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BEFORE THE CHEROKEE NATION  
CONSTITUTION CONVENTION COMMISSION

NOVEMBER 19, 1998  
INDIAN METHODIST CHURCH  
TULSA, OKLAHOMA

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

COMMISSIONERS: Dr. Charles Gourd  
Ralph Keen, Jr.  
George Wickliffe  
Luella Coon  
George Underwood  
Paul Thomas

\* \* \* \* \*  
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1           Thereupon, the following proceedings were had:

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JACK SANDERS

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MR. SANDERS: A lot of us younger  
5 people -- I say younger; we're all young, but yet, what  
6 we're trying to do is a very, good thing in trying to get  
7 our people back together to work diligently side-by-side.  
8 And we have to go through these things every now and then  
9 in order to sort out things that we don't want in the  
10 Constitution that hinder us in some ways.

11           Because today, in this day and age, we've got  
12 high-tech technology, and we need to build up toward  
13 where we can get our children as much technology as they  
14 can stand, and I think by doing this and sorting out the  
15 things that we don't want in the Constitution, like Chad  
16 said about the one about the Presidents, okay.

17           I think, as we know, 1540 when they first  
18 discovered us, realized that we were Cherokees, that our  
19 government -- it hasn't been the best, maybe. We've  
20 always had bickering and arguing and fussing and  
21 fighting. Our history is full of it. But yet, we don't  
22 let that bother us.

23           What we are to do is just go ahead. If we  
24 can't find anybody that can do the work; get somebody  
25 else. Support what we have. We have got the best Nation

1 there is under the sun. I get in trouble for saying that  
2 a lot of times, but I'm glad that the good Lord created  
3 us, gave us a government, and gave us something to shoot  
4 for, and we survived. And I'd like to see a lot of the  
5 historical books that you've got pertaining to our Nation  
6 from start.

7           But yet, this is the reason, if we can invite  
8 everybody to tell them what we're trying to do, we'll get  
9 our people back together, supporting each other in what  
10 we're trying to do here in Tulsa in order that we can  
11 bring everybody together, share the joy, share the  
12 heartaches and share the sad times, but yet unified as  
13 one. And that's our purpose.

14           If we can get a Constitution that's appealing  
15 to everybody -- it won't be appealing to everybody, but  
16 yet, we can show them that we strive to do our best.  
17 That's the only thing we've got in front of us, is to do  
18 our best, to show our best of what we have.

19           From then on, hopefully, the younger  
20 generation will pick up where we left off and carry it  
21 through. Thank you.

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1                                   BEN SHOEMAKE

2                                   MR. SHOEMAKE: I'd like to comment on  
3 what Mr. Underwood said awhile ago about flying an  
4 airplane around Europe. Not only that, it was one of the  
5 most dangerous missions there was, over the oil fields,  
6 it flew about five hundred feet.

7                                   I think we should have more community  
8 involvement. I think our representative should be  
9 required to call meetings periodically, at least every  
10 quarter. As it is now, we never see one. We never hear  
11 anything. All they do is go over and draw that pay and  
12 come back. I think we should have a meeting and a  
13 designated meeting place, even if we have to rent one,  
14 and I think the Tribe should pay for it if we don't have  
15 a facility by then.

16                                  Also the Judicial system, I think we could  
17 expedite it some if we had an Attorney General, which we  
18 don't have. I think we're patterned after the U.S.  
19 Government, or the Government is patterned after us or  
20 vice-versa. I think we should have that.

21                                  That's about all I have right at this  
22 movement. I do think the age requirement for the  
23 Principal Chief should be back to thirty-five where it  
24 was originally. I think it's thirty-two now, isn't it?

25                                  MR. THOMAS: Are you suggesting, Ben,

1 that something be put in the Constitution that would make  
2 it mandatory for Council people for certain areas have  
3 one meeting per month?

4 MR. SHOEMAKE: At least a quarter,  
5 yes.

6 MR. THOMAS: Quarterly?

7 MR. SHOEMAKE: Yes.

8 MR. THOMAS: At a designated place?

9 MR. SHOEMAKE: That's right.

10 MR. THOMAS: I just want to be sure  
11 that that's what you want.

12 MR. SHOEMAKE: That's it. I know  
13 people who are here that don't even know who their  
14 Council people is. I think it's in other areas, the same  
15 way. They don't know who they are. I think they should  
16 get more involved. Also, that age, I recommend that age  
17 be put back up.

18 MR. THOMAS: Be put back up to  
19 thirty-five?

20 MR. SHOEMAKE: Put back up to  
21 thirty-five where it originally was. That's about all I  
22 have.

23 MR. KEEN: If I may, sir; is it  
24 Shoemake?

25 MR. SHOEMAKE: S-H-O-E-M-A-K-E, yes.

1                   MR. KEEN: Mr. Shoemake, you  
2 mentioned creating an office of Attorney General. Would  
3 you think that should be filled by appointment or by  
4 election?

5                   MR. SHOEMAKE: Well, I think it  
6 should be elected, but it's up to the people if they want  
7 to vote one in. That's a good question.

8                   MR. WICKLIFFE: There's a generally  
9 defined cabinet position called General Council in the  
10 current Constitution. In creating an Attorney General  
11 position, would you want to replace this General Council  
12 with Attorney General, or are you talking about a whole  
13 new section with a separate section who would define the  
14 powers?

15                  MR. SHOEMAKE: Yes, new section.

16                  MR. WICKLIFFE: Would this Attorney  
17 General be elected at regular elections, or would they be  
18 elected for a longer term, or shorter term, or what?

19                  MR. SHOEMAKE: It would be more or  
20 less up to whether he is voted in. That's why I said,  
21 like it should be voted in, but, you know, if it's not  
22 going to be that way, it would be the other way, yes.

23                  MR. WICKLIFFE: In reference to  
24 appointments, would you want all appointed positions to  
25 be made as it has been with the Governor and President

1 appointed by the Chief Executive Officer and with the  
2 confirmation and advise and consent of the governing  
3 body?

4 MR. SHOEMAKE: Yes.

5 MR. WICKLIFFE: So if it's not  
6 elected, it needs to be appointed with confirmation?

7 MR. SHOEMAKE: Yes.

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1 DEWEY ALBERTY

2 MR. ALBERTY: I have about eight or  
3 nine just short ones. And the first, it says that I  
4 think we should follow the 1839 Constitution as  
5 pertaining to the Judicial and the Council to elect the  
6 Judges for a specific term, four years because the  
7 appointment of Judges by the Chief creates an imbalance  
8 in power in favor of the Executive or the Chief section.  
9 I think they had a good thing because there should be a  
10 balance of those three powers.

11 Number two is, I agree with Ben that the Chief  
12 and Council member should be more accountable to Tribal  
13 members. I said monthly meetings, but periodical  
14 meetings where they could be held in their district  
15 should be set, and the Council member should attend such  
16 meetings.

17 Failure to do so without a valid excuse should  
18 constitute neglect of duty. No increase in pay for these  
19 meetings. Community reps got mileage, and those guys  
20 were dedicated.

21 Terms of Council members should be staggered.  
22 Theoretically, we have a turnover, and I think, that -- I  
23 don't know how they would do it, but I would like to see  
24 them have the continuity somewhere in there somewhere.

25 Number four -- I'm speaking of this area here

1 too -- there should be an occasional census and a fair  
2 apportionment of the Tribal Council. I'm not going to  
3 say what is set up now, but it's over. There should be a  
4 provision for referendum and recall.

5           Number six, provisions for impeachment should  
6 also contain impeachment procedures. That's been  
7 mentioned.

8           I'm concerned about the quality we have in our  
9 Council. Of course, the people vote, but I believe that  
10 training sessions on Tribal government and basic business  
11 management should be provided to newly elected Council  
12 members. Let them be more responsible.

13           Number eight, our prolonged high poverty rates  
14 are an embarrassment and a hardship. Reduction of family  
15 Tribal property rates to at least a National level should  
16 be at least a standard Tribal policy. There should be  
17 some kind of a goal.

18           What is the Tribal government about anyhow?  
19 What is its purpose? What we have now is nothing really  
20 more than a life-support system based upon need.  
21 Essentially, we've got a bunch of Tribal programs, but  
22 our self-esteem comes from our ability to be off of those  
23 programs, really. I think so. It's difficult to move  
24 the court record from the hand of the record.

25           Again, spiritually, we should acknowledge the

1 Almighty God as supreme ruler of the universe and seek  
2 his guidance in all of our affairs. They can't do that  
3 in the United States because of all the conglomeration of  
4 religions.

