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In the

Supreme Court of the United States

RAYMOND MATTZ,

Petitioner,

v.

G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California,

Respondent.

No. 71-1182

Washington, D. C.
March 27, 1973
March 28, 1973

Pages 1 thru 52

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IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND MATTZ, Petitioner	:	
v.	:	No. 71-1182
G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Respondent.	:	

Washington, D. C.

Tuesday, March 27, 1973

The above-entitled matter came on for argument at 2:29 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

LEE J. SCLAR, California Indian Legal Services, 2527 Dwight Way, Berkeley, California 97404, for the Petitioner.

HARRY R. SACHSE, Office of the Solicitor General, Department of Justice, Washington, D. C., as amicus curiae, supporting Petitioner.

RODERICK WALSTON, Deputy Attorney General of California, 6000 State Building, San Francisco, California 94102, for the Respondent.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear argument next in No. 71-1182, Mattz against Arnett.

Mr. Sclar, you may proceed whenever you are ready.

ORAL ARGUMENT OF LEE J. SCLAR ON BEHALF OF THE PETITIONER

MR. SCLAR: Mr. Chief Justice, and may it please the Court:

This case is here on a writ of certiorari to the California Court of Appeals. The issue presented is whether an 1892 Federal statute terminated part of an Indian reservation and thereby made that area subject to State fishing laws.

The area in question is a strip one mile on either side of the Klamath River from the Pacific Ocean inland for 20 miles. This area together with the next 20 miles up the Klamath River has always been the center of Yurok Indian life. Petitioner Raymond Mattz is a Yurok. He and his family and his ancestors have always fished along this stretch of the Klamath River and have done so with large nets, including gill nets.

In September of 1969 Petitioner Mattz had five gill nets stowed at a location approximately 200 feet from the Klamath River and about 10 miles from the Pacific Ocean. The land belonged to the Simpson Timber Company, but it adjoined

an allotment of Petitioner Mattz' mother, and the nets were on the Simpson Timber Company land by mere inadvertence.

QUESTION: Is that a factor of any importance here, the fact it was on land owned by Simpson?

MR. SCLAR: In view of other rulings by this Court in Seymour and by lower courts, no, it isn't, your Honor. However, if it had proved to be on allotted land of petitioner's mother, then the issue presented by this case would not arise since the land would then be Indian country even if it wasn't an Indian reservation.

A game warden came by from the State of California, saw the nets, confiscated them. The respondent, Director of the Department of Fish and Game, instituted a proceeding to forfeit the nets to the State. Petitioner Mattz intervened and asked for the return of his nets saying the State did not apply because the nets had been seized in Indian country.

The trial court ruled for the State, ruling that all of the area had at one time been part of an Indian reservation, but that reservation had been terminated by an 1892 statute which opened the land for public purchase. The decision was affirmed on the same grounds by the California Court of Appeals and the California Supreme Court declined to hear the case.

In order to understand why the decisions by the California courts were wrong, it is necessary to understand

the legal history of this area. And I would ask if the Court could refer to the map supplied by the Solicitor General in this argument. The first reservation created in this area was the Klamath River Reservation. It is not in the brief of the Solicitor General. It was supposed to have been supplied to the Court specially this morning. They are relatively small maps.

QUESTION: Is this it?

MR. SCLAR: Right.

MR. CHIEF JUSTICE BURGER: You may continue.

MR. SCLAR: O.K.

I will try to describe it without the maps. The first reservation created was a strip two miles wide on either side of the Klamath River from the Pacific inland for 20 miles. That is the same area in dispute here. It's shown on the little maps.

QUESTION: (Inaudible)

MR. SCLAR: I am perfectly familiar with it. I just thought that every member of the Court would like to look at one while I --

QUESTION: They don't seem to have been delivered. Is it in one of the --

MR. SCLAR: No, I don't think it's actually in any of the briefs. It was supplied separately.

QUESTION: Is this it?

MR. SCLAR: Right. That's the map.

QUESTION: Some of us don't have it.

MR. SCLAR: I apologize to the Court for that situation. I understood that nine copies had been delivered.

QUESTION: If copies were delivered to the Court, then it's not your responsibility.

MR. SCLAR: The area that is in dispute in this case, that is, the two-mile strip from the ocean inland for 20 miles was first established as a reservation in 1855, and it was done by presidential proclamation and called the Klamath River Reservation.

In 1864 Congress passed a statute authorizing the creation of four reservations in California. Pursuant to that statute, the four reservations were created by 1876, and one of those reservations was the Hoopa Valley Indian Reservation. That reservation is shown on the little map as the green square. It's an area approximately 50 miles downstream on the Klamath River and approximately 12 miles square. The result of that is that between the Klamath River Reservation and the Hoopa square there is a gap of the Klamath River that at that time was not part of the reservation.

The Federal Government, however, continued to recognize the existence of the Klamath River Reservation as an Indian reservation until 1889. At that time a Federal court declared that the Klamath River Reservation was no longer a

reservation because it had not been included in one of the four reservations authorized by the 1864 Act. It did that on the basis of a statute which said that reservations -- a provision in the 1864 Act saying that reservations not included in the four reservations should not be retained for Indian purposes. So in 1889 the situation was that you had the Hoopa Valley Indian Reservation, that is the square, and no other reservations recognized by the courts in that area.

However, in 1891 the President moved to correct the situation caused by the court decision in 1889, and the President issued an Executive Order extending the Hoopa Valley Indian Reservation from the Hoopa square all the way up the Klamath River to the Pacific Ocean in a two-mile strip, one mile on either side of the river. That Executive Order extending the Hoopa Valley Indian Reservation was upheld by this Court in U.S. v. Donnelly in 1912, and the extension, that is, the addition to the Hoopa Valley Indian Reservation, the two-mile wide approximately 50-mile long strip became known as the Hoopa Extension.

QUESTION: Would that be the yellow and red?

MR. SCLAR: The combination of the yellow and red together constitutes the Hoopa Extension, that is correct.

Then we come to the Act of 1892 which is the crux of this case. That Act had three significant provisions. First of all, it provided that Indians living on the red area, that

is the lower 20 miles of the extension, should receive allotments of land there in priority over anybody else, including white settlers who may have innocently settled in that area thinking that it was not part of a reservation any more.

