No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA, DEFENDANTS

LOUISIANA'S REPLY BRIEF AND MOTION TO FILE WITH SUPPORTING STATEMENT

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MOTION OF THE STATE OF LOUISIANA FOR LEAVE TO FILE REPLY BRIEF WITH SUPPORTING STATEMENT

Pursuant to the order of this Court entered on April 14, 1958, the State of Louisiana moves for leave to file the within reply brief.

As grounds for this motion, the State of Louisiana shows that the reply brief of the United States filed on September 15, 1958 contains new matters which this state has not heretofore answered.

Specifically the reply brief of the United States on page 50 quotes in foot note 27 a statement made by Senator Holland in the Senate to the effect that Louisiana's seaward boundaries extend three marine miles by operation of law, and that a table showing approximate acreage of the submerged lands within state boundaries referred to on page 62 of Louisiana's brief is in error in showing a 3-league boundary for this state.

Furthermore, the reply brief of the United States on page 52 in footnote 29 refers to two opinions of the Attorney General of Louisiana "to the effect that the southern boundary of Louisiana does not extend more than 3 miles in the Gulf of Mexico."

The State of Louisiana shows the Court that the foregoing matters were urged, for the first time, in the Government's reply brief and that a full and fair consideration of this cause requires that Louisiana be permitted to answer these new matters contained in the reply brief of the United States.

Respectfully submitted,

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LOUISIANA'S REPLY BRIEF

In Louisiana's original brief attention of the Court is directed to the fact that Congress was advised before the passage of the Submerged Lands Act (67 Stat. 462, 43 U. S. C. Supp., Sec. 1331, et seq.) that Louisiana's seaward boundary extended 3 leagues from the coast. On page 62 of the Louisiana brief, reference is made to an exhibit which appears on page 35 of the hearings before the Committee on Interior and Insular Affairs in the United States Senate on S. J. Res. 13, at the 1st session of the 83rd Congress. This same exhibit is made a part of *Senate Report No. 133*, 83d Congress, 1st Session, page 76, and *House Report No. 215*, page 57. The exhibit is a table showing the approximate areas of submerged lands within State boundaries and a note appended to the table reads as follows:

> "In figuring the marginal sea area, only original state boundaries have been used. These coincide with the 3-mile limit for all states, except Texas, Louisiana and Florida Gulf coast. In

> the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used."

In their reply brief, plaintiff's counsel on page 50 state that this table is particularly unhelpful to Louisiana because Senator Holland who introduced the exhibit explained on the floor of the Senate that the footnote was mistaken in stating that a 3-league boundary had been used for Louisiana, and that he believed that the correct boundary of Louisiana to be 3 miles from the coast. In support of this statement, plaintiff's counsel quote the statement of Senator Holland appearing in 99 Cong. Rec. 2755. The statement of Senator Holland referred to is to the effect that Louisiana's seaward boundary extends 3 marine miles seaward from coast, by operation of law, and that in the hearings before the Senate Committee he had stated that the exhibit incorrectly assumed that the seaward boundary of Louisiana extended 3 leagues from the coast. A reference to the various statements made during the hearings held by the Senate Committee will show that Senator Holland was not certain of his position as to the alleged error and that other witnesses who appeared before the Committee gave testimony that Louisiana's seaward boundary did extend 3 leagues from coast, and that under the proposed bill (S. J. Res. 13), Louisiana as well as Texas and Florida would benefit from the provisions of the Submerged Lands Act recognizing seaward boundaries 3 leagues in the Gulf of Mexico. The only error contained in the table of areas was its failure to

recognize 3-league boundaries for all the Gulf Coast States, so as to include such 3-league boundaries for Alabama and Mississippi also.

I.

CONGRESS ASSUMED THAT LOUISIANA'S HISTORIC SEAWARD BOUNDARY EXTENDED 3 LEAGUES INTO THE GULF OF MEXICO FROM COAST.

Following the hearings held before the Senate Committee, it prepared a written report recommending the passage of S. J. Res. 13, to be later known as the Submerged Lands Act, and the exhibit set forth on page 35 of the Senate Committee hearings was annexed to and made a part of the majority report without a change or correction of any kind. (See Appendix F, *Senate Report No. 133*, 83rd Congress, 1st Session) This table which was adopted and made a part of the Senate Report despite Senator Holland's explanation, reads in part, as follows:[1]

---

[1] The table lists areas of submerged lands within all of the States of the Union but we have set forth above only those areas which are included within the boundaries of the Gulf coast states.

