No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1956 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN REPLY TO LOUISIANA'S OPPOSITION TO MOTION FOR JUDGMENT, AND IN OPPOSITION TO LOUISIANA'S MOTION TO TAKE DEPOSITIONS

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CITATIONS

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INTRODUCTION

Louisiana's brief expounds the State's contentions as set forth in its answer, with little or no reference to the comments on them contained in our opening brief. Our opening brief thus stands substantially unanswered; we believe that it disposes of all the State's basic contentions, and we shall not attempt to retrace the same ground here. However, the State's brief does contain some amplifying and subsidiary material which we consider unsound and which seems to justify additional comment. Our discussion here will follow the order of Louisiana's brief, with the addition of a final section addressed to Louisiana's motion to take depositions.

ARGUMENT

I. THE COASTAL STATES HAVE NO TITLE TO THE CONTINENTAL SHELF EXCEPT AS CONFERRED BY THE SUBMERGED LANDS ACT

Louisiana asserts that in *United States* v. *California,* 332 U. S. 19, and *United States* v. *Louisiana,* 339 U. S. 699, "this Court did not undertake to pass upon the matter of title." The reason for that forbearance is said to have been that "The Court was then without the benefit of a declaration by Congress as to the extent of American territorial jurisdiction." (Brief, 17.) Now, it is said, Congress has supplied that lack, making the dissenting rather than the majority opinions in those cases the authoritative precedents (Brief, 36). That proposition is unsound in every particular.

First, the *California* and *Louisiana* cases did most specifically pass upon the matter of title. The first paragraph of the decree in *United States* v. *Louisiana,* 340 U. S. 899, provides:

> 1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana. *The State of Louisiana has no title thereto or property interest therein.* [Emphasis added.]

The decree in *United States* v. *California,* 332 U. S. 804, 805, was in the same terms, except that the area there in dispute extended seaward only three miles. It is impossible to conceive a more direct and specific adjudication that the State had no title. So far from withholding decision because of uncertainty over the location of the boundary, the Court in the *Louisiana* case clearly pointed out that the location of the boundary was immaterial to the decision, saying (339 U. S. at 705):

> If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so.

Next, it is not true that Congress has defined the national maritime boundary by subsequent legislation. The Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, contains no direct statement on the subject. Inferentially, it adopted the existing three-mile rule, by fixing that as the general extent of the submerged land granted to the States as being within their boundaries. The additional provision, that Gulf States could obtain submerged land out to three leagues if they could prove that they had boundaries that far out when they entered the Union or if such boundaries were thereafter approved by Congress, did not reflect a Congressional view that

such boundaries were possible; it was merely a concession to the protests of the Gulf States that this Court, rather than Congress, was the proper forum for settling a dispute as to the existing state of affairs. See the Government's opening brief, pages 27–32. And the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, did not extend the national boundary but rather asserted special rights and interests of the United States in the continental shelf adjoining but beyond its boundaries. See the Government's opening brief, pages 85–97.

Finally, even if the national maritime boundary had been extended, and if that had effected or permitted a corresponding extension of State boundaries, still Louisiana would not have acquired thereby any additional proprietary rights in the seabed. It was already *res judicata* between the parties that the right to exploit the resources of the seabed belonged to the United States as an attribute of national sovereignty, and not to the State as an attribute of State sovereignty. The State had no such rights in the seabed within its former limits; extension of its limits would not enlarge its rights in that respect. The rights adjudicated to the United States by this Court could pass to the State only by Congressional grant, and Congress has granted only three miles, or up to three leagues if the State can prove that it had such a boundary when it entered the Union or approved by Congress before May 22, 1953.

Louisiana asserts (Brief, 19) that the Submerged Lands Act was not a *grant* but rather was a recognition of a pre-existing title in the State. It supports

this by two propositions: that Congress called the act one of restitution, and that it was measured by existing State boundaries, which the State calls "a present recognition of a previously existing title." A reading of the Congressional committee reports to which the State refers (Brief, 25–26; Appendix 8–37) shows no more than that the committees believed that it would be sound and equitable policy to establish title, within State boundaries, as it had been supposed in many quarters to be before the decisions of this Court in the *California* and *Louisiana* cases. A grant is not the less a grant because motivated by considerations of fairness or public policy. In citing reference to existing State boundaries as a recognition of existing State title, Lousiana confuses territorial jurisdiction with proprietary right. The effect of the Submerged Lands Act was to transfer to each State, within the limits of its existing territorial jurisdiction, a proprietary right which had theretofore belonged to the United States as an attribute of national sovereignty. It was as a grant of federal property that the Submerged Lands Act was sustained by this Court. *Alabama* v. *Texas,* 347 U. S. 272.

