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The Tidelands Oil Controversy

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the result in the *Wiley* case is sound. But if *Yates* is strictly limited to cases where Congress *has not* fixed the statutory limits within which the district judge must confine his sentence, then *Wiley* has erroneously extended the power of the court of appeals. Furthermore, in view of the fact that the court based its decision to a strong extent upon the disparity of the defendants' sentences, *Wiley*, if it is to be considered *stare decisis*, must be limited to those cases involving multiple defendants only. In either event, there is a strong possibility that *Wiley v. United States* will be *sui generis*.

Many legal writers have favorably advocated appellate review of sentencing and have outlined their formulae for its eventual inception.[85] But if Congress is to adopt a system which entitles the court of appeals to review the sentence imposed by the district court, it is suggested that it should do so only upon the following terms: (1) There should be no review unless a clear abuse of discretion is shown; and (2) If an abuse of discretion does exist, it should be disclosed by every factor which the trial court had at its disposal, namely: the *complete* record as evidenced by the trial transcript, any pre-sentencing reports, and confidential investigative reports. An accompanying written explanation of the factors motivating the judge in sentencing might also be included. It is submitted that only under these circumstances can a proper, intelligent review be accomplished.

[85] McGuire & Holtzoff, *The Problem of Sentence in the Criminal Law*, 20 B.U.L. REV. 423 (1940); ORFIELD, CRIMINAL APPEALS IN AMERICA (1939).

THE TIDELANDS OIL CONTROVERSY

As unbelievable as it would, no doubt, seem to our founding fathers, the boundaries of the states were not fully determined until June 15, 1960—more than one-hundred eighty years after this country had declared its independence of England. The reason for this anomaly was a belated realization on the part of the United States that perhaps it, and not the coastal states, owned the lands submerged beneath the marginal sea. With the birth of this realization, the United States began to actively pursue a program intended to bring these valuable lands within its jurisdiction, and thereby came into existence the dispute commonly termed the *Tidelands Oil Controversy*.[1]

Although it was oil which precipitated the struggle, the interests involved were much more valuable than the "black gold" resting beneath

[1] Technically, the tidelands is that area of land situated between high-water and low-water marks. In the Tidelands Oil Controversy, it refers to the lands lying beyond the low-water mark and extending out to the continental shelf.

the ocean bottom for, if the littoral states were not declared the owners of the marginal sea, then who would be allowed to exploit its vast wealth? Further, what would be the status of the numerous facilities built by the states and the many improvements which they had made in the offshore waters? The obvious answer spurred the coastal states to action and resulted in a long and bitter battle fought both in Congress and the Supreme Court. As one might expect, a controversy extending over two decades has numerous highpoints, but in this dispute there are three events which take precedence over all others; (1) United States v. California,[2] The Submerged Lands Act of 1953[3] and, (3) United States v. Louisiana, Texas, Mississippi, Alabama, and Florida.[4]

UNITED STATES V. CALIFORNIA

Prior to the 1930's, there was no dispute over the ownership of the off-shore lands,[5] the states assuming that they owned the lands situated beneath the marginal sea, and the Federal Government not challenging this assumption. That the United States had never asserted ownership of lands lying beyond low-water mark is evident from a historical study of Congressional action, such action being necessary in order for a territory acquired by the United States to become an integral part thereof.[6] However, on April 15, 1937, Senator Gerald Nye of North Dakota introduced a bill which, for the first time, directed the attention of Congress to the heretofore unrecognized question.[7]

During this early period of the dispute, Congress, in the main, favored state ownership of the submerged lands but, for various reasons was unable to enact legislation which would have affirmed ownership in the coastal states. It was this inability to act which enabled the United States to assert that it, and not the littoral states, was entitled to the minerals lying beneath the soils of the marginal sea. Rather than choose as its initial opponent one of the coastal states, the United States preferred to file suit against the Pacific Western Oil Company which leased from California lands situated beneath the marginal sea.[8] By determining the rights of the lessee, the United States would, in effect, also determine California's title to the controverted area, for the rights of the lessee would be dependent

[2] 332 U.S. 19 (1947).

[3] 43 U.S.C.A. § 1301 (Supp. 1959).

[4] 80 S. Ct. 961 (1960).

[5] *Ibid.*

[6] Dorr v. United States, 195 U.S. 138 (1903).

[7] U.S. Code Cong. & Ad. News 1385 (1953).

