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Letter from the Acting Secretary of the Treasury, transmitting a communication from the Secretary of the Interior, submitting a request for authority to use unexpended balance of an appropriation to reimburse Rev. E. Ashley for services.

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REV. E. ASHLEY.

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LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

*A communication from the Secretary of the Interior, submitting a request for authority to use unexpended balance of an appropriation to reimburse Rev. E. Ashley for services.*

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JANUARY 21, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

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TREASURY DEPARTMENT, *January 20, 1896.*

SIR: I have the honor to transmit herewith for the consideration of Congress a communication from the Secretary of the Interior, of the 17th instant, submitting a clause of appropriation for inclusion in the Indian appropriation bill authorizing the payment of the sum of \$700 from any unexpended balance of the appropriation for the support of Sioux of different tribes, including Santee Sioux of Nebraska, for the fiscal year ending June 30, 1896, to reimburse the Rev. E. Ashley, of Cheyenne River Agency, S. Dak., for money expended by him in the employment of counsel to defend seven Indian policemen charged with murder.

Respectfully, yours,

S. WIKE,  
*Acting Secretary.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, January 15, 1896.*

SIR: I have the honor to transmit herewith copies of a communication dated the 23d ultimo, and inclosures thereto, from the United States Indian agent at the Cheyenne River Agency, S. Dak., relative to the request of the Rev. E. Ashley, a missionary residing at that agency, to be reimbursed in the sum of \$700, which appears to have been advanced by himself and friends to secure the services of competent counsel to defend seven Indian policemen of said agency, charged

with the crime of having murdered a "squaw man" named William Fielder. The inclosures of the agent's letter are (1) letter from Mr. Ashley; (2) letter from the Rev. William H. Hare, Bishop of South Dakota, and (3) letter from Granville G. Bennett, of Deadwood, S. Dak., of counsel for the accused.

The letters above referred to set forth some of the facts of the case at hand, but all of the circumstances of the alleged crime and the subsequent proceedings growing out of it will be found in a communication dated July 3, 1895, addressed by this office to the Department. (See copy herewith.)

In the office letter above mentioned, occasion was taken to say that the action of the United States attorney for the district of South Dakota in noting an appeal from the decision of Judge Edgerton, of the United States district court, who had released the prisoners on habeas corpus proceedings, was regarded as a species of persecution, and closed with the recommendation that the Attorney-General be requested to direct the United States attorney to dismiss his appeal. The effect of this recommendation was that the Attorney-General telegraphed the United States attorney, under date of July 3, 1895, instructing him to dismiss the appeal in the proceedings before Judge Edgerton, of which fact this office was duly advised by the Department in its reference of a communication from the Attorney-General, dated July 5, 1895.

On being notified by this office of the action of the Department of Justice, Agent Couchman, of the Cheyenne River Agency, reported in part as follows:

I would respectfully state that I feared the effect of a revival of these cases by the district attorney. The police themselves and all the Indians looked upon the matter as settled when Judge Edgerton released them from prison, and had his action been reversed on appeal to the United States circuit court, I do not think I am saying too much when I state that the consequences would have been serious indeed, even to the shedding of blood.

It is true, as the agent states, that he applied for counsel, but as the law prohibits such employment (sec. 189, R. S.) on behalf of the Government by any Executive Department other than the Department of Justice, his application could not be granted. About that time, also, I was approached by members of the Indian Rights Association, and was urged by them to provide legal assistance for the Indians. In view of the statute, however, I was forced to decline to do so, but assured them that if they could procure the necessary funds for the purpose of providing able counsel for the Indians I would do what might properly be within my power to secure them reimbursement from the Government at the proper time.

The facts submitted will, I feel sure, furnish abundant evidence that Mr. Ashley and his friends have, at the solicitation of the Indian Rights Association, done a very charitable and praiseworthy act in aiding the Indians, in the manner stated, to obtain the justice due them.

