

In the

Supreme Court of the United States

STATE OF TEXAS,

Plaintiff

 $V_e$ 

STATE OF LOUISIANA

No. 36 Original

Washington, D.C.  
January 19, 1976

Pages 1 thru 45

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IN THE SUPREME COURT OF THE UNITED STATES

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STATE OF TEXAS, :  
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 Plaintiff :  
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 v. : No. 36 Original  
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 STATE OF LOUISIANA :  
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Washington, D. C.

Monday, January 19, 1976

The above-entitled argument came on for argument  
at 10:04 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice  
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

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For Defendant

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 36 under our original jurisdiction, the State of Texas against the State of Louisiana.

Mr. Hill.

ORAL ARGUMENT OF JOHN L. HILL, ESQ.

ON BEHALF OF STATE OF TEXAS

MR. HILL: Mr. Chief Justice and may it please the Court:

The major unresolved issue before us is which of two proposed lateral boundary lines should be adopted by the Court in its final decree that would, in the Court's judgment properly fix the Gulfward extension of the lateral boundary between the States of Louisiana, the State of Texas and the United States.

Now, during the trial before the Master in New Orleans, which constitutes almost 1,200 pages of testimony and a large number of exhibits, there were many lateral lines that were in contention and that were proposed by the parties, but the only two lines that are still viable and in contention are the Texas so-called "middle line" or "median line," which begins at the mouth of the River Sabine, the natural mouth of the River Sabine and extends gulfward three leagues on a middle line or median line principle, which we believe to be the only correct and equitable line that will



fairly divide the territorial sea between these two states which is all we seek to do, which is all we can seek to do, is just fairly divide this territory.

QUESTION: Mr. Attorney General, before you get to that, I understand there is no dispute of the area of the river now between 30 and 32 latitude.

MR. HILL: None at all.

QUESTION: And you refer to 12 maps that have been agreed upon and apparently are to be deposited with the land departments of each state.

Do you expect us to incorporate those maps in our decree here?

MR. HILL: Yes, we do. We do not speak of it as an agreement. We speak of it as the ascertainment on the ground of the facts and legal principles that this Court has already enunciated in your first opinion.

QUESTION: Well, do you expect us to incorporate them in the decree?

MR. HILL: Yes, we do. The only controversy left down to the natural mouth of the river involves --

QUESTION: I know what the only controversy is.

MR. HILL: I'm sorry.

QUESTION: But how are we to incorporate them in the decree if they are not here? Or are they here?

MR. HILL: Yes, they are in the exhibits, if it

please the Court.

QUESTION: Are you going to submit incorporation language, or do we have to work it out ourselves?

MR. HILL: No, sir, we would be happy to do so. We think that the proper decree -- since the Court's proper decree here should be that the lateral extension, gulfward extension shall be a middle line or median line extending from the mouth of the gulf, it would be sent back for that principle and we have plotted a coastline. We think the proper coastline is the historic coastline, as we say, but I think the proper decree would be for us to do that and at the same time you settle the middle path issue for us.

QUESTION: I know what the issues are.

MR. HILL: Yes, sir.

QUESTION: What I am concerned about is that two degree area out there and I am trying to pin you down as to whether you have language that will --

MR. HILL: We do, your Honor.

QUESTION: -- enable us to --

MR. HILL: We do. We have coordinates. We have fixed positions all through the geographic middle of the Sabine River. We worked very hard to do that and we have produced a result that we believe comports with Justice Stewart's opinion, Justice White's opinion in the first round of this case.

QUESTION: This doesn't bring you down to the gulf, does it?

MR. HILL: No, sir. But we are all right, we --

QUESTION: Our decree has to cover that two --

MR. HILL: Clearly.

QUESTION: -- degree area and I just wanted some help on it.

MR. HILL: Yes, sir. Well, we certainly have the help in the record and I don't think that presents any difficulty at all. We do, and I don't intend to dwell on the middle path issue, I think it is so clearly in favor of the Master's recommendation that the middle path be used at the northern end of Sabine Lake that unless you have some questions about it, I don't intend to take any of my time --

QUESTION: Mr. Attorney General, is there a counterpart of that map in our papers? It looks different from this --

MR. HILL: It is different in this respect, and I should like to explain it if I may.

QUESTION: Yes, but may I ask, is there a counterpart here?

MR. HILL: There is to this extent. This is an exact reproduction --

QUESTION: Mr. Attorney General --

MR. HILL: I'm sorry --

QUESTION: -- would you draw your map closer so that you will not be out of range of the microphone?

MR. HILL: Yes, I will, your Honor.

QUESTION: My eyesight isn't that good from here and I just want to --

MR. HILL: Well, sir, the difference between what is before the Court on the exhibit and what is in the Master's exhibit, aside from the obvious enlargement, is the Louisiana arc and the fact that the only two lines we put on this map are the lines still in contention. You will notice on the Master's exhibit there are many other lines. There is no use clogging up this discussion with lines that everyone has abandoned.

The only reason for putting the arc in, in your previous decrees you have decrees that Louisiana is entitled to measure the breadth --

QUESTION: Yes, but there is no facsimile of that in our papers that I can look at rather than try to read from here, and I can't. I can't see it.