[8] United States v. Pacific Western Oil Corp., U.S.D.C. for Southern District of California (filed 1945).

upon title residing in California. The United States, however, decided to discontinue this suit and engage as its adversary its true opponent—California. The United States complaint as quoted by the Court alleged that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California."[9] The United States then prayed for a decree declaring its rights to be superior or "paramount" to the rights of California in the marginal sea and for the issuance of an injunction against California and those persons claiming thereunder.

The Supreme Court, rather than analyzing the contentions of the United States, preferred to devote its energies to destroying the arguments presented by the California brief. By so doing, the Court was able to ignore the United States' claim of ownership, a claim which would be difficult to sustain in the absence of Congressional legislation, and decide the case upon the doctrine of "paramount rights." Further, by adopting such a position, the Court practically insured the United States of success in subsequent litigation which it intended to initiate against the remaining coastal states for, in destroying the arguments of California, it also destroyed the basic arguments relied upon by the other littoral states.

The first two arguments advanced by California were of a technical nature and were handled by the Court in a cursory fashion. California contended that the Supreme Court was without jurisdiction to entertain the suit because there was no controversy and, secondly, the Attorney General of the United States was without authority to initiate this particular suit because Congress had never manifested its intent to bring suit against the states. As to the first contention, the Court (the majority opinion by Justice Black) said that this was a controversy in the classic sense, and therefore the Court had jurisdiction under article III, section 2, of the United States Constitution.[10] As to the second assertion, the Court held that Congress had never revoked the authority it had conferred upon the Attorney General to initiate suit to protect the rights and interests of the United States.[11]

With the defeat of these two technical contentions, the Supreme Court then addressed itself to the heart of California's position. The argument

[9] 332 U.S. 19, 22–23 (1947).

[10] "The judicial Power shall extend to all Cases, . . . to which the United States shall be a party."

[11] 5 U.S.C.A. § 291, 309 (1926).

may be presented in the following three-fold arrangement: (1) The original Constitution adopted by California prior to its admission into the Union, placed its boundaries three English miles from the shore;[12] (2) the enabling statute which admitted California into the Union ratified the boundary thus established;[13] and, (3) California was admitted on an equal footing with the original states in all respects. California then concluded that, these premises being true, the State of California must be declared the owner of the marginal sea on the basis of the long established rule announced in *Pollard's Lessee v. Hagan*.[14]

In order to fully appreciate California's theory of ownership, it is necessary to consider in greater detail the phrase "equal footing" and the case of *Pollard's Lessee*. After having established its independence of England, the young Republic adopted the Articles of Confederation (March, 1781). Perhaps the greatest success scored by the government of Confederation, which government proved to be weak and ineffectual, was the manner in which it settled the problem created by the unsettled lands west of the Alleghenies. The government of Confederation "decided to open them [the unsettled lands] to orderly and progressive settlement; to encourage the inhabitants to develop self government by regular stages; and, finally, to erect new states, similar in powers to the original thirteen."[15] The principles upon which these new states were to be formed were embodied within the NORTHWEST ORDINANCE.[16] The term "equal footing" appears in article I, section 12 of that document and again in Article 5, the latter article providing: "And whenever any of the said states shall have sixty thousand free inhabitants, therein, such state shall be admitted by its delegates into the Congress of the United States, *on an equal footing with the original states, in all respects whatever. . . .*"[17] The import of this provision upon the later history of the states is best indicated by the fact that, with the exception of Texas,[18] it appears that every enabling statute admitting subsequent states into the Union contained it.[19]

[12] CAL. CONST. art. 12, § 1.

[13] 9 Stat. 452 (1850).

[14] 44 U.S. (3 How.) 212 (1845).

[15] NEVINS & COMMAGER, HISTORY OF THE UNITED STATES 114 (1942).

[16] CRAVEN, JOHNSON & DUNN, A DOCUMENTARY HISTORY OF THE AMERICAN PEOPLE 172 (1951).

[17] *Id.* at 175. (Emphasis added.)

[18] The joint resolution for annexing Texas contained three sections and, of the three, only section 3 referred to the "equal footing" provision. 5 Stat. 797 (1845). Texas, by joint resolution, accepted the annexation proposal of the United States exclusive of § 3. 2 GAMMEL'S LAWS OF TEXAS 1225 (1845).

[19] *E.g.*, The acts admitting Alabama, 3 Stat. 608 (1819), Mississippi, 3 Stat. 472 (1817), and California, 9 Stat. 452 (1850), contained such provisions.

