

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 120 Orig.

STATE OF NEW JERSEY, PLAINTIFF v.
STATE OF NEW YORK

ON BILL OF COMPLAINT

[May 26, 1998]

JUSTICE STEVENS, dissenting.

While I agree with the Court's analysis of the relevant legal issues, I do not agree with its appraisal of the evidence. Because we are in effect sitting as a trial court, and because the relevant evidence is either documentary or uncontradicted oral testimony, we are able to make our own findings of fact and draw appropriate inferences from those findings. In my judgment a preponderance of that evidence supports a finding that all interested parties shared the belief that the filled portions, as well as the original three acres, of Ellis Island were a part of the State of New York for over 60 years. That finding, in turn, supports the conclusion that New York acquired the power to govern the entire Island by prescription.

During the period between 1892 and 1954 Ellis Island served as the Gateway to America for over 12 million immigrants. Thousands of citizens worked on the Island and hundreds resided there during those six decades. There is no evidence that any of those people ever believed that any part of Ellis Island was in the State of New Jersey. What evidence is available uniformly supports the proposition that whenever a question of state authority was considered by any members of that multitude of immigrants and citizens, both they and the responsible authorities in New York assumed that all of Ellis Island was a part of New

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York. The relevant facts were sufficiently public and obvious to support a presumption that, with one temporary exception, the authorities in New Jersey shared that belief. The fact that all of the relevant evidence concerning that period points in the same direction is far more significant than the fact that the quantity of evidence supporting certain propositions is not large. A solitary fingerprint may establish a preponderance of the evidence when there is a total absence of evidence pointing in another direction.

I

As a preface to its factfinding, the Court provides us with two reasons for discounting the probative force of much of New York's evidence: the fact that New Jersey concedes that the original Island is in New York and the fact that the Island was occupied by the United States during the relevant period. *Ante*, at 21–26. Neither of those facts undermines the force of the uncontradicted evidence. I believe that a more appropriate preface to our factfinding function is a comment on the probable expectations of the three sovereigns who participated in the decision to enlarge the Island for use as an immigration station.

In 1890, when that decision was made, the 1834 Compact establishing the boundary between the two States had not yet been construed. Article Second of the Compact made it clear that Ellis Island was in New York, but Article Third identified separate interests in the area surrounding the Island. New Jersey was accorded “the exclusive right of property in and to the land under water” but New York was accorded exclusive jurisdiction over those waters.¹ In 1904, when New Jersey conveyed to the

¹Article Third also preserved New Jersey's jurisdiction “over the wharves, docks, and improvements, made and to be made on the shore of the said state,” but that provision is not relevant because the original additions to Ellis Island were improvements to the shore of New York, not New Jersey. 4 Stat. 710.

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United States its entire “right, title, claim and interest of every kind” in those submerged lands, the parties may reasonably have believed that the State thereafter possessed neither ownership nor jurisdiction over that area, particularly since the Compact had provided that New York was entitled to exercise jurisdiction over the surrounding surface.

It is thus not surprising that during the entire period when the Island was enlarged, and when buildings were constructed on filled land, there appears to have been no discussion of the possibility that the Island might be located in two different States. Indeed, even in 1955 and for several years thereafter when representatives of New Jersey vociferously asserted jurisdiction over Ellis Island, they claimed not just the filled portions but the entire Island. It was not until 1963 that New Jersey first advanced the claim that the state line split the Island (and, consequently, three buildings on the Island). Thus, the preponderance of the evidence supports a finding that during the relevant period between 1890 and 1954 both New Jersey and New York believed that the entire Island was located in one State.

II

Census data collected by both New York and the Federal Government establish that nonimmigrants resided on Ellis Island throughout the relevant period. This population increased from 93 in 1915, to 124 in 1920, and 182 in 1925.² The uncontradicted testimony indicates that these people lived only on the filled portion of the Island. They were employed as cooks, maids, nurses, and hospital at-

²These figures refer to nonimmigrants. The 1920 federal census stated that there also were 270 “patients” and 97 “immigrants” on the Island. The 1940 federal census stated that 717 people lived on the Island but does not indicate how many of them were nonimmigrants. Since the 1940 total was roughly 50% greater than the 1920 total, the number of nonimmigrants may also have risen by a similar percentage.

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tendants. Both the New York and federal censuses counted these people as residents of New York.

