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Message from the President of the United States, communicating, in compliance with a resolution of the Senate of April 23, 1872, information relative to the recent affray at the court-house in Going Snake, Indian Territory, and recommending the erection of a judicial district in the Indian Territory.

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M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of April 23, 1872, information relative to the recent affray at the court-house in Going Snake, Indian Territory.

MAY 17, 1872.—Read, ordered to lie on the table, and be printed.

To the Senate of the United States :

I herewith transmit to the Senate a communication of this date from the Acting Secretary of the Interior, and the papers therein described, containing information called for in Senate resolution of the 23d ultimo, which was answered in part on the 8th instant.

U. S. GRANT.

EXECUTIVE MANSION,
Washington, May 17, 1872.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 17, 1872.

SIR: Referring to letter of the 8th instant, submitting copies of certain papers in relation to the late outrage at Whitmore, Barren Fork, Cherokee Nation, to be communicated to the Senate in answer to the resolution of that body dated the 23d ultimo, I have the honor to forward herewith the following papers, received at this Department in letter of the Commissioner of Indian Affairs of the 16th instant, being copies of all "papers on file since A. D. 1865 relating to the acts of the United States marshals and deputy marshals in that portion of the western district of Arkansas now comprising the Indian country," called for in said resolution, viz:

1. Statement of P. P. Pitchlynn and others, of grievances of people by being arbitrarily arrested and imprisoned by deputy marshals, &c., May 14, 1866.

2. Copy of letter from the Attorney General of the United States, relative to arrest of Choctaw and Chickasaw Indians by deputy marshals, May 26, 1866.

3. Copy of demand made on Luther C. White, United States deputy marshal, for the release of R. H. Love, inclosing reply thereto, August 12, 1868.

4. Letter of George C. Harris, addressed to H. Colbert, relative to the release of Robert H. Love, August 27, 1868.

5. Petition presented by Messrs. Colbert and Carter for executive

clemency to one Robert H. Love, in the custody of deputy marshals, western district of Arkansas, March 31, 1869.

6. Statement of J. H. Huckleberry, United States attorney, western district of Arkansas, July 22, 1870, regarding the interference of Cherokee agents with deputy marshals in discharge of their duty.

7. Letter of Captain John H. Craig, United States Indian agent, in relation to the murder of a Cherokee by a Delaware Indian, and interfering of Deputy Marshal Van Buren, August 22, 1870.

8. Letter of Captain John N. Craig, United States Indian agent, inclosing request of deputy marshal for co-operation in securing arrest of Langford Moseley, charged with murder of a soldier of the garrison at Fort Gibson.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

The PRESIDENT.

WASHINGTON CITY, *May 14, 1866.*

SIR: From letters just received from respectable and reliable citizens of our nation, at home, we learn that our people are being greatly annoyed and harassed by the deputy marshals of Western Arkansas, going about our country with an armed force and arresting numbers of our citizens for offenses alleged to have been committed during the late unhappy civil war and since, the persons so arrested being taken to Fort Smith, where they frequently suffer a long and miserable imprisonment until court meets, and where they but too often fail to obtain an impartial trial, in consequence of a more or less lawless condition of affairs and the low estimate put upon the rights and life of the poor unprotected Indian. Such a course is much to be deprecated, as it is calculated to produce alienation and bitterness of feeling, especially as many of the arrests are without any just cause, the main inducement with the assistant marshals being to make fees thereby; and by the costs of unnecessary trials the United States are fleeced and subjected to much unnecessary expense.

Our people are looking forward with an anxious hope to our consummating a treaty which will contain an amnesty for past offenses, so that they will be relieved from the humiliating and aggravating annoyance complained of. As the treaty which we have recently signed contained such a provision, and may be expected to be soon ratified, we take the liberty of appealing to yourself and the honorable Secretary of the Interior, whom we regard as our friends, to interpose with the Attorney General of the United States, to have instructions issued to the district attorney and marshals for Western Arkansas, to suspend such proceedings while our treaty is pending in the Senate.

