

# Supreme Court of the United States

In the Matter of:

United States of America,

Plaintiff,

v.

State of Louisiana, et al.

Respondent.

Docket No. 9 Original

Pt. 2

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Place Washington, D. C.

Date October 15, 1968

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See also  
"Texas" argument,  
Nov. 18, 1968

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## IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

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United States of America, :  
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 Plaintiff :  
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 v. : No. 9 Original  
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 State of Louisiana, et al, :  
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 Respondent :  
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Washington, D. C.  
Tuesday, October 15, 1968

The above-entitled matter resumed for argument at  
10:00 a.m.

## BEFORE:

HUGO L. BLACK, Associate Justice  
WILLIAM O. DOUGLAS, Associate Justice  
JOHN M. HARLAN, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
ABE FORTAS, Associate Justice

## APPEARANCES:

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J. B. MILLER, ESQ.  
Counsel for the Respondent.

P R O C E E D I N G S

MR. JUSTICE BLACK: Proceed, Mr. Miller.

ORAL ARGUMENT OF J. B. MILLER, ESQ.

ON BEHALF OF THE RESPONDENT

(Resumed)

Q You may not be able to answer this question, but there must be about twenty-seven different interpretations, but I was wondering, number one, in a very few brief words what the case is about, and secondly, to what extent are you relying on my vain protest in the second California case, to sustain your case?

A I will answer the first question first.

As you know, the Court held in the first Louisiana case that Louisiana owned none of the marginal sea, that our title stopped at the inland waters, that we own the inland waters under the doctrine of Pollards v. Hagen, and in that case, and in the California case it was limited to inland waters, with the result that we own nothing beyond the inland waters, and none of the territorial sea.

Following that, the Congress passed the Submerged Land Act, by which they confirmed and granted to the States a three-mile belt of marginal sea lying outside of its inland waters. It not only confirmed the grant to the three-mile belt, but in cases where the State's historic boundary extended beyond three miles, it confirmed it out to its



2  
1 historic boundaries.

2 The second Louisiana case held that we did not  
3 have a historic boundary extending three leagues as we had  
4 contended, although this Court held and the Government con-  
5 ceded in that case that we did own the islands within three  
6 leagues of the coast, and that we also owned the water between  
7 those islands and the shore because they were so situated  
8 as to enclose inland waters.

9 Now this case is to determine where the limit of  
10 the inland waters of Louisiana are, the inland waters that  
11 belong to this State under Pollards v. Hagen. Once you  
12 determine where the inland waters are, then we measure three  
13 miles outside of those inland waters for the purposes of  
14 the Submerged Lands Act.

15 Q Is that a part of the second California case?

16 A Your Honor, we have felt that we must accept the  
17 California case in holding that the Geneva Convention applies.  
18 We may not agree with that, but that was the holding of  
19 this Court.

20 Now, if you will remember, this Court in the Texas  
21 case and in the Florida case awarded both Texas and Florida  
22 their historic limits. Texas goes out three leagues and  
23 Florida goes out three leagues. But Alabama, Mississippi,  
24 and Louisiana are brought into their inland waters.

25 Q But you certainly have a first point which we

3  
1 argued yesterday.

2 A Yes, sir, but the inland waterways which we argueu  
3 yesterday is the limit of our inland waters. It has nothing  
4 to do with our historic boundaries.

5 Q You said that you conceded that the Chicago cases  
6 and the Geneva Convention applies?

7 A I didn't say that we conceded that. I say for the  
8 purposes of our alternative coastlines, we have assumed that  
9 this Court will follow the California case.

10 A I want to make it clear that nothing that I say  
11 should be construed in any manner as detracting from our  
12 primary argument. We filed an alternative motion primarily  
13 in opposition to the restrictive and narrow interpretation  
14 of this interpretation that the Justice Department put on it.  
15 They have come up with a line that virtually is a shoreline,  
16 and it is my purpose to point out to this Court that whether  
17 or not you accept the inland waterways that Mr. Sachse  
18 advocates, there is no justification for the line that the  
19 Government contends.

20 Q Your assertion is not limited. It rests primarily  
21 on the argument which is practically the same that I made  
22 in the California case?

23 A Yes, sir, to a great extent, Mr. Justice. We feel  
24 that the shores of the Gulf of Mexico, and particularly  
25 Louisiana, are so shallow, and they are so changing, and

4 1 there is no way for foreign commerce or any ocean-going  
2 commerce to go anywhere in Louisiana because of the shallow  
3 waters. We have had to dredge a channel. The United States  
4 Government has spent over \$300 million dredging channels  
5 into the ports of Louisiana. There could be no commerce,  
6 and there would be no port but for these dredged channels.

7 This is a gently sloping shore, and it is of no  
8 value at all to foreign commerce. We feel that these are  
9 factors which this Court must take into consideration in  
10 determining what are the inland waters of Louisiana and  
11 the Gulf of Mexico.

12 Now, I have already alluded to the disagreement  
13 between the Government and ourselves over the interpretation  
14 of the Convention. Louisiana takes the position that the  
15 Convention is a general document, that it could not possibly  
16 be held to cover every complexity and every detail of every  
17 coast in the world.

18 We think it is like the United States Constitution  
19 and it must be interpreted liberally in order to make it  
20 work. The Government, on the other hand, said we have to  
21 stick to the letter of that document, that we can't go beyond  
22 its four corners, and where it is silent it is prohibitive.  
23 It denies to us principles of international law that were  
24 well established.

25 Q What do you say that the Government says?

5           1           A       Where the Convention is silent, it is prohibited.  
2       For example, the Convention is silent on whether or not  
3       islands may be used to form the perimeter of bays or to  
4       enclose inland waters.

5           The Government takes the flat position that that  
6       means it prohibits, and we may not use the islands to enclose  
7       inland waters. Yet in every single instance of every bay  
8       that they have recognized along our coast, they do in fact  
9       use islands to form the perimeters of those bays.

10          As a result of this type of narrow interpretation  
11       of this Convention, the Government has arrived at what we  
12       consider as a shoreline. It has changed the status of the  
13       inland waters of Louisiana from inland to the high seas.  
14       It has changed the status of inland waters which have been  
15       recognized by this Court to be inland.

16          A typical example of this is in Chandeleur  
17       and Breton Sounds. These waters are enclosed by the  
18       Chandeleur Islands and by Breton Island.

19          The Government concedes, and listen to this, that  
20       these waters are inland, but they say that they are inland  
21       only because of the concessions they made in this prior case  
22       where they admitted and conceded, when we were arguing for a  
23       three-league limit, they admitted that all of the islands  
24       within three leagues were within the territory of Louisiana,  
25       and all of the waters between the islands and mainland

6 1 was so situated as to enclose inland waters.

2 This Court recognized this in the first Louisiana  
3 case, and pointed out that these waters had become vested  
4 in Louisiana, at the time it was admitted into the Union  
5 and with our territory under the doctrine of Pollards v.  
6 Hagen.

7 In the California case, this Court again recognized  
8 that these waters were inland. It distinguished them from  
9 the Santa Barbara channel which the Court had held connected  
10 two areas of the open sea, and in distinguishing these waters  
11 from the Santa Barbara channel, it pointed out Breton Sound  
12 was a cul-de-sac, that Chandeleur Sound led only to Breton  
13 Sound, if it led anywhere, that neither served as a route  
14 of passage between two areas of the open sea, and both were  
15 so shallow as to be not navigable.

16 Q Where is the mainland on that chart there?

17 A Where is the mainland of Louisiana. It is all  
18 islands. These are all islands.

19 Q How about up above to your left?

20 A This is Mississippi.

21 Q It is still mainland.

22 A This is the mass of islands. Here is the City  
23 of New Orleans right here. All of Louisiana shoreline is  
24 islands. This is what makes it so difficult to apply this  
25 Convention without the use of the straight baseline system.



7 1 Now, these waters not only were recognized in the  
2 first Louisiana case and in the California case, they have  
3 been recognized as island waters of Louisiana in a case in  
4 1905 before this Court involving a dispute between Louisiana  
5 and Mississippi. Even the Chapman line which the Secretary  
6 of Interior drew in 1950 as the most landward position that  
7 the Government could claim in these waters recognized that  
8 these were inland, and enclosed the waters outside of the  
9 Chandeleur Island.

10 They were again recognized by this Court in the  
11 supplemental decree in 1965, because we were awarded title  
12 to waters lying outside of Breton Sound. But now the  
13 Government says the Convention has changed all of that, that  
14 there is now no legal basis for holding these waters to be  
15 inland, that the Convention has reclassified them into the  
16 high seas.

17 Q Can I ask you how much difference that makes in  
18 the boundary line that the Government claims and the boundry  
19 line that Louisiana claims? The difference between the  
20 claims?

21 A In this particular area, Your Honor, you mean?

22 Q Yes.

23 A There is about 15 miles between these islands  
24 and these islands. The Government says that the Convention  
25 means that we only get a three-mile belt around each island,

1 so there would be a strip of high seas in there. But the  
2 Government doesn't withdraw its concessions. It does not  
3 withdraw its concession in this case.

4 Q About these particular islands?

5 A In this particular water, it does not withdraw  
6 its concession.

7 Q But it applies elsewhere?

8 A It withdraws it everywhere else. It says except  
9 for its concession in this particular instance, these waters  
10 would be high seas, that the Convention has changed the  
11 statutes from inland waters to high seas.

12 Now, we say that Congress never intended any such  
13 result. We say that the Congressional hearings and the  
14 hearings before the Committee on the Adoption of the Geneva  
15 Convention, the Committee asked the State Department this  
16 very question: Are there any waters which are now internal  
17 but which would become high seas if we adopted this Convention?  
18 And the State Department's answer was in the negative.

19 Now, we say that the Convention has not changed  
20 these waters, that the Convention should be interpreted  
21 liberally, and it should be interpreted so as to continue  
22 the principles of international law which were in existence  
23 prior to the Convention and which are not concurrent to the  
24 Convention. But if we are wrong and the Government is right,  
25 and if the Convention should be interpreted as to change

9 1 the status of inland waters from inland to the high seas,  
2 then we say that these waters must be recognized as historic  
3 waters, which are excepted from the Convention. The Convention  
4 expressly excepts the category of historic waters.

5 Q Does the Government claim that the Convention  
6 changed the boundary of the State?

7 A Yes, the Government contends that the Convention  
8 changed the status of inland waters and the Government  
9 contends that the Convention changed the boundary of this  
10 country and took away the territory of Louisiana, and we  
11 say that if that is true, and we don't think it is, but if  
12 that is true, then we say that the act of Congress adopting  
13 this Convention is unconstitutional.

14 Q Why?

15 A Because Congress may not divest a State of its  
16 sovereign territory, and it may --

17 Q Is that a Constitutional provision?

18 A The Constitution provides, Your Honor, in Article IV,  
19 that Congress may not take away part of one State to form  
20 another state, and that it may not add territory to the  
21 first State without its consent. The second Article provides  
22 that the power of Congress to cede and sell its own  
23 property, its own territory, is unencumbered. Cases have  
24 held under this that Congress may not change the boundaries  
25 of a State without that State's consent.

10 1 Q As I understand, you are saying it can't change  
2 it and give it to someone else or give it to anybody?

3 A There is no express provision in the Constitution  
4 saying that Congress may take away the territory of a State  
5 and give it to a foreign nation, but we say if you can't  
6 take away the territory of a State and give to another State,  
7 it must follow that it can't give it to the family of nations.  
8 Cases have so held.

9 In the California case, Mr. Justice Harlan pointed  
10 out that the contraction of a State's boundary in the name  
11 of foreign relations would be highly questionable.

12 We have cited in our brief several cases in which  
13 the courts have held that Congress may not contract the  
14 State's boundary or cede its territory without the consent  
15 of that State.

16 Q The Government's claim rests at all on the Submerged  
17 Lands Act, but merely on the treaty?

18 A The Government's contention as I understand it,  
19 is by virtue of the adoption of the treaty that there is now  
20 no legal basis for these waters remaining inland waters,  
21 but since they have conceded that they were inland waters  
22 in the earlier case, that they do not feel that it is in the  
23 public interest to withdraw that concession.

24 A similar situation exists in the Mississippi  
25 River Delta. Your Map Number 5 will portray this area.

1 The coastline is shown in solid green and the three-mile  
2 limit is shown in dashed green lines. The Government's  
3 coastline, the more restrictive one, is shown in solid  
4 brown. Where there are no brown lines, the Government uses  
5 the shore as a line. The Government's three-mile limit is  
6 shown in a dashed line.

7 We all know of the importance of the Mississippi  
8 River. This river extends not only through Louisiana, it  
9 goes all of the way to the Ohio and Midwest and the Missouri  
10 and the West. This is a river that was responsible for the  
11 Louisiana Purchase. It participated in the War of 1812 and  
12 other wars. It is the most important waterway in this  
13 country.

14 Now, it is inland water. Could the Government  
15 cede the Mississippi River to the family of foreign nations  
16 and say this is high seas just by adopting the treaty?  
17 Certainly not. The treaty-making power of Congress is  
18 limited to the Constitutional power granted Congress.  
19 The Government concedes that most of these waters are  
20 geographic inland waters.

21 Q What is that?

22 A That means under the Convention they qualify  
23 mathematically. They say that West Bay and Garden Island  
24 Bay qualify as bays geographically under the mathematical  
25 formulas of the Convention.



12 1 Louisiana asserts that all of these waters are  
2 inland waters, both historically and geographically, and  
3 while the Government concedes that most of them do, the  
4 major exception is East Bay. They say that East Bay is  
5 high seas.

6 Now East Bay is the most important bay in this  
7 Delta area. All of this area was formed by sediment.  
8 It is continuing to deposit sediment. Some of the passages  
9 are being extended seaward and it is an ever-changing area.