Secondly, the Secretary of the Interior was authorized to set aside Indian villages in that area.

And thirdly, the area that was not allotted, not reserved for Indian villages, was opened up to non-Indian purchase under the general land laws of the United States. However, one exception was made to the general land law disposition, and that was that the proceeds of the money instead of accruing to the United States would be used solely for the benefit of the Indians.

That statutory pattern in the 1892 Act is, in our opinion, not distinguishable from the pattern of the South Colville Reservation Act which this Court in Seymour said did not abolish the south half of the Colville Reservation. It is, we feel, completely different from the North Colville Reservation Act which Seymour held did abolish the north half of the Colville Reservation. The two really significant differences that we see between the Hoopa Act and the North Colville Act was that the North Colville Act expressly vacated and restored the north half of Colville to public domain. There is no such provision in the South Colville Act or in the Hoopa Extension Act.

Additionally, the North Colville Act allowed for public use of the proceeds of the sale of surplus land. There is no such provision in the Hoopa Extension Act. In fact, as I pointed out, quite to the contrary, the Act specifically provides that only Indians are to be the beneficiaries.

In addition to the statutory language differences, the legisllative history also shows that Congress had no intent to terminate the lower 20 miles of the Hoopa Extension by the 1892 Act. The Senate deleted from the House bill a provision that would have allowed the sale proceeds to be used to remove the Indians from the reservation. The Congress as a whole concurred in the Senate move. Additionally, the provision of giving Indians allotments with priority over all other settlers was added in the Senate after no such provision was in the House bill.

Thirdly, this bill, as clearly reflected in the legislative history, came out of the Senate in substantially the form recommended by the Interior Department, and it is simply inconceivable that the Interior Department had recommended an 1892 bill that would have the effect of terminating a reservation which the President had only created in October of 1891 at the request of the Interior Department.

There are some references in the legislative history to an abandoned reservation, but if you read the legislative history closely, especially the House committee report, you

find that those references are to the Klamath River Reservation which, as we pointed out, had been declared to be non-existent by a court in 1889 because it was not one of the four reservations under the 1864 Act.

Finally, I would like to point out as far as the legislative history goes, that there is no mention whatsoever in any of the legislative history of the 1891 Hoopa Extension. And it seems totally inconsistent with this Court's holding in the United States v. Celestine that a clear intent is needed to terminate a reservation, that Congress not even mentioning the reservation could have intended to terminate it.

There are also subsequent Acts which show that this area was not intended to be terminated. In 1893, 161 allotments were made to the Indians pursuant to the 1892 Act. Those allotments constituted 40 percent of the lower 20 miles, that is, the area that had been opened. The 161 allotments were described in the 1893 Report of the Commissioner of Indian Affairs as being on-reservation. The Commissioner's report had two sections, one for on-reservation allotments, one for public domain allotments. These allotments were in the on-reservation section.

QUESTION: On this map, how much is involved in this lawsuit?

MR. SCLAR: The area covers the red area.

QUESTION: That's all.

MR. SCLAR: That is all. The red area is the area that was opened up after being allotted and having villages reserved.

QUESTION: Are the Yurok Indians centered in this area today?

MR. SCLAR: No, your Honor. Many of them do not live on the reservation as such, but they live, a great number of them live in the surrounding area and come to this area to fish. The area is very difficult to inhabit because it's very difficult to get in and out of. About half of it has no roads at all. People come there on summer vacations, come there on fishing expeditions. But the area is still regarded as the center of Yurok life.

QUESTION: How many Yurok Indians are there approximately today?

MR. SCLAR: Roughly 3,000.

QUESTION: And most of them are in this area of northern California?

MR. SCLAR: Yes. Virtually all of them, so far as I know.

Additional subsequent things which we think tend to show that this area was intended to remain as an Indian reservation are maps of the Commissioner of Indian Affairs reports showing the area continued to be a reservation. Testimony in 1932 in Congress by the Hoopa Agency Superintendent

saying that all the Extension from the square to the ocean as well as the square was all one reservation and under the jurisdiction of the Bureau of Indian Affairs. And I would point out that a census done in the same year, apparently the last census done on this basis by the BIA showed that there were more Indians living on the lower 20 miles of the Extension than on either the other part of the Extension or on the square.

There are also Acts from 1920, 1942, and 1958 which confirm the reservation status of this area. They are explained in the brief. I won't detail them here. And the National Atlas, the official Atlas of the United States, and the 1971 Bureau of Indian Affairs map of Indian land areas both show this area as being part of an Indian reservation.

In conclusion, I think, to say that the 1892 Act terminated this Indian reservation would go contrary to the requirement of Celestine that there be a clear intent to terminate, it would be contrary to the decisions of this Court in Choate v. Trapp, Alaska Pacific Fisheries, and Square v. Kappleman, that laws that are ambiguous are to be construed in the Indians' favor. It would be contrary to the holding of this Court in Seymour as the Act of 1892 applying to the Hoopa Extension was like the South Colville Act and not like the North Colville Act. And it would work a great injustice on the Yurok Indians whose life is centered here and who received a very small reservation to begin with.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Sachse.

ORAL ARGUMENT OF HARRY R. SACHSE ON BEHALF OF THE PETITIONER AS AMICUS CURIAE

MR. SACHSE: Mr. Chief Justice, and may it please the Court:

The United States agrees with the position taken by Mr. Sclar and by the petitioner in this case. What I want to try to do is put this 1892 Act into a little bit of historical perspective.

As Mr. Sclar said, the Yuroks always lived in this area. Twice they had their reservation recognized by Executive Order, 1855 and 1891. The 1891 Act was an obvious reaction to the legal problems that had been recognized in the 1889 Court of Appeals case.

In 1892 it may be that the House of Representatives set out to take from these Indians much of what had been theirs. But what the House set out to do, the Senate corrected. And there is a very marked contrast between the Act that was finally passed and the Act that was introduced in the House. The Act as it was finally passed in our view is quite clearly a special allotment Act similar to a number of other allotment Acts that were passed in that general time and which did not terminate the reservation in question.