With great respect,

P. P. PITCHLYNN,
Principal Chief Choctaws.
ALFRED WADE.
WINCHESTER COLBERT,
Governor Chickasaws.
his
EDMAND + PICKINS.
mark.
ROB'T H. LOVE.

Hon. D. N. COOLEY,
Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 26, 1866.

SIR: For your information I inclose copy of a communication from the Attorney General of the United States of the 25th instant, in reference to the arrests of members of the Choctaw and Chickasaw Indian tribes by deputy marshals of the Western District of Arkansas.

Very respectfully, your obedient servant,

JAMES HARLAN,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

ATTORNEY GENERAL'S OFFICE,
Washington, D. C., May 25, 1866.

SIR: Your letter of 19th instant was received. You request me to issue instructions to the deputy marshals for the western district of Arkansas to discontinue the arrests of members of the Choctaw and Chickasaw Indian tribes, for offenses committed during the rebellion, until the action of the Senate is ascertained in respect to the pending treaty with those tribes. You did not state whether the arrests referred to were or are made under legal process. If they were, the marshals cannot be controlled by direction of this office. If they were not, they were simple trespasses.

I have, however, instructed the United States attorney for that district to discontinue prosecutions against said Indians until the Senate shall have acted on the treaty.

The legal action of the marshals can only be controlled through the district attorneys in the manner stated.

Very respectfully,

JAS. SPEED,
Attorney General.

Hon. JAMES HARLAN,
Secretary of the Interior.

EXECUTIVE OFFICE,
Tishemingo, Chickasaw Nation, August 12, 1868.

SIR: Inclosed you will find a demand made on Luther C. White, United States marshal for the western district of Arkansas, for the release of Robert H. Love, a Chickasaw. You will perceive from the heading that the document was intended to be addressed to the superintendent, or, more properly, to the commissioner of Indian Affairs, at Van Buren. At the time the demand was made for the surrender of R. H. Love to the officer of the Chickasaw Nation authorized to receive him, I was uncertain of the name of the commissioner who ordered Mr. Love to jail, to await his trial at the November term of the United States district court at Van Buren. This was owing entirely to a report received at this office that a change had been made in the commissioner's office; hence the cause of the blank in the address, which was intended to be filled by the officer conveying the requisition. By the advice of Mr. Love's attorneys, the document was addressed to the marshal of the United States.

Upon examination of the document you will find the refusal of the

marshal to surrender Mr. Love to the officer authorized to receive him, without assigning any argument whatever for keeping Mr. Love a prisoner in the county jail at Van Buren.

The right of jurisdiction in this case, as claimed by the Chickasaws, is fully argued in the requisition, and it is to be hoped that your immediate attention to this subject, by obtaining the decision of the Attorney General of the United States upon it, will settle the difference of opinion now existing between the United States authorities and the authorities of the Chickasaw Nation.

I have the honor to be, your obedient servant,

CYRUS HARRIS,
Governor Chickasaw Nation.

Hon. N. G. TAYLOR,
Commissioner of Indian Affairs.

EXECUTIVE OFFICE, TISHEMINGO CITY,
Chickasaw Nation, July 22, 1868.

Information has reached this office that Robert H. Love, a citizen of the Chickasaw Nation, has been arrested, examined, and sent to prison by your honor * * * for the murder of Philip Kirby, (freedman,) of the Chickasaw Nation. (There follows a legal argument as to right of jurisdiction.)

These, sir, are the constructions which the Chickasaws have put on the third and fourth articles of the "treaty of July 10, 1866," and agreeably to these constructions they claim jurisdiction (exclusive of all other jurisdiction) in the case of Robert H. Love.

Robert H. Love was arrested for the murder of Philip Kirby, by the Chickasaw authorities, and his case examined before the county court of the county where the crime is said to have been committed. But there was not sufficient evidence adduced before the examining court to justify a committal or remand to a higher court for further trial. But this discharge by the examining court does not by any means prevent the grand jury of the county from inquiring into the case at their next sitting, and, if sufficient evidence is found, to indict him before the circuit court.