From the premise that the Submerged Lands Act was a "recognition" of title in the State rather than a grant to it, Louisiana leaps to the conclusion that it applies to the entire continental shelf. But that by no means would follow. The Submerged Lands Act is clearly limited in terms to areas within State boundaries, not more than three miles from the coast (or three leagues, if an historic boundary at

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that distance should be proven). Sections 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), 1311 (a), 1312. Even assuming that the Act is a "recognition" of existing State title, Congress, which could have stood on this Court's judgment that the State had no title, clearly had power to limit the area in which it would "recognize" State title as existing. That it intended to impose such a limit, whatever the nature of the Act may be, is equally clear, both from the terms of the Act itself and from the provisions of the Outer Continental Shelf Lands Act, contemporaneously enacted (67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343), which provides for exclusive federal control of the submerged lands seaward of the limits described in the Submerged Lands Act. The case of *Superior Oil Company* v. *Fontenot,* 213 F. 2d 565 (C. A. 5), certiorari denied, 348 U. S. 837, cited by Louisiana (Brief, 19–24) as recognizing that the Outer Continental Shelf Lands Act subjected the outer continental shelf to the same rules as inland waters, did nothing of the sort. It merely held that, as between the State and its lessee, rights acquired by the State under the Submerged Lands Act, within the three mile limit, must be considered retroactive.

Louisiana urges the Court (Brief, 30–36) to renounce the theory on which it decided *United States* v. *Louisiana,* 339 U. S. 699. But whatever might be the views of the Court as to such a policy with respect to States other than California, Louisiana and Texas, as to those three States we have not merely a legal

theory to be followed as *stare decisis,* or overruled if the Court be so advised; as to them, we have judgments which have become final. As to them, the applicable principle is not merely *stare decisis,* but also *res judicata,* and that principle stands as an absolute bar to any reconsideration now.

II. LOUISIANA'S TITLE DOES NOT EXTEND TO THE EDGE OF THE CONTINENTAL SHELF

Louisiana argues (Brief 37–47) that Presidential Proclamation No. 2667, 59 Stat. 884, asserting jurisdiction of the United States over the resources of the seabed of the continental shelf, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, asserting exclusive federal jurisdiction over the seabed of the outer continental shelf, have established the title of the State thereto. This paradoxical result is reached by asserting that those actions extended the national boundary; that the State boundary followed automatically; that the State's occupancy of the area is the only basis for the United States' claim to it; and that the United States claim it through the State, having acquired it in trust for the State as part of the Louisiana Purchase. This reasoning is confused. Nothing acquired from France by the Louisiana Purchase is claimed by the United States "through" the States; on the contrary, they claim through the United States which created them. If the area was acquired from France by treaty, the State's occupation of the seabed is not "the only basis in international law" for the claim by

the United States (Brief, 44–45).[1] And if the State's boundary was extended into the area as a result of a federal boundary extension (Brief, 38), again the State is obviously claiming through the United States rather than conversely as the State asserts.

We need not pause to unravel these confusions further, for the entire matter is irrelevant. The claims of the United States on the outer continental shelf do not amount to a boundary extension (see the Government's opening brief, pages 85–97). But even if they did, and if State boundaries were extended correspondingly, still the State would not have title to the seabed. Title to the seabed, as distinguished from the beds of inland waters, is not an attribute of State sovereignty. *United States* v. *Louisiana*, 339 U. S. 699. It is *res judicata* that the State has no title there unless it has acquired it from the United States since 1950. The only title the State has acquired from the United States is limited to three miles from the coast (or three leagues if the State can prove that it had a boundary of that extent when it entered the Union or approved by Congress before May 22, 1953). Submerged Lands Act, secs. 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed., Supp. III, 1301 (b), 1311 (a), 1312.

[1] The actual basis for the federal claim to the continental shelf beyond territorial waters is the mere assertion of such claim, announced to the world as an act of external sovereignty by Presidential Proclamation No. 2667 and by the Outer Continental Shelf Lands Act. It has not been challenged by other nations, and certainly its international validity cannot be questioned by a State of the Union.

III. THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY CONSTITUTIONAL RIGHTS OF THE STATE OF LOUISIANA

Louisiana argues (Brief, 47–64) that under the treaty of the Louisiana Purchase the United States was obliged to incorporate the purchased territory into the Union according to the principles of the Federal Constitution, that constitutional principles require that the seabed of the continental shelf be given to the State, and that the Submerged Lands Act and Outer Continental Shelf Lands Act are unconstitutional to the extent that they retain federal control over such seabed. As Louisiana sums up the point (Brief, 63), "Louisiana in this case asks this Court to preserve its right to property which is an attribute of State sovereignty, and to protect the State from trespass by the United States."

