

1999 CHEROKEE NATION CONSTITUTION CONVENTION

VOLUME I

TRANSCRIPT OF PROCEEDINGS, taken on the 26th day of February, 1999,
at Northeastern State University, Net Building, Tahlequah, Oklahoma,
County of Cherokee, State of Oklahoma, before Marla J. Cullison, a
Certified Shorthand Reporter, in and for the State of Oklahoma,
commencing at the hour of 8:00 a.m.

COURTEMANCHE REPORTING SERVICE
P.O. BOX 1196
MUSKOGEE, OKLAHOMA 74402-1196
(918) 683-3686

Court Reporter: Marla J. Cullison, CSR

THEREUPON, the following proceedings were had:

MR. GOURD: Good morning. The 1999 Constitution Convention of the Cherokee Nation will come to order. The invocation will be given by Ed Jumper. He will be followed by the presentation of the Colors by the Cherokee Nation Color Guard. Please rise.

MR. JUMPER: (Invocation in English and Cherokee dialect)

MR. GOURD: Color Guard.

With the assumed permission, I would like to grant the Color Guard presenter an opportunity to make a comment.

COLOR GUARD PRESENTER: Ladies and gentlemen, I would just like to take an opportunity. This is a historic event. All of you have a great responsibility ahead of you. I would just like to remind you that the privilege, the honor of our Nation coming together for events like this were guaranteed by a great number of our fellow tribal members that sacrificed a great deal.

Some of us put on funny looking clothes, raised our right hand, and promised to obey orders. Some of our brothers and sisters did not get the opportunity to come home, but we have all made sacrifices in order for a group like this to assemble and conduct business of this nature.

And in respect and in honor of the memories of our brothers and sisters who did not come home, I would just like to ask you to conduct yourself in the manner befitting their sacrifices. Thank you.

MR. GOURD: Present the Colors.

(Colors presented)

MR. GOURD: Please be seated. On behalf of the Constitution Convention Commission, I welcome you to the 1999 Constitution Convention of the Cherokee Nation. We come together for the next three days to join our minds in a historic undertaking.

We are here to review, analyze, and decide the form, content, and structure of our government.

This Convention is historic. The last time the Cherokee people came together in a Constitutional Convention was to draft the Constitution of 1839. That gathering was a result of the active union that followed our forced removal on the infamous Trail of Tears. Our people suffered enormous loss of life, liberty, and property, yet they managed to rise above the turmoil of their times to create a new government.

The government they set in place served our people until the United States decided that Cherokee sovereignty could be ignored. At the turn of the last century our people were subjected to a perpetual barrage of acts of congress. The Curtis Act, the Dawes Act were designed to bring about an end to our existence as a separate and distinct people.

While it is true our sovereignty was ignored, it is a

known fact today that our sovereignty cannot be denied. From 1907 to the early 1970s, it was simply assumed that the Cherokee Nation had ceased to exist. We had a series of presidentially appointed Chiefs. We had no quorum to establish public policy, no forum to administer our laws, and no forum to adjudicate disputes. Our resources and our people were managed by an agency of the Federal Government.

Our last appointed Chief was W.W. Bill Keeler. He organized a Kitchen Cabinet to advise him on issues, and he formed a quasi Council called a Community Rep Association. Many of the delegates here today recall those days and were active in both the Kitchen Cabinet and the Community Rep Association.

I had the distinct honor to know and work as a volunteer in Chief Keeler's administration. Our collective actions were a labor of love and an act of faith. It was a labor of love because at that time there was no money. It was an act of faith because we were starting a new government for the Cherokee people.

Chief Keeler left a legacy. A committee was formed to draft a Constitution of the Cherokee Nation of Oklahoma. The Cherokee people approved that Constitution by a referendum vote in 1976.

We are here pursuant to Article XV, Section 9. "The question of such proposed convention shall be submitted to the members of the Cherokee Nation at least once in every twenty years."

That was on the last ballot. This is the end product. Here we are together. To come together in Constitutional Convention is a truly unique experience. Our current population is more than two hundred thousand and growing at an expeditious growth rate every day.

Looking across the Convention hall here, I see the face of the Cherokee people. We come in every shape, size, and color that can be imagined. While we are in convention, we share a common bond. We are all delegates. We have unique status.

We can talk about things that are currently illegal and unconstitutional and make them legal and constitutional. We can make things currently legal and constitutional, illegal and unconstitutional. And we can talk about things that do not exist, and we can create them.

You, as delegates to this Convention, are the first to sit in judgment of the quality of work by those of us on the Constitution Convention Commission. Our final work product will not be judged by any of us in our capacity as delegates; by our capacity as an elected appointed employed person at the Cherokee Nation or anywhere else; not by our individual status of having a higher degree of Indian blood than our neighbor; not by having more academic degrees or professional status. The final judge will be the people of the Cherokee Nation when they come to vote on May the 22nd.

Let us pledge, therefore, to work together as Cherokee people. Our individual interests must be set aside. The

Constitution Convention Commission has been dedicated to this common goal since our inception. Our work has been a labor of love and an act of faith.

Commissioner Coon early on issued the challenge to the Commission. She said, "Let's work to make the Cherokee Constitution the best one on the face of the earth." I propose that we celebrate her challenge and dedicate ourselves to our past at hand.

I would like to introduce at present, or welcome Principal Chief Joe Byrd.

CHIEF BYRD: (Cherokee dialect) Good morning. First, I'd like to thank President Williams for the opportunity for us to have this historic event here at the campus at Northeastern State University. I'd also like to commend the Constitution Convention Commission for an outstanding project they have taken under their Commission to make sure that they give us the best possible quorum that the Cherokee people could have, and they have done an outstanding job.

With that, I ask you give the Constitution Convention Commission an applause.

(applause)

Historic event, as you look in the audience and you look at the diversity that we have, many of the names that are here today were probably at the last Constitutional Convention.

I'd like to just say that the importance of the participation of our citizens in our government has always been something that we have advocated. I feel like there's no service higher than serving as a delegate to a Constitution Convention.

The Constitution defines the roles and responsibilities of all who serve in the government. We all need to keep an eye to the future. We need to put aside our personal differences and think on behalf of the whole of the Cherokee Nation.

We must represent all the Cherokee people who cannot be here today. There are many out there in the rural areas and out of state that cannot participate. But don't you think they are not keeping an eye on us, folks. Keep those people in mind as we pursue the day.

I wish you all good luck in your deliberations, and I look forward to the final work product that you produce.

(Cherokee dialect)

There is nothing that we cannot accomplish. When the Cherokees work together, in spite of their differences, there is nothing that we cannot overcome. And this is the opportunity of a century for all of us to put aside our differences and make sure that we are here to represent all of our tribal members because the world is watching.

I'll leave you with a little quote.

"The work that is worthy of reward is a work that endures." Corinthians 13:14.

(Cherokee dialect)

Work together. Wado.

MR. GOURD: I'd like to introduce now, the president of Northeastern State University, Doctor Larry Williams.

MR. WILLIAMS: Thank you, Doctor Gourd. Chief Byrd, members of this historic Constitutional Convention, we welcome each and every one of you here this morning to our campus at Northeastern State University. It's certainly a privilege and an honor for us to be able to host you and for me to stand before you here today on this historic occasion. It's been a hundred and sixty years since the Cherokees held a Constitutional Convention.

To those of you who are alumni of Northeastern and are our guests on campus from time to time, I want to welcome you back to the campus, to your campus, to your University. To those of you who are perhaps on our campus for the very first time, or perhaps have not had the lengthy connection or maybe haven't been here a long time, I extend a very special welcome to you.

We are very proud of our University and very proud of the linkage between Northeastern State University and the great Cherokee Nation.

The work you'll be doing here in the next three days has tremendous potential to affect the history of the Nation, and I personally can't think of a more appropriate place for you to meet and discuss ideas that will help mold the future for the Cherokee people.

We're pleased that Northeastern State University can be able to remind people that our history is forever linked with that of the Cherokees. We trace our roots to the founding of the Cherokee National Female Seminary 1846, nearly a hundred and fifty-three years ago.

And today we hold classes in historic Seminary Hall. We've presently renovated it. And for those of you who are visitors at our campus for perhaps the first time, I would encourage you to take a moment to try to get by Seminary Hall. It's well worth the trip.

And in Seminary Hall where thousands and thousands and literally thousands of young men and women have fulfilled their academic goals, and many of these individuals were Native American, and by far the majority of those were Cherokee.

In fact, I can stand here today and remind you that we have bragging rights. We are an institution that has the largest Native American enrollment of any public University in the United States of America, here at Northeastern State University, and we're very proud of that.

There are several reasons why Native American students choose to pursue their education at Northeastern. We like to think first, and foremost, of course, its outstanding quality academically. We have a great institution here. We actively provide scholarship opportunities for our Native American students.

Another reason students come here is because the environment is naturally rooted to Native American tradition. It has in place a sill for bringing issues to the forefront that are

important to the Native American people.

In April, we'll present the 27th Annual Symposium on the American Indian. That's a quorum that has proven highly successful over those twenty-seven years for promoting awareness of the Native American people and Native American issues.

We have individuals on staff at Northeastern who have literally devoted their entire lives to promoting awareness of Native American culture, and may be counted amongst the most learned individuals in the United States.

Once again, I want to welcome you to this campus. We have an open-door policy. If the door happens to not be open, it's only closed because we are shutting down a draft, but please make this your home. Make this University a place that you'll remember for many, many years to come.

We are so pleased and so delighted to be a part of this historic occasion. If there's anything at all that I can do as president or any of our staff at the University while you're here during your deliberations for the next three days, please feel free to give us a call. Thank you all very much for coming.

MR. GOURD: Including myself, I would just like to know, how many other alumni at Northeastern do we have because it's something that we take -- everywhere you go, there's somebody that's graduated from Northeastern or somebody in their family, and it is truly a great honor and privilege to come together on this great campus.

I'd like next to introduce my fellow travelers for the last six months. The people with whom we have sat in public meetings, in private meetings, on the telephone, on E-mail, on the fax.

I'd like to introduce first our Vice-Chairman and parliamentarian for the Commission, Mr. Ralph Keen, Jr. And as his substantial, doesn't even come close to the contribution he has made. The idea for the revised Constitution, without having to go through forty-five or however many total amendments we came up with, he came up with the idea for the revised Constitution which puts it in the format so we can do continuity and consistency. And it was his labor of love that put that product together.

He would E-mail his copies to me about four in the morning. I would send back responses when I got back to the office about six-fifteen. So it has been truly a labor of love, and I would request a special applause for this extra effort that this gentleman has gone to.

(applause)

The Secretary-Treasurer for the Commission is Mr. George Underwood. When the Commission was formed, each branch of government appointed two, and then the six of us selected the seventh person, and George was the unanimous selection of the Commissioners to serve with us.

Next, I'd like to introduce Commissioner Luella Coon. She is the grand lady of the Commission, and she is our Sergeant at

Arms because I cannot imagine anybody who would not do exactly what they were told. I've known Ms. Coon for years, and I don't know anybody who has ever stood up to her and not done it. So we appreciate Luella. She's been at every meeting, and she has kept us in order, and it didn't take long for her to accomplish that.

And Commissioner Jay Hannah. One of the things about Jay is that it didn't make any difference when or where or why a meeting had to occur, he was there and usually there first. But he drove from Norman, Oklahoma. And you know how it goes, if you live close, you don't make plans, and he was always there first. He is the official records keeper, the custodian of the Commission.

We are creating a historical document so that twenty years from now when we come together and other Cherokees come together in convention, they will know exactly why, when, how, and what we went through, and the processes and ideas that were brought up by the people so they will have a better idea.

We don't know what happened in 1839. We don't have the minutes. I've talked to individuals who were on the '75 Constitution Committee. But we are creating that official record, and Jay is the one that is charged with the responsibility to make sure that that's preserved in every way possible.

I'm Charles Gourd, and I had the incredible honor to serve as Chairman of this Commission, elected by my fellow Commissioners. And it's kind of a silly thing to say, but I think we have bonded quite well over the last six months. So thank you very much.

I'd like to introduce -- and, again, our thinker, Mr. Keen, came up with the idea that it would be good for us to have in our service a parliamentarian. And in our searches we found an incredibly highly qualified and readily available parliamentarian from Fort Gibson, Oklahoma, Ms. Margaret McKee, who is with us here today. We will also have the services of her assistant in our deliberations, Ms. Deborah Langley.

On the count of three, I would like everybody to say "Happy birthday, Margaret," which tomorrow is her birthday. One, two, three.

DELEGATES: Happy birthday, Margaret.

MR. GOURD: She has been a tremendous asset.

Next on our agenda, I would like to call upon the credential report by the Secretary, Mr. George Underwood.

MR. UNDERWOOD: Mr. Chairman, we have registered sixty-six delegates, and creating a quorum of thirty-four. There are four alternates registered, and the Commission is ready to do business.

MR. GOURD: We are official. It is indeed a great honor. I would like now to introduce a guest with whom I have been communicating by E-mail, and she asked if it was possible for her to attend as a student to this Convention. And I said, "Well, of course, it would be just fine."

And she happens to have come from halfway around the face of the earth. Ms. Tina Roensberg from Berlin, Germany has come this far to observe and participate.

And this morning when the Commission opened our business meeting, we made a motion and accepted it among ourselves to make her an honorary appointed delegate to the 1999 Constitution Convention of the Cherokee Nation.

The oath of office will be administered to the delegates by Chief Justice Viles, followed by Justice Dowty, who will then administer the oath to Justice Viles. Please rise.

CHIEF JUSTICE VILES: This will be for the delegates and the alternates. If you're not a delegate or an alternate, why don't you just go ahead and take your seat. The delegates and alternates please raise your right hand and repeat after me.

I do solemnly swear or affirm --

DELEGATES: I do solemnly swear or affirm --

CHIEF JUSTICE VILES: -- that I will faithfully execute the duties --

DELEGATES: -- that I will faithfully execute the duties --

CHIEF JUSTICE VILES: -- of delegate to the 1999 Constitution Convention --

DELEGATES: -- of delegate to the 1999 Constitution Convention --

CHIEF JUSTICE VILES: -- of the Cherokee Nation --

DELEGATES: -- of the Cherokee Nation --

CHIEF JUSTICE VILES: -- and will to the best of my ability --

DELEGATES: -- and will to the best of my ability --

CHIEF JUSTICE VILES: -- preserve, protect, and defend --

DELEGATES: -- preserve, protect, and defend --

CHIEF JUSTICE VILES: -- the Constitution of the Cherokee Nation --

DELEGATES: -- the Constitution of the Cherokee Nation --

CHIEF JUSTICE VILES: -- and the United States of America.

DELEGATES: -- and the United States of America.

CHIEF JUSTICE VILES: I swear or affirm further --

DELEGATES: I swear or affirm further --

CHIEF JUSTICE VILES: -- that I will do everything within my power --

DELEGATES: -- that I will do everything within my power --

CHIEF JUSTICE VILES: -- to promote the culture,

heritage, and traditions --

DELEGATES: -- to promote the culture, heritage,
and traditions --

CHIEF JUSTICE VILES: -- of the Cherokee Nation.

DELEGATES: -- of the Cherokee Nation.

CHIEF JUSTICE VILES: Congratulations.

(Chief Justice Viles sworn in
as delegate by Justice Dowty)

MR. GOURD: I need to take just a short recess
to reset the stage here and bring the lap top for presentation. Are
we going to do that later? We need to reset the stage for just a
second.

(recess taken)

MR. GOURD: I was slightly remiss in my
instructions earlier. We have had a request and we've worked with
the students from Sequoyah High School and the Cherokee Nation Youth
Council who will be serving as pages to the convention, and I would
like to introduce the pages that are here today.

From Sequoyah High School, Teria Sixkiller, Crystal
Mouse, Ashlee Dreadfulwater, Tamara Davis, Joy Hooper, and Gil
Beaver. Our pages are from the Youth Council, and there will be
more here over the weekend to provide services for the delegates.

Today, Angela Sandoval, Elisa Henson, and Mackie Moore.
I'd like to introduce now our parliamentarian, Margaret McKee.

MS. McKEE: Just a few short sentences, and that
as parliamentarian, I want to remind the delegates how much
convention planning has gone on between the parliamentarian and the
Commission members when you're considering confirming the offices.

The next order of business on the agenda is confirmation
of officers.

MS. HAGERSTRAND: Mr. Chairman.

MR. GOURD: Yes.

MS. HAGERSTRAND: Delegate Marion Brown
Hagerstrand. I move that we confirm the Constitution Commission
Chairman officers, and they should be confirmed as listed in the
convention rules and proposed agenda.

