

In the

ORIGINAL

Supreme Court of the United States

J. GREGORY MERRION AND ROBERT L.
BAYLESS, ETC., ET AL.,

Petitioners

v.

NO. 80-11

JICARILLA APACHE TRIBE ET AL.;

AND

AMOCO PRODUCTION COMPANY AND
MARATHON OIL COMPANY,

Petitioners,

v.

NO. 80-15

JICARILLA APACHE TRIBE ET AL.

Washington, D. C.

November 4, 1981

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Mexico; on behalf of the Respondents.
LOUIS F. CLAIBORNE, ESQ., Office of the Solicitor
General, Department of Justice, Washington,
D. C.; on behalf of the Respondents.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next
in Merrion against Jicarilla Apache Tribe.

I think you may proceed now, whenever you are
ready.

ORAL ARGUMENT OF JASON W. KELLAHIN, ESQ.,
ON BEHALF OF THE PETITIONERS

MR. KELLAHIN: Mr. Chief Justice, and may it
please the Court, this case is here on certiorari to the
Tenth Circuit, and involves the power of an Indian tribe to
tax non-Indians who are lawfully on the reservation. The
case was argued on March the 30th of this year and by order
of the Court was set for reargument here today.

The facts of the case are quite simple, but the
issues, the legal issues involved direct us to some
fundamental constitutional questions.

The case involves the Jicarilla Apache Tribe,
which is an Indian tribe occupying an Executive Order Indian
reservation located in the northwestern part of the state of
New Mexico. The reservation is located in an area ceded to
the United States by Mexico under the Treaty of
Guadalupe-Hidalgo.

QUESTION: So there is no question of inherent
tribal sovereignty, I take it.

MR. KELLAHIN: That is our position, because

1 neither Spain nor Mexico ever recognized any sovereignty
2 existed.

3 QUESTION: In fact, Article VIII of the Treaty of
4 Guadalupe-Hidalgo makes special provisions for Mexican
5 title, but none for Indian title.

6 MR. KELLAHIN: That is correct. The only mention
7 of Indians at all is in Article XI, which deals with the
8 obligation of the United States to prevent incursions into
9 the country of Mexico. So we have no sovereignty existing
10 as of that date, and that was recognized by this Court in
11 the case of Lake Corporation of Jesus Christ of Latter Day
12 Saints, where they said that the only sovereign at that date
13 was the United States itself, and all other sovereignty must
14 of necessity be derived from that source, and that goes
15 directly to this question of inherent sovereignty, which is
16 an issue involved here today.

17 The Jicarilla Tribe is organized under the Indian
18 Reorganization Act. It adopted a constitution, and that
19 constitution purports to give it the right to tax
20 non-Indians. The Petitioners have been on the reservation
21 for -- some of them for many years, under oil and gas
22 leases, some of which were issued at least 30 years ago.
23 They were issued pursuant to federal law, under regulations
24 promulgated by the Secretary of the Interior. They were
25 assigned on behalf of the tribe and were approved by the

1 Secretary of Interior as required by law.

2 Now, we are not here challenging any provisions of
3 those leases. We are not quarreling about any rental or
4 royalty that has been assessed pursuant to the agreement
5 under which the Petitioners entered the reservation. What
6 we are challenging is a severance tax ordinance which was
7 adopted by the tribe in 1976, which imposed a tax on oil and
8 gas sold or transported off the reservation.

9 The Petitioners brought suit in the District Court
10 of New Mexico, which held that the ordinance was invalid and
11 void. The Court of Appeals, in reversing that decision,
12 held that the power to tax was an attribute of inherent
13 sovereignty, since no treaty or Act of Congress authorized
14 it, and the power to tax was not pre-empted by the federal
15 government, and it did not violate the commerce clause.

16 Now, that gives us the three issues we want to
17 discuss here today. I would like to address the first
18 issue, the question of the inherent Indian sovereignty. My
19 colleague will discuss the pre-emption by federal law and
20 the issue of the commerce clause.

21 The Secretary in his supplemental brief recognized
22 the issue we are talking about very clearly when he said,
23 "The dispositive point is whether the Jicarilla Tribe is
24 entitled to exercise and is here exercising the sovereign
25 prerogative of taxation as the United States or a state or a

1 municipality might do." With that, we agree. That is
2 exactly what we are here to talk about.

3 Now, if it is true that the tribe is exercising
4 that kind of an authority, the authority to tax, as does the
5 federal government or a state, and that in the absence of
6 any constitutional provision or treaty or Act of Congress,
7 then the tribe is necessarily exercising governmental powers
8 over non-members of the tribe, and under our constitutional
9 system, the powers of all governments are derived from the
10 people. That is fundamental to our country.

11 Within the boundaries of the United States, the
12 Americans have consented to federal and state governmental
13 power over their liberty and their property. As safeguards
14 against the abuse of this power, our government is
15 controlled through the democratic processes, and the
16 exercise of such powers is subject to constitutional
17 limitations.

18 In this nation, the sovereign governs only with
19 the consent of the governed. This fundamental aspect of
20 political control is wholly lacking here, where the
21 Jicarilla Tribe seeks to assert governmental power over
22 non-members of the tribe who are forever barred from any
23 participation in tribal affairs.

24 It is our position that the tribe does not have
25 any such sovereign power except, and their right to tax is

1 limited to, the right to condition the entry of non-Indians
2 or non-members of the tribe onto their reservations. That
3 is the tenor of all the cases dealing with this issue,
4 including the most recent.

5 These Petitioners are on Jicarilla reservation
6 under valid oil and gas leases issued long before there was
7 any attempt to tax. The leases stated the conditions under
8 which they could enter, and the conditions that would permit
9 them to remain, and taxation was not one of those
10 conditions. Yet, an examination of the cases cited by the
11 Respondents in this case show that --

12 QUESTION: Is there a clause that I recall in that
13 lease that they cannot alter the royalty structure?

14 MR. KELLAHIN: That is correct. Neither the
15 rental nor the royalty may be increased during the life of
16 the lease, Your Honor, and we submit that this is a veiled
17 attempt to do exactly that in the name of taxation. They
18 call it a tax, but it is adding an additional burden on the
19 production from the lease.

20 The other cases that have been relied on all
21 involve the right of the tribes to impose conditions on
22 those who enter on the reservations. This is true of the
23 early cases, like the grazing feed cases, from Morris versus
24 Hitchcock on down to Colville, where this Court upheld the
25 tribe's right to collect a cigarette tax.