The short answer is that this Court has already decided that under the Constitution the particular property here involved is *not* an attribute of State sovereignty, but is an attribute of national sovereignty. *United States* v. *Louisiana,* 339 U. S. 699. The acts of Congress cannot be "unconstitutional" for adhering to the situation which the Constitution itself created. The fact that Congress relinquished the federal rights to the State within certain limits gives the State no rights beyond those limits.

IV. LOUISIANA'S HISTORIC BOUNDARY DID NOT EXTEND TO THE 27TH PARALLEL

Louisiana's claim to a boundary at the 27th parallel rests solely on the terms of La Salle's proclamation of April 9, 1682; we are not given a single subsequent reference to that line in the whole history of Louisiana. As we pointed out in our opening brief (pages 111–114), the terms of the proclamation and the *procès-verbal* embodying it clearly show that La Salle mistakenly believed that he was at the 27th parallel at the time. Without discussion, the State now rejects the possibility of such an error, on the ground that determination of latitude is easy (Brief, 79). Be that as it may, La Salle's own writing shows that he determined it wrongly.

The proclamation and *procès-verbal* are not the only evidences of La Salle's error, nor was that the only time that he mistook a latitude. In a letter written at another time, he referred to the final reach of the Mississippi as running "to the East or at most to the South-East, taking this course at least one hundred twenty leagues, from the 30th *as far as the 27th degree, where it discharges into the sea* * * *."[2] [Emphasis added.]

In the same letter, he spoke of two Indian villages where he had stopped on the Mississippi, "one situated at 28 degrees or thereabouts of north latitude,

[2] "* * * à l'Est ou au plus au Sud-Est, faisant cette route au moins cent vingt lieues, depuis le 30e jusqu'au 27e degré, où il se descharge dans la mer * * *." 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877) 199.

and the other at 30 degrees * * *."[3] The 28th parallel is about 60 nautical miles in the Gulf south of the southernmost mouth of the Mississippi.

Earlier in the same letter, describing the area near the mouth of the Ohio river, La Salle said:

> The Chucagoa * * * is the river that we call the river Saint-Louis. The Ohio river is one of its branches, which receives two others of considerable size before falling into the Saint-Louis river * * *. The Takahagane live on the north bank of the Chucagoa, about 32 degrees of north latitude; the Cicaca in the lands about 30 degrees and a half to the south of the same river, almost north and south of the mouth of the river of the Illinois in the Colbert river * * *.[4]

Without attempting to identify precisely the location referred to, we can see, from the fact that the Ohio actually enters the Mississippi (Colbert) at the 37th

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[3] "* * * l'un situé à 28 degrez ou environ de latitude nord, et l'autre à 30 degrez * * *." *Ibid.*, 198.

[4] "Le Chucagoa * * * est le fleuve que nous appelons le fleuve Saint-Louis. La rivière Ohio est une de ses branches, qui en reçoit deux autres bien considérables avant que de tomber dans le fleuve Saint-Louis * * *. Les Takahagane habitent sur le bord septentrional du Chucagoa, environ les 32 degrez de latitude septentrionale; les Cicaca dans les terres, à environ 30 degrez et demy au sud de ce mesme fleuve, presque nord et sud de l'emboucheure de la rivière des Ilinois, dans le fleuve Colbert * * *." *Ibid.*, 196.

The French nomenclature for these confluent rivers was not uniform. Sometimes, the name Saint-Louis was applied to the Ohio as far as the Mississippi, but at other times the Saint-Louis was said to flow into the Illinois which in turn emptied into the Mississippi. See, *e. g.*, Father Zenobe's letter of June 3, 1682, *ibid.*, 206.

parallel, that La Salle was substantially in error regarding latitude.

Louisiana's reliance on De Fer's map of 1705 (Brief, 80–81) is equally unjustified. The dotted line in the water, which Louisiana treats as a boundary, was not confined to coasts claimed by France, but extended along the entire depicted coast, from below Tampico, Mexico, to above Cape Romain, South Carolina. The legend inscribed along it, "Les Gros Bastimens naproche pas la coste ny ayant de fond que Jusque a ces points," means simply, "Large ships are not to approach the coast, there being depth only as far as these points [dots]," and was nothing more than a navigational warning.[5] (As bearing on the accuracy of early determinations of latitude, it may be noted that this map shows the Tropic of Cancer as almost touching the Cape of Florida and about 30 leagues north of Cuba. In fact, the Tropic of Cancer, which is at 23° 27′ North, is about 30 leagues south of Florida and 7 north of Cuba.)

