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Oliver P. Stockwell

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THE BOUNDARIES OF THE STATE OF LOUISIANA

*Oliver P. Stockwell**

FOREWORD

The United States Supreme Court in 1950 in a suit by the federal government determined that Louisiana had no title to the seabed in the marginal sea beyond the low water mark along the Gulf of Mexico or where the open sea meets the inland waters.¹ To correct this injustice, Congress, in 1953, passed the Submerged Lands Act.² Louisiana was granted either three marine miles from its coastline or to its historical boundary, not to exceed three leagues in the latter. This decision required a legal determination to be made as to whether Louisiana had a historic boundary. After heated litigation, the Supreme Court of the United States decided Louisiana had no historic boundary in the Gulf of Mexico.³ Louisiana then had to establish its coastline from which to measure the three geographical miles granted to it in the Gulf of Mexico by the Submerged Lands Act.

The Honorable John McKeithen, as Governor of Louisiana, asked Paul M. Hebert, Dean of the Louisiana State University Law School, to assemble a team of attorneys to represent Louisiana in the litigation to establish the coastline. Dean Hebert asked the writer to serve as one of the attorneys.⁴

The United States filed an original action in the United States Supreme Court to fix the coastline. The first concern was to have the Court recognize the jetties into the Gulf of Mexico as harbor works under the Convention of the Territorial Sea and Contiguous Zone,⁵ which would extend the coastline around the jetties. At the same time, the effects of various channels into the Gulf were studied

* Member, Louisiana Bar Association.

1. *United States v. Louisiana*, 399 U.S. 699 (1950) (opinion), 340 U.S. 899 (1951) (decree).

2. Submerged Lands Act, Pub. L. No. 31, 67 Stat. 29 (codified at 43 U.S.C. §§ 1301-1315) (1953)).

3. 399 U.S. at 705.

4. Dean Hebert was not only a great legal scholar, he also was deeply interested in the welfare of Louisiana. He served the state on many ad hoc committees.

5. 15 U.S.T. (pt. 2) 1607, T.I.A.S. No. 5639. The United States Supreme Court, in the case of *United States v. California*, 381 U.S. 139 (1965), held that the Convention of the Territorial Sea and Contiguous Zone should be used in establishing the coastline of the various states to determine the extent of the rights granted to them under the Submerged Lands Act.

to determine if it was possible to have those works declared harbor works. As a result of this work, the United States recognized the jetties extending out of the Sabine, Calcasieu and Mississippi River channels as harbor works which extended the coastline to the extent of the jetties.

During this litigation, Texas filed suit in 1969 against Louisiana to have the boundary between the two states fixed in the middle of Sabine Pass, Sabine River to the 32° of north latitude.⁶ The writer was requested to represent Louisiana as trial counsel in that litigation, assisted by former Governor Sam H. Jones and Jake Morrison, a New Orleans attorney. The Honorable Price Daniel represented Texas in the litigation. He had researched the question for several years, visiting practically all of the governmental offices in Louisiana which contained materials on the boundaries between Louisiana and Texas.

The Honorable Robert Van Pelt, a retired federal judge from Nebraska, was appointed Special Master, and he fixed hearings to hear evidence as to the history of the boundary and as to how the two states had acted with reference thereto.

After many hearings Judge Van Pelt, an able master with considerable experience in river boundary cases, recommended to the Supreme Court, that the boundary be fixed in the middle of the Sabine Pass, Sabine Lake, and Sabine River to the 32° of north latitude. The matter was argued in the Supreme Court, and the Court sustained the Special Master's report, with one justice dissenting.⁷ The matter was then referred back to the Special Master to locate the actual boundary. At that point, Louisiana petitioned the Supreme Court to have the Master fix the boundary to the extent of Louisiana's claim under the Submerged Lands Act and to make the United States party to the suit. This action was necessary because Texas had a three-league boundary into the Gulf and Louisiana had a three-marine-mile boundary. The United States supported Louisiana since the further the boundary went to the west, the more the United States gained over Texas.

Texas was not interested, from the outset, in the mid-stream inland boundary, but was more interested in the extension of the boundary into the Gulf of Mexico because the area in dispute had strong indications of oil and gas. Texas urged the boundary to be extended into the Gulf from the mouth of the Sabine as it existed in

6. See *Texas v. Louisiana*, 410 U.S. 702 (1977).

7. *Id.* at 714.

1845 when Texas was admitted into the Union. Louisiana and the United States urged the boundary be fixed down the middle of the jetties and then extended on an equidistant line from a closed line at the Gulfward extension of the jetties. The Special Master held that the jetties extended the mouth of the Sabine into the Gulf and that, therefore, the boundary should be along the middle of the jetties and then extended out for three marine miles by an equidistant line from a closed line at the end of the jetties. This recommendation of the Master was upheld by the Supreme Court.⁸

As trial counsel in the Texas litigation and one of the counsel in the Submerged Lands litigation, this writer became very interested in the history of Louisiana and the total boundaries of the state. This paper is the result of that research, and is intended to assist the practitioner, the legal historian and others by presenting the collected legal history of the boundaries of our state.

BOUNDARIES OF THE STATE OF LOUISIANA

History, with its many important personages and events, has played as important a role as geography in the establishment of currently recognized boundaries of nations and states within nations. For illustration, one need only recall the great migrations in the fifteenth and sixteenth centuries from Europe to the new continent.

Early treaties bear heavily on Louisiana's boundaries. During the period of exploration, there were armed conflicts among the European nations; while the treaties they entered into extended to the New World, many were to settle disputes in the Old. In 1762 France, at war with England, encouraged Spain to enter the war on its side, and as a result of the war, Spain lost Cuba and Florida to England. To make up for this loss, France, in 1762, ceded a part of the Louisiana Territory to Spain. In 1863, the formal Treaty of Paris⁹ was signed confirming the transfer to Spain of the undefined Louisiana Territory west of the Mississippi River, including the isle of Orleans on the east side of the river; the remainder of the Louisiana Territory was transferred to England. The western boundary of the Territory was of little moment to Spain, for she owned the area

8. *Texas v. Louisiana*, 431 U.S. 161 (1977).

9. In this treaty among Great Britain, France and Spain, it was agreed that Great Britain owned the territory east and north of a line drawn along the Mississippi River from the source of the River Iberville and thence along a line drawn along the middle of Lake Maurepas and Lake Pontchartrain to the Gulf of Mexico. France retained the town of New Orleans with the island on which it was located, and England acquired Florida from Spain.

to the west. England divided the territory received from Spain, south of Georgia, into West Florida and East Florida. After many conflicts, England ceded the two Floridas back to Spain in 1783, and West Florida was put under the Spanish Governor of New Orleans. When the Revolutionary War between the United States and England ended, the boundary between the United States and West Florida was established along the 31° of north latitude to the Mississippi River. In 1800, at the insistence of Napoleon, Spain retroceded the Louisiana Territory to France and, on April 30, 1803, France sold the Louisiana Territory to the United States.

When the United States was negotiating with France for the purchase of Louisiana, Livingston asked the French representative, Talleyrand:

"What are the western bounds of Louisiana," asked Livingston.

"I do not know," replied Talleyrand. "You must take it as we received it."

"But what did you mean to take?" urged Livingston.

"I do not know," replied Talleyrand.

"Then you mean that we shall construe it our own way?" said Livingston again.

To which Talleyrand made final reply: "I can give you no direction. You have made a noble bargain for yourselves, and I suppose you will make the most of it."¹⁰

In 1804, the Louisiana Purchase was divided by the United States Congress into two territories. The southern portion was called the Orleans Territory and was described as follows:

all that portion of country ceded by France to the United States under the name of Louisiana, which lies south of the Mississippi territory and of an east and west line to commence on the Mississippi river at the thirty-third degree of north latitude, and to extend west of the western boundary of the said cession, shall constitute a territory of the United States under the name of the territory of Orleans, . . ."¹¹

At the time of the division, the Mississippi Territory did not extend

10. *State Papers and Correspondence Bearing upon the Purchase of the Territory of Louisiana*, 57th Cong., 2d Sess., H.R. Doc. no. 431, p. 200 (1903).

11. Act of March 16, 1804, ch. 38, 2 Stat. 283.

south of the thirty-first degree of north latitude east of the Mississippi River.