MR. GOURD: We have a motion to confirm the
officers of the Constitution Convention Commission to serve as
officers for the convention.

MR. HOSKIN, JR.: Second.

MR. SMITH: May I be heard?

MR. GOURD: We have a second from Charles
Hoskin.

MR. SMITH: Delegate Chad Smith. I nominate
that Jay Hannah be the Chairman of the Constitutional Commission.

MR. CORNSILK: David Cornsilk, delegate. I
second that motion.

MR. GOURD: We have the first motion was to
confirm all of the officers, Chairman, Vice-Chairman, and Secretary.
And your motion, would that be to confirm the other two and just

one replacement or what?

MR. SMITH: Yes, sir.

MR. GOURD: We'll need to take a vote then, the first motion, with the second, was to confirm the officers of the Constitution Convention Commission to serve for the Constitution Convention.

MR. POTEETE: Point of order.

MR. GOURD: We do this --

MR. POTEETE: On the motion, what was the answer?

MR. GOURD: She said you don't debate. You just vote on it. Is a roll call vote in order?

MR. HEMBREE: On order. Todd Hembree, delegate.

MR. GOURD: Yes.

MR. HEMBREE: Wouldn't the proper procedure to have been to open the floor for nominations, have a nomination speech and that seconded, speech for the officer, each officer? And then if there were more than one officer, or more than one individual nominated, take a vote on that, and then confirm by affirmation the other two officers.

MR. GOURD: My understanding is lots of ways to do it. And we talked about lots of ways to do it.

Mr. Secretary, we should go to a standing count or vote.

All of those in favor of the motion to confirm the officers of the Constitution Convention Commission to serve as officers for the Constitution Convention, please rise.

DELEGATES: (standing)

MR. UNDERWOOD: Thirty-eight.

MR. GOURD: Be seated. All of those against the motion, please rise.

The vote is thirty-eight --

MR. JOHN KEEN: Mr. Chairman.

MR. GOURD: Yes.

MR. JOHN KEEN: Point of order. John Keen, delegate. The honorary delegate stood in a vote. Is that in order?

MR. KEEN, JR.: I notice that some people who are not delegates stood as well.

MS. LANGLEY: Can we please have anyone who's a delegate in the first three rows. The ones who are not in the first three rows, please move to the first three rows. Be sure we count the right people.

MS. MEREDITH: Can we have a roll call vote on this, please?

MR. GOURD: Mr. Secretary, please move to a roll call vote to clarify.

MR. KEEN, SR.: Ralph Keen, delegate. Would you read the question, please?

MR. GOURD: The motion on the floor is to confirm the officers of the Constitution Convention Commission, myself as Chairman, Ralph Keen, Jr. as Vice-Chairman and George

Underwood as Secretary, is to confirm the officers of the Commission to serve as officers for the Constitution Convention.

Mr. Secretary.

MR. UNDERWOOD: You're asking for a roll call vote?

MR. GOURD: Yes, sir.

MR. CORNSILK: Mr. Chairman, before you do that, may I make a comment. David Cornsilk, delegate. I would like to ask Marion to withdraw her motion, and out of respect for Marion. Marion, I love you to death. What we see here is a division beginning to occur, and one thing that we're trying to accomplish is concurrence and get through this process. And if we can just do this in the form of an election, just have an election. Have actual nominations made and just do it the democratic way.

MR. SMITH: Mr. Chairman. I will offer to amend my motion -- I mean, offer to amend Ms. Hagerstrand's motion to designate Jay Hannah as the Chairman of the Commission.

MR. JOHN KEEN: I'd like to second his motion for amendment.

MR. KEEN, JR.: Mr. Chairman, delegate Ralph Keen, Jr. Sir, with the clear division that this issue is bringing about, I would move that the officers of this convention be elected by nomination and vote.

MR. GOURD: Move that the officers of this convention be conducted by nomination and a vote; is that correct?

MR. KEEN, JR.: That's correct, sir.

MR. CORNSILK: David Cornsilk, delegate. I second that motion.

MS. MEREDITH: Mary Ellen Meredith, delegate. Did we finish? Did Marion withdraw the motion or did that --

MR. GOURD: That was my next question. We still have a motion on the floor, moving to a roll call vote. Ms. Hagerstrand, you've been asked to withdraw your motion.

MS. HAGERSTRAND: If it will ease the Convention's feelings, then I will withdraw to go with Ralph Keen, Jr.'s amendment.

MR. GOURD: Motion to confirm has been withdrawn. I guess we cancel the roll call vote. The Chair now opens the floor for nominations.

MR. SMITH: Mr. Chairman, I would nominate Jay Hannah as Commission Chairman.

MR. GOURD: Jay Hannah has been nominated. As a question to Mr. Smith, as the Chairman for the Convention and not the Commission; is that correct?

MR. SMITH: That's correct.

MR. GOURD: We have a nomination of Mr. Jay Hannah. Are there other nominations?

MR. JOHN KEEN: Mr. Chairman, John Keen, delegate.

MR. GOURD: Yes, sir.

MR. JOHN KEEN: I nominate Ralph Keen, Jr.
Vice-Chairman of the Convention.

MR. HEMBREE: On order.

MR. JOHN KEEN: Vice-Chairman.

MR. HEMBREE: On order. Todd Hembree, delegate.

There's been a nomination for an individual as Chairman of the
convention. That requires a second.

MR. ROBINSON: Second.

MR. GOURD: Second.

MR. ROBINSON: I second. Just get this thing
going. I'm already getting ashamed of us.

MR. RUTLEDGE: Point of order. Delegate
Rutledge. I believe we still have that one motion by Mr. Smith. If
he would withdraw it --

MR. SMITH: I certainly withdraw that amendment.

MR. GOURD: We have two nominations for
Chairman. We have Mr. Jay Hannah and Mr. Ralph Keen. Are there
further nominations?

MR. KEEN, JR.: Point of clarification, Mr.
Chair.

MR. GOURD: Yes, sir.

MR. KEEN, JR.: Delegate Keen's nomination was
for me to be Vice-Chairman.

MR. GOURD: We were still discussing Chairman.
And I asked for further nominations.

MR. ROBINSON: In respect to Mr. Hannah, I know
him. But this is already becoming political. I was very proud to
be a member of the Commission, I'm starting to be very not proud.
But I nominate Dr. Charles Gourd for Chairman, and I hope that we
second this and we get to moving and do the business that we're here
for, not fighting over who gets to say what.

MS. HAGERSTRAND: I second that motion.

MR. GOURD: We have a second nominating Charles
Gourd.

MS. STARR-SCOTT: Delegate Starr-Scott. I
second Mr. Keen's motion for Vice.

MR. GOURD: We're still working on Chairman.
We're doing this one officer at a time. Any other nominations?

MR. JOHN KEEN: Was Mr. Hannah's motion for
nomination for Chairman seconded?

MR. GOURD: Yes. Yes, it was.

MR. HEMBREE: I move the nomination cease.

MR. CORNSILK: I second that motion.

MR. GOURD: Move nomination cease. All in
favor.

THE DELEGATES: Aye.

MR. GOURD: Opposed.

Motion carries.

Do you want a roll call vote or a standing vote?

MS. MEREDITH: Mary Ellen Meredith. Do we have

a second for the nomination?

MR. GOURD: Yes.

We'll take a standing vote.

MR. CROUCH: Point of order. Could we have for those of us who are out of town, a two-minute presentation by each of the people? You've had a chance to use the mike, and I have a clear idea who Dr. Charles Gourd is. Jim Crouch from Sacramento. And I would like to have a chance to hear from both of these people who would like to have this important responsibility.

MR. GOURD: Mr. Hannah.

MR. CORNSILK: May I request a roll call vote when we do finally vote?

MR. HANNAH: Thank you. My name is Dennis Jay Hannah. I am a native of Moseley's Prairie. One-eighth blood citizen of the Cherokee Nation. I grew up in northern Adair County. I am descended from the families of Caleb Starr and Nash (unaudible). There are many of you here in this room that I claim as cousins.

I attended high school in Watts, Oklahoma, in Adair County. And was fourth generation to attend what we respectfully refer to as Northeastern Seminary here at Northeastern, where I took an undergraduate degree in education. I hold a Master's degree from Oklahoma State University in Stillwater. And I have spent the past eighteen years of my professional career as a bank administrator serving as bank president of two community bank locations and currently serve as executive vice-president of the state's largest state chartered bank.

I, for a period of time, served as president of Banc First here in Tahlequah. During that period of time, I was honored to serve as Cochairman to the Private Industry Council for our Nation under the leadership of Chief Wilma Mankiller. And only until 1994, I departed from living within the historic boundaries of the Nation, where I now live in Norman with my wife and daughter, also natives of Tahlequah.

I am an apolitical figure of this Nation. I am a citizen. I believe that we are about the work that many have longed for, and that we have the ability to, in fact, come together and to practice what we have as culturally true, a true core value, and that would be consensus. And we need to be about that here at this convention over the next three days.

This Convention, as taking its oath this morning, answers only to the Almighty and to the Cherokee people, and as I've often said, not necessarily in that order. We have an opportunity to come together and to show as the Chief -- as the (Cherokee dialect) told us this morning, we have the ability to once again show all of those who are watching the Cherokee Nation and have been over the previous two years that we can stand as a sovereign voice, as a logical voice, and as a people prepared to take a culture, and most importantly our government, into the next century. That's who Jay Hannah would be.

MR. GOURD: I'm going to have Mr. Ralph Keen, Jr. preside over this procedure.

MR. HOOK: Sir, my name is Jonathan Hook from Houston. I have not had the opportunity to hear Gourd's similar statement about his personality and personal background. I wonder if we can have a statement somewhere?

MR. KEEN, JR.: Point taken. I will give Doctor Gourd the opportunity to address the delegates.

MR. GOURD: That's why I asked Mr. Keen to step in. I'm Charles Gourd. I'm originally from Tahlequah. I went to Tahlequah High School. As I mentioned earlier, from Northeastern State University. I obtained a Master's degree in anthropology from the University of Oklahoma in 1976, as I recall. And my doctorate degree is in anthropology from the University of Kansas, which I finished in 1984.

I wrote specifically on the issue of tribal sovereignty and international law, federal Indian law and state tribal relations. I have read and reviewed and written or lectured about nearly every treaty and agreement that the Cherokee Nation has ever had, not only with the federal government, but with other tribes.

And as I mentioned, it is a great honor to serve as Chairman of the Commission, and I appreciate the placement of my name and nomination for office of the Chair for the Convention. Thank you.

MR. VILES, JR.: Philip Viles. May I request when we take this roll call vote, that for this first time, at least, people stand and take a moment so I can put names with faces.

And later on, we can do it sitting and fast. But I would appreciate that opportunity, instead of going around and introducing everybody, if I make that request.

MR. KEEN, JR.: Yes, sir, I think that would be advisable. I would like the two nominees, if they so choose, to take a moment to step out of the room, if you would like to do that.

And I would like to call upon the service of our tellers to come down and assist our Secretary in counting the votes.

MS. MASTERS: Would the Secretary take the microphone through this, too?

MR. KEEN, JR.: Do we have tellers up there? We need a couple of volunteers.

At this time, I would turn the microphone over to our Secretary of our Commission.

MR. JOHN KEEN: John Keen, delegate. Could you read the question before we vote on it?

MR. KEEN, JR.: The question before the delegates are who should be elected as the presiding officer of this convention. The two nominees are Dr. Charles Gourd and Mr. Jay Hannah.

The parliamentarian has advised me that the way these elections are conducted is there are two separate votes. The first vote will be on the first candidate that was nominated, and so

that's the way we will proceed. The second vote will be on the second candidate.

Delegate Poteete.

MR. POTEETE: Troy Poteete. Are we going to hear from -- a nominating speech as we requested, someone else saying a word or two about why both of these people are equally qualified? One of them is an employee of the Cherokee Nation; the other one is an independent businessman.

The Commission's conducted things with dignity; Charles Gourd has done a wonderful job. That's not the reason for having another nominee.

MR. KEEN, JR.: The point has been raised -- I understand your point, sir -- that you would like to have an opportunity for the delegates to discuss these two nominations; is that correct?

MR. POTEETE: Yes.

MR. KEEN, JR.: According to the parliamentarian, she says that would not be in order. We've heard from the two nominees, and I can't really see what merit it would have.

MS. MASTERS: Would you pull the mike closer?

MR. KEEN, JR.: I can also turn it up.

Mr. Jay Hannah was the first nominee.

MS. MEREDITH: It would help if you speak into the mike and not turn your head away from it.

MR. KEEN, JR.: Thank you, ma'am. I will try to speak up, as well.

The first candidate who was nominated was Jay Hannah, so this first vote will be whether or not he should be elected as the presiding officer of this convention. I will now call upon our Secretary, Mr. George Underwood, to conduct the vote.

MR. UNDERWOOD: I have only the last names of the delegates. I'm not too sure that all of you have registered. I have not compared this with my registration sheet.

But last name, the first name is Adair, "yes" or "no."

MS. ADAIR: No.

MR. UNDERWOOD: Alberty.

MR. ALBERTY: Yes.

MR. UNDERWOOD: Bill Baker.

MR. BILL BAKER: Yes.

MR. UNDERWOOD: Donn Baker. Jack Baker.

MR. JACK BAKER: Yes.

MR. UNDERWOOD: Berry.

MS. BERRY: Yes.

MR. UNDERWOOD: Birmingham.

MS. BIRMINGHAM: No.

MR. UNDERWOOD: Burnett.

MS. BURNETT: I want to abstain because this is a very difficult position for me.

MR. UNDERWOOD: Center.

MR. CENTER: Yes.
MR. UNDERWOOD: Chilson.
MS. CHILSON: Yes.
MR. UNDERWOOD: Clarke.
MR. CLARKE: No.
MR. UNDERWOOD: Colson.
MS. COLSON: No.
MR. UNDERWOOD: Coon.
MS. COON: Yes.
MR. UNDERWOOD: Cornsilk.
MR. CORNSILK: Yes.
MR. UNDERWOOD: Crawford.
MS. CRAWFORD: No.
MR. UNDERWOOD: Crittenden.
MR. DON CRITTENDEN: No.
MR. UNDERWOOD: That was Don. H. Crittenden.
MR. H. CRITTENDEN: No.
MR. UNDERWOOD: Crouch.
MR. CROUCH: Yes.
MR. UNDERWOOD: Bill Davis.
MR. BILL DAVIS: Abstain.
MR. UNDERWOOD: Earl Davis. Bryce Downing.

Carl Downing.

MR. DOWNING: Yes.
MR. UNDERWOOD: Dowty.
MR. DOWTY: No.
MR. UNDERWOOD: Foster.
MS. FOSTER: Yes.
MR. UNDERWOOD: Gourd. Gunter.
MR. GUNTER: No.
MR. UNDERWOOD: Hagerstrand.
MS. HAGERSTRAND: No.
MR. UNDERWOOD: Hammons.
MS. HAMMONS: Yes.
MR. UNDERWOOD: Hannah. Herod.
MR. HEROD: Yes.
MR. UNDERWOOD: Hathaway.
MR. HATHAWAY: No.
MR. UNDERWOOD: Havens.
MS. HAVENS: No.
MR. UNDERWOOD: Hembree.
MR. HEMBREE: Yes.
MR. UNDERWOOD: Hook.
MR. HOOK: No.
MR. UNDERWOOD: Hoskin, Jr.
MR. HOSKIN, JR.: No.
MR. UNDERWOOD: Hoskin, Sr.
MR. HOSKIN, SR.: No.
MR. UNDERWOOD: Johnson.
MR. JOHNSON: No.

