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JAMES R. BROWNING, Clerk

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

PETITION OF STATE OF MISSISSIPPI
FOR REHEARING

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Evidence Cited by Gulf States					Evidence Cited by the United States						
	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
1848 Feb. 1 Feb. 2	Treaty of Guadalupe Hidalgo "The boundary line between the 2 Republics shall commence in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, . . ." 9 Stat. 922.	Gulf of Mexico Mexican Boundary	Boundary	"* * * to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship * * *." 9 Stat. 922.						The Government admits this treaty is still in effect and establishes this as the boundary line.	This treaty merely drew a line between the United States and Mexico, extending into adjacent waters in which they exercise special jurisdiction such as customs jurisdiction. It did not purport to enclose any territorial waters, and did not measure their extent. The United States has always taken the position that the treaty did not extend territorial waters beyond the three-mile limit, and Mexico took the same position until recent years. See below, under dates Aug. 19, 1848; Nov. 17, 1848; Sep. 3, 1863; Mar. 5, 1864; Mar. 9, 1864; Jan. 22, 1875; Dec. 18, 1902; June 3, 1936; Jan. 14, 1948.
					Aug. 19, 1848	Secretary of State Buchanan's Reply to the British Protest "I have had the honor to receive your note of the 30th April last objecting, on behalf of the British Government, to that clause in the 5th article of the late treaty between Mexico and the United States by which it is declared that 'the boundary line between the two republics shall commence in the Gulf of Mexico 3 leagues from land,' instead of one league from land, which you observe 'is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of states.' "In answer I have to state, that the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other Power may possess under the law of nations." 8 Works of James Buchanan, 175; U.S. Brief, 65-66.	Gulf of Mexico	Boundary	"The Bill for the appointment of a Commissioner and Surveyor to run and mark the boundary line under the 5th article of the Treaty with Mexico, after having passed the Senate, was lost in the House for want of time and amidst the pressure of business which always attends the close of a session. Congress will, beyond question, pass this Bill very early in December, next, and it is the desire of the President to carry into execution this article of the Treaty with the least possible delay. . . . "The British Government have objected to that clause of the late Treaty by which it is declared that 'the boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues' [instead of one] 'from land, opposite the mouth of the Rio Grande.' To this I shall answer civilly, that the stipulation can only affect the rights of Mexico and the United States, and for this reason third parties can have no just cause of complaint." Letter, Buchanan to Mr. Clifford, U.S. Minister to Mexico, 8 Works of Buchanan, 172.	It seems clear that Mr. Buchanan was neither admitting nor denying the rights asserted by Great Britain. The treaty was not altered. The boundary line was run. The British did not renew their protest. The obvious reason why the British did not renew their protest was that they had been assured that the treaty was only an arrangement between the United States and Mexico for their mutual convenience, and was not intended to question the rights of Britain or other nations under international law. Since the reply referred to, and did not question, the British assertion that international law allowed only one league of territorial water, it evidently agreed with that view; the United States has so construed it. See Secretary of State Fish's letter of Jan. 22, 1875, infra.	

Evidence Cited by Gulf States

Event	Area Involved	Subject Matter	Purpose
Nicholas Trist's Statement as to His Instructions	Gulf of Mexico	Boundary	
<p>"[As] said object stands in said instructions, specifically stated and expressed, it was the object of prevailing upon Mexico 'to agree that the line shall be established along the boundary defined by the Act of Congress of Texas, approved December 19, 1836, to-wit: <i>beginning at the mouth of the Rio Grande</i>; thence up the principal stream of said river. . . ." 33 Trist Papers, Misc. 62071; Texas Br. 102.</p>			

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					Here is Trist's own Statement.	<p><i>The passage quoted by Texas shows on its face that the object stated in the instructions was to follow the Texan boundary only up the Rio Grande from its mouth; it did not relate to the extension of the boundary into the Gulf.</i></p> <p><i>The Trist manuscript from which Texas quotes is a rough draft, without date or caption, of a very long document (211 pages) apparently intended to justify Trist's action in entertaining a Mexican proposal that the United States give up the area between the Nueces and the Rio Grande. Trist justifies this on the ground that the United States was not committed by the terms of the annexation of Texas, and he was not committed by his instructions, to maintain the boundaries claimed by the Republic of Texas. Thus, Trist says:</i></p> <p><i>"* * * that in regard to the 'consent' so offered for the consideration of 'the People' of Texas, to be by them accepted or rejected, the following truths were perfectly palpable & manifest * * * to every individual composing said 'People', however limited the capacity & understanding of such person might be:</i></p> <p><i>"1st—That the thought conveyed to the mind by the words 'the territory properly included within and rightfully belonging to the Republic of Texas' was not identically one & the same as the thought conveyed to the mind by the words, 'the territory comprehended within the boundaries specified in the Act of the Congress of the Republic of Texas of December 19, 1836.'"</i> Trist MSS, Library of Congress, vol. 32, Misc., 61932-61933 (emphasis in original).</p> <p><i>Again, " * * * this obligation to guaranty & maintain 'the independence of Texas,' and to tell Mexico that her conduct must be in conformity therewith, did not involve, and was not accompanied</i></p>
					<p>with, the obligation to say to Mexico, in regard to any definite portion of the earth, anything to this effect, 'that portion of the earth is the territory of Texas, and must not be interfered with by you' " Id., vol. 33, 62076-62077 (emphasis in original).</p> <p>The instruction which Trist quoted was Secretary of State Buchanan's instruction to Trist's predecessor, John Sli-dell, November 10, 1845. It stated an object to be sought, not a demand to be insisted on. Reply of U.S. to Briefs Filed by Defendants After Oral Argument, 12-14.</p>	

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1847 (Apr. 15)	Secretary of State Buchanan's Instructions to Nicholas Trist, U. S. Peace Commissioner	Gulf of Mexico <i>Mexican Boundary</i>	Boundary	"He [the President] deems it proper, notwithstanding, to send to the Head Quarters of the Army a confidential agent fully acquainted with the views of this Government and clothed with full powers to conclude a Treaty of Peace with the Mexican Government, should it be so inclined. . . ."
<p>"You are herewith furnished with the Projet of a Treaty (marked A,) " . . . Should a Mexican Plenipotentiary meet you, duly authorized by his government to conclude a Treaty of Peace, you will, after a mutual exchange of your full powers, deliver him a copy of this Projet. . . .</p> <p>A PROJET</p> <p>Article IV</p> <p>"The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from the land opposite the mouth of the Rio Grande, from thence up the middle of that river." 7 Works of Buchanan, 271, 276.</p>				
1847 (July 19)	Secretary of State Buchanan's Instructions to Mr. Trist	Gulf of Mexico <i>Mexican Boundary</i>	Boundary	
<p>"You will, therefore, in the copy of the projet of a Treaty which you are instructed to present to the Mexican Plenipotentiary, if this be not too late, substitute the following, instead of the 4th article.</p> <p>Article IV</p> <p>"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, from thence up the middle of that river." 7 Works of Buchanan 368-369.</p>				

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					This treaty draft follows the wording of the 1836 Texas Act.	<i>This treaty provided for a dividing line separating the two countries; it did not establish a boundary along the coast enclosing territorial water.</i>
					The western segment of the proposed boundary was altered by this instruction, but not the Gulf 3-league end.	

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1846 (Dec. 8)	President Polk's 2nd Annual Message	Gulf of Mexico Texas	Boundary	
"The Congress of Texas, on the 19th of December, 1836, passed 'An act to define the boundaries of the Republic of Texas.' in which they declared the Rio Grande from its mouth to its source to be their boundary, and by the said act they extended their 'civil and political jurisdiction' over the country up to that boundary. . . . This was the Texas which, by the act of our Congress of the twenty-ninth of December, 1845, was admitted as one of the States of our Union." House Exec. Doc. No. 4, 29th Cong., 2nd Sess. 483 [13-14].				

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
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Comment by Texas	Comment by the United States
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President Polk again refers to the 1836 Act as defining "the Texas" annexed in 1845.

The omitted text between the two passages quoted by Texas shows that the President was speaking specifically of the area between the Rio Grande and the Nueces, and not of the whole statutory boundary, when he said, "This was the Texas," etc. The text omitted by Texas is as follows:

*"During a period of more than nine years, which intervened between the adoption of her constitution and her annexation as one of the States of our Union, Texas asserted and exercised many acts of sovereignty and jurisdiction over the territory and inhabitants west of the Nueces. She organized and defined the limits of countries [counties?] extending to the Rio Grande. She established courts of justice and extended her judicial system over the territory. She established a custom-house, and collected duties, and also post offices and post roads, in it. She established a land office, and issued numerous grants for land, within its limits. A Senator and a Representative residing in it were elected to the Congress of the republic, and served as such before the act of annexation took place. In both the Congress and Convention of Texas, which gave their assent to the terms of annexation to the United States, proposed by our Congress, were representatives residing west of the Nueces, who took part in the act of annexation itself. This was the Texas * * *" etc. H. Exec. Doc. No. 4, 29th Cong., 2d Sess., 13-14 (Cong. Doc. Ser. No. 497).*

It was the area between the Nueces and the Rio Grande which had been invaded by Mexico and which the United States was acting to defend. The President's purpose was to justify the claim of the United States to that specific area.

