

In the

Supreme Court of the United States

CECIL D. ANDRUS, SECRETARY OF
INTERIOR, ET AL.,
Petitioners,

v.

ALASKA, ET AL.,

and

KENAI PENINSULA BOROUGH,
Petitioner,

v.

ALASKA, ET AL.,

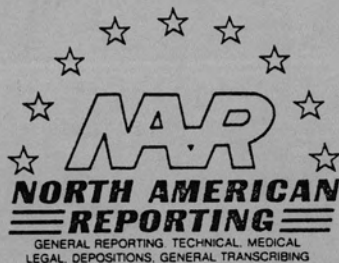
No. 79-1890

No. 79-1904

Washington, D.C.
January 13, 1981

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ORIGINAL



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IN THE SUPREME COURT OF THE UNITED STATES

CECIL D. ANDRUS, SECRETARY OF INTERIOR, :

ET AL., :

Petitioners, :

v. : No. 79-1890

ALASKA, ET AL., :

and :

KENAI PENINSULA BOROUGH, :

Petitioner, :

v. : No. 79-1904

ALASKA, ET AL. :

Washington, D.C.

Tuesday, January 13, 1981

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 10:14 o'clock a.m.

APPEARANCES:

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United States, U.S. Department of Justice, Washington, D.C.,
20530; on behalf of the Petitioners, Cecil D. Andrus,
Secretary of the Interior, et al.

CHARLES K. CRANSTON, ESQ., Cranston, Walters & Dahl,
310 K Street, Anchorage, Alaska 99501; on behalf of
the Petitioner, Kenai Peninsula Borough.

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State of Alaska, Department of Law, Pouch K., Juneau,
Alaska 99811; on behalf of the Respondents.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments first this morning in Andrus v. Alaska and the consolidated case. Mr. Claiborne, you may proceed whenever you are ready.

ORAL ARGUMENT OF LOUIS F. CLAIBORNE, ESQ.,
ON BEHALF OF THE FEDERAL PETITIONERS, CECIL D. ANDRUS, ET AL.

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

We deal this morning with the Kenai Moose Range which I am told has been renamed the Kenai National Wildlife Refuge a month ago in the enacted Alaska lands bill. That range or refuge is in south central Alaska, just south of Anchorage, and east of Cook Inlet.

It comprises approximately two million acres of lands, all within the Kenai Peninsula Borough, boroughs in Alaska being comparable to counties elsewhere. It was established by withdrawal of public domain or public lands in the United States, some 40 years ago. Ever since the mid-1950s oil and gas leases have been issued by the United States covering portions of that acreage and substantial revenues have been derived therefrom. Indeed, since 1965 approximately \$80 million in royalties, rents, and bonuses have accrued from those leases.

The issue presented to the Court is how those federal revenues from this refuge ought to be distributed,

1 whether according to the formula in the Mineral Leasing Act
2 of 1920, as Alaska maintains, which would have the result of
3 apportioning 90 percent, in the particular case of Alaska,
4 to the State and ten percent retained in the federal treasury;
5 or whether the appropriate formula is that ordained by the
6 Wildlife Refuge Revenue Sharing Act, an Act originally passed
7 in 1935 and amended in 1964, relevant to this case. According
8 to that formula, the same revenues would be divided 25 percent
9 to the county out of which these lands have been created, or
10 this refuge has been created, and the remainder, 75 percent,
11 would go to the Conservation Fund.

12 In practice, the first formula, the formula of the
13 Mineral Leasing Act of 1920, was followed. And indeed, until
14 anyone thought about it, which was so far as the record indicates
15 for the first time in 1975, that distribution formula obtained.
16 At that time, in 1975, the Fish and Wildlife Service in Alaska
17 wondered to itself, and then out loud, whether the right
18 formula was being applied. They accordingly inquired of the
19 Solicitor of the Department of the Interior for advice. He
20 gave the opinion that it was being done wrongly and that the
21 formula of the Refuge Act, 25 percent to the county, is the
22 one that should have obtained at least since 1964.

23 He, in turn, the Solicitor, asked the opinion of
24 the Comptroller General of the United States. The Comptroller
25 General agreed with the Solicitor and ruled accordingly.

1 Alaska then asked for reconsideration of that opinion, which
2 was duly given, but the Comptroller General adhered to his
3 view and reaffirmed his previous ruling.

4 At this point the Kenai Peninsula Borough would have
5 been the recipient under the Refuge Act and who would now
6 become the recipient under the ruling of the Comptroller
7 General, brought suit against the Secretary of the Interior
8 seeking a declaration that the Comptroller was indeed correct
9 and that his decision ought to be followed; and also asking
10 that the Secretary of the Interior be required to recoup the
11 monies now determined to have been erroneously paid to Alaska
12 rather than to the county in the previous decade.

13 Promptly thereafter the State of Alaska initiated a
14 separate lawsuit against the Secretary of the Interior, the
15 Secretary of the Treasury, and the Comptroller General, seek-
16 ing to set aside the ruling of the Comptroller General and to
17 obtain a declaration and an injunction that the old formula
18 that had been followed in practice should continue to be
19 followed, and that Alaska should continue to receive 90 percent
20 of these revenues.

21 The suits were consolidated in the district court
22 and in the meantime the monies accruing from the time of the
23 filing of the suits were held in suspense, where they still
24 are.

25 QUESTION: Mr. Claiborne, is there any attempt on

1 the part of the Government to recover the money paid between
2 1964 and 1975?

3 MR. CLAIBORNE: Your Honor, the Government resisted
4 the complaint of Kenai seeking to compel that action. The
5 ruling having gone against the Government in the district
6 court and the court of appeals because there's been no occa-
7 sion to consider whether, should that ruling be reversed here,
8 it would be appropriate to seek recoupment, in our view it's
9 a decision which the Government is free to embark upon but
10 cannot be compelled to undertake. No decision has been reached
11 with respect to what I've --

12 QUESTION: If you're right, Alaska has about \$50
13 million that it shouldn't have, doesn't it?

14 MR. CLAIBORNE: That is so, Mr. Justice Stevens.
15 It may well be that the appropriate course would be for the
16 United States to bring an action, if necessary, to recoup that
17 money for the benefit of the borough.

18 QUESTION: Have there been occasions, Mr. Claiborne,
19 where the United States had this type of a claim in broad
20 terms and took no action to enforce the claim?

21 MR. CLAIBORNE: I think, Mr. Chief Justice, without
22 being able to cite precedents, that one can find examples on
23 both sides; that is, cases in which the United States for
24 reasons of equity thought it improper to seek to redress the
25 past; other instances in which it was thought right to recoup

1 the money and redistribute it in accordance with what is now
2 declared to be the correct rule.