Louisiana takes the position (Brief, 67–68, 120, 123) that the Act of April 8, 1812, 2 Stat. 701, admitting it to the Union, which described the State as "bounded by the said gulf * * * including all islands within three leagues of the coast," should be construed as describing a three-league marginal belt of sea and submerged land. We have answered that contention in our opening brief, pages 32–38. However, in addition to what was said there we may point out that

[5] The fact that the map showed no inland political boundaries is a further indication that the line drawn opposite the shore was not intended to represent a political boundary.

similar language was used in the enabling acts for Mississippi and Alabama, and that there are strong reasons for believing that it was not intended that water or submerged land should be included thereby. The Mississippi enabling act, March 1, 1817, 3 Stat. 348, described the State as "including all the islands within six leagues of the shore"; similarly, the Alabama enabling act, March 2, 1819, 3 Stat. 489, 490, described the State as "including all islands within six leagues of the shore." It would certainly be surprising to find Congress at that late day claiming a marginal belt of *six* leagues, particularly in view of the fact that only a few years before it had limited Louisiana to islands within *three* leagues. Alabama, at least, has not construed that as a grant of a six-league marginal belt. In its brief in support of its motion for leave to file its complaint in *Alabama* v. *Texas,* 347 U. S. 272, Alabama said (pages 65–66):

> By joining the Union, Alabama became bound by the actions of the United States in the conduct of its foreign relations, and as a result, became bound by the rule, supported by the United States, that three nautical miles were the maximum limit of the width of the maritime belt which any nation, including the United States, might claim as part of its territorial boundaries. As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in width.

Other subjects discussed by Louisiana under the heading of its historic boundary (Brief, 64–83) are dealt with elsewhere herein or in our opening brief.

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As to the claim that the terms of the Louisiana Purchase required the United States to hold the offshore submerged lands in trust for the State of Louisiana (Brief, 66–67), see our opening brief at pages 98–101. As to the claim that ownership of the seabed passed to the State as an incident of State sovereignty (Brief, 67–73), see *supra,* pages 2–3, 8, 9, and our opening brief, pages 22–24.

V. LOUISIANA'S CLAIMS OF A BOUNDARY MORE THAN THREE MILES FROM THE COAST ARE NOT SUPPORTED BY INTERNATIONAL LAW

Louisiana cites (Brief, 83–84) various European treaties which it says recognized territorial boundaries extending seaward various distances ranging from three to 30 leagues. Excerpts from those treaties are set out in the Appendix to Louisiana's brief, at pages 89–102. Examination of them shows that they contain no reference to "boundaries" in the sea; in each instance the provision referred to is one granting or relinquishing a right of the subjects of one sovereign to fish within stated distances of coasts owned by the other. The power of nations to enter into such treaties has never been questioned, but they establish nothing more than personal privileges and obligations between the parties. For example, by the treaty with Great Britain of October 20, 1818, the United States renounced the right of its citizens to fish "within three marine miles of any of the coasts, bays, creeks, or harbours, of his Britannic Majesty's dominions in America" with certain exceptions. Art. 1, 8 Stat. 248, 249. In the North Atlantic Coast Fisheries Arbi-

tration, this was held to include, and to be effective as to, all "bays" whether or not they were so large as to be outside the territorial jurisdiction of Britain. *Protocols of the North Atlantic Coast Fisheries Arbitration* (1910) 121, 1 *North Atlantic Coast Fisheries Arbitration* (S. Doc. No. 870, 61st Cong., 3d Sess.), Award of the Tribunal, 92–93. Moreover, even if the treaties referred to by Louisiana did purport to establish territorial boundaries, they would only be effective between the parties and would not show any general right under international law to claim such boundaries against the world.

Louisiana next refers (Brief, 85–95) to the principle that a nation may by occupancy acquire exclusive rights in sedentary fisheries such as pearl fisheries, and claims by its occupancy of the continental shelf to have brought itself within that principle. The claim shows some misunderstanding as to the issues now before the Court. As between the United States and the State, the right to exploit the resources of the seabed belongs to the United States, regardless of where the State boundary may be (*United States* v. *Louisiana,* 339 U. S. 699), except to the extent that the United States has relinquished it to the State since 1950. The only such relinquishment has been by the Submerged Lands Act, and is limited to the State boundary, and not more than three miles from the coast, unless the State can show that its boundary extended farther when it entered the Union, or that a greater extent has been approved by Congress before May 22, 1953, in which case the federal relinquishment may extend as far as three leagues, but no farther

in any case. Sections 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), 1311 (a), 1312. Whatever the State of Louisiana has done by way of occupancy of the seabed has necessarily been done since it entered the Union, as the State did not exist before that time. There is no claim that any boundary established by such occupancy has been approved by Congress. This disposes of the point; all else is irrelevant. We may observe, however, that any preemption of rights in the bed of the high seas, as against other nations, must necessarily be accomplished by the National Government, which alone has external powers, and not by one of the constituent States of the Union acting alone. And against the United States, the State can of course acquire no rights there by prescription. *United States* v. *California,* 332 U. S. 19, 39–40.

