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BEFORE THE CHEROKEE NATION CONSTITUTION
CONVENTION COMMISSION

SATURDAY, SEPTEMBER 5, 1998

SUNDAY, SEPTEMBER 6, 1998

NORTHEASTERN STATE UNIVERSITY NET BUILDING
TAHLEQUAH, OKLAHOMA

A P P E A R A N C E S

- Chairman: Mr. Charles Gourd
- Commissioner: Mr. Ralph Keen
- Commissioner: Mr. Jay Hannah
- Commissioner: Mr. George Wickliffe
- Commissioner: Mr. Paul Thomas
- Commissioner: Mrs. Louella Hummingbird-Coon
- Commissioner: Mr. George Underwood
- Interpreter: Mr. Marion Jumper
- Reported by: Ms. Paula D. Louderback, C.S.R.

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P R O C E E D I N G S

1
2 MS. YORK-BERRY: This is to request that you
3 consider the addition of a position on the Council of the
4 Cherokee Nation. This council position would be a member-at-
5 large to represent the registered tribal members of the
6 Cherokee Nation of Oklahoma who reside outside of the physical
7 boundries of the Cherokee Nation.

8 Those of us who are not fortunate enough to live
9 within the Nation have felt under-represented for some time.
10 There are a great many of us who have very strong bonds with
11 the Cherokee Nation of Oklahoma and who work very hard to keep
12 up on affairs here and vote when the opportunity arrises. We
13 have not forgotten our roots; far from it. Keeping abreast of
14 things and absentee voting regulations present a challege we
15 are more than willing to meet. Our we not then entitled to
16 representation on the council? Yes, we are. Yet, there is an
17 even more important reason to add a member-at-large on the
18 council to represent us.

19 There are powerful people in the United States who
20 are constantly pursuing an end to Native American Tribal
21 Sovereignty, people like U.S. Senator Clay Gordon of
22 Washington State and many others. These people are
23 well-funded and publish very professional and convincing
24 literature. One of the arguments they raise to oppose native
25 sovereignty is that Native Americans do not want it anymore.

1 They cite the number of Native American tribal members who
2 have moved off of the reservations or other tribal lands
3 during this century. They say those of us who are out here in
4 the cities and the suburbs are here because we have, quote,
5 "voted with our feet," end quote, and no longer want to be
6 considered Indian and do not want to be represented in or by
7 our tribal government.

8 When I first read these statements, my heart sank. They
9 are wicked distortions of the truth that would make any
10 propagandist proud. Those of us who are out here will tell
11 you a very different story. Most of us are living outside of
12 the Cherokee Nation for one of three reason: some are out here
13 because of failed federal government attempts to assimilate us
14 or terminate our tribal ties through BIA relocation programs;
15 some of us are here because our parents or our grandparents
16 trusted those BIA relocation programs before we were even
17 born; and some of us are here because we or one of our
18 immediate family members must be here to find work in a field
19 of choice.

20 I assure you, not one of us who takes the time and makes
21 the effort to be informed and vote in tribal elections is out
22 here because we no longer want to be considered Cherokee. If
23 anything, our Cherokee heritage and history becomes even more
24 important to us because we have to work so much harder to keep
25 it and to pass it on. It is clear that you still consider us

1 to be Cherokee. You have been gracious to schedule hearings
2 in cities all over the west in order to hear our opinions
3 regarding constitutional revisions. We are extremely
4 grateful.

5 I urge you to consider a position of council member at
6 large to represent voting Cherokee tribal members living
7 outside the Nation. Give us the fair representation we so
8 deserve. Send a message to Senator Gordon and to the hill
9 that though we may reside outside the physical boundries of
10 the great Cherokee Nation of Oklahoma, our minds, our hearts,
11 our spirits and the very blood that courses through our veins
12 remain ever tied to the rolling hills of Northeastern Oklahoma
13 and the Cherokee people here. Thank you for your time, your
14 attention to my request, and your service to the Cherokee
15 Nation. May you have wisdom in your consideration of the new
16 Constitution.

17 MR. SCOTT: Sometime ago, I retired from the Corp of
18 Engineers and moved back to Oklahoma to work on helping the
19 Cherokee Nation preserve its culture and heritage. And after
20 bumping my head against that for a while, I saw that the
21 institutions weren't set up really to look at that, so I
22 fiddled around with the Constitution, sort of a partial draft
23 that is a little bit different than from what you might expect
24 to see, so I thought a little explanation might be in order.

25 I approached this as what we used to call "brain

1 storming" in the Corp of Engineers, where all conceivable
2 ideas were put out without being knocked down. Some of them
3 would be good, some of them might spur somebody else to think
4 of something along that line but it wouldn't quite be jelled
5 yet, and some of them just flatly wouldn't fly. But anyhow,
6 I've put down several ideas in that light here that I've given
7 you copies of.

8 First, it was drawn from several samples. One is our
9 current Cherokee Nation Constitution, the old 1839 one, the
10 U.S Constitution, and then the great law of peace of the
11 Iroquois League which the U.S. Constitution was largely based
12 on, plus some of my own ideas of how to bring it up to our
13 current situation and modern technology.

14 Second, there's several serious problems that the
15 UNAKA (phonetic) Society hasn't been able to handle that the
16 Cherokees once avoided through some of our old cultural
17 practices, and I suggest we resurrect some of these that are
18 useful, particularly the fractured family structure where
19 people depend on gang dependence or welfare for support and
20 look for security in all of the developments, in the towns and
21 long prison sentences, more policemen and all of the things
22 you hear about now. These things that Cherokees with their
23 extended family, their clans and their cultural cohesions were
24 able to handle. And something else that I'm looking at here
25 is few indigenious people that have succeeded for very long in

1 giving their tradition-oriented leaders a say in their faith.
2 Invariably, those who are educated in the ways of the white,
3 they help perpetuate the white ways. That's the way they've
4 been educated. So I think we've seen a lot of it in our
5 history, but we've also had opportunity to see how the
6 national governments and the corporations work, so maybe we
7 can use some of that knowledge to devise a way to revitalize
8 the things that give us strength.

9 Also, the Indian concept of leadership has been something
10 that comes to those who demonstrate ability and selflessness
11 and not to the big egos who decide they should be chiefs or
12 council members, so forth, who, from an old Indian point of
13 view, they appear kind of uppity and therefore ridiculous.

14 So one of the things in my draft here that I look at is
15 having the nomination of candidates for chiefs and senators
16 given to those who observe their ability and character, which
17 is mainly the mothers of the communities.

18 MR. HANNAH: Mr. Scott, you might conclude your
19 remarks for us; okay?

20 MR. SCOTT: Okay. Well, that's pretty much what I
21 have to say. I've got the rest of it in the write-up.

22 MR. KEEN: Mr. Scott?

23 MR. SCOTT: Yes.

24 MR. KEEN: You have submitted this proposed
25 Constitution that you've drafted to the Commission in writing;

1 is that correct?

2 MR. SCOTT: Yeah, in fact, I handed him one up
3 there.

4 MR. KEEN: Thank you for your testimony here today,
5 sir.

6 MR. PEACOCK: My name is Roger Peacock. I'm from
7 Tulsa, born and raised in Tulsa, lived away from Tulsa for
8 many years, educated in Oklahoma. And I don't know how much
9 information I'm supposed to give about myself, so I'll just
10 keep it at I was born and raised in Tulsa, educated in the
11 Tulsa Public School Systems, received by Bachelor's Degree
12 from the University of Southern Mississippi and my Master's
13 Degree from Oklahoma State University. I moved away from
14 Oklahoma and I am back to Tulsa, moved a business back there,
15 completely relocated, and I'm looking very, very strongly at
16 next year's elections.

17 I have some very serious concerns about some issues that
18 are not clarified in the '75 Constitution. It is talked about
19 and talked around some of the issues in the Constitution, but
20 I feel that some of these issues should be very clear, very
21 specific, with cutting-edge results that is not open to
22 interpretation, and they're very simple.

23 Term limits. I am a very strong advocate of term limits
24 in partisan positions. Now, that can be a double-edged sword.
25 We need good, fresh blood in our government. Once we get it

1 there and it's good, we don't want to lose it, so that's the
2 second part of the double-edged sword. But if we get bad
3 blood in positions of power and authority and leadership, we
4 want to get it out. So what do we do? I feel, personally,
5 term limits, two four-year terms in any particular position,
6 and then that incumbent must either set out a full term or
7 move up. In other words, if a person were to be elected to
8 tribal council and be re-elected for a second fourth term,
9 eight years in council, but not a 20-year retirement system,
10 and they either set a term out, or run for Deputy Chief or
11 Chief. Our elected positions should not be retirement
12 positions.

13 I feel that we need a very strong code and committee --
14 ethics committee, a strong code of ethics, and a very powerful
15 ethics committee that has legislative and punitive powers to
16 enforce the law when it comes to questions of ethics,
17 investigations, allegations; and if necessary, removal. I
18 believe very much in a recall and impeachment if it becomes
19 vitally necessary for the safety and the continuation and the
20 moral continuance of our government in that particular
21 position. Those are three issues that I plan on speaking a
22 lot about in the very near future, on through the elections of
23 next year. And then after the elections of next year, I'm
24 going to push those issues very hard.

25 Community meetings in each district I think should be

1 part of our Constitution and a requirement for every elected
2 official, whether it is a council representative or if we go
3 back to the community representative method that we've had in
4 past years and decades, even for the Chief and Deputy Chief.
5 And this is one issue that I'm going to start before the
6 elections take place next year. In fact, I'm going to try to
7 put the motions -- the motion forward and get the ball started
8 just in my own initiative probably in October in starting to
9 hold community meetings throughout District Eight, North Tulsa
10 County and Washington Counties, just for information gathering
11 from our people out there that live in those counties, that
12 live out in the hills and back in the countryside. And
13 Community meetings, not for someone to stand at the podium
14 like this, but to sit down at a table like this and look at
15 our Cherokee brothers and sisters who live out in the country
16 and say, hey, I'm not going to stand up here and talk to you.
17 I want you to talk to me and tell me what you need to have
18 done in Tahlequah and in Oklahoma City and in Washington. And
19 sit there with an interpretor if necessary, like this
20 gentleman over here, and a tape recorder and a yellow pad, and
21 sit down and take notes. And I feel very strongly there is no
22 communication out there in our districts and they are needed
23 vitally. We've got to hear from our people. And I think this
24 should be part of our Constitution and a requirement for an
25 elected position: Be out there, in your district or throughout

1 the Nation and listen and act on what the people want to tell
2 you and they need. Not to stand up as politician and speak to
3 them and tell them, make them all sorts of promises, but to
4 sit down eyeball to eyeball, not looking down on them and
5 listen to them.

6 Salaries. I am not in favor of salary increases at the
7 present time for elected partisan positions. I've heard
8 rumors in the last four or five months that there was an
9 initiative or some suggestions that - and I'll go ahead and
10 say it - that the council may be getting ready to consider a
11 very hefty salary increase for themselves. I may be out of
12 turn in saying this, I'm against it. I like to make money
13 just like the next person; I run two small business. But at
14 the present time and at least for the next four years,
15 minimum, I don't think our council representatives need an
16 increase. And I think, possibly, there should be something in
17 our Constitution that would prevent, or at least make it very,
18 very, very difficult for elected officials to vote themselves
19 indiscriminate salary increases. And those are the five
20 issues that I had to mention that I would like to see
21 included. Thank you.

22 (Whereupon, hearings on 9-5-98 were dismissed for the day.)

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

24 SEPTEMBER 6, 1998

25 MS. NAVE-MASTERS: I'm Billie Masters, I'm from the

1 Nave family. Some of you may --

2 MR. GOURD: Billie, speak up, please.

3 MS. NAVE-MASTERS: I'm Billie Nave Masters, and some
4 of you may remember that when John Ross was working that he
5 sent Andrew R. Nave ahead to try to take care of things at
6 this end, and so we're a direct line from that particular
7 family. Being that there was very little work down here, my
8 dad and four of his brothers moved up on the Osage during the
9 oil boom and worked as roustabouts, and so I was fortunate to
10 grow up with all of the Osage and knowing the Cherokee ways.
11 There was a lot of Cherokees up our way, so we had enough to
12 have ceremony and to get together every once in awhile, and
13 that was really nice. We had a lot of nice input.

14 I did get my basic education here at Tahlequah. I
15 graduated from Northeastern and then I went to graduate school
16 in California, got my Ph.D, and I've been a professor at the
17 University of California for the last 22 years. I'm a social
18 psychologist and a historian by training. Like Charlie, I've
19 amassed a lot of majors along the way. So I'm very pleased to
20 be here, and I'm very excited about the process that has
21 started today.

22 I have seven issues, so if you would rather I just deal
23 with a couple of them and then come back later after the
24 people have had time to talk, that would be okay with me. I
25 don't mind that at all.

1 My first issue is that I would really like for us to
2 require our council members to attend a one-week training and
3 orientation session at the beginning of every term. It
4 doesn't matter if they're returning. I think they must go
5 together and have a one-week training and orientation workshop
6 at the beginning of every term. I want the topics of
7 traditional values, cultural issues, Cherokee Constitution,
8 Cherokee history, contemporary demographics and current issues
9 to be major topics, and for them to get basic information on
10 all of those issues at the beginning of every term. And I
11 want this to be required.

12 MR. GOURD: There is a question on that. Do you
13 want that in the Constitution?

14 MS. NAVE-MASTERS: Yes, I want it to be required.

15 MR. GOURD: Or is that a procedural rule, if I could
16 just ask our councilmen here.

17 MS. NAVE-MASTERS: Sure.

18 MR. GOURD: Do you all have a similar procedure for
19 orientation?

20 MR. TERRELL: No, we don't, but it's something we
21 need.

22 MS. NAVE-MASTERS: I tried to get it implemented and
23 I wasn't able to.

24 MR. GOURD: It's been done in the past. I know
25 because I spoke at one of them one time a number of years ago.

1 MS. NAVE-MASTERS: It's kind of at the whim of the
2 administration. I want it to be required every time.

3 MR. GOURD: Okay.

4 MS. NAVE-MASTERS: I would like the establishment of
5 an ethics commission with power to enforce the ethics. And if
6 that doesn't exist in our code, I want it to be designed by
7 the council and I want those blank pages in the code to be
8 filled out, council members. I would like for us to specify
9 recall and impeachment procedures, so that if such an occasion
10 comes up, we'll have a process. We currently do not have
11 procedures for recall or impeachment as it is laid out. It's
12 referred to in the Constitution, but if you go to the code
13 book, it's a blank page again. We have a lot of blank pages
14 in there. So procedures need to be developed for those
15 portions of the Constitution where these issues are alluded
16 to. We don't have procedures designed yet, and then you go to
17 our Code of Conduct and it's woefully lacking.

18 I would like to establish an attorney general branch
19 within our governance where we would have an investigatory
20 body, so that when someone goes to our justices, to our
21 tribunal and they make a charge, we will have a body that can
22 investigate that charge as being valid or invalid. It will go
23 up or down. We now do not have an investigatory body, and I
24 think that has led to a lot of the problems that we have.
25 Could we have had a situation where we would have had that

1 investigatory body in place, I think that some of the things
2 could have been handled within our own governance, instead of
3 going outside to bring in outside people to make decisions in
4 regard to our Constitution and what we're doing.

5 MR. KEEN: Ms. Masters --

6 MS. NAVE-MASTERS: Yes.

7 MR. KEEN: -- can I ask you a question? You
8 referred to this as an additional branch?

9 MS. NAVE-MASTERS: Yes.

10 MR. KEEN: Do you mean that in a literal sense where
11 we have four branches of government or --

12 MS. NAVE-MASTERS: Well, it would be a set-aside,
13 actually. It wouldn't be a major branch. They would be
14 answerable probably to the judicial, much as the attorney
15 general to the justice department within the United States and
16 Washington D.C. When Janet Reno goes out and investigates
17 charges that are brought or something like that, you know, she
18 goes to the justice department and makes her report and her
19 findings.