1 In the recent case of Montana versus the United
2 States, it was pointed out very clearly that the sovereignty
3 exercised by Indian tribes extends only to the right to make
4 their own laws and be governed by them. Nowhere in our
5 jurisprudence do we find anything that says that tribes have
6 a right to make laws and govern others by them, as they are
7 attempting to do here.

8 QUESTION: Mr. Kellahin, the Colville case
9 appeared to articulate a position that it is a fundamental
10 attribute of sovereignty, the power to tax transactions on
11 the trust lands.

12 MR. KELLAHIN: That is very true, Your Honor.

13 QUESTION: There wasn't an articulation there, as
14 I read it, of basing it on the power to exclude non-members
15 from the reservation. How do you distinguish the Colville
16 case?

17 MR. KELLAHIN: The Court had used that language,
18 but it was wholly unnecessary to the decision, because in
19 another portion of the decision it pointed out that those
20 who would avoid the tax --

21 QUESTION: Well, the Colville case also came as a
22 result of the Treaty of Point Elliott with Indians who were
23 ceding lands over which they had tribal sovereignty as
24 opposed to the Jicarilla Apaches, who came in by virtue of
25 the Treaty of Guadalupe-Hidalgo, did it not?

1 MR. KELLAHIN: That is correct, Your Honor. There
2 was no treaty involved with the Jicarilla Apache tribe.
3 There never was a treaty reached with the Jicarillas.

4 QUESTION: Didn't the Jicarillas win a case before
5 the Indian Claims Commission that they had been deprived of
6 their tribal lands, their aboriginal lands? Their
7 aboriginal title?

8 MR. KELLAHIN: Yes, Justice White --

9 QUESTION: Didn't they --

10 MR. KELLAHIN: They were awarded some \$9.5
11 million, I believe, for the loss of their aboriginal tribal
12 lands, which were very loosely defined as the area east of
13 the Rio Grande over which they had historically roamed.

14 QUESTION: Was that ever reviewed by this Court?

15 MR. KELLAHIN: I believe not. I believe not, Your
16 Honor.

17 Getting back, Justice O'Connor, to your question,
18 I would distinguish Colville on the grounds that no one has
19 to go buy -- they were marketing a tax exemption, as this
20 Court clearly pointed out, and it was not a true tax in the
21 sense that a state or federal government tax is imposed for
22 the reason there is no sanction. It was an optional thing
23 in the first place, and it was accepted or you could reject
24 it, and if you accepted it, you had no choice but to pay the
25 tax, and that was the ruling in Buster versus Wright, one of

1 the early tax cases, where the Court very clearly pointed
2 out that this was an optional thing. Those who wanted to go
3 on the reservation and trade under Buster versus Wright were
4 required to pay the tax.

5 QUESTION: Well, I suppose no one is forced to go
6 on the reservation and buy or lease oil or mineral rights.

7 MR. KELLAHIN: That is correct, but the point is,
8 we are already -- our Petitioners are already there, and
9 they were there before there was any tax. The conditions of
10 their entry, it is our position, were imposed by the leases,
11 and now this is a modification of those leases, and I would
12 draw that distinction from Colville.

13 In Montana, this Court held that the exercise of
14 tribal power beyond what is necessary to protect tribal
15 self-government or to control internal relations is
16 inconsistent with their dependent status, and so cannot
17 survive without Congressional delegation. There has been no
18 Congressional delegation of this authority here, as there
19 was in some of the other cases such as Morris versus
20 Hitchcock and some of the others.

21 The Montana court did -- Montana case did
22 admittedly hold that the tribe does exercise some forms of
23 civil jurisdiction over non-members of the tribe, and may do
24 this through taxation, licensing, or other means and
25 activities of non-members who enter into consensual

1 relations with the tribe.

2 Now, I think that is the key word in that portion
3 of the decision. They enter into a consensual arrangement
4 with the tribe through commercial dealings, contracts,
5 leases, or other arrangements. Now, that is what we have
6 done. We have entered into a consensual relationship with
7 the tribe, of which taxation was no part. The Petitioners
8 view this as upholding what we were just talking about in
9 the -- case. They have a right to impose a tax if it is a
10 condition of entering onto the reservation, but they did not
11 do so at the time, and they cannot in our view do it after
12 we are already on and have spent some millions of dollars in
13 developing these leases. We can't pick up the leases and go
14 elsewhere, as was suggested in Colville. We either pay the
15 tax or we lose the lease.

16 The Colville case is consistent, in our view, with
17 the argument which we are now making, and this result does
18 not require a finding of governmental sovereignty on a par
19 with that of the federal government or the state such as is
20 sought to be asserted here. Under the ruling, Colville is
21 argued perhaps that the tribe had a significant interest,
22 which was one of the key arguments in the Colville decision,
23 that the tribe had a significant interest in the subject
24 matter which enabled it to tax, and of course we do not deny
25 that the tribe has a significant interest in its tribal

1 lands.

2 However, the reservation lands are held in trust
3 for it by the United States government. The manner in which
4 the oil and gas leases are going to be handled, both
5 issuance of the leases in the first instance, their
6 development, and the manner of payment of royalties and
7 rentals is all controlled by federal regulation, and the
8 tribe's interest in the lands insofar as the oil and gas
9 mineral interest is concerned was assigned for the terms of
10 the leases, and we submit that they have no significant
11 interest remaining at this time, as was contemplated in
12 Colville, which would support this tax.

13 QUESTION: Is it your position that this tribe
14 does not possess sovereignty in the traditional sense that
15 we have referred to that and other cases?

16 MR. KELLAHIN: Mr. Chief Justice Burger, I do not
17 feel they have the sovereignty as the Court has referred to
18 in other cases, but I think an analysis of the other cases
19 would indicate that the sovereignty the Court has talked
20 about down through the years was something considerably less
21 than true sovereignty, and the more recent cases have
22 limited the scope of that sovereignty step by step. For
23 example, we come to the Oliphant, where they were attempting
24 to assert criminal jurisdiction over a non-Indian on the
25 reservation, and this Court held that that jurisdiction

1 could not be exercised.

2 In Montana, the Court interpreted that ruling as
3 applying also to the civil area, and for that reason, I do
4 not feel that we are really talking about true sovereignty
5 in the sense of the old cases. We submit that the Court of
6 Appeals should be reversed. Thank you.

