

Supreme Court of the United States

In the Matter of:

United States of America,

Plaintiff,

v.

State of Louisiana, et al.

Respondent.

Docket No. 9 Original

Pt. 1

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Place Washington, D. C.

Date October 14, 1968

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C O N T E N T S

1	<u>ARGUMENT OF:</u>	<u>P A G E</u>
2	Victor A. Sachse, Esq. on behalf of the Respondent	1
3	J. B. Miller, Esq. on behalf of the Respondent	12

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

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4 United States of America, :
5 Plaintiff :
6 v :
7 State of Louisiana, et al, :
8 Respondent :
9 - - - - -x

No. 9 Original

10 Washington, D. C.
11 Monday, October 14, 1968

12 The above-entitled matter came on for argument at
13 2:00 p.m.

14 BEFORE:

15 HUGO L. BLACK, Associate Justice
16 WILLIAM O. DOUGLAS, Associate Justice
17 JOHN M. HARLAN, Associate Justice
18 WILLIAM J. BRENNAN, JR., Associate Justice
19 POTTER STEWART, Associate Justice
20 BYRON R. WHITE, Associate Justice
21 ABE FORTAS, Associate Justice

22 APPEARANCES:

23 ARCHIBALD COX, Esq.
24 Special Assistant to the Attorney General
25 Washington, D. C.
Counsel for Plaintiff

JACK P. F. GREMILLION,
Attorney General of Louisiana,
State Capitol
Baton Rouge, Louisiana
By: VICTOR A. SACHSE, Esq.

J. B. MILLER, Esq.
Counsel for the Respondent.

1 P R O C E E D I N G S

2 MR. JUSTICE BLACK: Number 9, Original, United States
3 of America, Plaintiff, versus the State of Louisiana.

4 THE CLERK: Counsel are present.

5 MR. JUSTICE BLACK: Mr. Sachse, you are arguing first,
6 aren't you?

7 MR. SACHSE: Yes, sir.

8 ARGUMENT OF VICTOR A. SACHSE, ESQ.,

9 ON BEHALF OF THE RESPONDENT

10 MR. SACHSE: May it please the court, in 1960, as
11 Your Honors know, in an earlier stage of this same case, Your
12 Honors held that the Submerged Lands Act of 1953 confirmed ar
13 quit claim to Louisiana, Mississippi and Alabama three miles
14 from their coastlines, while quit-claiming three leagues for
15 Texas and Florida.

16 In your decree, as in the Submerged Lands Act itself,
17 the coastline is defined as meaning the ordinary low water
18 along that portion of the coast which is in direct contact with
19 the open sea and the line marking the seaward inland waters.

20 This Court retained jurisdiction. Some modifications
21 were made in December of 1965 by the United States, but the
22 coastline, although it long ago was designated and defined by
23 an agency of the Federal Government directed by Congress to do
24 that very thing, although it was long an accepted and approved
25 by the State of Louisiana, has not been approved by the Attorney

1 General of the United States. So, last September we filed
2 a motion to have the Court recognize it. In January the
3 Attorney General responded opposing recognition of this line
4 and instead asked for the recognition of a line according to
5 his interpretation of the Geneva Convention, the Convention
6 on the territorial seas and the contiguous dunes.

7 Q The line you referred to is the Coast Guard line,
8 isn't it?

9 A We don't refer to it as the Coast Guard line
10 because it was marked so long as the Coast Guard had anything
11 to do with it. We refer to it as the inland water line, but I
12 am sure it is the same thing.

13 Q You can use that as a catch phrase.

14 A We refer to it as the inland water line because
15 the Congress directed in 1895 the Secretary of the Treasury
16 to designate and define, by suitable arrangements, lighthouses,
17 buoys or coast objects, the lines dividing the high seas from
18 rivers, harbors and inland waters.

19 Inland water is the basis of this issue, as we have
20 it. It is the basis of the statute. It is the point of
21 argument between ourselves and the Solicitor General.

22 I want to say that the phase of the argument which I
23 will attempt to cover relates to the inland water line.

24 In January of this year the Attorney General, through
25 the Solicitor, claimed a different line based upon the Geneva

1 Convention. Louisiana started to leave the issue right there
2 but we concluded that we found that line wrong also and that
3 incorrect interpretations of the Geneva Convention had been
4 used, as we understand it. We filed in May a motion for an
5 alternate line.