5           But it goes back to first Samuel where he  
6 says, you can have a king -- and they wanted a king. He  
7 said, "I'm your king; I took care of your people." But  
8 we want a man king, a visible. All right. You're asking  
9 it wrong because he won't be serving you; you'll be  
10 serving him. But I'll allow it on conditional, that if  
11 you obey my commandment, it will go well, and we will  
12 continue. But if you disobey and rebel, then my hand is  
13 going to be against you.

14           And just consider our circumstances today.  
15 I'm not talking about the Tribe, but on International  
16 government. I believe we have done that. We have  
17 rebelled against his commandment. Thanks.

18                       MR. UNDERWOOD: Any questions of  
19 Dewey?

20                       MR. KEEN: Sir, could you repeat your  
21 point number four? I didn't quite catch that. It was  
22 the fourth point.

23                       MR. ALBERTY: There should be an  
24 occasional census and a fair apportionment of the Tribal  
25 Council. I think we asked Judge Birdwell for

1 reapportionment, but I think we're running out of time,  
2 aren't we, on that?

3           But that's what we're on record as saying  
4 that, if you count it by numbers, there's no argument.  
5 It should be apportioned on a fair basis.

6           MR. WICKLIFFE: With the way the  
7 current Council is structured with fifteen members and  
8 nine districts, and it talks about equal proportionment  
9 or representation by districts, should there not,  
10 therefore, be fifteen districts instead of nine? The way  
11 the current structure -- nine districts, fifteen Council,  
12 and then within those districts, the population divides  
13 out, some with two and one with one Council person from  
14 the same districts.

15           I think the idea of the census is particularly  
16 brilliant because it just became a U.S. Constitutional  
17 issue over the current census count. We're drawing the  
18 Cherokee census counts for our head count population.

19           I'll give a brief speech. Everybody that is  
20 Cherokee had better fill out a census and count our heads  
21 for this time around or we're in trouble.

22           But the census idea and the apportionment,  
23 would you recommend, therefore, that we go to -- assuming  
24 it stays at fifteen for the Council, would we have  
25 fifteen districts apportioned equally, or what is your

1 thoughts on that?

2 MR. ALBERTY: No, I never thought  
3 about increasing your districts, but what I was concerned  
4 about, if we had to go that route to get, you know,  
5 equity, I don't care. But I would think as you look at  
6 it now, when you have one person that's -- well, how many  
7 people in District 8, and I didn't bring those numbers;  
8 it's a large amount. He's responsible, you know. He's  
9 that one. We've got three down there, and there's no  
10 argument, we should do something about that.

11 MR. WICKLIFFE: Let me ask you one.  
12 What do you think about at-large member on the Council?  
13 That's been brought up at another meeting, from out of  
14 state, which would make it sixteen members, or increase  
15 that even to seventeen where you will have an odd number.

16 MR. ALBERTY: Well, it would be  
17 issued responsibilities for the people outside of the  
18 district? Is that the rationale?

19 MR. WICKLIFFE: That was brought up  
20 at one meeting at Tahlequah, at-large representative on  
21 the Council.

22 MR. ALBERTY: If they don't have  
23 representation, perhaps that could be, but I never -- you  
24 know, my main point was to equalize representation.

25 MR. WICKLIFFE: What about your

1 comment on the Judiciary and the Judges about elective as  
2 compared to appointive?

3 MR. ALBERTY: By the Council.

4 MR. WICKLIFFE: So that the Judges  
5 would be all elected; for example, in Oklahoma, all the  
6 State District Judges and all of that are elected, so  
7 you're saying that all the judges should be elected  
8 rather than appointed and approved?

9 MR. ALBERTY: Yes, sir, by the  
10 Council. And it may not be perfect, but I think it would  
11 be a lot better than it is now. If we lose a judge, the  
12 sitting Chief is going to appoint him. I think it should  
13 be from the people through their Council.

14 MR. WICKLIFFE: So you're saying the  
15 people should vote on the judges and not the Council  
16 elect the judges?

17 MR. ALBERTY: Well, the people are  
18 the Council. The Council is representing the people, and  
19 if they are Councilmen representing the people, he  
20 listens to them. I think that's the way it was in 1839,  
21 that the Council elected the judge.

22 AUDIENCE MEMBER: None of the judges  
23 get the competition to run against each other if the  
24 Council is going to elect them. You usually just have  
25 the same three judges probably.

1 MR. ALBERTY: I don't know what their  
2 set-up was, but I'm just saying, this is a step, you  
3 know. If we could iron that out -- but I would like to  
4 see a change from the present. I wouldn't like to have  
5 the Chief appointing.

6 AUDIENCE MEMBER: Any judge can run  
7 for election? Any judge can put the name in the hat to  
8 run for Tribal Judge?

9 MR. ALBERTY: I guess that would be a  
10 procedure they could have.

11 AUDIENCE MEMBER: Or would they have  
12 to be Native American?

13 MR. ALBERTY: He would have to be a  
14 Tribal member.

15 MR. WICKLIFFE: There's been quite a  
16 few people comment to the issue of staggering the terms  
17 on the Council. There's been discussion, for example,  
18 that after the, whatever the election is, they would draw  
19 lots, and a third would be in for two years or four years  
20 so that, you know --

21 What we have right now is the potential there  
22 to replace everybody all in one election. How would you  
23 suggest that terms be staggered?

24 MR. ALBERTY: Well, I think in the  
25 old way we had an upper and lower house like we have

1 representatives and senators. I don't know what the  
2 duties, but they're officials. They all vote, and it's  
3 not a law unless they all vote on it; isn't that right?

4 MR. WICKLIFFE: Uh-huh.

5 MR. ALBERTY: -- where they introduce  
6 the law. I don't know how to perfect that thing, but I  
7 think you've got something right now that you ought to  
8 change on it.

9 AUDIENCE MEMBER: Pertaining to the  
10 census, well, we've got the majority here, but recently,  
11 we have -- the last Advocate that I read there, we're  
12 finding quite a few Cherokees up in the northwest Oregon,  
13 California areas. Now, in order for any one of us to run  
14 for Councilman or whatever office, we have to live in the  
15 district. Now, would we have to incorporate those people  
16 that lives out there, or would they have to start their  
17 own body there and try to get a representative from  
18 there?

19 MR. UNDERWOOD: If they have a  
20 representative at-large as was suggested, it would  
21 probably be from all from Southern California to Seattle,  
22 Washington, Kansas City, or wherever Cherokees are.

23 MR. KEEN: I think the thought is  
24 that there would be no residency requirement for that  
25 Council seat, that they would represent all at-large

1 Tribal members that do not reside within the historical  
2 boundaries, so that person could come from anywhere.

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1 NICK LAY

2 MR. LAY: My name is Nick Lay. I'm a  
3 Tribal member from Washington County, Ochelatta. Some of  
4 the things that I've seen that our Constitution kind of  
5 needs, I'll just start off first with the Legislative  
6 branch.

7 I do think there needs to be more Council  
8 representatives that represent the people. As I said  
9 earlier, I think there needs to be some type of process  
10 of that. One of the things that I've heard from the  
11 Creek Nation was that, for example, every two thousand  
12 Cherokees, you would get a representative within the  
13 districts. Eventually, they would grow in time. Say  
14 there were six thousand, you would get three  
15 representatives for that district. I think that's one  
16 way to look at that for reapportionment.

17 Another way is, I think maybe we should have  
18 something like a two-house system. We would have kind of  
19 like what's in the Federal system, a House of  
20 Representatives and the Senate. They don't have to be  
21 called that. That's just what I'm giving an example to.

22 The Representatives would be two-year  
23 Representatives. The Senators would be four years.

24 I believe we definitely need more  
25 representation on the Council, more people watching the

1 money. It would take more. They would have to come out  
2 and get the feeling from the people of more, assess your  
3 needs. Right now as it is, Tulsa and Washington County  
4 is a big district. It's as big as some Congressional  
5 districts.

6 I also feel that for this next election, we  
7 need to definitely have a reapportionment where you would  
8 get an extra Council representative for Tulsa and  
9 Washington Counties as it sits right now. That's what I  
10 kind of thought what our needs were in the Legislature.

11 Some of the other things I'm sure that was  
12 mentioned is a recall procedure. A recall procedure  
13 directly from the people for the Chief or whoever is  
14 there, Deputy Chief, whatever.

15 So many signatures would be turned over to  
16 somebody, then they would have a recall election and,  
17 thus, the election would have, you know, whether that  
18 public official is ousted or stays in.