7 CHIEF JUSTICE BURGER: Mr. Cooney?

8 ORAL ARGUMENT OF JOHN R. COONEY, ESQ.,

9 ON BEHALF OF THE PETITIONERS

10 MR. COONEY: Chief Justice, and may it please the
11 Court, we support the argument that the Constitution does
12 not permit Indian tribes to tax production by non-Indian
13 lessees. My argument will be that assuming for the sake of
14 argument that such power exists, the Indian tax here
15 violates the commerce clause, and is pre-empted by 25 United
16 States Code Section 398(C).

17 If such a power of taxation is found to exist,
18 fundamental constitutional concerns require that that tax
19 must be subject to the restraints of the Constitution, but
20 the tribe and the Secretary argue here not only that the
21 tribe may tax other than as a condition of entry, but that
22 those powers are not subject to the negative implications of
23 the commerce clause which prohibits states and lesser
24 sovereigns from impeding the free flow of commerce.

25 We submit that if this argument is accepted,

1 Indian tribes will be invited to impose discriminatory taxes
2 which unduly burden commerce as the Jicarilla have done
3 here, and --

4 QUESTION: Well, there is certainly nothing in the
5 original grant to Congress of the power to regulate commerce
6 among the several states to suggest that there is a negative
7 implication to it, is there? That in the absence of
8 Congressional action, a state act might be found violative
9 of that clause.

10 MR. COONEY: Justice Rehnquist, that is what we
11 submit is wrong with the Secretary's argument here. That
12 same argument, the affirmative power of Congress to prevent
13 states from burdening commerce was urged early on in this
14 Court's consideration of the commerce clause to prevent the
15 Court from finding negative implications in the clause
16 limiting the powers of states. This is the first
17 opportunity the Court has had to consider the application of
18 the commerce clause with the powers of Indian tribes over
19 commerce, perhaps because it is the first instance in which
20 Indian tribes have attempted to exert such powers over
21 commerce.

22 QUESTION: Well, maybe the Court went wrong a long
23 time ago.

24 MR. COONEY: Your Honor, the jurisprudence finding
25 the negative implications is so well established in this

1 Court and has been for decades that we believe the Court was
2 not wrong and that those same negative implications must
3 restrain the powers of Indian tribes.

4 QUESTION: Well, may I ask, Mr. Nordhaus as I
5 understand it, this severance tax, of course, was approved
6 by the Secretary of the Interior, was it not?

7 MR. COONEY: Yes, Your Honor.

8 QUESTION: Pursuant to a Congressional statute?

9 MR. COONEY: Your Honor, we find no statute which
10 requires the Secretary to approve the tax.

11 QUESTION: Where did the Secretary get the
12 authority?

13 MR. COONEY: The tribal constitution states that
14 the Secretary should approve the tribal ordinances, but we
15 submit that the mere fact of federal approval of the Indian
16 taxing --

17 QUESTION: I am not speaking so much just of
18 federal approval. You suggest that the Secretary's
19 authority to approve it derives from the Indian
20 constitution, not from the Congress?

21 MR. COONEY: There is nothing in the IRA, nothing
22 in the Indian Reorganization Act which requires the
23 Secretary to approve tribal taxing ordinances.

24 QUESTION: Well, I am not thinking it requires.
25 Does it authorize it?

1 MR. COONEY: Your Honor, to the extent that it
2 authorizes the Secretary to approve tribal constitutions and
3 the tribal constitution provides for Secretarial approval of
4 taxing ordinances --

5 QUESTION: Of course, you see what I am getting at.

6 MR. COONEY: Yes.

7 QUESTION: If in fact, accepting your argument,
8 does it apply here at all if there has been Congressional
9 authorization and federal approval of this severance tax?

10 MR. COONEY: Well, there has been no federal
11 approval by Congress of an Indian severance tax whatsoever.

12 QUESTION: Well, I gather that depends on how we
13 are going to read the authorization that went to the
14 Secretary, doesn't it?

15 MR. COONEY: That's correct, Your Honor, and we
16 think that Congress could not have intended under the 1927
17 Act, which I will discuss in a moment, that the states would
18 have to share the right of taxation with the tribe, and that
19 the tribal tax impacts the state tax by affecting the amount
20 of production against which the state tax is measured.

21 QUESTION: Is this provision in the Indian
22 constitution unique, or is that a common pattern?

23 MR. COONEY: Apparently not, Your Honor, because a
24 similiar provision or --

25 QUESTION: Apparently not which?

1 MR. COONEY: -- or a similar approval was in the
2 Colville case. The Secretary approved the Indian cigarette
3 tax there as well, and this Court found that the mere fact
4 of federal approval in that case could not act to oust the
5 state tax power, and we say here that the mere perfunctory
6 secretarial approval in the field likewise could not act to
7 oust or diminish the state's power of taxation granted by
8 the 1927 Act. Now, we --

9 QUESTION: In other words, the only Congressional
10 action that would answer your argument on the negative
11 implications of the Indian commerce clause would have to be
12 an affirmative Congressional authority to the tribes to
13 impose the tax.

14 MR. COONEY: Affirmative Congressional authority,
15 and we think in this case coupled with an affirmative
16 Congressional withdrawal of the grant to the states in 1927
17 of the power to tax the same production. Now, the commerce
18 clause has to limit the power of the tribes, we believe, and
19 the commerce clause, or this tax violates the commerce
20 clause in several respects.

21 QUESTION: Counsel, before going on with that, and
22 before you leave the approval of the Secretary, do we not in
23 this instance also have an Indian -- a tribal constitution
24 adopted under the Indian Reorganization Act, which
25 constitution contains a provision saying that they have the

1 power to tax non-members, and which constitution was
2 approved by the Secretary?

3 MR. COONEY: Yes, Your Honor, we do.

4 QUESTION: And isn't that pursuant to a
5 Congressional enactment, the Indian Reorganization Act, that
6 gave him the power to do that?

7 MR. COONEY: No, Your Honor, we don't think that
8 the Indian Reorganization Act authorized the Secretary to
9 create any governmental powers in Indian tribes. As a
10 matter of fact, the legislative history shows that the first
11 draft of that Act would have granted federal and municipal
12 powers to tribes, and that was not acceptable to Congress.
13 The Oliphant case recognizes, I believe, that the IRA did
14 not create any powers in Indian tribes which did not
15 theretofore exist, and we are led back to the same question
16 of whether the power exists in the first place.

