In the

Supreme Court of the United States

UNITED STATES,

Petitioner,

V.

UNITED CONTINENTAL TUNA CORP.,

Respondent.

No. 74-869

Washington, D. C.
November 3, 1975

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UNITED STATES, Petitioner,	:	
v.	:	No. 74-869
UNITED CONTINENTAL TUNA CORP., Respondent.	:	

Washington, D. C.,

Monday, November 3, 1975.

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

BEFORE:

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

APPEARANCES:

ROBERT E. KOPP, ESQ., Attorney, Department of Justice, Washington, D. C. 20530; on behalf of the Petitioner.

FRANCIS J. MacLAUGHLIN, ESQ., Lillick McHose & Charles, 611 West Sixth Street, 28th Floor, Los Angeles, California 90017; on behalf of the Respondent.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments first this morning in No. 74-869, United States against United Continental Tuna Corporation.

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

ORAL ARGUMENT OF ROBERT E. KOPP, ESQ.,

ON BEHALF OF THE PETITIONER

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

This case presents the question of whether Congress in 1960, when it amended the Suits in Admiralty Act, appealed by implication the Public Vessels Act of 1925.

The Suits in Admiralty Act, in general, expresses the consent of the United States to be sued in admiralty. The Public Vessels Act, however, contains specific requirements which pertain only to suits involving public vessels.

It's the position of the respondent,and of the Court of Appeals below, that when you have a public vessel that's involved, the conditions of the Suits in Admiralty Act only have to be satisfied.

QUESTION: Is there a statutory definition of a public vessel?

MR. KOPP: No, Your Honor, there is no statutory definition. One of the problems in the litigation is what is the effect of the absence of no definition and the question

of drawing the line as to what is a public vessel or what is not a public vessel.

QUESTION: In any event, I suppose it's conceded that a United States Navy destroyer is a public vessel?

MR. KOPP: That's right. In this case it's absolutely clear that we have a public vessel that's involved.

This particular case arose as the result of a collision which occurred off the coast of California, between the Navy destroyer and a fishing vessel owned by the respondent, a Philippine corporation -- although, I might add, that this Philippine corporation, in turn, was owned by American stockholders.

The collision occurred, and the fishing vessel, according to the complaint, was sunk. The respondent then brought suit in the District Court, alleging jurisdiction under both the Suits in Admiralty Act and the Public Vessebs Act.

The government moved for summary judgment. In our motion, we argued that this was the case arising under the Public Vessels Act. It involved a public vessel. Therefore, the suit had to satisfy the conditions of the Public Vessels Act, which included a requirement of a showing of reciprocity in suits by foreign nationals.

The reciprocity requirement had not been met here, and therefore we argued that the suit should be dismissed.

The District Court agreed, and entered summary judg-

ment for the United States.

The Court of Appeals, however, reversed. According to the Court of Appeals, the Suits in Admiralty Act, as it currently stands, as a result of the 1960 amendments, expresses generally the consent of the United States to be sued in admiralty. No longer when you have a public vessel that's involved, although prior to 1960 you had to do so, you had to meet the specific requirements of the Public Vessels Act.

Accordingly, the Court found that since the general conditions of the Suits in Admiralty Act had been satisfied, that the suit could proceed, and the Court of Appeals reversed and remanded.

QUESTION: Prior to 1960, Mr. Kopp, when, as I understand it, an action could be brought against a government-owned merchant vessel, under the Suits in Admiralty Act, would that have been a public vessel?

MR. KOPP: No. Prior to 1960, you had suits involving merchant vessels, which could be brought only under the Suits in Admiralty Act. Suits involving public vessels, which could be brought only under the Public Vessels Act. And one of the problems in that particular area, which I will get to in discussing the legislative history, is that you had cases that didn't fit into either category, where there wasn't a public vessel involved, there wasn't a merchant vessel involved, and it was very difficult if you had a contract suit, because this

meant you had to sue in the Court of Claims.

QUESTION: Well, why couldn't you sue under the Suits in Admiralty Act, if you were suing a United States owned merchant vessel?

MR. KOPP: If you were suing --

QUESTION: Rather, under the Public Vessels Act.

MR. KOPP: Because the Public Vessels Act -- there was a distinction set up between the Public Vessels Act, between a public vessel and a merchant vessel, there was a basic distinction; and that a merchant vessel was to be distinguished from a public vessel. You could have one or the other. This was a rigid dichotomy that was set out, and you couldn't in fact have a situation where you had a suit that involved what you would call a public vessel that would also fall into the merchant vessel category.

The law drew a rigid dichotomy.

QUESTION: Well, was that just a construction of the statute? It wasn't in the statute, was it?

