

The Burger Court Opinion Writing Database

Louisiana v. Mississippi

466 U.S. 96 (1984)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

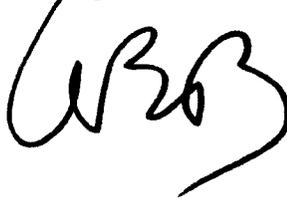
November 23, 1983

MEMORANDUM TO THE CONFERENCE

No. 86 Original, Louisiana v. Mississippi

Argument on the exceptions to the Special Master's Report is scheduled for January 16, 1983. I will not prepare my observations on the "outrageous" fee request until after argument.

Regards,

A handwritten signature in black ink, appearing to be 'W. B. B.', written in a cursive style.

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

December 30, 1983

CHAMBERS OF
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

Re: 86 Original - Louisiana v. Mississippi

The Special Master has applied for \$64,829.50 in fees including those of three persons who assisted him including one non-lawyer. For my part, I leave it to the States to decide whether five hundred hours was required to complete this work. I also leave to the States the rate of \$200 per hour charged by the Special Master for his time; I do so on the understanding the two States agreed on that rate. I also leave to the States the matter of the total hours charged.

Had the parties consented to these fees, I would be inclined to set aside my own doubts. However, Mississippi states it has "no objection to the allowance and payment of such fees as this Honorable Court may find equitable... taking into consideration the three-day trial and the fact that the legal principles involved in this case have long since been settled by prior decisions of this Court."

That places the responsibility for evaluating the claim for professional services directly on this Court. I am bound to question the charges for "associate" assistance at \$125.00 per hour for a four year associate, \$70.00 per hour for a one year associate and especially \$50.00 per hour for a "summer law clerk." I take it that the latter is a law student working under the direct supervision of a person admitted to practice law.

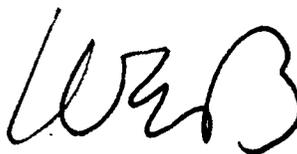
I am not unaware of the heavy overhead of lawyers in terms of space rental, staff personnel, equipment and libraries, etc. However, I question charging the rates fixed for the three "associates." And it will not do to say that "everyone is doing it." The allocation of a charge in excess of \$5000.00 for two and one half 40 hour weeks for a law student's work is open to very serious question. Similarly,

the \$70.00 per hour¹ rate for a lawyer one year out of law school and \$125.00 per hour for a lawyer four years out of law school is open to question.

In light of the position of Mississippi, I am unwilling to have the record show, sub silentio, that I approve the claimed fees; on this record I am unwilling to approve.

I will place this on the agenda for discussion for next Friday's Conference.

Regards,



¹A four year associate unburdened by the managerial or administrative side of law practice should record not less than 2000 hours a year or at this rate \$250,000.00 per year.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 15, 1984

MEMORANDUM TO THE CONFERENCE

Re: No. 86 Original - Louisiana v. Mississippi

I enclose a draft of proposed dissent.

I would join an order allowing Meyer's fees, but not his "staff."

Regards,

A handwritten signature in black ink, appearing to be 'W. B. B.', written in a cursive style.

Louisiana v. Mississippi, No. 86 Original

CHIEF JUSTICE BURGER, dissenting in part from the allowance of the Special Master's expenses

The role of a Special Master of this Court is as a surrogate of the Court and in that sense it is an important public service of high order. I do not suggest that Special Masters should serve without compensation, as Senior Federal Judges have done for a number of years, but I believe the public service aspect of the appointment is a factor that may be taken into account in determining the reasonableness of fees charged.

