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BEFORE THE CHEROKEE NATION CONSTITUTION
CONVENTION COMMISSION

SATURDAY, OCTOBER 10, 1998
MARYETTA SCHOOL GYMNASIUM
STILWELL, OKLAHOMA

A P P E A R A N C E S

Chairman: Mr. Charles Gourd
Commissioner: Mr. Ralph Keen
Commissioner: Ms. Louella Hummingbird-Coon
Interpreter: Mr. Marion Jumper
Reported by: Ms. Paula D. Louderback, C.S.R.

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

2 MR. KEEN: I'll call the meeting to order at this
3 time, the Stilwell Public Hearing of the Constitution
4 Convention Commission, the 10th day of October, 1998. And I
5 would like to thank the people that have interest enough in
6 their government to turn out at these hearings. I had a list
7 of things that I was going to cover in my opening remarks, but
8 because of the light turn out, I think those that attend are
9 already familiar in general with this process and the
10 authority under which this commission is established, so I'll
11 dispense with those. And if there's no questions that anyone
12 has, we can get directly to our first speaker who's here
13 tonight.

14 Before I would do that, I would introduce myself and the
15 other members of the commission. My name is Ralph Keen. I'm
16 an attorney here in Stilwell. It is my privilege to serve on
17 this commission and to serve for the Cherokee Nation in this
18 process of revising this Constitution. To my right is
19 Commissioner Louella Coone. Do you want to introduce
20 yourself, Louella?

21 MS. COON: Well, I don't think I need to really
22 introduce myself. I think everybody knows me here already.
23 But I feel real honored to sit on this committee, and I was
24 just hoping we would have a houseful.

25 MR. KEEN: Doctor Gourd?

1 MR. GOURD: I'm Charles Gourd. I'm from over at
2 Tahlequah, and the Constitution frame and structure of our
3 government has been a long-standing interest. I was working
4 around and with the Cherokee Nation in the days of Bill
5 Keeler, as Louella was at that time. I saw a lot of this kind
6 of get put together, and now we have an opportunity to make it
7 even better. So I'm very honored to be on this, also.

8 MR. KEEN: Thank you, Mr. Gourd. Our rules provide
9 for a five-minute time limit for speakers. We've amended
10 those rules to allow for that limit to be extended, based on
11 circumstances of the meetings. So based on that amendment, at
12 this time, I will extend the time limit to twenty (20) minutes
13 for any speakers who wishes to step forward and speak. And
14 having said that, if there's no questions, then I'll call our
15 first speaker tonight, someone whom I think we all know.

16 MR. PHILLIPS: I guess I'll be first. I feel
17 uncomfortable just sitting down. Do I need to use the mike
18 for the purpose of the --

19 REPORTER: You're fine.

20 MR. PHILLIPS: Do I need to use the mike?

21 REPORTER: It's not necessary, sir.

22 MR. PHILLIPS: Okay. I don't think I need it. Do
23 you all?

24 MR. KEEN: No, we can hear you fine.

25 MR. PHILLIPS: I can probably communicate without

1 it. The first thing that I would like to say is that I know
2 that we don't have a perfect Constitution with the Cherokee
3 Nation, but I also believe that we need to be very careful
4 that we don't overreact here. And I also think that this is
5 good, the thing that we're doing is good. I think we do need
6 to look at the Constitution, and I'll say that I'm very
7 pleased with the people that have been chosen to lead and
8 conduct this process, and I feel that you will do an excellent
9 job. I have every confidence in you. I don't have any
10 worries, whatsoever, in that regard.

11 But I do feel like we need to -- that we need to be
12 careful and that we don't make change or make changes just for
13 the sake of making changes. And I think we need to keep in
14 mind that the Constitution is a basic framework, and it's not
15 meant to go into detail to meet every problem or every issue
16 that comes before our government. It's worked fairly well.
17 Again, I'll say it hasn't worked perfectly, but it's worked
18 fairly well for us for these twenty (20) odd years, so I think
19 we need keep that in mind.