MR. KOPP: That's right, that was the construction of the statute, but that was done explicitly by the Congress. The Congress, when it passed the Suits in Admiralty Act, in fact, intended to draw a rigid dichotomy. It intended, in the Suits in Admiralty Act, to deal only with merchant vessel suits. The Public Vessels Act was passed five years later, and it contained additional requirements that Congress felt necessary

for suits involving public vessels such as government warships, for instance.

QUESTION: You said there wasn't a statutory definition of the term "public vessel", why did Congress use such a phrase? It's not a -- has there been a development -- a definition in the case law, admiralty law?

It doesn't say military vessel or naval vessel or anything that would be more familiar; public vessel certainly doesn't have very much of a common meaning, does it?

MR. KOPP: Well, what happened was that shortly before these two statutes were passed, Congress decided -- or this Court decided a case, The Lake Monroe, which involved a statute, the Shipping Act, whereby Congress had said that the merchant vessels owned by the United States were subject to all the ordinary rules of admiralty. So that you had a decision of this Court dealing specifically with the concept of merchant vessels, that said that merchant vessels of the United States could be sued, and were, in fact, subject to all the usual admiralty procedures.

So, in reaction to this decision, the Congress passed the Suits in Admiralty Act and the Congress had before it the specific situation of a merchant vessel, and it dealt with that specific situation.

There was --

QUESTION: Excuse me. I didn't want to interrupt you.

MR. KOPP: There was, in fact, a movement in the Congress in 1920 to expand the scope of the Suits in Admiralty Act to cover all vessels owned by the United States. But that was initially defeated because the Congress felt that there were further problems, if you had suits involving warships, that had to be dealt with, and there was a need for time to think about these particular problems.

QUESTION: My question was, where did the phrase "public vessel" come from? Do you know?

Does it have any case law meaning? Has there been a -- is it --

MR. KOPP: No, I think the phrase that produced this case was really not "public vessel" but was "merchant vessel".

QUESTION: Yes. Exactly. Quite a difference.

MR. KOPP: That's right. That's right. And, no, I think what happened was that back in 1920 everybody had in mind the idea that all vessels of the United States were, in one sense, public vessels; but there was this fixed judicial construction of what was a merchant vessel. So the Congress drew the definition, or drew the line, --

QUESTION: But it didn't draw a definition, did it?

MR. KOPP: It did, because it confined the Suits in Admiralty Act only to merchant vessels. And then --

QUESTION: Well, by implication, then, a "public vessel" is any vessel owned or operated by the United States

that is not a merchant vessel?

MR. KOPP: That's right. You had between --

QUESTION: And you get into ambiguous situations, don't you?

MR. KOPP: That's right, Mr. Justice.

Now, the government saw fit --

QUESTION: Troop ships or cargo ships chartered by the Navy or the Army and so on.

MR. KOPP: Well, actually, what happened was -- which --

QUESTION: Passenger ships, not troop ships; passenger ships. Merchant freighters.

MR. KOPP: That's right. You had some very difficult situations that arose as to what was a merchant vessel or what was a public vessel, and this led to a very difficult problem for litigants, because it was all right for them, if they had a suit, if they could show that their suit involved a merchant vessel or that it involved a public vessel; because then they were guaranteed to be able to bring suit in the district court.

But there were some very difficult problems in drawing the line. There were some cases where you had a situation where a court might very well say this suit didn't involve a public vessel, this suit didn't involve a merchant vessel, therefore it doesn't fall under either the Suits in Admiralty Act or the Public Vessels Act. And if you had a contract --

QUESTION: What kind of vessel would that be?

MR. KOPP: Well, take, for instance, the situation of a privately owned vessel, which is chartered by the government and used by the government to carry war materials. Now, this is a situation that wouldn't involve a case that could be brought under the Public Vessels Act, because you had a privately owned vessel. So the Public Vessels Act was out.

Now, according to a decision of the Court of Appeals, by Judge Learned Hand, this also involved the case where you didn't have a merchant vessel, because the ship was not being operated to carry merchant cargo, it was being operated to carry public cargo: war material.

So, according to the Court of Appeals for the Second Circuit, in the Calmar Steamship case, this particular situation fell under neither the Suits in Admiralty Act nor the Public Vessels Act. Therefore, the Court said, since you had a contract claim that was involved and since your contract claim was for more than $10,000, this suit could be brought only in the Court of Claims.

Now, that Second Circuit decision was, in fact, reversed by this Court; but the example of the Second Circuit decision was fresh on the minds of the drafters in Congress of the 1960 amendment. And the Calmar Steamship case was, in fact, one of the situations that they attempted to deal with in the 1960 amendment.

