

ORIGINAL

In the

Supreme Court of the United States

GULF OFFSHORE COMPANY, A DIVISION )  
OF THE POOL COMPANY, )

PETITIONER, )

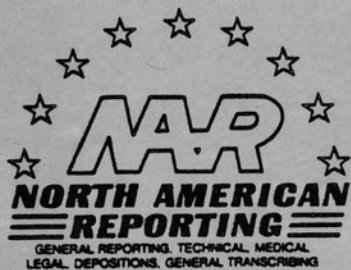
No. 80-590

v. )

MOBIL OIL CORPORATION, ET AL. )

Washington, D.C.  
March 31, 1981

Pages 1 thru 41



202/544-1144

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 GULF OFFSHORE COMPANY, A DIVISION :
   
OF THE POOL COMPANY, :
   
4 :
   
Petitioner, : No. 80-590
   
5 :
   
v. :
   
6 MOBIL OIL CORPORATION, ET AL. :
   
7 -----:
   
8

9 Washington, D. C.

10 Tuesday, March 31, 1981

11 The above-entitled matter came on for oral ar-
   
12 gument before the Supreme Court of the United States
   
13 at 2:08 o'clock p.m.

14 APPEARANCES:

15 CHARLES D. KENNEDY, ESQ., 3710 One Shell Plaza,
   
Houston, Texas 77002; on behalf of the Petitioner.

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17 Houston, Texas 77010; on behalf of Respondent
   
Mobil Oil Corporation.

18 JOSEPH D. JAMAIL, ESQ., 3300 One Allen Center,
   
19 Houston, Texas 77002; on behalf of Respondent
   
Steven Gaedecke.

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C O N T E N T S

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MILLERS FALLS  
ERASE  
COTTON CONTENT

P R O C E E D I N G S

1  
2 MR. CHIEF JUSTICE BURGER: We'll hear arguments  
3 next in Gulf Offshore Company against Mobil Oil.

4 Mr. Kennedy, you may proceed when you are ready.

5 ORAL ARGUMENT OF CHARLES D. KENNEDY, ESQ.,

6 ON BEHALF OF THE PETITIONER

7 MR. KENNEDY: Mr. Chief Justice, and may it please  
8 the Court:

9 We are here today on a writ of certiorari to the  
10 Texas Court of Civil Appeals, 14th Judicial District, on a  
11 matter raising two issues. First, there's an issue of sub-  
12 ject matter jurisdiction of the courts of the State of Texas  
13 to consider and try and hear cases arising under the Outer  
14 Continental Shelf Lands Act. The second issue is an issue  
15 involving the applicability of this Court's ruling in the case  
16 of Liepelt which finds that juries are knowledgeable taxpayers  
17 of this country -- I'm paraphrasing -- and that therefore  
18 the trial court has the duty of performing and providing in-  
19 structions to the jury as to the effect of federal income  
20 taxation on jury damage awards.

21 I'd like to first turn briefly to what I feel  
22 is the threshold question, and that is the question of subject  
23 matter jurisdiction to allow the courts of many states to  
24 take jurisdiction for matters arising on the Outer Continental  
25 Shelf.

1           In 1953 the Outer Continental Shelf was becoming a  
2 very vital area. The Congress of this country felt at that  
3 time that there must be a necessity for jurisdiction over  
4 this developing area. This is not a situation of the Congress  
5 going into a state and buying land or taking land away from  
6 an already existing state. This had already been laid to  
7 rest in this Court's opinion in United States v. California.

8           California had claimed ownership of the tidelands.  
9 The state found that the United States had paramount jurisdic-  
10 tion over the tidelands. Because of the historic nature of  
11 the state's claim to rights in the tideland areas, Congress  
12 passed, also in 1953, the Submerged Lands Act which ceded to  
13 the states that area lying offshore of their land areas that  
14 had historically been claimed by the states.

15           QUESTION: Do you think the '53 Act was primarily  
16 thought of in terms of personal injury jurisdiction?

17           MR. KENNEDY: No, Your Honor, I think it was thought  
18 of to encompass the entire activities on the Outer Continen-  
19 tal Shelf beyond the Submerged Land Act's ceding of rights  
20 to territorial waters of the state.

21           The personal injury aspect of this case comes up  
22 incidental. This is really a case involving a contractual  
23 dispute between the Pool Corporation, who is a drilling con-  
24 tractor, and Mobil Oil Company, who was the leasor of the area  
25 that was being drilled. The plaintiff in the case below was

1 an employee of Pool Corporation, an employee of my client.  
2 On the basis of the Outer Continental Shelf Lands Act  
3 Mr. Gaedecke, the plaintiff's sole remedy against Pool Cor-  
4 poration was under the Longshoremen's and Harbor Workers'  
5 Compensation Act which is definitely adopted as the exclusive  
6 remedy of employees on the Outer Continental Shelf. The  
7 Longshoremen's and Harbor Workers' Compensation Act also  
8 recognizes the right of third party suits by such employees  
9 under Section 905(b) if it happens to be due to the negli-  
10 gence of a vessel, under Section 33 if it is due to any other  
11 type of third party action. So this all, the plaintiff's  
12 primary claim had to arise under the Outer Continental Shelf  
13 Lands Act, and under the Longshoremen's and Harbor Workers'  
14 Act was thereby extended.

15 We move then to an area where because of interna-  
16 tional implication the Government had severe reservations of  
17 attempting to take sovereignty beyond the states' historical  
18 territorial limits. They adopted the procedure set out in  
19 the Outer Continental Shelf Lands Act which was a horizontal  
20 extension of jurisdiction of the Federal Government to cover  
21 the subsoils, seabeds, and any artificial islands constructed  
22 thereon. The Act specifically did not attempt to take on any  
23 jurisdiction over the high seas, leaving that to the maritime  
24 and admiralty courts.

25 The Act itself, after first providing for this

1 extension of jurisdiction, then turned its attention to what  
2 laws would be applicable in this Outer Continental Shelf area,  
3 in this new area of jurisdiction for the Federal Government.  
4 They first said that federal law and regulations are applica-  
5 ble. They delegated to the Secretary of Interior the right  
6 to promulgate rules and regulations which were made applicable.

7 Then, in order to plug any potential gaps or voids  
8 in the federal law as it existed at that time, they said that  
9 we are going to adopt as federal law the law of the adjacent state.