I would like to first mention something about the

General Allotment Act. I think that's important in this. By the 1880's most of the Indian reservations had been created. But there was a pressure by the settlers around those reservations to get some of the land in the reservations. They felt the Indians were not utilizing that land. And on the other hand there was a pressure to keep faith with the Indians and not to take from them what had recently been given to them. A sort of compromise was worked out in the General Allotment Act of 1887 called the Dawes Act. It has subsequently been repudiated in the Indian Reorganization Act of 1934. The Dawes Act set up this system, that whenever the President thought it was wise to do so, he could require all the Indians within a reservation to take allotments of a particular number of acres each. This would usually leave considerable land in the reservation that was not allotted. The President then with the consent of the Indians, which it was assumed in those days he could obtain, would open the rest of the reservation for homesteading, but the fees charged to the homesteaders would be used for the benefit of the Indians who lived on the reservation.

Now, that was the General Allotment Act. The General Allotment Act did not require the President to open any particular reservation in this way. And Congress passed a number of special allotment Acts. We have listed those that have been in litigation on page 22 of our brief, Footnote 18.

These special allotment Acts would take the matter out of the hands of the President and the tribe and Congress would say, "We want allotments made on a particular piece of land. We want, once the allotments are made, we want to open the rest of it to settlement, and we want funds collected from the settlers to be administered by the Government for the benefit of the Indians that lived on that land."

Many of the special allotment Acts made particular reference to the General Allotment Act saying that the allotments would be made under the terms of the General Allotment Act.

It's very significant that the funds obtained in such an Act were to be used for the benefit of the Indians who remained in the reservation. And this meant, of course, a continued Federal involvement with that reservation, both in handling the land transactions and in administering the funds that would be created by this procedure.

In our view, the 1892 Klamath River Act is that kind of special allotment Act. In our brief when we cited the language of the Act, we put in dark provisions, the part added by the Senate, which together with the final paragraph that had been there all along make this Act exactly a special allotment Act of the area of that reservation that was affected.

QUESTION: Ultimately homesteaders' land would be

within the reservation?

MR. SACHSE: That's correct.

Now, this Court early --

QUESTION: Would you take the same position even if some was allotted, some was homesteaded and the people and all the restrictions on the allotments had expired and the allotted lands had been sold to whites?

MR. SACHSE: Unless Congress had in some -- we don't reach that issue here because there still is allotted restricted land in this reservation.

QUESTION: Well, let me ask you. In an Indian reservation that's along a river, who owns the bed of the river?

MR. SACHSE: Well, in this case, this Court in Donnelly has already held that the Indians own the bed of that river. It has never been taken from them.

QUESTION: And that has never been allotted to anybody, has it?

MR. SACHSE: It has never been allotted to anybody. That's still communely held Indian land as far as we are concerned, and there is not a word in the 1892 Act --

QUESTION: Whether the reservation exists or whether it doesn't, and regardless of who owns the river bed, is there some treaty or some law defining Indian fishing rights? Or is it just ancestral fishing rights that have been --

MR. SACHSE: It's somewhere between the two. There were ancestral fishing rights, but this Court in Donnelly held specifically that the 1891 Extension that ran snaking 40 miles down the river was done specifically to preserve the fishing rights that the Indians had.

QUESTION: Which were what?

MR. SACHSE: I think the exclusive rights to fish in that river.

QUESTION: The exclusive right to fish there?

MR. SACHSE: Since it was made an Indian reservation, the purpose of which is that this area is to be reserved for the Indians, and since surplus lands were sold but nothing was done --

QUESTION: You would say, then, I suppose, that since the Indians owned then and still own the bed of the river, that even if all of the riparian land was in other ownership, the Indians would have the exclusive right to fish in the river?

MR. SACHSE: I would say -- yes, I would say that. But I don't think this case requires us --

QUESTION: Don't you have to hold that? Because there is some river riparian land that is not owned by the Indians.

MR. SACHSE: Well, here is the way I would analyze this case, but I think what you have raised is also a possible

analysis, a possible way to handle the case.

The 1891 Act established an Indian reservation, a mile on both sides of the river including the river and going all the way down to the sea. This Court in Donnelly held that one of the primary purposes of establishing that reservation was to secure to the Indians fishing rights of that river. That reservation has never been abolished. The 1892 Act which let other people than Indians settle in this area while preserving also Indian settlement, simply did not abolish the reservation. So the reservation is still an area of Federal jurisdiction and protection, except to the extent that Public Law 280 has given the State of California certain criminal and civil jurisdictions in it. Public Law 280 specifically reserves federally granted fishing rights and these were granted by Executive Order as this Court held in Donnelly.

QUESTION: That still leaves the question of what -- you said "exclusive."

MR. SACHSE: No. Let me say this. The issue was not argued below as to exactly what the consequences of this being held to be an Indian reservation. The court went up on the question it was not a reservation.

QUESTION: The scope of the Indian rights and whether or not the kind of fishing the Indians now want to do is the kind of a fishing right that was historically exercised has not been settled.

MR. SACHSE: That is correct. And we have only asked this Court to determine the question of whether this remains Indian country, whether this remains an Indian reservation, with a remand after that has been determined to the California courts.

QUESTION: You think that it may be irrelevant whether the reservation exists or not if it's true that the Indians still own the bed of the river.

MR. SACHSE: I don't think it would be irrelevant. I think it would matter from the standpoint of criminal and civil jurisdiction. It would only be irrelevant if the Court were to find that Public Law 280 had granted such total jurisdiction to the State of California that even if it is a reservation all that is left is the ownership of the river. So I think it still is relevant.

I would like to get back to the specific point that this Court is faced with, and that is has this allotment process terminated the reservation. And because I am running out of time, I would just mention this very quickly. That in United States v. Celestine, the Court first had to determine this problem, 215 U.S. And in that case the Court held in a careful opinion that the General Allotment Act is inconsistent with termination of a reservation, that allotments under that Act and even disposal of lands to non-Indians does not terminate a reservation. In United States v. Nice at 241 U.S. -- these

are all in our brief -- the Court held that a special allotment Act should be interpreted in accordance with, policy in the General Allotment Act and that a special allotment Act on the Sioux reservation though it required the Sioux to take, on that reservation, allotments, required the President to dispose of the extra land, did not terminate Federal jurisdiction, did not terminate the reservation, did not terminate Federal jurisdiction even as to the land that was disposed of to non-Indians.

