

ORIGINAL

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
**THE SUPREME COURT**  
**OF THE**  
**UNITED STATES**

CAPTION: ILLINOIS, Plaintiff V. Kentucky

CASE NO: 106 Orig.

PLACE: Washington, D.C.

DATE: March 18, 1991

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IN THE SUPREME COURT OF THE UNITED STATES

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ILLINOIS, :  
Plaintiff :  
v. : No. 106 Orig.  
KENTUCKY :  
- - - - - X

Washington, D.C.  
Monday, March 18, 1991

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States at  
12:59 p.m.

APPEARANCES:

RICKIE LEON PEARSON, ESQ., Assistant Attorney General of  
Kentucky, Frankfort, Kentucky; on behalf of the  
Defendant.

JOHN BRUNSMAN, ESQ., Assistant Attorney General of  
Illinois, Springfield, Illinois; on behalf of the  
Plaintiff.

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1 P R O C E E D I N G S

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 now in No. 106 Original, the State of Illinois v. the  
5 State of Kentucky. Mr. Pearson.

6 ORAL ARGUMENT OF RICKIE LEON PEARSON

7 ON BEHALF OF THE DEFENDANT KENTUCKY

8 MR. PEARSON: Mr. Chief Justice, and may it  
9 please the Court:

10 In 1986 Illinois filed a complaint against the  
11 Commonwealth of Kentucky in this original action. In the  
12 complaint Illinois alleged that Kentucky had directly  
13 infringed upon its sovereignty by exercising its boating  
14 and fishing laws north of the 1792 low-water mark on the  
15 northwestern side of the Ohio River. Prior to this  
16 litigation the 1792 low-water mark with respect to  
17 Illinois had never been plotted, designated, or otherwise  
18 marked. And prior to that action there had never been any  
19 boundary dispute between Illinois and Kentucky or any  
20 recurring litigation.

21 In the answer Kentucky denied that it had  
22 directly infringed upon Illinois' sovereignty. Instead,  
23 Kentucky asserted that its boundary on the Ohio River is  
24 the low-water mark on the northwestern side of the river  
25 as it exists from time to time. In other words, the

1 current low-water mark. Also in the answer Kentucky  
2 raised two affirmative defenses, one affirmative defense  
3 being that of acquiescence, the second affirmative defense  
4 being that of latches.

5 Kentucky raised the defense of acquiescence  
6 because it wanted to invoke and employ the basic teachings  
7 of Georgia v. South Carolina, and that is Kentucky wanted  
8 to maintain, and to this day wants to maintain, the status  
9 quo on the river. Kentucky submits that the boundary  
10 between the two States, as it has been for 168 years, is  
11 the low-water mark on the northwestern side of the river.

12 By bringing the complaint, Illinois in essence  
13 seeks to change this boundary and make it the 1792 low-  
14 water mark. Kentucky submits that there are many  
15 practical considerations with respect to utilizing the  
16 low-water mark on the north side of the river as the  
17 boundary between the two States.

18 QUESTION: Now, when you say low-water mark you  
19 have to tell us low-water mark at what time.

20 MR. PEARSON: As it exists from time to time, or  
21 currently.

22 QUESTION: The changing low-water mark, not the  
23 1792 low-water mark.

24 MR. PEARSON: That's correct. Not the 1792 low-  
25 water mark, but the prevailing, current low-water mark.

1 QUESTION: Mr. Pearson, are you asking us to  
2 overrule Ohio v. Kentucky? I mean, you do not accept that  
3 Ohio v. Kentucky sets forth the proper rule, even without  
4 all the acquiescence? You --

5 MR. PEARSON: Your Honor, we're not asking this  
6 Court to overrule Ohio v. Kentucky. We think that the  
7 case before this Court can be determined independently of  
8 that particular situation.

9 QUESTION: And must be for you to win.

10 MR. PEARSON: That's affirmative. That's  
11 correct.

12 If you look at Ohio v. --

13 QUESTION: Would you object if we were to  
14 overrule that area case?

15 MR. PEARSON: No, sir. We would not object if  
16 you were to overrule that case.

17 QUESTION: Well, there was a dissent in that  
18 case, wasn't there?

19 MR. PEARSON: There was a dissent in that case.  
20 And might I add, it appeared to favor Kentucky with  
21 respect to its argument here today. But there are some  
22 historical antecedents and factors that go into why  
23 Kentucky has recognized the ever-changing low-water mark  
24 on the Ohio River for 168 years.

25 It all starts back in 1818 when you look at the

1 Illinois Enabling Act, the 1818 constitution of Illinois,  
2 the 1848 constitution of Illinois, and the 1870  
3 constitution of Illinois. All these documents, when  
4 viewed, conclude that the boundary between Illinois and  
5 Kentucky is the low-water mark, as those documents put it,  
6 along the northwestern shore, meaning the bank.

7 Perhaps maybe the most important notification  
8 that Kentucky had with respect to the low-water mark on  
9 the northwestern side of the river came from an 1849  
10 report of the Illinois Joint Select Committee to  
11 investigate Illinois' boundary on the Ohio River. That  
12 legislative body concluded that the boundary between  
13 Illinois and Kentucky is the low-water mark on the  
14 northwestern side of the river.

15 Kentucky submits that the conclusion of the  
16 Joint Select Committee from Illinois is in keeping with  
17 the 1820 case of Handly's Lessee v. Anthony. In the  
18 Anthony case the court was called upon for the first time  
19 to construe the 1784 Virginia Deed of Cession which gave  
20 lands to the United States of America, and thereby created  
21 Kentucky, Illinois, Indiana, and Ohio.

22 In construing the 1784 cession, the court in  
23 Anthony's Lessee concluded that the boundary for Kentucky  
24 on the Ohio River is the low-water mark on the northern  
25 side of the river, or to put it in another term used by

1 the court, the water's edge.

2 But there were many factors why the court  
3 reached this conclusion, one of them being that it would  
4 be convenient for future population, because at that time  
5 the United States was growing. Secondly, it was an  
6 identifiable boundary mark between the States.

7 With that in mind, Kentucky submits that by  
8 using the low-water mark on the northwestern side of the  
9 river as it exists from time to time, or currently, or as  
10 it prevails, is the most practical approach to resolving  
11 the boundary dispute. After all --

12 QUESTION: Mr. Pearson, if you're not asking the  
13 Court to overrule Ohio against Kentucky, then your  
14 argument has to be based on acquiescence, does it not?

