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BEFORE THE CHEROKEE NATION
CONSTITUTION CONVENTION COMMISSION

DECEMBER 15, 1998

CHEROKEE COUNTY COMMUNITY BUILDING

TAHLEQUAH, OKLAHOMA

* * * * *
A P P E A R A N C E S

COMMISSIONERS: Dr. Charles Gourd
Louella Coon
Ralph Keen, Jr.
Paul Thomas

* * * * *
I N D E X

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Bill John Baker Page 18-28
Gary Stopp Page 29-37
Eddie Crittenden Page 38-50
Reporter's Certificate Page 51

COURTEMANCHE REPORTING SERVICE
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1 Thereupon, the following proceedings were had:

2

3

MARY SUE CARLILE BURNETT

4

MS. BURNETT: My name is Mary Sue Carlile Burnett. I mentioned my maiden name because it's from my dad, and his family is my Indian heritage term.

7

First, I'd like to read you the list. But I also would like to say, this is a rare opportunity, an opportunity afforded to few people, and it is afforded to us to help determine what our future as a people will be.

11

Some of the concerns expressed by different people are: Additional Council members. A Council member to represent people living outside the fourteen-county area. Attendance at Council meetings. Some people have even gone so far as to say, no attend; no pay, or can't miss more than three Council meetings in a row without that being grounds for removal from the Council.

19

As a suggestion, they've also suggested the Council have an orientation process, a code of ethics. They've also suggested that we need recall and impeachment procedures, which I'll speak more to in a minute.

24

It's been suggested that we have a separate branch of government, an Attorney General that will

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oversee the laws of enforcement, and that the Attorney General should be elected and not appointed.

3

Term limits have been suggested. It's been

4 suggested two terms, and as it stands now, four years in
5 each term. Then someone would have to sit out at least a
6 term, possibly could run again later.

7 Oversight committees for all programs.
8 Oversight committees not to be selected from within the
9 current tribal government. All federal programs, all
10 discretionary fund programs, basically all programs, need
11 an oversight committee. Possibly someone from the
12 Administration, they could name one person to each
13 committee, Judicial, and the Council could name one
14 person. But oversight committees for everyone.

15 The bicameral legislature with staggered
16 terms, and I had to look up bicameral. I didn't know
17 what that meant.

18 A mechanism for an enforcement of the law
19 which an Attorney General would take care of.

20 Increased number of judges. Have District
21 Courts outside of Tahlequah.

22 Accountability. Department heads subject to
23 oversight committees. Some kind of mini -- and I mean
24 M-I-N-I -- audits of all departments. Open books and
25 open records. Outside accountants to do all audits.

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1 I've already mentioned judges should be
2 elected, not appointed.

3 Councilors -- and I think there's a desperate
4 need for this, and it isn't a constitutional issue --

5 Councilors should find some way of holding regular
6 meetings with the people within their districts.

7 All appointed positions within the tribal
8 government must pass background checks before employment.

9 And then the repeal Article 15, Section 10:

10 "No amendment or new Constitution shall become
11 effective without the approval of the President of the
12 U.S. or his authorized representative." And the
13 statement was asking for a repeal of that auditor.

14 To address a couple of specific issues from
15 that list, people have talked at length about needing a
16 removal process or a recall process. Article 15, Section
17 3 says:

18 "The first power reserved by people of
19 Cherokee Nation is the initiative, but the second power
20 is the referendum, and it may be ordered except as to
21 laws necessary for the immediate preservation of the
22 public peace, health or safety, either by petition,
23 signed by five percent of the registered voters, or by
24 the Councilors as other enactments are effectuated.

25 It may show a percent of registered voters

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1 herein before stated shall be based upon the total votes
2 cast at the last general election for the officer
3 receiving the highest number of votes at such election."

4 There were approximately twelve thousand
5 voters in the last election. She said it wasn't quite
6 twelve thousand, it was nearer to eleven thousand eight

7 hundred. So that would be like five percent of that
8 number of people.

9 Article 15, Section 9 also says:

10 "The Council shall have the power of removal,
11 and said removal must be conducted in accordance with
12 Article 11."

13 Article 11 says:

14 "The Principal Chief and the Deputy Principal
15 Chief shall be subject to removal from office for willful
16 neglect of duty, corruption in office, habitual
17 drunkenness, incompetency, or any conviction involving
18 moral turpitude committed while in office." I also had
19 to look up turpitude, too.

20 So it seems to me that at least the first part
21 of that process for removal is already there, but it's
22 not legitimate to say, they say you can remove people,
23 but it doesn't say how. It says part of the how.

24 Then it gets a little sticky.

25 Petition signatures would then be verified and

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1 presented to the Council as soon as possible. The
2 Council could then notify the Chief or Deputy Chief
3 within seven working days of receiving the petition,
4 sooner if possible, but seven working days would allow
5 for someone being out of town.

6 The Chief or Deputy Chief would have an option
7 for immediate resignation if that's what they so chose.

8 If no resignation was offered, hearing would be needed to
9 start within a timely manner from the date of
10 notification, say fifteen days, perhaps longer because
11 the Chief, Deputy Chief or any other citizen or employee
12 of the Cherokee Nation is entitled to due process.

13 If after hearings the voting by the Council is
14 deadlocked, in this one particular instance, the Deputy
15 Chief could not break a tie vote. But if the hearings
16 were deadlocked, an emergency special vote within
17 forty-five to fifty days by all registered voters "yea"
18 or "nay."

19 There are nearly thirty thousand people
20 currently registered to vote in the Cherokee Nation. A
21 little less than twelve thousand of them actually voted
22 in the last election, which to me is a shame.

23 That's all I have to say about that.

24 A new article or amendment, a constitutional
25 provision for a Freedom of Information Act specifying

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1 that the business of the Tribe is the people's business,
2 and the money spent are the people's moneys; therefore,
3 the people are entitled to any and all information except
4 as noted in Article 5, Section 6, which is talking about
5 open meetings and what things have to be private if
6 you're censuring someone or talking about their personal
7 conduct or something like that, it has to be private. In
8 other words, somebody's personnel jacket would be
9 private, but all other information should be made public.

10 At least once every year or possibly no longer
11 than every two years, list all assets of businesses of
12 the Tribe. This could be published in the Advocate and
13 would be less of an expense.

