



10-1984

United States v. Louisiana

Lewis F. Powell Jr.

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Grant

Parties
have
approved
\$50,000
additional

GRANT additional compensation
but defer release of Master
Schickels

May 24, 1984 Conference
List 1, Sheet 4

No. 9 Original

UNITED STATES

v.

LOUISIANA, et al.

Petition for Allowance of
Additional Compensation
and Reimbursement of
Expenses to the Special
Master

[Special Master:
Walter P. Armstrong]

SUMMARY: The Special Master requests a final allowance of fees for his four years of service, bringing his total award to \$100,000.

FACTS: Petr was appointed the Special Master in this litigation 15 years ago in 1969. The present, and possibly the last, phase of the case commenced in 1980 when motions by Mississippi and Alabama and cross-motions by the United States were referred to petr as the Special Master. In November 1982 the Court approved an interim award of \$50,000 for petr's services from February 1980 through July 31, 1982.

Grant additional compensation but defer release of master for
the reasons stated herein. CRR

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Since then the Special Master received 10 post-trial documents, heard post-trial argument and received four additional briefs. On Feb. 10, 1984 the Special Master forwarded to counsel his proposed final report. Written comments were filed and a conference was held to consider the comments. On Apr. 9, 1984 the Final Report (56 pages) was delivered to the Clerk.

CONTENTIONS: Petr requests a total fee of \$100,000, \$50,000 over his interim award. Half the award will be initially paid by the United States. Alabama and Mississippi will initially pay one quarter of the award each. The states and the United States have approved and consented to the application. The Special Master also requests that the final allocation of all payments to the Special Master "award the conclusion of these proceedings, at which time any necessary adjustment can be made." Finally, the Special Master requests that he "be relieved of any further duties and obligations under the references of February 19 and March 17, 1980, pending further orders of the Court."

Petr notes that before filing his report he heard 11 days of trial at which more than 350 exhibits were filed. Before trial he had received some 74 documents including 11 depositions which totaled 1,291 pages. The "docket" for the four years that the litigation has been before the Special Master reflects the filing of some 94 documents.

DISCUSSION: A review of the Special Master's 56-page report reveals the complexity of this litigation. The Special Master dealt with such concepts as straight baselines, juridical

bays, historic bays and historic territorial waters both preceding and after the United States's adoption of the Convention on the Territorial Sea and the Contiguous Zone (the Geneva Convention). Not only did the parties disagree on the facts and the United States' historic position but the United States also argued that it was entitled to change its position.

Although the Special Master has not provided the Court with a specific breakdown of the hours he spent on the case, the parties have all approved the application and both the length of time that the litigation consumed and its complexity suggest that the requested allowance is reasonable. If the Court has any questions as to the amount requested, the Special Master might be given the opportunity to supplement his application.

The Special Master's specific breakdown of the payment of the allowance and expenses properly follows the interim division agreed to by the parties. The breakdown also credits Mississippi with the additional payment of \$12,500 that the Court authorized Mississippi to advance (Oct. 31, 1983 order). The Special Master notes that the final allocation among the parties should await the conclusion of the proceeding.

Finally, the Special Master requests to be relieved of any further duties and obligations pending further orders by the court. The Court may want to defer relieving the Special Master until it enters a final decree. The Special Master has no further duty pending the Court's review of his report. However, if the Court relieved the Special Master now, it would have to reappoint him if it wanted to remand all or part of the report to the Special Master. Since he has no obligations pending the

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Court's decision on his report, there is no harm in deferring his release.

CONCLUSION: The complexity and longevity of this action, as well as the parties' consent, support the Special Master's request for additional compensation. The Court, however, should defer the Master's request to be relieved until the Court reviews the Special Master's report.

5/21/84

Schickele

PJC

Helpful memo

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{ SCHEDULE EXCEPTIONS
FOR ORAL ARGUMENT
Schickele

September 24, 1984 Conference
List 21, Sheet 4

No. 9 Original

UNITED STATES

v.

LOUISIANA, et al.

Exceptions of the United
States to the Report of
the Special Master

Exceptions of Alabama to
the Report of the Special
Master

Exceptions of Mississippi
to the Report of the
Special Master

[Walter P. Armstrong, Jr.,
Special Master]

SUMMARY: The Special Master finds that Mississippi Sound is both a "juridical and a historic bay" and therefore its waters are inland waters and all submerged lands belong exclusively to the States. The United States has filed exceptions contesting the Master's conclusion. The United States claims that the portions of Mississippi Sound more than three miles from the

I agree that oral arguments should be scheduled.
Consolidation with U.S. v. Maine likewise appears to be
a good idea. Lee

mainland or an island belong to the United States. Alabama and Mississippi have filed exceptions advancing additional grounds of support for the Master's conclusions.

The Court may wish to schedule oral argument on the exceptions because they raise a number of questions concerning the determination of boundaries which have national and international ramifications. Argument might be scheduled in tandem with argument in No. 35 Original, United States v. Maine, as both cases raise the issue of whether an island may be considered an extension of the mainland.

BACKGROUND: In 1960 in renewed proceedings following passage of the Submerged Lands Act of 1953, 43 U.S.C. §1301 et seq., the Court held that the grant of territorial submerged land to Alabama and Mississippi extended no more than three nautical miles into the Gulf of Mexico from their respective coastlines. United States v. Louisiana, 363 U.S. 1, 29-83, (1960). The Court did not, however, locate the coastline from which the three-mile belt is to be measured.

*Approved
3 mi
limit -
that did not
not locate
the coastline*

In due course, it became clear that the parties disagreed on the treatment of Mississippi Sound, the water area immediately south of the mainland shore of Mississippi and Alabama, and north of certain 'fringe islands' (see exhibit 1).

The two states claim the whole of the Mississippi Sound as inland waters, so that their coastlines begin at the islands.

*The
states
claim*

The United States rejects the inland status of Mississippi Sound and, accordingly claims as areas of exclusive federal interest those portions of the Sound that are more than three miles from either the mainland or any island. Such pockets exist because some of the barrier islands are more than six miles from the mainland.

To resolve this conflict the parties filed motions and cross-motions for supplemental decrees. The Court referred all the pleadings to the already appointed Special Master. 444 U.S. 1064 (1980) and 445 U.S. 923 (1980). A further motion for relief by Mississippi was referred to the Special Master in 1982. 457 U.S. 1115 (1982). After extended proceedings, the Special Master submitted his Report on April 9, 1984, recommending a decree in favor of the states. The Court ordered the Report filed and called for exceptions.

The United States filed exceptions to the Master's Report. Both Alabama and Mississippi also filed exceptions urging additional grounds of support for the Master's conclusions. Alaska has filed an amicus brief addressing issues that are of particular concern to it in its boundary litigation (United States v. Alaska, No. 84 Original, presently pending before a Special Master).

SPECIAL MASTER'S REPORT: The Master starts his Report by explaining the legal context for the dispute. In United States v. California, 381 U.S. 139 (1965) this Court adopted the provisions of the Convention on the Territorial Sea and the Contiguous Zone (the Geneva Convention) as the basis for determining the seaward boundaries of various states. Under Articles 3 and 10 of the Geneva Convention the seaward boundaries of the mainland and islands extend from the low water lines along the coasts. This creates enclaves of high seas when the islands are more than six miles from the mainland.

Article 4 of the Geneva Convention avoids this problem by allowing a country to draw its boundary along a "fringe" of

The "straight line" method

→ { Problem is avoided where there is a "fringe of islands"

We adopted Geneva convention
enclaves when islands are more than 6 miles from mainland

islands, thus enclosing the water between the islands and the mainland. This Court, however, has suggested that the use of straight baselines is an optional method of establishing boundaries and "should be left to the branches of Government responsible for the formulation and implementation of foreign policy." United States v. Louisiana, 394 U.S. 11, 72-73 (1969). Here the United States has declined to adopt the straight baseline method.¹ The states nonetheless argue that the United States has by its action (although not explicitly) adopted the straight baseline method. A similar argument was made by Louisiana in a prior proceeding before the same Master. The Master rejected the argument and the Court overruled Louisiana's exceptions. 420 U.S. 529 (1975).

U.S.
rejects

Since the United States does not utilize the straight baseline method, the Master turns to two other methods for treating the Mississippi Sound as inland water.

In view
of rejection
by U.S.

of straight
baseline method
5/14

A. Juridical Bays. Under the Geneva Convention, the waters within a juridical bay are considered inland waters. The Master notes that there are four requirements for a juridical bay:⁴ (1) It must be a well marked indentation; (2) its penetration must be in such proportion to the width of its mouth as to contain landlocked waters and to constitute more than a mere curvature of the coast; (3) it must have a closing line of twenty-four miles or less; and (4) it must meet the semi-circle test.¹

4
requirements
of
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turns
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semi-circle test

¹This last test is set forth in Article 7 of the Geneva Convention as "[A]n indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation."

Before the criteria can be applied to Mississippi Sound, the boundaries of the Sound must be determined. This involves the characterization of two islands; the Isle Au Pitre to the west and Dauphin Island to the east. (see exhibit 1) Article 7 of the Geneva Convention does not encompass bays formed in part by islands which cannot realistically be considered part of the mainland. When faced with the question of whether an island could be treated as part of the mainland, the Court in United States v. Louisiana, 394 U.S. 11, 66 (1969) stated:

While there is little objective guidance on this question to be found in international law, the question whether a particular island is to be treated as part of the mainland would depend on such factors as its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island or curvature of the coast.

Relevant to whether there is a "juridical" bay formed by islands

The Court also suggested that the Master might consider "any other criteria and any evidence he finds it helpful to consider" to determine whether an island is integrally related to the mainland.

The western end of the Sound is not in issue as the United States admits "that the Isle au Pitre might be treated as an extension of the Louisiana mainland pursuant to the 1969 Louisiana decision [394 U.S. 11]."

The treatment of Dauphin Island is critical because if Dauphin Island is not considered as part of the mainland, there may be no eastern headland to enclose the Sound as a bay. Dauphin Island is separated from the mainland at Cedar Point by 1.6 nautical miles. The depth of the water in the straits is no greater than six feet except for the dredged channel. The island is joined to the mainland by a bridge and is inhabited.

