

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 83-1394

**TITLE** UNITED STATES, ET AL., Appellants v. MADISON D.  
LOCKE, ET AL.

**PLACE** Washington, D. C.

**DATE** November 6, 1984

**PAGES** 1 thru 38



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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, ET AL., :  
Appellants, :  
v. :  
MADISON D. LOCKE, ET AL. :  
- - - - -x

Washington, D.C.

Tuesday, November 6, 1984

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 10:52 o'clock a.m.

APPEARANCES:

CAROLYN F. CORWIN, ESQ., Assistant to the Solicitor  
General, Department of Justice, Washington, D.C.; on  
behalf of the appellants.

HAROLD A. SWAFFORD, ESQ., Reno, Nevada; on behalf of the  
appellees.

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C O N T E N T S

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1 abandoned.

2 The only time a claimant had to report to the  
3 federal government concerning his claim was if he  
4 elected to proceed to patent, that is, to take steps to  
5 obtain full ownership of the land on which the claim was  
6 located.

7 Most claimants didn't bother to take that  
8 step, so BLM did not have any information on the status  
9 of these claims, and that situation made it very  
10 difficult for the federal land managers to take actions  
11 with respect to federal lands.

12 Unless BLM did some fairly extensive research  
13 at the local county courthouse and then tried to track  
14 down all of these potential claimants it identified, it  
15 simply couldn't be sure one way or the other about  
16 whether the land at issue was encumbered by such claims.

17 And that interfered with the ability to go  
18 ahead and take action with respect to a piece of land.

19 Now, Congress sought to remedy that situation  
20 in Section 314 of FLPMA. Under that section, a claimant  
21 must make an initial filing with the Bureau of Land  
22 Management within three years of the passage of the  
23 statute. The claimant then must update that information  
24 annually by filing a piece of paper prior to December  
25 31st.

1 QUESTION: Why do you think that language was  
2 employed? Was this just a boner on the part of some  
3 administrative assistant, or was there a real purpose in  
4 having it before December 31?

5 MS. CORWIN: Well, the legislative history  
6 does not give any clues one way or the other about why  
7 that particular filing deadline was chosen, and I  
8 suppose there are several possibilities, one of which  
9 you suggest. It could be that someone simply was  
10 careless in drafting and didn't realize that they had  
11 done what they had done.

12 QUESTION: It is certainly is a trap for the  
13 unwary, isn't it?

14 MS. CORWIN: Well, I don't know whether it is  
15 fair to characterize it that way. I certainly don't  
16 think anybody at the time regarded it that way. That  
17 is, I think it may have been simply a failure to look  
18 closely at what they had done. It is conceivable it was  
19 somebody with a good intention to foresee a problem of  
20 the office closing right before New Year's or  
21 something. I don't know what it was, but --

22 QUESTION: Well, if we had the provision in  
23 the income tax law before April 15 or, as it used to be,  
24 March 15, there certainly would be a nationwide howl  
25 from those who are used to the last day filing.

1 MS. CORWIN: Well, it would certainly be  
2 difficult to adjust. Of course, this was a new  
3 provision, and I suppose that -- and people who look at  
4 this statute carefully, I think, can figure out that  
5 prior to December 31st doesn't mean on December 31st.

6 QUESTION: Especially the fellow who gave the  
7 bad advice.

8 MS. CORWIN: Well, I would point out that that  
9 is an affidavit on the part of the appellees in this  
10 case. There has been no finding as to the facts on that  
11 particular issue.

12 QUESTION: Oh, you think they might be lying?

13 MS. CORWIN: I am not suggesting he is lying.  
14 I am just suggesting on the record of this case neither  
15 the District Court nor the Interior Board of Land  
16 Appeals --

17 QUESTION: There is an affidavit.

18 MS. CORWIN: There is an affidavit, but  
19 neither the court nor the administrative board found it  
20 necessary to make a determination as to what had  
21 happened in terms of advice given or understanding of  
22 the advice.

23 QUESTION: Of course, you do have a sad case  
24 here, don't you, of people who have made their living on  
25 this claim for a long time all of a sudden find

1 themselves unable to move along, I suppose, without  
2 Congressional action.

3 MS. CORWIN: Well, this is a difficult case in  
4 several respects. That is certainly correct, Justice  
5 Blackmun. On the other hand, I think that is the sort  
6 of thing you run into whenever you have a filing  
7 deadline or a filing cutoff. You are always going to  
8 have people who fall just slightly on the other side. I  
9 suppose --

10 QUESTION: Of course, Ms. Corwin, if it were  
11 another type of mine other than sand and gravel or one  
12 of the things that cannot be relocated, a person missing  
13 the filing deadline presumably could relocate on  
14 December 31 if they came in a day late and realized then  
15 that they had missed the date, unless someone had filed  
16 ahead of them.

