NO. 9 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF LOUISIANA, ET AL.

RESPONSE OF THE STATE OF LOUISIANA TO THE MOTION BY THE UNITED STATES FOR ENTRY OF SUPPLEMENTAL DECREE (NO. 3); MOTION OF THE STATE OF LOUISIANA TO DEFER THIS MATTER OR ALTERNATIVELY TO REFER IT TO THE SPECIAL MASTER UNDER AN AMENDED REFERENCE AND ALTERNATIVE SUPPLEMENTAL MOTION FOR ORAL ARGUMENT ON THE MOTION OF THE UNITED STATES

MEMORANDUM IN OPPOSITION TO THE MOTION BY THE UNITED STATES FOR ENTRY OF SUPPLEMENTAL DECREE NO. 3 AND IN SUPPORT OF THE STATE OF LOUISIANA'S MOTION TO DEFER THIS MATTER OR ALTERNATIVELY TO REFER IT TO THE SPECIAL MASTER UNDER AMENDED REFERENCE AND IN SUPPORT OF THE ALTERNATIVE SUPPLEMENTAL MOTION FOR ORAL ARGUMENT ON THE MOTION OF THE UNITED STATES

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I. In filing this pleading the State of Louisiana reserves its rights under the pleadings previously filed in connection with the Motion of the United States for Supplemental Decree (No. 3) and files this pleading further to protect the interest of the State of Louisiana.

II. The opinion of this Court rendered herein on March 3, 1969, declared:

> "Several of these factual disputes cannot be properly resolved without evidentiary hearings, and as to others, we think it would be wise at all events in this technical and unfamiliar area to have the benefit, *preliminarily*, of the judgment of a detached referee. Accordingly, we have decided to refer to a Special Master the task of

resolving in the first instance several of the particularized disputes over the precise boundary between the submerged Gulf lands belonging to the United States and those belonging to Louisiana." [Emphasis added] (394 U. S. 11, 35-36.)

* * *

"In due course a Special Master will be appointed by the Court to make a preliminary determination, consistent with this opinion, of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico." (*Id.*, 78.)

III. This Court, by decree, appointed Walter P. Armstrong, Jr., Esq., of Memphis, Tennessee, as Special Master. (395 U. S. 901.)

IV. The record of the proceedings before the Special Master has not been closed, briefs have not been filed, and so the Special Master has not yet had an opportunity to make a preliminary determination of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico as ordered by this Court in its opinion of March 3, 1969, and, therefore, the Motion by the United States for Supplemental Decree (No. 3) is premature.

V. Answering each paragraph in the motion setting forth the grounds on which the United States relies, the State of Louisiana avers:

1. Denied.

2. Admitted.

3. In answer to No. 3 the State of Louisiana admits that by order of May 19, 1969, 395 U. S. 901, the Court referred this case to Walter P. Armstrong, Jr.,

Esq., as Special Master, to make a preliminary determination consistent with the opinion of March 3, 1969, of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico. Further answering, the State of Louisiana avers that no such determination has been made as of this date.

4. In answer to No. 4 the State of Louisiana avers that its answers to interrogatories and request for admissions requested by the United States were made in response to an order of the Special Master over the objection of the State of Louisiana and with full reservation by the State of Louisiana of its right to re-argue the objections before this Court. The attorneys for Louisiana did not* and could not** surrender any right of the State of Louisiana.

5. Admitted.

6. Denied.

VI. The State of Louisiana, through its Attorney General, moves the Court as follows:

1.

The motion of the United States for Supplemental Decree No. 3 should be deferred until the matter can be considered in its entirety or, alternatively, referred to the Special Master appointed by this Court to consider this case with additional authority to accept amendments to the pleadings by either party, to consider all issues raised by the State of Louisiana in its

*See discussion *infra*, p. 5-9.

**Louisiana Act 38 of 1956.

objections to responding to the interrogatories and request for admissions of the United States and to consider all other issues raised by the parties relevant in making a final determination of the precise boundaries of the submerged lands owned by the State of Louisiana in the Gulf of Mexico and to make a report on said issues to this Court.

2.

In the alternative, the State of Louisiana moves that in view of the importance of the issues in this case to the State of Louisiana, and to the Nation in the light of pending litigation before this Court involving The Atlantic States and the involvement of national territory, the motion of the United States should be set down for oral argument before the Court before any decree is rendered thereon.