3 QUESTION: Well, Mr. Claiborne, both the question
4 of Justice Stevens and the question of the Chief Justice
5 suggest that the answer reached by the 9th Circuit is wrong
6 in this case. I realize there's a good deal of money turning
7 on the issue, but when you get right down to the statutory
8 materials and go to the presumption against implied repeals
9 and the specific governing the general and other such maxims,
10 on the legal issue isn't it pretty close to a coin toss?

11 MR. CLAIBORNE: I would not have thought so,
12 Mr. Justice Rehnquist, but I own that two courts have held
13 against our position and we cannot therefore say that it's
14 absolutely clearcut that the Government's view as announced by
15 the Comptroller General and as we urge here is the correct one.
16 I do invoke the plain meaning rule as the governing canon of
17 construction in this case and this seems in our submission a
18 peculiarly appropriate instance in which Congress spoke as
19 clearly as one could hope for, much more clearly than is the
20 usual case, and one in which one ought to accept Congress at
21 its word. And if one follows that analysis which we submit is
22 the correct one, then the case is indeed plain that an error
23 has been committed for these ten years and perhaps under those
24 circumstances the proper remedy is to redress that past error.

25 We are not speaking of the individual private

1 persons who have relied to their detriment on the error of
2 the Administrator who is speaking of a state whose mineral
3 revenues are so generous that they are able to repay their
4 own citizens.

5 At all events, as the Court well knows, the district
6 court ruled against the Secretary, despite finding that the
7 plain meaning of the statute was as contended for, but holding
8 in what can only be described as a most unusual construction
9 of the statute that the word "minerals", though in the stat-
10 ute apparently applicable to both refuges made up of acquired
11 lands and those made up of public domain lands, must be con-
12 strued by a judicial decree with the words of the stat-
13 ute so as to apply only in the one case and not in the other,
14 the reasoning behind that being that this would accomplish
15 no change in the law and that there was insufficient indica-
16 tion that Congress by adding the word "minerals" to the
17 Revenue Sharing Act meant to accomplish any change of the law.

18 The court of appeals affirmed that decision, basi-
19 cally on the same reasoning.

20 Now this case reaches the courts, and at least this
21 Court, only because of two circumstances that occurred after
22 the relevant statute had been enacted; unfortunately, not
23 such rare occurrences, but still unfortunate. The first is
24 that the Department of the Interior was very slow in imple-
25 menting the change of law, if that's what it was, which had

1 occurred in 1964.

2 The second was that Congress, though having a clear
3 opportunity to indicate which was the correct view of their
4 own statute, expressly declined that invitation in 1978 and
5 said, since the matter is before the Court, we will let the
6 courts decide what we meant in 1964 rather than resolving it
7 themselves and sparing this and the other courts the need for
8 resolution.

9 Now the statute on its face, everyone has agreed,
10 at least until Alaska filed its brief in this Court, was per-
11 fectly plain.

12 QUESTION: Mr. Claiborne, before you get into your
13 analysis of the '64 statute, would you tell me what is the
14 statutory authority for the Secretary to derive revenues from
15 the sale of timber, hay, grass, and all these others, sand
16 and gravel, the things other than minerals? Is there some
17 statute that authorizes the disposition of those?

18 MR. CLAIBORNE: The authority as understood by the
19 Department and indeed as recited in rulings of the Solicitor
20 is that the so-called Wildlife Refuge Revenue Sharing Act as
21 originally enacted in 1935 does authorize the Secretary --
22 and, indeed, the words are reasonably clear to that end -- does
23 authorize the Secretary to grant sales or dispositions, which
24 in this context are understood to include leases, of those
25 products -- in the case of some of the products it's an

1 outright sale, but in other instances it's leases -- with
2 respect to both refuges made up of acquired lands and those
3 made up of public domain lands, without distinction.

4 QUESTION: If the Mineral Leasing Act did not apply
5 would that statutory authority have authorized the making of
6 the leases that are involved here?

7 MR. CLAIBORNE: We suggest that that is a possible
8 construction of the 1935 Act, even before its amendment, and
9 indeed that was the ruling of the Acting Solicitor of the
10 Department of the Interior in 1946, before the Acquired Lands
11 Act had been passed, and therefore the only authority then
12 available with respect to mineral leases on acquired lands.
13 He read the word "privileges" in that 1935 Refuge Act as in-
14 cluding the lease for oil and gas on acquired lands. If it
15 applied to acquired lands, it likewise applied to public
16 domain lands, though unnecessarily, since the Mineral Leasing
17 Act of 1920 was already available for that purpose.

18 We do not deem it necessary for this Court to decide
19 that question, that is, what the law was before 1964, because
20 in 1964 Congress added the word "minerals" to those revenues
21 which could be leased, those resources which could be leased,
22 and the revenues from mineral leases as among those that ought
23 to be distributed according to the formula of the Act.
24 And it was that very plain action of adding the word "minerals"
25 that moots out the question.--

1 QUESTION: It isn't entirely mooted out, because
2 isn't it normally true that the division of revenues would be
3 computed according to a statute that also grants the authority
4 to make the lease in the first place? It's somewhat unusual
5 in your position to have the statutory authority for every-
6 thing but minerals in one statute, and the mineral leasing
7 authority in another statute, but say that doesn't govern the
8 way the money should be divided up.

9 MR. CLAIBORNE: Mr. Justice Stevens, it is certainly
10 neater, if that's an appropriate word, if the same statute
11 both gives the authority and governs the distribution of
12 revenues. I would point out that all leases of public lands
13 are distributed, or granted, under the Mineral Leasing Act of
14 1920 so far as the mechanics are concerned, whether they're
15 acquired lands or not. The Acquired Lands Act, for instance,
16 simply says, you may apply the Mineral Leasing Act of 1920
17 to acquired lands as you have been doing with respect to other
18 lands. I have --

19 QUESTION: Mr. Claiborne, isn't there some real
20 basis, though, for treating acquired lands and domain lands
21 differently with respect to how much of a share of the royalty
22 should go to a county?

23 QUESTION: Mr. Justice White, that may have been
24 the thought, but as --

25 QUESTION: Well, there would be a basis for doing it.

1 MR. CLAIBORNE: There would.

2 QUESTION: After all, acquired lands does reduce
3 the county's tax base.

4 MR. CLAIBORNE: But, considering the revenues from
5 all other sources, all clearly divided under the Refuge Act,
6 whether from acquired or from public domain lands, it is diffi-
7 cult to see why mineral revenues, that is, oil and gas reve-
8 nues, should be segregated for different treatment.

9 Now, there is a different formula. It's not simply
10 25 percent in the case of acquired lands. there are two other
11 options available, more generous options potentially, and
12 in practice seem to be more generous, than with respect to
13 the lands that are in refuges that come from the public
14 domain.

