

BEFORE THE CHEROKEE NATION CONSTITUTION
CONVENTION COMMISSION

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FRIDAY, DECEMBER 11, 1998

HARMON CIVIC CENTER

224 SOUTH PINE

NOWATA, OKLAHOMA

A P P E A R A N C E S

Commissioner: Mr. Ralph Keen
Commissioner: Mr. George Wickliffe
Commissioner: Mr. Paul Thomas

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1 P R O C E E D I N G S

2 MR. KEEN: The question is, if I understand your
3 question, is why do we have to go to Washington to get the
4 Constitution approved?

5 MR. ARCHIE MCCOY: No, no.

6 MR. KEEN: To get, what?

7 MR. ARCHIE MCCOY: Do you remember when the Chief
8 went up there and he fired the judges and the police force?

9 MR. KEEN: Yes.

10 MR. ARCHIE MCCOY: Why didn't he have the right to
11 do that? That's what I want to know.

12 MR. KEEN: Well --

13 MR. ARCHIE MCCOY: He's the boss.

14 MR. KEEN: There's many people that agree with you.

15 MR. ARCHIE MCCOY: He's the boss, and if they don't
16 let him do his job, then he's --

17 MR. KEEN: To fire the judges?

18 MR. ARCHIE MCCOY: Yeah, yeah.

19 MR. KEEN: Well, you know, our judges are appointed.

20 MR. ARCHIE MCCOY: It don't matter if they are
21 appointed. Are they doing their job? It says right here,
22 somewhere in here, if they're not doing their job --

23 MR. ERIC MCCOY: He's talking about on No. Four on
24 the comments related to the legislative branch. On No. Four,
25 adoption. Yeah, if you miss more than -- well, let's see,
1 yeah, if you miss more than three meetings, you know, it
2 should be just, basically, automatically, kicked out.

3 MR. KEEN: Would you give your name?

4 MR. ERIC MCCOY: Eric McCoy. And that's -- that's
5 one of his main gripes. Is like he's there and he's seeing
6 what these people are -- they've got this gripe, but they
7 don't show up except once a year just to give a word in or
8 whatever, accept their check, or whatever they get. And he's
9 saying, well, hell, if they're not going to be there to do
10 their job, they ought to put somebody in there to do their
11 job, somebody that's going to show up.

12 MR. ARCHIE MCCOY: When they went in to grab all of
13 that stuff that he had --

14 MR. KEEN: Uh-huh.

15 MR. ARCHIE MCCOY: -- they didn't have a councilman.
16 They done that on their own and it's not right. They should
17 have went to the council, because when he tried to do
18 something they said, no, we ain't going to have that, and
19 there should be something done about that.

20 MR. KEEN: Okay. What would you like to see done?

21 MR. ARCHIE MCCOY: Well, if they're not going to go,
22 they ought to be fired.

23 MR. KEEN: Well, we've got two types of officials.
24 We have got elected officials, such as your councilmen, and we
25 have appointed officials. The appointed officials can be
1 removed by the council. That's the only way they can be
2 fired.

3 MR. ARCHIE MCCOY: Well, that's all right, too.

4 MR. KEEN: Okay.

5 MR. ARCHIE MCCOY: But if they're not going to do
6 their job, then why do they want to hang on? Because if
7 you're elected or you are appointed and you say, hey, we're
8 going to go raid the chief's office and get all of those
9 papers, and they didn't, they should, and that's why all of
10 the hell started. And you know you're a lawyer and you know
11 that. That's right.

12 MR. KEEN: My opinion really doesn't mean anything
13 in this, but --

14 MR. ARCHIE MCCOY: I know it don't, but you can talk
15 now.

16 MR. KEEN: I'm trying to from a Constitutional
17 prospective -- you know, any judiciary, whether it be Cherokee
18 Nation Oklahoma or the federal system, they have a method by

19 which they can enforce court orders, search warrants, and
20 there's mechanisms in place to do that, to enforce the law
21 against anybody.

22 MR. ARCHIE MCCOY: You see, they went over the
23 judges head, too.

24 MR. KEEN: Who did?

25 MR. ARCHIE MCCOY: Whoever it was.

6
1 MR. ERIC MCCOY: When all of that stuff was going on
2 here, when they was raiding the courthouse or whatever down
3 there at Tahlequah and the Chief -- now, I don't know all of
4 this because I've just kind of come here for him and, well,
5 the Chief has the right to fire, basically, that police
6 department that was down there. Am I mistaken or not? I
7 mean, I don't know, but I would think he does.

8 MR. KEEN: Okay. Assume he does.

9 MR. ERIC MCCOY: I would assume he does. So if he
10 fires him, whether he's got a good reason or not, if he's got
11 U.S. Marshals in there and they tried to jump in there and go
12 in there where they're not supposed to be, their butts ought
13 to be handcuffed and arrested.

14 MR. KEEN: I would agree, if they don't have the --

15 MR. ERIC MCCOY: And that's what's pissing him off
16 because all of that hell going down there, people doing this
17 and taking records that's not supposed to be taken or such, or
18 whatever, and when he -- he thinks that you're getting paid or
19 you're elected to do that job you should be there every time,
20 because if you're elected, the people wanted you there to
21 represent them.

22 MR. ARCHIE MCCOY: Well, he said awhile ago that

23 they didn't want to send their representative, their
24 councilman, because they didn't want to spend no money. And I
25 said, if they go, then they can vote against them, whatever
1 they're going to spend. And that's the way the government
2 runs and that's the way the Constitution of the United States
3 run and that's the way ours ought to run, because if you've
4 got councilmen there and they don't have a damn thing to say
5 about it --

6 MR. THOMAS: Who took papers that they weren't
7 supposed to take?

8 MR. ERIC MCCOY: Well, that's all -- I mean, I'm
9 just saying what I heard on the news, so that could be --

10 MR. THOMAS: Maybe I can help you out there.

11 MR. ERIC MCCOY: Uh-huh, because that's all we
12 heard.

13 MR. THOMAS: Several of the council people, and
14 they're entitled to have the documents that pertain to all of
15 us. Now, is there a problem there where the councilman --

16 MR. ARCHIE MCCOY: Well --

17 MR. THOMAS: Isn't he supposed to have the access to
18 these? Let's just take it a step at a time, please. They
19 went to the Chief and asked him, please, give us these papers.
20 The answer was "no."

21 MR. ARCHIE MCCOY: I understood that.

22 MR. THOMAS: They went to the Supreme Court and got
23 a court order, which is legal --

24 MR. ERIC MCCOY: Right.

25 MR. THOMAS: -- to go in and get the papers, and
1 that's all in the world they did. Now, I don't know what you
2 heard.

3 MR. ERIC MCCOY: Well, I know.

4 MR. THOMAS: But I was there and I've been mixed up
5 in this from the very beginning.

6 MR. ERIC MCCOY: Well, that's good.

7 MR. THOMAS: And if you doubt me, meet me and I'll
8 show you down there where I'm correct. I wouldn't come over
9 here and lie to you.

10 MR. ERIC MCCOY: I'm not saying I doubt you. Hell,
11 I'm just asking. If I doubted you, you'd know I doubt you.

12 MR. THOMAS: Okay. The marshals did what a court
13 ordered them to do by taking the documents.

14 MR. ERIC MCCOY: Right.

15 MR. THOMAS: They took them, Xeroxed them, put the
16 originals right back where they got them, and that was the
17 basis for the charges of obstructing justice and diversion of
18 federal funds come from. So without these papers, there
19 wouldn't be charges that are still in force against the
20 administration at this time. There's three warrants --

21 MR. ERIC MCCOY: Uh-huh.

22 MR. THOMAS: -- down there.

23 MR. ERIC MCCOY: You see, what I'm saying though is,
24 is they got a court order from the United States Government or
25 whatever to go in there and get them papers.

