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**Maps as Evidence in Maritime Boundary Disputes:
Louisiana v. Mississippi**

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Washington Map Society
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The question of whether or not maps possess probative value in the resolution of boundary disputes reflects a sharp cleavage of opinion in the international law community.ⁱ In its memorial submitted to the International Court of Justice in the Gulf of Maine Case (1984), the United States included only two eighteenth-century maps in support of prescriptive rights.ⁱⁱ By comparison, the Canadian memorial encompassed a detailed history of the hydrographic mapping of the disputed area as well as a description of French, Dutch and British charts, starting from 1610 onwards.ⁱⁱⁱ Based on the assumption that the Court would decide the case on points of law rather than historical evidence, the United States memorial focused on the rules encompassed in international conventions. The Canadian position adhered to the more traditional approach in the form of stressing prescriptive rights supported by such historical evidence as maps and charts. On balance, the Court favored the Canadian claim.^{iv}

The Pearl River Boundary Dispute

Below the thirty-first parallel the Pearl River is the boundary between Louisiana and Mississippi. Its estuary empties into the Mississippi Sound – an arm of the sea separating the coast of Mississippi on the north from the Louisiana shore on the south. At the turn of the century oystering was a thriving industry, and the absence of a lateral seaward boundary led to ongoing friction between the oystermen of Louisiana and Mississippi. In addition to the problem of licensing fishing boats, Mississippi law permitted dredging oyster beds, whereas Louisiana authorities imposed fines on those caught using dredges. By 1902, an armed Louisiana patrol vessel was on duty in the contested waters. To resolve the dispute the attorneys-general of the two states agreed to a “friendly suit” in the form of an original case in equity before the U.S. Supreme Court, and Louisiana filed its motion as the plaintiff in October, 1902.

Two topics of public international law dominated the proceedings. The first was the applicability of the rule of the Thalweg to the delimitation of a maritime

boundary between two states. The second was a determination of whether or not the doctrine of acquisitive prescription would serve to confirm the plaintiff's claim. On both subjects the probative value of maps and charts was the key issue. For specialists in cartography, *Louisiana v. Mississippi* became the testing ground for the use of maps as evidence.

Cartographic evidence focused on the following five questions:

- a. Did mapmakers of the 18th and 19th centuries depict the Mississippi Sound as a body of inland water separate from the Gulf of Mexico?
- b. If the Mississippi Sound is an inland waterway, is the Thalweg shown on early maps or charts?
- c. At the time of Mississippi's statehood (1817) was the St. Bernard Peninsula solid land or, as it is today, a series of islands and hummocks?
- d. Do official maps support the claims of either Louisiana or Mississippi?
- e. Do commercial maps reflect a public perception that Grand Island belongs to Louisiana or to Mississippi?

To answer these questions each side compiled and submitted atlases.^v John Dymond, Jr., an attorney for the State of Louisiana, had contacted P. Lee Phillips, the Chief of the Maps and Charts Division of the Library of Congress, for the purpose of assembling maps for the *Louisiana Atlas*. Photographic and colored copies were then made available as evidence to be presented in court. Dymond also drew upon the extensive personal collection of William Beer, the Librarian of Tulane University and a lifelong collector of historical maps. All in all, the *Louisiana Atlas* included 63 numbered exhibits and two addenda. By comparison, the *Mississippi Atlas* encompassed only seven exhibits, and its organization did not reflect the care so apparent in the Louisiana presentation. Not surprisingly, counsel for Mississippi did not rely heavily on cartographic evidence in the trial.

The trial was divided into two parts. The first was a series of extended hearings held before Commissioners appointed by the Supreme Court for Louisiana and Mississippi. The hearings commenced in New Orleans on April 5 and concluded in Jackson on September 22, 1904. Maps and charts were the object of extensive discussion during this phase. The case was argued before the Supreme Court on October 10 through 12, 1905, and the decision was announced on March 5 the following year. Chief Justice Melville Fuller wrote the opinion for the Court, and his analysis included an evaluation of the cartographic evidence presented by the two parties to the dispute.