15 QUESTION: Well, the '64 amendments were aimed at
16 facilitating the acquisition of lands?

17 MR. CLAIBORNE: That was plainly the main purpose
18 of the '64 amendment. But quite incidentally two other things
19 were done. One was to authorize expressly the granting of
20 leases of public buildings and public accommodations, and
21 having those revenues distributed pursuant to the Refuge Act,
22 something the Comptroller General had ruled could not be done;
23 and then tying up this problem about minerals that was
24 ambiguous before.

25 QUESTION: It doesn't -- perhaps the county might be

1 entitled to share more heavily with respect to acquired lands
2 but how about the public domain lands, that they never were
3 taxing anyway?

4 MR. CLAIBORNE: Well, they do receive a share of all
5 other revenues, and it's difficult to appreciate why they
6 shouldn't receive a like share of mineral revenues. Because
7 one could argue that the State receives it for their benefit
8 in any event, but why should they not receive it directly in
9 the locality?

10 I am trespassing on the time of my cocounsel, and
11 will allow him to continue.

12 MR. CHIEF JUSTICE BURGER: Mr. Cranston.

13 ORAL ARGUMENT OF CHARLES K. CRANSTON, ESQ.,

14 ON BEHALF OF THE PETITIONER, KENAI PENINSULA BOROUGH

15 MR. CRANSTON: Mr. Chief Justice and may it please
16 the Court:

17 My name is Charles Cranston from Anchorage, Alaska,
18 representing the Kenai Peninsula Borough.

19 I think I'd like to start off by addressing the very
20 question that Justice White asked, and that is, is there not
21 some justification for treating differently counties with
22 reserved land refuge from those counties which have acquired
23 land refuges? And my answer to that is, no, there is no dif-
24 ference for treating those counties differently. And I'll
25 explain why I believe that is the case, and perhaps with that

1 we can understand really why this case is here.

2 QUESTION: Just by way of definition, to clarify it
3 for me at least, when you speak of the term "acquired lands,"
4 are those always lands which have been on the tax rolls before
5 they were acquired?

6 MR. CRANSTON: Presumably so, Mr. Chief Justice.
7 I believe that certainly under the new Act, '78 amendment,
8 acquired lands are called fee lands, and those were lands which
9 were previously held in fee by private individuals and reac-
10 quired by the Government. Thus, if they were held in fee,
11 presumably they were taxed.

12 The reserved lands, on the other hand, were always
13 part of the public domain and were never taxed.

14 I think if you look at the Kenai Peninsula Borough
15 itself we have a striking example of why the reserved land
16 county should be the recipient of these wildlife refuge reve-
17 nues. In the case of Kenai there have been two million acres
18 withdrawn from the tax roll. Admittedly those lands were never
19 on the tax roll, but nevertheless two million acres of land
20 remain unavailable for the tax base of this borough. If we
21 apply conservative property tax estimates, that will equal
22 anywhere from six to \$10 million a year of tax revenues.

23 QUESTION: Are you relating that to current rates
24 of tax in that area?

25 MR. CRANSTON: Yes, Mr. Chief Justice, I am, I am

1 assuming a very low appraisal of \$100 an acre and a very low
2 mill rate of from three to five mills, which is roughly within
3 the range of the current tax rate in that borough.

4 Now, considering the fact that this wildlife refuge
5 has development, oil and gas development, which requires ser-
6 vices such as fire protection, it of course increases the
7 population of the borough, schools, the development in essence
8 adds to the load on the borough to provide public services.

9 QUESTION: But, Mr. Cranston, is that any different
10 than the situation of any other other western state that was
11 admitted to the Union, where the Federal Government started
12 out owning 70 or 80 percent of the land in the state?

13 MR. CRANSTON: It could be, Justice Rehnquist, in
14 that I believe it's unusual in all of the public domain to
15 have development of that public domain, which adds to the
16 services which the local government must provide. That is to
17 say, simply, if you have grazing on BLM grazing land, that
18 doesn't necessarily increase the type of intensive use of the
19 land that requires additional services which normally are pro-
20 vided by the county's tax base. And so I believe that in the
21 case of oil development, albeit on a wildlife refuge, there is
22 a legitimate reason for treating the county with a reserved
23 refuge the same as one with an acquired refuge, because the
24 net result is the same. You have the development, you have
25 the increased population, you have the need to provide the

1 services, there is no difference in rationale as to why one
2 should be treated differently if you look at it from the
3 standpoint of the county and if you look at it from the revenue
4 obligation of the county, that is the threat to the county's
5 revenues and the threat to the county's tax base.

6 QUESTION: But the county's tax base derives ulti-
7 mately from the authority of the Alaska Legislature, does it
8 not?

9 MR. CRANSTON: That's correct, Your Honor. But the
10 Alaska Legislature has permitted counties to tax land as well
11 as improvements, and it is certainly expected that when the
12 land itself is taken out of the tax base, there certainly is
13 significant reduction in available tax revenue to the county.
14 That is, it may only then tax the improvements, and in the
15 case of an acquired refuge, the county, as in Plaquemines
16 Parish, Louisiana, is a good example, may tax both the land
17 and improvements and there is really no reason why one should
18 be treated any differently than the other. And I think this
19 is what Congress recognized certainly in the 1964 amendment,
20 when if you read the statute, if one were asked to draft a
21 statute which gave authority to the Secretary to transmit
22 25 percent of reserved land refuges revenues to the counties,
23 and 25 percent of acquired land refuge revenues, you couldn't
24 come up with language any different from that which appears in
25 the Act. And I believe Congress must have recognized the

1 similarity of result both as to acquired and as to reserved
2 land refuges. Thus, again going to the question with which I
3 started this argument, there is really no basis upon which to
4 distinguish between the two types.

5 And I would also like to address the question which
6 Justice Rehnquist did ask early in this argument, is it not
7 close to a coin-toss as to how these statutes should be inter-
8 preted? And again I would answer that question by saying,
9 no, it is not close to a coin-toss. I think the Mineral
10 Leasing Act of 1920 and the Wildlife Refuge Sharing Act are
11 clearly inconsistent. You can't have one and the other.
12 There has to be a choice, either the Mineral Leasing Act
13 applies, or the Wildlife Refuge Sharing Act applies. And this
14 Court on numerous occasions has stated, and most recently in
15 SEC v. Sloan, that where there is a clear inconsistency between
16 the statutes involved, that apart from any express indication
17 of congressional intent, there is an implied repeal of at
18 least the inconsistent provisions.

19 Now, we certainly aren't saying that all of the
20 Mineral Leasing Act goes. That of course is not the case.
21 But certainly those provisions of the Mineral Leasing Act
22 which allocate revenues between the counties and the Federal
23 Government must apply in this case, since otherwise you have
24 the clear inconsistency.