20 MR. KEEN: Okay. So this would be a subdivision of
21 one of the existing branches?

22 MS. NAVE-MASTERS: Right.

23 MR. KEEN: But it would be a subdivision of -- I'm
24 sure our judicial branch, but not controlled by it. It would
25 have a set of powers that were given to them that we could not

1 infringe upon their duties. Thank you.

2 MS. NAVE-MASTERS: I do like the idea of the
3 modified term limits that was brought up yesterday by Mr.
4 Robert (sic. Roger) Peacock, and I do -- I would like to see
5 us have modified term limits to where we would have two terms
6 on and one term off for all elected officials. I am against
7 permanent time limits because I feel if we have any
8 leadership, we should never deny anyone serving the Cherokee
9 Nation. But I do think that after you do two terms in your
10 office, you get out, you let somebody else come on. And then
11 if you want to run again, if you want to be involved again,
12 then I think you can step back in. And this I think will give
13 us some new ideas, you know, bring in some new prospective and
14 will allow us to move around.

15 I would like for us to implement and establish a federal
16 programs oversight commission, someone that -- a commission
17 that would monitor all of our federal programs and all of our
18 monies that come from the federal government that are targeted
19 monies, to see that those are spent properly and that there
20 are no issues regarding our federal funds.

21 And my seventh position is that I would like a
22 discretionary funds oversight commission. We now in the
23 Cherokee Nation have a lot more discretionary money than we
24 did even two administrations back. Most our money during the
25 Swimmer administration was all discretionary money; we had

1 very little money we could make a decision about. We would
2 write a proposal and that federal money was targeted and
3 earmarked to go for Headstart to, you know, food programs, to
4 something, and we had very little wiggle room in there. Now
5 with our gas money coming back, with our fuel tax money, with
6 our bingo money, our discretionary funds have grown to the
7 point that we need an oversight committee to monitor and see
8 what is going on with that bundle of oversight -- of
9 discretionary funds.

10 I'm not sure that I know what the budget is, but I do see
11 things published once in awhile. And if you just look at the
12 last budget that I saw published, there is a million dollars
13 every other day: Christmas, Sunday, Saturday, New Years,
14 Thanksgiving, every other day there is a million dollars, if
15 you just look at it that way, that comes in to the Cherokee
16 Nation. We should not have people without housing. We should
17 be able to look at that, we should be able to monitor that
18 oversight, and that is the responsibility of our council.
19 This all goes back to our council being properly trained and
20 properly prepared to do their job. The financial oversight,
21 which is the council's responsibility, has not been upheld by
22 the council. And I think it's because we have allowed them to
23 not get the training that they really require to do this big
24 job that they have. We're not little anymore. We're big and
25 I think we're going to have to expand our structure to be able

1 to take care of the things that we would like to have taken
2 care of and that we see the problems.

3 This is my main issues. I have a lot of other littler
4 issues that go on, but these are the main ones that I think
5 are of a Constitutional level, and I thank you for the
6 opportunity to speak.

7 MR. KEEN: Thank you, Ms. Masters. Are there any
8 questions of Ms. Masters of the Commission?

9 MR. GOURD: How does your idea of the oversight of
10 the discretionary funds, the council for general fund money,
11 that is the money that the Nation accrues, and from whatever
12 revenue stream that's not earmarked or targeted from a funding
13 source?

14 MS. NAVE-MASTERS: Uh-huh.

15 MR. GOURD: The council's proper duty is to
16 appropriate that money. It's the people's money.

17 MS. NAVE-MASTERS: Uh-huh, right.

18 MR. GOURD: And the oversight then has
19 responsibility to see to it that it's spent right is still
20 with the council.

21 MS. NAVE-MASTERS: Right.

22 MR. GOURD: How would you see this commission
23 functioning?

24 MS. NAVE-MASTERS: Looking over their shoulder.

25 MR. GOURD: How would that commission be

1 established, by appointment? If so, by who? For example,
2 when commissions are established the usual order of business
3 is for the Principal Chief to make the appointment by and with
4 the consent of council; the council then would approve those
5 appointments as a cabinet, as an example of other
6 commissions. How would you see this being selected?

7 MS. NAVE-MASTERS: Oh, I appreciate that question,
8 because I did think of that and that probably should have been
9 an eighth point. I would like for our voting districts, our
10 eight voting districts - or if we have an at-large as a result
11 of this, then our nine - but I would like our voting districts
12 to be able to nominate delegates to these positions, and that
13 these commissions come from the people and not from the fox
14 guarding its own chicken house type of a thing.

15 So when the commissions would -- it would be known that
16 they were taking nominations for the ethics commission, then
17 we would have our communities get together and they would have
18 a recommendation from their area. And if it was a seven
19 person, or maybe all of our commissions should then be eight
20 being as we have eight districts. Maybe that would be the
21 proper way to do that, and we would have each district having
22 a representative on these commissions. But I don't think our
23 oversight commissions, whether it's ethics, federal programs
24 oversight or discretionary funds oversight should be appointed
25 by the elected official because that is who they're watching;

1 that's who they're overseeing. And so I think it needs to
2 come from our community delegations in each of our districts.

3 MR. KEEN: Ms. Masters, what type of powers would
4 you have these commissions be vested with?

5 MS. NAVE-MASTERS: The commissions would have the
6 power primarily, probably, of influence and media. Once the
7 people knew what was going on, I think that things would take
8 their proper course. I wouldn't see them having impeachment
9 or recall power or anything of that nature, but they would
10 have access to data, records, you know, they would have the
11 oversight responsibility. And by looking at these, they could
12 bring things forward. They could bring them to the attorney
13 general, and we could bring charges through the process of the
14 attorney general then looking in and investigating. It would
15 then go to the judicial in the typical way that misuse of any
16 funds would take.

17 But if we have our attorney general in place, that would
18 be our investigatory body, and the oversight commissions would
19 say, we see something here and based on the information we
20 have, we would like this investigated, and then your attorney
21 general office would do the investigation and the findings.

22 MR. GOURD: Would they be elected? How would they
23 be put in these positions if they're not to be appointed
24 because of the concern that, you know, the Chief would pick
25 his friends or whatever else, or the council would pick their

1 friends and they'd work -- however that works.

2 MS. NAVE-MASTERS: Uh-huh.

3 MR. GOURD: If you envision one from each district
4 and then the communities all getting together, how is that one
5 person going to be selected?

6 MS. NAVE-MASTERS: I think in my experience in
7 working in the community all of the time, people come together
8 when there is usually a problem. You know, when everything is
9 just going along, nobody really goes to community meetings or
10 school board meetings or parent advisory board meetings.
11 There's always the little poor people usually that hold the
12 community together and do everything; and then if there is a
13 problem, a lot of people come in that is effected by the
14 problem. And so I always see that there probably is a core
15 group that the community depends on to do the oversight that
16 will read all of the documents, that will get themselves
17 involved, and the community will have faith in that person
18 that they sent.

19 And I think each of our council members - I don't know if
20 Harley will tell you what he can do in his area - but I think
21 if our council members say it's time, you know, for us to
22 select our nomination to the ethics committee in our district
23 and he called a meeting and put out his flyers, the people
24 that were interested would come and they would nominate
25 somebody and he would bring that, you know, that nomination

1 and then would come back from his district. And I think the
2 council members -- well, George is the exception, George runs
3 his community group. But if he called a meeting at Kenwood
4 and said we're going to elect three people to sit on the three
5 commissions oversight: federal oversight, discretionary
6 oversight and ethics commission, I think his people would come
7 and they would vote and they would send somebody -- they would
8 send a recommendation down, because we do have these
9 organizations that are in place.

10 Is that true with your district, Harley? Is that true
11 with yours?

12 MR. TERRELL: Uh-huh.

13 MS. NAVE-MASTERS: You see, it's a workable -- I
14 think it's a workable plan.

15 MR. KEEN: Ms. Masters, I have a question on your
16 first recommendation about the training and orientation --

17 MS. NAVE-MASTERS: Right.

18 MR. KEEN: -- for each new counsel member. What
19 branch of the government would you have do this training
20 orientation?

21 MS. NAVE-MASTERS: Well, being as it's to happen
22 right after the election, you know, I would assume that it
23 would need to be put in place prior, you know, to the
24 election, and there would be people that would be called in to
25 do the history or maybe the cultural issues, or maybe

1 people -- you would even have an executive assistant in the
2 Deputy's office, because I do view the Deputy as being sort of
3 a leadership role in the council. And so I would assume that
4 this would come through the Deputy Chief's office and that he
5 would put -- maybe put out a call in the Advocate that anyone
6 interested in doing a workshop or presenting, send in your
7 position paper. Like you do as much as any other conference
8 that you attend, you put a call out for papers. You know,
9 what would you like to see the council do? And this is a
10 typical way that you put together conferences. You put out a
11 call for papers, and then you have people that are interested
12 in wanting to work up something, or people that are
13 specialists in the area that you haven't even got an idea
14 about.

15 For instance, Mr. Scott that was here yesterday, you
16 know, Owen is such a research scholar, you know. But you
17 would have people all over that do those kinds of things. And
18 if you put a call for papers, you would be surprised at the
19 people that would probably have a lot to offer in order to
20 make our council very, very productive and very, very
21 informed.

22 MR. THOMAS: I have a question about your term
23 limits.

24 MS. NAVE-MASTERS: Sure.

25 MR. THOMAS: Obviously, we would not want to lose

1 any great talent --

2 MS. NAVE-MASTERS: Never.

3 MR. THOMAS: -- that we might accidentally come
4 across - maybe not so accidental - but if we did get somebody,
5 would you suggest they layout - that's for the lack of a more
6 descriptive word - one term and then could they run for office
7 again after one term?

8 MS. NAVE-MASTERS: Absolutely.

9 MR. THOMAS: After one term?

10 MS. NAVE-MASTERS: Yes, one term. But if they were
11 going to run for a different office, they wouldn't even have
12 to -- say if you had been on the council --

13 MR. THOMAS: Uh-huh.

14 MS. NAVE-MASTERS: -- and you chose to run for
15 Deputy Chief or Principal Chief, you wouldn't have to layout a
16 term.

17 MR. THOMAS: Yes.

18 MS. NAVE-MASTERS: But if you were coming back to
19 the same position, you would need to skip a term and then come
20 back.

21 MR. THOMAS: Thank you.

22 MS. NAVE-MASTERS: Okay. No, I'm against term
23 limits, too, Mr. Thomas. I really wouldn't want to -- I
24 wouldn't want to ever deny any leadership ability. I'm really
25 against firm term limits. This is sort of a modified term

1 limit.

2 MR. THOMAS: Well, a lot of people feel that they
3 will be the judge when someone's time is up and they'll tell
4 him so or her at the ballot box, and that's the argument that
5 I hear frequently against term limits.

6 MS. NAVE-MASTERS: There's a lot of power and a lot
7 of plumbs with your seated council people that keep that from
8 happening, especially when people are living at the survival
9 level as they are here. A little bit of a -- a little bit of
10 something can sway a vote towards self-interest, rather than
11 the interest of the Nation.

12 MR. THOMAS: True.

13 MS. NAVE-MASTERS: And when people are not living in
14 an affluent environment, I think that it gives an abnormally
15 large power to the seated candidate, too much so.

16 MR. GOURD: We have a ways and division now, four
17 years and everybody is all elected at the same time. So
18 you're envisioning that they would be elected for eight years?

19 MS. NAVE-MASTERS: Yeah, two years.

20 MR. GOURD: And then sit out for eight?

21 MS. NAVE-MASTERS: No, they would just have to stay
22 out one term.

23 MR. GOURD: Well, if the term limit is set at four
24 years --

25 MS. NAVE-MASTERS: Right.

1 MR. GOURD: -- and than you have to run again.

2 MS. NAVE-MASTERS: No, I didn't say separate.

3 MR. GOURD: That's where I just have a problem with
4 this whole notion of calling it "term limits."

5 MS. NAVE-MASTERS: Yeah.

6 MR. GOURD: Is that the term for which you're
7 elected to office is set?

8 MS. NAVE-MASTERS: Yeah.

9 MR. GOURD: So you're there for four years?

10 MS. NAVE-MASTERS: Right.

11 MR. GOURD: And what you're saying is limit the
12 number of years, so --

13 MS. NAVE-MASTERS: No, I'm saying if you're seated
14 for two terms --

15 MR. KEEN: Two terms.

16 MS. NAVE-MASTERS: -- then you stay out one term.
17 We got years and terms mixed up in there. My position is you
18 can serve two terms and then you're out one, or go to a
19 different office.

20 MR. THOMAS: If they were fortunate enough to be
21 elected for two four-year terms, then they would have to
22 layout one term which would be four years, unless they ran for
23 another office. But before they could return to the campaign
24 trail to regain the office they lost, they'd have to wait --

25 MS. NAVE-MASTERS: One term.

1 MR. THOMAS: -- one term, whatever the length of
2 that term is?

3 MS. NAVE-MASTERS: Uh-huh.

4 MR. THOMAS: Four years in this case.

5 MS. NAVE-MASTERS: Yes. I think that would be a
6 good -- I think that would bring in our leadership and it
7 would increase our involvement a tremendous amount and it
8 would allow us to look at our leadership people better.

9 Maybe term limits isn't the right term for that, Charlie,
10 maybe I should come up with a new word. I called it "modified
11 term limits" because I'm not really for term limits. I just
12 called it a modified, but there's probably a better word we
13 could come up with, because people do think they know what
14 term limits are.

15 MR. GOURD: As a general question, not just
16 stability, but we have -- everybody conceivably could be
17 thrown out of office and replaced all at once. Federal
18 Congress and the State rotates, the Congress and Senate
19 staggering the terms. What is the opinion of the people for
20 the Nation, because right now we elect everybody every four
21 years. Is it a good idea to think about?

22 MS. NAVE-MASTERS: I was going to say when we
23 implement it, I think we should have a 50 percent turnover
24 every time, you know, just 50 percent. But that would, of
25 course, entail an election every two years and we can't afford

1 that, which is why we went to this particular one I think
2 because we couldn't afford any more election costs, you know.
3 And if we go to the 50 percent rotation it would entail, you
4 know, more election time. And I think they were trying to
5 keep down the election cost, if I remember the discussion when
6 we went to that one.

7 MR. KEEN: Well, assuming that cost was not an
8 issue, you would be in favor of alternating?

9 MS. NAVE-MASTERS: Oh, definitely.

10 MR. KEEN: Staggering terms?

11 MS. NAVE-MASTERS: If we could figure out how to do
12 an election, I'd love to see 50-50 each time.

13 MR. KEEN: Do I have any other questions for Ms.
14 Masters from the Commission? Is there any questions from Ms.
15 Masters from the floor? If not, we'll move ahead to our next
16 speaker.

17 MS. NAVE-MASTERS: I have a question. Okay. Now,
18 this counts for my time now, I can't speak any more?

19 MR. KEEN: No, ma'am, you can speak all you want.

20 MS. NAVE-MASTERS: Oh, okay. I'm still trying to
21 figure out the rules.

22 MR. KEEN: Well, we are, too. We lifted the time
23 limit --

24 MS. NAVE-MASTERS: Okay. Thank you.

25 MR. KEEN: -- in an effort to encourage

1 participation and interaction.

2 MS. NAVE-MASTERS: Okay. I appreciate that.

3 MR. KEEN: But we still -- because we are having
4 people sign up and register, we're going to make sure that
5 those people have an opportunity speak.

6 MS. NAVE-MASTERS: Oh, sure.

7 MR. KEEN: So, no, there's no limit on you, if you
8 want to speak later on or address another issue that someone
9 else has brought up, please feel free to do so.

10 MS. NAVE-MASTERS: Okay. I really appreciate you
11 all reconsidering that.

12 MR. KEEN: We have a number of people that have
13 signed up here. I don't know that -- so those that have
14 signed up to speak, we'll just open the floor up to whoever
15 wants to speak next. If you feel compelled, if not, we'll
16 find a name and call one.

