SECRET "INSTRUCTIONS AND SUGGESTIONS" TO THE CHEROKEE COMMISSION 1889-1890

By Berlin B. Chapman*

The novice in historical research is sometimes astounded at the veil of secrecy that hangs over "restricted records" in depositories in the national capital. Later he learns that secrecy may be essential, but that it often fluctuates with the indolence and idiosyncrasies of a custodian, or his incompetence in locating the material desired. This situation does not minimize the fact that the Government Printing Office, the largest printing plant in the world, is a prime dispenser of information.

The Interior Department has been one of the most liberal departments in disclosing the nature of its business to people in the American democracy. Many of its papers stamped "Confidential" are left unguarded where searchers can read and learn how freely a rubber stamp can be used. There have been times, however, when the Interior Department kept papers in such secrecy that the Senate was obliged to mingle patience with its dignity.

Such was the case when the Cherokee Commission was sent to the Indian Territory in 1889 to negotiate with Indian tribes for the dissolution of their reservations, and the sale of the surplus lands to the government. In the federal management and disposition of the lands of Oklahoma Territory there was no commission more important than the Cherokee Commission.1 It negotiated eleven agreements with Indian tribes for the dissolution of reservations embracing more than 15,000,000 acres. David Howell Jerome, Warren G. Sayre, and Alfred M. Wilson were the members of the commission when the agreements were made. The agreements were ratified by Congress. The commission was dissolved November 7, 1893.

On May 9, 1889, John H. Oberly, Commissioner of Indian Affairs, transmitted to the Secretary of the Interior for the guidance of the commission a compilation made in the Indian Office concerning the legal status of the lands in Indian Territory, to which was

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appended certain “Instructions and Suggestions.” When the commission was organized on June 29, 1889, the members were General Lucius Fairchild, chairman, General John F. Hartranft, and Wilson. John W. Noble, Secretary of the Interior, approved the document Oberly transmitted to him, and on July 6 sent printed copies direct to members of the commission. The document not only gives an excellent history of each tract of land (the Panhandle excepted) that comprised Oklahoma Territory, but shows by what title, right, or interest the various Indian reservations were held, in the estimation of the Interior Department.

In response to a Senate resolution, Noble said on December 21 that he deemed it incompatible with the public interest to make the document public. Pending negotiations of the commission, the Interior Department realized the importance of holding in secrecy the entire document, especially the “Instructions and Suggestions.” The commission was instructed to offer the Cherokees $1.25 an acre for their lands lying west of the Arkansas River, known as the Cherokee Outlet. If the Cherokees rejected the offer the commission was empowered to increase it. According to the “Instructions and Suggestions” if the first offer was rejected, the commission should negotiate “upon such terms as may be just and equitable.”

During November and December 1889, the commission made an unsuccessful effort to purchase the lands from the Cherokees. If the government were to sell the surplus lands cheaply to white settlers, or give them away, it should pay as little as possible for the lands. The Cherokees were shrewd traders, and the lands were valuable. Rentals paid by the Cherokee Strip Live Stock Association for the lands amounted to $200,000 a year, and a cattle syndicate valued them at $18,000,000 or $3.00 an acre. The Cherokees were more interested in the “Instructions and Suggestions” than in the price of $1.25 an acre. The commission would not increase the price or reveal their instructions. As weeks went by, Fairchild’s patience wore thin and on one occasion he confessed that he was

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4 NA, Int. Dept., Record of Letters Sent, No. 60, p. 348.


"as mad as a March hare for 24 hours." Yet the "d---d whelps, rascals and boodles" who controlled affairs in the Cherokee Nation exhibited no enthusiasm to sell the lands for $1.25 an acre.

Fairchild resigned from the commission on January 1, 1890. On March 10, before any of the eleven agreements were concluded, the Senate adopted a resolution stating that "the Secretary of the Interior be directed" to send it the compilation prepared in the Indian Office under date of May 9, 1889. Two days later Noble transmitted the compilation, about five-sixths of the document, to the Senate and it was published in the *Senate Executive Documents*. If Congress ever secured the "Instructions and Suggestions," it apparently never published them. It is the purpose of this article to give them in full.