Evidence Cited by Gulf States					Evidence Cited by the United States						
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
1845 Dec. 10) Dec 29]	Joint Resolution Admitting Texas	Gulf of Mexico	Boundary		Dec. 29, 1845	Joint Resolution for the admission of Texas	Texas	Annex- ation	Admission of Texas into the Union.	The Texas 3-league bound- ary was not questioned at time of final act of admission.	The joint resolution admit- ting Texas to the Union on an equal footing with the original States refers back to the terms of the annexation resolution of March 1, 1845, and only takes in the territory "properly with- in and rightfully belonging to" the Republic of Texas. It did not purport to define the boundaries of that territory.
	"Whereas the Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belong- ing to, the Republic of Texas, might be erected into a new State, to be called The State of Texas, . . . "Resolved . . . That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever." 9 Stat. 108.					"Whereas the Congress of the United States * * * did consent that the territory properly included within, and rightfully belonging to, the Republic of Texas, might be erected into a new State * * * : Therefore— "Resolved * * * , That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever." U.S. Brief, 2, 180, 195, 239, 330.					
1846 (May 11)	President Polk's War Message	Gulf of Mexico Texas	Boundary	"In further vindication of our rights, and defence of our territory, I invoke the prompt action of Congress to recog- nize the existence of the war, and to place at the disposition of the Executive the means of prosecuting the war with vigor, and thus hastening the restoration of peace. . . ." House Ex. Doc. 60, 30th Cong. 1st Sess. 4-10 [at 9].						The highest act of foreign policy is war. The United States went to war to pro- tect a portion of the Texas boundary.	The fact that the United States would fight to resist in- vasion of an area actually oc- cupied by Texas does not show that it was committed to ac- cept the entire boundary claimed by Texas. This mes- sage related specifically to the area between the Rio Grande and the Nueces, where Mexico had attacked places actually occupied by Texas.

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1845 (Dec. 2)	President Polk's 1st Annual Message	Gulf of Mexico Texas	Boundary Annexation	<p>"Nothing remains to consummate the event, but the passage of an act by Congress to admit the State of Texas into the Union upon an equal footing with the original States. Strong reasons exist why this should be done at an early period of the session. *** I cannot too earnestly recommend prompt action on this important subject." H. Exec. Doc. No. 2, 29th Cong., 1st Sess., 4 (Cong. Doc. Ser. No. 480); S. Doc. No. 1, 29th Cong., 1st Sess., 4 (Cong. Doc. Ser. No. 470).</p>

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					No question as to the Texas 3-league boundary was raised.	<p>Texas had never shown a disposition to insist on recognition of its claimed boundaries.</p> <p>On March 29, 1845, Texas proposed to Mexico preliminary conditions for a treaty recognizing Texan independence; one of the conditions proposed by Texas was arbitration of disputed boundary questions. U.S. Brief, 226-227.</p> <p>On April 12, 1845, Andrew Donelson, American chargé d'affaires in Texas, wrote to Secretary of State Buchanan, stating that Sam Houston, the former President of Texas, was opposed to the annexation because it would not guarantee the Texan boundaries. The fact that it would not was clearly understood by both sides. U.S. Reply Brief, 72-74.</p> <p>On June 11, 1845, Donelson wrote to Buchanan reporting the Texan proposal of March 29, 1845, to Mexico. U.S. Reply Brief, 71-72.</p> <p>On July 11, 1845, Donelson wrote to Buchanan:</p> <p>"You will have observed that in my correspondence with this [i.e., the Texan] government there has been no discussion of the question of limits between Mexico and Texas. The joint resolution of our Congress left the question an open one ***. The proclamation of a truce between the two nations [Mexico and Texas], founded on propositions mutually acceptable to them, leaving the question of boundary not only an open one, but Mexico in possession of the east bank of the Rio Grande, seemed to me inconsistent with the expectation that in defence of the claim of Texas our troops should march immediately to that river. ***</p> <p>Mexico, there has been no occupancy by Texas * * *." U.S. Brief, 227-228.</p> <p>The maritime boundary was never discussed, but it was well understood that Texan boundary claims as a whole were left unsettled by the annexation.</p>

Evidence Cited by Gulf States				Evidence Cited by the United States			
	Event	Area Involved	Subject Matter Purpose	Date	Event	Area Involved	Subject Matter Purpose
185 (Ar.)	Florida Statehood Act "Sec. 5. And be it further enacted, That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States." 5 Stat. 742.	Gulf of Mexico Florida	Boundary "An Act for the admission of the States of Iowa and Florida into the Union."				
185 (Gov. J.)	Secretary of State Buchanan's Instructions to John Slidell "... it is necessary briefly to state what, at present, are the territorial rights of the parties. "The Congress of Texas, by the act of December 19, 1836, have declared the Rio del Norte, from its mouth to its source, to be a boundary of that republic." House Ex. Doc. 69, 30th Cong. 1st Sess. 33-43.	Gulf of Mexico Texas	Boundary "... The fact is but too well known to the world, that the Mexican government are not now in a condition to satisfy these claims by the payment of money. Unless the debt should be assumed by the government of the United States, the claimants cannot receive what is justly their due. Fortunately, the joint resolution of Congress, approved 1st March, 1845, 'for annexing Texas to the United States,' presents the means of satisfying these claims, in perfect consistency with the interests, as well as the honor of both republics. It has reserved to this government the adjustment 'of all questions of boundary that may arise with other governments.' This question of boundary may, therefore, be adjusted in such a manner between the two republics as to cast the burden of the debt due to American claimants upon their own government, whilst it will do no injury to Mexico."				
						Comment by Texas	Comment by the United States
						This Act referred to the territories of East and West Florida, so designated since the Proclamation of George III in 1763.	This act referred specifically to the territories ceded to the United States by Spain. Spain ceded no more than a two-mile marginal belt, as that was all that Spain had claimed since the cédula of June 14, 1797, supra.
						Slidell tried unsuccessfully to negotiate an offset of American citizens' claims against Mexico with the Mexican claims to the territory between the Nueces and the Rio Grande Rivers.	Following the passage quoted by Texas, Buchanan continued: "In regard to the right of Texas to the boundary of the Del Norte, from its mouth to the Paso, there cannot, it is apprehended, be any very serious doubt. * * * "The case is different in regard to New Mexico. Santa Fé, its capital, was settled by the Spaniards more than two centuries ago; and that province has been ever since in their possession and that of the republic of Mexico. The Texans never have conquered or taken possession of it, nor have its people ever been represented in any of their legislative assemblies or conventions." S. Exec. Doc. No. 52, 30th Cong., 1st Sess., 71, 75, 77 (Cong. Doc. Ser. No. 509); see Reply of U.S. to Briefs Filed by Defendants After Oral Argument, 13. Clearly Secretary Buchanan was endorsing the Texan claims only from the mouth of the Rio Grande to El Paso.

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1845 (Mar. 1)	Joint Resolution Inviting Texas Annexation	Gulf of Mexico	Boundary	<p>"On the 6th day of March last, the Mexican Envoy made a formal protest, against the joint resolution passed by Congress, 'for the annexation of Texas to The United States.' He was informed that the Government of The United States did not consider this joint resolution as a violation of any of the rights of Mexico, or that it afforded any just cause of offence to his Government; that the Republic of Texas was an independent Power, owing no allegiance to Mexico, and constituting no part of her territory or rightful sovereignty and jurisdiction. . . .</p> <p>"... Texas had declared her independence, and maintained it by her arms for more than 9 years. She has had an organized Government in successful operation during that period. Her separate existence as an independent State had been recognized by The United States and the principal Powers of Europe." Polk's 1st Annual Message. House Exec. Doc. 2, 29th Cong. 1st Sess. 5.</p>
<p>"Resolved . . . That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union." Texas Br. 226.</p>				

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
Mar. 1 1845	Joint Resolution for the Annexation of Texas	Texas	Annexation	"Joint Resolution for annexing Texas to the United States." 5 Stat. 797.	Not one word of objection was raised to the Texas 3-league seaward boundary. The only boundaries then in controversy were the western boundaries, which were settled (a) by the war with Mexico and the Treaty of Guadalupe Hidalgo and (b) by the compromise of 1850 in which the United States paid Texas \$10,000,000 for her relinquished claims to New Mexico.	<p>"Boundary" was not the subject of this resolution. It specifically left boundary questions for future determination by the United States Government, and merely provided in general terms for the annexation of such territory as was properly and rightfully Texan. In these circumstances, there was no occasion to object to any particular Texan claim. The congressional debates show a general recognition that the Texan claims were excessive and that the United States was not to be committed to maintaining them. So little importance was attached to the three-league claim that it was not even mentioned. U.S. Brief, 208-240; U.S. Reply Brief, 79-80.</p> <p>American rejection of the Texan boundary claims appeared again in the Act of March 3, 1845, two days later, regarding customs drawbacks, entitled "An Act allowing drawback upon foreign merchandise exported in the original packages to Chihuahua and Santa Fe, in Mexico ***." The text described Santa Fe as in New Mexico, despite the fact that it was within the boundary claimed by Texas. U.S. Brief, 204-205.</p> <p>De Baca v. United States, 36 C.Cls. 407 (1901) held that eastern New Mexico, although claimed by Texas, was acquired by the United States directly from Mexico. U.S. Brief, 234.</p>
						<p>"Resolved * * * That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas * * *.</p> <p>"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments * * *." U.S. Brief, 208-209; U.S. Reply Brief, 79.</p>

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
12, 14	U.S.-Texas Treaty of Annexation (Unratified)	Gulf of Mexico	Cession of Territory	Cession of entire territory to the United States.
	"The Republic of Texas, acting in conformity with the wishes of the people and every department of its government, cedes to the United States all its territories, to be held by them in full property and sovereignty, and to be annexed to the said United States as one of their Territories, subject to the same constitutional provisions with their other Territories." 4 Miller, Treaties and other International Acts of the U.S.A. 697.			