VI. THE UNITED STATES HAS NOT APPROVED STATE OWNERSHIP OF A THREE-LEAGUE BELT IN THE GULF OF MEXICO

Louisiana argues (Brief, 96–109) that the United States has consistently approved State ownership of a three-league belt in the Gulf of Mexico. This subject was fully discussed in our opening brief, pages 39–62, 138–148, where we showed that, on the contrary, the United States has always insisted on a three-mile limit in the Gulf of Mexico as elsewhere. We believe that what we said there fully answers this part of Louisiana's brief, and we shall not add to it here, except to correct certain errors in Louisiana's presentation of its argument.

Louisiana says (Brief, 99) that the Treaty of Limits of 1819 between the United States and Spain "was the basis for the fixing of this corner at the mouth of the Sabine 'three leagues from land' in the Boundary Convention between the United States and the Republic of Texas in 1838." The fact is that the boundary convention with Texas did *not* fix a corner three leagues from land. It provided merely that the boundary established between the United States and Mexico in 1828 was binding as to Texas, and that a joint commission should mark "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." 8 Stat. 511. The Mexican treaty of 1828 had provided (8 Stat. 372, 374), as did the previous treaty of 1819 with Spain (8 Stat. 252, 254), that the boundary should begin "on the gulf of Mexico, at the mouth of the river Sabine, in the sea."

Louisiana also states (Brief, 104) that, when the United States protested the Mexican boundary extension of 1935, Mexico pointed to the three-league provision of the Treaty of Guadalupe Hidalgo in justification, to which the United States replied on May 23, 1936, that that treaty related only to the Gulf of Mexico, whereas the protest was only against a boundary extension in the Pacific. That statement is inaccurate. The letter of May 23, 1936, was a letter of instructions from the Assistant Secretary of State to the American Ambassador to Mexico. 1 Hackworth, *Digest of International Law* (1940) 640–641. The reply to the Mexican Government, by letter of June 3,

1936, was in the same terms as the letter of instructions, however, except for minor verbal changes. It is printed in full in 99 Cong. Rec. 3623; the most relevant portions are printed in our opening brief, pages 54–56. It does not in any way limit the protest to the Pacific coast. On the contrary, it makes it perfectly clear that the protest relates equally to the Gulf of Mexico. It says that the provision of the Treaty of Guadalupe Hidalgo "relates only to the boundary line at a given point," and points to the fact that when Great Britain protested against the treaty provision on the ground that "the Gulf of Mexico is a great thoroughfare of maritime commerce" the United States replied that the treaty provision was meant only for the mutual convenience of the parties and was not meant to question the rights of other nations under the law of nations. That necessarily referred to rights in the Gulf of Mexico, as none other was in question. The essence of the American reply to Mexico was that the provision extending the dividing line between the two countries three leagues into the Gulf was merely for the purpose of preventing smuggling at the boundary, and did not in any way justify claiming a three-league belt along the coast.

Louisiana misquotes (Brief, 104) a statement by President Jackson, giving it as "The title of Texas to the territory *sea* claims is identified with her independence." [Emphasis added.] This gives an erroneous impression that Jackson was speaking of the maritime boundary. What he actually said was, "the territory she claims." 3 Con. Globe (24th Cong., 2d

Sess.), 45. In its context, the statement has no significance for present purposes. The subject under discussion was the proposed recognition of the Republic of Texas as independent from Mexico. It was generally anticipated that, after achieving independence, Texas would join the United States. Jackson was warning that, under those circumstances, a too-precipitate recognition of Texan independence by the United States might be construed by other powers as a mere expedient to create a Texan title which the United States could then assume. It did not at all mean that recognition of Texas would amount to a recognition of the validity of any particular Texas claim.

Louisiana quotes (Brief, 105) a statement by Senator Walker to the effect that in connection with his resolution advising recognition of Texas he had claimed her boundaries as the ancient boundaries of Louisiana. That statement referred to the fact that the United States at one time claimed that Texas was part of the province of Louisiana as it was originally possessed by France, ceded to Spain, retroceded to France and finally transferred to the United States.[6]

[6] See, *e. g.*, the letter of January 19, 1816, from James Monroe, Secretary of State, to Luis De Onis, the Spanish Minister (*American State Papers*, 4 Foreign Relations 424, 425):

"It is known to your Government that the United States claim by cession, at a fair equivalent, the province of Louisiana, as it was held by France prior to the treaty of 1763, extending from the river Perdido, on the eastern side of the Mississippi, to the Bravo or Grande, on the western. To the whole territory within those limits, the United States consider their right established by well-known facts and the fair interpretation of treaties."