On February 20, 1811, an Act of Congress was approved to enable the people of the Territory of Orleans to adopt a constitution and form a government to be admitted as a state of the Union on an equal footing with the other states. The description of the boundary in the Congressional Act was as follows:

Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of north latitude, thence due north to the northernmost part of the thirty-third degree of north latitude, thence along the said parallel of latitude to the River Mississippi, thence down to said river to the River Iberville, and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico, thence, bounded by the said gulf to the place of beginning including all islands within three leagues of the coast.¹²

Residents of the West Florida Parishes declared themselves an independent nation free from Spain and asked to be added to the state of Louisiana. The United States considered West Florida part of the Louisiana Purchase and therefore did not recognize the West Florida Parishes as an independent nation, but Congress by Act dated April 14, 1812, added to the state of Louisiana additional territory described as follows:

Beginning at the junction of the Iberia with the River Mississippi, Thence along the middle of Iberia, the River Amite and the Lakes Maurepas and Pontchartrain to the Eastern mouth of the Pearl River, thence up the Eastern branch of the Pearl River to the 31st degree of north latitude, *thence along said latitude to the River Mississippi*, thence down the said River to the place of beginning, shall become and form part of the State of Louisiana.¹³

The area finally approved by Congress was incorporated in the 1812 constitution of Louisiana. There has been no change in the descriptions, either by a constitutional amendment or by legislative act, other than by the Submerged Lands Act, passed by Congress in 1953, granting Louisiana certain rights in the Gulf of Mexico. Thus, it is from these descriptions that we will locate the boundaries of

12. Act of February 20, 1811, ch. 21, 2 Stat. 641.

13. Act of April 14, 1812, ch. 57, 2 Stat. 708.

Louisiana. Although the description appears to be clear, many legal battles have been fought in locating it on the ground as it relates to the boundaries between Louisiana and Mississippi, Louisiana and the United States and, finally, between Texas and Louisiana.

The Boundary Between Texas and Louisiana

The Louisiana Constitution of 1812 described the Texas-Louisiana boundary as follows:

beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of north latitude, thence due north to the northernmost part of the thirty-third degree of north latitude, etc.¹⁴

Subsequent to the Louisiana Purchase and after Louisiana became a state, the first definition of the boundary line between Louisiana and Texas was that set forth in a treaty, between the United States of America and Spain, negotiated by John Quincy Adams, Secretary of State, and the Chevalier Don Louis Onis, Minister Plenipotentiary for Spain. After some preliminary skirmishing between Mr. Adams and the Chevalier, the treaty was concluded and ratified in 1819. The boundary was defined in these terms:

The boundary line between the two countries shall begin on the Gulf of Mexico at the mouth of the Sabine River in the sea, thence north along the west bank of the Sabine River to the 32nd parallel of north latitude, thence due north to the Red River.¹⁵

This boundary was confirmed in a treaty between the United Mexican States, which had acquired its independence from Spain, and the United States of America in 1828.¹⁶

The same boundary was confirmed in a Convention between the United States and the Republic of Texas, which had now acquired its independence from Mexico. The agreement, concluded at Washington, D.C., on April 25, 1838, was ratified and implemented by an Act of the First Session of the 27th Congress of the United States.¹⁷

14. LA. CONST. of 1812 (preamble).

15. T.S. No. 327, 8 Stat. 252 (1819).

16. T.S. No. 202, 8 Stat. 372 (1828).

17. Boundary Convention Between the United States and the Republic of Texas, 8 Stat. 511 (1838).

While the 1812 constitution described the boundary in the middle of the Sabine River, the government of Louisiana could not exercise any jurisdiction over the neutral zone until after the treaty of 1819. When the boundary between Spain and the United States was established in 1819, Louisiana considered that the treaty fixed its western boundary. The unsettled boundary between the Republic of Texas and Louisiana created many problems. Increased anxiety and uneasiness over this unsettled boundary led to the organization of a Convention between representatives of the Republic of Texas and the United States of America to discuss the subject of marking the boundary. As noted above, this Convention's deliberations terminated with the recognition of former treaties and definition of the boundary as beginning at the mouth of the Sabine River in the sea, thence along the west bank of the Sabine to the intersection of the 32nd parallel of north latitude, and thence due north to the Red River. Terms of the agreement provided for the formation of a Joint Commission, which was to survey and mark this boundary in the shortest possible time.¹⁸

Early in 1839, Mr. John H. Overton of Bayou Chicot, Louisiana, was appointed as United States Commissioner of the Joint Commission, which, under the terms of the Act of Congress, was to mark the boundary. On May 21, 1840, the actual marking of the boundary was begun by establishing a marker at the place of beginning.¹⁹

Mr. Overton, in his letter to Daniel Webster, under date of August 10, 1841, reports the completion of the boundary survey, and notes that the entire 17th range of townships and about half of the 18th range of townships in the state of Louisiana had fallen by the determination of the boundary within the limits of the Republic of Texas. This situation necessitated a resurvey of that portion of the public lands of Louisiana traversed by the newly marked boundary. Under contract, dated December 23, 1845, George W. Morse, Deputy Surveyor, was designated to retrace the meridional boundary and connect thereto the surveys of public lands in Louisiana. Morse performed this work in the first quarter of 1846, and his notes and township plats were approved at Donaldsonville, Louisiana, by the Surveyor General of Louisiana, on July 4, 1846.

The first serious question concerning the boundary between the

18. *Id.*

19. Journal of the Joint Commission Authorized by Boundary Convention Between the United States and the Republic of Texas, 8 Stat. 511 (1838) [hereinafter cited as Journal].

states of Texas and Louisiana came in 1910. The dispute involved certain islands lying between the two channels of the Sabine River at a point known as the Narrows, just north of Orange, Texas. When Texas was admitted as a state, it retained title to all of its public lands. All of the public lands in Louisiana were retained by the United States when Louisiana became a state; however, Louisiana did patent large areas under various swampland grants, which included the islands in controversy. Patents were issued both by the states of Louisiana and Texas to these islands. The adverse claims of the patentees were submitted to the General Land Office, Department of Interior, Washington, D.C., for a determination. Based on the description in Louisiana's Constitution of 1812, reading: "Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of north latitude, . . ." the Department determined that, in the absence of any limiting or restricting of the boundary between the state as to any particular channel, the limits described in the constitution would extend by the language to the farthest or western channel of the river and that, therefore, the islands were in the state of Louisiana; i.e., the Louisiana patents were valid. This decision was accepted, and the boundary between the state of Louisiana and the state of Texas in that area was fixed in the westernmost channel of the Sabine River.²⁰

In recent years, there has been renewed interest in the Texas-Louisiana boundary. In 1939, field work under the Louisiana Department of Public Works on retracement of the 1841 survey was begun. The first, and perhaps the most striking, fact to come to light in studying the completed survey in connection with the Commission's records in 1840 and 1841 was that at no point in the Commission's records, on their maps, or in any supporting or accompanying documents was given the longitude of the meridian. Referring to the Journal, under date of April 24, 1841, it will be noted that the following statement is made: "the continuance of the boundary on the meridian in which the granite column had been planted . . ."²¹ It was, therefore, concluded that this granite column, still extant, was the actual point of beginning of the meridional boundary and marked the meridian of the intersection. By reference to North American Datum, the longitude of this stone column is found to be 94°02'33".080. Identifiable points north of this stone column cling very closely to this longitude for several miles.

20. 39 PUB. LANDS DEC. 53, 57 (1910).

21. Journal at 68.

Major Graham²² found the value of a second of longitude at Logan's Ferry to be 86.10 feet. Thus, the maximum departure from an exact intersection with the 32nd parallel on the west bank of the river, which would have occurred in fixing the meridian on an even second division of the circle would have been 43.05 feet. It is certainly logical to assume, in view of Mr. Overton's discussion of what defined the phrase "west bank," that, within the latitude, the engineers would have fixed the meridian on an even division of the circle.

This departure, as referred to North American Datum through the retracement surveys, was eight-hundredths of one second, or less than seven feet. This may be considered a positive check, and, so far as the work of the Louisiana Geodetic Survey is concerned, it has been assumed that the meridian of the boundary, as established by the observations of Major Graham and Lieutenant Colonel Kearney, was the longitude 94°02'33".00.²³

The Journal of the Commission records the termination of the Louisiana portion of the boundary at a point 1,692 feet north of the 69th Milepost as being "by their measurement the 33rd parallel of north latitude" and the south boundary of Arkansas.²⁴ The latest determination of the figure of the earth available to Major Graham at the time his observations were made was probably that of Airy, 1830, who found the ellipticity to be 1/299.33, or that of Everest, in the same year, 1/100.8. Bessel's determination were not made until 1841.

It may be assumed, therefore, that the values used throughout the survey are relatively comparable to determinations made with either Airy's or Everest's constants, and the difference between those constants and Clarke's spheroid of 1846 is so slight as to be unimportant here.