10 Going back to East Bay, the Government says that  
11 East Bay is high seas because it does not qualify under  
12 Article 7 of the Convention. Now Article 7 defines a bay  
13 as a well-marked indentation whose depth of penetration is  
14 sufficient to enclose waters.

15 East Bay meets that test. It obviously is no mere  
16 curvature of the coast. Another requirement is that the  
17 width of the Bay may not exceed 24 miles. East Bay is only  
18 15 miles. But Article 7 also requires that the area of  
19 the Bay must be at least equal to the area of a semi-circle,  
20 the diameter of which is the closing line of the bay.

21 Since East Bay does not meet this test in its  
22 entirety, the Government says, "No bay, it is high seas."

23 We do point out at this point, however, that a  
24 substantial portion of East Bay does meet the semi-circle  
25 test, and this map shows a red line which satisfies the

1 semi-circle test and the Convention in every respect.

2 The Government even denies that.

3 Q Could I ask you a question? On the premise that  
4 you are arguing this portion of the case, are these questions  
5 matters for this Court to determine on this record or would  
6 it require the appointment of a special master?

7 A No, Your Honor, we think that this case can be  
8 determined on the basis of this record. Now, I am not  
9 going to go into a lot of detail about selection of headlines  
10 and whether we should select a point here that is 200 feet  
11 from a point there. But there are principles that are in-  
12 volved in this case, and I think that this Court must decide,  
13 even before a master could start on this case, the one  
14 principle that I have mentioned before is what about the  
15 inland waters that qualify as inland waters and form part  
16 of the sovereign territory of Louisiana before they adopted  
17 this Convention.

18 A master could not start on this case without the  
19 answer to that question. There aren't really any substantial  
20 factual disputes in this case as I understand it.

21 Q Mr. Miller, as I understand it, I thought you were  
22 going to argue the case on the assumption that the Convention  
23 did apply.

24 A Yes, sir.

25 Q Now what you are saying is that even if the Convention

1 does apply, it should not apply in respect of these particular  
2 points that you are raising, such as East Bay?

3 A No, sir.

4 Q Well, now, let me just be very sure that I am  
5 following you the best I can. You are saying that even  
6 if you apply the Convention, that is your alternative  
7 argument, and I understand that -- if you apply the Convention  
8 then you don't apply all of the definitions in the Convention.

9 You take Louisiana's historical inland waters in  
10 the case you were just discussing, which relates to East Bay.  
11 If you take this Convention literally with respect to the  
12 definition found in Article 7, wouldn't that rule out East  
13 Bay?

14 A No, sir, Your Honor.

15 Q Tell me why it would not?

16 A In this alternative argument --

17 Q I am just taking this as an illustration. I am  
18 trying to get the principle upon which you are arguing your  
19 case, and I haven't gotten it yet.

20 A I think that I can clear that up for Your Honor  
21 right now.

22 We do not depart from the Convention. We say that  
23 the Government's interpretation of the Convention is wrong,  
24 but that if you do follow the Government's interpretation,  
25 then you must hold the Convention to be unconstitutional.

15 1 Q Just a moment, you must hold the Convention to  
2 be unconstitutional?

3 A If you adopt the Government's interpretation of it.  
4 If you adopt our interpretation of it, you do not.

5 Article 7 excepts the category of historic bays  
6 from these mathematical formulae. It is our position that  
7 if a body of water has qualified as inland waters throughout  
8 the history of this country, and if it has been the inland  
9 waters and territory of a State throughout the history of  
10 this country, then it is historic inland waters, and it is  
11 excepted from the mathematical requirements of this brand  
12 new semi-circle test.

13 Q Maybe I didn't understand you. What you are  
14 saying is that you accept the Convention in this branch of  
15 the argument except where it conflicts with what you argue  
16 to be Louisiana's historical territory?

17 A No, Your Honor. Historic bays are excepted in  
18 the Convention itself. Article 7 of the Convention provides  
19 that the foregoing provision shall not apply to so-called  
20 historic bays.

21 Q Then where does your argument about unconstitutionality  
22 play a role?

23 A The Government says that they are not historic bays,  
24 that they are no longer inland waters, and that they are  
25 high seas. We say if that is a proper interpretation of

16 1 this Convention, then the Convention must be unconstitutional.  
2 But we don't think it is unconstitutional.

3 Q You say if you ignore what you say is the exception  
4 in Article 7, the exception of historic bays, if that is  
5 ignored, then the result would be unconstitutional?

6 A In East Bay that is true, yes, sir.

7 Now Louisiana claims East Bay as historic waters,  
8 not only in the legal sense we have just been talking about  
9 as having qualified as inland waters previously, but also  
10 in the historical sense of exercise of sovereignty.

11 At the time of the Louisiana Purchase in 1803,  
12 and when Louisiana was admitted to the Union in 1812, there  
13 was no mathematical requirement for a bay. There was no  
14 limitation upon the closing line. The only requirement was  
15 that the bay have the general configuration and characteristics  
16 of a bay and that its depth of penetration be such as to  
17 enclose inland waters along its sides.

18 Certainly East Bay met this test, and this map  
19 of 1838 shows the configuration of East Bay at that time.  
20 Earlier maps show the same general configuration, and we can  
21 assume that this was a configuration in 1812. It is obvious  
22 that its depth of penetration was sufficient to enclose  
23 inland waters, and it therefore qualified as inland waters  
24 of the State of Louisiana when it was admitted to the Union  
25 and became part of the territory of this State under the



1 doctrine of Pollards v. Hagen.

2 Not only is this true, but Louisiana's act of  
3 admission, its act of admission included all of its inland  
4 waters. It was described as being bounded on the south by  
5 Gulf of Mexico, and not the shore, but the Gulf of Mexico.

6 Q Excuse me, Mr. Miller. Where is Article 7 in  
7 your brief?

8 A Your Honor, unfortunately it did not appear in  
9 the index to the appendix. It is in our appendices to the  
10 brief, at page 127.

11 Q I am looking at the Government's brief here.

12 A I don't think that they have the entire Convention.

13 Q But they have what purports to be Article 7, that  
14 starts on page 125?

15 A Section 6 of Article 7 is the one to which I refer.

16 Q They don't have that printed?

17 A No, sir, I am sure that they left it out, but this  
18 small appendix to our brief is the one that contains it.

19 Q Thank you.

20 Q On what page?

21 A It starts on page 127, the Article I referred to  
22 is number 6 on page 130.

23 After going through all of the mathematical tests  
24 for bays, it says the foregoing provision shall not apply  
25 to so-called historic bays or in any case where the straight

1 baseline is used.

2 Now, the boundary was the Gulf of Mexico, and  
3 since East Bay was inland waters, it was not the Gulf of  
4 Mexico, and it became the territory of this State in 1812,  
5 and remained the territory of this State under the doctrine  
6 of Pollards v. Hagen.

7 Toward the turn of the century, international law  
8 had begun to develop a limitation upon closing lines, and  
9 the ten-mile closing line was mentioned with increasing  
10 frequency, and several countries had adopted it.

11 This chart shows East Bay in 1895, more than ade-  
12 quately satisfying even the ten-mile line.

13 This map also shows another interesting factor.  
14 Grand Pass is a peninsula in East Bay. When the United  
15 States Government started the improvement of navigation in  
16 South Pass, this Grand Pass was dammed off and forced more  
17 water through South Pass.

18 As a result of this procedure, the sediment flow  
19 into East Bay was curtailed, and Grand Pass subsided and  
20 eventually disappeared. In 1922 the Coast chart shows East  
21 Bay after this occurrence. The passes at South and Southwest  
22 Pass had continued to grow forward, but Grand Pass had dis-  
23 appeared.

24 East Bay had a greater penetration than ever  
25 before but for the first time its entrance exceeded ten miles.

1 At that time international law said you draw a ten-mile  
2 line at the nearest point within the Bay which does not exceed  
3 ten miles.

4 South Pass and Southwest Pass have continued to  
5 grow. They are still growing. In 1958 when the Convention  
6 was adopted, this was the configuration of East Bay. It  
7 was still a bay and it still had sufficient depth of penetra-  
8 tion to be a bay. It has grown since then.

9 The next map shows the 1968 depth of penetration  
10 at the bay.

11 Now, the Government says that the ten-mile rule  
12 never became international law. We don't know. But we  
13 say this, that if it never became international law, then  
14 there was no limitation, and East Bay remained a bay in  
15 the inland waters of this State by virtue of its general  
16 configuration and characteristics as a bay. It certainly  
17 had sufficient depth of penetration.

18 Now we have shown that East Bay has been part of  
19 the territory of this State since the beginning, since 1812.  
20 We say that the Convention cannot now divest Louisiana  
21 of this territory without the Convention being unconstitutional.

22 Since the term of historic bays is excepted from  
23 the strict inflexible mathematical requirements to inject  
24 into international law in 1958, we say that East Bay is a  
25 historic bay by virtue of having always qualified as a bay

1 throughout the history of this country, and that Congress  
2 has no power to do otherwise. It has no more power to dis-  
3 claim title to East Bay than it has the Mississippi River,  
4 or the District of Columbia.

5 But East Bay has not only qualified geographically  
6 as a bay, the classic definition under international law  
7 of historic water is waters over which a nation has exer-  
8 cised sovereignty for a considerable period of time with  
9 an attitude of general toleration among foreign states.

10 Now, the Government said we have exercised no  
11 sovereignty, but it confuses ownership with sovereignty.  
12 It seems to imply that the United States must have openly  
13 and expressly asserted a claim that East Bay was a part of  
14 the territory of this nation. This is not necessary.

15 Sovereignty does not mean ownership. Sovereignty  
16 is authority, it is the exercise of power or control.  
17 It is less than complete territoriality. This is made clear  
18 by the 1962 study of the United Nations which we understand  
19 the Government has adopted in the Alaska case. But it is not  
20 necessary for this classic type of definition of historic  
21 waters that all conceivable acts of sovereignty be exercised.  
22 It is only necessary that a nation exercise some act of  
23 sovereignty which is inconsistent with the concept of high seas.

24 Q Is there a definition in the treaty of historic  
25 waters, or historic bays?

1 A No, sir, the Convention is silent on the definition  
2 of historic waters, and it is our contention that that term  
3 was excepted from these mathematical requirements to serve  
4 as a safety valve for the very situations we are talking  
5 about as well as other situations.

6 Q I notice that Article 7, the reference is to so-  
7 called historic bays and "historic" is in quotation marks.

8 A It is the only time that it is mentioned. There  
9 is no other definition in the Convention. The definition  
10 that is recommended by the United Nations is the classic  
11 definition that I am talking about now, the exercise of  
12 sovereignty. That means that a nation has exercised some  
13 sovereignty for a considerable period of time, it is the  
14 best that they could come up with, was the word "considerable",  
15 with a general attitude of toleration by foreign nations.

16 But it is not necessary that all acts of sovereignty  
17 be exercised. It is only necessary that they exercise some  
18 act of sovereignty which is inconsistent with the concept of  
19 high seas.

20 In the Norwegian Fisheries case, which held  
21 Norway's waters to be historic behind their baseline, the  
22 only claim that Norway ever made was for fishing. They  
23 claimed fishing rights and by virtue of those rights having  
24 been asserted for so long a time and the lines having been  
25 drawn, they were held to be historic waters.



1 Now, it is not inconsistent with the concept of  
2 high seas to exercise limited control which is permitted  
3 by the Convention within the contiguous zone, as, for example,  
4 to prevent the infringement of your custom laws, the infringe-  
5 ment of your immigration laws, or your sanitary laws.

6 There is a fringe around the territorial sea over  
7 which you may exercise limited control to prevent violation  
8 of a nation's laws within its own territorial sea.

9 But we are not talking about that here. We are  
10 talking about the freedom of the seas, and the freedom of  
11 the seas is where a nation may not exercise sovereignty unless  
12 it is claiming these waters as its own, and the freedom  
13 of the high seas which is set forth in the Convention on  
14 the high seas are freedom of navigation, freedom of fishing,  
15 freedom of flight, and freedom to lay pipelines.

16 If sovereignty is exercised in any one of these  
17 spheres, it is absolutely inconsistent with the concept of  
18 high seas. It can be justified only on the basis that the  
19 nation is claiming the waters as its very own.

20 Q Do I understand your argument to be that it  
21 involves the Constitutional power to confer on all of the  
22 nations any submerged lands that have once been considered  
23 as belonging to the land?

24 A Not quite. I think that the Government may do  
25 whatever it wishes with its own territory, but I say that the

1 United States Government may not convey to a foreign state  
2 any part of the sovereign territory of a State.

3 Q But if the boundaries are the same, their ownership  
4 would be the same?

5 A No, the boundaries of the States under the Cali-  
6 fornia and Louisiana cases stop at the inland waters. The  
7 boundary of the nation extends for three miles beyond that.  
8 That is our present claim, three miles. Russia claims twelve  
9 miles, and the one thing that could never be agreed upon  
10 in this Convention was how many miles could a nation claim.  
11 This Convention is silent.

12 Q The Government without constitutional powers could  
13 convey any of that first three miles that you say is inland,  
14 of the submerged lands?

15 A I would have to presume that if Congress and the  
16 President so chose, they could do it as long as it did not  
17 infringe upon the boundary of a state. I think it would be  
18 a disaster to do it, but I think that I would have to admit  
19 that this power is vested in Congress.

20 Q Well, do you assume that a State has always owned  
21 the three miles from the coastal line so that the Government  
22 could not do that?

23 A No, this Court held that Louisiana did not own  
24 any of the three-mile limit, that we stopped at our inland  
25 water.

1 Now, if you will look at this next map, or your  
2 map number 5, you will see that there is a three-mile limit  
3 beyond our inland waters. The boundary of Louisiana stops  
4 at the inland waters, but the boundary of the nation stops  
5 at the three-mile limit.