14 One other thing. The current Judicial
15 Tribunal could be set up as more of a Supreme Court, and
16 the lower courts provide a more contemporary judicial
17 system with criminal jurisdiction, as well as civil.

18 Again, all judges need to be elected, not
19 appointed, with staggered terms.

20 The other thing is something I'd like to read
21 that I read the first day that I went to the first
22 hearing. I went home because I was quite upset because
23 there weren't very many people at the meeting, and I made
24 a bunch of phone calls and I talked to a bunch of people.
25 I'm not going to read you their comments because they're

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1 kind of personal to some people about why people weren't
2 there.

3 I was sitting thinking, and I got some books
4 out, and I was reading, and this is I think a beautiful
5 piece of work. These aren't my words.

6 "The continued existence of a free and
7 Democratic society depends on recognition of the concept
8 that justice is based on the rule of law grounded in the
9 respect or the dignity of the individual and his or her
10 capacity through reason for enlightened self-government.

11 Law so grounded makes justice possible. For
12 only through such law does the dignity of the individual
13 obtain respect and protection. Without it, individual
14 rights become subject to unrestrained power, and respect
15 for law is destroyed, and rational self-government is
16 impossible."

17 And I'm here to tell you that I believe that,
18 as I've said, most of us aren't constitutional scholars,
19 but everybody wants to feel respected. Everyone wants to
20 be listened to. And it is my firm belief that the
21 President of the United States, the Department of the
22 Interior, the head of the BIA, our Congressmen, our
23 Representatives, no one can take our sovereignty away
24 from us.

25 But if we don't get our act together and learn

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1 to work together and solve some of these issues among
2 ourselves, we're going to wake up some morning and find
3 out that nobody has taken our sovereignty away from us,
4 but we've given it away.

5 Thank you.

6 MR. GOURD: I'd like to point out
7 that it's often been the case that Mary Sue was the first
8 to arrive and the last to leave at nearly every public
9 hearing we've had. I think, well, the one at Sallisaw
10 because we cancelled it. Is Nowata the only one you
11 missed?

12 MS. BURNETT: And I had a wreck the

13 night before.

14 MR. GOURD: She had an accident the
15 night before or would have been there. To me, the
16 record, the testimony that she brings is a particularly
17 brilliant summation of everything that we have been
18 listening to in a very eloquent fashion. And I hope, and
19 I feel that a part of our responsibility is to take those
20 concerns, those ideas and those issues and see where they
21 fit into the constitutional framework.

22 I don't know the right language either.
23 That's why we have the capacity on our commission, and we
24 also have a large number of experts in Indian law and
25 constitutional law who have volunteered their services to

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1 assist us. I want to commend you for the tremendous
2 effort that you've gone through, not only to attend, but
3 to take incredibly good notes. I would like to borrow
4 them for my cheat-sheet.

5 We also, usually, when people provide
6 testimony, at different times commissioners have had
7 questions to maybe lengthen or broaden or expand upon
8 what people have, and other people have also asked
9 questions. Is there anybody that would like to question
10 issues or comments?

11 MR. KEEN; I've got a question of
12 Ms. Burnett regarding the authority of the High Court,
13 the Judicial Appeals Tribunal. You suggested to limit

14 their power to appellate review. Is that a fair
15 statement?

16 MS. BURNETT: I don't understand
17 "appellate review."

18 MR. KEEN: Let me rephrase it. To
19 allow the district court to handle most things, or maybe
20 I misstated your testimony. Maybe you can explain it to
21 me.

22 MS. BURNETT: Well, if I said it, I
23 guess that's actually what it came out as. They could be
24 the final ruling authority, but some of the load could be
25 taken off. That the lesser courts -- and I told you, I

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1 didn't want to look at you because I knew I would get
2 messed up.

3 MR. KEEN: No, you're doing good.

4 MS. BURNETT: The lesser -- and I
5 hate the term "inferior" -- I guess that's a legal term,
6 but lesser or lower sounds better to me.

7 MR. KEEN: Lower court sounds more
8 palpable.

9 MS. BURNETT: Yes, that they could
10 handle some of the things. It would be like if it's not
11 resolved here, we could take it here. That's what I
12 meant.

13 MR. KEEN: I appreciate that.

14 MR. THOMAS: In our district court,
15 counties, the district judges, there's three types:

16 special, associate and district. The district judge, is
17 the highest of the court. And I work in the courthouse,
18 and have for twenty-three years, but I'm not concerned
19 with that, but some of that rubs off on you if you're
20 around it enough. And I've noticed they assign various
21 cases to different courts, and it's evenly distributed
22 things. Is that what you have in mind?

23 MS. BURNETT: Yes.

24 MR. THOMAS: That's what I thought
25 she was trying to come up with. That makes a lot of

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1 horse sense.

2 MR. GOURD: You mentioned the
3 possible change of the term of reference instead of
4 Judicial Appeals Tribunal. Would you be in favor of
5 changing the wording to actually enumerate it as a
6 Supreme Court, and then define the court structure?

7 MS. BURNETT: I'm not sure if that's
8 one of those issues that we're going to get hung up on
9 small details or if that's a good idea. I don't know.
10 If Ralph knows things about what by changing the name we
11 would actually change --

12 You're getting into areas where I don't know.
13 It sounds nice, but I don't know what that means. Ralph
14 would have to address that.

15 MR. KEEN: I do have a thought or two
16 on it. The court itself has unofficially kind of adopted

17 that as their preferred name, even though their
18 constitutional name is Judicial Appeals Tribunal. And I
19 think it's important for this for one reason.

20 It really doesn't matter what we call our
21 court within the Cherokee Nation. We can refer to it as
22 Supreme Council, and that's our business. But it might
23 make a difference to other sovereigns in the state of
24 Oklahoma, to the Federal Government, to other judicial
25 systems.

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1 Cherokee Nation qualifies under full faith and
2 credit under Oklahoma law. That means that a decision
3 rendered from our court is just as enforceable in State
4 court as it is in Tribal court, that they will honor our
5 Court's judgments, and we honor theirs.

6 So if we're going to be interfacing with other
7 judiciaries, it would probably alleviate confusion if we
8 were somewhat more consistent with the names. You can
9 take any lawyer across the Unites States, and if they say
10 Supreme Court of any jurisdiction, they pretty well know
11 what that means. There's only one section, you know, if
12 they use the term Superior Court for their lower court
13 and everyone think that's silly, but they like it.