MR. UNDERWOOD: Jordan.
MS. JORDAN: I have a great amount of respect
for Jay Hannah, but I vote "no" on the nomination.
MR. UNDERWOOD: J. Keen.
MR. JOHN KEEN: "Yes" for Jay Hannah.
MR. UNDERWOOD: Ralph Keen, Jr.
MR. KEEN, JR.: Yes.
MR. UNDERWOOD: Ralph Keen, Sr.
MR. KEEN, SR.: Yes.
MR. UNDERWOOD: Lay.
MR. LAY: Yes.
MR. UNDERWOOD: Littlejohn.
MR. LITTLEJOHN: No.
MR. UNDERWOOD: Linnenkohl.
MS. LINNENKOHL: No.
MR. UNDERWOOD: Masters.
MS. MASTERS: Yes.
MR. UNDERWOOD: McDaniel.
MR. McDANIEL: Yes, Jay Hannah.
MR. UNDERWOOD: McIntosh.
MS. McINTOSH: No.
MR. UNDERWOOD: McCreary.
MR. McCREARY: Yes.
MR. UNDERWOOD: MacLemore.
MR. MacLEMORE: Yes.
MR. UNDERWOOD: Melton.
MR. MELTON: No.
MR. UNDERWOOD: Meredith.
MS. MEREDITH: Yes.
MR. UNDERWOOD: Miller.
MS. MILLER: No.
MR. UNDERWOOD: Moore.
MR. MOORE: No.
MR. UNDERWOOD: Mullon.
MR. MULLON: Yes.
MR. UNDERWOOD: Phillips.
MR. PHILLIPS: Yes.
MR. UNDERWOOD: Pitts.
MS. PITTS: No.
MR. UNDERWOOD: Plumb. Poteete.
MR. POTEETE: Yes.
MR. UNDERWOOD: Raper.
MR. RAPER: Yes.
MR. UNDERWOOD: Rider.
MR. RIDER: No.
MR. UNDERWOOD: Robinson.
MR. ROBINSON: No.
MR. UNDERWOOD: Rutledge.
MR. RUTLEDGE: No.
MR. UNDERWOOD: Sanders.

MR. SANDERS: No.
MR. UNDERWOOD: Barbara Scott.
MS. STARR-SCOTT: Yes.
MR. UNDERWOOD: D. Scott.
MS. SCOTT: Yes.
MR. UNDERWOOD: Owen Scott.
MR. SCOTT: Yes.
MR. UNDERWOOD: Silversmith, Mrs.
MR. SILVERSMITH: No.
MR. UNDERWOOD: Silversmith.
MR. SILVERSMITH: No.
MR. UNDERWOOD: Are there two Silversmiths?
MR. SILVERSMITH: Yes.
MR. UNDERWOOD: M. Silversmith.
MS. SILVERSMITH: Abstain.
MR. UNDERWOOD: R. Silversmith.
MR. SILVERSMITH: No.
MR. UNDERWOOD: Smith.
MR. SMITH: Yes, Jay Hannah.
MR. UNDERWOOD: Spencer.
MR. POTEETE: I thought you called Center

earlier.

MR. UNDERWOOD: I called for Center,
C-E-N-T-E-R. How do you vote, Mr. Spencer?
MR. SPENCER: Yes.
MR. UNDERWOOD: Now back to Center, C-E-N-T-E-R.
Center. Starr. Stopp. Stroud.
MS. STROUD: Yes.
MR. UNDERWOOD: Twining.
MS. TWINING: Yes.
MR. UNDERWOOD: Underwood. Viles.
MR. VILES, JR.: Yes.
MR. UNDERWOOD: Wheeler.
MR. WHEELER: Yes.
MR. UNDERWOOD: Whitfield.
MR. WHITFIELD: No.
MR. UNDERWOOD: Wilson.
MR. WILSON: Yes.
MR. KEEN, JR.: Please be seated.

Come to order again, please. Can you call in the candidates?

It's been obviously a very close vote. It's been counted by the two of our pages. It's been verified by the Secretary, as well as myself. And I would also leave it open for confirmation at a later time as well.

But out of a total of -- a total of seventy delegates voted. Thirty-six voted in favor of Jay Hannah as being presiding officer; thirty-one voted against Jay Hannah being presiding officer, and three votes abstained. So according to our parliamentarian, the rules of parliamentary procedure, Jay Hannah

has been elected as presiding officer.

At this point in time, I would turn the Chair over to our newly elected Chairperson.

MR. HANNAH: Thank you all very much. I'll make personal remarks very brief here at the beginning, and that is my personal pledge to serve the delegates of this convention and the Cherokee people and to see to it that we move with judicious pace over the next few days to do the work that is before us.

Next item on our agenda would be to receive nominations for the remaining officers. We will accept nominations for Vice-Chairman at this time.

MR. MacLEMORE: Mr. Chair, my name is Frank MacLemore from Dallas, Texas.

MR. HANNAH: You are recognized.

MR. MacLEMORE: I move that we accept the remainder of the officers, Mr. Ralph Keen, Jr. as Vice-President and George Underwood, Secretary.

MR. HEMBREE: Second.

MR. HANNAH: There is a motion for --

MR. HEMBREE: I second that motion. Todd Hembree, delegate.

MR. HANNAH: Thank you, Todd.

There is a motion for placement of the remaining officers of the Commission, Mr. Ralph Keen as Vice-Chairman, Mr. George Underwood as Secretary, that they be placed before the body by acclamation. There were a number of seconds to one voice, by being one, Mr. Hembree from Stilwell.

Take a voice vote. All of those in favor, please signify by saying "aye"

THE DELEGATES: Aye.

MR. HANNAH: Those opposed, please say "no."

(no response)

Motion carries, those officers will be duly installed.

MS. MASTERS: I'm here for the next order of business.

MR. HANNAH: Very well. Next order of business on our agenda is the adoption of rules.

MR. ROBINSON: Mr. Chairman.

MR. HANNAH: Sir.

MR. ROBINSON: What about the records custodian? You were; you're not now. Do we not have one?

MR. HANNAH: Actually, sir, I serve as records custodian for the Commission, and at least during the Commission's deliberation, the need for a records custodian for the convention was not contemplated. Obviously, we are here in service of the delegates. If it is felt that one is necessary, then we will be at the pleasure of the convention.

Hearing no action in that direction, we'll move to continue with our agenda. Adoption of rules.

MS. MASTERS: Mr. Chairman. I move that we

remove the adoption of the rules to be addressed immediately after the delegation reconvenes on Saturday morning. The rationale for this is that our parliamentarian will be speaking to us in training in regard to rules, and that I would like to have that training before we adopt our rules.

MR. CORNSILK: Mr. Chairman, delegate David Cornsilk. I second that motion.

MR. HANNAH: We have a motion to suspend from the agenda the adoption of rules until the completion of the tutorial that will be provided by the parliamentarian, which would bring that question back to the agenda tomorrow morning, has been seconded.

MR. JOHN KEEN: Mr. Chairman, John Keen, delegate.

MR. HANNAH: Sir.

MR. JOHN KEEN: I would like to make a motion to amend the previous motion and say that we adopt Robert's Rules as a baseline until we adopt standing rules for the convention.

MS. MASTERS: I second that motion.

MR. HANNAH: At this point, I would make mention that we are operating at this point of the convention outside of the structure of a judicial set of rules, so therefore, it will be common sense that will guide us, ladies and gentlemen, over the next few moments.

Just by point of information, we have a motion on the floor to remove the agenda item for the acceptance. Thank you, Mr. Keen. I'll speak to your point in just a moment. To delay the adoption of the rules until tomorrow morning. Mr. Keen has pointed out that he would like to submit a -- using perhaps a paraphrase, a friendly amendment, Ms. Masters, to your part to adopt Robert's Rules of Order. And I assume, Mr. Keen, that that does not include standing rules as generated by the Commission and submitted to the delegates.

MR. JOHN KEEN: Yes, Mr. Chairman, that's correct. It's just my intent to have some form of structure until we do adopt standing rules. I understand that common sense will guide us anyway, but just so we do have some baseline, so we can raise points of orders in the meantime.

MR. HANNAH: The gentleman is well heard. Thank you.

Ms. Masters, could you --

MS. MASTERS: I accept that as a friendly amendment.

MR. HANNAH: Very well.

MR. PHILLIPS: Mr. Chairman.

MR. HANNAH: Mr. Phillips.

MR. PHILLIPS: I agree with Mr. Keen that we do need some rules of order until we can officially adopt our rules of order. If his motion is official, then I would like to second his motion to amend the original motion.

MR. HANNAH: Thank you, Mr. Phillips. I will accept your second.

We have a motion before the delegates to -- and I will paraphrase, to accept Robert's Rules of Order, newly revised, as the general order for this convention, and suspending the adoption of the standing rules as presented in the delegates' packet, and it has been duly seconded. I will call for --

MS. McKEE: I don't think that's what she said.

MR. HANNAH: Ms. Masters.

MS. MASTERS: I did have a specific time that they would be considered when we reconvene on Saturday morning.

MR. HANNAH: First order of business.

MS. MASTERS: Right.

MR. HANNAH: Very well.

We'll move for a voice vote, then, to the motion that is before us.

All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Opposed, "no."

Delegate: Nay.

MR. HANNAH: And the motion carries. Robert's Rules of Order will preside over our convention as we move forward.

Move to the item on our schedule this morning for the adoption of agenda.

MR. SMITH: Mr. Chairman, I have a motion for the agenda.

MR. HANNAH: Mr. Smith.

MR. SMITH: We propose that we amend the agenda providing that all voting on amendments to be deferred until Sunday, February 28th at 3:00. The purpose of that is that we all have time certain that we can anticipate the final deliberations may come, not necessarily will, but may come, so we can make arrangements to make sure we're here, have some certainty as to when these votes will be taking place.

MR. HANNAH: We've heard the motion. The pleasure of the delegates?

MR. POTEETE: I'd like to second the motion.

MR. HANNAH: There's a second.

Motion as stands by Delegate Smith is that the vote with regard to constitutional items would be delayed until 3:00 p.m. on Sunday for a final approval by all delegates with time certain. Is that correct, sir?

MR. SMITH: Yes.

MR. HANNAH: The agenda providing all voting on amendments be deferred until Sunday, February 28th at 3:00 p.m., the actual vote. And we have a second.

MS. MASTERS: Point of personal privilege. Is that Item 3 on Page 3 of the proposed agenda that is in reference? Which number are we voting on?

MR. HANNAH: I think we might pull toward Item

Number 3.

Ms. Masters.

MS. MASTERS: Yes.

MR. HANNAH: I'm sorry. I was conferring for a moment here. Your point, has it been clarified?

MS. MASTERS: I understand that was not it. That was not what we were referring to.

MR. HANNAH: Mr. Smith, will you please clarify what we are about to take a vote on?

MR. SMITH: Any proposed amendments offered by this body would take place no earlier than 3:00 Sunday. It may be that we would want to pass it a little bit later than that, but at least we have a date, time and certain, that there be no voting on any proposed amendment until that time.

MR. HANNAH: So your proposed amendment would suspend the concept of voting in seriatim on any amendments being presented either by the Commission or by the delegates during that time?

MR. SMITH: Until 3:00 Sunday.

MR. PHILLIPS: Mr. Chairman.

MR. HANNAH: Mr. Phillips.

MR. PHILLIPS: Just as a point of clarification.

Mr. Smith's amendment or his motion, I'm assuming that each amendment in the meantime will be presented, discussed, debated up to the point of a vote being taken.

MR. SMITH: Exactly.

MR. PHILLIPS: And then the vote being taken will not take place until this certain time on Sunday, if I'm clear on that.

MR. SMITH: That's very correct.

MR. PHILLIPS: Thank you.

MR. HANNAH: Is there any other discussion?

MR. SCOTT: Scott, delegate. I'm not clear about what we're doing here. When the vote does begin, will each vote be -- or each amendment proposed be voted individually as we go through up or down, or is this a wholesale vote to take the amendments?

MR. HANNAH: As I understand the motion, sir -- Mr. Smith, please correct the Chair -- that rather than each amendment being considered in seriatim, in other words, approving each amendment as it is discussed or from debate on the floor, and then holding a final vote at the end of the Convention that no votes be taken until 3:00 on Sunday, when all amendments would be approved at the same time; is that correct, sir?

MR. SMITH: Will be voted on individually, that is correct.

MR. SCOTT: That answers my question, individually.

MR. SMITH: That all votes will be taken at one time individually with any proposed amendments.

MR. HANNAH: Without debate at that time?

MR. SMITH: I leave that to the discretion of the Chair.

MR. CORNSILK: Mr. Chairman. I would like to ask Mr. Smith to accept an amendment to his motion to make each of the questions that appear before this body listed according to the section of the Constitution from which they are making changes and list them as option A, option B, option C, in order that we may more clearly distinguish between whatever proposals are made at this convention.

MR. SMITH: I would accept that amendment, Mr. Chairman.

MR. HANNAH: Thank you, sir. I would hope that -- by way of comment, I would hope that our debate over the next two days would hopefully preclude us from having a series of options to vote on Sunday.

MR. ROBINSON: Sir. I would just like to state, I really see no reason for this motion, unless there are individuals in this delegation that plan not to be here the whole time. If they do plan not to be here the whole time, why are they here now?

Is this a motion simply for individuals to be able to get together outside of this body and make sure that they have their ducks in a row and make sure everybody is voting the way certain individuals wanted them to vote? So I am against this, most assuredly.

MR. HANNAH: Thank you for your comment, sir.

MR. WHEELER: Delegate Wheeler. I rise to speak against the proposition. If what we are doing here is trying to build a consensus of what we are going to do and where we are going, then we need to have some ideas as we go along where we are in this process.

If we have no vote on the items as we're going along, then how will we know at the end whether or not we've reached consensus? The debate is fine. I think that we do need to have some understanding, however, of where we're going to be when we wind up where we wind up at. I speak against it.

MR. HANNAH: Thank you, sir.

MR. KEEN, JR.: Mr. Chairman, I would like to offer a point of parliamentary inquiry and ask our parliamentarian to explain to the delegates the process of approving something by seriatim vote.

MR. HANNAH: I think that would be more than ample.

MS. McKEE: Mr. Chairman, the seriatim vote, you are considering each article or each section by itself, and then at the end, you have the opportunity to go back and discuss and amend again. And when this is all perfected, then the final vote is taken, after it's all perfected. So, consequently, you have two chances. One is being processed, and then the final vote is taken to adopt it as amended.

MR. KEEN, JR.: So, ma'am, if I understand you correctly, as we go through the sections and articles, there are votes taken, preliminary votes, correct?

MS. McKEE: Yes, it's not a document vote.

MR. KEEN, JR.: And then whenever we get through the entire document, we take one vote to adopt the entire thing.

MS. McKEE: That's right.

MR. KEEN, JR.: Thank you.

MR. ROBINSON: Mr. Chairman.

MR. HANNAH: Sir.

MR. ROBINSON: I need a point of clarification.

Dr. Ricky Robinson, delegate. I still don't understand it. I'm sorry for my ignorance. I'm not very centered like the officer and some people in the body.

It seems like we're using these points of orders and rules to delay our action. But if we accept Mr. Chad Smith's proposal, and I am a long-time friend of Mr. Smith and admire him, but I don't agree with this motion.

But what I'm saying in plain English, we're talking about how many Council people we're going to have. If we follow his motion, does that mean when we are discussing that 8:00 tomorrow morning, we will then say, yes, we want twenty-four councilors, or we want fifteen. Then at the 3:00 day on Sunday, we're going to have to vote whether we like the whole Constitution as a mass?

MS. McKEE: As amended.

MR. ROBINSON: As amended. I'm still just not really clear, and I'm sorry about that, but I don't see the purpose of handling it this way. I think some of us that are not as learned lawyers and parliamentarians and all of that need to have this understood.

The way I understood it is we wouldn't vote on anything until 3:00, then we would go right down the row.

MS. LANGLEY: That is his motion.

MR. ROBINSON: That's the way I understood his motion.

MS. LANGLEY: She's talking about if you do it the way it's planned to be done, versus his motion.

MR. ROBINSON: I know how to vote now.

MS. McKEE: If you vote to adopt each one of the articles as you go along, you can't go back. You've adopted, that's it. You can't do anything else. And then one article might make the other article that's in front of it that you voted on already, might make that absurd. That's Robert's reasoning.

MR. HANNAH: This was in fact the contemplation of the Commission in working with Ms. McKee, that we would have a seriatim process of consideration, so that we would not have, quote, unquote, a "binding" vote early in the convention that might, in fact, be nullified by discussion or debate later in the convention.

Is that correct, ma'am?

MS. McKEE: That's correct.

MR. HANNAH: Sir.

MR. DOWNING: I'm Carl Downing. And I can see at least three advantages I'm speaking for.

First advantage is, at the time we vote, we will have had an opportunity to go through the Constitution and understand it as a whole body of laws, not just each individual item that comes. I'm not a duck, but I think you can develop a whole lot of understanding outside of the convention itself, in the evening when you're talking.

Those may go one way or the other, but I think that is important that we understand what we're doing. I've got something else here -- oh, there can be a more thorough understanding -- I can't read my writing -- this will provide for a more thorough understanding than we will have if we do it in sequence.

MR. HANNAH: Would a delegate -- this gentleman has just taken to the microphone in favor of the motion. Is there someone who can speak in the contrary?

MR. HEMBREE: Mr. Chairman, I move to close debate and call question.