A fine example of the "equal footing" provision in action is the *Pollard* case. Stated briefly, the facts of that case were as follows: Pollard brought an action in ejectment against the defendant, Hagan. Pollard had been granted lands situated beneath Mobile Bay, an inland bay, by the United States subsequent to the admission of Alabama into the Union; Hagen's title was based upon an old Spanish land grant. The enabling statute admitting Alabama into the Union contained a provision which purported to reserve to the United States all the waste and unappropriated lands lying within the boundaries of Alabama. Pollard asserted that these lands, being waste lands, came within the ambit of this provision and, therefore, he was entitled to the lands by virtue of the patent conveying the lands to him by the United States. The Court, in denying this assertion, pointed out that the enabling statute admitting Alabama into the Union also contained an "equal footing" provision. Justice McKinley, who wrote the opinion of the Court, then quoted Justice Taney's famous statement from *Martin v. Waddell*:[20] "When the Revolution took place, the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights surrendered by the Constitution."[21] Justice McKinley incorporated into one rule the holding of the *Martin* case and the principle established by the "equal footing" provision of the *Northwest Ordinance*. Justice McKinley concluded that, the original thirteen states owning the soils situated beneath their navigable waters and Alabama having been admitted into the Union *on an equal footing with the original thirteen states in all respects*, it was Alabama which held title to the controverted lands beneath Mobile Bay and that these rights could be neither enlarged nor diminished by a compact between Alabama and the United States. Therefore, because the United States did not possess title to the lands beneath Mobile Bay, the patent conveying these lands to Pollard was a nullity.

Although the marginal sea was navigable, Justice Black refused to apply the rule of the *Pollard* case. He distinguished that case from the present case by pointing out that the factual situation presented by the *Pollard* decision and all subsequent holdings which applied the rule announced in that case, revolved around lands submerged beneath inland waters, concluding that an extension of the rule of *Pollard's Lessee* would be unwarranted. He further distinguished the two cases by denying that the original thirteen states had ever owned the "tidelands"; whereas, they had and did own the soils submerged beneath the inland waters. Justice Black's conclusion was premised upon the fact that, at the time of the

[20] 44 U.S. (3 How.) 212 (1845).

[21] *Id.* at 229.

revolution, the concept of the marginal sea was only a "nebulous suggestion," and therefore the original thirteen states could not have owned the "tidelands."[22]

The Court next considered three cases which it felt lent some credence to the claims of California: (1) *Manchester v. Massachusetts*;[23] (2) *Louisiana v. Mississippi*[24] and, (3) *The Abby Dodge*.[25] Justice Black held the first two cases to be inapplicable to the factual situation presented by the present case, the *Manchester* case involving inland waters, and the *Louisiana* case having as litigants two states rather than a state and the Federal Government. The Court found it more difficult to rationalize *The Abby Dodge*. The facts of that case are as follows: A federal statute prohibited the landing and subsequent sale in any United States port of sponge taken by means of diving equipment in the "Gulf of Mexico or the Straits of Florida."[26] The United States instituted action against the Abby Dodge, a fishing vessel, alleging a violation of the statute. In the complaint, the United States did not allege that the Abby Dodge was taking sponge outside Florida's three-mile coastal limit. In dismissing the action, the Supreme Court declared that the statute applied only to waters beyond Florida's seaward boundary,[27] and to construe the statute otherwise would render it unconstitutional. In denying the application of *The Abby Dodge*, Justice Black stated:

> But the opinion in that case was concerned with the state's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance. And there was no argument there, nor did this Court decide, whether the Federal Government owned or had paramount rights in the soil under the Gulf waters. That this question remained undecided in evidenced by *Skiriotes* v. *Florida*, 313 U.S. 69, . . . where we had occasion to speak of Florida's power over sponge fishing in its territorial waters.[28]

Justice Black then directed himself to the final argument he considered worthy of noting—*i.e.*, that California, by the doctrines of estoppel, laches, and adverse possession, had acquired ownership of the Tidelands. The Court, although admitting that many acts of the Federal Government tended to substantiate the theory advanced by California, held that the above doctrines could not be invoked to deprive the United States of public lands which it held in trust for the people, regardless of the neg-

[22] *But see* BARTLEY, THE TIDELANDS OIL CONTROVERSY 15–17 (1953).

[23] 139 U.S. 240 (1891).

[24] 202 U.S. 1 (1906).

[25] 223 U.S. 166 (1912).