This same policy is recognized more recently by this Court in Seymour v. Superintendent and also has been codified by Congress in its definition of Indian country as including all the land within the boundaries of an Indian reservation whether patented or allotted or not.

There have been two very recent cases we mention in our brief also, one in the Eighth Circuit, City of New Town, and another in the Supreme Court of South Dakota, State v. Molash, that had this same consistent interpretation of special allotment Acts indistinguishable from the 1892 Klamath River Act.

In closing, since I assume I am out of time, I refer the Court to page 17 of our brief where we have samples of language that Congress used when it did want to discontinue a portion of a reservation. "The Smith River Reservation is hereby discontinued," Congress said. Or, "The reservation lines

of the Ponca and Otoe and Missouria Indian reservations be, and the same are hereby abolished." There has been no confusion between an Act that simply opens the reservation to allotment and settlement and one that absolishes the boundaries of a reservation.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Walston, I think you won't have start your argument. We will let you begin fresh in the morning.

MR. WALSTON: Thank you, your Honor.

[Whereupon, at 2:56 o'clock p.m., oral argument in the above-entitled matter was recessed until 10:00 a.m. Wednesday, March 28, 1973.]

IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND MATTZ, Petitioner	:	
v.	:	No. 71-1182
G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Respondent.	:	

Washington, D. C.

Wednesday, March 28, 1973

The above-entitled matter came on for further argument at 10:04 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in 71-1182, Mattz against Arnett.

Mr. Sclar.

MR. SCLAR: Mr. Chief Justice, I have completed my --

MR. CHIEF JUSTICE BURGER: You have reserved some time for rebuttal, haven't you?

MR. SCLAR: Yes.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Walston, you may proceed.

ORAL ARGUMENT OF RODERICK WALSTON ON BEHALF OF THE RESPONDENT

MR. WALSTON: Mr. Chief Justice, and may it please the Court:

I just received the Government's AC brief in this case last Friday, and their brief prompted me to try to locate some additional information which I succeeded in doing. I am going to refer to this information during the course of my oral argument, and it may well be that the Court would like me to also cite the sources where this information can be located. I will be happy to do that. But at the same time it might be more convenient for this Court if I am permitted to file a very short brief after this argument is concluded setting forth these additional sources of information. I leave it to the Court to decide that question and I will

happily comply with it in whichever manner the Court wishes.

MR. CHIEF JUSTICE BURGER: The first alternative would be sufficient, but we won't confine you to that.

MR. WALSTON: O.K. Fine. Thank you.

QUESTION: Mr. Walston, may I ask you a question before you begin. I notice that you refer to several maps in your brief and the Government and your opponent referred to several maps. How many of these maps were placed in evidence in the trial court?

MR. WALSTON: None, your Honor. We offered those maps merely to show the reservation status of the Klamath River Reservation is unsettled at the present time.

QUESTION: Ordinarily, when you have a case involving maps, you offer them in evidence. This probably goes to your opponent's case as much as to yours. You offer them in evidence to the trial court, you authenticate them in some way? You may have expert testimony as to how credible they are?

I have some difficulty with the idea that this Court should simply consider a bunch of maps that were never offered to the trial court.

MR. WALSTON: That is probably true with respect to most maps, Justice Rehnquist, but one of the maps that we referred to, a 1909 map, was contained in a presidential proclamation which is published in the official governmental report. I think that map can be referred to as an official

Federal document. The other maps were simply Geologic Survey maps that I simply located by my own means and I would agree that those are not properly before the Court.

QUESTION: What's this one?

MR. WALSTON: That's the map that was offered by Mr. Sclar for illustrative purposes only.

QUESTION: It's not in evidence?

MR. WALSTON: That's not in evidence, no.

QUESTION: But for the purpose for which it is offered to this Court, you don't object.

MR. WALSTON: I don't object, no.

QUESTION: It's merely to show where something is.

MR. WALSTON: Yes, that's correct, your Honor.

QUESTION: And I take it with respect to the map that was attached to the Executive Order, you would say that can be judicially noticed?

MR. WALSTON: Yes, that's correct, your Honor, because that's contained in Senate documents, and I have cited the appropriate citation in my opening brief to this Court.

QUESTION: Do you concede that the tribe owns the bed of this river in the area that's at issue here?

MR. WALSTON: We haven't raised that question, Mr. Justice White. There is a question in the case as to whether the Indians actually own the bed of the river. The Solicitor

General responded to the question yesterday by saying that the Donnelly court decided that question. I recall from my own recollection, however, that the Donnelly court itself later reversed its own finding on that question and left the matter up in the air. I would refer the Court to page 711 of the same volume of the United States Reports in which the Donnelly decision is reported, page 711.

QUESTION: Was that on rehearing?

MR. WALSTON: Pardon me?

QUESTION: Was that on rehearing or what?

MR. WALSTON: That was tantamount to rehearing. It simply retracted its earlier holding and left unsettled the very question of whether the Indians own title to the bed or not. I consider that --

QUESTION: Is it a navigable river?

MR. WALSTON: I believe that the river is navigable.

QUESTION: So normally the State at admission would have taken title to the river bed.

MR. WALSTON: That's correct, your Honor. In fact, I was prepared to submit an argument to that effect to the Court, but I didn't because I felt there were sufficient other grounds to dispose of the case. I didn't want to raise what I considered to be a technical argument. Based on your question yesterday, I --

QUESTION: Would it make any difference to the

resolution of this case?

MR. WALSTON: Yes, it might. If the reservation includes all of the area --

QUESTION: Whatever it is we are supposed to set aside here might not decide the case at all?

MR. WALSTON: That's possible. If the Court concludes that the river that runs through the old reservation is not part of the reservation itself and that title to that river is vested in the State of California, the previous question is not before the Court. And I should caution, Justice White, that in Arizona v. California, which was decided a few years ago by this Court, there was some language in the later part of that opinion that seemed to indicate that a river running through an Indian reservation is considered part of the reservation. And because of that language, I didn't raise the argument in this case. I would be very happy to submit a --

QUESTION: And at some later case about who owns the bed of the Arkansas River, too.

MR. WALSTON: I am unaware of that, your Honor.