17 MR. SMITH: Being a lawyer, I am compelled to always
18 talk, but I have prepared some suggestions.

19 MR. KEEN: Can you state your name for our reporter,
20 Chad?

21 MR. SMITH: Here's a copy for the reporter, and I've
22 got five copies. If possible, I'll send it to the panel.

23 Just for the record, my name is Chad Smith, and I've
24 given you a list of eight -- nine items, and they're all
25 self-explanatory, and I don't need to explicate on those or

1 expound those matters. I'll just leave those for the record,
2 for the Commission.

3 MS. NAVE-MASTERS: Oh, we'd like to know what they
4 are.

5 MR. SMITH: Oh, I'm sorry.

6 MS. NAVE-MASTERS: Please say it for us.

7 MR. SMITH: I'm sorry. With your permission -- I
8 didn't mean to use very much time. There's nine provisions,
9 and it will be just as quick to read them, if that meets with
10 your approval.

11 MR. GOURD: Yes.

12 MR. SMITH: Number one: Add to the preamble of the
13 1975 Constitution the following portion of the Act of Union of
14 1839. The Act of Union of 1839 combine the Eastern and
15 Western factions of the Tribe and that was our organic
16 document, and the language in its preamble is very, very
17 strong and it adds a continuum of legal existance and its
18 beautiful foundational language. "Whereas as our Ancestors
19 have existed, as a separate and distinct Nation, in the
20 possession and excercise of the essential and appropriate
21 attributes of sovereignty from a period extending into
22 antiquity, beyond the records and memory of man: and Whereas
23 these attributes, with the rights and franchises which they
24 involve, remain still in full force and virtues, as do the
25 national and social relations of the Cherokee people to each

1 other and to the body politic." And I would like -- I would
2 make the recommendation that be included in the preamble to
3 our '75 Constitution.

4 Number 2: Amend Article XVI (416). It presently provides
5 that the provisions of the '75 Constitution repeal the
6 provisions of the 1839 Constitution. It's my opinion that the
7 1839 constitution is still in effect, except for those
8 provisions that are hostile and irreconcilable by the '75
9 Constitution. I would recommend that we include language to
10 make sure that the 1835-1839 Constitution is still in effect,
11 except for inconsistent provisions, and that's the intent of
12 this language. The provisions of the 1975 Constitution which
13 address and are in conflict with specific provisions of the
14 1839 Constitution shall supersede those provisions of the 1839
15 Constitution. The 1839 Constitution is effective unless
16 subsequent inconsistent provisions have been adopted in the
17 1975 Constitution or its amendments.

18 Number 3: Delete Article -- excuse me -- delete
19 provisions in Article XII (12) which refer to the Oklahoma
20 Administrative Procedures Act. We have adopted and can adopt
21 the federal rules of procedure and evidence or the Oklahoma
22 Federal Rules of Civil Procedure and Evidence which are much
23 more fluid, and so we shouldn't be constrained to that
24 procedural act.

25 Number 4: Create and provide for popular election for the

1 offices of marshal and prosecutor.

2 Number 5: Amend Article XI (11) to provide for popular
3 recall of the elected officials.

4 Number 6: Provide for a grand jury with power to
5 investigate illegal activities of elected officials.

6 Number 7: Amend Article V (5) to provide for a second
7 legislative body composed of representatives from Cherokee
8 communities.

9 Number 8: Amend Article VII (7) to, one, change the name
10 of the Judicial Appeals Tribal to the Supreme Court; two:
11 authorize the creation of inferior courts subject to the
12 general supervision of the Supreme Court; and three: delete
13 reference to the Oklahoma Administrative Procedures Act.

14 And Number 9 and last is: Provide that defiance of the
15 Constitution by an elected official shall be treason with
16 penalties of removal. Thank you.

17 MR. KEEN: Mr. Smith, on the question of the 1839
18 Constitution, has the tribunal issued any rulings that would
19 clarify as to its status?

20 MR. SMITH: I'm not aware of any.

21 MR. KEEN: Okay. But your opinion is that
22 Constitution is still a valid document?

23 MR. SMITH: Yes, sir. That was our organic document
24 in 1839. Nothing in the process of Oklahoma statehood,
25 allotment or such, ever changed the status of our legal entity

1 from being a constitutional government first organized in
2 Indian territory in 1839. There's been confusion as to
3 whether it is, and I think this would eliminate that
4 confusion. I think you will agree with me that the
5 fundamental principle of law if you have a subsequent
6 Constitution, only the irreconcilable provisions of the new
7 with the old would nullify the old Constitution. So there's
8 still provisions that may be helpful in the 1839 Constitution
9 that we need to keep on the books.

10 For example, one example, there's a Bill of Rights. We
11 don't have a Bill of Rights in our 1975 Constitution, but we
12 do have a Bill of Rights in the 1839, and that's what we
13 depend upon for the foundation of our criminal law and our due
14 process.

15 MR. GOURD: I would have a question. Your first
16 suggestion you say add to the preamble of the '75. Are you
17 saying add to it, or replace it with this language?

18 MR. SMITH: I would add that language, not replace
19 it, just add. Put that in with the '75 preamble. It probably
20 needs to be edited a little bit.

21 MR. GOURD: But essentially, what you're saying is
22 to merge --

23 MR. SMITH: Yes.

24 MR. GOURD: -- what was said in the 1839
25 Constitution with provisions that are in here?

1 MR. SMITH: Well, that's from the Act of Union.

2 MR. GOURD: Yes, yes, right.

3 MR. SMITH: Merge them, yes.

4 MR. KEEN: Mr. Smith, Article 16 of the '75
5 Constitution says that: "The provisions of this Constitution
6 overrule and supersede the provisions of the Cherokee Nation
7 Constitution enacted the 6th day of September 1839." So when
8 you read this, do you interpret this clause as not a general
9 repealer of the 1839?

10 MR. SMITH: Absolutely, it is not a general
11 repealer.

12 MR. KEEN: Okay. And that it just repealed whatever
13 sections may conflict with the '75?

14 MR. SMITH: Yes. To repeal the 1839 Constitution,
15 the fundamental, the principles of law, that has to be
16 extremely clear, and that's a very bold effort. And I think
17 it really shows that we are a continuum of a legal existence
18 back to 1839 if we incorporate or make clear that the 1839 is
19 our foundation and still effective.

20 MR. KEEN: Thank you.

21 MR. GOURD: You mentioned in number two and number
22 seven, number two referring to the Oklahoma Administrative
23 Procedures Act, and that's under the section dealing with
24 employee rights?

25 MR. SMITH: Yes.

1 MR. GOURD: How does that -- what effectively would
2 that change? Would that let the court system establish its
3 own rules of procedure and stuff and not have to go by -- and
4 I agree. My opinion on the Oklahoma Administrator's
5 Procedures Act is some sort of an abomination. You ought to
6 try to read it sometime. I always wondered why that was
7 tagged in there, but be that as it may. And also on number
8 seven.

9 MR. SMITH: It deals with the Tribunal.

10 MR. GOURD: Yes.

11 MR. SMITH: In the Tribunal Provision it says:
12 "unless otherwise necessary." It gives us latitude in the
13 judicial appeals procedure to adopt other procedural law. And
14 the only thing is the Oklahoma Procedures Act is too
15 confining, too narrow, and is outdated for general
16 application. So deleting those provisions would give the
17 flexibility to the council to adopt other procedural law, for
18 example: The Federal Rules of Evidence; The Federal Rules of
19 Civil Procedure; The Oklahoma Rules of Civil Procedure.

20 MR. THOMAS: I would like to add something, if I
21 might.

22 MR. SMITH: Yes, sir.

23 MR. THOMAS: Could you come stand up here?

24 MR. SMITH: Yes, sir.

25 MR. THOMAS: I'm just barely getting you.

1 MR. SMITH: Yes, sir.

2 MR. THOMAS: I'm sorry, I apologize for my
3 infirmities, but that comes along once in awhile. Are you
4 speaking of a bicameral legislative body?

5 MR. SMITH: Yes, sir.

6 MR. THOMAS: And what would you call each body, the
7 senate and the legislators, senate and council, or something
8 of that nature?

9 MR. SMITH: Well, we might go back to the 1839
10 Constitution. They had a national council and that may be the
11 name for the present council. And since we're all familiar
12 with the idea and the word "community representatives" that
13 may be a good name for the second body. But I think that
14 provision needs investigation, because over the years our
15 Cherokee people seem to be more distant from the national
16 government and it appears that we can be a valid mechanism to
17 get them back or feel that they have the access back to the
18 government if they have a representative from their community
19 with a voice in Tahlequah, in addition to their voice in a
20 district capacity.

21 MR. THOMAS: You're bringing in more people for a
22 say in their government, which a lot of people are going to
23 look at in a favorable light. Like you say, there's too many
24 either disinterested people out there and there's too many
25 people that don't know what is going on because they don't

1 have anybody in their community that they can visit with and
2 most - not in every community but generally speaking - there
3 is a lack of knowledge at the community level on what is going
4 on at the tribal headquarters. And I'm wondering if this
5 isn't your way of saying that we need more people to better
6 represent more people that we're acquiring. We've got --
7 somebody said 190,000 people, and it's pretty difficult for 15
8 people to adequately spread the news about what's going on.

9 We do -- a lot of people think that. I've heard some
10 talk about this before from other people, but that is what
11 you're saying, and one house or one department would be like
12 senate and the house of representatives? I mean, just for
13 instance, that would be the general idea?

14 MR. SMITH: As Charlie Gourd can show you, we can go
15 back to the 1839 Constitution and there are provisions there
16 for two houses and there are duties assigned to each house. I
17 think the importance of community reps, kind of a house, is
18 that we need to establish mechanisms that the people feel
19 that they have quicker and more dynamic access to the
20 government in Tahlequah. We need to insure those systems.
21 And I'm not saying our elected representatives have not made a
22 decent effort, but we need the mechanisms where people feel,
23 yes, I can call down the street and I can talk to my neighbor
24 who represents this community.

25 And the other thing, I think if we are going to survive

1 as a Nation, it's not as a corporate governmental body in
2 Tahlequah, but if we survive it's going to be as communities;
3 people helping each other out in their locale and with their
4 interests. And I think we all can agree, that is what has
5 helped us survive these 200, 300 years in the midst of
6 hostility is reliance on our neighbors.

7 MR. THOMAS: Thank you.

8 MR. SMITH: Thank you, sir.

9 MR. WICKLIFFE: You mentioned inferior courts. Are
10 you referring to the structure that we once had? We had a
11 courthouse in Little Saline District Court, whatever it was, I
12 think they called it Saline Courthouse that we have down
13 there. I've heard of another one being at Gore somewhere.

14 MR. SMITH: Yes, sir.

15 MR. WICKLIFFE: Are you saying that we need a
16 division, a court established somewhere away from Tahlequah?

17 MR. SMITH: No, sir.

18 MR. WICKLIFFE: You're wanting to house that court
19 also in the same courthouse, or away?

20 MR. SMITH: To me the issue is not where the court
21 is housed, it's from what legal authority does the lower court
22 operate. Right now our 1975 Constitution creates a court of
23 general jurisdiction or judicial appeals court. I believe
24 there's implicit authority for the legislator or the council
25 to create an inferior court. This provision would reduce or

1 get rid of any question as to the relationship of our district
2 court and our judicial appeals court.

3 So basically, my proposal is that we, as a constitutional
4 amendment, create -- call our judicial appeals court the
5 Supreme Court; make sure the council has the authority, which
6 I believe they have already to create a lower court, but the
7 Supreme Court has general supervision over the lower court.
8 There's an active debate now that the district court should be
9 a court separate and removed. That's not the way courts
10 operate and that should relieve that debate to show the
11 distinction, the line of authority in the judicial system.

12 MR. KEEN: Mr. Smith, your written statement here
13 doesn't spell it out, although I think you just answered my
14 question. You would like to see the council have the
15 authority to create inferior courts, but it would -- those
16 courts would be under the general supervision of the Supreme
17 Court?

18 MR. SMITH: Absolutely.

19 MR. KEEN: Okay.

20 MR. SMITH: Otherwise, you don't have the separation
21 of powers.

22 MR. KEEN: Right.

23 MR. WICKLIFFE: But your idea is to house the
24 inferior courts in the same building that we have now?

25 MR. SMITH: I would leave that to the discretion of

1 the court. That's the court's business. You know, the court
2 can have a roving court. It might be good for us for one
3 session, the Supreme Court to sit in Mayes County or up at
4 Delaware County. Those courthouses would open their doors to
5 us. You can have a rotating court. The location of the
6 courthouse is not a question of constitutional proportions.
7 The question is what authority does the lower courts have?
8 And that should be from the Supreme Court down, separate from
9 the legislative and executive branches.

10 MR. WICKLIFFE: Thank you.

11 MR. GOURD: As a final question, how would you
12 define, you know, if we have the district boundaries, the
13 second legislative body, how would you define the community so
14 that there is an idea - you know that the size and structure
15 and locations of communities is constantly changing - how
16 would you define that second legislative body so people would
17 know the corpus from which the ones they're representing or
18 the office? I hope I'm getting my point across. How would we
19 define that?

20 MR. SMITH: I would suggest that we, in the
21 Constitution as a broad framework, establish those houses with
22 general responsibilities, and defer to the council to
23 establish how they recognize communities by legislation rather
24 than constitutional amendment. The legislature can create the
25 vehicle, the requirements to recognize a community. The

1 council or legislative branch may say, well, you have to have
2 a certain population; it has to be in a certain geographic
3 area; you have to have so many registered voters. Or you
4 maybe even have to have -- you recognize them after a set of
5 bylaws are established and officers are appointed, but that
6 can be deferred to the council for legislation.

7 MR. GOURD: Thank you.

8 MR. HANNAH: Mr. Smith --

9 MR. SMITH: Yes, sir.

10 MR. HANNAH: -- you've already spoken to the fact
11 that the existence of the 1839 Treaty was not eradicated with
12 the dissolution of our government under the stand down of the
13 creation of the State of Oklahoma and the period of time when
14 the Chiefs of our Nation was appointed by the President of the
15 United States, and your premise is that we're still, more or
16 less, as a sovereign entity serving under that document; and
17 yet, you bring recommendations for amendments to our 1975
18 Treaty. And I guess from a legal prospective --

19 MR. KEEN: Constitution.

20 MR. HANNAH: -- yeah, Constitution, I'm sorry. I'm
21 interested to know what type of general repealer, if that
22 would be the appropriate term, would be needed for the '39
23 Treaty or what your premise is from a standpoint of do we look
24 back to the '39 treaty, or do we look for some culmination
25 between the two, between the '75 and '39?

1 MR. SMITH: I would strongly encourage you not have
2 a general repealer. Each provision that we take now that's
3 inconsistent with the '75 Constitution and/or inconsistent
4 with the 1839 Constitution has been repealed by implication.
5 It's a piece by piece repeal, so I would encourage you not to
6 have a general repealer.

7 I think for our continuum of legal existance, the most
8 interesting federal act is the Act of 1906, and I believe it's
9 Section 26 and maybe 23, but in that there was the Five Tribes
10 Act. And it says in its body that: "The governments of the
11 Cherokee Nation and the other Five Tribes shall continue in
12 full force and effect until other provision of law," so we've
13 never been dissolved. And so it was tenuous at that time, but
14 we are still the same Cherokee Nation today as we were in
15 1839.

16 MR. HANNAH: So a legal interpretation would be that
17 the 1975 Treaty is, in effect, simply a series of amendments
18 to the '39 Constitution?

19 MR. SMITH: Precisely, precisely.

20 MR.HANNAH: Thank you for that point of
21 clarification.

22 MR. SMITH: Thank you, sir.

23 MR. PHILLIPS: Mr. Chairman, may I ask a question of
24 Chad?

25 MR. GOURD: Yes.

1 MR. KEEN: Sir, please give your name for the
2 benefit of our court reporter.

3 MR. PHILLIPS: My name is Harold Phillips. Chad,
4 the second legislative body or the legislative part of it that
5 you would refer to as a community rep, what powers would they
6 have? Would they be involved in the legislative process along
7 with the other branch of legislature, or would they just be a
8 liaison from the community to the present legislature?