A photostatic copy of the "Instructions and Suggestions" was recently secured at the National Archives and placed in the Oklahoma Historical Society.

After the commission made agreements with the Iowas, and with the Sacs and Foxes, Acting Commissioner Robert V. Belt supplemented the "Instructions and Suggestions" by a letter of June 20, 1890, approved by Noble. The letter appears never to have been printed. Perhaps the portion most vital to Oklahoma Territory is found in the closing paragraphs entitled, "Remarks":

I take this opportunity of suggesting that the Commission be advised not to insist, in future agreements, that an allottee shall take his allotment of land in a square form.

In all instructions to allotting agents under the *Act of February 8, 1887* (24 Stats., 388) the following paragraph has been inserted:

"The tracts given to each allottee should be contiguous if possible, but an allottee may be allowed to select a detached tract, in order to give him a proper proportion of farming and timber land, or for the purpose of properly distributing lands fronting on streams and water courses."

The reservation being the property of the Indians, or reserved for their permanent use and occupation, it seems proper that they should have every advantage which such reservations afford. By requiring them to select land in a square form many may be unable to obtain a due proportion of wood or timber, and, where the improvements are near together, some may be unable to take their lands in this form without encroaching on the improvements of others or losing their own. I do not think they should be required to do this.

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6 For the latter part of 1889 and the early part of 1890 the *Fairchild Papers*, in the Library of the Wisconsin Historical Society, are a valuable source of information. From the field of operation Fairchild wrote a number of letters to his wife, Frances, whom the family called "Frank." The letters turn a flood of light on the human side of the negotiations for the sale of the lands of the Outlet, and on the development of the policy of depriving the Cherokees of the use of the lands. The letters in manuscript are filed in chronological order.

7 S. *Reports*, 52 Cong. 1 sess., iii(2913), no. 552, pp. 9-10; *Cong. Record*, March 10, 1890, p. 2069.

8 S. *Ex. Docs.*, 51 Cong. 1 sess., ix(2686), no. 78.

9 A photostatic copy of the letter of June 20, 1890, is in the Oklahoma Historical Society. See also, OIA, *Land Letter Book*, vol. 200, pp. 342-347.
The closing pages of the document of May 9, 1889, are as follows:

**INSTRUCTIONS AND SUGGESTIONS.**

It is believed that with the information given in the foregoing statement, which contains a history of each and every tract of land within the limits of the Indian Territory, except that portion thereof lying within the Quapaw Agency, the Commission will be enabled to intelligently enter upon the discharge of its responsible duties; but it is deemed advisable to go further and make certain suggestions in relation to the proposed negotiations.

**THE INDIANS TO BE NEGOTIATED WITH.**

Authority to negotiate with the following designated Indians is contained in the provisions of law referred to in the first part of this paper, namely:

The Cherokees. Under Article 16, treaty of 1866—14 Stat. 804, for their interest in the lands lying west of the Arkansas River—6,574,486.04 acres.

The Cheyennes and Arapahoes. For lands covered by the treaty of 1867—15 Stat. 593, containing 4,294,734 acres of Cherokee lands, and 730,162 acres of Creek lands.

The Osages and Kansas. For lands set apart by Act of 1872—17 Stat. 228, and conveyed by deed from Cherokees to the U.S. in trust, dated June 14, 1883—1,570,196 acres.

Pawnees. For lands set apart by Act of 1876—19 Stat. 29, and—(except as to that part thereof lying within the Creek cession)—conveyed by deed from Cherokees to U.S. in trust, dated June 14, 1883—283,020 acres.


Tonkawas. For such interest as they may have in the lands set apart for the Nez Percé Indians under the Act of 1878—20 Stat. 74—and conveyed by deed from Cherokees to U.S. in trust for the Nez Percé, dated June 14, 1883, and re-conveyed by said Indians by deed dated May 22, 1885, to the...
U.S. in trust for the use and benefit of such Indians as the U.S. might see fit to locate thereon, 90,711 acres.\(^\text{12}\)

Creeks. For that part of their domain lying east of the 96 degree, set apart under the several treaties hereinbefore referred to, estimated to contain 1,734,000 acres.