Now, the 1960 amendment was passed by Congress because of this very problem demonstrated by the Calmar case, where you had cases that didn't fall into the category of public vessels or merchant vessels, and they could very well fall into the Court of Claims. And what Congress did to deal with this problem in 1960, it did two things: it eliminated the old distinction that you had between merchant vessels and public vessels, because this distinction could throw some cases out of either classification; secondly, Congress wanted to make it very clear that all miscellaneous type of cases, all cases that were hard to classify, but were in admiralty, would fall into the district courts.

So this led to the 1960 amendment and the specific language which we now have before this Court. The Congress amended the language of the Suits in Admiralty Act in 742 to come to its present meaning, which is -- and it's set forth on page 3:

"In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed," -- now, here's what was added in 1960 -- "or if a private person or property were involved, a proceeding in admiralty could be maintained".

The 1960 amendment added the language "or if a private person or property were involved." It also subtracted former language in that section, which had included a proviso that that

section apply only where merchant vessels were involved. So you eliminated -- the Congress eliminated the old distinction between merchant vessels and public vessels.

Further, the Congress in this "or if a private person or property" language added language to the Act that was in fact as broad as the scope of the entire admiralty jurisdiction, and it did this to make it clear that all admiralty cases against the United States would now come into the district courts. You could no longer have the problem of cases falling into the Court of Claims.

Now, the respondent argues that this change had the consequence of erasing the Public Vessels Act. The Public Vessels Act, prior to this time, clearly applied only to public vessels. And the respondent now contends that because its situation, a situation involving a public vessel, is the situation "or if a private person or property were involved", a proceeding could be maintained, that now it could be maintained in its action under the Suits in Admiralty Act.

But Congress did not feel it necessary, when it was amending the Suits in Admiralty Act in 1960, to mention the Public Vessels Act, for a very particular reason; and that was because the Public Vessels Act, in Section 782, contains language which, in effect, makes it clear that when there is any conflict between the Public Vessels Act and the Suits in Admiralty Act, the Public Vessels Act must prevail.

Now, this particular language is the language that's set out at the bottom of page 4 of our brief, in Section 782 of the Public Vessels Act. Section 782, in the very last sentence, provides: "Such suits" -- now, those are suits set out in Section 781 above, "for damages caused by a public vessel of the United States" -- "Such suits shall be subject to and proceed in accordance with the provisions of Chapter 20 of this title, the Suits in Admiralty Act, or any amendment thereof, insofar as the same are not inconsistent herewith."

In other words, we have in Section 782 a specific provision that declares that in the event of any conflict between the two statutes, the terms of the Public Vessels Act must prevail.

Thus, in 1960 Congress felt no need to include any express guaranty of the Public Vessels Act was not being repealed, because it could rest confidently upon this language in Section 782 to prevent this result.

QUESTION: You would concede -- I think you have in your brief, Mr. Kopp -- that taking the language of the Suits in Admiralty Act, as amended in 1960, without reference to any other legislation, that the Court of Appeals was clearly correct here?

MR. KOPP: If the language of the Suits in Admiralty Act is read in isolation --

QUESTION: That's what I mean.

MR. KOPP: -- and by itself.

But we would submit that if that language is read in context, and in context with the Public Vessels Act --

QUESTION: And also in context with its legislative history.

MR. KOPP: And also in context with its legislative history -- a totally different result is reached. Because we have this very provision that reconciles the two statutes.

QUESTION: And your reference is to "insofar as the same are not inconsistent herewith"?

MR. KOPP: That's right, Mr. Justice.

QUESTION: Well, what's the inconsistency?

MR. KOPP: Okay. In this particular case, the Public Vessels Act contains a reciprocity requirement in Section 785. It provides -- and this is at the top of page 5:

"No suit may be brought under sections 781 to 790 of this title" -- that actually means under this Act, that's the way it was in the original statute -- "by a national of any foreign government unless it shall appear to the satisfaction of the court ... that said government, under similar circumstances, allows nationals of the United States to sue in its courts."

Now, one could, in fact, read that provision as not creating a conflict with the Suits in Admiralty Act. But its plain meaning and intent is that obviously Congress felt that

if you had a suit involving a public vessel of the United States and a foreign national were involved, the foreign national could not bring that suit unless he could meet a showing of reciprocity. And it's certainly inconsistent with that interpretation of Section 785 to then turn around and say that the foreign national, however, could bring suit under the Suits in Admiralty Act.

The Congress would, in fact, be giving foreign nationals a more favored status than they would be giving their own citizens, because American citizens in suits involving public vessels would have to sue under the Public Vessels Act.

So that's why we say there is such a conflict. It's not a strictly -- it's not a conflict that's inherent as a matter of linguistics, but I think in terms of the plain meaning of the statutes, the conflict is quite obvious.