20 I would rather actually see us do too little than to do
21 too much in changing our Constitution. And I'll say this, the
22 greatest weakness that we have in our government right now is
23 not in our Constitution nor in our laws, it's in the officials
24 that have been elected to carry out the Constitution's
25 provisions and the laws, the code of laws that's been set up

1 to govern this Nation. And I think it's kind of sad that we
2 had to be in this condition, our government had to be in this
3 condition at the time that we're going through, looking at the
4 Constitution, because I feel like there might be thinking and
5 ideas that the Constitution is responsible for the present
6 condition of our government. I feel like it would be much
7 better if we were looking at the Constitution in times when
8 our government was, you know, when we had a better image among
9 our people.

10 Actually, there's only two things that I would like to
11 put forth tonight, and one of them I really haven't gone into
12 putting it into words or putting the provision into words.
13 But the two things that I'm concerned with is, number one: I
14 feel that we need the provision in our Constitution for recall
15 of elected officials. And that's the one that I have not gone
16 into, into detail as to putting it into words. But I think
17 that probably we could use some of the wording and provisions
18 that are set up in Article 15 concerning the Initiative
19 Referendum Amendment and apply some of those provisions to the
20 recall process.

21 I feel that the people should have the power to remove an
22 elected official, whether it be a council person or the Chief
23 or the Deputy Chief, if the majority of the people feel that
24 he is not fulfilling his duties and his responsibility for
25 which he was elected. There's no provision in the

1 Constitution to provide for that at the present time. Again,
2 I don't think that we need -- I think that we need to be
3 careful and that we don't set up a provision where every time
4 an elected official makes a mistake or makes mistakes that we
5 can remove him. But in the severe cases, I feel definitely
6 that we, the people, should have that power.

7 And the other thing that I think that we probably need to
8 look at is fulfilling our vacancies in the council. The
9 Constitution presently provides for filling of a vacancy of
10 the Chief and the Deputy Chief, but it doesn't provide for
11 filling of a vacancy of a council person for a council seat.
12 Those provisions are set up in our code of laws, of course,
13 and what the code says is - it's very broad - says that the
14 council shall, in case of a vacancy in the council, the
15 council shall replace or appoint someone to take -- fulfill
16 the vacancy. And that provision or that Act was passed
17 while -- or before we went to the district system. It was
18 passed when council people were still elected at large.

19 Now, since a council person is elected by the people of a
20 particular district, the present system -- in the present
21 system, the people of that district have no say as to who will
22 replace their council person if that seat is vacant. The seat
23 is filled by the council, which means that people from outside
24 this district are saying who the replacement will be.

25 So my recommendation would be -- and I put this into --

1 probably the language is not what we would want, but something
2 similar to this. Filling of vacancies on the council: In case
3 of a vacancy in the council due to death, removal, resignation
4 or inability to serve or discharge the powers and duties of
5 said office, the council position shall evolve upon the
6 candidate who finished as runner-up to the elected officials
7 in the last election. That wording could be changed around.
8 I was talking to Dr. Gourd, and I believe he said that it
9 could say something like the next highest vote getter in the
10 last election. We need to keep in mind here, of course, I
11 guess that some districts have only one and some have two and
12 some have three. So the wording would have to be made such
13 that it was clear, you know, there on that.

14 Anyway, the person who got the next highest number of
15 votes, provided that that candidate meets the eligibility
16 requirements for such office as confirmed or certified by the
17 Cherokee Nation Commission Committee. So that person would
18 have meet the same eligibility requirements of any candidate
19 for the council. And it could be -- it could be included some
20 how, if that person so desires serve, or something like that.
21 He might not -- the next highest vote getter might not want to
22 serve. So that should be considered, I guess in the wording.

23 MR. KEEN: Mr. Phillips, can I ask you a question?
24 Under this proposal in the instance where the person either
25 could not serve or is not willing to serve --

1 MR. PHILLIPS: Yeah.

2 MR. KEEN: -- would you fall back to the present --

3 MR. PHILLIPS: Yeah, to the second runner-up or to
4 the third runner-up or whoever was in line who was eligible
5 and did want to serve.