14 So anyway, it would help that problem, you
15 know, for our judiciary to be able to interface with
16 other sovereigns. Other than that, it's really up to the
17 people's choice, and it is constitutional in nature. So
18 it's whatever the people want to do.

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SAMMIE TENNISON

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MR. TENNISON: Samuel Tennison,

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President of the Cherokee National Elders. I live here

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in Tahlequah.

5

But I would like to see that changed, and I

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would like to see us have an Election Commission. Say,

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like, three.

8

But I'd like to see this change here on this

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absentee ballot and see that the people can't send them,

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they can't fill them out and just take them and sign

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their name to them and somebody else vote for them.

12

There's one in Texas that voted. He didn't want to vote

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for that person. They told them not to when they called

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him, but he still voted.

15

One in Arizona. They told him not to vote for

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him, but he voted, and he did that too. They signed his

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name and he voted. They got his roll number, and they've

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got everything that is supposed to be on there to make it

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legal. I'd like to see that changed.

20 And I have one more question. Who do you talk
21 to about conflicts of interest?

22 MR. GOURD: I don't know.

23 MR. TENNISON: Well, I didn't know
24 who to ask, but this is what I'd like to know. I can't
25 find out nothing. I've talked to several. They don't

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1 know who. So I guess maybe I ought to decide and see if
2 I can't get at a Council meeting and ask them. I'm
3 asking for advice.

4 MR. KEEN: I would say the Council
5 would be where those concerns would be best addressed.

6 MR. TENNISON: There ought to be
7 something in that Constitution where if you've got a
8 complaint like that or you have something about something
9 like that, there ought to be one person, an office,
10 appointee or somebody that you take your complaint to.
11 There's not nothing in the Constitution.

12 MR. KEEN: Well, one suggestion
13 relates to the suggestion relating to the creation of an
14 Ethics Commission. If such a commission exists, that
15 would probably fall under conflicts of interest. That's
16 always an ethical issue.

17 MR. BAKER: Or the Attorney General.

18 MR. GOURD: Or the Attorney General.
19 Bring the question to an Attorney General, yes.

20 MR. TENNISON: To the State or the
21 Nation?

22 MR. GOURD: Nation, if it involves
23 Nation business.

24 MR. TENNISON: Who is the Attorney
25 General?

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1 MR. GOURD: We do not have one yet.
2 That's what people have requested in here is an Attorney
3 General with full prosecuting authority.

4 MR. TENNISON: Do you remember when
5 Glory died and his wife wanted to take the Council seat
6 and they wouldn't let her? Who boosted her out? They
7 said it was conflict of interest, but who?

8 MR. KEEN: I think -- and someone
9 might correct me here. I think she resigned after the
10 Judicial Appeals Tribunal ruled in the case. There's a
11 partial answer to your question, "Who do you take it to
12 now." It's because we don't have a designated body to
13 handle these types of dispute, the only recourse has been
14 to take it to the Court, and that's the Judicial Appeals
15 Tribunal. And that's in part what has caused some of
16 this division of conflict.

17 MR. TENNISON: There is a lot of it,
18 but nobody to talk to.

19 MR. KEEN: I'll say this in the
20 defense of courts everywhere, not just ours, but courts
21 are saddled with the responsibility of usually deciding
22 the tough issues that no one wants to decide. They

23 usually wind up in court. And we've seen some of that
24 here in the Cherokee Nation too.

25 Now, if we can make changes to our

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1 Constitution and we relieve them of some of that burden,
2 we'll probably have a better government.

3 MR. TENNISON: Yeah, we would.
4 That's what I'm here for. Nation is what I'm interested
5 in. I guess that's all I've got to say. Thank you.

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1 BILL JOHN BAKER

2 MR. BAKER: I'm Bill Baker, a Tribal
3 citizen.

4 There are several things that have transpired
5 in the last year, two years that the Constitution is
6 vague on or doesn't speak to that quite possibly could be
7 taken care of by legislative act. But some of them could
8 very well better serve this Nation as part of the
9 Constitution.

10 One of those, in the 1839 Constitution, it
11 gave the Council the right to compel attendance to the
12 Council meetings and to provide penalties for failure to
13 attend. Now, this has been brought up in the form of
14 three Council meetings and you're out, but I think this
15 is something that the Cherokee Nation can be very well
16 served by maybe going back to the 1839 provision or some
17 other provision.

18 I think that, you know, a lot of things could
19 be worked out, and this would not have lasted near as
20 long if attendance were compelled.

21 The part of the controversy last year was who
22 had control of the courthouse, and obviously we know that
23 there was conflict of different people trying to control
24 it and such as that. I think probably better than the
25 legislative act giving superintendents of the courthouse

1 to the Tribunal, it might better be given, like all other
2 properties of the Cherokee Nation, to be under the
3 Council's administration to be delegated out to
4 departments on a need-basis and not have a separate
5 branch of government having control of one of the
6 properties of the Cherokee Nation.

7 It doesn't mean that that's not where they
8 need to be. We're obviously talking about the
9 courthouse. That doesn't mean that's not where they need
10 to be. That's the ideal place for them. But other than
11 giving them superintendents of that building, I think was
12 a mistake and something that we would be very well served
13 to change.

14 I think that whether it's the State, the
15 Nation or the Cherokee Nation, that there needs to be a
16 separate and distinct District Court from the Supreme
17 Court or the Tribunal or whatever we're going to call
18 them.

19 A lot of the frustration is people are not
20 getting their day in court, and when they get it, there's
21 no place to appeal. And you're not used to that
22 anyplace, not having a place to appeal. And when the
23 Supreme Court of the Cherokee Nation hears a case and
24 makes a ruling, you have no place to go, even if you come
25 up with more information.

1 I think that it would be easier on the
2 Tribunal; I think it would be easier on the citizenry if
3 the Constitution provided for a District Court. That's a
4 fallacy. Nobody even thought of a District Court in the
5 last Constitution. And if this Constitution provides,
6 whether by completely doing it in the Constitution, or
7 giving the Council authority to create a District Court,
8 then I think that the judicial system and the justice
9 within the Cherokee Nation would be better served. But
10 definitely needs to be addressed in this constitutional
11 convention.

12 And, hopefully, this would never come up again
13 at all, but the Constitution deals with removal of
14 office. It has been interpreted that that's elected
15 officials only, and that that does not include judges. I
16 think that's wrong.