9 MR. SMITH: I am not -- his question was what power
10 would the second house be, and I don't have a firm proposal on
11 that. I would anticipate that the second house would have
12 some appropriation powers, some oversight of finances. I
13 think the greatest duty would be to keep information flowing
14 from the Cherokee Nation government back to the communities.
15 But that's the extent of the powers that I would anticipate
16 now as some appropriation financial oversight.

17 MR. PHILLIPS: So actually, in that capacity, they
18 wouldn't be a legislative branch or a part of a legislative
19 branch; would they?

20 MR. SMITH: They would be part of the legislative
21 branch. It would be a bicameral legislature.

22 MR. PHILLIPS: But with no power to pass laws, such
23 as the present council has?

24 MR. SMITH: I would anticipate that the council as
25 composed would be the house that could introduce bills and

1 ultimately act on them, but I would encourage that the second
2 house have financial oversight.

3 MR. PHILLIPS: Thank you, Mr. Chairman.

4 MR. KEEN: Do we have any other questions for Mr.
5 Smith? I've got a question for Mr. Smith.

6 MR. GOURD: Please state your name.

7 MR. MCDANIEL: My name is Calvin McDaniel, I live in
8 Muskogee. And the second half you're talking about, will it
9 have any - sometimes I'm kind of slow to get it through my
10 brain - but will they have any executive or -- they wouldn't
11 have any executive power; is that right?

12 MR. SMITH: That's correct. They would be part of
13 the legislative branch.

14 MR. MCDANIEL: In other words, if some official is
15 doing something that wasn't considered right, they wouldn't be
16 able to do anything about it; would they?

17 MR. SMITH: It would depend on what powers they were
18 given by statute. I don't have a recommendation as to their
19 authority to move for recall of the executive or sanction or
20 impeachment of the executives.

21 MR. MCDANIEL: Well, I just heard you mention
22 oversight and if you don't have -- if the oversight committee
23 finds something, well, it needs have some power to do
24 something.

25 MR. SMITH: Well, if you look at the House of

1 Representatives, that's where revenue bill are originated, so
2 it may follow that kind of model, but it would have some
3 oversight on the finances, as I would anticipate.

4 MR. MCDANIEL: Okay. That's what I wanted to know.

5 MR. KEEN: Are there any other questions for Mr.
6 Smith on his proposals?

7 MR. SMITH: Thank you, sir.

8 MR. KEEN: Thank you, sir. If not, those of you
9 that have registered and wish to speak, we'll entertain the
10 next speaker. We're not calling them in any particular order.
11 I see a hand go up back there. Mr. Ragsdale?

12 MR. RAGSDALE: May I come forward?

13 MR. THOMAS: Sure. Come up here, Pat, where I can
14 hear you.

15 MR. RAGSDALE: Is it okay if I sit down?

16 MR. KEEN: Absolutely. Please state your name for
17 the court reporter.

18 MR. RAGSDALE: My name is Pat Ragsdale and I'm an
19 enrolled member of the Cherokee Nation. Thank you for the
20 opportunity to address the Commission, and first let me
21 commend you for taking on this hard task. I don't necessarily
22 envy you. I have some ideas. What I would like to do this
23 afternoon is rather than talk about specific proposals I would
24 like to see, make some recommendations to the Commission about
25 process, even though I am the last one to tell you what

1 process I would follow if I was on the Commission.

2 Just by way of background I've been, for better or worse,
3 I've been in the Indian business for 30 years. I served in
4 the federal government for some 26 years, starting off as a
5 laborer out here at Sequoyah in 1964 digging ditches, and
6 finishing my tour of duty as an acting assist secretary. So,
7 I mean, I've worked in just about every grade level there is
8 in the federal government from ditch digger to high
9 administrative position, and I was lucky in my career that
10 that occurred.

11 I've had a lot of experience in tribal government. After
12 I left the field of education -- I started off as a school
13 teacher after I graduated and had a history of political
14 science major. I was recruited into the field of tribal
15 government as a tribal government specialist. I worked as an
16 enrollment officer on the old -- in those days the old I.C.C.
17 claims, Indian Claims Commissions, the commissions that were
18 established to hear the claims against the United States for
19 treaty deprivations, so for some of those claims the Cherokee
20 Nation participated in. I worked in the field of tribal
21 government to develop tribal ordinances to help tribes develop
22 tribal constitutions. So, I mean, it's been kind of an area
23 that I have a great fascination with as to how our tribal
24 governments in this country have evolved since its timely
25 memorial.

1 And so with that background, I would like to bring up
2 some issues, and not propositions about what you may want to
3 do, but things for you to consider in trying to formulated for
4 the Cherokee people how we should go and formulate our
5 Constitution in the future. And what I would recommend first
6 is that the Commission either publish or announce in a paper
7 their philosophy which will vary, probably, given the range of
8 experience that you may have and your ideas about government,
9 about what the purpose and the nature of a Constitution is. I
10 mean, I think generally most people, as far as the people in
11 this country, we developed a Federal Constitution to limit the
12 powers of government. Because of the experience that the
13 Americans had with the Europeans, the greatest thing in their
14 mind was that they did not want to see governmental authority
15 abused. And so the philosophy of many people in terms of a
16 constitution is really no more than an organization document
17 to give us some rules for governing, to get some delegations
18 of authority from the people, because we cannot operate -- a
19 purely democratic government would be 190,000 Cherokees would
20 sit down and counsel and decide what was best for the Cherokee
21 Nation, but in this day and age and with separation of people
22 and people and so forth, that's impractical, so the people
23 have to delegate some of their powers as free people to a
24 government to represent them.

25 Now, I've heard scholars. There are some scholars that

1 argue that constitutional provisions are like grafts of
2 unlimited power to the leaders of a government of the people.
3 Others argue, and I believe in this philosophy more than the
4 other, is that in terms of a constitution, those are to limit
5 what the government can do for you. And if the government --
6 if the people of the government have not given you the power
7 to act in their behalf, you can't do it. That's the
8 protection of the people.

9 Now, in the Indian tribal framework in this country, we
10 have tribal governments that still operate by what is called
11 the general council form of government; they don't have a
12 constitution. And basically what a general council, Indian
13 general council does is that periodically they operate - or
14 they were operating this way on the Crow reservation when I
15 left the Indian Bureau a number of years ago - periodically,
16 they would call the Indians together to approve budgets, to
17 settle issues of controversy, or decide on just about any
18 endeavor that you can think of, and the people vote. And if a
19 proposition doesn't pass, then the government does not have
20 the authority to act. In the old days, you know, when you
21 didn't have to make a whole bunch of business decisions, this
22 is probably the most democratic way to operate a government:
23 you had a consensus to move or act on something or you didn't;
24 either-or. The process of modern government is more
25 complicated within it.

1 A lot of tribes have refused to move from the general
2 council concept of government because they don't trust their
3 leaders to exercise authority. And so the government of some
4 tribes, and in particular if you want to go over to the
5 Western side of the state, the area I'm familiar with, have
6 really limited what their governmental leaders can do. And as
7 a result, a lot of times they're in constant turmoil about
8 questions of the day. So, I mean, I don't favor that form.
9 But my point in the philosophical discussion is I would
10 recommend the Commission put out to the people for this
11 process of developing a new Constitution or simply amending
12 the Constitution that we have, a kind of philosophical
13 framework of what a Constitution is supposed to do; and is it
14 a limitation of powers on those that govern us or represent
15 us, or is it a broader ground of power to our leaders that we
16 trust you to do what's right and we're going going to give all
17 kinds of discretion? Which philisophy you adopt, or something
18 in-between, makes a lot of difference in deciding whether or
19 not you want to change or revise your Constitution. And
20 that's something that the people need to wrestle with
21 themselves.

22 Second, in terms of process, there's another question I
23 think that you need to wrestle with. In terms of modern day
24 tribal governments in this country, you know, there are
25 scholars that can address it a lot better than I can. In 1934

1 the Congress of the United States passed the Indian
2 Reoriginazation Act, and then Congress two years later passed
3 the Oklahoma Indian Welfare Act of 1936. Those two acts
4 during the F.D.R.'s administration, the Roosevelt
5 administration, were intended to revive tribal government.

6 From 1887 to 1934 the Congress of the United States as a
7 matter of federal policy were doing everything that they could
8 to break up Indian reservations, to fragment the culture of
9 Indians and to discourage any self-determination by Indian
10 tribes. That was the policy of the United States during that
11 period. In 1934 the Roosevelt administration wanted to reform
12 them, and basically the reason that they wanted to reform it
13 was, one, the idea of fragmenting Indian landownership was
14 based upon an ideal that if you gave Indians 40 acres and a
15 mule, they would all prosper and they all become American
16 landowners and be blended into the great framework of the
17 American government.

18 And by 1934 what Congress found, by reviewing the policy
19 of allotment through 1934, that contrary to the ideal of
20 allotment and the abolition of governments, what had happened
21 is that Indians had lost 99 percent of their property, whereas
22 Indians actually owned most of this country in the previous
23 century. By 1934 the Indian land based had been diminished to
24 about 48 million acres; today it's about 54 million acres.
25 So, I mean, we're not gobbling up the country again, but that

1 was the idea. So tribes at that point were encouraged.

2 One of the compromises that the Roosevelt administration
3 made was they felt, the reformers felt, that American society
4 could not understand traditional tribal government. And a
5 traditional tribal government varies from the Cherokees who
6 had a framework that was very similar to the federalist's
7 concept, to Pueblo Indians that operated their communities
8 through religious leaders. And what the Congress decided is
9 that we're going to find something in-between; we're going to
10 adopt a law that allows tribes under federal laws to organize.
11 And the advantage of organizing either under the Indian
12 Reorganization Act if you're outside of the Oklahoma or the
13 Oklahoma Indian Welfare Act is essentially that if you
14 organize under that framework, then for whatever it's worth -
15 given the tendencies of the United States to break so many
16 treaties, but for whatever it's worth - if you adopt a
17 Constitution under the 1934 Act or the 1936 Act, the Secretary
18 of the Interior or the President of the United States cannot
19 summarily abolish your government.

20 Whereas, if you simply do as we choose to do and the
21 Navajo Nation choose to do, and that's to adopt our modern day
22 Constitution based upon our inherent authority as an Indian
23 tribe and as an Indian people to adopt our own that that's
24 good enough and that's been recognized by the federal
25 government. So you don't have to have I.R.A. Constitution or

1 an Oklahoma Indian Welfare Act Constitution to have the same
2 status as a tribal government as one over the other. I don't
3 think either one of them is superior.

4 But one advantage of having an I.R.A. blessed
5 Constitution or an Oklahoma Indian Welfare Act blessed
6 Constitution organized and approved is it does afford some
7 additional sanctity of federal law that some administrative
8 official in the Bureau of Indian Affairs or in the executive
9 branch can't say, for whatever reason, we are going to
10 withdraw our recognition with this tribal government. If
11 you're under one of those, organized under one of those, then
12 you have a little bit greater force of American law behind
13 you. One of the things that I think that the Commission needs
14 do is to put those two propositions out and do some study on
15 it. Do a pro-and-con analysis of whether or not we want to
16 use the I.R.A. or the Oklahoma Indian Welfare Act mechanism
17 in our approval of the new Constitution or not, and seek some
18 discussion on there.

19 Then in terms of process, another thing I think, and a
20 very difficult decision you all are going to have to make and
21 perhaps seek further recommendations, is once you've had your
22 hearings and sought public input, how are you going to develop
23 the process to get those boiled down to questions for people
24 to decide whether or not to vote on the question? And I have
25 not read your rules and regulations, so you may have already

1 addressed that and adequately. But I think it's a difficult
2 process or decision that you're going to have to make in the
3 future. And it also puts a burden on you to decide whether or
4 not the Commission is going to recommend that we totally
5 revise our Constitution, which would mean that we're going to
6 have to put a new Constitution out for the people; that here's
7 the 1839 Constitution, here's the 1975 Constitution, and
8 here's the proposed new revised Constitution of the year 2001,
9 if that's when the question went out, or whether or not you
10 just intend to fine-tune the current Constitution. And if you
11 decide just to fine-tune the current Constitution, you could
12 simply do that by process of amendment. Given the kinds of
13 ideas and options you're going to have, I think that's going
14 to be difficult for you to make your final recommendation.
15 And I think that you ought to be public about how you're going
16 to go about that process to do that, because it would make a
17 big difference on what decisions the people will make in terms
18 of voting to approve or to reject it. Now, that's giving you
19 enough about process to worry with. I don't have the solution
20 for any of those, but those are my thoughts on the matter.

21 A few things that I would recommend - and at some later
22 date I may have some more specific which I will give to the
23 Commission in writing - was to make a few points that have
24 already been made, and that is -- and I'll just highlight some
25 of the provisions in the Constitution that we may need to

1 clarify or that we may want to address further. And
2 commencing with Article 1 -- and I must tell you, when I was a
3 young man in 1974 right after I got out of the Marine Corp, I
4 attended the constitutional hearings that our community
5 representative, Mr. Thomas, I think, was one of those in the
6 70's, and I remember sitting -- I was a Bureau of Indian
7 Affairs specialist, but was basically learning about tribal
8 government. And I recall sitting in a meeting with some of
9 the committees that were working on what later became the '75
10 document and we talked about this article, and it's about the
11 only thing that I can remember because I was a real junior
12 staff person and was just sitting in there listening and
13 didn't have any say. But the Constitution implies that we
14 will always abide by the federal rules. And I think that
15 certainly the Cherokee Nation is obligated, given the history
16 of federal Indian law to recognize, whether we like to or not,
17 that Congress has the power to do things to us whether we like
18 it or not. But this has never come up, as far as I know, but
19 I think that the people gave too broad authority to the
20 federal government to always abide by federal rules, depending
21 on what your interpretation of federal rules is.

22 I think that we are obligated to follow tribal law -- or
23 federal law whether we like it or not, but I would hate to see
24 that particular provision used that if we have some onerous
25 rule that was similarly promulgated by the executive branch of

1 the federal, the Secretary of the Interior, the BIA
2 Commissioner or whoever, that someone could use that
3 particular article to say that the Cherokee Nation is bound to
4 follow that rule just because we have that provision in the
5 Constitution. I don't think that's what was meant, but I
6 think it could be improved to make that clear that we are not
7 just bound by federal rules because somebody issues a fiat
8 rule that may not have the power of Congress behind it.

9 MR. KEEN: Mr. Ragsdale, I agree with you that the
10 Cherokee Nation, as a matter of federal Indian law, we are
11 obligated to follow the federal constitution law. So is it
12 your suggestion that language be taken out of the '75
13 Constitution or just clarified somewhat?

14 MR. RAGSDALE: I think it should be clarified to
15 mean what I think it means and to mean what I think that if
16 anybody raised it with our court, what our court would
17 probably say in terms of interpreting it. It never has been
18 challenged and I'm not suggesting that it needs to be, but I
19 think it needs to be clarified.

20 MR. THOMAS: You asked a question awhile ago and you
21 never got an answer, there hasn't been time. I'm not the best
22 equipped person in the world to answer questions pertaining to
23 laws and making of laws, but I am a student of common sense,
24 and what I think we are about here is we will have people come
25 in here, make suggestions on what should be deleted from this

1 Constitution, what should be added to it. Now, this is their
2 opinion, and that's what we're looking for is the people's
3 input, and/or if someone comes up with a whole new
4 Constitution. These suggestions are being recorded and will
5 be catagorized and counted, as I understand our function. We
6 will have X number of comments in addition -- additional
7 house, as someone mentioned. Chad Smith mentioned maybe an
8 upper-lower house, or something of that equivalent, and we
9 will have oversight committees and things. These will all be
10 added up when these hearings draw to a close and we will then,
11 this group, will be bound to pay attention to what you folks
12 have said and go into some kind of a detailed enterprise to
13 figure out what are the most important things that is on
14 people's minds and how many, how they add up.