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By: /s/ Jack P. F. Gremillion
/s/ Paul M. Hebert
/s/ Victor A. Sachse

MEMORANDUM IN OPPOSITION TO THE MOTION BY THE UNITED STATES FOR ENTRY OF SUPPLEMENTAL DECREE NO. 3 AND IN SUPPORT OF THE STATE OF LOUISIANA'S MOTION TO DEFER THIS MATTER OR ALTERNATIVELY TO REFER IT TO THE SPECIAL MASTER UNDER AMENDED REFERENCE AND IN SUPPORT OF THE ALTERNATIVE SUPPLEMENTAL MOTION FOR ORAL ARGUMENT ON THE MOTION OF THE UNITED STATES

I. In the objection filed by the State of Louisiana to the right of the United States to file the motion for entry of Supplemental Decree (No. 3) at this time, it was made clear the motion was premature for the Special Master was delegated the task by the Court of making a preliminary determination and reporting to the Court on the precise boundaries of the submerged lands owned by the State of Louisiana in the Gulf of Mexico, which has not as yet been done since the hearings have not been concluded.

What the United States is attempting to do by this motion is to cause the Court to amend the order resulting from its March 3, 1969 opinion by having the Court determine the outer limits of the precise boundaries of the submerged lands owned by Louisiana in the Gulf of Mexico prior to a report by the Special Master to the Court.

The United States, in interrogatories and request for admissions, attempted to require the State of Louisiana, by its answers and admissions, to limit the extent of Louisiana's claim under the Submerged Lands Act in the Gulf of Mexico. Over the objection of the

State of Louisiana, the Special Master ordered the State of Louisiana to answer these interrogatories and request for admissions.

In response to order of the Special Master, the interrogatories and request for admissions were answered with a clear statement by the attorneys for the State of Louisiana that they did not give up any of the claims of the State of Louisiana under the Submerged Lands Act in the Gulf of Mexico. The State of Louisiana, in its objections, made it clear it did not consider the opinions previously rendered by this Court, in this case, were final until the precise boundaries of the submerged lands owned by the State of Louisiana in the Gulf of Mexico had been fixed by a decree of this Court, which has not as yet been done.

The United States errs in its proposed motion in treating Louisiana's statement of the outermost claims which it could make before the Special Master as its outermost claims before the Court. In order to facilitate trial by the Special Master, Louisiana entered into a Joint Pretrial Statement with the United States, accepting as correct for very limited purpose, and with certain exceptions, the product of a particular survey known as "the set of 54 maps."

This document stated:

> "For the purpose *of the present cross motion for entry of a second supplemental decree as to the State of Louisiana,* the parties agree to accept the set of 54 maps filed with the Special Master

as correct representations of the present high and low water lines. . . ." [Emphasis added.]

Louisiana's so-called admissions were predicated upon these maps, which Louisiana is not bound to recognize for purposes of this motion for an entirely new supplemental decree.

The record makes it abundantly clear that Louisiana's answer upon which the Government now relies was strictly limited to the proceedings before the Special Master "and not to lay a foundation for . . . petitioning the Supreme Court for any interim decree declaratory of ownership or jurisdictional powers in so-called undisputed areas. . . ." (Answers to United States Second Formal Interrogatories, December 10, 1970, in the Proceedings before the Special Master.) Furthermore, Louisiana repeatedly asserted:

> ". . . Louisiana recognizes that in the proceedings before the Master it must assert positions deemed tenable by counsel within the scope of the Supreme Court's opinion [of March, 1969] and the reference to the Special Master. But this is solely for purposes of trial before the Master and *not* for any more general or broad purpose of surrendering or not disputing rights generally 'in this litigation.'" (Additional Response by the State of Louisiana to Informal United States Interrogatories of January 20, 1970, and also Response to Second Formal Interrogatories *supra.*)

In the course of the hearings, Louisiana reiterated its position and with respect to this very motion by the United States, Louisiana again made its position clear, as appears from the following:

"MR. SACHSE: Mr. Armstrong, we think before we leave this room we ought to advise you if you haven't been advised that the United States has filed a motion for a new decree in this case with respect to areas outside of the limits as set by Louisiana in answer to interrogatories from the United States. So far as reference to the Master is concerned, disregarding but making reference to the earlier reservations in our response to the interrogatories and requests for admissions, which explicitly we have reserved our rights to be asserted in the United States Supreme Court rather than to you, sir, because it is not specifically referred to you. It may be that you already know of this but we thought that as a courtesy to you if you don't know of it, we should inform you and of course we will make opposition to this motion in due time.