19 Another thing that I've seen that we  
20 definitely need is something like an Attorney General,  
21 much like Drew Edmondson for the State of Oklahoma, if  
22 anyone knows Drew Edmondson.

23 I think this person should be a two-year term.  
24 He should have the authority independent from the  
25 Executive branch, Legislative branch, and Judicial

1 branch. He should be able to file charges, prosecute,  
2 and also give legal advice to the respective branches,  
3 much like Drew Edmondson does. He gives legal advice to  
4 the State Senators or State House Reps.

5           That person should have to be elected. He  
6 should be elected by the people, a two-year term. With  
7 somebody of that much magnitude and independency, they  
8 need to have some mechanism where they report back to you  
9 of what kind of job they've done and that type of thing.

10           I also believe that we have problems with the  
11 Cherokee Nation now. We have problems with our current  
12 Constitution. As some of the things read right now, it's  
13 a pretty good Constitution, it just needs more added to  
14 it. More people have to have a say, that's a definite.

15           As it is now, I feel that once an elected  
16 official gets in there, they really, really don't have  
17 much -- they don't listen too much to what the people are  
18 saying, maybe. There needs to be some way that the  
19 people have more of a voice. I really don't know how  
20 that is. Maybe it's more representatives.

21           As you found out when you call your State  
22 House or Legislature or your Congressman, sometimes  
23 there's a Congressman that works better for you than  
24 others, or Senator. When you have more of them in there,  
25 that's more of a person that you can go to. You know

1 that person is going to get more things done.

2           We are a big Nation, and we're only limited by  
3 fifteen people. You look at some of the other Councils,  
4 they've got fifteen or more, and they've got smaller  
5 groups of Council members or Legislative branch.

6           I also believe that people need, in some sort  
7 of fashion that live out of the districts, they need a  
8 Council representative. I don't know how you would go  
9 about doing it. Maybe each geographical area, they might  
10 have one, or if that's too expensive or too much, maybe  
11 one at-large Council member.

12           I also believe, while we're on that, that we  
13 need a Delegate. I'm sure that was said -- Delegate to  
14 Congress, a person that we can send up there. I don't  
15 know how it would work out, if that person could vote,  
16 much like a representative from Guam or Puerto Rico. I  
17 don't know if those people vote or anything.

18                   MR. UNDERWOOD: They can't vote on  
19 the floor, but they can serve on committee and vote and  
20 introduce legislation and all of that.

21                   MR. LAY: Something like that, I  
22 think that would be great. I think we need a person up  
23 there that is watching out for our interest.

24                   MR. THOMAS: Isn't that position  
25 unfilled? Isn't it in place to have one now?

1 AUDIENCE MEMBER: Yes, it is.

2 MR. THOMAS: I keep hearing it is.

3 MR. CHAD SMITH: By treaty in 1714,  
4 Congress agreed to allow us to have a Delegate to  
5 Congress, then they later amended that and said, "We'll  
6 let you have a Delegate in Congress when we make  
7 provisions for it." So we have the right through treaty,  
8 but we've never asked that it be enforced.

9 MR. THOMAS: If they could give us  
10 final punch, we could do that.

11 MR. SMITH: If Congress would carry  
12 that as word, it would open the door for us and give us a  
13 seat right beside Guam.

14 MR. THOMAS: I knew there was  
15 something close to being.

16 MR. LAY: I think that person should  
17 be at-large and everybody should be able to vote for it,  
18 and probably a two-year term too.

19 Term limits have been mentioned. It's really  
20 up to the team people. I've noticed some Chiefs or  
21 Deputy Chiefs have advantage over certain things, that  
22 they seem like they stay in there a long time, but if  
23 it's the people's will to keep them back in there, then I  
24 guess that's what the people have decided.

25 I don't know if this can be in the

1 Constitution or not. It might be done legislatively, but  
2 I definitely would like to see more of your money given  
3 back to you in some form or another, whether it's in  
4 former health, eyeglasses, something that you get from  
5 the Tribe.

6 Right now, I've seen a lot of financial money  
7 been wasted, and I want to see it spent on the people of  
8 the Cherokee Nation. I think finance is a key. I do  
9 believe there's got to be some mechanism that once money  
10 is appropriated for some certain job, like a health  
11 clinic or something, I believe that that money should go  
12 for that; it shouldn't be used for anything else but  
13 that.

14 We ought to have something in there that says  
15 if something happens to that money, that person or  
16 something, will be punished somehow.

17 We also need for our Judicial branch, our  
18 Tribunal our Supreme Court, they need to have some  
19 mechanism, I believe, to enforce their laws in Indian  
20 Country. Right now, they could write out an order, and  
21 from what I've seen, the Administration or the Council or  
22 whoever it is, the employees can throw up their arms and  
23 say, "Well, we don't have to adhere to this order."  
24 Well, that's not right.

25 If we're going to have a Judicial branch,

1 they've got to have some type of power to say, "Yes, you  
2 will enforce this court order." If an arrest warrant is  
3 issued, something like that, or if they say, "Turn these  
4 financials over to the people; it's open to the people,"  
5 that order should be enforced, however possible.

6 I've thought of different ways it could have  
7 been achieved. About the only thing I can think of is, I  
8 look at the Federal system, the Federal Judge has U.S.  
9 Marshals detailed to the court, that if he issues an  
10 arrest warrant, they're empowered to go serve that arrest  
11 warrant. They're basically there for that judge or that  
12 court, whoever is the judge. They act as bailiffs.  
13 That's how I could see that they can enforce their  
14 orders.

15 When we get in a situation that we've gotten  
16 now, that somebody can throw up their hands and say, you  
17 know, "That's a Tribal Court; I don't have to listen to  
18 them," type of thing, well, we don't have a Judicial  
19 system. We don't have any way to enforce it. That's one  
20 way that I've seen. If there's any better way, I would  
21 for sure like to hear some.

22 I believe I have mentioned appropriations,  
23 didn't I, to use for the intended purpose?

24 MR. UNDERWOOD: Yes.

25 MR. LAY: I believe it's already in

1 the Constitution. But we need to have some way of  
2 enforcing that, that those intended moneys go for that  
3 intended purpose which, basically, we're here to serve  
4 you, the Cherokee Nation.

5 That's about all I can think of.

6 MR. UNDERWOOD: Do you think the  
7 Attorney General position that you suggested would be a  
8 big help in enforcement?

9 MR LAY: I think so. If they see  
10 certain things or certain areas that there might be a  
11 possible crime that they can investigate, they should  
12 have like their own budget. They should be able to --  
13 just like a regular prosecutor can, you know, go to the  
14 court and say, "We think this and this and this is  
15 happening; can we have a search warrant or can we have  
16 this order," you know, just much like a regular  
17 prosecutor. I think that would help the investigative  
18 part.

19 As I've seen, what we have now is Marshals  
20 that are under the Chief, which is okay, but say there's  
21 a conflict like we have now. Basically, there's no way  
22 to rectify the problem. I definitely think this person  
23 should be independent from all three branches.

24 MR. THOMAS: There's one thing I  
25 brought up, nobody seems to know the answer to it. If we

1 have a situation where there's a warrant issued for an  
2 official, I'd like to know why I can't go up and arrest  
3 that man and take him to the nearest magistrate and have  
4 a hearing. And based on the warrant, the information on  
5 the warrant, should be enough for that magistrate to lock  
6 him up temporarily until there can be a hearing, like in  
7 the Federal situation.

8           But I have been told that there isn't anything  
9 in the Constitution to cover that, and I say, "Well, if  
10 there isn't anything in there to cover it, there isn't  
11 anything in there to keep me from doing it." If you're  
12 man enough to bring him in, he ought to be brought in,  
13 and if you aren't, take a friend with you.

14           This has made a mockery of everything that --  
15 I've worked my life in the Los Angeles Police Department,  
16 and I was a parole and probation officer here for twenty  
17 years. Everything that I stand for that's right within  
18 the rule of law has been desecrated, stomped on, stepped  
19 on, spit on, you name it, in Tahlequah, Oklahoma. And  
20 this is a sad commentary.

21                       MR. KEEN: Paul, you're talking  
22 effecting a citizen's arrest?

23                       MR. THOMAS: Yes, sir.

24                       MR. KEEN: Well, traditionally, under  
25 most systems of justice, you would have to have some

1 agent of the State to represent people of the State to  
2 effect the arrest. Citizen's arrest, normally, in common  
3 law extends to crimes that you witness, that you see  
4 first-hand. If you witness a crime being committed, you  
5 can effect a citizen's arrest, so that would not work for  
6 like that order for contempt or something. But I  
7 certainly get your point.