The Master bases his conclusion that Dauphin Island is part of the mainland on the fact that the island is in the mouth of Mobile Bay, which is a juridical bay. The Master reasons:

There seems to be no doubt that under the Geneva Convention internal waters are to be subsumed under the general category of mainland. If this is correct, then Dauphin Island, as it adjoins the mainland, is clearly an extension thereof; in effect, a peninsula extending westwardly therefrom and separating the Gulf of Mexico from Mississippi Sound. Report at page 14.

Once Dauphin Island is treated as part of the mainland, the Master has no trouble finding that the Sound meets the other criteria for a juridical bay. The total water distances between the Isle au Pitre and Dauphin Island, along a line formed by the barrier islands, totals 21.7641 miles, less than 24 miles. The Master finds that the Sound is a well-marked indentation with six natural entrance points between the islands that form the mouth of the juridical bay. He states "[T]he relation of maximum penetration to width of mouth is therefore .4167:1, which in my opinion is enough to constitute more than a mere curvature of the coast." Report at page 20.

The final consideration is whether the waters of the Mississippi Sound are so enclosed as to be considered landlocked. The Master notes that the straight line distance from Isle au Pitre to Dauphin Island is approximately 45 miles. The water gap distance is 21.7641 miles and none of the gaps between the islands is more than six miles in width. The Master concludes that the waters in the Sound are landlocked and that the Mississippi Sound is a juridical bay.

B. Historic Bays. The Special Master next addresses the states' argument that the Sound is a historic bay. The

Geneva Convention provides that its definitions shall not apply to limit a state's claim to historic inland waters. In United States v. Alaska, 422 U.S. 184 (1975) the Court summarized the criteria for a historic bay:

The term "historic bay" is not defined in the Convention. The Court, however, has stated that in order to establish that a body of water is a historic bay, a coastal nation must have "traditionally asserted and maintained dominion with the acquiescence of foreign nations." United States v. California, 381 U.S. at 172. . . . Furthermore, the Court appears to have accepted the general view that at least three factors are significant in the determination of historic bay status: (1) the claiming nation must have exercised authority over the area; (2) that exercise must have been continuous; and (3) foreign states must have acquiesced in the exercise of authority. Louisiana Boundary Case, 394 at 75, . . . (422 U.S. at 189).

The states claim that Mississippi Sound has been claimed by the nations that possessed the surrounding mainland and islands since at least 1756. The United States, however, denies that the Sound is a historic bay. In United States v. California, 381 U. S. 139 (1965) the Court held that the federal government's disclaimer was entitled to considerable deference. The Master and the states, however, note that in the Louisiana Boundary Case, 394 U.S. at 77, n. 104 the Court stated:

It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of past events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in United States v. California.

The Master found that "during the period from 1756 to 1819 what is now Mississippi Sound was apparently considered by

Our decision in U.S. v. Alaska - the criteria apply to whether the "nation" (the U.S.) has claimed the "bay".
U.S. denies in this case that it has claimed

whatever nation possessed the surrounding mainland and islands as part of its possession." Report at page 28. The Master finds that the United States treated the Mississippi Sound as inland water until 1971. He notes that the Sound is relatively shallow and that its navigational utility as an intracoastal passageway was recognized as early as 1817. In 1822 the Sound was described in Congress as a "little interior sea" and in 1840 plans were proposed for its military defense. Plans for the fortification of Ship Island, one of the fringe islands, were proposed as early as 1847, authorized in 1857 and construction was underway when the Civil War broke out. The fort had a minor role in the Civil War and was eventually abandoned in 1875. Furthermore, in various papers filed with this Court² and Congress, the United States has characterized the Sound as inland waters. The Master also concluded that treating the Sound as inland water was consistent with the United States' well-known international position on boundaries.

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The Master notes that this Court's prior decisions are not dispositive. In Louisiana v. Mississippi, 202 U.S. 1 (1906), an action between states in which the United States was not a party, the Court appeared to suggest that the Mississippi Sound was inland water. However, in United States v. Louisiana, 363 U.S. 1 (1960), the Court held that the states' acts of admission did not necessarily convey title to all of the Sound.

²In its 1958 Brief in Support of Motion for Summary Judgment on Amended Complaint in an earlier phase of this case, the United States construed Louisiana v. Mississippi, 202 U.S. 1 (1906) as describing Mississippi Sound as inland water which therefore passed to the States on their entry into the Union.

The Master found that the United States' first public disclaimer concerning Mississippi Sound was made in April 1971 by a publication of a set of maps delineating a three-mile territorial limit within the Sound. He opined that:

They undoubtedly undertake to rescind the concession made by the United States in its brief in an earlier stage of this proceeding. However under the circumstances it is difficult to accept the disclaimer as entirely extrajudicial in its motivation. It would appear to be more in the nature of an attempt by the United States to prevent recognition of any preexisting historic title which might already have ripened because of past events but which was called into question for the first time in a domestic lawsuit.
Report at page 47.

*Masters
reason
for holding*

The Master concludes that Mississippi Sound is a historic bay because (1) the United States exercised authority over the Sound by the positions it took in international affairs, before the Court and before Congress and by fortifying Ship Island and patrolling the Sound, (2) the exercise was continuous from the Louisiana Purchase in 1803 to 1971, and (3) foreign states have acquiesced in the exercise of authority as they knew or should have known of the exercise and did not protest.

THE UNITED STATES' EXCEPTIONS: The SG presents three major arguments against the Master's conclusions. They are: (1) Dauphin Island is not an extension of the mainland and does not form a juridical bay; (2) even if Dauphin Island is properly treated as an extension of the mainland, the whole Mississippi Sound does not qualify as a juridical bay; and (3) the Sound is not properly deemed an historic bay. The SG suggests that the Court need not give the Master's Report much deference because the Master's errors are errors of law not fact. The exceptions

do not argue disputed facts or the weight to be given evidence, but the legal reasoning and conclusions drawn from the evidence.

The SG's first point is that even though Mobile Bay is a juridical bay and thus inland water, it is still water and not land. Thus, the fact that Dauphin Island is on Mobile Bay does not allow the island to be considered an extension of the mainland. The argument that inland water should be treated as part of the mainland was made by Louisiana ten years ago in an earlier phase of this case. The same Special Master rejected the argument in his Report and the Court rejected Louisiana's exceptions. 420 U.S. 529 (1975). The principle of equity of treatment suggests that Alabama and Mississippi should not be more generously treated than Louisiana. Precedent aside, the Master's approach is wrong because although a nation's sovereignty extends to both the mainland and inland waters, the Convention distinguishes between the two. Thus, Article 7(3) of the Convention--in applying the semi-circle and the 24-mile rule--measures only the water gaps not the islands. The Master's approach allows for an unacceptable extension of sovereignty because distant islands could relate back through other islands to the waters of a bay and to the mainland. The SG suggests that "the Special Master's assimilation of inland waters to land would, if accepted here, invite substantial mischief in other cases."

The SG also argues that Dauphin Island, quite apart from its relationship to Mobile Bay, may not be considered an extension of the mainland. The SG emphasizes the 1.6 mile wide strait that separates Dauphin Island from the mainland and the

shape of the island. The SG refers the Court to his arguments against treating Long Island as an extension of the mainland in No. 35 Original, United States v. Maine (Rhode Island and New York), which is pending before the Court.

If Dauphin Island is an extension of the mainland, the juridical bay thus created extends to the nearest headland on the mainland (Point aux Cheres) and does not include the entire Sound. (see exhibit 1) The SG argues that the Court has determined that "Article 7 does not encompass bays formed in part by islands which cannot realistically be considered part of the mainland." Lousiana Boundary Case, 394 U.S. at 67 (footnote omitted). The parties generally agree that the barrier island cannot be deemed extensions of the mainland and the distance from Isle au Pitre to Dauphin Island, excluding the islands, exceeds 24 miles.

The SG admits that there is some evidence of treatment of Mississippi Sound as inland water. He argues, however, that the Master failed to give sufficient deference to the federal government's disclaimer and failed to recognize that the disclaimer required the States to present clear evidence that historic title had already ripened because of past events. The SG notes that no state has met this burden of proof, although California, Louisiana, Florida and Alaska have tried, and "there is no warrant for singling out Mississippi Sound as a uniquely stronger case."

The SG discounts the history of Mississippi Sound prior to the admissions of Mississippi and Alabama to the Union. He notes that the prior sovereigns did not differentiate inland from territorial jurisdiction. Furthermore, upon their

admission to the Union, the states relinquished their colonial claims, except as the United States chose to confirm them.

The SG finds the treatment of the Sound last century inconclusive. He notes that initial plans to fortify the Sound were rejected on the ground that the Sound was too open to the sea to be defensible. Efforts were made to fortify Ship Island but the fortification was never completed. Furthermore, the abandonment of the fort should be as significant as its construction. The SG also suggests that the military fort was not designed "to impede peaceful vessels engaged in innocent passage" and was not inconsistent with treating the Sound as territorial waters rather than inland waters.

The SG suggests that this Court's opinion in Louisiana v. Maryland, 202 U.S. 1, although it might be so read, does not hold that the Sound is inland water. He notes that United States was not a party to the litigation and should not be barred by it. The United States in 1958 did state in a brief to this Court that Louisiana v. Mississippi, supra, described the Sound as inland water. However, in litigation involving Louisiana, the United States initially conceded certain areas to Louisiana and then changed its position. This Court held that the United States was not bound by its initial position. Louisiana Boundary Case, 394 U.S. at 73-74 n. 97. Here, the United States has never made an express concession.

The SG finds the remaining materials mentioned by the Master to be less than compelling. Some items such as the 1951 letter from the Acting Secretary of State have already been rejected as inconclusive. United States v. California, 381 U.S. 139, 163-165 (1965). The most that can be said is that foreign

countries may have had the impression that the United States favored a general formula for boundaries that would treat the Sound as inland water. The impression of a general policy is not a specific claim and is far short of the type of "effective, persistent and notorious exercise of inland jurisdiction" that the states must demonstrate to overcome the United States' present disclaimer.

MISSISSIPPI'S EXCEPTIONS: Mississippi advances three arguments as alternate bases for the conclusion that Mississippi Sound is inland water. The arguments are: (1) judicial deference to the United States' disclaimer of Article 4 straight baselines is inappropriate in this case; (2) Mississippi Sound qualifies as inland waters regardless of the treatment of Dauphin Island as an extension of the mainland; and (3) Mississippi's Act of Admission confirms the state's title to Mississippi Sound.