9

1 MR. THOMAS: From the Supreme Court.

2 MR. ERIC MCCOY: Supreme Court. Well, U.S.
3 Government, Supereme Court, okay.

4 MR. ARCHIE MCCOY: No.

5 MR. ERIC MCCOY: So then they should not have
6 allowed whoever Chief Byrd had to block this part. If the

7 Cherokee Police or whatever had the right to go in there --

8 MR. THOMAS: All right.

9 MR. ERIC MCCOY: -- well, then, who was letting the
10 Oklahoma Highway Patrol block them from going in there, or
11 whoever was blocking them? I mean --

12 MR. THOMAS: It wasn't anybody blocking the doors
13 when they went in to get the papers. They highway patrol was
14 blocking the doors when I tried to get in the old courthouse
15 on August 13th. I had a black eye and a busted fist fighting
16 them, because we felt that that was a public building and we
17 had a court order from the judges to go in.

18 MR. KEEN: All right, gentlemen. Let's go off of
19 the record for a minute.

20 (Whereupon, a brief discussion was held off of the
21 record.)

22 MR. KEEN: Mr. McCoy, did you have something further
23 to add to your testimony?

24 MR. ERIC MCCOY: No, never mind.

25 MR. KEEN: Okay. Sir, did you have something
1 further to add?

2 MR. ARCHIE MCCOY: I guess not.

3 MR. KEEN: I'll recognize this gentleman in the
4 back. Will you state your name for the record?

5 MR. CHARLES HOSKINS JR.: Charles Hoskins Junior.
6 And I may understand that I'm talking out of turn here because
7 I believe you said we wanted to go in order, but I just want
8 to express my concern to the Commission that we ought to all
9 try to leave politics at the door. Sometimes that is
10 impossible. I certainly think that members of the Commission
11 should try to take the lead in this, and I haven't seen that

12 here. I would like to go on talking about changing the
13 Constitution and I'll waive my turn, I mean, if I can have my
14 turn back.

15 MR. KEEN: Well, I've been calling people as they've
16 been prepared to speak. So if you're ready to make that
17 presentation, we're certainly ready to hear you.

18 MR. CHARLES HOSKINS JR: And I may be echoing some
19 of the things that Mr. McCoy said about the item about quorum
20 for council members. I'll stand if it's more appropriate. As
21 it is right now we have a provision in our Constitution, and
22 I'll get the article here. It's Article 5, Section 4, and it
23 talks about the quorum requirements. It's like any
24 corporation or any government, there is quorum requirements
25 for the elected representatives. And there's a purpose for
1 quorum requirements because we want our elected body, our
2 representative body to be represented when it has meetings.
3 That's why we have quorum requirements. But you also have to
4 strike a balance: you have to make sure that the represented
5 body can work. And the way our provision is written, a
6 minority of council members -- and it doesn't matter matter
7 who they are. I don't care what their political philosophy is,
8 any six members of the council can effectively shut down the
9 legislature. And I don't want the people's branch of the
10 Cherokee Tribal Council to be shut down by a minority of
11 representatives, because that effects people beyond their
12 districts. And if you shut down the branch of government that
13 passes the laws, that passes the budget, then you have a great
14 effect on the other branches of government. And so I think we
15 still need a quorum requirement. I think we have to have one.

16 I think all forms of government like ours that have elected
17 legislature has to have some kind of quorum requirement.

18 The Cherokee Constitution of 1839 had a quorum
19 requirement of sort. I'm sorry, the Cherokee Constitution of
20 1839 had a quorum requirement, but it had a provision in it to
21 basically mandate that people show up. And it's similar to
22 the provision you see in the United States Constitution. Just
23 imagine for a moment if President Clinton is to be impeached
24 by the past representatives, his supporters can't walk out of
25 the United States Congress and shut that process down, nor
1 should they be able to. When he wants to pass his budget, his
2 opponents can't walk out and shut the House of Representatives
3 down, and that shouldn't be the case in Cherokee Nation. I
4 think we have to change this. And I know that's just half the
5 battle of saying we have to get rid of this and we've got to
6 have something in its place.

7 I think we ought to look to our own Constitution and I
8 think we ought to look to the United States Constitution
9 because I think they're good models. But we also ought to
10 make sure and understand that we ought to respect the minority
11 members of the council who disagree with the majority. That's
12 why we need quorum requirements that make sense, but we can't
13 have a minority shutting down an entire branch of government.

14 So I think the Commission, and I think I'm sort of a
15 broken record here from what you've heard over the past few
16 months because I think a lot of people have said this, but I
17 think the Commission really ought to look into changing the
18 language that's in it now and to have some sort of a mandate
19 of attendance. That's all I have to say.

20 MR. KEEN: Let me ask you, Mr. Hoskins, you

21 mentioned the Cherokee Nation Constitution of 1839 and the
22 requirement that it had and the U.S. Consttution. What
23 methods did they use to enforce a quorum?

24 MR. CHARLES HOSKINS JR.: I think the United States
25 Constitution has a Sergeant at Arms that can actually go out
1 and basically run enough members in. That may be a crude way
2 of describing it. I'm not an authority in that area. And I
3 think the Oklahoma Constitution may have a provision, or at
4 least statutory, that allows members of the highway patrol to
5 get members of the legislature in so they can conduct
6 business. And I think the issue that you might be hinting at
7 here is do we want in the constitutional provision something
8 that says in stone, you know, if you miss a third time you're
9 out, or do we want to give the council a means to work it out
10 amongst themselves? But that may mean they say the marshal
11 service may be able to go out and bring council members in.

12 So I think that's -- I think that's the issue that's
13 second to getting rid of the problem we have now. And then
14 the issue becomes do we want something in the Constitution
15 that says three strikes and you're out, or do we want to say
16 the tribal council through, you know, through their own
17 passing of a statute, can take care of that themselves? And
18 that may be more appropriate to let them do it.

19 MR. KEEN: Again, you know, I don't profess to know
20 the exact method the U.S. Constitution uses or even the
21 Cherokee Constitution of 1839. But you know, as an attorney
22 and a student of civil rights, it's difficult for me to
23 envision in this modern day sending out any armed force to
24 literally drag people into meetings. I mean, surely, we've

25 come further than that. And I agree with the basic premise

14

1 that a quorum requirement is absolutely necessary and it
2 should be enforced. No question about that. But I'm really
3 struggling with perhaps the best way to put that into place.

4 MR. CHARLES HOSKINS JR: And I see how that's
5 disturbing, the notion that an armed guard could come out and
6 remove a legislature from his house and force him to attend,
7 which might suggest that we ought to have something in the
8 Constitution, some sort of the three strikes you're out
9 provision. It's sort of self-enforcement, I mean, if it's on
10 the books, it's in the Constitution, and you miss three times.
11 And I see something in here about reasonable exceptions. That
12 sounds like something that you would challenge in court, well,
13 this is reasonable; this is unreasonable.

14 So maybe the problem that you have with what I believe to
15 be the method that the United States uses and the State of
16 Oklahoma uses, maybe the answer is to have in the Constitution
17 that if you miss three and it's unreasonable, you're out.
18 That may be the alternative.

19 MR. KEEN: The three strikes and you're out
20 approach, for lack of a better term, that has been suggested
21 and modeled after some school board. You know, that's the
22 system that they use. If you miss three consecutive meetings
23 without good cause, like medical cause or whatever you want to
24 define that to be, then you've breached your duty to the
25 school board. So I think that's where that originated from.

15

1 MR. CHARLES HOSKINS JR: And you know, you were
2 asking about the Constitution of 1839, I do have the provision
3 in front of me. It's brief, if I could read it and just have
4 it on record.

5 MR. KEEN: Yeah, put it on the record.

6 MR. CHARLES HOSKINS JR.: The Cherokee Constitution
7 of 1839, Article 3, Section 9: "Each branch of the national
8 council when assembled shall choose its own officers. The
9 majority of each shall constitute a quorum to do business, but
10 a smaller number may adjourn from day-to-day and compel
11 attendance of absent members in such a manner and under such
12 penalty as each branch may prescribe." So it didn't codify
13 what the penalty would be, it just gave the national council,
14 and actually each house of the national council, means to do
15 that.

16 MR. KEEN: Okay. And so they would exercise that
17 power through their legislative authority and then, of course,
18 that would have to pass Constitutional tests or Constitutional
19 review by the judiciary area. Would you agree?