APPENDIX F

Approximate areas of submerged lands within State boundaries

(Expressed in acres)

State	Inland waters[1]	Great Lakes[2]	Marginal sea[2]
Alabama	339,840	.....	101,760
Florida	2,750,720	.....	4,697,600
Louisiana	2,141,440	.....	2,668,160
Mississippi	189,440	.....	136,320
Texas	2,364,800	.....	2,466,560
Total (48 States)	28,960,640	38,595,840	17,029,120

[1] Areas of the United States, 1940, 16th Census of the United States (Government Printing Office, 1942) p. 2 et seq. The figures are very approximate but are absolute minimums.

[2] World Almanac and Book of Facts for 1947, published by the New York World-Telegram (1947), p. 138; Serial No. 22, Department of Commerce, U.S. Coast and Geodetic Survey, November 1915. In figuring the marginal sea area, only original State boundaries have been used. *These coincide with the 3-mile limit for all States except Texas, Louisiana and Florida gulf coast. In the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used.* (Emphasis Added)

It would seem that if the Senate Committee thought that this exhibit was in error insofar as Louisiana's 3-league boundary is concerned, it would undoubtedly have corrected the exhibit before submitting this table as a part of its report, recommending favorable action on Senate Joint Resolution 13 which was enacted into law as the Submerged Lands Act. In submitting this acreage table without change the Senate undoubtedly approved it.

Governor Kennon of Louisiana in his testimony before the Senate Committee stated that this exhibit was based upon a similar exhibit in "Serial No. 22, Department of Commerce, U. S. Coast and Geodetic Survey, November, 1915". His testimony appears on pages 1115 and 1116 of the Transcript of Hearings on S. J. Res. 13, as follows:

"*Senator Long.* Of course the Federal Government took the attitude in the Texas case and also in the Louisiana case that they were not contesting the actual boundary of the States, that they did not have to decide boundary in order to decide that the Federal Government had paramount rights. Nevertheless, the Congress in passing the quitclaim bill would propose to restore title within the historic boundaries of the States, You said that you feel the Louisiana boundary is 3 leagues. Would you give us your authority for that?

Governor Kennon. Senator Long, the State of Louisiana was admitted to the Union by the act of 1812 after the preliminary act creating the Territory of Orleans had been passed, and in both instances the act of Congress provided that the boundaries of the State of Louisiana would extend out into the Gulf to include islands within 3 leagues of the shore. That has been interpreted by international textbook writers and others as giving Louisiana a 3 league interest the same as Texas and Florida.

For instance, I have a memorandum here, Every State Has Submerged Lands, a publication by the National Association of Attorneys General,

the submerged lands committee. In showing the acreage they give Louisiana as 2,141,440 acres in inland waters, and 2,668,160 acres in the marginal sea. It states that these statistics were taken from a complete list of the 48 States, and a quotation at the bottom of it states that in the case of Louisiana and Texas and Florida it was figured at 3 leagues because Texas added 3 leagues from the Mexican Government in the treaty which you gentlemen speak of, and Florida has 3 leagues in its act of admission the same as there is mention of the 3 leagues in the Louisiana act of admission.

I have here an excerpt from M. W. Mouton's book, The Continental Shelf, which was awarded the 1952 Grotius prize by the Institute of International Law, in which he rather criticizes the United States for adhering to the 3-mile limit, and at the same time he mentions under each state that some states have more than a 3 mile limit. He mentions Texas and Florida. When he discusses Louisiana he uses this language:

> 'It is anomalous that in spite of the adherence to the 3 mile limit the boundary of the United States was set at 9 miles . . .'

he means 9 nautical miles from the coast by the congressional act which admitted the state to the Union.

> 'Any attempted enforcement of the present day 9 mile boundary of Louisiana could not with justice be contested by other nations.

