ORIGINAL

OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: UNITED STATES, Petitioner v. CHRIS W. BEGGERLY, ET AL.

CASE NO: 97-731 c.1

PLACE: Washington, D.C.

DATE: Monday, April 27, 1998

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, :

Petitioner :

v. : No. 97-731

CHRIS W. BEGGERLY, ET AL. :

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Washington, D.C.

Monday, April 27, 1998

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:05 a.m.

APPEARANCES:

PAUL R. Q. WOLFSON, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Petitioner.

ERNEST G. TAYLOR, JR., ESQ., Jackson, Mississippi; on behalf of the Respondents.

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P R O C E E D I N G S

(11:05 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in Number 97-731, United States v. Beggerly.

Mr. Wolfson.

ORAL ARGUMENT OF PAUL R. Q. WOLFSON

ON BEHALF OF THE PETITIONER

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

In 1982, the United States and about 200 other parties settled complex land litigation by agreeing that the title to the disputed lands would be quieted in the United States and that the defendants would receive substantial sums which they stipulated in the consent judgment were fair and just compensation for their claims.

Over a decade later, the respondents sought to nullify that settlement agreement. They contended that public documents in the National Archives showed that the disputed lands on Horn Island had been granted to a private claimant by the Spanish colonial authorities in 1781.

The district court dismissed their challenge to the consent judgment as untimely, and also stated that there was little evidence of fraud or mistake to support their challenge on the merits, but the court of appeals

agreed with the respondent that the consent judgment should be set aside, and it also held that the Spanish grant was valid, and it awarded title in the disputed lands to the respondents.

The court of appeals decision contravenes important values of finality, repose, and stability in the law which are at their apex in litigation over titles to land, and the lower court's errors also have broad significance for the stability of title to both public and private lands.

First, the court of appeals disregarded basic principles of finality of judgments and sovereign immunity when it allowed this case to go forward.

QUESTION: Incidentally -- and I want you to keep on this vein so far as I'm concerned, but do you have to -- in order to prevail, do you have to convince us both of the sovereign immunity point and of the statute of limitations point under the Quiet Title Act?

MR. WOLFSON: Well, they both -- there are two -- I have to turn to the statute of -- the QTA, the Quiet Title Act for a minute. If we win on the sovereign immunity ground, then I think that the quiet title action can't really go anywhere because we would indisputedly have title to the lands. That is, there may be a separate question --

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QUESTION: Well, what if they want to set aside the settlement, or something.

MR. WOLFSON: I don't -- my -- our position is that the Quiet Title Act would not allow a -- would not allow the settlement to be set aside.

I mean, if the -- let's assume that they could get into district court under the Quiet Title Act because the court of appeals said yes, the statute of limitations was tolled.

Immediately, we would move for summary judgment or to move to dismiss their claim because it's -- the judgment held -- as a matter of res judicata definitively gave us title, and in the Quiet Title Act, in fact, there's a provision that says that the plaintiff has to set out with particularity the nature of his right title or interest in the disputed lands, as well as the United States, and it would be, I think, a complete defense to any action under the Quiet Title Act that the judgment in the prior action had conclusively found -- determined that title were in the United States.

Now, that is -- it may be a separate question from the statute of limitations question under the Quiet Title Act as to --

QUESTION: -- made the claim preclusion argument was the one as I was reading your brief, and I said, what

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is this about equitable tolling, statute of limitations? Why didn't the Government just say claim preclusion? We already had a quiet title action.

MR. WOLFSON: Well, I mean, we of course -- it has to be understood in the district court the respondents relied on the quiet title action -- on the Quiet Title Act not really -- they didn't really want title to the land back. They didn't really want their land back. They wanted money, and there's various pleadings in the district court in which they say that.

What they said, Your Honor, was that the Quiet Title Act allowed the district court to award them damages because there is a provision that says if it's found that it's their land but -- under the Quiet Title Act, but we elect to keep it anyway, then we can elect to award them compensation.

Our argument in the district court was that the district court could not use the Quiet Title Act on that basis because it was essentially a taking claim which had to be brought in the Court of Federal Claims.

Now, we went up to the --

QUESTION: Even apart from that, why don't you, as to damages, also have res judicata to plead? You say, they acquired it, there was a judgment, it was so many dollars, and that dollar judgment is it. It has been

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satisfied, end of issue. Preclusion for that reason.

MR. WOLFSON: I have to emphasize that the reason -- the Quiet Title Act is in the case only because, essentially, of a surprise that the court of appeals --

QUESTION: No, but what's the answer to my question?

MR. WOLFSON: I think that -- well, I think that if we win on the first question presented, then we have those defenses to plead, but if we lose on the first question presented --

QUESTION: But do you say you have that defense to plead not only with respect to the party in whom title has been adjudicated, but that you also have that defense to plead with respect to the amount of money that could possibly be a liability from the Government to the respondents?

MR. WOLFSON: Well, again, I think that I -- you know, we are here on our petition sort of taking the case as the court of appeals --

QUESTION: Yes, but yes or no? What's the answer?

MR. WOLFSON: I may not be understanding your question exactly, but if we --

QUESTION: Look, Justice Ginsburg asked you why preclusion isn't your answer if you get to quiet title. I

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understood you to say, well, the issue really under the Quiet Title Act is not title. The issue is damages. And my question is, why isn't that also a matter of preclusion, because the damages were the subject of a prior settlement that was reduced to judgment?

MR. WOLFSON: Right, and my -- I guess what I have to say is, it's an answer that we can give only if that judgment remains closed.

QUESTION: Well, but the judgment remains closed, I presume, because you have won on the first issue.

MR. WOLFSON: Right. If we win on the first issue, then I think we have a substantive defense, but on the --

QUESTION: Not any more. You waived it below. I mean --

MR. WOLFSON: Well, no.

QUESTION: Res judicata can be waived.

MR. WOLFSON: I don't -- I have to say I don't think we waived it. I mean, it wasn't really presented in a way in which we were called upon to address it in the district court.

The respondents did not even amend their cause of -- amend their complaint in order to raise a claim under the Quiet Title Act until after they filed for

summary judgment, and the district court dismissed it as untimely, which should be reviewed in the court of appeals, I would think, under an abuse of discretion standard, so we strongly feel that we had no call to even address these matters.