20 MR. CHARLES HOSKINS JR: I would agree.

21 MR. WICKLIFFE: I need to ask you a question. How
22 about just a simple majority?

23 MR. CHARLES HOSKINS JR: You mean --

24 MR. WICKLIFFE: Well, I remember --

25 MR. CHARLES HOSKINS JR.: Yeah, I suppose you
16
1 would -- that would eliminate the idea that six members of the
2 council could shut down the legislature. It would take more.
3 I mean, that might make sense. It still seems to me that it
4 makes sense to give the council some means to compel
5 attendance.

6 Now, I didn't come here today with a specific idea as to
7 how they should compel attendance, but maybe that's the point.
8 Maybe that's why it should be in the Constitution. Maybe

9 that's a part of the procedure that is more suitable, as Mr.
10 Keen suggested earlier, more suitable for the legislature,
11 more suitable for them to work out as a matter of statutory
12 law as opposed Constitutional law.

13 MR. KEEN: Do you have any questions?

14 MR. WICKLIFFE: I have none.

15 TERRY WHITFIELD: Yes, Terry Whitfield. On this
16 getting after the council members, why don't they say, well,
17 after two months the Cherokee business cannot be conducted
18 because of the quorum, that the third month, regardless of how
19 many is there, business can be conducted? Like if any grants
20 for the whole Cherokee Nation, not one district, one
21 councilman's district, it can still be voted on where we can
22 get funding from the federal government without a quorum.

23 Now, that's the part that's hurting the Cherokee Nation.
24 It's the councilmen that's not there where they can't conduct
25 business and get the grants that needs to be got. And those
17
1 councilmen, they are hurt; but in turn, they shouldn't hurt
2 the whole of the Cherokee Nation. They should be able, just
3 because they're gone, the third time the Cherokee Nation
4 Council should be able to conduct business as normal. Now,
5 that would be a solution. Because if they're not able the
6 first two months to conduct business and vote on anything, any
7 grants, any money, the third month, regardless if two people
8 is there, it should be conducted where they can vote on
9 receiving grants from the federal government.

10 I think if you seen whenever they did go out, we had
11 quite a few grants that were up that couldn't be voted on to
12 get from the federal government, housing, things like that.
13 And that hurt the whole Cherokee Nation. It didn't hurt one

14 district, it hurt all of the Cherokees. And by going the
15 route of two meetings, without being able to conduct this and
16 vote on anything, the third meeting -- say, if it is nine
17 members, there's still a majority of the vote with the nine
18 members, or however many members come, you know, show up. But
19 this way at least the Cherokee Nation can carry on business
20 instead of stringing along six months without voting on
21 anything, but I think that would be a solution where the third
22 month -- and also the council person that doesn't show up for
23 any other council meetings or any of the other, that don't
24 even show up at Tahlequah for three or four months even, a
25 month I would say, they don't need -- Chuck, how much do you
18
1 get a month just for being a council member?

2 MR. CHARLES HOSKINS: A council member by
3 Constitution is given a stipend of \$600.00 a month for
4 council. Okay. That doesn't say you have to go to council
5 meetings, it just says for council.

6 MR. WHITFIELD: I thought --

7 MR. CHARLES HOSKINS: We also receive \$800.00 a
8 month for committee meetings. And I'll speak to that when it
9 comes my turn. But to completely answer your question, it's a
10 guaranteed \$1400 a month.

11 MR. WHITFIELD: Okay. I think something in the law
12 should say that that member, if he don't show up for three
13 months, why give him, what, three times 14 -- 42,000 -- I mean
14 \$4200 for not showing up?

15 MR. ERIC MCCOY: That's what I'm saying.

16 MR. WHITFIELD: I think this gentleman right here is
17 right. Hey, if that council member, even those he's

18 representing maybe his district, that council member is also
19 representing the whole Cherokee Nation and he has an
20 obligation not to just -- maybe it isn't a majority of his
21 people that put him in, but he has an obligation to the
22 Cherokee Nation to show up and at least vote. And if not,
23 after two meetings -- I mean, the pay is what's -- I mean, if
24 they don't even show up for a committee meeting or a council
25 meeting and the setback is three months, that's pretty good
19
1 wages for not even --

2 MR. ERIC MCCOY: I'm sure a lot of people around
3 here don't make \$1400 a month, or whatever.

4 MR. WHITFIELD: I mean, it's a fair salary for
5 something that you should at least represent. If not your
6 district, you should represent the Cherokee Nation, the
7 betterment of it. Like these federal funds, now that effects
8 the whole Cherokee people as a whole, funding, grants, things
9 like that. They have an obligation to vote on them for the
10 whole Nation, the Cherokee Nation, not just for their
11 district.

12 MR. KEEN: I'm sorry, I didn't catch your last name.

13 MR. WHITFIELD: Whitfield.

14 MR. KEEN: Whitfield. Mr. Whitfield, do you agree
15 that when the council calls a meeting, that that meeting
16 should be called according to Cherokee law?

17 MR. WHITFIELD: Well, I feel like just what I said,
18 that after two meetings that the council members, if they're
19 not there and they don't have a quorum for two business
20 meetings of the council, Cherokee Council, they don't have a
21 quorum to vote on any of our federal grants and things like
22 that, the third, regardless of how many is there, that they

23 can conduct Cherokee business as usual. Instead of saying,
24 well, I'm going to hold out and you're not going to get no
25 funds from the federal government because we're not going to
1 be here. It's hurting the whole Cherokee Nation. It's not
2 hurting any just one district.

3 MR. KEEN: And I didn't ask that question to try to
4 pick an argument with you, but we've had more than one problem
5 with our council meeting. One problem is boycotting. Do you
6 agree with that? But we also had another problem a little
7 over a year ago that's not been brought up, and that's the
8 council refusing to meet unless there is a quorum.

9 MR. WHITFIELD: After the two meetings without a
10 quorum, why not? It looks like there's not going to be no
11 business conducted, why not? That's what I'm saying. The
12 third meeting, instead of eliminating one of these council
13 members, go along with it, don't pay him those two meetings he
14 don't show up, and that goes for all of them. I mean, if they
15 don't show up for a meeting or anything, why give them \$1400
16 for not showing up each month for three months? Now, that's
17 not right to pay somebody that much money for not even showing
18 up. You're paying him to hurt the Cherokee Nation, I mean, by
19 not showing up.

20 What I'm saying is after two months, regardless, if the
21 Cherokee Nation -- if this one misses or that one misses and
22 they don't have a quorum, the third month should be able to
23 conduct business and vote on the grants and things as a
24 council. That's what I'm saying, the third meeting, instead
25 of eliminating the council member. I mean, he's been voted
1 in, let him be in as a council member, but also let the

2 business be conducted the third month.

3 MR. KEEN: Well, we appreciate your candor and your
4 views.

5 MR. WICKLIFFE: Let me ask one question. I really
6 can't give an opinion, but I would like to ask a question to
7 Mr. Hoskins, Councilman Hoskins, you know, in his capacity as
8 councilman, not just here as a citizen. How many meetings
9 were missed without a quorum?

10 MR. CHARLES HOSKINS JR.: Seven or eight.

11 MR. CHARLES HOSKINS: To my knowledge, there was
12 eight.

13 MR. WICKLIFFE: Eight, okay.

14 MR. KEEN: Sir, are you prepared to go on the
15 record?

16 MR. CRAWFORD: Yeah.

17 MR. KEEN: Can you state your name for us?

18 MR. CRAWFORD: Leonard Crawford. In Article 4 here
19 on your comment, I think the only thing missing outside of
20 there is after three consecutive meetings. The consecutive is
21 not in there. It just says "three meetings."

22 MR. KEEN: Yeah, it probably should be. I mean, I
23 think that's what it was --

24 MR. CRAWFORD: I mean, you can't miss three meetings
25 over a period of two years.

22

1 MR. KEEN: You're right, you're exactly right. And
2 it just got omitted out of here by oversight, but I think
3 that's what the testimony was at the other hearings, three
4 consecutive meetings.

5 MR. CRAWFORD: Okay. And then back to what I want
6 to speak about. I'd like to see something in the Constitution

7 to cover the election of the Chief; that we don't have another
8 thing like we had the last time on the election to where we
9 didn't have a choice of who to vote for. All we had was Byrd
10 to vote for and that was it.