15 Now, we have to be careful. There are going to be people
16 that try to load us up -- this is a prediction, I hope it
17 doesn't happen -- with changes that might not be beneficial to
18 the Cherokee people that some selfish person might want to
19 insert into this type of activity. So we will be on the
20 lookout for people that come to different places and different
21 meetings with the same line of change that they have visited
22 with us about at every other meeting.

23 We will then, after we have -- this is kind of a short
24 cut way of telling you, it's going to take a whole lot longer
25 to do it -- we will then take each individual sugestion,

1 condense it into language that can be put on the ballot for
2 you folks to vote on in a recognizable form that you will know
3 what you're voting for, hopefully. A lot of times on these
4 questions that we have in a white man's election, there is a
5 very short sentence on something, and if you vote yes it means
6 no and if you vote no it means yes. And hopefully we will not
7 try to confuse you on that kind of an issue. We've got enough
8 confusion as it is.

9 MS. NANCY FULLER: Do you mean to say you're not
10 going to let Mr. Keen and Mr. Hannah write it?

11 MR. THOMAS: Not going to, what?

12 MS. NANCY FULLER: Let Mr. Keen and Mr. Hannah write
13 it.

14 MR. THOMAS: Simply put, that may not satisfy the
15 most of you out there about what we're going to try to do, but
16 it might help. I think that if we can do what we have just
17 outlined here, in a more refined way, of course, we will have
18 accomplished something for our children and grandchildren and
19 further on down the road.

20 MR. RAGSDALE: Thank you, Mr. Thomas.

21 MR. WICKLIFFE: May I make a comment? I have
22 listened to four identified speakers so far that have come --
23 you're the fifth one, I think.

24 MR. MCDANIEL: What's that lady's name?

25 MR. WICKLIFFE: And I have that people are needing

1 ethic's commission, the three out four that I have down, so
2 that surely would be a promotion from me to have an ethic's
3 commission. I'm going to take throughout everywhere we go and
4 then I'm going to rank everything. That's going to be what I
5 do at the end of it all and I think -- I think that's the only
6 way to do it from each Commission is to rank and see what
7 prevails. Right now I would say the people want an ethic's
8 commission of what we've listened to.

9 MR. RAGSDALE: Well, Mr. Thomas, Mr. Wickliffe, I
10 agree with that. That's what I was alluding to earlier is
11 that is one thing that you might consider, and I think one of
12 the difficulties that you have as a Commission is I don't
13 think that given the process you can take -- if ten people
14 testify that we need to have a bicameral legislature and
15 nobody testifies for anything else, I don't think that that
16 necessarily means that there is a mandate to put that question
17 on the ballot, or even a hundred people. But maybe one of the
18 things you might -- and again, I leave this to you, because I
19 don't know how I would do it -- rather than -- maybe take some
20 specific proposals, but spend some time with the Commission
21 just asking people, what do you perceive to be the problems
22 with our government? And try to sort out whether or not those
23 are issues that can be helped or facilitated, solutions
24 facilitated through changes or revisions to the Constitution,
25 or whether those are questions that the people in our

1 legislature are going to have to deal with. Because some
2 people get an idea that we can cure all of our governmental
3 problems by adopting a new Constitution, and I'm here to tell
4 you, working with more than 100 Indian tribes across this
5 country that that's not going to happen.

6 Recently a legal scholar that I respect - I won't give
7 you his name, I met him at symposium - told me about
8 Constitutions. And he said, you know, Pat, if you got a
9 choice between having good law and bad leaders or bad law and
10 good leaders, you take the good leaders every time, because if
11 you've got bad people running your government, then they are
12 going to figure out how to get around the framework of your
13 laws and your Constitution every time. But I appreciate what
14 both of you gentlemen have said. Let me try to go through the
15 rest of my thoughts real hurriedly.

16 With regards to the Bill of Rights - I'm not going to do
17 this with each article, even the ones that I have thought
18 about for some time - the Article 2 Bill of Rights, as I
19 understand in the 1970's Congress passed -- or 1969, Charlie,
20 you may correct me -- but the Indian Civil Rights Act was
21 passed in 1969, and the Indian Civil Rights Act was intended
22 by Congress - and you have to remember that this was passed
23 during the civil rights movement in this country and after the
24 policy makers considered about the deprivation of rights of
25 black people and other minorities, kind of as an afterthought,

1 they turned the civil rights movement, turned its attention to
2 American Indians - and so Congress thought it was a good idea
3 to pass what was the so-called the Indian Civil Rights Act to
4 require Indian tribal governments to basically impose the Bill
5 of Rights onto Indian tribal governments, because it was
6 perceived that some Indian tribes abused their citizens' civil
7 rights. And this was really controversial for a lot of Indian
8 tribal leaders because it was another chipping away at their
9 sovereignty. If you think about, you know, the federal
10 government just up and deciding that we're going to impose
11 this requirement on, irregardless of how your government
12 functions.

13 At any rate, what we did in 1975 as I perceive it, and a
14 lot of Indian tribes did when they revised their
15 constitutions, they just adopted the Indian Civil Rights Act
16 in total. And that's what I believe that the Cherokees
17 intended to do when they adopted the Bill of Rights Revision.
18 I'm in favor of those rights that are enunciated in the Indian
19 Civil Rights Act. But what I would be in favor of in terms of
20 completing the circle with the people, is to spell out those
21 civil rights more specifically in our Constitution, and not
22 only to spell them out - and this is where your idea of an
23 ethics commission may come into play - is to attempt to find
24 some mechanism of enforcement of civil rights.

25 One of the problems in the Indian business, and I never

1 perceived this a problem with the Cherokee government until
2 recently, is that you can have all of the rights in the world
3 and if you cannot get those rights a mechanism to have those
4 rights enforced, they really mean nothing; they're just paper
5 rights. And so one of the things that I would recommend that
6 you wrestle with is an enforcement provision. Now, I will
7 also say that if you've got bad leaders in government that
8 want to override your law and the people allow that, it still
9 won't make no nevermind. But I think that it would be more
10 clear to individual citizens if we spell out the Bill of
11 Rights of Cherokees and we provide for an enforcement
12 mechanism that is more meaningful than we have today.

13 MR. THOMAS: Enforcement and closing loopholes will
14 be one or two of the things that I'm going to be particularly
15 interested in on just the subject that you have just spoken.
16 There are instances where we have injustices and we can't do
17 anything about it, and it's going to be up to us to provide a
18 vehicle for these complaints to get in front of the proper
19 people. That's something that everybody, I believe, would
20 want is justice for all, in simple terms.

21 MR. RAGSDALE: I agree, Mr. Thomas. With respect to
22 the distribution of the powers and the language in our current
23 Constitution that addresses the duties and the responsibil-
24 ities of the Tribal Council, the office of the Principal
25 Chief, the Deputy Chief and the court system of the Cherokee

1 Nation, I think that our current law addresses those
2 adequately. I think that those provisions could be fine-tuned
3 to some extent for clarity purposes. But again, you know, if
4 people are bound and determined not to abide by the law or
5 decide how the law is interpreted themselves, you can
6 fine-tune that all you want, and if you've got bad people in
7 power that choose to ignore the law, that's what will happen.

8 One of the things that I would recommend -- I came in on
9 the tail end of Chad's testimony, and he and I agree a lot
10 about constitutional philosophy of government and so forth,
11 but he and I also debate a lot about various philisophies,
12 which is healthy in my opinion. I think that we probably
13 ought to -- the Commission ought to seriously address and look
14 at the way that our legislature is constituted to represent
15 the sum total of 196,000 Cherokees.

16 I came back to work at the Cherokee Nation in 1989 when
17 the government was implementing the districting system, and by
18 in large, I think the districting system has been an
19 improvement. Although those of us in the administration at
20 the time were a little bit fearful that it would really
21 fragment our government, I don't think that it has done that.
22 I think that's a danger when you create, you know, separate
23 districts in terms of wantng to spend maybe an inordinate
24 amount of money in one area as opposed to the another. But I
25 think that the districting system is a good system.

1 One thing to even out how Cherokees are represented from
2 abroad, the way it is now if you live outside the historical
3 boundries of -- if you lives inside the historical boundries
4 of the Cherokee Nation, you are automatically enrolled or
5 registered in the district that you reside. I would not
6 change that. One thing that we might want to consider is that
7 people that live abroad who do not have a whole lot of
8 knowledge about history, I think that people would tend --
9 that live abroad have been separated from the Cherokee Nation
10 for some time. When they register to vote, they may register
11 to vote just based upon what the name of the district is or
12 where the capitol of the Cherokee Nation is. And I think for
13 that reason -- and I don't have any figures to prove this, but
14 my hunch is that a large number of people that are abroad,
15 whether or not they have any ties to Tahlequah or Cherokee
16 County or this area at all, might tend to register in this
17 district, as opposed to registering somewhere else where their
18 original enrollee's ancestors were, so here's my idea for
19 study. I don't necessarily think it's a good idea because I
20 haven't thought it out, but one way to even that
21 representation out in my opinion, and maybe get to the harder
22 question about representation for districts on a one-man,
23 one-vote principle, would be to require those that live
24 outside of the exterior boundries that have full voting rights
25 and full rights of citizenship, insofar as you can have those

1 outside the boundries, is to require them to be registered in
2 the district from which their ancestors came from. In other
3 words, if I lived outside of Oklahoma for the majority of my
4 adult life, but if I was required to when I filed for my
5 registration when I lived in another state, it would seem to
6 me to be fairly simple just to look at where my ancestors
7 original enrollees received their allotments and automatically
8 register me in that district. That would perhaps -- you know,
9 even that significance of the at-large vote, spread it out
10 more evenly as it was originally at the time of allotment, and
11 that's just an idea that I've heard.

12 But, I mean, I know that among tribal leaders here at the
13 Cherokee Nation there has always been some fear that the
14 Nation would be captured by the at-large electorate from --
15 that don't have any real ties, you know. And I've never seen
16 any evidence that that was about to happen, but there has
17 always been some fear that that would happen. And I think
18 that was part of the interest to go to the districting system,
19 to insure that people that lived in the old Cherokee Nation
20 were adequately represented and were not overwhelmed by the
21 majority of our membership which actually lives outside the
22 boundries.

23 Lastly, on the legislature, perhaps, you know, maybe we
24 need to do this in the Constitution, but maybe as a part of
25 the education process. It's my belief that we have three

1 co-equal branches of government, but the body that actually is
2 most responsible for governing and representing the people is
3 the legislature. And maybe we should make it more clear as to
4 what the legislature's duties were. In my view, if the United
5 States of America falls apart, you know, because of conflicts
6 within our government, the entity that would be most
7 responsible for that would be the Congress of the United
8 States because they are the governing body of the people of
9 the United States. The executive, the President or the
10 Principal Chief, really, is purely a minister of public
11 policy. He has no choice, supposedly, to do anything but
12 carry out the law. He can propose laws, he can propose
13 expenditures, he can propose budgets, but in the final
14 analysis, if we have a constitutional government that works,
15 he only can do what the Congress, or in our case the tribal
16 council, has delegated him to do. And our tribal council and
17 our Congress is also limited in what they can authorize him to
18 do by the Constitutional framework and the limitations of
19 power that the people put on him. And maybe we need to have
20 some education about that; maybe we need to strengthen some of
21 the provisions. But that's something that I think is one of
22 the heart of controversy that I've been involved in for the
23 last 18 months.

24 The thing that I would recommend be retained as one of
25 the best things that I've seen in any tribal constitution, my

1 experience in tribal government, my previous life in the
2 federal government, was that most tribal disputes and
3 disintegration of tribal governments usually came down to it
4 was about money; and so it is, as part of the heart of our
5 crisis now, our controversy here, regardless of which side you
6 believe is right. And one of the things that is great about
7 our Constitution is that we have a physical integrity section
8 that is as specific as I've ever seen in any tribal
9 constitution or any governmental document that I've ever
10 looked at, including the Constitution of the United States.
11 It is very precise as to how money is to be allocated, how
12 it's supposed is to be identified, and so on and forth, and I
13 would recommend that we retain those provisions or something
14 very similar to it.

15 I agree, for what it's worth, that the 1839 Constitution
16 is still alive and it is still part of our governmental
17 framework of the Cherokee Nation, and I believe that because
18 that even though in 1906 the United States of America in the
19 Curtis Act essentially said the Five Tribes Government are all
20 but abolished - that's what the law said - and even taking
21 away -- supposedly taking away the authority of the people of
22 the Cherokee Nation to even select or elect their own
23 Principal Chief, that the Congress was wrong. They did not
24 have the power to do that. And it wasn't until the Harjo
25 decision and in the late -- in the 70's and case law that

1 evolved out of that did the courts of the country say, you are
2 wrong.

3 When I came into the BIA, I thought that by in large the
4 Cherokee government had been abolished. All there was of the
5 Cherokee government was a little room inside the
6 superintendent office over there at the BIA and the community
7 council periodically met. The Cherokees' budget was something
8 like \$10,000 and, you know, I mean, that's what I think most
9 of us all thought: that it was hardly more than a cultural and
10 social mechanism because we had been persuaded by federal
11 policy that the flame had been put out. And then the courts
12 come along and said the flame wasn't put out; it was damaged.
13 But it wasn't put out; this is what the interpretation of law
14 is. And so notwithstanding what we were taught for almost a
15 century and what we believed for almost a century because we
16 did not exercise our powers of self-government didn't mean
17 that we lost them. And so when we adopted the Constitution in
18 1975, I think the majority of Cherokees thought that our
19 government had been diminished and the 1839 Constitution had,
20 in effect, been abolished. They were wrong and we were wrong.
21 And Chad's interpretation that our '75 Constitution prevails,
22 but only insofar as if you do the comparison that what
23 expressly changed in the 1839 Constitution, it is the same.

24 What I would suggest of the Commission is to make this
25 clear to people and maybe provide another framework for you to

1 move to as to whether to revise or amend the '75 Constitution,
2 is get the 1839 Constitution out, get the 1975 Constitution
3 out, put together a document that Cherokee people could
4 examine and provide some analysis of it and, you know, one
5 idea would be to amend the Constitution to make those merge
6 closer together for our modern time. Or to at least let
7 people know what they said and what they said then and what
8 they said now and give them a choice. In terms of process, I
9 think that would be helpful. It's very romantic to say that
10 what we really need to do is just go back the way we were
11 doing business in 1839, but I think that if you -- and most of
12 those principles of the 1839 Constitution are really as sound
13 then as they are now, but there are also some provisions in
14 there that may not work so well in the 1990's and in 2000 and
15 beyond, but that would be a suggestion that I would make.
16 Thank you very much.

17 MR. KEEN: Thank you.

18 (Whereupon, a brief break ws taken.)

19 MR. CORNSILK: Well, the first thing I'd like to
20 say --

21 MR. GOURD: Please state your name for the court
22 reporter.

23 MR. CORNSILK: John Cornsilk.

24 MR. GOURD: Thank you.

25 MR. CORNSILK: What I would like to say is that I

1 think this Commission ought to be decommissioned due to the
2 time and the process that is happening right now. Pat made a
3 statement that I think would cover it, and that was the
4 statement about the good leaders and bad constitutions or a
5 bad constitution and good leaders. I think that's the
6 problem. So we need to, I think, wait until after the
7 election.

8 MR. KEEN: Sir, how would you handle the mandate of
9 the people and the question that they passed on the last
10 ballot?

11 MR. CORNSILK: That doesn't seem to have been a
12 concern to the government up until now. A few more months is
13 not going to make any difference. And with the government in
14 the turmoil that it's in, I think we're going to be better off
15 to wait. And that's all I have to say about it.