It was only when the court of appeals, even while excusing the respondents for their 12-year delay in bringing their suit, rushed to the, you know, ultimate merits of the case, reopened the judgment, concluded that everything -- that the land claim was valid, and awarded title to the respondents, that we had to face the issue about whether the Quiet Title Act could be a basis for awarding the title into the respondents' land.

I think that that does focus -- return me to my point about why the court of appeals' decisions -- why its rulings are so important. First, I mean, in terms of finality of judgments and sovereign immunity, the court of appeals essentially redetermined land title issues in a litigation against the United States that was a collateral attack on a final judgment where there was no waiver of sovereign immunity that would permit such a case to go forward.

Second, when the court of appeals, on the issue of whether there is tolling of the statute of limitations under the Quiet Title Act, when the court held that it

should be tolled, I think it disregarded two very important policies about statute of limitations, both generally in the law and especially with regard to land title litigation: first, protecting parties against being forced to come into court to defend against stale, very stale land claims, and also to encourage plaintiffs who claim an interest in land to conduct prompt and thorough research on their claims.

I've spoken third about the court of appeals kind of prematurely judging the merits of the case. That, we submit, was error because it was -- first of all because it was outside of the scope of the court of appeals.

QUESTION: Is it your position the court of appeals was wrong in saying that the independent action was just really a continuation of the earlier action?

MR. WOLFSON: Yes, it is. I think that's -- that is essentially our primary submission.

QUESTION: Yes. Certainly an independent action is possible under the rules, isn't it, because it says that --

MR. WOLFSON: Right. I mean, I would say this. The rules leave any independent action where they found it. That is, they do not -- the rules, of course, do not abridge or modify or enlarge any substantive right, and

all that -- when Rule 60(b) says there may be an independent action, it doesn't purport to create one, or establish what the substantive law would be for proceeding under one.

All it says is, if, under some other body of substantive law there is available to a party an independent action that would allow that party relief from a final judgment, the rules leave that where -- you know, leave that there.

What the rules themselves do, however, is they eliminated a kind of a borderland of ancillary forms of action that were neither really inside nor exactly outside the original litigation, that were available in the 19th Century, before law and equity were united in the Federal Rules in 1938 and, as we've explained, there was considerable confusion between 1938 and 1946 as to whether still one could go outside the mechanism that the rules had set up, which was to say, to file a motion for relief from judgment.

The reason why I think there was confusion was that as it was originally enacted, Rule 60(b) did not specifically say that a party could get relief from a final judgment because of fraud, and I think there was some speculation that it couldn't have been that the rules had intended to cut off that avenue from relief. What

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QUESTION: Right on that point, supposing -- I know it's not this case, but supposing there had been allegations of fraud here, would there need to be an independent jurisdictional basis for attacking the judgment on fraud grounds?

MR. WOLFSON: Yes, because they're outside the time limit of Rule 60(b), which is 1 year for seeking relief from a final judgment based on fraud, whether intrinsic or extrinsic, as the rule specifically says, so --

QUESTION: But the sentence describing independent actions includes fraud as a ground of relief.

MR. WOLFSON: Well, there may be -- there may be some substantive law -- for example, between private parties is one that would come to mind, where one party could seek to -- could bring a lawsuit in Federal district court against another and get relief from a final judgment based on fraud, but when such an independent action is filed in Federal district court, it is just like any new lawsuit. You need substantive law. You need subject matter jurisdiction. You need -- and -- when the lawsuit is against the United States.

QUESTION: What is your authority for that?

MR. WOLFSON: What is our authority for that?

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Well, I think -- I mean, we're drawing our reasoning from the Court's recent decision in Kokkonen.

QUESTION: Yes, but there's no pre-Kokkonen law that establishes that?

MR. WOLFSON: Well, I mean, we recognize --

QUESTION: I mean, Kokkonen, of course, wasn't really directed at this problem.

MR. WOLFSON: I acknowledge that. I mean, we -- I guess our -- we recognize that this has been an unsettled issue for a while. I mean --

QUESTION: How about that it would undercut 60(b) entirely if you could just --

MR. WOLFSON: I think that's right.

QUESTION: -- avoid 60(b) and say, here, we -- because 60(b), you don't have to establish any independent jurisdictional basis.

MR. WOLFSON: Right. It is truly ancillary jurisdiction --

QUESTION: So --

MR. WOLFSON: -- and I think it would be hard to understand why the drafters of the Federal Rules would have put in a 1-year time limit for relief from judgment, motions for relief from judgment based on fraud, among other things, and mistake, if it had -- were also possible just to file a new or an independent action without

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invoking the --

QUESTION: But then it's also puzzling why did they use the word fraud in subparagraph (3), or clause (3), and also put it in with regard to independent actions if that's just meant to duplicate? That's what's puzzling to me.

MR. WOLFSON: I think that -- well, there is -- I mean, I do have to -- I do want to say, there is a separate concept of fraud upon the court.

QUESTION: Right.

MR. WOLFSON: Right, and that -- that is really, really bad fraud.

QUESTION: All right, let's --

MR. WOLFSON: I mean, there's no other way to --

QUESTION: That's what I wanted to do. I want to distinguish this case --

MR. WOLFSON: Right.

QUESTION: -- which doesn't involve that kind of fraud, with a case that does involve really, really bad fraud upon the court.

MR. WOLFSON: Right.

QUESTION: And in that case --

MR. WOLFSON: Right. What --

QUESTION: -- does there have to be an independent Federal basis for jurisdiction?

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MR. WOLFSON: I don't think that case -- that case does not really involve an independent action at all. What that case --

QUESTION: Oh, but it's in the sentence about independent action.

MR. WOLFSON: No, it says -- but you see, it says, it does not relieve a -- it does not prevent a party from bringing an independent action or to set aside a judgment for fraud upon the court.

Now, that -- the ability of a court to sort of purge itself of the effects of fraud perpetrated upon it -- the classic example was this Court's opinion in Hazel-Atlas.

QUESTION: Right.

MR. WOLFSON: That is an inherent authority of the court. It doesn't even require an independent action. In fact, there are cases from this Court where a party brought allegations of fraud to the Court as amicus curiae.

QUESTION: You know, there's been debate within the Court as to the extent of our inherent power. Some of us are --

MR. WOLFSON: But I think that this is a -- it doesn't even -- as I understand the cases under this, to be -- for a court to purge itself of a fraud upon the

court, it doesn't even really require a new lawsuit. It is ability of one branch of Government to protect itself from fraud perpetrated upon it, but it is a unique and very, very narrow situation that involves egregious misconduct like bribing a juror.