[26] 34 Stat. 312 (1906).

[27] The Court, in the light of United States v. Louisiana, 80 S.Ct. 961 (1960), erroneously stated that Florida's seaward boundary extended three miles into the sea.

[28] 332 U.S. 19, 37–38 (1947).

ligent manner in which its agents administered that trust. With the destruction of this final argument, the Court concluded:

> [W]e decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.[29]

The success of the United States in the *California* case did not auger well for the remaining coastal states since their theories of ownership were so closely akin to those advanced by California. In fact, their only hope of retaining possession of the marginal sea rested in the hands of a powerless Congress.[30] Before Congress could enact legislation affirming title in the littoral states of the "tidelands," the United States filed suit against the states of Louisiana and Texas.[31]

As to Louisiana, the Supreme Court, Justice Douglas writing the majority opinion, held the decision in the *California* case controlling. The status of Texas was unique in that she had once been an independent nation. This, however, did not deter Justice Douglas. Ironically, the means used by Justice Douglas to destroy any title which Texas *may* have possessed in the marginal sea prior to her admission into the union, was that argument upon which the coastal states relied so heavily—the "equal footing" provision. The Court stated that Texas, having been admitted into the Union upon an "equal footing" with her sister states in all respects, relinquished such title as she may have possessed in the marginal sea, for the "equal footing" clause demands not only that the rights of a state entering into the Union be no less than those states already a member thereof, but also, that they be no greater.[32] Also interesting to note in the *Louisiana* case is the fact that the Court spells out the doctrine of "paramount powers" which Justice Black had hinted at in the *California* case. The Court states:

> As we pointed out in United States v. California, the issue in this class of litigation does not turn on title or ownership in the conventional sense. California, like the thirteen original colonies, never acquired ownership in the marginal sea. The claim to our three-mile belt was first asserted by the national government. Protection and control of the area are indeed functions of national external sovereignty. . . . The marginal sea is a national, not a state concern.

[29] *Id.* at 38–39.

[30] A further discussion of the powerless position of Congress during this period is contained under the subtopic entitled "Submerged Lands Act" in this paper.

[31] The status of the boundaries of Texas and Louisiana was not decided until 1950, while the Submerged Lands Act was enacted in 1953.

[32] The Court later amended United States v. Texas, 340 U.S. 848 (1950), striking out the phrase "equal footing" wherever it appeared. See note 18 *supra*.

National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.[33]

The doctrine, although new in name, is probably not an extension of the Federal power; rather, the Supreme Court has simply placed a label upon the aggregate powers possessed by the Federal Government. Further, as indicated by the Submerged Lands Act,[34] the United States probably could exercise these powers in the marginal sea whether or not title to the "tidelands" rested in the littoral states.[35]

THE SUBMERGED LANDS ACT

While the battle between the coastal states and the United States was raging in the Supreme Court, Congress also was manifesting an intense interest in this controversial question—ownership of the marginal sea. Congress, however, unlike the Executive Department, preferred to affirm state ownership of the "tidelands" or, if the states possessed no title, to quitclaim such title as the United States possessed in the marginal sea to the coastal states. That the United States lacked a proprietary interest in the marginal sea presented no problem because, in declaring itself owner, Congress would be performing an act of a political nature. Since the Supreme Court refuses to take jurisdiction of disputes where the subject matter of such dispute is of a political nature,[36] the United States' ownership of the "tidelands" could not be questioned. Then, under article IV, section 3 (2) of the Constitution,[37] the United States could grant the "tidelands" to the littoral states.

As was earlier pointed out, the problem was first indicated in Congress in 1937. It wasn't however, until 1945 that those favoring the quitclaiming of the marginal sea to the states were able to gain sufficient support to pass such a bill through the House and Senate.[38] The bill was vetoed by

[33] 339 U.S. 699, 704 (1950).

[34] 43 U.S.C.A. § 1314 (a) (1953) provides: "The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed established, and vested in and assigned to the respective States and others by section 1311 of this title."

[35] *But see* BARTLEY, THE TIDELANDS CONTROVERSY, 247–273 (1957).

[36] South v. Peters, 339 U.S. 276 (1950).

[37] "The Congress shall have Power to dispose of . . . Property belonging to the United States."

[38] 92 CONG. REC. 10469 (1945).