The evidence also indicates that these residents voted in New York elections. According to maps prepared by the New York City Board of Elections in 1918, 1926, 1927, 1930, and 1945–1946, Ellis Island was part of a New York State Assembly District. Moreover, both the 1894 and the 1938 New York State Constitutions place Ellis Island in a New York State Senate District. Furthermore, since 1911 New York law has explicitly included Ellis Island in a federal congressional district. Finally, records of the New York City Board of Elections for 1918, 1919, 1925,³ 1930, and 1953 indicate that Ellis Island residents actually voted during those years. Indeed, an official list of enrolled voters for “1944–1945” identifies the party affiliation of over 50 residents of Ellis Island. It is reasonable to infer that residents of Ellis Island regularly voted in elections for New York offices and for candidates to represent New York in the United States Senate and House of Representatives. Given the public character of that activity it is also reasonable to infer that New Jersey was fully aware of that voting.

The Court fails to give proper weight to the fact that the entire population of the Island was counted as a part of New York in the federal census. The accuracy of the census is a matter of great importance to every State because it determines the size of a State’s congressional delegation, as well as providing “the basis for the allocation of various benefits and burdens among the States under a variety of federal programs.” *Franklin v. Massachusetts*, 505 U. S. 788, 814 (1992). Given the fact that a shift of only one or two hundred persons from one State to another might cause a State either to lose one of its seats in Congress or

³The 1925 records refer to 25 voters from Ellis Island, 14 of whom gave their addresses as on either the #2 Island or the #3 Island, both of which are fill.

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to fail to gain the number warranted by its relative increase in population, the accuracy of the census count is surely a matter of vital importance to the State.⁴ The consistent treatment of Ellis Island residents as residents of New York in the federal census is a matter that must have come to the attention of New Jersey and which was clearly of sufficient importance to prompt a vigorous objection if responsible state officials believed that those residents really lived in New Jersey. The fact that the Island was under federal control does not minimize in the slightest the importance of the census figures, or the importance of the other public acts that authorized Ellis Island residents to vote in New York elections.

III

There is uncontradicted testimony that between 1892 and 1954 there were hundreds of births and thousands of deaths on the Island. Since the hospital was located on the filled portions of the Island, virtually all of those births and deaths must have occurred in what is now claimed to be part of New Jersey. Presumably each of those births and each of those deaths was recorded in either a birth certificate or a death certificate. There is no evidence that any such certificate was issued by New Jersey. Given the fact that all of the relevant birth certificates and all of the relevant death certificates that have been found were issued by New York authorities, it is reasonable to infer that New York actually issued hundreds of birth certificates and thousands of death certificates to record events that occurred on Ellis Island. A preponderance of the evidence therefore would support a finding that throughout the relevant period New York performed the governmental function of recording the births and deaths on Ellis Island, and that the families of those decedents and newborn infants thought that those events oc-

⁴See generally *Department of Commerce v. Montana*, 503 U. S. 442 (1992).

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curred in New York.

IV

There is evidence that hundreds of marriages were performed on Ellis Island from 1892 to 1907. The exact number is uncertain, but it is undisputed that they were solemnized under New York law.⁵ Moreover, after a 1907 amendment to New York's domestic relations law, Ellis Island residents obtained their marriage licenses at City Hall in New York City. Fiorello LaGuardia, who served as an interpreter on the Island between 1907 and 1910, escorted couples to Manhattan so that they could get married. Presumably similar trips were made by engaged couples throughout the balance of the relevant period.⁶ There is no evidence of any Ellis Island resident being married under New Jersey law.

V

The evidence indicates that the millions of immigrants

⁵Although only a few marriage licenses are in the record, they are all New York licenses.

While there is some dispute over where these marriages occurred on the Island, it is fair to conclude, as the Court does, that these marriages were typically performed in the Great Hall of the Main Building, which was located on the original Island. Thus, they were performed in New York. The Court discounts the significance of this evidence because it does not necessarily constitute prescriptive activity on the filled portion of the Island. But if we assume, as the record plainly indicates, that everyone then believed that the entire Island was located in the same State, these marriages provide further confirmation of the proposition that everyone on the Island believed that that State was New York.

⁶One Ellis Island employee, who worked on the Island during the early part of the century, remembered as follows:

“Very often brides came over to marry here, and of course we had to act as witnesses. I have no count, but I'm sure I must have helped at hundreds and hundreds of weddings of all nationalities and all types. The weddings were numberless, until they dropped the policy of marrying them at the Island and brought them to City Hall in New York.”
E. Corsi, *In the Shadow of Liberty* 87 (1969) (hereinafter Corsi).