Again in this note on Every State Has Submerged Lands, they quote from the Department of Commerce, and here is where they give Lou-

isiana's acreage at 2,668,160 under 'approximate areas and present uses of submerged lands within State boundaries.' "

Governor Kennon's reference to the statement in Mouton's book "The Continental Shelf" is in fact a quotation by Mouton from a Columbia Law Review article. The author is discussing the article appearing in Volume 39, page 323-324 of the Columbia Law Review wherein the statement appears:

> " . . . It is anomalous that in spite of the United States' adherence to the three mile limit, the boundary of Louisiana was set at nine miles from the coast by the Congressional Act which admitted that state to the Union . . ." (Mouton's "The Continental Shelf" page 213)

Apparently Governor Kennon added to his statement a similar exhibit which he designated as Exhibit 3 because he gave the following additional testimony on this subject on page 1122 of the Transcript of the Senate Hearings:

> "*Governor Kennon.* On the first page of exhibit 3 attached to this statement is a list of inland waters, Great Lakes waters and marginal sea waters of the various states, and listed in it are the 2,141,440 acres of inland waters of Louisiana, 2,268,160 acres of marginal sea waters. Incidentally, of the marginal sea waters, Louisiana has a sixth part of that in the United States.
>
> * * *
>
> Again I want to call your attention to the fact that on the second page of exhibit 3 there is a note that in figuring the marginal sea area,

only original state boundaries have been used. These coincide with the 3 mile limit for all states except Texas, Louisiana, and the Florida gulf coast."

Part 2 of Senate Report No. 133 contains the minority report of the Senate Committee on Interior and Insular Affairs. Appendix D of this minority report also contains a table which sets forth a 3-league boundary for Louisiana and an even greater seaward boundary for the Louisiana territory. The following excerpts from Appendix D of the minority report, page 76 are presented:

4. "Historic" Claims of Other States
Partial listing of "historic" State claims to expanses of the seas taken from colonial charters, constitutions and statutes

Colony or State	Date	Wording
Louisiana Territory	1803	"with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic" (Treaty of Paris) note: this apparently included the old Spanish Seaward claims. (8 U.S. Stat. 200)
Louisiana	1811	"including all islands within three leagues of the coast" (Statute) (2 U.S. Stat. 641).
	1812	Seaward boundaries were set as equivalent of nine miles from the coast. (Statute) (2 U.S. Stat. 701; 3 U.S. Stat. 348)
Mississippi	1817	"all islands within six leagues of the shore" (Miss Rev. Code (1857), e. II, sect. 2).

Colony or State	Date	Wording
Alabama	1819	"south to the Gulf of Mexico, thence eastwardly including all islands within six leagues of the shore" (Statute) (3 U.S. Stat.)
Texas	1836	"running west along the Gulf of Mexico 3 leagues from land" (Act of Legislature of Republic) (1 Gemmel's Laws of Texas 1066).
Florida	1838	"The jurisdiction of the State of Florida shall extend over the Territories East and West Florida, which, by the Treaty of Amity, and settlement, and limits, between the United States and His Catholic Majesty, on the 22nd day of February, A.D. 1819, were ceded to the United States." (Const.) (2 Thorpe 678)
Texas	1848	"The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande. ." (Treaty of Guadalupe Hidalgo) (1 Thorpe 377)

It therefore appears that both the majority and minority of the Senate Committee were of the opinion that Louisiana's historic boundary extended 3 leagues into the Gulf of Mexico from coast. The Senate approved the resolution which became the Submerged Lands Act (67 stat 462, 43 U. S. C. supp 1331, et seq.), with recognition of the fact that Louisiana, as well as Texas and Florida, could justly claim a 3 league boundary in the Gulf of Mexico.

Similarly in the House of Representatives, when the committee on the Judiciary submitted its House

Report No. 215 recommending passage of S. J. Res. 13, it likewise annexed to and made a part of its report a table showing the approximate areas of the submerged lands within State boundaries. This table appears as *Appendix B* on page 57 of *House Report No. 215*, 83rd Congress, 1st Session. It is identical with the table appended to Senate Report No. 133 except that the extent of submerged lands is stated in square miles instead of acres. It also contains a note using the same language as that contained in the appendix to the Senate Report to the effect that a 3 league boundary was used in determining the area of offshore submerged lands on the Louisiana coast since Louisiana's original state boundary was established at a distance of 3 leagues from coast. It does not appear that when the House of Representatives approved S. J. Res. 13, which became the Submerged Lands Act, anyone contended that Louisiana's seaward boundary was incorrectly set forth in this table of areas under submerged lands. On the contrary, the House Committee adopted and approved the exhibit and the House of Representatives passed S. J. Res. 13, on the assumption that Louisiana's seaward boundary extended 3 leagues in the Gulf of Mexico from coast, an assumption which we believe is fully supported by the history of our State and Nation.