During the hearings the State of Louisiana called not only the librarian Beer but also officials of state government whose knowledge of the area was unrivaled. After delivering a short discourse on such famous mapmakers as

Willem Janszoon Blauw (1571-1638), Jacques Nicholas Bellin (1703-1772), and Emanuel Bowen (1720-1767), Beer was cross-examined extensively as to the provenance of his map collection. The examination focused on two issues: the authenticity of the maps and their scientific accuracy. As to the first point Beer could only insist that he had purchased the maps from reliable dealers. The issue of accuracy is insoluble. Because of the forces of accretion and erosion, the land forms in question are constantly in transition. An eighteenth-century map may well have been accurate for its day and therefore possess probative value, despite the fact that forces of nature have altered the topography. The cross-examination of Beer developed these points and contributed thereby to an understanding of the use of maps as evidence.

Cartographic Evidence

The customary rule in the use of cartographic evidence centers on the question of whether or not mapmakers have over time concurred as to the jurisdiction of a state over the contested territory. The emphasis is usually on quantity perception shared by a large number of cartographers. In this regard, both official and commercial maps are relevant, the idea is to establish a trend over time.

Maps enabled the litigants to answer the foregoing questions. First, early cartographers were unanimous in depicting the Mississippi Sound as a body of inland water apart from the Gulf of Mexico. Consequently the rule of the Thalweg would apply in the delimitation of the lateral seaward boundary between the two states. Mississippi's case rested on the assumption that the Sound was part of the high seas – an assertion which the Court rejected. Ironically, in 1983 Mississippi was to argue before the Court that the Sound was indeed inland and apart from the Gulf, while the Federal government took the position that the water between the mainland and the barrier islands should be classified as "high seas." With the passage of time, both Mississippi and the United States had reversed their positions.

The second question referred to early charts and the identification of the Thalweg. At the behest of the British Admiralty, the hydrographer Georg Gauld charted the Gulf coast in 1778, and his charts were subsequently regarded as authoritative until the survey begun by the U.S. Coast and Geodetic Survey in 1846. In his opinion Chief Justice Fuller ruled that the Gauld map showed the existence of a deep-water channel extending southwest from Cat Island into the open waters of the Gulf.^{vi} Accordingly, even eighteenth-century mapmakers had charted the Thalweg, and Louisiana's argument was therefore historically correct.

The third question involved an interpretation of the Enabling Act which granted Mississippi statehood in 1817. Congress had defined the maritime zone of Mississippi as including all islands within eighteen miles of the mainland. If the St. Bernard "Peninsula" at the time of statehood was actually an archipelago,

then Mississippi's claim was legally defensible. To rebut this allegation, Louisiana presented maps showing the peninsula as solid land. Among these was a map published by Isaac Tirion in Amsterdam in 1769, which described the peninsula as a swampy extension of the mainland. Early maps tended to support this interpretation.

The fourth question concerning the position taken in official maps was ultimately to prove decisive. In 1868, the Legislature and the Governor of Mississippi authorized the publication of T.S. Hardee's "Official Map of Mississippi." The map assigned all of the territory southwest of the Cat Island Channel to Louisiana. A subsequent edition did the same, and the series of Mississippi maps published between 1879 and 1890 by the General Land Office of the Department of the Interior implicitly accepted the Hardee map as a precedent. Efforts by Monroe McClurg, Mississippi's Attorney General, to discredit the map proved unavailing. Chief Justice Fuller seized upon the point and concluded that Mississippi had abandoned its claim and could not now reassert it.^{vii}

The fifth question analyzed the work of commercial mapmakers and their perception of Mississippi's boundaries. Such mapmakers and publishers as Mathew Carey (1760-1839), Henry Schenck Tanner (1786-1858), and Joseph Hutchins Colton (1880-1893) had all published state maps. Their attention had, however, not focused on the coastal zone. Moreover the interpretation of these maps often depended upon coloration which, as the trial attorneys pointed out, was not always uniform. Indeed enterprising booksellers would sometimes embellish the coloring of maps on display.