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entering the country, as well as the hundreds of residents of the Island, believed that Ellis Island was located in New York. For many of the immigrants, their journey to America began with a steamship ticket with the destination listed as “New York.” Upon arrival, the “certificate of arrival” for each newcomer was marked “Ellis Island, New York”; indeed, hundreds of thousands of such certificates of arrival are on file at the National Archives. Moreover, upon arrival, a federal official pinned a Landing Card on each newcomer; according to a representative card, the Landing Card stated, in eight different languages: “When landing at New York this card is to be pinned to the coat or dress of the passenger in a prominent position.”⁷ Given this evidence, it is certainly fair to infer that the new im-

⁷One such Landing Card read as follows:

UNITED AMERICAN LINES
(INCORPORATED)

LANDING CARD
(THIRD CLASS PASSENGERS)

Manifest Sheet No. 10

Name
Lari Schanker

List Number 6

When landing at New York this card to be pinned to the coat or dress of the passenger in a prominent position.

Bei Anknunft in Amerika muss diese Karte gut sichtbar an der Kleidung auf der Brust oder am Hut befestigt werden.

Když cestující dorazí do přístavu v New Yorku, ať má tento lístek na viditelném místě na svých šatech připevněn.

Keď cestujúci dorazí do prístavu v New Yorku, nech má tento lístok viditeľne pripúknutý na svojich šatách.

Podczas wylądowania w Nowym-Yorku pasażerowie powinni przypiąć tą kartę do paska lub sukni na wydatnym miejscu.

Pri iskrcavanju u New Yorku ova se karta mora islođiti na istaknutom mjestu na kaputu ili haljini.

При высадке на берег в Нью-Йорке пассажиры должны прикрепить эту карту на видном месте к пальто или платью.

ונתן איור קובץ של איור יצאם שישמרו על דיוקן קצרות כיום א יחזיקו איור איור באמצע ארבע קלייד אוף של אנטיקוויטתים שליל.

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migrants believed that they had arrived in New York.

Similarly, residents of Ellis Island— all of whom lived on the filled portions of the Island— believed that they lived in New York. Documents executed by residents of the Island during the relevant period consistently referred to their address either as “Ellis Island, N. Y.,” or as “Ellis Island, New York.” These references appear not only in voting records, but in other miscellaneous documents as well. Given the fact that the U. S. Postal Service placed the Island in a New York postal zone, presumably the residents regularly received mail addressed to “Ellis Island, N. Y.” There is no evidence that any of those residents prepared or received any mail or other documents describing their residence as in New Jersey.

Thus, the available evidence supports the proposition that the new immigrants, as well as everyone who lived on the Island during that period, thought that all of Ellis Island was a part of New York. Significantly, as far as I am aware, there is not a single indication in the voluminous record⁸ that any immigrant or any resident thought that Ellis Island, in whole or in part, was a part of New Jersey.

VI

On the few occasions identified in the record when it was necessary to obtain state or municipal assistance for law enforcement or fire protection on Ellis Island during the relevant period, those services were performed by New York employees. Thus, in the 1897 fire, “New York rushed twenty policemen to keep order among the panic-stricken immigrants.”⁹ In 1916, New York City firemen extinguished a fire in the seawall cribbing. In 1934, New York

⁸The record contains over 2,000 documents (some of which are hundreds of pages long) and over 4,000 pages of trial testimony.

⁹Corsi 114.

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police investigated a fatality that resulted from a construction accident on the Island. In 1942, the New York City Police Department formed a special squad to assist federal officials in questioning immigrants arriving at the Island. Thus, despite the fact that federal officials were in control of the Island, these incidents are consistent with the view that New York retained an interest in the Island, but New Jersey did not.¹⁰

VII

When courts considered the question, they consistently assumed or decided that Ellis Island was a part of New York. Thus, in 1915 one New York State court assumed that it had jurisdiction over an action for assault allegedly committed on the Island.¹¹ In 1931, the United States Court of Appeals for the Third Circuit, which includes New Jersey, held that the District Court for the District of New Jersey did not have jurisdiction over a habeas corpus petition filed by an alien detained on the Island.¹² The

¹⁰The Master discounted this evidence by stating that there was evidence that New Jersey also policed the Island. Final Report of Special Master 114. The evidence cited, however, involved a single incident in 1966—over 10 years after the end of the relevant period. Tr. 3636–3637 (Aug. 8, 1996); see also 3 H. Unrau, *Ellis Island, Statute of Liberty National Monument, New York-New Jersey* 1173 (1984).