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
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Comment by Texas	Comment by the United States
No protest was made of the Texas 3-league boundary at this time either.	<p>There was no occasion to protest the three-league claim, as the treaty left all boundary questions open. The Texan negotiators wrote of it to the Texan Secretary of State, April 12, 1844, "We have felt ourselves obliged to avoid any allusion, directly * * * to * * * boundary, leaving [it] to the future negotiations of this Government * * *. The only inquiry with us was: What will the Senate of the United States agree to?" 2 Garrison, Diplomatic Correspondence of the Republic of Texas, 269, 270; see U.S. Reply Brief, 71. On April 19, 1844, Secretary of State Calhoun instructed the United States chargé d'affaires in Mexico to assure the Mexican government that the treaty "has left the boundary of Texas without specification." U.S. Brief, 204; U.S. Reply Brief, 71. On September 27, 1844, Duff Green, U.S. Confidential Agent in Texas, wrote to Secretary of State Calhoun, "The people of middle and western Texas are not satisfied with the Treaty because it left the question of boundary open * * *." 12 Manning, Dipl. Corr. of the U.S.: Inter-American Affairs, 368; see U.S. Reply Brief, 71.</p> <p>Although on February 25, 1844, the Texan Secretary of State had instructed the Texan representatives to follow the Texan boundary statute, he authorized them on March 26, 1844, to depart if necessary from any instructions previously given them. U.S. Reply Brief, 71.</p> <p>By the treaty as drafted, Texas merely ceded to the United States "all its territories" without specifying them. U.S. Brief, 203-204; U.S. Reply Brief, 71. The description of Texas which President Tyler sent to the Senate with the treaty omitted the maritime claim. U.S. Brief, 200. The debates on the treaty show that its supporters advocated it on the specific ground that</p>

it did not commit the United States to any particular Texan boundary claims. U.S. Brief, 210-212; U.S. Reply Brief, 76-77.

On February 14, 1844, the Texan Secretary of State requested that the United States protect Texas from the Mexican navy during the annexation negotiations. U.S. Reply Brief, 65-66, fn. 35. This shows that Texas was not able to maintain effective control over the three-league belt as claimed.

Evidence Cited by Gulf States

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					May 21, 1840	Journal Entry, Joint United States-Texas Boundary Commission	Eastern Boundary of Texas	Boundary	To locate a portion of the boundary between the United States and Texas, referred to by the Boundary Convention of April 25, 1838, as described in the Treaty between the United States and Mexico, January 12, 1828.		The Commissioners described the mound as marking the beginning of the boundary, not merely the beginning of the survey. The Boundary Convention of April 25, 1838, supra, under which they were operating provided that the results agreed to by them should be considered as part of the convention, with the same force as if inserted in it. Clearly the agreed boundary did not extend any distance into the Gulf of Mexico.
					Aug. 1, 1842	Secretary of State Daniel Webster to Lord Ashburton re treatment of American Vessel with Slaves in a British Port. "A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected, exclusively, to the jurisdiction of that nation." 30 British and Foreign State Papers 183-184. Gov't. Rep. Br. p. 33-34. S. Doc. No. 1, 27th Cong., 3d Sess., 117 (Cong. Doc. Ser. No. 413).	Port in Bahama Islands	Territoriality of Ships in a Foreign Port Territorial jurisdiction over ships at sea	"The Bahama islands approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand, and the navigation difficult and dangerous, not only on these accounts, but from the violence of the winds and the variable nature of the currents. Accidents are of course frequent, and necessity often compels vessels of the United States, in attempting to double Cape Florida, to seek shelter in the ports of these islands." Immediately following the sentence quoted by the Government: "If against the will of her master, or owner, she be driven or carried nearer to the land, or even into port, those who have, or who ought to have, control over her, struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own Government, what reason or justice is there in creating a distinction between her rights and immunities, in a position, thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course?" "But, my lord, the rule of law, and the comity and practice of nations, go much further than these cases of necessity, and allow even to a merchant vessel, coming into	This letter dealt specifically with the status of slaves on board a ship entering the port of a free country. It has no relevance to the breadth of State boundaries in the Gulf of Mexico.	Secretary Webster's reference to the one-league rule, although only incidental to his purpose, illustrates again its regular acceptance by the United States at this time as defining the limits of national maritime jurisdiction.
									any open port of another country voluntarily, for the purposes of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country * * *."		

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
Feb. 1, 1837	Recognition of Texas Senate Resolution	Gulf of Mexico	Boundary Recognition	Diplomatic Recognition Advising the President regarding diplomatic recognition.
	<p>"Resolved, That the State of Texas having established and maintained an independent Government, capable of performing those duties, foreign and domestic, which appertain to independent Governments, and it appearing that there is no longer any reasonable prospect of successful prosecution of the war by Mexico against said State, it is expedient and proper, and in perfect conformity with the laws of nations, and the practice of this Government in like cases, that the independent political existence of said State be acknowledged by the Government of the United States." Cong. Globe, 24th Cong. 2d Sess. 83.</p>			
1838	United States-Texas Boundary Convention	Eastern Land Boundary of Texas	Boundary	The Treaty further provided: "And it is agreed . . . that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent which it has been heretofore usually exercised." 8 Stat. 511.
	<p>"Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this convention, at New Orleans, and proceed to run and 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.</p>			

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					The United States made no protest of the 3-league boundary at or after recognition.	Recognition of Texas was effected not by this resolution but by the President's appointment of a diplomatic representative on March 3, 1837. U.S. Brief, 201. Diplomatic recognition of a country does not amount to acquiescence in its territorial claims. U.S. Brief, 197-201. Beyond a possible reading of Texas' boundary statute as a whole, its maritime claim was never discussed in Congress. The Republic of Texas did not survive long enough, or enforce its maritime claim clearly enough to establish it by prescription. U.S. Brief, 195-197; U.S. Reply Brief, 64-66.
Apr. 25, 1838	United States-Texas Boundary Convention	Eastern Boundary of Texas	Boundary	"Convention Between the United States of America and the Republic of Texas, for marking the boundary between them." 8 Stat. 511.	The Texas Boundary Act was known to the Commissioners and the Treaty expressly reserves all parts of that boundary not then surveyed. The United States made no protest of the 3-league boundary at this time.	This convention adopted by reference the boundary described in the Treaty with Mexico, January 12, 1828, to "begin on the gulf of Mexico, at the mouth of the river Sabine, in the sea." On March 21, 1838, the Texan Secretary of State instructed the Texan Ambassador negotiating this convention, reminding him of the Texan boundary statute; but there is nothing to show that this was brought to the attention of the United States. U.S. Reply Brief, 69-70. As to proceedings of the Boundary Commission, see below, under date of May 21, 1840.
	<p>"Whereas the treaty of limits made and concluded on the twelfth day of January, in the year of our Lord one thousand eight hundred and twenty-eight between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas * * *</p> <p>"Art. 1. Each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet * * * and proceed to run and 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. They shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this convention, and shall have the same force as if it were inserted therein." U.S. Brief, 183, 203; U.S. Reply Brief, 36.</p>					

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
Dec. 19 1836	Texas Boundary Act	Gulf of Mexico	Boundary	"An act to define the Boundaries of the Republic of Texas."
Be it enacted, . . . 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 Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, . . ." Texas Br. 225.				

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
					The United States made no protest of the Texas boundary when the statute was passed.	On December 22, 1836, President Jackson sent to Congress a message explaining why he thought it advisable to defer recognition of the Republic of Texas. Accompanying that message was a report dated August 27, 1836, which said: "The boundaries claimed by Texas * * * will extend from the mouth of Rio Grande on the east side, up to its head waters * * * to the Sabine, and along that river to its mouth; and from that point westwardly with the Gulf of Mexico to the Rio Grande. * * * "The boundaries, as I have first described them, seem to be those which will be insisted upon in any future negotiation. "The political limits of Texas proper, previous to the last revolution, were, the Nueces river on the west; along the Red river on the north; the Sabine on the east; and the Gulf of Mexico on the south." U.S. Reply Brief, 74-75; see U.S. Brief, 201-202.

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					Jan. 26, 1832	Secretary of State Edward Livingston's Instructions to Francis Baylies	Falkland Islands South Atlantic	Fishery	A concluding paragraph said: "The object of establishing these points is to embody them into a treaty which you have herewith a full power to negotiate and conclude. The articles on this subject must acknowledge our right to the fisheries on the shores while they remain unsettled, and you may fix a certain extent from each settlement, not to exceed ten leagues each way." Ibid. at 11.	A full reading of these instructions shows that the purpose was to secure an unrestricted right to continue to use the waters and shores of these uninhabited South Atlantic islands for fisheries. The assertions were made in the hope of concluding a treaty embodying these principles—which vary in significant detail from the modern conception of a territorial sea, exclusive fishing right. They were obviously not intended to fix State boundaries in the Gulf of Mexico.	<i>The present significance of these instructions is their recognition of the distance of a marine league from the coast as the extent of exclusive national jurisdiction.</i>
					Nov. 18, 1836	Stephen F. Austin, Texan Secretary of State, to W. H. Wharton, Minister to the United States "As regards the boundaries of Texas, perhaps this question cannot be definitely settled at present; it may however be important for you to explain the views of this government on this point. You will therefore use the following as you may deem necessary. We claim and consider that we have possession to the Rio Bravo del Norte. Taking this as the basis, the boundary of Texas would be as follows. Beginning at the mouth of said River on the Gulf of Mexico, thence up the middle thereof * * * to the Gulf of Mexico at the mouth of Sabine, thence Southwardly	Texas	Boundary	To instruct the Minister as to the position he should take in pending annexation negotiations. The letter continued: " * * * Should it appear that very serious embarrassments or delays will be produced by insisting on the above described line, the following alterations might be made on the Western boundary—instead of the Rio Bravo, beginning on the West of the Gulf of Mexico, half way between the mouth of the Bravo and the inlet of Corpus Christi * * * ." U.S. Reply Brief, 68. <i>along the Shore of said Gulf to the place of beginning, including the adjacent islands, soundings, etc. * * * ." U.S. Reply Brief, 67-68.</i>		<i>This letter preceded by one month the Texan boundary statute. It shows no disposition at that time to claim any marginal belt in the Gulf, and shows a willingness to treat other boundary claims as subject to modification if necessary to secure annexation to the United States. (A specific exception to this was the Sabine boundary, which was to be firmly insisted on as against the United States' claim to the Neches. U.S. Reply Brief, 69.)</i>

Evidence Cited by Gulf States

Date Event Area Involved Subject Matter Purpose

Evidence Cited by the United States

Date Event Area Involved Subject Matter Purpose Comment by Texas Comment by the United States

1826 The Mariana Flora, 11 Wheat. 1, 42-43, per story, J.—Libel for attack on high seas of U.S. warships by Portuguese merchant vessel. Atlantic Ocean Territorial Rights of Ships on the High Seas

“It has been argued, that no ship has a right to approach another at sea; and that every ship has a right to draw round her a line of jurisdiction, within which no other is at liberty to intrude. In short, that she may appropriate so much of the ocean as she may deem necessary for her protection, and prevent any nearer approach. This doctrine appears to us novel, and is not supported by any authority. It goes to establish upon the ocean a territorial jurisdiction, like that which is claimed by all nations, within cannon-shot of their shores, in virtue of their general sovereignty. But the latter right is founded upon the principle of sovereign and permanent appropriation, and has never been successfully asserted beyond it. Every vessel, undoubtedly, has a right to the use of so much of the ocean as she occupies, and as is essential to her own movements. Beyond this, no exclusive right has ever yet been recognized, and we see no reason for admitting its existence.” U.S. Reply Brief, 32.