25 QUESTION: You do concede that there is a general

1 policy against implied repeal, do you not?

2 MR. CRANSTON: Certainly, Your Honor, and this Court
3 has recognized that many times, but the exception to that
4 policy against implied repeal is certainly pointed out most
5 strongly by this case, where there is such a clear inconsis-
6 tency between those statutes, and given that inconsistency,
7 I believe that consistent with Sloan --

8 QUESTION: Mr. Cranston, how do you explain the
9 fact that apparently the change was drafted by the Department
10 of Interior as a perfecting amendment, and yet they didn't
11 apparently realize that the change meant what you now say it
12 means, for at least ten years?

13 MR. CRANSTON: Certainly Interior in its early
14 letters, when this Act came before Congress in 1962, added
15 the word "minerals," and called it a perfecting amendment.
16 I think there are probably two answers to the question, Your
17 Honor. One is that the amendment was simply recognizing what
18 had been at least the idea or the concept of Interior before
19 the 1964 amendment, and that's reflected in numerous memoranda
20 which are in the Appendix. I won't refer them, but I think
21 they've been referred to in the briefs.

22 Secondly, I think it's fair to say that the effect
23 of the perfecting amendment did not filter down to those
24 individuals in the Fish and Wildlife Service, principally in
25 Alaska, people who were responsible for administering the law.

1 I think my only explanation can be that there was
2 an administrative oversight inconsistent with the statute and
3 certainly inconsistent with the desires of Congress.

4 QUESTION: Well, is it not correct that your basic
5 position is that it was much more than a perfecting amendment,
6 it made a fundamental change?

7 MR. CRANSTON: It certainly made a change with
8 respect to ultimately how the revenues were to be distributed.
9 I would not concede that it made a fundamental change in the
10 overall statutory scheme, since before the 1964 amendment
11 there was certainly reason to believe that mineral revenues
12 could be distributed under the 1935 Act as provided in the
13 1964 Act. That is, that simply it was -- just that.

14 QUESTION: But the people who wrote the checks didn't
15 think that.

16 MR. CRANSTON: I don't -- well --

17 QUESTION: And nobody complained for whenever it's --
18 '55 or so, and if you want to add another ten years, then
19 there's 20 years of construction of the Act.

20 MR. CRANSTON: Certainly the people who wrote the
21 checks didn't follow the Act. Now, what they thought, I
22 don't know, because --

23 QUESTION: I mean, I'm talking about the period
24 before 1964.

25 MR. CRANSTON: Okay. Certainly, before 1964 that's

1 true. They did not think, or at least give expression to what
2 the Act could have permitted. But again let me point out
3 that there was never any explanation of why they did what they
4 did until 1975, and when it was first brought to the attention
5 of those people who could explain what was being done, the
6 explanation was consistent with both the position taken by
7 the Solicitor today and by the Kenai Peninsula Borough.

8 QUESTION: This is not the first time that the
9 Department of Interior has had a change in position from one
10 period to another, is it? Or, perhaps I shouldn't put that to
11 you, since you're not responsible for the Department of
12 Interior. But in the oil shale case we had exactly --

13 MR. CRANSTON: Well, Mr. Chief Justice, that's a
14 difficult question for me to answer, but I -- human nature
15 being what it is, I assume that there may have been other
16 instances where positions have changed. But certainly there's
17 nothing wrong in -- yes?

18 QUESTION: Well, Mr. Cranson, let me ask you one
19 you probably, won't be hard for you to answer. What's the
20 status of a county or a borough in Alaska?

21 MR. CRANSTON: A borough, Justice White, is exactly
22 the same as a county, say in Maryland or Virginia. It has
23 rather broad area-wide --

24 QUESTION: Well, is it a creature of the State? It's
25 a creature of the State, I suppose, and it has the powers --

1 are they constitutionally granted powers or are they legisla-
2 tive?

3 MR. CRANSTON: A county, unlike -- perhaps the uni-
4 que thing about an Alaska borough is it is a self-chosen local
5 government. That is all of Alaska is not divided --

6 QUESTION: It's a home rule sort of thing?

7 MR. CRANSON: -- into boroughs. It's done by local
8 option under statutory authority.

9 QUESTION: Does it sort of have home rule authority?

10 MR. CRANSTON: It may. It may have home rule
11 authority if the populace wants that.

12 QUESTION: Well, let me ask you this. Could the
13 Alaska Legislature, at least prospectively, require the
14 boroughs or counties to turn over their revenues from oil and
15 gas leases to the State?

16 MR. CRANSTON: That is a question that may be diffi-
17 cult. I would say that if --

18 QUESTION: If the State is ultimately responsible,
19 if it determined to take over, say, the financing of all the
20 schools throughout the State and decided to take all the reve-
21 nues from oil and gas leases into the State treasury and then
22 redistribute them, would there be some barrier to that?

23 MR. CRANSTON: There's certainly, I think, under the
24 Alaska Constitution, nothing that grants a constitutional
25 right for the existence of a --

1 QUESTION: So that, if the powers that be in Alaska
2 want to change the result of this case, either way it went, I
3 suppose, nothing we could do about it.

4 MR. CRANSTON: That is conceivably possible, Your
5 Honor, although I think that would be true in any other state
6 as well as Alaska.

7 QUESTION: I just wonder why we're having to settle
8 a fight between the county and the State here when you could
9 settle it yourself; the State Legislature could settle it.

10 MR. CRANSTON: Again, I think the simple answer is
11 that we have two inconsistent statutes and until that is done
12 there is no other alternative.

13 QUESTION: But the State Legislature could -- it
14 sounds like they control the distribution no matter what the
15 federal law said.

16 MR. CRANSTON: I'm not willing to concede that --

17 QUESTION: I wouldn't if I were you.

18 MR. CRANSTON: -- the county has a right to the
19 money under federal law. I'm not certain that that could
20 happen, and I certainly have not briefed that point.

21 QUESTION: Could I ask one more question, please,
22 Mr. Cranston? Because if you lose, the State of Alaska gets
23 90 percent. If you win the county gets 25 percent. What part
24 of the 90 percent would probably inure to the benefit of your
25 county? In other words, what part of the total State of

1 Alaska does the Kenai Borough represent in either economic
2 or population or some kind of terms?

3 MR. CRANSTON: Probably the borough would get con-
4 siderably less than that which it would be entitled to under
5 the Wildlife Refuge Revenue Sharing Act. The State of Alaska
6 now has roughly, under the latest census, 400,000 persons.
7 I think the Kenai Borough might have 20,000. So the percentage
8 of --

9 QUESTION: About five percent

10 MR. CRANSTON: Right. And I'd say it's a fair state-
11 ment that these revenues are probably distributed on a somewhat
12 per capita basis. Thank you very much for your time.