17 MS. CORWIN: That's correct, Justice  
18 O'Connor.

19 QUESTION: So we are dealing with a  
20 particularly difficult situation, are we not?

21 MS. CORWIN: Well, that's correct. There are  
22 a number of people who are not going to find themselves  
23 in this situation, and that would, of course, be all the  
24 people who can still locate because they have locatable  
25 minerals like gold and silver and lead and so on.



1           You are also going to have the people who file  
2 enough in advance to avoid this tough situation at the  
3 end of the year.

4           QUESTION: And you will have the people who  
5 simply mail the notice, the annual notice in on December  
6 30, and even if it is received up until January 19th, it  
7 is okay.

8           MS. CORWIN: That is correct, although that  
9 particular regulation was not in effect at the time this  
10 particular situation came along, but that is the case  
11 today.

12           QUESTION: Ms. Corwin, could Congress  
13 retroactively cure this situation for the Lockes?

14           MS. CORWIN: My understanding is that Congress  
15 could take steps, and indeed it has taken steps in the  
16 case of oil and gas Placer claims. Congress did enact a  
17 provision which I believe is at 30 USC 188(f) in which  
18 it said people who miss the deadline and who have the  
19 oil and gas Placer claims can take certain steps, and  
20 they will not get their claims back under the general  
21 mining laws, but they will be eligible for  
22 noncompetitive leases of these oil and gas deposits.

23           I suppose something equivalent could be done  
24 here if Congress felt that there was a real problem.

25           QUESTION: I take it the government's reaction

1 to this hardship situation is that people who want to  
2 acquire rights in land owned by the government can be  
3 required to turn square corners.

4 MS. CORWIN: Well, I think that's correct, and  
5 certainly we understand that there are these  
6 difficulties, and the secretary has attempted to  
7 administer the statute in a way that is both consistent  
8 with what Congress has said and that accommodates an  
9 understanding of the difficulties people face.

10 But I don't think it was unreasonable for  
11 Congress to make the judgment that in this particular  
12 situation with millions of claims it was appropriate to  
13 put the responsibility for communicating intent to  
14 retain the claim on federal land on the claimant.

15 QUESTION: How do you think you advance your  
16 case by saying that it wasn't unreasonable for Congress  
17 to do this? Do you think we ought to sit up here and  
18 decide whether or not this was a "reasonable" statute  
19 for Congress to have passed?

20 MS. CORWIN: Well, I think the issue here is  
21 the constitutionality of what Congress has done.

22 .QUESTION: I would have thought so, too.

23 MS. CORWIN: That's correct. There has been  
24 much suggestion, I think, in the briefs that were filed  
25 in this case that Congress couldn't possibly have meant

1 to do this, that this is quite an unreasonable result,  
2 and my suggestion is that, following your suggestion  
3 about turning square corners, it is certainly reasonable  
4 to expect that sort of reaction from claimants in this  
5 particular circumstance.

6 QUESTION: Of course, in that Texaco versus  
7 Short decision, there is language in the opinion that  
8 speaks of upholding the state law in that case because  
9 it imposed reasonable conditions on intention.

10 MS. CORWIN: Well, that's correct. The Court  
11 in Texaco initially examined whether it was within the  
12 legislature's power to do something like this, and there  
13 was discussion of reasonableness. That is correct.

14 QUESTION: Before you get into your  
15 Constitution argument, may I ask a question about a  
16 possible reading of the statute?

17 The deadline here, it seems to me, December  
18 31st, is more apt to deceive someone than another date,  
19 where you say prior to a given date. It seems to me one  
20 reading this statute rather hastily might incorrectly  
21 assume before the end of the year is what was intended  
22 by Congress because of the December 31st date.

23 And I notice that you have a footnote in your  
24 brief in which you point out that you have been advised  
25 by the agency that they started at a certain time

1 sending out notices to tell people that December 30 was  
2 the date rather than December 31st.

3 Why would they do that if they didn't think  
4 there was some possible ambiguity in the statute?

5 MS. CORWIN: Well, I don't think it's a matter  
6 of ambiguity, but I think the Secretary recognized that  
7 there could be people who weren't really in tune with  
8 the system yet. The notice doesn't simply say what the  
9 date is. I think it says a little bit more than that.

10 QUESTION: Doesn't it remind them to be sure  
11 you realize it is the 30th and not the 31st? That point  
12 is made in the note.

13 MS. CORWIN: It does phrase it as on or before  
14 December 30th, which the regulations do as well, and I  
15 think that is an attempt to make sure that people focus  
16 on the fact that it doesn't look as though December 31st  
17 is part of this.

18 QUESTION: Would it compromise the  
19 government's interests in this whole program at all if  
20 the statute were simply construed as though it had said  
21 on or before instead of prior to, just to avoid the  
22 problem that occurred in this case, and also to avoid  
23 the necessity of deciding a constitutional question?

24 Would that be a possible solution to this  
25 case?



1 MS. CORWIN: Well, in terms of the  
2 government's interests, looking simply at that, I  
3 suppose you would have to consider what has gone on  
4 since the statute in terms of things that may have  
5 occurred with relocations by third parties.

