

In the
Supreme Court of the United States

UNITED STATES,

Plaintiff,

vs.

STATE OF FLORIDA,

Defendant.

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SUPREME COURT, U. S.

No. 52-Original

Washington, D. C.
February 25, 1975

Pages 1 thru 79

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IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES,

Plaintiff,

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No. 52, Original

STATE OF FLORIDA,

Defendant.

Washington, D. C.,

Tuesday, February 25, 1975.

The above-entitled matter came on for argument at
10:23 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
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:

KEITH A. JONES, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D. C.
20530; on behalf of the Plaintiff.

ROBERT L. SHEVIN, ESQ., Attorney General of Florida,
The Capitol, Tallahassee, Florida 32304; on behalf
of the Defendant.

C O N T E N T SORAL ARGUMENT OF:PAGE

Keith A. Jones, Esq.,
for the Plaintiff

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Robert L. Shevin, Esq.,
for the Defendant

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 52, Original, United States against Florida.

Mr. Jones, you may proceed whenever you're ready.

ORAL ARGUMENT OF KEITH A. JONES, ESQ.,

ON BEHALF OF THE PLAINTIFF

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

This case is a consolidated proceeding that resembles in several respects each of the two immediately preceding tidelands cases.

Like United States v. Maine, this case presents the broad constitutional question whether the separate Coastal States have the constitutional right, wholly independent of the Submerged Lands Act, to exploit the resources of the Outer Continental Shelf.

And like United States v. Louisiana, in which argument was heard yesterday, this case presents a number of narrower statutory questions pertaining to the application of the Submerged Lands Act to a particular coastal area.

Although the preceding arguments have discussed at some length the history of tidelands litigation in this Court, I think that in order to put this case in context, it would be helpful, briefly, to recapitulate that history here.

The history of tidelands litigation has two strands:

one constitutional and one statutory. Both of those strands are interwoven in this case.

The constitutional strand begins with this Court's decision in United States v. California, in which it was held that the United States and not the separate Coastal States had the right to exploit the seabed resources of the three-mile marginal sea.

That principle of federal maritime paramountcy was confirmed and extended to the Outer Continental Shelf in this Court's decisions in the Louisiana and Texas cases, 339 U.S.

Shortly after those decisions, Congress enacted the Submerged Lands Act and the Outer Continental Shelf Lands Act, in which it allotted the seabed rights of the Territorial Sea, generally speaking, to the separate Coastal States, and the seabed of the Outer Continental Shelf to the United States.

The Atlantic Coast States, including the State of Florida, now claim that they have a constitutional right to all of the seabed rights of the Outer Continental Shelf, and that the principle of federal maritime paramountcy announced by this Court in California was wrong.

They claim that the Submerged Lands Act and the Outer Continental Shelf Lands Act are unconstitutional, in so far as they deny the States the right to exploit the resources of the Outer Continental Shelf.

However, the other Atlantic Coast States base their

claim on British maritime history and Colonial maritime history, as we have just seen.

The State of Florida, however, bases its claim not on such history but rather upon its 1868 constitutional boundary. Since the claims of Florida were so different from those of the other Atlantic Coast States, this case was severed from that of United States v. Maine and tried separately before the Special Master.

That is the background of what might be called the constitutional aspect of this case.

The statutory aspect of the case derives from this Court's decision in United States v. Florida, 363 U.S., 121, that the State is entitled, under the Submerged Lands Act, to the seabed rights within its historic boundary in the Gulf of Mexico, out to a maximum of three marine leagues from the coastline.

Since the State is only entitled to three miles and not three leagues in the Atlantic Ocean, this Court retained jurisdiction to determine the location of the line separating the Atlantic Ocean from the Gulf of Mexico, and also to define the State's coastline in the Gulf.

Those statutory issues were consolidated with the constitutional issue and tried together before the Special Master.

The Special Master rejected Florida's constitutional

claim as incompatible with this Court's decisions in the California, Louisiana, and Texas cases, and concluded that the State is entitled only to those seabed rights granted in the Submerged Lands Act.

The Special Master defined the line separating the Atlantic Ocean from the Gulf of Mexico as a line running due north from Cuba to the Dry Tortugas Islands, the outer islands of the chain of keys, and then following along the outer curve of the Keys up to the mainland.

He then held that the State was entitled to seabed rights out to three miles to the east of the mainland and south of the Keys, and to three leagues in the Gulf of Mexico north of the Keys and west of the mainland.

QUESTION: Where is Key Biscayne in that --

MR. JONES: Key Biscayne is not on this map, it's approximately here [indicating]; Key Biscayne is just south of Miami Beach. This map, I might say, is --

QUESTION: It's really almost part of the mainland, I take it?

MR. JONES: This map is a trifle misleading. This body of land is in fact Key Largo, which is a separate island; but it's separated from the mainland by only a very narrow stream of water. It's so narrow that it was impractical to represent it on the map. But it runs right along here [indicating]; so that the mainland in fact would run in that

manner.

Thus the principle question disputed before the Special Master was the location of the coastline in this area, north of the Keys. And the Special Master -- the State had contended that a line running from the Dry Tortugas up to Cape Romano on the mainland marked the seaward limit of its inland waters; it claimed this large, roughly semi-circular body of comparatively deepwater in the Gulf of Mexico was in fact a historic bay, and therefore inland waters of the State.

QUESTION: Mr. Jones, what would be the approximate length of a line, a straight line drawn from the Dry Tortugas to Cape Romano?

MR. JONES: I think it's in -- it's in the nature of about 100 miles. The scale, as you can see, is 30 miles.

QUESTION: Nautical miles?

MR. JONES: Thirty nautical miles.

QUESTION: Unh-hunh.

MR. JONES: So it looks like roughly 100 nautical miles.

The Special Master rejected that contention of the State, but held suâ sponte that the eastern portion of the bay, marked by a line running from Knight Key up to the mainland, the East Cape of Cape Sable, was a juridical bay, that line is approximately 24 geographic miles, actually a little

bit more than 24 miles.

The Special Master also held sua sponte that the outer islands, the Tortugas, the Marquesas, and the lower Florida Keys should be encircled by base lines, and he denominated the waters within the base line so described as inland waters of the State.

The State here excepts to virtually every one of the Special Master's major determinations, the United States excepts only to the use of closing lines and base lines in the area of the Florida Bay and the outer islands to measure the Submerged Lands Act grant and mark the inland waters of the State.

I turn now to discussion of the exceptions made by the parties, and I will take up first the issue that this case has in common with United States v. Maine, that is the broad constitutional question of whether the State possesses a right to exploit the resources of the Outer Continental Shelf without regard to any limits imposed by the Submerged Lands Act.

The other Atlantic Coast States, in the United States v. Maine, claimed the entire Outer Continental Shelf. If this Court should, contrary to our submissions in that case, decide to overrule the California decision and decide the case in favor of the States, Florida presumably will advance a similar claim to the Outer Continental Shelf under the equal footing

doctrine. But any issues under the equal footing doctrine are not presented here.

Florida, in this litigation, claims not the entire Continental Shelf, but only that portion of it within its historic maritime boundary.

That boundary, even under the State's rather generous description, encompasses considerably less than the entire Continental Shelf.

The historic boundary upon which ---

QUESTION: In distance seaward, how much less?

MR. JONES: Pardon?

QUESTION: Distance seaward, how much less?

MR. JONES: Well, the Continental Shelf varies in width from as little as six miles to as much as, I think, 200 miles. Their historic maritime boundary, even given the most generous description of it, would not, I think, extend more than 30 miles offshore at any point.

So that, at least at some portions of the coast, it would be considerably less than the entire Outer Continental Shelf.

As I say, the historic boundary upon which the State relies is that set forth in its 1868 Constitution.

There was a good deal of argument before the Special Master as to the actual location of that boundary line, and I do not propose to renew that argument here. It's discussed

at length in the Special Master's Opinion and in our brief, and I rely upon that discussion here.

One reason I don't discuss the actual location of the boundary is that in the view we take of this case the State's historic boundary is largely irrelevant to the proper allocation of seabed rights as between the State and United States.

I would say, however, that both parties agree that at least one point along the coast, the area of water between the Marquesas Keys and the Dry Tortugas, the State's historic boundary did extend beyond the maximum limits of the Submerged Lands Act.

So that, even under the more restrictive view we take of the State's historic boundary, they would, if this Court decided the constitutional issue in their favor, be entitled to some seabed rights in addition to those granted under the Act.

But that fact, we think, does not prevail in Florida here.

In the first place, this case is foreclosed, the State's constitutional claim is foreclosed by the California decision. This case is on all fours with California.

Like Florida, California had a maritime boundary that had been approved by Congress. This Court held that that congressional approval of the boundary authorized the State to

exercise certain local police power functions in the area of the marginal sea, encompassed by its historic boundary; but that those functions did not detract from the federal government's paramount rights and power over that area.

The Court reasoned that the United States had acquired the seabed rights, or had acquired the marginal sea in the exercise of its foreign affairs and defense powers, and therefore that the United States and not the separate Coastal States were entitled to the seabed rights within that marginal sea.

The Solicitor General in the preceding case has set forth our reasons why this Court should adhere to its California decision, and I will not elaborate upon that argument here.

My only point is that if this Court does adhere to its California decision, nothing more need be said with regard to Florida's constitutional claim.

But even if this Court did depart from its consistent pattern of tidelands decisions and overruled California in the principle of federal maritime paramountcy for which it stands, Florida's claim would still have to be rejected.