13 MR. CHIEF JUSTICE BURGER: Mr. Koester.

14 ORAL ARGUMENT OF G. THOMAS KOESTER, ESQ.,

15 ON BEHALF OF THE RESPONDENTS

16 MR. KOESTER: Mr. Chief Justice, and may it please
17 the Court:

18 My name is Tom Koester and I represent the State of
19 Alaska in this proceeding.

20 Alaska's position here is really quite straightfor-
21 ward. the Moose Range leases, the leases on the Moose Range
22 with which we're dealing here, were issued under the authority
23 of the Mineral Leasing Act of 1920, and Section 35 of that Act
24 provides specifically that the revenues from leases issued
25 under the authority of the Act are to be distributed in a

1 certain fashion. In Alaska those revenues are to be distribu-
2 ted 90 percent to the State and 10 percent to the Federal
3 Government. It is our position that the 1964 amendment to
4 the Wildlife Refuge Revenue Sharing Act did not change the
5 scheme set out in the Mineral Leasing Act for distribution
6 of the revenues from the Kenai Range.

7 Our position is based on an analysis, first, of the
8 policies underlying Section 35, on the legislative history of
9 the 1964 amendment, and on the administrative practice of the
10 Department of Interior with respect to the revenues received
11 from the Kenai Range.

12 Now, the policy underlying Section 35 of the
13 Mineral Leasing Act has been in effect since 1920, and that is
14 a policy by which Congress has determined it is appropriate to
15 share revenues from mineral exploitation of the public lands
16 in this country with the states in which those lands are lo-
17 cated. That has been the policy since 1920. It was recently
18 reaffirmed in the 1976 amendments to the Mineral Leasing Act.

19 The policy with respect to Alaska has been that
20 Alaska should receive a greater portion than the other states.
21 There are two reasons. First, Alaska is not covered by the
22 Reclamation Act, into which a significant portion of revenues
23 from public lands in other states is placed. But more impor-
24 tantly, as the legislative history cited in our brief with
25 respect to the Alaska Statehood Act demonstrates, Congress was

1 concerned when it conferred statehood on Alaska that there was
2 a very distorted land ownership pattern in the Territory of
3 Alaska. The Federal Government owned 99 percent of the land.
4 In addition, significant portions of the public lands in
5 Alaska were withdrawn for purposes which Congress found, with-
6 drawals that Congress found were excessive. As a result,
7 Congress provided that 90 percent of the revenues from those
8 lands would be given to the State because these withdrawals
9 were hampering development in Alaska. This would include
10 public lands that were in the withdrawal status, if those
11 lands were leased for mineral exploitation, as the Kenai
12 Moose Range was.

13 In accordance with these policies underlying Section
14 35 of the Mineral Leasing Act, the Department of Interior dis-
15 tributed the oil and gas lease revenues from the Kenai Moose
16 Range pursuant to Section 35, from the date of statehood until
17 this question was asked by the Director of the Fish and Wild-
18 life Service in 1975. So we have a practice from 1959 through
19 1975 unbroken, of these revenues being distributed pursuant
20 to Section 35.

21 The Director's 1975 question focused on an amendment
22 11 years earlier, in 1964, to the Wildlife Refuge Revenue
23 Sharing Act. Now, the purpose of the 1964 amendment, it is
24 agreed by all parties, was to remove or eliminate opposition
25 on the part of states to the acquisition of land by the

1 Fish and Wildlife Service for wildlife refuges. The problem
2 was that once these lands were acquired, they were taken off
3 the tax rolls, and that the existing provisions of the Wild-
4 life Refuge Revenue Sharing Act were inadequate to compensate
5 the local governments for the lost revenues.

6 Because the governor of an affected state could
7 block acquisition, the Fish and Wildlife Service found that it
8 was unable to acquire land because the counties were afraid
9 they were going to lose money.

10 Now, it should be noted that this issue has nothing
11 to do with public land revenues, it has nothing to do with
12 the congressional policy in Section 35. The public land
13 revenues are to be shared with states. Congress passed the
14 amendment changing the formula for distribution of revenues
15 from acquired lands and eliminated the obstacle to continued
16 land acquisition. But at the same time it gave rise to the
17 Director's question in 1975 by adding the word "minerals" to
18 the list of revenue sources governed by the Refuge Revenue
19 Sharing Act.

20 Now, as has been mentioned, it was described in the
21 cover letter, this proposal to add the word "minerals" was
22 suggested by the Department of Interior, and was described
23 by the Interior Department as being a perfecting amendment,
24 not a substitute amendment, as you noted, Mr. Justice White.
25 Nor is the addition of the minerals mentioned anywhere in the

1 subsequent legislative history.

2 Now, in testifying on the proposed bill, we believe
3 it is significant that the Department of the Interior witnesses
4 stated that this bill if passed, including the word "miner-
5 als," would not affect the distribution of revenues from pub-
6 lic lands. In fact, they provided charts showing what the
7 revenue distribution was under the existing law and that it
8 would be under the amendment if passed. It's significant,
9 we believe, that revenues attributable to the Kenai Moose
10 range both in 1962 and in 1964 totalled less than \$10,000.
11 At this time the oil and gas revenues from the Kenai Moose
12 exceeded \$3-1/2 million. And it is significant that those
13 oil and gas revenues were not included in the charts prepared
14 by the Department of Interior for the use of Congress addres-
15 sing this amendment.

16 The witnesses also testified that some oil and gas
17 revenues currently were being distributed under the Wildlife
18 Refuge Revenue Sharing Act, but no additional oil and gas
19 revenues would be subjected to that distribution as a result
20 of this amendment.

21 Well, the Comptroller General had ruled in 1942 that
22 the Refuge Revenue Sharing Act did not reach oil and gas reve-
23 nues. That was still the administrative interpretation by the
24 Comptroller General, charged with overseeing expenditures of
25 revenues received by the United States in 1964 when this

1 amendment was passed.

2 Oil and gas revenues from acquired lands were sub-
3 ject to the formula contained in the Refuge Revenue Sharing
4 Act but they were subjected to that formula by virtue of
5 Section 6 of the Mineral Leasing Act for acquired lands.

6 QUESTION: The Kenai Moose Range was established in
7 '41, wasn't it?

8 MR. KOESTER: Right. And it was created out of
9 public lands, not acquired lands. So, under the Comptroller
10 General's ruling, those revenues would not be governed by the
11 Refuge Revenue Sharing Act. If the Kenai Moose Range had been
12 created out of acquired lands, they would have been governed
13 by the formula in the Refuge Revenue Sharing Act, but only
14 because Section 6 of the Mineral Leasing Act for acquired lands
15 directed that they be distributed in the formula in the same
16 way that non-mineral revenues from those acquired lands were
17 to be distributed.

