

11/25/68

Supreme Court of the United States

In the Matter of:

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF LOUISIANA, TEXAS, et al.

Defendants

Docket No.

No 9 Original

Office Supreme Court, U.S.

FILED

NOV 22 1968

JOHN F. DAVIS, CLERK

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Place Washington, D. C.

Date November 18, 1968

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(Texas argument
on base-line.)

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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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vs. : No. 9, Original
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STATE OF LOUISIANA, TEXAS, et al., :
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Defendants. :
:
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Washington, D. C.
Monday, November 18, 1968

The above-entitled matter came on for argument at
1:15 p.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
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

LOUIS F. CLAIBORNE, Esq.
Assistant to the Solicitor General
Department of Justice
Counsel for plaintiff

HOUGHTON BROWNLEE, JR., Esq.
Assistant Attorney General
State of Texas
Counsel for defendants

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P R O C E E D I N G S

MR. JUSTICE BLACK: No. 9, Original, United States of America, plaintiff, versus the State of Louisiana, et al.

THE CLERK: Counsel are present.

MR. JUSTICE BLACK: Mr. Claiborne.

ORAL ARGUMENT OF LOUIS F. CLAIBORNE, ESQ.

ON BEHALF OF PLAINTIFF

MR. CLAIBORNE: Mr. Justice Black, and may it please the court.

Let me make clear at the outset that despite the title of the case, this original action or this phase of this original action, involves only the State of Texas, not Louisiana, as might be otherwise indicated.

It is perhaps fitting that the court hear an apology first for having to hear for the third time since the passage of this Submerged Lands Act another aspect of this tidelands controversy between the United States and Texas.

One might have hoped that eight terms ago, when the Court decided that Texas, unlike most of the Gulf States, was entitled to a historic claim in the Gulf, that historic claim was based on the Republic of Texas Boundary Act, which defined the Belt of Texas as 9 miles from land, and the Texas coast being relatively uncomplicated, that might have been the end of the matter.

Unfortunately, however, there were certain unresolved

1 matters which came before the court only at the last term.

2 The question then was, where do you start measuring
3 this 9-mile belt? Was it from the present coast, or rather
4 from the historic coast -- that is, the coast in 1845.

5 The court there determined that it was measured, was
6 to be measured, this 9-mile historic belt of Texas had been
7 adjudicated, that it was to be measured from the historic
8 coast, the coast in 1845, therefore, one could not take into
9 account artificial jetties that had been put outside of
10 harbors at Galveston.

11 When it came to translating the court's opinion into
12 a decree, we discovered that we had left another problem
13 unresolved.

14 It was easy, or it was done -- it wasn't easy -- the
15 parties did stipulate where the 1845 coast was, and that has
16 been stipulated in a written, signed stipulation which is before
17 the court.

18 Texas felt the next step was simply to measure 9
19 miles out from that, which was done, and that line has been
20 stipulated.

21 However, the Submerged Lands Act contains a pro-
22 vision that no State, not even the States in the Gulf of
23 Mexico is entitled to submerged lands more than 9 miles from
24 its coast.

25 The United States takes the position that 9 miles

1 from its coast for that purpose, for the purpose of its
2 limitation, means 9 miles from the present coast, not from the
3 historic coast.

4 Now, it so happens that the Texas coast has eroded
5 substantially over the last century. One of the little
6 drawings which has been distributed to the court indicates the
7 extent roughly of the erosion and the extent of the accretion.
8 The portion shown in red indicates the erosion. That is what
9 concerns us today, because most of the coast has eroded rather
10 than accreted, we do have a difference as to where this 9 mile
11 belt ends up, depending on where it begins.

12 The real question is, as I said, whether this limi-
13 tation which Texas acknowledges, and which is stated in plain
14 words in the Submerged Lands Act, that no State shall take more
15 than 9 miles from the coast means from the present coast.

16 If it means from the present coast, then we cannot
17 measure from the old coast because that would push the line
18 beyond 9 miles from the present coast.

19 Now the effect of this ---

20 Q Do you contemplate that different parts of the
21 country, in different parts of the country, the States that
22 merge on the water have a different coast?

23 A Mr. Justice Black, the problem cannot arise with
24 respect to any other State except Florida. It arises with
25 respect to those two States only because they have received

1 grants which come to the very edge of the maximum, the maximum
2 for any State being 9 miles.

3 Otherwise, the problem would never arise.

4 While Florida was maybe affected by the decision
5 here, and was duly notified of that fact, it chose not to
6 participate in this phase of the controversy.