Thus, there could be little discrepancy between the computations of Major Graham and Lieutenant Colonel Kearney and the Louisiana Geodetic Survey with reference to spherical coordinates. The length of the degree of latitude between the 32nd and 33rd north parallels on the North American Datum is 68.903568 miles, yet the post set by the Boundary Commission as the 33rd parallel of latitude was 1,692 feet *north* of the 69th Milepost, when it should have been 528 feet south of it. Consequently the location of the 33rd

22. Journal at 68.

23. Journal at 72.

24. Journal at 72.

parallel made by the Commission and accepted by Morse as the north line of Louisiana was actually 2,220 feet in error. As brought out by reference to constants used by the Commission's astronomer, it would seem that this mistake was an error in simple arithmetic. Apparently, it had no effect in any case on the actual location of the boundary between Arkansas and Louisiana, as this boundary was then, and is now, recognized as the line dividing the public land surveys in Louisiana and Arkansas, which is marked by Triangulation Station Lou-Tex-Ark.

Geographic position of various stations throughout the retracement survey indicated that there was a progressive westing of the meridian amounting to about 100 feet at its northern terminus. It was also indicated that there were many aberrations in the production of the meridian from the granite column north, and further investigation in the field was indicated in order to try to reconcile these various discrepancies.

A close study of Morse's survey was made in order to use it so far as possible in attempting better identification of doubtful points along the line. One of the first points brought out by study of Morse's survey was the fact that there existed between his measurements and those of the Louisiana Geodetic Survey a discrepancy exactly contrary to that which might have confidently been expected.

It may be stated as a criterion that the apparent length of any unit of measure between two fixed points will shorten directly in proportion to the degree of precision with which measurement is made. The normal condition, therefore, to be expected was that any unit measured by Morse with Gunter's chain, and the methods used at that time, would be found short of the distance recorded by Morse when compared with precise measurement between the same points.

Comparison of Morse's work with that of the Louisiana Geodetic Survey showed the reverse to be true. This would seem to indicate that both the Commission and Morse had adopted some arbitrary constant to compensate for accidental errors and that this constant, as assumed, was too great. A constant of correction for Morse's work was, therefore, adopted, and the distance between his recorded position of the mounds and the mile stations of the Louisiana Geodetic Survey was corrected by this constant. Somewhere between this point and the point indicated by Morse should be found evidence of the original mound.

In May, 1941, Mr. William B. Benjamin, Cadastral Engineer of

the Louisiana Geodetic Survey, was assigned the task of making an exhaustive reconnaissance of the 1841 line and a search for all evidence of every character tending to identify the original location of boundary markers. Mr. Benjamin was equipped with the notes of the Journal of the Commission, of Morse's and Barbour's surveys, and the results of the various comparison and reconciliations made between these and the random line of the Louisiana Geodetic Survey.

An inspection of Morse's notes reveals the significant fact that nowhere throughout his tracing the boundary lines did he correct any course. This would presuppose the condition that Morse, in running from milepost to milepost, always fell on the post in the course he was running, which, of course, is impossible.

The primary purpose of Morse's work was to establish the true boundary between mileposts and connect this to the Land Office corners. In order to have accomplished this without the necessity for correction, it would have been necessary for Morse to have seen each succeeding milepost as a foresight from his setup, which, again, is impossible. Consequently, the value of Morse's work in establishing the true distance between section corners and the boundary line is, to say the least, doubtful.

Morse, in performing his traverse along the boundary, made no corrections from mile to mile. It may be assumed that, from a setup at each milepost, he approximated the course of the line, in all probability from marks of the old clearing, and then ran until he intersected the section line. It will be noted that, at several points when running east on these section lines, he falls north or south of his corner and corrects back. It will also be noted that, in several cases, he has a different bearing from milepost to section line and from section line to milepost, which is, of course, impossible in following a meridional line. It will also be noted, in these obvious cases of divergence from the meridian, that he does not correct back.

In view of the above conditions, it is probable that the recorded distances from the boundary line to section corners is to some degree in error in every case. In those cases where Morse's recorded locations of section corners on the boundary line have been accepted and used as the legal intersection of the boundary line with the lines of the rectangular survey, there is undoubtedly a discrepancy which will require adjustment in whatever method may at some time be used in re-establishing the boundary.

In the 1950's and 1960's, Texas and Louisiana were engaged in litigation over the land in the marginal sea adjacent to their coastlines as a result of the discovery of offshore oil and gas. As the development of oil and gas moved closer to the mouth of the Sabine River in the Gulf of Mexico, the state of Texas filed an original action in the United States Supreme Court on December 12, 1969 to have the Court establish the boundary between Texas and Louisiana in the middle of the Sabine Pass, Sabine Lake and Sabine River to the 30° north latitude.²⁵ In this action, Texas did not seek to have established the boundary to the Gulfward terminus of the Submerged Lands grant owned by Louisiana and Texas in the Gulf. Texas wanted the case heard by the United States Supreme Court on the pleadings. Louisiana was able to have the case referred to a Special Master to take evidence.

It might be well to pause a few moments and discuss a few events that happened prior to this suit. The location of the actual boundary between Texas and Louisiana has intrigued many historians and, as a matter of fact, Lyle Saxon, Director of a Federal Works Project, did research on the boundary in 1938. We have already discussed the locating of the 1841 boundary.

When Sam H. Jones was Governor of the State of Louisiana, a dispute arose between Texas and Louisiana as to the boundary between the two states from 32° north latitude to 33° north latitude. This involved a 150-foot strip. A series of letters passed between Governor Jones and Bascomb Giles, Commissioner of the State Land Office of Texas. As a matter of fact, Jacob H. Morrison, a prominent New Orleans attorney, was employed as Assistant Attorney General to study the boundary. The Louisiana Legislature, in 1942, passed Act 249 setting aside \$10,000 to litigate the boundary between Texas and Louisiana.²⁶ It must be remembered that, at that time, the United States was engaged in World War II, and nothing further was done by the state until the suit was filed by Texas in 1969.

In the 1969 suit,²⁷ Texas urged the boundary between the United States and the Republic of Texas from the Gulf of Mexico to 32° north latitude was fixed and surveyed on the west bank of the Sabine River and that, when the Republic of Texas was admitted as a state in 1845, the boundary remained at that location, but was moved to the middle of the river in 1848 by an act of Congress. (We

25. *Texas v. Louisiana*, 410 U.S. 702 (1973).

26. 1942 La. Acts., No. 249.

27. *Texas v. Louisiana*, 410 U.S. 702, 714 (1973).

must remember, the constitution of Louisiana of 1812 fixed the boundary in the middle of the Sabine River.) On March 8, 1848, the Texas Legislature requested the Congress of the United States to extend jurisdiction of the state of Texas over the west half of the Sabine Lake, Sabine Pass and Sabine River.²⁸ The Louisiana Legislature, on March 16, 1848, recognized the exclusive jurisdiction of the federal government over the west half of the Sabine River.²⁹ The United States Congress, on June 5, 1848, authorized Texas to extend her eastern boundary so as to include half of Sabine Lake, half of Sabine Pass and half of Sabine River.³⁰ The Texas Legislature extended the boundary on November 14, 1848 in accordance with such authorization.³¹ In addition to relying on the act of Congress extending its boundary, Texas urged that Louisiana had acquiesced in the mid-stream boundary fixed in the 1812 constitution.³²

Louisiana's primary position in the case was that when Louisiana was admitted as a state, the western boundary of the Louisiana Purchase was in dispute with Spain and that when the boundary was settled between the United States and Spain in 1819 on the west bank of the Sabine Pass, Sabine Lake and Sabine River, that became the boundary of Louisiana, even though the constitution of 1812 called for a mid-stream boundary. The Special Master did not agree with this position, and the United States Supreme Court held that the state of Louisiana was bound by its constitution and that the boundary between Texas and Louisiana in Sabine Pass, Sabine Lake and Sabine River to the 32° north latitude was in the middle of those water bodies.