THE MASTER: I appreciate your courtesy, sir. I was not aware of it but I figure that this is a matter that does not concern me but one that the parties will handle directly with the court.

MR. SACHSE: It may only inferentially concern you, sir, with respect to some certification to the Supreme Court of the United States of the answers to the interrogatories and requests for admissions which Louisiana filed because, while there is a reference to it in this motion in a vague sort of a way, the explicitness with which we undertook to preserve our rights is we think by no means indicated; so we may need to ask for some certification from you, sir.

THE MASTER: Very well sir. I will, of course, be glad to certify anything that has oc-

curred in the official proceedings here that may be of help. . . ." (43 *Transcript* 5906-5907.)

The State of Louisiana urges the Court, if it decides the motion should be considered at this time, to refer to the Special Master with authority to accept amendments to the pleadings, to consider whether any issues are foreclosed by former opinions of the Court in this case, whether or not the State of Louisiana is entitled to re-urge an historical boundary based on newly discovered evidence and to consider such other matters as would be relevant in making a preliminary determination of the precise boundaries of the submerged lands owned by the State of Louisiana in the Gulf of Mexico.

The first California Case held that none of the States, not even the original 13, had any claim to waters or submerged lands seaward of their coasts. (332 U. S. 19.) Meanwhile, in 1945, the Truman Proclamation claimed the submerged lands, but not the waters, of the continental shelf for the United States. (Executive Order No. 2667, 10 Fed. Reg. 12303, 59 Stat. 884.) The Congress, dissatisfied with the first California decision, effected a division by the Submerged Lands Act (67 Stat. 29) and the Outer Continental Shelf Act (67 Stat. 462) originally in the same bill, by which waters and submerged lands, to the extent of 3 miles, in the Atlantic and Pacific, were granted or confirmed to the States. In the Great Lakes, the international line was used. In the Gulf of Mexico, the line might be three leagues from the coast. The international line had to be referred to with respect to the Great Lakes because no claim to Canadian territory could be made, but

nowhere else was any reference made to an international line. Indeed, the Congress treated this as a wholly domestic matter and when the Attorney General of the United States sought to convince this Court to the contrary in the 1959-1960 case, this Court squarely rejected that view, held it to be a domestic matter, held that Congress could make such division of the Submerged Lands as it chose and that the problem of the Court was only to determine the extent of such division.[1]

Although considerations of international law were then rejected as to the extent of the Congressional division, when the second California case reached the Court, it was decided that the 1960 Geneva Convention should be used to determine the baseline from which the extent of the division is to be measured.[2] We have

[1] 363 U.S. 1, 32-35. "The Government now urges in this case . . . that because of federal supremacy in the field of foreign relations, this Court must hold that the Executive policy of claiming no more than three miles of territorial waters . . . worked a decisive limitation upon the extent of all state maritime boundaries for purposes of this act.

". . . However, in light of the purely domestic purposes of the Act, we see no irreconcilable conflict between the Executive policy relied on by the Government and the historical events claimed to have fixed seaward boundaries for some States in excess of three miles. We think that the Government's contentions on this score rest on an oversimplification.

* * *

"[T]here is no question of Congress' power to fix state land and water boundaries as a domestic matter. Such a boundary, fully effective as between Nation and State, undoubtedly circumscribes the extent of navigable inland waters. . . ."

[2] U. S. v. California 381 U. S. 139.

never been able to reconcile that decision with the earlier ones, except to recognize the relative simplicity of having one line for all purposes (though the Government has never heretofore sought that as there have been various lines with respect to navigation, fishing, smuggling and so on).[3]

In any event, California presented no evidence and little argument to support any other line to mark the division, and this Court has squarely recognized that fact in saying to Louisiana in its 1969 decision the opportunity to show initially to the Special Master that its use of offshore waters has been such that it would be considered as if Louisiana and the United States were opposing foreign powers. (394 U. S. 11, 77-78).

As the United States Constitution gives to the federal government exclusive treaty making powers, and as the same Constitution forbids the curtailing of State territory without its consent,[4] and as the

[3]The United States itself noted this in its Brief on Cross-Motion for the Entry of a Supplemental Decree as to the State of Louisiana. (No. 2) p. 38, f.n. 17.

