

TRANSCRIPT OF PROCEEDINGS

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of:

UNITED STATES,

Plaintiff,

v.

LOUISIANA, ET AL.

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No. 9 Original

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x

3 UNITED STATES, :

4 Plaintiff, :

5 V. : No. 9 ORIG.

6 LOUISIANA, ET AL. :

7 -----x

8 Washington, D.C.

9 Monday, January 11, 1988

10 The above-entitled matter came on for oral argument
11 before the Supreme Court of the United States at 1:34 p.m.

12 APPEARANCES:

13 JIM R. BRUCE, ESQ., Special Assistant Attorney General for
14 Mississippi, Kennett, Mo.;

15 on behalf of the Defendant Mississippi.

16 JEFFREY P. MINEAR, ESQ., Assistant to the Solicitor General,
17 Department of Justice, Washington, D.C.;

18 on behalf of the Plaintiff.

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1 PROCEEDINGS

2 (1:34 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument next in
4 No. 9 Original United States against the State of Louisiana.

5 Mr. Bruce, you may proceed whenever you're ready.

6 ORAL ARGUMENT OF JIM R. BRUCE, ESQ.

7 ON BEHALF OF DEFENDANT

8 MR. BRUCE: Mr. Chief Justice, and may it please the
9 Court:

10 This case concerns the location of Mississippi's
11 coast line and the extent of its seaward boundaries. During
12 the course of my argument, I'll be referring to charts which
13 were included in the amicus brief of the State of Alaska, as
14 well as Figure No. 2 included in the Report of the Special
15 Master.

16 Now, in the previous proceeding before this Court, we
17 were all focusing on the question of whether Mississippi Sound
18 constituted inland waters. We presented our case and this
19 Court agreed that it was inland waters and directed the Master
20 to frame an appropriate decree.

21 In approaching that task, the Master was faced with a
22 problem as he approached the western end of Mississippi Sound
23 in the area where Mississippi Sound meets the waters of
24 Chandeleur Sound south. The obvious solution the problem was
25 that a corner had to be drawn somewhere closing both of these
areas of inland waters.

1 The Master however felt constrained not to deal with
2 an issue which appeared to be obvious in light of the Court's
3 previous opinion, that is, necessary and obvious for
4 establishing a coast line.

5 Now, the Solicitor General's argument is confusing as
6 to whether or not he is suggesting remand or that this case is
7 at an end and that no further proceeding should be taken. He
8 says this is a case about Mississippi Sound only, and that it
9 should be reserved for a supplemental decree.

10 What we're asking the Court to do today is to remand
11 this case with instructions to the Master so that he can deal
12 with the coastline question in a logical manner and not feel
13 foreclosed from recommending a proper decree in the case. If
14 that's the Solicitor General's position, too, then we're all
15 agreed on remand and there's no issue for this Court to decide.

16 However, if the Government is arguing that the case
17 is over, we contend that they are wrong.

18 Mississippi Sound and Chandeleur Sound to the south
19 are inland waters or at least this --

20 QUESTION: Mr. Bruce, I take it from the way you're
21 pronouncing the word that Louisianans pronounce it "chandelier"
22 sound, even though the last syllable is spelled "leur"?

23 MR. BRUCE: Yes, sir.

24 Both of these bodies of water have been characterized
25 by this Court as inland waters. In fact, the last proceeding,
the Court held that Mississippi Sound was in fact inland

1 waters. The two sounds are at right angles to each other and
2 are separated from one another by Cat Island, West Ship Island
3 and East Ship Island. And I think it's very important to note
4 that Ship Island in the past has been a single island.

5 QUESTION: The only issue in this case is Mississippi
6 Sound, or not?

7 MR. BRUCE: No, Your Honor. Basically that was
8 disposed of at our last proceeding before this Court. The
9 question now is where the coastline should be located, that is,
10 should it take into consideration the inland waters of
11 Chandeleur Sound as well.

12 QUESTION: Well, why does Chandeleur Sound come into
13 the case?

14 MR. BRUCE: Well, because the Master in his report
15 was attempting to delineate the coastline of Mississippi. In
16 order to delineate the coastline of Mississippi, you have to
17 determine the limits of inland waters.

18 QUESTION: Well, why didn't he consider it?

19 MR. BRUCE: He felt that he was foreclosed by this
20 Court's previous opinion.

21 QUESTION: You have to address our opinion, then.
22 Before Chandeleur Sound is involved, you have to convince us
23 the Master was wrong in construing our remand.

24 MR. BRUCE: Well, we think, Your Honor, --

25 QUESTION: Isn't that right?

MR. BRUCE: I would agree, Your Honor.

1 QUESTION: Well, tell me why the Master was wrong in
2 that regard.

3 MR. BRUCE: Well, I think first of all in the
4 opinion, the Court noted that this was a very narrow question
5 involving only Mississippi Sound, or at least that's the way I
6 read the very beginning of this opinion. The parties were much
7 agreed that Chandeleur Sound was inland waters. In fact, the
8 United States has offered a concession to a part of Chandeleur
9 Sound.

10 QUESTION: Which he rejected, which Mississippi
11 rejected?

12 MR. BRUCE: Yes, Your Honor, because we felt that the
13 offer was less than what we were entitled to --

14 QUESTION: It's amazing, isn't it.

15 MR. BRUCE: -- as a matter of law. And of course the
16 question as to the status of Chandeleur Sound was raised before
17 the previous Master and was presented to this Court in the
18 claim of a straight base line.

19 QUESTION: Well, in this proceeding when did the
20 State first raise the Chandeleur Sound issue?

21 MR. BRUCE: Your Honor, that would have been back, I
22 believe, in early 1983, prior to the time the Master had
23 submitted his previous recommendation. In fact, the Master
24 notes on page 24 of his opinion in his footnote that
25 Mississippi did raise the question of the status of Chandeleur
Sound. In addition, we believe that there are other opinions

1 of this Court which have recognized Chandeleur Sound as inland
2 waters.