16 MR. GOURD: All right, thank you. We have the next
17 person.

18 MR. CORNSILK: My name is David Cornsilk. I
19 appreciate the opportunity to come before you and tell you
20 what I think about the Constitution and the process that we're
21 now in the middle of, or in the beginning of, I guess I should
22 say. I'd like to echoe my dad's feelings and also Pat
23 Ragsdale's that although I don't think the Commission should
24 stop its work, I do think that it should project its efforts
25 beyond the next election. I really feel like that our tribal

1 government is in a great deal of turmoil right now, and I
2 think the people are ready for some changes to the
3 Constitution, but I don't think that we have enough time right
4 now to educate the public on what kind of amendments we might
5 like to make to this Constitution, whether we would really
6 like to make amendments at all. I believe the Constitution
7 has some basic flaws, but I really, having dealt with the
8 public and with the tribal membership over the last 20 years,
9 my experience has been that the few months that we have left
10 before the next election is not enough time to educate people
11 as to the changes that we really need to make to our
12 Constitution.

13 The second point I'd like to make deals directly with the
14 Constitution itself, and that is there is a lawsuit on file
15 right now that has reached the stage of judgment by the
16 Judicial Appeals Tribunal and that is Hartly versus Jones, and
17 I would encourage this Commission to review that court case.
18 If you're familiar with Harjo versus Cleppey, which is the
19 court case that dealt with the Creek Nation Constitution,
20 Hartly versus Jones is a case very similar to that, but
21 brought in our own tribal court system. And I think if Hartly
22 is successful in his lawsuit, the 1839 Constitution will be
23 found to have been valid and still valid to this very day, so
24 that's something that I think this Commission should take very
25 seriously.

1 Internally within the 1975 Constitution, there are some
2 issues I have with changes that were made from the original
3 drafts to the final product; one of them being the council or
4 the legislature. I know you all are familiar with the crisis
5 that we're in right now. We have six council members
6 boycotting the council meetings, we have eight council members
7 supporting the Principal Chief, and I'm sure all of them are
8 doing that based on what they feel is best for the Cherokee
9 Nation and the tribe itself, but it has created a crisis for
10 the Cherokee people that I don't think that we alone can
11 tolerate much longer. And I think that we could probably have
12 alleviated that had the original bicameral type of legislature
13 been left in place. We have given all of the power of removal
14 to the council. The people have no power to remove elected
15 officials themselves, and therefore, not pointing a finger at
16 anyone, but if we have a rogue elected official who is
17 non-compliant with the Constitution, the people themselves
18 have no power to remove them, and so we need to address that
19 issue. That needs to be taken back out of the hands of the
20 legislature, or at least divided among the people and their
21 ability, to remove by petition an elected official that they
22 find to be offensive.

23 We also need a provision in the Constitution for a grand
24 jury. At this very moment, the Cherokee people are powerless
25 to bring to bear the laws of our Nation against someone who is

1 a criminal in office. Again, not pointing any finers, but if
2 crimes have been committed in the Cherokee Nation by elected
3 officials, the only party that can hold those people
4 accountable is our council. And we have a small, 15-member
5 council that is easily divided into clicks and political
6 factions; and therefore, the people are powerless to bring the
7 laws to bear against offensive public officials.

8 I think if we look at our own history and we look at the
9 type of legislative body that was formed early on in our
10 history, we have always had a national council and a national
11 committee. Two bodies: one representing the Cherokee Nation
12 as a whole, and the other representing the people themselves,
13 just like Congress, Senate and House of Representatives. And
14 if we could return to that, I think what we would find is
15 better representation, we would find that the factionalism
16 that splits our council now would be almost completely
17 eliminated. We would still have some factionalism, but it
18 wouldn't be so clearly cut: one side against the other; and
19 you would have two bodies: one body that could then hold
20 another accountable. The lower house could hold accountable
21 the upper house and vice versa. So I really think that the
22 major change that needs to take place in our Constitution is a
23 look at how the legislature is formed.

24 In 1838 and '39 - and I think it's significant that we're
25 here today on September 6th, because that's the date of the

1 signing of the Constitution - that there were 16,000 Cherokees
2 and a bicameral legislature that represented those people. We
3 have over 200,000 Cherokees now and 15 people representing
4 them. That is grossly inadequate, so I think that's something
5 that we really need to look at very carefully.

6 There are some questions about citizenship in our
7 Constitution which I think need to be addressed. We have a
8 Constitution which is very restrictive regarding who can
9 enroll with the tribe. Right now the Constitution says by
10 reference to the Dawes Commission Rolls, and we all are aware
11 that there are Cherokees out there who are not or were not a
12 party to the Dawes Commission Rolls, I think that we need to,
13 at least in some manner, attempt to embrace those people. I'm
14 not saying here, now, that they should be full citizens, but
15 I'm also not saying they shouldn't be. That's just something
16 that we need look at.

17 Also in our Constitution there is -- there are numerous
18 references to Oklahoma. I think all of those need to be
19 stricken. Oklahoma, although I consider it to be the enemy of
20 the tribe, many people don't, but making references to the
21 Cherokee Nation being of Oklahoma I think is inappropriate.
22 There are numerous references in our Constitution to approval
23 by the President of the United States, and that is something
24 that even the Bureau of Indian Affairs in its newest
25 constitutions for newly recognized tribes has eliminated, and

1 so I think we need to consider eliminating that from our
2 Constitution.

3 I guess probably minor details in the Constitution, I
4 think the preamble to the old Constitution was a beautiful
5 statement, and what we have now where it ends up saying
6 "nation is the same as tribe" is really kind of contrite. I
7 think we need to go back to the eloquence of our ancestors and
8 try to be a little bit more beautiful in our wording.

9 I think there are several references in the Constitution
10 to elected officials must be elected by blood. I think those
11 are something that need to remain in the Constitution. The
12 Cherokee Nation - and I know Charlie is going to smile at me
13 when I say this - but the Cherokee Nation may be moving in the
14 direction of citizenship beyond our blood, and I think it's
15 incumbent upon us to continue to govern the tribe ourselves;
16 govern it by those who are of our blood. And so I think that
17 we need to maintain the by-blood requirements for elected
18 officials, even if our tribal citizenship moves beyond a blood
19 requirement.

20 I guess I really don't have anything else to offer you,
21 except that I hope that you guys do a good job. This is
22 probably the most important task that I think will take place
23 in this century for the Cheorkee people. I'm excited that
24 it's happening. I hope you wait until after the next election
25 and good luck.

1 MR. THOMAS: David --

2 MR. CORNSILK: Yes, sir.

3 MR. THOMAS: -- I don't know if you were here.

4 Awhile ago I mentioned I felt that 15 people were inadequate
5 now that we are enrolling near the 200,000 mark, and that's
6 just my personal opinion, it's not the opinion of this group
7 of people that I know about. And there's one other thing that
8 you and your father mentioned that I would like to address. I
9 have not heard from any member of this board that we are going
10 to be in a hurry to do anything. We are after quality, as I
11 understand it, and we do not have a time limit. And I will
12 not be rushed, as far as -- I can only speak for me. And it
13 has not been stated here, but George Underwood, our fellow
14 commissioner there, was a member of the 1975 group that formed
15 that Constitution and it was omitted, has been omitted. I'd
16 like to set the record straight. George Underwood is an
17 experienced person in this and he will, we hope and know, he
18 will be an asset to this board. But we are not going to be
19 stampeded into making flimsy agreements. We want really and
20 truly to leave politics out in the hall. I swore I would do
21 it, and so did everybody else that I know of here. If you
22 catch me off base, I want you to tell me about it, and I'm
23 sure you will. But we are really, I think, a sincere group of
24 people.

25 MR. CORNSILK: Well, I think we can all appreciate

1 the task ahead of you and I -- Mr. Keen mentioned that there
2 was a mandate from the people to have a Constitutional
3 convention, and I'm not so sure that in that mandate that it
4 does give any kind of time frame.

5 MR. KEEN: It does not.

6 MR. CORNSILK: And the Constitution itself only
7 asks -- only brings to bear the question of a Constitutional
8 convention within 20 years, so I think we do have time.

9 MR. KEEN: Let me clarify, because I've had many
10 people ask me this question, and my response has been that we
11 have set as a goal to try to get something on the next
12 election. But that is simply a goal, you know, and that
13 certainly -- we're not going to sacrifice the due process that
14 this undertaking is entitled to, to try to reach that. You
15 know, obviously, if we don't get something on the next ballot,
16 we'll have to hold a special election. Well, if that's the
17 case, then that's the case. We'll hold one and we'll worry
18 about financing it later on down the road. But we're not
19 going to surrender, just as Mr. Thomas said, we're not going
20 to shortcut this process just trying to meet that deadline.
21 That's not going to happening. If it becomes apparent to us
22 through these hearings that this is going to take more time
23 and effort and more review than the next election will allow
24 us, then we'll continue beyond there, plain and simple.
25 That's my feelings.

1 MR. CORNSILK: I think that's great. I wanted to
2 make one more final point if I may, and I forgot to add this
3 in earlier, that over the last few months -- and Mr. Wickliffe
4 can attest to this -- that we've seen a flowering of - I guess
5 for lack of a better term - self-governance at an even more
6 local level, at the community level, and I would hope in our
7 Constitution that we could recognize that and encourage that.
8 We have districts and those districts could be self-governing.
9 The Cherokee Nation could do as the Creek Nation has done and
10 extend it's sovereignty at a lower level. I know the federal
11 government is required to deal with subdivisions of tribal
12 government, the same as they deal with the tribal government,
13 and we could have governors of the local districts. I could
14 certainly be governor of the Cherokee District, I wouldn't
15 mind doing that. And one thing that could be an end product
16 of that is a breeding ground for good politicians. Right now
17 we have basically no place for Cherokee politicians to flower,
18 and that could certainly happen at a lower, more close to home
19 and meet the needs of the people kind of level. So that's all
20 that I wanted to add. Thank you all for your time.

21 MR. GOURD: I have a couple of questions.

22 MR. CORNSILK: Okay.

23 MR. GOURD: You mentioned the case, Hartly versus
24 Jones that's in our judicial appeals tribunal and said it's a
25 case very similar to the Harjo v. Cleppey. I'm familiar with

1 the basis of that, but I think it would be helpful if you
2 could explain what that means, at this point in time, if it's
3 possible, you know, not taking too much time. But I think it
4 would help everybody to kind of understand your point because
5 it is important.

6 MR. CORNSILK: Okay. I'd be glad to.

7 MR. GOURD: If you could speak up just a little bit.

8 MR. CORNSILK: Sure. Harjo versus Cleppey, just a
9 brief synopsis of it, was a case brought against the Bureau of
10 Indian Affairs. I believe Cleppey worked for the BIA and
11 Harjo brought the case, and it regarded the newly adopted
12 Constitution of the Creek Nation and its validity. And the
13 argument was that the old Constitution of the Creek Nation was
14 still valid and that the new Constitution was not. And a
15 federal judge ruled that the new Constitution was the defacto
16 Constitution of the Creek Nation and therefore it couldn't be
17 thrown out easily, although they could have, and that the old
18 Constitution was still valid. And so they brought together
19 the two documents, lined out everything that matched exactly,
20 and that would not be voted on because it was a perfect match,
21 and then allowed the Creeks to vote on everything that was not
22 a match, and then they came up with their new Constitution. I
23 think, what was it, '83 or '85?

24 The case right now before the Judicial Appeals Tribunal
25 is a case that the basic foundation is not an argument over

1 the Constitution; it's an argument whether or not the council,
2 within its term, is capable of giving itself a pay raise, and
3 that is based on a provision found in the 1839 Constitution
4 which says that a council -- the council may not give itself a
5 pay raise within its own term; that they can project a pay
6 raise for the next council, but not for themselves. And if
7 the question is answered in the affirmative by the Judicial
8 Appeals Tribunal, then that means the 1839 Constitution is
9 still valid, and so that's how we reach back to that
10 Constitution and answer that question.

11 MR. GOURD: So as in Harjo, it involves an
12 expenditure --

13 MR. CORNSILK: Exactly.

14 MR. GOURD: -- of the public funds?

15 MR. CORNSILK: Uh-huh.

16 MR. GOURD: Okay.

17 MR. CORNSILK: Yeah, had the council appropriately
18 expended those funds on themselves.

19 MR. GOURD: Okay. And my second question, which is
20 one that in a lot of private conversation with people that
21 were here yesterday and then in travels around, the issue of
22 citizenship. As you've mentioned, this one is very
23 restricted --

24 MR. CORNSILK: (Witness nods head up and down.)

25 MR. GOURD: -- to the Dawes Commission Roll by blood

1 with Cherokees in the boundries at that time. What are some
2 suggestions or other historical documents that you would feel
3 would be valid for one's proof or making eligible for
4 citizenship? Because that is a very -- you know, we're
5 looking at 200,000 and growing now just with the Dawes
6 Commission, and then thinking about other historical records,
7 what are we looking at?

8 MR. CORNSILK: Well, we're probably looking at maybe
9 another 20 or 30,000 people. I wouldn't venture to guess it
10 it would be more than that. There are a number of families
11 that remain in Georgia and Tennessee. There are a large
12 concentration of Cherokees residing in Kilgore, Texas; some in
13 California; the descendants of Barbara Hilderbran in Hawaii.
14 So there are families out there who would benefit from that.

15 It's difficult for me to say at this moment what records
16 I would recommend, except to say that as a genealogist and
17 someone who has studied these kinds of records, I would not
18 say that you could accurately identify someone as a descendant
19 of anyone on the 1835 census. So you could begin eliminating
20 those census records as you move forward in time, mostly
21 because there are no relationships listed in those records.
22 And therefore you have a John Smith on one record and you
23 could have a million people with a John Smith claiming that
24 same person, and finding enough genealogical evidence to prove
25 that is your ancestor would be almost impossible.

1 The only record that I could sincerely recommend beyond
2 the Dawes Roll would be the Guy Miller Roll. That roll is
3 supported by applications by individuals. There are
4 approximately 45,000 persons who applied and 25,000 people
5 were eligible, which means if you compare that to the Dawes
6 Commission Roll by blood, there are about 2,000 people on the
7 Guy Miller who were admitted and have supporting records of
8 their Cherokee blood who are not on the Dawes Commission
9 Rolls. That would be the only record at this time I would
10 recommend.

11 MR. GOURD: Okay. So you say there's one other
12 valid roll?

13 MR. CORNSILK: One other valid roll.

14 MR. GOURD: Thank you.

15 MR. CORNSILK: Sure.

16 MR. GOURD: Any other questions?

17 MR. THOMAS: What was that name, Miller?

18 MR. CORNSILK: Guy Miller.

19 MR. THOMAS: What?

20 MR. CORNSILK: The Guy Miller Roll, and that's its
21 common name. It's actually the Roll of Eastern Immigrant
22 Cherokees.

23 MR. THOMAS: Thank you.

24 MR. CORNSILK: Thank you all.

25 MR. GOURD: Do we have anybody else who wants to

1 come forward?

2 MR. MCLAIN: Good afternoon. I'm Frank McLain
3 Senior. I'm a Delaware District Cherokee.

4 MR. GOURD: Could you speak up as best you can,
5 please.

6 MR. MCLAIN: Yes, I will. I will do my best. I
7 have a speaking problem. Several of the things that we
8 basically outlined that we as Cherokees have found a problem,
9 number one: It took three-and-a-half years to get something
10 started; and as a Cherokee we find that that's inexcusable;
11 and I felt like that was one of the reasons that our
12 Constitution that's in place now basically outlines the
13 neglect of duty which is grounds for removal of any Chief that
14 we have with the standing Constitution.

15 Now, I feel like that we're close enough to the new
16 election, as has been stated before, that there's going to be
17 a lot of things happening and I know there's a lot of
18 Cherokees out there that are looking forward to stop this
19 because we've said it a number of times. The Cherokee people
20 can stop the issues if they get involved and if they know what
21 their involvement curtails and what it is.