[4]The federal government has not heretofore been held to have the power to change the boundaries of a state without its consent.

In *United States v. Louisiana,* the Court stated:

> ". . . It is sufficient for present purposes to note that there is no question of Congress' power to fix state land and water boundaries as a domestic matter." (363 U. S. 1, 35.)

However, examination of the text reveals that the court is referring to the power of Congress to set boundaries of states upon their admission to the union and to make a divi-

sion of sea area then, and did not relate to a diminution of the territory of a state aftter its admission:

> "The power to admit new States resides in Congress. . . . From . . . [it] . . . springs the power to establish state boundaries . . . ."

This Court has several times indicated that it believed that Congress lacked this power to change boundaries.

In *Geofroy v. Riggs* the Court had before it the question of whether a citizen of France could take land in the District of Columbia by descent from a citizen of the United States. At issue was the effect of a treaty between this country and France which was operative at the time the District of Columbia was formed. The Court, in a discussion of the nature of the treaty power, said:

> " . . . The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, *or a cession of any portion of the territory of the latter without its consent.*" (133 U.S. 258, 267.) [Emphasis added.]

The *Fort Leavenworth RR Co. v. Lowe* case was concerned with the effect of acquisition of land within a state by the federal government on the jurisdiction of the state to tax. In that opinion, the Court mentions the Maine boundary dispute:

> ". . . And so when questions arose as to the northeastern boundary, in Maine, between Great Britain and the United States, and negotiations were in progress for a treaty to settle the boundary, it was deemed necessary on the part of our government to secure the cooperation and concurrence of Maine, so far as such settlement might involve a cession of her sovereignty and jurisdiction as well as title to territory claimed by her, and of Mas-

sachusetts, so far as it might involve a cession of title to lands held by her." (114 U.S. 525, 545)

In *Washington v. Oregon,* the Court said:

> "The northern boundary of the state of Oregon was established prior to that of the state of Washington and it is not within the power of the national government to change that boundary without the consent of Oregon." (211 U.S. 127)

We cite also *Louisiana v. Mississippi.* The case involved a boundary dispute between the two states. One of the contentions of Mississippi was that there was conflict between the language in the act admitting Louisiana fixing the boundaries of that state, and the language fixing the boundaries of Mississippi in the act admitting it. The Court stated:

> "If it were true that this repugnancy between the two acts existed, it is enough to say that Congress, after the admission of Louisiana, could not take away any portion of that State and give it to the State of Mississippi. The rule, *Qui prior est tempore, potior in jure,* applied, and section three of article IV of the Constitution does not permit the claims of any particular State to be prejudiced by the exercise of the power of Congress therein conferred." (202 U.S. 1, 40-41)

New Mexico v. Colorado involved a border dispute between the two states. The act admitting Colorado had fixed its boundary as the thirty-seventh parallel. The boundary line was surveyed and named the Darling line. Later another line was surveyed, called the Carpenter line, and it was found that the Darling line was inaccurate. The Court stated two grounds for its decision. The first ground was that "governments are bound by the practical line that has been established as their boundary, although not precisely a true one" and that New Mexico was bound by the previous recognition of the Darling line by the United States while New Mexico was a territory and Colorado a state. The court also stated:

> "Further, after Colorado had been admitted into the Union in 1876 its right to rely upon the line previously established could not be impaired by any subsequent action on the part of the United States." (276 U.S. 30, 41)

United States is in a fiduciary capacity *quoad* the states when the federal government deals with foreign nations, it is difficult to see how it could rightfullly use the treaty making power with respect to the Geneva Convention to curtail state territory.

All of this is again being put at issue in litigation between the United States and the Atlantic States and this Court has refused the Motion of the United States for a summary judgment. Apparently, then, the issue is not foreclosed and it may well be that this Court will recognize that the Atlantic States did indeed have territory into the Atlantic when they came into the Union and that they did not lose their water territory by ratifying the United States Constitution.