15 MR. PEARSON: It does, Your Honor.

16 QUESTION: And how much of a part does the  
17 practicalities of the thing play in acquiescence? I mean,  
18 don't you have to show that Illinois consented to this  
19 boundary, basically?

20 MR. PEARSON: You do. You have to show that  
21 they acquiesced in this particular boundary. You sure do.

22 QUESTION: And if they acquiesced, what  
23 difference does it make whether it's a practical boundary?  
24 And if they didn't acquiesce, what difference does it make  
25 whether it's a practical boundary?

1 MR. PEARSON: Your Honor, I think it's -- it's  
2 very important that it's a practical boundary for the  
3 simple fact that it would best serve the public  
4 convenience.

5 QUESTION: But what has that got to do with  
6 acquiescence? Acquiescence is a state of mind exhibiting  
7 your willingness to abide by a particular thing.

8 MR. PEARSON: Yes, Your Honor. I think if you  
9 look back at Vermont v. New Hampshire, which was decided  
10 in 1933, the court in Vermont v. New Hampshire looked at  
11 the practical considerations for the public convenience.  
12 They looked to see, first of all --

13 QUESTION: Did that -- did that case turn on  
14 acquiescence?

15 MR. PEARSON: Yes, it did, Your Honor. And it  
16 had to do with the location of the boundary between  
17 Vermont and New Hampshire on the western -- the western  
18 low-water mark on the Vermont side of the Connecticut  
19 River. It turned on acquiescence. The court there looked  
20 at the conduct of the inhabitants and the issue of  
21 acquiescence. And acquiescence, with respect to whether  
22 or not to use the largely identifiable western low-water  
23 mark on the Vermont side of the Connecticut River, looked  
24 at the practicalities of it.

25 Kentucky would submit that looking at the

1 practicalities in this situation, likewise, is very  
2 important. I think if we look at some of the  
3 practicalities and how they have impacted upon the  
4 interaction between officials from both Kentucky and  
5 Illinois, then I think we can bring home closer the  
6 doctrine of acquiescence.

7 QUESTION: Well, at least it makes it more  
8 sensible to argue acquiescence if it's -- if acquiescing  
9 was in the public interest or if it was practical to do  
10 so.

11 MR. PEARSON: I would agree, Your Honor. That's  
12 precisely our point. For instance, if we look at the  
13 bridges that cross the Ohio River between Illinois and  
14 Kentucky, there are four of them. Basically a bridge that  
15 was constructed in 1929, the Brookport bridge, 1938 the  
16 Cairo bridge, which, that's what they call it in Illinois,  
17 they don't call it Cairo, the 1956 Shinytown bridge, and  
18 the 1974 Interstate 24 bridge.

19 With respect to the Interstate 24 bridge, in  
20 1971 a construction agreement was entered between Illinois  
21 and Kentucky, and with respect to that agreement it was  
22 concluded that the boundary between the two States would  
23 be the north normal pool line, loosely translated the low-  
24 water mark. It did not say, it did not specify 1792.  
25 Kentucky submits that it's talking about the prevailing or

1 current normal pool line on the river.

2 Likewise, we see the same kind of situation with  
3 respect to Illinois and Kentucky entering into a  
4 maintenance agreement regarding the Cairo bridge, which  
5 was constructed in 1938. In 1954 Kentucky and Illinois  
6 officials corresponded regarding where to place the sign  
7 on the bridge indicating when you are going to be entering  
8 Illinois or leaving Kentucky. And between this  
9 correspondence one of the district engineers for Illinois  
10 concluded, after looking at the 1936 construction plan,  
11 that the area located on that construction plan was about  
12 as close enough to the theoretical line as it could be.

13 Kentucky had that 1936 plan analyzed by one of  
14 its bridge engineers and of course that plan indicated  
15 that the boundary was at Pier B, Station 20 plus 10.  
16 Notwithstanding the fact that that's construction talk,  
17 the bottom is when you look at it it's the same as the  
18 low-water mark on the northern side of the river.

19 Consequently Illinois has been on notice for  
20 quite some time, especially with respect to the 1849  
21 agreement, a Joint Select Committee conclusion that the  
22 low-water mark on the northwestern side of the river is  
23 indeed the boundary.

24 Likewise there was other situations which have  
25 come into play to show that Kentucky is exercising its

1 jurisdiction and its dominion to the north low-water mark  
2 on the Ohio River. For instance, Kentucky counties that  
3 bound -- that border on the river have the right in the  
4 authority under Kentucky's 1810 statute, and the case law  
5 that has interpreted it, to lease the river bed to the  
6 thread or the middle of the stream.

7 As a result of that subsequent decisions by the  
8 Supreme Court of Kentucky, or the highest court in  
9 Kentucky at that time, concluded that the State of  
10 Kentucky likewise has the authority to lease the bed of  
11 the river from the middle of the stream to the low-water  
12 mark on the northwestern side of the river.

13 And that's exactly what Kentucky has done.  
14 Before the Special Master there is evidence that Kentucky  
15 has entered into agreements with private companies for the  
16 leasing of the river bed for dredging of sand and gravel.

17 QUESTION: Mr. Pearson, I guess Kentucky has  
18 boundaries along the Ohio River with Ohio and --

19 MR. PEARSON: Indiana.

20 QUESTION: -- Indiana as well.

21 MR. PEARSON: That's correct.

22 QUESTION: And so I assume if somehow we were to  
23 agree with you that there has been acquiescence here for  
24 the Illinois boundary, that would mean the boundary is  
25 someplace else with respect to Indiana and Ohio?

1 MR. PEARSON: That's correct. In other words,  
2 if I understand your question, it would create an  
3 inconsistent boundary.

4 QUESTION: Yes, quite.

5 MR. PEARSON: With respect to that conclusion --  
6 which it would. It would create an inconsistent boundary.  
7 But there are some factors to be concerned. Maybe perhaps  
8 the bright-line principle that would allow Kentucky to  
9 fashion the boundary as it argues today, which has been  
10 recognized for 168 years, is California v. Nevada. I  
11 think the bright-line principle in that case is that there  
12 is no particular relationship between the origins of a  
13 boundary and the legal consequences of acquiescence in  
14 that boundary.

15 In other words, for 168 years it has been no  
16 problem between Illinois and Kentucky. Even as I speak  
17 today, the boundary on the river which the parties or the  
18 people who work on that river recognize, is the low-water  
19 mark. We haven't had any problems with it for 168 years,  
20 even though it has been different than the 1792 low-water  
21 mark.