QUESTION: Why do you think that? That is, I don't understand the relation of the first parts of the rules to the word independent action.

My understanding is there was a classical action in equity called an independent action in equity, and that classical action which existed in the Nineteenth Century was a way of going to a court of equity and asking for relief from a judgment, and you could get it.

MR. WOLFSON: Well --

QUESTION: And if there was a jurisdictional problem, there was no problem, because you went to the same court and they let you in in the same court that you had the original action in. That seemed fairly clear from the commentators.

MR. WOLFSON: I think that --

QUESTION: So I grant you, I agree with you, I don't understand the relation to that. On the one hand you have to say, bring it within a year. That's what they say in the first part of the rules. And then they say, oh, but we're not interfering with an independent action

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in equity and, of course, that would gut the year requirement.

MR. WOLFSON: Well -- all right.

QUESTION: But maybe it does -- it does gut it.

MR. WOLFSON: I mean, first -- right.

QUESTION: So what are we supposed to do?

MR. WOLFSON: First of all let me say, although there were these independent actions in equity, they were not allowed to proceed against the sovereign under cases that we've cited in our brief. They're all --

QUESTION: I thought they could proceed against whatever party was involved in the first action. I thought the --

MR. WOLFSON: Well, all --

QUESTION: Didn't Missouri -- what is it, Pacific Railroad --

MR. WOLFSON: Missouri Pacific Rail --

QUESTION: Yes. Doesn't --

MR. WOLFSON: Well, that is -- I would acknowledge that that is the strongest case for the other side, but that's not --

QUESTION: That -- to be sure, that speaks of citizenship.

MR. WOLFSON: Right. That's not a case against the sovereign, and the cases that we've cited on page 20,

footnote 13 of our brief, Hill v. United States, United States v. McLemore, they all say, well, these bills of -- these things like bills of review, they are really -- they are really new -- as far as sovereign immunity is concerned, they are new actions.

QUESTION: Well, suppose I thought --

MR. WOLFSON: I want to emphasize that before I --

QUESTION: I understand that.

MR. WOLFSON: Right. Right.

QUESTION: But suppose I didn't want to be technical about it --

MR. WOLFSON: Right.

QUESTION: -- and said that the whole point of these independent actions in equity was to set aside an initial judgment obtained through fraud, so if the sovereign waived immunity as to the first, they waived it as to the second, and moreover, since an action in equity, forget the statute of limitations in the statutes. There's a question of laches or something.

MR. WOLFSON: Right.

QUESTION: It's equitable. All right. Now, I grant you --

MR. WOLFSON: Right.

QUESTION: -- that totally guts the first part.

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MR. WOLFSON: Right.

QUESTION: But --

MR. WOLFSON: Well, there is --

QUESTION: And it says it in the second sentence --

MR. WOLFSON: But there is --

QUESTION: -- in the rules. It says it. So what am I supposed to do?

MR. WOLFSON: Well, I think that if -- looking at those cases, they really -- although they are referred to as independent actions in equity they really are devices that courts of equity were trying to fashion in order to get around the problem that a court of law could not reopen its judgments after a few months, and --

QUESTION: Well, in Missouri Pacific the second action was brought as a matter -- in a matter of months, after the original decision came down from this Court, wasn't it?

MR. WOLFSON: Right, and that's -- and in Missouri Pacific there had been a problem because there was no longer complete diversity among the parties, and the Court said -- now -- said yes, you know, the parties can go forward.

We think that Missouri Pacific is really best understood as a fraud upon the court case, but if not,

then it probably is best understood as a bill of review case, where it was a -- sort of a supplemental bill. It wasn't really -- it wasn't an independent action in equity like somebody --

QUESTION: Am I supposed to do this? What it says is, this rule does not limit the power of a court to entertain an independent action in equity --

MR. WOLFSON: Right. All right.

QUESTION: -- let's say, to relieve a party, so I'm supposed to imagine I'm back in the days of yesteryear, I'm back in the 19th Century.

MR. WOLFSON: Right.

QUESTION: I'm supposed to imagine that, and I'm supposed to imagine what would a court have done then in an independent action in equity.

MR. WOLFSON: But the bill -- all right, but the rule --

QUESTION: That's what it seems to tell me to do.

MR. WOLFSON: But the rule also says, and I think this is very important, writs of coram nobis, coram vobis, ad ide corella, bills of review and bills in the nature of bills of review, are abolished, so I think first of all you have to make sure that it isn't anything like those, and in the advisory committee notes it says, you

know, we have endeavored to list every single form of ancillary form of --

QUESTION: All right, but then you're agreeing with me about how to read it. Now tell me -- I'm now back, imagining I am in the 19th Century, bringing an independent action in equity without coram nobis, coram vobis, whatever it is, and now tell me --

MR. WOLFSON: I'm not sure -- I'm not sure -- I'm not sure I agree with --

QUESTION: -- what the court would then have held in respect to this independent action and why.

MR. WOLFSON: I'm not sure I agree with you that we are back in the 19th Century. I think that in -- when the Court is using the term, independent action, it means a new lawsuit, but even if we're back in the 19th Century, I mean, what I think we were talking about is, if there is subject matter jurisdiction and all of the rest of it and you can go and bring a new lawsuit -- for example, parties with diversity of citizenship who go into Federal court to enjoin the effect of a State court judgment, that is a classic independent action in equity, but it would need all of the requisites of what anybody would need when they were filing a new case in Federal court.

QUESTION: Yes, but Mr. Wolfson, if under all those rules, coram nobis or the various common law writs

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that were available then, if they could have been brought without a new basis of Federal jurisdiction you can't argue, I don't believe, that substituting a category of independent action for all of those limited the court's jurisdiction, because the rules are not intended to change jurisdiction.

In other words, if there were juris -- you didn't need new jurisdiction under one of those writs, you don't need it today if this is the substitute for that.

MR. WOLFSON: And I think it's not. I mean, I think the point is that -- I mean, maybe I misunderstood your question, but all of those are abolished, and so --

QUESTION: But they're replaced by --

MR. WOLFSON: They're not -- I don't think they are replaced by an independent action. What they are replaced by --

QUESTION: They were replaced by Rule 60.