¹¹*Rettig v. John E. Moore Co.*, 90 Misc. 664, 154 N. Y. S. 124 (App. Term 1915).

¹²The first contention is predicated on the assertion that Ellis Island is in the District of New Jersey and therefore within the jurisdiction of the District Court for that district.

“The island is property of the United States, ceded to the United States by the State of New York in 1808 and since 1891 used by the United States as an Immigration Station for the Port of New York. When it was property of New York it was within one or another of the counties of that state or within the waters thereof. With respect to federal jurisdiction over such counties and their waters, the United States by statute (28 U. S. C. §178, Judicial Code, §97) prescribed the territorial limits of the Southern District of New York and the Eastern

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federal judges sitting in the Southern District of New York exercised jurisdiction over cases arising out of the detention or deportation of aliens on Ellis Island. During the relevant period there is no evidence that any judge, state or federal, considered the possibility that Ellis Island might be in two States. Nor is there any evidence that any judge, state or federal, ever held that Ellis Island was a part of New Jersey.¹³

District of New York as embracing certain counties 'with the waters thereof' and provided that the District Courts for the Southern and Eastern Districts 'shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk. * * * ' This it would seem vested federal jurisdiction with respect to Ellis Island in the District Courts of the two named New York districts. But the relator, showing that by the Act of June 28, 1834 (4 Stat. 708) a boundary line between the states of New York and New Jersey had been run down the Hudson River to the sea, 'submitted' that Ellis Island is on the westerly or New Jersey side of the harbor and therefore is in- or 'not entirely' outside- the District of New Jersey and within at least 'the concurrent jurisdiction of the District Court for the District of New Jersey and the District Courts for the Eastern and Southern Districts of New York.' Jurisdiction is determined by statute, not by geography. The statute expressly, and therefore exclusively, placed federal jurisdiction of Ellis Island in the District Courts of the two named New York districts. The running of a boundary line in 1834 through the waters dividing the states of New York and New Jersey cannot disturb the statutory designation of jurisdiction in 1910.

"Therefore we hold that the judge of the District Court for the District of New Jersey had no power to issue the writ of habeas corpus prayed for in this case, to be executed outside of the territorial jurisdiction of his court." *United States ex rel. Belardi v. Day*, 50 F. 2d 816, 817 (CA3 1931).

¹³In a more recent case, the Court of Appeals for the Second Circuit reached the same conclusion as the Third:

"Ellis Island remains a part of New York by acknowledgment of the government and without objection (except in this case) by New Jersey. It has been a component of New York Congressional, State Senate and Assembly districts for more than one hundred fifty years. As part of New York County, it lies within the territorial jurisdiction of the United

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VIII

The Court discounts the probative force of most of New York's evidence by repeatedly reminding us that New York has the burden of proving prescription, and in many instances has failed to prove that New Jersey had actual notice of what happened on the Island, or, more narrowly, that the relevant events occurred on the filled portion rather than the original three acres. The discount would be appropriate if we were reviewing the history of a remote atoll in the far Pacific. In fact, Ellis Island was an enclave entirely within the geographic boundaries of New Jersey; a ferry connected it with Jersey City, which is less than a quarter of a mile away. Particularly during the first few decades of the prescriptive period, it teemed with activity that was open and notorious. Moreover, given the fact that 90% of the Island was filled land, it is surely reasonable to infer that whenever the specific location of a prescriptive event was in doubt, it is more likely than not that it occurred in what is now claimed to have been New Jersey.

Not only should we presume notice to New Jersey of what was occurring within the outer boundaries of the State; we must also presume that New Jersey was aware

States District Court for the Southern District of New York, 28 U. S. C. §112, and of New York's first judicial district, N. Y. Const. art. VI, §6; see *Rettig v. John E. Moore Co.*, 90 Misc. 664, 154 N. Y. S. 124 (N. Y. App. Term 1915) (civil suit for assault committed 'upon government property at Ellis Island'). The government treats the entire area of Ellis Island as part of Manhattan for census purposes and has assigned a New York postal zip code to the Island. Those who have resided on Ellis Island, both before and after the Compact, have been treated as citizens of New York. In order to avoid liability in this case, the government asserts for the first time that certain portions of Ellis Island belong to New Jersey. However, long acceptance of the status quo counts for a great deal in matters of territorial disputes between states." *Collins v. Promark Products, Inc.*, 956 F. 2d 383, 387-388 (1992).