6 QUESTION: Are there any other cases but this  
7 one in which the person missed it by one date?

8 MS. CORWIN: My understanding from the filings  
9 of the amici in this case is that there are other cases  
10 like that. Now, I don't know how many of those are  
11 people who very much want to continue their claims and  
12 would then come back and say you want to pick up on the  
13 claims if that reading of the statute were possible.

14 But you do have this problem of what has gone  
15 on since the statute. In terms of the one day  
16 difference, I guess I would have to say it doesn't make  
17 a difference if Congress had said December 31st --

18 QUESTION: Doesn't it at least seem  
19 theoretically possible that that might be exactly what  
20 Congress thought it was doing and was a little careless  
21 in its writing?

22 MS. CORWIN: Well, I think it is possible. My  
23 problem is that I don't think there is a 100 percent  
24 possibility that that is what Congress meant. I guess I  
25 am only about 80 percent sure, or maybe less. I'm not

1 sure. But the language is fairly clear on its face in  
2 terms of prior to December 31st.

3 And for that reason I doubt my own initial  
4 reaction to this, because clearly whoever wrote it knew  
5 that December 31st existed.

6 QUESTION: Do you think it would be better for  
7 the Court not to adopt that construction, but rather, to  
8 go ahead and decide the constitutional issue?

9 MS. CORWIN: Well, it seems to me that it is  
10 very difficult to reach the reading that you have  
11 suggested just because there is doubt, because of the  
12 language of the statute, because there are plausible  
13 reasons why somebody might have perhaps wrongheadedly  
14 sat down and said, you know, we won't have people filing  
15 on the last day of the year, and for that reason, I  
16 would think that you would have to reach the  
17 constitutional issue.

18 Obviously, in the interests of the government,  
19 it would help to have it resolved, but I am not  
20 suggesting that that is a reason that you shouldn't  
21 construe the statute. I am saying that I think there  
22 are other problems with that approach.

23 QUESTION: Well, Ms. Corwin, you said you  
24 thought it was fairly clear the statute should be  
25 construed in a particular -- the wording, I take it, is

1 "prior to December 31st." Do you think there is any  
2 ambiguity at all in those four words?

3 MS. CORWIN: I don't think there's any  
4 ambiguity on the face of the statute, and I might note  
5 that the Secretary has construed the language of the  
6 statute to be on or before December 30th, so if there  
7 were any ambiguity, I suppose you could look to the  
8 administrative construction to back up your natural  
9 reading of the statute.

10 I think Justice Stevens was suggesting that  
11 somebody might come to the conclusion that whoever wrote  
12 the statute must have slipped and meant before the end  
13 of the year. I might note that nobody in this case is  
14 urging that construction of the statute. Appellees  
15 acknowledge that they have missed the deadline, and as I  
16 noted, the Secretary construes it that way. The  
17 District Court didn't seem to disagree with that,  
18 either.

19 QUESTION: And there is nothing in the  
20 legislative history that would support that, is there?

21 MS. CORWIN: I have simply found nothing that  
22 suggests one way or the other anything about that "prior  
23 to December 31st" language, so I don't think there is  
24 anything we can look to one way or the other there.

25 Now, appellees were mining claimants whose ter

1 claims were located on federal lands in the state of  
2 Nevada. They had mined their claims since 1960, but  
3 they had never proceeded to patent on those claims.  
4 Following the enactment of FLPMA, they filed their  
5 initial recordation statement in October of 1979 in a  
6 timely manner.

7 Then, in 1980, they filed their affidavits of  
8 annual assessment work with the local recorder's office,  
9 August of 1980, but they waited until December 31st of  
10 1980 to file that same piece of paper with the Federal  
11 Bureau of Land Management office.

12 Since the statute does require filings prior  
13 to December 31st, BLM advised appellees that their  
14 claims were void by operation of the statute, and that  
15 is because of Section 314(c), which is the provision  
16 that is really at the heart of this case.

17 Congress provided there that the failure to  
18 comply with the filing requirements would be deemed  
19 conclusively to constitute an abandonment of the claim.  
20 In other words, compliance with the filing requirement  
21 would be a condition to continued retention of the  
22 claim.

23 QUESTION: Of course, the language the statute  
24 used tied it up with an abandonment, didn't it?

25 MS. CORWIN: Well, Congress did use the word



1 "abandonment."

2 QUESTION: Well, that is rather a strange way  
3 of describing what you just were talking about.

4 MS. CORWIN: I am not so sure it is strange.  
5 It is inartful.

6 QUESTION: Well, it sounds to me like it is  
7 strange. I will put it that way.

8 MS. CORWIN: Well, it is possibly inartful,  
9 and it is certainly circumlocution. I think it was kind  
10 of a roundabout way of getting to what Congress was  
11 after, but I don't think there is any doubt either from  
12 the face of the statute or from the legislative history  
13 that what Congress really had in mind was that if you  
14 don't file your -- make your filings on an annual basis  
15 in a timely manner, you are going to lose your claim.