10 QUESTION: You're paraphrasing now from pages 3 and  
11 4 of your brief? You're paraphrasing -- ?

12 MR. KENNEDY: I'm paraphrasing; yes. They said --  
13 I'm paraphrasing this -- that if there is a void, if Congress  
14 has not acted, or if there has been no rule or regulation  
15 promulgated by the Secretary of Interior, then, to fill these  
16 voids, we will adopt, or we will have as surrogate for federal  
17 law -- surrogate federal law -- the law of the adjacent  
18 state. But, in the Act itself -- and I think the Act itself  
19 clearly shows that there is exclusive jurisdiction. They  
20 put a caveat -- pardon me?

21 QUESTION: I was just going to say, it's on page  
22 three of your brief, Section B of the statute says the United  
23 States district courts shall have original jurisdiction of  
24 cases and controversies. It does not say original and  
25 exclusive, and certainly in FELA cases and in 1983 cases

1 the federal courts are the primary fora but nonetheless state  
2 courts can entertain 1983 actions and it's my understanding  
3 that state courts can entertain FELA actions.

4 MR. KENNEDY: Yes, Your Honor, that's correct, and  
5 I think you have to look to the enactment, in its entirety,  
6 to see the Congressional scheme, and after we get through  
7 that, I think that the Congressional scheme within the Act  
8 itself will be sufficient. But even if you get beyond that,  
9 then you're left with the legislative intent which I'll go  
10 into in a minute.

11 The caveat that was put in the Act in Subsection  
12 (a)(2), after they say, "will adopt state law as surrogate  
13 federal law," says, "all applicable laws shall be adminis-  
14 tered and enforced by the appropriate officers and courts of  
15 the United States."

16 QUESTION: And again, it doesn't say "exclusively."

17 MR. KENNEDY: No.

18 QUESTION: But you want us to read it that way, I  
19 take it?

20 MR. KENNEDY: Yes, Your Honor. Because I think this  
21 is the clear congressional intent.

22 QUESTION: In our own Article III jurisdiction, as  
23 you no doubt know, the provision is, with respect to some  
24 kinds of cases our jurisdiction is original and exclusive,  
25 and with respect to others it's just original but not



1 exclusive.

2 MR. KENNEDY: That's right. The reason I think Con-  
3 gress did not feel compelled to include this word "exclusive,"  
4 and as we'll discuss later, in the 1978 amendments to this  
5 Act, even dropped out the word "original," was because this  
6 was an area where there was no concurrent jurisdiction,  
7 where the states had no jurisdiction. And so the Federal  
8 Government went out and said, we are taking jurisdiction over  
9 this area. And therefore the word "original" and the word --

10 QUESTION: A state court is generally a court of  
11 general jurisdiction and if one party from Venezuela sues  
12 another party from Holland over an accident that happened  
13 500 miles out at sea, unless there is some federal prohibi-  
14 tion or statutory enactment prohibiting it, the federal court  
15 can take jurisdiction or the state court can take jurisdic-  
16 tion of that, can't it?

17 MR. KENNEDY: I think -- of course, if we're getting  
18 out to sea I think we're getting into an entirely different  
19 area, where we're getting into the admiralty and maritime  
20 courts. Whether the states have any jurisdiction between  
21 foreign nationals for injuries on the high sea, my recollec-  
22 tion is that it's exclusively federal at that point, when  
23 you have foreign nationals on the high seas.

24 QUESTION: How about Bremen v. Zapata?

25 MR. KENNEDY: The federal courts took jurisdiction

1 over that. It was a federal court case arising in admiralty,  
2 I believe.

3 In subsection (3) of the same portion of the Outer  
4 Continental Shelf Lands Act, I think even further confirmed  
5 what the congressional intent was. They say that the adop-  
6 tion of the state law as the law of the United States shall  
7 never be interpreted as a basis for claiming any interest in  
8 or any jurisdiction on behalf of any state for any purpose  
9 over the seabeds and subsoil of the Outer Continental Shelf;  
10 which to me I find very exclusive in its --

11 QUESTION: But it says, "the provisions of this  
12 section." It doesn't say excludes provisions or existing law  
13 that may be found in other sections.

14 MR. KENNEDY: Well, Your Honor, I don't know of  
15 any existing law at the time of the passage of the 1953 Act  
16 that gave any general jurisdiction to state courts over what  
17 happens on the high seas or, at that time, the Outer  
18 Continental Shelf. Prior to 1953 there was no Outer Conti-  
19 nental Shelf as we know it now; it was all high seas. This  
20 was just the ground under the high seas.

21 The congressional intent is clear from a reading of  
22 the legislative history. The report of the Senate Committee  
23 on Interior and Insular Affairs, which is the majority report,  
24 the Court will recall this case, this Act, came first up  
25 through the House, was sent to the Senate. The Senate

1 deleted practically all of the House Act, substituted their  
2 own. The Commerce Committee accepted it and then it became  
3 law. So therefore the report of the Senate Committee was  
4 actually the majority report. It stated that the purpose of  
5 the bill was to assert the exclusive jurisdiction and control  
6 of the Federal Government of the United States over the  
7 seabed, subsoil, and artificial islands. They said that  
8 we're going to carry out this primary purpose of the measure,  
9 the asserting of exclusive jurisdiction, by developing a body  
10 of law which is going to extend exclusively to this area.

11 This body of law is going to consist of the Consti-  
12 tution and the laws in the civil and political jurisdiction  
13 of the Federal Government. Next, it's going to incorporate  
14 the regulations, rules, and operating orders of the Secretary  
15 of Interior. And three, in the absence of any applicable  
16 federal law or adequate secretary's regulation, the civil and  
17 criminal law of the state adjacent will be adopted as federal  
18 law. So, here again, they knew exactly what they were doing.

19 QUESTION: Is there any reason why the Texas state  
20 courts can't apply federal law the way they do under FELA and  
21 under 1983?

22 MR. KENNEDY: I think you have to look at the com-  
23 pelling reasons for this under the Outer Continental Shelf  
24 Act itself. Jurisdiction could have been ceded by the Federal  
25 Government to state governments. I think, in a situation such as

1 this, since we have no concurrent jurisdiction to begin with  
2 or no state jurisdiction over this area to begin with, there  
3 was a taking enacted by Congress, ceding it back as they did  
4 in the Submerged Lands Act, saying, okay, Mr. Louisiana, Mr.  
5 Texas, we give you the right over this area.

6 QUESTION: Isn't there an intermediate ground where  
7 you don't cede the territory back but you say that federal law  
8 may be applied in the courts of the adjacent state?