Jan. 12, 1828 Treaty with Mexico Texas-Louisiana Boundary “* * * to confirm the validity of the aforesaid treaty of Limits [of February 22, 1819, between the United States and Spain] regarding it as still in force and binding between the United States of America and the United Mexican States.” 8 Stat. 372.

“The boundary line between the two countries, west of the Mississippi, shall begin on the gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north * * *.” U.S. Brief, 185.

This statement, incidental to a decision involving a claimed territorial right of a ship at sea, is immaterial to the determination of State boundaries in the Gulf of Mexico.

The materiality of this statement lies in its recognition of cannon-shot as the universal measure of maritime jurisdiction.

As before, the boundary is not extended into the Gulf.

Evidence Cited by Gulf States				Evidence Cited by the United States					Comment by Texas	Comment by the United States
Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
				April 17, 1824	Treaty with Russia "It is agreed, that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing * * *." U.S. Supplemental Memorandum, 5-6.	Pacific Ocean and Bering Sea	Navigation, Fishing and Trade	To terminate Russian claims to exclusive jurisdiction for 100 miles from shore.		<p>As Texas points out (comment on Secretary of State Adams' letter of March 30, 1822, to the Russian Minister, supra), this treaty did not in terms reserve any marginal belt; but in the Fur Seal Arbitration of 1893 between the United States and Great Britain, the arbitrators held:</p> <p>"* * * in the course of the negotiations which led to the conclusion of the Treaties of 1824 with the United States and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said [Bering's] sea should be restricted to the reach of cannon shot from shore, and it appears that from that time up to the time of the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive jurisdiction in Bering's Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.</p> <p>"* * * all the rights of Russia as to jurisdiction and as to the seal fisheries in Bering Sea, east of the water boundary in the Treaty between the United States and Russia of the 30th March 1867, did pass unimpaired to the United States under the said Treaty.</p> <p>"* * * the United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Bering Sea, when such seals are found outside the ordinary three-mile limit." U.S. Supplemental Memorandum, 9-10. Thus, the treaty in effect if not in terms limited Russia to "the reach of cannon shot from shore" or "the ordinary three-mile limit" as "the ordinary limit of territorial waters." The British construed their treaty with Russia in the same way. See U.S. Supplemental Memorandum, 6-8.</p>

Evidence Cited by Gulf States

Date Event Area Involved Subject Matter Purpose

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
Dec. 17 1823	Memorandum of Henry Middleton U. S. Minister to Russia to Russian Foreign Minister	North Pacific and Bering Sea	Navigation, Fishery and Commercial Trade	<p>The Memorandum says:</p> <p>"The extension of territorial rights to the distance of a hundred miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well determined course. . . .</p> <p>"The right cannot be denied of shutting a port, a sea, or even an entire country, against foreign commerce in some particular cases. . . . [Here appears the paragraph quoted by the Solicitor].</p> <p>* * * * *</p> <p>"The only object of these observations is to induce a reconsideration of all this question, in general, on the part of the Russian Government, whose just and reasonable disposition cannot be doubted, and to prevail upon it to adopt the measures which its wisdom shall point out to it as most proper to mitigate the inconveniences which arise to foreign nations from the decree on the privileges of the Russian American Company." American State Papers, 5 Foreign Relations 452.</p>

Comment by Texas Comment by the United States

<p>The paragraph from Vattel does not support Middleton's categorical statement. It says:</p> <p>"It is not easy to determine to what distance a nation may extend its rights over the sea by which it is surrounded. . . . But this exact determination can only be founded on a general consent of nations, which it would be difficult to prove. Each state may, on this head, make what regulation it pleases so far as respects the transactions of the citizens with each other, or their concerns with the sovereign: but, between nation and nation, all that can reasonably be said is, that in general, the dominion of the state over the neighbouring sea extends as far as her safety renders it necessary and her power is able to assert it. . . ."</p> <p>It thus supports one league only as a minimum distance.</p>	<p>Vattel proceeded to state, in a sentence omitted by Texas, that cannon-shot had come to be accepted as the measure of maritime jurisdiction:</p> <p>"To-day the area of marginal seas which is within the reach of a cannon shot from the coast is regarded as part of the national territory * * *." U.S. Brief, 193; U.S. Supplemental Memorandum, 5. Ambassador Middleton's reference to this section of Vattel's work must be understood as including the above sentence, in which Vattel stated his conclusion as to the existing state of the international law.</p>
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Evidence Cited by Gulf States				Evidence Cited by the United States				Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter Purpose	Date	Event	Area Involved	Subject Matter Purpose		
1822 Mar.	Florida Territory Organic Act	Gulf of Mexico	Boundary "An Act for the establishment of a territorial government in Florida"	Mar. 30, 1822	Florida Territory Organic Act	Florida	Territory "An Act for the establishment of a territorial government in Florida." 3 Stat. 654.		
	"Be it enacted . . . That all that territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a territory of the United States, under the name of the territory of Florida. . . ." 3 Stat. 654.				<p>"* * * That all that territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a territory of the United States, under the name of the territory of Florida * * *." 3 Stat. 654; U.S. Brief, 316.</p> <p>1822 (Mar. 30) Secretary of State John Q. Adams to Russian Minister</p> <p>"This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within one hundred Italian miles of the coasts." American State Papers, 4 <i>Foreign Relations</i> 863.</p>				
					North Pacific and Bering Sea	Navigation, Fishery and Commercial Trade	<p>Mr. Adams continued:</p> <p>"From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.</p> <p>"With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than ninety degrees of longitude, or four thousand miles." American State Papers, 4 <i>Foreign Relations</i> 863.</p>	<p>The Treaty of 1824 which John Q. Adams and Henry Middleton succeeded in negotiating with Russia provided:</p> <p>"It is agreed, that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, . . ." 8 Stat. 302.</p> <p>There is no reservation of any marginal sea right by either party.</p>	<p><i>This letter was not cited by the United States.</i></p> <p><i>For our comment on the Treaty of April 17, 1824, see below under that date.</i></p>

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1819 (Dec. 4)	Alabama Admission Resolution	Gulf of Mexico	Boundary	"Resolution declaring the admission of the state of Alabama into the Union."
<p>"Whereas, in pursuance of an act of Congress, passed on the second day of March, one thousand eight hundred and nineteen . . . the people of the said territory did, on the second day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, . . .</p> <p>"Resolved . . . That the state of Alabama shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever." 3 Stat. 608.</p>				

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
Dec. 14, 1819	Alabama Admission Act	Alabama	Statehood	"Resolution declaring the admission of the state of Alabama into the Union." 3 Stat. 608.
<p>"Whereas, in pursuance of an act of Congress * * * entitled 'An act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states,' the people of the said territory did * * * form for themselves a constitution and state government * * *</p> <p>"Resolved * * * That the state of Alabama shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever." 3 Stat. 608; U.S. Brief, 260.</p>				
1822 (Feb. 25)	Secretary of State John Q. Adams to Russian Minister	North Pacific and Bering Sea	Navigation, Fishery and Commercial Trade	To require Russia to abandon its claim of exclusive jurisdiction over the waters of Bering Sea and the North Pacific, to a distance of 100 miles from the coasts of Alaska and Siberia, asserted by ukase of September 4/16, 1821.
<p>"I am directed by the President of the United States to inform you that he has seen with surprise . . . a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within one hundred Italian miles of the shores to which that claim is made to apply. . . . To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise." American State Papers, 4 Foreign Relations 861.</p>				

Comment by Texas	Comment by the United States
	<p>This designation of Alabama merely by name presumably referred to it as previously described, but can hardly be said to make "boundary" the subject of the Act.</p> <p>In its complaint in Alabama v. Texas, October Term, 1953, Alabama asserted that it entered the Union with only the three-mile maritime belt that is recognized by the United States. U.S. Reply Brief, 85.</p>

In this and the succeeding letter, Mr. Adams only says 100 miles is too broad a claim to exclude shipping.	This letter was not cited by the United States.
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Evidence Cited by Gulf States

Event	Area Involved	Subject Matter	Purpose
Treaty with Spain	Gulf of Mexico	Boundary	
"His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, ... are included in this article." 8 Stat. 254.			
Alabama Enabling Act	Gulf of Mexico	Boundary	"An Act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states."
"And be it further enacted, That the said state shall consist of all the territory included within the following boundaries, to wit: ... thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; ... " 3 Stat. 489.			

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
Feb. 22, 1819	Treaty of Limits, with Spain	Florida and Mexican-U.S. boundary	Cession and Limits	"The United States of America and his Catholic Majesty, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions, by a Treaty, which shall designate, with precision, the limits of their respective bordering territories in North America." 8 Stat. 252.		Designation of the Floridas merely by name presumably referred to their existing limits under Spanish law; under the cédula of June 14, 1797, their maritime belt did not exceed two miles. Reference to the "adjacent" islands indicates that the islands were not within the perimeter of Florida. Description of the western boundary of Louisiana as beginning "on the Gulph of Mexico, at the mouth of the river Sabine, in the sea" shows no intention to extend the boundary into the Gulf. "In the sea" merely describes the mouth of the river.
Mar. 2, 1819	Alabama Enabling Act	Alabama Territory		"An Act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states."		This description follows that of the Organic Act of March 3, 1817.
				"Sec. 2. * * * the said state shall consist of all the territory included within the following boundaries, to wit: * * * due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; * * * " U.S. Brief, 176, 260, 328-329.		