6 The Submerged Lands Act has granted to Louisiana  
7 the resources under the three-mile limit, but I cannot say  
8 that we actually own the water of the three-mile belt. But  
9 our boundaries are inland waters.

10 Now, we have discussed the classic definition of  
11 exercise of sovereignty. We have shown that East Bay has  
12 qualified geographically as inland waters of this nation  
13 since 1803, and in the Louisiana Purchase, and when Louisiana  
14 was admitted to the Union in 1812.

15 This fact alone presupposes that all kinds of  
16 sovereignty were exercised over these waters. If it formed  
17 part of the territory of this State, and this nation, there  
18 is a presumption that sovereignty was exercised over these  
19 waters.

20 It is impossible at this late date to determine  
21 every single act of sovereignty that has been exercised  
22 by this nation, by this State, by the local authorities and  
23 everybody else, but we will mention some of them.

24 Now, Mr. Sachse has already discussed the Act of  
25 1895 as a basis of the inland water line. The Government

1 has objected to this, and contends that this Act is limited  
2 to navigation, that it has no effect whatsoever upon anything  
3 else except navigation. We violently disagree with that  
4 interpretation, but for the purposes of our discussion of  
5 the history of East Bay, we will assume that the Government  
6 is right and that it is limited to navigation.

7 Now, freedom of navigation is the first freedom  
8 mentioned in the Convention on the high seas. No nation  
9 may regulate navigation on any part of the high seas. To do  
10 so it can only justify it on the basis that it is claiming  
11 those waters as its very own.

12 Mr. Sachse pointed out that prior to 1895,  
13 Congress had adopted the international rules for the pre-  
14 vention of collisions on the sea. These rules applied not  
15 only to the high seas. They also applied to the marginal  
16 or territorial seas.

17 Subsequent acts of Congress, treaties and the  
18 case of the Delaware make this clear. The international  
19 rules apply to the high seas and the territories. The Act  
20 of 1895 imposed the inland rules only upon inland waters.  
21 But it imposed the inland rules upon all vessels, foreign  
22 as well as domestic.

23 It says that all vessels must comply with the  
24 inland rules once they get into the inland waters, and it  
25 authorized the Secretary of the Treasury to designate and

1 define a line marking those inland waters to carry out the  
2 purposes of that Act.

3 Now, the reason for the designation of this line  
4 by the Secretary of the Treasury was, of course, to regulate  
5 navigation. But the effect of it goes beyond that. It was  
6 a line marking the inland waters of these United States.

7 Now, in 1895, immediately after the passage of  
8 the statute, the Secretary of the Treasury began his task  
9 of designating and defining these lines. He picked the  
10 most important areas in the United States for his first  
11 lines in 1895, and he included Philadelphia harbor and Delaware  
12 Bay, Baltimore and Chesapeake Bay, New York, Charleston,  
13 Savannah, Mobile, and New Orleans, and the Delta of the  
14 Mississippi River among the first lines designated in 1895.

15 There had to be some line showing where the inland  
16 waters of this nation were, so that we could enforce inland  
17 rules on one side and international results on the other  
18 side. He designated these lines in 1895.

19 Q Was that done under a statute?

20 A Yes, sir, an Act of Congress, of February 19, 1895.  
21 I don't recall the title of the statute. It did provide that  
22 the inland rules were to be used in the inland waters of  
23 the United States and it did authorize and direct the  
24 Secretary of the Treasury to designate and define the line  
25 dividing the inland waters from the high seas.



1 Q Where is that statute? Is it in your brief?

2 A It is in one of these appendices to our brief.

3 I have the title, Your Honor. The title is an Act to Adopt  
4 Special Rules for the Navigation of Harbors, Rivers, and  
5 Inland Waters of the United States Except the Great Lakes,  
6 supplementary to an Act of August 19, 1890, entitled an  
7 Act to Adopt Regulations to Prevent Collisions at Sea.

8 This Act was similar to the Act of 1890 which  
9 adopted international rules. This Act adopts the inland  
10 rules.

11 Q Is it published anywhere in your brief or the brief  
12 of the Government?

13 A I cannot answer that offhand, Your Honor. We  
14 have so much in these briefs.

15 MR. COX: It is on pages 150 and 151 of our opening  
16 brief, Mr. Justice.

17 Q Your point, I take it is the action of regulating  
18 the navigation on the inland waters was an act of sovereignty?

19 MR. MILLER: Yes, sir.

20 Q And since that sovereign power was exercised  
21 with respect to East Bay, taking that as an illustration,  
22 that constituted an exercise of sovereignty by the national  
23 government, and therefore it followed that East Bay is  
24 historic waters?

25 A Yes, sir, that is exactly our position. That is one

1 of our positions. We say that irrespective of that it would  
2 have been historic waters.

3 Q One is sufficient at the moment. What I want to  
4 ask you is, you would not argue, of course, that the comparable  
5 exercise of control over navigation on the open seas consti-  
6 tuted an act of sovereignty over the open seas, would you?

7 A Your Honor, the Government says East Bay is open  
8 seas.

9 Q I understand that, but you wouldn't say, taking  
10 this clearly into international waters, that the regulation  
11 of shipping, United States shipping, in the international  
12 waters, that is not an act of sovereignty, is it?

13 A If it is exercised within well defined areas and  
14 marked and it is exercised for a sufficient period of time,  
15 the answer is, "Yes." This is exactly what happened in  
16 Norway. Norway had drawn these lines for fishing purposes.  
17 There had been no concept of straight baselines before the  
18 Convention and the court held that they were historic waters  
19 because Norway had controlled fishing within those lines.

20 If we were to draw off a part of the high seas and  
21 station gunboats out there, with regulations, and say, "You  
22 can't come in here unless you comply with our regulations,"  
23 and we do it for a sufficient period of time without objection  
24 from foreign states, it is historic waters.

25 Q I understand your position.

1           A     Now, the 1895 line around the Delta was defined  
2 as commencing at the Southeast Pass jetty light, and thence  
3 to Errol Island in the Chandeleur chain. It commenced again  
4 by a separate description at South Pass jetty light and ran  
5 to Southwest Pass, and thence north to shore.

6           This description was published in Treasury Depart-  
7 ment Circular 127 of July 1895, and it was also indicated  
8 on the U.S. Coast Chart 194 of that year.

9           We have circled this in red, and this map appears  
10 in a reduced scale in your folder, and I am sure you can't  
11 read it, but that is that it says.

12           Now this line enclosed all of the waters of the  
13 Delta including East Bay. Similar lines were designated  
14 again in 1897 and 1900. After 1900 the authority was trans-  
15 ferred from the Secretary of the Treasury to the Secretary  
16 of Commerce and Labor, and in 1905 and in 1907 the Secretary  
17 of Commerce and Labor designated similar lines, making only  
18 such adjustments as were occasioned by the seaward growth  
19 of the passes.

20           The Secretary of Commerce and Labor became the  
21 Secretary of Commerce, and in 1917 another line was designated  
22 by the Secretary of Commerce.

23           The lines were again designated in 1927 and 1932.

24           Our next map shows a composite of all of these lines  
25 as well as the 1953 lines. At the time that these lines

1 were drawn, each and every one of them enclosed the entirety  
2 of East Bay. The adjustments in the lines were occasioned  
3 only by the seaward growth of those passes. Since 1895  
4 that bay has been enclosed as inland waters of this country.

5 Q You are arguing that those are inland waters?

6 A Well --

7 Q And not the treaty?

8 A Your Honor, we say because of these lines that this  
9 makes East Bay an historic bay, which is excepted from the  
10 treaty. It is excepted by its own terms from the mathematical  
11 requirements of the treaty. We say that these lines mark  
12 the inland waters of the State of Louisiana.

13 Q What did you say was the last adjustment of that  
14 line?

15 A You mean when was it?

16 Q What was the time of the last line?

17 A This is 1853. In the inland water line that  
18 Mr. Sachse discussed yesterday.

19 Q There has been none drawn since that time?

20 A Not to my knowledge.

21 Q Which map is that?

22 A That is map number 15.

23 Q But at some point for the purpose of this case,  
24 that line freezes, I think.

25 A We take the position that the line of 1953 is

1 frozen because Louisiana has adopted a statute declaring  
2 it as its boundary.

3 Q For purposes of the Submerged Lands Act, it ceases  
4 to be adjusted.

5 A The Coast Guard tried to change this line last  
6 year, and they held hearings all over the Gulf of Mexico,  
7 and there were so many objections by the shipping interests  
8 and the people who had economic interests in this area that  
9 they abandoned the whole project.

10 We have to have a line like this in Louisiana  
11 because of the shallow waters, and the small boats. Fisher-  
12 men go out, and I have been out in an outboard motorboat  
13 fishing, and the Government says that this is high seas,  
14 and I was in a 16-foot motorboat. We can't even get to the  
15 shores in Louisiana without a dredged channel. There must  
16 be a line somewhere out there.

17 Now, we say that these lines qualify as straight  
18 baselines under Article 4 of the Convention, also. We think  
19 that they do. We think that the Convention should be  
20 interpreted as including lines such as these because this  
21 is necessary for this State and this country.

22 The waters of Louisiana are so shallow there is  
23 no way for them to be of any benefit to any foreign commerce.  
24 They are not like the Santa Barbara channel. It is two thousand  
25 feet deep there, and we are talking about waters for the



32 1 most part that an outboard motorboat has trouble getting  
2 into.

3 Q But the position of the United States doesn't mean  
4 that the waters outside its coastline or shoreline or what-  
5 ever you want to call it are international waters in this  
6 sense. It is a territorial sea.

7 A No, sir, in East Bay, the Government says this  
8 is the limit of the high seas. They say this is the three-  
9 mile territorial situation. They say this line represents  
10 the high seas.

11 Q But the Convention doesn't say how far the terri-  
12 torial sea goes?

13 A The United States Government says three miles.

14 Q They say that, but the Convention doesn't say  
15 that?

16 A There was no agreement on the territorial sea.  
17 Russia claims twelve miles and we claim three miles, and  
18 we could not agree. But the United States has consistently  
19 asserted three miles, and under their present position this  
20 would make a substantial part of East Bay high seas.

21 Now, acts of Congress and regulations require  
22 that the inland rules be used by all vessels both foreign  
23 and domestic inside of these lines. There can be no doubt  
24 that the agencies entrusted with the enforcement of these  
25 laws commencing with the Secretary of the Treasury, on up now

1 to the Coast Guard, did in fact enforce these laws and the  
2 Government doesn't deny that they did. There can be no  
3 doubt that the inland rules of the road were in fact en-  
4 forced inside of these lines both on domestic vessels and  
5 foreign vessels, and the Government doesn't deny that either.

6 And yet there is not a single instance of any  
7 objection by any foreign nation or any foreign vessel to  
8 these lines. Not only has there been toleration, but we  
9 feel that there has been complete acquiescence. But this  
10 isn't the end of the story.

11 Louisiana has exercised sovereignty within these  
12 waters. Beginning in 1870, Louisiana enacted extensive  
13 statutes regulating the oyster, fishing, and shrimp industry.  
14 All of these statutes have been applied and interpreted as  
15 applying to the inland waters of Louisiana, including East  
16 Bay.

17 Oyster leases have been granted in East Bay.  
18 Some of the shrimp statutes specifically mention East Bay.  
19 Arrests have been made in East Bay for the violation of the  
20 shrimping regulations. The Louisiana Department of Wildlife  
21 and Fisheries patrols East Bay to enforce regulations.  
22 No question has been raised by the United States or by a  
23 foreign vessel or not even the persons arrested.

24 Other control has also been exercised by local  
25 officials of other activities.

1 A large oil field is located in East Bay, and  
2 therein lies the problem.

3 Part of this oil field extends into the parts  
4 that the Government says is now high seas. This map was  
5 prepared by Shell Oil Company showing its facilities in  
6 this area. It is obvious that the --

7 Q Is that map in your brief?

8 A That is your map number 16. But Louisiana is  
9 not the only one that has considered this bay to be inland  
10 waters. The United States has considered it to be inland  
11 waters, and in 1940 when the Census Bureau undertook the  
12 measurement of the United States, they included all of  
13 East Bay as the inland waters of America.

14 This map shows the location of the line drawn  
15 by the Census Bureau in 1940.

16 Now the Government says we exercise no sovereignty,  
17 and yet we control navigation, so there is no freedom of  
18 navigation, and we control fishing, and there is no freedom  
19 of fishing, and we control pipelines and air flight in this  
20 bay also.

21 This country has exercised complete sovereignty  
22 over East Bay, and no nation has ever raised any objection.  
23 They have abided by our laws in East Bay, and all of the  
24 conditions for historic waters have been met not only from  
25 a classic sense of sovereignty but also from a legal sense

1 of geography.

2 Q What kind of laws have you had to control it?

3 A Fishing laws, shrimping laws, and oyster laws,  
4 and all types of conservation laws. The Department of Wildlife  
5 and Fisheries has regularly patrolled these bays. It is  
6 one of the best fishing bays in the Gulf of Mexico.  
7 Because of the Mississippi River current, the sediment and  
8 the fish just flock in there.

9 Q How about oil?

10 A The Shell Oil Company map shows the oil. That is  
11 what started the whole thing.

12 Q Does it exercise control over the bottom of the  
13 sea?

14 A Not now, Your Honor, because under the Convention  
15 on the high seas this is granted to all nations, but before  
16 that happened, it was. Before that occurred, it was.  
17 Before Mr. Truman's proclamation and the Continental Shelf  
18 Act, then any act that Louisiana performed over this bay  
19 was an act of sovereignty, and we did grant leases and that  
20 is what started this whole litigation.

21 Q There doesn't seem to be any difference in the  
22 fundamental proposition of law between you and the Government,  
23 and that is to say that both agree that East Bay is to be  
24 considered historic waters for this purpose if there has  
25 been an exercise historically of an act of sovereignty.

1           A     That is our contention, but the Government contends  
2     that we must have claimed ownership of this bay as part of  
3     the territory of this nation.