The Special Master has applied for \$64,829.50 covering fees for himself and six persons who assisted him; only two of whom were lawyers. The total amount requested can be broken down as follows:

Special Master	143.6 hrs	\$200	\$28,720.00
Mr. Witt (assoc 4 yrs.+)	240.9 hrs	\$125	30,112.50
Mr. Amber (1st yr. assoc.)	11.6 hrs	\$ 70	812.00
Others (summer law clerks)	108.7 hrs	\$ 50	5,185.00
			<u>\$64,829.50</u>

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

Second Draft
Louisiana v. Mississippi
No. 86 Original

From: The Chief Justice

Circulated: _____

Recirculated: **MAR 21 1984**

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CHIEF JUSTICE BURGER, dissenting in part from the allowance of the Special Master's expenses.

The Special Master has applied for \$64,829.50 covering fees for himself and six persons who assisted him; only two of whom were lawyers. The total amount requested can be broken down as follows:

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Mr. Witt (assoc 4 yrs.+)	240.9 hrs	\$125	30,112.50
Mr. Amber (1st yr. assoc.)	11.6 hrs	\$ 70	812.00
Others (summer law clerks)	108.7 hrs	\$ 50	<u>5,185.00</u>
			<u>\$64,829.50</u>

A Special Master of this Court is a surrogate of the Court and in that sense it is an important public service of high order in much the same sense as serving in the Judiciary. I do not suggest that Special Masters should serve without compensation, as for example, Senior Federal Judges have done for a number of years, but I believe the public service aspect of the appointment

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

CHAMBERS OF
THE CHIEF JUSTICE

March 29, 1984

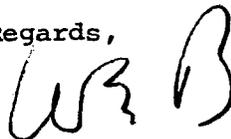
Re: 86 Original - Louisiana v. Mississippi

Dear Harry:

I thought I had joined you earlier on the merits but no
vote is recorded.

I join.

Regards,

Handwritten signature of William Rehnquist, consisting of the initials 'WR' followed by a large, stylized 'B'.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1984

No. 86 Original

Louisiana v. Mississippi

Dear Byron,

Your proposed order as to fees is
satisfactory to me.

Sincerely,

WJB/NE

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 16, 1984

No. 86 Original

Louisiana v. Mississippi, et al.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 21, 1984

No. 86 Original

Louisiana v. Mississippi

Dear Byron,

I would allow the fee in full.

Sincerely,



Justice White

Copies to the Conference

~~9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 22, 1984

No. 86 Original

Louisiana v. Mississippi

Dear Byron,

I agree.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 13, 1984

RECEIVED
SUPREME COURT U.S.
JUSTICE WHITE

'84 MAR 13 P2:12

MEMORANDUM TO THE CONFERENCE

Re: 86 Original - Louisiana v. Mississippi

I suggest that the attached Order with respect to the Special Master's fees be entered in the above case.

Byron

BRW

I agree with your action in this case.

W

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 20, 1984

Re: No. 86 Orig. -

Louisiana v. Mississippi

Dear Chief,

My proposed order to allow a \$60,000 interim fee to Charles Meyers was circulated with the expectation that it could be entered pending the receipt of your dissent and pending the writing of any others who may be inclined to write. If there is other writing contemplated, I suggest that we enter the order that I circulated. If there is not, I see no reason for not granting the full amount of his requested fee in accordance with the prior Conference vote. This assumes, of course, that those who voted to allow his fee are still of that mind.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: 86 Original - Louisiana v. Mississippi

Since Meyer's application is to be granted in full, I suggest the order read as follows:

IN THE SUPREME COURT OF THE UNITED STATES
NO. 86, ORIGINAL

STATE OF LOUISIANA,

Plaintiff,

vs.

STATE OF MISSISSIPPI,

ET AL.,

Defendants.

ORDER

The application of the Special Master for compensation in the amount of \$64,829.50 is hereby granted. The States of Louisiana and Mississippi will each pay one-half of this amount to the Special Master.

JUSTICE BLACKMUN dissents. He would allow the Special Master a total fee of \$40,000.

BW

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 22, 1984

Re: 86 Orig. - Louisiana v. Mississippi

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 23, 1984

MEMORANDUM TO THE CONFERENCE

Re: 86 Original - Louisiana v. Mississippi

Because the Clerk's Office has alertly called my attention to the fact that there was a private party involved in the above case, I have asked that the order be put over for a week.