16 They used this intermediate step. They  
17 said --

18 QUESTION: Well, to read the statute, you  
19 would think that they were equating failure to file,  
20 even a negligent failure to file, with an intention to  
21 abandon. It doesn't make a whole lot of sense.

22 MS. CORWIN: I think what they did was use a  
23 two-step procedure, which is sort of roundabout. They  
24 said failure to file will be the equivalent of  
25 abandonment, and we all know that abandonment means you

1       lose your claim, and they were just using --

2               QUESTION: It also usually means that you have  
3       some intention to do so.

4               MS. CORWIN: Well, in the common law sense  
5       that is so, but I don't think it is necessarily unusual  
6       in that there are statutes that are phrased in this sort  
7       of terminology, for example, in the general mining laws,  
8       30 USC 27, I think, contains some language that says  
9       "considered abandoned" when you don't spend enough time  
10      on your tunnel development, and in this Court's decision  
11      in Texaco versus Short, the Indiana statute there was  
12      not phrased in these terms. It talked directly about  
13      extinguishment of the interest.

14              QUESTION: I take it your position is that if  
15      the Administrator or if the Secretary had decided to by  
16      his regulations say -- if he said that a failure to file  
17      shall be presumptive evidence of an abandonment, but we  
18      will have a hearing to see if there was an intent to  
19      abandon, do you think that would be an invalid  
20      regulation?

21              MS. CORWIN: I don't think that would be  
22      consistent with the intent of Congress. I think here  
23      you have a statute that was designed to really simplify  
24      and to provide some certainty in this area. I think the  
25      underlying point of this section, Section 314(c), is to

1 provide land managers with what they had lacked prior to  
2 1976, and that was the ability to know for sure what the  
3 status of the claim was.

4 The point of this was to provide this sort of  
5 bright line distinction between who was in and who was  
6 out that would permit land managers to say for sure what  
7 the status of the claim was. Now, I think they used  
8 this roundabout language which, as I was saying, this  
9 Court itself used when it referred to the Indiana  
10 statute -- there are several places in the Texaco versus  
11 Short opinion in which the Court says "deemed abandoned"  
12 or "assumed abandoned." I don't think that is an  
13 unusual formulation in these land laws.

14 But I think that you have to go back to the  
15 purpose of the statute, and that was to provide a  
16 solution to this long-standing land management problem  
17 which was essentially the problem of knowing for certain  
18 what the status of the claim was.

19 Now, there is no real question, I think, about  
20 Congress's constitutional power to enact a provision  
21 like this, to impose a filing deadline as a condition  
22 for retention of the claim. It is quite reasonable for  
23 Congress to provide something that allows federal land  
24 managers to know what the status of asserted rights on  
25 public lands might be.

1           The question here is whether Congress provided  
2 appropriate process in connection with that sort of  
3 provision. And that is how the appellees have framed  
4 their claim in the District Court and here. I think it  
5 is clear that there is adequate process in at least two  
6 respects.

7           One is that there is clearly notice of the  
8 terms of this statute, of Section 314. Texaco versus  
9 Short provides a standard, I think, and here we clearly  
10 need it. We have a three-year grace period. We have  
11 people who know that they are under a system of federal  
12 regulation and can be expected to keep up with what is  
13 going on in the area.

14           Here, you don't even have that question,  
15 because these people clearly knew about the statute.  
16 They clearly knew about Section 314. The only thing  
17 they didn't look closely at was that particular filing  
18 date.

19           You also have adequate process in connection  
20 with the final adjudication as to whether someone has  
21 complied with the statute. This is the procedure under  
22 which these appellees and other claimants receive  
23 notice. If it appears that they have not complied, they  
24 have the opportunity to be heard before the Interior  
25 Board of Land Appeals on the crucial question under the



1 statute, which is whether or not you have complied with  
2 the filing requirements.

3 So, the only question that is really left is  
4 whether you have to provide one more round of notice in  
5 terms of an individualized card from BLM that says, your  
6 friendly BLM office would like to remind you, and we  
7 submit that that is not constitutionally required in a  
8 case like this.

9 I might note that the American Mining  
10 Congress, a major industry group, was a strong supporter  
11 of this provision, a proponent, and had in fact proposed  
12 it back in 1968 in similar terms. They didn't seem to  
13 think this sort of extra round of notice was necessary,  
14 and Congress, I think, looking at the --

15 QUESTION: Of course, the Mining Congress is  
16 made up of, you know, big time commercial miners that  
17 are probably more than equipped to deal with various  
18 regulations in a way that perhaps the respondents here  
19 aren't.

20 MS. CORWIN: Well, I think that -- several  
21 points, I suppose. The respondents here -- excuse me.  
22 The appellees here could simply look at the regulation  
23 and see on the face of it what the answer was. But I  
24 don't think the American Mining Congress was necessarily  
25 simply thinking about the interests of big groups.

1           Mcbil has filed an amicus brief in this case,  
2           and it seems to have a similar problem, so I don't think  
3           the American Mining Congress was focused solely on the  
4           big people on this.