MR. HILL: If you could Mr. Justice Brennan, if you will refer to the Master's exhibit but ignore all of the lines that are on it, except what is designated, I believe, line number one, the Texas median line and the U.S. line which is line number --

QUESTION: Five.

MR. HILL: Five. It is otherwise the same with the exception of drawing the Louisiana arc and we did that solely to refresh the memory of the Court of one unique feature of this controversy and that is, by previous decree this Court has said that Louisiana may measure the breadth.

It is a very important point in this case which was overlooked by the Master and specifically overlooked by the United States and Louisiana.

Your decree states that Louisiana may measure the breadth of her territorial sea from that jetty. That decision had nothing to do with where the lateral boundary would be in that territorial sea or in our territorial sea but we wanted to put it in here so you could see that the Louisiana territorial sea is rather unusual in that it comes on an arc and then joins in their three-mile line which, of course, they are taking under the unconditional grant of the Submerged Land Act. They take in three miles -- which they tried to take an historic three leagues. It was rejected by this Court.

We tried to take an historic three leagues and it was affirmed by this Court.

So you have a state on the one hand with a three-league grant already established by this Court and Louisiana on the other hand with a three-mile grant but allowing them to measure that three-mile grant from the eastern edge of the



jetty under the Geneva Convention hoping that that was a part of their coastline so that actually they have a territorial sea on breadth. It is a very unusual-looking animal as a result of those two cases so that is what this map is for. I hope it will be useful as we go along in our discussion.

QUESTION: You said you didn't want to argue the middle path point. Is there a map in the briefs or in the report that shows the upper end of the lake?

MR. HILL: Not in the briefs, if it please the Court, but there is an exhibit -- if you will go back to --

QUESTION: Because you are in contention, between you and Louisiana, as to where the line begins at the upper end of the lake.

MR. HILL: Yes, sir.

QUESTION: There is no map in these briefs that we can look at?

MR. HILL: Not in the briefs, on the exceptions to the Master's report, Justice White. But there is a map. We have --

QUESTION: What is the exhibit number? Do you know?

MR. HILL: I believe that it is five-A.

I beg your pardon. We did file a brief reply to an exception filed by the State of Louisiana and Mr. York now shows me that on page four of that brief there is a

description of the middle path, the west path and the east path, if I might refer you to that. It is a very short brief and it shows on page four.

QUESTION: Yes, I have looked at the brief. Is that the only map there is?

MR. HILL: It is the only one in the briefs, may it please the Court.

QUESTION: There is no Master's map of it?

MR. HILL: Not attached to -- as an exhibit to his report. There is, in the record --

QUESTION: Is this the --

MR. HILL: Well, Justice Blackmun has a larger exhibit that he is referring to, Justice Stewart.

Now, the only significance, as long as we are on that point and the Court is now expressing an interest in it, middle path is clearly the proper path to mark the geographic middle of the river at that point.

The only reason that Louisiana ever contended that the west path should be used was because Louisiana owned some islands, or claimed to own some islands west of the middle path.

The Master properly found that is totally immaterial to the question of where the geographic middle of the river is, whether there are some islands west of it or east of it.

QUESTION: South between -- you aren't in contention -- the two states are not in contention south of that until you get to the Gulf?

MR. HILL: That is correct.

QUESTION: Okay.

MR. HILL: And then the middle path I think clearly is going to be the judgment of this Court.

So we come on down then to the major issue in dispute which gives us about 12,000 acres of offshore lands that are in dispute in the area that the United States is affected by out here, beyond the Louisiana arc and some 7,500 acres in the little triangle here that is in dispute and that, when you get down to it, is what the lawsuit is about.

It's Texas position that Texas has had a lateral boundary, three marine leagues seaward into the Gulf in this now contested area, ever since the 1845-'49 period.

I am sure the Court knows why in this side of the litigation we refer to the 1845-'49 period as related to Texas. I'll pick that up in a little while. There is a very good reason for it -- most everyone has written on this subject or read these, that we were deeded this little sliver from the United States Government from the west bank to the middle of the river in 1843. It has the same standing historically, by the very terms of the Submerged Land Act as

our original historic grant so when I speak of 1845-'49, that is why I am using that term.

The United States, incidentally, agrees with the position that I just stated. They agree that Texas had a historic three-league lateral boundary and they concede this in their brief. They argue with the fact that it was not precisely limited and we'll get to that in just a moment but the position, of course, our basic position, is based on a number of historic items and this has been so well-documented in your previous cases that I feel a little bit imposing on the Court to go over all of it and I'll try to hurriedly do so.

Of course, first, the United States is a party to this litigation and the State of Texas is a party to this litigation -- entered a stipulation that appears at 394 U.S. 1 which was the third chapter of the second United States versus Louisiana case and this is what it said.

"The United States has accepted Texas' three league boundary opposite the western half of Sabine Pass, not as a boundary as it existed when the state came into the union in 1845, but as one approved by Congress before the passage of the Submerged Land Act and as such, equally entitled to recognition under 2B, section 2B of the Act.

"The line identified in the stipulation as the line to be recognized as Texas off-shore boundary includes

the 1849 extension but the United States reserves the effectiveness of that extension as against the claims, for example, that might be asserted by Louisiana."