22 I think the -- at present the Kentucky  
23 legislature, with respect to promulgating in its revised  
24 statutes the description of the boundary now, talks in  
25 terms of allowing the low-water mark on the north side of

1 the river to intersect with the present 1792 low-water  
2 mark as we know it from Ohio v. Kentucky, and of course  
3 Kentucky v. Indiana. Merely, the point being is that  
4 there has been no problem up until this lawsuit was filed  
5 regarding the boundary between the two States.

6 At present Kentucky enforces its boating and  
7 fishing laws on the entire river to the northwestern side  
8 of the river at the low-water mark. For instance, with  
9 respect to fishing licenses, the testimony before the  
10 Special Master showed that if an individual is fishing in  
11 the Ohio River, then Kentucky officials will check that  
12 person for his or her license. But if that person is  
13 fishing from the bank the Kentucky officials will not.

14 Moreover the officials from Kentucky testified  
15 that there are no Illinois water patrol or Fish and  
16 Wildlife personnel on the river. Only Kentucky is the  
17 State that patrols that river and enforces the fishing and  
18 boating laws on that river.

19 QUESTION: Mr. Pearson, isn't it possible that  
20 the boundary is actually on the land north of where the  
21 water is, under Illinois' theory?

22 MR. PEARSON: No, Your Honor.

23 QUESTION: I mean, maybe -- isn't it possible  
24 the river has moved to the south rather than to the north?

25 MR. PEARSON: I think, Your Honor, I think

1 you're speaking with respect to a survey that was done by  
2 Illinois with respect to that. We don't -- we cannot  
3 concede that that is possible or that is the case. We  
4 don't -- we don't know the impact with respect to what  
5 dams have done to the river and perhaps that issue might  
6 be premature and be appropriate if this Court concludes  
7 that Kentucky does not prevail.

8 QUESTION: No, my point is that all this  
9 activity rely on -- say Illinois allowed all the policing  
10 and what went on on the water itself. Maybe they assumed  
11 that was part of Kentucky because they don't really know  
12 exactly where the 1792 boundary is.

13 MR. PEARSON: That may well be true, Your Honor,  
14 but in the complaint they allege that it was the 1792 low-  
15 water mark. I have to take them --

16 QUESTION: Right, but I'm just saying if you  
17 don't know where it is, conceivably -- I don't know, I  
18 don't know anything about the geography. But conceivably  
19 the 1792, the river was 10 miles north of Cairo.

20 MR. PEARSON: It could have been. And I think  
21 you're talking about basically the principles of accretion  
22 and erosion.

23 QUESTION: Yeah.

24 MR. PEARSON: Kentucky submits, just as it has  
25 with respect to Illinois recognizing the low-water mark on

1 the northwestern side of the river, because it has waited  
2 168 years in which to bring this action, that it has in  
3 essence acquiesced likewise to the application of the  
4 principles of accretion and erosion. In other --

5 QUESTION: If I didn't know where the 1792 low-  
6 water mark was, I guess I would just operate on the  
7 assumption that it was where it is now, and therefore my  
8 operating on that assumption would not demonstrate any  
9 acquiescence whatever. It would demonstrate only a  
10 mistake of fact, perhaps. I mean, you have to demonstrate  
11 an acquiescence in the legal principle, right, not just in  
12 a fact, but in the legal principle.

13 MR. PEARSON: And I think we have with respect  
14 to inaction for a long period of time.

15 QUESTION: Well, how does --

16 MR. PEARSON: That's one of the considerations.

17 QUESTION: How would it hurt Kentucky? You just  
18 don't know how it would hurt you, Kentucky, if Illinois  
19 won?

20 MR. PEARSON: I think it could hurt us in many  
21 regards.

22 QUESTION: Okay, but you don't know how?

23 MR. PEARSON: I think I do. If Illinois were to  
24 prevail, is that your question?

25 QUESTION: Yeah.

1 MR. PEARSON: I think I would. First of all --

2 QUESTION: Tell us.

3 MR. PEARSON: First of all it would be with  
4 respect to the issuance and the selling of fishing  
5 licenses. Number one, which --

6 QUESTION: Well, how do you know?

7 MR. PEARSON: Well, if the boundary -- let's  
8 predicate on the assumption. If the boundary is the 1792  
9 low-water mark as Illinois alleges in its brief, which  
10 means that the boundary is no longer the shoreline but  
11 moves out into the waterway, then obviously because of the  
12 geographical location of that boundary which Illinois says  
13 is the boundary between the two States, we're going to  
14 give up some of the river. And consequently fishing --

15 QUESTION: For purposes of fishing jurisdiction?

16 MR. PEARSON: Fishing jurisdiction. Maybe for  
17 that fact dredging with respect to sand and gravel, if  
18 they want to dredge along the northern -- northwestern  
19 shore.

20 QUESTION: But you don't know, though, you just  
21 don't know. You just have to surmise that --

22 MR. PEARSON: That would appear to be, based  
23 upon the historical facts on the river that that's a high  
24 probability. So, yeah. I don't know, but --

25 QUESTION: Of course there might be a high

1 probability that the boundary, that the river has moved  
2 south, in which event you wouldn't lose anything in the  
3 river.

4 MR. PEARSON: That's true. Of course there's a  
5 probability that it could have moved north. And if it has  
6 then we probably lose a lot more. But the movement of the  
7 river, I think at this point in time with respect to  
8 trying to say that it's the 1792 low-water mark or that  
9 it's the low-water mark on the northwestern side of the  
10 river, perhaps is a little premature and would definitely  
11 be a vast and important consideration when trying to  
12 geodetically plot where we think it is if Kentucky does  
13 not prevail. I think that's where it has its most  
14 important function.

15 QUESTION: But isn't it correct that we -- the  
16 record does not yet tell us which direction, if either,  
17 the river has moved?

18 MR. PEARSON: That is correct.

19 QUESTION: So isn't -- it seems to me it's a 50-  
20 50 proposition. They want a certain line, but you don't  
21 know whether that -- it doesn't seem to me you can really  
22 tell whether that line will hurt one State or the other.

23 MR. PEARSON: Well, if -- that's, that's true,  
24 but I think that there is a certain line, and that's the  
25 line that Kentucky and both Illinois have recognized for

1 168 years.

2 QUESTION: Well, but you're saying the certain  
3 line is a line that changes from time to time, and  
4 wherever it is at a particular time, that governs.