9 MR. KENNEDY: But there is nothing in the Act to  
10 indicate that this was an intent of Congress. In fact, the  
11 minority people definitely recognized that this was not the  
12 intent of Congress. Congress wanted the adjacent states to  
13 have nothing to do with control of this area on the Outer  
14 Continental Shelf because with all the international implica-  
15 tions that were then involved, Congress was obviously worried  
16 at that time that there was going to be a hue and outcry from  
17 our world friends that we were trying to take over the sove-  
18 reignty of this seabed area. That's why they were so careful  
19 in placing this, I feel, in the hands of the Federal Govern-  
20 ment to rule and regulate without interference from the  
21 many states.

22 We're talking about not just one or two states that  
23 might have an interest in -- The Outer Continental Shelf  
24 extends, of course, completely around the continental United  
25 States, varying in size from 250 miles off the New England

1 coast to 50 to 150 miles in the Gulf of Mexico, to as little  
2 as five to 40 miles off California. Then, when you get to  
3 Alaska, the Outer Continental Shelf is bigger than the State  
4 of Alaska itself. So this is the area that we are talking  
5 about that Congress was so deeply involved in and interested  
6 in.

7 The Act's history and the minority report, if the Court  
8 will recall, Mr. Justice White has had an opportunity to re-  
9 view the legislative history of this Act at some length  
10 in the Rodrigue opinion. I think from a reading of that  
11 opinion it shows a clear indication of the vesting of exclu-  
12 sive jurisdiction in the federal courts. As noted by  
13 Mr. Justice White, it states that "on the other hand, federal  
14 enforcement of the law in this area was insisted upon by the  
15 Department of Justice and there was substantial doubt whether  
16 state law and jurisdiction could or should be extended to  
17 these structures. A federal solution was thought necessary."

18 The legislative history -- one thing, I think,  
19 should be pointed out, was, this Act was fought and fought  
20 bitterly by the Senators from Louisiana, the Senators from  
21 Texas, but primarily led by the Senators from Louisiana.  
22 Senator Ellender, the senior Senator from Louisiana, offered  
23 an amendment where, and described in his own words, "my amend-  
24 ment is very simple. It would clarify a multiplicity of  
25 problems which are bound to arise. It would give coastal

1 states the right to extend their jurisdictions to these  
2 lands. For what purposes? Merely for the purpose of adminis-  
3 tering the criminal and civil laws which may appertain to  
4 that area."

5 And this amendment was defeated by Congress. Again,  
6 we urge it. Senator Long from Louisiana filed a subsequent  
7 amendment trying to get Congress to adopt it, accepting for  
8 the most part all of Senator Ellender's original amendment,  
9 but deleting any possibility of confusion that the amendment  
10 may in some way provide for the taxing powers of the states.  
11 We thought maybe that was what the Congress was looking at,  
12 just simply that they were afraid this was going to give the  
13 states taxing powers. So, he specifically deletes that,  
14 Senator Long does, and that amendment was defeated after floor  
15 argument. Senator Long then submitted another amendment; it  
16 was a compromise amendment with the majority leaders, and  
17 simply added the word "adjacent state" to what law was to be  
18 adopted as federal law, because the original Act said, just  
19 the nearest point of land, the law would apply. So they  
20 put in this adjacent state rule instead of the nearest point  
21 of land. And that is what was finally enacted.

22 Senator Long filed the minority report and recog-  
23 nized in his minority report that there was no state court  
24 jurisdiction as far as this Act was concerned, and that was  
25 his brief or his minority report. He was still unhappy and

1 dissatisfied with the congressional action, so I think there  
2 was clear legislative intent as to what Congress was proposing  
3 to do.

4 Now, this case in 25 years up to 1978, this legisla-  
5 tion, had already been piecemealed and added to, in a piece-  
6 meal sort of way. In 1978 there was a codification of  
7 various laws and rules and various regulations into what's  
8 been referred to as the 1978 amendments. I would simply like  
9 to point out that as far as I'm concerned the 1978 amendments  
10 did not in any way change the jurisdictional approach. It was  
11 simply a recodification.

12 QUESTION: Did these accidents take place on arti-  
13 ficial islands?

14 MR. KENNEDY: Yes, Your Honor.

15 QUESTION: Well, then, don't you have some trouble  
16 with Rodrigue on which you rely and the passage that says a  
17 compromise emerged, that federal law would prevail but that  
18 the states would have some jurisdiction to apply that federal  
19 law on artificial islands?

20 MR. KENNEDY: I don't believe Rodrigu e, Your Honor,  
21 in Rodrigue, that was at all the holding. Rodrigue was simply,  
22 was this a maritime case or was this an Outer Continental  
23 Shelf lands case? And the maritime law --

24 QUESTION: Well, in Rodrigue it says, on page 365,  
25 that the special relationship between the men working on

1 these artificial islands and the adjacent shore to which they  
2 commute to visit their families was also recognized by drop-  
3 ping the treatment of these structures as vessels and instead  
4 over the objections of the Administration that these islands  
5 were not really located within the states. The bill was  
6 amended to treat them as if they were an area of exclusive  
7 federal jurisdiction located within a state. -- Page 365.

8 MR. KENNEDY: The whole approach there is applicable  
9 law. This was the question in Rodrigue. What is the appli-  
10 cable law? And the applicable law, as recognized by Rodrigue,  
11 is going to be federal law. They do not adopt admiralty and  
12 maritime law. That was the effect of it. And they simply  
13 go back and reiterate the standards of law that's applied  
14 under the Act. First, federal law; second, rules and regula-  
15 tions of the Secretary of Interior; and then, if there is no  
16 applicable federal law, then you look to the law of the  
17 adjacent state, not as state law, not as an Erie type of  
18 court, but as a federal law. And I think the 1978 amendments  
19 clearly show what has happened in this area.

20 When you started in 1953, there were a lot of areas  
21 where there might have been voids, where there was no appli-  
22 cable federal law at that time and they needed something to  
23 look to, to build and evolve a federal law. The 1978 amend-  
24 ments strengthened the control of the Federal Government over  
25 civil suits.



1 QUESTION: I thought you said a moment ago that it  
2 was just a codification.

3 MR. KENNEDY: Well, it was a codification as far as  
4 all of these piecemeal legislations that have been adopted  
5 over the 25-year period from '53 to '78. These were recodi-  
6 fied into this one Act. A lot of the rules and regulations  
7 were referred to and brought into the Act. But, really, then  
8 it strengthens it. And let, if I may point out the streng-  
9 thening, it provided that there was a law with, in suit, in  
10 federal court, to compel compliance with the Act, and with  
11 any regulations.