MR. VILES, JR.: Second that motion.

MR. HANNAH: There is a motion on the floor and a second to close debate. It will require two-thirds vote of the delegates. Standing vote at this time.

MR. SCOTT: What is the question?

MS. MILLER: I wish to speak. Take a vote if you wish, to see whether I'm allowed to speak or not.

MR. HANNAH: Very well. What would you be speaking to, ma'am?

MS. MILLER: I was going to speak against the motion because of the time frame already spent on this constitutional consideration, and we are here; we can do this.

MR. HANNAH: Thank you, ma'am. I would ask that you be seated.

We have a motion; we have a second. We'll move for the vote to end debate on this particular issue. We'll do so by standing vote.

And those in favor of the motion to stop debate on this issue, please stand.

DELEGATES: (standing)

MR. HANNAH: Thank you. Please be seated. Vote is counted, forty-four, and stop debate is now in force. Therefore, we return to the question. The motion has been placed by Chad Smith to amend the agenda providing all voting on amendments be deferred until Sunday, February 28th at 3:00 p.m. with Mr. Cornsilk's friendly amendment, which -- was that accepted by you, Chad?

MR. SMITH: Yes, sir.

MR. HANNAH: That piece being a various grouped amendments to the Constitution to be voted on, according to the section of the Constitution and listed individually as proposed A, B, C, et cetera.

MR. BILL BAKER: The problem is to stop debate with two-thirds. Was that approved?

MS. LANGLEY: The original count was sixty-six delegates, and that was the credential report that said sixty-six delegates.

MR. BILL BAKER: So what is two-thirds of that?

MS. LANGLEY: Forty-four.

MR. ROBINSON: So we have sixty-six delegates here now?

MS. LANGLEY: No, we have seventy delegates, but the credential report defines sixty-six. That's the quorum.

MR. HANNAH: Stop debate stands. We have the motion restated. We have a second. And those in favor, please signify by saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: Those opposed "no."

THE DELEGATES: No.

MR. HANNAH: Chair declares the noes have it.

I'll refer you back to our schedule of events for the adoption of agenda.

MR. CORNSILK: Mr. Chair.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: I still think my amendment was a good amendment, and it would help us out whenever we finally do vote a final vote that we vote by section of the Constitution and the proposals, A, B, C, D, E and F. And I would make that motion.

MR. HANNAH: Would you extend that to the Chair as a recommendation, please? Correct me, ma'am, that in fact he is restating the concept of seriatim, correct? Would you make that a recommendation?

MR. CORNSILK: Sure.

MR. HANNAH: And the Chair would accept it.

Sir, my Muskogee delegate.

MR. McDANIEL: I have just got a general question in the mailings I got. It says, "Revised Constitution of the Cherokee Nation." I don't understand just who drew this up. I'll just have to guess. I don't know. Is this something that's going to be revised if necessary? What is going to happen here?

MR. HANNAH: Absolutely nothing until we determine how we're going to go about the process. Your question is well taken. Each item of the revised Constitution has been listed in the agenda to be reviewed, but we must, in fact, as a Convention, determine if this agenda will be our course of action over the following days.

Mr. Smith.

MR. SMITH: I'd like to make another motion. I'd like to amend the agenda, that on Saturday Item Number 3, which reads, "Adoption of Revised Constitution by Article and Section," move to amend that to provide a substitution allowing discussion of revised Constitution along with other proposals.

The purpose of this is that if you read the style and the content of the agenda, after 1:30, there's presentation by Ralph Keen and George Underwood; however, Number 3, beginning at, it appears from 1:00 to 5:00, is titled "Adoption of the Revised Constitution."

MR. HANNAH: Mr. Smith. Forgive me for interrupting you, sir. The Commission has a great apology that is due to Scribner's error, and we will stop the convention at this point and make correction to that. I believe that your contention is with the phrase, on Item Number 3 of the Saturday agenda, which from your copy says what, sir?

MR. SMITH: "Adoption of Revised Constitution Article and Section."

MR. HANNAH: The Commission had discussion as late as Wednesday of this week, and due to Scribner's error, that is not the agenda that is being put before the delegates for approval.

That piece, which, are we prepared to hand out copies of that? Does everyone have a copy of it? Everyone should have a copy.

Will everyone turn with me to what is effectively Page 3 of your handout entitled "Proposed Agenda," and scroll down under the heading of "Revised Constitution Presentation," continued to Item Number 3.

The submitted, the correct submitted agenda should read, "Motion to consider Revised Constitution by article and section. Presentation by article and section, open discussion, debate, roll call votes or voice votes."

MR. SMITH: Based upon that information, I withdraw my motion.

MR. HANNAH: Thank you, Mr. Smith. On behalf of the Commission, I will stand in apology for the confusion of the Scribner's error. We realize that that phrase, in fact, evokes a certain amount of concern.

MR. KEEN, JR.: I'm just going to point out that the agenda that we distributed this morning, I'm not sure which one went into your delegate packet, had the correction that Mr. Hannah just spoke on, and it also had another typographical correction where it said, "previous roll call vote." It said, "Motion to roll call vote." I just want to point that out to you, as well.

MR. HANNAH: Those of you who may not have that particular agenda in hand, may I see a show of hands at this time?

MS. HAMMONS: For clarification, I'm Diane Hammons, delegate. I've got two or three different proposed agendas or revised. Will you just tell me the exact heading --

MR. VILES, JR.: If I may interrupt, it appears it's on Page 3, Number 3, proposal is the latest version.

MR. HANNAH: Yes, sir. Motion to consider on Page 3, item 3, if you, in fact, have that agenda. I would ask you to discard all other agendas and hold this as the agenda that's being placed before you for consideration.

The phrase is, "motion to consider Revised Constitution."

If my delegate at the podium will be patient, I once again ask for a show of hands for those of you who do not have the correct agenda before you, and we will see to it that copies are presented.

MS. SCOTT: Would you read exactly what it is that we're supposed to have, verbatim?

MR. HANNAH: Once again, the primary indicator for the agenda, and if it will please the delegation, once that we all have the same agenda, we will read through it line for line. I think that might be a healthy thing for us.

But right now in your package, you are looking for an agenda that has on Page 3, it is unnumbered, but it is Item Number 3 in serial, and it is Item 3 on the agenda. And it should read, "Motion to consider Revised Constitution by article and section, presentation by article and section, open discussion debate, roll call vote or voice votes."

And I would still be interested in seeing the hands of those of you who do not have that particular agenda.

MR. BILL BAKER: Now, I've got two agendas that say that. And then it goes on to say, "proposal by delegates --"

MR. HANNAH: Yes.

Let's be speedy about this. I would like to move us back toward our schedule. So those of you who are not holding a correct agenda before you at this time, please raise your hand and let us know.

MS. SCOTT: Mr. Chairman, she's distributing the wrong one.

MR. HANNAH: Ladies and gentlemen, may we have order here in the chambers? I want to make sure we get back on schedule.

MS. SCOTT: She's distributing the wrong one. She's distributing the one that has page numbers on it. Is the correct one numbered?

MR. HANNAH: Okay. We believe that while there may be different versions, that this is, in fact, the correct agenda. It would be my intention, if the delegates will oblige me, for us to read the agenda as presented so we have the appropriate one. The Chair would accept several nods of the head on that. Excellent. Thank you.

We will begin with Page 1, or first page numbered or unnumbered. And we will begin with, "Constitutional law seminar, 11:00 a.m. to 12:00 p.m. introduction of guest speaker, Ralph Keen, Jr., Esquire, presentation by professor Robert Clinton, University of Iowa, School of Law, Iowa City, Iowa."

Second page, "12:00 p.m. to 1:30, lunch break." And we know where that room is, and lunch is there. At least there's one thing that we have as a certainty here thus far.

"1:45 to 2:45, reconvene. Call to order: Presiding officer. Introduction of guest speaker: Dr. Charles Gourd. Presentation, Professor Robert Porter, University of Kansas, School of Law, Lawrence, Kansas.

2:45 to 3:45. Introduction of guest speaker: Dr. Charles Gourd. Presentation, Charles Michael Hathaway, as Adjunct Professor of Law, Georgetown University, Washington D.C.

3:45 to 4:00 p.m., break. 4:00 p.m., Constitutional Law Symposium. Invited speakers will recap their morning presentation and enter a question and answer session with delegates.

4:30 to 6:30 p.m. Reception/dinner break.

6:30 to 8:30 p.m, reconvene. Call to order.

Introduction. Presenter: Margaret McKee, Registered Parliamentarian. Training session on parliamentary procedures.

8:30 p.m. Recess."

This is where the Chair would look out and everybody would nod again. Are you with me?

This is good.

Saturday, February 27th, 1999; and Sunday, February 28th, 1999. 8:00 to 10:00 a.m., reconvene. Call to order. Item Number 1. Commission Progress Report.

MS. LANGLEY: That's been amended. It now says "Rules of order consideration" because of the amendment we passed earlier.

MR. HANNAH: That's very true. Thank you so very much. And the reason that we have, in fact, a parliamentarian here. Thank you.

The agenda has in fact already been amended by Dr. Masters' previous motion, which was approved, to move the adoption of the standing orders until Saturday morning. So that now needs to be penciled into this agenda.

MR. SCOTT: Would you please state that again?

MR. HANNAH: Once again, earlier, we accepted and passed a motion by Dr. Masters that the acceptance of our standing rules for the convention be delayed for review and acceptance until first order of business tomorrow morning. So that would, in fact, at 8:00 a.m. in this agenda, with all individuals making notations, it would be "adoption," or "consideration of adoption," I guess, "of standing rules."

Ms. McKee brings an interesting point for us to recall, that, obviously, you have as power of the delegates to amend the agenda as well as the standing rules and anywhere along the process.

Continuing with the reading --

MS. LANGLEY: Would you please call that "1-A," so if anyone cares to refer to it, we'll all call it the same thing.

MR. HANNAH: So done. The 8:00 a.m. adoption of standing rules will be noted as "1-A."

MR. BILL BAKER: On the 27th only?

MR. HANNAH: On the 27th only; that's correct.

Back to Item 1. "Commission progress report. Convention process and plans for post convention activities of the Commission.

Item Number 2. Presentation of draft Revised Constitution endorsed by the Constitution Convention Commission. Presentor is Dr. Charles Gourd, Chairman. Title. Preamble.

Article I. Federal relationship; Article II. Bill of Rights; and, Article III, citizenship.

Jay Hannah, Article IV, Distribution of Powers; and Article V, Legislative.

Ralph Keen, Jr., Esquire. Article VII, Judicial; Article VIII, Election.

George Underwood, Esquire."

And we now move to the third page.

"Article IX, Fiscal; Article X, Removal From Office; Article XI, Employee Rights; Article XII, Oath; Article XIII, Clans; Article XIV, Initiative Referendum and Amendment; Article XV, Supersedes Constitution of 1839 and 1976; Seat of Government; and Article XVII, Adoption."

At "10:00 to 10:30 a.m., break."

At "10:30 to 11:30 a.m., reconvene. Call to order.

1:00 p.m. to 5:00 p.m., reconvene. Call to order."

There's a special note there. Let's go ahead and move to that special note in your footnote. You'll see that it reads:

"All time frames are estimated as of the printing, and are, therefore, subject to change as the Convention proceeds. The proposed agenda will make provision for an afternoon break around 3:45, dinner breaks around 5:00 or 6:00 p.m., reconvene around 7:30 p.m., and recess around 10:00 p.m., according to the progress of the Convention and at the discretion of the Chairman or the delegates."

Back to Item 3. "Motion to consider draft Revised Constitution by seriatim." In other words, parenthesis, "by article and section," closed parenthesis.

"Consideration by article and sections; open discussion; debate; roll call vote or voice votes. Title; Preamble; Article I, Federal Relationship; Article II, Bill of Rights; Article III, Citizenship; Article IV, Distribution of Powers; Article V, Legislative.

A. Proposal by Delegate John Keen.

B. Proposal by Delegate David Cornsilk.

C. Proposal by Delegate Julia Foster.

Article VI, Executive; Article VII, Judicial; Article VIII, Election; Article IX, Fiscal; Article X, Removal From Office; Article XI, Employee Rights; Article XIII, Plans; Article XIV, Initiative Referendum and Amendment; Article XV, Supersedes Constitution of 1839 and 1976; Article XVI, Seat of Government; and Article XVII, Adoption.

No. 4. Motion for roll call vote to adopt Revised Constitution for placement on the May 22nd, 1999 ballot.

No. 5. Appointment of Style Committee.

No. 6. Special thanks and other acknowledgments.

No. 7. Acknowledgments.

No. 8. Courtesy resolutions.

No. 9. Adjournment."

(applause)

MS. MASTERS: Mr. Chair.

MR. HANNAH: Ms. Masters is recognized.

MS. MASTERS: I propose amending the agenda, and I would like to propose it be amended in this way. If you'll follow along on your agenda with me, from 11:00 until 3:45 this evening, we have three presentations. I would like those presentations to be limited to twenty minutes each and be completed by 12:00 noon break.

When we reconvene after lunch, I would like that we move up item -- at 4:00 p.m. crossing out Constitutional Law Symposium invited speakers. We'll recap the morning presentation. Mark that out; eliminate it, and go right into entering a question and answer session with delegates to the Commission and delegate-to-delegate discussion. And that would be ending at 4:00. That would go from 1:45 until 4:00.

At 4:00, I would move the 6:30 to 8:30 presentation by our parliamentarian to go from 4:00 to 6:30, and when we break for our reception and dinner break, we have no evening session this evening.

MR. HANNAH: There is a motion on the floor. And I would be hard pressed to repeat it at this time.

MS. MASTERS: I would gladly repeat it.

DELEGATE: I'll second.

MR. HANNAH: There is a second.

MS. MASTERS: What it's designed to accomplish is two things. One is that we will limit the amount of speaking time that we are talked at today. And that we will get on with the work that we are here to accomplish by 1:45 today.

We will have our parliamentarian presentation from 4:00 to 6:00, and when we break for our reception and dinner break, we will be through with official business today.

MR. HANNAH: Thank you, Ms. Masters. I would need to -- and we have a motion, and it is, in fact, seconded. But here in this moment of discussion we need to find out if by altering our agenda, and those individuals that have come to give their presentations, and those who have been contracted to perform various services here, would, in fact, be within the scope of their availability.

Ralph, I would look to you to assist me, and let's have an indication from our symposium speakers.

MR. KEEN, JR.: Before we even get that far, if I understand your motion correctly, it would simply speed up the time frame in which we adjourn for today's session; is that correct?

MS. MASTERS: No, it would limit our speakers to twenty minutes each and would complete that time that you have allotted for three hours to one hour.

MR. KEEN, JR.: Just on our speakers in the symposium part, correct?

MS. MASTERS: It would expand the period where we're going to have question and answer session, and I have added their delegate to the Commission where we can ask questions of concern in regard to this document we have, and delegate-to-delegate

on amendments.

MR. KEEN, JR.: Would you accept an amendment to your motion that we retain the one-hour guest speaker time slots and dispense with the symposium aspect of it?

MS. MASTERS: That is the symposium, isn't it?

MR. KEEN, JR.: We have one hour allotted for each one of our three speakers, and then we have a short symposium panel discussion after that.

MS. MASTERS: I believe that time is excessive for what we are here to do. And I think that twenty minutes for each speaker will give us whatever information we want. And I think they were gracious in coming, but we're here about other business.

MR. KEEN, JR.: I respectfully disagree with you.

MS. MASTERS: I realize you made the agenda.

MR. HANNAH: We will begin to supply a moment for discussion.

You are recognized.

MS. SCOTT: Yes. I was wondering if the proposed amendment might be agendaed to, after the symposium this evening and when there is spare time and those who would like to come and take full advantage of it, from 6:30 to 8:00. If we wanted to, we could still avail ourselves of the expertise available. It wouldn't be at the beginning of the day; it would be at the end of day.

MS. MASTERS: I would not presume that the speakers would be here through the evening. I don't know.

MR. HANNAH: And as stated earlier here from the Chair, we'll need to determine if those individuals have been invited and those have been contracted, if their availability will coincide with the motion that you have.

MR. HEMBREE: Mr. Chairman, I move that we move to debate on this amendment. Limit the debate to two speakers pro; two speakers con. Limit that debate to three minutes each per speaker and afterwards call for the vote.

MR. POTEETE: I second that motion.

MR. HANNAH: If there are no objections, I will accept the recommendation, Mr. Hembree.

MS. MILLER: I object.

MR. HANNAH: Ma'am.