17 Now, the plain language of this ordinance, we
18 believe, discriminates against interstate commerce. It
19 taxes only gas or oil sold or transported off the
20 reservation, and we think the tribe has attempted to create
21 a favored position for on reservation industry. The classic
22 discrimination represented by that type of a scheme has been
23 struck down by this Court many times.

24 Secondly, as the tax is imposed only when the
25 production is transported off the reservation, it is a

1 direct, unapportioned tax on commerce itself which directly
2 violates Michigan-Wisconsin Pipe Line.

3 QUESTION: How much goes to --

4 MR. COONEY: Eighty percent.

5 QUESTION: Eighty percent goes outside?

6 MR. COONEY: Eighty percent goes into interstate
7 commerce.

8 QUESTION: Twenty percent goes to the tribe?

9 MR. COONEY: Pardon?

10 QUESTION: Twenty percent goes to the tribe on
11 the reservation?

12 MR. COONEY: A very small percentage, not revealed
13 by the record, goes to the tribe. The rest is consumed
14 intrastate in New Mexico. Eighty percent of this --

15 QUESTION: On the reservation?

16 MR. COONEY: Not on the reservation. Eighty
17 percent is -- that is not shown by the record, how much of
18 the 20 percent stays on the reservation or goes into the
19 state of New Mexico, but 100 percent goes off the
20 reservation. Eighty percent goes into interstate commerce.
21 Now, this ordinance could be amended to eliminate those
22 discriminatory features, but even if it were, it would still
23 create an impermissible multiple burden upon commerce.

24 Both the tribe and the state can claim that their
25 respective taxes are imposed on taxpayers which have an

1 appropriate nexus with the jurisdiction, that each tax is
2 properly apportioned, and that each tax does not
3 discriminate, assuming the tribal ordinance were amended,
4 and both can claim that each government provides the
5 taxpayers with the benefits and advantages of a civilized
6 society. Therefore, both the tribe and the state can claim
7 the right to impose and they have imposed general taxes for
8 the support of government against the full value of the
9 production, without any apportionment.

10 Now, the traditional tests of Complete Auto and
11 Washington Stevedoring provide no solution to the multiple
12 burden problem present here. The tribe and the state are
13 concentric sovereigns, and neither has any power over the
14 taxing policy of the other. The tribal tax impacts the
15 state tax by affecting the ability to produce in paying
16 quantities and rendering marginal wells economic, thereby
17 reducing the amount of production against which the state
18 tax is measured.

19 We think this problem is analogous to that
20 presented in Japan Line. There, the Court subjected the
21 California shipping container tax to an extended analysis
22 beyond the traditional four-part test, and struck down the
23 tax because no tribunal with jurisdiction over both
24 California and Japan could prevent the multiple burden.

25 While it is true that this Court has jurisdiction

1 over the tribe and the state, Commonwealth Edison teaches
2 that it is inappropriate for the judiciary to attempt to
3 measure the rate of a general tax for the support of
4 government against the value of benefits provided to the
5 taxpayer. Judicial resolution of the multiple burden here
6 would require not only measurement of the benefits provided
7 by the state and the tribe against the tax levied by age,
8 but also some formula for apportioning those general taxes
9 between the two sovereigns.

10 Furthermore, if the Secretary is right in his
11 commerce clause claim that the commerce clause doesn't even
12 bind the tribe, then it would seem the Court would have no
13 jurisdiction to invalidate the tribal tax and the result in
14 Japan Line would seem to require invalidation of the state
15 tax, which would directly contradict the grant in 1927 by
16 Congress to the states of the right to tax.

17 The Court, then, we submit, is not the tribunal
18 which can or should allocate between the state and the tribe
19 the right to tax, and while Congress has the power to act,
20 Congress did act in 1927 to grant to the states the right to
21 tax the production on these reservations. They made a clear
22 choice, granting the rentals, royalties, and bonuses to the
23 tribe, an income which was more than sufficient in 1976 to
24 support the entire tribal government.

25 QUESTION: Counsel, you state they made a clear

1 choice. Do you think they had this possibility of tribal
2 taxation in mind at all?

3 MR. COONEY: Yes, Your Honor. In 1901 they
4 authorized the imposition of taxes for the benefits of
5 Indians in the Right of Way Acts in 27 USC, Sections 319 and
6 321. That history, coupled with the fact that this state
7 tax was allowed to be applied against the share obtained for
8 the Indians as well, leads us to conclude, along with the
9 three years of debate and the fight between the states and
10 the representatives of the Indians over who should get the
11 royalties, that Congress could not have intended, in view of
12 the economics of oil and gas production, that the state's
13 tax would have to be shared with an Indian tax.

14 We think the most compelling argument for the
15 preclusive effect of the 1927 Act is the recommendation of
16 Congress's own agency, the American Indian Policy Review
17 Commission, in 1977, that the 1927 Act and the 1924 Act,
18 which similarly grants states rights of taxation on treaty
19 reservations, should be amended or repealed to permit tribal
20 taxation of such production.

21 The Natural Gas Policy Act pass-through provision
22 in 1978 specifically left the validity of these tribal taxes
23 up to this Court in this case. We think that any
24 reconsideration of that policy permitting the states to tax
25 this production, which necessarily precludes tribal

1 taxation, should be left to Congress, as was the question of
2 any limitation on the state's rights to tax production under
3 the Mineral Leasing Act left to Congress last term in
4 Commonwealth Edison.

5 If the 1927 Act is not an outright pre-emption,
6 both the tribe and the state obviously can't tax at full
7 value without a multiple burden on commerce, and the 1927
8 Act is at least a clear Congressional choice for the state
9 tax, and if it is not, if the Court does not accept that
10 argument, or that the tax, tribal tax is not pre-empted by
11 extensive federal regulation, as we have argued in our
12 brief, then we are left with the multiple burden on
13 commerce, and we are left with no means of apportioning that
14 multiple burden, and no means of choosing between which
15 sovereign can tax.

16 We believe that these considerations would lead
17 the Court back to the basic sovereignty issue, and perhaps
18 to the conclusion that there is no room in our
19 constitutional system of representative government for this
20 form of taxation by 287 tribal governments, in which
21 non-members can ever have or never have any voice.

