Exhibit 202

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:

Slavery and the Annexation of Texas - Joint Resolutions in Congress; Issues from the: Congressional Globe, 28 Cong., 2 Sess., 19 (December 11, 1844 - February 18, 1845).

This attestation is made on August 18, 1998.

Attest: E. Brannen

D. A. West

Witness to source and above signature

Jo Helen Brannen

Witness to above signatures

It proposed new negotiations with Mexico and with Texas, though the one with Mexico could be dispensed with if Congress should come to consider Mexican assent to a treaty unnecessary. The boundary to be sought in the Mexican negotiation should start where the line of the "Old Texas" had started—in the desert-prairie west of the Nueces. It should proceed inland along the highlands separating the waters of the Rio Grande from those of the Mississippi to the northern latitude of forty-two degrees. In the negotiation with Texas, a state and an adjoining territory should be the result. The state—to be called "The State of Texas"—should have an extent not exceeding the largest state of the Union, but its boundaries should be left to itself to draw, and it should be admitted to the Union on an equal footing with the original states. This meant it would have the freedom to determine for itself the question of slavery.

The territory coming with it into the Union should be called the "Southwest Territory," and should be held and disposed of by the United States as one of its territories. The existence of slavery in the territory should be forever prohibited west of the one-hundredth degree of longitude, "so as to divide, as equally as may be, the whole of the annexed country between slaveholding and non-slaveholding States." The sovereigns of Texas, the people, were to express their assent to annexation, "by a legislative act, or by any authentic act which shows the will of the majority."[2] There were ambiguities and inconsistencies in the measure, an indication, perhaps, that the author was not sure, at this stage, of his own views.

Four weeks later, on January 7, 1845, Senator John M. Niles, a Connecticut Democrat, offered a joint resolution that resembled Benton's in some respects. It proposed the annexation of a state and a residual territory, with slavery prohibited in the territory to correspond with the terms of the Missouri Compromise. It proposed further that the boundary with Mexico be left to the United States to negotiate.[3]

On January 14 a bill was offered by Senator W. H. Haywood of North Carolina which proposed that Texas be annexed as two territories divided by the thirty-fourth parallel. Each territory could

[2] *Congressional Globe*, 28 Cong., 2 sess., 19 (December 11, 1844).
[3] *Ibid.*, 99 (January 7, 1845).

be divided into at least two territories which would eventually become states. The principle of the Missouri Compromise of 1820, that slavery be forever prohibited north of the line of 36° 30', was to be applied. The public lands and public debt of Texas were to be taken over by the United States. All boundary disputes with foreign powers were to be left to the United States to settle.[4]

On February 5 a new annexation proposal was offered by Benton as a substitute for his first. It canceled much of the detail of the first. It provided merely for the admission of the present republic of Texas as a state with suitable extent and boundaries as soon as the terms of admission, "and the cession of the remaining Texian territory to the United States shall be agreed upon by the government of Texas and the United States." Texas was to be admitted on an equal footing with the existing states, which meant that it would be free to choose slavery or otherwise as it wished. The sum of $100,000 was to be appropriated to defray the expenses of missions and negotiations to agree upon the terms of admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President would direct.[5] In part, the bill was a response to voices that had reached the Senator from his Missouri constituents; in part, it was a response to action that had been taken by the House of Representatives, which will be later described.

On February 13 Senator Chester Ashley of Arkansas introduced into the Senate yet another proposal for annexation. It provided that Texas be admitted as a state on the same footing as the original states in all respects whatever, and that the United States be authorized to settle all questions of boundary that might arise with other governments. The constitution of Texas was to be amended to provide that its territory might be divided into new states not exceeding five in number, all to be eligible for admission as states upon the same footing as the original states. The public lands of Texas were to be transferred to the United States in trust to be sold on the same terms as other federal lands. The proceeds were to be used to pay the public debt of Texas to an amount not exceeding the sum of $500,000. After the liquidation of these debts,

[4] *Ibid.*, 184–5 (January 14, 1845).
[5] *Ibid.*, 244 (February 5, 1845).

Other proposals were brought to the House by G. C. Dromgoole of Virginia, by Edmund Burke of New Hampshire, and by Orville Robinson of New York, which added few new ideas to those already before the House but demonstrated a disposition to please constituents who were expansionists.

Speeches defining and defending these proposals kept the post-election Congress busy. They left little time for other business. They once again subjected the public to annexation propaganda that had been spread first by Administration spokesmen under cover, then by expansionists after the betrayal of the treaty, and again on the hustings. In equal volume came answers from embattled Whigs and antislavery Democrats.