6 MR. KEEN: Okay.

7 MR. PHILLIPS: So it would need -- you know, it
8 would need some language in there that would provide for that.

9 MR. KEEN: And assuming -- you know, it might never
10 happen, but assuming it did, say there was no eligible
11 candidates, then would you retain the current provision of
12 having the seat be filled by the appointment of the council?

13 MR. PHILLIPS: That probably should be -- probably
14 should considered. Or, of course, or by special election in
15 that particular district.

16 MR. GOURD: Would that be based on the number of
17 years left in the term? Given our recent experience, you
18 know, if it's a four-year term and let's say there is two or
19 three years left, would that fall to a special election in the
20 district, or would you still want to go to that second or
21 third vote getter?

22 MR. PHILLIPS: I'd say go by the second or third
23 vote getter, myself.

24 MR. GOURD: Okay.

25 MR. PHILLIPS: We've had that -- we've had that

1 situation happen a couple of times since I've been on the
2 council, and one time it happened before the incumbent was
3 sworn in.

4 MR. GOURD: Sworn in, right.

5 MR. PHILLIPS: He died before his term was actually
6 over, after he was elected.

7 MR. GOURD: Yeah.

8 MR. PHILLIPS: As it so happened in that particular
9 moment, we did appoint the next highest vote getter. That was
10 before districting. And the next highest vote getter was
11 Amond Baker (phonetic), and he was appointed to fulfill that
12 office, Clarence Sunday, if I recall right. And, of course,
13 the last -- the last one that died while in office was Max
14 Glory, and he was replaced by Harley Terrell who happened to
15 be in his district, but council replaced and voted to replace
16 him.

17 MR. GOURD: Uh-huh. As a question about
18 districting, there are nine (9) districts, fifteen (15)
19 council members, some have more than one representative.

20 MR. PHILLIPS: (Nods head up and down.)

21 MR. GOURD: I guess it's a two-part question or
22 maybe two separate issues but in the same topic. For those
23 districts that have more than one council member under the
24 present system --

25 MR. PHILLIPS: Okay.

1 MR. GOURD: -- what would you think about their
2 district seat being numbered, rather than having everybody in
3 the district run for three seats --

4 MR. PHILLIPS: Uh-huh.

5 MR. GOURD: -- and the three highest vote getters
6 within the district --

7 MR. PHILLIPS: Uh-huh.

8 MR. GOURD: -- have a zone a region or something
9 else defined, so that you're running for council seat number
10 one?

11 MR. PHILLIPS: I'm one hundred percent for that. In
12 fact, I proposed that in the last -- when we went to
13 districting.

14 MR. GOURD: Oh, I'm sorry. That's where I got the
15 idea.

16 MR. PHILLIPS: And it was -- it was -- it was
17 discussed.

18 MR. GOURD: Uh-huh.

19 MR. PHILLIPS: I think some of the negative points
20 were it would be difficult to determine the boundary lines and
21 it had something about the mailing address, you know.

22 MR. GOURD: Sorted by zip code?

23 MR. PHILLIPS: In Adair County it wouldn't be any --
24 I think we'd have a natural, Baron Fork Creek, since we have
25 two districts: one north; one south. I think it's a good idea

1 and I think -- I think the people probably kind of set that up
2 for themselves. In other words, in our case at present, since
3 I've been on the council, I think the people kind of look to
4 me as a representative from the north end and maybe the other
5 one is a representative from the south end. That's not
6 necessarily the case and I don't necessarily look at it that
7 way. I feel like I'm Louella's representative as much as Dora
8 Mae's and Ralph's representative.

9 MR. GOURD: That's something that's kind of
10 intrigued me as to, you know, the process we're talking about
11 for replacing those.

12 MR. PHILLIPS: Uh-huh.

13 MR. GOURD: But going on from that, since we have
14 absentee voters --

15 MR. PHILLIPS: Yeah, uh-huh.

16 MR. GOURD: -- one comment that was made at the
17 early hearing was to reserve one council seat at large for
18 absentee voters.

19 MR. PHILLIPS: For all absentee voters?

20 MR. GOURD: Yes, for all absentee voters. It gets
21 to the question of an apportionment. And the way I read the
22 section now, it says: "These districts shall be apportioned to
23 afford a reasonably equal division of tribal membership among
24 the districts."

