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Excerpts of argument by Tom C. Clark, Attorney General of the United States before the Supreme Court in the case of United States of America, Plaintiff, versus the State of California, March 13, 1947

"The only question in this case is the proprietary right to the land underlying this three-mile belt, known to international lawyers as the marginal sea. It is important to point out, in the beginning, what this case does not involve.

"The United States raises no question as to the ownership of ports, harbors, bays, rivers, lakes or any other island waters. Nor is any question raised as to the ownership of the tidelands, that is, that narrow strip of land which lies between high and low water marks of the Pacific Ocean on the coast of California. The area here in controversy begins where the tidelands end. It is an area extending three miles from low-water mark into the sea.

"The Government's complaint filed in this case alleges that the United States is the owner in fee simple of the submerged lands underlying the marginal sea off the coast of California. The complaint states that California, in violation of the rights of the United States, has been and is publicly claiming title to these lands; has undertaken to provide for the leasing of same for the exploitation of petroleum and other deposits; is withdrawing large quantities of oil therefrom, and refuses to recognize the rights of the United States therein.

"At this point it might be in order for me briefly to describe the area involved herein. The entire marginal sea along the coast of California, in issue, embraces about 3000 square miles of area. As has been indicated above, this legal controversy arose because of the discovery of large pools of oil within the area. At this time these pools extend over approximately 15 square miles of the total area involved in this suit. One hundred leases have been

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executed and 350 wells drilled. Most of these wells were drilled subsequent to 1921 - the date of the first California leasing act. Some of the wells are "whip stocked" - that is, slanted from the high land out into the bed of the sea. The mouth of these wells is on shore but the bottom of the hole in some instances is almost a mile out to sea - thus draining oil from the reserves of the United States.

"The only other industries in the area are fishing and kelp, which is used in the making of medicines and chemicals. The plaintiff readily admits the right of California, in the absence of Federal action, to control and regulate such matters within the area.

"The first point to which I wish to address myself is that the concept of the marginal sea is international in origin and development. The relevancy of this fact arises out of our view, that to the extent that ownership of the bed of the marginal sea is to be deemed an attribute of sovereignty, it is an attribute not of State sovereignty but, rather, is to be attributed to the only sovereign in this Nation possessed of international powers, the Federal Government. The international nature of the marginal sea concept is a characterization drawn from history, and it is to that history that I now turn."* * * * * * *

"In 1793, Thomas Jefferson, as Secretary of State, addressed notes to the British Minister and to the French Minister, in which he stated that the United States, finding it necessary to define the extent of the line of territorial protection which they claim on their coast, in order to give effect to their neutral rights and duties, fixed provisionally upon the distance of one sea league, which is the equivalent of three nautical miles, as its zone of territorial protection. This definition of a seagoing area of

neutrality is comparable, I think, to the Declaration of Panama, adopted at the beginning of the recent world war."* * * * * *

"Given a concept which has had its origin and its genesis in international law, we think that it would be an aberration to attribute ownership of the marginal sea to a governmental body which has no international powers. The international concept that dominion could be exercised over the sea only as far as it could be held in subjection from the mainland or as far as a cannon will carry is certainly an attribute of national sovereignty, if any at all. As between the States and Federal Government, the United States is the only "prince that can challenge into the sea and command with cannon".

"To hold otherwise would be to divide up the proprietary interest in the marginal sea surrounding the United States into twenty separate proprietorships, exclusive of Connecticut, which has been held not to front on the Atlantic Ocean. Such a division would be contrary to all concepts of international law and could not be maintained unless by force of arms of the United States itself or acquiescence of foreign sovereignties.

"I turn now to the next point - and it is a basic one - that I wish to present as a background for the Government's contentions in this case. * * *

"We are here concerned with a State, California, which was formed out of lands which previously were the property of the United States as an entity. As to such a state, it seems perfectly clear that territory which actually belonged to the National Government prior to statehood remained the property of the United States after the individual new state was created, unless there is evidence that the National Government did actually, then or later, transfer part of the national property to the ownership of the state. Thus, the only lands within California that passed to the State as its lands are those which

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the United States affirmatively conveyed to the State. We have no such affirmative action here. The United States has not conveyed by statute or otherwise the lands here in question. We have a national forest in California, not because California has conveyed the area to the United States, but because the area belonged to the United States before California was admitted to the Union and because it continued to belong to the United States thereafter.