7 As I say, the effect of this translated into one
8 small segment of the coast is depicted on the chart behind me,
9 a copy of which, in small form, has also been distributed to
10 the court. This is a chart that was prepared by the State of
11 Texas.

12 But it shows rather clearly what the difference is.
13 Last term we were arguing about the effect of accretion,
14 artificial accretion in that case, and the same principle
15 applies to natural accretion, whether that pushed out the
16 9-mile belt.

17 The answer was it did not.

18 This time, we are arguing about whether the effect
19 of erosion is bringing in the line, because otherwise the
20 line would be more than 9 miles from the present shore.

21 Again, we say that this territory is not properly
22 attributable to Texas under the Submerged Lands Act.

23 You can see from just that statement that Texas
24 appears to have at two advantages in this case. One is that
25 we appear to be saying, "Heads we win, tails we lose," whether

1 it is accretion or erosion, Texas gets the benefit of neither.

2 Secondly, our position results in a changeable,
3 movable line as the modern coast shifts, whereas Texas would
4 have a fixed, permanent line 9 miles from the stipulated 1845
5 coast, which would not be affected by any future changes one
6 way or the other.

7 Q Your line could never move seaward, could it?

8 A The line will move seaward from where it is
9 today if there is accretion where there is presently erosion.

10 In other words, if this erosion should disappear, we
11 would put the line here today. Ten years from now if that
12 erosion is to be recaptured by the land that would shift the
13 9 mile ---

14 Q You would move both ways?

15 A We would move both ways, in some areas.

16 Now, as I say, the superficial attraction of the
17 permanent line which has already been stipulated, which would
18 certainly spare this court of any necessity of any future
19 litigation if the Texas position were adopted. We recognize
20 the simplicity, the attraction of that position.

21 But let me say as to the first point, the point that
22 we seem to be saying to Texas, no matter which way it shifts,
23 you don't get the benefit of it.

24 That is not entirely true.

25 When there is a shift, when there is accretion of

1 more than 6 miles, whether that be by natural accretion, by
2 the building more lightly, by the building of a hobble work,
3 we would push the line out, because in that instance we would
4 say to Texas, "Now you are taking not under the historic claims,
5 you are taking 3 miles -- which every State has a right to do
6 -- from its modern coast."

7 This example is illustrated on pages 20 and 21 of
8 our memorandum.

9 That may be a small compensation for the other effect.
10 The reason it is a small compensation is simply because Texas
11 is in the unusual position of having a 9-mile belt, whereas
12 every other State but one has a only a 3-mile belt.

13 Q Do you find any basis in the past decisions in
14 this case for saying that the natural coast line, apart from
15 the inland water problem, is the natural coast line is the
16 date of the passage of the Submerged Lands Act?

17 In other words, you seem to accept the view that
18 this is an ambulatory line, that it changes with accretion or
19 erosion, in the future?

20 A I think in the California case, Mr. Justice
21 Harlan, with respect to a 3-mile line, I think the court was
22 explicit that that line would change, and it is provided by
23 the convention ---

24 Q That was with respect to inland waters. We had
25 nothing except inland waters in that case, did we not? We

1 weren't concerned with anything except the definition of inland
2 waters?

3 A I suppose that is true. Perhaps I took the
4 proposition to apply equally when we are talking about the
5 shore line, that natural accretion or erosion to that shore
6 line, where that is the operating definition for the beginning
7 of the territorial sea ---

8 Q My recollection of that decision in the
9 California case was that it dealt only with inland waters,
10 and that, dealing at least in the inland water field, is what
11 is criticized now by Texas as being the effect of your rule.

12 We said, "Well, Texas could not affect the coast
13 line as far as inland waters are concerned because by building
14 out new jetties and new harbors, because the Government under
15 its navigation, its power over navigational waters, could
16 always step in and prevent that sort of thing being done.

17 A The court in the California case did advert
18 to the Governmental power to prevent an exaggerated extension
19 of the coast by the State for its own benefit, which didn't
20 serve a national or a navigational purpose.

21 I took it that discussion applies equally whether an
22 extension of the inland waters are involved or an extension
23 of the natural coast line.

24 Q Well, we didn't deal with it. I don't think
25 you will find anything in that opinion, the California opinion

1 that deals with the natural coast line. I may be wrong,
2 natural coast line, except as it is affected by the outer
3 limits of inland waters are.

4 A Mr. Justice Harlan, I am not in a position to
5 debate it. I thought, and I am advised, that the California
6 case did in fact deal for segments with the shore as well as
7 with the line of inland waters. I may be wrong about that.