12 Now, there might have been a void there, so that  
13 they thought they had to do that. But even more important,  
14 as a second item, they provided a suit for damages to any  
15 resident who is in any manner injured, be it any personal  
16 injury or any other type of injury due to an  
17 operator's, such as mining people, noncompliance with a  
18 rule, regulation, or permit issued pursuant to the Act, and  
19 in connection with what's been referred to as a citizen's  
20 suit, they granted award of attorneys' fees to be added on to  
21 the damages, and they granted the award of witness fees.

22 QUESTION: Take your mind back to this construction,  
23 how do you think the Texas Court of Appeals viewed that con-  
24 struction? As something called for under Texas law, federal  
25 law, Louisiana law?

1 MR. KENNEDY: You're referring to the Liepelt con-  
2 struction now, Your Honor? There's no doubt after having tried  
3 the case, they were implying Texas laws, as a procedural  
4 type of law. No, the appellate court did not really address  
5 it in view of the Liepelt decision, but the Liepelt decision  
6 didn't come down until after the appellate court's opinion.  
7 I can't say that I -- I really don't know what was in the  
8 judge's mind; it was just, as the record will reflect, one  
9 of the basic issues.

10 But I was representing a third-party defendant. Did  
11 I even have a right to raise this issue? Don't I even have a  
12 right to ask for this instruction?

13 QUESTION: Don't you think we should know or have  
14 some idea -- ?

15 MR. KENNEDY: As to whether this is Texas law?  
16 Well, of course, Texas law would not even apply in this case,  
17 Your Honor, even if you say that state courts have jurisdic-  
18 tion, subject matter jurisdiction, this happened off the  
19 coast of Louisiana.

20 QUESTION: Well, is it clear now that this kind of  
21 an instruction could be given under federal law?

22 MR. KENNEDY: I think it's very clear.

23 QUESTION: But it wasn't then?

24 MR. KENNEDY: It was not, at that time. But, it's  
25 been referred to that you'd have to be omniscient to ever

1 have decided that the Supreme Court would do what they did.  
2 I say this is not true. This is an instruction we've been  
3 fighting for and asked for for years, and if -- I'm no more om-  
4 nipotent than any other defense attorney; and it's an instruc-  
5 tion that I think and felt had to be asked for under the federal  
6 law. We knew we were dealing with federal law.

7 QUESTION: Then you did ask for the instruction?

8 MR. KENNEDY: We did ask for the instruction; it  
9 was refused. The instruction that I asked for is almost  
10 right in line with the instruction that was in the Liepelt  
11 case.

12 QUESTION: You anticipated the Liepelt decision, in  
13 effect, didn't you?

14 MR. KENNEDY: Well, I didn't really anticipate the  
15 Liepelt decision but I knew sooner or later that the law had  
16 to recognize the fact that juries were continuously being  
17 confused by the fact that nobody would tell them what effect  
18 taxes had on them. And I would like to make one thing clear,  
19 it is our position that the Liepelt opinion simply requires an  
20 instruction by the judge to the jury that they should neither  
21 take it, neither increase nor delete anything from their  
22 award because of federal income tax and it is that the award  
23 is not subject to federal taxation. I think this is what the  
24 Court has done in Liepelt.

25 QUESTION: So what if we disagree with you on the

1 jurisdictional question, on the jurisdiction of the state  
2 courts, but agree with you on the instruction?

3 MR. KENNEDY: Then I think the case should be re-  
4 versed and remanded.

5 QUESTION: It would be a new trial?

6 MR. KENNEDY: What?

7 QUESTION: Would it be a new trial then?

8 MR. KENNEDY: If remanded, yes, sir.

9 QUESTION: On liability or damages or what?

10 MR. KENNEDY: At least on damages.

11 QUESTION: But, of course, if we agreed with you  
12 on this first -- it would wipe out the entire --

13 MR. KENNEDY: Yes, Your Honor. Now --

14 QUESTION: Is it -- the jury set the damages?

15 MR. KENNEDY: Is what?

16 QUESTION: The jury found the damages?

17 MR. KENNEDY: The jury found the damages.

18 QUESTION: All in one proceeding?

19 MR. KENNEDY: All in one proceeding. There has  
20 been no appeal taken from the jury's award against Mobil.  
21 The only appeal before this Court is on Mobil's claim over  
22 against us for indemnity.

23 QUESTION: But if we disagree with you on the  
24 jurisdictional issue and conclude that the state courts do  
25 have jurisdiction, might it not also follow that the state

1 courts can apply their own rules of damages? And in which  
2 event they might not have to give the Liepelt instruction?

3 MR. KENNEDY: Not as long as it's inconsistent with  
4 federal law. This is not applying straight law as an  
5 Erie court would. The Outer Continental Shelf Lands Act is  
6 perfectly clear that it is federal law --

7 QUESTION: Is there a federal measure of damages  
8 in things like mental suffering and loss of consortium and  
9 all that? Is there a federal --

10 QUESTION: No, but there is about taxes.

11 MR. KENNEDY: There is about taxes, there is about  
12 interest. I have referred the Court --

13 QUESTION: No, but, you know, some of these like  
14 the Death on the High Seas Act and all, there have been dif-  
15 ferent rules of damages with the state or federal --

16 MR. KENNEDY: Rodrigue has thrown that out, sir;  
17 that is not applicable.

18 QUESTION: So there's no federal rule of damages  
19 applicable with respect to just the measure of damages; putting  
20 aside taxation for the moment?

21 MR. KENNEDY: There may be in certain areas, Your  
22 Honor. I can't really answer it. I know that as for the  
23 interest on awards on judgment, like an Aymond opinion out of  
24 the 5th Circuit, that there, there is a federal law. Liepelt,  
25 there is a federal law. So --

1 QUESTION: There is now -- this area.

2 MR. KENNEDY: In this area --

3 QUESTION: Federal law.

4 MR. KENNEDY: Right.

5 MR. CHIEF JUSTICE BURGER: Your time has expired --

6 MR. KENNEDY: Thank you, Your Honor.

7 MR. CHIEF JUSTICE BURGER: Mr. Kennedy. Mr. Caton.

8 ORAL ARGUMENT OF FRANK E. CATON, ESQ.,

9 ON BEHALF OF RESPONDENT MOBIL OIL CORPORATION

10 MR. CATON: Mr. Chief Justice, and may it please the  
11 Court:

12 The objective of the Outer Continental Shelf Lands  
13 Act is clearly stated in the Presidential Proclamation 1945,  
14 in the Congressional Record, and in the Act itself. It says  
15 specifically that what we are dealing with is the resources  
16 in the shelf. And that is what the states and the Federal  
17 Government were fighting over, the resources. They gave no  
18 deliberate attention to what court would have jurisdiction  
19 over these disputes arising out of the Act on the shelf.