3 If you go back to the 1906 decision of Louisiana v.
4 Mississippi, the question there was the boundary between the
5 State of Mississippi and the State of Louisiana. I think in
6 that regard, it's interesting to look at what the parties were
7 claiming and specifically what the Court said about Chandeleur
8 Sound.

9 In that case, of course, the State of Louisiana asked
10 for a decree defining its boundary line as the deep water
11 channel. I think the language of that, which the Court
12 repeated, is important. Louisiana asked that the boundary
13 extend through Mississippi Sound, north of Isle Au Pitre,
14 through Cat Island past southwest of Cat Island, through
15 Chandeleur Sound, northeast of Chandeleur Islands to the Gulf
16 of Mexico. Now, very clearly, the Court was under the
17 impression -- or at least Louisiana was under the impression
18 that the Gulf of Mexico began eastward the the Chandeleur
19 Islands.

20 QUESTION: Well, let's assume you're right.
21 Everybody agrees that whether the Master was right or wrong in
22 saying that the remand was a narrow one, everybody agrees
23 you're going to have to finish up the case anyway. He's going
24 to have to deal with Chandeleur Sound some time. But what
25 about the accuracy of what he did?

MR. BRUCE: Well, we think that there are some

1 serious problems with the accuracy.

2 QUESTION: Well, isn't that the issue that we have
3 before us? Was he right to the extent that he set the
4 coastline?

5 MR. BRUCE: No, Your Honor, he was not. And we
6 submit that for several reasons. The first reason --

7 QUESTION: Well, it's one of the issues isn't it?
8 Was he right in setting the coastline to the extent that he set
9 a coastline?

10 MR. BRUCE: Well, yes, Your Honor, that would be one
11 of the issues for the Court to consider in deciding whether to
12 affirm the Report of the Special Master.

13 QUESTION: Yes.

14 MR. BRUCE: And if --

15 QUESTION: And you object to what he did. You say
16 the Master was wrong?

17 MR. BRUCE: Yes, we do, Your Honor. First of all --

18 QUESTION: And you're going to argue that, I suppose?

19 MR. BRUCE: Yes, Your Honor.

20 There were a number of things that we object to about
21 the Special Master's report and of course this statement from
22 Louisiana v. Mississippi is an early legal precedent we believe
23 that shows that he is wrong.

24 The Court in its final decree in that case
25 interestingly enough attached a map and made it a part of the
decree. And if you look at that map, you'll find that the

1 boundary line which the Court delineated runs into Chandeleur
2 Sound. In fact, it runs off the paper, because all of
3 Chandeleur Sound was not shown.

4 In addition, the Court commenting on what Louisiana
5 had argued made it very clear as to where Chandeleur Sound
6 began and ended and where the Gulf of Mexico began and ended.
7 The Court said, to get into the open water of the Gulf of
8 Mexico beyond Chandeleur Islands and around to the western
9 boundary of Louisiana, it is necessary to follow, as Louisiana
10 contends, the deep water channel through Mississippi Sound, and
11 thence by the pass between Cat Island and Isle Au Pitre north
12 of the Chandeleur Islands into the Gulf of Mexico.

13 Now, I think it would be very difficult to read that
14 language --

15 QUESTION: Between Cat Island and Isle Au Pitre?

16 MR. BRUCE: Yes, sir. North of the Chandeleur
17 Islands into the Gulf of Mexico. So the Court seems to very
18 clearly expressly have stated its opinion that the Gulf of
19 Mexico began beyond the Chandeleur Islands, the northern part
20 of the Chandeleur Islands.

21 QUESTION: Was that question squarely involved in
22 that case? You know, a Court will write an opinion and it will
23 be focusing on one point, and it may say casually, to get from
24 here into the Gulf of Mexico without really thinking it's
25 saying other than kind of descriptive language about where the
Gulf of Mexico starts.

1 MR. BRUCE: I think that could be an argument that
2 would be made to oppose this. However, the issue presented to
3 the Court was the location of the boundary between Mississippi
4 and Louisiana, and of course the Court found that the boundary
5 of Louisiana went all the way to the Gulf of Mexico. So in
6 order to resolve that, the Court would have had to have decided
7 where the Gulf of Mexico began.

8 So I think it could be argued that way, but I would
9 think that it was material to the determination of the issue
10 and it was the lateral boundary between the two States.

11 One of the other problems that we find with the
12 Master's report, and that is that the recommendation if
13 accepted would divest Mississippi of approximately 150 square
14 miles of territory which the United States has been recognizing
15 for the most part of this century. And which the United
16 States, at this point, has been willing to offer a partial
17 concession.

18 In 1965 in the California case, California attempted
19 to analogize Santa Barbara Channel to Chandeleur Sound and the
20 United States was very quick to respond, these are really two
21 different cases. Chandeleur Sound, which we recognize as
22 inland waters -- and then it went on to contrast the two.

23 The Court picked up on that in a footnote and said
24 something to the effect, Chandeleur Sound, which the United
25 States claims as inland waters. So this Court has been
confronted with that. The United States has in the past

1 acknowledged that at least part of Chandeleur Sound was inland
2 waters. And of course, in the 1981 final decree in Louisiana
3 v. Mississippi, the whole decree seems to be premised upon the
4 fact that there is a lateral boundary between Mississippi and
5 Louisiana. If Chandeleur Sound is not inland waters, I submit
6 there is no lateral boundary, and that the decree lacks
7 definiteness and creates a real problem.