Anyway, I think Justice White's observation about the title of this area might well justify the Court in disposing of this case on other grounds, but if the Court wishes to dispose of the case on the grounds that have been raised by the parties in this case and that were considered by the trial

court, I would respectfully submit that the key question before this Court at the present time is in determining the intent, the legislative intent behind the 1892 Act which was passed by Congress. Now, that's the Act before this Court. That's the Act that effectively restored all of the lands on the old Klamath River Reservation to homestead settlement and provided for individual trust allotments to the Indians with respect to those lands.

Now, the Solicitor General in his AC brief has made the contention that this is really one of many examples of legislative action in which Congress attempted to utilize the old General Allotment Act for the purpose of turning over trust allotments to the Indians. The General Allotment Act basically provided that with respect to a large reservation area, any lands which are not being used by the Indians and which are surplus to their needs can be sold to homesteaders who want to receive the land and that the proceeds from the sale can then go back into the reservation's operating funds so as to augment the operating capital of the reservation. And this Court has held on many occasions that it was not the intent or the purpose of the General Allotment Act to terminate Indian reservations. We have no quarrel with that proposition.

But the Government's argument in trying to tie this case in with the purpose and spirit of the General Allotment Act really ignores the very unique historical context surrounding

the Klamath River Reservation which is before this Court. The Government's argument ignores the unusual historical circumstances that led Congress in 1892 to pass the Act in question.

Now, I would like to refer specifically to what I consider to be the two main historical factors considered by Congress in passing the 1892 Act. First, and this is, I think, foremost, the Indians by the time the 1892 Act was passed had largely abandoned the reservation. They were no longer there for all practical purposes. If you will refer to the decision in United States v. Forty-Eight Pounds of Rising Star Tea cited by both parties in this case, you will see that when the reservation was originally created in 1855, there were 2500 Indians on the reservation. But by the time the case was decided in 1888 there were only 200 Indians left. And then if you look at the Congressional reports which are cited at length in my opening brief, you will find that Congress estimated that the number of Indians left on the reservation at that time was 40 to 60. And I have also located an 1892 census conducted by the Commissioner of Indian Affairs in which he found that there were only 30 Indians --

QUESTION: Are you speaking of things that are in the record now?

MR. WALSTON: Everything I have said so far has been, your Honor. When I refer to the 1892 census, I am

referring to something that I found in the Annual Reports of the Commissioner of Indian Affairs to the Secretary of the Interior for the year 1892.

QUESTION: You ask us to notice that, too.

MR. WALSTON: Yes, your Honor.

QUESTION: Now, this 46 figure, that was in 1892, the census of 1892?

MR. WALSTON: Yes, the 40 to 60 figure. And that's contained in the statements of the bill's authors -- or I should say spokesman in the Senate -- at 23 Congressional Record 3918. He specifically said that there were 40 to 60 Indians left on the old reservation at that time. An 1892 census conducted by the Commissioner of Indian Affairs apparently only located 30 Indians remaining on the old Klamath River Reservation. And this is reported -- this fact I pieced together from two different sources of information. First, the census actually found 505 Indians total on both the Klamath River Reservation and the area 20 miles upstream from the Klamath River Reservation which everybody refers to as the connecting strip. And that fact is reported in Annual Reports of Commissioner of Indian Affairs to the Secretary of the Interior, year 1892, page 784.

Then, according to the trial commissioner's findings in the Short case which have been heavily relied upon by both the petitioner and the United States in this case, at page 55

it was stated that 475 of these Indians were located on the upstream area and thus out of the Klamath River Reservation, that left only 30 Indians left on the old reservation.

So that means for all practical purposes more than 95 percent of the Indians on the Klamath River Reservation left the reservation between the time that it was originally created in 1855 and the time that the 1892 Act was before Congress. And that's the first historical fact that I think assumes significance in this case.

Secondly, after the Indians moved out of the area, the homesteaders moved into the area. And according to the Congressional debates which, as I say, have been quoted at length in my opening brief, most of the land in the old reservation area were then taken over by the homesteaders. And they occupied this area. They lived on the -- they took over the arable lands that were located along the river's banks.

So we have the Indians basically leaving the area and the white settlers moving into the area. And many bills were offered into Congress through the 1880's for the purpose of protecting the title of these homesteaders to the lands which they occupied. The 1892 Act was a direct outgrowth of all these Congressional efforts. This is the historical context that I am referring to and that I think distinguishes this case from the Seymour case and that also distinguishes

this case from the typical type of case in which Congress utilized the General Allotment Act for the purpose of distributing surplus lands to homesteaders for the Indians' benefits.

Now, Congress was very greatly persuaded and influenced, I think, by these historical circumstances to which I have alluded, these very unique historical circumstances. In fact, if you look at the House report connected with H.R. 38 which is the bill that eventually became the Act, we find the following statement: "This reservation"-- the Klamath River Reservation -- and this is Congress speaking -- "This reservation became abandoned in law as it has been in fact since the winter of 1861-62." Then the bill went on into Congress and the bill was reported on the floor of Congress by Representative Geary. And during the course of his discussion and his oral presentation to the Congress, he said as follows: In 1861 the reservation was abandoned and has never been since used for that purpose. Since 1868 it has been occupied by settlers.

Then after the bill passed the House, it went to the Senate. There the bill was amended to provide for trust allotments to the Indians.

And the petitioner United States claimed that this trust allotment amendment somehow very basically altered the nature of the bill. And yet the bill spokesman in the Senate

said the same thing in virtually the same language that was said in the House report and by the bill spokesman in the House. And let's hear the Senator who spoke it. He said: The Klamath River Reservation has never been used as an Indian reservation.

QUESTION: Where do you have this in your appendix?

MR. WALSTON: This is on page 7 of my opening brief, your Honor, which is the blue brief.

The Klamath River Reservation has never been used as an Indian reservation. The number of Indians located on the reservation --

QUESTION: What does he mean when he says, "There is an Indian reservation within 20 miles of the river."

MR. WALSTON: He is referring, your Honor, to the Hoopa Valley Reservation which is the large 12-mile by 12-mile square reservation I have located on --

QUESTION: The one on this?

MR. WALSTON: Yes, the green block on the map.