17 I think if they can be appointed, they ought
18 to be able to be removed for just cause. I think it
19 ought to be two-thirds majority. I think that any judge
20 should be able to call for the removal of another judge.
21 I think the Council should be able to call for the
22 removal of a judge. But I think it ought to go right
23 along in the Constitution with the removal of Council
24 people and the removal of Chief and Deputy Chief.

25 Another point. Goes along with the District

1 Court. The law now says that the Chief will select a
2 clerk for the Tribunal and/or the District Court. I
3 think it ought to be changed to, he'll select a clerk for
4 the District court.

5 Because any time that the same clerk handles
6 both sets of files, you don't have a distinct and
7 separate court system. And the Tribunal -- I mean
8 there's no point in them looking at a case or controversy
9 unless it's on appeal. They are the Supreme Court. We
10 call them the Tribunal, but they're the Supreme Court of
11 the Cherokee Nation.

12 The Constitution says that they're the last
13 say. Yes, I think they ought to have appellate powers
14 only. I think that's how they should manage the lower
15 courts. If they don't like what the lower courts decide,
16 then they reverse it, but that's after people have had
17 their day in court; they've made their arguments; they've
18 heard the other side; they've heard their lawyer's side,
19 and it gives you some time to rethink and maybe even
20 renegotiate instead of being as hot-headed as you are up
21 front.

22 And then on appeal, I think the Tribunal will
23 have enough records, and they can sit back and look at
24 all the testimony and not be in the middle of the case
25 the controversy started with. For good government, I

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1 think that would be an excellent idea.

2 We also had problems very early on in this

3 situation where the Tribunal at some point or another
4 made a ruling that the Tribunal were magistrates or could
5 be magistrates. There, again, in a search warrant, in
6 all kinds of things that magistrates do, it is unhealthy
7 and very dangerous for the signing judge to be a Supreme
8 Court member because you have no place to appeal whether
9 it was right or wrong, good or bad, because they're not
10 going to sign it and then turn around and say, "I
11 shouldn't have signed it or I didn't do it right."

12 You lose that step in the process of law. You
13 lose that step. So if in this we could, along with the
14 judges, if when we do some constitutional revisions to
15 the District Court, then maybe insert the wording that
16 magistrates could be judges, District Court, associate
17 district judges, special judges or just plain
18 magistrates.

19 But I really think it ought to exclude the
20 Tribunal members as being magistrates. And it will give
21 you that extra appeal right that we have grown to know
22 that no matter what goes wrong, you have a right to
23 appeal. And I think that that is something that ought to
24 be near and dear to every citizen's heart, no matter what
25 you're accused of, or whatever.

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1 Another thing, District Court and the Tribunal
2 have been changing the rules, making new rules at the
3 drop of a hat. Right now it says that those rules don't

4 hold water until they are sent to the Council for their
5 review or some wording like that.

6 I think the rules that they make ought to be
7 able to stay in the light of day, and not only should
8 they be sent to the Council, but the Council should be
9 given the opportunity to approve them before those rules
10 take effect.

11 Nine times out of ten, they are going to come
12 up with good rules, but in the heat of the moment, there
13 has been some rule changes, jockeying around that in
14 normal circumstances would not take place.

15 I think if we put that check and balance into
16 the system so that you don't, every day you wake up and
17 there's a new rule on the books would be something that
18 would be considered only fair and just and everybody can
19 be playing by the same set of rules all the time.

20 And with that, I guess that concludes my
21 testimony.

22 MR. KEEN: Before we get away from
23 his testimony, I've got some questions for him.

24 Mr. Baker, I appreciate you coming and
25 testifying to this commission. I think you brought up

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1 some very relevant points. I would like to ask you
2 about, as it currently stands, under current law, the
3 Judicial Appeals Tribunal Justices have the authority to
4 sign warrants, they're made magistrate, but that's
5 through legislation; is that correct?

6 MR. BAKER: I don't know that it's
7 through legislature. I don't know where it came from.
8 It quite likely could have been, but it's a mistake.

9 MR. KEEN: In order to implement some
10 of the suggestions you make, it would be necessary to
11 revise the section which grants the Judicial Appeals
12 Tribunal its jurisdiction. I'm sure you've heard this
13 language.

14 "The purpose of this Tribunal shall be to
15 hear, resolve any disagreements under any provisions of
16 this Constitution or any enactment of the Council."

17 That is the jurisdictional basis of the High
18 Court at this point in time.

19 MR. BAKER: Nobody conceived the
20 District Court at the time this was written.

21 MR. KEEN: That's exactly right.
22 That's why it's in there.

23 MR. BAKER: I think they ought to be
24 up to Supreme Court, and the District Court ought to take
25 a great deal of that language right there.

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1 MR. KEEN: So what you're suggesting
2 is, create District Courts, and give them general
3 jurisdiction.

4 MR. BAKER: Yes, sir.

5 MR. KEEN: And then give the Tribunal
6 appellate jurisdiction?

7 MR. BAKER: So you would have a right
8 to appeal.

9 MR. KEEN: I'm with you on that.

10 Next question becomes, do we want to give the
11 High Court any powers of original jurisdiction? Are
12 there emergency situations where the court should be able
13 to act under extraordinary circumstances?

14 Because most Supreme Courts, whether they be
15 State or Federal, do have certain limited powers, very
16 limited powers, of original jurisdiction.

17 MR. BAKER: I'm liking our Supreme
18 Court with the Supreme Court of the United States. Not
19 with the State of Oklahoma, but the Supreme Court of the
20 United States, as closely as we can follow it.

21 MR. KEEN: The Supreme Court of the
22 United States has certain powers of original
23 jurisdiction. They're very limited, but they involve
24 suits among ambassadors, suits between states, you know,
25 if one state sues another, but which you don't see very

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1 often, and certain suits called "admiralty law," maritime
2 on the ocean.

3 So they do have certain very limited powers,
4 and they don't arise very often, but they're there, and
5 they're there for extraordinary circumstances.

6 So would you be opposed to the Cherokee Nation
7 Supreme Court retaining certain powers to be invoked in a
8 crisis situation?