Citizen band of Pottawatomies & Absentee Shawnees. For such rights as they may have in the reservation occupied by them under Act of 1872—17 Stat. 159, and the General Allotment Act, 24 Stat. 388—575,877 acres.

Kickapoos. For whatever right they may have in the reservation occupied by them, under Executive Order of August 15, 1883, and the General Allotment Act 24 Stat. 388—206,466 acres.

Iowas. For whatever right they may have in the reservation occupied by them under Executive Order of August 15, 1883, and the General Allotment Act 24 Stat. 388—228,418 acres.

Cheyenne and Arapahoes. For such rights as they may have in the reservation now occupied by them under Executive Order of August 10, 1889, and under the General Allotment Act of February 8, 1887, 24 Stat. 389, taken in consideration with their reservation created by the treaty of 1867—4,297,804.58 acres, excluding that occupied by the Wichita and affiliated bands.

Wichitas, &c. For whatever rights they may have in the reservation occupied by them under the unratified agreement of 1872; the General Allotment Act—24 Stat. 388—743,610 acres, taking into consideration their claim to lands selected for them by Superintendent Rector in 1859.

Choctaws and Chickasaws. For that part of the Choctaw domain lying west of the 96th degree, estimated to contain 1,321,208 acres, and for the whole of the Chickasaw domain,—4,660,935 acres, set apart by the various treaties with those Indians hereinbefore referred to.

Kiowas, Comanches and Apaches. For their whole reservation, treaty of 1867—15 Stat. 581—2,968,393 acres.

THE CHEROKEES.

You will observe by reference to the 14th Section of the Act of March 2, 1889,

"That said Commission is further authorised to submit to the Cherokee Nation the proposition that the said Nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said Nation

\(^{12}\) The Tonkawas were removed from Texas in October 1884 to the Iowa reservation, and from there to the Oakland, or Nez Percé reservation in June 1885. On June 20, 1890, the Cherokee Commission was informed that this removal was "by Executive direction, and not in pursuance of law. These Indians had no reservation in Texas, being there located on private lands. They, therefore, have no claim in the lands now occupied by them except such as arises out of the relinquishment of the Oakland reservation by the Nez Percés to the United States in trust for the use and benefit of such Indians as the United States might see fit to locate thereon, and such rights as were given them by the Severalty Act of 1887."
in said lands upon the same terms as to payment as is provided in the
agreement made with the Creek Indians of date January nineteenth, eight-
teen hundred and eighty-nine, and ratified by the present Congress."

It will be observed from the said agreement, which is embodied in the
Act of March 1, 1889, ratifying it, Public 82, a copy of which is enclosed,
that in consideration of the sum of $2,280,857.10, the Muskogee (or Creek)
Nation of Indians, ceded to the United States, absolutely and without reser-
vation or condition, full and complete title to the entire western half of
the domain of said Nation, lying west of the dividing line established under
the Creek treaty of 1866.

The Amount of the consideration named ($2,280,857.10) was arrived at,
as will be seen by reference to the President's letter of February 5, 1889,
transmitting said agreement to the Congress, which may be found printed
in Senate Executive Document, Number 98, 50th Congress, 2nd Session, a
copy of which is herewith enclosed, by allowing the Creeks one dollar and
twenty-five cents per acre for the lands embraced in the western half of their
domain, outside of that disposed of by treaty to the Seminoles, 200,000 acres,
to the Sacs and Foxes, 479,668 acres, and to the Pawnees 53,005 acres, being
the lands finally disposed of to other Indians, deducting therefrom thirty
cents per acre, the amount already paid under the treaty, and making a
further deduction of twenty cents per acre, to cover cost of surveys and
adjustments, on other lands assigned, and in which the Indians may
have only an individual right to allotments in severalty, viz: The Citizen
band of Pottawatomies and the Absentee Shawnees, 227,736 acres; the
Cheyennes and Arapahoes, 619,450 acres, the Iowas, 228,416 acres; and the
Kickapoos, 206,466 acres. In other words, the Creeks were allowed on
all unassigned lands the sum of one dollar and twenty-five cents per acre,
less the amount already paid therefor, thirty cents per acre; and a like
amount—one dollar and twenty-five cents per acre—on all lands temporarily
assigned, less the thirty cents per acre (originally paid) and twenty cents
per acre (cost of surveys etc.)