Mississippi's first argument is premised on the Master's finding that in ratifying the Geneva Convention, the United States departed from its previously held position. Prior to ratification, the United States subscribed to the "ten-mile rule" which provided that "waters enclosed between the mainland and off-lying islands which were so closely grouped that no entrance exceeded 10 nautical miles in width were deemed inland waters." Mississippi notes that in United States v. Louisiana, 394 U.S. 11 (1969) when the Court deferred to the federal government's right to opt for straight baselines, the Court talked about requiring the United States to take a "novel, affirmative step of adding to its territory." 394 U.S. at 77.

Here the use of straight baselines is not novel and does not enlarge the traditional international boundaries of the United States. The United States conceded Mississippi Sound to be inland water over a quarter century ago and the waters have become part of Mississippi's territory, protected by Article IV, Section 3 and 4 of the United States Constitution.

Mississippi's second argument is that a careful analysis of the Convention and the considerations behind its final language leads to the conclusion that an arm of a bay may be composed of a broken line of islands. Mississippi concludes that the fringe islands are such an arm and therefore the Sound is a juridical bay even if Dauphin Island may not be considered an extension of the mainland.

Finally, Mississippi argues that its Act of Admission established Mississippi's boundary on the seaward side of the barrier islands. Mississippi recognized that in United States v. Louisiana, 363 U.S. 1, 67-68, 81 (1960) this Court held that the language of Louisiana's and Mississippi's acts of admission "evidently contemplated no territorial sea whatever."

Mississippi distinguishes the case on the grounds that (a) the states were attempting to extend their territories beyond the three miles approved by the Submerged Lands Act, 43 U.S.C. §1301 et. seq., and (b) all the islands on the coast of Louisiana were within six miles of the mainland. Mississippi notes that in the Louisiana Boundary Case, 394 U.S. 11 (1969), when the Court allowed the United States to withdraw its concessions to Louisiana, the Court noted that Louisiana had not relied to its detriment on the concessions. 394 U.S. 73 n. 97. Should the

Court reject all the other grounds for finding Mississippi Sound to be inland water, Mississippi requests a remand to the Master to allow it to present evidence of detrimental reliance in the United States' previous position.

ALABAMA'S EXCEPTIONS: Alabama presents two exceptions to the Master's Report: (1) Alabama's Act of Admission, as historically interpreted, establishes Alabama's historic land boundary along the seaward side of Dauphin Island; and (2) if Dauphin Island is an extension of the Alabama mainland but the whole Mississippi Sound is not a juridical bay, the Court should rule that there is a smaller jurisdictional bay with a mouth located between the western end of Dauphin Island and Point Aux Chenes on the mainland.

Alabama recognizes that pursuant to this Court's opinion in United States v. Louisiana, 368 U.S. 1 (1960) its Act of Admission on its face does not cover the Mississippi Sound. Alabama contends, however, that the Act, as historically interpreted, extends Alabama's coastline to the seaward shore of Dauphin Island. Alabama notes that in Pollard's Lessee v. Hagan, 3 How. 212 (1845) this Court held that a state upon admission to the Union owned the land beneath navigable inland waters within their boundaries. Furthermore, the rights acquired upon admission vested on admission and are permanent. See Oregon v. Corvallis, 429 U.S. 363 (1977). Consequently, if Alabama establishes an Act of Admission boundary on the seaward side of Dauphin Island, the rights acquired on admission may not be taken away. Alabama argues that preadmission descriptions of the area as well as post-admission interpretations all construed

Alabama's boundary to extend to Dauphin Island. Alabama notes that in Louisiana v. Mississippi, 202 U.S. 1 (1906) this Court described Mississippi Sound as inland water and lists some 18 incidents between 1940 and 1979 in which the federal government represented Mississippi Sound as inland water.

Alabama has always maintained that its jurisdiction covers the Sound and Dauphin Island. Since at least 1929 Alabama has enforced its criminal laws in the waters between the mainland and Dauphin Island and around Dauphin Island. See Basarge v. State, 121 So. 427 (Ala. Cr. App. 1929) cert. denied, 121 So.2d 428 (Ala. 1929). Since 1930 Alabama has entered into over 50 oil and gas leases in Mississippi Sound, many of which concern the areas here in dispute.

Alabama's second position is the same as the United States' fall-back position. If Dauphin Island is an extension of Alabama mainland, but the entire Mississippi Sound is not a juridical bay, then the waters between Dauphin Island and the mainland form a small juridical bay.

ALASKA'S POSITION AS AMICUS: Alaska submitted a brief as amicus curiae in opposition to the United States' exceptions because Alaska is litigating its boundaries with the United States [United States v. Alaska, No. 84 Original]. Alaska's brief contains five arguments:

- (1) when Alaska became a state, the official position of the United States was to assimilate "objectionable pockets" of high sea to the territorial sea and Alaska's Statehood Act defines its territory to include territorial waters;
- (2) the Special Master's discussion of straight baselines is unnecessary and inadequate and the Court should not make a decision on straight baselines until the issue is fully developed in Alaska's case.

- (3) both the language of the Submerged Lands Act and the intent behind the Act give the states all submerged lands between their most seaward contiguous boundary and the mainland, even if some of the submerged lands are more than three miles from the mainland or the barrier islands;
- (4) the Submerged Lands Act was an extension of the equal footing doctrine to offshore submerged lands and therefore Mississippi and Alabama cannot be treated in a different manner than Louisiana; and
- (5) the executive may not, without the approval of Congress, renounce a state's claim to lands within the state's boundaries.

DISCUSSION: The increased value of submerged lands with their oil and mineral deposits has resulted in the United States taking the anomolous position of arguing that there are pockets of "high sea" within Mississippi Sound that belong to the United States even though they are surrounded by territorial waters belonging to the states. Because the Court has adopted the provisions of the Geneva Convention as the proper basis upon which to determine the coastal boundaries of the various states, the Court's analysis of the Master's Report and the exceptions will not only influence pending suits by other states (i.e., Alaska, New York, Massachusetts) but may affect United State's foreign policy.

The only clear conclusion that can be drawn from the Report and exceptions is that the exceptions merit oral argument. The issues raised are important and neither the Master's findings nor the parties exceptions are so clearly correct as to merit summary adoption.

The Master's conclusion that Dauphin Island may be treated as an extension of the mainland may be questioned on two

grounds. His decision that Mobile Bay, a juridical bay, may be treated as land for determining Dauphin Island's relationship to the mainland is unique. The finding appears to be contrary to the Master's previous rejection of the argument. Furthermore, if the Master's position were adopted, some restriction might be necessary to limit the process of bays abutting islands which create new bays which abut additional islands.

The question of when an island may be treated as an extension of the mainland is presently before the Court in No. 35 Original, United States v. Maine. Whatever decision the Court makes in that case may affect this case because: (a) the Court's discussion of assimilation of islands in United States v. Louisiana, 394 U.S. 11 (1969) did not establish a clear test; and (b) the Master did not indicate whether Dauphin Island should be treated as an extension of the mainland, if Mobile Bay was not considered land.

If Dauphin Island is considered an extension of the mainland, the SG's argument that this creates only a small juridical bay (from the western end of the island to Point aux Chenes) may be well taken. Article 7 does not encompass bays formed by islands which cannot realistically be considered part of the mainland. However, an island may be included in a bay if it lies in or near the mouth of the bay and gives the bay more than one natural entrance. The fringe islands may reasonably be treated as either creating a juridical bay or giving an existing bay multiple mouths.

a possible middle position

The Master's finding that Mississippi Sound is a historic bay may be more appealing because (a) the United States never

contested the state's ownership of the Sound until the second half of the twentieth century and (b) historic bays, by definition, are unique. Nonetheless, although the factual finding may not influence many cases, the criteria adopted by the Court will be used by other parties and may be cited against the United States in international cases.

The SG's exceptions to the finding that the Sound is an historic bay may not be persuasive. He admits that there is evidence to support that conclusion (see page 23 of the United States' exceptions) but suggests that the states' exercise of jurisdiction was not sufficiently effective, persistent or notorious. This may be an impossible test. How can a state exercise inland jurisdiction in an effective, persistent and notorious manner if from 1819 on no foreign country had any reason to question that the Sound was within the United States and the United States acceded to the states' exercise of jurisdiction until 1971?

The strongest of the states' exceptions are variations of the historic bay argument. Mississippi suggests that the Court should not defer to the United States' disclaimer of straight baseline because the United States historically employed straight baselines. Similarly, Alabama's argument that its Act of Admission, "as historically interpreted," extends states jurisdiction over the Sound, is an attempt to balance history against the United States' effort to change its position.

Of the remaining issues raised, one may merit mention. Alaska argues that both the language of, and the intent behind, the Submerged Lands Act grants Alabama and Mississippi all the

7

submerged lands landward of their most seaward contiguous boundaries. Alaska's argument is well made, does not appear to be precluded by the Court's prior opinions (see United States v. Louisiana, 363 U.S. 1 (196) limiting "each coastal state's seaward boundary at three geographical miles"), and is not really addressed by the Master or the United States. If this argument bears scrutiny, the Court may wish to invite further briefs.

CONCLUSION: Because the exceptions raise important unsettled issues that have national and international ramifications, the exceptions should be scheduled for oral argument. Argument should be held in tandem with argument in No. 35 Original, United States v. Maine, because both cases raise the issue of whether an island may be considered an extension of the mainland.

9/14/84

Schickele

PJC

Clawson (S6)

Conceder water of Mien. Sound
is so shallow that it is used rarely
by foreign shipping.

Bruce (Miss)

Agree with S/M's view that
Dauphin Island is part of mainland,
(Myer McDougall on brief)

Cohen (Ala)

Foreign nations have accepted
inland water status of Mien Sound
Inland waters are part of main land.

Evidence supports S/Master's
conclusion that Miss Sound
is an "historic bay" -

aml 11/27/84

To: Justice Powell

From: Annmarie

Re: United States v. Louisiana et al

To establish certain waters as "historic bays," it is ¹⁾ ~~have~~ ²⁾ ~~acquired~~ necessary to show that the coastal state has traditionally asserted and maintained dominion over the waters in question with the acquiescence of foreign states. United States v. California, 381 U.S. 139, 172 (1965). The Special Master cited persuasive evidence for his conclusion that Mississippi Sound represents historic inland waters. (Is this same as "historic bay"?)