20 No one has taken the position on the respondents'  
21 side of the aisle that we are asking that the courts of the  
22 states have sole jurisdiction of these cases. The Adminis-  
23 tration complained about those provisions in the Act origi-  
24 nally which would provide, apparently, for sole jurisdiction  
25 in state courts. And they insisted that the Act be amended

1 so as to provide that you would treat those fixed structures  
2 and fixed platforms as if they were an area of federal --  
3 a federal enclave; that's what they were to be treated as, as  
4 an area of federal jurisdiction located within a state.

5 We say that that falls directly in line with this  
6 Court's opinion expressed by Justice Marshall in the Evans case  
7 out of the State of Maryland, when we had a federal enclave  
8 in which the voters complained that they were being deprived  
9 by the Commissioners of Maryland of their voting rights. And  
10 the Court's clear statement in there was that despite the  
11 fact that they were residents of a federal enclave within  
12 the state, that the state courts had jurisdiction and the  
13 state courts had process over those certain residents of  
14 that federal enclave. The Act says specifically that you  
15 will treat those platforms as federal enclaves.

16 Now, the Claflin v. Houseman decision which came  
17 one year after the federal lower court system was established,  
18 1876, actually addresses the very contentions which are being  
19 made by Gulf Offshore in this case. They say that juris-  
20 diction, exclusive jurisdiction, in a sovereign follows the  
21 sovereignty. And that a state court is not entitled to  
22 have concurrent jurisdiction. And that was put to rest in  
23 Houseman, specifically.

24 Justice Story in the Martin v. Hunter case had  
25 agreed with that proposition and was disagreed with by this

1 Court in the opinion by Justice Bradley and in it he said,  
2 that that general principle, that where the state courts had  
3 historic concurrent jurisdiction, you are not going to take  
4 that away from them unless you do what Mr. Hamilton said you  
5 must do in No. 82 of the Federalist Papers. He said you can  
6 only do that in three ways. You can do it by express lan-  
7 guage in the statute; you can, secondly, do it, if it's not  
8 express language, you can give it by express language a  
9 jurisdiction of the federal court and deny the state courts  
10 jurisdiction. That's the second way. If you can't do it  
11 in those two ways, then you must show that the exercise of  
12 concurrent jurisdiction in the state courts is simply incom-  
13 patible by the nature of the case itself with concurrent  
14 jurisdiction in the state courts.

15 Now, from a practical standpoint, we cannot fathom  
16 why concurrent jurisdiction over Outer Continental Shelf  
17 lands cases should not be handled by a state court. The ob-  
18 jective of the Act is not being offended in any way by state  
19 court jurisdiction, there is very little difference in the  
20 discovery rules. There is no federal specialty which has  
21 been built up over the years in Outer Continental Shelf  
22 Lands Act cases which give the federal courts some particular  
23 specialized knowledge or expertise over this type of case in  
24 any way. It's interesting to note that in Gulf Offshore's  
25 brief they cite in support of one of their positions a case



1 called, In Re Dearborn. That case arose off the Texas coast  
2 on a fixed platform. Five or six men were killed because of  
3 an explosion and fire. One of those men was a man by the  
4 name of Monk, whose survivors filed an action in the state  
5 district court in Texas. That case was removed to the federal  
6 district court and it was joined in with all of the other sur-  
7 vivors' actions arising out of the case. That case went to  
8 conclusion, went through the 5th Circuit, cert. was denied by  
9 this Court. Are we now to take the position that that case,  
10 that all of the judgments entered in that case, are void be-  
11 cause that derivative jurisdiction which the federal court  
12 had to depend on in order to hold that Monk case in his  
13 court -- and I think it's clear that it is derivative --

14 QUESTION: Res judicata would prevent that, would  
15 it not? Sunshine Mining v. Treinies and those cases say  
16 that even though the Court did not have jurisdiction when it  
17 started out, if the parties litigated the issue and let the  
18 case become final, it's over; you can't vacate it.

19 MR. CATON: I agree with that, Your Honor. The  
20 point I'm really trying to make is that under the Lambert Run  
21 Coal Company line of cases, it's clear that a federal court  
22 cannot take jurisdiction in a removed action unless the state  
23 court had original jurisdiction of that case.

24 Now, if that's the case -- and I think that it is --  
25 Judge Rubin, whom they rely on, is the only federal lower

1 court who has held that the state courts don't have concur-  
2 rent jurisdiction. He should have dismissed the Fluor case  
3 because the state court, he said, didn't have jurisdiction  
4 originally. He should have simply dismissed it, and he did  
5 not do that. It's just inconsistent that he could rely on  
6 the contention that the federal court had exclusive juris-  
7 diction and then say that the state court, he had derivative  
8 jurisdiction out of that same state court.

9 Now, in order to take care of the objective of  
10 developing the riches, the resources on the Outer Continental  
11 Shelf, Congress simply passed two acts. It passed the  
12 Submerged Lands Act, which was called the quitclaim legisla-  
13 tion which gave the gulf states a three marine leagues area  
14 off their low mean tide shore, and it gave the ocean states  
15 a three statute mile area off their coast. Then it came  
16 along in the Outer Continental Shelf Lands Act case and said,  
17 now we're going to take care of two things: we are going to  
18 provide for development of those riches, and we are going  
19 to provide for what you are going with the revenue that you  
20 obtain from those riches. That's all they said.

21 I think, when we get back to the Cläflin v. House-  
22 man rule, which says that unless you can meet one of the  
23 tests which were established by Mr. Hamilton, that I've al-  
24 ready mentioned, then you cannot take away from the state  
25 courts their historic concurrent jurisdiction of these cases.

1 Now, I don't dispute that the Outer Continental Shelf Lands  
2 Act created a new statutory remedy, and we started from  
3 scratch with a federal law which we have to apply as surro-  
4 gate federal law, but it is not a new remedy.