As before seen, the Cherokees have been paid for the lands occupied
by the Osage and Kansas Indians, and a deed therefor, has been executed
to the United States in trust for the last-named Indians, and therefore these
lands, so far as the Cherokees are concerned, are not subject to negotiation.

It has also been seen that the Cherokees executed deeds in trust to the
United States for the lands occupied severally, by the Pawnees, the Otoes
and Missourias, the Poncas and the Nez Perces.

The consideration named in the Act of Congress requiring the execution
of these deeds, as well as the $300,000 appropriated by the Act of June 16,
1880, (21 Stat. 248) was to be paid out of funds due the Cherokee Nation for
lands lying west of the Arkansas River and not due for the particular tracts
occupied by the said several bands of Indians—therefore no specific price
was fixed on said lands, and the price determined by the appraisement
heretofore referred to was insisted upon by the Government. To this price
the Cherokees objected, claiming it to be inadequate. In view of this
statement, I hold that the fact that the Cherokees have conveyed the title
to these lands, should not operate to prevent them from receiving a just
and fair consideration therefor, and I am therefore of the opinion that
these lands should be included in the proposition that will be submitted for
the consideration of these Indians.

You will therefore present to the Cherokee Nation a proposition to pay
that Nation the sum of one dollar and twenty-five cents per acre for all
lands covered by the 16th article of the Cherokee treaty of 1866, lying west
of the Arkansas River, deducting the sum of $788,389.46, chargeable against
said lands as hereinbefore set forth; and you will give due weight to the
fact that as these several reservations were set aside, or subsequently con-

firmed by Act of Congress, the Indians residing thereon have greater rights
therein than those conferred by individual allotments in severality, and that
the lands embraced therein are therefore not subject to the reduction of
twenty cents per acre, as in the case of the Creek lands.

As it is important that negotiations should first be had with the Cherokee
Nation for its interests in the lands lying west of the Arkansas River, and
then with such other Indians as own or claim an interest in the lands lying
west of the 96th degree, you will proceed first to Tahlequah, Indian Territ-
ory, and submit the proposition, as above set forth, to the proper authori-
ties of the Cherokee Nation. Should that proposition be accepted, and the
legislature of that Nation is then in session, you will request the Principal
Chief to submit the same for the action of that body; and should the legis-
lature not be in session, you will urge upon the Principal Chief the im-
portance of convening the same in extra session, if the same can be done
under the laws of that Nation, for the purpose of acting upon said proposi-
tion; and should said proposition be accepted and ratified by the said
legislature, a duly certified copy of the proceedings had in reference thereto,
should be obtained and submitted with your report of your action in the
matter to this Department.

Should said proposition be rejected by the Cherokee authorities you
will then proceed to negotiate for the extinguishment of the claim of the
Cherokee Nation to all lands lying west of the Arkansas River, upon such
terms as may be just and equitable, taking into consideration the appraise-
ment heretofore made of said lands; the fact that a large proportion thereof
was ceded by the United States to the Cheyennes and Arapahoes by the
Treaty of 1867; the several dispositions made of portions thereof, as here-
inbefore set forth, to the Pawnees, the Otoes and Missourias, the Poncas, the
Nez Perces, the conveyance by the latter Indians to the United States of
the tract set apart for them and the subsequent settlement thereon of the
Tonkawas; the several deeds executed to the United States in trust by the
Cherokees, as hereinbefore recited, whereby the Cherokees divested them-
selves of the title to the tracts of land in question; the lands set apart
for the Chilocco Industrial School; and the several amounts chargeable
against said lands; the purpose for which the said lands were given to the
Cherokees; the question as to whether that purpose has not been fulfilled;
and as to what extent, if any, it was extinguished and surrendered by them,
by virtue of the provisions of the 16th article of the Treaty of 1866, and
the rights vested in the United States thereunder, and under which article
the Attorney General held that these lands "were absolutely reserved to
the United States, upon the conditions therein named (article 16 Treaty of
1866) for the settlement thereon of tribes of friendly Indians" (16 Opinions
Att. Genl. 471).