I have therefore the honor to recommend that Congress be requested to authorize the payment of \$700, under the direction of the Secretary of the Interior, to the party or parties entitled thereto, as reimbursement for moneys actually expended in securing able counsel for the Indians mentioned. I inclose a form for this purpose and ask that it be incorporated in the Indian appropriation bill for the fiscal year 1897.

Very respectfully,

THOS. P. SMITH,  
*Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,  
*January 17, 1896.*

Approved, and respectfully forwarded through the Honorable Secretary of the Treasury for the favorable consideration of Congress.

HOKE SMITH, *Secretary.*

The Secretary of the Interior is hereby authorized and directed to reimburse, upon the presentation of proper evidence, out of any unexpended balance of the appropriation for the support of Sioux of different tribes, including Santee Sioux of Nebraska, for the fiscal year ending June thirty, eighteen hundred and ninety-six, the Rev. E. Ashley, of Cheyenne River Agency, South Dakota, for money expended by him in the employment of counsel to defend seven Indian policemen of said agency, charged with the crime of murder: *Provided*, That not more than seven hundred dollars be used for this purpose.

DEPARTMENT OF THE INTERIOR,  
UNITED STATES INDIAN SERVICE,  
*Cheyenne River Agency, S. Dak., December 23, 1895.*

SIR: I would respectfully state that I have carefully read the accompanying letter of Rev. E. Ashley, of this place, dated December 23, 1895, and that of my own personal knowledge what he states in regard to employing counsel and soliciting money from Eastern friends of the Indians is according to the facts, and that, as stated, the counsel fees were as low as could be procured at the time and under the circumstances, and in my opinion Congress should refund the money to the friends of the Indians, especially as the Indians were policemen acting under the authority of the Government.

You will doubtless recall the fact that I applied to the Department for counsel at the time of the trial of these seven policemen, but the law prohibits the employment of counsel on such cases, and it was at this time that Mr. Ashley came to the rescue and appealed to his friends with the result stated, and simple justice requires that the friends who so advanced the money should be reimbursed by the United States.

Very respectfully,

PETER COUCHMAN,  
*United States Indian Agent.*

Hon. D. M. BROWNING,  
*Commissioner of Indian Affairs, Washington, D. C.*

CHEYENNE RIVER AGENCY, *December 20, 1895.*

SIR: A resident missionary at this place, I was conversant with all the facts relative to the killing of one William Fielder, by the United States Indian police of this agency, in March, 1893, while in the execution of their duty.

Shortly after the occurrence they were taken before the grand jury in Pierre, and no bill found against them.

In February, 1895, the seven men were arrested and taken to Deadwood, 875 miles by rail, and there indicted for murder, to the surprise of every friend of the Indian policeman. No one expected this, and the men themselves were put in a very trying position. They believed they had done their duty, but now found themselves prosecuted by the Government whose laws they had sworn to defend.

They were put on trial for their lives, and were without funds to procure proper defense. All efforts failed to obtain the help they needed. At this juncture, with other friends, I did the best I could to procure counsel at the lowest possible cost, under the circumstances. No one seemed willing to touch the case for less than \$1,000. Finally two lawyers offered to defend the men if someone would enter into an obligation to pay them \$700. Although without funds, I obligated myself to pay this amount, and at once appealed to friends to help me. They interested themselves in raising the money, and finally my friend, E. Y. Hartshorne, of Philadelphia, sent me a check for the amount, which was paid over to the attorneys, the receipt of which is herewith inclosed.

My action in the matter was to protect the policemen, who, I believed, were not guilty of murder, and also to aid the whole Indian service; for, had the men been convicted and hanged, the effects would have been disastrous, and perhaps caused an Indian uprising.

In justice to the friends who subscribed the money to enable me to carry out the contract, I trust that you may be able to make some provision for my reimbursement, since the charge is one which would have had to come out of a public fund, if one had been available for that purpose at that time.