5 MR. PEARSON: That's correct.

6 QUESTION: And they are arguing for a permanent  
7 line. And we don't know whether the permanent line is  
8 more favorable to one State or the other.

9 MR. PEARSON: Surely we know if it does move  
10 more northward --

11 QUESTION: Well, if it moves north it's more  
12 favorable to your side, if it moves south it's more  
13 favorable to the other side. But --

14 MR. PEARSON: That's correct.

15 QUESTION: Has the boundary line been  
16 established, to your knowledge, between Ohio and Kentucky?

17 MR. PEARSON: It has, Your Honor.

18 QUESTION: And how did that work out?

19 MR. PEARSON: That worked out as the result of a  
20 stipulation --

21 QUESTION: And the river was moved south some  
22 places and north in other places, is that it?

23 MR. PEARSON: That's correct, Your Honor. I  
24 think what we have --

25 QUESTION: And the same with Indiana?

1 MR. PEARSON: Same with Indiana, Your Honor. I  
2 think --

3 QUESTION: It may be the same in your place.

4 MR. PEARSON: I think what we have right now --

5 QUESTION: You may gain something. You may gain  
6 some ground.

7 MR. PEARSON: Well, the way the parties --

8 QUESTION: Actual ground.

9 MR. PEARSON: The way the parties stipulated was  
10 that when it gets too close to ground they move it 100  
11 feet out. That's not to Kentucky's benefit. Right now  
12 the boundary with respect to Ohio and Kentucky, as it has  
13 been agreed between the parties, takes a zig-zagging  
14 course. No one knows exactly still where it is. And when  
15 it gets too close to land the parties by agreement  
16 stipulated that it would move out 100 feet.

17 QUESTION: I know, but that --

18 MR. PEARSON: We didn't pick up --

19 QUESTION: That doesn't follow the 18 -- the --

20 MR. PEARSON: Handly's Lessee in 1820?

21 QUESTION: Yeah. That doesn't --

22 MR. PEARSON: It does not, Your Honor.

23 QUESTION: Because if you -- I would think that  
24 if the river moved a certain direction and the boundary  
25 line is that old low-water mark, it would be up on the

1 land and you would be having some land.

2 MR. PEARSON: I think perhaps the boundary as we  
3 know it based upon the 7 -- the 1792 low-water mark with  
4 respect to Ohio and Kentucky has resulted purely from  
5 stipulation and agreement between the States. And so they  
6 tried to do as best they could with what they could find,  
7 even with regard to speculation by knowledgeable surveyors  
8 as to where they think the boundary is. Kentucky didn't  
9 pick up anything as a result of that.

10 QUESTION: Mr. Pearson, if we don't know where  
11 the 1792 -- I mean, it's not in the record. You don't  
12 know. We don't know. I suppose the fellow who put up the  
13 sign on the bridges didn't know either. Any of these acts  
14 of acquiescence that you're alleging, does any of them  
15 involve a situation where somebody knows where the 1792  
16 line was, but nonetheless allows -- allows jurisdiction  
17 beyond it?

18 MR. PEARSON: No, Your Honor.

19 QUESTION: Not a single one?

20 MR. PEARSON: It does not.

21 QUESTION: So as far as appears, it has just  
22 been the operating assumption of Illinois that the  
23 boundary -- the boundary is -- was where it is --

24 MR. PEARSON: No, Your Honor --

25 QUESTION: -- which is a fair enough operating

1 assumption. It may have gone in either way.

2 MR. PEARSON: I don't think it's been an  
3 operating assumption, Your Honor, especially if you look  
4 at the 1849 Illinois Joint Select Committee and what they  
5 did. That was their job to make a determination where the  
6 boundary is. They concluded it's the low-water mark on  
7 the northwestern side of the river. They had an ample  
8 opportunity at that time to say, oh, it's the 1792 low-  
9 water mark. They did not find such. Consequently, I  
10 think Kentucky has correctly utilized the low-water mark  
11 and Illinois has acquiesced to it being the 17 -- not --  
12 being the low-water mark on the northwestern side of the  
13 river.

14 That's true, locating it would probably be  
15 extremely difficult. The parties in the two prior actions  
16 stipulated where they thought maybe it would be.

17 With respect to the -- Illinois' complaint I  
18 think also points it out. Illinois in its complaint  
19 alleges that Kentucky directly infringed upon its  
20 sovereignty by exercising its jurisdiction or dominion to  
21 the shoreline. Once again, I think that is indicative of  
22 the fact that it has always been that. It's identifiable.  
23 It's concrete. There is no guessing for people who work  
24 and live on that river everyday. There is nothing about  
25 maybe geodetically plotted the river runs, the boundary

1 runs this way or meanders that way. It's identifiable.  
2 When a person is on the riverbank fishing or a person puts  
3 that pole in the water, they know where it is.

4 To give you another example as to how Kentucky  
5 has exercised dominion and control over the river, from  
6 1946 to 1988 Kentucky had a special license called the  
7 Ohio River Commercial and Sport Fishing license. This  
8 license was purchased exclusively and available only for  
9 residents of Illinois, Ohio, and Indiana. We sold it  
10 exclusively to them so they could fish the Ohio River.

11 In 1988 the regulations were amended such that  
12 Kentucky would then have a new license called a  
13 nonresident fishing license, meaning that Illinois  
14 residents could purchase the license, just like any other  
15 resident of a -- from a State other than Kentucky. And,  
16 but in either case Kentucky was selling those licenses  
17 particularly to Illinois official -- Illinois individuals  
18 or inhabitants so they could fish on the river.

19 This once again shows you what has been going on  
20 for quite some time on the river in terms of exercising  
21 jurisdiction over the river to the low-water mark.

22 To show you one other example, Kentucky's  
23 fishing laws allows that it be --

24 QUESTION: Well, even in that -- even on that  
25 example, if any portion of the river in which they

1 intended to fish was south of the boundary, they'd need a  
2 Kentucky license. Wouldn't they?

3 MR. PEARSON: If it's south of the low-water  
4 mark.

5 QUESTION: Right.

6 MR. PEARSON: That's correct. That's correct.

7 QUESTION: So I would think most fish -- I don't  
8 know where the, where you get the most fish out of this  
9 river, but I would think --

10 MR. PEARSON: I don't either.

11 QUESTION: -- most people would need a Kentucky  
12 license, no matter -- unless the boundary had moved, you  
13 know, the whole breadth of the river.