The reason for that is that in 1962, after enactment of the Submerged Lands Act, the State formally relinquished by constitutional amendment any claim it might otherwise have

had to seabed rights seaward of the maximum limits of the Submerged Lands Act.

That 1962 constitutional amendment replaced Florida's 1868 boundary, on which it relies here, with a more clearly defined boundary that corresponds precisely with the maximum limit of its Submerged Lands Act grant.

That new boundary would mark the outer limit of any permissible constitutional claim, other than under the equal footing doctrine, that Florida could make.

Thus, there is no theory of law in this case under which Florida's claim could be sustained.

I therefore turn to questions relating to the application of the Submerged Lands Act to the facts of this case.

The first of these questions might be stated as: Where is the Gulf of Mexico? Or, more precisely: What is the line separating the Gulf of Mexico from the Atlantic Ocean, for purposes of the Submerged Lands Act?

There's really very little to be said on this question, because the evidence is essentially all on the federal government's side.

It's true that Congress in enacting the Submerged Lands Act did not purport to define those two bodies of water. There's nothing in the legislative history that suggests what Congress intended.

But cartographers, geographers, explorers, historians and other writers have all agreed that the line running due north from Cuba to the Dry Tortugas, and from there following the outer curve of the Keys to the mainland, is the maritime border between the Atlantic Ocean and the Gulf of Mexico.

That is the line set by the International Hydrographic Bureau, that is the line fixed by all geographers and cartographers, as the evidence before the Special Master showed; and the State presented absolutely no evidence whatsoever that would suggest that Congress intended any other line.

Indeed, shortly after enactment of the Submerged Lands Act, the Florida Legislature itself, with specific reference to the Submerged Lands Act, stated in legislation that the Florida Straits -- the Straits of Florida there -- are an arm of the Atlantic Ocean, not of the Gulf of Mexico, which the State claims here.

It's only when this litigation began that the Florida Legislature realized that perhaps it had acted adversely to its own litigating position and revoked that Act in 1971.

But the Florida Legislature's enactment in 1955 is clear evidence of the common understanding of where the dividing line between the Atlantic Ocean and the Gulf of Mexico was when Congress enacted the Submerged Lands Act.

QUESTION: Mr. Jones, what's the lettering right

above Straits of Florida? Does it say Florida Keys? Is that what that says?

MR. JONES: Yes, Florida Keys.

QUESTION: Right.

MR. JONES: We refer loosely to the Florida Keys sometimes as the entire chain of islands out to the Dry Tortugas, and sometimes only to those islands terminating here [indicating].

QUESTION: Is that Key West?

MR. JONES: Key West actually is right here [indicating], and these are the Marquesas Keys, and then the Dry Tortugas.

QUESTION: Unh-hunh.

QUESTION: Of course, if we decided against you on the constitutional question, would we have this issue as to where the Atlantic and the Gulf are?

MR. JONES: Well, if you decided against the United States in this case --

QUESTION: Yes, in this case.

MR. JONES: -- the constitutional question, then you wouldn't have to decide the dividing line between the Atlantic and the Gulf. That's correct.

You would simply make reference to the State's historical boundary. And there's no disagreement between the State and the Federal Government as to its historic boundary

south of the Keys.

In short, we believe that the Special Master's determination of the line dividing the two bodies of water, the Atlantic Ocean and the Gulf of Mexico, is firmly grounded in the evidence and reflects the common understanding on which the Submerged Lands Act was based.

The remaining questions in this case all relate to the definition of Florida's coast line, in the general area of the Florida Keys.

[Unfolding map] I haven't had much practice with this map.

The State claims that this large body of water, marked by this closing line, is a historic bay and that it is inland waters of the State.

We believe that it's clear that there's no foundation, either in fact or in law, for that claim.

To the contrary, the federal government has affirmatively and decisively disclaimed any historic title in that area. Before this issue even arose in litigation, the federal government had distributed to foreign governments maps showing that the United States Territorial Sea, in the area of the Florida Keys, is measured three miles out from the natural shore line, and that representation, of course, was wholly inconsistent with the existence of the historic bay. The necessary inference of the maps which we distributed was

that the United States claimed no historic bay in that area.

We believe that a disclaimer of that kind, a disclaimer made to foreign governments in advance of any domestic litigation, should be given preclusive effect. We think that in the face of that disclaimer, Florida's contrary claim is barred as a matter of law.

But even if the disclaimer is not given preclusive effect of that kind, it nevertheless imposes upon the State the burden of proving its historic title is clear beyond doubt; a standard applied by this Court in the second California case. And it's clear that the State's evidence did not meet that standard.

Under this Court's prior decisions, the State would have had to show three elements to prove its historic title.

It would have had to show that it had made a claim, and a long-standing claim; second, it would have had to show that accompanying that claim had been the continuous assertion of sovereign authority; and, third, that there had been foreign acquiescence, express or tacit, in that claim.

The State's evidence fell far short of making any of the three necessary showings.

As to the existence of a claim, the State relied almost exclusively upon its 1868 constitutional boundary, but the Special Master found that that boundary in fact did not run along the line claimed by the State as the seaward

limit of its inland waters, but rather ran along the inner perimeter of this area; and that construction, we believe, is based upon a solid reading of the constitutional language of Florida's boundary and upon the evidence of contemporaneous activities in the area of the Keys adduced before the Special Master.

The reasons we would present for supporting that boundary are set forth in our brief, and also in the Special Master's report; and I do not repeat them here.

Suffice it to say that if this -- if that construction is accepted, Florida's claim of a historic title is necessarily defeated.

Moreover, we believe that Florida's evidence with respect to the other two requirements of historic bay was, if anything, weaker. That evidence again is recounted in the Special Master's report and in our briefs in this case. And I won't repeat it here.

I will only point out that the United States did clearly establish before the Special Master, and the State concedes here in its brief, at page 48 of its opening brief, that foreign ships have fished, do fish, historically have fished and do fish in the Florida Bay, without any interference whatsoever by the State of Florida.

QUESTION: Didn't Governor Kirk send the Florida Navy out once a few years ago to accost some foreign fishermen?

MR. JONES: He may have, but any such excursion was unsuccessful, as the State itself recognizes; they testified that they had never attempted to interfere with foreign fishing in the Florida Bay.

The Governor may have threatened to do that. That threat may have been made in connection with this litigation.

Nevertheless, there has been no active interference with foreign fishing in the Florida Bay, and that fishing continues to this day.

Certainly there has been no foreign acquiescence in any claim. Governor Kirk's announcement, at most, would have shown that there was a claim made in the 1960's, not sufficiently ancient to show historic title.

That disposes, we believe, of the State's historic claim in this case.

I will now turn to the status of the easternmost portion of that bay, which we feel requires a somewhat more complex analysis.

Florida did not contend before the Special Master that the easternmost portion of the bay was a juridical bay, and almost no evidence was introduced before the Special Master on that point.

The Special Master, nevertheless, found that a portion of Florida Bay, which I will demonstrate by this piece of red tape on the map [demonstrating]; that the portion of the

bay east of that red line constitutes a juridical bay, and therefore inland waters of the State.

QUESTION: Mr. Jones, on the maps of the area, you have -- are they similar to your designation there: Florida Bay, you have there just the easternmost point or what are they? What do they show?

MR. JONES: The official maps?

I frankly don't know. I gather that the designation "Florida Bay" is rather loosely used. And I don't think that there's any particular outward limit expressed.

The Graphics Department of the Justice Department did this map, and simply put the designation "Florida Bay" in to make it more understandable for the Court.

QUESTION: Unh-hunh. How about the --

MR. JONES: The State, of course, calls the entire area, out to the wider, longer red line, Florida Bay.

QUESTION: Unh-hunh. How about the -- yes, the official maps, the Coast and Geodetic Survey maps?

MR. JONES: I don't think they designate Florida Bay.

QUESTION: There is such a thing as Florida Bay, but you --

MR. JONES: Well, as I say, it's loosely used, and I don't know exactly what the designation would be, or where -- it could, for example -- this portion, this larger area --

QUESTION: Well, it could be any of those; that's the reason I asked what is it generally considered to be.

You've led away the easternmost part there.

MR. JONES: Opposite page 84 of the Special Master's Opinion is a map in which the phrase "Florida Bay" appears immediately to the east of the line drawn by the Special Master.

And whether the line drawn by the Special Master or one further seaward might have been intended by that designation is, of course, unclear.

The problem, of course, is that Florida Bay, as such, has no official meaning and no --

QUESTION: Well, who prepared this map?

MR. JONES: That is a Coast Guard map.

QUESTION: Coast Guard?

QUESTION: Mr. Jones, --

QUESTION: On which are superimposed certain things.

MR. JONES: That's correct.

QUESTION: Right.

MR. JONES: The lines drawn on the map are -- were evidence before the Special Master.

QUESTION: Mr. Jones, has foreign fishing been allowed in the easternmost portion of this bay?

MR. JONES: I can't answer that specifically. You mean in the area east of the juridical bay line drawn by the Special Master?

QUESTION: Yes, east of the red line --

MR. JONES: Yes, it has. Part of that area has historically been regarded as high seas.

QUESTION: Has been regarded as a part of the high seas?

MR. JONES: That's correct.

QUESTION: Can you indicate roughly with your pointer?

MR. JONES: Actually, I think the -- I believe opposite page 94 of the Special Master's --

QUESTION: Page 94?

MR. JONES: I think so.

[Unfolding map] Yes. The solid connected line on that map represents the Territorial Sea, and the dotted line, dash-and-dot line, represents the juridical bay line drawn by the Special Master.