25 MR. PHILLIPS: Uh-huh.

1 MR. GOURD: And I've just kind of wondered at times,
2 given the boundries, and the districts that were nine (9)
3 districts, the way they were numbered and drawn out, how we
4 ended up with nine (9) districts and fifteen (15) council
5 members and not fifteen (15) districts but, more or less, the
6 same equal number of people in each one. And then since the
7 absentee voters have to register in a district within the
8 Cherokee Nation, they have to declare a district.

9 MR. PHILLIPS: Uh-huh.

10 MR. GOURD: And you know, of course, people who live
11 in the districts can also vote absentee, I mean, that's not
12 the point.

13 MR. PHILLIPS: Uh-huh, yeah.

14 MR. GOURD: And I've even heard discussion that if
15 on the voter registration or somehow when the people register,
16 they don't mark a district, it defaults to District One, which
17 really makes -- you know, the head count gets kind of messed
18 up.

19 MR. PHILLIPS: I don't know of any provision that
20 would provide for that, that it would fall to District One.

21 MR. GOURD: Okay. Well, I didn't either. I always
22 thought they had to mark one. Maybe they just put Tahlequah
23 district just because.

24 MR. PHILLIPS: Maybe if they don't really have a
25 preference, it might, you know --

1 MR. GOURD: Just mark it?

2 MR. PHILLIPS: Just mark District One.

3 MR. KEEN: Mr. Phillips --

4 MR. PHILLIPS: Uh-huh.

5 MR. KEEN: -- on the same topic. Now, correct me if
6 I'm wrong, but the apportionment scheme was put into place
7 about 1990 or 1991, is that correct, when it went to the
8 districts?

9 MR. PHILLIPS: Yeah.

10 MR. KEEN: And I don't know what the overall tribal
11 membership was then, but I do know now it is supposed to be in
12 the neighborhood of over 190,000, yet our Constitution still
13 provides for only fifteen (15) representatives. I mean, it
14 uses the number fifteen (15). Instead would it not be wiser
15 for our Constitution, instead of injecting a number or set up
16 an apportionment scheme based on the total population of the
17 total membership?

18 MR. PHILLIPS: Uh-huh.

19 MR. KEEN: That way such a provision wouldn't limit
20 the size of the council. The council could grow with the size
21 of the Nation on regular apportionments. What do you think
22 about that?

23 MR. PHILLIPS: Well, I see -- I see your point,
24 which is a good point, but I don't -- I don't really have a --
25 I'd have to give that some thought before I can say.

1 MR. KEEN: The reason I bring that up is comparing
2 to the Federal Constitution, it does set a set number for
3 senators but not for congressmen. You know, that's
4 open-ended; it's based on population. Am I right, Dr. Gourd,
5 on that?

6 MR. GOURD: (Nods head up and down.)

7 MR. KEEN: And so I'm thinking, well, since we have
8 ever growing tribal membership, and it will continue to grow
9 under our criteria for tribal membership instead of diminish,
10 then our Constitution should allow for a growing represent-
11 ative body. The legislator should be able to grow with our
12 nation, so that's why I bring that up. It seems to me that
13 fifteen (15) members is a little bit on the light side for the
14 total membership that we have. Maybe it's not, maybe it's
15 adequate. But, you know, if that's what they --

16 MR. PHILLIPS: Well, it sounds reasonable, because
17 when the fifteen (15) member council was set up, there
18 probably wasn't over forty thousand (40,000) registered
19 Cherokees, if that many. In 1985 when I came on the council,
20 the total number was seventy (70) something thousand.

21 MR. KEEN: So we've seen a very large increase.

22 MR. PHILLIPS: It's close to tripled in a period of
23 fourteen (14) years.

24 MR. KEEN: There's also been some discussion at the
25 first two hearings we conducted about staggering the terms of

1 elected officials.

2 MR. PHILLIPS: I'm definitely for that. I don't
3 have any process by which to establish it, but I'm definitely
4 for it. I'll leave that establishing it to you guys. I've
5 given it a little thought, and the initial setting it up would
6 be the biggest problem, you know, who's going to be -- who's
7 going to have the first two, you know, two-year terms and
8 who's going to have the first four-year terms.