The number of Indians located on this land -- on the reservation, is variously estimated at from 40 to 60 Indians.

Quoting again: There are a great many settlers upon that land. It is not practically an Indian reservation. It never has been used for that purpose.

So that's Congress speaking. That's what Congress had in mind, and it's quite clear from this language, this

Congressional language, that Congress did not regard this as a de facto reservation in 1892. It didn't consider that this area was actually operating for the purposes for which reservations normally operate. It clearly indicated that after the 1892 Act was passed, that the reservation was not intended to survive the Act. That's the clear and only meaning that can be attributed to this Congressional language. These assurances by the bill spokesmen were apparently very important in procuring the passage of the bill. And it must have been that Congress -- that the spokesmen assumes and that Congress assumed that they were not going to open up a large reservation for homestead entry and settlement if they wanted the area to continue to function as an Indian reservation.

QUESTION: What language of the 1892 Act do you rely on as saying that Congress really meant to discontinue the reservation status?

MR. WALSTON: At this point, your Honor, I am referring more to the Congressional intent behind the Act. The language of the Act itself merely provides for entry and settlement to homesteaders, and it also provides for trust allotments to the Indians. And then in the first sentence, I believe it's the first sentence, of the Act, the 1892 Act specifically refers in the past tense rather than in the present tense to the Klamath River Reservation. It says, I

believe -- it refers, I believe, to "lands in what was the Klamath River Reservation."

Now, the petitioner has pointed out that that language, the use of that past tense is subject to many conflicting inferences. And if there were no Congressional history before this Court, I would strongly agree with him there could be conflicting inferences. But with the Congressional statements that were made on the floor of Congress, it is quite apparent that this reference in the past tense is quite consistent with the statements which were made by the bill spokesmen in both the House and the Senate and thus indicates that Congress simply didn't intend for the area to continue as a reservation.

QUESTION: When you discussed these questions about the Indians moving off and the white settlers moving in, I take it you don't suggest that that fact disposes of the legal issues, but that explains why the bill was introduced and what Congress had in mind.

MR. WALSTON: That's precisely correct. The factor situation itself did not end the reservation, but the factor situation coupled with Congress' statement concerning the purposes of the 1892 Act do point in that direction.

QUESTION: What is your understanding of the source of the Indian fishing rights, whether there is a reservation --

MR. WALSTON: My understanding is that if the area

is a reservation, they are allowed to fish without restriction on the reservation. If the area is not a reservation, then they are not allowed to fish without restriction on the --

QUESTION: The mere fact of there being a reservation is the source of the rights. No one here points to any particular treaty or any particular agreement with the Federal Government?

MR. WALSTON: That's absolutely correct, your Honor. That question is not before the Court here. That question was not considered by the trial court. The trial court held only that the area was not a reservation.

QUESTION: I mean, there must be some substance in the Indians' claim of fishing rights or we wouldn't be here.

MR. WALSTON: Well, the Indians --

QUESTION: If there is a reservation here, do you concede that the Indians have a right that the State of California may not regulate or interfere with?

MR. WALSTON: Yes. That's correct. We concede that, your Honor.

I would like to point out, your Honor --

QUESTION: Why do you concede that?

MR. WALSTON: Pardon me?

QUESTION: Why do you concede that?

MR. WALSTON: That if there is an Indian reservation, we are not allowed to --

QUESTION: Yes.

MR. WALSTON: Well, I frankly don't recall, your Honor. That is one of the questions that may have occurred to me at some early point in the case and that I simply --

QUESTION: Are the Indians in this case fishing with -- what kind of equipment are they fishing with?

MR. WALSTON: They are using gill nets, your Honor.

QUESTION: What are they?

MR. WALSTON: These are very large mesh nets that catch the fish as they swim through the nets by the gills so that the fish cannot return.

QUESTION: How do they get them in the river?

MR. WALSTON: Are you asking whether there is one or more --

QUESTION: How do you get the net in the river? Do you need equipment to get it in the river?

MR. WALSTON: No, this can be hand held.

QUESTION: How big is it? How big is a gill net?

MR. WALSTON: Well, it varies. A gill net could vary from a very --

QUESTION: Is it used, or can it be used as a commercial fishing device?

MR. WALSTON: Yes, it commonly is.

QUESTION: Is that what it is being used for here?

MR. WALSTON: In the precise question before the

Court we don't know the answer to that question.

QUESTION: Well, don't you think that makes some difference in terms of whether or not the Indians have a fishing right that you can't interfere with, or not?

MR. WALSTON: I'm not sure, your Honor. I think that if the Indians have a right to fish on the reservation for their own purposes, they would also have the right to fish on the reservation for commercial purposes.

QUESTION: You mean by that that even though perhaps in ancient times all they could use was a little hand net to catch a fish at a time, now they could use something that stretches across the whole river under new technology and take every fish in the river?

MR. WALSTON: That's my understanding now.

QUESTION: And California could do nothing about it?

MR. WALSTON: California can't do a thing about it. Now, the BIA, if we --

QUESTION: Where is the law -- where are you finding a law like that?

MR. WALSTON: You've got me on that question, your Honor. I can probably research the question and submit an answer. I just don't recall, frankly, the source of the proposition.

QUESTION: (Inaudible) versus Georgia, doesn't it, that the State has no jurisdiction, regulatory jurisdiction

inside a reservation.

MR. WALSTON: I think that's right, your Honor, I think that's the source of the authority. I looked into this some time ago, Mr. Justice White, and I just frankly don't recall the source of --

QUESTION: Even if the State owns the bed of the river?

MR. WALSTON: But the Indians can't fish without restriction on the river and California can regulate --

QUESTION: Again I ask you, do you know whether this river is navigable or not?

MR. WALSTON: It's my understanding this river is navigable. I think that this was covered in the Donnelly decision at page 711. I'm not sure.

QUESTION: All right. Thanks very much.

MR. WALSTON: This goes back some time in my thinking.

QUESTION: It certainly .... look. I've seen it many times.

MR. WALSTON: I think that's correct. I think that's why the Donnelly Court originally concluded that the river was not navigable and then later it found that California had some special legislation concerning a question of navigability and thus the Donnelly Court changed its mind.

QUESTION: If this was a reservation, then you concede that the State has no jurisdiction?