4           Q     That is not the way I read their brief. Then they  
5     go on to say that, A, it has to be an exercise of sovereignty  
6     by the national government and, B, there has been no such  
7     exercise of sovereignty by the national government.

8           A     That is correct.

9           Q     Now, that may raise a perplexing question for us  
10    because it may not be just a question of law but it may be  
11    a question of fact, too, and the problem is one that my  
12    brother White raised earlier, whether we can decide this or  
13    whether there has to be a master.

14          A     Your Honor, we think that you can. We think that  
15    the law presumes that these officials performed their duties  
16    and enforced the laws, and the Government doesn't deny that  
17    they enforced the laws of navigation down there.

18                They do not deny that the navigation laws were  
19    in fact enforced.

20          Q     You have cited a lot of other things here, not  
21    only navigation laws, which may prove your case and may not --

22          A     We have filed in the record arrests that have been  
23    made, and oyster leases that have been made, and maybe we  
24    should ask the Government what facts they dispute. I don't  
25    know.



1 My time is running out and I want to cover one  
2 more area before I quit, and that is Caillou Bay, your map  
3 number 21.

4 Caillou Bay again serves as an example of the  
5 restrictive interpretation by the Government. The Government  
6 says that island may not be used to form bays, and yet they  
7 used this same mass of islands which we use as the western  
8 part of Caillou Bay to form the adjoining bay, but they say  
9 that these islands can't enclose bays.

10 These islands are separated from the mainland  
11 by one foot of water, one foot of water, according to the  
12 coast chart. The maximum depth of water in East Bay is  
13 7 feet and most of the bay is about 5 to 6 feet deep. But  
14 they say this is like Santa Barbara channel. They say this  
15 is the same thing as Santa Barbara channel, which this Court  
16 held not to be inland water.

17 To show the difference, this is a coast chart of  
18 Santa Barbara channel. We have reproduced Caillou Bay at the  
19 same scale on this coast chart, and this is Caillou Bay.  
20 It is so small I don't even think that you can see it.  
21 But this is Caillou Bay that the Government says is like  
22 the Santa Barbara channel.

23 The depth of water in Caillou Bay is 5 to 6 feet  
24 deep. The depth of water in the Santa Barbara channel is  
25 two thousand feet deep.

1 Now, this is the kind of water we are talking  
2 about in Louisiana. We are talking about ponds. We are not  
3 talking about two-thousand-feet, sea-going channels.

4 Even the Chapman Line in 1950, drawn by Secretary  
5 of the Interior Chapman, enclosed East Bay. I am sorry.  
6 It was Caillou Bay.

7 It has never been considered in dispute and no  
8 money has been impounded. It was never regarded as being  
9 disputed.

10 In the first Louisiana case, the Government con-  
11 ceded that all of the waters located or situated between  
12 the islands and the mainlands are inland waters, because  
13 the islands are so situated as to enclose inland waters.

14 Now, they say Caillou Bay is part of the high seas.  
15 There is six-foot water as part of the high seas.

16 I want to mention the dredged channels.

17 Q For Caillou Bay they just take three miles from  
18 around the islands?

19 A Three miles from shore.

20 Q And around the island?

21 A They say islands may not be used under the Convention  
22 to enclose bays.

23 Q Where there is one foot of water, that is not  
24 high seas, is it?

25 A It is territorial sea.

1           Now, I have mentioned the dredged channels before  
2 as being necessary for this State, and in every single port  
3 that we have in Louisiana, including the Port of New Orleans,  
4 it has been necessary to dredge channels in order to reach  
5 that port. Even the passes at the river silt-up and no boats  
6 can get in without dredged channels.

7           This is a dredged channel off the coast of Cameroon  
8 Parish. Similar dredged channels were held to be inland  
9 waters in the case of the Delaware. It was a channel leading  
10 to New York Harbor in which the court said it is as much  
11 inland waters as New York Harbor, itself.

12           Article 8 of the Convention provides that the  
13 outermost permanent harbor works which form an integral  
14 part of the harbor system shall be regarded as forming part  
15 of the coastline. These are permanent. They are cuts into the  
16 bed of the Gulf of Mexico.

17           The United States Government has spent over \$300  
18 million offshore in Louisiana dredging these channels.  
19 They currently spend money maintaining these channels, and  
20 these are not mere bouyed channels. The earth dredged out  
21 of these channels is deposited on the banks of the cut in  
22 the form of a soil bank, and it impedes navigation, but  
23 without the channels no vessel could navigate beyond a rowboat  
24 or an outboard motorboat or some other small type of boat.  
25 But they are not buoyed.

1           These channels are marked by a trestle and concrete  
2 towers that are sunk in the bed of the Gulf of Mexico and  
3 are over 60 feet tall. They are truly representative of the  
4 outermost permanent harbor works which form an integral  
5 part of the harbor system of Louisiana, and under Article 8  
6 of the Convention, they are part of the coastline. This  
7 Government objects to this because they are submerged.

8           That Article doesn't mention anything about being  
9 submerged. It says permanent harbor works.

10          The Government says we can't measure from the low  
11 water line. The Convention doesn't say anything about measuring  
12 permanent harbor works from the low water line. The Con-  
13 vention says if they are part of the harbor works, they are  
14 a part of that system, and they are regarded as part of the  
15 coast of Louisiana.

16          I have one more factor I want to mention.

17          In its brief the Government is asking that this  
18 Court limit the effect of this decision to the Chapman Line,  
19 and yet they are claiming Caillou Bay beyond the Chapman Line.  
20 We think that this decree must settle the lands underneath  
21 navigable waters which were converted to the States by the  
22 Submerged Lands Act.

23          Q     Do you want to reserve that time?

24          A     Yes, sir. We need a rebuttal.

1 MR. JUSTICE BLACK: You may proceed, Mr. Cox.

2 ARGUMENT OF ARCHIBALD COX, ESQ.

3 ON BEHALF OF THE PLAINTIFF

4 MR. COX: Mr. Justice Black, and may it please the  
5 Court, I think it will be helpful in the beginning if I go  
6 back to the fundamental question in this case.

7 As we see it, the ultimate question is, where is  
8 the coast line of the United States located in the general  
9 area of Louisiana for the purposes of the Submerged Lands Act?

10 The exact location of the coast line is important,  
11 because the Submerged Lands Act conveyed to each State the  
12 title to the resources not only up to the coast line, but also  
13 for three miles beyond.

14 Consequently, while we are fighting about where  
15 the line is three miles beyond the coast line, that is neces-  
16 sarily determined by the location of the coast line itself.  
17 It is more convenient to talk directly about the location of  
18 the coast line.

19 Q And you think about the coast line of the United  
20 States, rather than the coast line of Louisiana, do you?

21 A We say that the coast line for the purposes of the  
22 Submerged Lands Act means the coast line of the United States,  
23 yes.

24 The two would be the same for all purposes, so far  
25 as I can think, but we do mean for national purposes, Justice



1 Stewart, and that is why I emphasized the coast line of the  
2 United States.

3 Section 2(c) of the Submerged Lands Act defines  
4 the coast line as the line of ordinary low water along the  
5 coast which is in direct contact with the open sea, and the  
6 line marking the seaward limit of inland water.

7 There is no dispute, of course, about the first part  
8 of the definition in this case. That is to say, the low water  
9 mark along the coast where the coast is in contact with the  
10 open sea, although Louisiana denies that their coast is ever  
11 in contact with the open sea.

12 The critical question, then, is about the second  
13 part of the definition in 2(c) of the Submerged Lands Act:  
14 Where is the line marking the seaward limit of inland waters?

15 In other words, what are the inland waters of Louisiana,  
16 and where is their seaward limit?

17 Now, in answering this question, the first step is  
18 to determine where one finds the definition of inland waters,  
19 where one finds the standard that he applies to the physical  
20 features of this coast in order to find the inland waters.

21 Our view is that you find it in the Geneva Convention  
22 of 1961 defining the territorial sea and the adjacent water.

23 Louisiana's answer is that you find it, her first  
24 answer, in the regulations issued by the Coast Guard for the  
25 purpose of telling vessels where they are to follow the

1 international rules of navigation, and where they are to follow  
2 our own domestic inland rules of navigation.

3 The differences are illustrated on this chart and  
4 also on the small charts which I believe the clerk has handed  
5 to each Member of the Court.

6 The green area is the area which was confirmed to  
7 the United States by the Decree entered late in 1965, the  
8 Supplemental Decree, which was virtually by consent. In  
9 other words, it is the area more than three miles from the  
10 Coast Guard line.

11 The red areas here, and a little bit here, and then  
12 a bit over here, and another area in East Bay, are the areas  
13 that were conferred to Louisiana by the Supplemental Decree  
14 entered in late 1965.

15 Now, the pink area we concede goes to Louisiana.  
16 There is no dispute about it.

17 Consequently, one comes down to the white area between  
18 the green and the pink or red, this long strip in here, some-  
19 times 20 miles off the physical coast. The dispute is over  
20 that area.

21 Q Mr. Cox, did the red used to be pink? If it weren't  
22 red, would it be pink?

23 A Not in all cases. It became red for several reasons.

24 It became red partly because of more accurate surveys  
25 than had been available at the time the Interim Agreement was

1 drawn up, and it became red partly as a result of the Decision  
2 of this Court in the California case, which as you will recall  
3 rejected some of our claims with respect to the meaning of  
4 inland waters.

5 This is particularly true, if my memory is right,  
6 in the Atchafalaya Bay area.

7 Q So to that extent it would have been pink, and not  
8 red?

9 A It would have been white, and it would still be in  
10 dispute.

11 The pink area we now concede.

12 Q As being inland waters?

13 A Yes.

14 I am sorry. We conceded it belongs to Louisiana,  
15 and it is the territorial sea.

16 Q As being within three miles from inland waters?

17 A As being within three miles from the coastline, in  
18 some instances from inland waters, and in some instances from  
19 the shore, yes.

20 This map, in other words, Justice White, is a map that  
21 deals in terms of boundaries and not in terms of the coastline.

22 Now, I should make one other point about the map  
23 clear. Back of the pink line there is a lot of white area,  
24 which is of course water. That goes to Louisiana, too, but  
25 there has never been any dispute about it.

1           There have been no funds impounded from it, and con-  
2           sequently we didn't think it was worth coloring on the map.

3           Q     Where is that one?

4           A     These white area back here. Those clearly are  
5           inland waters, and I didn't want the fact that they are white  
6           to mislead the Court.

7           Now, the first issue in the case deals with the  
8           entire white area outside of the pink and the red lines.  
9           The issue about the Coast Guard line will determine that.

10          Q     Now, is that line on the top of the chart, there,  
11          is that the Coast Guard line?

12          A     No, the Coast Guard line doesn't hardly show. If  
13          you look sharp, you will see about three-quarters of an inch  
14          inside the yellow line. That is three miles, and that dotted  
15          line is the Coast Guard line.

16          I come next I think to answering the question that  
17          was bothering you, Justice Brennan.

18          The second part of the case, that is, assuming that  
19          we are right, that the Coast Guard line does not control --  
20          the second part of the case, then, concerns that we would get  
21          the white area outside of the blue line.

22          The second part of the case involves the area inside  
23          the blue line, between it and the pink and red.

24          In other words, Louisiana says they own out to that  
25          blue line, under the Submerged Lands Act, under their

1 alternative, whereas we say they don't go beyond what is pink  
2 or red.

3 Q That line is their application?

4 A Yes, so that in the second part of the case what  
5 you have is a series of disputes about specific areas within  
6 the fingers coming out, and then again this area here, and  
7 again here, Caillou Bay, and another application here, and  
8 getting around each of these, here is East Bay, and so on.

9 There are a series of specific disputes about the meaning  
10 and application of the Convention, which really have to be  
11 worked through one by one, although certain common questions  
12 apply.

13 I plan to devote the first part of my argument to  
14 the question of the Coast Guard line.

15 Q As I understand it, Mr. Cox, looking at your chart,  
16 the line which you say is the seaward limit of Louisiana's  
17 primary line is that line parallel to the Coast Guard line  
18 three miles out.

19 A Yes. In other words, the seaward limit of their  
20 primary claim is the edge of the green.

21 Q That is parallel to the Coast Guard line three miles  
22 to sea?

23 A Precisely.

24 Q Just so I am clear again, Mr. Cox, if that position  
25 does not prevail, then what we are concerned with are only those



1 white segments inside the heavy blue line from one end to the  
2 other of the chart?

3 A That is correct.

4 You see, these are tremendous -- perhaps "tremendous"  
5 is too strong -- and this is 27 miles, here, and they say that  
6 the sea never comes within 20 miles from the spot, 15 and 10  
7 in others, so as I say, I plan to deal first with the Coast  
8 Guard line, and then second with such of the more specific  
9 disputes as I have time for.

10 With respect to the Coast Guard line, we urge first  
11 that the United States against California should be decisive.  
12 There the Court held that Congress used the term "coastline,"  
13 and "inland waters," in the international sense, as it had used  
14 it in prior decisions, namely, the First California case.

15 Second, that Congress intended the Court to fill out  
16 the meaning of "inland waters" and "coastline," by choosing  
17 the best and most practicable definitions.

18 And third, the Court held that the best and most  
19 practicable definitions were those in the Geneva Convention  
20 ratified by the United States in 1961.

21 Now, those three rulings, it seem to us, were dis-  
22 positive of these issues in these white areas.

23 Louisiana argues, as I understand it, that the  
24 decision in the California case was merely sort of permissive,  
25 that a State could assert a right out to the line fixed under

1 the Convention, or it could, if it wished, assert a line out  
2 under some other set of rules going beyond the Convention.

3 That seems to us to be inconsistent both with what  
4 the Court said in the California case, and also inconsistent  
5 with what it actually did in its decree.