8 MR. THOMAS: It's pretty hard to  
9 observe a crook on the job working.

10 MR. KEEN: I've got a couple of  
11 questions for Mr. Lay too before he gets away from us.

12 Couple of things that's been mentioned before  
13 you came. One was staggered term limits for Council  
14 members. Right now the entire Council is seated at the  
15 same time, so we always have a potential of having a  
16 complete turn-over every four years.

17 Would you be in favor of staggering those  
18 terms where only certain members are elected every two  
19 years, or however it was structured?

20 MR. LAY: Well, as I've seen, the  
21 election is very expensive. If you go to that two-house  
22 system, you'll have that, I believe, because every two  
23 years, you'll have a representative up.

24 MR. KEEN: So you're going to have to  
25 have an election every two years?

1                   MR. LAY: Yes, if you go to that  
2 system. If you don't, if you kind of stay like it is,  
3 and just add Council members, say you go to the system of  
4 every two thousand Cherokees in the district, there's a  
5 Council rep, I wouldn't see any problem with it.

6                   That hasn't been my main thing that I would  
7 want to see changed, but I guess it would work. The only  
8 thing might be the expense, I guess, of it.

9                   MR. KEEN: Another interesting  
10 concept that's been mentioned both tonight and at a prior  
11 meeting, at least one other time, was establishing  
12 training sessions for incoming Council persons, Freshmen  
13 Councilmen. I'm not sure how we would go about doing  
14 this, but that's the concept, giving them some type of  
15 basic training.

16                   MR. LAY: I agree with that one  
17 hundred ten percent. Most people don't know this, when  
18 you look at a Sheriff that comes in or a County  
19 Commissioner or a County Treasurer, they go to school.  
20 I'm sure you guys know this, but a lot of people don't  
21 know that. The Sheriff, he'll go to CLEET, if he's not  
22 CLEET certified. The County Commissioner will go to  
23 County Commissioner School.

24                   I've never been to either one of those schools  
25 or anything, but I'm sure they have ethics courses in

1 there of what you can do and what you can't do. Boy, I  
2 would think that would be one hundred and ten percent  
3 great, that you would have some sort of thing that, this  
4 is what a Council member is, or this is what a Deputy  
5 Chief is or the Attorney General, this is what you're  
6 going to do.

7 I think maybe that booklet ought to be handed  
8 out before you run, let me tell you.

9 MR. THOMAS: A job description.

10 MR. LAY: Yeah, job description, and  
11 the ethics of it.

12 MR. THOMAS: That's good, yeah.

13 MR. LAY: You know, kind of like what  
14 is in the State Legislature or, you know, "This is what  
15 you can do," or "This is what you cannot do." For sure,  
16 "This is what you cannot do," these things, and list  
17 them. That way everybody knows what is up front.

18 MR. KEEN: Another concept that was  
19 brought up before you came was the concept of mandating  
20 Council members to hold community meetings with their  
21 constituents on some periodic basis, quarterly or  
22 however, but requiring that they go to their districts  
23 and meet with their constituents on scheduled meetings.

24 MR. LAY: You know, I think that's  
25 great. I think they need to have some sort of -- what I

1 found in mine is sometimes the expense of it, and getting  
2 the list. What I had trouble with was getting a list of  
3 Tribal members. Well, if I did have that list too, and  
4 say I was going to have a community meeting here in  
5 Tulsa, well, I would have to do a mail-out in, say, the  
6 whole county of Tulsa, and I don't know my numbers right  
7 off for the whole county. Say it's forty thousand  
8 Cherokees. So community meetings is -- if you ask me to  
9 require a Council member or a Chief or a Deputy Chief to  
10 have community meetings, I mean, I really can't answer  
11 that. I think it's good to have them, yeah.

12 MR. KEEN: Seems to me like it would  
13 address the concern you were talking about with the  
14 Council becoming too detached from the people they  
15 represent. It would force them to maintain some type of  
16 relationship. Who knows who may come to these meetings,  
17 but at least they would have that opportunity to come.

18 MR. LAY: What I found -- and I'm  
19 being perfectly honest -- right before the election,  
20 there's a lot of interest in community meetings and  
21 community organizations, and I've seen a few people here  
22 that's been to some of them. Then kind of right after  
23 that, maybe a year after that, it drops off.

24 It's hard to find a place. People have other  
25 things to do. It's almost hard to get the word out after

1 that, you know, by word of mouth. We're a little  
2 different here in Tulsa and Washington Counties than  
3 maybe around Tahlequah area or Stilwell, as in we're kind  
4 of spread out.

5 I go to the grocery store and then, of course,  
6 I'm not going to see probably Ben Shoemake there; he's  
7 going to be at another grocery store. Word of mouth is  
8 real difficult up in this area. The expense for up here,  
9 I know I tried to get a list to know who my Tribal  
10 members are.

11 People are calling me and saying, "Hey I'm a  
12 Tribal member; I need help with this." I didn't know if  
13 they were or not, or how to get ahold of them, how to  
14 call them back, other than if they call me type of thing,  
15 or if they were on the voter list. I don't know. My  
16 voter list back in '95 wasn't that good.

17 AUDIENCE MEMBER: Are you saying that  
18 you need a list of people in your district?

19 MR. LAY: Well, now I can get a voter  
20 list from Legislative Act 797, now since May of this  
21 year, I believe, you can get a voter list. Well, that  
22 didn't help me before back in '96 or '95 to get ahold of  
23 you or updated voter list. I asked for a Tribal  
24 membership list, and I didn't get anything back,  
25 basically.

1 I don't know if you're a Tribal member. I  
2 know Dewey is.

3 AUDIENCE MEMBER: Registration  
4 doesn't have records?

5 AUDIENCE MEMBER: Recently they had a  
6 mail-out for this deal about the meeting they had in  
7 Broken Arrow. Everybody in the area was mailed out.  
8 They've got the lists. You should be able to get it from  
9 registration.

10 MR. LAY: I don't have access to that  
11 list. I've asked for it. I can show you the memo that I  
12 sent a long time ago. That's the problem that I've had.  
13 You were asking, community meetings; unless to run an ad  
14 in the paper or something like that, then I wouldn't be  
15 getting a lot of --

16 MR. KEEN: Well, if it were made  
17 mandatory through the Constitution, and some set period  
18 set, it wouldn't be so much. You'd only have to get the  
19 word out a couple of times, and the only thing that might  
20 change would be the location of the meeting because it  
21 would be on a continuing basis, every three months or  
22 whatever.

23 So it would take a little time for the people  
24 to become aware of it, but after awhile, it wouldn't be a  
25 problem unless you just change the meeting place.

1 MS. COON: It would really help  
2 because I have talked to some people that have never  
3 really got acquainted with their Council person. Here I  
4 know how it is; it's so scattered and everything. But  
5 you need to meet with your people, you know, and bring  
6 them up to date on things they would like to know.

7 MR. LAY: I agree with that a hundred  
8 percent. Tulsa and Washington County is a spread out  
9 area, and we've had meetings up there in Sperry. There's  
10 quite a few Cherokees, Cherokee, Shawnee, Delaware in  
11 that area, but not all of them have come to the meetings.  
12 Maybe fifty or so, and there's I'm sure a lot more than  
13 that, and Bill can tell us.

14 We've had quite a few community meetings up  
15 here, and some people might say, "Well, I didn't get the  
16 message; I didn't get the word; I've never seen this guy  
17 before." That might be true because I didn't have the  
18 list to get in contact with them.

19 MR. KEEN: I've got one more question  
20 to you, and in all fairness, I'll tell you in advance, I  
21 asked this same question of your colleague, Jiggs  
22 Phillips, and he spoke before. But it's been mentioned  
23 in several of our meetings about requiring attendance at  
24 Council meetings, mandatory attendance policy of some  
25 type, of course, with reasonable exceptions to it.

1                   What would your thoughts be on that?

2                   MR. LAY: I think what we've had here  
3 this year or, I'd say a couple of years, is things that's  
4 never happened before. I don't believe you've ever had a  
5 Chief that's had an issue of an arrest warrant that I  
6 know of. You've never had the Council and the Chief get  
7 together and try to impeach the Justices. You've never  
8 had them spending millions of dollars that I know of --  
9 and this is from what I know of -- millions of dollars on  
10 attorney fees, funds that should be used definitely for  
11 you. Ninety percent of our Tribe is Federal funds. As  
12 far as I'm concerned, that's your money times two.

13                   The special interests that happen that the  
14 Council had to miss some of those meetings, and I'll  
15 defend to this day, is that I was there protecting,  
16 making sure your money was wasn't going to be wasted,  
17 millions of dollars, and our Tribunal, where we wouldn't  
18 have a Judicial branch.