11 MR. KEEN: Sir, I'm glad you brought that up.

12 MR. CRAWFORD: The third runner-up should have come
13 up and run against him.

14 MR. KEEN: I believe you're the first person to
15 bring up that issue in over 13 meetings now.

16 MR. CRAWFORD: It's eat on me ever since it
17 happened.

18 MR. KEEN: Please, continue. I didn't mean to
19 interrupt you.

20 MR. CRAWFORD: No, that's all. I just -- you know,
21 there should be something in the Constitution to where that
22 third runner-up comes up to where the second runner-up in the
23 primary -- I mean, you know, in the --

24 MRS. CRAWFORD: General election.

25 MR. CRAWFORD: -- general election.

1 MR. KEEN: Of course, you're referring to the
2 Bearpaw decision in the last election --

3 MR. CRAWFORD: Yes.

4 MR. KEEN: -- and the decision of the tribunal? I
5 was in law school at that time, but I tracked that very
6 closely, as many of you did. And the problem that the court
7 had was lack of guidance, really. There was no statute to
8 help guide them as to what to do and there is certainly no
9 guidance in the Constitution. So I don't know if it's best
10 suited for the legislature or the Constitution, but that is in

11 part why that decision was handed down the way it was.

12 I believe it was a unanimous decision as to whether Mr.
13 Bearpaw should be disqualified, but it was not unanimous as to
14 what do we do now? You know, how do we conduct the election?
15 We had one descending justice. And if memory serves me, I
16 think his idea was to continue the election and allow another
17 candidate to get on the ballot. So I appreciate your
18 comments.

19 MR. CRAWFORD: Well, sorry to say, but I have not
20 read the Constitution. This is the first time I've seen a
21 copy of it. But does it say in there somewhere where if
22 you've been convicted of a felony you cannot run as Chief?

23 MR. KEEN: It has language, and I'll have to just
24 take a minute to find it, but there's language regarding being
25 convicted of a crime.

24

1 MR. CRAWFORD: A crime?

2 MR. KEEN: Yes.

3 MR. CRAWFORD: Not a felony?

4 MR. KEEN: No, not a felony, so it's even more
5 discreet.

6 MR. CRAWFORD: Or a misdemeanor?

7 MR. KEEN: Possibly, and maybe that needs to be
8 changed. Of course, they found Mr. Bearpaw had been convicted
9 of a crime, even though it had been expunged from his record,
10 and that was the basis of their decision that he did not
11 disclose that.

12 MR. CRAWFORD: Somebody had to do some digging to
13 find it.

14 MR. CHARLES HOSKINS: I'm going to cite from the
15 Constitution, Article 9, under "Election, Section 2." It

16 says: "Any member by blood of the Cherokee Nation at least
17 twenty-five years of age on the date of the election may be a
18 candidate for Council. No person who shall have been
19 convicted of or has pled guilty or has pled no defense to a
20 felony charge under the laws of the United States of America,
21 or any State, Territory, or Possession thereof, shall be
22 eligible to hold any office or appointment of honor, profit or
23 trust within this Nation unless such person has received a
24 pardon."

25 MR. KEEN: Thank you for pointing that out. I stand
1 corrected. 25

2 MR. THOMAS: I think there's something that should
3 be corrected, no offense.

4 MR. KEEN: No, please.

5 MR. THOMAS: I was a probation and parole officer
6 for 20 years, and I happen to be acquainted with the
7 circumstances. Mr. Bearpaw shot a fellow through the
8 mid-section out on the Illinois River about 20-odd years ago.
9 The application for Chief, Deputy Chief, and elected officials
10 reads like: Have you ever been convicted of or pled guilty to
11 a felony? Now, Mr. Bearpaw put "no," which was a fatal
12 mistake on his candidacy. He received a deferred sentence.

13 There's three types of sentencing in the State of
14 Oklahoma: you go directly to the penitentiary; you can receive
15 a deferred sentence; or you can receive a suspended. A
16 suspended sentence stays with you until the undertaker let's
17 you down. A deferred sentence was -- came into being while I
18 was on the parole board. That was mainly put forth by the
19 legislature to give young people, or even older people that

20 had been real good citizens, just made a mistake on the spur
21 of the moment maybe, and it was -- came into being to give
22 those people an opportunity to make a mistake, have their
23 record expunged or erased, go back to society with a clean
24 record. Because if you go somewhere and apply for a job, yes,
25 I was arrested, I shot a guy in the mid-section, well, you
26
1 know, you aren't going to hire that guy very quickly.

2 So this deferred sentence came into being to give all of
3 the people that made this mistake a second chance. But you
4 have to plead guilty to get a deferred sentence. Now, you're
5 put on probation for a year, two, three, whatever. And at the
6 end of that time, if your probation and parole officer makes a
7 favorable recommendation, you go in front of the judge, change
8 your plea; not guilty. The court accepts that plea, and your
9 record is snow white.

10 MR. ERIC MCCOY: Uh-huh.

11 MR. THOMAS: That's it in a nutshell and that's what
12 happened in the Bearpaw case. He was not guilty of anything.
13 We didn't want to have it on the record having him found
14 guilty of anything because -- well, it would be a mistake.

15 MR. ERIC MCCOY: He shot the old boy; right?

16 MR. THOMAS: Yes, sir.

17 MR. ERIC MCCOY: So he was guilty of that, but then
18 he wrote on there "no." Yeah, I know what you're saying. All
19 it is is just a tongue of words, but it's still there. He
20 lied.

21 MR. THOMAS: He what?

22 MR. ERIC MCCOY: He lied.

23 MR. THOMAS: Yes, he did, because he said that he
24 had not pled guilty.

25 MR. ERIC MCCOY: I know what you're saying.

1 MR. THOMAS: And he did because he got --
27

2 MR. ERIC MCCOY: I know all about it.

3 MR. THOMAS: When I read he got a deferred sentence,
4 I knew he had to plead guilty because that was the business
5 that I was in at the time.

6 MR. ERIC MCCOY: Me, too.

7 MR. CHARLES HOSKINS: Maybe I missed the point here.
8 Is this a question of possibly changing the Constitution to
9 allow convicted or guilty verdicts to become eligible? I
10 didn't understand what the purpose for --

11 MR. KEEN: Well, I think the --

12 MR. HOSKINS: I knew your question wasn't that. I
13 just wondered what the debate was.

14 MR. KEEN: Again, we've kind of digressed away from
15 the Constitutional issue. The point that I was attempting to
16 make by getting into the Bearpaw decision was if we don't
17 like -- as citizens, if we don't like a decision of our high
18 court, this is how we change that. We amend our Constitution
19 to say should a candidate get disqualified during the course
20 of an election, this is what should happen.

21 MR. CRAWFORD: Yes.

22 MR. KEEN: You know, and I'm using the example here,
23 but to tie directly into your testimony, you know, this is how
24 we change the Constitution. And then the high court is bound
25 by that and they've got no choice in it if the matter ever

28
1 comes up again, that there's nothing for them to interpret.

2 All they have -- they're bound to follow the words of the
3 people, so this is what we need to be thinking about and the

4 change that we want to have made.

5 If we need to, you know, -- and I apologize for
6 misphrasing the Constitution earlier, and I appreciate Mr.
7 Hoskins straightening me out on the actual language. We do
8 have a higher standard than do the State of Oklahoma for our
9 candidates, because we include "every pled guilty to a crime
10 or pled nolo contendere," so there's some high standards in
11 there. And maybe that's what we want. Maybe we want that,
12 that's great. But we need to think about some of the things
13 that are not stated in the Constitution, just as much as we
14 need to think about the things that are stated.

15 MR. CRAWFORD: Maybe it should be changed to say
16 convicted of a felony.

17 MR. WICKLIFFE: The last ward is "pardoned"; isn't
18 it?

19 MR. KEEN: Yes, sir.

20 MR. WICKLIFFE: Or expunged.

21 MR. CHARLES HOSKINS: "Expunged" is not part of the
22 language in the Constitution, but "pardoned" is.

23 MR. WICKLIFFE: Would that cover what actually did
24 happen in the Bearpaw case? You know, it kind of was, it was
25 expunged.

29

1 MR. CHARLES HOSKINS: There's an attorney sitting
2 next to you, maybe he can --

3 MR. KEEN: I would say, yes, that would make a
4 difference to the court's decision. I think it would make a
5 difference. There's a process under which Mr. Bearpaw was
6 expunged was the Oklahoma State process, and that was yet
7 another legal issue before the court. Does expungement from
8 another jurisdiction should be recognized under Cherokee law?