The basis for the claims of the United States in this entire coastline litigation are now gravely in doubt. The claims of the United States rest ultimately upon the case of *United States v. California*, 332 U.S. 19 (1947), which held that no State had any boundary extending into the sea, not even the original thirteen. Subsequent events have reduced the force of this decision as precedent to the vanishing point. First, Congress, believing the opinion to have been in error, passed the Submerged Lands Act, which *quitclaimed* the ownership of mineral resources under the sea to the coastal states out to a certain distance. Next, this honorable court itself ruled that Texas and Florida did have historic boundaries, extending out into the Gulf of Mexico, *contra* the first California decision, *United States v. Louisiana et al.*, 363 U. S. 1. Most recently, this Court denied a Motion by the United

States for a judgment against the seaboard States that as a matter of law they were not entitled to more than the three miles granted them by the United States in the Submerged Lands Act. In countering the United States' motion with a motion for reference of the matter to a Special Master, the Atlantic States urged that they were not foreclosed from proving their claims by the California case. This Court did refer the matter to a Special Master, *United States v. Maine et al* 398 U. S. 947. If the Atlantic States make out their case, the historic claims of Louisiana, including the claim to three leagues mentioned in the 1803 cession from France, will be strengthened.

II. In Louisiana's objection to the right of the United States to file the present motion, reference was made to the fact there is now pending before a Special Master appointed by this Court in the suit entitled "The State of Texas, Plaintiff vs. The State of Louisiana, Defendant," Original Action 36, the question as to whether or not the Southwest corner of the State of Louisiana coincides with the Southeast corner of Texas in the Gulf of Mexico. Reference in Louisiana's memorandum was made to two recently discovered documents, one by President John Quincy Adams and the other by Secretary of State Henry Clay, which Louisiana urges recognized that the boundary established by the Treaty of 1819 between the United States and Spain established the western boundary of the State of Louisiana. An examination of the March 3, 1960 decision of this Court in *United States v. Louisiana et al.* suffices to demonstrate the materiality of

such a new discovery. There the Court stated:

> "Certain treaties successively entered into from 1819 to 1838 by the United States with Spain, Mexico, and the Republic of Texas establishing the boundary between Texas and the United States are relied on as indicating that the State and Federal Governments thought that Congress had fixed a three-league maritime boundary for Louisiana. Louisiana contends that the treaties fixed the beginning of the international boundary at a point three leagues from land, and that therefore the southwestern corner of Louisiana as well as the southeastern corner of Texas must have been regarded as extending seaward to that distance. Whether or not such reasoning is valid, the language of the treaties refutes the premise that the international boundary began three leagues from land. Both the 1819 and the 1828 treaties recited that [t]he boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico at the mouth of the river Sabine, in the sea * * *. The Treaty of 1838 referred to the Treaty of 1828, and provided for a survey of 'that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico, to the Red River.'" (363 U. S. 1, 77.)

The Court also noted:

> "The boundaries of Texas were described in full by the Act as follows:
>
> 'That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the

Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upo nin said treaty.' " (*Id.*, 36 f. n. 61).

Justice Douglas, in his dissent, stated:

"If the southeast corner of Texas was three leagues offshore, it is difficult for me to see how the southwest corner of Louisiana was not at the same point. From the beginning the United States and Spain fixed their corner west of the Mississippi on the Gulph of Mexico, at the mouth of the river Sabine, in the sea. 8 Sta. 254. If we move the Texas boundary out three leagues, it is hard to see why Louisiana's does not accompany it. It has long been recognized that a part of Louisiana's border is a water boundary that extends "to the open sea or Gulf of Mexico," *State of Louisiana v. State of Mississippi*, 202 U.S. 1, 43, 26 S.Ct. 408, 419, 50 L.Ed. 913, and includes the deep-water sailing channel line as a boundary. *Id.*, 202 U.S. at page 44, 26 S.Ct. at page 419.

"The enabling Act authorizing the people of the Territory of Orleans to form Louisiana described the territory as running 'to the gulf of Mexico; thence bounded by the said gulf * * * in-

> cluding all islands within three leagues of the coast.' 2 Stat. 641. The boundaries described in the Act admitting Louisiana to the Union are similarly described as 'to the gulf of Mexico; thence, bounded by the said gulf * * * including all islands within three leagues of the coast. 2 Sta. 701, 702." (*Id.*, 117-118)

Justice Douglas also noted:

> "The United States concedes that, so far as Louisiana, Mississippi and Alabama are concerned, all the submerged lands between the mainland and the islands are sufficiently enclosed to constitute inland waters that passed to the State on its entry into the Union. *Pollard v. Hagan*, 3 How. 212, 11 L.Ed. 565. It further concedes that these States have rights to the submerged lands within three miles of the islands under the ordinary three-mile rule." (*Ibid.*)