Two maps of historical importance deserve particular mention, and both were included in the Louisiana Atlas. The first was Barthelme Lafon's map of Louisiana and the Mississippi Territory (1806).^{viii} The coloration showed both the Mississippi coast and the contested islands in yellow, thereby legitimating Mississippi's claim. During the pretrial hearings McClurg pressed this point only to encounter stiff opposition on the part of the witness Beer, who insisted that Lafon was not "necessarily correct."^{ix} The second was John La Tourrette's map of Mississippi (1839,1850). In this instance, too, Mississippi's claim received support, for both Hancock County, Mississippi, and Grand Island were colored green^x. The transcript of the hearing does not indicate that counsel for Mississippi picked up on this point.

Louisiana v. Mississippi set a standard for the use of maps as evidence in territorial disputes, as noted in both the hearings and the decision of the Court. Nevertheless, the case illustrates the need to prepare a coherent argument based on careful research. The mere presentation of maps without a detailed analysis of their provenance and accuracy may well be counterproductive. Indeed the use of a few maps of recognized importance may be preferable to submitting a large number of ungraded items. To this extent, Louisiana v.

Mississippi demonstrates that quantity alone is not enough; quality is also central to the outcome of the issue.

Notes

ⁱ International legal precedents for the use of cartographic evidence include the following: Alaskan Boundary Tribunal, U.S. Senate doc. 162 (1904); Border Dispute: Honduras and Nicaragua (1906) in 11 Reports of International Arbitral Awards (1962) at 101; Honduran-Guatemalan Boundary Question, U.S. Department of State (1920); Opinion and Award of the Special Boundary Tribunal: Guatemala and Honduras (1920); Advisory Opinion regarding the Delimitation of the Polish-Czechoslovakian Frontier in Acts and Documents, Permanent Court of International Justice, series B, No. 8 (1923); Question of the Monastery of Saint-Naoum (Albanian Frontier) in Acts and Documents, Permanent Court of International Justice, series C, No.11 (1924); Re Labrador Boundary in 2 Dominion Law Reports (1927) at 401; The Island of Palmas: Netherlands and the United States (1928) in 2 Reports of International Arbitral Awards (1949) at 829; The Miquiers and Ecrehos Case: France and the United Kingdom in Reports, International Court of Justice (1953) at 47; Case Concerning Sovereignty over certain Frontier Land: Belgium and the Netherlands, in Reports, International Court of Justice (1959) at 209; Case Concerning the Temple of Preah Vihear: Cambodia and Thailand in Reports, International Court of Justice (1962) at 6; Rann of Kutch Arbitration: India and Pakistan in 7 International Legal Materials (1968) at 665; The Beagle Channel Arbitration: Argentina and Chile in Memorial of Chile (1973); and Demarcation of the International Boundary between Iraq and Kuwait, in 32 International Legal Materials (1993) at 1425.

ⁱⁱ Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area: Memorial Submitted by the United States, International Court of Justice (1982) at 64.

ⁱⁱⁱ Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area: Annexes to the Counter-Memorial Submitted by Canada, vol. III: State Activities, International Court of Justice (1983) at 23.

^{iv} International Court of Justice, Yearbook 1984-1985, at 159. Also see Sandra H. Shaw and Daniel J. Dzurek, "Charts in the Law of the Sea," in Rights to Oceanic Resources, ed. D.G. Dallmeyer and L. DeVorse, Jr. (The Hague: Martinus Nijhoff, 1989) at 15,23.

^v U.S. Supreme Court, October Term 1904, No.11, Original, Atlas of Maps Offered by the State of Louisiana and Atlas of Maps Offered by the State of Mississippi, Cartographic Section, National Archives, RG 267.

^{vi} 202 U.S. 1, 47.

^{vii} *Ibid.*, 57.

^{viii} Bartheleme Lafon, "Carte generale du Territoire d'Orleans comprenant aussi la Floride Occidentale et une Portion du Territoire du Mississippi" (New Orleans, 1806).

^{ix} Louisiana v. Mississippi, No. 11, Original, U.S. Supreme Court in Records and Briefs, vol. 202 (1905) at 617.

^x John La Tourette, "An accurate Map or Delineation of the State of Mississippi with a large portion of Louisiana & Alabama; showing the communication by land and water between the

Cities of New Orleans and Mobile, from original surveys of the United States" (Mobile, 1839 and New York, 1850).