18 Now, the Interior Department witnesses testified that
19 no new revenues would be subjected to the formula in the Refuge
20 Revenue Sharing Act by virtue of the amendment, and this was
21 true even though Congressmen were concerned at the time they
22 were considering this amendment that the revenues available to
23 the Department of Interior to make these payments to counties
24 were going to be insufficient. It would seem that if Interior's
25 proposal to add the word "minerals" was to make the

1 Kenai Moose Range royalties subject to distribution under that
2 Act, that at this point they would have stepped forward and
3 said there should be no concern about the adequacy of reve-
4 nues, we're going to get \$4 million a year more from the Kenai
5 National Moose range. Or certainly, Congress, if it had in-
6 tended the word "minerals" to reach those revenues would have
7 said, well, we would be concerned, except that by adding the
8 word "minerals" we are making this \$4 million annually avail-
9 able, which will eliminate any concern in this regard.

10 Now, following the passage of the amendment, the
11 Department of the Interior continued its pre-1964 practice of
12 distributing the Kenai Moose Range oil and gas revenues pur-
13 suant to Section 35 of the Mineral Leasing Act.

14 QUESTION: Is this part of your argument directed
15 to your submission that the word "minerals" in this statute
16 does not include oil and gas?

17 MR. KOESTER: Well, I think perhaps --

18 QUESTION: The argument is made in your brief.

19 MR. KOESTER: The argument is made in our brief.
20 The petitioners in this case have throughout maintained that
21 the plain meaning of the word "minerals" compels the conclu-
22 sion that the oil and gas revenues from Kenai National Moose
23 Range are subject to distribution under the Refuge Revenue
24 Sharing Act. Well, Alaska's position has always been, and
25 still is, in fact, that this is not an appropriate case for

1 application of the plain meaning rule. Here you have two
2 statutes which lead to diametrically opposed results. However --

3 QUESTION: But you also have an argument that oil
4 and gas are not within the plain meaning of the statute.

5 MR. KOESTER: Right. I think what our argument is,
6 is that if this case is going to turn --

7 QUESTION: And I was wondering if you're directing
8 yourself to that argument now, or not?

9 MR. KOESTER: If this -- no, I'm not, except in
10 response to your question.

11 QUESTION: Right.

12 MR. KOESTER: If this case is to turn on the plain
13 meaning rule, then it must be resolved that Section 35 con-
14 trols, because Section 35 and the Mineral Leasing Act in
15 general speak specifically to oil and gas, whereas the word
16 "minerals" in many cases is construed to include oil and gas,
17 in some cases is construed not to include oil and gas, but in
18 any event requires construction. It is not a plain meaning,
19 it is not susceptible to plain meaning construction, as in-
20 cluding oil and gas. It requires a process of construction.

21 But our basic position is that this is not an appro-
22 priate case for the application of the plain meaning rule,
23 because we have two statutes involved, and even under a plain
24 meaning rule interpretation of the word "minerals" you're
25 still stuck with Section 35, which under its plain meaning

1 leads to an opposite result. So a process of construction is
2 required here, and one must try to determine what Congress in-
3 tended.

4 Now, after Congress passed the 1964 amendment, and
5 added the word "minerals" to the statute, the Department of
6 Interior continued its pre-1964 practice of distributing these
7 revenues pursuant to Section 35 of the Mineral Leasing Act.
8 Now, this administrative practice was consistent, entirely
9 consistent, with the policy underlying Section 35 of the
10 Mineral Leasing Act, that is, to share public land revenues
11 with states. It also was consistent with the congressional
12 policy with respect to public lands in Alaska, that Alaska
13 should receive 90 percent of those revenues, because of the
14 excessive number of withdrawals in Alaska.

15 And finally, it is consistent with the testimony of
16 the Department of Interior witnesses, when testifying before
17 Congress, that this amendment would have no effect on the
18 distribution of public land revenues, that it would not subject
19 additional oil and gas revenues to distribution under the
20 Wildlife Refuge Revenue Sharing Act.

21 However, when the Director in 1975 asked his ques-
22 tion, whether this amendment 11 years earlier changed the
23 rules, the Solicitor of the Department of Interior and the
24 Comptroller General adopted the position which is now being
25 taken by the petitioners in this Court. They rested their

1 conclusion on the plain meaning rule.

2 Now I believe that, as we have shown, the plain
3 meaning rule is inappropriate unless it is going to be used
4 to find that Section 35 controls. But what we believe is
5 more interesting at this point is the argument which has been
6 raised by the federal petitioners in their brief, and that
7 is somehow that in 1964 there was a perception that the
8 Wildlife Refuge Revenue Sharing Act controlled these revenues.
9 Now, under the Comptroller General's rulings it did not,
10 but that there was somehow this perception on the part of
11 senior Department of the Interior officials, that this per-
12 ception was communicated to Congress -- although they concede
13 that it may possibly only have been communicated by inference
14 -- and that Congress may therefore have added the word
15 "minerals" based on this perception or understanding, and
16 the Court now should effectuate that presumed congressional
17 understanding by construing the word "minerals" to include
18 the oil and gas revenues from the public lands of the Kenai
19 National Moose Range.

20 We find that requires several assumptions before
21 you can get from Point A to Point B. The first is that both
22 the Interior Department officials and Congress were unaware
23 of the Comptroller General's rulings. The second is that they
24 were unaware that the Kenai Moose Range was generating \$4
25 million a year in oil and gas revenues because their testimony

1 was, and the chart showed, the Kenai revenues were only
2 \$10,000 a year.

3 The third is that they were unaware that Interior
4 was in a process of distributing these revenues under a
5 totally different statutory scheme, under Section 35 of the
6 Mineral Leasing Act. And finally, as has been discussed,
7 that Interior continued to distribute these revenues in the
8 wrong way, or a way which was not perceived by the senior
9 officials of the Department of the Interior as being the pro-
10 per manner.

11 We submit that this chain of assumptions that must
12 be made before one reaches the result sought by the petitioners
13 simply is untenable. It requires too much of a leap of fate.
14 We believe Justice Brennan's comment in the SEC v. Sloan case
15 suggests a more appropriate assumption and that is that this
16 continuous process by which the Department of the Interior
17 distributed the revenues pursuant to Section 35 of the Mineral
18 Leasing Act more accurately reflects both the Department of
19 Interior's understanding and Congress's understanding.

20 If there is any doubt in this regard, one would
21 suggest that because the Secretary of the Interior -- the evi-
22 dence is that that the Secretary of the Interior gave the
23 directive to continue this practice. So even if his senior
24 officials were confused, the Secretary wasn't.

25 QUESTION: Well, the Secretary doesn't ordinarily

1 turn to the Comptroller General for legal advice, does he?