6 Mr. J. B. Miller of New Orleans will speak to the
7 Court with respect to the lines relating to the Geneva Conven-
8 tion and I will not. There is no dispute, Your Honors, as to
9 this inland water line as designated and defined by the agency
10 of the Federal Government pursuant to the 1895 Act.

11 Q You mean there is no dispute as to where it is?

12 A Correct. There is no factual dispute about its
13 existence.

14 Q Existence or location?

15 A That is right. Therefore, argument concerning
16 it need not take as much time as argument about any line under
17 the Geneva Convention which would necessarily involve a great
18 many disputes about fact.

19 I call your attention to a statement from a brief
20 filed on behalf of the Government in the 1956 stage of this
21 case in which it was said to the Court that Louisiana shores
22 -- and I draw a distinction between coast and shore here -- the
23 United States said the Louisiana shore has a contour so nearly
24 level that wind variations -- and Your Honors know that we have
25 hurricanes of unbelievably severe power -- can cause very

1 substantial differences in a point to which the tide retreats,
2 says the Government.

3 The shore line is not a stable one and that is quite
4 true and quite an understatement. But they added, "is subject
5 through most of its length to rapid and substantial changes.
6 Islands may be moved as many as four miles. A judicial
7 inquiry for the precise location of the entire shore lines
8 might be stretched to require many years of completion." So
9 said the Government in 1956.

10 Although such a consideration ought not to be
11 necessary, and it is not, in our opinion, although the inland water
12 line is designated and defined long, has been marked on
13 public charts and published to the world and not challenged,
14 and in our opinion ought to be understood by everyone to be
15 the outer limit of inland water as used by this Court and as
16 used by the Congress, a great part of the time allotted to
17 Louisiana has been assigned to Mr. Miller because of the
18 difficulty in discussing factual distinctions with respect to
19 any sort of a Geneva line.

20 Q For what purpose was that line established?

21 A The 1895 line was established originally,
22 Justice Harlan, as we have tried to outline in our brief,
23 because the Congress made a deliberate decision in 1885 that
24 it would prescribe different rules for the inland waters of
25 the United States than for the territorial sea.

1 It became necessary then to find out where this is,
2 where this was then. Your Honors know, of course, of the
3 Delaware, involving the channels, getting the channel to the
4 Harbor of New York. After the 1885 Act was passed, before the
5 1895 Act was passed, a collision occurred. This court, in
6 the case of the Delaware, had to consider whether international
7 rules or inland rules were to be applied to the case.

8 Your Honors' predecessors said then that the 1885 Act
9 had not drawn any line and, to quote from the Court, "nor could
10 any general legislation do so." But the Court added, "The
11 Congress, by the Act of 1895, passed since the occurrence
12 which caused the case to be before the Court had arisen, had
13 directed the Secretary of the Treasury to designate and
14 define the line and he had done so.

15 This Court decided that the inland rules declared
16 by Congress applied in the inland waters designated and defined
17 by the Secretary of the Treasury as fully as if New York
18 Harbor itself were involved.

19 Q Perhaps that is the issue, that is to say, as I
20 understand the fact, that line was drawn for purposes of
21 determining which navigation rules would apply.

22 A That is not to be disputed, but from that or
23 with that flows, in our opinion, the rights of territory and the
24 rights of sovereignty because without the right of sovereignty
25 the United States would not have the right to legally declare
that inland rules of navigation apply to foreign vessels within

1 this line.

2 I cite you Collins and his work on the subject in
3 1949. Now, Louisiana knows that whether you consider this as
4 the coast line of the United States for all purposes, it was,
5 within the meaning of the Congress, the coast line when the
6 Submerged Lands Act was passed.