Date _____

1. The first step is to identify the problem. This involves understanding the symptoms and the context in which they are occurring.

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Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
Oct. 20, 1818	Convention with Great Britain	East Coast of Canada	Fisheries	<p>The American Commissioners explained:</p> <p>"* * * the exception of the exclusive rights of the Hudson's Bay Company * * * does not affect the right of fishing in Hudson's Bay beyond three miles from the shores, a right which could not exclusively belong to, or be granted by, any nation.</p> <p>"It will also be perceived that we insisted on the clause by which the United States renounce their right to the fisheries relinquished by the convention, that clause having been omitted in the first British counter-projet. We insisted on it with the view—1st. Of preventing any implication that the fisheries secured to us were a new grant, and of placing the permanence of the rights secured and of those renounced precisely on the same footing. 2d. Of its being expressly stated that our renunciation extended only to the distance of three miles from the coasts. This last point was the more important, as, with the exception of the fishery in open boats within certain harbours, it appeared, from the communications above mentioned, that the fishing-ground, on the whole coast of Nova Scotia, is more than three miles from the shores; whilst, on the contrary, it is almost universally close to the shore on the coasts of Labrador. It is in that point of view that the privilege of entering the ports for shelter is useful, and it is hoped that, with that provision, a considerable portion of the actual fisheries on that coast (of Nova Scotia) will, notwithstanding the renunciation, be preserved." Gallatin and Rush (U.S. Ministers) to John Quincy Adams (Secretary of State), October 20, 1818, 4 North Atlantic Coast Fisheries Arbitration, <i>Appendix to Case of Great Britain</i> 94; <i>S. Doc. No. 870, 61st Cong., 3d Sess., vol. 4, Appendix to the Case of Great Britain</i> 160, 161 (Cong. Doc. Ser. No. 5932).</p>	<p>Secretary J. Q. Adams thus stated the basis of the compromise:</p> <p>"... In these several cases, it is apparent that Great Britain had asserted and maintained an exclusive and proprietary jurisdiction over the whole fishing grounds of the Grand Bank, as well as on the coast of North America, and in the Gulf of St. Lawrence. Nor are we without subsequent indications of what she would have considered as her exclusive jurisdiction, ... For, in the summer of 1815, the year after the conclusion of the peace, her armed vessels on the American coast warned all American fishing vessels not to approach within 60 MILES of the shores.</p> <p>"It was this incident which led to the negotiations which terminated in the convention of 20th October, 1818. In that instrument the United States have renounced forever, that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of British provinces, and within three marine miles of the shores. This privilege, without being of much use to our fishermen, had been found very inconvenient to the British: and, in return, we have acquired an enlarged liberty, both of fishing and drying fish, within the other parts of the British jurisdiction, forever." John Quincy Adams' Answer to Jonathan Russell, May 3, 1882. 7 North Atlantic Coast Fisheries Arbitration, <i>Appendix to the Counter Case of Great Britain</i> 162; <i>S. Doc. No. 870, 61st Cong., 3d Sess., vol. 7, Appendix to the Counter Case of Great Britain</i>, at 270 (Cong. Doc. Ser. No. 5935).</p>	<p><i>The Commissioners' explanation regarding the Hudson's Bay Company (added by us under "Purpose") clearly shows the American position that three miles was the maximum permissible limit of exclusive national jurisdiction in the sea.</i></p>

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
1817 Dec. 10	Mississippi Admission Act	Gulf of Mexico	Boundary	"Resolution for the admission of the State of Mississippi into the Union."	Dec. 10, 1817	Mississippi Admission Act	Mississippi	Statehood	"Resolution for the admission of the State of Mississippi into the Union." 3 Stat. 472.		The Gulf boundaries of Mississippi are not set out, but the Act incorporates by reference the Mississippi Enabling Act of March 1, 1817 which did set out the boundaries.
	<p>"Whereas, in pursuance of an Act of Congress, passed on the first day of March, one thousand eight hundred and seventeen . . . the people of the said territory did, on the fifteenth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government . . .</p> <p>"Resolved . . . That the state of Mississippi shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever." 3 Stat. 472.</p>					<p>"Whereas, in pursuance of an act of Congress, passed on the first day of March, one thousand eight hundred and seventeen, entitled 'An act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states,' the people of the said territory did * * * form for themselves a constitution and state government * * *</p> <p>"Resolved * * * That the state of Mississippi shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states, in all respects whatever." 3 Stat. 472; see U.S. Brief, 252-253.</p>					
					Dec. 29, 1817	Spanish Ambassador to Secretary of State Adams	Louisiana	Boundary	To rebut American claims that the western boundary of Louisiana was at the Rio Grande. See U.S. Brief, 199, fn. 64.		Reference to termination of the boundary at the Gulf was only incidental to the Ambassador's purpose, but does reflect the Spanish view of the matter.
					Mar. 23, 1818	Spanish Ambassador to Secretary of State Adams	Louisiana	Boundary	To rebut the American claims that the western boundary of Louisiana was at the Rio Grande. See U.S. Brief, 199, fn. 64.		Reference to the fact that the boundary started from the ocean was only incidental to the Ambassador's purpose, but does reflect the Spanish view of the matter.
						<p>"At that time Louisiana was, in the hands of Spain, precisely what it was when ceded by France, in virtue of the treaty of 1764. In the same treaty its eastern boundaries are marked by a line * * * finally terminating at the Gulf of Mexico * * *"</p> <p>U.S. Brief, 167-168.</p>					
						<p>"That which has been said by Don Pedro Cevallos and by me, and which can admit of no doubt, is, that the western boundaries of Louisiana have always been notorious and acknowledged between Spain and France; from the ocean by a line drawn between the rivers Mermento and Calcasia * * *"</p> <p>U.S. Brief, 168-169.</p>					

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1817 Mar. 1)	Mississippi Enabling Act "Sec. 2. and be it further enacted, That the said state shall consist of all the territory included within the following boundaries, to wit: . . . thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, . . ." 3 Stat 348.	Gulf of Mexico	Boundary	"An Act to enable the people of the western part of Mississippi territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states."
1817 Mar. 3)	Alabama Territory Organic Act "Be it enacted . . . That all that part of the Mississippi territory which lies within the following boundaries, to wit: . . . thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river . . ." 3 Stat. 371.	Gulf of Mexico	Boundary	"An Act to establish a separate territorial government for the eastern part of the Mississippi territory."

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
Mar. 1, 1817	Mississippi Enabling Act "Sec. 2. * * * the said state shall consist of all the territory included within the following boundaries, to wit: * * * due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne * * *." U.S. Brief, 176, 252, 326-327.	Mississippi	Territory	"An Act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states." 3 Stat. 348.
Mar. 3, 1817	Alabama Territory Organic Act "Be it enacted * * * That all that part of the Mississippi territory which lies within the following boundaries, to wit: * * * due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river * * * shall, for the purpose of a temporary government, constitute a separate territory, and be called 'Alabama.'" U.S. Brief, 260, 327-328.	Alabama	Territory	"An Act to establish a separate territorial government for the eastern part of the Mississippi territory." 3 Stat. 371.

Comment by Texas

Comment by the United States

The disparity between the six leagues referred to in this Act and the three leagues referred to in the Louisiana Enabling Act and Act of Admission only five or six years earlier supports the view that the Acts mean only to refer to islands, as they say. It would be strange to find Congress providing different marginal belts for adjacent States, within such a short period, and without comment or explanation.

The boundary running "eastwardly" between termini at the edge of the Gulf must be understood as running along the edge of the Gulf. The islands were separate parts of the Territory.

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					May 1812	<i>The Ann</i> , 1 Fed. Cas. No. 397 (C.C.D. Mass.) "STORY, Circuit Justice. As the <i>Ann</i> arrived off Newburyport, and within three miles of the shore, it is clear that she was within the acknowledged jurisdiction of the United States. All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Pub. Juris. 61; 1 Azuni, [Mar. Law,] 204, § 15; Id. p. 185, § 4;) and this doctrine has been recognized by the supreme court of the United States. [Church v. Hubbard,] 2 Cranch, [6 U.S.] 187, 231. Indeed such waters are considered as a part of the territory of the sovereign." See Reply of the United States to Briefs Filed by the Defendants After Oral Argument, 4, fn. 12.	Atlantic Coast	Maritime boundary	Libel for violating the embargo laid by the Act of December 22, 1807, 2 Stat. 451, on "all ships and vessels in the ports and places within the limits or jurisdiction of the United States."		Justice Story had no doubt that the three-mile limit defined the territorial jurisdiction of the United States.
1815					June 30 and July 6, 1815	Treaty with Algiers "XI. If a Vessel of either of the contracting parties shall be attacked by an enemy within cannon shot of the forts of the other, she shall be protected as much as is possible." Gov't. Br. 64-65.	Mediterranean Sea and U.S. Coasts	Neutrality	Treaty of Peace	This treaty adds nothing to the protection to which Algerian ships were already entitled off of the coast of the United States. It does not determine Gulf State boundaries.	We agree that this added nothing to the protection to which Algerian (or any other) vessels were already entitled off the coast of the United States, because the range of cannon shot (or a marine league) had already been established as our limit of territorial jurisdiction. The treaty merely reaffirmed an existing status. It applied to the Gulf coast as well as to any other.