All right, that reservation was carried out. Louisiana made a contest of it and that is what the original opinion in this case dealt with, is whether it was valid against Louisiana's claim and this Court held that it was. That is already decreed law by this Court.

In the face of Louisiana's contest, you rejected their claim of the west bank and judicially decreed Texas historic boundary to which the State of Texas and the United States had already agreed.

So Louisiana's contest had been rejected and the stipulation of the United States is still binding on them.

Now, that historic boundary, of course, is based on a lot of historic documents.

Again, just so hurriedly because it is so much a part of the previous cases, our 1836 Texas Boundary Act was the fundamental historic document that from and after the passage of this act, passed when we were an independent nation and a republic, 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 and so forth.

When Congress annexed us as a state in 1845, this, mind you, was the territory that the Republic of Texas considered : "It was properly included within its boundaries and rightfully belonging to the Republic, that beginning at the mouth of the River Sabine three leagues gulfward to the mouth of the River the Rio Grande."

What did Congress say when they annexed us? That "Congress does consent that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new state."

It did say, "Subject to the adjustment by this government of all questions of boundary that may arise with other governments."

You remember the history that the United States was concerned about where the western boundary of our state would be -- where the boundary would be with Mexico and they wanted to press every claim that Texas rightfully had against all contestants and participants and that is why that language was used.

There was never any contest over our eastern boundary, never. The only contest that has ever arisen about it is that Louisiana has rejected claim that we didn't own half of the Sabine River.

We came along to the treaty that we then entered

into with Mexico. Following this series of events, the language that was in the Treaty of Guadalupe Hidalgo said, "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 and from thence," and so forth.

"Three leagues...." "river."

There can be no question any longer about the fact that we had our historic boundary and there can be no question about the fact that that boundary included a lateral boundary, whether or not Congress said -- when it said, "Beginning at the middle of the River Sabine and to a line three leagues --" the mere fact that it didn't stake it out by some call or some precise delimitation, we believe does not defeat the fact that Texas had and had to have an historic lateral boundary connecting that beginning point and that ending point at that time.

QUESTION: The Treaty of Guadalupe Hidalgo was after Texas was annexed, wasn't it?

MR. HILL: Yes and you do remember -- of course I didn't read it but I didn't think it was necessary when they moved our line over, the United States in 1848 Congressional Act consenting to the extension of the line, it said, "Also one-half of the Sabine River from its mouth."

QUESTION: Mr. Attorney General, are the parties in

agreement as to what the situation would have been prior to 1948 when the boundary was on the west bank of the river as to how you would get from shore to three leagues out, what angle would be appropriate?

MR. HILL: It is our position, your Honor --

QUESTION: I am asking if the parties are in agreement as to what the line would have been prior to 1848.

MR. HILL: I would say that there is no longer any dispute in this case that the only proper way to construct the lateral boundary is by use of the so-called "median principle."

QUESTION: How would the median principle operate from the west bank of the river? That is what I wasn't quite clear on.

MR. HILL: The west bank of the river? If that were still a contended-for line, which it isn't, you'd simply step out and adopt the same so-called "shallow width principles."

Really, the way a median line is drawn, if you go to sea and you find a place that is close to where you are shooting for, and you shoot to the nearest point on each shore that you are nearest to, then that is your beginning point. And you step in on an arbitrary kind of ad hoc basis so that you keep that line all the way to its connection point where every point on that line is no closer to one

coast than it is to the other and of course, the obvious reason is, what you are trying to do is equitable to divide the seabed and that is the only kind of line that does it.

QUESTION: Let me put my question a little differently. If the line had originated on the west bank of the river instead of in the middle of the river, would it have been parallel under that principle to a line which originated in the middle of the river?

MR. HILL: Yes, sir, there wouldn't be very much difference if that -- let's say academically -- if that is what we were fighting about in this case we wouldn't have very much to fight about, because the principle of the line would be the same, you'd just have a different connection point with some maybe a quarter of a mile to the west of them but you project the line exactly under the same principles.

It was spoken of as a middle line back at the time Texas was annexed and I'll get to that in a moment but the only concept of any of the so-called "middle line" or median line is that what you are trying to do is to divide the pie fairly. That is all it is about. You are trying to go halves. You are trying to do equity on both sides.

No one denies that the Texas line shown on this map does that. No one. The line is proper. It connects a historic middle and it divides it in an equitable way.

When you take the United States line, which has now been joined in by Louisiana, you use the jetties, which were not developed on median principle lines at all. They have nothing to do with equity of dividing a sea bed. They were built by the United States Corps of Engineers for the purposes of the United States Government in navigation. They don't even purport to follow a median line and when you move down and start at that position, you destroy the principles of median principle because you have such narrow base lines it is meaningless.

If you take two small base lines to construct a median principle off of you might as well just draw a straight line. It is going to come out substantially the same.

So unfairness is injected into this case by the use of man-made jetties constructed by the United States Corps of Engineers in 1880 when they were begun after our historical boundary was already recognized which did equity to everyone and now we are put in the position that we are being said that we have given up part of our entitlement because in some way we have acquiesced -- we have acquiesced, says the Master, as his primary basis.