7 I use the verb I have chosen because it was presented
8 to the Congress by a spokesman for Louisiana, much as we are
9 presenting it to Your Honors here today, in 1949, when earlier
10 legislation was before the Congress, before the Senate in
11 respect to modifying the rules of the first California case,
12 the bills then pending referred to shore. The Louisiana
13 spokesman stood before that committee and said that "shore"
14 was the wrong word to use. He said that "coast" was the
15 right word to use and the reason "coast" should be used was
16 because not only was that a part of our aggregate admission,
17 not only was it a part of our Constitution, but more closely
18 to the point, Congress itself had used the word "coast" in the
19 1895 Act in undertaking to say where the inland waters are.

20 Our spokesman then, as I now, called that Act to the
21 attention of Congress, called the Delaware to the attention
22 of Congress, and from that time on, the legislature pending
23 used the word "coast line" and not shores.

24 There was an attempt, while the Submerged Lands Act
25 was before Congress, by certain senators who opposed the Act

1 entirely. There was an attempt by the then Attorney General
2 of the United States to have the Congress accept the idea of
3 a shore line instead of a coast line. But this was rejected
4 and the idea of the coast line was used.

5 Now, I pass to another phase. Immediately following
6 the Act of 1895, the Secretary of the Treasury began to mark
7 this line to designate and define the line between inland
8 waters and the high seas. As directed by Congress, he used
9 coast objects, which means to us coast line. As directed by
10 Congress, he used vessels and buoys, which means to us that
11 Congress knew then, as it had known in all of its earlier acts,
12 that at least a part of the United States had its coast line
13 in the water.

14 So, it has been ever since. The Government says in its
15 current briefs that not until 1937 was there any indication
16 by the Government that this line meant something different, that
17 it did not actually divide inland waters from the high seas,
18 that after that time it began to put a different legend on
19 their charts or in their publications.

20 Mr. Schallowitz, for the Department of Commerce, said
21 the change occurred in 1948. Whichever date you take, the
22 fact is that by that time we were in litigation and by that
23 time the Government had changed its position of not changing
24 any waters or any lands beneath submerged waters out from the
25 shores of the States and by that time you were heading towards

1 your first California decision.

2 We submit that changes made by the Government in
3 its treatment of its own publications after the case was in
4 litigation ought not to bear much weight with the Court.

5 We point to the fact that in the Government's brief
6 they refer to the fact that the Coast Guard Commandant who,
7 by that time, was the officer who then had the duty formerly
8 possessed by the Secretary of the Treasury, by the Secretary
9 of Commerce and Labor, by the Secretary of Commerce, now the
10 Commandant of the Coast Guard has it and when he finished
11 marking on the charts, not designating and defining the
12 lights and the vessels and the coast markings, but actually
13 physically putting a line on the chart, he did make a statement
14 in which he said he was doing this for navigation and not
15 undertaking to set the boundaries of the United States or
16 of the States or of the jurisdiction of either.

17 We don't find fault with that statement because at
18 that time it had not been determined whether there were to be
19 three leagues for the States or three miles for the State or
20 some for one and some for another.

1 The Commandant may have been trying to save that
2 point, but whatever his intentions were, he had to conclude,
3 as the Congress directed him to conclude, that by saying
4 the Inland Route enacted by Congress related to the water
5 lines of this line and the International waters related
6 to the seaward of the lines.

7 This heavy, green line is the line marked by
8 agencies of the Federal Government which Louisiana accepted
9 in 1964. This rather lighter line, dotted line, is the
10 100 fathom line of the Continental Shelf and for a
11 long time, was thought to be the edge of the outer Continental
12 Shelf. All of the area in between is area that is exclusive
13 to the Federal Government. Only this area is in issue.

14 The red line is the line which the Government
15 contends is the coastline and which so nearly follows the
16 Louisiana shore.

17 I come now in some haste because of the limited
18 time allotted here

19 Q I would imagine, on that line, the
20 Commandant of the Coast Guard could change it tomorrow.

21 A You mean the Commandant could change this
22 line?

23 Q Yes.

24 A This is not our position, Justice Brennan.

25 Q Does he have powers to change it?

1 A We think if we are correct that this is
2 now declared by Congress through this action to be the
3 coastline of Louisiana, then no one has the right to change
4 it for any purpose, but certainly no one has the right
5 to change it for the purposes of the Submerged Lands Act.