8 QUESTION: Mr. Bruce, let me ask you a question if I
9 may about the map which I think is the one in Alaska's Amicus
10 Brief. It seems odd in a way that we should be relying on a
11 map which is found only in the Amicus Brief.

12 MR. BRUCE: Especially from Alaska.

13 QUESTION: But take a look at where it shows
14 Chandeleur Sound, and then on the left all that land, is that
15 mainland Louisiana?

16 MR. BRUCE: Yes, it is, Your Honor. And that was
17 decided of course in Louisiana v. Mississippi in 1906 as well
18 and the Court held that was the mainland of Louisiana. Isle Au
19 Pitre is the furthest extension of the Louisiana mainland.

20 QUESTION: Thank you.

21 MR. BRUCE: In addition to those problems, we feel
22 that the Master confused the terms, boundary and coastline. Of
23 course, the two are distinct. The boundary is located three
24 miles seaward of the coastline, the coastline being defined as
25 the limit of inland waters, and the low water mark along that
part of the coast in direct contact with the open sea.

1 Now, by confusing the terms, the Master not only
2 deprived Mississippi of the claims of Chandeleur Sound inland
3 waters, but at the same time, took away all of Mississippi's
4 territorial sea all along its coastal front.

5 Another problem that has been raised is the treatment
6 of the --

7 QUESTION: Mr. Bruce, could I ask you a question
8 about the map, too.

9 As I understand it, the lines that are marked 3 from
10 Petit Bois to East Ship Island, that's not in dispute, right?

11 MR. BRUCE: No, Your Honor, that is not.

12 QUESTION: And how about the lines marked 7 from West
13 Ship Island down to the Isle Au Pitre. Are they in -- that's
14 what the Master proposed, and you dispute that? Is that right?

15 MR. BRUCE: That's right, Your Honor. We submit that
16 the proper closing line should have been the line marked 6 from
17 East Ship Island down to the northern tip of --

18 QUESTION: All right, and from that point, how do you
19 get from there to Isle Au Pitre. What do you think the Master
20 should have done. I understand that line 6 is the one you
21 contend for but that doesn't close anything if you just go down
22 there.

23 Where would you go to the west from that line in your
24 view?

25 MR. BRUCE: From the eastern tip of Ship Island, we
 would have closed that down to the Chandeleur Islands.

1 QUESTION: I understand that. But then what do you
2 do once you get to the eastern tip of Chandeleur Island. You
3 don't claim all of Chandeleur Sound, do you?

4 MR. BRUCE: Oh, no, Your Honor.

5 QUESTION: But I'm asking you, where do you go from
6 there under your view of the case?

7 MR. BRUCE: Mississippi would be entitled only to
8 that area north of its lateral boundary of Louisiana.

9 QUESTION: But Justice Stevens asked you about a line
10 that comes down. Six goes down from East Ship Island to the
11 northern most of the Chandeleur Islands, and then where does
12 the line go as it goes westward from there?

13 MR. BRUCE: Oh, I see. Your Honor, the line would
14 continue South around the outer extremity of the Chandeleur
15 Islands continue on South and then close across an area which
16 is not shown on this map. Chandeleur Islands the United States
17 has drawn a closing line for its agreement with Louisiana down
18 to the Mississippi Delta.

19 QUESTION: And you then contend that all of
20 Chandeleur Sound that's shown on this map is part of
21 Mississippi?

22 MR. BRUCE: No, Your Honor. No, Your Honor, just
23 that part of Chandeleur Sound north of the lateral boundaries
24 separating Mississippi and Louisiana.

25 QUESTION: In other words, north of line number 1?

MR. BRUCE: No, that would be North of line number 5,

1 Your Honor.

2 QUESTION: And I still question how do you get from
3 the northern tip of Chandeleur Islands to the line number 5. I
4 still don't understand.

5 MR. BRUCE: Your Honor, I'm not sure I understand.

6 QUESTION: I haven't been able to understand. I
7 understand you think the line should begin at Petit Bois
8 Island, go to East Ship Island, go south to the northern tip of
9 Chandeleur Islands.

10 MR. BRUCE: Yes, Your Honor.

11 QUESTION: And then where does it go?

12 MR. BRUCE: The coastline would follow the outer
13 fringe of the Chandeleur Islands.

14 QUESTION: All right, get down to the south --

15 MR. BRUCE: Down to the Mississippi Delta.

16 QUESTION: All right, down to the south tip of
17 Chandeleur Islands.

18 MR. BRUCE: Yes, sir.

19 QUESTION: Whose coastline? But that's not
20 Mississippi's coastline?

21 MR. BRUCE: No, Your Honor. That would not be.

22 QUESTION: Well, what he's asking is where's
23 Mississippi's coastline. I think what you would do is you
24 would head west from the point where line 6 intersects with the
25 dotted line 5. Isn't that where you think the boundary of
Mississippi is?

1 MR. BRUCE: Yes, Your Honor. Basically we would use
2 the line down to the lateral boundary and follow the lateral
3 boundary --

4 QUESTION: Down over to 1.

5 MR. BRUCE: That's correct.

6 QUESTION: But you would close Chandeleur Sound from
7 the south end of the Chandeleur Islands over to the Delta?

8 MR. BRUCE: Yes, Your Honor.

9 QUESTION: And then Chandeleur Sound is divided
10 between Mississippi and Louisiana?

11 MR. BRUCE: The northern part of it would be, yes,
12 Your Honor.

13 QUESTION: And what about the southern part of
14 Chandeleur Sound, is that all Mississippi?

15 MR. BRUCE: No, Your Honor, that wouldn't be. The
16 southern part of Chandeleur Sound and Breton Sounds which have
17 also been recognized as inland waters would belong to
18 Louisiana, there's no question about that.

19 QUESTION: So what's in dispute then is the area to
20 the west of line 6 and north of line 5 and 1, and south of Cat
21 Island and West Ship Island?