19                   I believe before this, before these two years  
20 of, I guess, fighting or Constitution crisis, whatever  
21 you want to call it, I don't think we've ever had that  
22 problem of people regularly missing meetings. So before  
23 this time, and I look back, and I asked some people  
24 before, I don't believe that it was a problem.

25                   These just were extraordinary times. We found

1 out that things weren't working, maybe with our  
2 Constitution, or maybe something else, where it was all  
3 three branches were fighting.

4 MR. KEEN: Well, I understand what  
5 you're saying, that extraordinary times calls for  
6 extraordinary remedies. I think that's in essence what  
7 you're saying. I accept that, but once we get over this  
8 problem, and assuming that we can put fixes in place  
9 through the Constitution where this type of thing cannot  
10 happen again, would there be any reason not to require,  
11 have some type of attendance requirement for Council  
12 members? I'm talking in the sense of an electing  
13 official who never comes to the meetings. Is there any  
14 reason why we shouldn't do that?

15 MR. LAY: Those are things, if you  
16 put the right recall, those people will be recalled, and  
17 I'm not sure -- well, I think it would just have to  
18 depend on the circumstances. If that person had cancer  
19 and was sick and down and out --

20 MR. KEEN: That's why I say, there  
21 would have to be exceptions written into it. It would  
22 have to be carefully drafted. Absolutely.

23 MR. LAY: If you're asking do I think  
24 it should be in there --

25 MR. KEEN: Do you think it's

1 necessary?

2 MR. LAY: I don't think before these  
3 two years it was a problem. Do I think it's necessary?  
4 I think there's other things that need to be in there  
5 before that, but I definitely think maybe like you said,  
6 it needs to be drafted carefully that a person, if  
7 they're sick, you know, they won't be impeaching you the  
8 next week type of thing.

9 MR. KEEN: Well, the model that we've  
10 heard more than once is, what many School Boards adopt,  
11 is that if you miss three meetings in a row without good  
12 cause, then your seat falls into jeopardy. That's  
13 probably the best system I've heard of so far, three  
14 consecutive meetings.

15 MR. LAY: I'd like to see something  
16 to follow like what the Federals do. I don't know if  
17 they have one or not; I'm sure they do, or the State.  
18 Maybe adopt something kind of consistent note to that,  
19 maybe. I don't know if they do or not. I'm sure they  
20 do. Something consistent, I guess, with something  
21 everybody could look at.

22 MR. KEEN: I appreciate you  
23 responding to my questions.

24 MR. GOURD: The 1839 Constitution,  
25 Federal and State has provisions that compel attendance,

1 where if there's not a provision under which three  
2 meetings and you're out, absent proper justification or  
3 something, you send -- like the Speaker of the House can  
4 send the Highway Patrol and somebody else can find you  
5 and bring you back, you know, to compel attendance so  
6 that the business of this government can continue.

7           So the discussion has gone back and forth  
8 between three meetings in a row and you're out, or some  
9 provisions to compel attendance.

10                   MR. LAY: Are we talking Council  
11 meetings or Committee meetings?

12                   MR. GOURD: Council meetings.

13                   MR. SMITH: Can I ask a question?  
14 How about the situations where you reverse the coin and  
15 you have portions of the Council meeting in secret?  
16 Should there be some Constitutional provision where  
17 Council members who meet in secret to the exclusion of  
18 the rest of the government, should be punished?

19                   MR. LAY: I've heard that has  
20 happened.

21                   MR. SMITH: Well, the impeachment,  
22 eight Councilmen met in secrecy at one of the  
23 Councilman's house and agreed to violate the order of the  
24 highest court of our government. Should that not have  
25 the same kind of repercussions as boycotting meetings?

1                   MR. LAY: I think so. If you're  
2 going to add something like that, I think you should add  
3 something like that too.

4                   MR. GOURD: Would that require a  
5 majority of those to compel such an action, or unless you  
6 have a majority there's something such a thing as freedom  
7 of association? I don't know what meeting you're talking  
8 about, but if there's ten, with ten people --

9                   MR. SMITH: Bill Baker's meeting in  
10 June of last year.

11                  MR. GOURD: I didn't know. Now I  
12 know. Thank you. At his house?

13                  MR. SMITH: At his house. Semore and  
14 his other lawyers say, here is JT opinion as the quorum  
15 is necessary, and eight said, "So what; we're going to go  
16 ahead and go through with the impeachment." Carry on  
17 with the Tribal business in the smoke room, back room of  
18 some Councilman's --

19                  MR. GOURD: Well, if it would compel  
20 ten to take action, and if you have less than a majority  
21 and freedom of association of people just sitting around  
22 -- that was just a question. I don't know.

23                  MR. LAY: How about this? When you  
24 have that small number like that, you might have that  
25 situation happen. Fifteen members. That's why I was

1 getting back to more members, more people watching your  
2 money, more people it takes to get something by. You  
3 just don't have eight members saying, "We're going to go  
4 impeach the Judicial branch; let's go get them." It  
5 takes more people to go do that.

6           That's why I said, the more people that are  
7 watching your money, the more people that has to pass  
8 something whether it goes through those two houses or  
9 more representatives per district, I think that would  
10 help out too. Thus, they maybe could come up with the  
11 certain type, by legislation, their attendance thing.

12           The more people you have on there -- let's  
13 just example say, thirty or something like that. These  
14 thirty people, they come up with their rules, if you miss  
15 three, you're out of here, has to be passed by all thirty  
16 of these people.

17           MR. UNDERWOOD: If we vote on it  
18 though, won't the people be making the decision rather  
19 than the Council? We want to draw the rules for the  
20 Council in the Constitution.

21           MR. LAY: That's true. Yeah, in the  
22 Constitution. But definitely the more people you have,  
23 the better I think you are.

24           AUDIENCE MEMBER: I would like to  
25 speak with Nick, and another historical question, that

1 five hundred years ago, the Cherokees, how many houses of  
2 legislature did they have?

3 MR. GOURD: There were autonomous  
4 villages that were based on seven-clan system.

5 AUDIENCE MEMBER: And a Council?

6 MR. GOURD: There was no National  
7 Council as such. There were about sixty to eight  
8 semi-autonomous villages with seven clans. Each village  
9 had about six to seven hundred people in residence. That  
10 was kind of the capacity for a self-sufficient village.

11 It wasn't until after the American Revolution  
12 and the change to the formation of states that all of the  
13 Cherokee villages made a conscience decision to form a  
14 Nation because you had a village over here on the South  
15 Carolina Colonial frontier, or the formation state of  
16 South Carolina going at it with that State, and the U.S.  
17 Army come in and punishing somebody over here for  
18 something somebody did over here.

19 So it was a conscience decision in the late  
20 seventeen hundreds to actually form the Cherokee Nation,  
21 that is one body politic for all of the autonomous  
22 villages.

23 AUDIENCE MEMBER: And it has been  
24 called the "Council" since that time?

25 MR. GOURD: Yes, the Legislative,

1 yes.

2                           AUDIENCE MEMBER: I like the Council  
3 system -- and I think I'm getting ready to use my five  
4 minutes to speak, maybe at Claremore I'll be ready to use  
5 up my five minutes. But I'll probably go with not  
6 supporting two houses and thirty people because you're  
7 talking about money and too much salary, and we don't  
8 have to do what the U.S. Government does. That gets real  
9 bogged down sometimes.

10                       So we could stay with the Cherokee way and  
11 have a Council, give them their four years because four  
12 years goes so fast, you're going to spend campaigning,  
13 you're going to spend a lot of expense.

14                       So probably when I speak my five minutes, at  
15 Claremore, I'll probably go with the Council, as many as  
16 we have it. But I do agree that the Council members  
17 should go by the population in the district. Perhaps it  
18 should be for a certain number of Cherokee citizens, two  
19 thousand, one Councilman for that person.

20                       And I think the Cherokees need a few good  
21 people. With transportation and communication like it is  
22 today, we can talk to each other and people can get from  
23 one place to another. We don't need a lot of people; we  
24 don't need a lot of legislature. We need a few good  
25 people that will pay attention and go with that.

1                   So when I speak in Claremore, that's what I'll  
2 say. I think that the Council representation should be  
3 equal. We have a large population here in District 8,  
4 and we should have more than one Councilman.

