

# The Burger Court Opinion Writing Database

## *Mississippi v. Arkansas*

415 U.S. 289 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 3, 1974

Re: No. 48 Orig. - State of Mississippi v. State of Arkansas

Dear Harry:

Please join me.

Regards,

WBJB

Mr. Justice Blackmun

Copies to the Conference

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 48, Orig.

State of Mississippi,  
Plaintiff,  
v.  
State of Arkansas.

} On Motion for Leave to File  
Bill of Complaint.

12-11

[December —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Luna Bar is today an island in the Mississippi River. Arkansas on the west claims it is hers because the river as a result of an avulsion moved west. Mississippi claims it is hers because Luna Bar was created as a result of slow gradual accretion. The Special Master found for Mississippi and the case is here on exceptions to his Report.

No one has an historical recorded account of what happened. Mississippi made its case by use of experts who testified as to how the Mississippi usually performs. They testified that the river at low water washes the concave side of a turn (this being the side that marks Luna Bar) but that during high water it scours the convex side (that being Arkansas). That testimony gives force to the argument that accretion formed Luna Bar, washing heavily Arkansas land to form the island. Favoring Mississippi was other testimony that at least in the Mississippi avulsion would shorten the course of the river, while here the course was lengthened. Never did the experts know of an instance where avulsion had worked the way Arkansas claims.

Opposed to these highly qualified experts were lay witnesses who knew Luna Bar. They had located great trees that once grew there, the age of the trees going back

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4-7

To : The Chief Justice  
Mr. Justice Brennan ✓  
Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Stevens  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 48, Orig.

State of Mississippi,  
Plaintiff.

State of Arkansas

On Motion for Leave to File  
Bill of Complaint

Recirculated: 12-22-73

[December — 1973]

MR. JUSTICE DOUGLAS, dissenting.

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To : The Chief Justice  
No. 48, Orig.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 48, Orig.

State of Mississippi,  
Plaintiff,  
v.  
State of Arkansas. } On Bill of Complaint.

[December —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 28, 1973

Re: No. 48, Orig. Mississippi v. Arkansas

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 28, 1973

Re: No. 48 Orig. - Mississippi v. Arkansas

Dear Harry,

I agree with the per curiam you have circulated  
in this case.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 48 Orig. - Mississippi v. Arkansas

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 48 Orig. - Mississippi v. Arkansas

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

*But should a boundary line  
be refused to as "encompassing" Luna  
Bar? See the facts 112, P. 6.  
Baw*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 3, 1974

Re: No. 48 Original -- Mississippi v. Arkansas

Dear Harry:

I agree with your Per Curiam in this case.

Sincerely,

  
T.M.

Mr. Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 28, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 48 Orig. -- Mississippi v. Arkansas.

The maps referred to in this proposed per curiam are the first two that appear at the end of the Special Master's printed report. It will be a few days before their reproduction is available. In the meantime, I thought the proposed per curiam should be circulated.

*Harry*

or distributed without the specific author-  
ization of the Hoover Institution Archives.

HOOPER INSTITUTION  
ON WAR, REVOLUTION AND PEACE  
Stanford, California 94305-5080



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For: The Chief Justice  
of the United States  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 48, Orig.

From: Black  
Recirculation

State of Mississippi,	{	On Motion for Leave to File Bill of Complaint.
Plaintiff,		
State of Arkansas		

[January — 1974]

PER CURIAM.

Mississippi, prompted by the pendency of private title litigation in the Arkansas courts,<sup>1</sup> instituted this original action against Arkansas in November 1970. The bill of complaint, which accompanied the motion for leave to file, prayed that the boundary line between the two States, in the old bed of the Mississippi River from the upstream end to the downstream end of Tarpley Cut-off, that is, the Spanish Moss Bend-Luna Bar-Carter Point area where Arkansas' Chicot County and Mississippi's Washington County adjoin, be fixed and determined.

The river was originally established as the boundary between the States by their respective Acts of Admission. Mississippi's Act, 3 Stat. 348 (1817), described the line as "up" the river.<sup>2</sup> Arkansas' Act, 5 Stat. 50-51 (1836), described the line as "up the middle of the main channel of the said river." See also, Arkansas' Constitution, Art. 1 (1874). Over 50 years ago the question whether

<sup>1</sup> See *Arkansas Land & Cattle Co. v. Anderson-Tully Co.*, 248 Ark. 495, 452 S. W. 2d 632 (1970), a 4-3 decision of the Supreme Court of Arkansas.

<sup>2</sup> Mississippi's Constitution of 1890, Art. 2, however, reads, "up the middle of the Mississippi river, or thread of the stream."

Mr. Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 48. Orig.

State of Mississippi,  
Plaintiff,  
v.  
State of Arkansas

On Bill of Complaint.