Having given you my reasons at length for the steps which I have taken in the present case, and sincerely hoping that they are sufficiently clear to satisfy you that they are correct, without having to appeal to higher authority, and having sent an officer of the Chickasaw Nation (the bearer of this requisition) to take charge of the said Robert H. Love, if he be given up, but, if not given up agreeable to this requisition, hoping that the honorable United States marshal will state his reasons on the blank pages of this document, and forward the same by the bearer to this office:

Now, therefore, be it known that I, Cyrus Harris, governor of the Chickasaw Nation, do, in accordance with the seventh article of the treaty of June 22, 1855, and the third and fourth articles of the treaty of July 10, 1866, claim for the Chickasaw Nation the right of jurisdiction in the case of Robert H. Love, a citizen of the Chickasaw Nation, now in confinement in the jail at Van Buren, charged with the murder of Phillip Kirby, a freedman of the said Chickasaw Nation. And furthermore, I do here make a formal demand of the body of Robert H. Love from the United States marshal for the western district of Arkansas, at Van Buren, in

the State of Arkansas, and I have authorized J. H. Jones, a constable, to receive the same.

Given under my hand and seal of office at Tishemingo City, in the Chickasaw Nation, this 22d day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.]

CYRUS HARRIS,
Governor of the Chickasaw Nation.

Hon. LUTHER C. WHITE,
United States Marshal for the Western District of Arkansas.

Attest :

ALEX. RENNIE,
National Secretary.

OFFICE OF UNITED STATES MARSHAL FOR
WESTERN DISTRICT OF ARKANSAS,
Van Buren, July 29, 1868.

The undersigned, United States marshal for the western district of Arkansas, in answer to the within requisition made by his excellency Cyrus Harris, governor of the Chickasaw Nation, for the surrender of the body of Robert H. Love, says respectfully that said Robert H. Love was committed to the county jail of Crawford County, Arkansas, by order of James O. Churchill, esq., United States commissioner for said western district of Arkansas, on a charge of murder in the aforesaid Chickasaw Nation, and that said Love remains in charge of the jailer of said Crawford County for safe keeping, and for his appearance to answer before the honorable the district court of the United States for the western district of Arkansas, at Van Buren, Arkansas, on the 9th day of November next, A. D. 1868; and that the undersigned has no right to surrender the body of the said Robert H. Love on the requisition made by his excellency Governor Harris, and cannot, therefore, comply with the same. All of which is most respectfully submitted.

LUTHER C. WHITE,
United States Marshal for Western District of Arkansas.

WASHINGTON, *August 27, 1868.*

MY DEAR SIR: I inclose herewith a communication from Hon. C. Harris, governor of the Chickasaw Nation, dated at the executive department, August 11, 1868, addressed to Hon. Holmes Colbert, in which he informs him that Mr. Robert H. Love, a Chickasaw Indian, charged with the killing of a negro, member of the Chickasaw Nation, is held in custody by the United States marshal at Van Buren, Arkansas; and the said marshal has refused to deliver up to the officers of the said nation the body of the said Love.

We believe this to be in contravention of the seventh article of the treaty of 1855 between the United States and the Choctaws and Chickasaws, and also the third article of the treaty of 1866 between the same parties.

We respectfully ask that the inclosed letter may be considered in connection with the communication of Mr. Holmes Colbert, inclosing opinion of Hon. John H. B. Latrobe, relative to the construction of the said articles. We hope that proper and immediate steps may be taken to

have the body of the said Love delivered up by the United States marshal to the proper authorities of the Chickasaw Nation.

Very respectfully,

JNO. H. B. LATROBE,
Per F. C. LATROBE, *Attorney,*
Counsel for Chickasaw Nation.

Hon. CHARLES E. MIX,
Acting Commissioner of Indian Affairs.

EXECUTIVE DEPARTMENT,
August 11, 1868.