The State of Texas has acquiesced in giving up this valuable land that would be ours under that principle because we have acquiesced in moving our boundary line down the jetty to the mouth.



Now, how ridiculous can you get? It is an evulsive change, nothing in which we participated. It was begun in 1888, totally financed by the United States Government and the only reason for building it was that there was silt building up at the mouth of the Sabine River and placing a bar there to navigation and if we'd get it further out to sea the silt wouldn't impair navigation.

They worked on it till 1936. What were we doing? Acquiescing every several years as they added a little bit more onto it? It's ridiculous.

QUESTION: Well, on your --

MR. HILL: We have not consented --

QUESTION: Mr. Attorney General --

MR. HILL: -- to the changing of our boundaries.

QUESTION: Mr. Attorney General, on your theory, had the river come in to the Gulf directly due east, then the median line would also go directly due east.

MR. HILL: Not necessarily directly due east, Justice Blackmun, because you don't measure a median line from the channel of the river and extend the channel of the river out. You use the coast line, draw the baseline, the proper baseline.

QUESTION: No, suppose the two shoulders had been north and south of one another at the point of the mouth of the river? Does not my question demand a positive answer?

MR. HILL: It would still go to coastal -- you still, in establishing the middle line at that river point, you would establish it, not by reference to the channel or the thalwick, so-called, of the river; you would establish the middle line by reference to the coastal -- the coastline.

QUESTION: Then it depends on how long the baseline is.

MR. HILL: Yes, sir.

QUESTION: It might change -- if you had a fairly long baseline, it wouldn't make much difference which way -- what direction the river was running when it went into the --

MR. HILL: No, sir, particularly if the coastline was more or less regular and I don't think anyone claims that Louisiana and Texas has a substantially irregular coastline, as coastlines go and what is happening here is after they can't sustain the acquiescence in prescription because the evidence is weak, the law is weak, you don't take something away from someone on acquiescence in a small 25-year period, which is all that we are talking about, on the basis that some shrimpers have given affidavits that they got arrested or bought some fishing license in a certain area.

That is just weak as water and it won't hold and there is not enough evidence here -- this Court has repeatedly said that if you are going to apply proscription and acquiescence -- which you don't even favor as a rule -- you are slow

to do it in a boundary involving water, much slower than in land and I just don't know of a case where you take this kind of evidence that has been presented here with such a short period of time and ignore all of the other documentation and history and case law here and just override it on some basis of prescription we have agreed that the mouth of that river could be shifted down.

Now, losing on that point, we get into a -- the United States takes the position, and the Master agreed that since Congress did not more accurately delimit our lateral boundary line back in those historic times, that it must be discarded in favor of a modern line which would take into account these modern jetties.

Now, we have set out in our briefs -- and please remember that we have a pretrial brief, a post-submission brief as well as our brief in support of our exception, all of which we would commend because we shortened our brief down on our exceptions and some of our evidence on this inchoate line principle is in the -- are in the previous briefs.

QUESTION: Where is your baseline? Where do you claim your baseline is?

MR. HILL: The historic coastline.

QUESTION: Well, where is that?

MR. HILL: In this particular map it is right here. It actually would favor Texas to use the present --

QUESTION: Well, tell me again, where is your, where do you claim your historic baseline is?

MR. HILL: Right here, your Honor, where these lines are. That is the historic coastline and --

QUESTION: And anything to the right of that is man-made.

MR. HILL: Yes, these were result of a bulk of changes that came about by building the jetty. I wish we could use them. We would move our line eastward if we could, but it is wrong, legally wrong to use it. It is not equity to Louisiana. It is not halfers. It is the wrong principle.

The right principle is the historic shoreline because you have already decreed it for Texas. You have already told us that that was the baseline.

QUESTION: And where is Louisiana's --

MR. HILL: Baseline?

QUESTION: Coastline, baseline which, to apply the median principle.

MR. HILL: Right here. We took these lines from the decree that was already placed in the --

QUESTION: Now, where is Louisiana's baseline according to the Master?

MR. HILL: At the eastern -- at the mouth or head or terminus of the eastern jetty.

QUESTION: Where is that?

MR. HILL: It is down here.

QUESTION: And you -- so it isn't much of a --  
how long is the Master's baseline?

MR. HILL: Well, the Master's baseline is --

QUESTION: -- is just --

MR. HILL: -- oh, about six miles because the  
jetty comes out 3.1, you see, into the water from the natural  
map and the reason that the -- the basic fallacy --

QUESTION: In applying the equidistant principle  
out in the Gulf, where is he measuring from, just the two  
ends of the jetties?

MR. HILL: Exactly. He may as well have saved his  
time.

QUESTION: Yes.

MR. HILL: I mean, once he got us out to the end  
of the jetties, for the jetties with which he had such a  
great affection, there was no need. I mean, the median line  
principle went out the window.

So you see it was simply because, the anomaly here  
is that you have given Louisiana the right to measure her  
territorial sea, the breadth of it, from the east jetty but  
you have confined -- you haven't given her -- that had nothing  
to do with lateral boundaries.

That just simply had to do with your interpretation  
of the Geneva Convention that since harbor works were a part



of the coastline for purposes of delimiting the sea, they --

QUESTION: When were the last additions to the jetties made?