9 MR. GOURD: How many of that, yeah.

10 MR. PHILLIPS: Right. But I think in the United
11 States Senate, one-third of them are up for election every two
12 (2) years, making the term a six (6) year term; possibly
13 one-half up for election every two (2) years to make it a
14 four-year term. But who's going to have the first -- somebody
15 has to have the first two (2) year term, and that would be
16 where the problem would come in, as I see it, you know.

17 MR. GOURD: At least a third of them would be upset?

18 MR. PHILLIPS: Yeah, right. But I think that's a
19 definite weakness in our present Constitution, because the
20 fact that all elected officials could be replaced at one time.
21 We have a Chief in at one time, and that certainly wouldn't be
22 good, I don't think.

23 MS. COON: Well, I wonder if there's going to be a
24 time maybe we could talk about this, like having -- having our
25 council, or whatever at large, like we did at the beginning.

1 MR. GOURD: Have all of them at large for the
2 district to establish?

3 MS. COON: Yes, uh-huh, and not have the districts.

4 MR. PHILLIPS: Not have the districting?

5 MS. COON: No. Just like we did, you know,
6 when they first started electing our council.

7 MR. PHILLIPS: Well, there's something to be said
8 for that. Really, there are some people that are opposed and
9 don't think our present system is too good, works out too
10 well.

11 MS. COON: Uh-huh.

12 MR. PHILLIPS: On the other hand, there's some
13 thinking that the other system was -- wasn't good, because
14 most of the time half of the -- about half of the council
15 people were people from Cherokee County.

16 MR. GOURD: Right.

17 MR. PHILLIPS: And the areas that were, you know,
18 most related to and was involved in the government, and that
19 may not be bad, really, because there are people, you know,
20 that take part, you know, know about the government, that are
21 more likely to than the people away. And also, the people
22 actually in the four (4) counties here probably make up
23 about -- I don't know what percent, but a big percentage of
24 the people that receive service from the Cherokee Nation.

25 MS. COON: But at that time, it was just seven (7)

1 counties until later, then all fourteen (14) counties, you
2 know, at large.

3 MR. GOURD: I remember some of the strategies under
4 that fifteen (15) votes on the council. If there was four (4)
5 or five (5) you were in favor of and you voted all of your
6 options, you were voting against yourself. If you had five
7 (5) people you wanted on the council and you voted for ten
8 (10), you cancelled yourself out because it was the top vote
9 getter, fifteen (15) vote getters.

10 MR. PHILLIPS: Right.

11 MR. GOURD: So you had the choice. You know, if you
12 voted fifteen (15) times and there was only five (5) you
13 really wanted on there, you cancelled yourself out at least
14 twice.

15 MR. PHILLIPS: That's right.

16 MR. GOURD: So, you know, the strategies of voting
17 under that sort of a system were interesting.

18 MR. PHILLIPS: That's right. And, of course, most
19 people -- the most common voter does not know enough about
20 fifteen (15) people to vote, you know, to vote for them. Most
21 people, the common voter, maybe has one or two or three, at
22 the most, three people that they're interested in and they
23 know their qualifications of.

24 MR. GOURD: Yeah.

25 MR. PHILLIPS: So, really, I feel that the district

1 system is the best system, even though it does have some
2 negative points.

3 MR. GOURD: There was some questioning at one of the
4 first two hearings about a two (2) house legislature as
5 provided for in the 1839 Constitution and stuff. What do you
6 think would happen if somehow two houses in the legislature
7 were established?

8 MR. PHILLIPS: Well, I think -- I guess we'd have to
9 compare it to the present Federal Government Constitution. I
10 think one house has certain powers that the other house
11 doesn't have, you know, and I think probably the basic -- the
12 basic reason in thinking, in having the congress and the House
13 of Representatives, U.S. House of Representatives, was to be
14 more directly related to the people, actually, and the senate
15 was to be more indirectly --

16 MR. GOURD: Yeah.

17 MR. PHILLIPS: -- related to the people. I don't
18 know, I really don't see that much of -- I don't see in our
19 present government, in the Cherokee Nation Government, that it
20 would be that much advantage to having two (2) houses.