22 MR. BRUCE: Yes, Your Honor.

23 QUESTION: That area's in dispute.

24 Now, do you think the Master has decided what State
25 that water is in?

 MR. BRUCE: Well, I don't think that he's decided

1 what State it's in. I think he's decided what it's not in.

2 QUESTION: Well, do you think he has decided it's not
3 in?

4 MR. BRUCE: Yes.

5 QUESTION: He hasn't just said for the purpose of
6 this case, the border should be you know what he's drawn. You
7 don't think it's open to you to relitigate in a new proceeding
8 what the status of that water is?

9 MR. BRUCE: It appears from what the Master said that
10 he was fixing our boundary as that term is used and the term
11 coastline is used, that would limit the State as to how far it
12 could go. And he makes the coastline go between the islands.

13 QUESTION: I understand.

14 MR. BRUCE: Does not even give us a three mile limit,
15 so that leaves a long finger of land in there which we estimate
16 to be somewhere around 150 square miles that would be lost to
17 Mississippi. That does create some problems.

18 QUESTION: Well, it's a long finger of water that you
19 contend is land. Isn't that all water?

20 MR. BRUCE: I'm sorry, yes, Your Honor.

21 QUESTION: Okay.

22 MR. BRUCE: The problems that this would raise also
23 under the decree, the 1981 decree in the Louisiana case the
24 Court awarded to Louisiana all of the land west of the closing
25 line of Chandeleur Sound, subject to the location of the
lateral boundary.

1 QUESTION: Let me ask you another question if I may,
2 because I'm finally getting this. You did argue before the
3 Master, and it's referred to I think in footnote 15, isn't that
4 the one?

5 MR. BRUCE: Yes, Your Honor.

6 QUESTION: That this particular area should have been
7 part of your State, Mississippi.

8 MR. BRUCE: Yes, Your Honor.

9 QUESTION: The Master rejected that and you did not
10 file an exception to that holding of the Master, and we
11 affirmed, and so isn't the law of the case that you're not
12 entitled to this because it was raised and was rejected before
13 the Master on the prior appeal?

14 MR. BRUCE: I suppose the Court could view it that
15 way. We did file an exception that is that Mississippi Sound
16 and Chandeleur Sound were inland waters by virtue of the
17 straight face line. The Court did not address that particular
18 issue, but limited itself to the historic bay claim. It did
19 not address the juridical bay claim which the Master raised.
20 Said it was not necessary and decided the case on historic bay.

21 Along with that of course we felt with the case law
22 of the statements by the United States over a long period of
23 time that there was no dispute to the fact that Chandeleur
24 Sound was inland waters and that the only question we had to
25 decide was the closing line between the two. As I say, in the
previous proceeding, we were focusing more on the question of

1 those enclaves and high seas inside Mississippi Sound. That
2 was the thing that took most of the attention.

3 What we're asking the Court to do in this case is
4 remand to the Master so that he can consider and determine the
5 status of Chandeleur Sound as inland waters and recommend an
6 appropriate decree to the Court. In this respect, we
7 specifically request that he be directed to consider evidence
8 of the use of straight base lines by the United States for
9 delimiting Chandeleur Sound and the applicability of Article 4
10 of the Geneva Convention on the Territorial Sea.

11 QUESTION: Well, if you lose on that, you can still
12 bring another original action, can't you?

13 MR. BRUCE: Your Honor, we would feel that if we lost
14 after being referred back to the Master that another original
15 action would not be permissible. And furthermore, we think
16 that referral back to the Master at this time would not only be
17 saving in time and this area of course is an area people are
18 very much interested in because of the oil and gas leasing
19 activity and we would certainly --

20 QUESTION: I can understand your second point, not
21 your first. If the Master chooses not to act on Chandeleur
22 Sound, how have you lost as of this point?

23 MR. BRUCE: I'm sorry, if the Master?

24 QUESTION: I think Justice Blackmun is asking, if you
25 lost on that point here -- not if you lost after it's referred
back to the Master -- if we choose not to refer it back to the

1 Master, you can bring another original action, can't you?

2 MR. BRUCE: I think that that would be questionable
3 as to whether we could or not. Certainly, if we did, I think
4 we'd be faced with the same problem that we have with this
5 Master, that he would be reluctant to entertain something that
6 he feels that the Court has already viewed and passed on. And
7 I think that's the real problem we have with the Master's
8 report. He did not consider the evidence of the straight base
9 line use, the long history of claims by the United States,
10 because he felt that this Court in its last opinion had
11 precluded him from making such findings.

12 He said, in view of the Court's previous opinion, the
13 only way this can be inland waters is by agreement, or if the
14 United States subsequently uses the system of straight base
15 lines. So I think the Master would be reluctant to entertain a
16 further action. He would feel if this Court had the
17 opportunity and did not reverse, that --

18 QUESTION: Well, he certainly would do it if we asked
19 him to.

20 MR. BRUCE: Your Honor?

21 QUESTION: He certainly would do it if we asked him
22 to.

23 MR. BRUCE: He certainly would.

24 QUESTION: May I ask you another question with the
25 map, because I'm intrigued by this now.

The Louisiana boundary is 1 and 5 and then it goes

1 down to what was at one time the northern tip of Chandeleur
2 Islands which I guess had actually been moved a little bit to
3 the east to point 4. And that would suggest to me that the
4 boundary of the inland waters are from between -- under that
5 view of the case -- from West Ship Island to the northern tip
6 or the former northern tip of Chandeleur Islands.

7 What is the possible justification for claiming the
8 area between points 5 and 6?

9 QUESTION: Lines.

10 QUESTION: Or lines 5 and 6?

11 MR. BRUCE: You mean, why would Mississippi be
12 entitled to anything greater than what the United States has
13 offered?

