

Osage Civ. Bill

July 15, 1939

Mr. F. M. Goodwin
Mills Building
Washington, D. C.

Dear Mr. Goodwin:

I am enclosing herewith my ideas of a report on the Osage Bill. You will notice that I have put the outstanding features in the first three or four pages, and have added the other material prepared by Mr. Capler. I wish you would study this thoroughly. You need not give much attention to the stuff I have prepared, but I think you will agree that it is in the form we should have it. In other words, Congressmen read the first page or two of a report--only.

I think the report should contain the complete opinion of the Court of Claims, the finding of facts of the Court of Claims, and the report of the Interior Department as to how the Civilization Fund was expended. After you have gone through this material and gotten the report in the shape you think it ought to be, won't you call me and let's go over it again. I think there is no need to have the opinion or the findings of the Court of Claims recopied by your stenographer, nor the report of the Secretary of the Interior on Expenditures, because they can be attached for printing by the Government Printing Office. However, I do want to have them all printed in one report, so as to make this thing a complete, authoritative document.

Somewhere there is material, called to my attention by Mr. Capler, on the fact that in the '80's, the Interior Department did not know what to do with the money.

Cordially and sincerely,

WED:JS

Wesley E. Disney.

1. TRICK TRADE WITH THE OSAGE INDIANS

In 1865 the Indian Department made a sharp trade (for decency's sake called a treaty) with the Osage Indians, in which the Osages ceded to the Government 960,000 acres of their land. The Government advanced \$300,000 to the Indians, promptly sold the land for \$1,100,000 and, after reimbursing itself for the \$300,000, kept the balance of \$776,931.58. The Government spent this item on other tribes of Indians and out of that large sum, the Osages got \$189.55. \$776,742.03 went to other Indians. The trick treaty provided that the balance of the money (\$776,931.58) should go into a "Civilization Fund" for the other Indians. It did. Some even went to Indians with whom the Osages were at war. The money went to Cheyennes, Pueblos, Chippewas, Papagos, Poteaus, Choctaws, Poncas, Omahas, Wichitas, Sioux, Cherokees, Kaws, Shoshones, Arickarees, Spokanes, Penobscotts, Sac and Foxes, Modocks, Ottawas, Arapahos, Kickapoos, Walla Wallas, Quapaws, Black Feet, Nez Perces, and Chickasaws, among others. The famous Carlisle Indian School was established and run the first three years out of this money so purloined from the Osages, and not at Government expense.

2. INDIANS COULD NEITHER READ NOR WRITE

The Tribal Council were fullbloods who could neither write nor speak nor understand the English language, and a typewritten sixteen-page "treaty", prepared in advance, was put over them through interpreters in less than three hours' time by so-called Government Agents.

3. UNITED STATES IS GUARDIAN OF INDIANS

The United States is guardian of the American Indian in morals as well as in law. In 30,000 Land Suits, *Heekman v. U. S.*, 224 U. S. 413, that doctrine is sustained.

Justice Van Devanter (Solicitor of the Interior Department prior to his elevation to the bench) in *U. S. v. Creek*, 295 U. S. 103, said:

"The tribe was a dependent Indian community under the guardianship of the United States, and therefore its property and affairs were subject to the control of that government. But this power to control and manage was not absolute. While extending to all appropriate measures for protecting and advancing the tribe, it was subject to the limitations inhering in such guardianship and to pertinent constitutional restrictions. It did not enable the United States to give the tribal lands to other, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation for them; for that would not be an exercise of guardianship but an act of confiscation.

"True, the tribe, if free and permitted to proceed in its own behalf, might successfully have assailed the disposals; but it was not in a position where it could be expected to assume that burden. It was in a state of tutelage and entitled to rely on the United States, its guardian, for needed protection of its interests. Plainly the United States would have been entitled to a cancellation of its disposals had it instituted suit for that purpose. But, although having all the facts, it made no effort in that direction. On the contrary, it permitted the disposals to stand."

4. FIRST INSTANCE OF EXPROPRIATION IN AMERICAN HISTORY

The Court of Claims said:

"There is no other instance in connection with treaties by the United States with Indians where the United States has applied or undertaken to apply the proceeds of sales of land of one Tribe to the benefit of another."

5. THE INDIANS PROTESTED IN DUE TIME

As soon as the Indians found out that they had been cheated, they immediately protested the treaty through their agent, Cyrus Beede, and the agent reported their dissatisfaction in his report in the year 1876, as follows:

"Upon careful inquiry * * * leads me to believe they were overreached, and did not understandingly make this * * contribution."

6. LEGISLATION HAS PASSED BOTH HOUSES

The House in 1932 passed this legislation. It failed in the Senate. Three times since that date the Senate has passed this legislation and it has failed in the House.

7. COURT OF CLAIMS

The Court of Claims reviewed the whole history of the subject matter of this bill, and held:

"It is not the province of this Court to re-form treaties or to make new treaties for the parties. That is the function and province of the political department of the Government."

In other words, the Court held that the reformation of a treaty is a legislative and not a judicial function. The Court made extensive findings of fact, every word of which is in favor of the Indians. It proceeded under a jurisdictional act passed by Congress February 6, 1921 (41 Stat. Pt. 1, 1097).

8. ALLEGED OFFSETS, CLAIMED BY GUARDIAN AGAINST WARDS

Notwithstanding the bad faith on the part of the United States in making the treaty, and in spite of the fact that the Government owes the

duty of guardian and ward to these Indians, its Departments still go through the motion of claiming offsets against the ward. The letter of the General Accounting Office dated April , 1937, glibly states that the Government has offsets of \$417,824.46, without any attempt to break the item down and show its propriety, as a charge by the guardian against the ward. This pretended offset may be as promptly disposed of, in that \$222,022.52 thereof is barred under the Act of 1935, which offsets predated the treaty in question; that \$254,799.35 is barred because it is for individual and not tribal expenditures; that \$72,654.55 was admitted by counsel for the Government in the Court of Claims to be not susceptible of proof, and, in the language of the Court, "would, in any event, be rejected".

9. INDIANS WAIVE ONE AND A HALF MILLIONS INTEREST

In the hope that they may get this legislation through, the Indians have agreed to waive interest which, at 5%, would amount to \$ The Jurisdictional Act of 1921 provided for interest at 5%.

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1- TRICK TRADE WITH THE OSAGE INDIANS

On September 29, 1865, the Indian Department made a sharp trade (for decency's sake called a treaty) with the Osage Indians, in which the Osages ceded to the Government 817,000 (?) acres of their land. The Government advanced \$300,000 to the Indians, sold the land for \$1100,000 and, after reimbursing itself for the \$300,000 kept the balance of \$776,931.58 . The Government spent this item on other Indians and out of that large sum, the Osages got \$189.55 (?). \$776,000 went to other Indians. The trick treaty provided that the balance of the money (\$776,000) should go into a Civilization Fund for the other Indians. It did. Some went to Indians with whom the Osages were at war. The money went to Cheyennes, Pueblos, Chippewas, Papagos, Poteaus, Choctaws, Poncas, Omahas, Wichitas, Sioux, Cherokees, Kaws, Shoshones, Arickarees, Spokanes, Penobscotts, Sac and Foxes, Modocks, Ottawas, Arapahos, Kickapoos, Walla Wallas, Quapaws, Black Feet, Nez Perces, and Chickasaws, among others.

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(Quote pps. 1 and 2)

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(Insert)

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It is interesting that the jurisdictional act of 1921 provided for an allowance of interest.