9 Let me give you one example of what I'm
10 talking about.

11 MR. BAKER: Please. We ain't got a
12 Navy.

13 MR. KEEN: An election dispute, where
14 we're on a set time frame, money is budgeted and spent,
15 there's set deadlines. Now, the Chief is supposed to be
16 sworn in by a certain date as per the Constitution, so
17 you don't have a whole lot of luxury of time to resolve
18 it through the judicial process.

19 Should our High Court reserve original
20 jurisdiction to hear those kind of cases? Not that they
21 would every time, but they would have the ability to.
22 And that's just by way of suggestion.

23 MR. BAKER: I mean, I'm just one
24 person. I don't know that I would have a major problem
25 with reserving it for extraordinary situations. I'm not

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1 wanting to cut their legs out. That's not the point.

2 MR. KEEN: I understand.

3 MR. BAKER: It would be really
4 nice, and even in an election deal, to have an appeal. I
5 mean, that's a basic right. And as an attorney, you
6 understand that.

7 MR. KEEN: Well, I understand that
8 everyone feels it is a right, yeah. That's part of
9 our -- it offends our sense of self-justice. But there

10 are cases where you don't have an appeal.

11 MR. BAKER: If two sets tell you
12 you're wrong, then you're probably wrong. But if one
13 tells you, you always wonder, well, if I caught them on a
14 different day or done something different, or if my
15 lawyer said this much more or something. But to have
16 that one extra step of appeal, I think, is paramount to
17 almost all justice.

18 MR. KEEN: Well, in general terms, I
19 agree with you, no doubt about it. That's why we have
20 appellate courts. That's their purpose, to protect the
21 right of the litigants and the rights of the accused.

22 You mentioned going back to the 1839 system of
23 Council attendance. What exactly was that system as far
24 as what powers did that have to compel attendance?

25 MR. BAKER: The 1839 gave them -- to

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1 start with, it required attendance to be at every Council
2 meeting, and that, you know, if you were going to be
3 elected, you were going to be there. And then it gave
4 the Council -- and I don't care if the Council has the
5 right and we do it in the Constitution or whatever, and
6 maybe three unexcused and you're out, or some method of
7 assuring that business with the Cherokee Nation will take
8 place.

9 Last night we missed a meeting, and there's a
10 good possibility we've lost another seven hundred fifty
11 thousand dollars on a federal grant that is due right

12 now, and we may or may not get another extension on the
13 deadline.

14 And that's these citizen's dollars. It's
15 money that cost us nothing to come into the Cherokee
16 Nation for services to our people. It's unconscionable
17 that we can't show up and get together to take care of
18 the business of the Cherokee Nation. I think this
19 Constitution ought to require it.

20 MR. KEEN: Thank you for your
21 testimony.

22 MR. BAKER: Thank you.

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1 GARY STOPP

2 MR. STOPP: My name is Gary Stopp and
3 I'm a Cherokee citizen. First item on the Constitution
4 would be the budget schedule. I'd like to see amended
5 from July to September 31st, due to the fact that the
6 fiscal year for the federal system has changed, and we
7 have not changed in the Nation. So that's a real issue
8 within the Constitution.

9 The second issue would be representing the
10 Council representatives. One, that they will become
11 full-time Council representatives, and they would be put
12 on staggered terms. When I say "full-time," full-time to

13 all the benefits in a forty-hour work week because this
14 Nation has changed. It is a Nation of two hundred
15 thousand members, and it's the second largest Nation.

16 And if we look at other Nations that are our
17 peers, and the only one close to our peers is the Navaho.
18 They have eight Council people, and they are full-time
19 because it is a full-time position.

20 The third would be the court system. In
21 looking at a three-tiered court system where you would
22 have a Supreme Court that would have the appellate
23 rights, a potential appellate court and a district court
24 much like what we have within the U.S. Government.

25 And that the distinction and the definition of

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1 all three courts would be imposed. Right now I feel that
2 the two-tiered system, you have supervision. You do not
3 have a Supreme Court at this time, but you have a
4 supervising court who also has supreme power.

5 In addition, item four would be a creation of
6 some time type of, through the Constitution, a business
7 or economic Council. It would be of professionals that
8 would either be non-Cherokees or non-Indians or could be
9 Cherokees or Indians, that would help bring economic
10 stability to the Tribe and looked at.

11 Currently that is not -- right now when we
12 elect certain individuals, we have people within the
13 system that don't have some of the business savvy, I
14 would think, or the ties to the 20th century in the

15 fortune five hundred companies. I think we could do very
16 well there. I don't know if that's a constitutional
17 issue or a legislative issue on that.

18 In addition, to the elected officials, I would
19 like to see a retirement system brought in for all
20 elected officials based on a tenure basis of either one
21 full term or two full terms, tenure into it.

22 What that also does is prevent any bipartisan
23 while they're in office for future activities. If we
24 image ourselves off the Federal Government, they do the
25 same thing within the U.S. Government. The President and

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1 with the Congress and things of that, they go into the
2 tenure process. Again, it goes back to the full-time
3 Council representatives.

4 Six, on the definition of regular special
5 meetings, that the definition be clearly defined within
6 the Constitution and the parallels within that be clearly
7 defined. I think it's very obscure at this point within
8 the Constitution. And at this point, I don't know what
9 the definition is.

10 Item seven is, when we talk of impeachment
11 powers, Mr. Thomas talked earlier, put the power back
12 into the people's hands on a recall if possible. And,
13 again, I would image that off the Navahos because they
14 have a recall system, that if the Legislative branch, if
15 we ever get ourselves back into a situation that we are

16 currently in, that the people would have the ability to
17 come back based on some percentage, or some way of doing
18 that. I don't know what the form would be, but put the
19 power back into the people.

20 So if the individuals are truly not
21 representing their counties, be it from the eight who are
22 showing, or the six who are not, their constituents would
23 have the opportunity to say, "yes, we support them," or
24 "no, we don't; we want a new one or we want to replace
25 them." So I think it's very important that we put that

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1 power back to the people.

2 That's all I've got.

3 MR. KEEN: Again, thank you for your
4 comments and suggestions. I think they're very well
5 thought out and constructive. I missed the very first
6 one, that you would like to have the --

7 MR. STOPP: The budget in the
8 Constitution. We have a budget requirement that
9 stipulates that we have a budget in by July of that year,
10 which was under the old calendar year of the federal
11 system, which has changed to October 1. It's recommended
12 that we change to it September 31st so we fall in line
13 with the federal system.