14 QUESTION: No, no. That's greater than the inland
15 waters as defined in the Louisiana boundary, is it not? Is it
16 not true that the Louisiana boundary goes line 1, line 5, to
17 the intersection with the line descending from West Ship
18 Island?

19 MR. BRUCE: Yes, Your Honor.

20 QUESTION: All right, now why would one treat
21 anything east of West Ship Island and the northern point of
22 Chandeleur Islands as inland waters? What is the argument.

23 MR. BRUCE: Your Honor, we believe that we have
24 evidence and of course the decision in Louisiana v. Mississippi
25 would tend to support that, that this area has also been
included as part of Chandeleur Sound, and that Chandeleur Sound

1 in its entirety is inland waters. Now, the question you may be
2 asking, and that is, isn't it unusual to have a dog leg, so to
3 speak, with having the boundary drop back. It's not unheard
4 of. In fact, Congress fully anticipated that when they passed
5 the Submerged Lands Act.

6 Florida has a three league boundary. Mississippi and
7 Alabama have a three mile boundary. So does Louisiana. Texas
8 has a three league boundary. So the coastline, as you're going
9 from Florida to Alabama drops in roughly seven miles. Florida
10 and Texas have seven more miles of territorial sea than do the
11 States inbetween. So this is no unusual and Congress certainly
12 made that a possibility.

13 QUESTION: Mr. Bruce, could I ask you a question
14 concerning Figure 2 in the Alaska brief, not Figure 1.

15 MR. BRUCE: Yes, Your Honor.

16 QUESTION: Am I correct in understanding that if the
17 United States prevails here, there is that strange indentation
18 along the Louisiana line well toward Cat Island. Is that a
19 correct conclusion?

20 MR. BRUCE: Yes, Your Honor. In fact, it would go
21 all the way to Cat Island. The line that's shown as the three
22 mile territorial sea the Court would have to reject the
23 Master's recommendation as to the boundary before Mississippi
24 would even get the three miles from its mainland. In other
25 words, if the Master's report were accepted, all of that line
which has Mississippi X all of that line over to the pass

1 between Cat Island and Isle Au Pitre north to the Barrier
2 Islands and the lines connection those would be in question.

3 The question is whether it would be inland waters of
4 the State of Louisiana, whether it would be high seas, whether
5 it would be territorial seas of Mississippi partially or would
6 it be partially territorial seas of Louisiana. It would create
7 a jurisdictional nightmare.

8 QUESTION: It would certainly on its face a seemingly
9 strange result, isn't it.

10 MR. BRUCE: Yes, Your Honor, it does.

11 If there are no further questions, I'll reserve the
12 time I have left.

13 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Bruce.

14 We'll hear now from you, Mr. Minear.

15 ORAL ARGUMENT OF JEFFREY P. MINEAR, ESQ.

16 ON BEHALF OF THE PLAINTIFF

17 MR. MINEAR: Mr. Chief Justice, and may it please the
18 Court:

19 The United States urges that this Court reject
20 Mississippi's exceptions and approve the Special Master's
21 report.

22 I would like to begin by stating the procedural
23 context of this present case. Alabama and Mississippi
24 commenced this proceeding in 1979 to define the States'
25 coastline for purposes of the Submerged Lands Act. Mississippi
specifically alleged, and I quote, "the chain of islands

1 extending from Petit Bois Island to Cat Island and forming the
2 southern most boundary of the State of Mississippi does in fact
3 constitute the seaward limit of inland waters and is the
4 coastline of Mississippi for purposes of the Submerged Lands
5 Act." This appears at page 3 of the Motion, paragraph 12.

6 That statement defined what this case was all about.
7 And if that wasn't enough, there are a number of other
8 statements that Mississippi has made along the way. In the
9 Memorandum supporting that Motion at page 29 they said, and I
10 quote, "therefore, we submit that the Barrier Islands enclosing
11 the Mississippi Sound represents the outer limit of inland
12 waters for the purposes of the Submerged Lands Act. And
13 Mississippi is entitled to have this Court designate its
14 coastline as extending from the line of ordinary low water mark
15 on the seaward side of such islands a distance of three
16 geographic miles into the Gulf of Mexico."

17 QUESTION: And the United States claims Mississippi
18 Sound was not a juridical or an historic bay?

19 MR. MINEAR: That is correct.

20 QUESTION: That was the issue.

21 MR. MINEAR: Yes.

22 QUESTION: And the Master and this Court found for
23 the States?

24 MR. MINEAR: That is exactly right, Your Honor.

25 QUESTION: And so that Mississippi's southern
boundary were those islands?

1 MR. MINEAR: That is correct, Your Honor. And in
2 fact, the Master's 1984 report was quite clear on this. "The
3 sole issue raised by these motions is whether the coastlines of
4 Mississippi and Alabama are the line of ordinary low water mark
5 along the southern mainland and along certain islands adjacent
6 thereto, or whether the waters of Mississippi Sound are inland
7 waters and those coastlines are therefore the line of ordinary
8 low water along the southern shore of those islands together
9 with the line marking the seaward limit of those waters." That
10 appears at page 2 of the Special Master's Report.

11 This Court noticed this same point as well in its
12 opinion at page 470 U.S. 96: "The two States, Alabama and
13 Mississippi, contend that the whole of Mississippi Sound
14 constitutes inland waters. Under this view, the coastline of
15 the States consists of the lines of ordinary low water along
16 the southern coast of the Barrier Islands."

17 QUESTION: And then they are entitled to three miles
18 beyond that?

19 MR. MINEAR: That is right, Your Honor, and there's
20 no dispute. The Master's Report seems to have misused the
21 word, boundary, for coastline in its conclusions, but there's
22 no dispute of the right to --

23 QUESTION: So our remand, our most recent remand was
24 just for the purpose of actually defining that line drawn along
25 where did the line run along those islands.