Perhaps most telling is the fact that every nation that exercised sovereignty over the surrounding mainland and islands has considered the Sound to be part of its possession. For example, after the Louisiana Purchase, Congress authorized the President to take possession of "all navigable waters, rivers, creeks, bays, and inlets lying within the United States, which empty into the Gulf of Mexico east of the River Mississippi." Spain disputed the United States' authority over the eastern part of these waters, but acquiesced by Treaty in 1819. } Every nation

In the 1800s, a number of Congressional documents indicate that Congress thought that the Sound represented inland waters of the United States. The Special Master cited three Senate reports discussing the necessity and possibility of defending these waters. By 1847 Ship Island was reserved for military use. In 1857 Congress authorized the construction of a fort and

construction began the next year. In 1861, Union troops destroyed the fort to prevent it from falling into Confederate hands. The fort changed hands several times during the War and sometime afterwards was abandoned. It nevertheless is strong evidence, I think, of the United States' claim that the waters north of Ship Island were its own.

The acts admitting Mississippi and Alabama to the Union define their boundaries as extending to the Gulf of Mexico, and then, respectively, westerly and easterly, "including all islands within six miles of the shore." Mississippi and Alabama argue that this language establishes the southern coast of the barrier islands as their southern boundaries. Additionally, in Louisiana v. Mississippi, 202 U.S. 1, (1905), this Court spoke of Mississippi Sound as "an enclosed arm of the sea, wholly within the United States" The brief of Alabama also cites numerous examples from the past fifty years of the United States' claim that Mississippi Sound is inland waters. (See pp. 15 - 20.)

I think that the foregoing show that the United States has traditionally asserted and maintained dominion over the waters of Mississippi Sound sufficient to establish the first element of the States' claim that the water is an historic bay.

It is a bit more difficult to cite direct evidence that foreign states acquiesced in this claim. The 1819 Treaty with Spain is the only example cited to the Court. As Alabama points out, however, the reason it hasn't had to exclude foreign fishing trawlers, for example, is because the Sound is too shallow for all but the "shallowest draft coastal vessels and barges." In

United States v. Alaska, 422 U.S. 184, 200 (1975), the Court noted a U.N. study which concluded that a State need not necessarily have undertaken "concrete action to enforce its relevant laws and regulations" in the area claimed as an historic bay, if its laws and regulations were respected. Rather, it is essential that a State act to the extent necessary to maintain its authority over the area. There is no claim here that the coastal nation has failed to enforce its authority in the face of disrespect by foreign nations. Thus, I think the Special Master correctly concluded that both of the components of the historic bay test were satisfied.

EXHIBIT 1

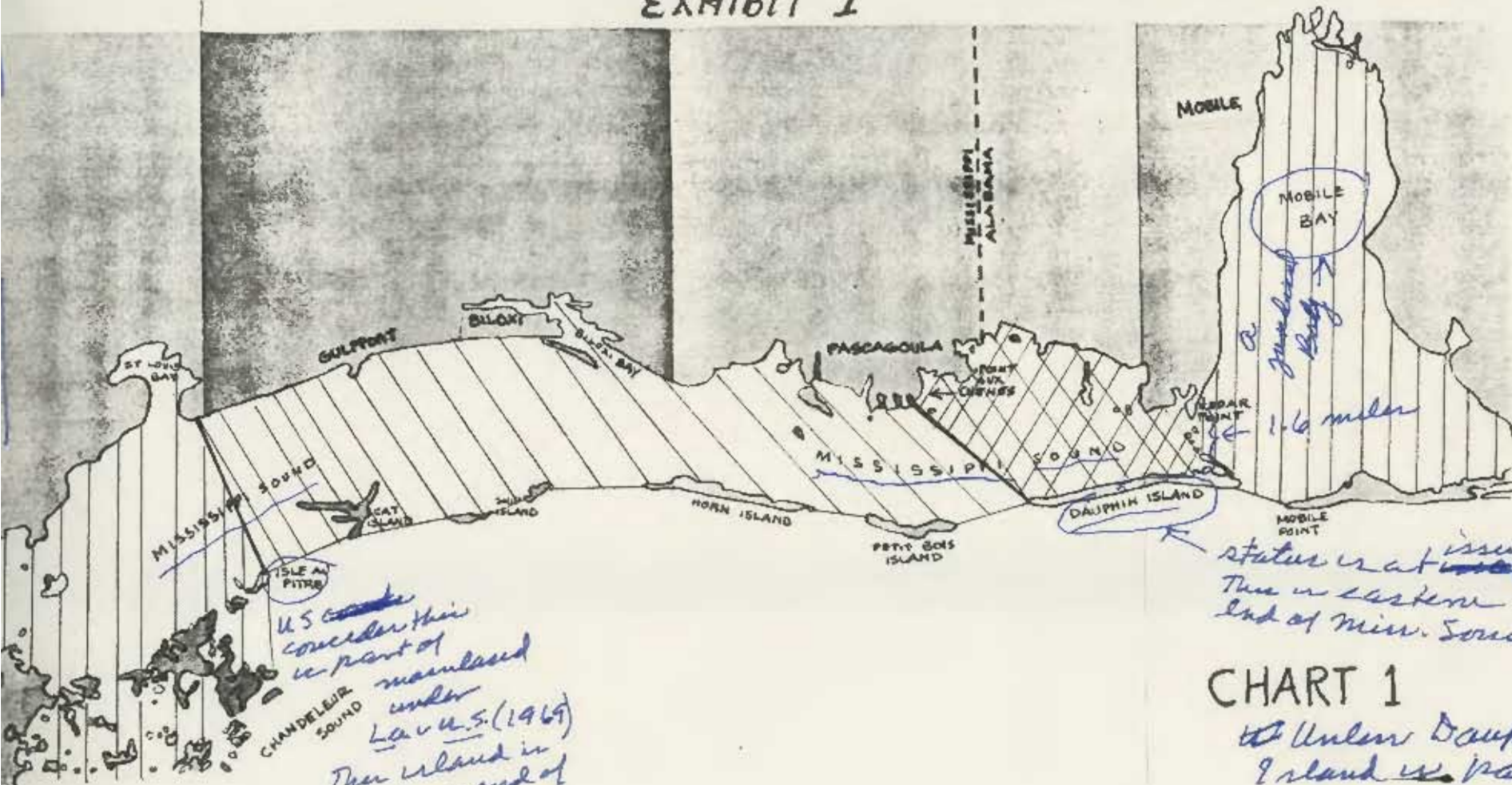
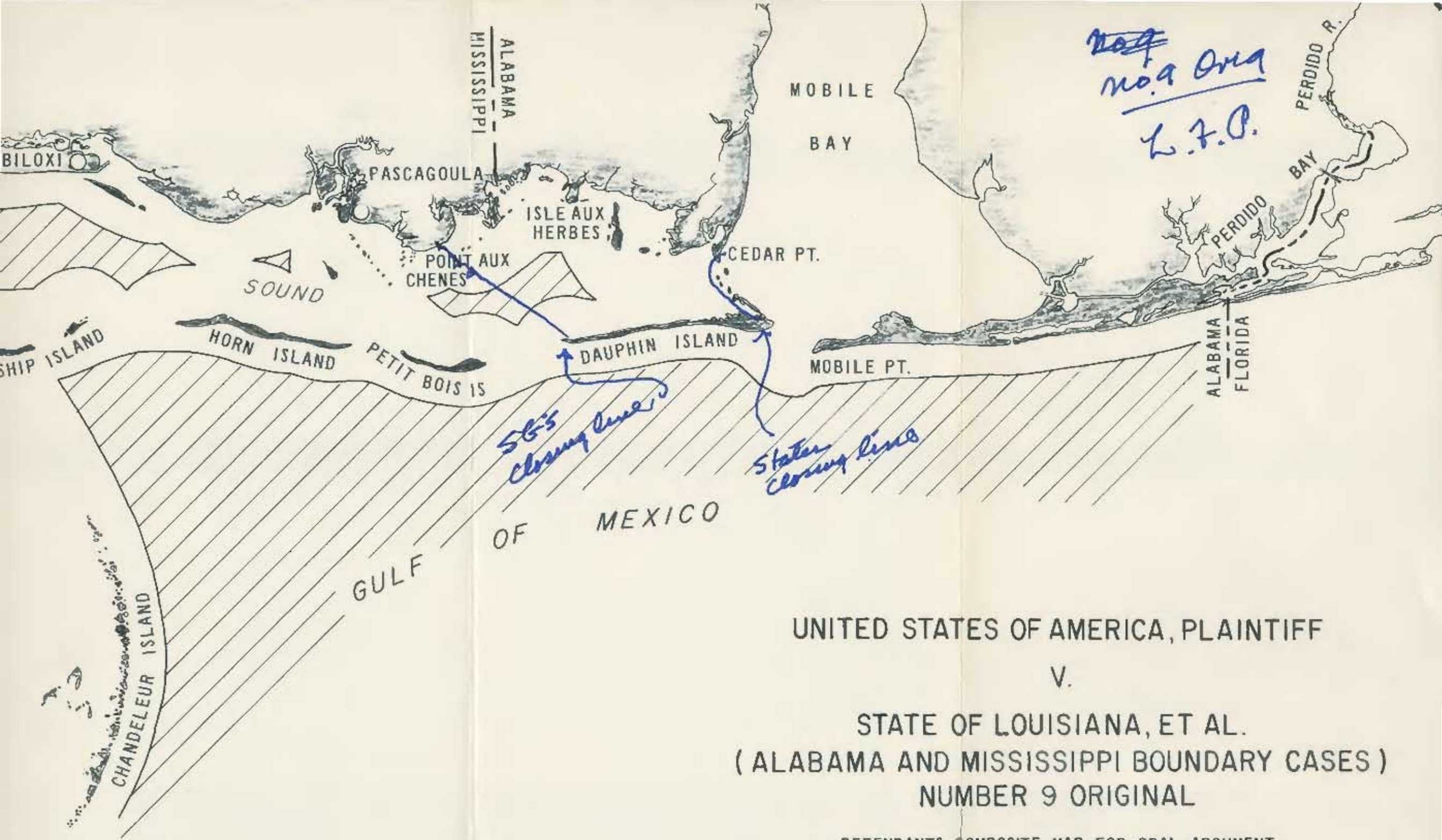