[January —, 1974]

PER CURIAM and DECREE.

Mississippi, prompted by the pendency of private title litigation in the Arkansas courts,<sup>1</sup> instituted this original action against Arkansas in November 1970. The bill of complaint, which accompanied the motion for leave to file, prayed that the boundary line between the two States, in the old bed of the Mississippi River from the upstream end to the downstream end of Tarpley Cut-off, that is, the Spanish Moss Bend-Luna Bar-Carter Point area where Arkansas' Chicot County and Mississippi's Washington County adjoin, be fixed and determined.

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<sup>2</sup> Mississippi's Constitution of 1890, Art. 2, however, reads, "up the middle of the Mississippi river, or thread of the stream."

18.15.4.2000

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

100

SUPREME COURT OF THE UNITED STATES

No. 48. Orig.

State of Mississippi,  
Plaintiff,  
v.  
State of Arkansas.

On Bill of Complaint.

[January —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 48, Orig.

State of Mississippi,	}	On Bill of Complaint.
Plaintiff,		
v.		
State of Arkansas.		

[January —, 1974]

## DECREE

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Luna Bar, depicted in Mississippi's Exhibits 1 and 2, constituting, respectively, Appendix A and part of Appendix B to the Special Master's report, and appended hereto and hereby made a part of this decree, came into existence by accretion to Carter Point and is, and was, a part of the State of Mississippi.

2. The boundary line between the State of Mississippi and the State of Arkansas in the areas between the upstream and the downstream ends of Tarpley Cut-off is as follows:

"In the abandoned bed of the Mississippi River between the upstream end of the Tarpley Cut-off and the downstream end of Tarpley Cut-off, as defined and identified in Mississippi's said Exhibit 2. The courses and distances of the above-described line are set out in said Exhibit 2."

3. The cost of this suit, including the expenses of the Special Master and the printing of his report, have been paid out of the fund made up of equal contributions by the State of Mississippi and the State of Arkansas and said fund has been sufficient to defray all said expenses



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 20, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 48 Orig. - Mississippi v. Arkansas


Herewith, at long last, are the maps to be  
attached to the opinion.

*H. A. B.*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 18, 1974



MEMORANDUM TO THE CONFERENCE

Re: No. 48 Original - Mississippi v. Arkansas

Mr. Rodak has handed to me the enclosed letter from the attorneys for Mississippi. It is self-explanatory.

The decree that was ordered entered, and which accompanied the opinion, precisely followed that recommended in the Special Master's report. It seems to me that Mississippi's counsel should have presented his present concern to the Special Master for incorporation into his proposed decree. I am disinclined to have us tamper with what has been approved, and I would prefer that he take his troubles to the Special Master. Perhaps Mississippi and Arkansas could agree and persuade the Master as to any details that may be necessary by way of a supplement to the decree.

Perhaps this could be discussed at the conference of April 19.

*H.A.B.*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 2, 1974

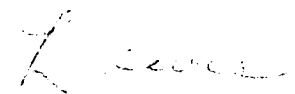
No. 40 Orig. Mississippi v. Arkansas

Dear Harry:

Please join me in your fine Per Curiam opinion.

In my view, it deserves to be a signed opinion. Perhaps other members of the Court feel the same way.

Sincerely,



Mr. Justice Blackmun

CC: The Conference

LFP/gg

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 14, 1973

Re: No. 48, Orig. - State of Mississippi v. State of  
Arkansas

Dear Bill:

I think your opinion makes as persuasive a case as can be made for overturning the Special Master's findings. On balance, I think there are enough flaws in Arkansas' evidence - the fact that one witness testified that Luna Bar had a considerably lower elevation than the Arkansas side, the fact that the stump in question was not indubitably in place where it had grown, the fact that there appears to be no independent evidence of the existence of a prior channel into which the river avulsed -- to bring me down on the side of approving the Master's findings.

Sincerely,

Mr. Justice Douglas

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 28, 1973

Re: No. 40 Orig. - Mississippi v. Arkansas

Dear Harry:

Please join me in the per curiam you have prepared in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

December 28, 1973

Re: No. 40<sup>1</sup> Orig. - Mississippi v. Arkansas

Dear Harry:

I am sending you a separate join letter in this case. I wanted to say that I had an uneasy feeling in Conference that some of us were treating this case a little bit lightly, but your excellent opinion completely dispels that notion.

I also wanted to make one tiny suggestion, acceptance of which is in no way a condition of my joining. On page 2, third line from the bottom, you refer to the "accretion of the river westward". I had thought that accretion, at least in its pristine meaning, referred to the process by which land is formed when a river gradually migrates, and that therefore "gradual migration" would be a better word than "accretion" in that sentence. Further your affiant sayeth not.

Sincerely,

WHR

Mr. Justice Blackmun