Very respectfully,

E. ASHLEY.

Hon. D. M. BROWNING,

*Commissioner of Indian Affairs, Washington, D. C.*

1013 CLINTON STREET,  
*Philadelphia, December 28, 1895.*

SIR: An effort is on foot to secure from the Indian Department an appropriation to reimburse the Rev. Mr. Ashley and certain other friends of the Indian police at the Cheyenne River Agency for amounts expended by them in securing counsel for certain Indian policemen who were prosecuted by the United States district attorney in the United States court at Deadwood.

I am quite familiar with this case, and was instrumental to a degree in securing the release of the policemen on habeas corpus.

The Indian police are the skeleton on which is growing up the new life and the new organism which it is the policy of your Department to encourage in the Indian country in place of the old system, which was practically inconsistent with loyalty to the United States and with the laws and customs which prevail throughout our country. Because the police are such an important element in the new system they are peculiarly liable to hostility, especially from the half-breeds and squaw men, at least the lower class of them, who hate to see the supremacy which they enjoyed when absence of law and ignorance reigned supreme overthrown.

I knew William Fielder, the squaw man whom the Indian police killed in their own defense while he was assaulting them, for some twenty years before his death. He was always a bad-tempered man, frequently a hard drinker, and when under the influence of liquor very ugly and very dangerous.

When the case of the Indian police, after having been dismissed by the late United States district attorney, was revived after two years or thereabouts by his successor, I felt that it was of supreme importance to the very life of the policy, which you and your predecessors have encouraged, that these Indian policemen should be adequately defended, an opinion which was shared by United States Agent Couchman, Rev. Mr. Ashley (for many years a missionary among the Sioux), and by others. I am firmly of the opinion that nothing but the courage, promptness, and ability with which these friends of the Indians came to the support of the Indian police saved the whole system from a blow which would have been fatal to it, and the Government and all good citizens owe, in my opinion, a great debt to them, and I very earnestly hope that you may find it possible to take some measures which will result in the reimbursement of the \$700 which they raised and paid out in retaining counsel and perhaps in other legal expenses.

Very respectfully, yours,

WILLIAM H. HARE,  
*Missionary Bishop of South Dakota.*

The COMMISSIONER OF INDIAN AFFAIRS.

DEADWOOD, S. DAK., *July 13, 1895.*

DEAR SIR: We are in receipt of your favor of 8th instant, inclosing a draft for \$700 in payment of obligation for attorneys' fees in case of United States v. Straight Head et al., for which we are very much obliged. We inclose agreement to pay, executed by the defendants and guaranteed by you and others.

Very respectfully,

GRANVILLE G. BENNETT.

Rev. E. ASHLEY,

*Cheyenne River Agency, S. Dak.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, July 3, 1895.*

SIR: Under date of March 10, 1893, Frank Lillibridge, esq., the United States Indian agent for the Cheyenne River Agency, S. Dak., reported to this office the killing of a squaw man on the reservation on March 8, 1893, by Indian policemen of

that agency, while resisting arrest and attempting the lives of the said policemen with an ax. The circumstances of the killing were, as reported by the agent at the time, briefly as follows: On March 7, 1893, Mrs. Fielder was paid a sum of money amounting to \$200 on account of her "pony claim." In the afternoon of the same day that this money was paid to her she went with her husband to Forest City, and while there gave him \$105 of the sum with which to settle some debts. On returning to the reservation she hid the rest of the money. On the morning of the 8th Fielder demanded more money, and when she refused to give it to him he threatened to kill her, and followed up the threat with a most savage attack, knocking her down with a heavy stick of wood and beating her into insensibility. When she revived he was gone and she managed to reach the agency and make her complaint to the agent.