22 Thank you.

23 CHIEF JUSTICE BURGER: Mr. Nordhaus?

24 ORAL ARGUMENT OF ROBERT J. NORDHAUS, ESQ.,

25 ON BEHALF OF THE RESPONDENTS

1 MR. NORDHAUS: Mr. Chief Justice, and if it please
2 the Court, in answer to the argument that tribal sovereignty
3 was not recognized in New Mexico and Arizona as a result of
4 the Treaty of Guadalupe-Hidalgo, I only want to state that
5 neither the federal government, federal officials, nor this
6 Court has ever differentiated between the sovereignty of
7 tribes in New Mexico and Arizona and elsewhere in the United
8 States.

9 QUESTION: May there not be good reason for such
10 differentiation, when you are interpreting the treaty of
11 Point Elliott and saying that you -- in Washington, and
12 saying that you resolve all ambiguities in favor of people
13 who didn't understand English well, and when you are
14 interpreting an Executive Order which was disposing of lands
15 that were already completely under the dominion of the
16 United States as the result of a treaty with another foreign
17 sovereign?

18 MR. NORDHAUS: Your Honor, there was no reference
19 to Indian tribes, and so there was no inference that Indian
20 tribes were even mentioned, and the fact that officials of
21 the United States negotiated treaties with Indian tribes in
22 the early fifties, immediately after the treaty, indicates
23 that those officials recognized the sovereignty of these
24 tribes, and throughout the years there has been no question
25 as to the sovereign status of tribes in that area.

1 The Jicarilla Apache Tribe, by the way, was also
2 -- ancestors of these tribal people were located in Colorado
3 and Kansas. They were not only in New Mexico and Arizona.

4 QUESTION: Well, sovereignty doesn't necessarily
5 -- tribal sovereignty isn't necessarily connected with a
6 piece of land.

7 MR. NORDHAUS: It is not. No, Your Honor.

8 QUESTION: And it is the tribe --

9 MR. NORDHAUS: It is the tribe.

10 QUESTION: -- that has sovereignty, and tribal
11 sovereignty has been recognized, and a tribe, even though it
12 has been moved from one part of the country to another.

13 MR. NORDHAUS: It is still recognized, and it has
14 been recognized by the European nations and by the United
15 States.

16 To go to the main portion of the argument, I think
17 we have to go back to the statement of Felix Cohn that has
18 often been repeated by this Court, and is most significant,
19 is that one of the powers essential to the maintenance of
20 any government is the power to levy taxes, and I think in
21 order to understand the problem in the situation of the
22 western tribes with large areas to govern, we should take a
23 look at the Jicarilla Apache reservation.

24 It contains 750,000 acres in a mountainous area of
25 northwest New Mexico, near the Colorado border. It is

1 remote from Albuquerque, where the federal agencies are
2 located, and it is remote from Santa Fe, the state capital.
3 There are, outside of one federal highway and two state
4 roads, the road network, which is extensive, serving the oil
5 and gas lessees and others, is maintained by the tribe out
6 of tribal funds, and to some extent by the BIA.

7 Law and order is maintained by a tribal police
8 force of 20 officers, some of whom are deputized by the
9 state of New Mexico, but all paid out of tribal funds, as
10 compared to one tribal police officer who must patrol the
11 entire reservation.

12 QUESTION: Mr. Nordhaus, may I interrupt you?

13 MR. NORDHAUS: Yes.

14 QUESTION: While we are discussing the sovereignty
15 problem, first of all, I would like to ask you your views on
16 a question Justice O'Connor asked one of your counsel for
17 the other side about the 1934 Act, which spelled out some of
18 the powers of the tribes. Your opponent says that that
19 statute did not enlarge any sovereign powers that
20 theretofore existed. Do you agree with that?

21 MR. NORDHAUS: I -- pardon me.

22 QUESTION: Do you agree with that --

23 MR. NORDHAUS: I don't --

24 QUESTION: -- did not enlarge it?

25 MR. NORDHAUS: It enlarged the sovereign powers,

1 but it expressly recognized the inherent sovereign powers of
2 tribes, and --

3 QUESTION: But insofar as we are talking about the
4 power to tax --

5 MR. NORDHAUS: The power to tax.

6 QUESTION: -- you rely on that statute as the
7 source of the power to tax?

8 MR. NORDHAUS: No, Your Honor. We rely on the
9 inherent sovereign power to tax --

10 QUESTION: That pre-existed.

11 MR. NORDHAUS: -- that pre-existed, and was
12 reaffirmed by the --

13 QUESTION: Did the sovereign power to tax exist
14 before the reservation was created?

15 MR. NORDHAUS: The sovereign -- well, that is a
16 difficult question.

17 QUESTION: Well, the reason I ask it, the
18 Executive Order creating the reservation back in the 1880s
19 somewhere has a clause in it that says it shall not affect
20 existing rights, or something of that nature.

21 MR. NORDHAUS: That's correct.

22 QUESTION: And I am just wondering what your view
23 would be in the case -- supposing these people or some
24 silver miners or something had their rights in 1887, in the
25 area now encompassed in the reservation. Would your tribe

1 have the power to tax them?

2 MR. NORDHAUS: Your Honor, I -- that is a
3 difficult question. I think the tribe would, as a
4 government, as a government for the territory that is now
5 recognized by the United States, and I think the United
6 States in creating the Executive Order reservations
7 recognized the inherent power of tribes to tax on a
8 territorial basis, tax non-Indians and Indians alike, and I
9 think this Court has recognized that the power over
10 non-Indians has a territorial basis, but --

11 QUESTION: Over non-Indians has a territorial
12 basis?

13 MR. NORDHAUS: Has a territorial basis.

14 QUESTION: But that is not true with respect to
15 the power over Indians, is it?

16 MR. NORDHAUS: The power over Indians has more
17 than a territorial basis.

18 QUESTION: So the powers over the members and the
19 non-members are not coextensive?

20 MR. NORDHAUS: I think that is correct. I think
21 this Court has so stated. The activities of oil and gas
22 lessees on this reservation impact tribal members and the
23 tribal lands extensively on a daily basis. The oil
24 companies, these companies demand and receive the benefits
25 of tribal roads, tribal police protection, and tribal

1 community services.