B.R.W.

cc: Mr. Stevas

cpm

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

RECEIVED
SUPREME COURT U.S.
JUSTICE BLACKMUN

CHAMBERS OF
JUSTICE BYRON R. WHITE

'84 MAR 28 A9:44

March 27, 1984

MEMORANDUM TO THE CONFERENCE

Re: 86 Original - Louisiana v. Mississippi

Because there were private defendants, I suggest
the order read as follows:

IN THE SUPREME COURT OF THE UNITED STATES
NO. 86, ORIGINAL

STATE OF LOUISIANA,

Plaintiff,

VS.

STATE OF MISSISSIPPI,

ET AL.,

Defendants.

ORDER

The application of the Special Master for compensation in the amount of \$64,829.50 is hereby granted. One-half of this amount shall be paid to the Special Master by the plaintiff and one-half by the defendants.

JUSTICE BLACKMUN dissents. He would allow the Special Master a total fee of \$40,000.

BW

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1984

Re: No. 86 Original-Louisiana v. Mississippi

Dear Byron:

I agree with your order in this case.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 21, 1984

Re: No. 86 Original-Louisiana v. Mississippi

Dear Byron:

I, too, would allow the full fee.

Sincerely,

T.M.

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1984

Re: No. 86 Orig.-Louisiana v. Mississippi

Dear Harry:

Please join me.

Sincerely,

Jm.
T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: MAR 14 1984

Recirculated: _____

RECEIVED
SUPREME COURT, U.S.
JUSTICE

'84 MAR 14 P2:59 1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86 Orig.

STATE OF LOUISIANA *v.* STATE OF MISSISSIPPI
ET AL.

ON BILL OF COMPLAINT

[March —, 1984]

JUSTICE BLACKMUN delivered the opinion for the Court.

This original action was filed by the State of Louisiana against the State of Mississippi and Avery B. Dille, Jr., to resolve a dispute as to the boundary between the two States in a reach of the Mississippi River above the Giles Bend Cut-off, upstream from the city of Natchez. The Report of the Special Master, however, stops short of ascertaining the entire boundary along this stretch, for the Master would have us resolve the case in Louisiana's favor with the conclusion that throughout the period 1972-1982, the years relevant to this litigation, the actually contested point—the place in the riverbed of the "bottom hole" of a particular producing oil well—at all times was west of wherever that boundary line might have been and was within the State of Louisiana. Therefore, the Special Master observes, we need go no further in bringing this controversy to an end.

Mississippi has filed exceptions to the Special Master's Report, Louisiana has filed its response to those exceptions, the case has been argued orally, and the matter, thus, is before us for disposition.

I

In the area in question, the Mississippi River marks the boundary between Mississippi and Louisiana. See Act of Apr. 8, 1812, 2 Stat. 701, admitting Louisiana to the Union; Act of Mar. 1, 1817, 3 Stat. 348, and Joint Resolution of Dec. 10, 1817, 3 Stat. 472, admitting Mississippi to the Union.

STYLISTIC CHANGES
pp. 1, 8, 9, & 12

Handwritten notes:
HATE
Please don't
M

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: **MAR 16 1984**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86 Orig.

STATE OF LOUISIANA *v.* STATE OF
MISSISSIPPI ET AL.

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

[March —, 1984]

JUSTICE BLACKMUN delivered the opinion for the Court.

This original action was filed by the State of Louisiana against the State of Mississippi and Avery B. Dille, Jr., to resolve a dispute as to the boundary between the two States in a reach of the Mississippi River above the Giles Bend Cut-off, upstream from the city of Natchez. The Report of the Special Master, however, stops short of ascertaining the entire boundary along this stretch, for the Master would have us resolve the case in Louisiana's favor with the conclusion that throughout the period 1972-1982, the years relevant to this litigation, the actually contested point—the place in the riverbed of the "bottom hole" of a particular producing oil well—at all times was west of wherever that boundary line might have been and was within the State of Louisiana. Therefore, the Special Master observes, we need go no further in bringing this controversy to an end.