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of the official acts of both New York and the United States that were predicated on the understanding that all of Ellis Island was in New York. Judicial districts, legislative districts, postal districts, and census districts all included the entire Island within New York.

IX

The only significant evidence¹⁴ offered by New Jersey to support the proposition that it did not accept New York's prescription of the entire Island relates to Representative Norton's efforts in 1934 and 1935 to persuade federal officials to use New Jersey labor in construction work on Ellis and Bedloes Islands. In her letter of August 25, 1934, she advised the Division of Procurement of the Treasury Department that a local union in her home city contended¹⁵ that "these islands are part and parcel of

¹⁴There was also evidence that Hudson County, New Jersey, had placed Ellis Island on its tax roles. The county, however, did not ever attempt to collect taxes; because the Island was owned by the Federal Government, Ellis Island was marked as "exempt."

¹⁵In a letter of July 31, 1934, the union wrote to Representative Norton:

"At the present time on Ellis Island there are under the course of erection several buildings and from maps obtained by us of the Department of Conservation and Development of the State of New Jersey, the latest edition of which was printed and revised in 1932 [*sic*] show specifically that this Island is entirely within the boundary lines of the State of New Jersey. This being the case we feel that Unions in New Jersey should have jurisdiction over this work and have protested to our International Union for the right to cover this operation." N. J. Exh. 18 (Letter of Thomas F. Moore, Secretary, Bricklayers', Masons' & Plasterers' International Union, Local No. 10, New Jersey, to Honorable Mary T. Norton).

Similarly, on August 18, 1934, the union wrote to Representative Norton:

"Since the middle part of June this union has sought jurisdiction of those Islands lying in New York Bay, known as Ellis and Bedloes Islands, from the Executive Board of our International Union. It is our contention that these Islands are part and parcel of the State of

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the State of New Jersey.”¹⁶ On March 19, 1935, she again advanced the position that Ellis Island was in New Jersey. When the Treasury Department ultimately rejected her submission, the matter appears to have been dropped.

Representative Norton’s correspondence fails to establish nonacquiescence for several reasons. First, it demonstrates that people in New Jersey were actually aware of what was happening on Ellis Island. Second, when the Treasury Department ultimately rejected Representative Norton’s submission, she acquiesced in that rejection and the entire State joined in that acquiescence for another 20 years. Finally, the fact that her correspondence espoused the manifestly untenable position that the entire Island belonged to New Jersey makes it rather clear that she was not advancing a serious claim on behalf of the State.¹⁷

New Jersey. We have also obtained official maps of the State of New Jersey . . . which shows [*sic*] that these Islands lie within the boundary lines of the State of New Jersey.” N. J. Exh. 28 (Letter of Thomas F. Moore, Secretary, Bricklayers’, Masons’ & Plasterers’ International Union, Local No. 10, New Jersey, to Honorable Mary T. Norton).

¹⁶N. J. Exh. 29 (Letter of Honorable Mary T. Norton, House of Representatives, to Division of Procurement, Treasury Department).

¹⁷The Court points to a few incidents when federal officials equivocated over whether Ellis Island belonged to New York or New Jersey. *Ante*, at 33–38. These incidents do not, of course, speak to New Jersey’s nonacquiescence; nonetheless, they are relevant to New York’s claims of prescription. None of these incidents, however, is significant.

First, maps from the Harbor Line Board from 1890 to 1911 labeled Ellis Island as being part of New Jersey. Yet since only the original island existed in 1890, the first mapmaker obviously made a mistake; given the fact that the state designation had no practical consequence, it is reasonable to conclude that the mistake was simply carried forward in subsequent maps. Second, the Federal Government purchased the underwater land surrounding the Island from New Jersey in 1904; but because the 1834 Compact gave New Jersey property rights to such land, it is fair to assume that the Federal Government merely saw itself as purchasing this property from its rightful owner. Third, Edward Corsi, the Commissioner of Immigration on Ellis Island, applied to New Jersey’s Board of Commerce and Navigation for permission to construct