5                   MR. LAY: Let me ask a specific  
6 question here. What if you have a Chief or a Deputy  
7 Chief or a Council that just breaks the law; there's an  
8 arrest warrant for these people or there's an order in  
9 our courts, that says, "You will provide this  
10 information; you will do this; this is our order; we're  
11 the Supreme Court of the Cherokee Nation; we're the third  
12 arm of the branch," what happens to those people when  
13 they fail to do that order?

14                   Are they subject to recall? Should they be  
15 arrested? When you break the law, basically, if you  
16 break the law or you speed or, you know, you go to steal  
17 something, you go to jail. That's the way it is until a  
18 court finds you guilty or not guilty.

19                   And in our free system that we have right now,  
20 three equal branches of government, we have the  
21 Legislative, Executive and Judicial. Well, if nobody is  
22 going to listen to the Judicial branch, we don't have  
23 that system no more.

24                   So what happens to those, say, not the Chief,  
25 say it's a Council member or the Deputy Chief that says,

1 "I'm not going to listen to your law or your court order  
2 or your laws that we made"?

3 MR. UNDERWOOD: You have made some  
4 suggestions how we would cure this. One of them was the  
5 Attorney general; one of them was recall, and referendum.  
6 We need more of that to get the teeth in there, so give  
7 us your suggestions like you have.

8 MR. LAY: I was trying ask some more  
9 and ask you --

10 MR. KEEN: I will say this; every  
11 government has to have a law enforcement arm, as Paul  
12 knows, he worked in law enforcement most of his life.  
13 Right now the Cherokee Nation does not have a law  
14 enforcement arm to speak of. We had one, or at least we  
15 did for some time.

16 The Executive is supposed to back up the  
17 Judiciary. This is both at the State level and the  
18 Federal level. Whenever the Judiciary needs the strength  
19 of law enforcement in terms of the Executive and through,  
20 you know, intergovernmental accommodating, they assign  
21 some type of law enforcement powers -- not powers, but, I  
22 mean, people to enforce court orders, whether it be  
23 through the County Sheriff's Department or in the Federal  
24 level, like you say, the Federal Marshals.

25 Technically, the old law enforcement officers

1 operate under the Executive branch, but it's through this  
2 sharing and let's work together and make this government  
3 work that is how this operates. Last time in Cherokee  
4 history that the Executive refused to honor the orders of  
5 their high Court, brought about the Trail of Tears.

6           Whenever Jackson refused to honor the orders  
7 of the United States Supreme Court, which brought about  
8 one of two or three of the Cherokee cases, had to do with  
9 the problem back in Georgia at that time.

10           And that's when he made the famous -- or has  
11 been attributed to making the quote -- I don't know  
12 whether he did or not -- "That Marshall wrote the order,  
13 let him enforce it." That's not the judge's job. The  
14 judge is to interpret law and bring about justice in this  
15 court. But sometimes they need help to do that, and it's  
16 up the Executive branch to back them up. That's where  
17 our system broke down.

18           MR. LAY: Our system don't work.

19           MR. GOURD: It was only two years  
20 after Andrew Jackson's order to send in the troops in  
21 violation of the Supreme Court order of Chief Justice  
22 John Marshall, it was two years later that the Federal  
23 Congress passed a law making it incumbent upon the  
24 President to follow the orders of the court.

25           So, you know, is it now incumbent for some

1 legislation to be passed, as you point out, to force that  
2 following of the orders of the Court. Historically,  
3 there are all kinds of interesting delimas out here.

4 MR. LAY: Maybe we can remedy that by  
5 putting it in the Constitution. But as you've seen, that  
6 Federal Judge, if he issues an order to go get those  
7 files from whoever, say, it was Nixon, search warrant, by  
8 golly, it gets done by those Marshals.

9 MR. GOURD: Not with Nixon, it  
10 didn't.

11 AUDIENCE MEMBER: Jackson's orders  
12 weren't because he had the people behind them. Those  
13 people wanted the Cherokees out of there, and Jackson  
14 could defy the Judicial and get us out.

15 MR. KEEN: Both times it caused a  
16 Constitutional crisis.

17 MR. UNDERWOOD: I think Dewey is  
18 trying to work in here, Chad.

19 MR. ALBERTY: Nick, you asked a  
20 suggestion, "what could we do." This is really what I  
21 would have done. You have in the Constitution a  
22 provision for impeachment, but you've got no provision --  
23 you've got provision, but you don't have any procedure.

24 But, listen, if I were a Councilman, I would  
25 write a short paragraph on procedures, so you would have

1 to take that 1839, and the Council submit those. And I  
2 would take Martindale down there and tell him, "Look, I'm  
3 going to submit some procedures on impeachment for good  
4 reason."

5 If you've got that on the floor, I'd call for  
6 a roll call vote on it, you know, and let the people know  
7 who voted it down and who supported it. But if we have  
8 an impeachment, who's going to support it and who's not?  
9 Let it be known in all the papers.

10 MR. LAY: And you know the outcome of  
11 that, don't you?

12 MR. ALBERTY: We would know. Let  
13 them know, you know. Come election, who's going to get  
14 voted out?

15 MR. UNDERWOOD: Chad, do you have a  
16 comment?

17 MR. SMITH: That provision is already  
18 in our Constitution in Article 6, Section 10, it says,  
19 "The Principal Chief shall cause the laws of the Cherokee  
20 Nation to be faithfully executed." I mean, that's there.  
21 His duty is very clear in open questioning, and I think  
22 you've addressed it very well. How do you enforce it  
23 when he has failed to do his duties?

24 This is interesting. We have a Civil Rights,  
25 and we have a right to civil disobedience. We can say,

1 we're not going to follow the law; we're not going to  
2 follow the traffic requirements. That's our choice. We  
3 don't have to follow the law. That's our right of civil  
4 disobedience.

5           The only one in the Cherokee Nation who does  
6 not have the right of civil disobedience, and that's the  
7 Principal Chief because of his oath of office says he  
8 will enforce all the laws. He doesn't have a choice to  
9 disobey the law. If he does so, it's a breech of his  
10 oath and his duties and in the Constitution.

11           AUDIENCE MEMBER: Then when that  
12 decision is made, we have to listen to the old-timers.  
13 They would say, "Be neutral. There's three sides to  
14 every argument, your side, my side, and the right side."

15           MR. WICKLIFFE: There was an  
16 old-timer made a statement at Pryor about Council people  
17 attending meetings. He said, "Don't pay them." Also,  
18 when we refer back to the 1839 Constitution, we're  
19 referring back to a Constitution that would remove these  
20 people. It was that strict.

21           AUDIENCE MEMBER: Same as they were  
22 convicted, they would take them out and shoot them.

23           MR. WICKLIFFE: Another thing, Chad,  
24 we're talking about, if a meeting was held, if there is  
25 enough people attending that meeting that would

1 constitute a quorum, it should be illegal like it is with  
2 School Boards. That right there is policy that could be  
3 passed by the Council itself if it would meet.

4 MR. SMITH: That was the decision by  
5 the Judicial Appeals Tribunal in the case of Paula Holder  
6 versus Joe Byrd. In the Council, those eight decided to  
7 disregard it and proceeded anyhow with an illegal  
8 impeachment.

9 MR. WICKLIFFE: That was really bad  
10 advice though.

11 MS. COON: Don't you take an oath  
12 when you become a Council?

13 MR. LAY: Say we missed that one  
14 meeting, one or two at that point in time -- wasn't it  
15 one or two? If they proceed and go ahead and do  
16 business, isn't that breaking the law? Didn't they break  
17 their oath right then? When those eight impeached those  
18 Justices without a quorum and we only missed two meetings  
19 -- say that three-meeting thing is in there. Say it's in  
20 that Constitution right now. By that time, we only  
21 missed two meetings. Say they just proceeded anyway,  
22 which they did.

23 MS. COON: How come all the six  
24 missed the meetings at the same time?

25 MR. LAY: The eight proceeded, and

1 they called themselves a quorum for some odd reason.  
2 They impeached those Justices. With a year's time, we  
3 finally have three guys, three white men say, "Well, no,  
4 you had to have a quorum, ten Council members."

5 MR. KEEN: The High Court said it  
6 long before the Massad Commission.

7 MR. LAY: Yeah, the High Court did  
8 too.

9 MR. WICKLIFFE: The High Court was  
10 right too.

11 MR. LAY: What do you do with those  
12 Council members that broke their oath? How would you go  
13 about impeaching those eight, or would you recall them?

14 MR. THOMAS: They violated their  
15 oath. It's very plain. No Cherokee business can even be  
16 discussed unless there is a two-thirds majority of the  
17 fifteen duly elected Council people present.