8 It has certainly been assumed by all parties since
9 that case, including the argument in the Louisiana case, a
10 month or so ago, that shifts in the shore line, when the
11 shore line is the coast line, would affect the ultimate 3-mile
12 line, and that I think, is consistent with the International
13 Convention.

14 Of course, the court having held in the California
15 case that one and the other are the same, that is the inter-
16 national line and the national line, where the line is 3 miles
17 from the coast. This, of course, doesn't apply to Texas, as
18 we are dealing with a 9-mile line.

19 Let me say, and this bears on your Honor's point,
20 that the appeal of the Texas position, that we here end up
21 with a fixed permanent line that would not move, would be an
22 unusual result, because, as I understand it, in every other
23 situation, we do in fact have a movable line -- certainly we
24 do where inland waters are involved, and I thought it was clear
25 that we do where shore line is the coast line.

1 Q What is unusual, if property is sold at one time
2 to a person, why would it be unusual for the boundaries of the
3 property that he sold to be able?

4 A As I understand it, ordinary property law, it
5 would normally if one owns the edge of a body of water,
6 normally that ownership carries with it the right to the
7 accretions, therefore a shifting boundary, as well as a loss
8 by erosion if the water eats into the land, so that the normal
9 rule of property of boundaries on water is that they do move
10 as the water recedes or comes in.

11 Q This would be governed, would it not, by what
12 Congress meant in the Submerged Lands Act?

13 A Well, I thought, as I say, I may be wrong,
14 Mr. Justice Black. But I thought the court had long since
15 determined that we were faced, whatever inconveniences might
16 be to it, with a shifting line of those lands which have been ---

17 Q We did that in California. Does that neces-
18 sarily mean the same rule applies all over the nation?

19 A I only say that it would be odd if it didn't,
20 not that it is impossible. Of course, one could have a fixed
21 line in the Gulf with respect to Texas, a movable line in the
22 Gulf with respect to Louisiana and Alabama and Mississippi.

23 It would simply be against the normal. That is all
24 I am saying. There is a more dispositive answer to all this
25 which is that the text of the Submerged Lands Act makes it

1 crystal clear that this 9-mile limitation beyond which no
2 State can take, whatever its historic boundary was, this 9-mile
3 limitation reads from "The coast line."

4 That word is the same operative word that defines
5 the 3-mile grant. That word is expressly defined in the
6 Submerged Lands Act in Section 2-C. It is defined there for
7 all purposes. It doesn't say, "As used in this subsection."

8 Coast line means the same thing each time it is used
9 in the Submerged Lands Act, it has been defined by this court
10 to mean a measurement, the modern coast, the ambulating modern
11 coast. If I am right in that premise, then it follows that
12 this 9-mile limitation must also be measured from the modern,
13 ambulatory coast.

14 The confusion here arises only because it so happens
15 that Texas' historic claim is 9-miles and the limitation is
16 also 9-miles, and there is a temptation to make the two read
17 on the same points.

18 The case would be far easier to view if there had
19 been a 12-mile historic claim by Texas. Only 9 miles of which
20 was cognizable under the Submerged Lands Act. In that case,
21 I don't think it would ever occur to anyone to go plot the
22 1845 shore line, because it would be evident that you only
23 took the first 9 miles of it.

24 Even clearer case perhaps would be if the boundary
25 historically in the case of Texas had, for instance, been set

1 for the southern part on the 97th meridian, without any
2 reference to the coast whatever.

3 In that case, it would be a great waste of effort to
4 go back and see where the coast was in 1845, since the historic
5 boundary was not related to the coast, but was set geographi-
6 cally arbitrarily.

7 In that instance, one would of course read the 9-mile
8 limitation of the Submerged Lands Act grant as reading from
9 the modern coast.

10 Q Mr. Claiborne, perhaps I don't have this in mind
11 clearly, but as I understand it, that Texas has been contending
12 for a maximum line out there three leagues from their 1845
13 coast line?

14 A That is correct.

15 Q That is correct. And you are contending for a
16 maximum line in the gulf, three leagues out from their coast
17 line at any given time. Now, or in the future, as you say in
18 the briefs.

19 A Exactly.

20 Q Isn't there, or is there not, a possible third
21 alternative, and that is a maximum of 3 leagues out from the
22 coast line as of 1953, when the Submerged Lands Act was enacted?

23 A There certainly was that alternative.

24 Q The statute refers to the coast line, and could
25 not it be argued that the Congress meant to be referring to

1 coast line as it then and there existed on the date of the
2 enactment of the statute?