CHART 1

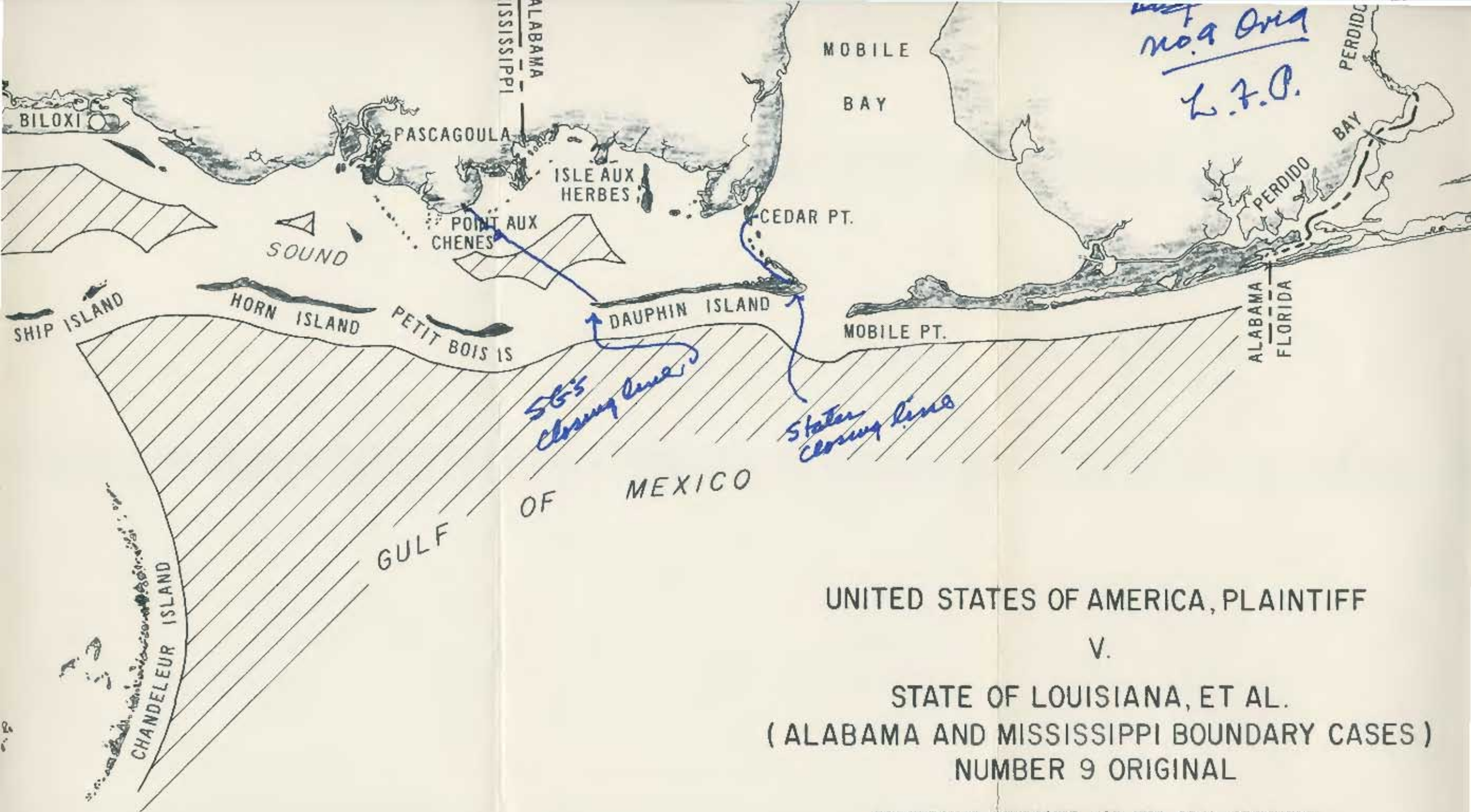
Under Dauphin Island is part of mainland these would be no accepted closure of the Sound.

Dauphin is joined to mainland by a bridge & is inhabited S/M found it a part of mainland



UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, ET AL.
(ALABAMA AND MISSISSIPPI BOUNDARY CASES)
NUMBER 9 ORIGINAL

DEFENDANTS COMPOSITE MAP FOR ORAL ARGUMENT
BEFORE THE SUPREME COURT OF THE UNITED STATES



UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, ET AL.
(ALABAMA AND MISSISSIPPI BOUNDARY CASES)
NUMBER 9 ORIGINAL

DEFENDANTS COMPOSITE MAP FOR ORAL ARGUMENT
BEFORE THE SUPREME COURT OF THE UNITED STATES

NOVEMBER 26, 1984

The Chief Justice Accept Report & Reject Exception

Sound only 6' deep.

For 100 yrs U.S. has treated Sound
as inland water. Now, U.S. has
changed its position

It is an historical bay.

Don't need to reach ~~just~~
"juridical bay" issue.

Justice Brennan

Agree with C.J.

Mem. Sound has been
recognized as inland waters
for more than a century.

Foreign nations have
accepted.

Justice White

Agree as to historical bay,

Don't reach juridical bay
& make this clear.

Out

Reject juridical bay argument.
See Armstrong's 1974 Report.

But agree as to historical bay
U.S. position has changed

Agree - see my notes
History is impressive.

Justice Rehnquist

Agree

Justice Stevens

Agree

But would simply say we
do not reach jurisdictional-law
issue. Leave this open.

Justice O'Connor

Agree

~~To~~ Referred to Civil War
history (ask her)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

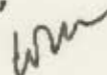
January 29, 1985

Re: No. 9 Original United States v. Louisiana

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 29, 1985

No. 9 Orig. United States v. Louisiana

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 30, 1985

Re: 9 Orig. - United States v. Louisiana

Dear Harry:

Please join me.

Respectfully,

A handwritten signature in dark ink, appearing to be "JH" with a flourish, followed by the initials "J.P.S." in a smaller, less distinct script.

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 30, 1985

No. 9 Original

United States v. Louisiana

Dear Harry,

I agree.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

STYLISTIC CHANGES

and pp. 9+15

Wrote & sign
a join note

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

Z.F.O.

From: Justice Blackmun

Circulated: _____

Recirculated: FEB 4 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 9 Orig.

UNITED STATES v. LOUISIANA ET AL. (ALABAMA
AND MISSISSIPPI BOUNDARY CASE)

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

[February —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

This is the latest chapter in the long-lasting litigation between the Federal Government and the States of the Gulf Coast concerning ownership of the seabed, minerals, and other natural resources underlying the Gulf of Mexico. The particular and narrow issue presented here is whether the waters of Mississippi Sound are inland waters. If the Sound constitutes inland waters, as the States of Alabama and Mississippi contend, then these States own the lands submerged under the Sound. If the Sound in substantial part does not constitute inland waters, as the Government contends, then the United States owns the lands submerged under several "enclaves" of high seas within the Sound. We conclude that Mississippi Sound qualifies as a historic bay, and that the waters of the Sound, therefore, are inland waters.

I

The Submerged Lands Act of 1953, 67 Stat. 29, 43 U. S. C. § 1301 *et seq.*, confirms to each State title to and ownership of the lands beneath navigable waters within the State's boundaries. § 1311(a). The Act also confirms in each coastal State a seaward boundary three geographical miles distant from its coastline. § 1312. A State bordering on the Gulf of Mexico, however, may be entitled to a historic seaward boundary beyond three geographical miles and up to three marine leagues (approximately nine geographical miles) dis-

Reviewed

2/10-11

Join

Still join.
Amc

tant from its coastline. §§ 1301(b), 1312. The Act defines the term "coast line" as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." § 1301(c). The first part of this definition is relatively easy to apply. The second part—requiring determination of "the line marking the seaward limit of inland waters"—is more difficult to apply because the term "inland waters" is not defined in the Act.

In *United States v. Louisiana*, 363 U. S. 1 (1960), this Court determined, among other things, that the States of Alabama and Mississippi are not entitled under the Submerged Lands Act to a historic seaward boundary three marine leagues distant from their coastlines. Rather, the Court held, these two States are entitled, as against the United States, to all the lands, minerals, and other natural resources underlying the Gulf of Mexico, extending seaward from their coastlines for a distance of no more than three geographical miles. *Id.*, at 79–82, 83 (opinion); *United States v. Louisiana*, 364 U. S. 502, 503 (1960) (decree). The Court, however, did not express any opinion as to the precise location of the coastline from which the three-mile belt is to be measured. 363 U. S., at 82, nn. 135 and 139. The Court merely noted, in accordance with the above-mentioned definition in § 2(c) of the Submerged Lands Act, 43 U. S. C. § 1301(c), that "the term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." 364 U. S., at 503. See also 363 U. S., at 83. The Court retained jurisdiction to entertain further proceedings, including proceedings to resolve any dispute in locating the relevant coastline. *Ibid.*; 364 U. S., at 504.

As has been noted, locating the coastline requires the determination of the seaward limit of "inland waters." Follow-

ing the Court's decision in *United States v. Louisiana*, a disagreement arose between the United States and the States of Alabama and Mississippi concerning the status of Mississippi Sound as inland waters. The Sound is a body of water immediately south of the mainland of the two States. It extends from Lake Borgne at the west to Mobile Bay at the east, and is bounded on the south by a line of barrier islands. These islands, from west to east, are Isle au Pitre, Cat Island, Ship Island, Horn Island, Petit Bois Island, and Dauphin Island. The Sound is approximately 80 miles long and 10 miles wide.

The two States contend that the whole of Mississippi Sound constitutes "inland waters." Under this view, the coastline of the States consists of the lines of ordinary low water along the southern coasts of the barrier islands together with appropriate lines connecting the barrier islands. These latter lines mark the seaward limit of Mississippi Sound. The United States, on the other hand, denies the inland water status of Mississippi Sound. Under its view, the coastline of the States generally consists of the lines of ordinary low water along the southern mainland and around each of the barrier islands.¹

¹The United States' position actually is somewhat more complicated. First, the United States concedes that Isle au Pitre may be treated as part of the mainland, and that a bay closing line may be drawn from the eastern tip of Isle au Pitre to the eastern promontory of St. Louis Bay on the mainland. Thus, the waters of Mississippi Sound west of this bay-closing line are inland waters, and the bay-closing line forms part of the legal coastline of Mississippi. Second, the United States takes the position that if Dauphin Island at Mobile Bay is properly treated as part of the mainland—which the United States disputes—then a bay closing line may be drawn from the western tip of Dauphin Island northwesterly to Point Aux Chenes on the mainland, just west of the Alabama-Mississippi boundary. Under this secondary or fall-back position of the United States, the waters of Mississippi Sound east of this bay-closing line are inland waters, and the bay-closing line forms part of the legal coastline of Alabama and Mississippi. Finally, there are several undisputed inland rivers and bays along the shores of Alabama and Mississippi, and, as a consequence, undisputed clos-

Under the States' view, then, the States own all the lands underlying Mississippi Sound, as well as the lands underlying the Gulf of Mexico extending seaward for a distance of three geographical miles from the southern coasts of the barrier islands and the lines connecting those islands. Under the United States' view, on the other hand, the States own only those lands underlying Mississippi Sound and the Gulf of Mexico that are within three geographical miles of the mainland coast or of the coasts of the barrier islands. There are several areas within Mississippi Sound that are more than three miles from any point on these coasts. Under the United States' view, those areas constitute "enclaves" or pockets of high seas, and the lands underlying them belong to the United States.