18 I was there that day beating on the table with  
19 my cane, and Gene Stipe and his four, yellow-neck  
20 lawyers, two hundred dollars an hour, five of them,  
21 thousand bucks an hour. I'm sitting there watching the  
22 money.

23 I said, "What makes you think you can have a  
24 meeting with eight people"? I've known Gene Stipe a long  
25 time. He said, "Paul, this is an emergency." I said,

1 "Okay, Senator, show me the word "emergency" in the  
2 Constitution, and I'll eat the book." Well, it's not in  
3 there. And I said, "You're raping the Cherokee  
4 treasury." And we went at it.

5                   Then I got threatened to be throwed out  
6 because I didn't shut up, and I didn't get throwed out  
7 either.

8                   AUDIENCE MEMBER: If those six people  
9 aren't interested enough in the meeting, then they've got  
10 no right to be there anyway. They could recall them.

11                   MR. THOMAS: But he got paid a  
12 thousand dollars an hour, his firm.

13                   AUDIENCE MEMBER: I'm not talking  
14 about Gene Stipe; I'm talking about people like him. If  
15 he's not interested enough to be there at the meeting, he  
16 ain't got no right --

17                   MR. LAY: I'm not interested in  
18 overthrowing my Judicial branch of government.

19                   MR. THOMAS: Now, about some of these  
20 people missing meetings, we've had that brought up  
21 several times. There are two schools of thought.

22                   One is, that Council person is not performing  
23 his job. The other school of thought is, if we all go,  
24 the eight will vote two or three hundred thousand dollars  
25 for the Administration to waste, so we aren't going. And

1 I have actively pursued my Councilman on occasion, not to  
2 go. Just go often enough to keep the programs for the  
3 elderly and the children and the necessary programs. Go  
4 often enough so there won't be a breakdown. Don't go  
5 often enough to where you can just throw out more money  
6 for the Administration to waste on attorneys.

7           So we in Mayes County have asked our Council  
8 person -- and by the way, we elected him; nobody else  
9 did, so we're calling the shots. Don't go, or sometimes  
10 we tell him, go. And he's representing us the way we  
11 want him to.

12           But then there are those people who say,  
13 "Well, he shouldn't be paid for missing a meeting." My  
14 goodness, that's a very small part of being a Councilman  
15 or Councilwoman. People don't realize there are  
16 committee meetings and community activities and  
17 everything to go to. Missing one Council meeting a month  
18 is by a long shot, not all of the duties that he's  
19 expected to perform.

20           You can take your choice; send your Councilman  
21 to go, and they'll have a quorum, and the Administration  
22 gets several hundred thousand dollars to spend, or if  
23 they can't have a quorum, that's the quickest way to cut  
24 them off.

25           MR. LAY: I'd like to say a little

1 bit about the Constitution. In there, I was defending  
2 what I thought the Constitution said, your money, it says  
3 in there, it must be used -- if it's appropriated, it's  
4 used for that specific purpose. Well, that's what I was  
5 protecting in that Constitution.

6 Also, it says we should have a Judicial  
7 branch. That's what I was also protecting. Well, in  
8 there, it says if there's not ten for a quorum, that's  
9 not a meeting. That's breaking your oath. You swore an  
10 oath to that Constitution.

11 It did not say, "If you miss three meetings,  
12 you're breaking your oath," which it might need to be in  
13 there, and that's a vote of you guys. But as it sits  
14 right now, it says, "Ten is a meeting." And it says,  
15 money should be used for its intended purpose, and we  
16 should have a Judicial branch. That's what I was  
17 protecting.

18 In that Constitution, where it sits right now,  
19 I swore an oath to that on the Bible. But it didn't say  
20 in there, you miss three meetings, and you're out of here  
21 type thing. And like he said, in circumstances, if the  
22 Chief just followed the law, just done what was supposed  
23 to be done, what the Judicial branch said so, we wouldn't  
24 have missed those meetings. That's the whole point.

25 We wouldn't have done that if he followed the

1 law.

2 AUDIENCE MEMBER: In that action of  
3 refusing to allow a quorum is international political  
4 strategy. If they're going to railroad something with a  
5 quorum, then you keep them from getting a quorum, like  
6 you said, you told your Councilman.

7 MR. KEEN: It may be a political  
8 strategy, maybe good political strategy, but it's not  
9 good government. That's my view on it.

10 MR. LAY: It's not good government,  
11 like he says, but if everybody done what they were  
12 supposed to do, if the Chief followed the law, if he just  
13 followed the law back then, we wouldn't have had done  
14 that.

15 MR. SMITH: How about if you're  
16 entertaining the discussion about the boycotting as a  
17 legislative tool or such, would it be wise to also look  
18 and expand that inquiry to other legislative techniques  
19 by filibustering? That served almost the same thing.  
20 You thwart the agenda, everybody shows up, but you don't  
21 yield the floor, so there's no progress.

22 Perhaps the discussion should look at those  
23 other traditional mechanisms that there's been led by the  
24 legislators if the people want to disallow those  
25 mechanisms too. Because what they could have done is all

1 attend and just somebody grab the floor and never give it  
2 up, I guess.

3 MR. GOURD: Another interesting thing  
4 that's in this Constitution, and the Indian Organization  
5 Act -- and being an anthropologist, I have to admit a  
6 tremendous amount of guilt in terms of discipline on this  
7 because I've argued this point for years about the Indian  
8 Organization Act and Oklahoma Indian Welfare Act, and the  
9 section of this Constitution which contemplates a yearly  
10 meeting not to last more than thirty days. That's what  
11 it says about regular meetings.

12 That's based on the old notions and ideas of  
13 the Plains Indians and hunting buffalo. There was only  
14 one time of the year in which there was enough food  
15 around for them to get together to talk about things.  
16 That's very clear in these IRA and OIWA Constitutions,  
17 and I've talked about that in reference to this  
18 Constitution. There was no contemplation of a regular  
19 monthly meeting.

20 So, you know, and inevitably, and I cannot  
21 think of, and while we're sitting here talking about this  
22 constitutional breakdown and the crisis, I cannot think  
23 of a single Indian tribe that has modeled after IRA or  
24 OIWA that had the provision of annual meetings and then  
25 have to do special meetings to conduct business the rest

1 of the time, that hasn't precipitated nearly a meltdown  
2 because of that problem there.

3 I think what we're talking about is actually  
4 coming very close to, if not a full-time legislature,  
5 then really close to that concept because we have monthly  
6 meetings now, which is nearly there anyway, with Council  
7 committee meetings the week following that.

8 So, you know, the idea might be, and what  
9 we're talking about here is changing that provision for  
10 Council meetings to occur and not have this idea of a  
11 regular meeting which can last no longer than thirty  
12 days. I think it even says sometime in June. I guess  
13 that's when the strawberries were ripe or something; the  
14 fish are running and we can gig them instead of buffalo  
15 hunting.

16 That might be another issue that needs to be  
17 looked at, is the structure of the meetings themselves  
18 which would properly define a quorum, not just as regular  
19 and special, and you'll have that and the other and get  
20 rid of that but actually talk about Council meetings and  
21 what constitutes the quorum.

22 But, again, this OIWA and IRA would be things  
23 that is fed onto this jack of a single Tribe that has  
24 that in there that has precipitated into a virtual  
25 meltdown.

1                   AUDIENCE MEMBER: We can get gown  
2 here. We can drive over. We can have meetings. We can  
3 communicate. We can get there, and we can just get into  
4 the 21st century and show the U.S. Government how to do  
5 it with the Council.

6                   MR. KEEN: We've obviously touched on  
7 some pretty tender spots here tonight in some of this,  
8 but we need to stay focused on not so much about  
9 assigning blame or fault for what has happened, as to the  
10 future and what are we going to do to the Constitution to  
11 remedy this type of problem and prevent it from happening  
12 in the future.

13                   That's what our assignment is, in my view, at  
14 least. I'll leave the fault-assigning to the powers that  
15 be, and let them work that out. My job is, what changes  
16 do we need to make in the Constitution to rebalance these  
17 powers and prevent it from happening again.

18                   MR. WICKLIFFE: I think too, Council  
19 Lay is agreeing there should be some kind of requirement,  
20 aren't you?

21                   MR. LAY: Yes, like I said, it was  
22 extenuating circumstances. If we put stuff in there that  
23 whatever says, the Chief will follow the law, whatever  
24 the Tribunal says, then I think you wouldn't have  
25 problems like the quorum meeting and stuff. And like if

1 they use the money for their intended purpose, like it  
2 goes for that clinic and not some lawyer -- no offense,  
3 Chad. But, you know, what I mean.