3 A Exactly. Mr. Justice Stewart, in fact I think
4 it was at one time the position argued by the United States.
5 I thought it had been the position argued by the United States
6 in the California case, and I thought it had been rejected by
7 the court, saying, "No, we don't look to 1953, we look to the
8 convention of the territory ---

9 Q That was only with reference to inland waters,
10 the inland waters part of the coast line. We took the inland
11 waters definition instead of what you are arguing, namely that
12 the practice of the State Department in 1953 should be taken
13 as the definite international definitions, so called, in
14 international waters.

15 We rejected that and said here is the treaty which
16 establishes it. That is all we were dealing with. We weren't
17 dealing with the question of accretions or erosions to the
18 natural coast line.

19 A I can only repeat and apologize for my ignorance
20 ---

21 Q Well, I am asking you, because it comes as a
22 surprise to me that -- it comes as a surprise to me, and that
23 is the reason I asked you the question as to whether we ever
24 indicated in any of our previous opinions that so far as the
25 natural coast line is concerned, this was a movable affair.

1 A I think, and this may be ---

2 Q If I am wrong about that, I would like to have
3 the reference to the opinion.

4 A I don't have the opinion handy, Mr. Justice
5 Harlan. I would certainly be glad to furnish to the court
6 whatever references we can find.

7 Q I may be wrong in these things, but ---

8 A My best memory is that at least the decree in
9 the California case set out the definition of coast line in
10 terms that at least implied a movable coast line when it is
11 related to the natural shore, that is, where the natural shore
12 is in open contact with the sea.

13 I had taken it that that was the unanimous view of
14 the meaning of a boundary, an international boundary, under
15 the International Convention, that the court had adopted for
16 the purpose of inland waters the international rules, I had
17 supposed the same was true here, where the 3-mile limit, or
18 in this case the 9-mile limit is defined by reference to the
19 shore rather than to the line of inland waters.

20 Q Well, assuming that the position has not been
21 precluded or forbidden by Mr. Justice Harlan's opinion in the
22 California case, would it be a rational, third alternative, or
23 argument, to say that the 3-league limitation from the coast
24 line means not the coast line of 1845, and not the present and
25 future coast line, wherever it may be, but the coast line as

1 was described by Congress, which enacted a statute referring
2 to it in the year 1953?

3 A I only see two difficulties with it, Mr. Justice
4 Stewart. The first is simply one of determining the coast
5 line as of that time rather than as of now.

6 Q That is always going to be a difficulty.

7 A However, having done that for 1845, I suppose
8 we could manage it for 1953 ---

9 Q It is comparatively easy, 308 years later.

10 A The more serious problem, I would think, was
11 that once the court has adopted the rule that the 3-mile limit
12 internationally, and the 3-mile belt assigned to the States is
13 one and the same, then, of course, we would be running against
14 a different rule followed by the State Department for inter-
15 national purposes in viewing the Convention, as establishing an
16 ambulatory line, even where that line is referenced to the
17 open coast.

18 Q For international purposes of the coast, the
19 environmental context is quite different along the gulf
20 from the way it is in the Atlantic and Pacific anyway, because of
21 the Continental Shelf and a variety of other things, isn't
22 that true?

23 A Well, I don't say they need to be the same.
24 Nor need they be the same perhaps is less reason for them to
25 be the same in the Gulf than on the California coast, but there

1 I suppose you couldn't have two rules, one for the Gulf of a
2 fixed line as of 1953, but in California one that ambulates.

3 Q I thought you had pointed out in this case,
4 the decision in this case would have a reference to, would
5 have an impact only upon Texas and upon Florida, because of
6 our earlier decision?

7 A Well, I meant to say perhaps you couldn't have
8 a 1953 boundary all over the Gulf, even where it is 3 miles,
9 as in Louisiana, Alabama, or Mississippi, and yet have a
10 different rule applying to California simply because inter-
11 national considerations may be more important on the Pacific
12 and the Atlantic Coast than they are in the Gulf of Mexico.

13 But I would think one might also -- this is somewhat
14 hypothetical -- run across problems of a narrowing of that
15 belt to the point where Texas would almost lose some of its
16 lands, or Louisiana might if you got a very shifting boundary.

17 If you fix it as of any given time and there is a
18 substantial accretion, you presumably have no longer any water
19 belt around you. The notion of the shifting belt is more
20 consistent with, I think, normal property rules.

21 Q But, isn't the basis of your discussion with
22 Mr. Justice Stewart would only be for the purpose of applying
23 the 3-league limitation?

24 A Well, I don't see, Mr. Justice White ---

25 Q Because the basic grant is on historic
boundaries?

1 A But one cannot texturally leave the 3-league
2 and the 3-mile stipulation in the Act as starting from a
3 different point. They both start from the coast line.