21 MR. GOURD: The recently amended Constitution of the
22 Eastern Band of Cherokees has two (2) classes of citizens.

23 MR. PHILLIPS: Uh-huh.

24 MR. GOURD: One: Everybody is a citizen, but if you
25 can get your CDIB card and all of that. But to be a member

1 and to vote, you have to live on the reservation.

2 MR. PHILLIPS: Uh-huh.

3 MR. GOURD: Ours is that if you're eighteen (18) and
4 a member you can vote, regardless, you know, with the
5 absentees and all of that.

6 MR. PHILLIPS: Uh-huh.

7 MR. GOURD: And the discussion about an at large
8 council seat.

9 MR. PHILLIPS: Uh-huh.

10 MR. GOURD: Under the provision there's been some
11 discussion on membership here. But what would your thoughts
12 be along the line of making a residency requirement to vote,
13 as compared to the way it is now?

14 MR. PHILLIPS: If I had to make a decision on it, I
15 would be opposed to it, because people that live outside of
16 the fourteen (14) county area, they feel like they're as much
17 Cherokee as the people that live here. Most of them are more
18 active in the government. I'd say on a percentage-wise, the
19 Cherokees that live in California know more about our
20 government than the people that live in Adair County or
21 Cherokee County, and probably a higher percentage of them
22 vote. Most of them don't receive any services. But I don't
23 think I would be in favor of --

24 MR. GOURD: Of a resident requirement?

25 MR. PHILLIPS: Of a resident requirement for

1 voters.

2 MR. GOURD: What would you think about expanding the
3 scope of eligibility for citizenship to other historical
4 records beside just the Dawes Commission Roll?

5 MR. PHILLIPS: I feel that there are a lot of
6 Cherokees that are not eligible under the Dawes Commission
7 Roll requirement that I would like to see become eligible for
8 citizenship, and I think, really, they deserve to be citizens.
9 But again, if you open up, you know, that can of worms, it's
10 going to be awfully hard, awfully difficult to keep people
11 that are -- that are maybe not actually Cherokees from getting
12 on the roll, getting on the citizenship roll.

13 So I think that the fact -- the difficult of establishing
14 the process, I think is the big -- is the big negative in
15 that. I don't think the fact that -- we want all Cherokees to
16 be members. I don't think that's a problem at all. But I
17 think that you may open up a situation where it would be
18 almost impossible to control. So the pros and cons there, I'd
19 like to think if we could work out some system, you know,
20 where we could control it --

21 MR. GOURD: Control it.

22 MR. PHILLIPS: -- I would probably be for it. But I
23 don't know what that system would be.

24 MR. KEEN: Mr. Phillips, under the Article 12,
25 creating the judicial branch, establishing the tribunal, the

1 tribunal has very broad jurisdictional basis. And one thing
2 that I think every one has recognized is that our
3 Constitution, another flaw in our Constitution or weakness is
4 it does not constitutionally create a district court system.
5 Would you be in favor of the Constitution creating a superior
6 court and a district court system?

7 MR. PHILLIPS: Well, that's going into one of these
8 areas that I mentioned that I don't think the Constitution is
9 supposed to provide for, you know, details.

10 MR. KEEN: Uh-huh.

11 MR. PHILLIPS: I think it sets up the basic
12 framework. I definitely think that we need the district, you
13 know, the lower court system which -- does the Constitution
14 not provide for that to be set up in our laws?

15 MR. KEEN: No, it doesn't, and that seems to be some
16 problem with some legal scholars, me included.

17 MR. PHILLIPS: Uh-huh.

18 MR. KEEN: Unlike the Federal Constitution that does
19 expressly grant congress the authority to create inferior
20 courts, our Constitution does not. So that casts a question
21 on the constitutionality of our current district court system.
22 And I understand your point is well taken about that we
23 shouldn't try to legislate through our Constitution.