DEAR SIR: Mr. Robert H. Love is now in custody of the judicial authorities at Van Buren, charged with the killing of a negro who formerly belonged to Bob Wilson. Some time ago demanded, through Agent Challer, the release of Robert H. Love, claiming jurisdiction under the treaty of 1866, and since that I demanded R. H. Love from the United States marshal, and at the same time sent a constable from Pickens County to take charge of him. The marshal refused to surrender R. H. Love by saying "that he has no right to do so;" and returns the demand, which is forwarded to the Commissioner of Indian Affairs. You are requested to urge the document of Mr. Love. I claim that the United States has no jurisdiction over cases until after the expiration of the two years and ninety days mentioned in the treaty of 1866.

Very respectfully, yours, &c.,

C. HARRIS,
Governor.

Hon. HOLMES COLBERT.

WASHINGTON, D. C., *March 31, 1869.*

SIR: The undersigned, Chickasaw commissioners, have the honor to inclose herewith a petition numerously signed by the most influential and respectable citizens of Arkansas and the Indian country west thereof, praying Your Excellency to extend executive clemency to one Robert H. Love, a Chickasaw Indian, now in custody of the United States marshal for the western district of Arkansas, on the charge of killing a negro named Philip Kirby, *alias* Philip Wilson, on or about the 20th day of February, 1868. At the time of said killing, Mr. Love was United States deputy marshal, and was endeavoring to arrest the deceased on the charge of murder. The deceased, attempting to escape, was fired upon by Mr. Love, who, without intending to inflict a fatal wound, unluckily did so.

The petition appears, by its printed caption, to be addressed to the late Chief Executive, but it was never delivered. A communication was, however, addressed to him on the 16th September last, alleging want of jurisdiction in the marshal to hold said Love, as only the latter, but the negro *Kirby* or *Wilson*, was a Chickasaw Indian, from which fact it resulted that the courts of the Chickasaw Nation only, and not those of the United States, could take cognizance of the alleged offense.

The President kindly referred the question of jurisdiction to Mr. Evarts, the Attorney General, who decided that the case "must be left to judicial control," by which we understood him to mean that, how favor-

able soever his opinion might be, it would have no power to take the case out of the regular judicial channel.

We now beg leave to present the case upon such merits as the circumstances attending the alleged offense may disclose, which are briefly set forth in the inclosed petition. It is proper to add, however, that Mr. Love was a Union man, devotedly attached to the cause of the United States during the late rebellion.

Trusting that Your Excellency will find it in accordance with your views of executive clemency to extend to Mr. Love a full pardon, your petitioners will ever pray.

HOLMES COLBERT,
COLBERT CARTER,
Chickasaw Commissioners.

His Excellency U. S. GRANT,
President of the United States.

VAN BUREN, ARKANSAS, *December 1, 1868.*

The undersigned petitioners, citizens of the State of Arkansas and of the Indian country west thereof, respectfully represent that Robert H. Love, who is a Chickasaw Indian by birth and life-long residence, and who is now about fifty years of age, was on the 2d day of June, 1868, arrested by the United States marshal for the western district of said State of Arkansas, upon the charge of the murder of Philip Kirby, *alias* Philip Wilson, a negro man in the Chickasaw Nation, on or about the 20th day of February, 1868; that afterward, on or about the 27th day of June, he was brought by said marshal before James O. Churchill, esq., United States commissioner for said district, upon said charge, who, after an examination touching said charge, committed said Love to the custody of said marshal, to be by him safely kept to answer unto an indictment to be preferred against him in the premises in the district court of the United States for said western district of Arkansas, at the next term thereof; that afterward, on or about the 12th day of November, 1868, upon the hearing of a writ of *habeas corpus*, before that time issued, before Hon. Henry C. Caldwell, judge of said court, the question of jurisdiction alone being under consideration, said Love was remanded to the custody of said marshal, by the order of said judge, in whose custody he now is; that said Philip Kirby, *alias* Philip Wilson, was, at and before the commencement of the late civil war, held as a slave in said Chickasaw Nation, and was regarded there as a member of the tribe; that he was freed by the result of the war, and continued to reside in said nation as a member thereof until the day of his death; that, at the time the killing occurred, said Love was a deputy United States marshal and went to the place where said Philip Kirby, *alias* Wilson, was, to see him on private business, and for the purpose of arresting him upon the charge of having a short time before murdered one Leonard Willis, who was also a freedman, and a member, by long residence, of said nation, and whose body had been found in the woods a short time before, with one gun-shot wound and four stabs upon it, and identified and buried, it being the general opinion in the neighborhood that said Kirby, *alias* Wilson, was the perpetrator of said offense; that upon being told by said Love that he would arrest him for said last mentioned homicide, the said Kirby, *alias* Wilson, fled, and was attempting to escape, when said Love hastily drew a pistol and fired at him, the ball taking effect and