14 Another question occurs to me --

15 QUESTION: And especially since they don't know  
16 where the boundary is any more than you do.

17 (Laughter.)

18 QUESTION: They know there are a lot of Kentucky  
19 game wardens out there and they want to --

20 MR. PEARSON: Of course if they fish north of  
21 the low-water mark, one would have to assume they would  
22 have to get an Illinois license, but right now we're  
23 selling those licenses with respect to having  
24 accessibility to the Ohio River. And --

25 QUESTION: What would happen under your view of

1 the case if Kentucky decided to fill out to the middle of  
2 the river and cause the river to bend farther to the  
3 north? Would they acquire territory by doing that?

4 MR. PEARSON: I think we have to first classify  
5 what that conduct would be by Kentucky as to whether or  
6 not it's some kind of accretion or whether or not it's  
7 evulsive in nature. Because if it's evulsive in nature,  
8 and is sudden, which usually is in terms of an earthquake,  
9 then of course because the river would shift, the shift of  
10 the river would not divest the States that had certain  
11 properties --

12 QUESTION: So your view isn't that the proper  
13 line is as it exists from time to time. It's as it exists  
14 from time to time, excluding all examples of evulsion.  
15 That's your theory?

16 MR. PEARSON: That is.

17 QUESTION: So you -- even under your theory  
18 you've got to go back 100 years and find out how many  
19 evulsive changes took place, don't you?

20 MR. PEARSON: Well, we have -- we have an  
21 affidavit indicating from our surveyor that the river has  
22 not changed very much at all.

23 QUESTION: Very much. But if there are any  
24 evulsive changes, in order to find the boundary you would  
25 have to know what they were.

1           MR. PEARSON: Of course finding some of that  
2 evidence is one of the problems we have because of the  
3 inaction on the part of Illinois in bringing suit 168  
4 years later. It has a deleterious effect upon the quality  
5 of evidence presented. I think that's another practical  
6 consideration with respect to whether or not acquiescence  
7 has been shown.

8           Finally, I think I'd like to conclude by  
9 indicating that when a person drowns in the Ohio River, if  
10 that body is located in the river the Kentucky coroners  
11 will exercise jurisdiction over it. However, Illinois  
12 coroners will not. If the body is brought to the bank on  
13 the Illinois side they will exercise jurisdiction over it.  
14 Sometimes the Illinois coroners will seek the permission  
15 of the Kentucky coroners to exercise jurisdiction over a  
16 body.

17           QUESTION: What else would you expect them to  
18 do? I mean, if it -- if the 1792 boundary were the line,  
19 how would you expect them to behave differently? It would  
20 seem to me if I were a coroner I would say, yeah, I know  
21 it's the 1792 line, but nobody knows where the 1792 line  
22 is, even Mr. Pearson. He's been working with this case  
23 for a long time. He doesn't know -- I'll just assume that  
24 it is now where it was then. Isn't that the way you'd  
25 operate? I would.

1 MR. PEARSON: Well, I think, Your Honor, the  
2 answer to that question is the practical choice of all,  
3 the low-water mark on the northwestern side. Then you  
4 don't have to guess at all. Just like with -- in -- with  
5 the Connecticut River. There would be no guessing. There  
6 would have to be no assumptions.

7 With that in mind, Your Honor, if there are any  
8 more questions --

9 Thank you.

10 QUESTION: Thank you, Mr. Pearson.

11 Mr. Brunzman, we'll hear now from you.

12 ORAL ARGUMENT OF JOHN BRUNSMAN

13 ON BEHALF OF THE PLAINTIFF ILLINOIS

14 MR. BRUNSMAN: Mr. Chief Justice, and may it  
15 please the Court:

16 I'd like to begin this afternoon by talking a  
17 little bit about the 1792 low-water line, whether anyone  
18 knows where it is or not. I think that the record does  
19 show that Indiana, Ohio, and Kentucky all resolved their  
20 boundary dispute following this Court's 1980 decision by  
21 using a line depicted on a series of U.S. geological  
22 Survey maps showing the 1792 low-water mark, and that line  
23 was based on surveys done by the Corps of Engineers about  
24 the time of 1896 to 1906. They did those surveys before  
25 they built the dams on the river that have raised the

1 level of the river that have really caused the problem  
2 that we have here today, and the parties agreed that was  
3 the best existing representation of the 1792 line.

4 QUESTION: How did the 1896 surveys deduce the  
5 1792 low-water line?

6 MR. BRUNSMAN: It's obviously, Your Honor, it's  
7 not exactly. They just -- the parties determined that's  
8 the best approximation they could ever come up with.

9 QUESTION: Well, so what you're saying is that  
10 the 1896 survey didn't purport to show the 1792 low-water  
11 mark; it showed the 1896 low-water mark?

12 MR. BRUNSMAN: It showed -- it used an average  
13 of gauge readings on various parts of the river going back  
14 a number of years before that, up to 50 years before that.  
15 What it did was get a mean low-water mark over a period of  
16 years, and --

17 QUESTION: 50 years preceding 1896?

18 MR. BRUNSMAN: Exactly. And the 22 U.S.  
19 Geological Survey maps showing the Illinois-Kentucky  
20 section of the boundary are part of the record in this  
21 case. They are filing No. 44. Like the maps between  
22 Kentucky and Indiana and Ohio, they all show the boundary  
23 as the low-water mark some distance south of the  
24 contemporary northern shoreline. It varies anywhere from  
25 100 feet to some places past the middle of the river.

1           There are three exceptions to that. There are  
2 three places where there were former islands in the river  
3 that have now become attached to Illinois. Illinois  
4 concedes those are part of Kentucky because they were  
5 islands originally, so that 1792 low-water mark would have  
6 been north of them.

7           I submit that these maps have been in existence,  
8 many of them have been in existence since the 1950's, that  
9 Kentucky had some notice, some idea of where the 1792 low-  
10 water mark was, just as Illinois was put on notice by  
11 those maps.

12           QUESTION: If you use a changing low-water mark  
13 as the boundary, what's the law if a dam is built or the  
14 low-water mark is changed by an act of one of the States?

15           MR. BRUNSMAN: I believe that there are cases  
16 that indicate that you can have in effect an evulsive  
17 change created by manmade intervention. In fact Illinois  
18 resolved a dispute informally with the State of Missouri  
19 using just that principle. The Corps of Engineers had  
20 built a dam there --

21           QUESTION: Well, what about the low-water mark?  
22 Suppose the low-water mark is always much higher after a  
23 dam? If the normal rule applies, is there now a new low-  
24 water mark, even though it's manmade?