MR. WOLFSON: -- was rule 60(b) -- right, and so I would say that the only way -- what Rule 60(b) is intended to make clear is that the only way you can get relief from final judgment without filing a new lawsuit is to make a motion under the rules, and the advisory committee notes say the rules, the practice of the rules are intended to be complete in this regard.

I'd like to turn, if I may, to the --

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QUESTION: Mr. Wolfson, before you do, I'd just like to fasten on something extraordinary about this case. You prevailed in the district court. The Fifth Circuit was obviously very disturbed by this case, very angry almost, one might say, because you got cut off entirely at the end. You end up, from being a total winner, being a total loser, so what is it that -- is it that the -- this Spanish grant should have been -- did the court of appeals think that it was terribly negligent, or maybe even deceptive of the United States not to have come forward earlier with this --

MR. WOLFSON: Well, I -- obviously it's difficult to -- I mean, I agree with you that the court of appeals was -- you know, there was something that really concerned it about the case, but I have to say, to the extent that the court of appeals might have thought there was some problem that led it to toll -- thought -- think that equitable tolling, for example, was proper, I have to say I disagree with it.

I mean, as we pointed out in our brief, we did bring the fact of the Boudreau grant to the parties' attention in the original litigation and said, presuming this to be for -- a grant for Horn Island, we -- you know, we believe that it was not valid because it was never recognized by Commissioner Crawford and so it shouldn't be

given effect.

On the point about Power's Heirs, which I want to get to, the Court -- the respondents did not mention Power's Heirs either in the lower court, and Professor Baade's affidavit, which purports to be a comprehensive examination of this Court's 19th Century decisions on the issue, does not address -- you know, does not discuss Power's Heirs at all, even though it is a -- it is a controlling decision of Federal law that goes to the ultimate issue on the merits in this case, which is whether the United States obtained title to the lands in the Louisiana Purchase or whether they were -- had already been alienated out of the public domain at that time.

Now, two points on how the court of appeals disposed on the case. First, as I mentioned earlier, we think that the court of appeals acted outside the scope of appellate jurisdiction under section 1291 when it reached the ultimate issue in the case.

Even if we're wrong on the first two questions presented, or even the first one, and even if the judgment of dismissal was incorrect in the case -- you know, that dismissal should have been reversed -- it seems to me that what the court of appeals should have done was simply remand the case to the district court for further proceedings.

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The district court did not really look at any of the merits issues in this case. I mean, it thought that that had already been decided already, and all the district court really said about the case was, well, I don't believe that the respondents have brought forth evidence of fraud or mistake that would justify setting aside the judgment even in the alternative, and on that basis it denied the respondents' motion for summary judgment.

Now, that denial of the motion for summary judgment was not a final decision. It certainly wouldn't have been appealable by itself, and it didn't merge -- the courts often talk about an interlocutory decision merging into the final judgment, and I would submit that it did not merge into the final judgment because it did not in any way affect the ultimate way in which the district court disposed of the case, which was to dismiss for lack of jurisdiction.

So when the court of appeals reversed the dismissal and said the case can go forward, the case was essentially just where it had been in the district court, which was a tentative conclusion that the case should not -- should go to trial.

QUESTION: You've mentioned the word tentative. There were -- there's a 54(b) judgment entered here, and

yet there was a third claim that seemed to me just another reason for the relief that was wanted. It seemed to me that this was an unfinished case.

MR. WOLFSON: The -- well, the district court dismissed the --

QUESTION: 1 and 2, but the -- I understand --

MR. WOLFSON: The third -- there was a third that was dismissed for lack of jurisdiction. That's the Tucker -- that's the -- they raised sort of an inverse condemnation claim, and the district court said on that, no --

QUESTION: But there were three -- two left standing, 3 and 4, right?

MR. WOLFSON: There's only three -- I believe there's only three causes of action in the complaint. One is fraud, one is mutual mistake, and the third is inverse condemnation.

QUESTION: You said the -- in the -- the first count was dismissed?

MR. WOLFSON: Was dismissed for -- because of -- yes. It's in the district court's order in the petition appendix at --

QUESTION: Well, I'm probably wrong. I thought you --

MR. WOLFSON: Yes, it's at page 42a and 43a of

the petition appendix, because the court said, well, even if there is a -- some claim of taking here, it has to be presented to the Court of Federal Claims.

QUESTION: So you're telling me there was only one count left over, only one thing that wasn't dismissed.

MR. WOLFSON: No, everything was decided by the district court. I would -- I mean, the district court dismissed all three causes of action, two for untimeliness, and the third because it belonged in the Court of Federal Claims, so it's a whole -- it's not a 54(b) judgment. It's a -- it was a final judgment of dismissal.

QUESTION: Okay.

MR. WOLFSON: Turning last to the court of appeals decision on the merits, the respondents have argued that this Court decided Power's Heirs on the basis of an incorrect and incomplete understanding of the history of West Florida, and we disagree with their reading of that history, but we would say that even if the question is doubtful, that the Court should nonetheless adhere to its decision in Power's Heirs, which was a controlling decision of Federal law about the interests of the United States obtained under the Louisiana Purchase.

That decision governs both private and -- both public and possibly private land claims in the area, and

it would be -- the policy of stare decisis has its strongest force, this Court has recognized several times, in the area of litigation over titles to land. It would be extraordinary for the Court to overrule a 150-year-old precedent governing land titles without a truly compelling reason, and for that reason we think the Court should adhere to that decision.

If there are no further questions, I would like to reserve my time for rebuttal.

QUESTION: Very well, Mr. Wolfson.

Mr. Taylor, we'll hear from you.

ORAL ARGUMENT OF ERNEST G. TAYLOR

ON BEHALF OF THE RESPONDENTS

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

I would like to begin immediately by stating that counsel opposite's comment that the finality of judgments is important to protect litigants from stale claims and to also encourage litigants to do their research before presenting their cases, or during the cases, is a critical point that is in my favor, because the Federal Government in this instance did not do their research, and they misrepresented a critical fact.

They misrepresented that the key document that the Beggerlys needed to defend their claim in 1979 did not

exist, and I don't think there's really any question on this record but that that misrepresentation is the cause of the entry of this judgment. It also was the cause of delay, which I'll get into in a little bit --

QUESTION: But Mr. Taylor, the district judge said this was in good faith. Everybody realized that there was this document, and that it wasn't found, and the district judge said, I understand that, but he is not using the kind of language that you are. He said there was good faith on the part of the Government.