22 One of the things I want to outline is that I went to the
23 illegal impeachment court that the tribal council had on May
24 the 3rd, and I had to acknowledge the reason I was there is I
25 wanted to make a determination of what I had been hearing on

1 the radio and the television and the newspaper was actually
2 happening. So I had to go, physically go there myself, in
3 order to make that determination, because sometimes you hear
4 things being said and you don't know if it's really true or
5 not. So I had to go myself as Cherokee to our tribal council
6 to determine, were they holding an illegal meeting, an illegal
7 impeachment? And as I stated then, I felt like they were
8 doing that and that I would have to remove myself from the
9 meeting because, number one -- there was a number of reasons,
10 but that was the main one. Because I had already heard enough
11 and basically told the council that under our present
12 Constitution, the people have a right to supersede any action
13 of the council.

14 Now, the council don't want to make procedures for the
15 people to do that and they've failed to do that year after
16 year after year; okay? It's real nice to write laws that are
17 toward you or you or me, but not as a whole, and we find that
18 in the outline that's been discussed. That is one of the
19 drawbacks, because we have 15 people representing a massive
20 amount of people and our older Constitution had two bodies
21 that overled the other which gives a little bit more
22 flexibility assurance that laws would be fair for all
23 Cherokees, not just selected few. And it's pointed out that
24 since our tribal council and through this crisis we have,
25 you've got some on there that basically are wanting to write

1 laws that would only be defined as being followed in some
2 views of Hitler. To write a law, to go out and drag a council
3 member out of their home under duress or force and drag them
4 into a tribal council chamber to say we have a quorum, me, as
5 a Cherokee, I can't support anything like that. And this is
6 what we've been hearing that some of these people are trying
7 to do.

8 My suggestion was that if that's the case, then why don't
9 they write the law where if a tribal council member
10 participated in illegal activities, why can't we remove them
11 from the council? Then you've got some fair body of bringing
12 one in and you've got a fair body of taking one out. But that
13 just shows how limited we've got here that we've got to
14 clarify and to strengthen it where the council members -- and
15 I agree, we probably need more council and not less, because
16 as we can see, we've already got a small problem because of
17 that.

18 Years ago we basically started talking and I started
19 talking with a number of Cherokees, because the indications
20 that the 1839 Constitution still was pretty much in effect;
21 that the Constitution that was presented or that we have here
22 through our research basically outlined that there were some
23 weaknesses there. And I know -- I think that you said the
24 gentleman here was on the Commission that did that in 1975.
25 Through research I have found some of the old documents on the

1 final draft of the Constitution in 1975 and in there, there
2 was an impeachment section. Now, this document doesn't have
3 an impeachment section, and a lot of the older Cherokees that
4 I've talked to personally said that this document is not the
5 same document that they voted on; okay? Now, that is -- and
6 I've talked to a lot of older Cherokees in the last five or
7 six years for that reason. Because, number one, when we
8 started looking at this and seeing it, we've been forced as a
9 Cherokee people to educate ourselves on what are our base
10 laws. We're probably one of the most informed tribes in this
11 country because of it. In one aspect we're going to be much
12 stronger in the future for it, and that's why I basically
13 said, hopefully, you will listen to the Cherokee people and
14 outline the things that are going to be more helpful to make
15 it easier for our people to be serviced. Because we find that
16 there are a lot of areas that people can do things and there
17 doesn't really seem to be anyone controlling it or supervising
18 it.

19 I'll give you a prime example. The Bureau of Indian
20 Affairs has changed their regulations where they put a lot of
21 the controls out to the area offices. A few years ago there
22 was a rogue area director in the Bureau of Indian Affairs that
23 participated in the overthrowing of a tribal government, and
24 this is under documentation through federal court. That
25 person was over the bureau in the area and the federal court

1 issued their rulings, their court rulings, but since it was
2 against the person that was in charge, there wasn't anybody
3 else to carry it out because that person didn't say, arrest
4 me. So where did that leave? That leaves a lot of problems
5 for the tribes to deal with and it's the same situation that
6 we can have under ours. We do have some gray areas, and I
7 think the people have said for a number of years that we
8 definitely need to shore it up and make some changes that's
9 going to make it better for us, because we're going into the
10 year 2000 and beyond. And we all know that the 1839, we can't
11 use that in whole today because there's been a lot of changes
12 since then; okay? We know there's been some weaknesses in
13 this, because the final draft and a lot of the Cherokee people
14 feel like that this really isn't the document that they voted
15 on. So where does that leave us? Does that leave us to
16 prepare something the Cherokee people, and I mean the whole of
17 the Cherokee people, can embrace and say this is our based
18 constitutional law and move forward so people can understand
19 it, so we can deal with people that break them.

20 Right now we have a situation to where in most cases --
21 and if we had an impeachment section in here we wouldn't have
22 18, 19, 20 months of turmoil that we've had, because it
23 probably would have already been dealt with and should be.
24 The people should be involved in something like this. And
25 I've said it on May the 3rd when I was escorting myself out of

1 the illegal impeachment process court there that they stated,
2 that the Cherokee people have a right under this Constitution
3 to -- let me see if I can find it here. Article 15, jud --
4 referendums and amendments Section 1: "Notwithsanding the
5 provision of Article 5, the people of the Cherokee Nation
6 reserve to themselves the power to propose laws, amendments to
7 this Constitution to act or reject the same at the polls
8 independent of the council, and also reserve power at their
9 own option to approve or reject at the polls any act of the
10 council."

11 Now, our Constitution states that, but you know the
12 administration and the tribal council has failed because we
13 have no procedures to enact that. He have the powers under
14 this Constitution, but the procedures are lacking and unclear.
15 So anything could be challenged and say, oh, well, you know,
16 we don't want to do that today. Or, oh, well, we don't want
17 to do that tomorrow. So we find that that's been a problem
18 for the Cherokee people in general because there's been a lot
19 of people sign petitions. And I believe George is aware of a
20 lot of those, and several on the Commission has been aware
21 that a lot of people have signed commissions in enough numbers
22 to have something done and were presented to the tribal
23 council I believe which nothing was done, and that's one of
24 the problems that we have. And I think that we need to
25 address that so that the Cherokee people can deal with issues

1 and crisis as they come up and give some people some security
2 that something is going to be done.

3 Now, I have a problem with the administration controlling
4 the law, and as we've seen here under our situation that has
5 brought us a crisis, because now we have the Bureau of Indian
6 Affairs under our law enforcement and they were brought in
7 under an illegal meeting of the council. And the bureau says,
8 oh, well, it doesn't matter if it was legal or illegal, we
9 were asked to come in. Well, I have a problem with that.
10 Number one, the Bureau of Indian Affairs wants to be involved
11 and controlling of our tribe. I disagree with that. We don't
12 need the Bureau of Indian Affairs to deal with our situations.
13 I think we're a responsible enough people that if everybody
14 will do their job, it will be and work properly, but we're not
15 left alone.

16 As you know and many of you are aware that the tribes
17 around the country over the last ten years have tried to
18 remove the Bureau of Indian Affairs from being our trustees
19 because they've done a very poor job. And we can look at many
20 documents, reports and various aspects of it to show that the
21 bureau -- if I was hiring a firm to help us to do an
22 economical development or whatever, they would have been fired
23 a long time ago because they've done a very poor job. So we
24 don't need them. And I think that the council, as it stands
25 right now, they should have already, once the agreement on the

1 Massad Commission basically said that that impeachment process
2 was illegal, then the standing council should have requested
3 the Bureau of Indian Affairs to step out of our affairs.
4 Well, they didn't do that; we still have them. In some
5 aspects they're still not doing anything for us, because
6 they're only open to laws that they want to issue or hear or
7 if they see it. If they don't see it, well, I can't do
8 anything. The bureau has always jumped back and forth, so
9 that's a problem for us right now. Our law enforcement really
10 is not working very well. We have to try to get a handle on
11 that. I think the document that we stand and work on for the
12 people needs to make sure that something like this cannot
13 ever, ever happen again in the future, because it's caused us
14 a lot of -- the people a lot of problems, and we're still
15 living under those problems. And as I pointed out earlier,
16 it's made us an opportunity to look at the Constitution.

17 I will have a written statement for the Commission and I
18 do want the opportunity to make a statement. I didn't see
19 this until I got here. I would probably want to make another
20 oral statement of one point or make recommendations. I'll do
21 it written. I find this a little dilemma for some of us
22 Cherokees, because sometimes we are a little slower, might
23 talk slower or walk slower, but we all get to the same place.
24 And I want to commend you for listening to us, and hopefully
25 this process will go forward and will help the people, because

1 we've got to do something to make it to where the people feel
2 comfortable about their Constitution. Because as I pointed
3 out, the one we're under right now, there's a lot of the older
4 Cherokees don't feel like that's ours because it's not the one
5 they voted on, and they've been very verbal over the years.
6 That's what came back from Washington, what we have today in
7 our hands, and I find a problem with that. And I hope that
8 now we can get something that is going to identify some of the
9 weak areas and the suggestions, taking the 1839 and make
10 comparison, and then the areas that are weaknesses we can deal
11 with.

12 The impeachment process I think needs to be there, and I
13 believe at one time it was in the draft, or the final draft
14 that I've got. I'm going to do some digging again to find out
15 what I've got. And also I looked at the Constitutional
16 Convention of when Oklahoma and the Constitutional Convention
17 of the State of Sequoyah, reading through that and outlining
18 that the Cherokee Nation and the Five Civilized Tribes were
19 wanting to make their own state and they went through a
20 process. And one of the first processes that they had was
21 that a sitting commission was set, was viewed as being
22 temporary. The first order of business of the commission was
23 have elections for those from the people. And they may be the
24 same ones that would be sitting in those positions that you're
25 sitting right now, or it may not be, but the people voted on

1 it. Okay. See, really, that's the way the conventions have
2 all, that I did research on, basically handled things. Also
3 they were somewhat independent and free of the administration.

4 My understanding is that, Mr. Gourd, you're still under
5 Chief Byrd's staff?

6 MR. GOURD: Our commission is independent.

7 MR. MCLAIN: I'm talking about you.

8 MR. GOURD: I'm under his supervision? No, sir.

9 MR. MCLAIN: You're still on administrative staff of
10 the Cherokee Nation?

11 MR. GOURD: I'm under the supervision now,
12 immediate, of Gary Stop, not the Principal Chief.

13 MR. MCLAIN: Okay.

14 MR. GOURD: I'm no longer under his supervision.

15 MR. MCLAIN: So you're not under the direct staff?

16 MR. GOURD: No, sir.

17 MR. MCLAIN: Well, you see, I had a problem with
18 that initially because, number one, that's something that all
19 the Consitutional Conventions basically outline: If people are
20 going to sit on the commission for the convention of the
21 constitution, then they remove themselves from any sources,
22 whatsoever, that would tie them back to any impropriety.

23 MR. GOURD: And everybody on this commission has
24 done everything that we can to do that.

25 MR. MCLAIN: Okay. Well, That's good.

1 MR. THOMAS: Mr. McLain --

2 MR. MCLAIN: Yes.

3 MR. THOMAS: -- I might agree with you on most of
4 what you said here. As a long time person that come down here
5 as a community representative since the Keeler days, George
6 Underwood and I have both assisted in that effort, 1975 --

7 MR. MCLAIN: Right.

8 MR. THOMAS: -- and when I read the final, what we
9 got back, I couldn't believe that I had a part in it.

10 MR. MCLAIN: Uh-huh.

11 MR. THOMAS: It made a trip to Washington, let us
12 say, and when it came back that's what you read, the 1975
13 model.

14 MR. MCLAIN: That's this.

15 MR. THOMAS: It wasn't anything like what we sent.
16 That's all I'm at liberty to say here.

17 MR. MCLAIN: Right.

18 MR. THOMAS: Because I'm part of this and I don't
19 want to cloud the issue.

20 MR. MCLAIN: Right.

21 MR. THOMAS: But we will endeavor to act
22 independently. I was appointed by the judges, and so far I've
23 had no communications as to my conduct under this board --

24 MR. MCLAIN: Uh-huh.

25 MR. THOMAS: -- from any of the three judges, which

1 I'm grateful for.

2 MR. MCLAIN: Right.

3 MR. THOMAS: Because I have great respect for all
4 three of them, and they are going to have to respect my
5 judgment or remove me from this board.

6 MR. MCLAIN: Uh-huh.

7 MR. THOMAS: Whichever they choose to do.

8 MR. MCLAIN: Right.

9 MR. THOMAS: I don't know whether they can do it now
10 or not. My second cousin -- you talk about that Sequoyah, the
11 State of the Sequoyah, that's a very interesting part of your
12 history. Derrias Ward, my grandmother's first cousin, and Mr.
13 Coffee and Woodall and there was two others, I can't recall,
14 were appointed by Grover Cleveland. The Cherokees, for those
15 of you who aren't acquainted with that, wanted the Cherokee
16 Nation not to be up for allotment. They wanted, as I
17 understand, the State of Sequoyah declared and we would be a
18 state, along with Kansas and Oklahoma and everybody else.

19 MR. MCLAIN: Right.

20 MR. THOMAS: But it wasn't to be because the Indians
21 would still own all of this land, and that was not in the
22 white man's plans.

23 MR. MCLAIN: Right.

24 MR. THOMAS: The minute it became allotted, they came
25 in like buzzards and beat our people, the ones that were

1 less -- the ones that were naive enough to believe a lot of
2 things, they lost.

3 MR. MCLAIN: Right.

4 MR. THOMAS: They lost their shirt. So that's too
5 bad it didn't happen or maybe -- I don't know, I can't judge
6 that. That's what happened.

7 MR. GOURD: You've raised an interesting issue in
8 your discussion about getting out from under the Bureau of
9 Indian Affairs. What would be your position or what do you
10 think the will of the people would be if we have as the bureau
11 trustee for tribal lands, for individual allotted lands --

12 MR. MCLAIN: Right.

13 MR. GOURD: -- and also there's the individual
14 Indian money account.

15 MR. MCLAIN: Right.

16 MR. GOURD: So as a trustee in that situation, what
17 would your proposal be to remove the status? Would the
18 Cherokee Nation become the trustee? I find that a fascinating
19 point.

20 MR. MCLAIN: Well, I think that's something that
21 we've been looking at. Number one is that I think the tribes
22 along this country have basically shown that they've taken the
23 trust status away from the Bureau of Indian Affairs already.
24 I believe over the two billion dollars or so that they --
25 well, supposedly have now and the two billion that they can't

1 account for, so we're talking about a four billion dollar
2 aspect. And it amazes me that the tribe has to account for
3 every penny that it gets in federal dollars, but the bureau
4 cannot show what they do with two billion dollars. They just
5 lost it somehow. They made a check error somplace, but they
6 can't find the error, and that's a problem.

7 I think that as far as the federal government, they have
8 set up an independent commission to handle that Indian monies.
9 So the bureau has been shown and a lot of congretional people
10 and I know a lot of the tribes were very active in trying to
11 get rid of the bureau. Instead of having them over us, the
12 tribe needs to -- the tribe needed to absorb what the bureau
13 was. And one of the things was, when we talked about the
14 community aspect, and I'll even throw out the Keetoowas as an
15 example. The Keetoowas are a federally recognized tribe, but
16 due to the administration at Muskogee they've said all of your
17 money goes through the Cherokee Nation of Oklahoma and is
18 diversed out to the people. Well, we have a council over here
19 that's been active since 1946 or so, or probably earlier than
20 that trying to do something for their people, still Cherokee,
21 most of them full-blood. I said all along the Cherokee Nation
22 of Oklahoma can show that they are a self-governing tribe by
23 assigning them a portion of the funds for programs for
24 servicing of their people, let them do it and the tribe would
25 overee that, making sure to give them guidance to make sure

1 they do it properly. But instead, we basically have denied
2 them any land base. And if anybody feels that a full-blood
3 Cherokee should have some sort of right to a land base, I'm
4 going to have to say I do. Now, I find that somewhat
5 offensive.

6 My dad was full-blood, and I just don't see that the
7 full-bloods need to be cut out of what belongs to the Cherokee
8 people, and this is what we've kind of done, and we've done
9 that through the direction of the Bureau of Indian Affairs.
10 Well, I think we need to rethink that a little bit and try to
11 get them out of our way, because they're not doing it for our
12 benefit. They're showing that we can't take care of our own
13 affairs, which is untrue if we're allowed to -- the mechanism
14 to work properly, not to convert them or ignore them or abuse
15 them. And I know that if I was one that did that, I'd be
16 sitting in jail someplace. It wouldn't take them long to get
17 me, either. And I find that that's something that we have to
18 kind of deal with.