25           MR. BRUNSMAN: Assuming that we had a case other

1 than Ohio v. Kentucky?

2 QUESTION: Yes.

3 MR. BRUNSMAN: I would assume that would be a  
4 new low-water mark, because that's -- a low-water mark  
5 would be the point the river recedes in its lowest stage  
6 under existing circumstances. That would be one  
7 definition.

8 QUESTION: Well, if you knew where the 1792 --  
9 I'm sorry, you did know where it was. You should have  
10 been more careful about where you put your bridge signs  
11 and things of that sort.

12 MR. BRUNSMAN: Well, Your Honor, I don't think  
13 that a bridge sign is the sort of thing that you use to  
14 deprive a State of what would otherwise be its legal  
15 jurisdiction. I think the letter that Mr. Pearson talked  
16 about, the author said well, this is close enough to the  
17 theoretical State line for our purposes. He was putting  
18 up a sign that said you're leaving Kentucky and entering  
19 Illinois. I am sure he would have been quite surprised to  
20 consider that he might be determining a State boundary for  
21 all time by writing that letter. I don't think that's the  
22 sort of situation or the sort of fact you would rely on in  
23 establishing acquiescence.

24 And in discussing the facts in this record I'd  
25 like to turn at this point to the various Kentucky

1 authorities since 1890 that have recognized the 1792 low-  
2 water mark to be Kentucky's boundary. In fact, starting  
3 in 1890 that was Kentucky's position when it came to this  
4 Court and argued the Indiana v. Kentucky case. In that  
5 case Indiana suggested that it was the contemporary low-  
6 water mark. This Court disagreed, siding with Kentucky,  
7 and said the decisive question is really the line as it  
8 existed in 1792, and that it was fixed at that point and  
9 wouldn't change thereafter. So beginning as early as 100  
10 years ago Kentucky authorities themselves have  
11 acknowledged the 1792 line.

12           Following that decision there have been a number  
13 of Kentucky authorities, the earliest is a 1916 Kentucky  
14 case where the question was whether or not a small island  
15 in the river was within the northern boundary of Kentucky.  
16 That Kentucky court cited Indiana v. Kentucky and said the  
17 boundary is defined as the low-water mark as it existed  
18 when Kentucky became a State. And that case, I would  
19 submit, is of significance to the present controversy  
20 since the island was located in the river near Mound City,  
21 Illinois. So in that Perks v. McCracken decision we have  
22 explicit recognition by Kentucky that the 1792 line  
23 applies to that part of the river between Illinois and  
24 Kentucky.

25           Subsequent --

1 QUESTION: Mr. Brunzman, did something occur  
2 that promoted Illinois to file the suit that it did after  
3 all these years?

4 MR. BRUNSMAN: I think it was the resolution --  
5 the resolution of the earlier cases in 1980, and then I  
6 believe the actual maps weren't completed showing a line  
7 until 1985. I think that's fair to say was the --

8 QUESTION: (Inaudible) your statement probably  
9 benefit the results of those other cases when they finally  
10 drew the line?

11 MR. BRUNSMAN: Well, the line that's on the  
12 U.S.G.S. map shows that some part of the river for the  
13 most part is in Illinois. So to that extent we would  
14 benefit. I think at the time we filed the suit, I'm not  
15 even sure -- I wasn't aware of those maps. I'm not  
16 certain if anyone -- if we were, but they -- just the  
17 certainty of knowing where it is was the benefit we sought  
18 to obtain by filing a lawsuit at that time, knowing that  
19 the court had just resolved it with regard to the other  
20 three States on the river, and that it seemed like the  
21 opportune time to do so as far as Illinois was concerned.

22 QUESTION: Wouldn't there be some chance that if  
23 the boundaries, the low-water mark as it was back in 1792,  
24 that the river has changed so that that low-water mark of  
25 1792 would be on dry land on the Illinois side?

1 MR. BRUNSMAN: I think that's -- it's  
2 conceivable, and in fact that is the situation --

3 QUESTION: Well, I would think it would be just  
4 as conceivable as if the river moved the other way.

5 MR. BRUNSMAN: Well, but I think that -- this is  
6 based on a premise that misconstrues the change in the  
7 river. The river hasn't moved. The dams have raised the  
8 level of the river so in effect it has spread out both  
9 ways. It's deeper behind the dams than it was naturally.  
10 That's why the original pre-dam --

11 QUESTION: You don't think then, you don't think  
12 the Ohio is as much of a meandering river as the  
13 Mississippi, for example? It goes downhill faster, so it  
14 doesn't --

15 MR. BRUNSMAN: I think that is exactly what I  
16 have read, that that's the case. Also, the Corps of  
17 Engineers, the Government has spent many millions of  
18 dollars putting these dams and docks there. They are not  
19 likely to let it gradually move around those dams and  
20 docks so that --

21 QUESTION: But if it's deeper above the dams,  
22 one would think it would be shallower below the dams,  
23 because the same amount of rainfall is falling on that  
24 watershed as fell in 1792.

25 MR. BRUNSMAN: If you look at the level of the

1 dams, and in one of the filings, I think it's filing No.  
2 41 in Exhibit 3 or 4, some Corps of Engineers documents,  
3 they show the level of the pool behind each dam. And it's  
4 above the existing low-water mark because each dam was  
5 built to guarantee a minimum 9-foot navigation pass. And  
6 to do that --

7 QUESTION: Then where is the additional water  
8 coming from? I mean, if it's wider on both sides in some  
9 places, it seems logical it must be narrower on both sides  
10 in other places.

11 MR. BRUNSMAN: Well, I -- to tell you the truth,  
12 I can't answer that. I do know that when you look at the  
13 line based on the pre-map, or the pre-dam survey of the  
14 Corps of Engineers, you'll see that all along the  
15 shoreline of not just Illinois, but Indiana and Ohio, that  
16 pre-dam low-water mark is for the most part south of the  
17 shore.

18 Another source that -- another Kentucky source  
19 recognizing the 1792 line was the 1963 attorney general's  
20 opinion where the Kentucky Attorney General not only  
21 recognized the existence, or the accuracy of the 1792 low-  
22 water mark as Kentucky's boundary, he also recognized that  
23 because of the dams it would be south of the contemporary  
24 northern shoreline due to the general raising of the  
25 river.