5           The situation of the mining claimant is that  
6           they come and they go in a lot of cases. Many of them  
7           are not in a situation of appellees here. They don't  
8           have a stable producing operation. There are people who  
9           come onto the land, who locate their claim, who decide  
10          after a year or two that it is really not worth it, they  
11          just don't find what they thought they might find, and  
12          they move on.

13          In those sorts of circumstances, they are the  
14          ones who know whether they want to keep the claim. It  
15          is reasonable for Congress to have concluded that they  
16          could assume the minimal burden of providing a piece of  
17          paper each year to the government.

18          Now, appellees and amici have suggested  
19          alternatively, and the District Court also accepted this  
20          argument, that some sort of substantial compliance would  
21          be sufficient under this statute. If you come close  
22          enough, then you ought to assume that you are not going  
23          to lose your claim, they suggest.

24          I would like to suggest briefly why we don't  
25          think that is so. The face of the statute does not seem

1 to suggest that there is this leeway to sort of deviate  
2 from the statute to one extent or another. It doesn't  
3 suggest a sliding scale of compliance.

4 Remember that this system involves millions of  
5 claims. I think Congress was aware that if it  
6 established this sort of a sliding scale standard, the  
7 Secretary could be faced with thousands, tens of  
8 thousands, maybe hundreds of thousands of factual  
9 situations in which people come in and say, well, two  
10 weeks late, a month and a half late, that didn't hurt  
11 you, that is substantial compliance.

12 And at the same time, I think the Secretary is  
13 going to be faced with a situation under that sort of  
14 standard in which he doesn't have any good way to decide  
15 what the cutoff should be. You are going to have people  
16 arguing that it is arbitrary and capricious to cut it  
17 off at one point or another.

18 You are going to have not only claimants who  
19 are disappointed. You are going to have third party  
20 people who thought they were going to be able to  
21 relocate or to locate claims after someone else's had  
22 lapsed under this statute.

23 We don't think that there is any indication  
24 that Congress intended to impose that sort of  
25 administratively complex system in the context of a

1 statute that was designed to simplify things. It is  
2 like the argument about abandonment. There is no  
3 indication that Congress was envisioning some massive  
4 factfinding process that would require the BLM to take  
5 evidence on the intent to abandoned.

6 In your heart you may want to keep your claim,  
7 but I think the point here was, if you don't submit  
8 something that is objective evidence that land managers  
9 can rely on, Congress made the determination that you  
10 would lose your claim in those circumstances.

11 If there are no questions at this time, I  
12 would like to reserve the remainder of my time.

13 CHIEF JUSTICE BURGER: Mr. Swafford.

14 ORAL ARGUMENT OF HAROLD A. SWAFFORD, ESQ.,

15 ON BEHALF OF THE APPELLEES

16 MR. SWAFFORD: Thank you, Your Honor.

17 Mr. Chief Justice, and may it please the  
18 Court, as pointed out by the appellants, the Lockes own  
19 ten unpatented mining claims near Ely, Nevada, which  
20 they have operated for 24 years. On April 4th, 1981,  
21 the Bureau of Land Management in Reno issued an opinion  
22 stating that the Locke's claims were deemed to be  
23 abandoned because they had filed an annual affidavit one  
24 day late.

25 The Lockes had fully complied with the statute



1 the prior year in regard to their initial filings.  
2 Under the Act, they were required to file certificates  
3 of location for each of their claims, maps, affidavits,  
4 and they did all of that prior to the deadline in  
5 October of 1979.

6 The court found below that the BLM had then  
7 opened a file on the Lockes showing their claims to be  
8 active mining claims. Now, the statute at issue herein  
9 provides that the failure to file any of the instruments  
10 required in the Act shall be deemed conclusively to  
11 constitute an abandonment of the claim by the owner.

12 The District Court viewed that as an  
13 irrebuttable presumption which to us seems pretty  
14 obvious on its face, and decided the case in accordance  
15 with this Court's decision in Vlandis versus Klein and  
16 other irrebuttable presumption cases.

17 The Court found that because that presumption  
18 of abandonment wasn't unnecessary or universally true,  
19 especially where the Lockes had operated their claims  
20 for 24 years, and indicated by filing their documents  
21 that they didn't intend to abandon, they should have a  
22 hearing or some method by which they should have an  
23 opportunity to rebut presumption.

24 Now, the appellants attacked the District  
25 Court's decision by saying that this doesn't present an

1 irrebuttable presumption at all, and they argue further  
2 that the court ought to decide the case in accordance  
3 with Texaco versus Short.

4 We think this is a pretty novel  
5 interpretation, and the Court should look at the  
6 statute, look at what it says on its face, and not  
7 search for other meanings in other cases.

8 QUESTION: But if we look at what the statute  
9 said on its face, your client is out.

10 MR. SWAFFORD: No, I think if we look at what  
11 it says on its face, it is an impermissible,  
12 irrebuttable presumption.