As you can see, it's seaward in some places of the Territorial Sea. And it thereby encloses part of the high seas.

QUESTION: When you say Territorial Sea with reference to that map you're just talking about, just what do you mean?

MR. JONES: That's the three-mile marginal sea
its
claimed by the United States as/Territorial Sea. Seaward
of the three-mile Territorial Sea --

QUESTION: But that certainly doesn't seem to be just within three miles from dry land.

MR. JONES: Well, it is, it's three miles from islands within the eastern portion of the bay. Some of those islands may be so small that they don't show up on the map. Indeed, some of them may be areas of land that's covered at high tide.

Nevertheless, that is the three-mile zone drawn from land and not by reference points that are wholly covered by water.

QUESTION: What's the distance from what the government says, I gather, is the natural shore line and the Master's red line? What's that?

MR. JONES: There is a scale on this map --

QUESTION: It would appear to be about the same as your 30-mile legend, does it not?

MR. JONES: Well, let me try to determine this. I think that, roughly speaking, it would be between one and five or six miles, from the --

QUESTION: From the shore line?

MR. JONES: From the three-mile -- I'm sorry; what was the question? The distance from --?

QUESTION: From the shore line to the Master's -- where you've drawn that smaller red line, the Master's, making the juridical bay.

What I'm really getting at is: on the government's submission, the marginal sea ends where, within the line that the Master drew?

MR. JONES: Well, this is again set forth on the map opposite page 94.

QUESTION: 94?

MR. JONES: Yes, in the Special Master's Report.

I think that the line drawn by the Special Master is, at all points, within six miles of the natural shore line.

QUESTION: And the government's submission is that it should not be more than three miles?

MR. JONES: Under the government's position, it should be no juridical bay.

QUESTION: I know, but the marginal sea would be.

MR. JONES: The marginal sea should be only three miles from the shore, that's right.

QUESTION: I see that. And the Master's line takes in six miles?

MR. JONES: That's correct.

QUESTION: Right.

QUESTION: Well, but that isn't an entirely accurate --

MR. JONES: That's right, it's not entirely accurate. Let me amend that.

The Special Master's closing line of the juridical

bay at, at most, about six miles from the natural shore line. But then the Territorial Sea would be three miles further seaward of that line.

So -- a little less than nine miles, perhaps.

QUESTION: Right.

MR. JONES: For reasons I will discuss in a moment, we believe that the Special Master's finding of the juridical bay was erroneous.

But, before discussing that point, I wish to draw the Court's attention to the fundamental and clear legal error that the Special Master made in drawing the Submerged Lands Act grant from the juridical bay closing line.

In our view, that line, that grant has to be drawn from the natural shore line of the State.

Now, we rely here upon this Court's holding in United States v. Louisiana, 389 U.S. 155 [sic], that historic boundaries that are measured from the coast line, such as Florida's boundary in this area, must be measured for Submerged Lands Act purposes from the historic coast line.

And it is clear that this juridical bay closing line is not the historic coast line.

QUESTION: You're referring -- you say that Louisiana at 389, do you mean 339?

MR. JONES: No, 389 --

QUESTION: 389?

MR. JONES: At 155.

QUESTION: That was, what, the second --

MR. JONES: Well, actually, that case may be a misnomer, because it involved Texas. There were a number of States. But the claim was that the construction of a jetty was a new coast line, and that the historic boundary could be measured out from that jetty.

And the Court held that: no, it can only be measured from the historic coast line and not from the new Twentieth Century coast line.

QUESTION: Well, that's Justice Stewart's opinion in 394 U.S.

MR. JONES: Oh, I apologize.

That, however, is the opinion that I meant to refer to.

QUESTION: Oh.

QUESTION: Well, there's one involving a jetty, I thought that was California, wasn't it?

MR. JONES: It involved the State of Texas.

QUESTION: Yes. The caption of the case is United States v. Louisiana; somewhat --

MR. JONES: That's what I --

QUESTION: Somewhat misleading.

MR. JONES: Yes, that's what I meant, 394 --

QUESTION: And the opinion was written by Justice

Harlan, was it? I think.

MR. JONES: I'm not certain, Mr. Justice Stewart.

QUESTION: I'm not certain, but I think so.

QUESTION: You think it's at 389 U.S.?

MR. JONES: That's my understanding. I may have gotten my numbers confused. I haven't looked at the decision for some time.

QUESTION: Well, I still don't quite understand the government's point. You think the marginal -- whether that's a juridical bay or not, you say the marginal --

MR. JONES: We know that's the determination of the Submerged Lands Act grant.

QUESTION: And you say that's generally true, or just because of Florida?

MR. JONES: No, only in this case --

QUESTION: I had the understanding that generally you would measure the marginal sea from the outer line of a juridical bay.

MR. JONES: That's correct. But here we're saying that the Submerged Lands Act is only measured from historical coast line, when you're measuring it by reference to historic boundary.

And I will go --

QUESTION: So you think under the Submerged Lands Act that at times you do measure from the historic boundary?

MR. JONES: There's just no question about it.

QUESTION: I mean always?

MR. JONES: If there's --

QUESTION: How do you measure it from there?

MR. JONES: You would measure it from the current coast line, if three miles from the current coast line was further seaward than three leagues from the historic coast line.

Now, the reason that this juridical bay closing line is not the historic coast line is that it's based upon the 1961 Convention on the Territorial Sea in the Contiguous Zone, which first permitted a 24-mile closing line. This closing line is roughly 24 miles. Actually a little longer, and therefore invalid under the Convention.

But prior to 1961, this nation recognized, at most, ten-mile closing lines for juridical bays. And in the Nineteenth Century they recognized only two-marine-league closing lines. A closing line of that length would make the juridical bay approximately in that area [indicating on map].

Now, the historic coast line would not be defined by reference to any closing line such as that, but by reference to the natural shore lines of the islands lying to the west of that closing line in the Florida Bay.

And our submission here is that the State's Submerged Lands Act grant must be measured by reference to

its historic boundary, which in turn is measured by reference to the historic coast line, and not to any new modern juridical bay closing line.

QUESTION: Let me see if I get this, Mr. Jones. I now have that Louisiana case in 389, that's Mr. Justice Black wrote this one.

And that one held that Texas' claim under the three-league grant -- this is a three-league grant --

MR. JONES: That's correct.

QUESTION: In other words, that's what we're dealing with here, isn't it?

MR. JONES: That's right.

QUESTION: -- must be measured by the boundary which existed in 1845, when Texas entered the Union, and cannot be measured from artificial jetties built long thereafter.

Now, you apply that principle here, how, to say that it must be measured by the boundary, historic --

MR. JONES: It must be measured by reference to the historic boundary.

QUESTION: Right.

MR. JONES: Which is determined as of 1868.

QUESTION: And therefore, it cannot be measured from the line that the --

MR. JONES: Special Master did.

QUESTION: -- the Special Master did.

MR. JONES: Because that line was based upon the 1961 Convention, which first permitted 24-mile closing lines.

QUESTION: Yes, but we're governed here, aren't we, by the language of the 1953 statute that Congress enacted?

MR. JONES: That's right.

QUESTION: And how is this different from the --

MR. JONES: Because the --

QUESTION: -- the Louisiana boundary case?

MR. JONES: -- the Submerged Lands Act only permits the State three leagues within the Gulf of Mexico, within its historic boundary. So you have to fix the historic boundary.

To fix the historic boundary, you have to look at where it would have run out in 1968, from the Coast. And you measure -- you determine the coast line in 1868, as of the -- on the basis of the principles of law that appertained at that time.

The principles of law at that time would not have permitted a juridical bay closing line of this kind. You would have had to measure the coast line, therefore, by reference to the natural shore line of the islands, and measure the historic boundary from that natural shore line.

QUESTION: But you're allowing Mr. Claiborne -- pardon me, Chief.

QUESTION: But the line that you just put on in

red with some crayon, is that based on the 1868 boundaries?

MR. JONES: That would have been --

QUESTION: Would you indicate that one again for me?

So that it's clear.

That's based on --

MR. JONES: All that --

QUESTION: That's based on the 1868, is that right?

MR. JONES: All that line represents is the maximum juridical bay closing line that would have been permitted in 1868. It does not represent the historic coast line, because there are islands further west of that line, so that historic coast line would have been the natural shore line of those island further to the west.

QUESTION: Your colleague, Mr. Claiborne, yesterday was talking to us about Ascension Bay, and I got the impression that the thing we were arguing about there was what is the equivalent of the low-water mark for purposes of measuring the grant under the Submerged Lands Act. And that if the Special Master's finding, that it was a juridical bay, were upheld, we would measure from the mouth, from the line of the bay.

MR. JONES: Right.

QUESTION: Is Louisiana different from Florida in this regard?

MR. JONES: Well, unfortunately, I'm not sufficiently

versed in the detail of the Louisiana case to be able to answer that. But it -- I think that -- well, I can't remember now which bay was historic and which was juridical.

Any historic bay, of course, would be the historic coast line.

Now, -- oh, I'm sorry.

In Louisiana, you're only measuring three miles out from the current coast line. Because Louisiana has not established a historic boundary.

Therefore, you have to look, in Louisiana, at the current coast line and measure three miles from that line.

We're here concerned with determining the historic boundary, which is measured by reference to the historic coast line.

QUESTION: Mr. Jones, did -- where do I find this discussion in your brief on this current point?

It seems to me I thought --

MR. JONES: That discussion is --

QUESTION: I thought your first exception to the Report of the Special Master was that -- well, was to his finding that --.