MR. HILL: In 1936 and we are supposed to have somehow acquiesced in these man-made evulsive jetties.

QUESTION: How far apart are the jetties?

MR. HILL: Well, about half a mile.

QUESTION: And that is the shipping channel that is used.

MR. HILL: Am I wrong in that? I'll stand corrected. I don't know the answer. I have seen them many times.

QUESTION: On your theory, would part of the eastern jetty be in Louisiana be in Texas?

MR. HILL: No, sir, you see it is a fallacy. They talk in terms of the eastern jetty being owned some way by someone. The only one who owns the eastern jetty is the United States Government.

The Louisiana speaks that they own this land, this seedbed from the Texas median line to the jetty. Not at all. You haven't decreed who owns that. You have simply decreed how to measure the territorial seas. The only thing that can determine who owns it is for you to fix the lateral boundary. That is what is going to determine who owns it.

to  
QUESTION: Your answer/ Mr. Justice Blackmun is

that on your view the jetties are all located within the boundaries of the State of Texas.

MR. HILL: No question about it.

QUESTION: Yes.

MR. HILL: No question about it and they can't alter our boundaries by that kind of unilateral act as to which we have absolutely not only not acquiesced in 1947, we established our own statutory line by --

QUESTION: Does the eastern jetty attach itself to what is conceded as Louisiana land at the mouth of the river? I take it it does not.

MR. HILL: I am sorry, I am not catching the question.

QUESTION: What is the landmost end of the jetty? To what does it attach? The eastern jetty.

MR. HILL: The eastern jetty attaches to the shore line of Louisiana.

QUESTION: Well, then, part of it is in Louisiana, no?

MR. HILL: No, the jetty belongs to the United States.

QUESTION: I don't care to whom it belongs. I want to know, is it in Louisiana, any part of it?

MR. HILL: I don't think it is, unless you want to quibble about where the attachment point is.

QUESTION: Even though it attaches to Louisiana.

MR. HILL: If you want to say that the attachment at the shoreline, that Louisiana owns that shoreline to where it attaches, yes. But they do not own the jetty. And the mere attachment --

QUESTION: Mr. Attorney General, let's forget about ownership. At the point of attachment, it certainly is in Louisiana, is it not?

MR. HILL: Yes, sir, it is.

QUESTION: And how far out is it in Louisiana?

MR. HILL: Not any at all -- not any point from there is it in Louisiana. You have not decreed the jetty or any part of the jetty to be owned by any state -- by either state, nor could you. It is owned by the United States Government that paid for it and erected it. The only significance you have ever attached to it is you gave the east --

QUESTION: Mr. Attorney General, I am not interested in ownership. I am interested in location.

MR. HILL: It is not located then in Louisiana. It would be located in areas that are properly, let's say, over which Texas will properly have jurisdiction when this case enters the proper decree.

When this Court entered the proper decree, to say that this territory is within our proper territorial sea,

then the jetty will be in an area over which we properly and legally have offshore jurisdiction is something less than full ownership even in that area, as was pointed out in the first United States versus California case.

But even when U.S. versus California was decided, you recognized that the states had some jurisdiction left. You recognized that jurisdiction was bounded by lateral boundaries. You said so, in the decree of U. S. versus California and U.S. versus Texas. You can't wipe out what has already been done by the Court.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Attorney General.

Mr. Rupp.

ORAL ARGUMENT OF JOHN P. RUPP, ESQ.

ON BEHALF OF UNITED STATES

MR. RUPP: Mr. Chief Justice and may it please the Court:

There is no longer any dispute between the parties here that the boundary between Texas and Louisiana and the Gulf must be constructed by reference to the median line or equidistant principle contained in Article 12 of the Geneva Conventions. That is, that the boundary must be a line that is at all points equidistant from the coastlines of the two states.

The dispute relates instead to the coastlines for purposes of application of the median line principle.

Texas' basic position is that the relevant coastline is the coastline that existed in 1845 when it was admitted to the union.

In support of that position, Texas has contended first that the congressional resolution annexing Texas recognized that Texas had in the Gulf of Mexico both lateral and offshore boundaries; that had Congress undertaken to fix that boundary as of 1845, it would have used the equidistant or median line principle and it would have applied that principle to the 1845 coastline and finally, that even though Congress did not fix the lateral boundary in 1845 or thereafter, the boundary nevertheless remained inchoate and neither post-1845 evulsive changes in the coastline nor post-1845 changes in domestic and international law can operate to effect the position of the lateral boundary which has remained in some sense established since 1845.

We believe that the Special Master properly rejected Texas' positions and that all three of the contentions made by Texas in support of that position are demonstrably unsupportable.

The operative language that Texas relies upon in support of its argument that it has had for the last 140 years a lateral boundary in the Gulf of Mexico appears at



page 7 of our brief and it was referred to by my brother a moment ago.

That language, which is taken from the Texas Boundary Act, reads as follows, describing the seaward boundary of the State of Texas:

"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."

And United States versus Louisiana, decided by this Court in 1960, this Court held that the language to which I have just referred is sufficiently precise to sustain Texas' claim to an offshore grant under the Submerged Lands Act extending into the Gulf of Mexico three leagues from land.