It had nothing to do with the three-league boundary claimed by the Republic of Texas; that claim was not made until December 19, 1836, whereas the American pretensions to Texas as part of the Louisiana Purchase were relinquished by the Treaty of Limits with Spain, February 22, 1819, 8 Stat. 252, fixing the western limit of Louisiana at the Sabine.

Louisiana likewise says (Brief, 105) that the territorial claims of Texas were recognized by treaties which it entered into with France on September 25, 1839 (2 Gammel, *Laws of Texas,* 655; Laws of the Republic of Texas, 5th Cong., 1840–1841, App., 1), The Netherlands on September 18, 1840 (2 Gammel, *Laws of Texas,* 905; Laws of the Republic of Texas, 7th Cong., 1842–1843, App., XXI) and Great Britain on November 13, 1840 (2 Gammel, *Laws of Texas,* 880; Laws of the Republic of Texas, 7th Cong., 1842–1853, App., I). A reading of those treaties discloses no reference whatever to the territorial extent or boundaries of the Republic of Texas, maritime or otherwise. As we pointed out in our opening brief, pages 140–142, recognition of a nation does not amount to recognition of its territorial claims.

Louisiana refers (Brief, 105) to the Florida Constitution of 1868 as having claimed a boundary five leagues in the Gulf of Mexico, citing 2 Thorpe, *American Charters, Constitutions and Organic Laws* 706, 734. While it makes no difference here, we may point out for accuracy that the Florida Constitution of 1868, as adopted by the people of Florida and as submitted to Congress, provided for a boundary *three* leagues in the Gulf of Mexico. H. Exec.

Doc. No. 297, 40th Cong., 2d Sess., 3; Florida Laws (1868) 193, 195; Bush, *Digest of the Laws of Florida* (1872) 1, 3; 3 Florida Statutes (1941) 178, 179; 25 Florida Statutes Annotated, 411, 413. We have no immediate explanation for the entirely different text printed by Thorpe. We have already pointed out in our opening brief, pages 145–147, that Congress did not approve the boundary provision of the Florida constitution.

Since Louisiana has failed to show any instance of approval by the United States of a three-league boundary for any State in the Gulf of Mexico, it is unnecessary to consider whether, if such a boundary had been recognized, "equal footing" would entitle Louisiana to a boundary of that extent.

Louisiana refers (Brief, 108) to the fact that the Submerged Lands Act recognizes boundaries extending more than three miles into the Great Lakes. That has no relevancy here; the Great Lakes are inland waters, as to which it has always been recognized that boundaries of bordering nations and States extend to the mid-line.

Louisiana also refers (Brief, 109) to the Submerged Lands Act as setting a three-league limit in the Gulf of Mexico. But, as we have already explained, that limit was set, not as an indication that Congress believed that such limits did or could exist, but as a concession to the demands of coastal States that they be allowed to litigate their claims to have such boundaries existing in the past. The claim then was that for Congress to deny them that opportunity would be arbitrary and confiscatory; the fact that they

have been given the opportunity to prove their claims, if they can, should not be taken as in itself a Congressional recognition of the validity of those claims.

VII. THE UNITED STATES HAS NOT RECOGNIZED A THREE-LEAGUE MARGINAL BELT

Louisiana refers (Brief 109–119) to various examples of exercises of authority by the United States at distances greater than three miles from the coast. There is no doubt that the United States has exercised and does exercise some authority, for customs, fiscal and sanitary purposes, at greater distances from the coast than three miles. This does not at all mean that the United States claims territorial possession of the waters to those distances. The areas in which such authority is exercised are called "contiguous zones." They are described, for example, in the recent Report of the International Law Commission of the United Nations, containing its proposed codification of the law of the sea (General Assembly, Official Records: Eleventh Session, Supplement No. 9 (A/3159), 1956, page 11), as follows:

> SECTION II. CONTIGUOUS ZONE
>
> *Article 66*
>
> 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to
>
> (a) Prevent infringement of its customs, fiscal or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

In this connection, Louisiana refers (Brief, 114) to the Act of February 18, 1793, 1 Stat. 305, 314, which provided for licensing of coasting and fishing vessels, under which vessels so licensed were subject to seizure if found to be carrying foreign goods, without permission, within three leagues of the coast. That provision applied only to vessels enrolled under the law of the United States, and its jurisdiction rested on nationality rather than on territorial jurisdiction.

Louisiana likewise refers (Brief, 115–116) to American seizures of ships for piracy, within the limits of the Gulf Stream. Such seizures have no territorial significance, as pirates are liable to seizure anywhere on the high seas by vessels of any nation. *The Marianna Flora,* 11 Wheat. 1, 38.