Later in the day the agent sent the captain of police, with six men, to arrest Fielder and bring him to the agency, instructing them not to hurt him. They endeavored to persuade him to submit quietly to arrest, but he had been drinking and refused to be reasoned with. He armed himself with an ax, and at the time the first shot was fired he was attempting to brain the captain of police, and would have succeeded but for the fact that the blow aimed at the policeman was interfered with by the ax coming into contact with the eaves of the house. After he had been shot he made assaults on the other policemen with his ax, and all had to shoot him in their own defense until he was killed.

On receipt of Agent Lillibridge's report the office, on March 24, 1893, transmitted a copy thereof to the Department, with the following remarks and recommendation, namely:

"While it would appear from the agent's report and the investigation instituted by him that the Indian police have been guilty of no crime in killing this man under the circumstances, still I deem it expedient that the matter should be inquired into by officers of the Department of Justice, so that the Indian police may be authoritatively exonerated if they are not guilty of wrong, or punished if a crime has been committed.

"I have the honor, therefore, to recommend that the matter be referred to the Attorney-General with the request that the United States district attorney for the district of South Dakota be instructed to take steps to have the matter properly investigated by the judicial authorities of the United States."

In pursuance of this the district attorney for South Dakota was properly instructed in the premises, and under date of April 10, 1893, he reported to the Department of Justice as follows:

"In reply I would state that prior to the receipt of your letter a judicial investigation in regard to the killing of William Fielder had already been had. As soon as I learned of the killing of Fielder I investigated the matter, and although I was satisfied that the Indian police had not been guilty of any crime in connection with Fielder's death, I thought that a judicial investigation ought to be had, and accordingly had all of the Indian police concerned arrested and brought before a commissioner. On the hearing before the commissioner the defendants were bound over to await the action of the grand jury, which convened at Pierre on March 28. The case was then presented to the grand jury, and after a thorough investigation a return of 'No bill found' was made. In my judgment no blame can be attached to the agent and none to the Indian police, except, perhaps, that they were too hasty in their action."

It will be seen from the foregoing that when the killing of Fielder occurred the office and the department took prompt steps to assist the Department of Justice in its investigation of the matter; that a fair investigation was had, and the Indian police were exonerated by the United States grand jury. Thus the matter stood, and it was supposed that after all that had been done the ends of justice required no further inquiry by the judicial officers.

The office was therefore surprised on receipt of a report of November 29, 1894, from Peter Couchman, the present agent, Cheyenne River Agency, conveying the information that the Indian policemen involved in the Fielder killing had again been arrested and held for the action of the grand jury at Deadwood, S. Dak. The reasons for the revival of the matter after so long a time, and especially since it had once been thoroughly investigated, do not seem to be very clear, but it appears that the principal instigator is one Louis Benoist, a half-breed of the reservation, who has heretofore been reported to this office as being an unscrupulous man and a great mischief-maker.

By a letter of January 8, 1895, I instructed Agent Couchman that when the grand jury came to consider the case to proceed to Deadwood and lay before that body all the facts connected with the killing, and in case an indictment be found against the Indians to appear at the trial and request the court to appoint some attorney of experience and competent to defend them.

Under date of February 12, 1895, Mr. Couchman telegraphed me that an indict-

ment for murder had been returned against the Indians, and that the witnesses which he had brought in favor of the Indians were not permitted to testify before the grand jury, and recommending that the Department of Justice be requested to direct the district attorney to nol-pros the case. All the facts in the case seemed so clearly to point to the innocence of the Indians that I felt that such a request of the Department of Justice would not be unreasonable under the circumstances. I accordingly submitted the matter to the Department in my report of February 15, 1895, with the recommendation that the Department of Justice be requested to direct the district attorney to enter a nolle prosequi in the suit. This the Attorney-General declined to do.

The trial of the charge was fixed for February 22, 1895, but it was postponed by direction of the Attorney-General until the district attorney could report on the case and receive instructions from the Department of Justice. There was no nolle prosequi entered and at the trial five of the Indians were acquitted, while the other two (there were seven in all involved) were convicted of "an assault with intent to do great bodily injury."