13 QUESTION: I see. You are not saying  
14 interpret it literally and apply it. You are saying  
15 interpret it literally and it is unconstitutional to  
16 apply it.

17 MR. SWAFFORD: Yes, Your Honor, and I think in  
18 answer to your question earlier of whether there was a  
19 boner, I believe Justice Blackmun answered that. I  
20 think there was a mistake. I think Congress intended to  
21 apply a rebuttable presumption, some kind of a --

22 QUESTION: What makes you think that?

23 MR. SWAFFORD: Because a conclusive  
24 presumption just doesn't fit in with notions of  
25 abandonment that require an intent.

1 QUESTION: Well, if we are looking as to what  
2 Congress might have intended, perhaps their mistake was  
3 in choosing to analogize what is essentially a  
4 forfeiture to abandonment. I mean, Congress wanted this  
5 terminated if the thing wasn't filed. Perhaps they were  
6 mistaken to have suggested that it was a conclusive  
7 abandonment.

8 MR. SWAFFORD: I think Congress intended to  
9 terminate inactive, long dormant, and abandoned mines.  
10 There was no intent on Congress's part that I can find  
11 from any reading of the Congressional Record or any of  
12 the statements by the American Mining Congress or  
13 anybody else that they intended to forfeit operating  
14 mines.

15 QUESTION: What if you, instead of reading the  
16 Congressional Record or the discussion, just read the  
17 statute? Surely it is absolutely clear from the statute  
18 that they intended a forfeiture, isn't it?

19 MR. SWAFFORD: It is a contradiction of  
20 terms. They use the word "abandonment," which means  
21 intent on the part of the miner to relinquish his  
22 property. It is just a contradiction in terms to say  
23 "conclusively deemed to be abandoned."

24 QUESTION: Any more so than the April 15th  
25 deadline on the question that was put to the

1 government? The April 15th tax return. One day late  
2 and you are just as badly off as six months or a year,  
3 aren't you?

4 MR. SWAFFORD: Well, I believe there is a  
5 deadline for filing tax returns, and there are other  
6 deadlines in statutes, other statutes, but I don't  
7 believe that that has anything to do with the conclusive  
8 presumption. I don't understand, I don't think, Your  
9 Honor.

10 QUESTION: I am addressing the language "prior  
11 to December 31st." Isn't that just as clear as April  
12 15th?

13 MR. SWAFFORD: I think it is a statement that  
14 Congress wanted it filed by December 30th. I think that  
15 is a clear statement, though it is, as the District  
16 Court found, a trap for the unwary. I don't think that  
17 makes it any -- I don't think that gives a person  
18 another day.

19 QUESTION: How do you describe the property  
20 interest, if any, that the claim owner has?

21 MR. SWAFFORD: The claim owner has a property  
22 interest as defined by this Court in Wilbur versus  
23 United States. He has property in the fullest sense of  
24 the term. He has an operating mine for which he earns --

25 QUESTION: I take it he can exclude others



1 from the claim, can he?

2 MR. SWAFFORD: Not from the claim surface. I  
3 don't believe he --

4 QUESTION: But he can exclude them from --

5 MR. SWAFFORD: From the mine itself, which is  
6 the vein of ore that he is operating and his -- the  
7 works that he has devised to get to it. I don't think he  
8 could exclude the BLM, for example, leasing out a mine  
9 for grazing purposes, or for -- he couldn't exclude  
10 hunters or --

11 QUESTION: Aren't there some other conditions  
12 besides filing on the continuation of that claim?

13 MR. SWAFFORD: He has to perform his  
14 assessment work every year, at least \$100 worth.

15 QUESTION: What if he doesn't some year?

16 MR. SWAFFORD: If he doesn't then, of course,  
17 the claim can be forfeited, I suppose.

18 QUESTION: Don't say suppose. It is  
19 forfeited, isn't it?

20 MR. SWAFFORD: It is lost by relocation by a  
21 junior locator, or if the government contested it, yes.

22 QUESTION: Well, he just forfeits. If by the  
23 end of the year you haven't done your assessment work,  
24 you are out of business.

25 MR. SWAFFORD: If certain conditions arise.

1 One is, of course, a junior locator. Another one is if  
2 he hasn't substantially --

3 QUESTION: And the government contests it,  
4 just like this, says, you have failed to do your  
5 assessment work, your claim is cancelled, your claim is  
6 out. Now, if you want to litigate with us as to whether  
7 you did your assessment work, why, come on in. And he  
8 said, well, I didn't do my assessment work, but  
9 nevertheless I am still in. He can't win that, can he?