Two constitutional issues, not clearly visible before, rose to the surface to increase the complexities imbedded in the joint resolutions. One concerned a provision in Article I, Section 2, of the Constitution, that in determining a state's population for apportionment of representatives in Congress, three-fifths of the slaves, in addition to all free persons, should be counted. The other was the two-faceted constitutional issue: whether it was constitutional to annex a fully organized foreign state, and, if so, whether any means besides a treaty would conform with the Constitution. The first had been discerned at a distance by William Ellery Channing, the New England clergyman, as early as 1837, in his famous letter on the Texas issue. He had written that the three-fifths clause was a circumlocution employed shamefacedly in a Constitution drawn for a free people by framers who could not bring themselves to pronounce the word "slave" in an instrument for the government of a free people. He observed further:

> Were slavery to be wholly abolished . . . no change would be needed in the Constitution . . . except [omitting] an obscure clause, which, in apportioning the representatives, provides that there shall be added to the whole number of free persons three fifths of all other persons. . . . How little did our forefathers suppose that it [slavery] was to become a leading interest of the Government, to which our peace at home and abroad was to be made a sacrifice! [14]

[14] William Ellery Channing, *Works*, 6 vols. (Boston, 1866), II, 256–7. The three-fifths clause is found in Article I, Section 2, paragraph 3, of the Constitution. "Representation and direct taxes shall be apportioned among the several states . . . according to their respective Numbers, which shall be determined by adding to the

into policy in cases of territorial expansion. By 1843 the issue of acquiring dependent territory of foreign states by treaty was established to a degree that would have permitted the Supreme Court to confirm it on the legal ground of *stare decisis*, which means: Don't disturb settled matters. Legal experts such as Gilmer, Crittenden, Webster, Gallatin, and Levi Woodbury, certainly took that stand.

But when the issue of annexing Texas arose in 1837, a distinction was drawn by those disliking slavery between incorporating a Louisiana by treaty, and annexing a Texas—between admitting an inchoate territory that had neither dominion over itself nor a numerous population, and annexing a nation invested with sovereignty and supporting a large population. As William Ellery Channing had put it in the summer of 1837, in voicing his protests against annexing Texas:

> We shall not purchase a territory, as in the case of Louisiana, but shall admit an independent community, invested with sovereignty, into the confederation; and can the treaty-making power do this? Can it receive foreign nations, however vast, to the Union? Does not the question carry its own answer? By the assumption of such a right, would not the old compact be at once considered as dissolved?[33]

John Quincy Adams put the question more bluntly. As chairman of the Committee on Foreign Affairs of the House, he submitted the following resolutions on February 28, 1843:

> Resolved, That by the constitution of the United States no power is delegated to their congress, or to any department or departments of their government, to affix to this union any foreign state, or the people thereof. Resolved, That any attempt of the government of the United States, by an act of congress or by treaty, to annex to this union the republic of Texas, or the people thereof, would be a violation of the constitution of the United States, null and void, and to which the free states of this union and their people ought not to submit.[34]

These resolutions, which seemed too radical to the majority of Adams's committee, were not approved.

[33] Channing, *Works* (1866), II, 237.

[34] Adams, *Memoirs*, XI, 330 (February 28, 1843); *Niles' Register*, 64 (May 13, 1843), 174.

could be carried into effect. But it is unnecessary on this occasion to discuss those questions. That now at issue is simply this. In whom is the power of *making* treaties vested by the constitution? The United States have recognized the independence of Texas; and every compact between independent nations is a treaty.

The Constitution . . . declares that "the President shall have the power, by and with the advice and consent of the Senate to *make* treaties, provided two-thirds of the Senators concur." This power is not given to Congress by any clause of the constitution.

The intended joint resolution proposes that the treaty of annexation . . . signed on the 12th of April, 1844 (which treaty is recited verbatim in the resolution) shall, by the Senate and House of Representatives . . . , be declared to be the fundamental law of union between the said United States and Texas, so soon as the supreme authority of the said Republic of Texas shall agree to the same.

The Senate had refused to give its consent to the treaty, and the resolution declares that it shall nevertheless be made by Congress a fundamental law binding the United States. It transfers to a majority of both Houses of Congress, with the approbation of the President . . . the power of *making* treaties, which, by the constitution was expressly and exclusively vested in the President with the consent of two-thirds of the Senate. It substitutes for a written constitution, which distributes and defines powers, the supremacy, or, as it is called, the omnipotence of the British Parliament. The resolution is evidently a direct, and, in its present shape, an undisguised usurpation of power and violation of the constitution.