9 That was an issue the court has had to deal with.

10 MR. CRAWFORD: Was he tried under Cherokee law?

11 MR. KEEN: Was he tried? Oh, absolutely.

12 MR. CRAWFORD: No, I mean on the original shooting.

13 MR. KEEN: No, he was not. That was under State
14 law.

15 MR. CRAWFORD: Right, so that's where he should have
16 been expunged.

17 MR. KEEN: Well, he was, but the question the court
18 had to deal with was does that expungement entitle him to say
19 that I've never been convicted of a felony under Cherokee law
20 on his application, was the question.

21 MR. CRAWFORD: Well, my point was that, you know,
22 when I go to vote for somebody I'd like to have a choice,
23 rather than just one sitting there and he can vote for hisself
24 (sic.) and he's in.

25 MR. KEEN: I agree. I think that's -- democracy
30
1 demands that you have a choice.

2 MR. CRAWFORD: Yeah.

3 MR. KEEN: No doubt about it. Well, in this
4 situation, Mr. Crawford, should this situation arise again,
5 how would you suggest that it would be handled, as far as what
6 candidate be put back on the ballot?

7 MR. CRAWFORD: Well, the third runner-up.

8 MR. KEEN: The third runner-up. The third highest
9 vote getter?

10 MR. CRAWFORD: Yeah, from the primary.

11 MR. KEEN: Can you state your name for us?

12 MS. SMITH: Elaine Smith. Extend eligibility for

13 Cherokee citizenship. Will there be different things other
14 than going through the Dawes thing? Chuck and I have worked
15 on mine and they turned it flip-flop and sent it back, and I
16 got mad.

17 MR. KEEN: The discussion that has taken place on
18 that, and it's too bad Dr. Gourd is not here because he knows
19 much more about this than I do, but the suggestion is to
20 expand the criteria for tribal membership beyond just the
21 Dawes Rolls to go back to other reliable historical documents
22 and be able to trace your Cherokee blood from those documents
23 as well, and that's what the general suggestion is. As far as
24 exactly what documents, you know, that's not been discussed.

25 MR. WHITFIELD: Did they ever look at the Miller
31
1 Roll?

2 MR. KEEN: That's one of the rolls that's been
3 suggested. And forgive my ignorance, but there are some other
4 rolls that were used at the time of the removal from Georgia,
5 too. Is that the Miller Rolls?

6 MR. WHITFIELD: I'm not sure.

7 MS. SMITH: There's about 50 some, or more.

8 MR. WHITFIELD: There's three or four that I know
9 that you can find in the library that was not --

10 MR. KEEN: Well, so, Ms. Smith --

11 MR. WHITFIELD: The Cherokee Nation just recognizes
12 the Dawes, but there's three or four at the library.

13 MR. KEEN: And that's what the proponents of this
14 has been. You know, they say, why should we just limit our
15 membership to the Dawes Roll when there are other good,
16 reliable historical documents out there? And everyone is
17 fully aware of the great number of Cherokees that did not sign

18 the Dawes, for whatever reason, and as a result of that have
19 been ex-patriated or disenfranchised from the Cherokees.

20 Would you have a suggestion as to what other rolls we
21 might look to?

22 MS. SMITH: Well, not right off, but I've got --
23 gosh, I don't know how many kind of books with different ones.
24 But now, when they was doing the Miller Roll, my father was in
25 the service, so he didn't have a chance.

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1 MR. KEEN: Excellent example.

2 MS. SMITH: So far, they've just kind of kicked mine
3 back and forth.

4 MR. KEEN: Okay.

5 MS. SMITH: But he was in the service then and my
6 grandmother couldn't read or write and she was having to live
7 alone, so it threw a monkey wrench in it.

8 MR. KEEN: Do we have any other comments regarding
9 Mrs. Smith's testimony?

10 MR. CHARLES HOSKINS: Mr. Keen?

11 MR. KEEN: Yes, sir.

12 MR. CHARLES HOSKINS: I would like to address that
13 in part. The reason why the Cherokee Nation relies on the
14 Dawes Roll is because that's what the federal government told
15 us we were going to rely on. That's what the federal
16 government said that only these people and this roll will be
17 Cherokee. We all know, just like you stated, there's a lot of
18 Cherokees out there that's not on the Dawes Roll. However,
19 the federal government also says we will pay no dollars to
20 Cherokee citizens if they are not on that Dawes Roll. We
21 could open it up, and maybe we should. But if we open it up,

22 there will be no additional dollars. The dollars that we
23 receive will be spread even thinner and thinner than they are
24 now.

25 However, to be recognized as a member of the Cherokee
33
1 Nation, the idea of accepting all of those rolls, there's a
2 lot of validity to that. But again, it goes back to a
3 question of funding, and a lot of people don't understand the
4 reason why the Dawes is the roll, because the federal
5 government said that is the roll and it was not a Cherokee
6 decision.

7 MR. KEEN: When was that decision made; do you know?

8 MS. SMITH: 1906.

9 MR. CHARLES HOSKINS: The Dawes Commission was prior
10 to that. The Dawes Commission was prior to the turn of the
11 century.

12 MR. KEEN: Okay. Well, I appreciate that, and I can
13 easily understand the government taking that position,
14 especially at that time.

15 MR. CHARLES HOSKINS: Right.

16 MR. KEEN: And that type of history. Of course,
17 it's always possible that that decision could be used a second
18 time.

19 MR. CHARLES HOSKINS: And that is my point. I think
20 it may be a valid point in which the Chief of the Cherokee
21 Nation approach the federal government and plead the case of
22 the Cherokee people and see if they would accept, you know,
23 these people into our rolls, because they are Cherokee, they
24 are traceable Cherokee, but because the federal government
25 said they weren't doesn't make them not Cherokee.

34
1 MR. KEEN: Do we have other people that would like

2 to give us their testimony at this time?

3 MRS. CRAWFORD: I'm Verna Crawford. I would like to
4 bring in the dual citizenship issue for the record, since I
5 mentioned it before. And it's just something that I believe
6 that the Constitutional Convention should look at in that the
7 Cherokee Constitution allows for --

8 UNIDENTIFIED LADY: What's your number? What's your
9 roll number?

10 MRS. CRAWFORD: -- Delaware tribal members and
11 Shawnee or others to be members of the Cherokee Nation. The
12 Delaware has been recognized as a separately federal
13 recognized tribe, and again it falls back to dollars and it
14 falls back to federal, possibly directions or mandates, that
15 people should not be allowed to have dual-full-membership or
16 dual enrollment in two different tribes so they are members of
17 both tribes as in blood. This is something that many tribes
18 are addressing at this time and possibly the Cherokee Nation
19 needs to look at it, also.

20 MR. KEEN: Thank you, Mrs. Crawford. Any questions
21 of her?

22 MR. WICKLIFFE: I have a question. Back in the last
23 election when the Delaware economy issue, separating from the
24 Cherokee Nation, it had already been voted on by the people
25 and approved. I remember hearing that a Delaware would have a
35
1 choice on whether to remain Delaware or remain Cherokee. They
2 would be given a choice as a result of that election.

3 MRS. CRAWFORD: That was some of the discussion, but
4 there was never anything officially decided whether there
5 would be a choice or whether, you know, how it would work.

6 And that's what's got to be worked out is how it's going to
7 work.

8 MR. WICKLIFFE: There was a lot of campaigning that
9 went on --

10 MRS. CRAWFORD: Agreed.

11 MR. WICKLIFFE: -- that addressed that.

12 MRS. CRAWFORD: Right.

13 MR. WICKLIFFE: And I really don't know the outcome,
14 you know, of what the last decision was.

15 MRS. CRAWFORD: As far as I know, there wasn't one.

16 MR. WICKLIFFE: Yes, okay.

17 MS. HAVENS: I'm Edna Havens and I have a question
18 on Verna. I thought on the Delaware Constitution, the last
19 one they sent out, that it said you have to choose. You
20 cannot be -- you have to choose between --

21 MRS. CRAWFORD: That was a proposed Constitution.
22 It was voted on at the election and it was defeated.

23 MS. HAVENS: Oh, it was?

24 MRS. CRAWFORD: They are having to revise it. The
25 people did not pass it.

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1 MR. WICKLIFFE: What would be your wish? Would you
2 wish that there been a dual membership allowed, or should
3 there be a choice?