President Truman.[39] With the knowledge that President Truman would remain in office until 1952, and being unable to override his veto by the necessary two-thirds vote,[40] Congress was forced to remain idly by and observe the defeats of the coastal states in the Supreme Court. Then, in 1952, General Eisenhower was elected President and, with the threat of a Presidential veto removed, Congress quickly enacted the Submerged Lands Act of 1953.[41]

The act quitclaims the soils situated beneath the marginal sea, including the minerals residing thereunder, to the coastal states and gives to each of them the right to extend their boundary three miles out into the marginal sea from low-water mark.[42] Section 1301 (3) (b) provides that "in no event . . . shall the . . . boundaries . . . [extend] more than three geographical miles into the Atlantic Ocean, or more than three marine leagues into the Gulf of Mexico." This provision, when taken in conjunction with the portion of section 1312 which reads,

> Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such state became a member of the Union, or if it has been heretofore approved by Congress,[43]

would seem to indicate that Congress considered the Supreme Court decision in the *Texas* case as an unjust one and, therefore, intended to rectify the injustice. The truth of this theory is indicated by the following facts: Texas asserted that its boundary extended three marine leagues into the Gulf of Mexico;[44] section 1301 (3) (b) refers specifically to the Gulf of Mexico, the location of the Texas claims; and the *Texas* case was decided shortly before the Submerged Lands Act.

UNITED STATES V. LOUISIANA

By merely glancing at the aforequoted provisions of the Submerged Lands Act (sections 1301 (3) (b) and 1312), one could readily perceive that one of the consequences of the act would be further litigation be-

[39] U.S. CODE CONG. & AD. NEWS 1712 (1946). President Truman stated: "It [the issue] thus presents a legal question of great importance to the Nation, and one which should be decided by the Court."

[40] 92 CONG. REC. 10660 (1946).

[41] In Alabama v. Texas, 347 U.S. 272 (1954), the Supreme Court denied Alabama and Rhode Island leave to file bills of complaint challenging the act, holding that the disposition of public lands is for Congress to determine and not the Supreme Court.

[42] 43 U.S.C.A. §§ 1311-12 (Supp. 1959).

[43] 43 U.S.C.A. § 1312 (Supp. 1959).

[44] As earlier pointed out, Texas, after it declared its independence of Mexico, established its boundaries as extending three leagues out into the Gulf of Mexico.

tween the United States and the coastal states in order to ascertain who was entitled to the lands lying between the three-mile water mark and three marine leagues. Once again, it was the United States which initiated suit against the coastal states, this time choosing as an adversary Louisiana. The United States then ordered the suit to be broadened to include the states of Texas, Alabama, Mississippi, and Florida.[45]

The first difficulty encountered by the Court was the meaning of the phrase "prior to or at the time," the language of section 1312. After denying the interpretations advanced by the United States and California,[46] the Court held that because the statute was inconclusive upon its face, it would be necessary to consult the legislative history. (Although the court does not make clear the legislative history to which it is referring, it is obvious that it means the admission history of the states into the Union.) The Court, in a quandary, adopted the rule of *Pollard's Lessee* which, in the *California* case, they had held inapplicable to the marginal sea. The phrase was, therefore, construed to mean the boundary of the state *when the state was admitted into the Union.*

Justice Harlan, who wrote the majority opinion, considered first the claims of Texas. The Texas legislature, in 1836, defined its boundaries as "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river."[47] In 1845, Texas was admitted into the Union by the following Joint Resolution:

> That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas. . . . Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments. . . .[48]

It was the contention of the United States that the boundaries of Texas, being subject to adjustment, Congress was in effect refusing to recognize the boundaries of Texas. Since the United States foreign policy at the time of Texas's admission provided only for a three-mile seaward limit, the boundary of Texas could not have extended beyond that three-mile limit. The Court rejected the argument advanced by the United States, stating that "the boundaries contemplated by the Submerged Lands Act

[45] 354 U.S. 515 (1957).

[46] The states argued that the phrase "prior to or at the time" referred to the pre-admission boundaries of the states, and therefore if the boundaries of the states were defined to extend beyond the three-mile mark at any time prior to their admission into the Union, they were, by virtue of the act, entitled to such boundaries.

[47] 1 GAMMEL'S LAWS OF TEXAS 1193 (1836).