The Court said:

[1] We agree with the Special Master that the western boundary of Louisiana is the geographical middle of the Sabine River, not its western bank or the middle of its main channel. Congress had the authority to admit Louisiana to the Union and to establish the boundaries of that State. U.S. Const., Art. IV, § 3; *United States v. Louisiana*, 363 U.S. 1, 30, 60-62, 67, 80 S. Ct. 961, 979, 994, 995, 999, 4 L.Ed.2d 1205 (1960); *Washington v. Oregon*, 211 U.S. 127, 134-135, 29 S. Ct. 47, 48, 49, 53 L.Ed. 118 (1908). Hence, our task is to ascertain congressional will when it admitted Louisiana into the Union on April 8, 1812, and established

28. Resolution of the Texas Legislature, March 18, 1848.

29. Resolution of the Louisiana Legislature, March 16, 1848.

30. Act of July 5, 1848, ch. 94, 9 Stat. 245.

31. Act of Texas Legislature, November 14, 1848, Gammel's Laws of Texas, 442.

32. *Texas v. Louisiana*, 410 U.S. 702 (1973).

her relevant western boundary as "beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude . . ." 2 Stat. 702. The statute in this respect was identical with the Enabling Act of the prior year and differed hardly at all from the Preamble to the Louisiana Constitution of January 22, 1812. The Louisiana Legislature resolved in 1848 that the State's jurisdiction should be "extended" to the western half of the river, reciting that neither it nor any other State had authority over that portion of the Sabine. See n.4, *supra*. Texas made a similar request, see n.4., *supra*, Congress acceding to the latter and consenting that Texas could "extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of the Sabine Lake, also one-half of Sabine River, from its mouth . . . [to] the thirty-second degree of north latitude." 9 Stat. 245. On the floor of the Senate, Mr. Butler, speaking for the Judiciary Committee, stated that the boundaries of the United States extended to the western shore of the Sabine, but that the boundary of the State of Louisiana extended only to the middle, the result being that "the half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana . . ." Cong. Globe, 30th Cong., 1st Sess., 882. Hence the bill, which gave "the half of the river beyond the boundary to the State of Louisiana to the State of Texas . . ." *Ibid.* The bill passed, both Senators from Louisiana expressing "their acquiescence in the arrangement." *Ibid.*³³

Justice Douglas dissented and defended Louisiana's position by stating:

The treaty provided that the boundary should start "at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude." 8 Stat. 252, 254, 256. When Texas was admitted to the Union in 1845, 9 Stat. 108, that same boundary was used to describe her eastern line. 8 Stat. 372, 374. The Treaty of 1828 recognized that as the boundary line between Louisiana and Texas for it was the boundary between the United States and Mexico, of which Texas was a part. 8 Stat. 372. Texas did not come into the Union until 1845. The Treaty of 1819 read in context means that Louisiana's western border, coinciding with that of the United States, was the western bank of the Sabine.

33. *Id.* at 707-08.

The 1819 Treaty does not mention Louisiana. But Louisiana along that segment of our western boundary was a buffer between this Nation and Spain. It is therefore dubious that the United States was bargaining for that narrow strip between the "middle" of the Sabine and the west bank of the Sabine as a detached, isolated piece of our public lands. Rather, it seems well-nigh conclusive that in 1819 this Nation was bargaining with Spain for a border that in part at least of its reach would be the western border of Louisiana.³⁴

The suit as filed by Texas dealt only with the boundary from the Gulf of Mexico to 32° north latitude. Texas was trying to establish a point of departure into the Gulf favorable to it where rich mineral land existed.

Louisiana, after the first decision, petitioned the United States Supreme Court to permit the Special Master to locate the boundary between Texas and Louisiana in the Gulf of Mexico and to establish the boundary from 32° north latitude to the extent of Louisiana's claim in the Gulf of Mexico. Texas was seeking all along to have the Court agree that the boundary in the Gulf should be extended from the mouth of the Sabine River as it existed in 1845 when Texas was admitted into the Union instead of through the jetties constructed at the mouth of the Sabine River. Texas' position would have projected the boundary into the Gulf to the east in accordance with an act passed by the Texas Legislature in 1947 asserting title to an area east of the jetties at the mouth of the Sabine River. The United States was made a party to this phase of the proceedings.³⁵ The Special Master, after an extended hearing, determined that the jetties constructed at the mouth of the Sabine River extended the mouth of the river into the Gulf and that the extension of the boundary should be projected in the Gulf from the closing line at the mouth of the jetties in the center of the channel.³⁶ This gave Louisiana some 9,000 acres in the marginal sea. In 1979 Louisiana leased 3,500 acres of these 9,000 acres for a bonus of about \$53,000,000. Since then, a number of gas wells have been brought in on that lease.

34. *Id.* at 715 (Douglas, J., dissenting).

35. This action was important to the United States for it had been determined that Louisiana was entitled only to three geographic miles, while Texas was entitled to three leagues. TEX. REV. CIV. STAT. ANN. art. 5414A (Vernon).

36. Report of the Special Master in the Supreme Court of the United States, October Term 1974, No. 36, Original, Texas v. Louisiana (Robert Van Pelt, Senior U.S. District Judge, Special Master).

In adopting the Special Master's report, the Court said:

All parties agree that the lateral seaward boundary is to be constructed by reference to the median line, or equidistant principle, recognized in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone [1964] 15 U.S.T. (pt. 2) 1606, T.I.A.S. No. 5639. Texas, however, excepts to the Special Master's determination that the equidistant principle is to be applied to the coastlines of the States as affected by jetties at the mouth of the Sabine River. Texas urges that the relevant coastline is the coastline that existed in 1845 when it was admitted to the Union. Texas argues that this is a domestic dispute involving historical precedents and that the State's offshore boundary should be constructed as Congress would have done in 1845 had it considered the matter.

The short answer to Texas' argument is that no line was drawn by Congress and that the boundary is being described in this litigation for the first time. The Court should not be called upon to speculate as to what Congress might have done. We hold that the Special Master correctly applied the Convention on the Territorial Sea and Contiguous Zone to this suit. As we previously have recognized, "the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome." *United States v. California*, 381 U.S. 139, 165, 85 S. Ct. 1401, 14 L.Ed.2d 296 (1965). When read together, Arts. 12 and 8 of the Convention clearly require that the median line be measured with reference to the jetties.³⁷

The final decree of the Court reads:

2. That the offshore lateral boundary between the States of Texas and Louisiana seaward from the point Latitude 29°38'37.329" North, Longitude 93°49'30.940" West (end of jetties) is a line running South-Southeasterly from said point on a constant bearing of South 13°44'45.8" east true to the seaward limit of Louisiana's Submerged Lands Act grant. Texas' historic boundary then continues offshore on the same bearing to the point Latitude 29°36'06.784" North, Longitude 93°41'.699" West. This offshore lateral boundary and the Texas historical boundary are shown upon Exhibit 14 which is in evidence in this case.

3. That the United States holds no title to or interest in any island in the west half of the Sabine River by virtue of that

37. *Texas v. Louisiana*, 426 U.S. 465, 470 (1976).

island's continuous existence since 1848, when the western half of that River was part of the territory of the United States, but not part of Texas. Louisiana does not hold title to or interest in any island in the west half of the Sabine River. The United States and Texas do not hold title to or interest in any island in the east half of the Sabine River.³⁸

It is your writer's view that the decree fixed the full length of the Texas-Louisiana boundary.

The Boundary Between Arkansas and Louisiana

The boundary between the states of Arkansas and Louisiana commences at the point where the 33° north latitude intersects the boundary between Texas and Louisiana and then extends on that latitude to the Mississippi River.³⁹

The boundary follows the land surveys of the two states and, as far as the author has been able to determine from the General Land Office, there have been no disputes between Louisiana and Arkansas over their common boundary, as fixed.

The Boundary Between Mississippi and Louisiana From 33° North Latitude to 31° North Latitude

The boundary between Mississippi and Louisiana is the Mississippi River from 33° north latitude south to 31° north latitude. This boundary follows the thalweg (the navigable channel) of the river.

Several cases have arisen involving changes in the boundary brought about by accretion and erosion along the Mississippi River. One dispute involved an avulsive change in the bed of the Mississippi River which occurred in 1913-1914.⁴⁰ Between 1823 and 1913 the

38. *Texas v. Louisiana*, 431 U.S. 161, 167-68 (1977).

39. In 1895, J.R. Barbour, United States Deputy Surveyor, relocated the corner common to Texas, Louisiana, and Arkansas, and then placed the monument marking the corner as follows:

At the corner for the N.W. corner of Louisiana, he set a square stone foot, 4 feet long 10 inches square, 30 inches in the ground marked "TEXAS" on the west face, with the N.E. and S.E. angles leveled to a 3 inch face, and marked thereon "ARK" and "LA" respectively, and fully witnessed in the most permanent manner.

He marked the closing corner to Tps. 23 N., Rs. 15 and 16 W. by a stone 4 feet long and eight inches square, marked C.C. 23 N. "LA" on the South face, 15 W. on the East face, and "ARK" on the North face, with 6 grooves on the S.E. and W. faces.

Field Notes of the Survey by J.R. Barbour, United States Deputy Surveyor, under instructions dated June 10, 1895.