4 Q Again getting back, the outer limits, if there
5 were accretions to the coast line so that 3 leagues from the
6 present-day coast line extended beyond the historic boundaries
7 of Texas, the historic boundary would be the line, wouldn't it?

8 A No, then Texas would be entitled to the 3 mile,
9 which every state is entitled to. It would no longer take
10 under its historic grant, it would take under the all-states
11 grant of 3 miles.

12 It would shift the basis for its grant, as we
13 illustrate on page 21.

14 If the land goes out to the point where the distance
15 between the historic boundary and the land is no longer 3 miles

16 ---

17 Q What about ---

18 A It is less than 3 miles, we give them 3 miles.

19 Q I take it the basic grant was out to historic
20 boundaries, initially, is that right?

21 A Subject to this limitation.

22 Q Yes, and let us suppose that then there was,
23 that the historic boundary at that time was exactly 3 leagues
24 from the coast, and then there was accretion, at that point.

25 A Yes.

1 Q The Texas grant doesn't move shoreward does it?

2 A No.

3 It seems to me all the discussion, if I may say so,
4 last term about artificial harbor works, which was in turn
5 premised on the California decision assumed that where the
6 shore line is the operative base line, that shore line is, under
7 the California decision, extended so far out as these harbor
8 works are built out, and we assume that, as Texas did, that
9 that would result in a shift in its 3-mile belt, or its 9-mile
10 belt, if that was the proper starting point, as we assumed it
11 would be, as both parties assumed it would be had it be a
12 conventional 3-mile belt.

13 The only reason we argued it was not is because Texas
14 took under the historic claim which must be judged by the facts
15 of history, not by the changing facts of today.

16 Q Except Texas took, in last term's case, and in
17 fact Texas' claim is under a definition of the 1953 Act, which
18 did not contain the word "coast line" which is the boundaries
19 as they existed at the time such State became a member of the
20 Union, and that another division of the Act to be, establishes
21 a maximum, as you pointed out, but the definition under which
22 they claim does not contain the phrase "coast line."

23 Is that right?

24 A That is entirely correct, and as I understand it,
25 that is the basis of the decision and your Honor made it

1 abundantly clear in the concurring opinion that that was the
2 basis of your concurrence.

3 Let me end on this, that I do not think one can
4 consistent with the text say that the coast line for the
5 purpose of the 9-mile limitation is something fixed as of 1953,
6 but that for the purpose of the 3-mile grant, it may be a
7 shift, because both statements, that is, a statement of the
8 limitation and the statement of the 3-mile grant, are both
9 referenced to the single words "coast line," and those words
10 are defined once and for all, for all purposes, in Section 2-C
11 of the Act.

12 It cannot mean one thing one time and another thing
13 another time. Therefore, if I am right about the California
14 case here also this 9 mile limitation must mean from the
15 modern coast, as it may be at any given time.

16 We have submitted decrees to the court premised on
17 our disagreement as to theory. However, we both agree with
18 each other that if the Government's theory, the United States'
19 theory, prevails, its decree should be ended. And, likewise,
20 if Texas is correct of the law it wshould be ended.

21 I should caution the court that more sophisticated
22 complications have required slight amendment of the figures
23 in the decree which are not appropriate for statement orally
24 and which will be supplied to the court by consent by both
25 parties within the next several days.

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Q This I wanted to get clear, in my own mind.

This issue that you have been arguing, Mr. Claiborne, isn't it that that is the only difference between you, isn't it?

A That is entirely the only difference between us.

Q Do you foresee more troubles in the future?

A Hopefully not, although I think the Texas coast being as it is, uncomplicated, one need not envisage another Louisiana case before the court in the next term.

MR. JUSTICE BLACK: Mr. Brownlee.

1 ORAL ARGUMENT OF HOUGHTON BROWNLEE, JR.

2 ON BEHALF OF DEFENDANTS

3 MR. BROWNLEE: Mr. Justice Black, and may it please
4 the court.

5 As I remember, the last time we were here, our posi-
6 tions were almost exactly opposite.

7 And here we are, simply because there is a difference
8 in who gains an advantage. That is the simple truth of the
9 matter.

10 We were told quite plainly in the opinion that what
11 Congress intended was to give us back what we had in 1845,
12 all that area that we had in 1845, and even one sentence in the
13 majority opinion states that it is extremely clear that no
14 real estate matter is being created but a State which qualifies
15 and they are talking about this historical claim, simply is
16 being given the same area it had when it entered the Union.