unfortunately inflicting a mortal wound, of which he afterwards died. The said Love was immediately tried before one of the Chickasaw tribunals, having as was supposed jurisdiction in the premises, and was acquitted of said supposed offense, the late Edmund Pickens, ex-chief of said Chickasaw Nation, being a witness, who was present at the shooting, but who has since died and the benefit of whose testimony the said Love cannot therefore now have.

The said Love has always maintained and sustained the character of a good, quiet, peaceable, and law-abiding citizen, of a kind and humane disposition, and we do not therefore believe him capable of committing the crime of murder, and do believe that his case is one which, under all the circumstances, entitles him to strong claims for executive clemency; and we do therefore most earnestly recommend him to the mercy of Your Excellency, and pray that Your Excellency do grant him a pardon in the premises. And, as in duty bound, will ever pray, &c.

R. M. JOHNSON.

JNO. W. CUNNINGHAM.

C. M. BARNES.

WM. B. SUTTON.

HENRY NATHAN.

THOS. LANIGAN.

and eighty others.

His Excellency ANDREW JOHNSON,
President of the United States.

— — —
OFFICE UNITED STATES DISTRICT ATTORNEY,
WESTERN DISTRICT OF ARKANSAS,
Van Buren, Arkansas, July 22, 1870.

SIR: I desire to call your attention to a matter of importance connected with the administration of justice in this the western district of Arkansas.

It frequently happens that United States deputy marshals of this district, in the service of writs, are compelled to penetrate the Indian country two and three hundred miles, and while at that distance from the United States commissioner's office at this place, on the service of such writs, frequently come across persons who have committed larcenies in the Indian country, but for whom they have no writs, no information having yet been made before the commissioner here against such persons. Now, if under such circumstances a deputy marshal should not arrest the thief or thieves until he returned here and procured from the commissioner a warrant for such arrest, the accused would invariably be enabled to escape, and the arrest would be next to impossible. In cases where there is no doubt of the commission of crimes cognizable by this court, deputy marshals under such circumstances have sometimes made the arrest without warrants, brought the prisoner here and the witnesses to substantiate the charge, and caused the information to be made and the warrant to be issued immediately on their arrival here. In a case of this kind, which occurred in the Cherokee Nation, about 125 miles from here, where a thief had stolen some cattle from an Indian, a deputy marshal made the arrest without a warrant, and the Indian agent for the Cherokee Nation turned the prisoner loose, or compelled the deputy to do so. He has done the same thing in other cases. Deputy marshals complain that this Indian agent has many times interfered with them in the discharge of their duties as such, and in the ser-

vice of writs in the Indian country, and that he has gone so far as to order deputy marshals out of the Cherokee Nation.

If such men are not compelled to cease their interference with the processes of this court in the Indian country and to permit the deputy marshals to attend to their duties without molestation, it is useless to send them there or to attempt to enforce the intercourse laws in the Indian country.

JAS. H. HUCKLEBERRY,

United States Attorney for Western District of Arkansas.

Hon. E. S. PARKER,

Commissioner of Indian Affairs.

UNITED STATES AGENCY FOR CHEROKEES,
Fort Gibson, Indian Territory, August 22, 1870.