Evidence Cited by Gulf States					Evidence Cited by the United States						
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
1811	Louisiana Enabling Act	Gulf of Mexico	Boundary	"An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes."	Feb. 20, 1811	Louisiana Enabling Act	Louisiana	Territory	"An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes." 2 Stat. 641.	This is the first act by which the Congress undertook to fix the maritime boundary of a proposed new state.	This Act again shows a congressional intent to confine Louisiana to the area received from France. It describes the State as bounded by the middle of Lake Ponchartrain to the Gulf of Mexico, and thence "bounded by the said gulf" to the mouth of the Sabine River; this can only be understood as meaning the edge of the Gulf. The provision including islands within three leagues of the coast adds them as disjunct appurtenances.
1812	Louisiana Admission Act	Gulf of Mexico	Boundary	"An act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state."	Apr. 8, 1812	Louisiana Admission Act	Louisiana	Territory	"An Act for the Admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state." 2 Stat. 701.		This is to be construed in the same manner as the Enabling Act of February 20, 1811, supra. An opinion of the Attorney General of Louisiana, September 21, 1934, infra, said in reference to it, "you will note that the southern boundary of the State of Louisiana is given as the Gulf of Mexico." U.S. Supplemental Memorandum, 11-12.
				"Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of 'Louisiana,' by the treaty made at Paris, . . . contained within the following limits, that is to say: beginning at the mouth of the river Sabine; . . . and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the Gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did, . . . form for themselves a constitution and state government, . . ." 2 Stat. 701.					"Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of 'Louisiana,' * * * contained within the following limits, that is to say: beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands * * *; and from thence, along the middle of the said [Iberville] river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did * * * form for themselves a constitution and state government * * * therefore		
				"Be it enacted * * * That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana * * *." U.S. Brief, 172, 325-326.					"Be it enacted * * * That the inhabitants of all that part of the territory or country ceded under the name of Louisiana * * * contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands * * *; and from thence along the middle of the said [Iberville] river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government * * *." U.S. Brief, 172, 324-325.		

Evidence Cited by Gulf States

Date	Event	Area Involved	Subject Matter	Purpose
1805 (Nov. 30)	President Jefferson's Conversation With John Quincy Adams "The President mentioned a late act of hostility committed by a French privateer near Charleston, South Carolina, and said that we ought to assume as a principle that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed." I Memoirs of J. Q. Adams 375-76.	Atlantic and Gulf Coasts Atlantic Coast	Neutrality	"Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genet, and by an Act of Congress at that period, we had seemed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principle because Genet by his intemperance forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to; but he had then taken care expressly to reserve the sub-

Evidence Cited by the United States

Date	Event	Area Involved	Subject Matter	Purpose
1805 (Nov. 20)	The Anna, 5 C. Robinson 676 [373], 165 Eng. Rep. 809. American ship captured by privateer "at the distance of a mile and a half from the Western shore of the principal entrance of the Mississippi, and within view of a post protected by a gun . . ." "The capture was made, it seems, at the mouth of the River Mississippi, and, as it is contended in the claim, within the boundaries of the United States. We know that the rule of law on this subject is 'terrae dominium finitur, ubi finitur armorum vis,' and since the introduction of firearms, that distance has usually been recognized to be about <i>three miles from the shore</i> . But it so happens in this case, that a question arises as to what is to be deemed the shore, since there are a number of little mud islands composed of earth and trees drifted down by the river, which form a kind of portico to the mainland. . . . It is argued that the line of territory is to be taken only from the Balise, which is a fort raised on made land by the former Spanish possessors. I am of a different opinion; I think that the protection of territory is to be reckoned from these islands; . . ." 165 Eng. Rep. at 814-15. <i>Reply of the United States to Briefs Filed by the Defendants After Oral Argument</i> , 4.	Gulf of Mexico <i>Mouth of the Mississippi</i>	Neutral Rights	The Court said: "I am of opinion that the privateer has laid herself open to great reprehension. Captors must understand, that they are not to station themselves in the mouth of a neutral river, for the purpose of exercising the rights of war from that river, much less in the river itself. . . . Looking to all the circumstances of previous misconduct. I feel myself bound to pronounce, that there has been a violation of territory, and that as to the question of property, there was not sufficient ground of seizure; and that these acts of misconduct have been further aggravated, by bringing the vessel to England, without any necessity that can justify such a measure." 165 Eng. Rep. at 815-16.
				ject for future consideration, with a view to this same doctrine for which he now contends. . . . But in the mean time, he said, it was advisable to squint at it, and to accustom the nations of Europe to the idea that we should claim it in the future." Joint Br. 112.

Comment by Texas

Comment by the United States

This case throws no light on whether the boundary was 3 miles or three leagues since the ship was captured within a mile and a half of land.

*The captor argued that the ship was taken outside territorial waters, as the nearest firm land was at the Balise, about five miles away. 5 C. Rob. at 374. The court said that, since the introduction of firearms, the extent of maritime boundaries "has usually been recognized to be about three miles from the shore" (id. at 385c) but held that some nearby islands were "shore" within the meaning of the rule (id. at 385c-385d). It said, " * * * it is not denied that the actual capture took place within the distance of three miles from the islands * * * " (id. at 385d), and so held that it was within territorial waters. The court's discussion regarding the islands would have been wholly unnecessary if it had believed that territorial waters extended as far as five miles from shore. The decision is clearly premised on a three-mile limit.*

Jefferson plainly thought that the breadth of the security zone could be changed from time to time. He had no idea of fixing a state boundary.

This was a mere private statement of Jefferson's opinion as to what the United States should or might do at some indefinite time in the future; it shows on its face that it did not represent a position actually taken by the Government. This statement could not have related to the Gulf of Mexico, since the Gulf Stream does not flow there. See Columbia Lippincott Gazetteer (1952) 737; Stommel, The Gulf Stream (1958) 23, 27; Leip, The River in the Sea (Pichler and Kirkness transl., 1958) 15.

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Evidence Cited by Gulf States

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Evidence Cited by the United States

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Comment by Texas

Comment by the United States

Mar. 26, 1804	Organic Act for Orleans Territory "Be it enacted * * * That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans * * *." U.S. Brief, 171, 324.	Louisiana	Territory	To establish a territorial government in the portion of the Louisiana Purchase now included in Louisiana (except the area added to the State by the Act of April 14, 1812, 2 Stat. 708).
Apr. 13, 1805	Pedro Cevallos, Spanish Foreign Minister, to American Envoys Charles Pinckney and James Monroe "It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, beginning at the Gulf of Mexico, between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north * * *." U.S. Brief, 167.	Louisiana-Texas boundary	Boundary	To rebut the American claim that the western boundary of the Louisiana Purchase was at the Rio Grande. (See U.S. Brief, 199, fn. 64.)

The Territory of Orleans was not to extend beyond the limits of the area ceded by France.

Description of the boundary as "beginning at the Gulf of Mexico" was only incidental to Cevallos' purpose, but does illustrate the Spanish understanding that the boundary did not extend into the Gulf.

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Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					Apr. 30, 1803	Louisiana Purchase	Louisiana	Territory	To transfer Louisiana to the United States with the same extent that it had had in the hands of Spain and France.		Reference to the islands as "adjacent" indicates that they were not within the perimeter of Louisiana, that is, that the territory of Louisiana did not extend into the Gulf so as to include the whole area where the islands were situated. If that had been the case, no special reference to the islands would have been necessary, and they would have been "within" Louisiana rather than "adjacent" to it.
						<p>"Art. I. Whereas, by the article the third of the treaty concluded at St. Ildelfonso * * * it was agreed as follows: 'His Catholic Majesty promises and engages on his part, to cede to the French Republic * * * the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.' And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.</p> <p>"Art. II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana * * *."</p> <p>8 Stat. 200-202; U.S. Brief, 166.</p>					

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					Oct. 1, 1800	Treaty of San Ildefonso between France and Spain	Louisiana	Territory	Retrocession of sovereignty to France		By this description, Louisiana retained its former boundary.
						By Article 3, Spain retroceded to France "the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states." U.S. Brief, 165.					
					About 1801-1805	Protest to Spain	Cuba	Maritime limits	To enforce this country's view that international law did not permit a wider belt of territorial waters than the three miles which we claimed for ourselves.		This account appears in a letter written by Secretary of State Bayard on May 28, 1886. The accuracy of the statement has been questioned, as no contemporary documents have been found to support it. See U.S. Supplemental Memorandum, 14-15.
						"When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more * * *." U.S. Brief, 64.					

Evidence Cited by Gulf States					Evidence Cited by the United States				
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose
					Sept. 2, 1796	Secretary of State Pickering's Letter to Lt. Gov. of Virginia	Atlantic Coast	Neutrality	
						"Our jurisdiction * * * has been fixed (at least for the purpose of regulating the conduct of the government in regard to any events arising out of the present European war) to extend <i>three geographical miles</i> (or nearly three and a half English miles) from our shores * * *." Gov. Br. 63-64.			
					June 14, 1797	Spanish Cédula "Art. I. The immunity of the coasts of all my dominions will not be measured as was done until now by the doubtful and uncertain range of cannon, but by the distance of two miles of 950 toesas each." U.S. Reply Brief, 87-88.	All Spanish Dominions	Neutrality	To define precisely the neutrality limits claimed by Spain for all its territories.
					Mar. 1, 1799	Spanish Treaty with Morocco Art. 21 fixed the limit for neutrality at cannon range or two miles. U.S. Reply Brief, 88.	Spanish and Moroccan Coasts	Neutrality	
Apr. 2, 1799	Customs Act	Atlantic Coast	Smuggling	"An act to regulate the collection of duties on imports and tonnage." 1 Stat. 628. [627]					
				"... it shall be lawful for all ... the officers of the revenue cutters hereinafter mentioned to go on board of ships or vessels in any port of the United States, or within four leagues of the coast thereof, if bound to the United States, ... for the purpose of examining and searching the said ships or vessels; ..." 1 Stat. 668.					
									Comment by Texas Secretary Pickering, by his parentheses, emphasizes the limited character of the jurisdiction then asserted by the United States.
									Comment by the United States If Britain or France had established any broader limits for Florida or Louisiana, they were clearly superseded by this cédula.
									This shows Spain's continued adherence to its two-mile rule established in 1797.
									Re-enactment of the earlier 1790 act.
									As Texas itself recognized in its comment on the earlier act, this has nothing to do with the question of seaward boundary.

