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Letter from the Attorney-General, transmitting, in answer to Senate resolution of May 8, 1884, correspondence relating to the shooting of "Black Wolf" in the Territory of Montana.

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LETTER

FROM

THE ATTORNEY-GENERAL,

TRANSMITTING,

In answer to Senate resolution of May 8, 1884, correspondence relating to the shooting of "Black Wolf" in the Territory of Montana.

MAY 27, 1884.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, May 24, 1884.

SIR: In accordance with Senate resolution of May 8, 1884, I have herewith the honor to send to you three letters:

1. Dated Washington, May 9, 1884, and addressed by me to W. H. DeWitt, esq., United States attorney for Montana;

2. Dated Butte, Mont., May 15, 1884, from W. H. DeWitt, esq., United States attorney;

3. Dated Butte, Mont., May 17, 1884, from W. H. DeWitt, esq., United States attorney;

all touching the shooting of "Black Wolf," an Indian, by one Taliafero.

This is the only information this Department has upon the subject inquired of by the resolution.

I have the honor to be, sir, your obedient servant,

BENJAMIN HARRIS BREWSTER,
Attorney-General.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF JUSTICE,
Washington, May 9, 1884.

SIR: I transmit you herewith a copy of a resolution of the Senate of May 8, 1884, asking for information as to the shooting of "Black Wolf," an Indian, by Hal Palmarino, on or about the 12th of March last, in the Territory of Montana.

You are hereby directed to make an examination of the matter mentioned in the resolution and report upon it to this Department at the earliest practicable date.

Respectfully,

BREWSTER,
Attorney-General.

WILLIAM H. DEWITT, Esq.,
United States Attorney, Helena, Mont.

BUTTE, MONT., May 15, 1884.

In the case of the Territory of Montana against Black Wolf, Howling Wolf, Wolf Teeth, Black Deer, Kinky Hair, Wolf Black, White Bear, Standing-to-one-Side, A Handle and Crawls-out-of-the-Lodge, ten Cheyenne Indians indicted at the April term, 1884, in the first judicial district court in and for the county of Custer, Montana Territory, for the crime of arson, and also of grand larceny, for burning and pillaging the Zook and Alderson ranch, in said county, on March 18, 1884.

SIR: The above-entitled case was disposed of at the April term of said court, I appearing, under your order, for the defendants. In making report upon the case, it would be proper to state, by way of preface, the popular account of the affair, as put forth by the cow-boys. Their statement appeared to be that on March 18, Black Wolf came to the Zook and Alderson ranch, at which were present the cow-boys Perfecto, Rynhardt, Hal Taliafero, and Brown Taliafero. Perfecto and Brown Taliafero almost immediately left. Black Wolf took dinner. After dinner he was sitting on some fence posts before the house, and Hal Taliafero made a bet with Rynhardt that he could shoot through the Indian's hat, and not hurt him. He attempted it, and gave the Indian a wound on the top of the head. Black Wolf went away, and about sundown, when the cow-boys were away from the ranch for the purpose of getting assistance, the Cheyennes above named came and burned the house and carried off the contents. The cow-boys came up as the sacking was going on, but the Indians stood them off, and would not allow them to come near the place. Such was the statement put forth, and supposed to be the facts in the case.

The testimony of Black Wolf, on the witness-stand, was that he went down to the ranch, ate with the cow-boys, Taliafero and Rynhardt, and sat down in the room to smoke, and, while smoking, Taliafero commenced to dance around him, and, when back of him, shot him in the back of the head; that he lay stunned for some time, then got up and found that he was partially paralyzed in the legs, hobbled away, and while going was shot at again from the ranch; he crawled and hobbled to his camp, four miles distant, and the medicine man and his squaw took care of him in the lodge all that night—the night and evening when the ranch was burned. He was corroborated by the medicine man, Wolf Teeth, and the squaw. Rynhardt was the only one who undertook to contradict him as to the circumstances of the shooting, and he told the popular story above referred to, except that he did not mention the bet. He broke down so completely on cross-examination that it was apparent to every hearer that his testimony was false, and the jury, evidently from their verdict, believed Black Wolf's account.

The ten above named were indicted for arson, and also grand larceny, Andrew F. Burleigh representing the Territory. I demanded separate trials for each defendant upon each indictment. The trial of Black Wolf for arson commenced May 1, and was concluded May 2, with a verdict of "not guilty." It was developed on the trial, to the satisfaction of the jury, that, whoever did burn the ranch, Black Wolf was not present. The effort was to implicate him as principal, as being the chief of the band, and ordering or counseling the burning. However well this may have been proved, the verdict was as above.