6 In the California case, on page 165 of 381 U.S.,  
7 the Court said:

8 "It is our opinion that we best fulfill our respon-  
9 sibility by giving content to the words which Congress employed"  
10 -- that is, in the Submerged Lands Act -- "by adopting the  
11 best and most workable definitions available.

12 "The Convention provides such definitions. We adopt  
13 them for the purposes of the Submerged Lands Act."

14 Then the Court went on to point out that this estab-  
15 lishes a single coastline both for the administration of the  
16 Submerged Lands Act and the conduct of our future relations.

17 This certainly doesn't sound permissive. "It estab-  
18 lishes a single coastline," and, "We adopt these definitions."

19 It doesn't sound as if they were to be used on some  
20 occasions and then not on others, if the State happened to  
21 prefer.

22 O Of course, the Court later on in its opinion rejected  
23 California's claim to Santa Monica Bay and San Luis Obispo  
24 Bay, on the ground they did not conform to the requirements of  
25 the Convention.

1           So that it applied it both where it hurt us, as some  
2 of you will recall, in Monterey Bay, and it applied the/Con-  
3 vention, too, where it hurt California, as in San Luis Obispo  
4 Bay and Santa Monica Bay.

5           When it came to the decree which the Court entered  
6 following the decision in the California case, the decree  
7 recited as used herein, "Inland waters means," and I emphasize  
8 the "means," "waters landward of the baseline of the terri-  
9 torial sea, which are now recognized as internal waters of  
10 the United States under the Convention on the territorial sea  
11 and the contiguous zone."

12           If the word means what it says, there is no alterna-  
13 tive.

14           Furthermore, in the second paragraph of the decree,  
15 where the Court listed certain waters that it adjudicated to  
16 be inland waters of California, it used the words that the  
17 inland waters of California include specific areas that were  
18 in litigation in that case.

19           Obviously, it didn't wish to pre-judge California's  
20 claims as to areas we didn't talk about in that case, up  
21 along the northern part of the coast.

22           I think again the contrast between "includess"  
23 in this paragraph, and "means" in the other paragraph, empha-  
24 sizes that the word "means", when adopting a general formula,  
25 was deliberate, indeed as it was pointed out in the Supplemental

1 Briefs to the decree.

2 Louisiana's other argument, as I understand it, is  
3 that the United States against California does not apply  
4 because her coast has unique features.

5 Of course, the characteristics of all of the coastal  
6 States are in some degree peculiar. On the Alaska coast, it  
7 is entirely unlike the North Carolina coast, and the Maine  
8 coast is unlike the Louisiana coast, and the Connecticut coast-  
9 line would be different from Oregon's, and so forth.

10 If one said that a State may get out from under the  
11 Convention simply by calling attention to particular character-  
12 istics, then every State's coastline is thrown open to litiga-  
13 tion.

14 The very purpose of the California case was to have  
15 the same coastline for international purposes and for the pur-  
16 poses of the Submerged Lands Act.

17 The Court and the Congress incorrectly, I suggest,  
18 would be put in the position of playing favorites among the  
19 States if it used the Convention rules in one case, and some  
20 other set of rules in another case.

21 So we think, as I say, that the California decision  
22 is controlling.

23 I should in that connection mention one small point.

24 There are Coast Guard lines near some of the bays  
25 in California. There is none along the whole coast as there

1 is in Louisiana.

2 Neither party in the California case thought it  
3 appropriate to invoke those lines. They might have been  
4 invoked, but both parties thought that they were irrelevant, and  
5 we so stated to the Court, as I remember it, during oral  
6 argument, mentioning the existence of the lines.

7 Moving along --

8 Q Has there ever been any complete coastline there,  
9 as in Louisiana?

10 A No, and of course, Mr. Justice Black, there never  
11 was any complete coastline drawn in Louisiana until after  
12 the Submerged Lands Act was passed.

13 The line has varied from time to time. At some  
14 times it has run along the east side of the delta, here, down  
15 along the east side of the delta.

16 Q Who drew it, then?

17 A It was to begin with the Secretary of the Treasury,  
18 and at one stage the Bureau of Navigation, and ultimately it  
19 came to the Coast Guard.

20 But this whole expanse here that they now rely on  
21 wasn't drawn until after the Submerged Lands Act was adopted.  
22 It didn't exist at the time the Submerged Lands Act was passed.

23 Indeed, at the time that the Submerged Lands Act  
24 was passed, Louisiana's charts didn't mention this. The line  
25 didn't even include East Bay. It ran a little bit up here, and



1 down around the Chandeleur Island, and then down roughly  
2 where the edge of the green is now.

3 That was the only line from 1935 until 1953, a  
4 period of almost 20 years, according to our study of the  
5 records.

6 So that the line Louisiana is now invoking was pro-  
7 mulgated after the Submerged Lands Act was passed.

8 Q Was it drawn under the 1895 statute?

9 A Yes. That is, with changes due to the governmental  
10 reorganization, but it was basically the 1895 statute.

11 Now, we say that even as an original question, for-  
12 getting the California case, that the Coast Guard line would  
13 be utterly unacceptable as a definition of inland waters for  
14 the purposes of the Submerged Lands Act.

15 In other to put the two in proper relation, I think  
16 it is important that I go back and give a little bit of  
17 explanation of the history of the legislation dealing with the  
18 Coast Guard line and the various lines that have been promul-  
19 gated from time to time under that legislation.

20 Q May I ask you a question, first?

21 I can't remember. Was there any reference to the  
22 Coast Guard line in the legislative history of the Submerged  
23 Lands Act?

24 A A few very brief references, yes.

25 I can elaborate them now, or do it a minute later,

1 after I get to that.

2 I have it firmly in mind to refer to them.

3 In 1864, Congress enacted a statute later incor-  
4 porated in the Revised Statutes, that promulgated certain  
5 rules of the road, that is, navigation rules, for all United  
6 States vessels anywhere, the kind of statute that Justice  
7 Fortas referred to as applicable earlier to vessels sailing  
8 the high seas.

9 This applied to both naval vessels and to the merchant  
10 marine.

11 In the 1880s, there were a series of international  
12 conferences on rules of navigation, and they came up not with  
13 a treaty, but with recommendations to the nations who partici-  
14 pated in them.

15 In 1890, Congress enacted a new statute which required  
16 all U.S. vessels upon the high seas, and in all waters connected  
17 therewith, navigable by sea-going vessels, to follow the new  
18 international rules.

19 That was to take effect some years later, and in the  
20 interval, it became apparent that there was going to be some  
21 confusion, because the old statute adopting the inland rules  
22 still applied somewhere, and the new statute still applied to  
23 some vessels somewhere.

24 In 1895, having been advised of this problem,  
25 Congress enacted the statute that we are talking about. It

1 appears on pages 150 and 151 of the Government's Brief.

2 It said that the old 1864 rules, the inland rules,  
3 should be followed on inland waters, and then it went on in  
4 Section 2 and empowered the Secretary of the Treasury, and that  
5 is the authority which has come down to the Commandant of the  
6 Coast Guard -- it empowered him from time to time to designate  
7 and define by suitable bearings or ranges, with light houses,  
8 light vessels, buoys, or coastal aides, the lines dividing  
9 the high seas from rivers, harbors, and inland waters.

10 Q What does that mean, that is, Section 2?

11 A It means that the Secretary, and later the Commandant  
12 of the Coast Guard, is to provide or to define where the inland  
13 rules are to apply, and where the international rules are to  
14 apply.

15 Q Why isn't that binding?

16 A I think this definition is binding for the purposes  
17 of this schedule.

18 Q For the purposes of what?

19 A For the purposes of this statute; binding for the  
20 purposes of navigational rules.

21 Q Just the rules?

22 A Just the rules, yes.

23 Q But it was to mark the boundaries between the inland  
24 waters and the sea?

25 A Which was to be done for a specific purpose, as

1 provided in the title of the Act, on page 150.

2 It is an Act to adopt special rules for the naviga-  
3 tion of rivers, harbors, and inland waters of the United  
4 States.

5 That was the only purpose ever explained.

6 Q I don't quite understand why that was not the line.

7 A It certainly is a line, for the purposes of this  
8 Act.

9 Q For the purposes of navigation?

10 A Yes.

11 Q But why would it not be the right boundary?

12 A Well, I think there are two points, and I am going  
13 to develop them in a moment, Justice Black.

14 Q All right. You can do that later.

15 A It would be handy to indicate them.

16 First, we think that it is most implausible for  
17 reasons that I will state to suppose that this Act authorized  
18 the Secretary of the Treasury to define the territorial limits  
19 of the United States for international purposes.

20 Secondly, we say that even if the Act should be con-  
21 strued as having told him to lay out these lines in terms of  
22 where our boundaries for international purposes were, he  
23 plainly has never done it. He has never done that.

24 He has never tried to do it. We say, consequently,  
25 he hasn't done it.

1 Q This line was drawn?

2 A This line was a line that the Secretary thought,  
3 and later the Commandant of the Coast Guard thought would  
4 be a good line to make the place where you shifted from the  
5 international rules to the inland rules, and he has said so  
6 over and over again, that that was the only thing he was  
7 doing.

8 Q Where did he say that?

9 A The history is covered beginning on page 26 of  
10 our Brief, and running on to page 41.

11 Q Where did he make the statement that you just  
12 referred to?

13 A Well, it was first made by the Coast Guard in a  
14 publication in 1943, referred to on page 33 of our Brief,  
15 toward the bottom of the page.

16 The Coast Guard Admiralty Law Enforcement Manual  
17 at that point begins by explaining what is meant by inland  
18 waters and high seas in the international or territorial sense.  
19 Then he goes on and he says, "Navigation Rule," and, "Now let  
20 us consider another line of demarcation."

21 Q What page are you on?

22 A I am on page 35 of my Brief.

23 He said:

24 "Now let us consider another line of demarcation,  
25 something other than the line for international purposes. As



1 shown in Chapter 5, there are different rules for navigation  
2 on the inland waters and the high seas. But here we do not  
3 apply the previous definition, but adopt a new one for con-  
4 venience. The Secretary of Commerce has fixed a series of  
5 lines," and so on.

6 Going over on page 34:

7 "Quite obviously this artificial line does not truly  
8 separate the high seas from the inland waters of the United  
9 States. It simply marks the area within which the inland rules  
10 apply, and outside of which the international rules control."

11 You find this repeated in the Coast Guard publica-  
12 tions over and over again.

13 I call attention to perhaps the most significant  
14 of all: In 1953, when the Commandant for the first time pro-  
15 mulgated any line along the part of the area from here to  
16 here -- shown here -- he said in putting out that regulation  
17 that it was drawn solely for purposes connected with navigation  
18 and shipping.

19 Q That is on page 35?

20 A Yes, that is on page 34.

21 "And not to define or not for the purpose of defining  
22 Federal and State boundaries, nor to define or describe Federal  
23 or State jurisdiction over navigable waters."

24 Q It was in the year 1953?

25 A Yes, in 1953.

1 Q Before or after the enactment of the Submerged Lands  
2 Act?

3 A It was after the enactment of the Submerged Lands  
4 Act, and in the instrument drawing this line, which you will  
5 recall was drawn after the enactment of the Submerged Lands  
6 Act.

7 Q That he has partially described as a disclaimer?

8 A It was consistent with the disclaimer which has been  
9 asserted all of the way through, Justice Stewart.

10 The first explicit disclaimer, and I will indicate  
11 what I mean by "explicit" in a few minutes, that we have  
12 reference to came from the Assistant Secretary of State, and  
13 it is quoted on page 38 of our Brief.

14 Q Was that before or after the Act?

15 A This was back in the 1920s, Excuse me. I should  
16 have stated it.

17 It was the Assistant Secretary of State, and the  
18 circumstances were these: The Norwegian Government was putting  
19 together some materials for the purpose of trying to go before  
20 the Court in the fisheries case.

21 They wrote around the world asking everybody to pro-  
22 vide evidence where that country defined its territorial boun-  
23 daries, and the Secretary of State circulated the departments  
24 and collected everything, and he collected among other things  
25 from the Treasury Department references to the various Coast

1 Guard lines, and he explains in the letter, and I don't quote  
2 it all, but he explained in part of it that different depart-  
3 ments had adopted different rules for their purposes in the  
4 United States, and sent the Coast Guard regulations among  
5 them, and then after that he went on and said, and this is  
6 the part that I rely on particularly:

7 "It should be understood that the foregoing lines  
8 do not represent territorial boundaries, but are for naviga-  
9 tional purposes, to indicate where the inland rules begin  
10 and the international rules cease to apply."

11 There again there is a clear recognition of the very  
12 limited purpose of these definitions under the Act of 1895.

13 Q What is the authority of the United States to pre-  
14 scribe those limits? What is the authority for the line for  
15 territorial waters?

16 A I think that there is some question whether they are  
17 valid within that area.

18 The Coast Guard takes the position that they are  
19 valid, even though that is not inland waters, and in some parts,  
20 of course, it is not territorial sea.

21 Q Your position would raise that question?

22 A It raises that question.

23 I would think that the Court would not pass judgment  
24 upon it, and let me answer in two steps.

25 First, we do think it most unlikely that the 1895

1 statue was ever intended to give the Secretary of the Treasury  
2 power to fix the territorial limits of the United States.

3 It just seems inherently implausible that in a little  
4 Act dealing with navigation a section would have been put in;  
5 the only explanation was that it was done at the request of  
6 shipping interests in New York Harbor, and that it would be  
7 for this limited purpose.

8 We think it is inherently implausible that Congress would  
9 have said that the Secretary is now to fix the territorial  
10 limits of the United States.

11 Q Why is that strange? Doesn't the Government have  
12 to act through somebody?

13 A Yes, but it seems to me strange that it would have  
14 been given to the Secretary of the Treasury, and second, that  
15 it would be strange that it would be given simply in an Act  
16 entitled An Act To Fix the Rules of Navigation.