QUESTION: Well, there's at least one other limitation of importance, isn't there?

MR. KOPP: That's right. Now, the Public Vessels Act was enacted because there were certain requirements that Congress felt really were essential in suits involving public vessels, and there are only a handful of such requirements.

Perhaps the one that was most in the forefront of the Congress at the time that it was enacting the Public Vessels Act was a provision which is now in Section 784 of the Public Vessels Act. That's not in our brief. Section 784, which

provides that subpoenas may not be issued to the members of the crew of a public vessel without the consent of the captain or the Secretary of the Department concerned. This was a condition that the Congress felt was unique to public vessels, and it was very important to have that in there, because if you had a suit involving a warship, it would be intolerable to permit the vessel to be tied up at a dock while its crew members were off testifying in court.

So that that's why we have Section 784.

QUESTION: And then you have the other provision that, at least in time of war, the Secretary of the Navy has the unreviewable power to stay all proceedings.

MR. KOPP: That's right. In 1944, that provision was enacted and it gives the Secretary the automatic right to require a stay of all proceedings under the Public Vessels Act.

These provisions would, as a practical matter, be totally voided by the decision of the Court of Appeals, which would permit anybody to bring a suit under the Suits in Admiralty Act today, instead of the Public Vessels Act.

QUESTION: I'd like to get back again, Mr. Kopp, to your colloqury with Mr. Justice Stewart.

What is your submission as to the limit of public vessels?

MR. KOPP: A public vessel, we would submit, means a vessel that is owned by the United States and operated solely

for governmental purposes.

QUESTION: As, for example, a Coast Guard dredge, that dredges a harbor?

MR. KOPP: That's right.

QUESTION: That would be a public vessel?

MR. KOPP: That would be. This is to be distinguished from the situation, for instance, where you have the United States, which charters a vessel but with a private crew, and that crew remains in control of the vessel throughout the voyage.

QUESTION: But even in cases, I gather, of charter vessels, you may have a public vessel; is that it?

MR. KOPP: If the United States in fact has a bare boat charter, a charter where it acquires ownership for the purpose of the voyage. Government ownership is a prerequisite for --

QUESTION: Government ownership. But on a bare boat charter, would it have to be --

QUESTION: That's the equivalent of ownership.

MR. KOPP: It's the equivalent of ownership.

QUESTION: And the United States would have to provide its own crew?

MR. KOPP: That's right. This --

QUESTION: Well, your definition is self-defining, it's a bootstrap definition; any vessel owned and operated by the United States is, presumptively, owned and operated for the

government of the United States.

MR. KOPP: That's right, and it's a public vessel; but it's not a merchant vessel, a vessel that's being operated for hire.

The typical situation involving a merchant vessel is the situation that arises where the government, to develop the merchant marine, has to build and own a freighter, for instance, because there isn't simply enough capacity in the private industry to do so. So the government builds this freighter, it has title to the freighter, and then it lets it out to government contractors who use it in ordinary commercial intercourse.

Now, that's the prime example of a merchant vessel. But it --

QUESTION: Well, not the prime example of a merchant vessel. It may be an example of a merchant vessel owned by --

MR. KOPP: An example.

QUESTION: -- the United States.

MR. KOPP: That's right.

QUESTION: That's not a public vessel.

MR. KOPP: It's not a public vessel; that's right.

QUESTION: What about a ship like the old UNITED STATES?

MR. KOPP: I'm sorry, Mr. Justice --

QUESTION: Passenger vessel. Wasn't it called THE

UNITED STATES, or something like that?

QUESTION: It was, yes.

MR. KOPP: If it was operated as a troop transport, for instance, --

QUESTION: Oh, no, it's on its regular passenger run, with passengers on it; it's owned by the United States, and I assume it's in the interest of the United States.

MR. KOPP: If it was in fact owned and operated by the United States, as opposed to a government contract, I would say that would be a public vessel.

QUESTION: And yet it would be a merchant vessel.

MR. KOPP: No, because it would not be operated for private profit, it would be operated for the public interest.

QUESTION: And now we've got another one in here: whether it's public interest or private.

MR. KOPP: Well, you --

QUESTION: That's a merchant vessel, it has the labor unions and everything else that every other merchant vessel has. Had.

MR. KOPP: Well, I'm not saying the drawing of a line today between merchant vessel and public vessel is a totally automatic thing. All I'm saying is that the 1960 amendment was not enacted because of the problem of drawing the distinction, per se, between public vessels and merchant vessels; rather, it was drawn because you could have cases where you had

neither a public vessel nor a merchant vessel. The public vessel/merchant vessel distinction could throw some cases into the Court of Claims. And that was why the 1960 amendment was enacted.