5 And strangely enough, in the Houseman case, again,  
6 Mr. Bradley anticipated that, Justice Bradley, and he said  
7 specifically, that it was mentioned by Justice Story. He  
8 said it was indeed intimated by Mr. Justice Story over a  
9 dictum in *Martin v. Hunter* that the state courts could not  
10 take cognizance of cases arising under the Constitution, laws,  
11 and treaties of the United States, as no such jurisdiction  
12 existed before the Constitution was adopted.

13 "This is true as to jurisdiction depending on United  
14 States authority, but the same jurisdiction existed, at least  
15 to a certain extent, under the authority of the states." And  
16 then he goes on to say, "The change of authority creating the  
17 right did not change the nature of the right itself."

18 We are simply saying that this is a simple, common  
19 law negligence action. The character of that right wasn't  
20 changed because the Federal Government declares initial juris-  
21 diction over that territory, and the practical question to  
22 ask, then, is, what is going to happen when I get this  
23 \$183 sworn account case that I have in my office, and I give  
24 it to a federal judge-- he's got 600 or 700 cases on his  
25 docket -- and tell him that you must rule on that case because

1 we can't take that to the county court.

2           If we are really looking at the pragmatic factors,  
3 because Congress didn't and we therefore have to do it,  
4 how can we be pragmatic and take the position that we are  
5 going to congest the federal court dockets more by giving  
6 them all of the cases and controversies which were tradi-  
7 tionally handled by state courts and turn those into the  
8 hands of federal courts? That is not being pragmatic.

9           The Act does not say, exclusions. The idea that  
10 because you do not say, we are granting concurrent jurisdic-  
11 tion to the state courts, has been ridiculed many times by  
12 the treatise writers, including Professor Redish, because  
13 that's begging the question.

14           The fact that you do not grant concurrent jurisdic-  
15 tion to the state courts means nothing. You don't grant  
16 concurrent jurisdiction to the state courts, you take it  
17 away; that's what Congress does. There is no prohibition  
18 against state jurisdiction in the Act, so that you can't meet  
19 the second test that Mr. Hamilton established, and no viable  
20 or justifiable reason has been suggested why we should dump  
21 these cases on the federal district court. There is no prag-  
22 matic reason for it.

23           I would like to say, with respect to the Liepelt  
24 decision --

25           QUESTION: Well, maybe you could suggest some way

1 that we could hold that the state courts have exclusive juris-  
2 diction?

3 MR. CATON: No, that is something I'm sure that a  
4 number of judges I know would like to see happen, Your Honor.

5 QUESTION: You mean federal court judges?

6 MR. CATON: Federal courts? It's like asking a Marine in a foxhole whether  
7 preference. It's like asking a Marine in a foxhole whether  
8 he prefers strafing or bombing, which court I'm in, so I don't  
9 see any preference.

10 I would like to say with respect to the Liepelt  
11 decision, briefly, the reason why the district court judge  
12 in the state, the trial judge, didn't have anything in his  
13 mind was because the jury didn't have anything in their minds.  
14 And they didn't have anything in their minds because they  
15 didn't have any evidence, and I'm saying that the Liepelt  
16 decision doesn't say you can give that -- that very --  
17 whether we like it or not, that is a confusing instruction in  
18 the absence of explanation. The only explanation you can  
19 give --

20 QUESTION: Was Liepelt on the books when the trial  
21 took place?

22 MR. CATON: Well, Your Honor, it was on the books.  
23 It simply wasn't in the appellate books but everybody knew  
24 that that case was about to be decided.

25 QUESTION: About to be, but it wasn't?

1 MR. CATON: But the arguments that were being made  
2 in this court --

3 QUESTION: Yes, I know, but it wasn't,--but it  
4 wasn't --

5 MR. CATON: That's right, it was not binding, Your  
6 Honor.

7 QUESTION: Your argument goes at least as far as  
8 that we shouldn't decide the instruction should have been  
9 given. But why shouldn't we remand to see if the district  
10 judge, the trial judge thought that this was a matter of  
11 federal law, and he should decide whether it should be given?

12 MR. CATON: Your Honor, there's a very simple explana-  
13 tion for that. It is a matter of federal law. If it is,  
14 the federal law provides clearly that you may not give an  
15 instruction in the absence of evidence. That's not a state  
16 rule.

17 QUESTION: It may be but then we ought to have the  
18 district judge decide that. You are asking us to look at  
19 the record and come up with our own view of the facts.

20 MR. CATON: Your Honor, I think --

21 QUESTION: What's the evidence that's missing,  
22 Mr. Caton?

23 MR. CATON: There is no evidence, Your Honor, but --  
24 All right, I'll tell you the evidence that I think should have  
25 been put in, briefly, one of the instructions. They should be

1 have put in the Code section which says that these awards are  
2 not subject to taxation. They should have put in the 1040  
3 instruction book, they should have put in the 1040 --

4 QUESTION: 1040 what?

5 MR. CATON: The Form 1040; the IRS 1040 instruction  
6 book. They should have put in the tax table. They could  
7 have at least argued with that information, could simply have  
8 been put in, they could have argued from that and explained  
9 to the jury -- or better still, they could have done what the  
10 Leipelt Court suggested, offer expert testimony to explain  
11 to the jury rather than to confuse them, what that instruction  
12 meant. But the idea that that was a state procedural rule  
13 is accurate, but it's also a federal procedural rule; that's  
14 clear. Decisions of this Court have held that you may not  
15 give an instruction, an explanatory instruction, in the  
16 absence of clear evidence in the record.

17 And I'm saying that the people who are complaining  
18 about the judges' failure to do that are asking the judge to  
19 give an instruction on no evidence.

20 QUESTION: So you're just saying that if we remand  
21 it for reconsideration in the light of Liepelt, it would just  
22 be a useless act?

23 MR. CATON: You'd give them the second chance to do  
24 what they should have done the first time. That's offer  
25 evidence. Thank you, Your Honors.

1 MR. CHIEF JUSTICE BURGER: Mr. Jamail.

2 ORAL ARGUMENT OF JOSEPH D. JAMAIL, ESQ.,

3 ON BEHALF OF RESPONDENT STEVEN GAEDECKE

4 MR. JAMAIL: Mr. Chief Justice, and may it please  
5 the Court:

6 I represented Mr. Gaedecke in the trial below and up  
7 to and including this point. He was injured in 1975. The  
8 Act that petitioners ask this Court to now construe by adding  
9 the word "exclusive" to was passed in 1953. It was amended  
10 in 1978. Mr. Gaedecke's case did not go to trial until after  
11 the Act had been amended. The Act was amended in September,  
12 1978. Mr. Gaedecke's case went to trial in November, 1978.