 MR. MINEAR: That is exactly right, Your Honor. And

1 we submit that that is what this case is all about.

2 QUESTION: Well, now, what if they are right at
3 bottom that Chandeleur Sound is also inland water? Now, if
4 that position is ultimately correct, what does that do to the
5 line up there around the Mississippi Louisiana line? It gets
6 very peculiar.

7 MR. MINEAR: Your Honor, no. The United States
8 submits if there was a determination that Chandeleur Island is
9 inland water -- and we further submit there has been no such
10 determination.

11 QUESTION: You mean Chandeleur Sound.

12 QUESTION: Sound.

13 MR. MINEAR: Chandeleur Sound, excuse me, was inland
14 water.

15 QUESTION: Then what happens.

16 MR. MINEAR: And the proper line we would submit
17 would be the line indicated in the Alaska map, line 5.

18 QUESTION: Which, the first map?

19 MR. MINEAR: This would be the first map.

20 QUESTION: Figure 1.

21 MR. MINEAR: Of Alaska. And this line which we have
22 offered as a settlement of this case would in fact ensure the
23 continuous coastline between Mississippi and Louisiana, would
24 simply be an extension of the stipulation that we made with the
25 State of Louisiana in 1974. And I should note that in that
stipulation we were absolutely clear that we were not conceding

1 that Chandeleur Sound was inland water. And this Court noted
2 that concession.

3 QUESTION: What did you do? Did you make that part
4 of Chandeleur Sound below the line, did you recognize that as
5 Louisiana waters?

6 MR. MINEAR: What our stipulation said, and this
7 appears in the Special Master's 1970 Report at A-2, is that we
8 would stipulate that Louisiana would be entitled to use
9 Chandeleur or it would be its rights under the Submerged Lands
10 Act would be recognized in Chandeleur Sound without an
11 admission on our part that these are inland waters for
12 international purposes.

13 QUESTION: Where did that southern line close from
14 the southern end of the Chandeleur Islands over to where?

15 MR. MINEAR: The Louisiana agreements in these cases,
16 it would have been or was in fact an extension of the line that
17 marks the Mississippi Louisiana boundary to line 5 which then
18 extends southerly to the northern tip of Chandeleur Island.

19 QUESTION: Lines 5 and 6 diverge there. Are there
20 two different little islands there? Is that the problem?

21 MR. MINEAR: No, Your Honor. Actually the difference
22 here is there's been some movement of the entire chain of
23 islands as a result of simply accretions and relictions.

24 QUESTION: You're saying, Mr. Minear, that the
25 Government has offered to agree that the Mississippi boundary
would be a line running from point 1 to point 2 on Figure 1?

1 MR. MINEAR: Yes. We've agreed to recognize this as
2 the lateral boundary between Mississippi and Louisiana, and we
3 don't believe there's any dispute between Mississippi and
4 Louisiana to the extension of that line. But wherever that
5 line might be extended, we would then say that the line
6 demarcating the rights of Mississippi and Louisiana would be
7 line 5 to West Ship Island.

8 Now, this has already been agreed to on the portion
9 below the lateral boundary.

10 QUESTION: Oh, I see. I see.

11 QUESTION: But you don't concede anything about the
12 nature of Chandeleur Sound?

13 MR. MINEAR: No, not as inland water.

14 QUESTION: And as long as Mississippi doesn't accept
15 it, you say that the limit of her authority under the Submerged
16 Land Act is three miles outside of those Barrier Islands.

17 MR. MINEAR: Exactly the relief that they requested.

18 QUESTION: And if they want to start another action
19 you say let them start it.

20 MR. MINEAR: That is correct, Your Honor. That is
21 our position.

22 QUESTION: Would it be more efficient to go ahead and
23 remand now and let the thing be resolved, and why not.

24 MR. MINEAR: No, Your Honor, I do not think so.

25 QUESTION: Why not?

 MR. MINEAR: For the reason that as you know, the

1 original action proceeded at a snail's pace, and it was very
2 important at the outset to define what the purpose of the
3 original action is. Now, if we simply remand here, we might be
4 remanding for another five years of litigation. I think it's
5 important for Mississippi to file a Motion for Leave for a
6 further supplemental decree in this case to specify exactly
7 what their claims are and what their theories are, so this
8 Court can make the appropriate reference.

9 Mississippi's position, as you can tell, has been
10 moving throughout this litigation, and I think it's important
11 for them to specify to this Court exactly what relief they're
12 asking.

13 QUESTION: Well, they've shown on the map what they
14 want. Why are we in doubt? They've made a claim. You can see
15 the lines right here.

16 MR. MINEAR: Your Honor, part of the question here
17 too are the theories that they are raising. Now, they're also
18 claiming that this is all -- well, let me step back for just a
19 second and answer your question, Your Honor.

20 The actual exceptions that Mississippi has filed here
21 it's not asked for a remand to determine the status of
22 Chandeleur Sound. They have asked for an Order from this Court
23 declaring that Chandeleur Sound is inland waters and directing
24 the Master to draw the appropriate line. Now, that matter
25 still remains to be contested.

QUESTION: Well, yes, but I heard Mr. Bruce say this

1 afternoon what they asked for as a remand.

2 MR. MINEAR: Yes, Your Honor, but this is not what
3 they requested when they filed their brief and we filed our
4 brief in response. I think that we are entitled, the United
5 States is entitled to submit a response if they wish further
6 proceedings to make clear exactly what will be litigated here,
7 and on what theories. Now, some of the theories that they have
8 advanced have in fact already been rejected by the Special
9 Master.