MR. JONES: That discussion is at pages 14 and 15 of our opening brief.

QUESTION: And this is in support of the first exception, isn't it?

MR. JONES: The first exception is that there is no juridical bay, that --

QUESTION: I know, but is this argument in support of the -- you have only two exceptions, the United States; doesn't it?

MR. JONES: That's true.

I'm merely showing here that the existence of the juridical bay is essentially irrelevant to the question of the Submerged Lands Act.

QUESTION: Was this -- has this been argued before the Special Master? I assume it was.

MR. JONES: No, it wasn't, because no one contended that there was a juridical bay of this kind before the Special Master. That determination was made by the Special Master on his own, without any discussion or evidence.

That's why we're having this difficulty here.

QUESTION: Because I would have thought you would have -- you wouldn't be objecting to his, as in the first instance, to his finding of juridical bay; but as to the --

MR. JONES: Well, we also object to the existence of a juridical bay for the international legal reasons.

QUESTION: But only if you would lose on your present argument.

MR. JONES: Well, no, we believe that there should not be a juridical bay, because it's inconsistent with the

position we've taken in foreign affairs, that --

QUESTION: I agree, but it's irrelevant to setting a line, isn't it, in your view?

MR. JONES: That's right, but we don't feel that the Court should grant Louisiana inland waters and thereby --

QUESTION: Well, we wouldn't. I mean, if it was irrelevant.

MR. JONES: I would certainly hope not.

QUESTION: But the Special Master hasn't passed on the point that you're now raising.

MR. JONES: Which point is that? Oh, yes, he measured the Submerged Lands Act grant from the closing line of the juridical bay.

QUESTION: I understand that, but he's -- it's never been argued to him that that was improper.

MR. JONES: That's true. Because, as I say, a juridical bay closing line of that kind was not contemplated by the parties before the Special Master.

QUESTION: Was there any submission by the government subsequent to the report which introduced that element, sua sponte?

MR. JONES: No, there was not. The report was --

QUESTION: Until you came here?

MR. JONES: That's right.

QUESTION: Was there any reason you didn't go back

to the Master and ask him to reconsider it?

MR. JONES: Well, the Special Master submitted the report to the Court, and as a procedural matter, I suppose we were unsure whether we could in fact go back to the Special Master, at that time.

Because the report was then before this Court.

QUESTION: Well, when you say sua sponte, the Master's job was to answer some of these questions besides whether there was juridical bay, as I presume; and did he have to have a brief on each point from the parties before he could draw a single line on the map?

MR. JONES: Well, I suppose he wouldn't have to, he didn't have a brief. What we're saying is that if we had been able to make these arguments before the Special Master, we're certain he wouldn't have found a juridical bay.

I would make just one point -- my time is running short -- about the juridical bay.

He's used a chain of islands as the defining coast line of that bay. That use of islands is impermissible under the Convention on the Territorial Sea. The islands are separated by water gaps of more than one mile in width, which are navigation channels through the Keys. They're not assimilable to the mainland.

QUESTION: Well, is that any different than Long and Sound? We were told yesterday that the --

MR. JONES: That is a historic bay, not a juridical bay. The principles are different. A juridical bay relies upon the technical -- technicalities of the Convention on the Territorial Sea, which were not met in this case.

I'd like to pass on quickly to the last exception of the United States, which is the use of closing lines in the three groups of outer islands. And I will illustrate that by reference to the Dry Tortugas Islands, which are here on this map [indicating]. Although the principles of law are basically the same with regard to all of the islands.

The Special Master drew these closing lines to enclose inland waters of the State. The effect of that was to deny foreign navigators, foreign vessels the right to sail through those waters, and they were designated inland waters of the State.

That use of base lines -- well, the Special Master had no jurisdiction to use base lines in this fashion. As this Court has recognized in the Louisiana boundary case, the use of such base lines is within the sole discretion of the United States. The United States has not chosen to enclose outer islands with base lines, and the Special Master had no power to do it.

Moreover, the use of such base lines is inconsistent with our position in foreign affairs.

Certain island nations, Indonesia and the Philippines,

for example, have enclosed large bodies of water with the use of such base lines, and threatened to deny foreign navigation rights through these waters.

QUESTION: I take it what the Special Master has concluded is that that's the boundary of the State.

MR. JONES: That's correct.

QUESTION: And if the islands were very close together and imperceptably apart, you would think that would be quite all right?

MR. JONES: Yes, but these islands are not that close together.

But, more than that, only if they're close to the mainland, not if they're just close together.

Islands that are merely close together are not entitled to base lines unless the sovereign determines to draw such base lines.

QUESTION: But you -- would you say that this was there all the way up the Keys, for the south side of Florida Bay?

MR. JONES: No, we're only speaking now of the lower Florida Keys, the Marquesas Keys and the Dry Tortugas.

QUESTION: Why aren't you speaking -- why don't you take the same position on up through the Keys?

MR. JONES: He didn't encircle those in the same way. He did form a juridical bay there when he enclosed that.

QUESTION: But he did that, and the Keys do form the south side of a supposed juridical bay.

MR. JONES: That's correct, and --

QUESTION: Do you challenge that?

MR. JONES: Certainly. We say that there's no juridical bay there.

QUESTION: Well, I know, but do you challenge it on the grounds that the islands themselves are not part of the mainland and should not therefore -- do not therefore bound the bay?

MR. JONES: That's right, the islands are not assimilable to the mainland. They're separated from the mainland by a series of water gaps, some of which are more than one mile in width, some of which are navigation channels. They are simply not a part of the mainland.

The only time this Court has permitted the assimilation of islands to the mainland was in the Louisiana boundary case, where there were very marshy areas, riddled with very thin, impassable streams of water, where it was impossible, for practical purposes, to define the difference between the mainland and the islands.

That's simply not the case here. These are true islands, separated at some great distance from the mainland.

QUESTION: I suppose, if you followed your course, you would just go out three miles from the actual coast line

of each of those islands?

MR. JONES: Well, three miles to determine the Territorial Sea.

QUESTION: That's right.

MR. JONES: Yes. Our position is that the coast line of the State is determined solely by reference to the natural shore line of the mainland and the islands, and that all grants under the Submerged Lands Act must be measured from the natural shore line, and that the Territorial Sea is measured from the natural shore line, and that there are no substantial bodies of inland water in the area of the Keys,

QUESTION: What if the Florida Keys, instead of running southwest, ran from northeast to southwest, ran from Key Biscayne southeast, so that there could be no question of a juridical bay at all, but they were still separated by the same water that they now are, between Key Biscayne and Key West?

MR. JONES: Well --

QUESTION: Would you say there that the Master couldn't draw base lines?

QUESTION: Yes.

MR. JONES: Yes. Certainly as to islands that are sufficiently separated from the mainland, not to be assimilable to the mainland.

QUESTION: How about these particular islands?

MR. JONES: In our brief we suggested that the

islands down to Upper Matecumbe Bay -- Upper Matecumbe Key, might be so closely assimilated to the mainland to be part of it.

Those islands, which I'll illustrate on the map, are separated from the mainland only by impassable ribbons of water.

[Indicating on map] I'm here discussing only down to this point. In fact, on this map, it appears that this is part of the mainland. It's not, it's a series of Keys, some large, some smaller, which really are so closely connected to the mainland, or so close to the mainland as, for practical purposes, probably to be part of the mainland.

At this point, between Upper Matecumbe Key and the Keys further to the southwest, there are water gaps which are wide enough, some over a mile in width, to completely separate those islands, in our view, from the mainland, and to make it impermissible to draw base lines.

But I would further add that the base line running down along a chain of islands would serve no purpose at all. It would not enclose any body of water. It would simply deny passage between the islands. That would serve no legitimate interest of the State, and it would interfere with foreign navigation in some instances, with no counterveiling considerations in its favor.

That's the problem with the base lines drawn by the

Special Master in the outer islands. It serves no purposes in his report. Florida's grant under the Submerged Lands Act would be essentially the same, whether they use base lines or not, and they are merely gratuitous in this case.

QUESTION: This is another question that was not argued before the Special Master?

MR. JONES: That's correct. No one made any submissions about base lines of this kind.

It was assumed by the federal government, and the State made no contrary contentions, that there would be no such base lines.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Jones.

Mr. Attorney General, you may proceed whenever you're ready.

May I suggest, Mr. Attorney General, that you put your map back a little bit. There, now I think we can all see it.

You are free to use --

QUESTION: We can't see it at all; the chairs are in the way.

MR. CHIEF JUSTICE BURGER: Let's move these chairs out of the way then, gentlemen.

QUESTION: How about using the other stand? The one the government used.

MR. CHIEF JUSTICE BURGER: You are free to use both maps, if you wish, Mr. Attorney General.

MR. SHEVIN: This is not mounted, and it wouldn't stand on the other easel.

MR. CHIEF JUSTICE BURGER: Can you see now?

QUESTION: I can see it now, but I'm sure Mr. Justice Powell will have difficulty.

MR. CHIEF JUSTICE BURGER: Well, let's move all these chairs as far as necessary to have a clear view.

QUESTION: Well, Chief, on this side, I think if Mr. Jones and his associate would be willing to move --

MR. CHIEF JUSTICE BURGER: Yes, if you'd move to your right, Mr. Jones. I think you'll have to move about ten feet in order to accomplish that.

QUESTION: You might be able to see then, too, Mr. Jones.

MR. SHEVIN: Sorry for the confusion.

MR. CHIEF JUSTICE BURGER: That's quite all right now.

Yes. We'll not start your time running until your stage props are all ready, Mr. Attorney General.