To resolve this dispute over the inland-water status of Mississippi Sound, the two States and the United States filed motions and cross-motions for the entry of a supplemental decree. The Court referred these pleadings to its Special Master, the Honorable Walter P. Armstrong, Jr., who already had been appointed in *United States v. Louisiana (Louisiana Boundary Case)*, 394 U. S. 11 (1969). See 444 U. S. 1064 (1980); 445 U. S. 923 (1980). See also 457 U. S. 1115 (1982). Following extended proceedings, the Special Master has submitted his Report to this Court.

II

As noted above, the Submerged Lands Act employs but does not define the term "inland waters." In *United States v. California*, 381 U. S. 139, 161-167 (1965), this Court observed that Congress had left to the Court the task of defining "inland waters" for purposes of the Submerged Lands Act. The Court for those purposes has adopted the definitions provided in the Convention on the Territorial Sea and the Contiguous Zone, [1964] 15 U. S. T. (pt. 2) 1607,

ing lines across the mouths of these rivers and bays that, in the Government's view, form part of the legal coastline of the States.

T. I. A. S. No. 5639 (the Convention). 381 U. S., at 165. See also *Louisiana Boundary Case*, 394 U. S., at 35; *United States v. Maine (Rhode Island and New York Boundary Case)*, *ante*, at — (slip op. 8–9).

The Convention, however, uses terminology differing somewhat from the terminology of the Submerged Lands Act. In particular, the Convention uses the term “baseline” to refer to the “coast line,” and it uses the term “territorial sea” to refer to the three-geographical-mile belt extending seaward from the coastline. The territorial sea is one of the three zones into which, in international law, the sea is divided. The Court so explained in the *Louisiana Boundary Case*:

“Under generally accepted principles of international law, the navigable sea is divided into three zones, distinguished by the nature of the control which the contiguous nation can exercise over them. Nearest to the nation’s shores are its inland, or internal waters. These are subject to the complete sovereignty of the nation, as much as if they were a part of its land territory, and the coastal nation has the privilege even to exclude foreign vessels altogether. Beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal, or territorial, sea. Within it the coastal nation may exercise extensive control but cannot deny the right of innocent passage to foreign nations. Outside the territorial sea are the high seas, which are international waters not subject to the dominion of any single nation.” 394 U. S., at 22–23 (footnotes omitted).

Article 3 of the Convention provides the general rule for determining the “baseline”:

“Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as

marked on large-scale charts officially recognized by the coastal State."

The Convention, however, provides several exceptions to the general rule pursuant to which Mississippi Sound might qualify as inland waters.

First, Article 4 of the Convention permits a nation to employ the method of straight baselines in delimiting its coastline. Article 4(1) provides in pertinent part:

"In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

If the method of straight baselines were applied to the coast of Alabama and Mississippi, the coastline would be drawn by connecting the barrier islands, thus enclosing Mississippi Sound as inland waters. The Court has held, however, that the method of straight baselines is applicable only if the Federal Government has chosen to adopt it. See *Louisiana Boundary Case*, 394 U. S., at 72-73; *United States v. California*, 381 U. S., at 167-169. In the present case, the Special Master concluded that the United States has not adopted the straight baseline method.

Second, Article 7 of the Convention provides a set of rules for determining whether a body of water qualifies as inland waters because it is a "juridical bay." Under Article 7(2), such a bay is defined to be "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast." In addition, the area of the indentation must be "as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation." And the closing line of the bay must not exceed 24 miles. The Special Master concluded that Missis-

issippi Sound satisfies these criteria and thus qualifies as a juridical bay. In reaching this conclusion, the Master determined that Dauphin Island was to be treated as part of the mainland. The closing line drawn from the easternmost point of Isle au Pitre to the westernmost point of Dauphin Island, connecting each of the intervening barrier islands, crosses water gaps totaling less than 24 miles in length.

Finally, Article 7(6) of the Convention indicates that a body of water can qualify as inland waters if it is a "historic bay." The Convention does not define the term "historic bay." The Special Master concluded that Mississippi Sound qualifies as a historic bay under the tests noted in *United States v. California*, 381 U. S., at 172, and *United States v. Alaska*, 422 U. S. 184, 189 (1975).

The Special Master, accordingly, recommended to this Court that a decree be entered in favor of Alabama and Mississippi.

The United States and the States of Alabama and Mississippi respectively filed exceptions to the Master's Report. The United States argued that the Master erred in concluding that Mississippi Sound is both a juridical bay and a historic bay; it claims that it is neither. Alabama and Mississippi agreed with those conclusions of the Special Master, but argued that there also were alternative grounds for concluding that Mississippi Sound constitutes inland waters. In particular, the States argued that their Acts of Admission established their boundaries along the southern coast of the barrier islands; that Mississippi Sound qualifies as inland waters under the straight baseline method of Article 4 of the Convention and prior United States practice; that Mississippi Sound qualifies as a juridical bay regardless of the characterization of Dauphin Island as a "mainland headland;" and that even if the whole of Mississippi Sound is not a juridical bay, a smaller juridical bay exists at the eastern end of the Sound.

We have independently reviewed the record, as we must. See *Mississippi v. Arkansas*, 415 U. S. 289, 291–292, 294 (1974); *Colorado v. New Mexico*, — U. S. —, — (1984) (slip op. 6); *Rhode Island and New York Boundary Case*, ante, at —, (slip op. 1). Upon that review, we conclude that the Special Master correctly determined that Mississippi Sound is a historic bay. We therefore need not, and do not, address the exceptions presented by the States of Alabama and Mississippi or those exceptions of the United States that relate to the question whether Mississippi Sound qualifies as a juridical bay under Article 7 of the Convention.

III

The term “historic bay”³ is not defined in the Convention and there is no complete accord as to its meaning. The Court has stated that a historic bay is a bay “over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations.” *United States v. California*, 381 U. S., at 172. See also *United States v. Alaska*, 422 U. S., at 189; *Louisiana Boundary Case*, 394 U. S., at 23. The Court also has noted that there appears to be general agreement that at least three factors are to be taken into consideration in determining whether a body of water is a historic bay: (1) the exercise of authority over the area by the claiming nation; (2) the continuity of this exercise of authority; and (3) the acquiescence of foreign nations. See *United States v. Alaska*, 422 U. S., at 189; *Louisiana Boundary Case*, 394 U. S., at 23–24, n. 27. An authoritative United Nations study concludes that these

³In this opinion, the term “historic bay” is used interchangeably with the term “historic inland waters.” It is clear that a historic bay need not conform to the geographic tests for a juridical bay set forth in Article 7 of the Convention. See *Louisiana Boundary Case*, 394 U. S. 11, 75, n. 100 (1969). In this case, as in that one, we need not decide how unlike a juridical bay a body of water can be and still qualify as a historic bay, for it is clear from the Special Master’s Report that, at minimum, Mississippi Sound closely resembles a juridical bay.

three factors require that "the coastal State must have effectively exercised sovereignty over the area continuously during a time sufficient to create a usage and have done so under the general toleration of the community of States." Juridical Regime of Historic Waters, Including Historic Bays 56, U. N. Doc. A/CN.4/143 (1962) (hereinafter Juridical Regime).³ In addition, there is substantial agreement that a fourth factor to be taken into consideration is the vital interests of the coastal nation, including elements such as geographical configuration, economic interests, and the requirements of self-defense. See Juridical Regime, at 38, 56-58; 1 A. Shalowitz, *Shore and Sea Boundaries* 48-49 (1962). See also *Fisheries Case (U. K. v. Nor.)*, 1951 I. C. J. 116, 142. In the present case, the facts establish that the United States effectively has exercised sovereignty over Mississippi Sound as inland waters from the time of the Louisiana Purchase in 1803 until 1971, and has done so without protest by foreign nations.

A

Mississippi Sound historically has been an intracoastal waterway of commercial and strategic importance to the United States. Conversely, it has been of little significance to foreign nations. The Sound is shallow, ranging in depth generally from 1 to 18 feet except for artificially maintained channels between Cat Island and Ship Island leading to Gulfport, Miss., and between Horn Island and Petit Bois Island leading to Pascagoula, Miss. Outside those channels, it is not readily navigable for ocean-going vessels. Furthermore, it is a cul de sac, and there is no reason for an ocean-going vessel to enter the Sound except to reach the Gulf ports. The historic importance of Mississippi Sound to vital interests of

³The study explains that "no precise length of time can be indicated as necessary to build the usage on which the historic title must be based. It must remain a matter of judgement when sufficient time has elapsed for the usage to emerge." Juridical Regime, at 45. See also 1 A. Shalowitz, *Shore and Sea Boundaries* 49 (1962) (hereinafter Shalowitz).

the United States, and the corresponding insignificance of the Sound to the interests of foreign nations, lend support to the view that Mississippi Sound constitutes inland waters.⁴

Throughout most of the 19th century, the United States openly recognized Mississippi Sound as an inland waterway of importance for commerce, communications, and defense. Early in this period the Nation took steps to enhance and protect its interests in the Sound. On February 8, 1817, the House of Representatives listed among objects of national importance several "improvements requisite to afford the advantages of internal navigation and intercourse throughout the United States and its Territories," including "as a more distant object, a canal communication, if practicable, from the Altamaha and its waters to Mobile, and from thence to the Mississippi." H. R. Doc. No. 427, 14th Cong., 2d Sess. (1817), reprinted in 2 American State Papers 420, 422 (1834). This project ultimately became the Intracoastal Waterway through Mississippi Sound. On February 28, 1822, the House Committee on Military Affairs issued a report that recognized the importance of the intracoastal communication between New Orleans and Mobile Bay through what an 1820 letter reprinted in the report described as "the little interior sea, comprised between the main and the chain of islands, bounded by Cat Island to the west, and Dauphin Island to the east." H. R. Rep. No. 51, 17th Cong., 1st Sess., 7 (1823).