When you shall have finished all negotiations with the Cherokees,
you will make a full and detailed report thereof and submit all the papers
to this Department.

**Negotiations With Other Tribes.**

After making report of your negotiations with the Cherokees, you will
then visit the other civilized nations and Indian tribes of the Territory in
the order that you may deem most advisable.

Cheyennes and Arapahoes.—With these Indians you will negotiate for
the extinguishment of whatever title they may have in the lands ceded
to them by the Treaty of 1867, including the portion thereof that is within
the Creek cessions of 1866—1889, and which is covered by the President's Proclamation of March 25, 1889, hereinbefore referred to.

In negotiating with these Indians it may be necessary to remind them that while the tracts of land in question were set apart for their use and benefit, they have never occupied or made use of them, but that for nearly twenty years they have been occupying and using other lands, to which they have no title; that the Cherokee Nation is entitled to a money consideration therefor, and that all the appropriations, amounting to about $38,000 per annum, have been annually made since that time as required by that treaty. In this connection it may be wise to call your attention to article 12 of the treaty of 1867. [Here follows a quotation from 15 Stats. 592.]

2. The Act of Congress providing for the allotment of lands in severalty to Indians, &c., approved February 8, 1887, (24 Stat. 388) and which it will be necessary for you to consider in all negotiations had with Indians occupying reservations created by Executive Orders, contains the following in its first section. [Here is quoted from 24 Stats. 388 the provision for size of allotments.]

It has been held that under the provisions of this Act, Indians occupying reservations created by Executive Order are legally entitled to allotments of land in severalty. However the intention of Congress can hardly be so construed as to give allotments in severalty to Indians on two reservations. This question should also be considered in your negotiations with the Cheyennes and Arapahoes.

The Wichitas and Affiliated Bands. —While at the Cheyenne and Arapahoe Agency, negotiations should also be had with the Wichitas and affiliated bands for any right or claim they may have to the lands now occupied by them in the southeast corner of the Cheyenne and Arapahoe Executive Order Reservation, by virtue of the unratified agreement of 1872, or otherwise.

The Osage and Kansas, Pawnee, Otoe and Missouri, Ponca and Tonkawa. —You will also negotiate severally and in such order as may be found most convenient, with the Osage and Kansas Indians, the Pawnee Indians, the Otoe and Missouri Indians, the Ponca Indians and the Tonkawa Indians, for the cession of the lands owned or occupied by them, taking into consideration the necessity of providing new reservations for the several bands or the allotment of lands in severalty to them. And in the case of the Tonkawa Indians you should further consider the rights of those Indians in the lands now occupied by them in view of their settlement there, after the execution by the Nez Perce Indians of a deed conveying the lands to the United States in trust for such Indians as might be settled therein and also such rights as they may have under the provisions of the Act providing for allotments of land in severalty to Indians.

Creeks, Seminoles, and Sacs and Foxes. —You will negotiate with the Creeks for the cession of all that part of their domain that is west of the 96th degree, with the Seminoles, and Sacs and Foxes respectively, you will negotiate for the cession of their entire domain.

Iowas, Kickapoos, Pottawatomies and Absentee Shawnees. —With these Indians you will negotiate respectively, for the cession of whatever rights they may have in the reservations respectively occupied by them.

In the case of the Iowas and Kickapoos, whose respective reservations were created by Executive Order, you should take into consideration such rights as these Indians may have therein under the General Allotment Act.
of February 8, 1887, and in case of the Citizen band of Pottawatomies and Absentee Shawnees, such rights as they may have in the reservation now occupied by them under the said Act and the Act of 1872, considering the several tracts paid for by individuals. Consideration should also be given the question of creating new reservations for these several bands of Indians or by giving their members allotments in severality.