MR. SHEVIN: Thank you, sir.

MR. CHIEF JUSTICE BURGER: Very well. You may proceed.

ORAL ARGUMENT OF ROBERT L. SHEVIN, ESQ.,

ON BEHALF OF THE DEFENDANT

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

First of all, the water gaps that Mr. Jones refers to, of a mile between the Keys, I would point out that most of those are not more than two feet deep. There are a couple of six and seven-foot channels, but there was testimony presented before the Special Master that one could begin walking at Key Biscayne and walk the entire distance to Key West during low tide.

So we're not talking about substantial water gaps of depth.

Secondly, what counts is what was the historical setup of this land in 1868. And the maps that were presented in the record indicate that this was one mass of land with very little separation in 1868; and, as a matter of fact, there were mud flats from Key Biscayne all the way to Key West.

I would also point out that what Indonesia and the Philippines do with regard to their islands is totally immaterial to this boundary dispute, and we should not be bound, in a dispute with the federal government, over what will happen in Indonesia or the Philippines.

QUESTION: Now, when you made that statement about

walking from Key Biscayne to Key West, assuming you wanted to take that long a walk, is that in evidence in the Master's record?

MR. SHEVIN: Yes, it is.

QUESTION: Unh-hunh.

MR. SHEVIN: There is evidence, and we have maps from the 1700's that show this entire mass of land and mud flats, without hardly any separation at all between the Keys.

With regard to the exercise of sovereign power by the State in Florida Bay, may I remind the government that in 1964 they supported us in the Barrios case, which came to this Court, where we prosecuted two Cuban fishermen for the violation of our State fishing laws, and the government filed a brief in favor of our exercise of sovereign jurisdiction.

I would also point out, in response to a question asked by Mr. Justice Powell, that foreign fishing has not been allowed in the eastern portion of Florida Bay, and it has not been allowed in this entire portion on a historical basis.
[Indicating on map.]

I would also point out that the 1962 Florida constitutional amendment, which they refer to as a waiver of the State's rights, was not approved by the Congress, so therefore it cannot constitute a waiver. Florida's historical boundary in 1868 is our only lawful boundary, because that was the only boundary approved by the Congress.

I would also point out that the 1962 amendment to the Constitution in Florida cannot be any more effective, as far as hurting us, than the 1968 amendment could in helping us. Because in the 1968 amendment to the Florida Constitution, it readopted almost verbatim the 1868 boundary.

So what we're left with is that the only lawful boundary of the State of Florida is the 1868 boundary.

With regard to the 1955 statute that was passed by the State of Florida, which mentioned gratuitously that the Straits of Florida were located in the Atlantic rather than in the Gulf; and here are the Straits of Florida [Indicating on map].

With regard to that, I would point out that this statute was passed by the Legislature in response to the Submerged Lands Act, it certainly cannot affect what is based on expert testimony, and that is marine geology and sedimentology. The testimony is clear that this is a Gulf area, and that this is the Atlantic [indicating on map]; and the Gulf and the Atlantic are separated at Cape Florida. In effect, the lighthouse at Cape Florida separates the Gulf and the Atlantic.

QUESTION: Will you point out Cape Florida?

MR. SHEVIN: Cape Florida is located right about here [indicating].

QUESTION: I can't see it.

QUESTION: Yes, stand back a little.

MR. SHEVIN: Here's Key Biscayne, and Cape Florida would be the tip, right about here [indicating].

QUESTION: Right.

MR. SHEVIN: It's 25 degrees and 40 minutes, Your Honor.

QUESTION: And it's your submission that that is what, at that point --

MR. SHEVIN: We are -- our contention, Your Honor, is that the Straits of Florida and the entire Keys are located in the Gulf of Mexico. We have drawn the line where we contend the Atlantic and the Gulf separate.

The Master, in his finding, said basically that everything north of the Tortugas is Gulf, and everything south is Atlantic.

QUESTION: Right. And your submission is that an east-west line, with its westward terminus the Cape of Florida, is the dividing line between the Gulf and the Atlantic?

MR. SHEVIN: Yes, sir.

QUESTION: Right.

MR. SHEVIN: And we contend that the record is clear. We have sufficient testimony, and I'm going to get into the testimony, and point out why the testimony of the government is inadequate on this point.

QUESTION: Now, before you go on, --

MR. SHEVIN: Yes, sir.

QUESTION: -- would you take your pointer, at least for me, and show me where you would draw a north-south line from the lighthouse you were talking about, that would separate the Gulf from the Atlantic?

MR. SHEVIN: This red line, with the Atlantic here -- excuse me.

QUESTION: If you would use your pointer, maybe we could see over on this side.

MR. SHEVIN: All right. This red line --

MR. CHIEF JUSTICE BURGER: Can you see now, Mr. Justice Powell?

[Laughter.]

MR. SHEVIN: Throughout this map the red line indicates what the State of Florida's position is, the black line indicates what the Master found, which is pretty consistent with what the government put forth in their case, with the exception of the juridical bay.

Basically, where we differ -- we differ very slightly here, and I don't even intend to argue the Atlantic coast line. I intend to argue the Atlantic and the Gulf separation. The question of Florida today, which we contend -- we agree, we don't think it's a juridical bay; we think it's a historic bay. And we think the historic bay goes on the 45-degree angle from the Tortugas to nine miles, or three

leagues off the coast of Florida. And we'll get into that in just a moment.

So, basically, this is the red line which encloses what we contend is all of Florida Bay, and we will show that historically we have exercised sovereign jurisdiction over that entire area.

QUESTION: How far eastward, in your view, does the Gulf go from that line off the lighthouse?

Well, --

MR. SHEVIN: From here?

QUESTION: Yes.

MR. SHEVIN: Well, we contend that --

QUESTION: How far east of the mainland of Florida?

MR. SHEVIN: Just a few miles, Your Honor. It would be a matter of about, I think it's about ten, twenty -- ten to twenty miles at the most.

QUESTION: Based upon the bottom, isn't it?

MR. SHEVIN: Yes, it's based upon the bottom.

QUESTION: Right.

MR. SHEVIN: But if you emptied the bottom, it would drain into the Gulf, because -- and we've also got testimony with regard to the organisms in that area, and with regard to the sedimentology and the geology of that area.

I would also point out that the 1955 statute, which was a response to the Submerged Lands Act, certainly cannot

affect where that line is, based upon expert testimony. In addition to which, that statute was repealed, so the Legislature obviously has no further position or opinion on the location of the Florida Straits.

With all due respect, I would disagree with Mr. Jones in his answer to you, Mr. Justice White, because you said, if you ruled against the government on the constitutional issue, would you still need to decide the boundary line. I think you would. Because it would still be a difference of whether we're entitled to three leagues or three miles on the Gulf side.

And you've got to decide where does the Gulf end and where does the Atlantic begin in order to reach that question.

So I --

QUESTION: Incidentally, if you were right on that point and also right on the historic bay, would your three leagues begin from that long line in the --

MR. SHEVIN: Here? [Indicating]

QUESTION: Yes.

MR. SHEVIN: No, sir, we believe that in this instance the boundary line and the coast line would be the same.

QUESTION: I see.

MR. SHEVIN: We would not get an additional three leagues on top of that, nor have we contended so.

I would also strongly agree with the Master on where the 1868 boundary is, and of course that's the crux of this issue.

QUESTION: Well, why is that, Mr. Attorney General? You would say that if you were right on the historic bay there, in Florida Bay, your rights in the seabed would be -- would stop there?

MR. SHEVIN: Yes.

QUESTION: Because that's your historic boundary.

MR. SHEVIN: Because that is our historic boundary, and it would also --

QUESTION: Well, why wouldn't that be true of your -- on the entire Gulf side, with respect to your historic boundary?

MR. SHEVIN: No, sir, because on the entire Gulf side, our historic boundary would be, in effect, a three-league line, it would -- it is the same as the three-league line: our historic boundary.

QUESTION: Well, what about all up the west coast of Florida?

MR. SHEVIN: This is approximately -- the historic boundary is approximately three miles; two and a half to three miles.

QUESTION: The west -- the west coast.

MR. SHEVIN: On the west coast. Here it's the three-

league line, and both the Master, the federal government and the State are in agreement that this does constitute a correct reading of the historic boundary.

QUESTION: Well, then, I still -- if we held for you on the constitutional issue, it seems to me you get out to your historical boundary and we don't have a problem about where the Atlantic and the Gulf are.

MR. SHEVIN: Well, Your Honor, in -- yes, I guess that that would be true. Yes.

QUESTION: Well, that's a --

MR. SHEVIN: Yes, sir, I guess that that would be true. If you determined that that's where our historic boundary was,

QUESTION: Yes.

MR. SHEVIN: The importance of this case to Americans living thousands of miles away, we contend, will not be known for a long time, because we think that the impact of this case will be very great. Already Florida Bay, which is the area in question, produces half of our \$16 million a year fishing industry. At present the area is protected by the Florida Marine Patrol.

If the Master is upheld, this entire fishery will become international waters and will probably have no police protection whatsoever.

We would like to comment that for many years the

government has had, we consider, a general policy of trying to chip away at the rights of the State in our marine areas. And this policy has taken the form of nibbling away at State sovereignty.

This case, we think, presents an excellent opportunity for the Court to reverse this trend and to recognize that the States have a value in being able to give local knowledge and direct interest in protecting these vital natural resources, a police force already on line, trained, knowledgeable, and particularly equipped to patrol this area, and vigorous enforcement with proper respect for international commitments.