Now, there's absolutely nothing in the legislative history to --

QUESTION: I take it, you suggest that if there was a chartered troop carrier here that had been involved in this accident, the suit would have had to have been under the Suits in Admiralty Act? Or it could have been.

MR. KOPP: It would depend on how the government had chartered it.

QUESTION: Well, it wasn't a bare boat charter.

MR. KOPP: Okay, then it would be under the Suits in Admiralty Act. And that's what --

QUESTION: And there would need to be no reciprocity.

MR. KOPP: There would need to be no reciprocity; that's right.

QUESTION: But if the destroyer that was escorting the ship gets in the accident, there must be reciprocity?

MR. KOPP: That's right. This is the holding of the Calmar Steamship case in this Court, where the Court was faced with this very similar problem: a private vessel transporting troops and war material and manned by a private crew. And the Court there, in effect, said that the consequence of our holding

that this case does not involve a merchant vessel would be to throw this suit into the Court of Claims. Therefore, because we don't think the Court of Claims is properly an admiralty court, we are going to conclude, essentially as a matter of policy, that we have a merchant vessel involved in this situation. And therefore the plaintiff could bring suit in the district court under the Suits in Admiralty Act.

And it was because of a problem as was presented by the Calmar case that the 1960 amendment was enacted.

But, now, there's absolutely nothing in the legislative history to indicate any way that Congress intended to repeal the Public Vessels Act. Congress was concerned with this very specific problem of the jurisdiction of the Court of Claims in relation to the district court.

The Public Vessels Act was not amended in any way. In the legislative history there is absolutely no discussion at all that the terms of the Public Vessels Act are onerous or unjust.

One would think, if Congress was going about repealing the Public Vessels Act, at the very least there would be some discussion along those lines. There's no discussion of any of the differences between the Suits in Admiralty Act and the Public Vessels Act.

Again, if Congress were rationally going to go about repealing the two statutes, you would expect at least a bare

minimum of discussion, for instance, as to why it's unjust to have a reciprocity requirement.

QUESTION: So you say that you may read a statute different from what it says on its face, just because of congressional silence, and the existence of another statute?

MR. KOPP: Well, our position is not just that, because we say that on the face of the statutes, when they are read in context, --

QUESTION: Well, yes, but that wasn't what I said. I said, on the face of the Suits in Admiralty Act, you don't read the words the way they appear to read.

MR. KOPP: If one --

QUESTION: Because of the existence of another statute, and silence.

MR. KOPP: Because of the existence of another statute, which indicates how the Suits in Admiralty Act should be read, and silence. And, of course, we have in this case --

QUESTION: So the legislative history you're referring to is silence.

MR. KOPP: That's -- there's absolutely no intent at all reflected in that legislative history to repeal the Public Vessels Act.

We have here really a classic case of repeal by implication, where, under the Court of Appeals decision, Congress, without thinking about the Public Vessels Act, just simply --

and not amending it in any way -- simply repealed it.

QUESTION: Well, really, your argument, at best, is by analogy there, isn't it, because if the Court of Appeals is right, the Public Vessels Act remains as a source of authority for bringing suits, it's just another statute has been expanded to overlap with it a great deal. Maybe you've got argument by analogy, but it isn't a repealer, certainly.

MR. KOPP: Well, it is in fact a repealer, Mr. Justice Rehnquist, and the reason is because the Public Vessels Act consists of a series of extra conditions, more onerous conditions, that Congress has imposed upon the Suits in Admiralty Act for suits involving public vessels. So that no plaintiff today, given his choice between the two statutes, is going to sue under the Public Vessels Act. He's always going to sue under the Suits in Admiralty Act. Because the Public Vessels Act, for him, simply means more trouble.

For instance, the rules on interest are less favorable.

QUESTION: But it's still there and it could apply to his case, if he chose to have it.

MR. KOPP: But no one, no litigant in their right mind would ever choose to apply the Public Vessels Act, because they have available the Suits in Admiralty Act, which is the more favorable statute.

Now, there's one situation where the Public Vessels

Act is in fact more favorable to litigants, and that's in the area of venue. The Public Vessels Act and the Suits in Admiralty Act both provide that when you have a suit that's brought in the district where the vessel can be found, you have to bring suit in that district. If the vessel can't be found, then you can bring the suit in the district where the plaintiff has his place of business or residence.

The Suits in Admiralty Act then stops there. But the Public Vessels Act goes on to say if the suit -- if the vessel can't be found, or if the plaintiff does not have his place of residence, then you can bring suit in any court.

So, in a situation where the vessel can't be found, and the plaintiff has no place in residence, he might be able to get venue under the Public Vessels Act, but not under the Suits in Admiralty Act.