10 MR. SWAFFORD: I think he can as against the  
11 government.

12 QUESTION: Why? How?

13 MR. SWAFFORD: But not as against the junior  
14 locator.

15 QUESTION: How can he win it against the  
16 government?

17 MR. SWAFFORD: Well, I think cases have  
18 decided, and in the Hickel --

19 QUESTION: You mean the government may not  
20 enforce its requirement of doing assessment work?

21 MR. SWAFFORD: I think that's correct as to  
22 assessment work. I think Hickel versus United States,  
23 and the cases that were decided there, is that  
24 assessment work, the failure to do assessment work is  
25 not something the government can assert, but only a

1 junior locator, because even if a person doesn't do  
2 this --

3 QUESTION: That is just because of the intent  
4 of Congress, I take it.

5 MR. SWAFFORD: Well, I think that is Court  
6 interpretations.

7 QUESTION: Of the intent of Congress.

8 MR. SWAFFORD: Yes, I believe, because if a  
9 person didn't do it for 20 years, and there were no  
10 intervening junior locators, he could resume doing his  
11 assessment work --

12 QUESTION: Unless it was held that he had  
13 abandoned it.

14 MR. SWAFFORD: Unless he has been held -- I  
15 agree with that. If he had abandoned the claim, had an  
16 intention to abandon it, then that is correct.

17 QUESTION: You think the nature of the  
18 property interest is such that the government, instead  
19 of saying, please file or you lose your interest, you  
20 think the government could just send a letter to all --  
21 investigate and get the names of all the holders of  
22 mining claims and just writes them a letter saying,  
23 everybody who hasn't got a patent is now forfeited?

24 MR. SWAFFORD: I don't think that would be  
25 possible constitutionally.

1 QUESTION: Do you think the Constitution would  
2 prevent that?

3 MR. SWAFFORD: I think it would, and there is  
4 some language in the dissent in Texaco versus Short that  
5 states that if the government were to issue a fiat  
6 simply terminating mineral interests across the board,  
7 it would be unconstitutional absent just compensation.

8 I think the government could do it, but it  
9 would probably have to pay for it, is what the final  
10 result would be. But the --

11 QUESTION: Well, I take it your position then  
12 in this case is that your client could just refuse to  
13 file at all.

14 MR. SWAFFORD: No, I don't believe --

15 QUESTION: And as long as he could show that  
16 he had no intent to abandon, that he was working the  
17 mine every day, he could just tell you, forget this  
18 filing business. That interferes with my property  
19 rights.

20 MR. SWAFFORD: I think at some point he needs  
21 to be given an opportunity to show, because of the  
22 statute, because if Congress, I think, wanted an  
23 abandonment it would say that.

24 QUESTION: Say he just said, I am just never  
25 going to file, but I would be willing -- I will litigate



1 with you any time about whether I have abandoned, and I  
2 will always win. Can he get away with that?

3 MR. SWAFFORD: Well, I think if there are no  
4 intervening people, and the government hasn't taken any  
5 position on it, which was a point made in the Wilbur  
6 versus Krushnic case, that if the Court -- or if the  
7 government has not intervened to take action, then it  
8 may very well be that he has substantially complied by  
9 correcting at some later date.

10 QUESTION: He just writes back -- he just  
11 writes back and says, I am sorry, but I am just not  
12 going to ever file under this statute, and you can't  
13 terminate my claim until and unless I abandon.

14 MR. SWAFFORD: Under this particular statute,  
15 that may be the result. It may very well be, because --

16 QUESTION: That letter would have to get there  
17 before the 31st?

18 MR. SWAFFORD: No, Your Honor, I think that he  
19 has to have an intent to abandon his mine whenever that  
20 occurs.

21 QUESTION: The reason is that if he doesn't  
22 get anything there before the 31st, he loses.

23 MR. SWAFFORD: By the 30th.

24 QUESTION: I said before the 31st. He loses.

25 MR. SWAFFORD: Well, I think he would only

1       lcse if he had an intent not to abandon his operating  
2       mine.

3               QUESTION: You recognized the validity of the  
4       statute when you filed, didn't you?

5               MR. SWAFFORD: I don't think the Lockes ever  
6       recognized the constitutional validity of it.

7               QUESTION: Well, did he file?

8               MR. SWAFFORD: They filed, and they complied  
9       in --

10              QUESTION: Did he file under protest?

11              MR. SWAFFORD: Not in 1979.

12              QUESTION: Well, if he didn't file under  
13       protest, how can he now protest?

14              MR. SWAFFORD: They are not protesting the  
15       initial filings. We think the initial filing  
16       requirements are constitutional. We are objecting to  
17       the forfeiture of operating mining claims by not filing  
18       an annual affidavit.

19              We feel that the government has a -- that  
20       there was no other way to do it as to the six million  
21       claims that existed out there. The solicitor has  
22       explained --

23              QUESTION: Well, Mr. Swafford, would you  
24       concede that at least the people who had not filed a  
25       mining claim before the enactment of the new law, that

1 the government can set whatever conditions it wants to  
2 enable people to obtain mining claims on public land?  
3 Is that right?

4 MR. SWAFFORD: Conditions for obtaining  
5 property in the first place, is what you are saying.

6 QUESTION: Sure. Somebody who has never filed  
7 before this law was passed.

8 MR. SWAFFORD: I believe that's true.

9 QUESTION: Now, you don't have any problem  
10 with those, do you?

11 MR. SWAFFORD: I have no problem with that.  
12 They have to comply with whatever conditions, whether it  
13 is doing \$10,000 worth of work instead of \$100, or  
14 filing any document the government wants.