2 QUESTION: Mr. Nordhaus --

3 MR. NORDHAUS: Yes.

4 QUESTION: -- before you go on, I would like to be
5 clearer in my own mind about your position on this thing.

6 Do you think basically that the cases from this Court which
7 have dealt with the power to tax rest essentially on a power
8 to tax which stems from a power of the Indian tribe to
9 exclude non-members from the territory of the reservation?

10 MR. NORDHAUS: Your Honor, I disagree completely
11 with that thesis. A power to tax that is based on a power
12 to exclude is really not a sovereign power. It is a power
13 of a landlord, and none of the earlier cases really based
14 the power to tax on the power to exclude, and I go back to
15 Morris against Hitchcock, in 1904, which placed the tax on
16 cattle on the Chickasaw reservation, the taxes imposed in
17 June or July of 1904, and attached cattle that were already
18 on the reservation in January of that year, and that was one
19 of the bases on which the tax was attacked.

20 Again, in Buster against Wright, the tax was
21 applied to owners of business lots, a business activity tax
22 was applied to those who were on the reservation owning
23 property and who could not be excluded, and if you -- if the
24 contention is that the power to tax is based on the power to
25 exclude, you are saying that these oil and gas lessees who

1 have been on the reservation for 25 or 30 years, and whose
2 leases may extend through production by another 20 or 30
3 years, that the tribe has no power to change the conditions
4 of their occupancy.

5 In other word, they have a diplomatic immunity
6 forever from any change in the conditions on the
7 reservation. If --

8 QUESTION: What, then, do you do with the case of
9 United States against Cagama, which says that the only two
10 sovereign entities recognized by the Constitution are the
11 federal government and the state governments?

12 MR. NORDHAUS: Well, Your Honor, the tribal
13 governments are dependent sovereign governments. They exist
14 -- their sovereign powers can be divested by Congress. But
15 until Congress acts, they retain those powers, as this Court
16 said in U. S. v. Wheeler. They retain all the powers which
17 they had which are not divested or which are inconsistent
18 with their status, and our contention is that there is
19 nothing in the tax power that is inconsistent with the
20 status of tribes.

21 In other words, tribal governments cannot exist
22 without taxation, and taxation that is appropriate for one
23 tribe may be inappropriate for another. The tribes have to
24 levy the taxes where they find the resource on which to
25 tax. And we believe that this type of tax comes within the

1 definition of the Colville tax in every respect.

2 QUESTION: Do you think there is anything
3 necessarily inconsistent with the exclusion theory in the
4 language of previous cases from this theory?

5 MR. NORDHAUS: I think the inconsistency lies in
6 the facts of the previous cases.

7 QUESTION: But not in the language. You would
8 concede that.

9 MR. NORDHAUS: Not necessarily in the language,
10 but the facts of the earlier cases and of the later cases
11 surely lead to the conclusion that the tax was not based on
12 the power to exclude because the tax was imposed on people
13 who already had property rights on the reservation.

14 QUESTION: And yet you would tie to the territory.

15 MR. NORDHAUS: I would tie it to some extent to
16 the territory, to the reservation, because that is the area
17 that must be governed, and a tribe must govern its
18 territorial area. Without taxation, no government can
19 survive. But before I finish, Mr. Claiborne is going to
20 discuss the effect of the 1927 Act, which the Petitioners
21 say grant to the states an exclusive right to tax, but I
22 would like to address for a moment the commerce clause
23 argument. We submit --

24 QUESTION: Let me ask you this. How much a
25 necessity for government was there in the Puyallup

1 reservation, which by the time the cases came here that were
2 written in the seventies consisted of a freeway from Tacoma
3 to Seattle?

4 MR. NORDHAUS: I think in some cases the necessity
5 for a strong government is not clear, but I think in the
6 case of this tribe, and for instance, the Navajo Tribe, the
7 case for a strong tribal government is -- it can't be
8 denied. The Navajo reservation covers almost 19,000 square
9 miles, bigger than eight of the states. It covers -- it
10 extends beyond the borders of three different states. I
11 would venture that the state of Arizona would not -- would
12 be very unhappy if Arizona had to attempt to govern the
13 Navajo reservation. The Navajo reservation has a
14 tremendous budget, and a tremendous governmental
15 structure. It couldn't be --

16 QUESTION: And a tremendous income from oil.

17 MR. NORDHAUS: Well, but that, of course, there is
18 a great deal of poverty, too, Your Honor, and that income
19 from oil is the property of the landlords rather than a
20 governmental revenue. But on the commerce clause arguments,
21 Your Honor, we submit that this tax is no different from any
22 other severance tax. It is a privileged tax on a local
23 activity of producing oil and gas, and it is measured by the
24 volume of production at the wellhead. All production is
25 sold at the wellhead except pipeline production.

1 The Petitioners attack the provision or -- that
2 the tax rate is applied to oil and gas sold or transported
3 off the reservation. That means that the tax rate is
4 applied to gas sold on the reservation or transported off
5 the reservation without sale by a pipeline producer. The
6 purpose of that particular clause, transported off the
7 reservation, is to reach pipeline production which is not
8 sold actually until -- for interstate gas until it reaches
9 the California border and it is sold to Pacific Light and
10 Electric Company.

11 The key to the interpretation of the tax and to
12 the -- and to answer the argument that it is discriminatory
13 against off reservation commerce is that the exemption
14 applies only to royalty gas or condensate taken by the tribe
15 and used by the tribe, meaning the tribal government. In
16 fact, gas and oil transported off the reservation for
17 processing and returned for consumption by tribal members is
18 taxed. There is no claim by Petitioners that the tribal tax
19 favors New Mexico consumers as opposed to out of state
20 consumers. The claim is that it favors off-reservation
21 consumers, and there we get into an Indian commerce clause
22 claim which has really no reference to discrimination
23 against interstate commerce.

24 Thank you, Your Honor.

25 CHIEF JUSTICE BURGER: Very well, Mr. Nordhaus.

1 Mr. Claiborne?

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

3 ON BEHALF OF THE RESPONDENTS

4 MR. CLAIBORNE: Mr. Chief Justice, and may it
5 please the Court, it need not be necessary to rebut what is
6 at the end of the day the allegation of the Petitioners,
7 that is to say, that this Court in several of its recent
8 decisions was grossly misusing language or engaged in loose
9 talk when it spoke of inherent tribal sovereignty, when it
10 spoke of residual tribal sovereignty, and specifically
11 sovereignty over its territory, that those words, first
12 declared in the unanimous decision of the Court in the
13 Missouri case.