4 MRS. CRAWFORD: I have to admit, I'm undecided on
5 that. Many of the Delaware tribal members are undecided, for
6 the fact that they have both Delaware and Cherokee blood.
7 That is where the hard decision is coming in. Personally, I
8 would probably -- I do not have Cherokee blood, I would go
9 with the Delaware Tribe, but that would be individual. I
10 would not want to make that decision for everybody without

11 more --

12 MR. WICKLIFFE: Probably, though, if you made the
13 choice to go Delaware, you would get your services then only
14 from the Delaware?

15 MRS. CRAWFORD: Right, right.

16 MR. WICKLIFFE: Okay.

17 MRS. CRAWFORD: And you know, that's the whole
18 concern is that you're going to be eligible to get services
19 from more than one place.

20 MR. WICKLIFFE: By access, you would get services?

21 MRS. CRAWFORD: No matter which tribe you go to.

22 MR. CRAWFORD: And in our case we've got both
23 tribes covered. I'm Cherokee and she's Delaware.

24 UNIDENTIFIED LADY: Well, I'm both, and if it comes
25 to a decision, I'll go Irish.

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1 MS. HAVENS: I don't think you should be able to
2 make a choice.

3 MR. KEEN: Let's go off of the record.

4 (Whereupon, a brief discussion was held off of the
5 record.)

6 MS. MCINTOSH: I'm Dorothy McIntosh, Cherokee. For
7 the people who have not been to some of the other meetings,
8 there are a couple of issues I would like to just mention that
9 were brought up.

10 MR. KEEN: Sure.

11 MS. MCINTOSH: That you might want to think about as
12 time goes by and you want to submit things in writing. There
13 was one question about adoption of Cherokee children outside
14 of the tribe, and it brought up an issue that so many people

15 hadn't even thought about. Should we really address that
16 issue, and do want our Cherokee children who are to be
17 adopted, do we want them adopted out to non-Indian,
18 non-Cherokee families? Another was in some of the meetings,
19 it has been suggested that we work toward getting a delegate
20 to the United States Congress, just as Puerto Rico has, and
21 that we could have a delegate from our Nation there under
22 those provisions.

23 MR. WHITFIELD: That should be one.

24 MS. MCINTOSH: That's two things to just think about
25 and network among yourselves and bring up issues, but those
1 are two rather profound issues. It would be good for our
2 Nation to have a delegate in the U.S. Congress under the same
3 guidelines, such as Puerto Rico.

4 MR. WHITFIELD: That should be voted on. That
5 should be in there.

6 MS. MCINTOSH: Thank you.

7 MR. KEEN: Thank you, Ms. McIntosh. The question of
8 the -- I believe it's called an ambassador, that's been
9 brought up more than once. That is a very unique treaty right
10 that the Cherokee people have that I have to claim ignorance,
11 because I didn't know it existed until a short time ago. What
12 that right is, we, the Cherokee Tribe, the Cherokee people,
13 have a right by treaty to place a representative in Congress
14 of the United States to listen to everything that goes on.
15 Now, they don't have any voting rights, but they can vote in
16 committee, but it would be a presence of the Cherokee Nation
17 at all times.

18 Mr. Hoskins, have you heard anything regarding this?

19 MR. CHARLES HOSKINS: I have heard about it. The

20 Chickasaw Nation of Oklahoma has an ambassador residing in
21 Washington D.C., and he does sit in on the committees that
22 you're talking about. And I do, I also agree that it is
23 something that Cherokee people need. There's even a debate
24 that the Cherokee Nation deserves an elected member of
25 congress, but that's another issue. But the ambassadorship is
1 certainly a possibility. And if the people bring it to the
2 forefront, if it's on this proposed amendments to the
3 Constitution, I don't think there's anyway they could keep us
4 from having it.

5 MR. KEEN: Uh-huh.

6 MR. WICKLIFFE: Is there any other tribe of the Five
7 Civilized Tribes that does have it, except for the Chickasaw?

8 MR. CHARLES HOSKINS: Not that I'm aware of that's
9 constantly housed in Washington. I'm not aware of another
10 one. But I might add to that that the Cherokee Nation
11 desperately needs continual voice in Washington D.C., because
12 it's a constant battle fighting the federal government and the
13 people that oppose Indian tribes. We need someone there.

14 MR. KEEN: Agreed. We need someone there all of the
15 time representing our interest, not their own.

16 Do we have other people that would like to speak?

17 MR. CHARLES HOSKINS: Mr. Keen, I would like to
18 speak, although I have spoke many times tonight. My names is
19 Charles Hoskins. I live in Vinita, Oklahoma. There are many
20 issues, and as you're aware, as many people in the room are,
21 that I also hold a position as council representative for
22 District 9. Again, however, let me state for the record that
23 I am speaking tonight as a Cherokee citizen, not as

24 representative of the Cherokee people.

25 I feel very strongly in many ways. One of the things
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1 that I think we need to consider is when we talk about
2 changing the Constitution, we're not addressing changes of
3 individuals. We don't let personalities come into play when
4 we decide what will happen to the Cherokee Nation for the next
5 20 years. I'm a strong proponent of offices rather than
6 individuals. I feel very strongly about the office of the
7 Chief of the Cherokee Nation. He is or she is our Chief,
8 whomever it may be, and I take great offense when the office
9 is attacked. The individual can defend themselves. The
10 Cherokee people need to defend the offices, because a long
11 time after all of us are gone, hopefully, there will be people
12 in those offices.

13 With that being said, I would like to speak to the
14 election or the service of members of the council. As a
15 Cherokee citizen, I feel like when I cast a ballot for a
16 person to represent me in the representative government that
17 we have, all I'm asking that person to do is sit in that chair
18 at council and represent me and the other people of their
19 district. Now, that doesn't mean they have to vote the way
20 that I tell them that I want them to vote. It doesn't mean
21 that at all. It means that I simply want them there to take
22 part in the debate, to argue for or to argue against, but
23 that's what I vote for that person to do. And again, I'm
24 speaking as an individual.

25 I think that if a person is not there, there needs to be
41
1 something in our Constitution that will take care of that.
2 I'm not a proponent to squash the minority or anything like
3 that. I simply want the Cherokee Nation Government to

4 function for everyone, for all of the children, all of the
5 elders, and all of the rest in-between. We cannot allow the
6 government to be shut down or to even be hamstrung. We cannot
7 do that.

8 The question was raised, well, possibly, we should put it
9 in and let it be left up to the council to police itself, and
10 I also believe in that; however, that also brings to the front
11 a problem. That leaves interpretation. And I think anytime
12 that we can clarify without making our Constitution too
13 verbose, without making it too large. One of the things
14 that's great about our Constitution is it's very simple, very
15 short and very readable.

16 But, folks, our government has grown tremendously. Our
17 population has grown tremendously. There are need for
18 changes. It's not changes dictated by what one person or one
19 group of people have done. If we're going to make changes, it
20 has to be for the best interest of the Cherokee people, not to
21 get back at or to support any one group or individual.

22 I think there needs to be something in the constitution
23 that if a council member intentionally misses a council
24 meeting or two council meetings, that person is brought before
25 the council, possibly for simply a vote of the councilman -

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1 it has to be spelled out in the Constitution - and that person
2 can be removed from council for failure to do his job or her
3 job. And again, this isn't directed at any one individual --
4 individuals, excuse me.

5 There has to be a means in which the government of the
6 Cherokee Nation can continue by the will of the people. The
7 legislative branch is the people's branch. That's the one

8 that belongs to the people. We all vote and we elect the
9 Chief and the Deputy Chief, but our representatives sit in
10 those council chairs. They're the ones that we can complain
11 to, they're the ones that we can tell what we need, and
12 they're the ones that will hopefully be our voice at council.
13 If they are not there at council, then we have no voice, and
14 that is not representative government. So I feel there needs
15 to be some mechanism to replace individuals that simply refuse
16 to attend council meetings.