MR. TAYLOR: Your Honor, I did not --

QUESTION: They just couldn't find it.

MR. TAYLOR: Excuse me. Pardon me, Your Honor.

I did not intend to insinuate that the Government did not act in good faith. You can act in good faith and not get your homework done. You can act in good faith and not do a thorough job.

I'm not saying that the Government intended to not find this document, but the fact of the matter is, they did not find it, and they represented that it did not exist, and our people relied upon that representation.

QUESTION: Well, maybe you shouldn't in adversary litigation. I mean, every time your opponent cites a case incorrectly, or states a fact incorrectly and you don't take them up on it, this is a basis for setting

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aside the judgment?

MR. TAYLOR: Certainly not, Your Honor.

QUESTION: Well, why is it here, if there is no knowledgeable fraud on the part of the Government?

MR. TAYLOR: What happened here, in my mind, is similar to what happens in discovery in all cases. After doing an initial investigation of their own in various archives, including the National Archives, the Beggerlys ultimately deposed Mr. Dorasavage, who was the ultimate authority on these records and these grants.

Mr. Dorasavage said that the document did not exist. There was still time to look further -- not much, but still some time, when he gave that testimony in 1982. The Beggerlys, just like any litigant does when they take a 30(b)(6) deposition, or take a deposition of a managing agent, they're entitled to assume that the testimony that is given on behalf of the other litigant is truthful, and until some time -- until such time that they acquire evidence to -- that indicates that it's not true, then they don't look in that area any more. They accept --

QUESTION: Let's not say it's not truthful. It was truthful. It was simply not correct.

MR. TAYLOR: Well, I apologize, Your Honor.

QUESTION: He wasn't -- he wasn't misrepresent -- wasn't intentionally misrepresenting.

MR. TAYLOR: Right.

QUESTION: I don't know, I'm rather troubled by that. I'm not sure, in an adversary system, you are entitled to assume that what your opponent or your opponent's expert witness says is true, and if it turns out to be false, you somehow have a 60(b) claim, or some claim to set it aside for fraud. I don't find your case as sympathetic as you do.

MR. TAYLOR: Well, Your Honor, the independent action, according to the basis for that action, identified in Banker's Mortgage Company case, Fifth Circuit case, 1970, specified that mistake or fraud is a sufficient basis for setting aside a judgment, and that has been the generally accepted rule, that you do not have to prove fraud, that mistake is sufficient, and --

QUESTION: Well, is the record that supports you on this, pages 222 to 224 of the appendix -- I mean, you said the Government said, at your first -- you know, at the trial, before you settled -- you know, you settled the case. There were no disposals, no private land claim disposals for Petit Bois Island. Is that what you're relying on?

MR. TAYLOR: Well, you've got the wrong island, Your Honor.

QUESTION: And it says or Ship Island, or for

Horn Island.

MR. TAYLOR: Right. They -- there were a combination of representations, those made during the summary judgment proceedings and the sworn testimony of Mr. Dorasavage.

QUESTION: But in the record are they cited somewhere, because I want to look and see what it is that the Government said that you said was a misrepresentation.

MR. TAYLOR: Your Honor, we have cited in our brief Mr. Dorasavage's testimony. I don't have that --

QUESTION: That's what I quoted here. That's 222-24 of the record.

MR. TAYLOR: All right, sir. If that's Dorasavage's testimony --

QUESTION: Yes, it is.

MR. TAYLOR: -- it's that representation that they did rely upon.

QUESTION: Fine. What that seems to do is, the pages before that, what Dorasavage says is, he describes his search, so a person reading that would think, well, he's reached the conclusion on the basis of the search he's just described, so where's the misrepresentation?

MR. TAYLOR: Well, the misrepresentation is that there and in the briefs the Government indicated the grant didn't exist when in fact it did exist.

QUESTION: Yes, but a person who says, I've looked here, there, and the other place, what's your conclusion, well, my conclusion is, there are no needles there in that haystack --

MR. TAYLOR: If I --

QUESTION: -- and then it later turns out -- I mean, I'm representing on the basis of that search I didn't find the needle. I didn't lie, didn't tell the truth. I told the truth. I didn't find it.

MR. TAYLOR: Again, Your Honor, in the discovery process, and I don't -- am certainly not arguing with the Court in any way, but I --

QUESTION: No, but I want you to point me to something that --

MR. TAYLOR: Well, the 30(b)(6) depositions that we take every day in litigation, if I take a company representative and he says, we don't have any documents of this description, and I have done the research I'm supposed to do, then I am entitled to go and conduct my search in other places and in other ways and to rely on that statement and --

QUESTION: Yes, but would you be entitled, many years after a judgment in that case, to bring an independent --

QUESTION: That's what -- that's the --

QUESTION: -- action setting it aside on the basis of that sort of testimony?

MR. TAYLOR: It would depend upon the gravity of the representation I think, Your Honor, and also the -- in this case I might add that you have individuals against the United States Government, and you have the --

QUESTION: What does that amount -- how does that differentiate from other cases?

MR. TAYLOR: We get to sophistication, Your Honor, not just of the parties -- I know that a litigant has the responsibility to do what's necessary to present his claim, but when you're dealing with specialized documents that are kept in special places that even only a handful of experts, probably, in the country know how to thoroughly research, I do think that makes a difference.

QUESTION: Well then, maybe you have to hire your own expert.

MR. TAYLOR: Your Honor, and we did, and they came to the archives and did a search, as the Government did, without finding it.

QUESTION: Yes, but what is the source of authority to file your independent action in the district court?

MR. TAYLOR: The -- two sources of authority, Your Honor. One is ancillary jurisdiction to reopen their

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initial action, as was discussed previously. The Pacific Railroad -- Railway --

QUESTION: You say you can come in and reopen the original quiet title action?

MR. TAYLOR: Yes, Your Honor.

QUESTION: Without any time limit on doing that?

MR. TAYLOR: The limitation that's applicable to an independent action in equity is laches. Laches says that as long as a party is diligent in pursuing his rights and there's no prejudice to the other party in later litigating the issue because of the delay, then they will not be stopped by laches.

QUESTION: Well, what does that do to Rule 60(b), which sets time limits, 1 year, setting aside a judgment for fraud? Do you think that just falls by the wayside because of your version of an independent action?