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I

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1984

Re: No. 86 Orig. - Louisiana v. Mississippi

Dear Chief:

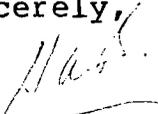
Byron's proposed order allowing fees of \$60,000, which a substantial majority of the Court has now approved, gives Dean Meyers nearly all of what he asked for (\$64,829.50). That being so, I wonder if there is much point in not allowing the entire amount.

I agree with you that the Master's own amount is reasonable and should be approved. In addition, something more for staff should be allowed. Except for Dean Meyers' breakdown, my own reaction would have been for a total of about \$40,000, for I agree with you that he has overstepped on the summer law clerks and on Mr. Witt, who was a salaried associate with the firm for only four years. It seems to me that the summer law clerks fall in the same category as secretarial services and other expenses that a law firm incurs. All of these presumably are covered by the attorneys' base hourly rates.

All of this means, I suppose, that I do not join the others with Byron. Having gone through the transcript, the report, and the exceptions, I find it hard to justify more than a total of \$40,000.

At the end of your dissent, therefore, would you please add the following:

"JUSTICE BLACKMUN dissents. He would allow the Special Master a total fee of \$40,000."

Sincerely,


The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

86 OR 16

October 28, 1983

Dear Chief:

I enclose information on lawyers' salaries that Roger Jacobs provided sometime ago at my request. Until the discussion at the Conference today reminded me, I had overlooked these.

I think the 1983 Altman & Weil survey is the most informative, though it primarily covers nine southern states. There are a number of major law firms in several of these states. It is fair to say that generally the information shows somewhat higher hourly rates on the average, in some of the earlier age categories, than I had expected. It is particularly noteworthy, however, that the average hourly rates for lawyers with 11-20 years of experience was found to be \$95, and with more than 20 years of experience \$108.

I neglected to say above that although the survey was of the South, the column on the righthand side gives comparative figures for the Northeast.

Whatever other conclusions one may draw from these figures, it is certain that all of us have missed the "golden age" for lawyers in the private practice.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 15, 1984

86 Orig. Louisiana v. Mississippi

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 22, 1984

86 Orig. Louisiana v. Mississippi

Dear Byron:

I agree with your proposed order.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

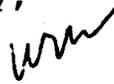
March 14, 1984

Re: No. 86 Orig. Louisiana v. Mississippi

Dear Byron:

I agree with your proposed order.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1984

Re: 86 Original Louisiana v. Mississippi

Dear Byron:

I agree with your proposed order.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1984

Re: No. 86 Original Louisiana v. Mississippi

Dear Harry:

Please join me.

Sincerely,

WM

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1984

Re: 86 Original - Louisiana v. Mississippi

Dear Byron:

I also agree with your proposed order.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 15, 1984

Re: 86 Orig. - Louisiana v. Mississippi

Dear Harry:

"Mark Twain"--in riverboat language that means that anybody who had as much fun as you obviously did in working on this case is entitled to two joins. Accordingly, I join both as a Member of the Court and as the Circuit Justice for the East Bank of the Northern portion of the River that Henry Schoolcraft thought he knew something about.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1984

Re: 86 Orig. - Louisiana v. Mississippi

Dear Byron:

Please join me in your proposed order.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 13, 1984

RECEIVED
SUPREME COURT U.S.
JUSTICE SANDRA DAY O'CONNOR

'84 MAR 14 A9:46

86 Original Louisiana v. Mississippi

Dear Byron,

I agree with your proposed order.

Sincerely,

Sandra

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 15, 1984

No. 86 Orig. Louisiana v. Mississippi

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 22, 1984

No. 86 Orig. Louisiana v. Mississippi

Dear Byron,

I agree with the proposed order.

Sincerely,



Justice White

Copies to the Conference