At the same time, however, this Court recognized in that case that at the time of Texas' annexation, Congress paid preciously little attention to the location or distance of any offshore boundaries for the State of Texas.

As the Special Master noted, they paid no -- Congress paid no attention at all to the location of lateral boundaries. The consuming interests at that time were instead the question of slavery, the debt that had been accrued by the Republic of Texas and our deteriorating relations with Mexico.

Texas has pointed to nothing in the available

legislative history that adds to the language to which I have referred and I think that Special Master -- we submit that the Special Master was correct in concluding that it is impossible on the basis of the operative language upon which Texas relied -- it relies -- to construct a lateral boundary.

As the Special Master noted, the problem is getting from the mouth of the Sabine to the point three leagues into the Gulf -- and I am quoting -- "No meridian is chosen. No angle of departure from the coast is referred to, nor is any point in the Gulf three leagues from land specified."

Given the total lack of relevant language in the statute, there is no indication of how or where a lateral boundary was to be constructed.

What the Special Master was confronted with, then, was a holding by this Court that Texas' off-shore boundary, the breadth of Texas' grant under the Submerged Lands Act, extended three leagues into the Gulf.

The instruments upon which it relied in arguing that it had an inchoate lateral boundary and that the responsibility of the Special Master was simply to divine that boundary is that the language, the relevant language provides no clue whatever to how that boundary was to be constructed.

Events occurring since 1845 also demonstrate the weakness of Texas' position. I'd like to refer the Court, if I may, to the diagram that appears as an appendix to the Special Master's report.

Although Texas contends that it has had, for the last 140 years, an inchoate boundary on the Gulf of Mexico, you will note from the map that when Texas undertook to define that boundary by statute, it fixed a lateral boundary which bears no relation to the lateral boundary has existed for the last 140 years.

The median line that Texas, from the 1845 shoreline that Texas now suggests ought to be regarded by this Court or adopted by this Court as its lateral boundary is marked as green line number one on the Special Master's map.

The Texas statutory line is line number three, green line number three.

The principles used to construct line number three and the principles that Texas now relies upon in constructing line number one are not the same and not surprisingly then, the lines bear little relation to one another.

The second link in Texas' argument in support of its proposed boundary line, we believe, is no stronger than the first and that is that, even if lateral boundaries were not defined at the time of Texas' annexation or

subsequently, had the United States' Congress undertaken to define the lateral boundary as of 1845, it would have used the median line or equal distant principle and it would have applied that principle to the 1845 coastline.

We dealt with this contention at some length in pages 14 through 18 of our brief. Let me only state here that although the median line or equal distant principle is today recognized as the governing principle in the fixing of lateral boundaries between adjacent states, that was not true in the 1800's.

The instances referred to by Texas at pages 25 through 28 of its brief are not instances in which the median distance principle was used to delimit areas in the marginal sea -- with one exception and that is the Grisbadarna case, but that case did not apply the median line or equidistant principle for which Texas contends here and which the United States and Louisiana agree is the proper principle.

That case said -- the Court in that case used the right angle principle.

QUESTION: Does the median line principle, equidistant median line principle apply only when there is not only a dispute between two states or countries but only when the line -- you can't say the line has ever been definitely established before.

MR. RUPP: There are two ways under the Geneva Conventions to delimit --

QUESTION: Let's assume, then, to get my question straight -- let's assume that when Texas came into the Union there was a language used or at least there would be no question whatsoever that the boundary was -- from what point you would measure and what angle you went out into the Gulf on and let's assume that it was absolutely clear at that time.

MR. RUPP: Yes, sir.

QUESTION: Now, would building the jetties then change that boundary?

MR. RUPP: I wish I could answer that question yes or no. I think you must have the answer --

QUESTION: You must answer it no, I suppose?

MR. RUPP: Well, I think the answer is no and the reason it is no is that this Court has held --

QUESTION: Because if you answered it yes, Texas' argument about what its historic boundaries were is irrelevant.

MR. RUPP: I don't think that follows. Let me back up for one moment. This Court held in the United States versus Texas that Texas did not have a recognizable claim to lands offshore.

It recognized however, in United States versus



California that Texas and other Gulf states might nonetheless -- and California -- exercise some police powers in those areas.

Now, the historic element of this case comes into the picture only because in the Submerged Lands Act, Congress permitted states to exercise one of two options, either the three-league option based upon historic events or an unconditional three-geographic-mile range.

QUESTION: Well, I'll put it again. The Master establishes what the line is now. Now, suppose the jetties are extended next year on a different angle?

MR. RUPP: Yes.

QUESTION: Does the boundary change or not?

MR. RUPP: Our position is that it is not. Once it is fixed in a decree of this Court it would not. I should add, however, that the parties --

QUESTION: And so you agree if there had been a judicial finding of what the boundary was or where it started in 1900 it wouldn't have been changed by the building of the jetty?

MR. RUPP: The problem is, I cannot answer yes or no.

QUESTION: That's all right.

MR. RUPP: The problem is that we are talking about a controversy which has relevance only under the

Submerged Lands Act.

Now, it is the United States' position that a decree in this Court now establishing the lateral boundaries between Texas and Louisiana and lands obtained by the United States under the Submerged Lands Act will finally fix the boundaries.