10 The question of straight base lines, everything that
11 was to be said about straight base lines was said by Louisiana
12 in the 1974 proceeding. The Special Master rejected all those
13 arguments. And this Court affirmed the Special Master's
14 Report. So I think it's important that in any further
15 litigation in this case that we be clear about exactly what our
16 theories are and where we're going from here.

17 QUESTION: -- to Louisiana, by the way, on that
18 settlement.

19 MR. MINEAR: Your Honor, I'm afraid I don't
20 understand your question.

21 QUESTION: Well, you haven't conceded that legally
22 Louisiana's entitled to what you've agreed to recognize?

23 MR. MINEAR: Yes, that's right, Your Honor. And as
24 far as that concession goes, I'm sure that Louisiana would want
25 to hold us to the practical effect of the stipulation we
entered into with them.

1 QUESTION: Well, I suppose if there were further
2 litigation and you won on the law that Mississippi wasn't
3 entitled to any part of Chandeleur Sound that then Louisiana
4 would just have a better deal on Chandeleur Sound than
5 Mississippi, that's all.

6 MR. MINEAR: That's right, Your Honor.

7 QUESTION: May I ask you a couple of questions.

8 MR. MINEAR: Yes, Your Honor.

9 QUESTION: First of all, if we were to affirm the
10 Master's Report and overrule the exceptions, would not the
11 United States be in a position to argue that the boundary had
12 been fixed in this proceeding and is no longer open to litigate
13 the status of the water area immediately south of the line
14 between Cat Island and West Ship Island?

15 MR. MINEAR: Yes, Your Honor, the United States would
16 be in a position to make that argument. The Solicitor General
17 has not made a determination whether he would make the
18 argument.

19 QUESTION: And is it not true that there has not yet
20 been a judicial determination as to whether Chandeleur Sound is
21 or is not inland waters?

22 MR. MINEAR: That is correct, Your Honor.

23 QUESTION: And so is it not also true that there is a
24 possibility that if we knew all the answers to these questions
25 that a) it is inland waters, and b) if it is, the line really
would be incorrect if we simply affirmed, because if it's

1 inland waters, Mississippi presumably is entitled to the
2 portion north of the Louisiana border, isn't it?

3 MR. MINEAR: Your Honor, if there's a problem in that
4 regard, it stems from Mississippi's original allegation.

5 QUESTION: Well, maybe that's right. I'm just saying
6 that maybe they goofed up procedurally and they may have to
7 stand by what they allege. You may be dead right and you may
8 win. I'm just asking you is that not a possible consequence.

9 MR. MINEAR: Yes. Under those conditions, yes, Your
10 Honor, that would be a possibility.

11 QUESTION: And if I were, as a member of this Court
12 concerned about that and wanted to protect their right to
13 proceed, what is the best way to do it? To make clear to the
14 Master that the line isn't final for that purpose, or to go
15 ahead and remand it?

16 MR. MINEAR: Your Honor, I think that what this Court
17 should do is simply accept the Special Master's Report and tell
18 him to go forward and draw the line. Mississippi will then
19 have several options. One, it can ask for relief prior to the
20 formulation of the decree to this Court specifying exactly what
21 asking for an expansion of the reference of the Special Master.

22 If it does not wish to do that and waits until the
23 decree is entered, it can file a motion for entry of an
24 additional supplemental decree.

25 QUESTION: Well, it seemed easier to me, frankly,
either to remand it or to say the line isn't final.

1 MR. MINEAR: The problem again, Your Honor, with a
2 remand is that we'll be giving the Master will have a true lack
3 of direction in terms of a reference. Normally a case is
4 referred to the Master based on the submission of the party.
5 In this case, it was the motion by Mississippi for the entry of
6 a supplemental decree. They stated what their position was,
7 and they certainly had plenty of time to determine what their
8 position might be.

9 Mississippi became a state in 1817. There's 160
10 years there in which they could make some conclusions about
11 what their southern boundary is. In addition, they had five
12 years prior to the preparation of the Master's Special Report.
13 If there are difficulties here for Mississippi, they are
14 primarily difficulties of their own making.

15 QUESTION: This is sort of like after you've lost a
16 case, you move to amend your complaint.

17 CHIEF JUSTICE REHNQUIST:

18 MR. MINEAR: Yes, except here Mississippi would need
19 to move to amend their complaint after they won the case.

20 QUESTION: After they won the case. They want to win
21 some more.

22 MR. MINEAR: Yes. That's exactly the situation we're
23 faced with here.

24 QUESTION: But it would seem to me that it is not at
25 all impossible that one would conclude that Chandeleur Sound is
not inland waters. It's not an open and shut case.

1 MR. MINEAR: That is absolutely correct, Your Honor.

2 QUESTION: And if that were true, they wouldn't get
3 anything more and Louisiana might end up with at least a
4 doubtful claim as the one you're talking about their boundary.

5 MR. MINEAR: Yes, that is right, Your Honor.

6 QUESTION: Is it a factor also that if this
7 proceeding is expanded, Louisiana would have a rather large
8 stake in it, I take it, would they? Would they want to get in
9 on the fun?

10 MR. MINEAR: I'm sure that they would be interested
11 in participating at least as amicus in this case.

12 QUESTION: -- of the Sound than just rely on your
13 agreement.

14 MR. MINEAR: I'm sure that that is the case as well,
15 Your Honor.

16 So as you can see, as your questions indicate, that
17 if there is a further remand here, we are talking about an
18 extensive further litigation, and without any clear guidance as
19 to what the absolute scope of that litigation might be.

20 QUESTION: What was it, is it U.S. v. Louisiana?

21 MR. MINEAR: Yes. The actual litigation for --

22 QUESTION: And how long has this Special Master been
23 working on it?

24 MR. MINEAR: I think this Master has been approaching
25 20 years, Your Honor.

QUESTION: And maybe he better get a colleague up

1 with him, his son, maybe.