17 I think that there should be an ethic's commission.
18 That's one of the items it displays down here, an ethic's
19 commission to oversee the council members; also to oversee the
20 executive branch as well as the judicial branch. There has
21 been claims from time to time that no one is above the law and
22 that is exactly correct. That's everyone. So there needs to
23 be something in place. For instance, the judicial branch I've
24 heard many times say, well, they're the final appeal; there is
25 no appeal. So right or wrong, we have to live by what they

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1 say. Well, that's true to certainly an extent, but just like
2 the federal government and the state government, they have
3 judicial review boards. They have judicial review boards to
4 look at charges or complaints that a judge or judges are not
5 doing correctly because that is protection for the rights of
6 the Cherokee people. After all, a court is to provide one
7 thing and that's due process. If a citizen is denied due
8 process, they're denied their right of government, and so they
9 must have that. So no one, I agree, is above the law, nor
10 should they be, but there needs to be mechanisms in place to
11 examine each one of those.

12 There is many things listed that's been talked about, a

13 system of publication for legislative action, judicial
14 opinions. I don't think I've heard any debate against those.
15 There must be a publication in which Cherokee citizens can
16 read what their legislative branch is doing, can read what
17 their judicial branch is doing, can read what the executive
18 branch is doing, and have nothing hidden, whatsoever. There
19 has never been a vote by the council that has been less than
20 unanimous when it came to the issue of open records. You can
21 go back -- again, this is something I'm talking about that you
22 can actually go back and look at the voting record. There's
23 never been this split 8-6, 8-7, whatever, when it came to
24 issue of open records. Every time every member present would
25 vote for and in support of open records. What we need to do

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1 is make sure that the people have access to all of those
2 records.

3 The at-large seat, I've already voiced my opinion of it.
4 I certainly believe that a person living outside of the
5 Cherokee Nation is entitled to as much representation as a
6 person living in Vinita or Tahlequah. However, simple
7 geographics make that extremely difficult. So again, I would
8 like to look at a way in which council members can receive
9 funds to at least contact their districts, a member of their
10 district, at least two or three times during their term of
11 office to try to inform them of what's going on and make
12 available to them numbers in which they can be contacted.

13 I think that there should be a staggered term in council.
14 I don't think all council members should come up at the same
15 time. I think part of them should be elected, and that can be
16 worked out, but I don't think there's any need when all 15

17 members come up at the same time. There has to be some
18 continuity there.

19 The question about money. When I first came -- and again
20 here, I'm speaking as a council member and I apologize. But
21 back in '95 when you were put on the council, elected to the
22 council, you received \$600.00 a month stipend. You received
23 \$100.00 a month for every standing committee that you
24 attended, that you had to attend in Tahlequah. Those standing
25 committees were such things as education, health, community
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1 development. If you were there, physically there, if you
2 attended, if you listened, if you took part, if you debated,
3 then you received \$100.00 per meeting. If there are eight
4 standing committees and if you are a member of all eight of
5 them and you attended all eight that month, then you qualified
6 for \$800.00 for attending those standing committess.

7 About a year-and-a-half ago it was voted to eliminate the
8 requirement to attend those meetings. It was simply if you
9 were a member of that committee, then you did not have to
10 attend to receive your \$100.00 per committee meeting. So
11 that's just what they did -- excuse me -- what that did was
12 increase the council members' salary from \$600.00 to \$1400 a
13 month without attending any meetings. I don't agree with
14 that. I think that if you're a member of that committee, I
15 would like to say that you shouldn't have to be forced to
16 attend that and you're not forced to attend it. If you have
17 some reason to keep you away from that meeting, from the
18 committee meeting, that's understandable. But you should not
19 be entitled to draw the money for sitting on that committee
20 and taking part in that meeting for that month.

21 Again, it's not necessarily a Constitutional issue. It

22 is an issue that should be addressed by council. It was
23 passed by council to eliminate the need to actually be there,
24 and so that's a problem that could be addressed. Again, we
25 talk about problems that have to be addressed in the
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1 Constitution and problems that can be addressed in the
2 Constitution, and we have to be very careful about which one
3 of those we talk about. Our problem is it gets back to
4 interpretation. If we want for sure that council members must
5 attend meetings in order to qualify for any pay from the
6 Cherokee people, that needs to be in the Constitution. That
7 will answer the question; there will be no interpretation.

8 The question about the \$600.00 per council, if the
9 Cherokee people want that to be a requirement that you have to
10 be in council to receive the \$600.00, the Cherokee people need
11 to say that's what we want in our Constitution. It needs to
12 be there. Not simply you received \$600.00 for being a member
13 of the council each month, except you receive \$600.00 for
14 sitting in that chair, taking part in the council meeting that
15 month. Again, those are issues that can be interpreted, but
16 we all know there's been problems. So if we're going to
17 address those problems, maybe that's something -- specific
18 wording that we need.

19 Filling vacant seats on the council. And some of you may
20 not be aware of this, but shortly after the last election
21 term, one of the council members passed away. His name was
22 Max Glory, a very fine fellow. The way the Constitution is
23 written now, the council votes to replace -- for the
24 replacement for that seat. Now, I don't know how you feel,
25 but I didn't really feel qualified. I tried to learn as much

1 as I could about the people who were nominated to fill that
2 seat, but it was for a district that was down around -- it was
3 Tahlequah, District 1. And I didn't feel as qualified to vote
4 for a replacement of that seat. I felt like the people of
5 that district should be given an opportunity to vote for that
6 replacement.

7 It's been stated in here that you ought to maybe go back
8 to the second highest vote getter. Well, I don't think that's
9 the answer either, because there's a reason why that person
10 came in second. I think the people ought to be given an
11 opportunity to have a special election. It would not cost
12 that much for one district. Even the absentee voters and the
13 people of that district would have a right to select the
14 person that's going to represent them, the person that knows
15 them best, the person that lives there and understands the
16 situation in that area. But again, that's something that has
17 not been talked about a lot this term, but it did happen, and
18 we voted a replacement member. And I think he's done an
19 outstanding job; however, I don't feel as qualified as the
20 person living in their district to vote that.

21 Staggered terms we've talked about -- I've talked about.
22 The Number 7 under the legislative branch of government:
23 Numerated power to create inferior courts to the counsel. The
24 council of the Cherokee Nation by the Constitution has the
25 right to -- and, Ralph, you may help me out here. I can't
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1 remember the exact recording -- but we can create lower
2 courts; is that right? The wording in there, I believe we
3 have the power. But however, let's just say it is not.
4 Folks, we have to have a system of appeals just like they do
5 in state courts. There need to be a way to appeal. We need a

6 district court that's set up up completely separate from any
7 appeals court, the way it is anywhere. If the case is first
8 heard in the lower court or the appeals court, if the decision
9 is not agreed with there, then there can be a place to appeal
10 it.

11 What has happened in some cases is rather than being
12 heard in the district court, it has been taken to the appeals
13 court and heard. It also has been heard by people in the
14 district court and the appeals court by justices who had some
15 type of connection with the outcome. And I'm not saying
16 they've been wrong. I'm not here to debate that. I'm just
17 saying as a Cherokee citizen what I want is a system in which
18 if there is a justice that has any bearing on the outcome,
19 either gain, benefit, or any connection with the outcome of
20 that particular hearing, they need to recuse themselves. They
21 need to have a system in which other judges can step in that
22 have nothing whatsoever to do with the system. Even if the
23 judge -- and I'm sure the judge would be totally impartial and
24 totally fair, but this would eliminate even the appearance of
25 it. We need to have a system where other justices can be
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1 brought in that are willing to serve, and I don't know how
2 many people would be, but are willing to serve to come into
3 cases in situations like that.

4 So there are many, many things that the Cherokee
5 Constitution needs to address, should address. All of them
6 may not be thought about here or talked about here, but you
7 need to give them a lot of thought. If something comes up
8 that you feel very strongly about, I really feel like we, as
9 Cherokee citizens, need to make this voice known to this

15 MR. CHARLES HOSKINS: And that says not a good
16 thing.

17 MR. KEEN: Agreed. And like you said with respect
18 to one of the other proposals, I've not heard any opposition
19 to that suggestion. The big challenge is how do we implement
20 it, because everyone -- it's just common sense that you
21 shouldn't lose all of your experience and continuity in
22 government if you have that possibility.