It came out upon the trial that some Indians did burn the ranch; that these Cheyennes were the only Indians in the immediate neighborhood at the time; that they had strong provocation for committing the act; and there were admissions of Black Wolf that the band did it; and the plunder from the ranch was almost all found in possession of the band when arrested. I gave the matter as careful attention as I could, and early in the investigation became satisfied that some of the Cheyennes committed the depredation. Before any of the trials Howling Wolf, White Bear, Standing-to-one-Side, and A-Handle told me and the agent, Capt. E. P. Ewers, that they alone burned the ranch, and did it as a retaliation for the assault upon Black Wolf. They said they were ready to plead guilty lest the others might suffer. As the evidence stood, I was sure that a jury would make mistakes; that they would either convict them all, or convict part and acquit part, and probably, almost certainly, get the wrong ones and convict some innocent ones and let go some guilty ones. Under the evidence a conviction of some of the defendants was absolutely certain, and, in my judgment, it was better to make certain that the innocent did not suffer; so I agreed with the prosecuting attorney to allow the four above named to plead "guilty" to the indictment for arson, upon condition that a *nolle* should be entered as against the remainder on the arson indictment, and as against all on the grand larceny indictment. This was done, and Black Wolf, Wolf Teeth, Black Deer, Kinky Hair, Wolf Black, and Crawls-out-of-the-Lodge were finally discharged, and the four who pleaded "guilty" were sentenced to five years, the lowest sentence under the law. This course was taken after very mature deliberation and investigation, and upon consultation with Captain Ewers, the Cheyenne agent. He gave it to me as his opinion that it would be an equally bad result if the guilty escaped as it would be if the innocent were punished; that the former would give the Indians impunity, and counteract

what he had tried to teach them as to the proper way for "good Indians" to settle difficulties and offenses against them; and that the latter would give them a feeling of outrage, and lead to further troubles. He felt certain, as I did, that the guilty were punished and the innocent discharged, and that the result was precisely what was best.

Black Wolf, I was informed by the sheriff of Custer County, was the first Indian who had ever been acquitted on a criminal charge in the Yellowstone country.

I have given rather a full report of this case, sir, believing that the Department would be interested in knowing the exact history of it. In conclusion I have to say that I most earnestly recommend that steps be taken to have the four convicted Indians pardoned at a very early day and furnished transportation to their country. By a very short term of imprisonment every good end could be attained that a long one would serve. It would teach the Indians that they must rely upon courts for vindication and give up the *lex talionis* in the future. And that, I believe, is the only good to be attained by their imprisonment. And it is to be considered that they acted under their own code of law in burning the ranch, and were doing only what they believed right under their own law and morality. And their terrible provocation is to be considered. There is no doubt of their offense against the laws of Montana, and there is equally no doubt that no Indian on earth would have stayed his hand when these men raised theirs. Furthermore the crime of Taliafero, the one who shot Black Wolf, was as foul and cowardly an outrage as ever went unpunished. A friendly Indian, with a certificate in his pocket from Fort Keogh that he was friendly, which he showed to Taliafero while smoking with those whom he thought his friends, and whose salt he had just eaten, in their own house, was shot like a dog in the back. He is crippled probably for life and his would-be-assassin is free, and, as far as I could learn, no one knows where to look for him. His prosecution of course does not fall within my duties nor his arrest within those of the marshal of this Territory. The offense was committed in the county of Custer and the officials of that county are the ones to take hold of the matter. It would be with great pleasure that I would learn of his arrest and conviction.

This case has consumed about three weeks of my time. I have been interested to obtain the best results, and trust that you, sir, will be amply satisfied with the outcome.

My accounts I will prove at the next term of the United States court for the first district and forward them to you.

Respectfully,

WILLIAM H. DEWITT,
United States Attorney, Montana.

HON. BENJAMIN H. BREWSTER,
Attorney-General, Washington, D. C.

BUTTE, MONT., May 17, 1884.

SIR: Your letter May 9, inclosing Senate resolution May 8, was received to-day.

By the resolution itself, the Senate seems to be informed that the shooting of Black Wolf was in the *Territory of Montana*. For this reason, I did not know that the United States had any jurisdiction over the prosecution of Taliafero, the assailant of Black Wolf, and therefore I have done nothing.

The grand jury for the district meets May 26. In the mean time the district court of the county of Custer has jurisdiction of the case. A term has just passed, and no trial was had of Taliafero. I understood that he had disappeared. Andrew Burleigh, esq., is the prosecuting attorney of the district and resides at Miles City, Mont. It may be that he obtained an indictment at the last term and kept it secret in order to have a better chance to make the arrest of Taliafero. I have to-day forwarded to him copies of your letter and the Senate resolution and suggested to him that perhaps he could give some information upon the subject.

I wrote to you quite fully the 15th instant in the whole matter of the Indian trial. I can only say again that the assault upon Black Wolf was as horrid a crime as ever went unwhipt of justice. I do not know that the authorities of Custer County are culpable in any way, but it is a grave misfortune that Taliafero was not captured. If there is any way in which the Department of Justice of the United States can aid in bringing him to punishment they will find me an earnest ally in the undertaking.

Very respectfully,

WILLIAM H. DEWITT,
United States Attorney, Montana.

HON. BENJAMIN HARRIS BREWSTER,
Attorney-General.