But that's not a very real distinction, because why would Congress have set up a statutory scheme that turns, for instance, on where you can find venue?

Further, virtually all public vessels, at some point within a two-year period, return to the United States and can be found within the United States.

So that this little distinction really is meaningless.

MR. CHIEF JUSTICE BURGER: Your time has expired, Mr. Kopp.

Mr. MacLaughlin.

ORAL ARGUMENT OF FRANCIS J. MacLAUGHLIN, ESQ.,

ON BEHALF OF THE RESPONDENT

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

I would like to begin my discussion of this case by asking the Court to consider in practical terms the significance of this decision and what the government is asking us to hold.

Now, if the role of tort feasor and innocent victim in this collision were reversed -- that is, if the Philippine vessel had been negligent, and it were the government's vessel which were damaged or sunk -- the government's remedies are quite clear. And there is no question at all but what they could have that Philippine vessel arrested and sold in rem, if necessary, in order to satisfy their damage claim.

Also, they could commence an in personam action against the Philippine owner here in the courts of our country, as the government has done in the past, and it has standing to do it in the courts of the Philippines or in any other civilized nation which follows the general maritime law.

Now, that would be the situation where the government has been damaged.

But in this case it's the Philippine shipowner who has been damaged, and it's the government, we allege, which has been negligent.

Now, what the government is saying, in effect, in this

lawsuit, as I understand their position, is that liability arising from ship collisions in these circumstances should be a one-way street. If the government has been damaged, it has the right to recover; but if a Philippine shipowner has been unfortunate enough to have suffered damage as a result of a collision, he has no right to sue, because --

QUESTION: Well, I didn't think the government was making that analogy,--

QUESTION: Before 1960.

QUESTION: -- Mr. MacLaughlin. I thought they were juxtaposing the position of an American national damaged by a Philippine ship, and comparing his right to sue in the Philippine Courts. Is that not the way he argued?

MR. MacLAUGHLIN: Well, Mr. Chief Justice, I'm not sure I heard -- I listened closely enough to answer your question. But with --

QUESTION: Isn't that the heart of the reciprocity issue?

MR. MacLAUGHLIN: Well, that's the way the statute is worded, and that's what I'm suggesting is unfair about it. Because here is this poor little Philippine shipowner, and the United States can sue him, they can sell his vessel *in rem* to pay their damage claim; but the government says he has no claim against them.

QUESTION: Well, the fact that a statute is unfair in

some respects, does that make it totally vulnerable?

MR. MacLAUGHLIN: No, Your Honor. And I do want to discuss the statute itself, but I started out by asking the Court to consider the case in terms of practical, equitable considerations.

And what I'm suggesting is that a result which deprives a Philippine shipowner of his right to recover his damages from the government is basically unfair.

QUESTION: But there's no doubt that would have been the result before the 1960 amendment, is there?

MR. MacLAUGHLIN: No question at all.

QUESTION: And that's the way sovereign immunity is operated forever.

MR. MacLAUGHLIN: That's the way it's operated forever, --

QUESTION: And the rule in our cases has been that you -- don't you construe congressional waivers of sovereign immunity rather strictly?

MR. MacLAUGHLIN: It's exactly the opposite, Mr. --

QUESTION: Oh, really?

MR. MacLAUGHLIN: -- Justice White. They're construed liberally.

QUESTION: Liberally for whom?

MR. MacLAUGHLIN: Liberally in favor of the claimant.

QUESTION: As the Court of Appeals said in this case,

in any event.

MR. MacLAUGHLIN: That's correct. And several courts of appeals have said that, and this Court itself, in the past, has --

QUESTION: But you need express waivers by Congress, don't you?

MR. MacLAUGHLIN: Oh, that's correct, but the waiver, once made by Congress, is liberally construed in favor of claimants.

QUESTION: Well, the waiver here is with respect to -- is with respect to all kinds of government vessels.

MR. MacLAUGHLIN: That's correct, Your Honor.

QUESTION: So it isn't -- is it a sovereign immunity?

MR. MacLAUGHLIN: Well, these are really reverse sides of the same coin. The government says, "we can't be sued unless we have consented to be sued", and this consent is liberally construed under the cases as we read them.

QUESTION: Are you suggesting that there is something inherently unfair about a statute which provides that foreign nationals can sue in the American courts and recover if the nation of that foreign national extends the same rights to American citizens?

MR. MacLAUGHLIN: Well, if the same right were extended to American citizens there, there would be nothing unfair about it.

QUESTION: Well, that's the heart of a reciprocity statute always, isn't it?

MR. MacLAUGHLIN: Well, that's the way the statute is phrased. But what I'm suggesting is unfair is: how about the individual Philippine citizen who can be sued in his own country by the United States, or he can be sued here to satisfy their damage claim? I'm suggesting that it's unfair to deny equal rights to him as against the United States.