17 Q The Secretary of the Treasury has the Coast Guard  
18 under his jurisdiction?

19 A Yes, but the questions of international law which  
20 determine the territorial boundaries of the United States are  
21 primarily under the Department of State.

22 Then there is one more point about the Act. Of  
23 course it provides that the Secretary shall issue the regula-  
24 tions from time to time.

25 This doesn't sound like fixing territorial boundaries

1 for internationa purposes. You don't fix territorial boundaries  
2 for international purposes from time to time.

3 Q Didn't they do it with reference to the acreage  
4 limits out in the West?

5 A I am afraid I don't understand Your Honor's refer-  
6 ences.

7 Q During President Truman's time.

8 A That was the resources, and we didn't purport to  
9 change the boundaries in terms of the freedom of the seas,  
10 as I understand it.

11 We said that we were entitled to the resources under  
12 the Continental Shelf, but we didn't purport to change our  
13 boundaries in reference to the high seas.

14 Q It interfered with it, and it was different from what  
15 it was before.

16 A We were asserting authority under it, and I suppose  
17 the structures that came up might interfere with navigation,  
18 although there has always been a privilege to erect structures  
19 in the high seas for light houses and other things of that  
20 kind, without their becoming part of the territory of  
21 the United States.

22 That, in any event, today, is covered by International  
23 Convention, but it is quite possible, I think, that what was  
24 contemplated originally was that the Secretary of the Treasury  
25 would be guided by the territorial boundaries, and that he



1 was instructed for the convenience of navigation not to fix  
2 them, but to find them, which are, I suggest, two different  
3 things.

4 One is to apply the international rules, and trans-  
5 late them into buoys and light houses and the like, and the  
6 other thing is to determine them.

7 But in point of fact, as I have suggested, whatever  
8 the original intention was, neither the Secretary of the  
9 Treasury nor anyone else has ever done this in terms of inter-  
10 national law.

11 But from the very beginning, as we elaborate in our  
12 Brief, the rules have been laid down in ways that do not con-  
13 form either to this country or any other country's conceptions  
14 of international law.

15 Q Has the United States asserted jurisdiction over  
16 those waters for any other purposes, other than international  
17 rules?

18 A We have taken positions in international conference  
19 after international conference quite inconsistent with our  
20 saying that this is international waters.

21 Q Let us say a ship of a foreign nation came within  
22 three miles of the edge of where the white joins the green.  
23 We would not say it was within United States territorial  
24 waters?

25 A No. Indeed, Mr. Justice, so far as anyone knows,

1 we have never asserted against any ship flying the flag of  
2 another nation, nor applied in any admiralty proceeding involv-  
3 ing a ship of another nation, the inland rules, because of  
4 a collision or sailing in this area.

5 I cannot say that a Coast Guard boat hasn't ever  
6 hailed a foreign vessel. Neither can anyone say it has.  
7 But so far as this goes, this is a paper thing.

8 Q Let me make sure that I understand that.

9 What you are saying is that in that white area, we  
10 have never attempted to enforce domestic regulations against  
11 foreign vessels?

12 A So far as I know, and of course this is important  
13 on many aspects of the case.

14 As against our own nationals, there is in Florida  
15 a clear power to regulate shipping and shrimping and anything  
16 else.

17 Q Of course, it may be that ships are going to observe  
18 these rules.

19 A I take it that they undoubtedly do, and I take it  
20 that we have the power to ask them to do it, and if they  
21 acquiesce, then that is that.

22 Q All of the charts on any ship would show that the  
23 inland rules apply within that line?

24 A Along the side of this line, it says "Use inland  
25 rules," yes.

1 Q And every chart room of every ship, no matter what  
2 flag it is sailing under, would have charts indicating that,  
3 and the ships would comply with it?

4 A And they no doubt do conform.

5 Now, I am just speaking about the status of the rules  
6 today.

7 First, I want to emphasize that under Louisiana's  
8 view, and any view of Justice White, that the validity or  
9 effectiveness of these rules depends upon these being inland  
10 waters in the international sense.

11 They are plainly invalid today, because the Geneva  
12 Convention as of today plainly fixes rules consistent with the  
13 inland rules.

14 That Convention, which we have ratified, undoubtedly  
15 takes precedence over anything that the Coast Guard has done,  
16 so that the rules cannot be sustained today on the theory that  
17 they somehow are fixing the territorial boundaries of the  
18 United States in the international sense. They are bound to  
19 be invalid under that theory.

20 Q Well, without reference to the international rules,  
21 let us take the domestic rules.

22 A If they are to be limited for domestic purposes,  
23 they apply only to our vessels.

24 Q What is the boundary of this country?

25 A But that is an international question. That boundary

1 of a country is an international question. That is what one  
2 means by the boundary of the country.

3 Q It depends on the force that the government can  
4 exercise to fix its own boundaries.

5 A That was the original historical derivation of the  
6 rule. The theory was that the three-mile limit was a cannon  
7 shot from shore.

8 Q It really is difficult to find the intent of Congress,  
9 and all of this talk about the international rule is just as  
10 a means toward that end?

11 A That is correct.

12 Q Plus the fact that we have decided a case on that  
13 subject?

14 A You have decided a case on that subject, and it seems  
15 to me that the reasons behind it are very sound.

16 I just want to give one more answer to Justice  
17 White, and then I will come directly to that point.

18 There are decisions, Justice White, particularly  
19 the English case of the Annapolis, which suggests that a nation  
20 has the power to set rules of navigation, or requirements of  
21 navigation for vessels approaching or leaving their ports.

22 I don't want to over-state it, but if that is sound  
23 law, then that would validate these rules simply as require-  
24 ments of navigation, because for all practical purposes, vessels  
25 coming in here are going to be foreign vessels going to the

1 ports of Louisiana.

2 Now, I come to the question raised by Justice Fortas:  
3 What about Section 2(c) of the Submerged Lands Act?

4 We say that it cannot have meant the inland water  
5 line as laid down by the Coast Guard or the Secretary of the  
6 Treasury, for a number of reasons.

7 First, the evidence is very persuasive that the  
8 term was used in the international sense, with reference to a  
9 general body of international law.

10 This was the flavor of the debate. There are  
11 specific references to the Court's use of the term in the early  
12 California case, where it clearly indicated that it referred  
13 to and used it in the international sense, and there is  
14 specifically legislative history which Justice Harlan asked  
15 me about earlier with respect to the Coast Guard line.

16 There was testimony from Leander Perez of the Delta  
17 area, and an Assistant Attorney General of Louisiana, which  
18 referred to the Coast Guard line.

19 Remember, at that time this line did not exist.  
20 Indeed, under the regulations, East Bay wasn't even behind the  
21 Coast Guard line, and this was referred to in the testimony  
22 pretty much, I think, in passing.

23 Did I say hearings on the Submerged Lands Act?  
24 Because if I did, it was wrong.

25 It was referred to two Congresses earlier in hearings



1 on previous bills. Then the matter was brought up again in  
2 the hearings before the Interior Committee of the Senate on  
3 the bill that became the Submerged Lands Act, and Senator  
4 Anderson cut in and said:

5 "Well, we have been all through that, and we found  
6 that that line wouldn't help us."

7 It was the end of the discussion.

8 Of course, for any number of reasons, it might not  
9 help, and one of them was that it affected very little of the  
10 coast, and it seems to me it is most unlikely that Congress  
11 intended to give some official in the Coast Guard the power  
12 to draw lines that would be decisive for the purposes of the  
13 Submerged Lands Act.

14 (Whereupon, at 12:00 noon, the Court recessed to  
15 reconvene at 12:30 p.m., the same day.)  
16  
17  
18  
19  
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12:30 p.m.

MR. JUSTICE BLACK: We will proceed.

MR. COX: Mr. Justice Black, and may it please the Court, the core of our position with respect to the Coast Guard line comes down to these three sentences:

First, that when Congress spoke of the coastline of inlands in the Submerged Lands Act, it used those terms with reference to international law and the territorial boundaries of the United States.

Second, that whatever may be said about the original purposes of the Act of 1895, or the meaning of the original instructions to the Commandant of the Coast Guard or the Secretary of the Treasury, that he has not for years defined a line in terms of international law or the territorial boundaries of the United States.

Consequently, the Submerged Lands Act was talking about one thing, and the Secretary of the Treasury and the Commandant were talking about another thing, and that other thing is irrelevant for the purposes of this statute.

Inland waters isn't a word, I might add, that invariably must have one meaning.

Louisiana in a statute enacted in 1948 defined the term "inland waters" to cover only waters where the tide ebbs and flows, and excluded all others from that.

2  
1 We are not going to argue that that is the meaning  
2 of inland waters, but I simply show that this term, like  
3 others, must be construed with reference to its context and  
4 what was intended to be done.

5 I move on, therefore, to the second part of the  
6 case, to the areas behind the blue line, which is Louisiana's  
7 outermost claim, and offshore of the red or pink which we  
8 concede is Louisiana.

9 Our position is that the status of those waters  
10 is to be determined by applying the Geneva Convention in a  
11 practical and common-sense manner, in accordance with its  
12 terms, and that if something does not qualify as inland  
13 waters under the Convention, then it is not inland waters  
14 for the purposes of the Submerged Lands Act, and that this  
15 is true of all our coasts and therefore specifically true  
16 of the coast of Louisiana.

17 In that connection, I think it is worth looking  
18 at the Geneva Convention, and calling attention to a few  
19 things in support of my proposition that it is intended to  
20 be universal and exclusive.

21 Since we omitted to print the full text, it may  
22 be fairer to use the text as printed by Louisiana, which is  
23 in the appendix, the third volume of their briefs, beginning  
24 at page 127.

25 I would call the Court's attention, first, to

3  
1 Article 3 on page 128 -- limits of the territorial sea;  
2 "Except as otherwise provided in these articles, the normal  
3 baseline for measuring the breadth of the territorial sea  
4 is the low water line along the coast as marked on the large-  
5 scale official chart."

6 So that, unless one can bring himself within an  
7 exception elsewhere provided in these articles, the coastline  
8 is the line along the coast, the low water line along the  
9 coast as marked on the large-scale official charts.

10 We are not this explicit, that that is the line,  
11 except as provided elsewhere in the Article.

12 Lest any question arise, I should call attention  
13 to the word "normal", which it seems to us is quite clear  
14 in this connection and means the line according to rule,  
15 the line according to standards, and not some word like  
16 "generally" or "ordinarily" or "usually."

17 This is very clear from the history.

18 At one stage, without attempting to quote exactly,  
19 the predecessor of Article 3 did include words like "generally",  
20 and the word "normal" baseline was in the title.

21 Then for the specific and explained purpose of  
22 making it clear that there was no discretion except as pro-  
23 vided in the Convention, those words "generally" or "usually"  
24 were stricken, and the explanation was given that the purpose  
25 of the Convention was to provide exclusive uniform sets of

4 1 rules.

2 Q You say the word "normal" doesn't mean more or less  
3 the same thing as "generally speaking" would mean?

4 A That is right. I think it means according to  
5 standard, or according to rule. I point out that this,  
6 through many versions, did not have normal in it. The word  
7 "normal" was put in only by the drafting committee, and only  
8 when it was decided to give up titles and for some reason  
9 it was put in there, and I think it simply means the baseline  
10 according to rule.

11 In other words, the drafting committee wouldn't  
12 have been authorized to make such a major exception.

13 Now, there are other articles that make it quite  
14 plain that the Convention was defining the territorial sea  
15 and contiguous zone of the coastline, both inclusively and  
16 exclusively.

17 Q Your submission is that Article 3 would have the  
18 same meaning as it does have if the word "normal" were not  
19 there at all?

20 A Absolutely. I think history shows that without  
21 any question. The whole purpose of the Convention was to  
22 establish a uniform set of rules applicable to all nations.

23 Indeed, another incident that tends to show this  
24 is that at one time there was an effort in the preparatory  
25 drafts to state what was international law, and then new



5 1 proposals separately. It was decided that this should not  
2 be done because there wasn't enough agreement on what was  
3 international law, and that the only way to get rules elimi-  
4 nating everyone's discretion was to set them down in the  
5 treaty, that everyone would know.

6 Another indication, as was pointed out this morning,  
7 is that this agreement or this treaty does not define the  
8 breadth of the territorial sea. It leaves that to each  
9 nation.

10 The draftsmen were very careful to avoid saying  
11 it is three miles, leaving anybody to claim more if he wanted  
12 to, so as to leave in question what was the breadth of the  
13 territorial sea open. We have always taken the position  
14 that it is no more than three miles.

15 Article 7, as I say --

16 Q How does the three league situation square with  
17 the Geneva Convention?

18 A Geneva just defines where it starts.

19 Q And you say the United States never claimed more  
20 than three miles?

21 A That is true, and I think that we would not recog-  
22 nize the Texas three leagues for international purposes.  
23 We have to recognize it for rights in the continental shelf,  
24 but not for international purposes.

25 Q You don't think that was a historic boundary, then?

6 1 A Well, it was a historic boundary of Texas as used  
2 in the Submerged Lands Act, but of course it was found that  
3 Louisiana's historic boundary did not go out three leagues.

4 Q I wondered whether it was in the Geneva Convention,  
5 the three-league provision.

6 A If the United States chose to say three leagues,  
7 it would not be in violation of the Geneva Convention, because  
8 it doesn't decide it.

9 Q That is the difference between the three miles  
10 and the twelve miles?

11 A That is correct. What I was stating was not our  
12 interpretation of the Convention, but what I understand  
13 the position of the State Department to be. I was saying  
14 that Article 7 not only defines a bay by inclusion but by  
15 exclusion.

16 Q Could I just ask you, does Louisiana rely to any  
17 extent in any of your arguments on Article 4?

18 A They certainly refer to baselines from time to  
19 time, and I am not sure whether they do or whether they  
20 don't. I thought I heard Mr. Sachse say yesterday that they  
21 didn't, but as I read their brief they from time to time  
22 say that the Coast Guard line should be regarded as the  
23 baseline.