MR. TAYLOR: I think that there is -- the very rule itself having listed those items in the first part of 60(b) that must be brought within a year and then saying, but this does not prevent someone from bringing an independent action, adopts the independent action as it existed so far as --

QUESTION: But don't you agree that you have to read those provisions together so that each one of them make sense?

MR. TAYLOR: Of course, Your Honor, they do have to make sense.

QUESTION: And if the second part simply swallows the first part, do you think that lets the first part make sense?

MR. TAYLOR: I disagree with your premise, Your Honor, that it swallows the first part. I believe in order to bring an independent action you've got to show the five elements to bring an independent action that are listed in the Banker's Mortgage case, and that there are more stringent requirements for bringing an independent action after the year has run than are required for bringing the other 60(b) motion within a year.

QUESTION: I think you could reconcile them if you reserve the independent action for particularly egregious frauds, of which my reading of the Dorasavage testimony would say yours is not one. You would respond to my statement by telling me that there are cases that show that isn't so, so which case?

MR. TAYLOR: Your Honor, I can't specify a particular case that provides for that, but I do think that --

QUESTION: Mr. Taylor, can an independent action be brought in a court other than the one that rendered the judgment --

MR. TAYLOR: I -- may I conclude my answer here --

QUESTION: -- and if so, isn't that one big difference?

MR. TAYLOR: I believe I have concluded that, Justice Breyer is -- yes.

QUESTION: If you're trying to find a difference between the two, 60(b) is what you use to reopen a judgment in the court that rendered it. The independent action, unless I'm wrong about this, but as I recall, you could bring that any place, not the -- you're not limited to the court that rendered the judgment.

MR. TAYLOR: That is correct, Your Honor.

QUESTION: So wouldn't that make sense, the difference between the two? 60(b) you go to the court that entered the judgment, and if you have 60(b), then you can't end-run it, and 60(b) has a time limit for mistake, inadvertent surprise, excusable neglect -- but the independent action is reserved for, you go to another court, and that court is not going to be any more giving, I assume, than 60(b) would be for the court that rendered the judgment.

MR. TAYLOR: Your Honor, it's curious to me that you can go either to a separate court or into the court that rendered the action, and I frankly do not understand

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why you may go into a circuit court as well as an original court.

Presumably the original court is available, and I understand what you're saying, and that is that there is a distinction, because you can go into a separate court there, rather than filing -- and filing a motion, you cannot.

But I suggest to the Court that the provisions for an independent action here preserve those equitable grounds that existed in the 19th Century, which was to give the court discretion to have some flexibility in setting aside a judgment when a wrong has been done, the party has been diligent that presented it, and that to weigh those equities and to make an adjustment, as all of the Federal Rules of Civil Procedure preserved, as I understand it, those 19th Century and prior rights that litigants had.

QUESTION: I may not -- I may have confused you in the way I put my question, but when you were doing research on this, you probably looked up a lot of cases that involved an independent action in equity --

MR. TAYLOR: Yes, Your Honor.

QUESTION: -- and involved fraud --

MR. TAYLOR: That's true.

QUESTION: -- or misrepresentation.

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MR. TAYLOR: Right.

QUESTION: Now, did you find a case where an independent action was permitted that involved a fraud or a misrepresentation, let us say as -- I want to say as little or trivial -- I don't mean to be pejorative, but as small as the one that seems to be at issue here, but nonetheless the court said, I know it was an inadvertent misrepresentation, I know it was somebody who was looking for a needle in a haystack, I know it isn't much of a fraud, but still you can bring your independent action? Did you find a case that you would like me to look at that would help you in that way?

MR. TAYLOR: Yes, Your Honor.

QUESTION: What was it?

MR. TAYLOR: West Virginia Oil & Gas v. Breece Lumber Company, cited in our brief. It's a Fifth Circuit 1954 decision. It's also cited by the Fifth Circuit in its opinion.

That case is one in which there was a mistake in regards to a description of land, and it became apparent that there was a mistake, but oil and gas had been discovered on the land in the meantime. The party that was a beneficiary didn't want to agree to it and fought it on jurisdictional grounds. As I recall, that action was brought 7 years after the original judgment was entered,

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and it was pure mistake, and the court reversed it and corrected that mistake.

QUESTION: Mr. Taylor, on the question of finding the mistake, you said that your client was kind of lulled into a sense that there was nothing to be done because the United States had made a representation that there was nothing there, and yet there came a point in time when you were vigorously pursuing Freedom of Information Act, everything that you could. You hired your own researcher.

So why did you shift from trusting the Government and saying, well, I'll accept their representation, and then you took their money -- you were paid, what, $200,000-some-odd -- and then there was a great flurry of activity, much investigation on your part.

So why -- well, what made you suddenly get into this highly investigative mode when earlier you said, we relied on the United States?

MR. TAYLOR: Your Honor, the intensity of the investigation slowed down some after the judgment was entered but did increase again, or did recontinue afterwards.

The critical point, I believe, so far as the inability to bring this action within 1 year, is that the Beggerlys had looked at archives all around, had hired an

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archivist to look, had looked in the National Archives, as a matter of fact, had not discovered the grant.

As they got to the very end, after they'd done this basic research, and they took the deposition of the Government representative, a man who supposedly knows how to find documents in the National Archives and other repositories. He said there is no grant in the National Archives, and they had already done an initial look, and so they accepted him.

They pursued Freedom of Information Act requests after the judgment was entered. They pursued other means to try to find this, but they didn't go back to the National Archives for some time, and the reason they did not go back there is because -- based on this representation that it would be fruitless.

Finally, as a last-ditch effort, they said okay, let's take one more look, and they hired this genealogist who went in and did intensive research over a period of several weeks and found the document.

But they were directed away from the National Archives as it got to the close of the litigation because of the Government's representation, because they had already deposed the Deputy of that office, who said there may be grants there.

They went in and did their own research and they

deposed the ultimate authority, and he said you won't find them there, and so they ceased looking there until they had looked in all the other places possible.

And then they went back and said, okay, let's take one last look here and see if we can find it, and they did.

QUESTION: Why was that deed, or -- that grant, why was that dispositive?

I mean, the Third Circuit said not only was it relevant, but it's so dispositive that we're going to give your client summary judgment? The United States didn't have any chance to say, now, wait a minute, that deed doesn't do it, or that grant doesn't do it.

MR. TAYLOR: Well, the point is the Government had tried to buy the Beggerly property for several years, and negotiated with them and made offers to buy it, fully recognized their title, with the exception of their ultimate determination that there was not a valid disposal out of the Federal Government.