I would point out, Your Honor, that the conduct of international affairs, Your Honors, is not at issue here. The rights between the State's sovereign and the federal sovereign are at issue. There's nothing in the record that shows that Florida's ownership of Florida Bay, or exercise of sovereignty in Florida Bay has ever embarrassed or interfered with the federal government's conduct of foreign affairs.

Time and time again, the Master, we think, wrongly turned to international law to decide what properly is a purely municipal matter.

This is a case of domestic law. It arises, we think, from a somewhat misguided effort on the part of the federal Executive to veto Congress by litigation. And I think that the Court should recognize the usefulness and the detrimental

effect that the Executive Branch of Government has in spending great sums of money in this litigation to ask the Federal Judiciary to proclaim what the President or the Department of Justice or the State Department feels is best as to where the boundaries of the State should be located.

QUESTION: Mr. Attorney General, if the large bay, that is, the one with the 100-mile opening, the one that you claim is a historic bay?

MR. SHEVIN: We claim it is a historic bay and we claim it is -- we claim that it is the historic boundary.

QUESTION: If that's now open to foreign shipping and foreign fishing, back to the new line that the Master has drawn to a very much smaller bay, do you then suggest that that will open up that whole area to potential conflicts between the State's efforts to police it, or will the State be entirely out of policing that large area?

MR. SHEVIN: Well, if the Master is correct, and the historic boundary of the State is along in this area [indicating], then we would feel that this entire Florida Bay area would be considered international waters and that we would have no jurisdiction for policing any of that area; notwithstanding the fact that a great amount of the shrimping industry in Florida is located in that specific area.

QUESTION: What proportion of the total do you --

MR. SHEVIN: Of the shipping? Of the fishing?

QUESTION: Of the fishing.

MR. SHEVIN: About half of the \$16 million industry is located in that area.

We would also point out -- and I hope to get to this at some point in time -- the State has issued a number of oil leases since 1941 in this entire area, which has never been questioned before, and large companies have been drilling for oil in that entire area over the past 30 to 35 years.

QUESTION: Mr. Attorney General, the government doesn't agree with you that you have permitted or not permitted fishing, by a foreign government.

MR. SHEVIN: Well, Your Honor, we --

QUESTION: You state it as a fact, but you agree that that's not an admitted fact; right?

MR. SHEVIN: Well, it's not an admitted fact, but I hope to get into some of the specific testimony which will point out that there has been an acquiescence by foreign governments in the sovereign exercise of jurisdiction by the State in that entire area, over a long period of time.

QUESTION: Have you prohibited foreign governments from fishing?

MR. SHEVIN: We have. Whenever --

QUESTION: By what means?

MR. SHEVIN: We have the Marine Patrol that polices that area. The federal government entered into a treaty with

Cuba in 1957, and during the pendency of that treaty, which we asked the federal government to enter into with Cuba because there had been shrimping -- shrimping that was occurring in the Tortugas --

QUESTION: Is there any shrimping going on there now by foreign governments?

MR. SHEVIN: Not to our knowledge.

Not to our knowledge. The treaty --

QUESTION: That's in the record?

MR. SHEVIN: Yes, sir.

QUESTION: I thought you said in the record that you admitted that it had been going on.

MR. SHEVIN: There were two Cuban fishing vessels that came into the area in '71.

QUESTION: I thought the government said that, in the record, that Florida admitted that foreign fishing was going on. Is that correct or not?

MR. SHEVIN: I don't think that statement, standing alone, is correct, no, sir. I think there have been occasions of foreign ships going in the area, and wherever possible the police has tried to exercise its police power to keep them out.

And there have been a couple of arrests occasionally. Usually of Cuban fishermen within that area.

There were two arrests back in '71, and the Coast

Guard were called in to assist the local police.

QUESTION: Well, my point is that it isn't as clear as you make it.

MR. SHEVIN: Let me comment, if I may, on United States vs. California. Of course, the overturning of that case is sought by the States in Original 35.

I agree with them that the case was wrongly decided in overlooking at least 100 years of case law, and I think it's fomented great misunderstanding.

But the point that I wish to make with regard to Florida's case as it relates to California is not so much that it was wrongly decided, but that it does not apply in the way the Master used it.

Our question is simply: Where did Congress permit Florida to have our boundary in 1868?

Even though Mr. Jones states that this is identical to California, we disagree with him. They are not identical. California went off on a summary judgment. There was no evidence put in the record. California did not decide where the historical boundary of California is or was or whether they had a historical boundary.

Unlike California, Florida has been declared already an Original Action 9 in 1960 to possess a historic marine boundary, as described in the 1868 Constitution; in excess of three marine miles.

Also, it's our position that the Submerged Lands Act by Congress was clearly a response to this Court's decision in California, and, in effect, vitiated California.

In the Submerged Lands Act, the Congress confirmed a quit-claim title to the States to the seabeds beneath the navigable waters within the State's boundaries and to the natural resources within such lands and waters up to three miles, and gave the States the right to prove the existence of a marine seaward boundary beyond three miles.

QUESTION: Mr. Attorney General, it seems to me you have just advanced several different propositions, and on your point that California isn't controlling: In California, Congress had recognized the three-mile boundary of California at the time it was admitted to the Union in 1850, as I recall. And I take it the government's position, which the Master accepted, was that Congress's recognition of Florida's 1868 boundary was no more and no less than that.

Now, do you -- if you disagree with that, why do you disagree with it? It's one thing to say you want California overruled, or that the Submerged Lands Act had changed it; but in so far as arguing that you're not governed by Florida, why aren't you?

MR. SHEVIN: Because we think that the facts in California are not identical, that it's a different situation, that this Court never decided whether California had a historic

boundary.

And in this case you've already -- the Court has decided, in Original 9, that Florida has a historic marine boundary that gives us rights beyond three miles. And subsequent -- in other words, it's our position that the Submerged Lands Act, since it very clearly states "nothing shall be taken to prejudice the rights of any State to establish a boundary beyond three miles", and then this Court, in United States vs. Louisiana, the 363 U.S. page 1 decision, this Court said: It was suggested that Mississippi and Alabama might claim boundaries six leagues -- which of course is an excess of three -- six leagues in the Gulf because of similar provisions in the Acts admitting them to the Union.

He went on to say, and this is Justice Harlan: It was recognized that if the legal existence of such boundaries could be established, they would clearly entitle the respective States to Submerged Lands rights to that distance under an application of the Pollard Rule to the Marginal Sea.

Hence, while a three-mile boundary was expressly confirmed for all coastal States, the rights of the Gulf States to prove boundaries in excess of three miles was preserved.

Now, surely, in that --

QUESTION: Well, that's based, then, on the Submerged Lands Act?

MR. SHEVIN: It is saying, in effect, that the Submerged Lands Act's quit-claim to the States confirmed title but gave the States every right to come in and try to prove that they have a historical boundary, even if it went six leagues.

Now, obviously, this historical boundary that's located out in the -- the historical boundary that's located out in the Florida Bay would be in excess of three leagues. So we are dealing with an area in excess of three leagues.

So it's our contention that we have ownership interests in the disputed area off of our coast line; it's our contention that the rule of Pollard's Lesse should apply, and that the extent of our jurisdiction was declared in the earlier U. S. vs. Florida decision to be that which we had in 1868, as described in the State Constitution of that date, and approved by the Congress.

We're not here contesting war powers; we're not here challenging the federal government's right over interstate or foreign commerce; we are not questioning who conducts our international relations.

But that does not mean that Florida cannot control the seabed of its own territories. Florida should retain eminent domain over the shores of her territory and of the submerged lands that are here in question.

We have excepted to several particular points in the

Master's finding.

One of these important points regards the location -- thank you; I broke my pointer.

One of these important points regards the location of the historical boundary between the southernmost Key, the Dry Tortugas, and Cape Romano.

I'd like to call your attention to the call in the Constitution, and that is: From the Tortugas you go thence northeastwardly to a point three leagues from the mainland, -- thence northeastwardly to a point three leagues from the mainland.

Now, the Master has concluded that that's only a general over-all direction, and he, in effect, has said that you first go east, and then you even go southeast before you start, and you follow a three-fathom line to a northeastwardly fashion until a point nine nautical miles is reached.

Now, it's our view that this construction is so illogical and contrary to the plain meaning of the words as to be ludicrous.

Florida contends that the call "thence northeastwardly to a point three leagues from the mainland" can only mean one thing, and that is a specific compass direction, an absolute heading of 45 degrees. Because there are no geographical directions included in the call, such as "go northeastwardly along the coast"; it doesn't say "along the

coast", it says "thence northeastwardly to a point three leagues from the coast."

The only way that you can go northeastwardly is a point between north and east, it's a direct compass reading of 45 degrees.

Even the government's witness, Dr. DeVorsey, testified on cross-examination that "northeastwardly" means 45 degrees, a point between north and east. And even the Special Master himself, Judge Maris, in Michigan vs. Ohio, Original 30, in 1971, interpreted "northeast" as "north 45 degrees east".

But in this case, for some reason, he went southeast in order to determine what the historical boundary of the State of Florida is.

QUESTION: Might there not be a difference between northeast and northeastwardly?

MR. SHEVIN: Not when it says to go to a point, Your Honor, it's --

QUESTION: Northeast is, as you correctly say, a very definite course of 45 degrees. Northeastwardly means more -- about 40 -- more or less northeast.

MR. SHEVIN: Yes, sir. Except for the fact that on cross-examination, of the government's own witness, he testified that to him that would mean a point between north and east, and he said 45-degree angle.