17 Well now there is only one possible way to do that,
18 and that is to use a fixed, historic boundary. Otherwise,
19 erosion is going to take away something from Texas. That is
20 the only possible way to give that effect to the Congressional
21 intent is to measure from the fixed historic 1845 boundary as
22 the majority opinion says.

23 Q Can you state rather briefly so that I can get
24 it fully, what is between you and the Government?

25 A I am saying simply this, sir, that the only way

1 that the court can give effect to the Congressional intent to
2 give back to Texas the same area it had when it entered the
3 Union is to measure from a fixed, historical boundary, three
4 leagues out.

5 And that is the only possible way to include all of
6 that area, because we have lost somewhere between 17,000 and
7 35,000 acres through erosion.

8 Now, I can't tell you the exact amount that is
9 involved, because we don't know. We have one set of engineers
10 that said 35. They have another set of engineers that said 17.
11 Well it is somewhere in there.

12 In any event, it is important enough to change posi-
13 tions on as far as the Government is concerned. They started
14 out saying, "You are stuck with 1845," because they didn't want
15 us to have a jetty. We were saying, "We want 1953, or present,
16 because we want the jetties."

17 Well, now that they have got the jetties cut away
18 from us, they want to use the historic boundary only when it
19 hurts us, and use the modern boundary when it hurts us. In
20 other words, we don't win either way.

21 There is no way we can come out ahead with this
22 proposition.

23 Q Litigants frequently have that difference, don't
24 they?

25 A Yes, sir, they sure do.

1 I just don't think, though, that one should attribute
2 an intention on the part of the Congress to a philosophy of
3 this, "Heads, the Government wins, and tails, the State loses."
4 I mean that is just basically unfair.

5 Now, I think I can explain why this limitation was
6 put into the Act, this one in 2-B that he is referring to,
7 which, incidentally, does not contain the word "present."

8 It was put in there because Texas and Louisiana,
9 prior to the enactment of the Submerged Lands Act had sought
10 unilaterally by legislation of their own states, to shove their
11 boundaries out to the edge of the Continental Shelf.

12 They wanted to make sure that Texas didn't get more
13 than three leagues from its ancient historic boundary. They
14 wanted to make sure that no other State got more than three
15 leagues from whatever historical boundary it could prove up.

16 Well, the one we proved up was this 1845 line, which
17 we have now more or less got located on the ground. I think
18 this is a simple explanation as to why this limiting phrase
19 was put in the definition by the Congress.

20 Q What do you claim now, what do you measure the
21 nine leagues from?

22 A From the stipulated line.

23 Q From what stipulated line?

24 A The one which we and the Government both worked
25 out. We started with maps in 1850, and we spent about \$6,000

1 on engineering fees to locate this line.

2 It is there in the field notes. We had to conform
3 it to the 1927 North American Datum, and we had to go through
4 a lot of work.

5 Q Well specifically, it is that line marked 1845,
6 shore line on the map, isn't it?

7 A Well that is just a graphic illustration, yes,
8 but --

9 Q But that is what you say?

10 A Yes.

11 Q And you say you measure nine miles from that,
12 and that gives you the straight line on the right?

13 A Correct.

14 Q That is Texas' claim?

15 A Right. All we are saying today is, here, that
16 we want to follow what you told us the last time. We think
17 what you told us is very clear.

18 Q From what point?

19 A From the fixed, historic 1845 boundary.

20 Q But you say you have stipulated on that?

21 A We have stipulated on where the line is. We
22 haven't stipulated that we are entitled to that claim; no, sir.

23 Q The last time, the court was not concerned at
24 all, was it, with the proviso of Section 2-B. Is that
25 accurate, or not?

1 A We didn't argue that, no, sir.

2 Q That wasn't an issue?

3 A No, sir, it was not.

4 Q So really, it is not quite accurate to say that
5 we told you anything last time with respect to proviso of 2-B?

6 A Maybe we weren't told enough. I suppose that
7 is true, but reading this opinion I see at least ten references
8 to the fixed historic boundary in the majority opinion.

9 I see two in your concurring opinion, and I see one
10 in the dissenting opinion. All of which are very, very clear
11 to me as to what the court said.

12 Now, I just trust the court meant what it said.

13 Q You were arguing last time, weren't you,
14 as I remember it, in terms of the present coast line?

15 A That is correct, sir. And I would be willing
16 to go back to that.

17 Q The court disagreed with you. I thought you
18 were right, and now this is in reverse.

19 A Yes, it is a strange situation.

20 Q But you are dealing with a different section
21 of the Act?

22 A Well, we were dealing with the entire Act the
23 last time.

24 Q We were not dealing the last time. You tell me
25 if I am factually wrong. There were no issues last time under

1 the Section 2-B proviso. Is it true or not true, just as a
2 matter of fact?