Various speculative statements in Kent's Commentaries and in Jefferson's correspondence, that the United States might be justified in claiming more than three miles at some future time (Louisiana's Brief, 113–118), fall far short of showing actual recognition of such boundaries by the Government. The resolution of December 4, 1781, of the Continental Congress (Louisiana's Brief, 109), providing for seizure of ships carrying British goods within three

leagues of the coast, was limited to vessels "destined to any port or place of the United States". 7 *Journals of Congress* (1800) 185, 186; 21 *Journals of the Continental Congress* (1912) 1152, 1154. It was a wartime measure of embargo, not a general territorial claim. And the fact that the Continental Congress, in negotiating for peace with Great Britain, would if necessary have made certain concessions regarding fishing which in fact were not made (Louisiana's Brief, 109–112), does not amount to a recognition of territorial rights as belonging to Britain. Certainly it is not an assertion of similar claims by the United States. If anything, the treaty provision actually adopted, permitting American fishermen to fish up to the shores of British North America (8 Stat. 82), would negate claims to territorial waters altogether. However, as we have already explained (*supra,* pages 14–15), such treaty arrangements regarding fishing do not necessarily correspond to territorial limits.

VIII. LOUISIANA ACT 33 OF 1954 IS NOT JUSTIFIED BY ACTS OF CONGRESS

Louisiana argues (Brief, 119–130) that since its marginal belt is to be measured from the line marking the outer limit of inland waters, it has properly used for that purpose the line drawn by the Commandant of the Coast Guard delimiting the waters in which vessels must observe the inland rules of navigation. We have answered that contention in our opening brief, pages 130–136, although recognizing that the Court may prefer to defer that, together with other

questions as to identification of the base line, for consideration in supplementary proceedings. Little need be added to what we have already said on this subject. Louisiana's view is that it is justified in using the Coast Guard line as marking the limit of "inland waters" in the jurisdictional sense, because the Act of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151, requires the line to be so drawn. That is not the construction which the Commandant of the Coast Guard has placed on the statute; on the contrary, he has construed it as requiring him to draw a line marking the areas where it will best serve the interests of navigation to follow the inland rules. The line along the Louisiana coast was drawn after a public hearing held in New Orleans, June 2, 1953, at which the public were invited to comment on the line proposed by the Commandant. Notice of that meeting was published in the Federal Register for May 1, 1953, and included the following statement (18 Fed. Reg. 2556):

> The primary purpose for boundary lines and their establishment is and has been since 1895 to definitely indicate where the provisions of the international rules for navigation at sea apply and where the provisions of the navigation rules for harbors, rivers, and inland waters generally in 33 U. S. C. 155 to 222 shall apply and be followed by navigators of vessels. *These lines are based on the needs of safety in navigation.*[7] [Emphasis added.]

[7] If the Court prefers to postpone this subject to later proceedings where evidence can be introduced, the United States can produce the record of that hearing, showing that navigational convenience was the only matter considered.

This, of course, agrees with the statement included in the order establishing the line, quoted in our opening brief at pages 131–132. Whether or not the statute requires the Commandant to determine the limits of "inland waters" in the jurisdictional sense, it is clear that he has not undertaken to do so. There can be no justification for giving jurisdictional effect to a line drawn on a different assumption.

Louisiana refers (Brief, 125) to the case of *Porter* v. *United States* (*United States* v. *The Steam Vessels of War*), 106 U. S. 607, 612, which construed "inland waters" as used in Section 7 of the Act of July 2, 1864, 13 Stat. 375, 377, to mean "all waters of the United States upon which a naval force could go, other than bays and harbors on the sea-coast." That merely shows that "inland waters" can be used in various senses; for bays and harbors on the sea coast are certainly inland waters in the jurisdictional sense. Clearly the Commandant of the Coast Guard has construed "inland waters" in the 1895 Act in a sense other than jurisdictional; whether he is right or wrong, the line that he has drawn can only be understood as representing what he intended it to represent.

Reference is made (Brief, 124) to the Mississippi and Alabama boundaries as being "six leagues of the shore." Actually, those States are merely described in their enabling acts as "including all the islands within six leagues of the shore." 3 Stat. 348 (Mississippi); 3 Stat. 489, 490 (Alabama). The difference is obvious. See *supra,* p. 13, and our opening brief, pages 32–38. We have already pointed out (*supra,* p. 20) that the Florida boundary described by the con-

stitution of 1868 was three leagues in the Gulf of Mexico, rather than five as stated by Louisiana (Brief, 124).