2 MR. KOESTER: I don't believe so. He turns to his
3 Solicitor for legal advice. But here, I think, the issue
4 really is that no legal advice was necessary. In 1964 every-
5 one understood that public land oil and gas revenues, whether
6 in wildlife refuges or not, were subject to distribution under
7 Section 35 of the Mineral Leasing Act. So no legal advice was
8 necessary. It was not necessary to get a formal opinion at
9 that time. The Secretary simply said, continue the preexisting
10 practice, because there is no need to change it.

11 Now, this construction -- that is, the construction
12 adopted by the Secretary of the Interior in 1966 and continued
13 until 1975 -- leaves intact without an implied amendment or
14 repeal the congressional policy regarding the sharing of
15 revenues under Section 35 of the Mineral Leasing Act, revenues
16 from public lands. It also leaves intact the specific con-
17 gressional policy that revenues from public lands in Alaska
18 should be shared on a basis of 90 percent to Alaska and ten
19 percent to the Federal Government.

20 Now, in its reply brief and here today, Kenai -- and
21 briefly alluded to by Mr. Claiborne -- discuss Alaska's
22 changed economics. And as I'm sure the Court is aware, Alaska
23 now is enjoying rather large public revenues from state-owned
24 mineral lands. However, this seems to me to be beside the
25 point. Congress in 1964 could not foresee that Alaska would

1 enjoy this kind of bonanza. Moreover, these revenues are from
2 nonrenewable resources. What is here today will be gone to-
3 morrow.

4 QUESTION: I suppose Congress could change the
5 formula now, too, couldn't it?

6 MR. KOESTER: I believe, if it is to be changed,
7 that is, for Congress to do it --

8 QUESTION: Oh, I know, they could do it; there would
9 be no problem.

10 MR. KOESTER: Well, I think there still might be an
11 argument here because, actually, this was one of the fundamen-
12 tal underpinnings which underlay the Statehood Act and while
13 it may or may not rise to the level of a compact, and I don't
14 believe that that issue really needs to be decided here, it
15 is certainly an issue that that will be --

16 QUESTION: Well, I would think, if you think it's a
17 substantial question, your argument would be that the '64
18 amendments were unconstitutional, if construed to change the
19 distribution.

20 MR. KOESTER: Well, I think it's sufficiently clear
21 though, here, that Congress did not intend to change those --

22 QUESTION: Well, what if it isn't? What if we dis-
23 agree with you?

24 MR. KOESTER: Well, then, I think you should consider
25 very carefully the fact --

1 QUESTION: Well, you haven't raised that, have you,
2 anywhere?

3 MR. KOESTER: Yes.

4 QUESTION: Have you ever resisted the Government's
5 case on the ground that Congress has no power to change the
6 distribution of the revenues from reserved lands?

7 MR. KOESTER: In the lower courts we did.

8 QUESTION: And you've mentioned in your brief here --

9 MR. KOESTER: And here we've mentioned --

10 QUESTION: Today, the Alaska Statehood Act, under
11 the quid pro quo.

12 MR. KOESTER: Right. We have mentioned the fact
13 that it is incorporated in the Statehood Act, and we've not
14 made a definitive argument on the parameters of the statehood
15 compact, what it would require to change that statehood com-
16 pact. And I think we recognize that there are legitimate
17 policy concerns under which Congress can deal with revenues
18 from public lands. However, it is a very interesting question,
19 and particularly, given the policy considerations that Congress
20 gave when it enacted statehood for Alaska to the distribution
21 of public land revenues, it certainly seems that at least if
22 there is going to be a change, it is a change that must
23 be made by the legislature.

24 QUESTION: Well, what about the distribution of the
25 revenues from non-oil and gas leases, or produce from reserved

1 lands in these refuges or -- ?

2 MR. KOESTER: Well, I think, as was mentioned, I be-
3 lieve in response to a question from Justice White, the author-
4 ity for those sales of surface resources stems from the
5 Wildlife Refuge Revenue Sharing Act. In other words, Congress
6 in dealing with mineral revenues in Alaska, revenues derived
7 under the Mineral Leasing Act, provided specifically that 90
8 percent of them were to go to the State. However, it did not
9 make that provision with respect to non-mineral revenues.

10 And therefore the non-mineral revenues are subject to the
11 provisions of the Act which allows their sale in the first
12 place, in this case the Wildlife Refuge Revenue Sharing Act.
13 And as the charts in the legislative history show, the Kenai
14 Borough was receiving some of those revenues, even at that
15 time, albeit they were minimal compared to the oil and gas
16 revenues which were being derived.

17 Now, the judgments of the district court and the
18 court of appeals, we believe, reached an appropriate solution
19 to the dilemma here. That is, to construe the word "minerals"
20 as reaching those from acquired lands, those on acquired lands,
21 but not reaching those on public lands. Mr. Claiborne sug-
22 gests that this type of narrowing construction indulged by
23 the district court and the court of appeals is somewhat
24 unusual -- in fact, unique, I think, was the word he used.
25 However, this Court has done that very thing. In United States

1 v. American Trucking Association, it narrowed the construction
2 of the word "employees," and in Train v. Colorado Public
3 Interest Group in 1976 it narrowed the term "radioactive
4 materials." And in both cases it was persuaded by the fact
5 that with respect to one subclass contained within the general
6 term being construed Congress had definitively legislated there
7 was a strong preexisting congressional scheme of regulation.
8 And that's precisely the case here. There has been a policy
9 since 1920 of distributing public land revenues under Section
10 35 of the Mineral Leasing Act.

11 Now, Mr. Cranston has suggested that there is a
12 problem here in that counties containing reserved lands do not
13 get these revenues while counties containing acquired lands
14 with oil and gas development do. In terms of the money,
15 direct revenue sharing to the counties, as the federal peti-
16 tioners point out in their brief, there were amendments in
17 1978 to the Refuge Revenue Sharing Act which authorized addi-
18 tional payments to counties containing reserved lands. Those
19 payments can be as much as 75 cents per acre. Or, in the
20 event that timber sales, material sales, gravel sales and so
21 on, exceed that amount, then they would get the higher figure.
22 So they get the largest amount available either under the
23 provisions of the Refuge Revenue Sharing Act or the 75 cents
24 per acre.

25 But I think, more significant is that in 1964 when

1 Interior was proposing that this word "minerals" be included,
2 the Interior Department felt that these oil and gas revenues
3 being shared with counties resulted in windfalls to the coun-
4 ties. Interior was not at all pleased that counties were re-
5 ceiving oil and gas revenues. And yet what is now suggested
6 is that by adding the word "minerals" at the same time they
7 disavowed windfalls, they somehow have allowed counties con-
8 taining reserved public lands with oil and gas revenues to
9 obtain these very windfalls that were disavowed in 1964.