Through the efforts of the Indian Rights Association able counsel was provided for the defense of the Indians. On the conviction of the two for the crime (?) above mentioned, these attorneys sought to have them released through habeas corpus proceedings. In deciding the habeas corpus case Judge Edgerton said:

"It is the pride and glory of our laws that no man may be deprived of life or liberty without due process of law, and whenever any person who is deprived of his liberty presents to any United States court, or any judge thereof, his petition in due form, claiming that his imprisonment is unjust and illegal, that court or judge must promptly hear his case. We have no record of any judge of any Federal court having ever shrunk from the conscientious discharge of his high duty in this regard. This court shall follow in the footsteps of its predecessors. I have given the most careful and diligent attention to the argument of counsel and to the authorities cited, and it seems to me that the only question for me to consider is the bare, naked, bald question of law, Does the return of the Warden to the writ of habeas corpus show that petitioners are held prisoners by him with authority of law?"

"In order that the warrant of commitment under which he holds them be 'due authority' in a legal sense, two things most positively appear by the return. First, that the court which tried the defendants on the charge of murder had jurisdiction both of the person of the defendants and of the offense of which they were convicted. The defendants were tried on an indictment for murder. The circuit court which tried them had jurisdiction of that offense, the jury found the defendants not guilty of murder, but guilty of an 'assault with intent to do great bodily injury.' This is an acquittal of all offenses of a higher grade than mere assault, and this, according to all known authorities, is but a mere misdemeanor, and did not justify the trial court in passing the sentence of imprisonment in the penitentiary which it did, which sentence can only be passed upon a conviction of felony. Upon this ground it would be the duty of this court to discharge defendants, but I will go further. Had the trial court jurisdiction of the offense of which the defendants were found guilty at all? In other words, and to put it more plainly, is there any such offense as assault with the intent found by the jury known to the Federal courts? If so, it must appear plainly and unequivocally by statute—so plain that none may mistake it. The learned district attorney has cited me to no such law. None exists.

"Therefore my duty is plain, and I am without doubt as to the correctness of my decision, which is that petitioners be discharged, and it is so ordered."

The foregoing is a brief history of the killing of Fielder, the first investigation, and the recent trial of the Indians.

I now have the honor to invite the attention of the Department to a telegram which I have just received from Agent Couchman, as follows, namely:

"Notice served of appeal by the district attorney South Dakota from decision of United States District Judge Edgerton, who granted writ of habeas corpus in cases Captain Straight Head and Sacres the Hawk, and releases them from prison. The appeal comes up July 5 before United States court, Sioux Falls. This is in my opinion persecution on the part of the district attorney. Will not the Attorney-General instruct him to abide the decision of Judge Edgerton? The police and their friends have already expended over \$2,000 in defending their action in discharging their duty to Government. This appeal will perhaps cost as much more, and the Indians are without means to meet it. Should Judge Edgerton's decision be reversed and the police be again imprisoned, the consequences, I believe, will be very serious. I leave for Sioux Falls to-morrow."

As stated by the agent, this last step on the part of the United States attorney seems to be nothing more than a persecution of these Indians. They have already been impoverished by the great expense to which they have been put in defending themselves against the charge of murder which has not been sustained. All the cir-

circumstances in connection with the late trial give indication more of a malicious intent to persecute these Indians than to subserve the ends of justice. The indictment was returned on February 12, 1895, and the trial first set for February 22, 1895, yet at the same time it was known that the only assistance the Indians could receive must be through the intervention of this department. The notice of appeal from Judge Edgerton's decision releasing the Indians was served July 2, 1895, and the trial fixed for July 5, 1895. It seems all along to have been the intention to rush this matter through and give the Indians as little opportunity as possible to prepare for the trial of the many questions that the courts have had to pass on in their case.