24 Q In the negotiations between the United States and  
25 Louisiana, have any of their agreed-upon locations of the

7 1 coastline rested upon agreements under Article 4?

2 A Oh, no. We have always asserted, and the State  
3 Department has always asserted that it is contrary to the  
4 policy of this Government to draw a straight baseline.

5 Q You mean even where the Geneva Convention permits  
6 it?

7 A That is correct. We have never drawn straight  
8 baselines, although there are some places perhaps where we  
9 could.

10 Q But if it permits them, you can't rely on the  
11 Geneva Convention as precluding it for purposes of this  
12 lawsuit?

13 A Well, the Geneva Convention says that a straight  
14 baseline shall be the boundary where it has been drawn a  
15 certain way, and as Justice Harlan said in the California  
16 case, the United States hasn't drawn any straight baseline,  
17 and therefore there are no straight baselines for the  
18 purposes of this case.

19 Q If one had been drawn, the situation would be  
20 different?

21 A Yes, if one had been drawn.

22 Q Perhaps it should be insisted that one be drawn  
23 in this lawsuit.

24 A But it is not for this Court to settle that matter  
25 of foreign policy, whether we should exercise the permission.

8 1 That is something that a nation does as a matter of foreign  
2 policy.

3 Q Isn't this lawsuit about where the territorial  
4 sea starts?

5 A Yes, but unless the Government elects to draw a  
6 straight baseline, the territorial sea starts at the other  
7 point defined in the Geneva Convention.

8 If the Government does elect to draw a straight  
9 baseline, then it starts there.

10 Q You say that the United States as a litigant in  
11 this lawsuit has the option of precluding any resort to  
12 Article 4?

13 A I would say the United States, which is a litigant,  
14 which is also concerned with its foreign policy, has the  
15 option of deciding whether to draw a straight baseline.  
16 This was adjudicated.

17 Q So that your answer is, "yes", that the United  
18 States can just say, "We elect not to permit any resort  
19 to Article 4 in this lawsuit"?

20 A That is the effect of our position. We state  
21 something that is much more important than that. An important  
22 part of the foreign policy of the Government is involved.

23 Q It is an important part of this lawsuit as far as  
24 we are concerned.

25 A That is right, but I suggest if this Court should

9 1 say that we elect to draw a straight baseline, that that  
2 would have a very important and unfortunate effect on the  
3 policy that the State Department has been consistently  
4 following.

5 If the Court does it, the State Department will  
6 have to live with it.

7 Q That may be true. I just wondered whether or not  
8 there was any issue in the lawsuit under Article 4, and  
9 I understand there is not.

10 A I tried to say honestly I wasn't clear about  
11 Louisiana's position on that, and I can't say that there is  
12 none. We say that there is none.

13 Q But, as I understand it, if I understand it, if  
14 you rely on 4, it is only as to the Coast Guard?

15 A I think that they do make the suggestion that  
16 Justice White made, and it slipped my mind, that maybe the  
17 Court should draw some baselines, which we object to for  
18 the reason I stated.

19 Q And your answer is that it is beyond the power  
20 of the Court?

21 A Yes, and I would further answer that the Court  
22 has already decided it in the California case.

23 Q When did they decide it in the California case?

24 A I don't have the language directly in front of me,  
25 but there is a passage in Justice Harlan's opinion that



1 recognizes that only the United States, and apparently he  
2 is speaking in terms of the Executive Branch of the Governmnet,  
3 can draw straight baselines, and they had elected to draw  
4 none, and he said that straight baselines were not applicable  
5 in that case.

6 Q I have the opinion here and I will check it.

7 Q But you said that baselines didn't apply?

8 A I thought he was referring to it, and he might  
9 be referring to the Legislative Branch, too. But it is not  
10 the Judicial Branch. That is page 168 of 381 U.S.

11 Q Thank you very much.

12 A I was arguing that the exclusive rules must be  
13 found within the Convention, and it is the sole determinant  
14 of what is the coastline of the United States for the purposes  
15 of the Submerged Lands Act.

16 I want to emphasize some of the implications of  
17 what I was saying, so that there could be no mistake about  
18 it.

19 First, I implied that arguments based on geological  
20 phenomenon, or economic uniqueness, are irrelevant either  
21 in general or as applied to specific instances.

22 The Convention deals with what one might call  
23 cartographic phenomena, and the thing as shown on the charts  
24 of mariners, and other considerations are irrelevant under it.

25 Second, I imply that the mere former theories of

1 the United States with respect to international law or the  
2 rule as to islands and so forth which we have from time  
3 to time advanced are no longer applicable because the matter  
4 has been frozen in the Convention.

5 Specifically, Louisiana's argument, that under  
6 some rule espoused by the State Department at periods in  
7 our history before the Geneva Convention, is simply irrelevant  
8 for the purposes of this case, just as our theory with respect  
9 to Monterey Bay and the ten-mile bay was held in the California  
10 case to be irrelevant, because it was simply something that  
11 we had propounded at the time of the enactment of the  
12 Submerged Lands Act, but was not embodied in the Convention.

13 Next, I specifically mean to imply the point I  
14 touched on before, that there is no basis for claiming  
15 straight baselines under Article 4 because neither the  
16 Congress nor the Executive Branch has ever promulgated  
17 straight baselines under Article 4.

18 Certainly there has been none by the President or  
19 the State Department, and the Commandant would hardly be  
20 the appropriate official.

21 Q Has he done it?

22 A But he has not done it, we say, and we say that  
23 for several reasons.

24 First, when he put out his lines, he expressly  
25 said he was not claiming anything for territorial purposes.

12 1 So he can't have been promulgating straight baselines under  
2 Article 4.

3 Q Whatever the purpose was, has he outlined any  
4 straight line base?

5 A He drew the line three miles inshore of this yellow  
6 line for the purposes of defining which rules of the road  
7 should apply. He certainly did that. His line, even if he  
8 had attempted to draw it as a straight baseline under  
9 Article 4, would be invalid for two reasons.

10 In the first place, no one can argue that this  
11 part of the coast is deeply indented or cut into or has a  
12 rim of islands along it, within the language of Article 4  
13 which limits the places where you can draw straight baselines.

14 Secondly, Article 4 limits the points between which  
15 you can draw straight baselines and they don't include buoys,  
16 light ships, and ranges bearing on underwater shoals and  
17 things of that kind.

18 So that it is clear again that he couldn't have  
19 done it even if he tried, and of course what he did quite  
20 plainly wasn't an effort.

21 The fourth thing that I mean to imply by saying  
22 the Convention applies and is the exclusive standard is  
23 that it is a very sharp limitation on both historic bays  
24 and the evidence that will constitute a historic bay. But  
25 first I want to emphasize that Section 6 of Article 7 applies

1 only to historic bays.

2 It doesn't speak of other historic waters. It says  
3 historic bays. One, therefore, must have something in the  
4 nature of a bay before this exception could possibly apply.

5 But the kinds of evidence that will be sufficient  
6 to constitute a historic bay are very limited.

7 Q Excuse me, if you don't mind being interrupted,  
8 I notice that Section 6 of Article 4 says that a coastal  
9 State must clearly indicate straight baselines on charts,  
10 so due publicity must be given. How is that to be read?

11 If there is a line, is it that it must be stated  
12 by the State that it is a straight baseline?

13 A I should suppose that the State must assert, "We  
14 are claiming this as our territory."

15 Q It is not that we are drawing this line as a  
16 straight baseline?

17 A I would think that it was satisfied by saying, "We  
18 are drawing this line and claiming that all of the waters  
19 behind it are our inland waters," but I think that it must  
20 mean at least that the State that draws it is giving notice  
21 to all of the world that it is claiming it as its waters.

22 Of course, the Coast Guard has always indicated  
23 that we weren't claiming it as our waters. All it has said  
24 is that you shall follow our inland rules, and asserted the  
25 limited purpose, and not a claim of territorial sea.

1 Now, the other point I was going on to make was  
2 that the kind of evidence that is necessary to show a bay  
3 to be a historic bay is limited to active assertions of  
4 jurisdiction, doing something to somebody by the coastal  
5 State, usually coupled with some kind of acquiescence by  
6 the others.

7 Q By coastal State you mean the nation?

8 A In the international sense, and indeed we argue  
9 that a State in our sense, one of the fifty States, is not  
10 sufficient. But I don't have to rest on that point here  
11 any more than we had to rest on it in the California case.  
12 The evidence that Louisiana invokes here for the purposes  
13 of claiming historic bays rather plainly seems to me the  
14 point of anyone advancing jurisdiction.

15 The abstract theories of international law that  
16 other nations didn't accept, and that were not settled inter-  
17 national law, without ever applying them to particular areas,  
18 cannot be regarded as the necessary kind of assertion of  
19 jurisdiction to constitute a historic bay.

20 Even more clearly, old maps like the Commerce  
21 Department maps, to which you were referred this morning,  
22 which were drawn for limited purposes, do not constitute  
23 an assertion of jurisdiction as against other states in the  
24 international sense.

25 Statutes in the State of Louisiana purporting to



15 1 regulate the taking of shrimp and oysters or natural resources,  
2 and ostensibly applicable in these waters are not sufficient,  
3 as the Court held in the California case, because they do  
4 not involve an actual enforcement of jurisdiction against  
5 a foreign nation.

6 Now, the only specific things that Louisiana refers  
7 to anywhere are a series of criminal prosecutions under some  
8 of their natural resources laws. There are three answers to  
9 those points.

10 First, so far as we know, all of those offenses  
11 under Louisiana law may well have been committed within the  
12 territorial sea, the three-mile strip within the bay. Some  
13 of them, one can tell from the records, were within that  
14 three-mile strip.

15 Second, all of the defendants so far as the in-  
16 stances they gave us were concerned were residents of  
17 Louisiana, and therefore presumably are citizens of Louisiana,  
18 and under this Court's decision in Sceriotas in Florida,  
19 Louisiana has the power to regulate their conduct on the  
20 high seas just as much as anywhere else.

21 The third point is what one of our fifty States  
22 does, in our view, is irrelevant.

23 Now, against the background of those generalizations,  
24 I would like to take what time I can on some of the specific  
25 areas that are in controversy.

1 We are talking now about the material between  
2 the blue lines and the pink or the red lines. I start at  
3 the west edge over in Louisiana.

4 Q Hasn't Louisiana argued that at least to the ex-  
5 tent of what is an exercise, surely the drawing of the  
6 Coast Guard represents such a baseline?

7 A I think that they did. I would say that the drawing  
8 of a line with the statement we are not exercising sovereignty,  
9 we are doing it for a limited purpose, is not an acceptable  
10 assertion of jurisdiction, because we are saying that we are  
11 not asserting territorial jurisdiction over this.

12 Q Although you, yourself, indicate, I gathered,  
13 that even this assertion was questionable?

14 A I indicated that the question of whether we could  
15 enforce it.

16 Q It was an assertion of something, of some  
17 significance?

18 A We never did apply it, and as a pronouncement  
19 we always limited it, so that what it is I insist or suggest  
20 isn't anything more than it purports to be, which was a  
21 statement we want and we will require you to follow our  
22 inland rules.

23 This was never challenged, and there has been no  
24 violation which was tested in the courts and so there was  
25 a case in an admiralty suit or something of that kind.

1 Q "We will require you to follow" -- wouldn't that  
2 be an assertion?

3 A If limited to the statement that, "We will require  
4 you to follow", and it was never applied, I wouldn't think  
5 that was an adequate assertion of jurisdiction, because  
6 there has been no bringing of it to bear.

7 Actually, so far as I can see, the only area where  
8 this can come into play is at East Bay, because that is  
9 the only thing that could be called a bay, and I don't mean  
10 a strict bay, but a bay in the loose sense, and this area  
11 certainly could never be called a historic bay. There is  
12 no bay about it, and Article 7, paragraph 6 is limited to  
13 bays.

14 I was about to start at the west end of the coast-  
15 line and take the segment which runs from Sabine Pass here  
16 to Tigre Point, which is on the coast about here.

17 You will note that our line and the Louisiana  
18 line, when it applies the Convention, follows the coast  
19 except for these fingers reaching out; curiously they even  
20 reach out into the area which has already been adjudicated  
21 to be ours, and those are the dredged channels, to which  
22 Mr. Miller referred this morning and which Louisiana claims  
23 are part of her coast under the Convention.

24 These channels appear not only here at Sabine Lake,  
25 and Calcasieu Pass, and at Freshwater Bayou, but there are

1 other points along the coast where such channels exist, and  
2 consequently this is a recurrent problem, and it seemed well  
3 to deal with it at the outset.

4 First I want to point out that last statement on  
5 page 336 of the brief, that the Congressional history of  
6 the Submerged Lands Act clearly shows that both the Senate  
7 and House of Representatives considered dredged ship channels  
8 to be part of the inland waters of the United States, that  
9 that is not applicable.

10 The facts are these: History does show that at  
11 one stage the Senate Committee on Interior and Insular  
12 Affairs considered, and there was in the bill, a definition  
13 of inland waters which included all estuaries, ports, harbors,  
14 bays, channels, straits, historic bays and sounds.

15 Whether this included dredged channels or not is  
16 anyone's guess. My guess would be that it is in the sense  
17 of English Channel, or some other body of water, between  
18 an island and the mainland, rather than something leading  
19 out perhaps 20 miles into the ocean, but I can't say that  
20 I am right. But certainly I am as right as they are.

21 The next thing that is clear is that this language  
22 was deliberately struck out of the bill in an effort to  
23 leave the definition of inland waters entirely to the Court,  
24 so that no one can infer that there was any intention to  
25 include these areas.

19 1 And we come to consider the question, like all  
2 other questions, in terms of the Geneva Convention.