IX. LOUISIANA SHOULD NOT BE ALLOWED TO INTRODUCE EVIDENCE WITH REGARD TO ITS PLEAS OF ACQUIESCENCE, ESTOPPEL OR PRESCRIPTION

Louisiana argues (Brief, 131–141) that it should be allowed to introduce evidence of its long-continued exercise of governmental and proprietary rights in the continental shelf. We submit that it is not appropriate for the Court to receive evidence on those subjects. It is *res judicata* that the State had no title in 1950, all rights in the submerged land of the continental shelf being then in the United States. *United States* v. *Louisiana,* 339 U. S. 699. The only title which the State can now claim is that granted by the Submerged Lands Act. Thus, evidence of past exercise of proprietary rights by the State is irrelevant. The State's boundary for jurisdictional purposes cannot exceed that of the United States.[8] The boundary of the United States is subject to judicial notice. Thus it would not be proper to receive evidence on that subject. See our opening brief, pages 62–81. These conclusions rest on the nature of the questions, and not, as Louisiana implies, on the relative sovereign status of the parties. However, we do assert that the United States is not subject to loss of its rights in the

[8] Louisiana takes the position that its boundaries and those of the United States are necessarily the same. Brief, 47–48, 130. Our position is that a State's boundary cannot extend beyond that of the United States, but may be less. See our opening brief, pages 102–103.

continental shelf by prescription. *United States* v. *California,* 332 U. S. 19, 39–40.

X. LOUISIANA'S MOTION TO TAKE DEPOSITIONS SHOULD BE DENIED

Louisiana's motion to take depositions indicates (pages 6–7) that they are to be on the subjects of (1) the extent of the State's historic boundaries in the Gulf of Mexico, (2) the possession, jurisdiction and control exercised by the State over the continental shelf, and (3) the nature of Louisiana's shoreline and its location when or before the State entered the Union.

We believe that no evidence should be received on the first two subjects, because they are irrelevant for the reasons just stated, and that leave to take depositions on those subjects should accordingly be denied, for the same reasons.

As to the third subject, it is our view that, if supplementary proceedings are necessary to identify specifically the area described in the decree to be entered on the Government's present motion, the case should be referred at that time to a Special Master for that purpose, and that the testimony which Louisiana desires should be taken before such Special Master, to the extent that it may be material, without the added burden of first taking it as depositions before a notary or other official. Where a case is to be referred to a Special Master before whom witnesses will testify, it is proper to deny an application to take prior depositions of those witnesses. *National Bondholders Corporation* v. *McClintic,* 99 F. 2d 595, 599–600 (C. A. 4).

Particularly must that be true here, where the proposed witnesses are all present (or in a few cases, former) officers or employees of the State or its instrumentalities and it is asserted (Motion, 6) that they will testify with respect to State records, so that there appears to be no need for discovery so far as the State is concerned.

Louisiana has given no reason for its desire to take these depositions, resting merely on its right to do so under Rule 26 (a), Federal Rules of Civil Procedure. Reply to the Motion for Judgment and to the Opposition of the United States to Louisiana's Motion to Take Depositions, page 3. However, Rule 30 (b) allows the Court, for cause shown, to order depositions not to be taken. We submit that under the circumstances of this case, the taking of the proposed depositions is wholly unnecessary and should be denied. At the least, it should be deferred until a decree has been entered on the present motion for judgment, so that it can be known what further subjects of inquiry will be material to the case. *Klein* v. *Lionel Corporation,* 18 F. R. D. 184, 185 (D. Del.); *Sogmose Realties* v. *Twentieth Century-Fox F. Corp.,* 15 F. R. D. 496 (S. D. N. Y.); *Air King Products Co.* v. *Hazeltine Research,* 10 F. R. D. 381 (E. D. N Y.); *Momand* v. *Paramount Pictures Distributing Co.,* 36 F. Supp. 568 (D. Mass.). The purpose of the rules relating to depositions "is clearly to lighten, not burden, the record; to minimize, not increase, expense," *Odum* v. *Willard Stores,* 1 F. R. D. 680, 681 (D. D. C.), and "The power of the court to prevent abuse of its process is very broad, before the exam-

ination under Rule 30 (b) and during the course of the examination, Rule 30 (d)." *United States* v. *Brussell Sewing Mach. Co.*, 3 F. R. D. 87, 88 (S. D. N. Y.).

So that our position may be clearly understood, we restate at this time our view that the location of the shoreline before or when Louisiana entered the Union is wholly immaterial to the case. However, this involves a question of construing the Submerged Lands Act with respect to the base line which it describes, which we think can be argued more appropriately in supplementary proceedings than at the present time.

CONCLUSION

We submit that the Government's motion for judgment should be granted and that Louisiana's motion to take depositions should be denied.

Respectfully,

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