40. *Louisiana v. Mississippi*, 282 U.S. 458 (1931).

river eroded away Tullos Island and part of the Mississippi shore; the river gradually and imperceptibly moved eastwardly and north westerly a distance of approximately five miles. The Mississippi-Louisiana boundary shifted with the river and the accretion became the territory of Louisiana. In 1912-1913, the river cut across the accretion and then formed a new river bed by avulsive change. The Court held the boundary between Mississippi and Louisiana did not change, but remained in the middle of the old channel:

As matters stood in 1912 and 1913, the boundary line between the states was the thread of the navigable channel far to the eastward of the present channel. As above stated, there is no controversy as to what occurred in 1912-13. The river by a sudden avulsion made a short-cut to the west of Albemarle Bend, as it then was; and subsequently the channel in the old bend to the eastward of the new channel silted and filled until it entirely closed at the upper end. This sudden avulsion did not change the boundary line between the states.⁴¹

Another boundary dispute was resolved in the case of *State of Mississippi v. State of Louisiana*,⁴² an original action filed in the Supreme Court. The Special Master was appointed to consider the question whether a cutoff in a bend of the Mississippi River changed the boundary between Mississippi and Louisiana. The Special Master determined that the change in the Mississippi River bend did not change the boundary and that the boundary between Mississippi and Louisiana still remained in the middle of the navigable channel in the old river.⁴³

This same area was considered in the case of *Esso Standard Oil Company v. Jones*,⁴⁴ where the Louisiana Supreme Court observed:

The Supreme Court of the United States in the case of *St. Clair County v. Lovington*, 23 Wall. 46, 90 U.S. 46, 23 L.Ed. 59, after reviewing the Roman, Spanish, French (including Louisiana) and common-law authorities with reference to alluvion makes the following statement:

"In the light of the authorities, alluvion may be defined as an addition to riparian land, gradually and imperceptibly made by the water to which the land is contiguous. It is different from reliction, and is the opposite of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that

41. *Id.* at 465.

42. 350 U.S. 5 (1955).

43. *Id.*

44. 233 La. 915, 98 So. 2d 236 (1957).

though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same."⁴⁵

In commenting on the finding of the Special Master in the case previously quoted, the Court said:

But we should not fail to note the inaptness of the observations of the Special Master in the instant case. His purpose, in seeking the boundary between two states, was to determine when the bendway ceased to be the main navigable channel of the river—that being the crux of the matter since the jurisprudence of the United States Supreme Court decreed that the river's new bed, even though it had resulted from a natural avulsion, worked no change in the boundary between the states of Mississippi and Louisiana. He observed that although such boundary may shift, being affected as it is by natural processes of erosion and accretion, and although it follows always the varying center of the channel, in a case where the river left its old channel and sought a new bed the boundary became fixed at the thalweg or middle of the main navigable channel as it last existed before the sudden change—followed by the gradual filling of the old bed. . . .⁴⁶

As the Mississippi River changes its bed, other boundary disputes will arise between Mississippi and Louisiana in this section of the boundary.

The Boundary Along the 31° North Latitude from the Mississippi River to the Pearl River

The reader will recall that the initial description of Louisiana in the congressional act authorizing the formation of the state of Louisiana and in an act of the Louisiana Legislature in 1812, creating Louisiana, provided the following description: down the Mississippi River ". . . to the River Iberville [now Bayou Manchac] and from thence along the middle of the said river and Lakes Maurepas and Ponchartrain to the Gulf of Mexico, . . ."⁴⁷ The area north of Bayou Manchac to 31° north latitude was claimed by Spain as part of West Florida. Residents of West Florida declared themselves free from Spain in 1810 and, in 1812, petitioned to have that part of West Florida east

45. 233 La. at 920, 98 So. 2d at 242 n.4.

46. 233 La. at 924, 98 So. 2d at 248-49.

47. See text at note 12, *supra*.

of the Pearl River included in the state of Louisiana. The United States did not recognize Spain's claim to West Florida nor the free state of West Florida, but in 1812 permitted Louisiana to include as part of its territory West Florida to the Pearl River.⁴⁸ This meant the Mississippi-Louisiana boundary from the Mississippi River to the Pearl River extended along the 31° north latitude to the west channel of the Pearl River. This part of the boundary was well established by a survey that was made in 1807 as a boundary along the 31° north latitude previously settled further to the east. Ory G. Poret, who served for many years in the State Land Office, had this to say in commenting on the early Louisiana titles:

United States surveyors by 1807 had established a "principal meridian" and a "base line." The establishment of a base line was relatively easy as the surveyors needed only to extend westwardly a previously surveyed line setting the southern boundary of the Territory of Mississippi between Mississippi and Spanish Western Florida. The principal meridian running north and south from the base line was established approximately in the center of the territory.

Monuments were then set every six miles on the principal meridian and base line—North, South, East and West. These were to be used as main points in establishing later surveys. The method of surveying used in the Territory of Orleans had been adopted on May 17, 1784, by a special committee appointed by the Continental Congress under the chairmanship of Thomas Jefferson.⁴⁹

There have been no disputes between Mississippi and Louisiana as to this portion of the boundary along the 31° north latitude as far as the author can determine.

Since it is of great historical interest, let us pause to consider the dispute over West Florida, a portion of which became part of the state of Louisiana. The issue to be resolved was whether or not West Florida was part of the Louisiana Purchase. President Jefferson argued that the Louisiana Purchase extended from the Rio Grande on the west to the Perdido River on the east.⁵⁰ Many other historical figures of that time had the same view.

48. Act of April 14, 1812, ch. 57, 2 Stat 708.

49. ORY. G. PORET, *HISTORY OF LAND TITLES IN LOUISIANA*, Publications of the Louisiana Historical Society, Series Two, Volume 1 (1973).

50. T. JEFFERSON, *THE LIMITS AND BOUNDS OF LOUISIANA* (1804), published in *DOCUMENTS RELATING TO THE PURCHASE AND EXPLORATION OF LOUISIANA* (Houghton-Mifflin, 1904).

Soon after Louisiana was admitted into the Union, Chief Justice Martin of the Louisiana Supreme Court held West Florida was part of the Louisiana Purchase. In the case of *Foster and Elam v. Neilson*,⁵¹ Chief Justice Marshall, speaking for the United States Supreme Court, discussed the history of West Florida. In that suit, filed in 1826, the plaintiff brought an action to recover a tract of land lying about 30 miles east of the Mississippi River and south of the 31° north latitude. The claim arose out of a Spanish grant by the Spanish Governor of Louisiana on the 2nd day of January, 1804, to Jayme Joydra, but was ratified by the King of Spain on the 29th day of May, 1804. The question was whether or not the territory between the Iberville and Perdido Rivers rightfully belonged to Spain or to the United States under the Louisiana Purchase. The case was argued before the Court by Daniel Webster. Since the case was argued and decided by able statesmen with current events fresh in their minds, the discussion of the history of West Florida by Chief Justice Marshall in his opinion is clearer than any effort on my part to rewrite what was said. In the words of the Chief Justice:

Without tracing the title of France to its origin, we may state with confidence that at the commencement of the war of 1756, she was the undisputed possessor of the Province of Louisiana, lying on both sides of the Mississippi, and extending eastward beyond the bay of Mobile. Spain was at the same time in possession of Florida; and it is understood that the river Perdido separated the two provinces from each other.

Such was the state of possession and title at the treaty of Paris, concluded between Great Britain, France, and Spain, on the 10th day of February, 1763. By that treaty France ceded to Great Britain the river and port of the Mobile, and all her possessions on the left side of the river Mississippi, except the town of New Orleans and the island on which it is situated; and by the same treaty Spain ceded Florida to Great Britain. The residue of Louisiana was ceded by France to Spain, in a separate and secret treaty between those two powers. The King of Great Britain being thus the acknowledged sovereign of the whole country east of the Mississippi, except the island of New Orleans, divided his late acquisition in the south into two provinces, East and West Florida. The latter comprehended so much of the country ceded by France as lay south of the 31st degree of north latitude, and a part of that ceded by Spain.

51. 26 U.S. (12 Pet.) 253 (1829).

By the treaty of peace between Great Britain and Spain, signed at Versailles on the 3d of September, 1783, Great Britain ceded East and West Florida to Spain; and those provinces continued to be known and governed by those names, as long as they remained in possession and under the dominion of His Catholic Majesty.

On the 1st of October, in the year 1800, a secret treaty was concluded between France and Spain at St. Ildefonso, the third article of which is in these words: "His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations relative to His Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other States."