3 A I am not real certain whether that is in the
4 Government's brief or not.

5 Q I didn't think there was any claim on that.

6 A I think perhaps they had some reference to
7 a limitation of that kind. I am not sure. I would have to go
8 back and check.

9 Q This would mean that the coast line in the
10 statute, you would have one meaning for the measuring the
11 6-league grant and another meaning for measuring the 3-mile?

12 A Certainly the historical ---

13 Q Wouldn't it?

14 A Coast line ---

15 Q In other words, the States that don't have a
16 historic boundary, they get 3 leagues from the present coast
17 line, whether it is an ambulatory coast line, or a 1953 coast
18 line, right?

19 A That is correct.

20 We think you can have two types of coast lines, like
21 you can have two types of boundaries. One with historic claim
22 and the other a simple grant. And that is how our case was
23 distinguished from the California case.

24 I think, really, what the problem is is that the
25 Government is trying to have both ways, and thus doesn't seem

1 an appropriate intent, to place, so to speak, in the mind of
2 the Congress.

3 Q But you and the Government are in agreement as
4 to what the historic boundary is?

5 A Yes, sir, we are in agreement as to where it is
6 located.

7 Q Yes, and your argument is how you measure the
8 three league limit and the 9 league limit?

9 A Yes, we can measure out from that line wherever
10 it is. We lose whatever erosion may have occurred at that
11 time. We gain whatever -- I mean we gain whatever -- well, we
12 would have a line, but what we would pick up would be what we
13 lost between 1845 and today, the actual land that submerged
14 or blew away.

15 Q If the historic boundary was in 1845, was more
16 than 3 leagues from the coast line?

17 A No, it was exactly 3 leagues from the then
18 coast line.

19 Q It had to be?

20 A It was from the then coast line.

21 Q You mean coast line like shore line?

22 A Well, from land. Actually the statute read
23 "from land."

24 Q Do you mean coast line or the shore line?

25 A Well, I would say from land is where the Texas

1 Boundary Act read. Now how that would have been interpreted
2 at the time I don't know.

3 Q You would have no difficulty with that?

4 A No, I have no difficulty. I think it was what
5 we would normally call the coast today. There were no arti-
6 ficial works or anything of that kind. It was completely
7 natural at that time.

8 Q Mr. Brownlee, I have forgotten. What is the
9 legislative history which explains the 3-league limitation
10 anyway?

11 A Well, it is a rather strange thing. For some
12 reason or another, way back there, a law was passed establishing
13 a boundary. That was prior to the admission of Texas into the
14 Union. We tried to find out once before why this was done, and
15 we never did find it out.

16 All we knew was that it was done, and it was asserted
17 by the Republic as its boundary.

18 Now, there was a lot of international law that went
19 back in those days that did claim boundaries longer than three
20 miles. We got into all that ---

21 Q And that is the reason we have a limitation
22 then that you should get not more than 3 leagues from the
23 present coast line?

24 A Yes, because that was the historic ---

25 Q Because I gather this one that the Republic

1 attempted would take it way beyond, would it, 3 leagues from
2 the old coast line?

3 A No, that was the State of Texas in 1943 ---

4 Q 1943?

5 A Yes. When the California case came up in 1947,
6 and I think this happened after that time, and then Texas runs
7 out and passes a statute saying, "Our boundary goes out."

8 Q Goes out how far?

9 A To the edge of the Continental Shelf, about
10 200 miles.

11 Q Oh, I see.

12 A It was a futile act, of course.

13 Q Well, then was the limitation, are you sug-
14 gesting a response to that Texas statute?

15 A Yes, sir. Exactly. Louisiana did the same
16 thing. They passed a statute trying to stick their boundary
17 out as far as they could, and then they wanted to get the
18 Submerged Lands Act passed while this proviso had to go in
19 that type of claim. That was the reason for it.

20 Q How far do you claim out from the shore line
21 to date?

22 A Well, you can look at this exhibit.

23 Q Well, I can't tell by looking at the exhibit.

24 A Well, how far it would vary with these red
25 lines. These are exaggerated.

1 Q Well, how far would that be from land?

2 A Well, let me look at the scale a minute and I
3 think I can tell you. The farthest point from land would be,
4 let me see, oh, it looks like there is one point as far out
5 as 10 miles, and at other points it runs back 20 miles into
6 the coast.