Defense of this important waterway has been a longstanding concern of the United States. On April 20, 1836, the

⁴United States Attorney General Edmund Randolph long ago employed similar reasoning in his opinion that Delaware Bay constitutes inland waters:

"These remarks may be enforced by asking, What nation can be injured in its rights by the Delaware being appropriated to the United States? And to what degree may not the United States be injured, on the contrary ground? It communicates with no foreign dominion; no foreign nation has ever before had a community of right in it, as if it were a main sea; under the former and present governments, the exclusive jurisdiction has been asserted." 1 Op. Atty Gen. 32, 37 (1793).

Senate passed a resolution calling upon the Secretary of War to survey the most eligible sites for a fortification suitable for the defense of Mississippi Sound and the commerce along it. See S. Rep. No. 490, 26th Cong., 1st Sess., 1 (1840). A subsequent resolution instructed the Senate Committee on Military Affairs to study the expediency of erecting a fort on the western extremity of Ship Island. See S. Rep. No. 618, 26th Cong., 1st Sess., 1 (1840). In response to an inquiry pursuant to this resolution, the War Department noted: "The defenses indicated would cover one of the channels leading from the gulf into the broad interior water communication extending from Lake Borgne to the bay of Mobile." *Id.*, at 2.⁵

Ship Island was reserved for military purposes by an executive order of August 30, 1847. In 1858, the War Department, responsive to an appropriation made by Congress, see the Act of Mar. 3, 1857, 11 Stat. 191, 192, authorized the building of a fort on the island. It was to be constructed at the island's west end, and to command the pass into Mississippi Sound between Ship and Cat Islands. Forty-eight cannons were ordered to arm the fort. During the War Between the States, the fort was occupied alternately by Union and Confederate troops. It was finally abandoned in 1875.

⁵Ten years later, the Senate Committee on Military Affairs noted:

"The broad sheet of water which lies between the coast of Mississippi and the chain of islands parallel to it, is the channel of a commerce important in peace and indispensable in war. Through this passes the inland navigation which connects New Orleans and Mobile. This is the route of the mails and of a large part of the travel between the eastern and southwestern sections of the Union. Through this channel supplies for the naval station at Pensacola are most readily drawn from the great storehouse, the valley of the Mississippi, and its importance in this respect would be increased in a two-fold degree by the contingency of a maritime war: first, because a war would increase the requisite amount of supplies at that station; and, secondly, because it would greatly augment the difficulties of the more extended and exposed lines of communication by exterior navigation." S. Rep. No. 23, 31st Cong., 1st Sess., 2 (1850).

In 1879, the United States erected a lighthouse on the central section of the island.⁶

The United States argues that this official recognition of Mississippi Sound as an internal waterway of commercial and strategic importance has no relevance to the Sound's status as a historic bay. It would support this argument with a citation to the 1962 United Nations study of historic waters. *Juridical Regime*, at 56–58. The cited pages of the study discuss the view taken by some authors and governments that such circumstances as geographic configuration, requirements of self-defense, or other vital interests of the coastal state may justify a claim to historic bay status without the necessity of establishing long usage. The study notes, *id.*, at 58, that “[t]here is undoubtedly some justification for this view,” but ultimately suggests that it does not make sense for “historic title” to be claimed in circumstances where the historic element is wholly absent. *Ibid.* The study, however, does not suggest that such circumstances as geographic configuration and vital interests are irrelevant to the question whether a body of water is a historic bay and, indeed, it affirmatively indicates that such circumstances can fortify a claim to “historic bay” status that is based on usage.⁷

⁶ See, generally, Report of the Special Master 38; Caraway, *The Story of Ship Island, 1699–1941*, 4 J. Miss. Hist. 76 (1942); Weinert, *The Neglected Key to the Gulf Coast*, 31 J. Miss. Hist. 269 (1969).

The United States argues that the fortification of Ship Island is relevant only to the United States' suppression of its civil insurrection. But the fort was planned and construction was begun years before the outbreak of the Civil War, and it was not abandoned until some years after the conclusion of that War. The United States further argues that the abandonment of the fort suggests a retreat from any claim of inland water status for Mississippi Sound. But it seems just as likely, and perhaps more likely, that the fort eventually was abandoned because foreign nations completely acquiesced in the United States' assertion of sovereignty over the Sound, rendering the fort unnecessary.

⁷ The study cites Bourquin as a proponent of the view that “[t]he character of a bay depends on a combination of geographical, political, economic, historical and other circumstances.” *Juridical Regime*, at 25

In any event, the evidence discussed above does not merely demonstrate that Mississippi Sound is presently important to vital interests of the United States. Rather, the evidence demonstrates that the United States historically and expressly has recognized Mississippi Sound as an important internal waterway and has exercised sovereignty over the Sound on that basis throughout much of the 19th century.

B

The United States continued openly to assert the inland water status of Mississippi Sound throughout the 20th century until 1971. Prior to its ratification of the Convention on March 24, 1961,³ the United States had adopted a policy of enclosing as inland waters those areas between the mainland and offlying islands that were so closely grouped that no entrance exceeded 10 geographical miles.⁴ This 10-mile rule represented the publicly stated policy of the United States at least since the time of the Alaska Boundary Arbitration in 1903. There is no doubt that foreign nations were aware

(translating and quoting Bourquin, *Les Baies Historiques*, in *Mélanges Georges Sauser-Hall* 42 (1952)). Bourquin explains:

"Where long usage is invoked by a State, it is a ground additional to the other grounds on which its claim is based. In justification of its claim, it will be able to point not only to the configuration of the bay, to the bay's economic importance to it, to its need to control the bay in order to protect its territory, etc., but also to the fact that its acts with respect to the bay have always been those of the sovereign and that its rights are thus confirmed by historical tradition." *Juridical Regime*, at 25-26.

³The Convention did not go into effect, however, until September 10, 1964, when the requisite number of nations had ratified it.

⁴The United States confirmed this policy in a number of official communications during the period from 1951 to 1961. See Report of the Special Master 48-54. Also, the United States followed this policy in drawing the Chapman line along the Louisiana coast following the decision in *United States v. Louisiana*, 339 U. S. 699 (1950). See Shalowitz, at 161. In a letter to Governor Wright of Mississippi, written on October 17, 1951, Oscar L. Chapman, then Secretary of the Interior, indicated that if the Chapman line were extended eastward beyond the Louisiana border, it would enclose Mississippi Sound as inland waters.

that the United States had adopted this policy. Indeed, the United States' policy was cited and discussed at length by both the United Kingdom and Norway in the celebrated *Fisheries Case (U. K. v. Nor.)*, *supra*.¹⁰ Nor is there any doubt, under the stipulations of the parties in this case, that Mississippi Sound constituted inland waters under that view.

The United States contends that its earlier adoption of and adherence to a general formulation of coastline delimitation under which Mississippi Sound would have qualified as inland waters is not a sufficiently specific claim to the Sound as inland waters to establish it as a historic bay. In the present case, however, the general principles in fact were coupled with specific assertions of the status of the Sound as inland waters. The earliest such assertion in the 20th century occurred in *Louisiana v. Mississippi*, 202 U. S. 1 (1906). In that case, the Court determined the location of the boundary between Louisiana and Mississippi in the waters of Lake Borgne and Mississippi Sound. The Court described the Sound as "an inclosed arm of the sea, wholly within the United States, and formed by a chain of large islands, extending westward from Mobile, Alabama, to Cat Island. The openings from this body of water into the Gulf are neither of them six miles wide." *Id.*, at 48. The Court ruled that the doctrine of "thalweg" was applicable to determine the exact location of the boundary separating Louisiana from Mississippi in Lake Borgne and Mississippi Sound. Under that doctrine, the water boundary between States is defined as the middle of the deepest or most navigable channel, as distinguished from the geographic center or a line midway between the banks. See *Texas v. Louisiana*, 410 U. S. 702, 709-710 (1973); *Louisiana v. Mississippi*, — U. S. —,

¹⁰ It is noteworthy that in the *Fisheries Case*, the International Court of Justice ruled that the consistent and prolonged application of the Norwegian system of delimiting inland waters, combined with the general toleration of foreign states, gave rise to a historic right to apply the system. See 1951 I. C. J., at 138-139.

— (1984) (slip op. 3–5). The Court concluded that the “principle of thalweg is applicable,” not only to navigable rivers, but also to “sounds, bays, straits, gulfs, estuaries and other arms of the sea.” 202 U. S., at 50. The Court rejected the contention that the doctrine did not apply in Lake Borgne and Mississippi Sound because those bodies were “open sea.” *Id.*, at 51–52. The Court noted that the record showed that Lake Borgne and the relevant part of Mississippi Sound is not open sea but “a very shallow arm of the sea, having outside of the deep water channel an inconsiderable depth.” *Id.*, at 52. The Court clearly treated Mississippi Sound as inland waters, under the category of “bays wholly within [the Nation’s] territory not exceeding two marine leagues in width at the mouth.” *Ibid.*

The United States argues that the language in *Louisiana v. Mississippi* does not constitute a holding that Mississippi Sound is inland waters. It appears to us, however, that the Court’s conclusion that the Sound was inland waters was essential to its ruling that the doctrine of thalweg was applicable. The United States also argues that it cannot be bound by the holding because it was not a party in that case. The significance of the holding for the present case, however, is not its effect as precedent in domestic law, but rather its effect on foreign nations that would be put on notice by the decision that the United States considered Mississippi Sound to be inland waters.