14 We have talked about that that could change
15 again for the federal system, not knowing how that would
16 work, but right now we're ninety days behind. There's no
17 way that the Constitution can be correct, even within the

18 best system.

19 MR. GOURD: Would it be that the
20 Council would establish the fiscal year, the budget year
21 kind of thing?

22 MR. STOPP: I don't know if that's a
23 constitutional issue.

24 MR. GOURD: That's my question.

25 MR. BAKER: It is now. It is in the

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1 Constitution.

2 MR. RAGSDALE: It has been changed.
3 It has it been changed. The Constitution is changed on
4 the first day of July of each year, unless otherwise
5 provided by law. And that has been construed that the
6 Council has the authority to change the fiscal year, and
7 they have done so by statute. So that has that.

8 MR. STOPP: Okay. I stand corrected.
9 I was not aware of that.

10 MR. GOURD: Does that change when the
11 budget is due though? That's the problem. That's the
12 gap you're talking about. The Constitution says the
13 budget has to be prepared as compared to the fiscal year.

14 MR. RAGSDALE: It just sets the
15 fiscal year, so the Council and the Administration can
16 prepare the budget any time they want to and present it
17 to the Council. And the Council can pass it any time
18 they want to, but it shall commence on the beginning of

19 the fiscal year, which is now currently October 1, which
20 commences the fiscal year. We're into October 1, 1999
21 fiscal year, and you're running on a one hundred twenty
22 days continuing resolution.

23 MR. KEEN: Mr. Stopp, I've got a
24 couple of questions here for you. You mentioned you
25 would be in support of staggered terms for Council

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1 members.

2 MR. STOPP: Yes, sir.

3 MR. KEEN: We've heard a lot of
4 support for that, but the hard question there is, how do
5 you implement that? Do you have any thoughts on that?
6 Right now, all Council seats have filled every four
7 years, and that always provides a possibility that we
8 have a complete change in Council. Everyone agrees that
9 that's probably not a good system. But the question is,
10 how do we stagger those, and how do we implement it?

11 MR. STOPP: What I've seen with
12 school boards is there's a transition period of one to
13 three years in there where you actually start getting on
14 the cycle. And individuals that would come up for
15 reelection, say, in this particular summer, would be
16 bided for one, two or three years terms, and then it
17 would pick up from that point.

18 An example would be, Cherokee County may have
19 one slot open for one year this year, and would roll over
20 to a three-year term next year on another election.

21 What that also does, it creates a couple of
22 things. It creates an administrative internal issue on
23 politics, as you continue having an election every year
24 on something. But what it also does for the Tribe, it
25 continues to lead a level of expertise and the elders

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1 within the Council to groom other people through, which
2 is a real issue.

3 It hasn't happened, but it possibly could
4 happen in the future, you know, is a washing of all
5 seventeen elected officials. Then what do you do with a
6 government who is brand new? The learning curve is too
7 steep.

8 MR. KEEN: You've lost all of your
9 experience and continuity.

10 MR. STOPP: Right.

11 MR. KEEN: Of course, even if this
12 was proposed and submitted on this ballot and approved by
13 the people, the soonest it could take effect would be
14 four years, unless we built into the provision a way to
15 initiate the process through -- I'm not even sure how to
16 complete it. I'm not sure if it could be done. But
17 you're probably looking at four years before that could
18 be implemented.

19 AUDIENCE MEMBER: It would require an
20 election every two years. Elections are expensive.

21 MR. GOURD: But they would only apply

22 in certain districts.

23 AUDIENCE MEMBER: And one way you can
24 do these terms is by simple draw.

25 MR. KEEN: Draw straws.

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1 AUDIENCE MEMBER: That's the way
2 Indian Boards do.

3 MR. GOURD: A third would be up in
4 two years. When they're seated, they draw their straws,
5 and the five would get that or two years; the next five
6 or however you rotate that.

7 MR. STOPP: I guess my point is, any
8 Board of Directors or any Board of Education, the worst
9 fear is to turn over your entire board because of the
10 loss of experience.

11 AUDIENCE MEMBER: Charlie, isn't that
12 the way our 77th County Commissioner did, what you're
13 talking about drawing for two, four, six years?

14 MR. GOURD: I wasn't here then. Why
15 don't you tell us? That staggering of terms has been
16 mentioned a number of times.

17 MR. KEEN: The other question I had
18 was on the definition of special meetings. Do you feel
19 that it is ambiguous?

20 MR. STOPP: I feel that whole section
21 is ambiguous -- I don't feel that it's ambiguous because
22 I feel like I have a definition in my own mind of what
23 that is. The problem is, by practice over the last year

24 that I've been here, there are definite issues of
25 ambiguity in that.

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1 There have been definite interpretations of
2 what is a special meeting, who can call it, who can't
3 call it, how often can you have a regular meeting. If
4 there's different interpretations out there, and the
5 fifteen elected officials -- Council or the seventeen
6 elected officials have attorneys looking at it saying one
7 thing or the other, then it must be ambiguous, and this
8 is the place to come back to and say, let's define it,
9 whatever that definition is.

10 MR. KEEN: Thank you for your
11 testimony.

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1 ED CRITTENDEN

2 MR. CRITTENDEN: My name is Ed
3 Crittenden.

4 The problem that is currently paramount in the
5 Cherokee Nation -- this is going to go along with what
6 Baker just said. In the Cherokee Nation government, is
7 our definition of a quorum in the legislative body. As
8 our Constitution reads in or Article 5, Section 4:

9 "No business shall be conducted by the Council
10 unless at least two-thirds of the members thereof
11 regularly elected qualified should be in attendance,
12 which numbers shall constitute a quorum."

13 Our ancestors defined a quorum requirement as
14 a majority of Council in Article 3, Section 9 of the 1839
15 Constitution. In this section they also state:

16 "The power to compel the attendance of absent
17 members in such a manner and under such penalty as may be
18 prescribed by the Council at that time."

19 The senate and house of representatives of
20 every state in the nation, as well as the United States
21 Congress, define a quorum as a majority of the body, and
22 also have provisions to enable each body the power to
23 compel attendance of absent members.

24 These are examples of tested governmental
25 bodies that have most likely had the same type of

1 inefficiency occur, at which time preventative measures
2 from reoccurring were implemented to evolve their system
3 into a stronger, more efficient government.