The United States brief on page 51 in footnote 28 makes the statement that Senator Holland was right because the acreage figure for Louisiana "was in fact computed on the basis of a 3-mile limit for Louisiana." This is an incorrect statement. In 99

C. R. 2746 covering the proceedings of the Senate under date of April 7, 1953, there is a table showing the coast line of the United States. The length of Louisiana's coast line is stated to be 397 statute miles, and this is purported to be a figure furnished by the United States Coast & Geodetic Survey. A simple calculation will prove that the two tables appended to and made a part of *Senate Report 133* and *House Report 215* will show that the acreage under submerged lands attributed to Louisiana is acreage lying within 3 leagues of the coast:

397 (Shore line in miles) x 10-1/2 land miles (3 marine leagues) = 4,168.5 square miles.

This compares with 4,169 square miles shown for Louisiana in Appendix B, House Report No. 215, page 57.

The table appended to Senate Report No. 133 shows the area of submerged lands in acres and the acreage for Louisiana is shown to be 2,688,160 acres. This figure is obtained by multiplying the 4,169 square miles shown in Appendix B of the House Report by 640 acres. These calculations therefore show that the figures contained in the two tables are computed on the bases of a 3-league limit for Louisiana.

On page 7 of *House Report No. 215* the following significant statement appears:

> "That part of the shelf which lies within historic State boundaries, or 3 miles in most cases, is estimated to contain about 27000 square miles or less than 10 percent of the total area of the shelf, and is covered by Title II of the bill."

The 27000 square miles (approximate figure) referred to in this statement is the total area of the marginal sea shown in Appendix B to the House Committee Report (p. 57) and includes for Louisiana, Texas and Florida boundaries three leagues seaward for these states.

Committee Reports furnish the highest type of evidence as to congressional intent. It is from these reports that members of Congress gain accurate and authoritative information as to the action taken by the majority of the Committees considering and approving proposed acts of Congress. A statement of a single Senator even though he may be a proponent of the measure, and statements made in debates in Congress by individual members can at most reflect only the individual opinions of those members. The Committee Reports reflect the composite opinions and they are the agreement of the Committee as a whole. As we will show hereinbelow Senator Holland's personal opinion as to Louisiana's seaward boundary was somewhat qualified in the Committee hearing and on the floor of the Senate, and other statements made on the floor of the Senate reflected a contrary opinion, as did statements of other witnesses who appeared before the Congressional Committees that considered the proposed Submerged Lands Act.

As stated by the Court in *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474, 65 L.Ed. 349, 360:

> "By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of

individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. *Aldridge v. Williams*, 3 How. 9, 24, 11 L.Ed. 469, 475; *United States v. Union P. R. Co.*, 91 U.S. 72, 79, 23 L.Ed. 224, 228; *United States v. Trans-Missouri Freight Asso.* 166 U.S. 290, 318, 41 L.Ed. 1007, 1019, 17 Sup. Ct. Rep. 540. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *Binns v. United States*, 194 U.S. 486, 48 L.Ed. 1087, 1090, 24 Sup. Ct. Rep. 816. . . ."

And in *United States v. Trans-Missouri Freight Asso.*, 166 U.S. 290, 318, 41 L.Ed. 1007, 1020, the Court said:

"There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States v. Union P. R. Co.*, 91 U.S. 72, 79; *Aldridge v. Williams*, 44 U.S. (3 How.) 9-24, *Taney, Ch. J.; Mitchell v. Great Works Milling & Mfg. Co.* 2 Story, 648, 653, Fed. Cas. No. 9662; *Reg. v. Hertford College*, 3 Q. B. Div. 693, 707.