MS. MILLER: I object. Mr. Chairman, I would object to the two speakers for each side of the issue. We're all delegates here. We all want to speak. We want to hear our speakers who have been contracted. Our day is for this.

MR. HANNAH: The Chair hears that there is in excess of two delegates that would wish for debate to continue. Mr. Hembree, I will not act on your recommendation and I shall do so.

MR. HEMBREE: Mr. Chairman, I had a motion on the floor.

MR. HANNAH: There is a motion, and do we have a

second to his motion for the debate? And there is a second.

And in that case, I'm reminded by our parliamentarian that we have a motion on the floor to structure debate. On the time frame once again, Todd, of --

MR. HEMBREE: Two speakers, pro; two speakers, con; limit the debate time to three minutes each.

MR. GOURD: Mr. Chairman, is that a standing rule to start out with?

MR. HANNAH: First off, I would remind that we are operating under Robert's Rules of Order, and the parliamentarian tells me that this would be a correct and proper avenue.

The motion is to limit the debate three minutes; with two speakers pro; two con, with regard to the motion that Ms. Masters has before us to amend the agenda. Is that correct, sir?

MR. HEMBREE: That's correct, sir.

MR. HANNAH: I would ask for a voice vote. All those in --

MR. HOOK: I'm not sure whether this is a point of information. I would at some point like to hear the rationale by the Commission members as to why these speakers are invited and why they felt that this is an important component of the initial process, before we make a decision on whether to hear them or not.

MR. HANNAH: May I speak to that? And any member of the Commission may correct me or please amplify. It was the intent some months ago as we began to prepare a structure for this convention that the convention process would, in fact, be held over a weekend, Saturday and Sunday, where actual activity with regard to any amendments, changes, adoption of a new Constitution, the litany of items that we are charged with, and that we are all charged with under our oath here, would be discussed.

That the Friday prior to, we would hold as a symposium of Native American studies with regard to constitutional law. These gentlemen were identified as being experts in their field. We asked, and they accepted the opportunity to come and simply to give us the benefit of their experience and their knowledge.

So I think that the intent of the Commission was to assist in the further education of all of us assembled here with regard to specific areas of Native American Constitutional Law. That was our intent.

But I will just take privilege, and I would hear from you, sir, then we will stop debate. I have now been informed that -- and I was actually right for a moment; is that correct? That there is no debate on this, and we're going to move to Mr. Hembree's motion that he has.

And it will be a two-thirds vote, and we'll probably do a standing vote. So, George, you can get ready to start counting here in just a moment. But I will hear from my friend.

MR. ROBINSON: I will delay mine, with the assumption that I will have first choice to speak after this vote.

MR. HANNAH: I will so recognize you at that

particular time. We have a motion on the floor; it has been properly seconded. It will require two-thirds passage by the delegates to structure debate on the issue that is before us with regard to the planning of the agenda by Ms. Masters structuring two speakers pro; two speakers con; for three minutes total.

Those in favor of the motion, please signify by standing.

THE DELEGATES: (standing)

MR. HANNAH: Please be seated.

Those who would vote no, please stand.

THE DELEGATES: (standing)

MR. HANNAH: Has a tally been taken? Please be seated.

MR. KEEN, JR.: Thirty-five in favor; twenty-four opposed.

MR. HANNAH: So we'll need two-thirds of those voting.

Forty is required for passage; therefore, the motion for extension of debate as proposed by Delegate Hembree did not pass, to limit the debate.

You are recognized, sir.

MR. ROBINSON: I appreciate Dr. Hembree's concern about time. I'm really concerned about time. I really don't think that three days is enough for something that is important to begin with.

But also, I feel like many of us in the delegation -- usually I talk real loud. Many of us in this delegation need these workshops. We maybe are not quite as intelligent or as versed in this area as a lot of people very obviously are.

Here it is 11:30 and we're already about an hour behind, or more. I would not propose maybe being cut down to forty minutes or forty-five, but I think many of us need to learn a little bit. And I hope that other individuals are not wanting to keep us ignorant to be able to enhance their agenda. I would like to make a personal comment.

If you're a delegate here, it's an honor. Why don't you vote? We have several people not voting. And I don't want to be, you know, disrespectful to anybody, but we're here to vote. If you've accepted this position, vote. Sometimes it is very difficult, like my friend here said, but also, we need to either be for something or not for something. By abstaining or not voting, you're simply not coming. Thank you.

MR. HANNAH: Good doctor, thank you. We have a motion on the floor to amend the agenda as presented by Ms. Masters.

There is a second. I will entertain one additional comment. You, sir.

MR. SPENCER: Can I call for a vote on that motion?

MR. HANNAH: Yes, sir, you can.

I think it would be good for us to make sure we know exactly what we're about to vote on, just for the record. Billie,

did you send us a written copy of your --

MS. MASTERS: Yes, I did. Not in the detail that I provided to the delegates.

MR. HANNAH: Billie's motion that has been seconded and the question has been called is to -- she moves that the proposed agenda be considered -- in regard to the Friday schedule, she proposes that we amend the four speakers to thirty minutes each to allow us to get on with the work we are here to do.

MR. ROBINSON: Twenty minutes.

MS. MASTERS: Twenty minutes. There was four speakers on my previous proposal agenda, proposed agenda, and now there are three. So it would move to twenty minutes each.

MR. GOURD: There's always been three; there's never been four.

MR. HANNAH: Billie, you're not construing your parliamentary training would be in the speaker category; is that correct?

MS. MASTERS: No. No, no, no, we need that.

MR. HANNAH: Yeah, we need that. You're not moving to amend that training session, right?

MS. MASTERS: It would just move up to 4:00 because of the time. And it would eliminate a business session, too.

MR. HANNAH: Then with all eyes on the Chair, this motion that I am holding, I may strike four; state three; and are you still of allowing for thirty minutes?

MS. MASTERS: Twenty minutes each.

MR. HANNAH: Twenty minutes each.

The parliamentary notifies us that she is here, obviously, by contract, and is obligated on previous engagement and will not be available to us until 6:30. So I add that by way of, obviously, something beyond the control of the delegates.

MS. MASTERS: She's not going to be in the afternoon session with us?

MR. HANNAH: No, ma'am.

We have a motion on the floor; it has been seconded; the question has been called.

All of those in favor, please signify by saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: And those against say "no."

THE DELEGATES: No.

MR. HANNAH: Motion does not carry. We are, therefore, back to our schedule, as submitted to the delegates.

MR. RUTLEDGE: Speaker, I call the question.

MR. HANNAH: And the question is, for the adoption of the agenda as presented to the convention. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: Numerous. Those in favor of the motion before us of the adoption of this agenda, please signify by

saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: Those opposed "no."

THE DELEGATES: No.

MR. HANNAH: Motion carries, and the agenda is set.

MS. MASTERS: Point of personal privilege.

MR. RUTLEDGE: I just want to make one motion.

I'll even waive the motion if the Chair will accept it. I'd ask that the Commission collect the proposed amendments that are already written, make copies of them for all delegates, and present them before we leave tonight.

MR. HANNAH: We will take that as a friendly recommendation from the delegation, and we will purge this chamber of all descending agendas that may be out there.

MR. RUTLEDGE: Not all the agendas; the amendments.

MR. HANNAH: I'm sorry. I'm sorry. I misunderstood, I thought we wanted to just make sure everyone has the agenda in their hand.

MR. RUTLEDGE: I think you did that already.

MR. HANNAH: You figured right.

MR. RUTLEDGE: My question is, will you take all the amendments that are already prepared, have copies made for all of us, and distribute them to everyone so when we leave, we can read them.

MR. HANNAH: And thank you, sir, that was a good point. As you are seated, I will remind the delegates that, Charlie, we did in fact instruct all of you in your delegate packets that if you were to bring proposals, that there was a set number of copies that you were to bring for distribution.

Obviously, there's a lot of things to remember here, folks. And we will take that as a friendly recommendation to see to it that all additional amendments or proposals before the Commission are appropriately copied and submitted to the delegates.

MR. RUTLEDGE: Point of information. Not all of us could afford to do that.

MR. HANNAH: We understand, and we thank you for those comments.

Ms. Masters.

MS. MASTERS: On the third page of our agenda, Item Number 4, was it a mistake that -- shouldn't it say, "Adopt Revised Constitution as amended"? Did you leave out "as amended" there? Because the copy that we got in the mail says "Revised Constitution" on it.

MR. HANNAH: Will you speak to that, Mr. Keen?

MR. KEEN, JR.: I'd be happy to. The copy you got in the mail, where it says "revised," I put that in parenthesis just to indicate to the delegates that that was our proposals. It never was intended to be a part of the official title of the

document.

So we would not be amending a revised Constitution; we would in fact be adopting a new Constitution to replace that one which was passed in 1975. I use the word "revised" just for editorial distinctions.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Yes, sir.

MR. GOURD: Delegate Charles Gourd. One of the principal reasons, the major reason is that we have taken on the use of the word "revised" or "revision," to get it into the category of a new Constitution. There is enormous confusion within the Bureau of Indian Affairs on line item authorities on who can sign amendments, revisions, alterations or new Constitutions for federally recognized Indian tribes because of their political status as IRA, OIWA, original inherent, administrator will recognize it across the board.

The line item authority right now, the one that we're proposing through the use of the word "Revised Constitution" places it squarely in the central office of the Bureau of Indian Affairs in Washington D.C. The reason for that, by proper protocol procedures for the President or his authorized representative to sign requires that that person be politically appointed and confirmed by the senate.

We do not want a line officer having say over the things that our people vote on that's in our Constitution. That's why we have taken it to the next level to make sure that it remains at the higher authority to obtain a quicker approval and also a more effective one, rather than dealing at the area office level. Thank you.

MR. HANNAH: Dr. Gourd, thank you for that clarification. I will say by way of information that the Commission has spent an inordinate amount of time in discussion with the Bureau of Indian Affairs, because of the line in our existing Constitution which requires approval by the President or his designee. And a great deal of confusion at the level of the Bureau of Indian Affairs with regard to protocol for the approval process.

The Commission believes, as Dr. Gourd has indicated, we believe that by usage of this particular phrase that we will escalate the B.I.A. approval, which we must be about, and as many of you have read the, quote, unquote, "revised" version we have before you, that is a requirement that we are suggesting be removed, that we should not as a sovereign people seek the approval of the President of the United States or his designee.

But we must, if there are to be changes placed before the Cherokee people, we must in fact make our way to Washington D.C., and it would be a much more logical case for us to place this provision in front of one power versus a decenting area office of Washington D.C. with lack of identifiable protocol.

Charlie, is that an adequate addendum to your statement?

MR. GOURD: Yes, sir, thank you.

MR. HANNAH: With the agenda approved in force at this time, we will continue with the items that are before us.

Constitutional law seminar will be initiated. And the introduction of our guest speaker by Ralph F. Keen, Jr., Esquire, and the presentation by Professor Robert Clinton, the University of Iowa, School of Law, Iowa City, Iowa.

MR. POTEETE: Point of order. I move for a ten-minute recess.

MR. HANNAH: Does the Chair even need to take a vote on that, ladies and gentlemen? Let's be back in here in ten minutes, very prompt.

(recess taken)

MR. HANNAH: Ladies and gentlemen, if we get started, we can break for lunch on time. And we will in fact take privilege from the podium to make a slight alteration in our timing schedule. Not our agenda, but our timing schedule. So we will be taking care of a few housekeeping items. We will, in fact, on schedule, recess for lunch, and then we will pick up with our presenters following lunch this afternoon.

Now, before we do that there are a few items that I want to ask. These are primarily housekeeping issues. Those of you who are not delegates here in the room today, and I realize that this is a very historic event and there is an urge for a great deal of conversation, but I would ask that if you are not a delegate, that you would be mindful to keep your conversation down, please.

The acoustics in this room are excellent, but only if we are in fact addressing singular issues at a time and not multiple. So every good man and good woman here deserves to be heard with a people's voice, and I would ask that if you were to carry on conversations at length, that you please remove yourself to the antechamber.

Secondly, those of you who are participating in the debate and activity here over the next course of days, you will no doubt have noticed that we have a court reporter that is taking down the activities of this convention. We're doing so, so that if this same event were to occur twenty years from now, that it will not be dependent upon someone's memory or on someone's handwritten notes of what took place here.

And this young lady is not only a member of our Tribe, but she is also a certified stenographer who has traveled with us to a number of our public hearings. She does a good job of keeping up with the verbiage that will no doubt be about the course of our discussion, but she is sometimes challenged on exactly who is speaking at what time. So I would once again ask, and many of you have followed protocol adequately, I simply will remind you as I no doubt will, that when you stand to be recognized, please give your name so that it may be entered into the official record and we may have a proper accounting of the information that is shared here today.

We have also been joined by additional delegates. Our

protocol procedures require that those individuals that arrive after the posting of the delegates and the administration of the oath, that it's prior to 10:00 a.m. on Saturday, as I recall, as our cutoff time. And, Ms. Plumb, are you here at this time? Yes, you are.

Are there any other delegates that perhaps I should ask the Credentials Committee to give us a report? Only one. Ms. Plumb, if you would step to the side and, Chief Justice Viles, are you here with us? Thank you, sir. If you would move to the side there and administer the oath to that delegate, then we will have yet another of our group seated.

MS. JORDAN: Just a point of inquiry.

MR. HANNAH: Yes, ma'am.

MS. JORDAN: We have seventy people vote on the first vote cast, should some of those, also, if they voted, do we have some additional delegates that came in late?

MR. HANNAH: All delegates that voted, Tina, by my understanding were those that were registered and were in fact standing to vote at that time and were qualified. Is that not the case, Charles?

MR. GOURD: We had seventy at one time, sixty-six another time.

MR. LITTLEJOHN: Sixty-six were certified. Seventy voted.

MR. HANNAH: Being out of the room at that time, now I'm going to have to ask you guys what you were doing in here. Let me simply ask this, if we're going to question an earlier vote, then I would like for that to be either raised or squelched at this time.

MR. LITTLEJOHN: I don't think it's a question of the voting. It's a question of the credentials of the --

MR. HANNAH: Of the committee.

MR. LITTLEJOHN: I'm Dwayne Littlejohn.

MR. HANNAH: Thank you, sir. I'm so sorry. I'm not even following my own instructions.

MS. STARR-SCOTT: Mr. Chairman.

MR. HANNAH: Yes, ma'am.

MS. STARR-SCOTT: Delegate Starr-Scott. To resolve the differences that have just now come up, will you ask who was not sworn in because that's what they're wanting to know.

MS. JORDAN: That's all I'm asking. I'm afraid there's three people, they could have come in after the sixty-six percent or sixty-seven or whatever, but we had seventy people, I believe, voted the first time or abstained. I just want to know whether they were sworn in or not.

MR. HANNAH: And we will rely on their graciousness and their good spirit to stand forward. Are there delegates seated in the chamber at this time that did not receive the oath earlier this morning, please stand. Not that we would single you out, but then again, we would.

Have you received the oath yet?

MS. CHAPMAN-PLUMB: Yes.

MR. HANNAH: Are there other delegates that have not taken the oath this morning?

MR. VILES, JR.: Mr. Chairman, if it will help resolve confusion, I think Diane Hammons from the official delegation would have been one of those people that came in before I gave the oath but may not have been in that earlier count. I can't speak for her, and I don't see her, but I think that would be the one.

MR. HANNAH: Then the Chair will rule that the honesty of the delegates that are before us, those who have indicated they have received the oath, and we will consider you as delegates in good standing, and you've taken the oath.

Tina, you raised a very important question for us, and I will ask my fellow Commissioners to assist in the process, that obviously we have delegates that are absent from these proceeding at this time. And as they arrive, I'll reinstruct the Credentials Committee, we need to know exactly who those individuals are upon their arrival within the acceptable time frame as set out in our protocol, and it will move to have their oath administered.

Tina, is that okay? Thank you for raising that concern.

Ms. Plumb, Chief Justice Viles, once again, I'd ask that you just step to the side and --

CHIEF JUSTICE VILES: We've done that.

MR. HANNAH: You've done that. Excellent. So help me God. Okay.

I will tell you that by way of information, that tomorrow morning at 8:00, as we convene here at this building, we will have an official photograph made of the delegates, and we may all grab onto a small string and walk across the street and have our official picture taken in front of Seminary Hall, the Cherokee Indian Seminary, which we believe to be an appropriate location for that photograph, and -- too long of a walk.

And if it is, we'll all thumb wrestle on where we're going to take that tomorrow morning. We will not debate that at this time. I will tell you then that it is nine minutes to the hour of 12:00 by my watch, which is probably running late. It is high noon. So lunch is at high noon. It is in the University Center. It's the building immediately to the north, for those of you who are directional, or to your right as you go out the door. We'll try to have chaperons going that way.