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					1794 (Nov. 19)	The Jay Treaty with Great Britain "Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within <i>cannonshot of the coast</i> , nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose <i>territorial rights</i> shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels." Gov. Br. 63; 8 Stat. 128.	Atlantic (all Coasts) <i>All Coasts</i>	Neutrality	<i>Regulations respecting prizes and captures</i>	This treaty is in line with Jefferson's tentative policy.	<i>Embodiment of the cannon-shot rule in a treaty reflected its acceptance as permanent policy. The treaty clearly characterized the rule as one of territory.</i>

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					Nov. 10, 1793	President [<i>Secretary of State</i>] Jefferson's Instructions to U. S. Attorneys "The executive officers are therefore instructed to consider a margin of <i>one sea-league</i> on our coast as that within which all hostilities are interdicted for the present, until it shall be otherwise signified to them." Gov't. Br. p. 62.	Atlantic	Neutrality	"The war at present prevailing among the European powers producing sometimes captures of vessels in the neighbourhood of our seacoast, and the law of nations admitting as a common convenience that every nation inhabiting the sea coast may extend its jurisdiction and protection some distance into the sea, . . . The least claimed by any nation is the utmost range of Cannon shot, usually stated at one sea-league, or 3 sea miles, . . . Several intermediate distances have been insisted on under different circumstances, and that particularly of 3 sea-leagues has the support of some authorities which are recent. However as the Nations which practice navigation on our coasts, are interested in this question, it is thought prudent not to assume the whole distance which we may reasonably claim, until some opportunity shall occur of entering into friendly explanations and arrangements with them on the subject; . . ."	This instruction to the executive officers implements the tentative policy, but it also emphasizes its provisional character.	<i>While the three-mile rule was announced here as only a provisional policy, it was never afterward changed.</i> <i>This letter again recognized that the range of cannon shot as a maritime limit was commonly taken as equal to three miles.</i>
					1794 (June 5) and Subsequent Years	Neutrality Act "That the district courts shall take cognizance of complaints by whomsoever instituted, in cases of captures made within the waters of the United States, or within a <i>marine league</i> of the coasts or shores thereof." 1 Stat. 381. <i>U.S. Brief</i> , 62.	Atlantic Coast <i>All Coasts</i>	Neutrality	The Act defines a series of crimes against the neutrality of the United States and fixes jurisdiction.	This Act implements President Jefferson's tentative policy. It is limited to captures. It does not purport to fix a territorial boundary.	<i>This Act adopted Jefferson's three-mile limit as defining the area within which captures were forbidden, and authorized the President to use military force to execute judgments of restoration "in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as above defined." Secs. 6 and 7, 1 Stat. 384. Through repeated reenactments, this remains in effect to the present day. 22 U.S.C. 461; see U.S. Brief, 62, fn. 14.</i> <i>Neutrality was the earliest element of what has now developed into complete territorial jurisdiction.</i>

Evidence Cited by Gulf States					Evidence Cited by the United States						
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose	Comment by Texas	Comment by the United States
1790	Customs Act of August 8 “... it shall be lawful for all ... the officers of the revenue cutters hereinafter mentioned, to go on board of ships or vessels in any part of the United States, or within four leagues of the coast thereof, if bound to the United States, ... for the purposes ... of examining and searching the said ships or vessels; ...” 1 Stat. 164.	Atlantic Coast	Smuggling	“An Act to provide more effectually for the collection of the duties imposed by law on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels.”						This is an early extension of jurisdiction on an ad hoc basis having no relation to the location of national boundaries.	<i>The same comment would apply to the Act of February 18, 1793, sec. 21, 1 Stat. 305, 313-314 (La. Brief, 51), which provided customs regulations, but not fishing regulations, for fishing vessels within three leagues of the coast. See U.S. Reply Brief, 49. Customs jurisdiction for a limited distance outside territorial waters is recognized in international law. See U.S. Brief, 109-110.</i>
1793	President Jefferson's letters to France and Great Britain “The President gives instructions to the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea-league or three geographical miles from the sea shore.” 6 Writings of Jefferson 440 (Ford ed.)	Atlantic Coast	Neutrality	The letter began: “The President of the United States thinking that before it shall be finally decided to what distance from our sea shores the territorial protection of the United States shall be exercised, it will be proper to enter into friendly conferences and explanations with the powers chiefly interested in the navigation of the seas on our coast, and relying that convenient occasions may be taken for these hereafter, finds it necessary in the meantime, to fix provisionally on some distance for the present government of these questions. You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time, has been the extent of the human sight, estimated at upwards of 20 miles, and the smallest distance I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at one sea-league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever. Reserving however the ultimate extent of this for future deliberation...”	Nov. 8, 1793	Letters from Secretary of State Jefferson to the British and French Ministers “* * * The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league or three geographical miles from the seashores.” U.S. Brief, 60.	Atlantic Coast	Neutrality	“[T]o fix provisionally on some distance for the present government of these questions,” that is, “to what distance from our sea shores the territorial protection of the United States shall be exercised.” (Letter to the British Minister, H. Exec. Doc. No. 324, 42d Cong., 2d Sess., 553 [Cong. Doc. Ser. No. 1521]). To “define the extent of the line of territorial protection on the coasts of the United States * * *.” (Letter to the French Minister, American State Papers, 1 Foreign Relations 183).	This establishes a foreign policy recognizing that three miles is a minimum security distance, that three leagues is permissible, and that some nations exercise jurisdiction to a distance of twenty miles.	These letters announced a provisional policy of restricting this country's territorial jurisdiction to a distance of three miles, which they said was generally taken as the distance of cannon shot. They recognized that there was “some authority” for three leagues or other distances, but did not say that any distance beyond three miles was permissible. The policy thus provisionally announced was never modified.

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
					Sept. 3, 1783	Treaty Between Great Britain and Spain	Florida	Florida	Retrocession of Florida from Great Britain to Spain.		Designating the Floridas by name, without description, this cession presumably transferred the territory defined by the proclamation of George III of October 7, 1763. As explained above, that proclamation described the provinces as being bounded by the Atlantic Ocean, the Gulf of Florida, and the Gulf of Mexico.
83	Treaty of Paris	Atlantic Coast	Boundary	"... that all Disputes which might arise in future on the Subject of Boundaries of the said United States may be prevented, . . ."	Sept. 3, 1783	Treaty of Paris (American Independence)	Atlantic Coast	Independence and territory of the United States	"* * * to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony * * * And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented * * *."	Although this treaty was well known to President Jefferson, there is no indication that he thought he was changing its boundary provisions by his letter establishing a limit for protection of neutral shipping.	The fact that the United States asserted a three-mile neutrality belt in 1793, without ever suggesting that its territory extended for 20 leagues, seems to us the strongest possible evidence that the Treaty of Paris was understood as referring only to islands and not to a 20-league belt of water. U.S. Brief, 173.
	"And that all Disputes which might arise in future on the Subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, Viz. ". . . comprehending all islands within twenty Leagues of any part of the Shores of the United States, and lying between Lines to be drawn due East from the Points where the aforesaid Boundaries between Nova Scotia on the one Part and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are or heretofore have been within the Limits of the said Province of Nova Scotia." Joint Rep. Br. 6-7.					"And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz. * * * comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East-Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia." U.S. Brief, 173.					

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Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
1763	Proclamation of King George III	Gulf of Mexico	Boundary	To Define the Boundaries of British Possessions in America.	Oct. 7, 1763	Proclamation of George III	Florida	Territory	To describe certain British possessions in America.		<p>The natural meaning of this language is that the Floridas were to be bounded by the edge of the Atlantic Ocean, the edge of the Gulf of Florida and the edge of the Gulf of Mexico, with the islands included as disjunct appurtenances. U.S. Brief, 172-177, 314. Pope v. Blanton, 10 F. Supp. 18, 21 (N.D. Fla.), dismissed for lack of jurisdictional amount, 299 U.S. 521, so construed this language as incorporated by implied reference in subsequent treaties and statutes, noting that international law adds a marginal belt of one league.</p>
	<p>"The Government of East Florida, (was) bounded to the Westward by the Gulf of Mexico and the Apalachicola river . . . and to the East and South by the Atlantic Ocean and the Gulf of Florida, including all islands within six leagues of the sea coast. . . ."</p> <p>"The Government of West Florida (was) bounded to the Southward by the Gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to Lake Pontchartrain. . . ." Florida Br. 66-67.</p>					<p>"Secondly, the government of the East Florida, bounded to the westward by the Gulf of Mexico and the Apalachicola river * * * and to the east and south by the Atlantic ocean and the gulf of Florida, including all islands within six leagues of the seacoast.</p> <p>"Thirdly, the government of West Florida, bounded to the southward by the gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to Lake Pontchartrain * * *." U.S. Brief, 313-314.</p>					
					Dec. 4, 1781	Ordinance of the Continental Congress	Atlantic	Captures	"An ordinance, ascertaining what captures on water shall be lawful."		<p>Although not included on Texas' chart, this ordinance was cited in Texas' Post-Submission Reply, at page 55, for its provision that "all goods, wares and merchandizes of the growth, produce or manufacture of Great Britain, or of any territory depending thereon, if found within three leagues of the coasts and destined to any port or place of the United States * * * shall be liable to capture and condemnation * * *." 21 Jour. Cont. Cong. (1912) at 1154. Such a provision aimed against enemy contraband seems to us to have far less relation to any idea of general territorial jurisdiction than does the provision defining the territory within which civilians may capture enemy goods, not in self-defense and not acting under commissions or letters of marque.</p>
						<p>"Besides those who are duly authorized to make captures by special commission, captures of the property of an enemy shall be adjudged lawful when made: * * *</p> <p>"3d. By inhabitants of the country, if made within cannon-shot of the shore." 21 Jour. Cont. Cong. (1912) 1153, 1156; Reply of U.S. to Briefs Filed by Dfts. after Oral Argument, 5.</p>					

[Note: Material prior to 1763, cited by the Gulf States, is omitted here because it was omitted from Texas' chart.]

