

# Exhibit 100

---

in the case of:

**People of the Republic of Texas  
and the  
Sovereign Nation of the Republic of Texas**

**v.**

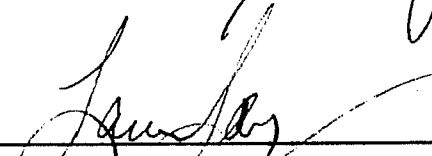
**UNITED NATIONS  
(and all it's Political Subdivisions)  
and  
UNITED STATES  
(and all it's Political Subdivisions)**


**Under Pains and Penalties of perjury and the laws of the Almighty, and being sworn under a vow and oath, I attest that the attached pages are true and correct reprints of the:**

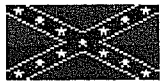
**Opinion of Judge Black, November 20, 1860:  
The Civil War Documents site at  
<http://web.trellis.net/users/phma/recon1.htm>**

**This attestation is made on August 12, 1998.**

*Attest:* 

  
*Witness to scan and above signature*

  
*Witness to above signatures*



From *Twenty Years of Congress: From Lincoln to Garfield. With a review of the events which led to the political revolution of 1860*, by James G. Blaine. Vol. I, pp. 603-605.

## Opinion of Judge Black, November 20, 1860

The Tenth chapter of this volume having been given to the press in advance of formal publication, many inquiries have been received in regard to the text of Judge Black's opinion of November 20, 1860, referred to on pp. 231, 232. The opinion was submitted to the President by Judge Black as Attorney-General. So much of the opinion as includes the points which are specially controverted and criticised is here given — about one-half of the entire document. It is as follows:—

... "I come now to the point in your letter which is probably of the greatest practical importance. By the Act of 1807 you may employ such parts of the land and naval forces as you may judge necessary for the purpose of causing the laws to be duly executed, in all cases where it is lawful to use the militia for the same purpose. By the Act of 1795 the militia may be called forth 'whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State by combinations too powerful to be suppressed by the ordinary course of Judicial proceedings, or by the power vested in the marshals.' This imposes upon the President the sole responsibility of deciding whether the exigency has arisen which requires the use of military force, and in proportion to the magnitude of that responsibility will be his care not to overstep the limits of his legal and just authority.

"The laws referred to in the Act of 1795 are manifestly those which are administered by the judges, and executed by the ministerial officers of the courts for the punishment of crime against the United States, for the protection of rights claimed under the Federal Constitution and laws, and for the enforcement of such obligations as come within the cognizance of the Federal Judiciary. To compel obedience to these laws, the courts have authority to punish all who obstruct their regular administration, and the marshals and their deputies have the same powers as sheriffs and their deputies in the several States in executing the laws of the States. These are the ordinary means provided for the execution of the laws; and the whole spirit of our system is opposed to the employment of any other, except in cases of extreme necessity arising out of great and unusual combinations against them. Their agency must continue to be used until their incapacity to cope with the power opposed to them shall be plainly demonstrated. It is only upon clear evidence to that effect that a military force can be called into the field. Even then its operations must be purely defensive. It can suppress only such combinations as are found directly opposing the laws and obstructing the execution thereof. It can do no more than what might and ought to be done by a civil posse, if a civil posse could be raised large enough to meet the same opposition. On such occasions, especially, the military power must be kept in strict subordination to the civil authority, since it is only in aid of the latter that the former can act at all.

"But what if the feeling in any State against the United States should become so universal that the Federal officers themselves (including judges, district attorneys, and marshals) would be reached by the same influences, and resign their places? Of course, the first step would be to appoint others in their stead, if others could be got to serve. But in such an event, it is more than probable that great difficulty would be found in filling the offices. We can easily conceive how it might become altogether impossible. We are therefore obliged to consider what can be done in case we have no courts to issue judicial process, and no

ministerial officers to execute it. In that event troops would certainly be out of place, and their use wholly illegal. If they are sent to aid the courts and marshals, there must be courts and marshals to be aided. Without the exercise of those functions which belong exclusively to the civil service, the laws cannot be executed in any event, no matter what may be the physical strength which the Government has at its command. Under such circumstances to send a military force into any State, with orders to act against the people, would be simply making war upon them.

"The existing laws put and keep the Federal Government strictly on the defensive. You can use force only to repel an assault on the public property and aid the Courts in the performance of their duty. If the means given you to collect the revenue and execute the other laws be insufficient for that purpose, Congress may extend and make them more effectual to those ends.

"If one of the States should declare her independence, your action cannot depend on the rightfulness of the cause upon which such declaration is based. Whether the retirement of the State from the Union be the exercise of a right reserved in the Constitution, or a revolutionary movement, it is certain that you have not in either case the authority to recognize her independence or to absolve her from her Federal obligations. Congress, or the other States in Convention assembled, must take such measures as may be necessary and proper. In such an event, I see no course for you but to go straight onward in the path you have hitherto trodden — that is, execute the laws to the extent of the defensive means placed in your hands, and act generally upon the assumption that the present constitutional relations between the States and the Federal Government continue to exist, until a new code of things shall be established either by law or force.

"Whether Congress has the constitutional right to make war against one or more States, and require the Executive of the Federal Government to carry it on by means of force to be drawn from the other States, is a question for Congress itself to consider. It must be admitted that no such power is expressly given; nor are there any words in the Constitution which imply it. Among the powers enumerated in Article 1, Section 8, is that 'to declare war, grant letters of marque and reprisal, and to make rules concerning captures on land and water.' This certainly means nothing more than the power to commence and carry on hostilities against the foreign enemies of the nation. Another clause in the same section gives Congress the power 'to provide for calling forth the militia,' and to use them within the limits of the State. But this power is so restricted by the words which immediately follow that it can be exercised only for one of the following purposes:

1. To execute the laws of the Union; that is, to aid the Federal officers in the performance of their regular duties.
2. To suppress insurrections against the State; but this is confined by Article 4, Section 4, to cases in which the State herself shall apply for assistance against her own people.
3. To repel the invasion of a State by enemies who come from abroad to assail her in her own territory.

All these provisions are made to protect the States, not to authorize an attack by one part of the country upon another; to preserve the peace, and not to plunge them into civil war. Our forefathers do not seem to have thought that war was calculated 'to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.' There was undoubtedly a strong and universal conviction among the men who framed and ratified the Constitution, that military force would not only be useless, but pernicious, as a means of holding the States together.

"If it be true that war cannot be declared, nor a system of general hostilities carried on by the Central Government against a State, then it seems to follow that an attempt to do so would be *ipso facto* an expulsion of such State from the Union. Being treated as an alien and an enemy, she would be compelled to act accordingly. And if Congress shall break up the present Union by unconstitutionally putting strife and enmity and armed hostility between different sections of the country, instead of the domestic tranquillity which the Constitution was meant to insure, will not all the States be absolved from their Federal obligations? Is any portion of the people bound to contribute their money or their blood to carry on a contest like that?

"The right of the General Government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers cannot be denied. But this is a totally different thing from an offensive war to punish the people for the political misdeeds of their State Government, or to enforce an acknowledgment that the Government of the United States is supreme. The States are colleagues of one another, and if some of them shall conquer the rest, and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected.

"If this view of the subject be correct, as I think it is, then the Union must utterly perish at the moment when Congress shall arm one part of the people against another for any purpose beyond that of merely protecting the General Government in the exercise of its proper constitutional functions.

"I am, very respectfully, yours, etc.,

"J. S. BLACK."