4 Presently, a minority of six Council members
5 can prevent a vote on any legislation by non-attendance.
6 It is the duty of the Council to meet in regular session
7 once a month to discuss, debate, and vote on issues in
8 the legislative body of our government, and it must be
9 guaranteed in our Constitution that this will be so.

10 As a Cherokee citizen, I have the right to
11 hear both sides of any debate so I can determine where I
12 will stand. And above all, I want to know that action is
13 taken on each issue to prevent stalemate and keep the
14 Nation moving forward.

15 Regularly scheduled Council meetings are the
16 forums where this is meant to happen. Without this
17 guarantee, the people of the Cherokee Nation have no
18 insurance that business will be addressed in a timely
19 manner and that Cherokee Nation will even survive.

20 To give the commission another example; if a
21 hypothetical disaster was to occur, like an airplane
22 crash, where six or more Council members were killed, the
23 Cherokee Constitution and statutes make no provision of
24 how the government will survive.

25 A Council meeting to appoint new members in

1 the vacated seats or to even call a special election
2 would be illegal because of a lack of a quorum. No
3 business could be conducted until the next election. The
4 Cherokee Nation would be in an extraordinary situation
5 with no solution.

6 One suggestion to amend Article 6, Section 8,
7 under the Executive portion of our Constitution where the
8 Chief may on extraordinary occasions convene the Council
9 at the seat of government. The provision reads:

10 "Before the extraordinary meetings may be
11 legally sufficient to conduct business, a quorum of the
12 Council must be present."

13 The wording could be amended to read; "Before
14 the extraordinary meetings may be legally sufficient to
15 conduct business, a majority of living Council members
16 must be present."

17 This would provide for extraordinary occasions
18 within the Cherokee Nation and also prevent a minority
19 from stalemating the Legislative body through
20 non-attendance of regular meetings.

21 A majority of Council in a meeting with a
22 quorum established can pass any legislation on to the
23 Executive branch for approval. It is obviously
24 counter-productive and detrimental to a functioning
25 government to have this inconsistency in our

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2 Democracy has been taken from us by the 1975
3 Constitution. It is imperative this Constitutional
4 Commission bring this to the attention of the Cherokee
5 people and allow them to reestablish democracy for the
6 Cherokee Nation in the next election.

7 The second issue I have is, our present
8 election process allows the Chief and a Deputy to be
9 elected independent from one another. This can create
10 less than desirable working relationships within the
11 Executive branch of our government. A United States
12 candidate for President chooses a running mate so the
13 people know what kind of functioning package is going to
14 be running the country.

15 In our case we may have a democrat for Chief
16 and a republican for Deputy, and their philosophies may
17 be completely different and not a cohesive team to lead
18 our Nation.

19 That's about as much preparation as I got for
20 tonight with the notice that I got. But there's a couple
21 of other ideas I'd just like to briefly touch base.

22 One of the things it seems that we need and
23 don't have in our judicial system, we have a cannon of
24 ethics, but we don't have a Board of Ethics to enforce
25 that cannon. I don't know how that might be set up. If

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1 may be the Board could actually be the Oklahoma Board of
2 Ethics to oversee our Judicial branch, or if it could be

3 tribal members, if it could be Indian people throughout
4 the state of Oklahoma.

5 But I believe a Board of Ethics over our
6 Judicial branch, if not the entire Cherokee Nation, to
7 overlook Council. I don't think there's anything in
8 place to judge our elected officials or appointed
9 officials, whether they're living up to what the people
10 expectations of them are.

11 I'm going to make a wild suggestion here that
12 will definitely get people out to vote this time if it's
13 on the ballot. And I will suggest that people living
14 outside the fourteen-county area of the Cherokee Nation
15 not be eligible to vote.

16 Most of the programs, most of the facilities
17 that are provided by this government are within this
18 fourteen-county area. Now, I know there's some things
19 that affect people in California or Texas, but they can
20 actually elect our chief. And someone from California is
21 taking care of the people in Oklahoma. And it's going to
22 get more and more so that way if we don't start looking
23 at that possibility.

24 I know it's happened in the past. There was
25 one time when by absentee ballot we elected a Chief and

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1 he didn't win one district in the fourteen-county area.
2 So that's, you know, that will get them out if anything
3 will.

4 The three missed meetings by Council to be

5 ejected from Council. I don't think that they need to be
6 consecutive. I think the Seminoles, you miss three
7 meetings during your term and they just oust you. It's
8 pretty cut and dry. If you're elected to that duty and
9 you're not willing to serve that duty, then you need to
10 resign so business can be taken care of and your people
11 can be represented.

12 Even if you're against something, you've got
13 the right to filibuster. You've got the right to scream
14 with your loudest voice, and I want to hear it. I want
15 to hear what the opposition has to say, as well as the
16 pros and the cons of any issue. That's why I expect
17 everybody to be there.

18 I'd like to see it mandatory. Today we're in
19 a new age that none of us has ever seen before, and
20 there's something out there called the Internet, and it's
21 one of the most powerful things that's come in our life.

22 I would like to see it be written in the
23 Constitution that it's mandatory that the law books of
24 the Cherokee Nation be published and kept current by way
25 of the Internet so we can all get on there and study the

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1 law and be able to put our two cents in and have
2 something to base it on. We can all be lawyers. It's
3 very inexpensive, and it's something that we all could
4 use.

5 AUDIENCE MEMBER: None of these old

6 Cherokees are on the Internet.

7 MR. CRITTENDEN: Twenty-two percent
8 of Native Americans are on line.

9 AUDIENCE MEMBER: I'm talking about
10 our rural Cherokees.

11 MR. CRITTENDEN: I'll tell you, every
12 Cherokee from the first grade to the twelfth grade is on
13 the Internet today.

14 MR. GOURD: The part of the issue
15 here is even the publication and the codes, one of the
16 things people want published in the Advocate is the
17 legislative acts and, you know, the rules and stuff.
18 We're years behind publishing what they call the
19 pocket --

20 AUDIENCE MEMBER: We ought to provide
21 this free to the Cherokee people, otherwise, it is not
22 fair.

23 MR. GOURD: Let him finish.

24 MR. CRITTENDEN: I think in the
25 Constitution, I believe in the Constitution it makes it

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1 mandatory that we publish Council minutes in the
2 Advocate, you know, whenever it comes out. And I think
3 for cost sake, if we were to change that to Internet, we
4 may be able to save a big chunk of money, like to the
5 tune of ten thousand dollars every two months just in
6 those pages. And it would still be available.