Lunch is being held in Ballroom A and B. It is on the second floor of the Student Union. Dinner will be there as well this evening. And we're going to reconvene at 1:30 -- at 1:45 we will reconvene in this room. Delegates, please, let's move to stay on as close a schedule as we possibly can since we are compressing some of the activities on our agenda. Any other pieces of information that come before this group before we recess for lunch?

Hearing none, we are recessed.

Wait a minute. Hold it just a second. I apologize. I told you all earlier that for those of you who were disbursing materials, and Commissioners, please help me with the logic here, for those of you who are dispensing materials, we would like to ensure that all delegates have a copy of what you have brought.

Gwen Henry, are you there? If you will submit your copy to this lady, we will see to it that the appropriate number of copies are generated and that by the conclusion of this afternoon's activities that those copies are placed in the hands of all delegates. I know that may be a replication of earlier activities, but I would rather have more than not enough.

We are recessed.

(lunch recess taken)

MR. HANNAH: Once again, I remind our visitors as we come back together, please be mindful of keeping a decorum in the chambers so that our delegates can be heard during our discussion and debate. We're very appreciative of you being here. We want to keep this forum open to all of those who are interested in seeing our government at work.

I would also, once again, by way of introduction, point out and thank George Kirk and Joe Fishinghawk, who you see posted at either door, who are assisting Luella Coon, our Sergeant at Arms, and they'll be working primarily with any needs that you have with entering or exiting the chambers.

Certainly, later on in our convention as we begin to take issues to the floor for discussion and vote, we want to make sure that we are all in our seats and that we have the appropriate decorum here in the chambers so that that vote can be taken appropriately. With that, we move to our afternoon schedule. And thank you for your promptness in returning from lunch.

I call upon Commissioner Ralph F. Keen, Jr., and Vice-Chair of our convention to introduce our afternoon speaker.

MR. KEEN, JR.: Thank you, Mr. Chairman. Our first speaker today is a professor from the University of Iowa, Professor Robert Clinton. He is a Wiley B. Rutledge distinguished professor of law at that University. He teaches, among other subjects, the subject of constitutional law and Indian law. He is co-editor of the 1982 edition of Cones Handbook on Federal Indian Law. And for those of you that have dealt with Indian law, we commonly refer to this book as the Bible of Indian law.

He is coauthor of one of the leading case books in American Indian law used in law schools throughout the country. He's been widely published in articles and writings on different Indian law issues in legal publications and law reviews, and in addition to all of these fine things, he still finds time to serve as Chief Justice of the Winnebago Supreme Court and as Associate Justice on the Cheyenne River Sioux Court of Appeals.

Simply put, Professor Clinton is one of the -- well recognized as being one of the most foremost leading authorities in the area of American Indian law, and I would like for you to join me

in welcoming him to this convention today.

MR. CLINTON: Good afternoon, and I thank you very much for that, Ralph, for that kind of overly generous introduction. I'm Bob Clinton, as Ralph suggested. I'm from Iowa City. I bring you all greetings from the Ho-Chunk people of the Winnebago Tribe and the Hota (phonetic) people of the Cheyenne River Sioux Tribe, for whom I have the privilege of working.

As a teacher who teaches both Indian law and constitutional law, it's a rare privilege to be here and to attend the Constitutional Convention, as a group of dedicated people attempt to revise what really is the oldest running native tradition of written constitutionalism in the country.

And so it's an honor and a privilege to be here and to join you in this important undertaking. I thank the members of the Commission and the delegates for your kind invitation to be here.

I thought, as I was asked to speak today, about what I could speak to you about, obviously, the changes are for you; they're not for me. And what I thought I might try to do, is to think a little bit about what constitutionalism is all about, what the written Constitution is all about, and what the history of the drafting of written Constitutions in Indian tribes has been about, including specifically the Cherokee efforts in that direction.

And in the process, what I hope to try to share with you is the notion that some of the aspects of the Constitution that we presently have, that some of the aspects of prior Constitutions like the 1839 Constitution, that at first glance look kind of similar to the U.S. Constitution, actually, in many ways, are of native in origin. That, in fact, in many ways, some of the basic concepts that exist in the U.S. Constitution, while we often don't talk about it, are of native origin.

Now, as I try to encapsulate for myself, what does it mean to be drafting a Constitution, the phrase came to mind that what you're really doing here today is that you're in the process of dreaming the future. That's what you're doing. You are dreaming your community's future.

But in addition to dreaming that future, you're doing something that most dreamers aren't asked to do. You're being asked to put that dream on paper in a way that it can be used in later times by not only the current generation of Cherokee, but later generations of Cherokee who will follow.

Interesting question is, why are we bothering to put it on paper? That is, why a written Constitution? It's something we often don't pause and think about. It isn't true that most western societies or most Indian tribes have written Constitutions. Great Britain still exists without a written Constitution. New Zealand exists without a written Constitution. Navaho Nation functions without a written Constitution. So why a written Constitution?

Well, there are both up sides and downsides to that process. First of all, a written Constitution is an opportunity for the people of any community, tribe, any other community, to come

together and to delegate authority in some way or another to a government. What does that do? It gives that government some aspects of legitimacy it might not have if the process of drafting a new Constitution had not taken place.

Thus, to some extent, thinking about this convention, what really you're doing in addition to drafting, is you're asking questions about, and raising concerns about, and ultimately if you approve a new document, approve it, something that will give it, one hopes, some legitimacy.

A Constitutional Convention is an opportunity for people to talk about and express their fundamental values, and in the process, also to debate those fundamental values. What does it mean to be Cherokee? What does it mean to be Navaho? And how should that be expressed, somehow, in the written document which comes out of the Convention?

It's another opportunity for popular participation in government, but it's on a different sort, not the kind of opportunity for popular presentation in government we have when we have legislative meetings and we have elections.

It's a very special sort that doesn't come around often. The last time a convention was held, as I understand, was drafting the Cherokee Constitution, was 160 years ago. That's a long time ago. This is an effort to renew that mandate through some kind of popular input on the Constitution.

Written Constitutions are also ways of inter-generational transfers of understanding, transfers of understanding what we think. A particular community is and should be, not only for the present day, but for the next generation of that community, and for the next generation after that. Or maybe some generations out, depending on tribal tradition and the tribal community.

It's a way of transmitting those values. Now, traditionally, in most Indian communities, the transmission of values wasn't in writing. It was rather from storytelling through an oral tradition.

But increasingly, beginning really with the development of the Cherokee Almanac, from background of your web page, tribes have moved in the direction of using written language as the method of transmission. And so it's kind of uniquely important that this Tribe has the longest tradition of a written Constitution of any tribe of the United States, which is also the tribe that has the longest tradition of a written language of any tribe in North America, certainly written languages in Latin American, and certainly in North America. And so they sometimes go hand and hand.

Written Constitutions also establish shared ground rules for public debate. I heard debate this morning. What rules are we going to have? Robert's Rules of Orders, some other rules. That's what a Constitution is. A Constitution sets the framework for public debate and structures it in some way so that there is at least the ground rules, and every time you come together, you don't have to redebate the ground rules. The debate can take place within

an agreed framework that is established by that written Constitution.

Finally, written Constitutions, at least in the western tradition developed in the United States and enforced by many tribal government's today, create legally enforceable basic rules. Legally enforceable basic morals. They're law. And they're enforced as law by the courts. And they're a kind of superior law.

That is, the governments have to conform their behavior to that law. Tribal Council, tribal police, Principal Chief, they're supposed to be acting within the framework of the norms established by the people through that written document.

Now, I've talked about up sides. There are downsides. There are downsides to having written Constitutions, which, of course, is one of the reasons some societies have chosen not to have them. For example, if they are written too narrowly or rigidly, they can often serve as a break on social change on the evolution of any society, or all societies, no matter how traditional they are, evolve over time.

And the question is, will the Constitution permit that evolution to take place? If you think about the U.S. Constitution -- and I'm not suggesting they are; I'm illustrating a point -- the U.S. Constitution is not terribly rigid. It contains a lot of norms. It hasn't been amended a lot for that reason. It has permitted an incredible amount of evolution. There's not that many pages.

The new Constitution for South Africa is 168 pages. It covers everything you can imagine in rigid detail. In part, because of the process out of which it came. The process of negotiation of the end of apartheid in South Africa.

The net effect of that, however, is it's going to be very difficult to evolve with that Constitution because it's not just a skeletal document. It is almost a code of law. And, of course, Constitutions in the American tradition often are not codes of law; they're skeletal documents. But that varies tremendously. California's Constitution is far more detailed than is the U.S. Constitution.

Some tribal Constitutions are far more detailed than, say, your present Constitution; others are not. There's this tension about how much do you want to codify the Constitution; how much do you want to make it a skeletal document, and it comes out of this basic question.

Secondly, in the American model, at least, of written Constitutions, we often require supermajority, two-thirds, three-quarters, not just simple majority, for decision-making. What that does, is it winds up itself, requiring greater societal consensus.

Now, in Indian communities where consensus is the norm, that may not be that much of a problem. But for non-Indian societies who are used to fifty-one percent majority, that's often seen as a major problem, and constitutionalism often produces a

focus on greater consensus, a need for greater consensus before fundamental changes are made in the rules of the game under which a society operates.

And, finally, the downside that many tribal governmental officials don't like, is that if a Constitution is treated as enforceable law, which, in fact, it usually is, in most traditions in the United States, at least, written Constitutions often limit governmental action. That is, you have to conform to the Constitution. The tribal legislature may not want to do that; the Tribal Council, Chief may not want to do it; the police officers may not want to do it.

But what it does is it takes away their discretion not to do so. Because if they're true to the law, the judicial branch of government may be looking over people's shoulders, enforcing the norms, the rules, the laws that are contained in that Constitution.

And so for those who want absolute discretion in government and don't want that discretion limited, written Constitutions are not good things; they're bad things. But written constitutions, in fact, have been liked by those who want to limit governmental authority and keep it within a normal sphere.

Now, as I've suggested, many of America's notions of constitutionalism actually have native origins. I want to talk about that for a little bit, and then come back to modern Constitutions.

I want to submit, first of all, that the western notion of freedom and liberty itself is an idea that came from contact with Indian peoples. Why? Think about Europe at the time of contact in 1491. Europe in 1491 wasn't so western democracy as we see Europe today. It was a group of futile monarchies in which all power came from the Crown, and the Crown was the source of all governmental authority.

When the Europeans found the North American continent, they decided to organize differently. They organized around kinship lines with a great deal of autonomy. The individual in many ways was sovereign. it was a foreign concept to Europeans. How does the Preamble of the United States Constitution begin? "We the people of the United States delegate this power to the federal government."

Where do they get the idea that sovereign was the Crown?

It wasn't from the revolution. It was rather from contact with a group of peoples, Native American tribes, in which the sovereignty did reside with the people. Now, we very frequently don't pay appropriate homage, talking about the U.S. Constitution, to where those notions come from. But that's precisely where they come from.

But it's not just notions of liberty, in fact, that come from that contact. The idea of a confederacy -- the U.S. Constitution is, after all, a confederacy -- comes from the need to deal, particularly with the contract with the Iroquois confederacy or -- excuse my Iroquois pronunciation; the Porters are from Seneca -- the whole concept of the Iroquois confederation.

Clear confederacy, very powerful confederacy, they

drafted the language. Most civics books talk about the all need clan of unions of 1754 being the basis of an idea of an American union. The history books don't tell you what the opening congress was. It was a treaty convention of Iroquois. And the reason that Benjamin Franklin proposed a confederacy was, he wanted to confront the Iroquois confederacy in an organized and united manner, which so far is a common formality.

And finally -- this is a theme I want to talk a little bit more about -- the idea of separation of powers itself. I want to submit to you, and I hope prove to you, a India, not a European idea, has its roots in contact with Indian tribes.

If you look at most Indian tribes of contact, most of those tribes are organized around clear divisions of authority. Those divisions are based on age. They're based on gender. They're based on family. They're based on clan structures. They vary tremendously. And from tribe to tribe, you're going to see differences in those organizations. They're not all the same, obviously. There's over five hundred Tribes.

But clearly, power was diffused. Different people had different responsibilities. Ceremonies and governing authority were, in fact, divided that way. Different clans sometimes have responsibility for different ceremonies in some tribes. Governing authorities may have varied. Among many of the southeastern tribes including, as I understand, Cherokee. But you would all know this better than I, so correct me if I'm wrong.

There was a classic red and white division among many of the southeastern tribes. Peace, war division. Allocation of authority. Different people in responsibility at different times. Among the Iroquois, different tribes with confederacy have different responsibilities for different aspects of the tribe. And even within the tribe, different people had different responsibilities.

The spokesperson for the tribe, often male, was always selected by the (inaudible), and so the women had a structured vote, an equal vote, equal participatory vote in the process. So, again, a division of authority within the traditional political structure of a tribe.

Plus, among many of the tribes, we see clear divisions, often gender divisions about who controlled what. Well, women sometimes went on hunting parties. In general, it was a male practice. The women controlled the villages, and village life, and they controlled agricultural. Only recently, efforts of the federal government to impose agriculture, failed among the culture, for example, where the traditional allocation would have left agriculture to the extent that the culture relied on it, to the women of the community. What did the Bureau Agent try to do; make the men farm, not understanding at all the division of labor within the Lakota society.

Another example is the division of roles in any tribal community between elders, often great respect in the tribal govern authority, in the tribal councils, and younger warriors, who had

different responsibilities within those councils. And among the Lakota Cheyenne, male and female societies have different aspects of control.

Now, notice, all of this suggests a very carefully ordered traditional government arrangement in which power is separated, yet, cooperative. That's what basically the idea of separation of powers is, separating power, yet, cooperating.

What was European society like at the time? European legal thought, they didn't have any idea of separation of powers. The Crown had a vertical command authority over futile lords below them to the extent that there was a division of labor within the Crowns lieutenants. No responsible Crown. There's no sense of division of authority in European legal thought at the time.

After contact with Indian tribes, however, European philosophers like Locke, Montesquieu, and Rousseau started writing about people having natural liberty; people being in the state of nature; people sharing and allocating the dividing power. Where did they get these ideas? They weren't part of the European thought of the day.

Those rations are only coming up after contact. They're not doing what I always taught my law students to do. Give credit to where you got the idea. They're not doing that. Where they got the idea, of course, is from contact with Native communities. And so many of the western ideas we have about governing authority, in fact, come from Native communities like this one and the contact that was had. And so after contact, there's a major effort of decentralizing and defusing power.

The European legal figures came to associate the lack of a separation of powers with dictatorial authority. And so what you see emerging in European western thought is that the problem with the monarchies is centralized power, so we have to separate out that power into separate branches of government. And that process of thinking was taking place during the colonial period of the United States, it's culmination, of course, being the drafting of the second Constitution of this nation, the U.S. Constitution.

So based on all of this thought, after the revolution in the United States among Europeans, written Constitutions emerged as a way of thinking about how to decentralize and defuse power like their neighbors in the tribes.

The first efforts in those directions didn't have a separation of powers notion. The U.S.'s first Constitution was the Articles of Confederation drafted in 1777, went in effect in 1781. If you were to look at it, it actually looks like some of the B.I.A. Constitutions. There's, in fact, one seat of government. It's in legislature. That's it.

There was no executive; there was no judiciary. There was just what, if it were a tribe, would be the Tribal Council. It was called the United States in Congress Assembled, which is where we got our name, United States. It's from that language called the Articles of Confederation, which is congress.

The second stab at it, of course, was, in fact, the Constitution. And in the Constitution what we decided to do as a Nation was to, in fact, enshrine in a written document some of the ideas that had been part of oral tradition of natives, including separation of powers, that had emerged through European legal thought, with the expectation that the courts would enforce these limits on government.

And so what emerged out of a process of contact with Native communities was the first effort, really, at a major written constitutional effort, probably in the world, that was thought of as legally enforceable law, but a higher law that limited governmental action. And the mechanism for that limitation would be a court system.

So today if you look at non-Indian governments, most of them have in them a separation of power systems, state governments, federal governments. They have a legislature, congress, the federal level which passes laws.

They have an executive branch, president, federal level, the governor at the state level, which administers the laws passed through agencies, governmental bureaus, et cetera.

Then they have courts, which, of course, enforce those laws, usually at the initiation, either of private parties or of the executive branch of government. And that's fundamentally how almost all state and federal governments work.