13 Mr. Gaedecke was 30 years of age. The evidence in  
14 the case, as elicited by me from the doctors, from expert  
15 testimony, showed that his lost earnings would exceed by twice  
16 what the jury assessed as damages. He had major surgery three  
17 times, spinal surgery. It differs -- I bring this to the  
18 Court's attention to show the difference between Gaedecke and  
19 Liépelt. Liépelt was this Court construing a federal statute,  
20 where the damages were confined to net pecuniary loss.  
21 No such test exists in Gaedecke.

22 So, if the instruction is correct in Liépelt, there  
23 is no reason to extend it to a common law negligence action  
24 where pain and suffering are a major element of that cause of  
25 action damagewise.



1           And what other differences do we have? In Liepelt,  
2 we had the, in that case, the complaining party attempting to  
3 introduce evidence showing what tax brackets, and the evidence  
4 regarding income tax, and then that evidence was denied by  
5 the trial judge and he was not allowed the instruction.

6           In this case, all we had was, counsel for peti-  
7 tioner, after all of the evidence was closed and the case was  
8 over, handing the trial judge a piece of paper asking for an  
9 instruction. The Louisiana law forbade this. The Texas  
10 law procedurally forbade this. Liepelt had not been handed  
11 down. We must look at this case as --

12           QUESTION: What about a case in the federal court,  
13 the same kind of a case as this one, in the federal court  
14 that's filed and tried tomorrow? Would it be error to give  
15 the Liepelt instruction?

16           MR. JAMAIL: I believe that it would be error not  
17 to give it in a FELA case.

18           QUESTION: Not to give it; yes; not to give it.

19           MR. JAMAIL: An FELA case.

20           QUESTION: Well, I didn't ask you about that.  
21 I asked you about this kind of case.

22           MR. JAMAIL: A common law tort action?

23           QUESTION: I'm asking you about it, about this kind  
24 of a case that arises on the Outer Continental Shelf and  
25 under this -- and it's federal law borrowing state law except

1 to the extent that it's inconsistent?

2 MR. JAMAIL: I think that unless this Court desires  
3 to extend the Liepelt rule to a common law tort damage ele-  
4 ment action, which it did not do in the FELA case, because  
5 you were looking at a net pecuniary loss, where income taxes  
6 may have been --

7 QUESTION: Well, we aren't -- we were extending it  
8 to a statutory, to a claim under a statute, aren't we?

9 MR. JAMAIL: Aha, Your Honor, but that's not so.

10 QUESTION: You didn't say we'd borrowed state law.  
11 It says, federal law.

12 MR. JAMAIL: This action was brought under a common  
13 law tort. The second most important document, in reply to  
14 your question --

15 QUESTION: Well, it certainly wasn't brought under  
16 state law.

17 MR. JAMAIL: The action?

18 QUESTION: Yes.

19 MR. JAMAIL: Well, it most certainly was, Your  
20 Honor.

21 QUESTION: How could it be?

22 MR. JAMAIL: Because, Your Honor, of the savings  
23 to suitors clause of the 1789 Judiciary Act gave them this  
24 right unless --

25 QUESTION: Oh, so you're saying this Outer

1 Continental Shelf Lands Act doesn't apply at all?

2 MR. JAMAIL: No, I'm not.

3 QUESTION: Is it federal or law or not, that con-  
4 trols this case?

5 MR. JAMAIL: It is state law, and you've so stated --

6 QUESTION: It's only borrowed. It's only federal  
7 law borrowing state law.

8 MR. JAMAIL: Borrowed, begged, or bought, Your  
9 Honor, it's still state law.

10 QUESTION: Well, it isn't a cause of action under  
11 state law then?

12 MR. JAMAIL: It is, Your Honor.

13 QUESTION: Well, okay. You can have it your way.

14 MR. JAMAIL: Well, Your Honor, unless we're ready  
15 to repeal the 1789 Judiciary Act, the savings to suitors  
16 clause, it's still state law. Where in the Act -- and I have  
17 asked, in my brief, for petitioner to point out so we would  
18 know, where in the Act does it give Mr. Gaedecke or anybody  
19 else the right to bring suit? It has none. The section  
20 he refers to, Your Honor, is Section 2, which was brought  
21 about after Olsen v. Shell, when Justice Brown ruled that  
22 there was no remedy under this Act, and it was put in to,  
23 for one reason only, Your Honor, not common law actions.  
24 And all one need do is read it, and it says, for violations  
25 of rules or regulations, not common law -- rules and

1 regulations are not common law.

2 And it is very clear -- we must assume, correctly  
3 or incorrectly, that some of the members can read and write  
4 the rudimentary English language. Now, the only time  
5 "exclusive" appears in this Act is when it -- and it appears  
6 once -- which, I think, adds weight to what I'm trying to  
7 say -- it appears in Paragraph 7 under section of "Citizens'  
8 Rights to Sue," and it says, "When a suit is brought against  
9 the Secretary of the Interior, then jurisdiction lies in the  
10 district court of the District of Columbia, and the deal is  
11 exclusive to the court of appeals of the District of Columbia.

12 QUESTION: Well, the exclusive argument -- if you're  
13 right, the exclusive argument is beside the point, because  
14 it's state law, and obviously you're not going to have some  
15 exclusive jurisdiction in the federal court over a state law  
16 cause of action.

17 MR. JAMAIL: But we have to address it, because this  
18 Court does have the right to interpret that statute, and I  
19 must address myself --

20 QUESTION: So it is a cause of action under the  
21 statute?

22 MR. JAMAIL: No, it is a cause of action applying  
23 state law, and if we're going to be semantical, state law  
24 under the statute. But it's still state law, and state law  
25 forbade us to submit an income tax instruction.

1           And, another thing, procedurally I don't believe the  
2 Court has the power if *Monger v. Florida* is still the law to  
3 address itself to this question, because under the Texas  
4 procedural law counsel has the responsibility not only to  
5 present the issue to the court but to have it marked "refused"  
6 and made a part of the record. This was not done in this  
7 case.

8           Issue No. C, which he relies on is not marked  
9 "refused" in any way. We have no way to know whether or not  
10 the judge refused it. Procedurally he did not comply with  
11 everything he must do in order for this Court to rule on the  
12 matter.