15 QUESTION: So what distinguishes that  
16 principle, then, for people who have already filed but  
17 haven't perfected their claim, the unpatented mining  
18 claim? Can the government come in and establish new  
19 conditions for obtaining the patent?

20 MR. SWAFFORD: For obtaining a patent?

21 QUESTION: Right.

22 MR. SWAFFORD: I think if somebody wanted to  
23 obtain a patent and Congress wanted to increase, say,  
24 from \$500 to \$10,000, I think Congress could do that.  
25 It would make it a condition of --

1 QUESTION: And can it not come in and  
2 establish other requirements for holding onto an  
3 unpatented mining claim?

4 MR. SWAFFORD: Not when Congress has set up  
5 abandonment as one of the -- as the reason for losing  
6 the claim, as it has here.

7 QUESTION: Well, your position has already  
8 conceded that the earlier filing of an intention to  
9 retain a claim is valid, so you do concede that the  
10 government can come in and impose some additional  
11 conditions on holding an unpatented claim?

12 MR. SWAFFORD: Yes. I think in a certain  
13 circumstance, but not here. I don't see how it could be  
14 done here under this statute, is why I have problems  
15 with it, because it did set up abandonment, I think, as  
16 the standard for losing your claim.

17 Now, there are differences in Texaco versus  
18 Short with this case, I mean, major differences, in that  
19 the treatment -- it is the treatment of operating mines  
20 that is really different in the two statutes. In the  
21 Texaco versus Short context, operating mining claims are  
22 protected because the statute is only directed to  
23 eliminating claims where work has not been done for more  
24 than 20 years.

25 In this statute, Congress chose to protect



1 operating mines, I think, by requiring that they be  
2 abandoned. Because of that difference, I think the  
3 Court should not adopt and force this case into a Texaco  
4 versus Short situation.

5 Here, we do have the clear, irrebuttable  
6 presumption, and I think the District Court was right,  
7 and this Court should affirm that, on deciding this case  
8 in accordance with Vlandis versus Klein.

9 Now, the Court also found that the Lockes had  
10 substantially complied with the statute by doing many  
11 things. Now, the government says you can't  
12 substantially comply with the cutoff date, but the Act  
13 required numerous things to be done. The Act required  
14 the Lockes to file in 1979 their certificates of labor  
15 -- location, the maps and the affidavits of labor.

16 In 1980, the Lockes produced \$1 million worth  
17 of materials, and they filed their affidavit with the  
18 White Pine County, Nevada, Recorder's Office, and they  
19 also filed that with the Bureau of Land Management in  
20 Reno, although it was one day late.

21 The Court looked at all of the acts, the  
22 things that the Lockes had done, and stated that they  
23 had substantially met all of the requirements of the  
24 statute. The Court relied on Hickel versus Shell Oil  
25 Company in that line of cases which dealt with

1 performance of annual assessment work.

2 In that case, the Supreme Court ruled that if  
3 you substantially complied, that is sufficient under the  
4 assessment work. The lower court did not see that any  
5 of the purposes of the Act would be defeated by having  
6 the Lockes -- by ruling in their favor on substantial  
7 compliance. In other words, they found that the  
8 purposes of the Act were to eliminate this long buildup  
9 of six million long dormant claims on the public  
10 domain. Those purposes had already been accomplished.

11 And further, that the Lockes had indeed  
12 registered with the BLM, so the BLM knew they were  
13 active claims at the very time that they terminated  
14 them. So the purposes of the Act had been met. Now,  
15 the appellants have now apparently adopted a substantial  
16 compliance standard here by permitting annual affidavits  
17 to be filed by January 19th if they are postmarked by  
18 December 30th.

19 A literal reading of the statute would require  
20 a December 30th filing, and this seems to be a departure  
21 from the Act's strict requirements. In view of the  
22 nature of the irrebuttable presumption that we think  
23 this Court should rule on in accordance with the Vlandis  
24 versus Klein line of cases, and in view of the  
25 substantial compliance of the Lockes with the terms of

1 the Act, we urge this Court to affirm the District  
2 Court.

3 And if there are no more questions by the  
4 Court, that concludes my presentation.

5 CHIEF JUSTICE BURGER: Very well, Mr.  
6 Swafford.

7 Do you have anything further, Ms. Corwin?

8 MS. CORWIN: I have nothing further, unless  
9 there are other questions.

10 CHIEF JUSTICE BURGER: I think not. Thank  
11 you, ccounsel. The case is submitted.

12 (Whereupon, at 11:35 o'clock a.m., the case in  
13 the above-entitled matter was submitted.)  
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# CERTIFICATION

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

#83-1394 - UNITED STATES, ET AL., Appellants v. MADISON D. LOCKE, ET AL.

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)



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