On March 30, 1895, eleven of the jurors before whom the seven Indians were tried signed a petition to the President, praying for the immediate and unconditional pardon of the two who had been found guilty of the offense of "assault with intent to do great bodily injury," an offense which Judge Edgerton declares is unknown to the law.

Judge Elmer S. Dundy, who presided at the trial, in a letter of April 1, 1895, to the President, joins in the petition for a full and complete pardon for the two convicted Indians. He concludes his letter as follows, namely:

"All of the parties charged stood on an equality in the shooting and consequent killing. The two convicted, as well as the others, bear an excellent reputation as policemen. So far as can be done, it seems to me that the Indian police system, originated and sustained by the Government, ought to be upheld. The ends of justice have been fully subserved in this instance, as I think, hence my joining in the request for a pardon."

As Judge Dundy has stated that he believes the ends of justice "have been fully subserved in this instance," as the Indians have been impoverished by the long and tedious defense they have been forced to make, I do not see how any good can result from a further persecution of them, even if the district attorney should fail in reversing Judge Edgerton's decision in the habeas corpus case, the possibility of which is, in my belief, not remote. I have the honor, therefore, to recommend that the Attorney-General be requested to direct the United States attorney for South Dakota to dismiss his appeal.

As Agent Couchman reports that the appeal is to be tried on July 5, 1895, and as to-morrow will be a public holiday, I have the honor to recommend that this matter be called to the attention of the Attorney-General this afternoon.

Very respectfully, your obedient servant,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

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DEPARTMENT OF JUSTICE,  
*Washington, D. C., July 5, 1895.*

SIR: Your letter of the 3d instant, inclosing a communication to you from the Commissioner of Indian Affairs, requesting that the United States attorney for the district of South Dakota be instructed to dismiss the appeal taken by him from the decision of Judge Edgerton in the case of the United States against Straight Head and Scares the Hawk, Cheyenne River Indian policemen, was received on Wednesday afternoon, the 3d instant, and I immediately instructed the United States attorney by wire as requested.

Respectfully,

HOLMES CONRAD,  
*Acting Attorney-General.*

The SECRETARY OF THE INTERIOR.

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UNITED STATES INDIAN SERVICE,  
*Cheyenne River Agency, S. Dak., July 8, 1895.*

SIR: I would respectfully acknowledge the receipt on the 5th instant, in Sioux Falls, S. Dak., of office telegram of same date, informing me that the Department of Justice directed the district attorney on 3d instant to dismiss Straight Head habeas corpus suit.

I left the agency on the 2d instant, as soon as I was informed of the intended appeal of the district attorney from Judge Edgerton's decision, and proceeded to Sioux Falls, where I remained until I received the telegram above referred to, when I immediately returned to agency, reaching the same yesterday. As soon as notice was served of the appeal, I decided to wire you and proceed to Sioux Falls, and there do what might be in my power in the interest of the police.

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I would respectfully state that I feared the effect of a revival of these cases by the district attorney. The police themselves and all the Indians looked upon the matter as settled when Judge Edgerton released them from prison, and had his action been reversed on appeal to the United States circuit court I do not think I am saying too much when I state that the consequences would have been serious indeed, even to the shedding of blood.

Before the release of Straight Head and Scares the Hawk from the Sioux Falls prison my Indians were becoming very uneasy. The police and judges of the court of Indian offenses were very desirous of resigning their offices, and information reached me that some of the Indians were so wrought up over their unjust confinement that they meditated serious mischief. Knowing this state of feeling to exist, I desired to settle the appeal proceedings promptly and before the Indians learned that the matter had been called up again.

I appreciate the prompt action of the Department, and on behalf of the Indians interested desire to thank you for the warm interest you have ever taken in the matter from beginning to end.

Very respectfully,

PETER COUCHMAN,  
*United States Indian Agent.*

HON. D. M. BROWNING,  
*Commissioner of Indian Affairs, Washington, D. C.*

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