13           Jurisdiction, if I may, again. Never do we see the  
14 word, and I would like to -- original jurisdiction has  
15 meaning in only one context, that is when it is applied in  
16 relation to appellate jurisdiction. And I think that I don't  
17 need to dwell upon that. But as I can say it no better than  
18 Justice Brennan said it in *Sun Ship v. Pennsylvania*, if  
19 counsel's argument is that exclusion of the word "original"  
20 then made it necessary for you to interpret it as meaning  
21 "exclusive," then that is a tour de force of statutory  
22 interpretation, and I begged and borrowed the words from  
23 Justice Brennan.

24           QUESTION: Mr. Jamail, may I get back to the  
25 Liepelt question again?

1 MR. JAMAIL: Yes.

2 QUESTION: I gather -- do I correctly understand  
3 your argument? -- even if this case were tried the day after  
4 Liepelt's decision here, you'd be arguing just as you are  
5 now?

6 MR. JAMAIL: I would have to, because Liepelt was  
7 talking about an FELA case.

8 QUESTION: I know. That's what I'm trying to get  
9 to. You'd be arguing that no Liepelt construction was re-  
10 quired, notwithstanding the case is tried after Liepelt?

11 MR. JAMAIL: Yes, and I hope and pray that that's  
12 what this Court will write.

13 QUESTION: Well, you would say it would be error to  
14 give it. Not only that it wasn't required, it would be error  
15 to give it?

16 MR. JAMAIL: I think it would be under the existing  
17 Louisiana law, as it was at the time, Justice White, because  
18 we had case law, Louisiana law, and incidentally, there is no  
19 confusion under which law this case was tried under. The  
20 Court of Civil Appeals emphatically states it was tried under  
21 Louisiana law and it was, using the Texas rules of procedure,  
22 which we were required to do.

23 Now, I'm saying, Your Honor, and I don't want to  
24 be misunderstood and I certainly don't want to be crosswise  
25 with you, this is -- the only one who gets hurt in this is

1 Mr. Gaedecke. Look at the miscarriage of --

2 QUESTION: There's nothing wrong with being cross-  
3 wise with me. Many people are.

4 MR. JAMAIL: I'm crosswise with too many people al-  
5 ready. Let me say this to you, and seriously so, what  
6 happens to poor Mr. Gaedecke? The respondent lays back until  
7 the statute of limitations runs and then says you don't have  
8 any jurisdiction over here. And then he comes in and says,  
9 no jurisdiction. Now, what happens to Mr. Gaedecke? The  
10 Court can say, well, we will rely on Justice Potter Stewart's  
11 opinion in the Chevron v. Huson which said that, well, it  
12 would be too harsh and too unjust to send it back now because  
13 where is his remedy?

14 But I'm not relying on that. This is not -- I'm  
15 saying the law itself, the Act itself, imposes no exclusive  
16 jurisdiction. I hope that that's been made clear and hope-  
17 fully this Court will not by judicial fiat say, all right,  
18 we're going to say exclusive jurisdictions. And incidentally,  
19 the character of what happened -- we can't listen to floor  
20 debates by Senators and Congressmen who are interested in  
21 glomming off some of the profits from the undersea belt. What  
22 you've got to do is take it in context.

23 What did the explanation committee of the floor  
24 managers of the bill tell us? What does that teach us?  
25 It says nothing in this Act shall ever be construed to put a

1 limit on anyone's remedy for injury or death. Now, again, we  
2 must assume Congress can read and write English. Some may  
3 not, but here we must. They said what they wanted to say.  
4 They had two cracks at it to say "exclusive" and both times  
5 turned it down. Originally, and in the amendments.

6 But back to Liepelt. If the Court is going to  
7 extend Liepelt -- and I'm asking the Court to do it in a  
8 "sunburst" sort of way and not make it retroactive with the  
9 harshness that would result to this man, simply because the  
10 case was tried, as it had to be, of necessity, under the rules  
11 that existed at the time, and both Louisiana substantive law  
12 and Texas procedural law forbade its inclusion, the Texas  
13 substantive law. He is not properly before this Court on the  
14 issue of Liepelt, unless you want to overrule *Monger v.*  
15 *Florida*. And that's made clear in our brief.

16 And I can only hope that the Court will not inflict  
17 us -- we have to try lawsuits -- with the further burden, as  
18 counsel for respondent suggests, a new body of federal law.  
19 What's it going to be called? Nobody intended that. It's  
20 already very difficult to try one of these cases, and the  
21 court said that, and everyone, I think, will agree that the  
22 courts below are doing all they can to interpret. I think,  
23 whatever happens, there ought to be a clear enunciation,  
24 first that there is no exclusivity in the federal court for  
25 this type of action for if there had meant to be Congress



1 would have told us so.

2           Secondly, that we will not further encroach on  
3 state jurisdiction by judicial fiat. And thirdly, that we  
4 will not extend Liepelt beyond what it was intended to do.  
5 For what is a jury to do with an instruction without evidence?  
6 Are they to go in and then sit back in the jury room and say,  
7 well, I wonder what bracket he'll be in? Will somebody go to  
8 the phone and call H. R. Block, maybe he can help us.

9           What do we do with this? It's already enough con-  
10 fusion. I say that there must be evidence. And if the Court  
11 is just going to issue a ukase, a decree, that says, evidence  
12 or not, the instruction should be granted, then how do we do  
13 this in the face of the Penrod cases, Starnes and Johnson  
14 cases, where the Court has ruled -- I was the lawyer that  
15 tried those also, unfortunately -- that inflation cannot be  
16 considered? Well, what is more speculative than what is going  
17 to happen to us taxwise? Is inflation more speculative?  
18 It's omitted because even evidence is omitted in a diversity  
19 case, which that was.

20           So, I am asking this Court to confine Liepelt to  
21 what it's meant to be, the interpretation of a federal  
22 statute, and a death case at that, where the net pecuniary  
23 loss is the damage issue involved; and not to insert it into  
24 the common law tort action where there are other elements of  
25 damages; and certainly to hold that there's no jurisdiction

1 and to consider the fact of the injustice that will occur to  
2 Gaedecke if this case is reversed, and if this Court holds  
3 that exclusive jurisdiction lies in the federal courts.

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

6 (Whereupon, at 3:07 o'clock p.m., the case in the  
7 above-entitled matter was submitted.)

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6 No. 80-590

7 GULF OFFSHORE COMPANY, A DIVISION OF THE POOL COMPANY

8 V.

9 MOBIL OIL CORPORATION, ET AL.

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11 and that these pages constitute the original transcript of the  
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