19 But being a trustee of the funds, I think one of the
20 things that you've got to do is show that the commission or
21 that the tribe is self-governance; that it can and has
22 departments of people that are there to service the people,
23 and that could be done. It could be contracted through mutual
24 fund, there's a lot of different areas that it could be dealt
25 with. But, yes, that is an interesting point, just like our

1 lands.

2 My dad passed away, is full-blood, so his momma and his
3 dad, grandparents all had allotments. Well, I went into try
4 to get some information. As you know, the people back in the
5 1800's and early 1900's, a lot of them didn't carry a lot of
6 documentation with them. A lot of the full bloods, you know,
7 they didn't have paperwork. They didn't have a really good
8 filing system. They had a cigar box or something or a can
9 they put something in. So going out and getting that stuff is
10 really difficult to try to obtain sometimes. So I went to
11 call the Bureau of Indian Affairs and asked them, my dad
12 passed away, I'm trying to find out what lands, blaugh,
13 blaugh, blaugh. Oh, well, that's been turned over to the
14 Cherokee Nation. Okay. So I contact the Cherokee Nation. Lo
15 and behold they said, well, if you'll bring us the numbers,
16 we'll sure verify it for you. And I said, well, I don't know
17 the numbers, that's why I'm here. This is all computer, so
18 can't you plug the names in and come up with some sort of list
19 or something? Well, no, we can't do that. Well, here again,
20 there's no services given to the Cherokee people from my own
21 tribe. So if I can dig around long enough, I might be able to
22 find some numbers, when they're sitting right down here at our
23 own facilities, but I can't get any information. I think
24 that's some of the stuff that we've got to try to work where
25 it makes it better where the Cherokee people can be assisted

1 and not avoided. And I think that's where we get a lot of
2 what we have today is that they've been avoided, for whatever
3 reason.

4 MR. GOURD: Other questions?

5 MR. MCLAIN: Thank you. I look forward to attending
6 more of them and listening to more of what's going on. And
7 like I say, I will give you a written format.

8 MR. THOMAS: Thank you, Mr. McLain.

9 MR. GOURD: Do we have another person who wishes to
10 speak and make comment?

11 MR. TOMES: Osi-yo to each you, elders brothers and
12 sisters and dignitaries. Good to see you, me-ta.

13 MR. GOURD: For purpose of our notes, could you tell
14 us your name.

15 MR. TOMES: Michael David Tomes, District Eight, and
16 I'm sorry, that our District Eight --

17 MR. THOMAS: How do you spell your last name?

18 MR. TOMES: T-O-M-E-S, District 8. Nicholae, he's
19 our council member and he's been boycotting these meetings for
20 some reason, but also we've got Owen Scott. Do we know Owen
21 Scott?

22 MR. THOMAS: Yeah.

23 MR. GOURD: He was here yesterday.

24 MR. MCLAIN: Oh, was he? All right. I had vehicle
25 trouble, overheating.

1 MR. GOURD: If you might speak up so the people in
2 the audience can hear, because we want to make sure of your
3 comments.

4 MR. TOMES: What's your name?

5 MR. GOURD: My name? Charles Gourd.

6 MR. MCLAIN: Wa-do. Yes, Mr. Gourd, I will address
7 everybody. Owen Scott, did he bring his Constitution?

8 MR. THOMAS: He turned that in to us.

9 MR. GOURD: A month ago.

10 MR. THOMAS: A month ago, yes.

11 MR. TOMES: Okay. That's old business then.

12 MR. THOMAS: It's a matter of record that he brought
13 it with him --

14 MR. TOMES: Well, I endorse his deal.

15 MR. THOMAS: -- with his biography.

16 MR. TOMES: Yeah, okay.

17 MR. GOURD: He went right to the heart of the matter
18 and proposed a whole new Constitution.

19 MR. TOMES: How about that?

20 MR. GOURD: We could have voted and been over with.

21 MR. TOMES: Yeah, well, my deal is I want to see
22 unity amongst all of the Cherokee people that's all over the
23 world, and it hasn't been that way since Dawes and statehood.
24 I have a problem with carded Cherokees not taking care of
25 uncarded Cherokees, the same people. I am a Cherokee

1 mix-blood, Scotch-Irish born, and my deal is my people, my
2 dad's side were -- they lost their -- what do you call it --
3 well, their right to be Cherokee over in West Virginia by
4 nook-and-crook way back when, but also my other people on my
5 mother's sides were chiefs and elders and leaders, General
6 George Lowery and Reverend Edward Chamberlin.

7 Lowery and Geest (phonetic) in 1939 signed the active
8 union between the East and the Western band and yielded. This
9 is seven generations later. It's time to do it again, and I
10 stand in the gap for all Cherokee people. And I never got any
11 cheese and butter; I didn't need any cheese and butter. I
12 worked for an oil company for 25 years, production foreman for
13 offshore in Texas and Wyoming, Citgo, but I didn't need any
14 benefits. But now I do, I'm old. I'm 50 years old. And
15 there's a lot of my people like Sam Drywater, he's my medicine
16 man and he's at the point where he could use some help. I
17 even understood that his wife died several years ago and she
18 had to lay three days in a nursing home because the C.N.O.
19 wouldn't get her out of there up at Owasso; and that's not
20 right.

21 Right now in District 8 I understand that they're getting
22 ready to build a housing project on top of our graves. I
23 informed Garland Eagle Friday about it and he's going to look
24 into it; if not, we will. But our other council member, he's
25 trying to do all he can do, but he's not getting any help from

1 down here and -- but he does have a lawsuit for District 8 for
2 11 million dollars, if you all were aware of it.

3 MR. THOMAS: Is there any terms or contributions
4 today --

5 MR. TOMES: Oh --

6 MR. THOMAS: -- that you would like to make to
7 remedy those?

8 MR. TOMES: Oh, yes.

9 MR. THOMAS: Complaints, we're interested in.

10 MR. TOMES: Oh, complaints, okay.

11 MR. THOMAS: Remedies are --

12 MR. TOMES: Solutions, yes.

13 MR. THOMAS: -- things that we want to hear from
14 you.

15 MR. TOME: Yes, solution.

16 MR. THOMAS: We appreciate your concern about your
17 fellow Cherokee. But if we heard everybody's complaints, we
18 wouldn't even get back to what we're supposed to be doing.

19 MR. TOMES: Oh, okay. You listened to his, though.

20 MR. THOMAS: You need to tell us what you want
21 changed.

22 MR. TOMES: Oh, okay.

23 MR. THOMAS: You know, take out this and put in
24 that, or throw the whole thing out; do it over. What's your
25 opinion?

1 MR. TOMES: Oh, my opinion is to go back to the
2 first treaty that we ever signed with France.

3 MR. THOMAS: Okay. I don't know how we can do that,
4 as a practical matter.

5 MR. TOMES: Somebody has got a copy of it and then
6 come out that way. If we go from this other end, we're not
7 ever going to get there.

8 MR. THOMAS: Yeah.

9 MR. TOMES: So, yeah. But just in behalf of my
10 District 8, that we're alive and well. We also have a
11 Tulsa-Cherokee Committee Organization which I am Sergeant of
12 Arms, temporary, and we have one of our secretaries here,
13 Menta, (phonetic), and -- but we just wanted you to know that
14 we are active up there, and if there's anything that we can do
15 to help the Cherokee people and the Cherokee Nation, we'll be
16 glad to do it.

17 MR. THOMAS: Well, they could be of great assistance
18 by submitting in writing something that they would like
19 changed in the Constitution, or come to one of our hearings,
20 like this one --

21 MR. TOMES: Uh-huh.

22 MR. THOMAS: -- with specific ideas on what should
23 be taken out or added to the Constitution.

24 MR. TOMES: That will work.

25 MR. THOMAS: That's our main thrust, not that we

1 aren't interested in private problems. I have been for 30
2 years myself, but I kind of have to set those aside here now
3 and work with these gentlemen and collectively getting
4 information that will benefit everybody.

5 MR. TOMES: Right. I've been doing it for 50 years.
6 I've been here 50 years.

7 MR. THOMAS: Okay. So you outrank me by 20.

8 MR. TOMES: Eighty-seven, anyway. That's when I
9 came back to Oklahoma. The Indian territory became Oklahoma,
10 but anyway --

11 MR. THOMAS: Well, if you want to get technical I've
12 been doing it 80.

13 MR. TOMES: Oh. But I'm still a warrior, thank you.
14 This is my friend. He helped me immensely in '95 when I ran
15 for Deputy Principal Chief of the Cherokee Nation. He run for
16 chief and I voted for him. We would have had a good chief, an
17 honest chief. He's a school teacher. But I concede my time
18 to anybody else, but thank you, brother.

19 MR. GOURD: Thank you.

20 MR. THOMAS: Thank you, sir.

21 Mr. MCDANIEL: I'm kind of critical of what's been
22 going on in the Cherokee Nation for a long time. I don't like
23 to get to wrought up over it, but sometimes I do.

24 Who is going to be writing the final draft of this
25 Constitution? I mean, who's going to write up the amendments?

1 And if there's a new Constitution, who's going to do it?

2 MR. GOURD: It will probably be a collective effort.
3 One of the things, since we've only been meeting since August
4 8th, we are looking at the formation of committees and special
5 task forces, and also the identification of people who are
6 willing to step forward and volunteer to help us. We are
7 seven people and this is an enormous task. So, at this point
8 in time, our first operation is to collect information. Then,
9 as Paul pointed out, we'll start putting all of that stuff
10 together. But as far as to the, you know, the named person
11 who will be doing all of that, my guess is it's going to be a
12 group of people, and then it will be reviewed by this group,
13 and then we're going to come again to public hearings and make
14 sure that everybody, to the extent we can communicate with
15 them orally and in writing, has an opportunity to see it
16 before it's proposed to a vote.

17 MR. MCDANIEL: You'll have it accessible for people
18 to get a copy of it and all of this stuff?

19 MR. GOURD: Yes, sir, yes, sir. Our idea at present
20 is to -- first of all, we will have a public record of this
21 available, of all of the testimony that's officially a part of
22 the record that Commissioner Hannah is our custodian of the
23 record. We will have a public record available. And to the
24 extent that we can get additional appropriations, we need to
25 have the opportunities to provide in a newsletter format.

1 We're going to have a page on the internet for those that can
2 access that; we're going to have a separate mailbox. We're
3 doing everything that we can at this point in time to identify
4 the best mechanism of communication. We discussed yesterday
5 the Advocate comes out quarterly. Well, we're going to need
6 to be more frequent than that. But even given that, the total
7 number of bad addresses that are even in the registration
8 office of 90,000 household mail-outs, about 20 or 25,000 are
9 bad addresses. So again, you know, we want to figure -- and
10 we're open for help on that point you're making on
11 communication. It's essential.

12 MR. MCDANIEL: Yeah, well, that's one of the things
13 I wanted to bring up. But I know you're going to have
14 several -- quite a few more meetings as time goes along, and I
15 would like to make two suggestionss now, if I could.

16 MR. GOURD: All right.

17 MR. MCDANIEL: On several different occasions I've
18 been out to the Cherokee Nation complex and I've tried to get
19 information about the enrolled members, where they live or how
20 to get in contact with them or just general information about
21 it. I couldn't -- I couldn't do any good. I just -- I think
22 now they've got a plan where you can get a list of some kind
23 for a hundred dollars I think.

24 MR. GOURD: That will be the voter registration for
25 candidates in the upcoming election for those who are

1 registered to vote. The election commission has put together
2 a process for the candidates for them to do their mail-outs
3 and stuff. The regular membership, the record is governed by
4 the Privacy Act, so there's a limited -- you know, just an
5 ordinary citizen, anybody can't just walk in and get your
6 name, address and all of the private information about you or
7 anybody else that's on the roll. So it's a Privacy Act
8 question for that.

9 MR. MCDANIEL: Well, what I -- I might have a
10 different feeling of privacy than you do. But if I want to
11 know where a certain enrolled member lived, I don't want to
12 know his life history, I'd just like to know the location and
13 whether he lives in Oklahoma, Texas, or anywhere. I don't see
14 anything really that -- it's not a whole lot to ask. I
15 mean --

16 MR. GOURD: That's a function of the rules and
17 regulations that the registration office is governed under and
18 there's a commission that deals with that.

19 MR. MCDANIEL: Well, I've talked to that lady
20 that -- I can't remember her name there, but she's the
21 director of that office, the registration I'm talking about,
22 and she showed me the code book in there that had something to
23 do with what I was talking about. And somewhere along the
24 line, she told me that I might be able to get some information
25 but -- on an individual anywhere an enrolled member is. I

1 mean, the only thing I couldn't get on this person would be
2 his blood quantum degree. Do you know anything about that?

3 MR. GOURD: I don't know a thing about it.

4 MR. THOMAS: Blood quantum?

5 MR. GOURD: Yeah.

6 MR. MCDANIEL: Well, my memory is not so good as it
7 was a few years ago, but I did talk to a lady in there a few
8 months ago. Well, I've got another point, too. I went over
9 to the financial office in a small building just east of the
10 main building and there's a lady over there, I think her name
11 was -- I can't recall her name either, but she's the head of
12 the office there. I asked how could I find out what the
13 salaries of the people working for the Cherokee Nation, what
14 kind of wage salaries they get, you know, and I -- nothing
15 doing. I mean, I couldn't find out anything. And when you
16 all get to writing this Constitution, why, just think about
17 that, I mean, and a couple of items like that.

18 MR. GOURD: So you would propose that something be
19 included in the Constitution that deals with the issue of
20 access to public records; to define what would be available --

21 MR. MCDANIEL: Yeah, yeah.

22 MR. GOURD: -- as a public record? Okay.

23 MR. MCDANIEL: I can probably go down the street of
24 Muskogee and find out what the chief of police makes or a
25 policeman. There's nothing to hide. I mean, why hide it?

1 What the hell? I mean, I guess old Hitler back in the 30's,
2 he had a government something like this. But I don't have
3 much to say. That's just about it right now, I guess.

4 MR. GOURD: All right, thank you. Anybody else want
5 to come forward to comment?

6 MR. KIRKLAND: Could I just comment from the floor,
7 please.

8 MR. GOURD: Yes.

9 MR. KIRKLAND: Well, it seems to me I remember about
10 1945 and '96 government that really did a number on
11 governance, but we don't have a bureau of govern affairs.
12 Those people got a constitution and a government that they can
13 exercise their sovereign powers. They don't have to be
14 approved by the President of the United States, so why do se
15 have this in ours? I disagree with it. I think if we're
16 sovereign people, then we should be sovereign people, then we
17 should rule our own affairs. I think we should own our land
18 in common again like we used to.

19 MR. KEEN: Sir, could you state your name for the
20 benefit of the reporter?

21 MR. KIRKLAND: James Kirkland and I won't waste your
22 all's time no more. Thank you.

23 MR. GOURD: You're not wasting our time. What we
24 wanted to do in looking at the process of soliciting public
25 input through the public hearings, through the written

1 comments, suggestions as far as how we can better communicate,
2 keep that line of communications open, I would propose we just
3 throw it open for discussion here on issues that has been
4 brought forward just for general comment, or suggestions as to
5 process that would help us in working through all of this.

6 (Whereupon, open discussions were held that were not a
7 part of the record.)

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss.
COUNTY OF ADAIR)

I, Paula D. Louderback, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that on Saturday, September 5, 1998; and Sunday, September 6, 1998, at the Net Building, Northeastern State University Campus, Tahlequah, Oklahoma, the following forum was held. The testimony was reduced to writing by me in stenograph and thereafter transcribed by me, and is fully and accurately set forth in the preceding 109 pages.

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

WITNESS my hand this 17th day of September, 1998.

Paula D. Louderback
Certified Shorthand Reporter