The treaty of the 30th of April, 1803, by which the United States acquired Louisiana, after reciting this article, proceeds to state, that "the first Consul of the French Republic both hereby cede to the United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty concluded with His Catholic Majesty." The 4th article stipulates that "there shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country, and its dependencies, in the name of the French Republic—if it has not already done—as to transmit it in the name of the French Republic to the commissary or agent of the United States."

On the 30th of November, 1803, Peter Clement Laussatt, Colonial Prefect and Commissioner of the French Republic, authorized, by full powers, dated the 6th of June, 1803, to receive the surrender of the Province of Louisiana, presented those powers to Don Manuel Salcedo, governor of Louisiana and West Florida, and to the Marquis de Casa Calvo, commissioners on the part of Spain, together with full powers to them from His Catholic Majesty to make the surrender. These full powers were dated at Barcelona the 15th of October, 1802. The act of surrender declares that in virtue of these full powers, the Spanish commissioners, Don Manuel Salcedo and the Marquis de Casa

Calvo, "put from this moment the said French commissioner, the citizen Laussatt, in possession of the Colony of Louisiana and of its dependencies, as also of the town and island of New Orleans, in the same extent which they now have, and which they had in the hands of France when she ceded them to the royal Crown of Spain, and such as they should be after the treaties subsequently entered into between the States of His Catholic Majesty and those of other powers."

The following is an extract from the order of the King of Spain referred to by the commissioners in the act of delivery. "Don Carlos, by the grace of God, etc. . . . Deeming it convenient to retrocede to the French Republic the Colony and Province of Louisiana, I order you, as soon as the present order shall be presented to you by General Victor, or other officer duly authorized by the French Republic, to take charge of said delivery; you will put him in possession of the Colony of Louisiana and its dependencies, as also of the city and island of New Orleans, with the same extent that it now has, that it had in the hands of France when she ceded it to my Royal Crown, and such as it ought to be after the treaties which have successively taken place between my states and those of other powers."

Previous to the arrival of the French commissioner, the Governor of the provinces of Louisiana and West Florida, and the Marquis de Casa Calvo, had issued their proclamation, dated the 18th of May, 1803; in which they say: "His Majesty having before his eyes the obligations imposed by the treaties, and desirous of avoiding any disputes that might arise, has designed to resolve that the delivery of the Colony and island of New Orleans, which is to be made to the General of Division Victor, or such other officer as may be legally authorized by the government of the French Republic, shall be executed on the same terms that France ceded it to His Majesty; in virtue of which, the limit of both shores of the river St. Louis or Mississippi, shall remain as they were irrevocably fixed by the 7th article of the definitive treaty of peace, concluded at Paris the 10th of February, 1763, according to which the settlement from the river Manshac or Iberville, to the line which separates the American territory from the dominions of the King, remain in possession of Spain and annexed to West Florida."

On the 21st of October, 1803, Congress passed an Act to enable the President to take possession of the territory ceded by France to the United States; in pursuance of which commis-

sioners were appointed, to whom Monsieur Laussatt, the commissioner of the French Republic, surrendered New Orleans, and the Province of Louisiana on the 20th of December, 1803. The surrender was made in general terms; but no actual possession was taken of the territory lying east of New Orleans. The government of the United States, however, soon manifested the opinion that the whole country originally held by France, and belonging to Spain when the treaty of St. Ildefonso was concluded, was by that treaty retroceded to France.

On the 24th of February, 1804, Congress passed an Act for laying and collecting duties within the ceded territories, which authorized the President, whenever he should deem it expedient, to erect the shores, etc., of the bay and river Mobile, and of the other rivers, creeks, etc., emptying into the Gulf of Mexico east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district, and to establish a port of entry and delivery therein. The port established in pursuance of this Act was at Fort Stoddert, within the acknowledged jurisdiction of the United States; and this circumstance appears to have been offered as a sufficient answer to the subsequent remonstrance of Spain against the measure. It must be considered, not as acting on the territory, but as indicating the American exposition of the treaty, and exhibiting the claim its government intended to assert.

In the same session on the 26th of March, 1804, Congress passed an Act erecting Louisiana into two territories. This Act declares that the country ceded by France to the United States south of the Mississippi Territory, and south of an east and west line, to commence on the Mississippi River at the 33d degree of north latitude and run west to the western boundary of the cession, shall constitute a territory under the name of the Territory of Orleans. Now, the Mississippi territory extended to the 31st degree of north latitude, and the country south of that territory was necessarily the country which Spain held as West Florida; but still its constituting a part of the territory of Orleans depending on the fact that it was part of the country ceded by France to the United States. No practical application of the laws of the United States to this part of the territory was attempted, nor could be made, while the country remained in the actual possession of a foreign power.

The fourteenth section enacts "that all grants for lands within the territories ceded by the French Republic to the

United States by the treaty of the 30th of April, 1803, the title whereof was at the date of the treaty of St. Ildefonso in the crown, government, or nation of Spain, and every act and proceeding subsequent thereto of whatsoever nature towards the obtaining any grant, title or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void and of no effect in law or equity." A proviso excepts the titles of actual settlers acquired before the 20th of December, 1803, from the operation of this section. It was obviously intended to act on all grants made by Spain after her retrocession of Louisiana to France, and without deciding on the extent of that retrocession, to put the titles which might be thus acquired through the whole territory, whatever might be its extent, completely under the control of the American government.

The President was authorized to appoint registers or recorders of lands acquired under the Spanish and French governments, and boards of commissioners who should receive all claims to lands, and here and determine in a summary way all matters respecting such claims. Their proceedings were to be reported to the Secretary of the Treasury, to be laid before Congress for the final decision of that body.

Previous to the acquisition of Louisiana, the Ministers of the United States had been instructed to endeavor to obtain the Floridas from Spain. After that acquisition, this object was still pursued, and the friendly aid of the French government towards its attainment was requested. On the suggestion of Mr. Talleyrand that the time was unfavorable, the design was suspended. The government of the United States, however, soon resumed its purpose; and the settlement of the boundaries of Louisiana was blended with the purchase of the Floridas, and the adjustment of heavy claims made by the United States for American property, condemned in the ports of Spain during the war which was terminated by the treaty of Amiens.

On his way to Madrid, Mr. Monroe, who was empowered in conjunction with Mr. Pinckney, the American Minister at the court of His Catholic Majesty, to conduct the negotiation, passed through Paris; and addressed a letter to the Minister of Exterior Relations, in which he detailed the objects of his mission, and his views respecting the boundaries of Louisiana. In his answer to this letter, dated the 21st of December, 1804, Mr. Talleyrand declared, in decided terms, that by the treaty of St. Ildefonso,

Spain retroceded to France no part of the territory east of the Iberville which had been held and known as West Florida; and that in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. He added that he was authorized by His Imperial Majesty to say, that at the beginning of the year 1802, General Cournonville had been charged to open a new negotiation with Spain for the acquisition of the Floridas; but this project had not been followed by a treaty.

Had France and Spain agreed upon the boundaries of the retroceded territory before Louisiana was acquired by the United States, that agreement would undoubtedly have ascertained its limits. But the declarations of France made after parting with the Province cannot be admitted as conclusive. In question of this character, political considerations have too much influence over the conduct of nations to permit their declarations to decide the course of an independent government in a matter vitally interesting to itself.

Soon after the arrival of Mr. Monroe at his place of destination, the negotiations commenced at Aranjuez. Every word in that article of the treaty of St. Ildefonso which ceded Louisiana to France, was scanned by the ministers on both sides with all the critical acumen which talents and zeal could bring into their service. Every argument drawn from collateral circumstances, connected with the subject, which could be supposed to elucidate it, was exhausted. No advance towards an arrangement was made, and the negotiations terminated, leaving each party firm in his original opinion and purpose. Each persevered in maintaining the construction with which he had commenced: The discussion has since been resumed between the two nations with as much ability and with as little success. The question has been again argued at this bar, with the same talent and research which it has uniformly called forth. Every topic which relates to it has been completely exhausted; and the court by reasoning on the subject could only repeat what is familiar to all.

We shall say only, that the language of the article may admit of each construction, and it is scarcely possible to consider the arguments on either side without believing that they proceed from a conviction of their truth. The phrase on which the controversy mainly depends, that Spain retrocedes Louisiana with the same extent that it had when France possessed it, might so readily have been expressed in plain language, that it

is difficult to resist the persuasion that the ambiguity was intentional. Had Louisiana been retroceded with the same extent that it had when France ceded it to Spain, or with the same extent that it had before the cession of any part of it to England, no controversy respecting its limits could have arisen. Had the parties concurred in their intention, a plain mode of expressing that intention would have presented itself to them. But Spain has always manifested infinite repugnance to the surrender of territory, and was probably unwilling to give back more than she had received. The introduction of ambiguous phrases into the treaty, which power might afterwards construe according to circumstances, was a measure which the strong and the politic might not be disinclined to employ.