MR. WALSTON: That's correct.

QUESTION: I thought that that was an open question. According to the Government's brief it is. That the only question we have here is the preliminary question of whether or not this is or is not Indian country. Your State court held that it was not and therefore there was no question of any conflict. This was just the normal application of the State conservation fish and game laws of your State of California. But if that finding should be reversed, if we find that it is Indian country, then at least the Government says the respective right of the State to enforce its fish and game laws and its conservation laws in this Indian country is an unresolved issue and the case should be remanded to the State court for the resolution of that issue.

MR. WALSTON: That's correct, your Honor.

QUESTION: Am I incorrect about that?

MR. WALSTON: No, you are absolutely correct. In other words, if the area is a reservation, there is a basis for California still regulating the Indian fishing on the area if there was no Federal treaty agreement or statute.

QUESTION: And that's a question that the State court did not reach, that is not here. All we have here is the threshold question of whether or not this is Indian country.

MR. WALSTON: Uh-huh. That's correct, your Honor.

That's absolutely correct.

QUESTION: May I get back to the statute for a moment? I gather you are arguing it's quite consistent to read the 1892 Act as discontinuing the reservation, although that Act in terms provides that Indians may have allotments on the reservation. Is that consistent?

MR. WALSTON: There is a single reference in the 1892 Act to the word "reservation."

QUESTION: It says any Indian now located upon said reservation may at any time within one year, and so forth.

MR. WALSTON: Yes. If you look at the words "said reservation", your Honor, you will see that it's a reference back to the statement, and I believe it's the prior sentence to "land --

QUESTION: How can you allot lands to Indians unless it's a reservation?

MR. WALSTON: Well, this has been done quite commonly, your Honor. This was done with respect to the north half of the Colville Reservation in 1892 which involved an Act that was passed about two weeks before the 1892 Act before this Court. And in that case, Congress discontinued the north half of the Colville Reservation and yet made a number of Indian allotments on the former reservation. And this Court held in both United States v. Pelican and in the Seymour case that the old north half of the Colville Reservation was terminated

and yet individual trust allotments of Indians were still situated on that old area. So in effect it created a Federal enclave type situation. The Court has expressed, I think, some concern --

QUESTION: You have to rely on the 1892 Act as in fact discontinuing this reservation.

MR. WALSTON: Yes, that's correct, your Honor.

The Court has expressed some concern about the type of regulation, I think, that California is providing with respect to Yurok fishing activity in the Klamath River, and I want to remind the Court that Section 7155 of the California Fish and Game Code is the code section under which we regulate Yurok fishing activity in the Klamath River. Incidentally, I made an error in my opening brief. I said that that section was enacted in 1957. Actually, it was enacted in 1951 and was recodified in 1957. And that means that for 22 years, nearly a quarter of a century, California has been regulating Yurok fishing activity in the Klamath River and nobody has objected, the BIA has not objected, they never brought any lawsuit against the State of California with respect to this regulation.

Now, this regulation, I think, clearly recognizes the very special circumstances that the Yurok Indians find themselves in. We recognize that the Yuroks are an impoverished tribe and that they have special economic and social needs, that they deserve some special consideration under California

fish and game code structure. And we have provided this type of protection for them under Section 7155 because we have immunized them from many of the restrictions which are imposed on non-Indians, on whites, who fish in the same river. For instance, whites who fish in the river have to -- can only fish during certain seasons of the year. The Indians can fish at any time of the year for sustenance.

QUESTION: Does it permit commercial fishing?

MR. WALSTON: No, your Honor. Under the code section you are not permitted to fish and catch the fish and then sell the fish.

QUESTION: Subsistence purposes only.

MR. WALSTON: Subsistence purposes only, that's correct, your Honor.

And also the Indians are not subject to daily bag limits. They can simply take as many fish as they want from the river each day except for three very critical types of fish, the sturgeon, the salmon and the trout. But the white man who fishes in that river is subject to daily bag limits with respect to every type of fish.

So California has recognized for nearly a quarter of a century that the Yurok Indians fishing in that area have special problems and that they have a special dependency on this fishery and thus they should be getting some type of special consideration. But at the same time I think we are

highly cognizant in California of the need for the fishery itself. It needs to be protected. It can't sustain an unlimited yield forever, and the fish and game officials in California feel very strongly that if the Yuroks are allowed to fish without restriction in this area, the fishery might and probably would be irreparably damaged. So in California we tried to reconceile these two competing needs, the needs of the Indians, the needs of the fishery itself. And we come up with Section 7155 which has worked for nearly a quarter of a century, and I respectfully ask this Court to uphold the decision of the California Court of Appeals and allow California to go on trying to work this question out on an ad hoc basis.

MR. CHIEF JUSTICE BURGER: I think, Mr. Sclar, you have a few minutes left.

REBUTTAL ORAL ARGUMENT BY LEE J. SCLAR ON BEHALF OF THE PETITIONER

MR. SCLAR: Unfortunately, I think I have all too short a period of time here, but I will try to answer a number of questions that have been raised.

As to the conservation issue, I would like to point out that the State of California is not the only agency capable of regulating a fishery. The Federal Government and the Indians are quite capable of regulating it. The Indians did so before the white man arrived. The Bureau of Sport

Fisheries of the Department of the Interior presently has a program which you can tell from the Interior appropriation hearings for fiscal year 1973 operated on 75 or 80 Indian reservations in this country. One of those, although it doesn't appear in the record, is the Hoopa Indian Reservation.

I would also like to deal with this question of what types of nets have historically been used on this reservation. If you look at page 839 of the appendix, you will find that the Indians have historically fished here with large nets, very large nets, including gill nets up to, I believe it's 85 feet long. In other words, these are the same types of gill nets being used today with the exception that the nets are being made today out of nylon instead of out of cord. But the type of nets being used --

QUESTION: They used gill nets in the 1880's?

MR. SCLAR: Yes, they did, your Honor.

QUESTION: Is that in the record?

MR. SCLAR: It's in the appendix. If you will look at Kroeber, he doesn't point to any particular year, but he is talking --

QUESTION: What do you mean "historically."