Now, there may well be good reasons--in fact, I'm persuaded that there are -- to deny the Philippine Government, or any other government which refuses to submit to suit, to deny them the right to recover from the United States.

But it's basically unfair to deny an individual citizen,who is subject to the United States' claim, equal and reciprocal rights under the law.

Now, we believe that Congress -- if I may address myself to the Suits in Admiralty Act -- we believe that Congress by this Act, as amended in 1960, has abolished the pre-existing distinction which existed between public vessels and merchant vessels.

The legislative history of the Act recites, according to the Senate Report, that a substantial portion of the jurisdictional uncertainty in this area is attributable to the confusion in establishing whether a vessel is a merchant vessel or a public vessel. And the courts in the late Forties and

early Fifties had tremendous difficulty trying to decide what were public vessels and what were merchant vessels, and was there a gap between them.

And the Senate and the House looked at this confusion, and their report reflects that they were concerned about it. And at the bottom, or after reciting a number of these cases, the Senate Report reflects what the Senate wanted to do about it. And it says that the decisive question in a lawsuit should, as far as possible, be its merits and not esoteric technical problems of procedure.

So this was the Senate's attitude, and this was the House's attitude when it considered the 1960 amendment. We know that they were upset about the confusion. We know that they were upset about the technical disposition of cases, and that they desired these cases to be heard against the government on their merits.

Now, the statute which they adopted is perfectly plain. It eliminated the old restriction concerning merchant vessels, so that the statute, as now worded, applies generally to all types of vessels.

So the statute on its face is plain. The government says that if we look at the legislative intent we will see that Congress really intended, after all, to preserve the public vessel distinction and to separate out from the Suits in Admiralty Act damage caused by public vessels.

But the legislative history is completely silent on that. The government has been unable to show, or to invite our attention to any portion of the legislative history which would show that.

Indeed, if I may say so, or invite the Court's attention to this Court's earlier decision in Amell vs. United States, which was decided in 1966, shortly after this Act was amended, the Court stated in that case that the old distinction was abolished.

And the government's brief in that case, which is a part of the records of this Court, is here before me, and if I may quote from page 19, the government at that time reviewed these jurisdictional problems and then said: The same problem led Congress in the 1960 Act to abolish the distinction between public and merchant government vessels, which had caused uncertainty and led to frequent misfilings.

So this was the position of the government in 1965, when this issue was last presented to the Court.

QUESTION: But that doesn't address itself to the reciprocity issue, does it?

MR. MacLAUGHLIN: No, it does not. It addresses itself to the meaning and interpretation and purpose of the Suits in Admiralty Act.

I'm suggesting that the Suits in Admiralty Act, as amended in 1960, abolished the merchant/public vessel distinc-

tion, and now encompasses claims caused by any type of vessel.

I'm suggesting -- in fact I'm inviting the Court's attention to the fact that this was precisely the government's position when it presented its brief to the Court in connection with the Amell case.

Now, the government counsel has made an argument here this morning which I did not see in his brief, though it may well be there, and he's invited our attention to this sentence which appears in Section 782 of the Public Vessels Act --

QUESTION: Where are you reading from, now?

MR. MacLAUGHLIN: I'm on page 4 of the petitioner's brief, Your Honor.

QUESTION: The main brief?

MR. MacLAUGHLIN: Yes, Mr. Chief Justice, at the bottom of the page. And the sentence to which counsel invited our attention reads: "Such suits shall be subject to and proceed in accordance with the provisions of section 20 of this title, the Suits in Admiralty Act, or any amendment thereof, insofar as the same are not inconsistent herewith."

I think what counsel has suggested, or what he means to suggest, is that this sentence means that when there is an overlap between the Acts, that the claimant must proceed under the Public Vessels Act.

Now, I don't read it that way. I think what this says is that when the claimant is proceeding under the Public

Vessels Act, the procedure then will be as specified in the Suits in Admiralty Act, except where the Public Vessels Act otherwise provides.

It does not say that a claimant must proceed in the event of an overlap of jurisdiction. It does not say that a claimant must proceed under the Public Vessels Act, or that, in that event, the Public Vessels Act supersedes the provisions of the Suits in Admiralty Act.

QUESTION: Well, does that, Mr. MacLaughlin, give any emphasis to the first few words, "such suits shall be subject to"?

MR. MacLAUGHLIN: I think "such suits" refers to suits which are brought under the Public Vessels Act. And it is saying that when a claimant sues under the Public Vessels Act, that claim will be heard in accordance with the Public Vessels Act and in accordance with the provisions of the Suits in Admiralty Act, except when the provisions of the Suits in Admiralty Act are inconsistent.