Now, when people hear separation of powers, they often have this model that I've got up there of separation of powers. We've got three branches of governments and never the 'tween shall meet.

So my way of thinking, that, of course, not what the U.S. Constitution does. The model I see of the U.S. Constitution is something that looks more like that. There are separate branches of government that have overlapping spirits of authority in some areas, not overlapping spirits of authority in other areas.

And if you look at the U.S. Constitution, for example -- I'm not holding it up as a model; I just want to talk about it constitutionally -- you'll see that. If you look at the U.S. Constitution, Article I deals with congress; Article II of the U.S. Constitution deals with the President; Article III deals with federal courts, it separates out of the three branches of government. Article III also guarantees like a tenure for federal judges, in order to have a mechanism to enforce the Constitution that's free of the political process, so it can't be manipulated by the political process. And it guarantees certain salary aspects.

It is a check and balance system, as we've often heard of. But that check and balance has some overlap, and that's the overlap you saw in that diagram.

For example, the legislature isn't the only body that makes law. Why? They've got to be presented to the President for a veto. He can either veto it or approve it. The Constitution has some similarities in it. So you've got some overlap of the

legislative process between the congress on the one hand, the President on the other.

The judiciary reviews the constitutionality of that which both the executive and the legislature do, and we call that judicial review. And, of course, that suggests some area of overlap.

Congress has the power of constitutional amendment, and it can overturn through a constitutional amendment, requiring a simple majority, what, in fact, the other branches have got, again, overlap.

And congress fundings after all, has the power of the purse over the President, over the courts, it's got some power over them. The President has pardon power. We've heard a lot about that during the impeachment. The President has pardon power and can overturn the courts, the results, the criminal results of the federal courts by pardoning somebody who has been convicted. Again, overlap.

So as I say, I suspect that at the federal level, the preferred model, if you will, want to visualize what the separation of powers is all about, is something that looks more like that.

Now, that model suggests that you've got a federal government that basically has President, one branch, congress, another branch, supreme court, another branch. Under the President, you've got the cabinet officers, and they each have a whole lot of agencies. I'm not going to put them all up on the board. You've got congress; it's divided into committees. And you've got a federal judiciary. You have the supreme court, Supreme Court of Appeals and trial courts, called the district court. That's basically what the federal government looks like, as a practical matter. And notice, it's three branches of government.

Now, the implications of that are rather significant, particularly for judicial legislative interaction. The courts have at the federal level independence, and they're designed to create the neutral forum so that the courts can enforce these constitutional norms that were put in the U.S. Constitution.

The legislature can't overturn decisions of the courts. Those decisions are final. What the legislature can do in the U.S. system, is they can prospectively, for later cases, adopt a different rule, as long as it's not changing the Constitution. If it involves changing the Constitution, then it's got to be amended.

And what's the difference? The amendment process in the U.S. Constitution requires a simple majority. Two-thirds of the legislature, three quarters of execs, whereas, you'll notice that simply passing the law, just requires a majority of the congress.

Now, the Cherokee experience is, I think, an important one, because the Cherokee Nation has been in the forefront of using written Constitutions. And the Cherokee experience of written Constitutions is, I think, in many ways unique.

The Cherokees have always used written Constitutions and held the Constitutional Conventions or some other process of constitutional making at a time of great social crisis.

Constitutionalism in this Nation, at least as I see as an outsider, is an opportunity. It's an opportunity you've got today to heal, in a very traditional way, social status.

Now, you've got a history of three Constitutions in this Constitutional Convention. And I'm taking it all the way back to prerule, before there was a Cherokee Nation of Oklahoma. You've got an 1827 Constitution that, in fact, was drafted at the time of great social pressure from the state of Georgia, the state of Tennessee, the state of North Carolina, and Cherokee lands, and peoples. And the response was a coming together, coming together of people to draft the Constitution to resist that pressure, which created the first Constitution.

After removal, I'm sure all of you are aware of the splits between the old settlers faction, the treaty party, the Ross party here in the Cherokee Nation. And it produced some very troubling times for these people. Of course, the response was the drafting of the 1839 Constitution, which brought a greater unit in the Cherokee Nation, another response to social crisis.

The '76 Constitution comes at the end of a great period called Lonial (phonetic) Assertion of Authority, to try to take away the sovereignty of the Cherokee Nation and to force federal control of what was left of your government.

And finally, a Constitution is drafted to respond to that pressure. That's the Constitution you're going to amend today. And, of course, I don't need to remind anybody that this has been a time of stress in the Cherokee Nation, and this is an opportunity for healing.

And I want to suggest to you that this use of constitutional making as healing is a unique aspect of Cherokee constitutionalism. In at least the eyes of an outsider, hope the trend will continue into the next weekend, and that this will be a time of healing and a productive time of bringing in a productive and good future for the Cherokee Nation.

Now, among other tribes there was a long suppression of tribal government. Therefore, the period between 1885 and 1934 was after some of your earlier Constitutions was drafted, we got almost no Constitutions drafted, written Constitutions. Because what the federal government was trying to do, was to stamp out tribal government, and stamp out tribal sovereignty, and so it wasn't supportive of the drafting of the Constitution.

And so in Oklahoma, the federal government tried to take over running your governments and started appointing the Chief. The effort during this period was to treat Indians individually, rather than a sovereign Nation, which, of course, accounts for why there are individualized allotments all around the Cherokee why in fact there are necessarily boundaries on the Cherokee reservation, no longer treated as a site, since non-Indian entity to interpret the Cherokee government, et cetera.

That period ended with the Indian Reorganization Act, I know you're not organized, of 1934. In fact, the Indian

Reorganization Act can be applied to Oklahoma tribes in later statutes, and also the Oklahoma Indian Welfare Act of 1936 was adopted to make it applicable.

Now, prior to the adoption of these two statutes, the federal government had sought to govern Indian country. It had sought to displace Indian reservations. The Bureau of Indian Affairs was the primary government, and it ran the government through literally kangaroo courts called the Courts of (inaudible), in fact, were arms of the Bureau Agent, and enforced Bureau norms.

When John Collier came into the FDR's administration in 1942, his proposal was to abolish the BIA. As a substitute for the Bureau of Indian Affairs, giving back power to organize tribal governments. Well, the bureaucrats in Washington had been used to being the government, and they were hearing that their jobs were going to be attacked by this plan, at the height of the Nation's worst depression in history.

I mean, how would you feel if it was going to be attacked at the height of the Nation's worst depression? What they wound up doing is using the drafting of Constitutions to carve out a roll for themselves that would entrench themselves as bureaucrats in an effort to protect their jobs, really. And, thus, some of the earliest BIA Constitutions contained no separation of powers, by the way, unlike your Constitution now.

I've always thought that the reason for that is that if you're a bureaucrat and you want to control another government or corrupt it, is it easier to control or corrupt one branch of government or three? It's obviously easier to control one of them, and that's, I suspect, why most of the Bureau Constitutions do not contain any notion of separation of powers, when we've already seen the idea of division of authority, is certainly much more of an Indian than a European idea.

A government, therefore, with a strong separation of powers is, of course, more insulated from that kind of corruption. Now, what's its downside? Its downside is, it's going to be less efficient. One agency is always quicker to move than three of them.

Now, if you look at the way the BIA sought to control, it sought to control in other ways as well. It drafted into the IRA Constitution, not yours, federal approval requirements. Where do those federal approval requirements come from? Well, I looked. Except for approval of the Constitution, they didn't come from anything in federal law.

The federal approval requirements in tribal Constitutions, strangely enough, come from the tribal Constitution itself. But who drafted the tribal Constitution? Often, it wasn't the people of the community. Often, it was BIA bureaucrats who were going to try to impose it on the people of the community. And, of course, they were trying to protect their own jobs and entrenched bureaucratic authorities, and so you get those kind of approvals.

Today we get a little bit more of that through financial oversight, loan programs, and more recently Public Law 638, and

Tribal Self-government Grants, and so the financial oversight becomes kind of the colonial way of controlling tribal governments in one sense or another. And they've been using that in that way.

And, finally, there is always the possibility, used rarely, but it happens, of refusing to recognize a tribal government as a way of controlling that tribal government at the federal level.

So if you look at most tribal Constitutions today that come out of the Indian Reorganization Act in Iroquois, and they're unamended, you get something that kind of looks like this. The Bureau of Indian Affairs has to approve just about everything in this Constitution. Ordinances, everything else. They sit at the top.

Then you get a Tribal Council, and in some, but not all, of the Constitutions, occasionally you'll get an elected Chief. More commonly, the Chairperson of the tribe is selected from the Council, basically, the presiding officer.

There's provisions for attorneys, and they advise the Council, and unfortunately they play too active a roll in tribal government. Often the Tribal Council will appoint a Chief Executive Officer, so you have an Administrative Officer, and under them, you'll see various kinds of commissions, authorities, health, what have you, that, in fact, run the structure. And that's what most tribal governments look like today.

Notice, no separation of powers trended. That's, of course, not your government. What have been the recent trends in tribal constitutional drafting? One of the central things is to eliminate federal approval requirements for the legislative acts. Of course, some of the proposals the Commission have come up with are along the lines of those trends with respect to your Constitution.

There have been increasing broad claims of sovereign power made in recent amendments in IRA Constitutions, whereas, it was a very modest, but limited claim, made in the earlier IRA Constitutions.

Another trend is tailoring the culture and tradition to the tribe. Very frequently the tribe wasn't even known by the name it understood itself to be. So, for example, the Pomador (Phonetic) people from Arizona aren't the Pomador (Phonetic) people in Arizona, they're the Tohono people of Arizona. It's a western name imposed on them.

So when they redrafted their Constitution, the Constitution used their tribal name in their language. Some other tribe used other tribal names to designate the appropriate official where there's an analog. But since in many cases the positions of authority are western in structure where they're derived from, the language may contain no answer, and, of course, you can't move in that direction.

In many other instances, the tribe tries to draft something it more understands to be consistent with its culture, rather than what the Bureau of Indian Affairs imposed on them.

Another trend is an increased reliance on separation of powers, including and especially under judiciary. I know of some tribes that don't have an executive branch in their Constitution, but do have an independent judiciary. And the effort being, to create a neutral umpire, referee, to resolve disputes that everybody sees as neutral. And the effort, therefore, is to make them outside of the control of the legislature or the control of the executive branch of government, so that, in fact, they can't be influenced and they remain a neutral umpire.

Another trend is an increased public control of government. The IRA Constitutions used what we call representative democracy. That is, instead of everybody getting together and voting, you folks represent other people. You represent different members and constituencies.

Tribal Council members, if we're going to elect them by district, they represent people. But once, in fact, they got together, many of the IRA Constitutions didn't have any mechanism to control them.

This movement toward the greater effort of popular control is a movement back to traditional notions of individual sovereignty, the individual sovereign, and is a distrust of representative and representative democracy.

In some tribes that are smaller, they weren't here very long, but they're small enough, the idea of a general council, literally, a meeting of everybody. That's what general council is, as opposed to an elected representative tribal council, is coming to bear.

The Ho Chunk Nation's new Constitution has four branches of government. Executive, legislature, judiciary and a general council. The general council sits on top of all of those branches of government.

For tribes that are too large, this would be paramount to have a council meeting, a general council meeting, increasing with use of initiative, referendum, recall provisions to give greater popular control. I'm not opposing these, I'm just telling you what I see, in tribal Constitutions coming out, have been very common.

Another thing that's come out is reconsideration of membership rules. Where did membership rules come from? They came from the process of allot. Came in the late 19th century when we were trying to individualize the land system of the tribe, and we're trying to figure out who's entitled, who should be, you have to be on a roll. That's when membership rolls came in.

The membership rolls tended to improve the static situation. You have members that live outside of the territory, and other people of Indian decent who live inside, but, in fact, can't be members because of their membership roll.

A number of tribes in drafting their Constitutions have tackled the very difficult and greatly controversial question of membership, to try to get at the question of whether they make any sense or not. I'm not suggesting you should or shouldn't, it's just

that has been one of the things that has been redrafted.

Another recent trend that's very controversial include the emergence of tribal constitutional Bill of Rights. At Winnebago where I serve as Chief Justice, they adopted the Indian Civil Rights Act as a Bill of Rights. I'm not suggesting you do that as a part of it. Most tribes don't have Bills of Rights in their Constitution, because they don't think in rights and models about those kinds of issues.

There has been a trend to create individualized rights. In some ways if you look at the employment rights guarantees of your existing Article XII, that's probably the closest you've got to any Bill of Rights provision, because it guarantees a certain employee tenure, and it also guarantees the kind of hearing process system for removal. So there is a sort of rights motion.

Thus, if you look at Constitutions today, modern tribal Constitutions, a couple of models you'll see; this is one of them. You basically have either or both elections or a general council, or both, at the top of the system. Still have the BIA at the top of the system. Elected tribal Chief or Chair, tribal courts and a tribal Council.

The tribal council has oversight committees and other kinds of committees. Tribal committee may report to the tribal council. The tribal Chief may or may not appoint an administrative officer. And then you'll have different branches, lease housing, Indian Commission, whatever is appropriate to the tribe, under that process.

And then you'll have tribal courts. Often times a trial court and an appellant court, as well as judicial administrators in a separate judicial branch, which you'll notice has gradually evolved tribes back to sort of where the United States started, and the United States got it from someone, i.e., they got it from tribes.

Another model that you sometimes see, a lack of an elected executive. Notice this model. Again, elections or general council. You have only a council and a tribal court. Your administrative function, executive function, is played by a tribal Chief Executive officer.

In fact, this model is probably closer to the Winnebago tribe, which I serve. They don't have a separately elected executive. Everybody is responsible to the council, except the courts. I'm not directly responsible to the courts as Chief Justice of the Winnebago Tribe, and I provide the rule of a neutral umpire when needed, which isn't often, thank God, for difficult disputes.

And so the council basically has Oversight Committees. Those Oversight Committees oversee the administrative aspects of government.

Now, with that in mind, I tried to diagram what I see as your existing 1976, there's also a designation problem, the constitutional draft in '75, was approved as far as the Cherokee was concerned in '75. It was actually approved by the federal

government in '76, but I've used '76 just as a later date.

The '76 Constitution basically puts the people at the top. And the people basically operate in your Constitution through elections, through initiative and through referendum. And then you've got a Principal Chief elected; you have a Council of the Cherokee Nation; and you do have a Judicial Appeals Tribunal, although as I see it, no full judiciary on the original court, et cetera, at least set up in the Constitution.

You have a Deputy Principal Chief, and then under that, you have, and this is kind of interesting, unlike the U.S. Constitution where the cabinet is structured by the legislature and can change at the request of the Chief, you've got a cabinet that's constitutionally designated, and which includes a Secretary-Treasurer, a Secretary of Health, Education and Welfare, a Secretary of Commerce and Industry, a General Counsel, and a Secretary of Communication. So that's your basic structure.

Now, the thing that is most interesting with that -- I'm going to leave it there because I don't have any suggestions; I'm just here to give an overview. The thing that's most interesting is the tribe with the longest tradition of written Constitutions in the country. The tribe that has one of the longest histories of contact with Europeans, it isn't the longest, but one of the longest, basically has a Constitution that looks a lot like the federal Constitution.

Now, many commentators have looked at that and said, ah, you copied it from the U.S. Constitution. The thought I want to leave you with is, no, that's not it at all. Cherokee didn't copy it from the U.S. Constitution. The U.S. Constitution copied its notions of government from the Cherokee and many other Indian tribes with whom they came in contact. They're not European; they're Indian.

So if you can dream the future in the next two days in a way that keeps your values intact and transmits in your document what it means to be Cherokee, not only to the voters on, what is it, May 22nd -- and this thing may or may not go to the voters -- but to the next generation, and the next generation. What my Lakota friends would say, and the summit generation, then, in fact, you've done some very good work here.

Thank you very much for the opportunity.

(applause)

MR. HANNAH: Thank you very much, Professor.

Mr. Keen. I'd ask Charles Gourd to step forward at this time to introduce our next speaker for the afternoon, following of which I think we may impose a small break. So endure with us, ladies and gentlemen, for just a moment longer.

Charlie.

MR. GOURD: Thank you, Mr. Chairman. I'd like to introduce our next speaker, Professor Robert Porter from the University of Kansas. He is a professor there and a director of their Indian law section in the school of law. And Professor Porter

comes to us to speak of his experiences within his Tribe when he was going about a very similar process of bringing about a written Constitution, and the amending of that Constitution, and putting it in place.

Professor Porter.

MR. PORTER: Thank you very much, Dr. Gourd.