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each

> other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

The foregoing rule has been relaxed somewhat to permit reference to individual statements made in debate when these confirm what the committee reports demonstrate. However, the rule stands, that congressional debate is not entitled to the same weight as the reports of Committees of Congress. Thus in *United States v. International Union*, 352 U.S. 567, 585, 1 L.Ed. 2d 563, 575, Mr. Justice Frankfurter in rendering the decision of the Court, said:

> "Although not entitled to the same weight as these carefully considered Committee Reports, the Senate Debate preceding the passage of the Taft-Hartley Act confirms what these reports demonstrate."

If the Court is to consider the statements made by witnesses in the hearings before the Congressional Committees, and if it is to consider the statements of Congressmen made in debates prior to the passage of S. J. Res. 13, which became the Submerged Lands Act, then it will find that both the Congressional Committees and the members of Congress assumed that Louisiana's historic seaward boundary did extend 3 leagues from coast.

During the hearings before the Senate Committee, Senator Daniel of Texas made the following statement on page 189 of the transcript:

"*Senator Daniel.* I have the figures now,

> Senator, Within Louisiana's original boundaries in the marginal sea covered by the Holland bill, we find that there are 2,668,160 acres. Within Texas, 2,466,560 acres. That is a total of a little over 5,000,000 acres that Texas and Louisiana would get out of the Holland bill or have restored to them, that we have been claiming for over a hundred years. . . ."

The foregoing acreage figures used by Senator Daniel in this connection are the figures shown in the table on page 35 of the hearings of the Senate Committee relating to submerged lands within boundaries 3 leagues from coast, both for Louisiana and Texas, and are the same figures which appear in the table annexed to and made part of Senate Report No. 133 and House Report No. 215 recommending passage of S. J. Res. 13, to become the Submerged Lands Act.

Later Senator Daniel stated in the hearings before the Senate Committee that a 3 league boundary on the gulf coast is a reasonable claim and that it can be sustained in international law. He further stated that the Treaty of Guadalupe Hidalgo (9 Stat. 922) fixed this boundary in the gulf, not only for Texas, but for the nation as well. In this connection, Senator Daniel said:

> "*Senator Daniel.* . . . I think that the distance of 9 miles or 3 marine leagues on the Gulf coast is a reasonable claim, and in international law it can be sustained. It has been sustained for over 100 years by the State of Texas, recognized by the United States, that our boundary goes out 3 leagues . . . (page 208)

Senator Daniel. No sir; our seaward boundaries were set forth in the 1836 Boundary Act that I have read.

The 3 league gulfward boundary of Texas was recognized by the United States and Mexico in the Treaty of Guadalupe Hidalgo, July 4, 1848, which significantly provides—here, Senator Anderson, we come to an absolute recognition by the United States Government, by solemn treaty, of the 3-league boundary in the Gulf of Mexico between the United States and Mexico. Here are the words:

> 'The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte' *** (9 Stat. 922)

The reason I say that Mexico has what I think is a just claim or right to go out there, as far as this Nation is concerned, is that if you do not take that position, you mean they set that boundary out there 3 leagues for the benefit of Texas and the United States and not for the benefit of the other contracting party. That is the way I feel about it, and they have so interpreted it over these years."

Governor Robert Kennon of Louisiana appeared as a witness before the Senate Committee and in his testimony made the following statements regarding Louisiana's boundary 3 leagues from coast. On page 1093 of the transcript of the Senate Committee hearings, he stated:

> "*Governor Kennon.* I might say, incidentally, that our seaward boundary is the same 3

leagues as the State of Texas. We just do not bellow—we just do not talk so loud or so often about it. Our act of admission to the Union, the Act of the Congress in 1812, and the act of 1803 or between 1803 and 1812, which set up the Orleans Territory which, with the addition of the Florida parishes, became the State of Louisiana, gives us a 3 league jurisdiction into the Gulf of Mexico and includes islands within 3 leagues of the shore. . ."

Governor Kennon's statement before the Senate Committee was repeated by Senator Douglas in the following debate in the Senate recorded in 99 Cong. Rec. 2896:

"*Mr. Douglas* . . . Thus far I have been speaking of the 3 mile littoral belt. Now we have the peculiar claims advanced before the Court in the Texas case, the claims asserted for Florida by the Senator from Florida, and, I thought, not asserted for Louisiana by the Senator from Louisiana. But my attention has been called to the testimony of the Governor of Louisiana in the hearings on page 1093, in which Governor Kennon stated:

> I might say, incidentally, that our seaward boundary is the same 3 leagues as the State of Texas. We just do not bellow—we just do not talk so loud or so often about it."