It would not be difficult to show that it is not less at war with the spirit . . . of that sacred document; and that the provision which requires the consent of two-thirds of the Senate, was intended as a guarantee of the states' rights, and to protect the weaker against the abuse of the treaty-making power, if vested in a bare majority.[40]

That opinion was held widely by Northern antislavery Democrats. It was held even more widely by Northern and Southern Whigs. One Northern Whig, Rufus Choate of Massachusetts, expressed it with particular vigor on February 18, 1845. He was the holder of Webster's seat in the Senate and was an influential figure on the Committee on Foreign Relations. More radical than Webster on the unconstitutionality of acquiring Texas, he believed that no power existed in any branch of the federal government to add a

[40] New York *Evening Post*, December 19, 1844.

foreign nation to the Union. Such a power would have to be created by an amendment of the Constitution. As for a legislative annexation of Texas, he forthrightly declared:

> Until it was found [that] the treaty of last session had no chance of passing the Senate, no human being, save one—no man, woman, or child in this Union, or out of this Union, wise or foolish, drunk or sober, was ever heard to breathe one syllable about this power in the constitution of admitting new States [Article IV, Section 3] being applicable to the admission of foreign nations, governments, or states. With one exception, till ten months ago, no such doctrine was ever heard of, or even entertained.[41] The exception to which he alluded was the letter of Mr. Macon to Mr. Jefferson, which Mr. Jefferson so promptly rebuked that the insinuation was never again repeated till it was found necessary ten months ago by some one—he would not say with Texas scrip in his pocket—but certainly with Texas annexation very much at heart, brought it forward into new life, and urged it as the only proper mode of exercising an express grant of the constitution.[42]

Whigs of the South were even more eloquent in denying the applicability of Article IV, Section 3, to the annexation of Texas. This was true especially of two Whigs in the Senate from the President's own state, both members of the Foreign Relations Committee: William C. Rives and William S. Archer. Rives, on February 15, 1845, delivered a speech on the issue unrivaled for lucidity and force.[43] He opened by putting the issue in its proper setting:

> Everything that might be deemed by us expedient is not, therefore, lawful and justifiable. What would it profit us should we gain Texas, if thereby we lost our regard for that sacred instrument which was the bond of our national union, the pledge and palladium of our liberty and happiness? The mode in which Texas was to be acquired, in its aspect upon the principles of our political compact, was, with him, a vital and a paramount consideration. . . .
>
> The legislative department in other governments arrogated to itself supreme power, the *jura summa imperii*, but, thank God! such legislative supremacy was unknown in ours. The legislative as well as other departments of government in our system, were

[41] Choate's thesis was overdrawn. The constitutionality of congressional annexation was assented to by Van Buren in his famous letter to W. H. Hammett of April 20, 1844, and certainly he had no Texan scrip in his pocket. His opposition to immediate annexation was based on grounds of expediency.

[42] *Congressional Globe*, 28 Cong., 2 sess., 303–5 (February 18, 1845).

drugged by Walker into believing that an annexed Texas would some day produce the end of slavery and the race issue. They had no affection for free Negroes, certainly not for those residing in the North. They hated Tyler and Calhoun, but had hope and respect for Polk. He was, it was true, a major slaveholder, but he was sound on the tariff and on strict construction of the Constitution. He could be trusted to choose wisely between the alternatives of proposing to Texas annexation by joint resolution or by a new negotiation. For all these reasons it was desirable to join their strength with that of the slave oligarchy.

The Joint Resolution, signed by Tyler on March 1, was a cluster of provisions to attract a coalition. Each provision had its special function. One function was to exclude issues that had proved divisive. This was done in Article II, Part 2, which relegated to Texas the problem of speculation in the debts and public lands that had troubled Benton. Another provision had the function of obfuscating those who had scruples about slavery. This was Article II, Part 3, which, in applying the Missouri Compromise line to Texas, stipulated expressly what Brown's original resolution merely implied—that slavery would not be permitted in any state carved out of its territory north of that line—while repeating Brown's declaration that in states carved out of territory south of that line, slavery might be permitted if the people there wanted it. Two articles effectively dodged the issue of the boundary. Article I provided that "territory properly included within, and rightfully belonging to the Republic of Texas" could be admitted into the Union as a state. But the issue was left dangling in Article II, Part 1, by the provision that the annexation would be subject to the "adjustment by this government [United States] of all questions of boundary that may arise with other governments." The difficult issue of constitutionality was also dodged. Article III left it to the chief executive (which one, incoming or outgoing, was not disclosed) to decide whether annexation should be by acceptance of the act of Congress or negotiation of a new treaty.

The effectiveness of Democratic tactics in closing ranks on the Joint Resolution is highlighted by the divisions opened in the ranks of the Whigs. In the vote in the Senate on the Joint Resolution, a crucial trio of Southern Whigs cast their votes with the Democrats,