If foreign nations retained any doubt after *Louisiana v. Mississippi* that the official policy of the United States was to recognize Mississippi Sound as inland waters, that doubt must have been eliminated by the unequivocal declaration of the inland water status of Mississippi Sound by the United States in an earlier phase of this very litigation.¹¹ In a brief

¹¹ The United States also acknowledged that Mississippi Sound constitutes inland waters in a letter written by the Secretary of the Interior to the Governor of Mississippi on October 17, 1951, confirming that the oil and

7 omission

filed with this Court on May 15, 1958, the United States noted:

"[W]e need not consider whether the language, 'including the islands' etc., would of itself include the water area intervening between the islands and the mainland (though we believe it would not), because it happens that all the water so situated in Mississippi is in Mississippi Sound, which this Court has described as inland water. *Louisiana v. Mississippi*, 202 U. S. 1, 48. The bed of these inland waters passed to the State on its entry into the Union. *Pollard's Lessee v. Hagan*, 3 How. 212." Brief for United States in Support of Motion for Judgment on Amended Complaint in *United States v. Louisiana*, O. T. 1958, No. 10 Original, p. 254.¹²

Similarly, in discussing Alabama's entitlement to submerged lands, the United States conceded that "the water between the islands and the Alabama mainland is inland water; consequently, we do not question that the land under it belongs to the State." *Id.*, at 261.

The United States argues that the States cannot now invoke estoppel based on the Federal Government's earlier construction of *Louisiana v. Mississippi* as describing Mississippi Sound as inland water. The United States points out that the Court in the *Louisiana Boundary Case*, 394 U. S., at 73-74, n. 97, concluded that a similar concession with respect to Louisiana was not binding on the United States. As with the Court's holding in 1906 in *Louisiana v. Mississippi*, however, the significance of the United States' concession in 1958 is not that it has binding effect in domestic law, but that it represents a public acknowledgment of the

gas leasing rights inside the barrier islands belonged to the State of Mississippi. Report of the Special Master 42-44.

¹² In *United States v. Louisiana*, 363 U. S. 1 (1960), Alabama and Mississippi argued that language in their Acts of Admission and in other historic documents entitled them to ownership of all submerged lands located within three marine leagues of their coastlines. See *id.*, at 79-82.

official view that Mississippi Sound constitutes inland waters of the nation.

C

In addition to showing continuous exercise of authority over Mississippi Sound as inland waters, the States must show that foreign nations acquiesced in, or tolerated, this exercise. It is uncontested that no foreign government has ever protested the United States' claim to Mississippi Sound as inland waters. This is not surprising in light of the geography of the coast, the shallowness of the waters, and the absence of international shipping lanes in the vicinity. Scholarly comment is divided over whether the mere absence of opposition suffices to establish title. See *United States v. Alaska*, 422 U. S., at 189, n. 8, 199–200; *Louisiana Boundary Case*, 394 U. S., at 23–24, n. 27. In *United States v. Alaska*, this Court held that, under the circumstances of that case, mere failure to object was insufficient because it had not been shown that foreign governments knew or reasonably should have known of the authority being asserted. There is substantial agreement that when foreign governments do know or have reason to know of the effective and continual exercise of sovereignty over a maritime area, inaction or toleration on the part of the foreign governments is sufficient to permit a historic title to arise. See *Juridical Regime*, at 48–49. See also *Fisheries Case (U. K. v. Nor.)*, 1951 I. C. J., at 138–139. Moreover, it is necessary to prove only open and public exercise of sovereignty, not actual knowledge by the foreign governments. See *Juridical Regime*, at 54–55. In the present case, the United States publicly and unequivocally stated that it considered Mississippi Sound to be inland waters. We conclude that under these circumstances the failure of foreign governments to protest is sufficient proof of the acquiescence or toleration necessary to historic title.

IV

The United States contends that, notwithstanding the substantial evidence discussed above of the Government's assertion of sovereignty over Mississippi Sound as inland water, the States have failed to satisfy their burden of proof that Mississippi Sound is a historic bay. The United States relies on its recent disclaimer of the inland-water status of the Sound and on the absence of any evidence of actual exclusion from the Sound of foreign navigation in innocent passage. We find neither of these points persuasive.

A

In April 1971, the United States for the first time publicly disclaimed the inland-water status of Mississippi Sound by publishing a set of maps delineating the three-mile territorial sea and certain inland waters of the United States. These maps, which include the entire Gulf Coast, have been distributed to foreign governments in response to requests made upon the Department of State for documents delimiting the boundaries of the United States.

This Court repeatedly has made clear that the United States' disclaimer of historic inland water status will not invariably be given decisive weight. In *United States v. California*, 381 U. S., at 175, the Court gave decisive effect to a disclaimer of historic inland water status by the United States only because the case involved "questionable evidence of continuous and exclusive assertions of dominion over the disputed waters." The Court suggested, however, that such a disclaimer would not be decisive in a case in which the historic evidence was "clear beyond doubt." *Ibid.* The Court also suggested that "a contraction of a State's recognized territory imposed by the Federal Government in the name of foreign policy would be highly questionable." *Id.*, at 168. See *Geofroy v. Riggs*, 133 U. S. 258, 267 (1890). The Court reiterated this latter theme in the *Louisiana Boundary Case*, where it stated:

"It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of *past* events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California*." 394 U. S., at 77, n. 104 (emphasis in original).

The maps constituting the disclaimer in the present case were published more than two years after the decree in the *Louisiana Boundary Case*, and 11 years after the decision in *United States v. Louisiana*, 363 U. S. 1 (1960). The Special Master concluded that "under the circumstances it is difficult to accept the disclaimer as entirely extrajudicial in its motivation." Report of the Special Master 47. Rather, according to the Master, the disclaimer "would appear to be more in the nature of an attempt by the United States to prevent recognition of any pre-existing historic title which might already have ripened because of past events but which was called into question for the first time in a domestic lawsuit." *Ibid*.

We conclude that historic title to Mississippi Sound as inland waters had ripened prior to the United States' ratification of the Convention in 1961 and prior to its disclaimer of the inland-waters status of the Sound in 1971. That disclaimer, issued while the Court retained jurisdiction to resolve disputes concerning the location of the coastline of the Gulf Coast States, is insufficient to divest the States of their entitlement to the submerged lands under Mississippi Sound.

B

Finally, the United States argues that proof of historic inland water status requires a showing that sovereignty was exerted to exclude from the area all foreign navigation in in-

nocent passage. This argument is based on the principle that a coastal nation has the privilege to exclude innocent-passage foreign navigation from its inland waters, but not from its territorial sea. See *Louisiana Boundary Case*, 394 U. S., at 22. According to the United States, such exclusion is therefore the only conduct that conclusively demonstrates that the nation exercises authority over the waters in question as inland waters and not merely as territorial sea.

This rigid view of the requirements for establishing historic inland-water status is unrealistic and is supported neither by the Court's precedents¹³ nor by writers on international law.¹⁴ To the contrary, in advocating a flexible approach to appraisal of the factors necessary to a valid claim of historic inland-waters status, two leading commentators have stated: "A relatively relaxed interpretation of the evidence of historic assertion and of the general acquiescence of other states seems more consonant with the frequently amor-

¹³ In *United States v. Alaska*, 422 U. S. 184, 197 (1975), the Court noted that to establish historic title to a body of water as inland waters, "the exercise of authority must have been, historically, an assertion of power to exclude all foreign vessels and navigation." It is clear, however, that a nation can assert power to exclude foreign navigation in ways other than by actual resort to the use of that power in specific instances.

¹⁴ One prominent writer has explained the "actes d'appropriation" necessary to establish effective exercise of sovereignty as follows:

"It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulation made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute evidence. In the *Grisbadarna* dispute between Sweden and Norway, the judgement of 23 October 1909 mentions that 'Sweden has performed various acts . . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty.'" 3 Gidel, *Droit International Public de la Mer* 638 (1934), translated and quoted in *Juridical Regime*, at 41.

phous character of the facts available to support these claims than a rigidly imposed requirement of certainty of proof, which must inevitably demand more than the realities of international life could ever yield." M. McDougal & W. Burke, *The Public Order of the Oceans* 372 (1962). Similarly the 1962 United Nations study of historic waters notes that the requirement of effective exercise of sovereignty over the area by the appropriate action on the part of the claiming state

"does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken." *Juridical Regime*, at 43.

Thus, although a coastal nation has the privilege to exclude from its inland waters foreign vessels in innocent passage, the need to exercise that privilege may never arise. Indeed, in the present case, as the United States seems to concede, the record does not indicate that there ever was any occasion to exclude from Mississippi Sound foreign vessels in innocent passage. Tr. of Oral Arg. 16. This is not surprising since, as noted above, foreign nations have little interest in Mississippi Sound and have acquiesced willingly in the United States' express assertions of sovereignty over the Sound as inland waters. We conclude that the absence in the record of evidence of any occasion for the United States to have exercised its privilege to exclude foreign navigation in innocent passage from Mississippi Sound supports rather than disproves the claim of historic title to the Sound as inland waters.

V

In sum, we conclude that the evidence discussed in the Report of the Special Master and in Part III above, considered in its entirety, is sufficient to establish that Mississippi Sound constitutes a historic bay. The exception of the United States to the Special Master's recommended ruling that the whole of Mississippi Sound constitutes historic inland waters is overruled. We repeat that we do not address the exceptions of Alabama, or those of Mississippi, or the exceptions of the United States that relate to the question whether Mississippi Sound qualifies as a juridical bay. The recommendations of the Special Master and his Report, to the extent they are consistent with this opinion, are respectively adopted and confirmed. The parties are directed promptly to submit to the Special Master a proposed appropriate decree for this Court's consideration; if the parties are unable to agree upon the form of the decree, each shall submit its proposal to the Master for his consideration and recommendation. Each party shall bear its own costs; the actual expenses of the Special Master shall be borne half by the United States and half by Alabama and Mississippi.

The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be determined necessary or advisable to effectuate and supplement the forthcoming decree and the rights of the respective parties.

It is so ordered.

JUSTICE MARSHALL took no part in the consideration or decision of this case.

February 12, 1985

9 Orig. United States v. Louisiana

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

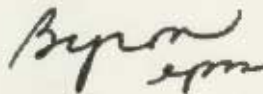
February 12, 1985

9 Original - United States v. Louisiana

Dear Harry,

I agree.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Byron R. White".

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

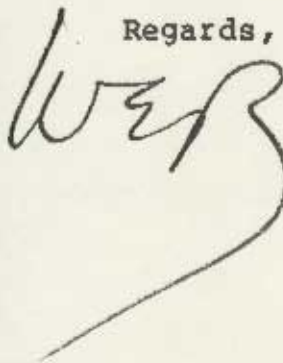
February 22, 1985

RE: 9 Original - United States v. Louisiana

Dear Harry:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'W. B.', with a long, sweeping underline that extends to the right.

Justice Blackmun

Copies to the Conference

9 Orig. United States v. Louisiana (Annmarie)

HAB for the Court 12/10/84

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