The letters of Adams and Clay, reproduced as Appendix to Louisiana's Objection, establish the United States was settling the western boundary of Louisiana, which was of course the western boundary of the United States as established by the Treaty of 1819[5] for

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[5]This effect of a treaty is not without precedent. In debating in the United States Congress the Act authorizing the people of the Territory of Orleans to form a constitution preparatory for its admission into the Union, Congressman Poindexter pointed out two instances where the boundaries were settled by the United States and a foreign government after a State came into the Union, and where the Treaty boundary, thereafter, became the boundary of that State without any further action on the part of the State. The first instance involved Massachusetts and a treaty between England and the United States and the other involved Georgia and

a treaty between Spain and the United States and England. In his debate Mr. Poindexter said:

"It has been contended by an honorable gentleman from Connecticut, (Mr. Pitkin) that inasmuch as the western limits of Louisiana remain undefined, the State to be formed of the present Territory of Orleans would extend its jurisdiction over the province of Texas, to Rio Bravo, and down that river to its confluence with the sea, so as to include the Bay of St. Bernard, and the whole extent of country, supposed by the American Government to be transferred by the French Republic under the name of Louisiana. This circumstance, it is alleged, will enable the Government of the new State to involve the United States in war, for the establishment of the most western boundary, to which we have asserted a claim. *The gentleman has himself referred to a fact which, in my estimation, furnishes a sufficient answer to this objection. He admits that the northern boundary of the State of Massachusetts was never definitely established until commissioners were appointed by the Government of Great Britain and the United States, to ascertain what was the true river St. Croix. Anterior to that event it was uncertain how far north the jurisdiction of Massachusetts extended; but the most scrupulous advocates for State sovereignty never imagined that the State could decide its own boundaries, and call upon the general Government to support that decision at the point of the bayonet. The difficulty was adjusted by amicable negotiation, and the river designated by the two nations became the permanent boundary of the State. Can the gentleman distinguish that case from the one which exists as to the western boundary of Louisiana?* By the second section of the bill, it is provided, that the State shall be composed of all that part of the territory or country ceded under the name of Louisiana by the treaty made at Paris on the 3rd day of April, 1803, between the United States and France, 'now contained within the limits of the Territory of Orleans, except that part lying west of the river Iberville, and a line to be drawn along the middle of the lakes Maurepas and Ponchartrain to the ocean.' The Territory of Orleans is limited indefinitely by the western boundary of Louisiana; but by an arrangement made in the Autumn of 1806, between the Commander-in-Chief of the

Louisiana was the Southwesternmost of the United States. This means the Southwest corner of the bound-

American Army and the Commander of the Spanish forces in that quarter it was agreed that for the present the Spanish should not cross the Sabine, and that the American settlements should not extend to the river. To carry this arrangement into effect, the Government of the United States has given instructions that the public lands should not be disposed of west of a meridian passing by Natchitoches. Beyond that line I am inclined to believe the Territorial Government of Orleans has not yet extended its authority. It follows, therefore, by a fair construction of the section to which I have referred, that the State to be formed of that territory will be confined within the same limits, until by an act of the General Government the western boundary of the cession shall be finally adjusted. *It belongs exclusively to the high contracting parties, to render that certain, which by the deed of cession is equivocal, and whatever line they may consent to establish as the western extremity of the country ceded under the name of Louisiana will constitute the permanent limit of the State, whether it extends to Rio Bravo or the Sabine, or a meridian passing by Natchitoches. This, sir, is conformable with usage. The southern boundary of Georgia was fixed by the Treaty of the 27th day of October, 1795, with the King of Spain; and, by the Treaty of 1794 with Great Britian, the true river St. Croix was determined. In these instance, the States whose interests were involved, existed prior to, and were parties in, the adoption of the Federal Constitution; and yet no one ever questioned the right of the Government of the United States to settle the line of demarcation between them and the colonies of Great Britain and Spain. I put it to the candor of the gentleman from Connecticut to say whether the difficulty which he suggests, is not entirely removed by a reference to the practice of the Government on these occasions, similar in their* nature to the present, and differing only in circumstances which rendered them more favorable to the interposition of State authorities." (Emphasis ours.) (Pages 556-8) January 1811. The Debates and Proceedings in the Congress of the United States, Eleventh Congress, Third Session, comprising the period December 3, 1810 to March 3, 1811 inclusive. Printed and published by Gales and Seaton 1853.

ary of the State of Louisiana coincides with the Southeast corner of the boundary of the State of Texas, which the Court has already held gave the State of Texas a three-league historical boundary. This newly discovered evidence should lead to the recognition of a three-league water boundary for Louisiana as well as for Texas, whether the issue is considered by the Special Master or by this Court if it considers the Motion of United States, acting under Rule 60 of the Federal Rules of Civil Procedures applicable in this Original action.