SIR: I have the honor to report that, some six weeks since, two young men, one a Delaware and the other a Cherokee, both about eighteen years of age, quarreled about some trivial matter, and, as I am credibly informed, a few days afterward the Cherokee went in pursuit of the other, on learning he was on the way from his father's house to a neighboring mill, and attacked him with the purpose of killing him. He wounded the Delaware two or three times with pistol-shots, but in the struggle that took place was killed by the Delaware, with a pocket-knife. The Delaware gave himself up for trial, and the case came up before the Cherokee court last Monday, but, to secure attendance of witnesses, was postponed till next Thursday, August 25. Shortly after the killing, the father of the Cherokee boy, whose name is Cocoa, came to me and stated it was a very aggravated case of murder, but that he feared the murderer would not be punished, on account of alleged partiality of those to be summoned as jurymen in a neighborhood where the larger part of the population are Delawares, and asked for interference on my part. I informed him this was out of the question, and that the Cherokee court was the only tribunal before which the case could be brought. I afterwards learned that there is a strong feeling in favor of the acquittal of the Delaware, grounded on the belief that he acted in self-defense, under murderous assault.

After coming to me, Cocoa went to Van Buren, and obtained from United States Commissioner Churchill a warrant for the arrest of the Delaware, on the ground that the mother of the Cherokee, the wife of Cocoa, is a white woman. The serving of this warrant was attempted by a deputy marshal, but the Cherokee sheriff refused to deliver his prisoner into the hands of the officer of the United States court, as he held him himself as a sworn officer of the Cherokee court. The deputy marshal has gone back to make his return, and the Cherokee authorities apprehend the issue of further processes or orders by the United States authorities, and believing that the Cherokee court has exclusive jurisdiction of the case under provision of the treaty of 1866, have asked advice from me, and the case is respectfully submitted for your instructions in case the United States marshal shall attempt to take the prisoner from the hands of the officer of the Cherokee court or from the court itself during his trial.

Very respectfully, your obedient servant,

JNO. N. CRAIG,

Captain United States Army, Agent for Cherokees.

COMMISSIONER OF INDIAN AFFAIRS.

S. Ex. 70, pt. 2—2

UNITED STATES AGENCY FOR CHEROKEES,
Fort Gibson, Indian Territory, January 6, 1871.

SIR: I have the honor to forward a letter received from a deputy of the United States marshal for the western district of Arkansas, asking for co-operation in securing the arrest of Sanford Moseley, charged with murder of an enlisted man of the garrison of Fort Gibson, for whom a *pluries* writ has issued, and whose capture has hitherto been impossible because he has been "assisted and harbored" by citizens of the Cherokee Nation.

The facts in this case are well known to me, and in addition to what is set forth in the inclosed letter it should be stated the murder was done under circumstances that require vigorous measures on the part of the authorities. Although Moseley is harbored in the nation, there are many Cherokees who, on account of his lawless and desperate character, would willingly assist in his capture. It is only with their assistance it can be effected, since he has timely warning of the appearance of United States officials. But I can take no steps in the matter, as Principal Chief Downing has, as I have already reported, refused to secure and deliver to me certain offenders, among whom was included by name this man Moseley, who is a half-blood Cherokee. Nothing could be accomplished in this case by a party of the military. Instructions are respectfully asked for as to the course now to be taken and the answer to be returned to the deputy marshal.

Very respectfully, your obedient servant,

JNO. N. CRAIG,

Captain Tenth United States Infantry, United States Agent.

COMMISSIONER OF INDIAN AFFAIRS.

FORT GIBSON, INDIAN TERRITORY,
January 4, 1871.

DEAR SIR: We have the honor to submit to you a *pluries* writ for Sanford Moseley, charged with the murder of a soldier of the Fort Gibson garrison.

We would further state that the said Moseley is a desperate character of the first degree; that he is now in the Cherokee Nation, and that we have heretofore been unable to effect his arrest, for the reason that he is assisted and harbored by citizens of this nation.

We would therefore respectfully request you to take such steps in the premises as your judgment may dictate for arresting and delivering to us the aforementioned party.

Most respectfully,

C. R. STEPHENSON and
 R. FITZ HENRY,

*Deputy United States Marshals,
 Western District Arkansas.*

Captain JOHN N. CRAIG,
United States Army, Agent for Cherokees.