7 I know we spend sixty thousand dollars every

8 two months on the Advocate. And I think that the minutes
9 should be available and should be archived, and I know
10 after I've read the paper, it goes in the trash. And I
11 don't know what those minutes say after that paper is
12 gone. But if they were archived on line, anywhere within
13 the world you can you could sit down at a your computer
14 and find that.

15 Five years ago, you know, ten years from now,
16 it would be available to all people, and precedent that
17 may have been set today could be studied ten years from
18 now.

19 I think that our judicial system, we need to
20 keep focusing on how our judicial system is working. If
21 it's working parallel to the white man's court, or if
22 we're all out in left field someplace.

23 If from time to time, if due process is not
24 there in the Cherokee Nation court, there's been times
25 when I've realized, I would be better off -- if I had a

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1 legal problem, I'd be better off to cut my card in half
2 and say, "I'm no longer Cherokee," and go to the white
3 man's court because I would have due process and an
4 appeal situation. And that's not a good place to put our
5 people.

6 So it's imperative that we develop this court
7 system and get it figured into the budget. I don't know
8 that they're full-time positions for a District Court, an

9 Associate District Court and then a Supreme Court. But I
10 think a tiered court system is imperative that we get in
11 place to resolve all of these difficulties that we had
12 and make sure that it works as well as what they've got
13 out there so we are not cheating our own people.

14 One last issue, and I'm not for sure how to
15 approach this. Our Constitution says something to the
16 effect that you cannot hold public office if you've pled
17 guilty to a felony, or if you've committed a felony, may
18 be how it is.

19 Then in the statutes it talks about if you've
20 pled guilty to a felony. In our last election, we saw a
21 situation where a man did something in his life that his
22 record was expunged, yet twenty years later -- it was
23 expunged and by the Supreme Court in the United States,
24 he was no longer guilty of a felony. Yet a plea was
25 entered into the court record and set up as a deferred

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1 sentence.

2 Now, that was probably a life-changing event
3 for him, and twenty years later we see a man that's
4 probably a different man than he was that night twenty
5 years ago. Because of that night, he looked at his life
6 and he decided, "I've got to change or I'm going to be
7 somewhere I don't want to be."

8 Now, a lot of us probably have gotten into a
9 situation like that or will. You can be driving down the
10 highway, drinking, have a few drinks or something, and

11 happen to run into somebody and kill them. And you may
12 be judged for man slaughter. But the court may find that
13 this was not intentional, and they may set you up on a
14 deferred sentence. And the courts have gone to a
15 deferred sentence today to give people a second chance in
16 life, but then it's up to the person.

17 When they're under that sentence, if they mess
18 up again, they're gone. But it puts the burden of
19 responsibility on the person, and it may be a
20 life-changing event. Now, twenty years from that event,
21 the Cherokee Nation goes back and rejudges a person for
22 who he was instead of what he's become because he's
23 learned from his mistakes.

24 And this individual -- and I'm not speaking in
25 support of him, I'm using him as an example -- was

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1 thought so highly as to be chosen as a candidate for our
2 highest office, yet our Constitution judges him as
3 invalid.

4 Now any one of us could be in the same
5 situation where we may have done something that we're
6 judged for ten years from now to make it impossible for
7 us to hold a public office in the Cherokee Nation,
8 although we've evolved into a productive, responsible
9 citizen.

10 Ralph, you know more about the deferred
11 sentence process than I do, but do you understand what

12 I'm trying to say?

13 MR. KEEN: Yes, I do.

14 MR. CRITTENDEN: That's all, I guess.

15 MR. THOMAS: Ed, the problem that
16 that young man ran into was not the fact that he shot
17 somebody. That didn't even enter into it. Where he made
18 his mistake was, he didn't tell the truth on his
19 application to be Chief. He put down that he had never
20 pled guilty to a felony, which he had to do to get the
21 deferred sentence in the first place.

22 MR. CRITTENDEN: He pled "no contest"
23 on that deal, I believe. Ralph, is that true?

24 MR. THOMAS: You can't get a deferred
25 sentence unless you pled guilty with the specifications

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1 that you go through one, two, three years of probation,
2 come back to court, change your plea to not guilty, and
3 the court accepts the not guilty plea. But you still
4 pled guilty back here two years ago, and that's where he
5 made the mistake.

6 MR. CRITTENDEN: The court enters the
7 plea for you; is that true? The court enters the plea
8 for that defendant, and then the court pulls that plea
9 back out.

10 MR. KEEN: Regardless of that, and
11 really regardless of what happened in the Bearpaw case,
12 you're absolutely correct that the court hinged its
13 ruling on constitutional language. So if our High

14 Court --

15 See, our High Court can only interpret the law
16 that is given. That is this. If we don't like the
17 rulings that they come up with, we, the people, have the
18 power to trump that by changing the language. So if we
19 want to lower that qualification for Chief, then we can
20 do that. This is the forum to do it.

21 MR. CRITTENDEN: I'm looking at the
22 problems that we've experienced over the past three
23 years, and I'm trying to address them. This is the
24 perfect time to address them and see if we can evolve
25 into a stronger system by clarifying things.

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1 MR. KEEN: I can tell you, sometimes
2 the judges don't necessarily like the decisions they have
3 to come to, but yet they feel like they're bound by the
4 language. And the standard that Cherokee Nation has is
5 somewhat more higher and stringent than other
6 Constitutions. So that probably needs looked at.

7

8 (PROCEEDINGS CONCLUDED)

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1 C E R T I F I C A T E

2 STATE OF OKLAHOMA)
) ss
3 COUNTY OF MUSKOGEE)

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5 I, Marla J. Cullison, a Certified
6 Shorthand Reporter, in and for the State of Oklahoma, DO
7 HEREBY CERTIFY that the said Transcript of Proceedings
8 was taken by me in stenograph on the 15th day of
9 December, 1998, and that the foregoing Proceedings was
10 later reduced to computer-aided transcription form under
11 my supervision, and that the same is a full, true,
12 correct, and complete transcript of said Proceedings.

13 I FURTHER CERTIFY, that I am not an
14 attorney for, nor relative of any of the parties involved
15 in this action.

16 WITNESS MY HAND AND SEAL this day

17 of December, 1998.

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