"With this background, I can proceed to a summary of the reasons supporting the Government's claim to paramount proprietary rights in the bed of the marginal sea. We begin with the fact that the territory which became California was acquired by the United States from Mexico under the Treaty of Guadalupe Hidalgo, in 1848. This treaty vested in the United States full rights, sovereign as well as proprietary, over the entire area thus acquired. Indeed, California admits as much, for its basic claim is that it obtained these lands from the United States in 1850 when it was admitted to the Union.

"The United States secured full rights to all of the territory, except that previously conveyed by Mexico. No such grants are involved here. California was admitted into the Union by the Act of September 9, 1850. There is nothing in that Act of Admission, or elsewhere, which explicitly grants the marginal sea to the State of California, and it is the Government's contention that there is nothing in that Act or any other document that impliedly transferred the marginal sea to California.

"California's case, however, is rested on a provision in Section 1 of the Act of Admission, to the effect that California was admitted 'on an equal footing with the original States in all respects whatever.' It relies on a series of decisions of this Court which had reference to inland navigable

waters. The rule of these cases is taken from "the equal footing clause" inserted in each of the admission acts as to new states. It is in the Admission Act of 1850 as to California. This clause merely guaranteed to new States the same sovereign rights as those enjoyed by the original thirteen States.* * * *

"We think, moreover, that the original states themselves had no rights in the marginal sea as such. In fact, none of them claimed it by Constitution, statute, or interpretation." * * * *

"To attribute to California ownership of the marginal sea simply because it, by Constitutional Act, in 1850 laid claim to it, would, we think, give it greater rights than were had by the original States at the time of the formation of our Union." * * * *

"The State could regulate the use of rivers, lakes, bays and harbors - and protect the rights of the public in such use - without owning the beds thereunder." * * * *

"However, we do not ask that the prior decisions of this Court be overruled. We suggest merely that if this Court should find it necessary to reach this issue at all, the unsound rule of these cases be not extended to apply to the marginal sea."

"I think it proper, finally, to point out that this suit is not comparable to a mere title dispute between private parties. It is not indeed comparable to a dispute over title between governments of equal stature. It will not be taken amiss, I think, and certainly I do not cast any reflections on the State of California when I say that this is not a suit between equal sovereigns. It is a suit, rather, between the people of the United States, as a whole - a paramount sovereignty - and the State of

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California. The State's claims rest solely on the geographical accident that its territory borders upon the Pacific Ocean. On the other hand, the people of the United States, in every state of the Union, have a genuine interest in the marginal sea.

"It would be to the best interests of all the people - all the States - that it not be cut up into 20 different proprietorships. This is reflected in President Truman's Executive Proclamation of September 28, 1945, in which he asserted the rights of the United States to the "Continental Shelf." This is the gradually sloping submarine plain adjacent to practically all of the shorelines of the oceans of which the bed of the marginal sea is a part.

"The President has authorized me to say that the Administration approaches this controversy with every desire to do substantial equity to California and to the private interests involved. In the event that the decision of this Court is favorable to the Government of the United States, it will be necessary to have Congressional action to determine the use to which these oil reserves shall be devoted - whether to a reserve for our Navy, coupled with a present development looking to a determination of the limits of the pools of oil available, or to immediate exploitation.

"The President advised me he will recommend to the Congress that legislation be enacted designed to relieve California and those who have operated under State authority, from the necessity of accounting to the United States for revenues derived in the past from the exploitation of any of the lands here involved. Such legislation, in the view of the President, should also establish equitable standards for the recognition of investments made by private interests and should offer a basis for the

continued operation of private establishments wherever consistent with the national interest, and on terms which would be fair and just under all circumstances. There is no desire on the part of the President or of any official of the executive branch to destroy or confiscate any honest and bona fide investment, or to deprive the State or its subdivisions of any reasonable expectation of future return from the areas that have been developed. I am confident that a program of this kind presented by the President would not lack support in the Congress.

"At the same time, it should be borne in mind that only a relatively small proportion of the marginal sea has as yet been exploited or occupied. As to proven oil property in the marginal sea of California, only 1/2 of one per cent of the entire area is involved here. Existing investments may well prove to be minor in extent in comparison with the untold resources of the remaining area. Property rights - determined under existing leases by the State - are small in comparison to what they may be at a later date. If this area in fact belongs to the United States, every consideration of public policy calls for its dedication to the interests of all of the people of the United States, subject to such valid equities as the Congress may recognize."