QUESTION: Unh-hunh.

MR. SHEVIN: And that's what we have contended throughout these proceedings, that that is the historical boundary call, and that the Master has arbitrarily added a geographical call where none previously existed.

QUESTION: But at least you think you have to start out north of east and not south of east?

MR. SHEVIN: Yes, sir.

This is -- I would point out that this was the usual course, and there is testimony in the record that shrimpers, who would turn from the Tortugas shrimp grounds, when they wanted to get to the mainland they set a course for 45 degrees, they started across this expanse of water to the nearest point of the mainland before turning north.

And the point that they invariably reached was Cape Romano.

QUESTION: Would the 45-degree call northeast from the Dry Tortugas bring you right out to Cape Romano?

MR. SHEVIN: Yes, sir. It would. It would bring you right to Cape Romano.

Shrimpers, we contend, have been doing so for hundreds of years, and if the Master's version is accepted, the plain meaning of the words is ignored.

What's more, he reads into the call a meaning contrary to the clear import of the words, because he draws the

boundary not northeastwardly at all, but in a direction southeastwardly from the Tortugas.

Further, the call concludes that it goes to a specific point, that point lying three marine leagues off the mainland. Clearly, it requires a straight line 45 degrees to Cape Romano. Northeastwardly standing alone, without further references to geographical locations, either as commencing midpoint or terminal monuments, must mean northeast or north 45 degrees east to constitute a definite boundary.

It's the contention of Florida that by virtue of the Act of 1868, Congress expressly or impliedly conveyed or granted to the State the rights and interest in the title possessed by the United States in the area encompassed by the boundary described in the Florida Constitution in 1868, when Florida was readmitted to the Union.

Which rights include ownership of the submerged lands and resources of the sea.

Furthermore, the historical boundary in 1868 defines the outer perimeter of an area historically known as Florida Bay, which is a historic bay or historic waters, and thus internal or inland waters of the State of Florida.

The contested area of Florida Bay amounts to about 8,000 square miles. And this boundary, as I pointed out, is not only Florida's historic boundary, but it's our only lawful boundary.

Now let me address, if I may for a few moments, the issue of Florida Bay.

We claim that Florida Bay is a historic bay, and thus inland waters of the State of Florida. And we construe it to be all of the waters bounded on the south by the Florida Keys to and including the Dry Tortugas, and on the northeast by the Florida Peninsula, and on the northwest by the Tortugas with a line running 45 degrees from the Tortugas to Cape Romano.

In determining whether the State has properly acquired historic title to maritime area, this Court has said that there are three factors: The exercise of authority or sovereignty by either the State or the federal government; the continuity for a long period of time of that exercise; and the attitude of foreign States -- in other words, acquiescence by foreign States.

In addition, it has been held that a Coastal State may strengthen its claim by showing that its vital interests are involved, as we did in this case.

We contend that we proved our case in all three respects. Our claim of historic title is based upon the occupation of Florida Bay. The Master, in concluding that we failed to prove our claim, ignored, we contend, compelling evidence to the contrary; and we also contend that he held us to the wrong burden of proof.

He said we have to prove it clear beyond doubt.

To apply that burden rather than a preponderance burden was error, and the matter should be, at the very least, returned to the Master for additional testimony and hearings, and the application of the correct standard of proof.

The clear-beyond-doubt test in California II can only be applied to a State in proving its historical claim where the federal government, by its actions, has made an effective disclaimer of sovereign jurisdiction in the area.

Here the federal government tried to disclaim, and they introduced several self-serving declarations, all made during or within the proximity of the commencement of this litigation.

And the documents in evidence carry no specific disclaimer that Florida Bay is a historic bay.

These purported disclaimers should not incur such an onerous burden on the State of clear-beyond-doubt.

Also I would point out that the danger zones that have been established by the federal government in this area right here [indicating], these danger zones which only allow people to enter that area with permission by the United States Navy, certainly represents an act of dominion over Florida Bay by the federal government, which cannot be ignored.

When the authority is asserted pursuant to a statute permitting such exercise of power, only in the Territorial Waters of the United States; they establish those

danger zones based upon a congressional Act that allows them to do so only in the Territorial Waters of the United States, so they obviously recognize that area as Territorial Waters, not the High Seas; and it's hard to see how the United States has disclaimed dominion over the area when they have danger zones that only allow people to come in on permission from the United States Navy of approximately 1900 square miles.

QUESTION: Is your historic bay claim separate from your historic boundary claim?

MR. SHEVIN: Yes, sir.

QUESTION: They bring you out the same place, though?

MR. SHEVIN: Yes, sir; they bring us the same place.

We contend that we have a historic boundary that goes there.

You could, in the alternative, find that we have a historic bay without agreeing that our boundary is where we contend it is.

QUESTION: That would be under the International Convention?

MR. SHEVIN: That's right.

Also, with regard to the failure of the federal government to disclaim any interest in the area, we rely upon a Treaty of the United States with Cuba in 1957, when Cuba agreed to keep its nationals out of the Tortugas shrimp beds, and we think this represents active dominion of the United

States to the historic Florida Bay area.

Further, we contend that we have established by a preponderance of the evidence, we contend we have established even by a clear-beyond-doubt test that Florida Bay is a historical bay and that it is thus the inland waters of the State.

We contend that it's a historic bay, because we believe that the Dry --

QUESTION: Mr. Shevin, I don't understand, if you're right on your historic bay argument, why it is you can't go from that line nine leagues into the Gulf. I mean three leagues into the Gulf.

MR. SHEVIN: I think that if we're correct on that argument, and you don't agree with us on the establishment of the boundary that we covet, that we have considered -- we considered that question and we felt that since that is the boundary line and the coast line, that we could not go beyond that another three leagues. And that that's --

QUESTION: But if it's an historic bay?

MR. SHEVIN: Well --

QUESTION: That's your coast line, isn't it?

MR. SHEVIN: Yes. That would be our coast line if --

QUESTION: Well, then, you'd measure it three leagues from that line, wouldn't you?

MR. SHEVIN: Well, perhaps. We had not thought that

we could get an additional three leagues on top of that.

QUESTION: The statute wouldn't allow it, the 1953 law doesn't give you that.

MR. SHEVIN: I think it gives us either to the boundary or to the three leagues, whichever is greater.

QUESTION: That's right.

MR. SHEVIN: In this case we get to the boundary which would be our coast line, and that's the reason that I think we concluded that we couldn't get an additional three leagues.

QUESTION: And I think you're right.

MR. SHEVIN: All right.

The historic bay -- the Dry Tortugas, we contend, can be considered as islands forming a multiple-mouth bay, and the Archipelago known as the Florida Keys certainly can form one side of that bay, and it is lawfully conceptual.

The Florida Bay is historically a part of Florida, ancient maps and charts that we introduced in evidence demonstrate a remarkable continuity of Florida Bay, by whatever name, as a distinctive area with roughly the same boundaries through the Spanish experience, the British experience, and the American experience.

And these date back to the Jeffery's map of 1763, and it shows Richmond Bay and Chatham Bay as the designation of the area that is now called Florida Bay.

In the early maps, as I pointed out, the Keys area were a solid line mass, and it showed mud flats from the mainland to the Tortugas.

Also, the United States acquired title to Florida from Spain by virtue of the Treaty of Amity, Settlement, and Limits.

Article II of that Treaty provided for the King of Spain to cede to the United States -- and I hope you will pay close attention to this language -- "in full property and sovereignty, all of the territories which belong to him situated on the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces which relate directly to the property and sovereignty of said provinces", unquote.

It is clear to us, from this language, that the Treaty would include the Dry Tortugas and the water area between the islands and the mainland, known as Florida Bay.

What is the utilization of Florida Bay? So as to establish a historic bay.

To begin with, when they belonged -- when the Territory belonged to them, the Spanish and the British fished in the area in the period of the late 1700's and early 1800's. All of this is in the record, and I won't mention transcript pages, but I will relate specifics in the record.

The sponge industry began in 1849. It extended

from the very shallow waters, sponging to Hawk Channel between the Keys and the reefs.

One of our witnesses, Senator Hodges, who is the Director of the Department of Natural Resources, said: In my mind, I would consider it once again, the 45-degree angle from the Tortugas north to Cape Romano, as an area that was utilized for fisheries and for sponging and for all other economic activities.

At about 1870, sponging expanded to the areas up to 50-foot in depth by the use of the glass-bottom bucket.

Kirk Monroe published an article, *Sponge and Sponges in the Florida Reefs*, in *Scribner's Magazine* in 1892, and he noted that the Key West sponger has a choice of two distinct fishing grounds: the Bay and the reef.

"This former, the Bay, includes all of the waters of the Gulf of Mexico, washing the western coast of Florida", unquote.

In 1935, a map of sponge fishing area for the United States Tariff Commission notes the diving area from Cape Romano north, and the hooking areas in the shallow waters of the Keys in Florida Bay.

Wrecking was a lucrative and growing industry in the Florida Straits in 1850, but had gone on since the early 1700's.

What are the expressions of sovereign authority in Florida Bay? In 1922, Florida complained to the federal

government about british interlopers in the area from Cape Florida to the Dry Tortugas, fishing and turtling.

By 1825, federal revenue cutters were patrolling the southwest coast of Florida. In 1826, the United States ordered all foreign fishermen from South Florida waters.

In 1832, Government Duval indicated that Florida fishing and turtling were exclusively and solely for the local jurisdiction and for Florida citizens, and he opposed giving British fishermen the right to use Florida waters or Florida Bay.