24 MR. PHILLIPS: Uh-huh.

25 MR. KEEN: But shouldn't we at least delegate that

1 authority to one of the branches? Would you agree with me on
2 that?

3 MR. PHILLIPS: Yeah, I agree with you.

4 MR. KEEN: Do we have any other questions for our
5 speaker?

6 MR. PHILLIPS: I'm just reading here the Judicial in
7 Article 7, judicial branch: "The Council shall provide for a
8 procedure which shall insure that any litigant receives due
9 process of law together with prompt and speedy relief, and
10 shall generally follow that portion of the Oklahoma Statutes
11 known as the Administrative Procedures Act, Title 75," so
12 forth. "The decision of the Judicial Appeals Tribunal shall
13 be filed insofar as the judicial process of the Cherokee
14 Nation is concerned." Do you think that that possibly might
15 be implying that the council has the authority set up a lower
16 level of courts or a district court?

17 MR. KEEN: Well, of course, one could take it as
18 that. I think it would require a very broad reading of it.

19 MR. PHILLIPS: Broad interpretation?

20 MR. KEEN: Yeah, I believe so, because it says:
21 "Council shall provide for a procedure." Well, does the
22 procedure entail setting up a complete independent court
23 system? Well, you know, from a constitutional standpoint, I
24 think that's one of those powers that should be delegated,
25 clearly delegated, and then leave it up to that branch.

1 MR. PHILLIPS: Okay. Then the last statement says:
2 "The decision of the Judicial Appeals Tribunal shall be final
3 insofar as the judicial process is concerned." Might that be
4 implying that there are other levels of court? If not, then
5 the Judicial Appeals Tribunal is not only final, but it is the
6 only --

7 MR. GOURD: The only, exactly.

8 MR. PHILLIPS: --- the only decision.

9 MR. KEEN: Right.

10 MR. GOURD: That's the contradiction in that
11 Judicial Appeals Tribunal.

12 MR. KEEN: Right.

13 MR. GOURD: Is it, you know, one from which cases
14 are appealed, or is it the one to which all cases are
15 appealed?

16 MR. KEEN: Uh-huh.

17 MR. PHILLIPS: Uh-huh.

18 MR. KEEN: And the other ambiguity, the other
19 possibility that has not arose but could arise in the future
20 is the creation of administrative courts in the Cherokee
21 Nation, and that would even further muddy up the waters. You
22 know, who would have the power to create those? Now, we know
23 that the language tell us that the tribunal would be the
24 ultimate authority on appeal.

25 MR. PHILLIPS: Uh-huh.

1 MR. KEEN: But, you know, virtually every state in
2 the union, and I think several Indian tribes, have utilized
3 the administrative process.

4 MR. PHILLIPS: But if we do take this, I guess you'd
5 say interpret it strictly, then our present district courts
6 are unconstitutional. It doesn't provide, specifically.

7 MR. KEEN: Well --

8 MR. PHILLIPS: Would that be an argument?

9 MR. KEEN: In fact, argument has been made in the
10 courts.

11 MR. GOURD: It has.

12 MR. KEEN: Fortunately, the tribunal has not made
13 such an interpretation.

14 MR. PHILLIPS: Yeah.

15 MR. KEEN: But as long as this ambiguous language is
16 in here, that's always going to be prone to attack.

17 MR. PHILLIPS: Probably I would say I would be in
18 favor of the Constitution providing specifically for a lower
19 level court. I believe my five minutes is up.

20 MR. GOURD: I didn't know he was going to come in
21 here and be the target.

22 MR. PHILLIPS: Besides, there's going to be a
23 ballgame on at 8:00.

24 MR. KEEN: Well, we thank you for coming and
25 participating.

1 MR. PHILLIPS: I appreciate the privilege to visit
2 with you all.

3 (Whereupon, 10-10-98 meeting was concluded.)

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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, October 10, 1998, at the Maryetta School Gymnasium, Stilwell, Oklahoma, the above proceedings were taken by me. The proceedings were reduced to writing by me in stenograph and thereafter transcribed by me, and is fully and accurately set forth in the preceding 26 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 23rd day of October, 1998.

Paula D. Louderback
Certified Shorthand Reporter