6 Q In any event, that line is frozen as of
7 the time of the program?

8 A For the purposes of the Submerged Lands Act.
9 I will not stand before the Court and say there are not
10 mobile boundaries on the sea, that as land filters out by
11 the Mississippi, as land recedes in other portions of our
12 shore, that adjustments will not have to be made sometime,
13 but as far as the Submerged Lands Act is concerned, the
14 Congress said one act divided into two -- Submerged Lands
15 Act and Outer Continental Shelf Lands Act, and in pursuance
16 of the Truman Doctrine of 1945, nobody but the United States
17 is going to have any of the minerals or mineral resources
18 from these submerged lands on our Continental Shelf.

19 Now, we will divide that between the Federal
20 Government and the state Government and they did it in
21 the fashion, Your Honors know, of either saying three miles
22 or three leagues, as can be shown.

23 I must take a minute or two on the California case.
24 I cannot ignore the fact that in the second California case,
25 when the lawyers stood before this Court, and you did not have

1 the benefit, Justice Harlan, of any such line as this,
2 and Justice Brennan and Justice Goldberg asked Mr. Cox
3 whether California or the United States had any argument
4 to be based upon the inland water line. Mr. Cox said no,
5 and California did not dispute it.

6 So far as we can find from the briefs, and so
7 far as we can find from the report of the decision by this
8 Court, there was no mention of the Delaware case. There
9 was no mention at all of it, and yet that is the case that
10 we think is most important of all.

11 Your Honors said, through you, Justice Harlan, that
12 when the Submerged Lands Act was passed, there was no
13 definition of inland waters, because the managers expected
14 that earlier decisions and earlier acts of Congress would
15 supply that definition, and it was only because of the lack
16 of such a definition that you turned to the Geneva Convention.

17 I will close with this: If it be said in
18 argument, as it has been said in briefs, that all states
19 must be treated alike, Your Honors know that is not
20 correct.

21 Your Honors have had the three leagues and
22 three mile issue before you before, but to bring it home
23 precisely to this point, when this legislation was pending
24 before Congress, there was a report by the Congress which
25 we have cited, Number 2515, which deals precisely with the

1 thing I am now talking about.

2 Said the Congress -- not some Representative,
3 not just a Senator, no matter how important, but the Congress:
4 There is a startling difference between the shore and
5 coast of Louisiana and Florida on the one hand, and
6 that of Texas and California on the other. To say that
7 these contrasting coastal areas should be treated exactly
8 alike with reference to the definition of inland waters
9 would ignore geographical factors that are wholly different."

10 We respectfully point out that however these
11 resources are used, whether they come through Louisiana
12 and the other liberal states, or whether they come through
13 the Federal Government, only Americans can have them. But
14 it would be a tragedy, we think, to lead any foreign
15 nation to believe that these shallow waters, where
16 ocean-going vessels cannot travel, that these waters between
17 the passes of the Mississippi River are international
18 waters or the high seas.

19 Mr. Miller will complete for Louisiana.

20 ARGUMENT OF J. B. MILLER, ESQ.,

XXXXXX 21 ON BEHALF OF THE RESPONDENT

22 MR. MILLER: May it please the Court, in addition
23 to our motion which Louisiana filed asserting the inland
24 water line as our coastline, we filed an alternative motion
25 asserting an alternative coastline under the Geneva

1 Conference.

2 If the inland water line is adopted, of course
3 that alternative motion will become moot. For the
4 convenience of the Court, we have filed these folders,
5 which we hope will assist you in following us along the coast.

6 Within the time allotted, it will not be possible
7 to cover every segment of this coastline, and our failure
8 to do so should not be considered as a lack of interest.

9 California, however, was not permitted to us
10 the system of straight base lines because the Court
11 found it would extend the boundaries beyond the traditional
12 limits. Consequently, we have not used the base lines.
13 We feel that our coast with its islands and limits would be
14 an ideal place to use this system.

15 We have found difficulty in putting these in the
16 limits of the Geneva Convention. Louisiana feels that
17 the Convention should be interpreted liberally.

18 The red light is on, so I guess I should stop here.

19 THE CLERK: We will adjourn until 10:00 tomorrow.

20 (Whereupon, the argument in the above entitled
21 case was continued to Tuesday, October 15, 1968, at 10:00 AM.)
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23
24
25