And, by the way, these ships that were in contention were from twenty to fifty-ton ships, and would have to be employed in the deepwater of Florida Bay, which would be at the outer perimeters [indicating on map].

And this request by Great Britain was not granted.

The Florida Legislature, in 1832 enacted the law for protection of the fisheries of the Coast of Florida, which included all of the seas, bays, creeks, and harbors adjacent to, of the islands or Keys of the Territory.

And the testimony is that it obviously included Florida Bay.

In the early 1860's, Florida seized Connecticut ships fishing off the Keys. Historically, Florida Bay was considered --- and this was before Florida's readmission to the Union --- historically Florida Bay was considered a

strategic military area. Key West was a United States Military Post in the 1820's.

In 1822, deepdraft vessels were used by the United States to combat pirates in waters north and south of the Florida Keys, and the Army set up a post in the Keys in 1831. In 1850, General Harney had patrols from Fort Myers across the waters of Florida Bay, and Barnes Sound to the Florida Keys.

Federal ships in early 1860 continuously patrolled the waters along the Florida Keys, and the Gulf Coast, during the Civil War, to stop blockade runners.

And we can go on. And of course I mentioned to you that the Florida leased lands for oil drilling in Florida Bay, beginning in 1941 -- and this included all of Florida Bay up to the 45-degree line from the Tortugas to Cape Romano.

The Territorial Water Acts of the State in 1963 require aliens or foreign nationals to have a license to fish in Florida waters.

What are the indications of foreign acquiescence, which is the third criteria of the Florida Bay area?

In 1831, the British request to fish in South Florida waters certainly indicates acquiescence in control by the State or the federal government.

In 1845, Great Britain again asked for permission to fish in Florida waters, and an Act of the Legislature to

protest the fisheries of the Coast of Florida was passed.

Foreign nationals have never challenged marine patrol enforcement; it has been pointed out in the testimony that a lack of State enforcement over the Tortugas Strait beds would just about wipe out a \$16 million a year industry, and the Government of Cuba, as pointed out by Senator Fulbright, during the negotiations between Cuba and the United States for the Treaty in 1957 to keep Cuban nationals from fishing in the shrimp beds of the Dry Tortugas, Senator Fulbright said that the Cuban Government was honoring the request of Florida, they had a gentlemen's agreement which certainly indicates acquiescence in the authority of the State of Florida.

Professor Tebeau, who is a Professor Emeritus of History at the University of Miami, testified that northward from Key West on the Gulf side, the main lines of sea traffic lay west of Cape Romano.

This was a passage inside the Cape, but its usage was limited to small boats with skilled navigators to clear the Tortugas Channels through the shallow waters, between these limits lay the distinctive area now designated Florida Bay, set aside by geography and history as part of Florida.

And Dr. Samuel Proctor, a history professor at the University of Florida, transcript page 408, said that Floridians and other informed persons at the time knew the

importance of the resources adjacent to the Florida coast.

They were aware of the importance of these waters.

Consequently, these men writing Florida's Constitution and operating in the best interests of the State, would have wanted to enclose as much of the area as possible within their State boundaries. This they sought to do in writing the Boundary Article in the 1862 -- 1868 Constitution.

We have historically exercised police power over the statute, the 1893 statute, prohibiting foreign fishing in Florida waters without a license, the 1915 State law making all fishing in Florida waters, including the Bay, to be Florida property; and the regulation of shrimping in the Tortugas since 1957.

No one has challenged Florida's exercise of its marine conservation laws, except two Cuban vessels, which were arrested within three leagues of land; in addition to which the federal government, in a pending case in the United States District Court, the Northern District of Florida, has sought an injunction against the State and has asserted that Florida attempts to regulate or prohibit foreign fishing boats more than twelve geographic miles from any part of the coast line of the State, between Cape Romano and the Dry Tortugas.

So even the federal government recognized that we do attempt to exercise police power all the way out to the 45-degree angle between the Tortugas and Cape Romano.

Perhaps the most significant aspect of this case in determining the attitude of foreign governments to Florida's claim of historic title to Florida Bay is the absolute absence of any evidence or hint of evidence from the federal government that any country has in the past 150 years protested or objected to Florida's overt active assertion of sovereign claim to Florida Bay.

And highly significant in regard to assertion of sovereignty is the act of the United States Congress in affirming to the world in 1868 that one of the States in the Union, Florida, had a marine boundary from the Dry Tortugas Islands to the mainland, which formed the northwest perimeter of the Bay.

Throughout these proceedings, the United States' concern for its position with regard to foreign affairs has been paramount.

With all due respect to the government, foreign affairs is not a material issue. Whether war powers, authority over interstate or foreign commerce, or authority over international relations may be exercised within Florida's boundaries, whether marine land or dry land, has never been at issue. These paramount powers, we concede, may be exercised if appropriate by the federal government in any part of any State at any time.

But just because they may be paramount in Lake

Okeechobee, which happens to be an inland lake in the State of Florida, does not mean that Florida cannot regulate fishing therein or the taking of the minerals from the bottom, from the seabed.

Also, there is nothing in the record to indicate that innocent passage of foreign shipping is in fact frustrated by Florida's claim that the Keys, out to and including the Tortugas, constitute an integral part of the State, nor is there any evidence that innocent passage in the area between the Keys and the mainland, denominated Florida Bay, has or will in any way be denied, should this Court find that it is a historic bay constituting the inland waters of the State of Florida.

There will be no interruption to the right of innocent passage.

And this case was not brought in the face of any international dispute involving Florida.

Our last major point, and I think I have just a few, about six or seven minutes left -- five minutes left. My last major point, and we preserve all our other arguments in the brief not argued, is that this case, as it relates to Florida, does require a determination of the rights under the Submerged Lands Act and United States vs. Florida, that it mandates a determination of the demarcation between the Gulf of Mexico and the Atlantic Ocean.

Because if the federal government, assuming arguendo, is correct, and we are limited to three marine miles in the Atlantic and three leagues in the Gulf, and not any further, then it's imperative that we determine where is the Gulf and where is the Atlantic.

We contend that the boundary between these two bodies is at Latitude 25 degrees, 40 minutes north, the position of Cape Florida; which means that the Florida Keys and the Straits of Florida, southwestwardly of such latitude, are located in the Gulf of Mexico and not in the Atlantic Ocean.

The Master says everything north of the Tortugas is Gulf, and everything south is in the Atlantic. And that dispute here is about a thousand square miles, the difference between three leagues and three miles.

The federal government takes its description -- and by the way this is their major piece of evidence, I think their sole piece of evidence on this point. They take a description from the Gulf which the Master adopts from the International Hydrographic Bureau, Special Publication. They say this proves up their case. And in the description itself, on the face of the map, it says, "these limits have no political significance whatsoever," unquote, and then the authors go on to say that it's not to be regarded as representing the results of a full geographic study.

They point out it's primarily for uniformity.

We presented the testimony of a renowned expert in marine geology and sedimentology, he testified unequivocally that the International Hydrographic Bureau's boundaries between the Gulf and the Atlantic have no scientific basis whatsoever in terms of these parameters that form the basis for the geological and geometric boundaries.

Florida contends that the finding of the Master is incorrect, contrary to the weight of the evidence, as to where the Gulf meets the Atlantic.

We contend that it should be decided on marine geology and sedimentology, and it is best visualized by the fact that if the area were to be viewed, if all the water were removed, a natural drainage basis would appear separating the Gulf and the Atlantic at that point.

Historic evidence, mariners' evidence, geological evidence defining the Straits of Florida and the Florida Keys as being in the Gulf of Mexico was totally ignored by the Master.

All of this was subordinate to one piece of evidence, a map, which, as I pointed out, on its face, relies, its persuasive effect, on the very point for which it was used.

The testimony of the State is quite persuasive. Dr. Ginsburg testified, he referred to the Jurist Text, beginning with the 1957 edition of the Encyclopedia Britannica, including the '71 edition of McGraw-Hill Encyclopedia of

Science and Technology, the Bulletin of Geological Society of American, 1971, the 1972 edition of the same Bulletin; he also -- in each of these it refers to the Florida Shelf or the Florida Platform, including the Keys and the Tortugas entirely within the Gulf of Mexico.

In addition, he testified how topography identifies the dividing line, the submarine topography visualized as a terrestrial landscape, would separate the Gulf and the Atlantic Basin. He testifies, at 25 degrees, 40 minutes north; with the Keys and the Tortugas and the Florida shrimps in the Gulf.

He testified how sediment indicates the dividing line. He said there is a relatively abrupt change between the coral reef limestone south of Soldier Key to Atlantic type sandy barrier islands north of Cape Florida and that that is the major change in the coastal morphology.

He also testified as to the organisms that indicates the dividing line.

So our position, therefore, is that the configuration of the sea floor should control. The Straits of Florida are part of the Gulf, since they would drain into the Gulf if they were dried up one basis.

The basis for this position is that submarine topography should follow the same criteria as terrestrial topography. Dry land is considered to be part of the Basin

into which it drains, since the Straits of Florida would drain into the Gulf, if on dry land they are a part of the Gulf of Mexico Basin, they are not part of the Atlantic Ocean.

So the weight and the quality of the evidence clearly indicates that Florida's contention as to the location of the Gulf of Mexico is correct.

Thank you.

MR. CHIEF JUSTICE BURGER: I believe your time is up, Mr. Jones.

Thank you, Mr. Attorney General.

Thank you, Mr. Jones.

The case is submitted.

[Whereupon, at 11:59 o'clock, a.m., the case in the above-entitled matter was submitted.]

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