However this may be, it is, we think, incontestable, that the American construction of the article, if not entirely free from question, is supported by arguments of great strength which cannot be easily confuted.

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous.

We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the Legislature, if that will has been clearly expressed.

The convulsed state of European Spain affected her influence over her colonies; and a degree of disorder prevailed in the Floridas, at which the United States could not look with indifference. In October, 1810, the President issued his proclamation, directing the Governor of the Orleans Territory to take possession of the country as far east as the Perdido, and to hold it for the United States. This measure was avowedly intended as an assertion of the title of the United States; but as an assertion

which was rendered necessary in order to avoid evils which might contravene the wishes of both parties, and which would still leave the territory "a subject of fair and friendly negotiation and adjustment."

In April, 1812, Congress passed "an Act to enlarge the limits of the State of Louisiana." This Act describes lines which comprehend the land in controversy, and declares that the country included within them shall become and form a part of the State of Louisiana.

In May of the same year, another Act was passed, annexing the residue of the country west of the Perdido to the Mississippi Territory.

And in February, 1813, the President was authorized "to occupy and hold all that tract of country called West Florida, which lies west of the river Perdido, not now in possession of the United States."

On the third of March, 1817, Congress erected that part of Florida which had been annexed to the Mississippi Territory, into a separate territory, called Alabama.

The powers of government were extended to, and exercised in those parts of West Florida which composed a part of Louisiana and Mississippi, respectively; and a separate government was erected in Alabama. U.S.L., c. 4, 409.

In March, 1819, "Congress passed an Act to enable the people of Alabama to form a constitution and state government." And in December, 1819, she was admitted into the Union, and declared one of the United States of America. The treaty of amity, settlement and limits, between the United States and Spain, was signed at Washington on the 22d day of February, 1819, but was not ratified by Spain til the 24th day of October, 1820; nor by the United States until the 22d day of February, 1821. So that Alabama was admitted into the Union as an independent State, in virtue of the title acquired by the United States to her territory under the treaty of April, 1803.⁵²

The Court rejected the title to the land granted by the King of Spain.⁵³

Even today there are differences among historians as to

52. *Id.* at 300-08.

53. *Id.* at 315.

whether West Florida formed part of the Louisiana Purchase. The United States recently instituted a suit seeking title to some islands off the Mississippi and Alabama coasts as forming part of the Louisiana Purchase and not part of the Mississippi Territory from which Mississippi and Alabama were formed.⁵⁴

The Boundary Between Mississippi and Louisiana From 31° North Latitude to Gulf of Mexico

The boundary between Louisiana and Mississippi extended to the west channel of the Pearl River and then down the middle of said channel to the Gulf of Mexico.⁵⁵

In the early 1900's, serious conflicts existed between residents of the state of Mississippi and residents of the state of Louisiana over oyster fishing in Lake Borgne, Mississippi Sound and other waters projecting from these areas to the Gulf of Mexico. As a matter of fact, armed conflict was threatened. In order to settle this title dispute, the state of Louisiana filed a bill in the United States Supreme Court in which it sought to obtain a decree determining the boundary line between the two states as being the deep water sailing channel emerging from the mouth of the Pearl River and extending eastward to the north of Half Moon Island through Mississippi Sound and Cat Island Pass between Cat Island and Isle of Pitre and through Chandeleur Island Sound northeast of Chandeleur Islands to the Gulf of Mexico.⁵⁶ In settling this boundary, the United States Supreme Court had to consider the treaty of peace between England, France and Spain of February 10, 1763, where Spain acquired the Louisiana Territory from France, and England acquired the Floridas from Spain, and also the treaty of September 3, 1783, between England and Spain, in which England retroceded East and West Florida to Spain, the treaty of October 1, 1800, whereby Spain ceded to France the Province of Louisiana to the extent that it was then owned by France and/or Spain and such as it was after the treaties subsequently entered into between Spain and other states, and the cession on April 30, 1803, from France to the United States. Mississippi urged that the Peninsula of St. Bernard was part of Mississippi. The Court determined that the Peninsula of St. Bernard was part of the Isle of Orleans, which formed part of the state of Louisiana when it was admitted into the Union in 1812.

54. *United States v. Adams*, No. 79-0338c (So. D. Miss., So. Div., filed Sept. 9, 1979).

55. Act of April 14, 1812, ch. 57, 2 Stat. 708.

56. *Louisiana v. Mississippi*, 202 U.S. 1 (1906).

The reader will recall that in the constitution of 1812 of Louisiana this portion of the description read:

and from thence along the middle of the said river and Lakes Maurepas and Ponchartrain to the Gulf of Mexico

If there was any conflict in the description of the boundary between the states of Louisiana and Mississippi, the description in the admission of the state of Louisiana takes precedence over that of Mississippi, for the latter was not admitted as a state until March 1, 1817.

In resolving the issue, the Court said:

Mississippi's mainland borders on Mississippi Sound. This is an enclosed arm of the sea wholly within the United States and formed by a chain of large islands extending westward from Mobile, Alabama to Cat Island. The opening from this body of water into the Gulf are neither of them six miles wide. Such openings occur between Cat Island and Isle de Pitre between Cat Island and Ship Island, between Ship and Horn Islands, between Horn and Pitre Bois Island, between Pitre Bois and Dauphine Islands, between Dauphine Island and the mainland on the west coast of Mobile Bay. The maps show all this and among others reference must be made to the Jeffrey's map of 1775 given in the record in which a reduced form is reproduced from Jeffrey's atlas of 1800 as a front piece of volume 2, Adam's History of the United States.⁵⁷

The Court then went on to say:

Now to repeat the boundary of Louisiana separating her from the State of Mississippi to the east is a thread of the channel of the Mississippi River, and this extends south until it reaches the 31st° of North Latitude, thence runs directly east along that degree until Pearl River is reached, thence south along the channel of that river to Lake Borgne, Pearl River flows into Lake Borgne, Lake Borgne into Mississippi Sound and Mississippi Sound into the open Gulf of Mexico, through among other outlets South Pass separating Cat Island and Isle de Pitre.

The Court then held that Louisiana was entitled to the boundary set forth in its complaint.⁵⁸

Per Mr. Chief Justice Fuller:

This cause came on to be heard on the pleadings and proofs

57. *Id.* at 48.

58. *Id.*

and was argued by counsel. On consideration thereof it is found by the court that the state of Louisiana, complainant, is entitled to a decree recognizing and declaring the real, certain, and true boundary south of the state of Mississippi and north of the southeast portion of the state of Louisiana, and separating the two states in the waters of Lake Borgne and Mississippi Sound, to be, and that it is, the deep-water channel sailing line emerging from the most eastern mouth of Pearl River into Lake Borgne, and extending through the northeast corner of Lake Borgne, north to Half Moon or Grand Island, thence east and south through Mississippi Sound, through South Pass, between Cat Island and Isle au Pitre, to the Gulf of Mexico, as delineated on the following map, made up of the parts of charts Nos. 190 and 191 of the United States Coast and Geodetic Survey, embracing the particular locality:

And it is ordered, adjudged, and decreed accordingly.

It is further ordered, adjudged, and decreed that the state of Mississippi, its officers, agents, and citizens, be and they are hereby enjoined and restrained from disputing the sovereignty and ownership of the state of Louisiana in the land and water territory south and west of said boundary line as laid down on the foregoing map.⁵⁹

This boundary has been recognized between Louisiana and Mississippi from the date of that opinion until recently when a dispute arose over revenue sharing. Congress in 1972 passed an act permitting revenue sharing by states of oil and gas royalties from federal lands in the Gulf adjacent to their coastline.⁶⁰ An Administrator⁶¹ was appointed to determine how the states' lateral boundaries should be extended into the federal waters in the Gulf. In fixing the adjacency, a dispute arose between Louisiana and Mississippi as to how a line should be projected out into the Gulf of Mexico. From all maps, it is easy to see that the delta of Louisiana projects under the state of Mississippi and, as the Court stated in the Mississippi-Louisiana case, Mississippi is bounded on the south by Mississippi Sound. Hearings were held before the Administrator appointed to fix this line to divide revenue sharing revenues in offshore oil and gas operations and, after many hearings, the Administrator issued a rul-

59. *Id.* at 58.

60. Section 308 of the Coastal Zone Management Act of 1972, as amended (CEMA), established the Coastal Energy Impact Program (CEIP) 16 U.S.C. § 1456a (1972), Pub. L. 89-454, § 308, as added Pub. L. 94-370, § 7, 90 Stat. 1019 (1976).