III. If the Court considers the motion of the United States, the State of Louisiana should be permitted to file with the Court the complete transcript and record of the proceedings before the Special Master so that the Court will have the facts on which the State of Louisiana relies.

The "piecemeal" character of the federal motion is evident from its one-sided nature, that is, it does not give effect by way of any recognition of Louisiana title to lands within the United States' innermost coastline claims or evidence or admissions submitted by the United States in the Proceedings before the Special Master. In this respect, it is materially different from the December 13, 1965 Decree.

The federal government, in material submitted to the Special Master, recognizes, in effect, that the Court's ruling on low water elevations within three miles of bay closing lines but more than three miles from dry land results in the production of three-mile arcs; but that recognition is not reflected in its motion

or proposed decree. Also, the federal government, in a last-minute filing in the proceedings before the Special Master, introduced evidence (United States Exhibit 416-D) showing that at or near the mouth of Dead Woman Pass there were many low water elevations and islands which it recognized ought to have effect in casting three-mile arcs.

U. S. Exhibit 416-D, especially in the area near Dead Woman Pass and elsewhere, has differed from earlier expressed federal positions which in part were utilized as the basis for formulating the Louisiana alternative positions for the limited purposes of the proceedings before the Special Master, which the federal government now relies upon.

The result is that if the federal motion is granted, the Court will have to then next consider another motion which Louisiana will be forced to file immediately thereafter to recognize on an interim basis, at Atchafalaya Bay and Dead Woman Pass, as well as at hundreds of miles of other locations, the area shoreward of which the United States plainly recognizes the title of Louisiana.

Likewise, in the unimaginably grave difficulties associated with the split-lease problem, there lurks potential for vast problems of administration and administrative accounting, engineering, financial record keeping problems as well as other matters of an exceedingly complex factual nature which may also involve neighboring leases that will not be split. (Federal admission of such problems is implicit in the request that leases which will be split should be excluded

from the proposed decree.) Effects of units, discrepancies between federal records and State records, systems of accounting for production, problems of survey to determine bottom hole location of wells—and there are at least hundreds, perhaps thousands of wells involved —all auger the probable repetition of much complex factual negotiation, discovery procedure and dispute. All of this will have to be later repeated on the Louisiana motion which would surely follow any granting of the federal motion, and also after the coastline determination is complete. Prior to the December 13, 1965 decree, where much smaller areas and much more limited production was entailed, such problems had been substantially negotiated before the decree.

To submit Louisiana to having to engage in veritable endless negotiations of this sort, without the availability of a Special Master to supervise discovery and resolve much factual detail, would be to require the State of Louisiana to merely accept the federal government's word concerning its handling of more than a billion dollars of funds from scores of areas scattered over thousands of square miles of territory with many hundreds of oil wells involved and many, many thousands of bookkeeping entries.

Therefore, a reference to the Special Master will be necessary, if for no other reason than to supervise discovery and take evidence on the matters of factual dispute that are sure to arise with accounting and surveying problems. These accounting and surveying and other administrative and technical problem areas are, of course, prone to raise factual complexities in addi-

tion to those factual disputes that arise out of the denials made by Louisiana in response to the United States' motion.

The fact that such numerous detailed disputes will have to be carried on concurrently with the still-unresolved coastline dispute which will inevitably involve the same counsel and technical personnel of both governments is bound to materially detract from the speedy resolution of the total dispute.

CONCLUSION

This matter is not only of great interest to the State of Louisiana, but to the other States on the Gulf of Mexico and the Atlantic states who are now involved in similar litigation. The complexities of these problems are such that no decree should be rendered on the motion of the United States without an oral argument before the full Court.

PROOF OF SERVICE

I, the Attorney General of the State of Louisiana, certify that copies of the foregoing ~~motion, proposed decree and memorandum~~ have been properly served on the 28th day of October, 1971, upon the Solicitor General and the Attorney General of the United States, respectively, in their offices in the Department of Justice Building, Washington 25, D. C.

/s/ Jack P. F. Gremillion