We believe further, however, that the coordinates of the line ought to be incorporated in an agreement between the parties and presented to the Congress so that any potential ambiguity is removed.

This is the first case that presents to this Court under the Submerged Lands Act the question of lateral boundaries. Those boundaries normally, under international law, will continue to fluctuate until fixed by agreement and possibly by judicial decree although that has not been settled yet.

QUESTION: Fluctuate depending upon what?

MR. RUPP: It depends upon both natural changes in the coastline as well as evulsive changes. Now, the change --

QUESTION: Now, how about man-made changes? How about changing the location of the jetty?

MR. RUPP: Yes, I include man-made changes.

QUESTION: As evulsive?

MR. RUPP: Yes. Man-made changes are normally

evulsive and the Geneva Conventions specifically include harbor works that form an integrated part of the harbor network as part of the coastline and this Court has held that the jetty on the east forms part of Louisiana's coastline.

QUESTION: Yes.

MR. RUPP: For you to hold now, for purposes of the lateral boundary dispute with which we are now presented, that Texas' jurisdiction cuts the eastern jetty and extends eastward into the Gulf of Mexico from the natural mouth of the Sabine, we regard as wholly inconsistent with that prior holding.

It is clearly inconsistent with the governing legal principles under the Geneva Convention which this Court has applied to cases such as this arising under the Submerged Lands Act.

In the United States versus California, when this Court was presented with the duty of determining the meaning of the phrase "Inland Waters," this Court referred to the Geneva Convention. This Court incorporated evulsive man-made changes in determining the location extent of California's inland waters.

In United States versus Louisiana, the last case involving these two states in this Court, again the Court held that man-made changes, harbor works, affected

the location of the boundary.

QUESTION: That case didn't involve these two states. It simply involved the Louisiana coastline, didn't it?

MR. RUPP: Yes, that is right. I am sorry. It did not.

QUESTION: It had nothing to do with the border between these two states as such, did it?

MR. RUPP: No, that is right. It did not. What the Court held in that case, of course, was that for purposes of measuring the three-mile limit under the Submerged Lands Act, the eastern jetty was part of Louisiana's coastline and that Louisiana could use an arc extending three miles from that eastern jetty.

QUESTION: But that is really not relevant to the dispute here, or the issue here, is it?

MR. RUPP: It is relevant, it seems to me.

QUESTION: Well, relevant, but certainly it is not dispositive.

MR. RUPP: It is not conclusive, no, no, it is not conclusive. This Court has not held, as I just indicated, has not confronted a case involving an issue of the location of the lateral boundary between two states.

QUESTION: Right. Right.

MR. RUPP: Off shore. We believe that the logic

of the prior opinion leads to the result that was reached here, recommended here by the Special Master.

QUESTION: The baseline -- namely, the baseline is to lay out on the coast to start with -- you think has to be the same coastline that was recognized as part of the Louisiana coastline in past cases?

MR. RUPP: Exactly. That is correct. That is the breadth of the territorial sea and the coastline to be used for the present purposes should be the same.

MR. CHIEF JUSTICE BURGER: Mr. Stockwell.

ORAL ARGUMENT OF OLIVER P. STOCKWELL, ESQ.

ON BEHALF OF STATE OF LOUISIANA

MR. STOCKWELL: May it Please the Court:

I won't try to duplicate the argument that has just been made. There is one thing, though, I would like to clear up. I think it was Mr. Justice White, when we argued the last Texas boundary case, asked Mr. McDaniels about the effect of that judgment on the offshore boundary and Mr. McDaniel said -- and this is page 34 of our brief, "That is correct. This does not affect the United States, I do not think, because as to the United States, the three-league limit only comes as far as our historic boundary, and Congress has not consented for us to extend it here any more than they have consented for us to extend it up here north of the 32nd degree of latitude. So, we have no



controversy with that."

So Mr. McDaniel was saying that in the extension of 1848, it really didn't affect the offshore boundary.

Now, I think in this case, though, one of the salient factors that I see is the factor that the jetty starts on the coast of Louisiana and extends out in the Gulf so it is an extension of the coastline of Louisiana and the Master actually determined that the jetties were a part of the river to some extent because he said that would, in the expert testimony, was put in, justified the fact that you could say that was an extension of the river mouth but he said he didn't have to hold it on that basis because under the Geneva Convention it would be the coast of Louisiana to the end of the jetty and they have the low-water mark into the jetty which is about 1,800 feet or practically what Mr. Hill said and that was the baseline, which is the baseline for measuring the territorial sea of the United States and under Article 12 of the Convention it is measured from that baseline so I think the Master was absolutely correct in taking the modern coastline -- since you had never had a boundary established -- it was maybe inchoate boundary.

But Texas never had recognized any boundary out there. As a matter of fact, I think the record will demonstrate that all of these parties have treated more or

less down the center of the jetties as being the boundary between Texas and Louisiana.

Now, of course, we disagree about the fact that their median line is correct because the Special Master, in his report, said that there wasn't enough of the Louisiana coastline of 1845 to justify the median line that Texas was suggesting so we take issue on that.

I think one of the things that I would like to cover before I get into that is this north -- as it comes into the Sabine River. The Sabine River comes to the Sabine Lake; there is no dispute over the fact that there is three areas.