* * * * * *

"*Mr. Douglas.* Certainly, she should have a right to her day in court. However, I was interested in pointing out that the Governor of the great State of Louisiana is not satisfied with 3

miles or 1 league. He says the boundary is 3 leagues, just as the Senator from Florida (Mr. Holland) says the boundary of Florida is 3 leagues.

Mr. Long. Mr. President, will the Senator further yield?

Mr. Douglas. Let me finish. The Governor of Louisiana went on to say:

> Our act of admission to the Union, the act of the Congress in 1812, and the act of 1803 or between 1803 and 1812, which set up the Orleans Territory which, with the addition of the Florida parishes, became the State of Louisiana, gives us a 3 league jurisdiction into the Gulf of Mexico and includes islands within 3 leagues of the shore.

So we are likely to find that not only will Florida and Texas come forward with a 3 league claim, or 9 marine miles, or 10-1/2 land miles, but Louisiana will do likewise. . . ."

During the course of the hearings before the Senate Committee, Senator Anderson who consistently opposed the passage of S. J. Res. 13, sought to amend that resolution so as to provide a limitation to the effect that boundaries of the United States should not exceed 3 miles on the two oceans or more than 3 leagues in the Gulf of Mexico, which amendment was finally adopted. The following discussion relating to that amendment appears on pages 1348 and 1349 in the Transcript of the Hearings:

> "*Senator Anderson* . . . I do not mean by that to restrict these States unduly, but I do not

believe anyone has contended that the boundary of any State under the language of this bill would exceed 3 leagues. I do not say it shall apply only to Texas and Florida. I think that may be the only place it now applies. But Mississippi and Alabama may have some different feelings.

I think that the Gulf of Mexico is somewhat different than the open sea off the Atlantic and Pacific coasts. Therefore, I wanted to put in that limitation there.

Senator Butler. Would that affect Louisiana?

Senator Anderson. It would limit it to 3 leagues. I don't see how Louisiana can claim more than 3 leagues. It probably is going to claim 3 miles, but what I am trying to keep away from is a claim that might run a hundred miles by some peculiar construction of this bill.

Senator Anderson . . . I am just trying to make this explicit, that they could not possibly exceed more than 3 leagues on the Gulf and 3 miles on the Atlantic and Pacific coasts.

I do it on this theory: That if someone would argue that we are trying to upset the State Department, we might be able to say the State Department is mainly concerned with the Atlantic and Pacific coasts. But in the Gulf, if you will take a look at Cuba, and various other islands in that Caribbean area, you can almost enclose the Gulf of Mexico and say it is not quite as much open ocean as the Atlantic and Pacific and therefore we might be excused with 3 leagues. . . ."

In the hearings before *Sub-Committee No. 1* of the Committee on the Judiciary of the *House of*

Representatives, 83rd Congress, 1st Session, Congressman Henry D. Larcade, Jr. of Louisiana made the following statement appearing on page 272 of the Transcript of the Hearings:

> "The State of Texas was admitted to the Union on an equal footing with other States. The territorial limits of the Original States have been conceded to be those fixed by the charters of those States and their claims of boundary at the date of the Declaration of Independence.
>
> Texas had defined her limits of 3 leagues in the Gulf of Mexico at that time the doctrine of the cases of *Harcourt v. Galliard* and *R. I. v. Massachusetts*, that the external boundaries of the United States is the external boundaries of the States was not disputed.
>
> It follows that Texas as an independent republic possessed that right. This is confirmed by the Treaty of Guadalupe Hidalgo after Texas was admitted. Louisiana admitted in 1803, in full sovereignty, was equally secure in that right."

It is therefore apparent that the Congress was fully advised that Louisiana's seaward boundary was deemed to be three leagues from coast and that this State's right to prove and establish such a boundary was specifically reserved to it as well as other Gulf Coast States. If the Congress had intended the Act to approve a three league boundary for Texas and Florida only, the Act would have so provided. Congress apparently desired to give equal treatment to the states bordering the Gulf. Frequent references were made to the fact that state and national

boundaries are co-extensive; that the actions of the political branches of the Government had established a three league boundary in the Gulf, and that a greater limit than 3 miles for territorial waters in the Gulf was justified by reason of historical and physical differences between the Gulf and the two great oceans.