1           The final two Kentucky sources that contain  
2 statements incompatible with Kentucky's position here are  
3 their two bulletins issued in 1969 and 1972 by the Special  
4 Ohio River Boundary Subcommittee of the Kentucky  
5 Legislative Research Commission. The introduction or  
6 forward to the first of those bulletins, Bulletin 81,  
7 tells us that this special subcommittee was created  
8 specifically to study Kentucky's Ohio River boundary due  
9 to litigation during the preceding 150 years.

10           I think it's significant to note that despite  
11 Kentucky's claim here that it has always asserted its  
12 boundary to be the low-water mark as exists from time to  
13 time, that claim was somehow lost on the authors of this  
14 -- these bulletins, since neither one of those bulletins  
15 advanced such a claim on Kentucky's behalf, and both of  
16 them recognize the 1792 low-water mark.

17           So, based on those sources running from 1890  
18 through 1972, and those two reports were even issued while  
19 Ohio v. Kentucky was pending in this Court, it shows to me  
20 first that Kentucky has repeatedly recognized the 1792  
21 line. Also that -- oh, that's true, there was also  
22 confusion within Kentucky, because the legislative  
23 research commission was saying it's the 1792 line,  
24 Kentucky in their answer to Ohio's original complaint said  
25 no, it isn't.

1           And again, that kind of uncertainty and  
2 confusion, I think, fits Illinois' position in this case  
3 because you don't have acquiescence where the State  
4 claiming the benefit of it can't show a longstanding  
5 continuous claim to the boundary they are seeking to have  
6 the Court adopt.

7           There is additional evidence in the record, I  
8 think, also that shows that this uncertainty extends to  
9 both States. The best evidence of that concerns the  
10 taxation of the permanent structures. There are a number  
11 of structures built on the Illinois shore that extend into  
12 the river, barge loading facilities, coal loading  
13 facilities, that sort of thing. Illinois identified 15 of  
14 these structures, and admittedly we could produce evidence  
15 that we were definitely taxing only one of them. That was  
16 part of a grain-loading facility that is located in  
17 Alexander County, Illinois.

18           Kentucky of course argued this shows that they  
19 have exercised exclusive jurisdiction over the river,  
20 Illinois hasn't. But in fact the record also shows that  
21 Kentucky, too, has only taxed one of these 15 structures.  
22 So really what you have, 13 out of 15 structures aren't  
23 being taxed by either State.

24           Kentucky did try to tax a second one --

25           QUESTION: I bet they're paying taxes now.

1 (Laughter.)

2 MR. BRUNSMAN: They're waiting, holding their  
3 breath.

4 Kentucky did try to tax a second structure, but  
5 the taxpayer there protested on the grounds that they felt  
6 that the whole thing was in Illinois and not in Kentucky.  
7 And taxation I think is one of the factors the Court has  
8 traditionally looked at in these acquiescence cases, and  
9 here I think it supports a conclusion that the record  
10 shows uncertainty in both States, and that's incompatible  
11 with a finding of acquiescence.

12 Another example --

13 QUESTION: What is the -- is the water above  
14 these dams heavily used for recreation?

15 MR. BRUNSMAN: I don't believe it is, Your  
16 Honor. I have been down there -- all I can say is on my  
17 personal visits there is not. It is mainly used for  
18 commercial --

19 QUESTION: No, not a lot of boating or anything?

20 MR. BRUNSMAN: Not a lot of boating. I only  
21 know of one --

22 QUESTION: But fishing? But fishing?

23 MR. BRUNSMAN: There is some fishing. There is  
24 some commercial fishing. But the few times I have been  
25 down there there is not a great deal of pleasure boating

1 on the river.

2 QUESTION: What do they get? Catfish?

3 MR. BRUNSMAN: I have no idea, Your Honor.

4 (Laughter.)

5 MR. BRUNSMAN: Another incident that Mr. Pearson  
6 talked about was the -- had to do with the coroners. And  
7 he mentioned the situation where the Illinois coroner  
8 always asks permission before he takes charge of a  
9 drowning victim in the river. While it happens to be the  
10 coroner in Hardin County, Illinois, it is certainly true  
11 that he has always done so. But it's also true that the  
12 Kentucky coroner has always given his permission, even in  
13 the most recent incident where the victim was still in the  
14 river when the Kentucky coroner arrived on the scene.

15 And I would submit again this reflects  
16 uncertainty in both States, since Kentucky doesn't suggest  
17 how one of its coroners could legally delegate authority  
18 over a death occurring in the Commonwealth to an Illinois  
19 official. Plainly it's just neither of them knows what to  
20 do exactly, so they work this out between themselves.

21 There is a similar arrangement that was in  
22 existence for a long time between the Gallatin County,  
23 Illinois coroners and their counterpart. The Illinois  
24 coroner handled the victims if he was a resident of  
25 Illinois. The Kentucky coroner handled the rest.

1           So again, I think these sorts of situations fall  
2 far short of what normally takes and what this Court has  
3 found in the past it takes to establish a new boundary by  
4 means of acquiescence or prescription.

5           Finally, I'd like to discuss briefly the various  
6 instances where Illinois has exercised jurisdiction over  
7 part of the river. One example of this are the, some 78  
8 permits Illinois' Department of Transportation has issued  
9 over the last 69 years governing a variety of structures  
10 built from the Illinois shore south into the river. And  
11 these permits were issued pursuant to a statute that  
12 requires such a permit for anyone who wishes to do any  
13 construction within the public bodies of water of  
14 Illinois. And I would submit that the actions of the  
15 Department of Transportation is clear assertion that it  
16 believed some part of the waters of the Ohio were within  
17 Illinois, or it wouldn't have been issuing these permits  
18 for the last 69 years.

19           Kentucky of course says that Illinois has never  
20 exercised any jurisdiction on the water, and this I think  
21 proves that that --

22           QUESTION: Do you think we ought to give some  
23 deference to what the Master found?

24           MR. BRUNSMAN: Yes, Your Honor, I certainly  
25 agree.

1           QUESTION: Well, I suppose you would. But do  
2 you find any evidence in the -- in our original case  
3 opinions that if it's a tie the vote goes to the Special  
4 Master?

5           MR. BRUNSMAN: Your Honor, I think the Court has  
6 said that although the Special Master's findings are  
7 entitled to respect and a tacit presumption of  
8 correctness, the Court nonetheless has to make an  
9 independent review of each record in an original action,  
10 since it's really this Court and not the Special Master  
11 who is --

12           QUESTION: That's quite inconsistent, isn't it,  
13 to say that there's a presumption but we do it  
14 independently?