14 By that, the Court surely did not mean the sort of
15 power that a country club has over its members, to determine
16 membership, to assess fees against the members, to enact
17 rules of conduct, discipline the members --

18 QUESTION: But it didn't mean, either, the power
19 that a state has over its residents, did it?

20 MR. CLAIBORNE: Not precisely, Mr. Justice
21 Rehnquist, but certainly some governmental power. We then
22 reach more recent -- two of the most recent decisions of
23 this Court --

24 QUESTION: Mr. Claiborne, before you reach the
25 more recent decisions, would you -- could I just ask your

1 views on the question whether this power to tax by this
2 tribe existed before the reservation was created?

3 MR. CLAIBORNE: The power to try non-members,
4 Justice Stevens --

5 QUESTION: The power to tax non-members, yes.

6 MR. CLAIBORNE: -- I would have found difficult to
7 assert without a territory over which territorial
8 sovereignty of that tribe could be exercised, and this leads
9 me to comment on the question asked by Justice O'Connor
10 whether the power to tax has a territorial aspect. I would
11 answer yes in exactly the same way that the municipal or
12 state power to tax is normally limited to a territory.

13 It isn't based on any power to exclude. A city or
14 a state cannot exclude people who come there, but it can
15 only tax those that either do business there, have some
16 nexus there, or reside there. So it is, it seems to me,
17 with respect to the tribal power to tax.

18 QUESTION: And would you say that that power, if
19 you say it did not pre-exist the reservation, what about
20 someone who was in that territory before and might claim the
21 benefit of that proviso in the Executive Order creating the
22 reservation?

23 MR. CLAIBORNE: That could be read as meaning only
24 property rights subject to regulation, taxation, and the
25 other exertion of governmental power by the new sovereign,

1 the tribe, or it could be read to save -- to grant an
2 exemption from even such governmental regulation.
3 Fortunately, we do not have that problem with respect to
4 this case. Here, the tribe is clearly exerting a
5 governmental power which was in existence at the time these
6 lessees obtained their interest.

7 They may not have appreciated that it would be
8 exercised against them, but that is precisely the situation
9 of the New York Transit case, reported in 303 US. The City
10 of New York there sought to impose 20 years later on the
11 lessees of rapid transit a tax, and the lessees said, when
12 we obtained our lease you hadn't been granted this power by
13 the state of New York, and certainly we thought we had
14 contracted against it.

15 This Court held unanimously not so. This was a
16 governmental power of taxation. The contract did not
17 expressly provide against its later imposition.
18 Accordingly, the city was entitled to impose that tax,
19 however unanticipated it may have been by the lessee at the
20 time of the contract.

21 QUESTION: Just one final question, if I may. I
22 take it you also do not rely on the 1934 Act as the source
23 of power for the power to tax. I didn't understand you to
24 in your latest brief.

25 MR. CLAIBORNE: Quite right, Justice Stevens. We

1 follow the teaching of this Court that the inherent powers,
2 governmental powers of tribes are not those for the most
3 part which had been delegated by the United States, but
4 rather powers which survive from aboriginal sovereignty, and
5 which attach to a particular territory when the United
6 States, by treaty or by Executive Order or by Congressional
7 action, defines that territory.

8 QUESTION: But then what was the status of the
9 Jicarillas between 1848 and the Treaty of Guadalupe-Hidalgo
10 in 1870 when the Executive Order reservation was established?

11 MR. CLAIBORNE: They were, Justice Rehnquist, a
12 sovereign tribe without a defined territory.

13 QUESTION: Well, why were they sovereign?

14 MR. CLAIBORNE: Sovereignty has other aspects but
15 the power of taxing on Indians within a defined territory.

16 QUESTION: But what made them sovereign?

17 MR. CLAIBORNE: What made them sovereign among
18 other things was the recognition given them by the European
19 sovereigns who decided, as they might not have decided, to
20 recognize the sovereignty of the aboriginal inhabitants of
21 the continent.

22 QUESTION: Well, if Europe were to recognize
23 Arlington County as a sovereign, would that make Arlington
24 County sovereign?

25 MR. CLAIBORNE: More relevantly, the United

1 States, with respect to that territory which it gradually
2 took unto itself, chose, perhaps it wasn't required to, but
3 it chose to recognize the native inhabitants as enjoying a
4 sovereignty. That is a doctrine which has been vindicated
5 in this Court for 200 years. I had not thought it now open
6 to question.

7 QUESTION: What was the relationship of this tribe
8 to Mexico at the earlier point? Was it --

9 MR. CLAIBORNE: Mr. Chief Justice --

10 QUESTION: Was it sovereign --

11 MR. CLAIBORNE: I am not --

12 QUESTION: -- vis-a-vis Mexico?

13 MR. CLAIBORNE: -- well aware of the views of the
14 Mexican government with respect to the native Indians. I
15 would point out --

16 QUESTION: Well, isn't that an important part of
17 this case?

18 MR. CLAIBORNE: Well, Mr. Chief Justice, I would
19 point out that this Court, in deciding Williams versus Lee,
20 the seminal modern case on the subject of Indian
21 sovereignty, involving the Navajo reservation in Arizona,
22 took no exception to the proposition that because this was
23 former territory of Mexico, somehow the Navajos had lost the
24 sovereignty which other tribes throughout the nation
25 enjoyed, and there Mr. Lee was required to submit himself to

1 tribal authority, and of course, the United States entered
2 into a treaty with the Navajos, thereby recognizing them as
3 a sovereign entity.

4 I should stress, because it has been passed by,
5 that the power to tax was, of course, recognized in the
6 Colville case, and with respect to the Colville Indians,
7 whose reservation is not derived from the Treaty of Point
8 Elliott, but is simply an Executive Order reservation of no
9 greater status than the Jicarilla reservation here, nor was
10 that power to tax in any way related to the power to exclude
11 those who bought cigarettes from the reservation. Many of
12 them lived and were entitled to remain within that
13 reservation.

14 Now, I should say something about what I thought
15 to be the only question in the case, which was whether
16 Congress in 1927 took away the inherent power which up to
17 that date the tribe clearly enjoyed to tax non-Indians
18 within these circumstances, within this territory. Plainly,
19 there is nothing on the face of the 1927 Act that
20 accomplishes this result. There is nothing arguably
21 inconsistent about granting the power of taxation to the
22 state, and leaving in existence a concurrent power in the
23 tribe.