Evidence Cited by Gulf States				Evidence Cited by the United States					Comment by Texas	Comment by the United States
Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
				Nov. 3, 1762	Preliminary Convention Between Great Britain, France and Spain	Mississippi Valley	Boundary	To establish a boundary between British colonies in North America and the French colony of Louisiana.		By stopping the boundary at the sea, the parties gave some indication that their respective dominions did not extend into the sea.
					Art. 6: " * * * for the future, the confines between the dominions of his Britannic majesty, and those of his most Christian [i.e., French] majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, to the sea * * * " U.S. Brief, 160, 161.					
				Nov. 3, 1762	Secret Treaty Between France and Spain	Louisiana	Cession of Louisiana	To transfer the entire French possession of Louisiana to Spain.		This transfer of Louisiana by name, without description, must be understood as referring to it as formerly described by France; that is, stopping at the shore.
					France ceded to Spain "all the country known under the name of Louisiana, as well as New Orleans and the island in which that place stands." U.S. Brief, 159.					
				Feb. 10, 1763	Treaty Between Great Britain, France and Spain	Mississippi Valley	Boundary	To establish a boundary between British North America and Louisiana.		As before, by stopping the boundary at the sea, the parties gave some indication that their respective dominions did not extend into the sea.
					Art. 7 described the same boundary as Art. 6 of the Treaty of Nov. 3, 1762, between the same three parties, supra, and in the same terms. U.S. Brief, 160.					

CHART OF EVIDENCE AS TO SEAWARD BOUNDARIES AND MARITIME JURISDICTION

1763-1868

1682-1959

Evidence Cited by Gulf States					Evidence Cited by the United States					Comment by Texas	Comment by the United States
Date	Event	Area Involved	Subject Matter	Purpose	Date	Event	Area Involved	Subject Matter	Purpose		
[Note: Material prior to 1763, cited by the Gulf States, is omitted here because it was omitted from Texas' chart.]					Apr. 9, 1682	La Salle's Proclamation Claiming Louisiana for France	Louisiana	Territory	To claim Louisiana for France.		La Salle did not describe any marginal belt of territorial water. He described Louisiana as extending as far as the mouth of the Mississippi, where he was when he issued the proclamation. His statement that the mouth of the river was at about latitude 27° north was a mere expression of an opinion, which proved to be mistaken; it did not reflect an intent to claim to the 27th parallel wherever it might be. (In fact it is about 120 miles south of the mouth of the Mississippi.) This same mistaken belief as to latitude appears in other writings of La Salle, and in the official report of his notary, who stated that the party erected a monument at about latitude 27° north. U.S. Brief, 155-158.
						"I * * * have taken and do take possession * * * of this country of Louisiana, seas, harbors, ports, bays, adjacent straits and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, rivers, streams, comprehended in the extent of the said Louisiana, from the mouth of the great river Saint Louis on the east side * * * as also along the river Colbert, or Mississippi, and streams which discharge therein, from its source * * * as far as its mouth in the sea or gulf of Mexico, about 27 degrees of the elevation of the north pole * * *." U.S. Brief, 154-155.					
					Sept. 14 1712	Letters Patent from Louis XIV to De Crozat	Louisiana	Territory	To grant a trading monopoly in Louisiana.		In granting a trading concession for Louisiana, the king specifically described the province as extending "from the shore of the sea." Plainly he included no marginal belt of territorial water.
						"* * * We * * * do establish the said Sieur Crozat to conduct alone the commerce in all the Lands possessed by Us & bounded by new Mexico, & by those of the English of Carolina * * * from the shore of the Sea as far as the Illinois * * *."					
						"We will that all the said Lands, Regions, Rivers, Streams & Islands be and remain comprised under the name of the government of Louisiana * * *." U.S. Brief, 158-159.					

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 10, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

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

ON MOTION FOR JUDGMENT ON AMENDED COMPLAINT

REVISED AND ENLARGED CHART OF EVIDENCE AS TO SEA-
WARD BOUNDARIES AND MARITIME JURISDICTION

chart, together with our additions, corrections and comments. Matter appearing in Texas' chart is reprinted here as it appeared there, in roman type and with emphasis added by Texas indicated by **bold face**. Matter added by us is printed in *italic* type, with our emphasis indicated by **bold italics**. Where we have desired to emphasize additional portions of matter printed by Texas, that also is indicated by **bold italics**. When appearing in italicized text, matter that would normally be italicized for reasons other than our own emphasis is indicated by Roman type.

Texas' chart covered only the years 1763-1868. We prefer to submit a chart of our material for the entire period of 1682-1959, but of course have not attempted to enlarge the tabulation of the Gulf States' material beyond what Texas saw fit to list. It is to be under-

stood that the absence of any material in the Gulf States' column before 1763 and after 1868 means only that Texas did not consider it necessary to its case to list any material relating to those periods. We do not assume any responsibility for the completeness of the material in the Gulf States' column between 1763 and 1868; we merely reproduce it as Texas printed it, adding our corrections where we have noted errors. Our purpose here is to make additions and corrections which we consider important to a fair presentation of our own case.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

DECEMBER 1959.

As Appendix D to the Post-Submission Reply Argument and Memorandum on Behalf of the State of Texas, Texas filed a "Chart of Evidence as to Seaward Boundaries and Maritime Jurisdiction, 1763-1868." Although it purports to be a complete and correct listing of all the materials cited by either side upon that subject and within that period, we find in it many errors and omissions, particularly with respect to matter cited by the United States. See Reply of the United States to Briefs Filed by the Defendants After Oral Argument, Appendix, pages 25-34. So that the Court may have before it in a single document both the material listed by Texas and the additions and corrections which we consider important, we have prepared the following chart, which contains verbatim and in full everything included in Texas'

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

**PETITION OF STATE OF MISSISSIPPI
FOR REHEARING**

The defendant State of Mississippi hereby petitions the Court for a rehearing of this cause and reconsideration of the Opinion and Judgment rendered on May 31, 1960.

ARGUMENT

The Submerged Lands Act makes no special reference whatsoever to the States of Texas and Florida that would indicate that these states were to be vested with ownership and jurisdiction over more submerged lands than the other states bordering on the Gulf of Mexico.

Whatever was intended to be conveyed by the Submerged Lands Act was made applicable equally to all states bordering on the Gulf of Mexico.

Mississippi's Gulf Boundary has been consistently defined, claimed, and recognized as extending six (6) leagues from shore into the Gulf of Mexico.

- (a) Proclamation of King George III of October 7, 1763, wherein he described West Florida as "bounded to the Southward by the Gulf of Mexico, including all islands within six (6) leagues of the coast, from the River Apalachicola to Lake Ponchartrain . . ." (see our separate answer and also Harlan's majority opinion)
- (b) Enabling Acts of Congress (see our separate answer for descriptions)
- (c) Act of Admission (see our separate answer for descriptions)
- (d) Boundary Descriptions in Mississippi Constitutions (see our separate answer for descriptions)

The Congress, when it passed the Submerged Lands Act, considered the Gulf States as an unit of states and distinguished from the Atlantic and Pacific Coastal States by permitting them to claim to the extent of three (3) leagues, rather than three (3) miles from the coast.

If it had been the intention of Congress to differentiate among the several Gulf States, it might easily have done so. But this it did not choose to do.

Rather, at the time of the passage of the Submerged Lands Act, as stated by Mr. Justice Black (opinion wherein he concurred in part and dissented in part, page, 1, 2), "Congress . . . believed that *all* Coast States were equally entitled to keep all submerged land they had long treated as their own, without regard to technical legal ownership or boundaries." And in passing said Act, Congress gave expression to it's desire "to

have the ancient boundaries of these Gulf States determined on the basis of their long-unchallenged claims, rather than by the use of subtle, refined legal inferences . . .” (Mr. Justice Black’s opinion wherein he concurred in part and dissented in part, page 9) We respectfully submit that any other interpretation of the Submerged Lands Act does violence to the manifest intention of Congress.

Granting to Texas and Florida ownership and sovereignty over a three (3) league marginal belt, while denying it to Mississippi, Louisiana, and Alabama, — “is bound to frustrate the intention of Congress to settle this whole Gulf States controversy at this time. (from opinion of Mr. Justice Black wherein he concurs in part and dissents in part, page 14)

We agree with the statement of Mr. Justice Douglas on page 17 wherein he says — “. . . and I agree with Mr. Justice Black that the discrimination in favor of Texas and against Louisiana, Alabama, and Mississippi is quite unjustified.”

The reasoning set forth in the dissenting opinion of Mr. Justice Black states the position of Mississippi herein.

CONCLUSION

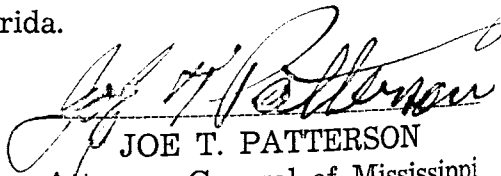
We submit that this Petition for Rehearing should be granted and that this Court should declare that the measure of the grant under the Submerged Lands Act to the State of Mississippi extends three (3) leagues from it’s coast into the Gulf of Mexico.

Respectfully submitted,

JOE T. PATTERSON
Attorney General
State of Mississippi

PROOF OF SERVICE

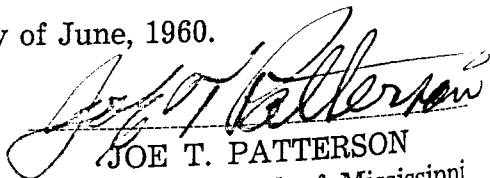
I, Joe T. Patterson, Attorney General of Mississippi, certify that on the 24 day of June, 1960, I mailed copies of the foregoing Petition for Rehearing to the Solicitor General of the United States at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the states of Texas, Louisiana, Alabama, and Florida.


JOE T. PATTERSON
Attorney General of Mississippi

CERTIFICATE

I, Joe T. Patterson, Attorney General of Mississippi, certify that the foregoing Petition for Rehearing is filed in good faith and not for delay.

This 24 day of June, 1960.


JOE T. PATTERSON
Attorney General of Mississippi