[48] 5 Stat. 797 (1845).

are those fixed by virtue of Congressional power to admit new States, . . . not by virtue of the Executive power to determine this country's obligations *vis-à-vis* foreign nations."[49] As to the status of Texas's boundary when it entered the Union, the Court held that it complied with the requirements of the Submerged Lands Act. Justice Harlan stated that when Texas was admitted into the Union, there was an utter "insensitivity" to the question of a seaward boundary. Therefore, when Congress, in the Joint Resolution, seemingly questioned the efficacy of Texas's boundaries, it was referring only to the land boundaries and not the seaward boundaries. Further, the Court stated that even if Texas's boundaries were not settled when Texas was admitted into the Union, Congress thereafter impliedly consented to the seaward boundary, such implied consent being sufficient to satisfy the act. The Court predicated this latter position (implied consent) upon a treaty entered into between the United States and Mexico,[50] and upon the fact that the two countries had ratified it many times thereafter.[51] Article V of the treaty provided: "The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land. . . ."[52]

Because of the similarity in the claims of Louisiana, Mississippi, and Alabama, they will be considered together. The constitutions of these states provided that all islands lying within six leagues (three leagues in the case of Louisiana) of the coasts of such states shall be included within their boundaries.[53] These states argued that the boundaries established by their constitutions should be construed to include the lands submerged beneath the marginal sea, and not as including only the islands. The Court held that it was obvious that these constitutions contemplated only the islands and not the "tidelands." Therefore, the boundaries of these states were established at three geographical miles.

The Supreme Court rendered a sepaarte decision upon Florida, whose position differed from the other coastal states in that it asserted that its boundaries were approved by Congress subsequent to its entry into the Union. The Reconstruction Act of 1867 required that all states which had seceded from the Union must submit to Congress for approval a state constitution which complied in all respects with the exacting requirements of the act.[54] Florida, being a secessionist state, submitted such a

[49] United States v. Louisiana, 80 S.Ct. 961, 990 (1960).

[50] 9 Stat. 922 (1848).

[51] *E.g.*, 22 Stat. 969 (1882); 25 Stat. 1390 (1885); 35 Stat. 1863 (1905).

[52] 9 Stat. 922, 926 (1848).

[53] Louisiana, 2 Stat. 701 (1812); Mississippi, 3 Stat. 348 (1817); Alabama, 3 Stat. 489 (1819).

[54] 14 Stat. 428 (1867).

constitution which, in June, 1868, was approved by Congress.[55] Article I of that constitution described Florida's boundary as running from a point in the Gulf of Mexico three leagues from the mainland and "thence northwestardly three leagues from the land to the next point."[56] The Court concluded that Congress, in accepting the constitution, had performed the very act contemplated by the Submerged Lands Act and, therefore, Florida's seaward boundary extended three marine leagues into the sea from low-water mark.

Thus was it that the boundaries of the coastal states were not determined until June 15, 1960, more than one-hundred eighty years after the founding of this country.

[55] 15 Stat. 73 (1868).

[56] FLA. CONST. art. I.

THE ENIGMA OF FOURTH AMENDMENT PROTECTIONS

Fourth amendment[1] protections against illegal search and seizure would seem to be among the most ill-defined and misconstrued of the guarantees of the Constitution interpreted by the United States Supreme Court. Up until *Elkins v. United States*[2] the "silver platter" doctrine proved to be a means by which the Court allowed the fourth amendment to be a paper protection only. By using as a basis for its decisions federal rules of evidence[3] or the particular facts of the case before it,[4] the Court created confusion and contradictory decisions which existed until the *Elkins* rul-

[1] The fourth amendment reads as follows: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmative and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

[2] 364 U.S. 206 (1960).

[3] *E.g.*, Salsburg v. Maryland, 346 U.S. 545 (1954); McDonald v. United States, 335 U.S. 451 (1948); United States v. Murdock, 284 U.S. 141 (1931); Byars v. United States, 273 U.S. 28 (1927); Silverthorne Lumber v. United States, 251 U.S. 385 (1920), wherein the Court stated: "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it should not be used at all." *Id.* at 392.

[4] *E.g.*, Irvine v. California, 347 U.S. 128 (1954); Schwartz v. Texas, 344 U.S. 199 (1952); On Lee v. United States, 343 U.S. 747 (1952); Harris v. United States, 331 U.S. 145 (1947); Nardone v. United States, 302 U.S. 379 (1937); Go-Bart Importing v. United States, 282 U.S. 344 (1931), wherein the Court stated: "Each case is to be decided on its own facts and circumstances." *Id.* at 357. Cf. Rochin v. California, 342 U.S. 165 (1952); Agnello v. United States, 269 U.S. 20 (1920).