MR. SCLAR: Kroeber is an anthropologist who did the most definitive studies of the California Indians. His book has been judicially noticed by a number of courts. We have printed parts of his book dealing with fishing by the Yurok

Indians in the Klamath River in the appendix. It doesn't point to any particular year when this was being done, but his is an anthropological study discussing the traditional life patterns of the Klamath Indians --

QUESTION: (Inaudible) of the trial court?

MR. SCLAR: Yes, your Honor, it was.

QUESTION: Was it as a live witness, or just judicial --

MR. SCLAR: No, the court took judicial notice of the book. But, your Honor, the court ruled that the full issue was irrelevant, that the conservation question was irrelevant to the case because he determined that the area either was or was not an Indian reservation and therefore State law would or would not apply regardless of the conservation question.

QUESTION: What is the authority for that, counsel?

MR. SCLAR: Your Honor, I would like to answer that. At this point I wouldn't like to take the absolute position that the State under no circumstances could regulate, but I would like to tell you the source of the Indian fishing rights which I think is your principal question. There are three sources that the Indians claim here. One is the Executive Order establishing the reservation for Indian purposes. You will remember the Extension is an extension of the Hoopa Valley Reservation set aside for Indian purposes. In a California

case, Donahue v. California Justice Court, 15 Cal. 3d 562, the court held that that provision "for Indian purposes" encompassed Indian fishing rights. This Court has done a similar thing in the case of Menominee v. United States at 391 U.S. 404, 405, 406 implied in a treaty with the Menominees that setting aside of a reservation to be used as an Indian reservation implicitly gave Indians fishing rights.

A second basis the Indians claim for fishing rights is 18 U.S.C. 1165 which vests in the Indians the absolute right to determine who shall fish on an Indian reservation.

And finally, the Indians in this case claim there is an implied agreement between the United States and the Indians giving them fishing rights on the reservation --

QUESTION: Commercial fishing rights?

MR. SCLAR: Well, your Honor, at this point, we do not claim that. This man was not fishing for commercial purposes. There was no assertion he was fishing for commercial purposes. The question isn't raised. We would claim that there are commercial fishing rights in these Indians that when Congress set apart the reservation originally it --

QUESTION: If it is not commercial fishing, what is it?

MR. SCLAR: Just for personal use, for family use.

QUESTION: With a gill net.

MR. SCLAR: Yes, your Honor. The Indians had

historically fished that way.

QUESTION: Is the question of what rights the Indians have contrary to the law of California that would otherwise be applicable? Here before us isn't the only question this is Indian country? Isn't that all that the Court --

MR. SCLAR: Yes, your Honor. I was answering Justice White's question merely because he inquired. It is not before the Court.

QUESTION: Those questions are simply not before us.

MR. SCLAR: That is correct, your Honor.

Although my time has expired, your Honor, would it be possible for me to discuss this question of the number of Indians living on the reservation?

MR. CHIEF JUSTICE BURGER: Go right ahead.

MR. SCLAR: Thank you.

There is one other thing, Justice White, I would like to say. The fact whether the river bed is or is not a part of the reservation is not an issue which I believe would be ... in the case. In Donnelly the Court stated that it assumed that the river was non-navigable and then it said whether or not the river was navigable in fact, its bed was deemed as included within the extension of the Hoopa Valley Reservation. This is the court on reconsideration of the case speaking at page 710.

QUESTION: Yes, I have got that.

MR. SCLAR: In addition to that I would point out that these nets were in fact seized 200 feet from the river, so that I don't think whether the river is included would solve the question.

As to the number of Indians living on the reservation, the record, I think, does not support what has been said. Forty percent of this land was allotted to the Indians in this reservation. In addition the Indians were given villages, we do not know how many Indians lived in those villages. There were statements made on the floor of Congress saying there were only 40 or 60 Indians there. I think those were the remarks of rather over-eager promoters of the settlers' interest and not the views of the Congress. The references to an abandoned reservation in the House were repudiated in the Senate. They in addition were clearly referring to the Klamath River Reservation. If you read the House report in its entirety, you see that the words "abandoned reservation" refer to the reservation abandoned in the 1860's. And they talk about the decision in Forty Eight Pounds of Rising Star Tea which is the decision which said that the Klamath River Reservation did not continue to exist because it violated the 1864 Four Reservations Act. They were not talking about the Hoopa Extension as is clear by the fact that during the debates there is no mention of the Hoopa Extension and, in fact, at two points the Congress indicated they didn't even think there

was a reservation ... in this area.

Finally, I would like to say that the phrase what was the Klamath River Reservation in this Act is not subject to conflicting interest interpretations. I have never suggested that. I think it's only subject to one inference, and that is that the Klamath River Reservation was dead at the time that this 1892 Act was passed, that Congress knew it, as shown in the House Act, it had been held so, and that that phrase was used merely to describe a particular portion of land, not to have any termination effect. I would contrast that with the Act passed two weeks later relating to the north half of Colville which said that this reservation is hereby vacated and restored to public domain.

MR. WALSTON: Mr. Chief Justice, may I have one additional minute?

MR. CHIEF JUSTICE BURGER: Do you have a fact you want to deal with?

MR. WALSTON: Yes, your Honor.

MR. CHIEF JUSTICE BURGER: You can clarify a fact matter. We don't want to have any further argument. Is it a factual question?

MR. WALSTON: It's in rebuttal to something.

MR. CHIEF JUSTICE BURGER: All right.

REBUTTAL ORAL ARGUMENT OF RODERICK WALSTON

ON BEHALF OF THE RESPONDENT

MR. WALSTON: One fact I would like to point out for the Court's attention. Counsel said that approximately 40 percent of the old Klamath River reservation was taken over by the Indians after the 1892 Act was passed. I would refer the Court to the Annual Reports of the Commissioner of Indian Affairs to the Secretary of the Interior for the years 1895 through 1900. For example, the 1895 report at page 582. And that shows that the total acreage cultivated by Indians on both the Klamath River Reservation and the upstream 20 miles area together was only 400 acres, and that figure reappears in each annual report of the Commissioner from 1895 to 1900. And that shows that the Klamath River Reservation -- that the Indians on the old Klamath River Reservation were cultivating less than 400 acres on the old reservation which, of course, is less than one square mile.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

[Whereupon, at 10:38 o'clock a.m., the argument in the above-entitled matter was submitted.]