There wasn't a valid patent or grant. That was the only question, and once they found the Boudreau grant and it was apparent that it was a valid and binding grant on the record before the court --

QUESTION: But why was it apparent? I know that Professor Baade provided this affidavit, but the

Government didn't have a chance to question that.

MR. TAYLOR: The Government did have an opportunity to question that, Your Honor. They had opportunity in response to our summary judgment affidavit to challenge it. They elected not to challenge it. They elected to attack it purely on legal grounds, saying that --

QUESTION: That was in the district court you're talking about?

MR. TAYLOR: Yes, Your Honor, and of course the same thing in the Fifth Circuit, and I might add, the attack that's brought concerning Galvez' authority was brought for the first time in this Court, something we objected to. The citation of the Power's Heirs case in that regard was brought for the first time in this Court, and let me deal with that, if I may, right here.

QUESTION: But the district court denied you summary judgment, and that's what the court of appeals granted you, and that's what I don't understand.

If you say -- the district court said, if it came to the merits, which it didn't because the district judge dismissed it on other grounds, but if it came to the merits, we don't give you summary judgment, faced with that same document, and the Fifth Circuit said, yes you do get summary judgment. That I don't understand.

MR. TAYLOR: Your Honor, it's because the issues that were presented to the district court and to the Fifth Circuit were purely legal issues. The Government defended on the ground of jurisdiction. It defended on the grounds of res judicata. It attacked the judgment on legal grounds, whether or not it was valid because it had not been confirmed, and for that reason the record that was before the court did not indicate that the Government has any interest or any intention to pursue any factual attack here, and --

QUESTION: Why on the factual attack -- suppose -- this is a question that's bothering me on the merits, which you probably want to get to, but I take it someone in the chain of title here, maybe your client, bought an interest for about $35, and it turns out to be worth, so far, $223,000 to your clients, so they've now gotten that money, I take it, as a result of the decree.

Now, the thing I might be missing is, suppose I say you win. Suppose you win, and you win, but you don't necessarily get -- I mean, I don't know whether this Governor had authority to grant the land to Mrs. Boudreau or not. He might have just been an occupying force.

So suppose you go back to the district court and we now hear that out, and it turns out that the Governor was just an occupying Governor, just what they say. He's

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an occupying force. They didn't change the civil law. He can't give any land grants under French law or whatever, and so you lose.

Well, wouldn't your clients have to give back the $223,000? Are they all now prepared to put that at risk?

MR. TAYLOR: I think --

QUESTION: How does this work?

MR. TAYLOR: That's an issue that could -- would have to be dealt with in the district court, as to the nature of that payment and why it was paid and what --

QUESTION: Why wouldn't you have to give it back? If it turns out -- if it turns out that the Governor in fact did not have the authority to give Mrs. Boudreau the land, because he was just an occupying military force and didn't have civil authority over land grants, why don't you have to give back the $223,000 you already got for this because your client has no interest in this land?

MR. TAYLOR: The Government paid that money -- and this is documented by the letter of Steve Herman, which is in the Joint Appendix, in order to settle the litigation.

QUESTION: So if they had to settle the litigation, why didn't you have to settle the litigation?

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MR. TAYLOR: And they made the choice not to -- they made the representation that they were doing this for the purpose of resolving the litigation and not -- I'm avoiding your question. I don't mean to. I'm going around the world to get there, Your Honor.

The point is, certainly the Government would have the right to present their claim in the litigation. For whatever reason, they chose not to do so up to this point.

QUESTION: But if we send it back and you win, wouldn't we have to say, you asked to reopen this, very well, it's reopened?

MR. TAYLOR: If we -- I think that would be an issue the district court could take up, is whether or not they had the right to pursue repayment of that money, yes, sir.

If I may, I would like to address Power's Heirs. That's the case the Government says controls the validity of the Boudreau grant, and there's a point that is raised in the brief that I think is controlling that says that in 1783 -- the Government, Dr. Baade, all of us agreed in 1783 a peace treaty was made between Britain and Spain. That resolved all the issues between those two warring nations at that time as to this land.

That treaty, by principles of international law,

and this is not disputed by counsel opposite, validated all prior actions that had been done by the Spanish Government during the time period of occupation.

Because of that, whatever, whoever may be right about the historic facts and when Galvez was given authority, clearly under principles of international law the validation that occurred by virtue of that treaty resolved any issues there. The grant was valid.

QUESTION: Well now, you -- is the proposition that you're now stating, is that consistent with the Power's Heirs decision?

MR. TAYLOR: The Power's Heirs decision did not reach that issue of law, Your Honor. It said first that we've got questionable evidence that's been presented to us, and that it's not --

QUESTION: But I don't think you've answered the question I asked you.

MR. TAYLOR: I'm sorry.

QUESTION: Which was, is the proposition that you're now maintaining consistent with the Power's Heirs decision?

MR. TAYLOR: Yes, Your Honor, I think it is consistent with the Power's Heirs decision. This -- if I may --

QUESTION: Yes.

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MR. TAYLOR: The other point is, it's a point that was not presented in the Power's Heirs case. This legal issue was not presented as to the effect of the treaty. The controlling point, as I read Power's Heirs, Your Honor, is that the documentation that was presented to the court was incomplete. It was from a secondary and questionable source, and the court questioned whether or not it had authentic, genuine evidence before it.

QUESTION: And therefore your alleged predecessor in title did not have title.

MR. TAYLOR: Well, but this was Power's Heirs, and that's a different document from the document we're dealing with, Your Honor. That document was a separate notarial record of a different grant that had been made as to different islands.

QUESTION: No, but isn't the crucial point that the issue is the authority of the Governor to make the grant, and the grant in Power's and the grant in this case were made on the same day? Isn't that the point on which Power's is controlling?

MR. TAYLOR: They -- the grants were made on the same day, Your Honor, but I believe a reading of the Power's Heirs case indicates that the court had questionable evidence before it as to whether or not there even was a grant --

QUESTION: Maybe it did have questionable evidence --

QUESTION: But that --

QUESTION: -- but it's -- I'm sorry.

QUESTION: Go ahead.

QUESTION: I was going to -- regardless of what its evidence was, its conclusion was that the Governor could not make a grant on that day, and that is exactly the fact in -- and the day is the same in your case, so I assume that Power's decided the issue upon which your claim rests.