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X

JUSTICE BREYER's concurrence merits a separate comment. He places great reliance on Charles Wyzanski's statement that Ellis Island was not a part of either New Jersey or New York during the prescriptive period, but rather was a territory of the United States not falling within the jurisdiction of any of the then 48 States. See *ante*, at 2. Wyzanski, who was then the Solicitor of Labor, made this statement during the Federal Government's consideration of Representative Norton's request. As already noted, after full consideration, the Government re-

a new seawall in 1933. One of the blanks on the permit application asked "[w]here work is contemplated"; Corsi entered "New York." N. J. Exh. 10. So while it is unclear why Corsi applied to New Jersey for the permit, it is clear from the face of the document that Corsi believed the work was being performed in New York. Fourth, after Representative Norton argued that some of the jobs on Ellis Island should be given to New Jersey residents, federal officials initially proposed a compromise solution, dividing the jobs between New Jersey and New York; as noted, however, the officials eventually concluded that all of Ellis Island belonged to New York. Finally, from 1947 to 1949, the Department of Labor used New Jersey wage rates to determine wages for construction projects on the Island; in 1949, however, the Secretary reversed his decision—because "additional data and more current information ha[d] been assembled." N. J. Exh. 90.

These five incidents do not undermine New York's claim of prescription. Moreover, these isolated incidents are dwarfed by the Federal Government's repeated statements and actions that treated all of Ellis Island as a part of New York. The Immigration Service, the federal agency most intimately involved with the Island, clearly believed that all of Ellis Island was part of New York, as is evidenced by dozens and dozens of documents in the record. Similarly, the Department of Public Health, the Navy Department, the Department of Treasury, and the Justice Department all repeatedly treated Ellis Island as a part of New York. (Although my analysis does not turn on this point, it is worth noting that many of these documents specifically refer to the filled portions of the Island.) In addition, as far as I am aware, every Act of Congress that mentioned the location of Ellis Island gave its location as New York.

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jected her request.

It is true that Wyzanski was an exceptionally able lawyer, but it is perfectly clear that in this instance he was simply wrong. Like numerous other federal enclaves within the United States, Ellis Island was unquestionably subject to the jurisdiction of the State or States in which it was located. Nevertheless, even though Wyzanski was clearly wrong, I would agree with JUSTICE BREYER that Wyzanski's opinion would be relevant if it stated a view that was expressed by others during the prescriptive period. In fact, there is not a shred of evidence that anyone else shared that view, either before or after Wyzanski made the statement. The prevailing view during the relevant period was that shared by the legislators who drew the boundaries of the congressional districts, the census takers who treated Ellis Island residents as citizens of New York, and the New York officials who supervised their voting in New York and recorded the births, marriages, and deaths that occurred on the Island. Indeed, one may infer from JUSTICE BREYER's opinion that his grandparents shared that view as well.

XI

In my opinion the conclusion that New York acquired jurisdiction over the entire Island by prescription is supported not merely by a preponderance, but by clear, convincing, and uncontradicted evidence.¹⁸ With all respect, I am persuaded that the Court's contrary conclusion rests on a hypertechnical focus on detail that overlooks the significance of the record as a whole. What I believe was apparent to virtually everyone in New York and New Jer-

¹⁸Because I think it clear that New York has acquired the power to govern the entire Island by prescription, it is not necessary for me to comment on the eminently sensible approach set forth by JUSTICE SCALIA, *post*.

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sey, as well as to the millions of immigrants who entered our melting pot through the Ellis Island Gateway during the early part of this century, is somehow obscured in a voluminous trial record. The implausibility of the Court's conclusion is underscored by the strange boundary line that it has decreed.

Instead of the entire Island constituting an enclave within the borders of New Jersey, now New York's share of the Island is an enclave within New Jersey's share of the Island. The new state line intersects three buildings—the Main Building, the Baggage and Dormitory Building, and the Boathouse Building. Thin strips of New Jersey's sovereign territory separate New York from the ferry slip where boats operated by the City of New York have been delivering millions of visitors annually. By ending New York's sovereignty over a large portion of the ferry slip in front of the Main Building, well short of the slip's seawall, the decree denies New York access to, and control over, the area of land most intimately and functionally connected to the operation of the Main Building. The Master correctly stated that this result is “neither just nor fair to New York.”¹⁹

In my opinion it is not only the bizarre boundary that is unfair to New York. It is the failure to draw the common-sense inference that neither State could have contemplated such a bizarre division of the Island during the prescriptive period that lasted for over 60 years. During that entire period both States most certainly treated Ellis Island as part of a single State. Unquestionably, that State was New York.

Accordingly, I respectfully dissent.

¹⁹Final Report of Special Master 163.