2 MR. MINEAR: It might well be that the Special Master
3 is quite willing to be absolved from his responsibilities in
4 this case. I simply do not know.

5 QUESTION: Maybe we don't want to bring in a newcomer
6 in this problem, either.

7 MR. MINEAR: Well, Your Honor, unless you have some
8 further questions.

9 QUESTION: How did we get in this mess?

10 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Minear.

11 Mr. Bruce, you have four minutes remaining.

12 ORAL ARGUMENT OF JIM R. BRUCE, ESQ.

13 ON BEHALF OF DEFENDANT - REBUTTAL

14 MR. BRUCE: Your Honor, first of all, I'd like to
15 address Justice O'Connor's question about the two islands on
16 the map at the northern tip of the Chandeleurs. The point at
17 which the United States' line stops is not a point on land,
18 it's a point out in the water. The point shown for line 6
19 where Mississippi's line ends is the northernmost of the
20 Chandeleur Islands. It is a land point and it was one of the
21 reasons why we thought that was a more appropriate line.

22 QUESTION: Could I ask you, when did you find out
23 about the agreement the United States had made with Louisiana
24 with respect to Chandeleur Sound?

25 MR. BRUCE: When I personally?

QUESTION: Mississippi, the State of Mississippi.

1 MR. BRUCE: I presume that sometime about the time
2 that the decree was entered in 1975. I have no knowledge that
3 Mississippi was aware of it prior to that time.

4 QUESTION: And when did this phase of this case
5 begin?

6 MR. BRUCE: This case was filed in 1979.

7 QUESTION: '79. And yet you framed your case, you
8 focused the case strictly on Mississippi Sound?

9 MR. BRUCE: Your Honor, that is true.

10 QUESTION: You claimed that your line was those
11 Barrier Islands?

12 MR. BRUCE: Initially the --

13 QUESTION: Isn't that right?

14 MR. BRUCE: That's correct, Your Honor.

15 QUESTION: Despite the fact that you knew the United
16 States had made a deal with Louisiana recognizing Louisiana's
17 right to some portion of Chandeleur Sound?

18 MR. BRUCE: Well, I think that's probably giving us
19 more credit than we deserve. I don't think anybody recognized
20 or they certainly wouldn't have drafted the motion that way.

21 QUESTION: I would think that rather impressive

22 MR. MINEAR: That's correct, Your Honor. Once that
23 error was discovered, we did --

24 QUESTION: What error? What error?

25 MR. BRUCE: The question there as to where the line
should be, and that is should it go along the islands or should

1 it be a closing line across Chandeleur Sound. That issue was
2 presented to the Master.

3 QUESTION: Just on this latest remand?

4 MR. BRUCE: No, Your Honor, this was presented to the
5 Master prior to his original recommendation. This was
6 presented to him in brief form back in 1983.

7 QUESTION: It wasn't in your complaint?

8 MR. BRUCE: No, Your Honor.

9 QUESTION: When did you first put it in the case?

10 MR. BRUCE: It would have been in the early part of
11 1983. The Master makes note of the fact that we did raise that
12 issue as to the status of Chandeleur Sound as well in one of
13 his footnotes.

14 QUESTION: In this Report or in the prior Report?

15 MR. BRUCE: In this Report, I believe it's on page 24
16 in his footnote. He indicates that Mississippi did raise that
17 question.

18 QUESTION: But it hadn't been raised at the time we
19 last remanded to the Special Master?

20 MR. BRUCE: Well, not at the time that you referred
21 the matter to him originally, that's correct. There has been
22 no remand in this case except --

23 QUESTION: I see. Of the original submission?

24 MR. BRUCE: That's correct, Your Honor.

25 So far as the lateral boundary with Louisiana, I
might point out that boundary has not been fixed or established

1 beyond the point at which this Court's decree ended in 1906, so
2 there is a question as to exactly where that would be located.

3 With respect to how long it would take this case, Mr.
4 Minear notes that he would expect five years. I think that
5 would be a very lengthy period of time in view of the
6 documentation and in view of the case authorities which we have
7 to support a case before the Master.

8 Once the case was presented after some preliminary
9 negotiations, it took approximately ten months to get the case
10 ready for submission to the Master. And I think that on remand
11 that we could probably wrap this case up in a year's time. I
12 do not anticipate that it would take longer than that.

13 The Master is intimately familiar with the geography
14 of the area. He's been involved in these sort of cases for, as
15 Mr. Minear says, 20 years. He has written reports before, and
16 I think that he could very well handle this matter without
17 unnecessary delay. I think if we have a new Master, he would
18 have the problem of having to become familiar with perhaps a
19 whole new area of law which he might not have been familiar
20 with before.

21 And I think that is one of the real advantages of
22 remand.

23 QUESTION: Mr. Bruce, do you understand the
24 Government's settlement offer to be still open?

25 MR. BRUCE: No, Your Honor, I do not. They are
asking that the Master be affirmed. In that respect, I do not

1 understand it to be still open. There have been negotiations
2 back and forth with the United States, and we have been unable
3 to reach any kind of agreement, although at one point, we
4 thought we had.

5 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Bruce.
6 The case is submitted.

7 (Whereupon, at 2:15 p.m., the case in the above-
8 entitled matter was submitted.)
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REPORTER'S CERTIFICATE

DOCKET NUMBER: 9-8216.

CASE TITLE: U.S. V. LOUISIANA ET AL.

HEARING DATE: 1-11-88

LOCATION: WASHINGTON, DC.

I hereby certify that the proceedings and evidence
are contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
United States Supreme Court
and that this is a true and accurate transcript of the case.

Date: 1-11-88

Margaret Dacy

Official Reporter

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