MR. TAYLOR: Well, the court did say that Galvez did not have authority to make that grant on that day. We say that the court on the record very clearly says that we suppose and we presume, and used speculative language about what the history was to reach that conclusion.

I believe, though, that the court was driven by the fact that it had questionable documentation before it.

QUESTION: But that -- but the decision turned -- or, at least, it concluded that Galvez didn't have the authority to make that grant, did it not?

MR. TAYLOR: It stated that in the opinion, Your Honor, no question about that. That was stated.

QUESTION: Then it seems to me that the position you're maintaining isn't consistent with the decision in

Power's Heirs.

MR. TAYLOR: Arguably not, Your Honor, but I think you can distinguish it in this manner, that there were other -- I don't think that --

QUESTION: Is this something we want to do in a case involving real property title, where I think the Solicitor General is right, that there stare decisis is regarded as the most -- at its greatest peak?

MR. TAYLOR: I do not believe that this -- the Court's affirmance of the Fifth Circuit ruling and therefore finding the validity of the Boudreau grant would do violence to titles, and the reason is, Your Honor, that this -- we're talking about a period in the late 18th Century and the Government raises a specter that we'll have competing titles out there and that the Government may have titles based upon the Louisiana Purchase and authority it gained, which is in conflict with the Spanish titles.

That's not so, Your Honor, because adverse possession will have long since taken care of any issues.

QUESTION: But it still undermines the principle to say that this -- it will just have a limited effect because other factors historically soon came into play.

I don't think that really counsels in favor of being more lenient with stare decisis here, because the

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general proposition is that when you're dealing with real property titles you adhere most closely to it.

MR. TAYLOR: I understand that rule of law, Your Honor, and I understand the reason behind it, but I -- my statement is, it is a matter of fact there will not be any conflict with any titles caused by ruling that the Boudreau grant was a valid grant, because adverse possession, whether it's the Government's title, and you've got a national forest, or museum, or whatever it may have on the land, adverse possession will clear up any problems with that, and if there's conflicting, theoretically conflicting private titles, adverse possession again would clean those up.

Clearly, the Beggerlys' title itself, they paid taxes for 32 years on this land, and in fact paid quite a bit more money than that initial tax payment, because the tax bills were going up over time.

Nobody was claiming against them. The Government recognized their title itself and negotiated with them for several years and made offers to them to buy it. Even in the Raleigh Beggerly affidavit, the Government presented him with title opinions. It said that the title was in the Beggerlys.

So I do not see any disruption of title, and I might add, Your Honor, that this Court has on more than

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one occasion reconsidered its interpretation of laws of foreign Governments as well as State Governments based on newly discovered evidence or the fact that the law in that sovereign area, country, has changed by a ruling of its ultimate authorities.

I might add that Chief Justice Marshall, writing for the Court in the Percheman case in 1833, I believe it was, reversed his prior ruling -- may I continue, Your Honor?

QUESTION: I think not. Your time has expired --

MR. TAYLOR: All right. Thank you, Your Honor.

QUESTION: -- Mr. Taylor.

Mr. Wolfson, you have 3 minutes remaining.

REBUTTAL ARGUMENT OF PAUL R. Q. WOLFSON

ON BEHALF OF THE PETITIONER

MR. WOLFSON: Thank you, Mr. Chief Justice. A few points.

First, on the question of mistake on the West Virginia Oil & Gas decision that my colleague mentioned, first of all let me say we think that case was incorrectly decided. It's an old Fifth Circuit case.

QUESTION: Well, and it also requires negligence on the part --

MR. WOLFSON: Right.

QUESTION: -- the absence of negligence on the part of the moving party.

MR. WOLFSON: Yes. I --

QUESTION: Do you think we have the authority in this -- based on the issues that are before us, to rule in your favor based on the fact that the misrepresentation is not sufficient to set aside the judgment?

MR. WOLFSON: On the facts --

QUESTION: Your brief asks that we remand.

MR. WOLFSON: Right. On the -- well -- on the facts of this -- I think that if -- assume we're wrong on the first two questions presented and there is jurisdiction in the district court, I think that the case has to go back to the district court for a determination about the facts of this case, because the -- once the dismissal based on lack of jurisdiction would be wiped out, then the case is no longer really in the court of appeals and the case should go back to the district court for further proceedings. There --

QUESTION: Was there a ruling on laches on --

MR. WOLFSON: Yes.

QUESTION: -- the independent action?

MR. WOLFSON: Yes, there was, Your Honor. The district court concluded that the respondents' independent -- it recognized that there was a bar of --

there could be a bar of laches, and it ruled that respondents' independent action was barred by laches.

Now, the court of appeals just didn't really address that at all, and nonetheless, you know, held for the respondents.

QUESTION: Can you go back to Justice Kennedy's question?

MR. WOLFSON: Yes.

QUESTION: I was thinking, maybe if we're trying to reconcile independent action with the first part of the rule, you would do it by saying, independent action of those unusual egregious frauds, et cetera, but you say, if I thought that I couldn't say that here. We'd have to send it back.

MR. WOLFSON: On the facts of this case, yes.

QUESTION: As to whether it is egregious?

MR. WOLFSON: As to whether it is egregious, and because the -- it's the district court that is supposed to -- it's the district court that's supposed to make an evaluation, and then when it looked at the case it said, you know, I don't find any evidence here of fraud or mistake that would warrant setting aside the judgment.

QUESTION: But I mean, is -- can we take certain facts -- I mean, they have the record here. Suppose we look at their facts, which was testimony that was referred

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to, and said that doesn't rise to the level, or it does?

MR. WOLFSON: Well, of course, we -- I mean, I think if it went back to the district court, we would move for summary judgment, probably, on the grounds that there was no evidence of fraud or mistake on -- and so on the merits the independent action should not go forward. I think the court -- once -- all that the court of appeals could have done was decide whether there was jurisdiction.

A couple of points about the National Archives. I can't agree with the statement that the Government directed the respondents away from the National Archives.

I understand that my colleague has relied on Dr. Dorasavage's deposition, but I think it is important that the whole of that deposition and also Mr. Knipfing's deposition did say that the Crawford Commission report is one standard source that we look to and it is in the National Archives, and we did bring the Boudreau grant specifically to the attention of the court.

Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wolfson.

The case is submitted.

(Whereupon, at 12:05 p.m., the case in the above-entitled matter was submitted.)

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