4 MR. SMITH: We weren't the ones  
5 getting the money.

6 MR. THOMAS: There should be some  
7 laws in about diversion of funds. That would eliminate  
8 this program of money being spent over here. That is  
9 against the law, but we can't get anybody arrested for  
10 doing it.

11 MR. LAY: See, you never had a  
12 problem before this Constitutional crisis. I think one  
13 of our members was sick a lot. He had, I believe, it was  
14 cancer. So until we had this crisis, we never had that  
15 problem ever that I know of.

16 MR. WICKLIFFE: What you're really  
17 saying is, we need a strong Judicial system to make our  
18 system work?

19 MR. THOMAS: George, that's true, but  
20 if the Judicial system is not backed up --

21 MR. WICKLIFFE: That's what ties  
22 everything together.

23 MR. THOMAS: The Judicial system has  
24 done everything they can. They've issued warrants.

25 MR. WICKLIFFE: What I'm saying is,

1 we need to rework the Judicial system where it will work  
2 and these things won't happen.

3 MR. LAY: I think they're a Judicial  
4 system, and if they just had a power to enforce it.

5 MR. WICKLIFFE: That's it.

6 MR. LAY: A power to enforce it.  
7 That's where the breakdown is. If you had a power to  
8 enforce it, the judge makes you pay a fine for a speeding  
9 ticket. If you say, "I'm not going to pay you, I'm  
10 walking right out of here," he's going to say, "Deputy,  
11 go over there and get that person."

12 That's what we need. We need somebody that  
13 says, "If you're not going to use this money right or  
14 turn these files over to the Cherokee people, then we're  
15 going to send somebody over there and make you do it, or  
16 you're going to go to jail," and have that process that  
17 that person or persons goes to jail. Does that answer  
18 your question? A Judicial branch with enforcement power.

19 MR. THOMAS: The Executive branch is  
20 where it's got to come from, that enforcement.

21 MR. LAY: What if we have an  
22 Executive branch that you're wanting to enforce?

23 MR. THOMAS: That's what we've got  
24 now. That's what we need corrected.

25 MR. KEEN: An Attorney General needs

1 to have autonomous power of his own to enforce the laws.  
2 He is under the Executive branch, that is true, but  
3 somewhere, there has to be enough independence vested in  
4 his office that he can enforce the law even as to elected  
5 officials. In the State system in Oklahoma they do it by  
6 process of Grand Jury, but it's still the attorney  
7 General's office that carries that process out.

8 MR. LAY: Grand Jury.

9 MR. GOURD: The point is, it's  
10 Constitutionally based.

11 MR. KEEN: Absolutely.

12 MR. GOURD: That's the point.  
13 Whatever the solutions that are being suggested and why  
14 we're here is to make sure it's Constitutionally based in  
15 exactly how the people want and how they want it to work.  
16 But absent a Constitutional reference, everybody can  
17 point fingers until the cows come home or that bull wears  
18 out, and we've got a problem.

19 MR. LAY: You're saying, like, say  
20 this independent Attorney General, not under any branch,  
21 has a duty to call a Grand Jury to find out  
22 misappropriations within a certain branch, whatever  
23 branch that is?

24 MR. KEEN: Yes. They have the sole  
25 power of prosecution. They decide whether or not -- they

1 try to investigate and ascertain whether or not a crime  
2 is being committed. Once they have ascertained that,  
3 they have the power to prosecute that crime. That's the  
4 way it's structured in both the Federal and the State  
5 level.

6           It's the trickle-down effect. It goes from  
7 the State Attorney General down to the separate District  
8 Attorneys, and then the Assistant District Attorneys.

9           MR. LAY: What if -- and I'm getting  
10 back to what if again, and this has happened -- if you  
11 have the Chief that's not going to say, "I don't have to  
12 do that type of thing," or "I don't have to go to this  
13 --"

14           MR. THOMAS: "I don't agree with that  
15 law; I'm not going to abide by it." Tell it like it is.

16           MS. COON: It's not only this  
17 Administration; it has been in the other Administration  
18 too things went on.

19           MR. LAY: How would that Attorney  
20 General or that Judicial branch say, "Yes, you will do  
21 this"?

22           MR. KEEN: They would launch an  
23 investigation, and then file charges against the Chief,  
24 and if the Chief refuses to respond to them or comply  
25 with Court orders --

1 MR. LAY: Right now that has  
2 happened --

3 MR. GOURD: Removal procedures,  
4 that's everything we've talked about.

5 MR. LAY: There are charges filed on  
6 our Chief.

7 MR. KEEN: There is?

8 MR. LAY: Right, and there is an  
9 arrest warrant, I think, too, I think.

10 MR. KEEN: There was at one time.  
11 I'm not sure whether it is now.

12 MR. LAY: I'm sure there still is.  
13 But we still get back to, how do you enforce that?

14 MR. THOMAS: I'll tell you how hard  
15 it is to enforce. About four months ago when they had  
16 the symposium over here, I was talking to Mr. Gover, and  
17 he promised me in Washington that he would do certain  
18 things, and I sought him out and asked him when he was  
19 going to start earning his money because he promised me.  
20 Nick Lay walked up -- wasn't that you walked up?

21 MR. LAY: Yes.

22 MR. THOMAS: We had a warrant there.  
23 I had one and so did Nick for Joe Byrd's arrest. Joe  
24 Byrd is standing right here. Nick handed Mr. Gover, the  
25 Chief Law Enforcement Officer now over everything -- I

1 don't know, not many people know this, but I don't mind  
2 saying it -- he handed that paper to Mr. Gover and said,  
3 "Paul said you should earn your money; arrest that man,"  
4 pointing to Joe Byrd.

5           That guy dropped that paper like it was red  
6 hot. I said, "What is the matter with you? Don't you  
7 want to earn your money"? He said, I want to keep big  
8 business out of this conflict not -- excuse me; "I want  
9 to keep big government out." That was his words. Did  
10 you hear him say that, Nick?

11                   MR. LAY: Yes. He went on to say  
12 that, you know, he's not going to enforce that order.  
13 They're our law enforcement branch right now.

14                   MR. THOMAS: He gave us a cop-out  
15 that this is a Cherokee problem; you people fix it.

16                   MR. LAY: If they're the law  
17 enforcement, how can we fix it?

18                   MR. UNDERWOOD: I think we're  
19 spinning our wheels a little bit.

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1 BRICE DOWNING

2 MR. DOWNING: I'd like to see,  
3 accountability. I'm kind of spoiled. I worked in a  
4 corporate operation for forty years, and we could balance  
5 our books every twenty-four hours. They were cost  
6 effective, and you knew how much money you had. You knew  
7 how much you spent. If you bought anything, you had a  
8 purchase order with a serial number on it. You could put  
9 it out for bid, and you couldn't take any kickbacks. It  
10 wasn't the guy that gave the best kickbacks that was  
11 ordered, it was the one that had the quality product for  
12 the least amount of money.

13 And I don't see why that wouldn't work in our  
14 government. As a matter of fact, the government has, I  
15 understand, tried to get this implemented, and they say  
16 they're working. But, you can get with today's  
17 computerized world, it's a lot easier keeping records and  
18 bookwork. If you've got people, CPAs and clerical help  
19 that can operate those computers and are trained to do  
20 it, they can have anything you want to know about any  
21 program in just a matter of minutes.

22 That's the way it ought to be operated, and  
23 not paying outside lawyers. And they're ignoring all the  
24 laws. But if you've got an accounting system, you need  
25 laws to back it up.

1                   MR. UNDERWOOD: I think all we're  
2 talking about here is enforcement, which we haven't had.  
3 If you guys have a better way than recall and voting  
4 people out, let us know and we'll get after it as far as  
5 the Constitution. We can't tell you how in the  
6 Constitution to do your accounting.

7                   MR. DOWNING: You can have policy  
8 though.

9                   MR. UNDERWOOD: That's for the  
10 Department to establish that policy. I think the  
11 government has good accounting policies. I don't think  
12 that's the problem. It's just not adhering to it and no  
13 enforcement again.

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

3

4 I, Marla J. Cullison, a Certified  
5 Shorthand Reporter, in and for the State of Oklahoma, DO  
6 HEREBY CERTIFY that the said Transcript of Proceedings  
7 was taken by me in stenograph on the 19th day of  
8 November, 1998, and that the foregoing Proceedings was  
9 later reduced to computer-aided transcription form under  
10 my supervision, and that the same is a full, true,  
11 correct, and complete transcript of said Proceedings.

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

15 WITNESS MY HAND AND SEAL this day  
16 of December, 1998.

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