10 Finally, the policy of the 1964 amendment, as I
11 mentioned, was to eliminate objection to the acquisition of
12 additional lands for wildlife refuges. If this statute, the
13 amendment, is construed as changing the distribution formula
14 for oil and gas revenues from public lands, the very evil
15 sought to be remedied by that amendment would result in that,
16 certainly in the case of Alaska, the State would object to the
17 creation of additional wildlife ranges if in fact that would
18 change the revenue distribution from those lands. And yet
19 that is what is asserted here.

20 We believe that this Court should not construe the
21 1964 amendment in a fashion which could result in the very
22 evil which was sought to be remedied by Congress, and yet that
23 would happen here.

24 QUESTION: Mr. Koester, may I ask one question?
25 You refer in your brief to some charts or material in the 1964

1 legislative history which I have not looked at myself, which
2 suggest a breakdown of what revenues were being generated
3 and were not to be changed. Was there any source of revenue
4 in that record that could be classified as a mineral revenue
5 such as, say, it was stone or -- something like that, other
6 than oil and gas on the one hand, or things like sand and
7 gravel, which were previously mentioned in the statutes speci-
8 fically?

9 MR. KOESTER: The only things that I can recall are
10 in fact sand and gravel, and those were explicitly mentioned
11 in the Wildlife Refuge Revenue Sharing Act. There is nothing
12 else that I can conceive of although I suppose -- and purely
13 speculating -- but if a wildlife refuge had a tourist shop and
14 they sold gold trinkets or something, perhaps that would be
15 included. But again, that would be material not specifically
16 subject already to governance by a specific statute. In other
17 words, the Mineral Leasing Act of 1920 does not authorize the
18 leasing of land for gold extraction. And so, to the extent
19 that the Department of Interior could sell gold trinkets or
20 nuggets that it found, or stones, or pebbles, or shells, that
21 authorization would come out of the Wildlife Refuge Revenue
22 Sharing Act, and the terms of that Act would then apply.

23 But we're not dealing with that here, we're dealing
24 with oil and gas, which was already governed by Section 35 of
25 the Mineral Leasing Act.

1 For the policy reasons underlying Section 35 of the
2 Mineral Leasing Act and the legislative history underlying the
3 1964 amendment, as well as the administrative practice of
4 the Department of Interior for 11 years following that amend-
5 ment, we believe this Court should affirm the decisions of the
6 district court and the court of appeals.

7 MR. CHIEF JUSTICE BURGER: Mr. Claiborne, you have
8 about two minutes left.

9 MR. CLAIBORNE: Thank you, Mr. Chief Justice.

10 ORAL ARGUMENT OF LOUIS F. CLAIBORNE, ESQ.,

11 ON BEHALF OF THE FEDERAL PETITIONERS,

12 CECIL D. ANDRUS, ET AL. -- REBUTTAL

13 MR. CLAIBORNE: First, in answer to the question
14 asked by Mr. Justice Stevens, I draw the Justice's attention
15 to the Appendix to our brief at page 2a. This is a part of
16 the affidavit of the Director of the Fish and Wildlife Service.
17 Paragraph 3 of that affidavit indicates that the mineral reve-
18 nues generated by all wildlife refuges consists entirely of
19 oil and gas revenues. That apparently has always been true and
20 is true as of the date of this affidavit.

21 QUESTION: That can't be entirely true because
22 weren't there sand and gravel sales?

23 MR. CLAIBORNE: I take it the word "mineral" here is
24 used as meaning mineral other than sand and gravel specified
25 in the Wildlife Revenue Sharing Act, though I don't for a fact

1 know that there was any such revenue even though it's speci-
2 fied.

3 QUESTION: You mean, that there was any sand and
4 gravel revenue?

5 MR. CLAIBORNE: Indeed. Mr. Justice White suggested
6 that the Alaska Legislature could resolve this case.

7 QUESTION: Well, I didn't suggest that they could
8 change the distribution between the United States and Alaska.

9 MR. CLAIBORNE: It would be enormous --

10 QUESTION: I think it would be your interest.

11 MR. CLAIBORNE: The enormous difference is it goes
12 between the 90 percent and the 25 percent, whoever it goes to
13 in Alaska. I would add that it is a case which is entirely
14 appropriate for Congress, the national Congress, to resolve,
15 but it has declined the invitation to do so when the matter
16 was very clearly put before it in --

17 QUESTION: Well, you wouldn't suggest that the
18 Alaska Legislature would be disentitled if you won this case
19 to take the 25 percent that would go to the county?

20 MR. CLAIBORNE: I suppose the duty of the Secretary
21 would be to pay to the county. Whether the county was then
22 required by Alaska law to turn it over --

23 QUESTION: You probably don't even have an opinion
24 on that.

25 MR. CLAIBORNE: It would not be our concern; that

1 is so. But I do think the Secretary must first obey the
2 federal law and pay it to the county --

3 QUESTION: Yes.

4 MR. CLAIBORNE: -- whatever the county is then re-
5 quired to do. But, it seems to me that the approach this
6 Court ought to take is that Congress ought to be held to its
7 word if the consequences of what it wrote or not, as it in-
8 tended it, and we think they probably are, then Congress has
9 an easy opportunity to amend the Act. But this Court ought
10 not torture the text to guess what Congress may or may not
11 have been doing in changing or not changing the law in 1964.

12 QUESTION: Does the word "mineral" or does the
13 addition of the word -- would the addition of the word "mineral"
14 have any meaning whatsoever if the State wins this case?

15 MR. CLAIBORNE: It would accomplish precisely
16 nothing because it would simply confirm the formula already
17 enacted by the Mineral Leasing Act --

18 QUESTION: Would it affect, would it add something,
19 would it change the distribution of any other -- ?

20 MR. CLAIBORNE: Nothing whatever, Mr. Justice White.

21 QUESTION: Mineral besides oil and gas?

22 MR. CLAIBORNE: It would be entirely surplusage,
23 unless it applies to reserved lands. Because at least all
24 minerals covered by the Minerals Leasing Act for acquired lands
25 in 1947, or by that Act, required to be distributed under the

1 Refuge Act formula -- now -- gold and silver might present a
2 separate question.

3 QUESTION: Well, so you answer yes, if there were
4 gold and silver discovered, the word "minerals" would have
5 some meaning besides oil and gas?

6 MR. CLAIBORNE: Yes. Though no one, in the '64 --
7 or '62 debates, ever suggested that there was gold and silver
8 to be found on this refuge. The only mineral ever spoken of
9 was oil and gas, and everyone knew that the word "mineral"
10 in that context meant oil and gas.

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

13 (Whereupon, at 11:17 o'clock a.m., the case in the
14 above-entitled matter was submitted.)
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CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1890

No. 79-1904

CECIL D. ANDRUS, ET AL. AND KENAI PENINSULA BOROUGH

V.

STATE OF ALASKA ,
ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

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