II.

OPINIONS OF THE ATTORNEY GENERAL OF LOUISIANA.

The reply brief for the United States on page 52 refers to two opinions of the Attorney General of Louisiana and apparently infers that these opinions constitute official support for the contention that the southern boundary of Louisiana does not extend more than 3 miles into the Gulf of Mexico. Such an inference is not warranted.

The first opinion referred to is found in the Report and Opinions of the Attorney General of Louisiana, April 1, 1934 to April 1, 1936, page 685 and is dated September 21, 1934. All this opinion does is to refer to the language of the Act of Admission of Louisiana which describes the southern boundary as "the Gulf of Mexico . . .including all islands within 3 leagues of the coast." There is no discussion in this opinion whatever as to the manner in which the law has been administered or interpreted.

The second opinion referred to by plaintiff's counsel appears in Report and Opinions of the Attorney General of Louisiana, April 1, 1936 to April 1, 1938, page 959. This opinion is dated December 8, 1937, and it does not state that Louisiana's southern bounda-

ry is limited to 3 miles as the Solicitor General indicates. In fact, the opinion states that the State of Louisiana has not limited its territorial waters to a 3 mile limit. The following quotations from this opinion are pertinent:

> "Some of the states of the Union have legislated their territorial boundaries to the sea at three miles from their coast line . . . . The State of Louisiana has not placed in its Constitution, nor in any special laws, any limitations of sovereignty of territorial waters to the three mile limit . . . .
>
> . . . With reference to the Gulf of Mexico, the United States and the Republic of Mexico in Article 5 of the Treaty of Guadalupe Hidalgo provided that the 'boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues (nine miles) from land, opposite the mouth of the Rio Grande.'
>
> . . . Therefore, we conclude, in consonance with the treaties of the United States with foreign powers and the jurisprudence of the United States Supreme Court, that the minimum limit of the territorial water domain of our state in the Gulf of Mexico extends at the present time to a distance of three marine miles (60 to a degree of latitude) from the lowest point of low water mark of the coast.
>
> . . . Our own Gulf of Mexico . . . has been considered by a distinguished writer to be in certain parts a closed sea and territorial water. (DeCussy, 1 Phases et Causes Celebres de Droit maritime des Nations (1856) Sec. 41)."

Whatever these opinions from the office of the Attorney General of Louisiana may have said in dealing with local problems only partly related to the matter now at issue, the official position of the State on the claim of Louisiana to a three league measurement in the Gulf of Mexico was very shortly thereafter unmistakably declared by its Legislature in the preamble to Act 55 of 1938, which reads in part as follows:

> "Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: 'thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;
>
> Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore. . . ." (Emphasis supplied)

The rule that department heads charged with the duty of administering and enforcing the statute will carry weight in determining the meaning of the statute, does not apply to the mentioned opinions of the attorney general. This is so because the Attorney General of Louisiana is not charged with the administration of the Act of Congress admitting Louisiana to the Union, and his opinions do not constitute a contemporary interpretation of the Acts of Congress. The opinions were not rulings of long standing which had been acquiesced in by the State, but on the contrary

the suggestion of a three-mile limit was repudiated by the Legislature of Louisiana in adopting Act 55 of 1938.

As Mr. Justice Frankfurter said in his dissenting opinion in *Heikkila v. Barber*, 345 U.S. 239, 97 L.Ed. 979:

> "As the hundreds of cases in the Lower Courts demonstrate, the Attorney General's actions are voluminously challenged and frequently set aside."

Actually, though the mentioned opinions came from the office of Attorney General Porterie (later federal judge), he strongly endorsed and advocated Act 55 of 1938 asserting the three league measurement for Louisiana's gulfward boundary.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General of Louisiana

PROOF OF SERVICE

I, the undersigned, of Counsel for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ____ day of _____, 1959, I served copies of the foregoing document, entitled "Louisiana's Reply Brief and Motion to File with Supporting Statement," on opposing Counsel by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing, postage prepaid, copies of said brief and motion to Counsel of record for the States of Texas, Mississippi, Alabama, and Florida.

_____

Of Counsel

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