Choctaws and Chickasaws. — With these Indians you will negotiate for the cession of that part of the Choctaw district lying east of the 96th degree, and for the whole of the Chickasaw district and in case of the cession of the district occupied by the Chickasaw Indians, arrangements should be made for the settlement of said Indians within the Choctaw District.

The Kiowa, Comanche and Apache Indians. — You will negotiate with these Indians for the cession of their entire reservation, taking into consideration, in case of cession by said Indians, the question of creating a new reservation for, or the allotment of lands in severality to them, as indicated in the case of other bands of Indians hereinbefore referred to.

GENERAL REMARKS.

It is proper here to state that while the Act authorizing negotiations provides for the extinguishment of the Indian title to all lands lying west of the 96th degree, no provision is made for the location and settlement elsewhere of the Indians occupying said lands. It will therefore be necessary in the event of successful negotiations with such Indians as occupy lands lying west of that degree, for the cession thereof, to provide new reservations suitable to the requirements of each band within the reservation now occupied by such band, or to provide for allotments in severalty within the reservation now so occupied or to provide new reservations, or for the allotment of lands in severality in some other portion of the country lying west of that degree, or to provide for the removal of the Indians to lands east of said degree, and in the latter case negotiations for that purpose would be necessary with the Indians owning the lands lying east of that degree.

It may also be said here that if the Commissioners shall find it impossible to secure a cession of all the lands lying west of the 96th degree, owned or claimed by any of the several nations or tribes, they may then negotiate for such modifications of existing reservations and claims as the said nations or tribes may severally agree to. Such negotiations, however, should not be had with the Cherokees in respect of their claims to lands lying west of the 96th degree.

You will observe that the 14th Section of the Act of March 2, 1889, requires that "any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification."

Therefore, you will upon entering into agreement with any nation or tribe of Indians, submit the same to the council of such nation or tribe for its ratification.

Full and complete minutes should be kept of all proceedings and transactions had with each separate tribe or nation, which with all papers, documents, &c., including any agreements negotiated after action by the proper council, should be forwarded to this Department for transmission to the President. Separate reports in triplicate should be made of the proceedings had with each nation or tribe.
Should any question arise during the progress of your negotiations not fully covered by these instructions, or upon which you have any doubt, the facts in relation thereto should be submitted to this Department with request for instructions.

Authority is granted you to visit such other places not named herein, as may be necessary in the performance of duties.

Very respectfully,
Jno. H. Oberly
Commissioner.

(Maxwell)

APPENDIX

On June 20, 1890, Belt with Noble's approval said of the Ponca reservation in the Indian Territory:

"As the reservation was conveyed to the United States for the use and benefit of the Ponca tribe, I am of the opinion that every member, whether enrolled at the Agency in the Indian Territory, or at that in Dakota, is entitled to his share of the lands and of the money that may be derived from their sale, except as hereinafter stated.

"By Act of March 2, 1889 (25 Stats., 888) each member of the Ponca tribe occupying a part of the old Ponca reservation, within the Great Sioux Reservation is entitled to allotments there, and to all the benefits conferred by that act. I do not think that those members of the tribe who elect to take the benefits of the Sioux Act, should be permitted to share in the Indian Territory reservation or in the proceeds of its sale, as they became entitled to such benefits by abandoning the said reservation. The benefits of that act are much greater than can be obtained from the reservation in the Indian Territory. I am strongly of the opinion that all who can do so should remain in Dakota and believe that nearly all will do so. I also believe that those who are now located at the Agency in the Indian Territory are competent to make a valid contract for the sale of the reservation, and that those in Dakota need not be consulted in this respect.

"Still I think provision should be made in any agreement that may be concluded whereby those who do not avail themselves of the benefits of the Sioux Act (which they must do, if at all, on or before the 10th of August next) shall be entitled to a full share of the lands and funds of the tribe in the Territory provided they apply for enrollment and allotments before the completion of the latter."