15           MR. BRUNSMAN: Well, Your Honor, I can only  
16 repeat what I have read in the cases.

17           QUESTION: I've got you.

18           (Laughter.)

19           QUESTION: Well, what do you think?

20           MR. BRUNSMAN: I'd like you to rely heavily on  
21 the tacit presumption of correctness and --

22           (Laughter.)

23           MR. BRUNSMAN: Another example of Illinois'  
24 assertion of jurisdiction over the river has to do with  
25 the 1927 decision of the Illinois Supreme Court in the

1 Joyce-Watkins case. That case involved an accident that  
2 occurred on a railroad incline, and it occurred some 8 to  
3 10 feet south of the existing Illinois shoreline. The  
4 employer there argued that since it took place south of  
5 the shoreline it didn't take place within the State of  
6 Illinois, and the Illinois Industrial Commission has no  
7 jurisdiction.

8 The Illinois Supreme Court rejected that  
9 argument. It cited *Indiana v. Kentucky* for the  
10 proposition that the boundary was the low-water mark on  
11 the northwest side of the river. But then it also  
12 observed that no commission between the States had ever  
13 actually plotted that line, and that the dispute before it  
14 really wasn't the proper vehicle for resolving an  
15 interstate boundary dispute.

16 What it did, it was however able to resolve the  
17 controversy because it concluded that the low-water mark  
18 referred to in *Indiana v. Kentucky* was the record low-  
19 water mark at any given point along the river. In other  
20 words, each time the river got lower the boundary moved  
21 further south. I would submit that that --

22 QUESTION: As opposed to a mean low-water mark.

23 MR. BRUNSMAN: Exactly. And under the way it  
24 applied that rule in this case it's clear that it didn't  
25 contemplate the boundary ever moving back. It would just,

1 each new --

2 QUESTION: Ratchet.

3 MR. BRUNSMAN: It would just ratchet further  
4 south. And I submit that this certainly is not an  
5 accurate interpretation --

6 QUESTION: That's about as chauvinistic approach  
7 as you can take.

8 (Laughter.)

9 MR. BRUNSMAN: Exactly. This is the most  
10 favorable boundary, I think --

11 QUESTION: Look at all the land you picked up.

12 MR. BRUNSMAN: It's mostly just water.

13 QUESTION: Look at all the shoreline you pick up  
14 when it moves south.

15 MR. BRUNSMAN: Well, but we haven't really  
16 picked up any shoreline. Regardless of what line the  
17 Court would adopt in this case, it's a water line either  
18 way. I don't think either State is going to gain any  
19 shoreline one way or the other, no matter how it's  
20 concluded.

21 But getting back to the Joyce-Watkins case, as  
22 the Chief Justice indicated, that's the most favorable  
23 possible version of low-water mark the State could have  
24 come up with. That rule was cited by the various  
25 authorities within the State of Illinois from 1927 through

1 1973. I would submit that that alone shows that Illinois  
2 has not acquiesced to the less favorable line that  
3 Kentucky claims in this case.

4 So in summing up, Illinois' position in this  
5 case is first of all, of course, that the boundary between  
6 Illinois and Kentucky is controlled by the prior decisions  
7 of this Court in Ohio v. Kentucky and Indiana v. Kentucky.  
8 It should be the 1792 low-water mark. Kentucky's defense  
9 of acquiescence fails, I believe, first because Kentucky  
10 authorities themselves have repeatedly recognized the 1792  
11 low-water mark, and that is -- you can juxtapose that to  
12 the fact that there is not a single witness or document in  
13 the record that says -- that Kentucky can point to that  
14 says it's the low-water mark as exists from time to time.  
15 That, those words appear in the pleadings before this  
16 Court, and nowhere else that I am aware of.

17 In addition, Illinois rely on the fact that  
18 there is evidence of confusion in both States, and once  
19 again that's incompatible with a finding of acquiescence  
20 based on a continuous claim of right.

21 Finally, Kentucky has based its argument in part  
22 on the suggestion that Illinois has never exercised any  
23 jurisdiction on the river. I think there are examples in  
24 the record at least as concrete as those Kentucky can  
25 point to to show that we have exercised jurisdiction over

1 some part of the river south of the existing shoreline.  
2 And that all of those factors add up to a situation where  
3 you simply do not have acquiescence.

4 If the Court has no further questions, that's  
5 all I have.

6 QUESTION: Thank you, Mr. Brunsman.

7 Mr. Pearson, do you have rebuttal? You have 3  
8 minutes remaining.

9 REBUTTAL ARGUMENT OF RICKIE LEON PEARSON

10 ON BEHALF OF THE DEFENDANT KENTUCKY

11 MR. PEARSON: I do. Thank you very much. With  
12 respect to the 78 permits issued by Illinois officials,  
13 Kentucky would indicate from the outset that it cannot  
14 stop Illinois from systematically developing its shoreline  
15 or its bank. In other words, those riparians along the  
16 bank have those rights. This is exactly the teachings in  
17 New Jersey v. Delaware. Because you allow the development  
18 of the Illinois shoreline, just like in New Jersey v.  
19 Delaware, the State which allows that does not abandon the  
20 defense of acquiescence.

21 Secondly, with respect to the Joyce-Watkins case  
22 which was the Illinois case, as indicated in Vermont v.  
23 New Hampshire, only the U.S. Supreme Court can determine  
24 the boundary. The Illinois appellate court cannot  
25 determine that boundary. Furthermore, if you read the

1 Joyce-Watkins case extremely closely, you'll find out that  
2 they recognized that the boundary is a moving boundary,  
3 which is consistent with our theory that it's the low-  
4 water mark wherever it may exist from time to time.

5 Finally, with respect to Illinois' argument that  
6 there is uncertainty regarding where the boundary is  
7 located, this Court can end that uncertainty. It can  
8 conclude that the boundary between the two States is the  
9 low-water mark on the northwestern side of the river,  
10 which everyone can see. Every fisherperson can see.  
11 Every person having a boat on the river can see.

12 With that in mind, Your Honors, thank you.

13 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
14 Pearson.

15 The case is submitted.

16 (Whereupon, at 1:46 p.m., the case in the above-  
17 entitled matter was submitted.)

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**CERTIFICATION**

*Alderson Reporting Company, Inc., hereby certifies that  
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*#106 Orig. ILLINOIS, Plaintiff V. KENTUCKY*

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

BY *Robert Stuart Antel*  
(REPORTER)