61. 15 C.F.R. § 931.80-85 ().

ing on October 26, 1979, in which he recognized the Mississippi-Louisiana boundary as established by the 1806 Supreme Court decree to Louisiana's coastline, and then projected out into the Gulf following a line based on a modified equidistant line. The Administrator considered certain equities due to the irregularity of the coast in fixing the line. It is not as Louisiana contended under the equidistant theory, but the line does extend under Mississippi after a certain point into the Gulf and extends under Alabama. In connection with this same act, the line between Louisiana and Texas was extended into the Gulf following the equidistant line established in the Texas Boundary Cases. By these two lines, Louisiana gets the greatest share of adjacency in the Gulf for revenue sharing. In time, this should mean a lot of money to the state of Louisiana.

It is interesting to note that, in the Mississippi-Louisiana case, the Court used the theory of thalweg to establish the boundary between Mississippi and Louisiana,⁶² and under the same constitutional provision the Supreme Court decided that the boundary with Texas is in the geographic middle of the Sabine River and not the main channel.

The Boundary Between the State of Louisiana and the United States in the Gulf of Mexico

The reader will recall that Louisiana's constitution stated:

to the Gulf of Mexico, thence, bounded by the said Gulf to the place of beginning including all islands within three leagues of the coast⁶³

The place of beginning was the Sabine River. The question arose as to how far Louisiana's boundary extended into the marginal sea. Louisiana had reason to believe that it had paramount rights over the marginal sea adjacent to its coastline. The Supreme Court, in the case of *Pollard's Lessees v. Hagan*,⁶⁴ held that the 13 original states, by virtue of sovereignty, acquired through revolution against the crown lands beneath the navigable inland waters within their territorial boundaries. Each subsequently admitted state acquired similar rights as an inseparable attribute of the equal sovereignty guaranteed to it upon admission. Louisiana felt that this same rule would apply to lands beneath navigable waters of the marginal sea beyond the low water mark and the outer limits of its inland waters.

62. 202 U.S. 1 (1906).

63. See text at note 12, *supra*.

64. 44 U.S. (3 How.) 212 (1845).

Beginning in 1930, the federal government began to dispute the effect of the Pollard Rule as to waters under the marginal sea. The earliest offshore oil production occurred in 1896 off the coast of California. The only ventures were extensions of onshore drilling projects.⁶⁵ The first offshore well drilled from a mobile platform, the dominant technology used today, located out of sight from land, was drilled twelve miles from the Louisiana coast in 1947. In 1970, south Louisiana, an area including both onshore and offshore areas adjacent to Louisiana, was responsible for the production of approximately thirty-three percent of domestic natural gas. It is estimated in 1980 that there existed over 13,000 wells operating in the offshore lands in the Gulf of Mexico. In 1945, President Truman issued Proclamation No. 2667 in which he proclaimed that the United States exercises paramount rights over the sub-soil and seabed of the Continental Shelf within and outside of the three-mile territorial sea. Oil was being discovered in the Continental Shelf. The United States filed a suit in the United States Supreme Court against the state of California claiming paramount rights over the seabed seaward of the low water mark and where the open sea meets its inland waters along its coast. In 1947, the Court held that the United States possessed paramount rights in the seabed underlying the Pacific Ocean seaward of the low water mark along the coast of California and outside of its inland waters.⁶⁶ Following the ruling in the California case, the United States Supreme Court issued a similar ruling on June 5, 1950 as applied to the submerged lands in the Gulf of Mexico lying off the coasts of Louisiana and Texas.⁶⁷

The ruling created consternation along the coastal parishes of Louisiana where oil operations were being undertaken. An effort was started to have Congress deed some portion of the Continental Shelf back to the states. On May 22, 1953, Congress passed the Submerged Lands Act,⁶⁸ in which the United States relinquished to the states all of its rights within three geographic miles seaward from the low water mark or where the inland waters meet the open sea — as to the Gulf Coast states, to their historical boundary if they could

65. U.S. DEPT. OF THE INTERIOR, MINERAL RESOURCES, MANAGEMENT OF THE OUTER CONTINENTAL SHELF, GEOGRAPHICAL SURVEY CIRCULAR #720 (February 19, 1975).

66. *United States v. California*, 332 U.S. 19 (1967) (opinion), 332 U.S. 804 (1947) (decree).

67. *United States v. Louisiana*, 339 U.S. 669 (1950) (opinion), 340 U.S. 899 (1951) (decree); *United States v. Texas*, 339 U.S. 707 (1950) (opinion), 340 U.S. 900 (1951) (decree).

68. 67 Stat. 29 (codified at 43 U.S.C. §§ 1301-1315 (1953)).

prove such boundary, but not beyond three leagues. The question then arose as how to prove a historic boundary. The Court, in the case of *United States of America v. States of Louisiana, Texas, Mississippi, Alabama and Florida*,⁶⁹ decided May 31, 1960, determined that Louisiana had no historical boundary and that Louisiana was only entitled to three geographic miles from its coastline or where the open sea met the inland waters. The Court did hold that both Texas and Florida had historical boundaries. Louisiana urged that the inland water line established by the Commandant of the Coast Guard (recognized by Louisiana as its inland water line by Act 33 of 1954) formed the coastline of Louisiana from which the three miles was to be measured into the Gulf of Mexico. The Court determined that the inland water line established by the Coast Guard and adopted by Louisiana did not establish the inland water line and, therefore, the Court disregarded this argument. The Court held Louisiana's coastline should be determined under the provisions of the Convention on the Territorial Sea and Contiguous Zone in accordance with the decree in the case of *United States v. California*.⁷⁰ It then became necessary for the United States and the state of Louisiana to attempt to apply the provisions of the Convention on the Territorial Sea and Contiguous Zone to Louisiana's irregular coastline. In an opinion rendered on March 3, 1969,⁷¹ the Court set down certain guidelines to be followed and then appointed a Special Master to hear evidence to locate and fix on the ground the coastline of Louisiana from which three geographic miles were to be measured. The Honorable Walter P. Armstrong of Memphis was appointed as Special Master and, after many, many hearings and much evidence, he rendered a report in which he recognized some of Louisiana's contentions, but denied others. Finally his report was submitted to the Supreme Court and approved by the Court in an opinion rendered in 1975.⁷² Later, a decree was entered fixing by coordinates the coastline of Louisiana from which three marine miles were measured.⁷³

69. 363 U.S. 1 (1960).

70. 381 U.S. 165 (1965).

71. *United States v. Louisiana*, 394 U.S. 11 (1969).

72. *United States v. Louisiana*, 420 U.S. 529 (1975).

73. *United States v. Louisiana*, 422 U.S. 13 (1975). The extended litigation over Louisiana's coastline is best summed up in the recent opinion by Justice Blackmun in the case of *United States v. Louisiana*, 100 S. Ct. 1618, 1620-23 (1980).

On June 22, 1981, the United States Supreme Court, in the case of *United States v. Louisiana*, No. 9. Original, fixed the extent of Louisiana's rights under the Submerged Lands Act in the Gulf of Mexico. The decree provided:

Moreover, until and unless superseded by a final decree of this Court or agree-

This is, at this time, the present coastline of the state of Louisiana. Of course, the courts have held that the coastline is ambulatory and will change by accretion and erosion. It is to Louisiana's interests, as well as to all other states along the Gulf of Mexico, the Pacific Ocean and the Atlantic Ocean, to have legislation passed by Congress establishing permanently the three-mile projections that have been fixed by courts' decrees in these various cases, so that the line would not be ambulatory. This would not effect the relations between the United States and foreign governments; it would only be fixed for the purpose of the Submerged Lands Act.

CONCLUSION

From all of this, you can see that it has been very difficult to locate precisely the boundaries of the state of Louisiana. It would not appear that, other than for the migration of the boundaries by erosion and accretion along the Gulf of Mexico, Mississippi, Pearl and Sabine Rivers, the boundaries are located on the ground. Other than for these ambulatory features along the water bodies, the boundaries of the state of Louisiana appear to be rather stable at this time.

ment of the parties, the line described in Exhibit A hereof shall remain in effect for all purposes relevant to the Submerged Lands Act, 43 U.S.C. §§ 1301-1315, including exploitation of mineral resources; and, with respect to any period during which this line remains in effect, neither party shall ever be held to account to the other for or reimburse the other for any revenues from or attributable to sales, leases, licenses, or exploitation of lands, minerals, or resources adjudicated to that party by paragraph 1 or paragraph 2 hereof.

101 S. Ct. 2605, 2606 (1981).