3 The question turns on Articles 3 and 8 of the  
4 Convention. Article 3 we noted before, "Except where otherwise  
5 provided in these Articles, the normal baseline for measuring  
6 the breadth of the territorial sea is the low water line  
7 along the coast."

8 Now I ask you, keeping that in mind, the low water  
9 line along the coast, to jump to Article 8 which begins at  
10 the very bottom of page 130 in the Louisiana appendix,  
11 "For the purpose of delimiting the territorial sea, the  
12 outermost permanent harbor works which form an integral  
13 part of the harbor system shall be regarded as forming a  
14 part of the coast."

15 So that the question we have to ask ourselves is  
16 whether a dredged channel leading out from a port is a  
17 part of the permanent harbor works within the meaning of  
18 Article 8.

19 We submit that such a channel, even though marked  
20 by aids to navigation, and buoys, and in some places day  
21 beacons and lighthouses and the like, is not a part of the  
22 permanent harbor works, that the term harbor works refers  
23 only to raised installations, like piers and jetties and  
24 breakwaters, but which, although man-made, are a physical  
25 part of the coast.



1 I rest that conclusion on several things.

2 In the first place, I don't think just a matter  
3 of the ordinary use of words, one would normally think of  
4 a dredged channel or of a channel that has not been dredged  
5 that leads out from a port, which was secured by a river,  
6 as part of the harbor works. It seems to me an extraordinary  
7 usage.

8 Q What about the steel towers we were shown?

9 A I would say that those were like any lighthouse  
10 on a reef offshore, and both prior decisions show that those  
11 are not part of our territory, and the discussions in the  
12 Convention show that a lighthouse was not to be treated as  
13 part of the territory of the literal state unless it was  
14 fixed to the shore.

15 Q Mr. Miller says that the material that is dredged  
16 up is piled on the side of the channel.

17 A It never gets up above the water or, if it does,  
18 it isn't connected to the coast. IT is all under water.

19 Q It is not connected to the coast?

20 A Well, when I say coast, I mean land or physical  
21 structures above water. I suppose that if you were under-  
22 neath, you could find some connection. But by coast we mean  
23 the land above water, and this is not above water.

24 Q The point he was making, as I understood it,  
25 suggested that this is just like a jetty, instead of being

1 made of steel or wood, is made of earth, and it has on it  
2 these high towers.

3 A If these were banks, and by banks I mean something  
4 that was consistently or continuously above the water reach-  
5 ing out from the coast, then we would have a harder time of  
6 it; but they aren't.

7 Q Excuse me. How do you think that we ought to  
8 decide that, Mr. Cox?

9 A How do I think you ought to decide it?

10 Q What do you think we ought to do? I haven't seen  
11 these, and the Court hasn't seen them, and we don't have an  
12 evidentiary record before us, do we?

13 A I don't think anyone contends that there are  
14 banks that run continuously above the sea level.

15 Q Perhaps I have misunderstood Mr. Miller then.

16 A Certainly I don't understand Mr. Miller to be  
17 saying that. I am prepared to assert that they do not.  
18 I am not prepared to assert that some little pile of earth  
19 doesn't occasionally get up there.

20 Q You think we ought to decide, for instance, on  
21 the basis of a general proposition of law that unless  
22 these mounds show up above the water they don't fit within  
23 the definition?

24 A I think you should say that an area of water is  
25 not to be assimilated under Article 7 to something that is

22 1 spoken of as permanent harbor works, forming part of a coast,  
2 because the coast means in the Convention and in usage in  
3 this area something above water.

4 If the notion was to make these water areas part  
5 of the inland waters, the place to have dealt with that  
6 was in the sections on bays or inland waters. The most  
7 likely place to have dealt with it would be in the area of  
8 roadsteads, because there the Convention, and there is  
9 in Article 9, was dealing with areas of water off the coast  
10 in the sense of something above the land, and the Convention  
11 said that, "Well, we will make these part of the territorial  
12 sea."

13 They didn't even make them inland waters. They  
14 said it would be part of the territorial sea, even though  
15 they lie more than three miles offshore. And it seems to  
16 me that if there had been any intention to treat these areas  
17 of water with their lighthouses and towers to distant points  
18 along there as belonging to the literal state, that was the  
19 place to have done it.

20 Now, there was a proposal to make buoyed channels,  
21 and it didn't say anything about whether they were dredged  
22 or not, to make buoyed channels and give them the same status  
23 as roadsteads, and the International Commission rejected  
24 that.

25 We think, while not conclusive, it points in the

1 direction of showing and confirming the inference that I  
2 would otherwise draw, that these water areas were not assimilated  
3 to something that is above water.

4 Q I thought the question was whether this was an  
5 outermost permanent harbor work or integral part of the  
6 harbor system.

7 A But one finds Article 8 saying that that shall be  
8 regarded as forming part of the coast. I suggest that treat-  
9 ing it as part of the coast strongly suggests that the  
10 draftsmen had in mind things above the water.

11 Otherwise, it would have been extraordinary to  
12 say something was nothing but a water area but it should  
13 be treated as if it was something out of the water.

14 It just seems to me an exceedingly odd way to  
15 come at it. The history I refer to I suggest confirms that.

16 Q The structures along those dredged channels along  
17 the side -- these are not just buoys?

18 A Some are buoys and some are tripods, and they are  
19 not connected to one another; they are just like many lights  
20 and fixed buoys and fixed lights along the New England coast.

21 Q Every few hundred yards. If there was something  
22 anchored along the bottom, that would be the same thing.

23 A Not unless they are connected above the water.  
24 They are not as frequent as every 100 yards, and they are  
25 essentially like many aids to navigation, that they put in

1 the high seas, maintained lighthouses. They have certain  
2 privileges.

3 Q Would there be a harbor at either place along the  
4 dredged channel?

5 A Oh, yes. It would be very hard for vessels of  
6 any size to get into the harbor, I presume that there might  
7 still be a harbor. There certainly would be inland waters.

8 Q I think that they were built to make possible in  
9 each instance a harbor.

10 A They were built to give vessels of greater draft  
11 than could previously get in access to the harbor.

12 Q If they extend the harbor system at all, they  
13 surely would be a part of the harbor system.

14 A I would say harbor system means fixed structures  
15 above the water. For one thing we are talking about some-  
16 thing that there can be a low water line on. But you can't  
17 have a low water line on an area sticking away out here.  
18 It is a physical impossibility.

19 Q I would like to ask you before you go on, do you  
20 agree with Mr. Miller there is no need for a master in this  
21 case?

22 A I have thought a great deal about that, Justice  
23 Harlan, and I would like to divide my answer into several  
24 parts, always directing myself, I think, to your question.

25 First, it is entirely clear to me that the initial



25 1 issue, the effect of the Coast Guard line, should be  
2 resolved by the Court now.

3 But, second, there are a very considerable number  
4 of other issues which can't be elucidated by any further  
5 factual evidence, and I think that those should be decided  
6 by the Court now.

7 Also, I recognize that it might be of some aid  
8 to the Court to have an experienced master, an expert master,  
9 go through them and winnow them out.

10 But despite that, I am very sure they would all  
11 be back here with as long briefs and much the same arguments  
12 if we all lived long enough. The Court would be here, and  
13 they would be back before the Court.

14 Q You are posing all of these questions and you  
15 want us to decide all of them?

16 A I was going to say as against the advantages of  
17 sending it to a master, from the Court's point of view, in  
18 terms of the total administration of justice, if this case  
19 went to a master with nothing decided on the Coast Guard line,  
20 no one would know whatever to put in or what not to put in,  
21 and the result of course would be everybody would dump in  
22 all of the evidence that he could find.

23 I think the total effect would be a worse morass  
24 and the Court would have it all back here.

25 Now, the last part of my answer, Justice Harlan,

1 is that there are some points of the argument where there  
2 appear to be some questions of fact. I don't think those  
3 are real questions, but on the face of the briefs they seem  
4 to be here. I do think that if the Court were to do the  
5 work of resolving the questions of law now, it would turn  
6 out that there were no significant factual differences  
7 among us.

8 So, on the whole, my recommendation is that the  
9 Court must face a large number, I think all of these ques-  
10 tions. But I don't want to pretend it isn't a difficult  
11 matter of balancing.

12 What I do want to urge very strongly is that we  
13 be given all of the guidance and that the master be given,  
14 if the Court decides to send it to a master, all of the  
15 guidance it can.

16 The question that I am talking about is one that  
17 can be resolved here, and many of the other questions can be  
18 resolved here. If there remain some others, then at least  
19 we could get part of the money distributed and we could  
20 focus on specific issues in subsequent proceedings, and I  
21 think it would be a more efficient way to administer justice.

22 Q Mr. Cox, if I felt comfortable that there were  
23 no issue of fact that has been posed between you and  
24 Mr. Miller with respect to the dredged channels, I would  
25 feel more comfortable about your last observations.

1 Perhaps after we read the transcript of argument  
2 and consider the briefs more thoroughly that I will come  
3 to that conclusion. But I did not get that impression in  
4 the course of argument.

5 A He has two minutes, and perhaps he will enlighten  
6 you on it.

7 Q Do I understand you correctly, that those red  
8 areas are more than three miles from the coastline?

9 A No.

10 Q They are all within three miles?

11 A They are all within three miles of the coastline  
12 as we interpret the coastline.

13 Q Is that true of that little red area in East Bay?

14 A Yes. The reason is that you will remember when  
15 you draw the coastline, you swing a three-mile arc from  
16 any low tide elevation.

17 Q And any island?

18 A But it is not so much the island here as it is  
19 low tidal elevations within three miles of the mainland.

20 Q And the United States sticks to its concession  
21 on the east there, on that string of islands?

22 A I don't know whether I am trespassing too much,  
23 but we don't claim that.

24 Q That would be another, I suppose, assertion of  
25 the United States beyond the three miles?

1 A Well, at one time --

2 Q In terms of the Geneva Convention.

3 A At one time the State Department was asserting  
4 that a rim of islands within perhaps six miles or later  
5 perhaps ten miles of each other, an area like this, did  
6 enclose inland waters. It was the position of the United  
7 States in 1953. Until the decision in the California case,  
8 the view of the Government was that we should apply the posi-  
9 tion of the State Department in 1953. So we applied it here.

10 Now, we learned two things later, first that that  
11 wasn't international law, and it was our claim, but it wasn't  
12 international law, and second that we weren't governed by  
13 the position of the United States in 1953 but by the Geneva  
14 Convention, as the Court held in the California case.

15 Now, the result was that if there was nothing  
16 more than that, we would have applied the Geneva Convention,  
17 but a lot of things have happened.

18 We had said the opposite to this Court and the  
19 authorities relied on it, and there had been leasing, and  
20 people had relied on it, and we had repeatedly dealt with  
21 Louisiana in these terms, and it seemed to me that it was  
22 not suitable and becoming to the United States, having gone  
23 that far, to suddenly say, "Well, we made a mistake, and  
24 we are sorry that we led you all into this, but we insist  
25 now on backing out."

29  
1 So we think as a purely practical matter, that,  
2 well, we did it, and we are stuck with it, and we ought to  
3 live by it. It is on that basis, and no rule of international  
4 law that we say that this area inside the pink goes to  
5 Louisiana.

6 REBUTTAL ARGUMENT OF VICTOR A. SACHSE, ESQ.,

7 ON BEHALF OF THE RESPONDENT

8 MR. SACHSE: In the short time left to me, if  
9 it please the Court, I would like to point out to Your  
10 Honors that Mr. Cox is in error about East Bay.

11 The navigation laws of the United States, pub-  
12 lished in 1940, show precisely that East Bay was considered  
13 inland waters of the United States at the time of its publi-  
14 cation, as you see on page 418.

15 He is in error also --

16 Q Could you give me the beginning of that?

17 A Navigation laws of the United States, of 1940,  
18 published by the Department of Commerce of the United States.

19 Q Does it have a line?

20 A It describes the line just as it was described  
21 before. It is not a chart, it is a book, but it is there.

22 He is in error, in our opinion, in his reference  
23 to the Annapolis, which I think is so important in relation  
24 to Justice White's question, because there the British  
25 said precisely that their right to regulate foreign vessels



1 was limited to their own jurisdiction, so they are inland  
2 waters.

3 We think it is perfectly clear that Justice Stewart  
4 raised a proper point with reference to the word "normal"  
5 in the Geneva Convention.

6 It couldn't have been put there meaninglessly by  
7 all of the people who went to that Convention when the word  
8 "normal" indicates that if an abnormal situation exists, a  
9 different treatment is to be accorded.

10 I have one final word. The State Department may  
11 have the right, for our Government, to act in determining  
12 whether our boundary is three miles, or three leagues, or  
13 a greater number of leagues from our coast, but the Congress  
14 confided to the Secretary of the Treasury not to the State  
15 Department the right and the duty to mark the outer limit  
16 of inland waters. He did so. And he did so by these lines  
17 which have been on published charts for years.

18 And when I asked the Commandant of the Coast Guard  
19 last year, when he proposed to change these, if any foreign  
20 government or any foreign vessel or anyone else had ever  
21 protested that line, he said, "If there is such a protest,  
22 we will advise you." And none such has been given.

23 Q Did you say that these existed on charts for  
24 years?

25 A Yes, there have been large charts which showed all

1 of this line starting back from 1895. This much of the line  
2 has been on the chart only since 1953, but the points marking  
3 it have been there for many years, designated and defined  
4 by the same federal authority.

5 Q Do the lines fall within the requirements of  
6 Article 3, which says along the coast marked on large-scale  
7 charts officially recognized?

8 A I would certainly think so, Justice Black. If not,  
9 it has not yet been suggested to us who in the Federal Govern-  
10 ment will do this, if the agency directed by Congress to  
11 do it is not the one to do it.

12 Thank you.

13 (Whereupon, at 1:25 p.m., argument in the above-  
14 entitled matter was concluded.)  
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