23 With respect to your testimony on filling vacated seats
24 on the council, it has been suggested at one point not only a
25 special election be called, but an election by mail, mail-in
1 proxy as a possible form of expediting that special election
2 and minimizing costs. Have you considered something like?

3 MR. CHARLES HOSKINS: No, I haven't. Any way that
4 we can do it at the least cost to the Cherokee people is what
5 we need to address. However, we need to make sure that every
6 Cherokee, every registered voter, and that's what we're
7 talking about. Because although there may be 10,000
8 registered voters in a district, for instance, only maybe 3200
9 are registered voters. So the costs would not be like mailing
10 out to everyone one, you simply mail to your registered
11 voters.

12 One of the things that -- and again, I hate to talk as a
13 council member -- one of the things that has been done, I've
14 sent out questionnaires just to try to get information about,
15 you know, what the people outside of our Cherokee Nation feel,
16 what they think about. And one of the things they talked
17 about was how they would like to see us be able to vote by
18 mail-in regular elections, general elections. They would like

19 to see us even vote maybe sometime through the internet. You
20 know, so there are ways that we can look to expedite the
21 election of a council member. And again, you know, we all
22 hope that that does not happen again, especially that way, but
23 we have to be prepared for it. Again, that is what this is
24 doing. You know, this is preparing for all eventuality, not
25 just something that happens today or yesterday.

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1 MR. KEEN: And finally, on your point regarding the
2 courts. The tribunal, of course, gets the authority from
3 Article 12 and it's jurisdiction, basically, arises from this
4 language. I know you're familiar with this language, but the
5 other folks here probably are not. Let me find it here.
6 Okay. "The purpose of this tribunal shall be to hear and
7 resolve any disagreements arising under provisions of this
8 Constitution or any action of the Council." Now that's a
9 pretty broad brush right there, and I know our current court
10 has interpreted this language to grant them both original
11 jurisdiction and appellate jurisdiction. This is not -- this
12 is not really unique in a judiciary, but what is unique is
13 that they have such a broad grant of general jurisdiction.

14 In most cases -- take for example the United States
15 Supreme Court. It has a very limited general jurisdiction,
16 original jurisdiction for certain areas, but those areas -- I
17 mean those circumstances very rarely arise. Everything else
18 is delegated to the lower courts and the courts of other
19 jurisdiction. So would you suggest that that language be
20 looked at and modified somehow to be adjusted?

21 MR. CHARLES HOSKINS: I would like to see it be
22 adjusted to where there would be a clearly defined line
23 between appeals and original jurisdiction. And they do indeed

24 have some areas of original jurisdiction, but those need to be
25 spelled out, I believe, and anything beyond that is reserved
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1 to the district courts.

2 MR. KEEN: Thank you for your testimony.

3 MR. WICKLIFFE: I have a question to ask Mr.
4 Hoskins. Back in the 1839 Constitution at times there were
5 district courts. There was one down at Gore I think and one
6 at little Saline, they called it, down by Salina. They were
7 located away from, you know, the main one that we talk about
8 so much. Are you thinking maybe original courts, district
9 court within the nine districts somewhere scattered out?

10 MR. CHARLES HOSKINS: I think that could be a
11 possibility, as long as it not cause undue expense on the
12 Nation as far as upkeep and maintenance of courthouses, that
13 type of thing. If it could be tied into a city municipal
14 system or a state municipal system in which we could pay a fee
15 for using their courtrooms, using their facilities, that would
16 be a possibility. I am a firm believer in it's not the
17 location of the court, but the action of the court. I don't
18 believe that the district court has to be housed adjacent to
19 the appeals court in order for a court system to operate. I
20 think those can be separate, physically separate, and I see no
21 need to where they are in the same building, if that's what
22 they want, if that's what they choose.

23 Actually, it's left -- it is supposed to be the council's
24 decision where to place these various courts according to some
25 interpretation of the Constitution. And again, I don't

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1 believe it has to be physically connected, physically in the
2 same structure. Should there be some spread out, maybe one to

3 represent the three northern districts, maybe one for the
4 three southern districts? I have no problem with that.
5 Again, it all goes back to, unfortunately, it's always a
6 question of costs.

7 MR. KEEN: With respect to -- were you finished?

8 MR. WICKLIFFE: Yes, I am.

9 MR. KEEN: With respect to our district court
10 judges, it has been suggested at previous hearings that
11 perhaps those judges, and maybe perhaps even the justices of
12 the high court, be elected officials rather than appointed.
13 Do you have any position on that?

14 MR. CHARLES HOSKINS: Well, I feel like the problem
15 with electing judges would be the same problem that we face in
16 electing state judges. We're handed a ballot with 15 names on
17 it and none of us really know those individuals or that much
18 about those individuals. So what we end up doing is one of
19 two things, usually: we ask somebody who they think is the
20 best one on there, or they simply choose. Well, I don't want
21 to choose the first guy, so I'll go down here to the middle
22 and pick the middle guy. But what I'm getting to is the way
23 it's currently done, there has to be submission of resumes to
24 the Chief of the Cherokee Nation. He in turn or she in turn
25 gives them to the council. The council has the opportunity to

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1 go over these resumes to learn as much as then can about these
2 individuals to see if there is a knowledge of Indian law, to
3 see if there is a knowledge of what we deal with daily as far
4 as Indian country goes. Then the Chief of the Cherokee Nation
5 makes his or her appointment. It has to be confirmed by the
6 council. I think that's -- I think that's an excellent way to
7 get very good people in office. And because we disagree with

8 some of the rulings that have been made or some of the
9 statements that have been made, I don't know if it
10 necessitates changing that method, again, for the possibility
11 of simply picking and choosing a name that may look familiar
12 or popular. It would take some good education on the part of
13 the Cherokee Government to the citizens of the Cherokee Nation
14 to educationally pick members that would serve on our courts.

15 MR. KEEN: I have a question from Mr. Crawford.

16 MR. CRAWFORD: Yeah, Chuck, you said that the
17 council votes on the judges now?

18 MR. CHARLES HOSKINS: We have to approve the
19 appointment of the Chief.

20 MR. CRAWFORD: Do they have the authority to check
21 into a criminal background or a criminal check?

22 MR. CHARLES HOSKINS: The council has the authority
23 to do any checking that they desire. You know, if they want
24 to go through law and justice to do -- to make sure due
25 diligence background check, yeah, that's no problem. But
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1 again, they're given a resume. And I know that you can't
2 always believe everything that you see on a resume, but it
3 does give you some guidelines or points of contact. It puts
4 us in a better position, I feel like, than just simply looking
5 at some names and hearing about, you know, what this person
6 has done and whatever.

7 MR. CRAWFORD: Well, I agree, but I just wondered
8 how far you dug into their background.

9 MR. CHARLES HOSKINS: We can go as far as
10 basically -- the council can go as far as they basically want
11 to go. And again, that is one of the powers of the Chief of

12 the Cherokee Nation. Leaving any individuals out, any names
13 out, that's the power of the Chief of the Cherokee Nation.
14 And I question whether we want to assert that power. If we
15 can do it a better way, I have no question that we need to do
16 that. But again, I think we need to take a long look at what
17 would be the best interest of the Cherokee people; what would
18 best serve the interest of the Cherokee People in selecting a
19 judge.

20 MR. KEEN: Do we have any other folks here tonight
21 that would like to give their testimony before this Commission
22 at this time? Let me remind everyone -- let's go off of the
23 record here.

24 (December 11, 1998, meeting concluded.)

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

2 STATE OF OKLAHOMA)
3) ss.
4 COUNTY OF ADAIR)

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6 I, Paula D. Louderback, Certified Shorthand
7 Reporter in and for the State of Oklahoma, do hereby certify
8 that on Friday, December 11, 1998, at the Harmon Civic Center,
9 224 South Pine, Nowata, Oklahoma, the following forum was
10 held. The testimony was reduced to writing by me in
11 stenograph and thereafter transcribed by me, and is fully and
12 accurately set forth in the preceding 56 pages.

13 I do further certify that I am not related to
14 nor attorney for any of the said parties, nor otherwise
15 interested in the event of the said action.

16 WITNESS my hand this 29th day of December, 1998.

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Paula D. Louderback
Certified Shorthand Reporter