24 The Colville case teaches us that such two taxing
25 powers may indeed coexist. There is no inconsistency in a

1 provision which allows the same sovereign to both share in
2 the royalties and to enjoy taxing power. The 1920 Act,
3 General Leasing Act, with respect to federal lands, does
4 precisely that with respect to the states, who may impose
5 severance taxes and enjoy 50 percent of the federal
6 royalties.

7 QUESTION: Well, tell me, Mr. Claiborne, is there
8 anything in the way of Congressional action that supports
9 the Secretary's approval of this tax in this case?

10 MR. CLAIBORNE: As Justice O'Connor pointed out,
11 the IRA requires the Secretary to approve tribal
12 constitutions. In submitting those -- in making his
13 conditions upon the constitutions which he will approve, it
14 appears at the time, judging from the uniform provisions in
15 them, that one of those provisions was that any taxing
16 ordinance bearing on non-Indians should be submitted to him
17 before it was implemented. So it was here.

18 Accordingly, we have Congress requiring
19 secretarial approval of tribal constitutions, that
20 constitution requiring Secretarial approval of any taxing
21 ordinance bearing on non-Indians, and finally, Secretarial
22 approval in this case of the very ordinance. That is the
23 common pattern, and it --

24 QUESTION: Well, does that negative any argument
25 that the 1927 Act in any way prevented what happened here?

1 MR. CLAIBORNE: We don't say that Congress has in
2 1934 clarified any doubt that existed in 1927, because we
3 say that in 1927, at the end of the day, Congress did a very
4 simple thing. It said, here are these Executive Order
5 reservations with respect to which oil and gas leasing is
6 not presently available. They thought of several schemes,
7 all of which schemes permitted the state to tax the lessee's
8 interest. They wanted to give the state something more, a
9 share of the royalties or a power to tax the royalty
10 interest, the Indian interest.

11 They finally realized that here was a model ready
12 made, the 1924 Act, which provided with respect to treaty
13 reservations that the state might tax the whole of the
14 production, and the Indians would get the whole of the
15 royalty. In the end, that is precisely the pattern that was
16 followed.

17 It follows that the 1927 Act no more than the 1924
18 Act was focusing in the slightest on Indian taxing power,
19 not a very lively notion in that day, for historic reasons
20 which we elaborate in our brief.

21 QUESTION: If the Secretary had declined to
22 approve, what would be the status of this taxing power?

23 MR. CLAIBORNE: In this case, it would plainly be
24 impermissible for the tribe to implement it since its own
25 constitution requires Secretarial approval for such

1 ordinances.

2 QUESTION: But that would be by virtue of an
3 inhibition which it had placed on itself in its
4 constitution, would it not?

5 MR. CLAIBORNE: But which may have been, Mr. Chief
6 Justice, imposed upon it in order to win approval for its
7 constitution. At all events, I would suggest that there
8 remains residual power in the Secretary under Section 2 of
9 Title XXV, Section 9, to disapprove, and certainly to refuse
10 to implement any ordinance enacted by a tribe which bears on
11 others than members, and which he has not approved and would
12 affirmatively disapprove, that that residual power could be
13 exercised in any such case.

14 There was, of course, no occasion to do so here,
15 the Secretary believing that the tribe was correctly
16 exercising a power which Congress had not expressly granted
17 it, but which Congress had not taken away.

18 Finally, on the 1927 Act, let me point out the
19 irony of the argument of the Petitioners. This is
20 legislation expressly designed to aid the tribe which under
21 the Secretary of the Interior's action in 1922 was getting
22 no part of the royalties from the oil and gas leasing.
23 Congress sought to remedy that by granting Executive Order
24 tribes exactly the same benefits from their lands as treaty
25 tribes.

1 It would be strange to read into such legislation
2 against all the canons of construction an implied by wholly
3 silent repeat of tribal power.

4 I submit, Your Honor.

5 CHIEF JUSTICE BURGER: You have about two minutes
6 left, counsel.

7 ORAL ARGUMENT OF JASON W. KELLAHIN, ESQ.,

8 ON BEHALF OF THE PETITIONERS - REBUTTAL

9 MR. KELLAHIN: Mr. Chief Justice, and may it
10 please the Court, there are several questions that have been
11 raised here in the argument which I would like to address
12 very briefly.

13 The question directed by Justice Stevens, for
14 example, was, did the power to tax exist before the creation
15 of the Jicarilla reservation, and Mr. Claiborne has said in
16 his opinion it did not, because it is territorial, and I
17 think he is exactly right there.

18 QUESTION: You mean the power to tax non-Indians?

19 MR. KELLAHIN: Non-Indians. Yes, sir.

20 QUESTION: They had the power to tax their own,
21 whether they --

22 MR. KELLAHIN: If they had an organization which
23 could have imposed such a tax.

24 QUESTION: Yes, but it isn't necessarily
25 territorial.

1 MR. KELLAHIN: As among their own members, that is
2 correct, Justice White.

3 QUESTION: Yes.

4 MR. KELLAHIN: But that point was addressed at
5 some length by Justice Seth in his dissent in the Tenth
6 Circuit, which appears at Page 167 of our Joint Appendix.
7 He discussed the origin of the Jicarilla Tribe and the
8 nature of their tribal organization at the time and prior to
9 their being placed on the reservation.

10 Now, the reservation was created from public lands
11 which belonged to the United States, and it was not tribal
12 lands at all. The -- If the power to impose a tax or if the
13 sovereignty they are talking about did not exist, and the
14 sovereignty over non-Indians did not exist prior to the
15 creation of the reservation, then where did that power come
16 from? It would have to be simply a territorial right which
17 brings us back to our argument that they have control over
18 their reservation, they have the right to say who is going
19 to come on the reservation, just as do the treaty tribes or
20 those created by legislation, and they can control in that
21 manner and tax those coming on.

22 Thank you very much.

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

25 (Whereupon, at 2:47 o'clock p.m., the case in the

1 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

J. GREGORY MERRION AND ROBERT L. BAYLESS, ETC., ET AL. vs.

JICARILLA APACHE TRIBE ET AL AND AMOCO PRODUCTION COMPANY AND MARATHON OIL CO. vs.

JICARILLA APACHE TRIBE ET AL NO- 80-11 & 80-15

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

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