Texas in their brief admits that when they were admitted into the Union in 1845, that their boundary was on the westernmost branch of the Sabine so at that time there is no question about where their boundary was. There is no question about the channel that was used.

Now, in 1838, which was before Texas was admitted, the United States surveyed this land for the purposes of issuing patents and made townships out of it and they surveyed it to the west branch of the Sabine River and they let Louisiana select that land under the Swamplands Act.

Now, the only reason Louisiana could select it was that the United States treated that as being in

Louisiana and then Louisiana patented that land out to individuals who own it today and pay taxes Cameron Parish.

Now, one of the important things today as far as Louisiana is concerned is that the same surveyor held all of these channels were navigable so that meant that Louisiana owned the beds of those navigable streams.

Now, what the Master has done, he admits to these islands were rightly -- were patented to Louisiana and patented out by Louisiana but yet he says that they are now going to be in Texas so that means Louisiana is giving up these navigable waters and also they are giving up these taxes on this private property.

QUESTION: How many miles seaward are these jetties from the point --

MR. STOCKWELL: They are a little over three miles, about three and a half miles, I think.

QUESTION: And Louisiana's position was that you then go seaward three miles from --

MR. STOCKWELL: Yes, well, we -- our first position was, we had a statute, too, that defined our boundary and it commenced at the head of the jetty and took a line across the jetty and went due south and the United States' line, this was the median line based on a line across the jetty and after the Master decided that was the proper line, we accept that, so we don't urge the line that

we were urging at the time.

Now, so, the Master, in making this determination about the island, about the right channels, said something about the amount of water that came through but it is difficult for us to see how the Master could put the land that was already determined to be in Louisiana over into Texas and that is going to be the effect of this decree. It is going to take title to a lot of property since it came through the swampland grants to Louisiana and was patented out by Louisiana over 100 years ago.

So I don't think there is anything --

QUESTION: Well, that wouldn't affect title, would it?

MR. STOCKWELL: Well, I think that the only reason that Louisiana could get the swampland was that it had to be in Louisiana.

In other words, they were entitled, as you know, to select overflow land in that border and they did that. They made these selections and then they issued patents to individuals.

QUESTION: Well, but you can't go back and invalidate those patents now.

MR. STOCKWELL: Well, I think that might be a legal question. I mean, I don't know. Maybe there is some prescriptive period but anyway, the Master admits these was

all patented into Louisiana and there is no question of acquiescence on the part of Louisiana because right now, they are paying taxes in Louisiana and as a matter of fact, this same issue arose right north of there at Orange, Texas, what they call the "Narrows," and they had two channels and the Department of the Interior determined that the westernmost channel was the channel to be used because that was the channel on the west bank of which the Texas boundary was.

Now, that is the whole position we take, is that the channel on which the west bank of Texas boundary -- the east bank of Texas boundary is the channel to be used and the line is only moved to the middle of that channel.

Is there anything further the Court would like?

Thank you.

MR. CHIEF JUSTICE BURGER: I guess not.

Thank you.

QUESTION: The Missouri River is full of instances where property on the other side belongs to the state on the other side of the river so that the fact that the island might be Louisiana territory but yet beyond the west side of the line isn't conclusive, I suppose.

MR. STOCKWELL: Yes, Mr. Justice Blackmun. Of course, what we are saying is that Louisiana has title to the beds of these streams by virtue of the fact that the



United States recognized their boundary extended to this west fork.

Now, the United States could not take that away and give it to Texas in its 1848 act. That same issue came up in Mississippi versus Louisiana and the Court held that once a state had territory, the Congress could not take it and give it to another state.

QUESTION: Well, was it the result of our prior case in this Court that Louisiana's boundary went three miles out from the jetty?

MR. STOCKWELL: Yes, that is right. In other words --

QUESTION: And you went three miles seaward from the end of that jetty -- or from the middle of the line between two jetties or from the end of the jetty?

From the end of the jetty.

MR. STOCKWELL: From the end of the jetty because it determined that --

QUESTION: And then you started in an arc.

MR. STOCKWELL: That is correct.

QUESTION: And as between the United States and Louisiana, that arc divided the rights to the sea bed.

MR. STOCKWELL: That is right, under the Submerged Lands Act.

QUESTION: Yes, under the Submerged Lands Act.

Now, Texas' position in this case would mean that part of that property within that arc would be -- belong to the State of Texas.

MR. STOCKWELL: That is correct. In other words they say that that -- in other words, if you adopt their theory, they get the whole -- they get both of the jetties. Therefore, we would not be able to use the jetties to determine our territorial seat.

QUESTION: So if there is oil development -- if there was drilling in the seabed within the arc that the United States thought belonged to Louisiana under a prior case, it might now be determined it belonged to Texas?

MR. STOCKWELL: Well, it might be, yes.

I mean, if it -- let's say that the Court would hold the Texas boundary extends to where they say it is, it would put part of what Louisiana has already been awarded into Texas and of course, one of the things, Mr. Justice, is the fact that I think the Court started out to have some uniformity to the coastline and to these various issues, like bays under the convention, and what they will do here, if this is not followed, will be creating a real anomaly as far as this area around the jetties is concerned.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:01 o'clock a.m. the case was submitted.]