In other words, it is prescribing a procedure to be followed when a claim is made under the Public Vessels Act, but it does not say, I respectfully submit, it does not say that a claimant must proceed under this Act; and it does not say that in the event of dual coverage under the Acts that the Public Vessels Act supersedes the Suits in Admiralty Act.

QUESTION: Mr. Kopp [sic], if you're correct, and

the Court of Appeals is correct, why would any plaintiff ever proceed under the Public Vessels Act? Rather than the Suits in Admiralty Act.

MR. MacLAUGHLIN: Well, Mr. Justice Stewart, the only reason I can think of is the one which the Court of Appeals suggested, and that is that the venue provisions are slightly different and in a particular case it might well be that a claimant could not secure venue under the Suits in Admiralty Act, but could do so under the Public Vessels Act.

QUESTION: Excuse me, Mr. MacLaughlin, I called you by your -- and that's the same kind of situation mentioned by Mr. Kopp. You can't think of anything else, any other possible reason?

MR. MacLAUGHLIN: No, I can't, and that is the only situation I can think of.

QUESTION: Yes.

MR. MacLAUGHLIN: We have an alternative theory of recovery, which we presented to the district court and to the Court of Appeals, and if, for some reason, this Court decides to reverse the Court of Appeals on the Suits in Admiralty issue, we would respectfully request that it consider our claim under the Public Vessels Act.

And, in particular, we invite the Court's attention to the admiralty doctrine under which a shipowner's nationality is determined according to the nationality of the real or

beneficial owner of the company.

We looked through the technical state of incorporation, and it is only right in this day and age to do so, because many shipowners, in the United States and elsewhere, incorporate and register vessels under flags of convenience, and you can't tell anything about their nationality, and they ought not to be permitted to escape from liabilities rightfully imposed or would be imposed against them in their own country.

QUESTION: But the Court of Appeals didn't consider that.

MR. MacLAUGHLIN: That's right. That's right. The Court of Appeals decided the case on the basis of the Suits in Admiralty Act, and did not rule upon our alternative theory.

QUESTION: If there were more of these amendments, that would come from the kinds of cases that didn't fall under the Suits in Admiralty Act or the Public Vessels Act, I gather?

MR. MacLAUGHLIN: There was a real question as to whether or not --

QUESTION: Well, let's assume that there were. And that Congress was aiming at curing that, I take it. But those cases were -- could still be -- the cases before 1960 that didn't fall under either one of those Acts could still be brought under some -- in some other court? Could be brought as a federal tort claim or in the Court of Claims?

MR. MacLAUGHLIN: Well, the courts were in conflict on

that issue, because there was a real question as to whether or not a vessel-caused claim would lie under the Federal Tort Claims Act or under any other Act.

QUESTION: But some courts held that they could?

MR. MacLAUGHLIN: I think most of them held that they could not. So that if a claimant --

QUESTION: The word "contracting" is --

MR. MacLAUGHLIN: That's right.

So that if a claimant unfortunately could not bring himself within the definition of a public vessel nor within the definition of a merchant vessel, he had no remedies.

QUESTION: Well, was that because of some lack of an authorization to bring suit, or was it because there wasn't any waiver of sovereign immunity?

MR. MacLAUGHLIN: I think the courts construed it as a lack of waiver of sovereign immunity. The government --

QUESTION: Well now, is there something in these amendments which would indicate that a suit that fell outside those Acts before the amendment, but now falls within one or the other or both of them, could not be brought in the Court of Claims/or under the Federal Tort Claims Act?

MR. MacLAUGHLIN: No, you --

QUESTION: Is there the same possibility there was before that --

MR. MacLAUGHLIN: No, I think not. Because the

language adopted in 1960 is far broader. It says that where, if a vessel were privately owned, a proceeding --

QUESTION: Well, I understand that, but let's assume that that was perfectly clear, but what if you -- what if this case had been brought under the Federal Tort Claims Act?

MR. MacLAUGHLIN: It could not, because the Federal Tort Claims Act contains a provision which says that if there is jurisdiction under the Suits in Admiralty Act, --

QUESTION: Oh, I see; that's all right.

MR. MacLAUGHLIN: -- that it will not lie under the Federal Tort Claims Act.

QUESTION: And is that true -- you couldn't bring it in the Court of Claims?

MR. MacLAUGHLIN: I'm not aware of the rule with respect to that quote.

I have nothing further to add, Mr. Chief Justice. I would be happy to try to answer any further questions of the Court. But if there are none, I have nothing further.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. MacLaughlin. Thank you, Mr. Kopp.

The case is submitted.

[Whereupon, at 10:53 o'clock, a.m., the case in the above-entitled matter was submitted.]