7 Q Where is the 10-mile point?

8 A Near Louisiana.

9 Q I thought that was in terms of -- isn't that
10 on the accretion-erosion scale?

11 A Yes, sir.

12 Q It wouldn't be anything like 10 miles, would it?

13 A Oh, now, I was looking at the wrong scale.

14 Q It would be at most 2 miles or a mile?

15 A Yes, you are right. You are right. I was
16 looking at the wrong scale.

17 Q So that this erosion, as I understand it, is a
18 slow process, and so is accretion?

19 A Yes, that is right. So you are right, it is not
20 nearly that far out, nor does it cover a very wide area, as
21 far as that is concerned.

22 As I said, it makes a difference -- we are not really
23 sure how much.

24 But we do not believe that the court should allow
25 this proposition. You can use the 1845 boundary when it hurts

1 you. In other words, where there has been erosion, you have
2 got to use it where it hurts you, but you can't use it where
3 it helps you.

4 We say that is basically an unfair argument. We
5 think it is a position which the Congress did not have in mind
6 when it first passed the Submerged Lands Act.

7 We feel that the opinion has made this statement
8 by the court at least very clear. We don't think it is at all
9 ambiguous, and we see no trouble at all in reconciling the
10 limitation imposed for those exaggerated claims, with the other
11 definitions in the statute.

12 Thank you.

13 Q Wait a minute. May I ask you a question.

14 Is he right in saying that you want to use the coast
15 line where you get the benefit of the accretions or the
16 incursions if you want to take it away from them when it comes
17 to give them something?

18 A In one sense, Mr. Justice Black, that is true.
19 That is the way it works out now, because ---

20 Q Why should you use two tests, one of which goes
21 to the disadvantage of Texas and one of which is to the
22 advantage?

23 A We are dealing with two quite separate provisions,
24 one is the provision which the court held last term determines
25 the extent of the historic claim, it being a historic claim

1 it was properly to be measured from the historic shore. That
2 is what the court held.

3 That is, of course, what we argued last time.

4 Now, we are dealing with something quite different.
5 We are dealing with a maximum limitation which is stated to be
6 from a coast line. That maximum limitation applies not only
7 to those states which -- well, not only to Texas in terms. It
8 applies to any State which is able to show a valid historic
9 claim.

10 Q I thought we had already decided that Texas'
11 claim is not to be decided on the same standards as the
12 California claim? Claims in the Gulf, Texas.

13 A Well, Mr. Justice Black, this 3-league or 9-mile
14 limitation only applies in the Gulf.

15 Q Right.

16 A But it applies to all the Gulf States, and it
17 simply says that you may take as much as you had when you came
18 into the Union, but no more than 9 miles from the coast.

19 And the coast is then defined for that purpose as
20 well as for the purpose of the 3-mile grant which every State
21 gets, and I can only say I thought it had been decided by the
22 court that that meant the modern coast, not the historic coast,
23 not the 1953 coast, but the modern coast as it shifts from
24 time to time.

25 Q The coast today?

1 A The coast today.

2 Q Well, Mr. Claiborne, just one last question.

3 Do you agree with Mr. Brownlee, that that proviso
4 is a response to this 1943 case?

5 A This proviso was added as I understand it on
6 the floor rather as without much explanation. It does appear,
7 however, or one I think can fairly deduce that the 9-mile
8 limitation was in response to the very exorbitant or at least
9 very self-generous claims made by Texas and Louisiana, and
10 perhaps also by Louisiana and Alabama.

11 Q Well, if that is so, wouldn't that argue against
12 your idea that the coast line means the present coast line?

13 A No, for instance, in the case of Louisiana,
14 the claim was not a stated number of leagues from the coast,
15 or at least the definition of the coast began so far out that
16 it is a practical matter they were 20 miles or so out into the
17 Gulf, and there were boundaries set with straight lines that had
18 no relation to the coast.

19 So, as it applied to Louisiana, this 9-mile limi-
20 tation couldn't be measured from any historic shore line. It
21 would have to be measured from the modern shore line.

22 Q Well, but in the case of Texas, what Congress
23 wanted to be sure that the limitation gave them no more than
24 what they had back in 1845. It might mean that coast line
25 meant coast line of 1845.

1 A Had Texas been the only State against which
2 this limitation was designed, and since it happened that
3 Texas had a 9-mile claim, one might have made the inference
4 your Honor suggests.

5 Since, however, it is equally fair to read this
6 limitation as reading as Louisiana it had a different sort of
7 claim, I don't think the conclusion is warranted.

8 (Whereupon, at 2:05 p.m. the argument in the above-
9 entitled matter was concluded.)

end bh