Thank you all for inviting me. I want to thank the Commission, I guess, for making it possible for all of us to be here. I am pretty impressed by the work that's gone on so far, and I know that it isn't just certain people that did it. I know there are a lot of people in the Nation who have very much been involved, and certainly we wouldn't have much of a convention without you all here as well.

So I just wanted to thank you for inviting me to participate in this event.

I think what I'd like to do with my presentation, and I guess I didn't realize this until I got here, was that the article that I had written, it sort of deals with government before (inaudible) has been put into your packets.

I think I had mentioned that at some point to someone, and it actually happened, and I was pleased to see that. And I would like to open up a possibility that, if at any given moment you think I'm saying something really wrong or something that really makes you furious, just raise your hand, and I'll try to answer the question. Because much of my presentation is going to try to follow some of the theme in that article, as well as just try to deal with a few other things as well.

Much of what I have to say isn't going to make any sense unless you understand a little bit about where I'm coming from. I'm a member of the Seneca Nation. I grew up on the reservation of our Nation in western New York. And I -- to cut a longer story short, I've gone a long way in, I think, a very few number of years in terms of better understanding how we govern ourselves and what our future of government is all about within the Cherokee Nation.

I left a corporate practice in Washington D.C. for, I was there for almost three years after law school, and I went back to become the first Attorney General in my Nation. We had never had such a position. It was a very difficult, challenging experience, and I learned a great deal about, not just myself, but our people.

Throughout the course of this, the very first thing that I worked on, the major project that I didn't realize until later was kind of a litmus test of whether I got fired or not, was a constitutional reform effort.

We had a lot of problems within our Nation in terms of our governing progress, and it occurred to me as I had sat in many council meetings as a young person that a lot of what was going on within our Nation was internal. It didn't have to do with the United States. It didn't have to do with the state of New York. It had to do with the Seneca Nation. Our business. And that's why I thought the Attorney General concept made sense, a legal officer within our Nation to advise our government to perhaps represent our

Nation in our own courts. But it was internal.

The first task that I got when I went to work for the Tribe was working on a Constitution, specifically the court system.

And within about a nine-month period, somehow I was able to convince, well, enough people, at least, I don't know about everybody, that we should have major changes in the way we structured our court system.

I have since tried to write down some of the ideas about what that process was all about. And one of the nice things I've had the occasion to do since I've been teaching is to go back and rethink and understand the stuff I lived through, which many of us don't have when you're involved in tribal political business. You're very busy, and you don't have a lot of chance to reflect. So I feel grateful to have the opportunity to perhaps share some of those thoughts with you.

The second thing that happened, and the reason why I'm here with you today, and not continuing to be the Attorney General within my Nation, is that in the fall of '94, we began a political process that ultimately became what I call our Civil War.

That resulted in three people being killed; that resulted in the political destruction of our government for almost a year, in which among other things, resulted in my leaving, and my wife, who was with our children at the time. Because we simply, we had no roll in the fight that had consumed our people, and as professionals in our Nation we felt at the time it was the time to move on to other things while these other issues played out.

So a lot of what I am trying to do is think through that.

Why did that happen with our Nation, that we would become so consumed with whatever it was that we were consumed with that would result in self-destruction? I'm mindful of the fact that things within the Cherokee Nation have not been perfect within the last few years.

While it's not my position or place, nor do I have the knowledge to presume to know what the reasons were, what I'd like to do is sort of go through my discussion of some of these issues and stimulate some thinking about where all of these things come from and why we might want to do something about it.

So with that, I'd like to sort of give an overview of where we are sort of nationally in terms of tribal governments. And I think there are three different kinds of governments that we have in what we now call the United States, which was once, of course, all of our territory.

We have traditional governments, those governments which have changed very little from the pre-colonial period. And there are a few around that have retained that traditional framework. Many of the Shoshone Nations, which the Seneca Nation was once a part of, the confederacy, retained a traditional form of government that's been in place for 500 years or so. Many of the Hopi people, the Pueblos retain traditional forms of government. Those continue to be recognized by the United States.

Secondly, we have what I call autonomous constitutional governments. And those are governments which evolved and adopted this written form of Constitution that Professor Clinton so eloquently talked about in which we evolve away from an unwritten, understood way of government. It might have been very complex, but unwritten to something that we've written down, and we now can think of as generally Constitutions.

Autonomous, though, in the sense that there's no strong connection to the colonial power, neither the federal government or the states. That some internal movement within the people at some point in the past, spurred them to develop a constitutional system.

And while it certainly had colonial authority, it wasn't a direct result of the colonial power.

Lastly, we have dependent constitutional or corporate governments. And these are tribal governments that are dependent upon some position of federal, and in some cases, state law for their existence or authority.

There are a number of different examples. The Indian Reorganization Act Constitutions are an example. The Alaskan Native Corporations are established under state law. These are primarily mechanisms in which the colonial power has provided some mechanism for these, the establishment of tribal government.

Given that, what are some of the problems that we would see in tribal government? Now, this is not to be overly critical, but, frankly, I've been in tribal government, and for most all of us who have been in tribal government, this is not a surprise, hopefully, the things that I want to talk about here.

We have a difficult time administering money, programs, people. Now, I don't think this is such a personal criticism, although, undoubtedly, in some cases there is a person at fault, but I think it has far more to do with just experience. That for the most part, we've been denied the opportunity to govern ourselves for various reasons. And so the influx of money, which is really 30 years old, in terms of Self-Discrimination Act, twenty-five. There are other mechanisms by which you've had significant monies, and, thus, bureaucracies in organizations has continued to be more a problem of inexperience, and not necessarily incompetence, I think.

Secondly, dependence. We have been living within a colonial environment that has promoted our dependence upon it. And as a result of that, we have a lot of tension between being autonomous and sovereign and in control of our future. And then, and also wanting the protection or the comfort of being dependent upon the United States or a state for our well-being. And then, I think, also induces conflict and clash within our nations between those of us who have different views on this issue of how much we wish to be dependent upon the United States or a state.

Thirdly, the ineffective legal system. And I use that in the broadest sense, at least with respect to the Shoshone people and the Senecas, we have a deep tradition of peace as being the primary barometer of whether things are good or bad in our society, and

consensus building of politics. We don't have a coercive, as Professor Clinton talked about, we don't have a coercive process, historically, within our Nation. If we can't all agree on how to do something, it just doesn't get done. And if we could ever agree, then we'll do something.

The notion of layering over all of that, a colonial legal system. What was primarily emphasized was the adversarial dispute resolution process, certainly rips apart a lot of what it means to be in relations with one another. And those of you who have ever been involved in litigation know what I'm talking about. That there is no notion of justice or peace or resolution. It's conflict and warfare and battling.

A legal system that promotes that, and as an American law professor now, I may not be the best person to talk about this, but it seems to me ironic that a society would have a system that promotes more adversarial process in the pursuit of justice, and hopefully, the resolution of conflict. It doesn't make much sense to me.

But lastly, we do get to what I do think is probably the most problematic problem -- problematic of conflict that we have within our Nation. The function of feuding, in-fighting. And you don't have to be a rocket scientist to figure that out. You can pick up any issue of Indian Country Today, and someone is in a state of feuding, Civil War, conflict, battle, something is going on somewhere.

And I'm kind of curious about that. Why? I mean, it's not like, admittedly, what's going on in Washington in the last year is the closest they're going to get to tribal conflict. But we do it all the time. It's just perpetual. And I guess it sort of, well, maybe that's our way; I don't know, but I'd like to know why, why it's that way.

So here are some of the reasons why I think we might have some of these interests. And this has different significance for different peoples, of course, but this is certainly true in my Nation, and I think it's true in others, but we fight over money.

And I think quite honestly that one of the big issues has been gaming, you know, pursuit of casinos. It has driven a level of intensity of political problems that people very much -- they don't stop sometimes, ever, when it comes to fighting over this kind of money.

And the related issue, of course, is political power. Certainly the gaming contest, and those who control the government, thus, control whether the tribe gets involved in gaming. But it is the broader issue, and it isn't just -- I mean, we always fight over politics. In fact, I miss it. I mean, this is a certain level which is very enjoyable. It's therapeutic. It's sport. It's rewarding when you succeed, and it's painful when you lose.

But for those of you who have been involved in gaming you know what I'm talking about. It's an exciting opportunity and thrill. I'm not talking about that, though. I'm talking about,

"I'm going to have to kill you because I don't agree with you," and that, to me, is extremely scary that we get to that point, when I have to take you out physically.

Immigration. This is a problem associated with, it's related to one and two, but it is this notion of this, I think, return that you often see. Part of the BIA's termination policies in the past include sending prosecutors and people and sending them off to the city. Some people are coming back. I'm not saying that's good or bad; I'm just saying what happens when people come back who don't know the unwritten way of how politics is done, they speak in a different language, literally. And that is disruptive, as well. Again, not that it's necessarily wrong, but I think that as you've written new acts and new players, you're going to get some disruption.

Loss of traditional language and culture. This is the process by which we are living with the aftermath of having been colonized. We're different; we speak different languages; we're different colors; we have different political views. And there is this issue of identity crisis. And I'm not a sociologist to get too deeply into it, but I think that that part of the mix of what builds conflict is in very many cases, while we may all have the same ID card, we're very different people by virtue of our varying degrees of cultural -- having been culturally simulated.

Fifth, is development of individual rights mentality. I think this is a number of different sources, but it's the notion of thinking of "me" first, as opposed to thinking of how I fit within the Nation and how I can be better treated, things like that.

Then there is the Indian Civil Rights Act. There is an emerging western notion of rights -- sort of concerns, since the civil rights era of the '60s. And I think what that's done, of course, is it's disrupted a sort of communal atmosphere that exists within most Indian nations, although some who retain immunity. When getting the lawyer first, being concerned about your rights rather than your responsibilities as your primary concern, there's going to be conflict with those who contain notions of community.

Sixth, reemergence of democracy. This is -- I don't know whether this has any relation to the fall of the Berlin Wall or things going on globally, but there does seem to be this spirit. I sense it in this room. Having sat in here this morning, that there is a real sense of energy that I think is occurring. I think it's fantastic. It's just that it isn't without cost that there is a lot of downside in terms of delay, all kinds of things, which you'll find out in the next couple of days, I'm sure.

But there is this notion of democracy really having a downside. Nobody talks about that in high school, that democracy has a downside, but it does. And often it means bringing people into a process who can't -- who don't know how the rules work. Not that those rules are good, it's just that they bring in a spirit that is disruptive to the existing system, and thus, a source of conflict and feud.

Now, how are all of these things related? I think they're all related to having been imposed upon us through the colonization process, that the variety of actions taken by the United States, enough to transform us as people, it changes us as governments, to take our lands, to allot them, to do all of the things that we know that have happened to us, have left us as an extremely pluralistic group of people. And Indian nations would vary in degree in which they've been collectively colonized. But definitely as a result of this external force of change.

So that's what I want to talk about now, is what is the effect of this colonization on our government? Certainly we're feuding, but we need to explore it a little bit further.

What is colonization? Apologies to Professor Clinton here a little bit because this is an amended version of the definition that he's used. But what is it? Let's be clear, I think. At least let's see what I'm trying to say the definition is.

It's the exploitation or annexation of lands and resources belonging to another people who are usually of a different race or authenticity, and the involuntary expansion of political power over them, displacing in full or in part their prior political organization.

This is not a gentile process; it's forced. And we're aware of that, I guess, but what's haunting is how calculated it was, how planned it was. And, frankly, I never really had an opportunity of reading a lot of history of American colonization of our Nation until I started teaching. And it's chilling, the degree to which this amalgam of people came together with a common objective of destroying our collective tribal existence.

There is a lot of emotions that can be responsive, including anger, and sadness, and the like, but it really -- it's chilling by virtue of how calculated it was to exterminate us as a people and to take our lands.

What has this meant for tribal governments, the colonization process? First off, changes in structure. Colonizations change our structure. One, this notion of evolutionary constitutionalism. Where we get the autonomous constitutional governments.

In my own nation, it was an amalgam of factors. We had a revolution in 1848, and throughout our traditional Chiefs, our traditional government. But it didn't happen in a vacuum. Ten years before, the Chiefs had agreed to sell off all of our lands and remove us to Kansas, ironically. People didn't go. Like a hundred people left, but everyone else pretty much said, no, what did you cut that deal for? You're all familiar with bad treaty deals, so I'm not going to -- we didn't -- never mind.

There was fifty or seventy-five years of change that led up to that. The Quakers moved in at the turn of the century after the Revolutionary War and converted many people to Christianity and inspired one of our members, Handsome Lake in the vision of his new religion to adopt fundamental changes in our social structure,

transferring the notions of the nuclear family, rather than clan, of single family dwellings rather than the long house. A lot of things that just came through this process of interaction with white people.

And it really, you know, for good or bad, I mean, I think that one of the very reasons that I'm a law professor now has a lot to do with the Quakers and the educational values they instilled with my grandmother when they raised her. I don't speak our language either, and there are obviously cost associated with these things, that's up for each of us and our people to sort of figure out.

But this evolution process was a result of a colonization inspired atmosphere. It wasn't we just sort of came up with it, well, let's write our Constitution down; it was a result of a non-Indian writing our Constitution for us, among these other things.

Secondly, the imposed government force. Obviously, by definition are the result of colonization. As Professor Clinton eloquently talked about our needs by which the Bureau has perpetuated its control through that system, as well as through the congress.

Secondly, the changes in who we are as a people. That affects our government as well, right, who we are as a people. If we have a tough time looking across the Council chamber and seeing someone who is my brother or who is my sister, literally, because we're very different in terms of our blood or our religion or where we live, or, you know, there's a lot of reasons to be divided. But colonization has induced these changes in us, and are a significant reason why we have disruption in our government process. Overall then, we have the creation of conditions within the society that promote divisions.

If you were to plan, and it was planned in the minds of some, although I doubt it would have -- I guess it would have taken a hundred years for a lot of this to materialize. But we're living the dream of those who would seek our destruction as we speak right now.

Now, that may seem bold, and it may seem aggressive, but if you were to add all the pieces together of what was laid down primarily in the 19th century, it took a lot longer than they thought. They thought we would be wiped out in a generation. But the government we have now established for ourselves, the behaviors we engage in, the activities that we're -- the identities of who we are, the difficulties we engage in. They would have been -- yes, we've succeeded. We decolonized the nation and put in place the seeds of destruction within these peoples.

So the seeds of destruction have been planted. What does that mean about the future? It affects our sovereignty. We all have our personal definition of sovereignty, so I'm going to add to the confusion, perhaps, and add my own personal definition.

When we speak of sovereignty, we speak of the right of

the people to form their own nation and exercise the right of all people to self-determination. By virtue of that right they can freely determine their political status and their economic, social and cultural development. But it's a good working definition of what we're talking about.

Professor Clinton talked about dreaming the future. I often talk about controlling the future. But it has a lot to do with this choice of where you end up as a people. Why is that important? This is a good question. I have these discussions with my students about this. Why is this choice important?

We're not living as a dependent people. You know, the check comes in every month; you don't have to do much. Why not? Frankly, I think there's a lot more real -- maybe not in this Nation, but in a lot of Indian nations. And the best evidence they have of it is this debate over whether to move into self-governance program or continued self-determination policies.

Self governance requires a new level of taking care of their own business. And a lot of nations don't want to do it. But why? My simple answer, I guess, is that it has everything to do with survival. If you're not in control of your own life, how can you expect to survive as a people?

And I guess I'm just taking it for granted that survival as a people is a good thing. But fundamentally, our sovereignty relates to our survival. If we're not in control, we can't possibly expect to make it in the future.

What then influences our sovereign development? How do we determine our sovereignty? This is my sort of working theory. And these are all interrelated. I don't have a really cool graph like Professor Clinton does, of how they all interrelate in circles, but imagine that all as we talk about these three factors. I'll have to work that out for my next presentation, a circle graph.

But I think it starts with belief. You've got to believe in your sovereignty, right? Whether it comes at you through the pillow; whether your mom and dad gave it to you; whether you read it in a book; whether you hear it from me or Clinton or anybody, I mean, you have to believe that you're a sovereign people. You have the right, the ability, the desire to control your future.

And you know what, that's what boarding school is all about, was to get rid of that belief. I teach a class at Haskell Indian Nations University every spring, and it really strikes me every time I go over there. It never fails. That I'm in a place that was spawned to help destroy indigenous people. And I get excited about the chance that I'm doing just the opposite, I hope, when I teach over there. But it really turns on belief. If you don't believe it, you don't get anywhere else.

It's related to ability. You can have all the belief in the world, but if you don't have the ability to effectuate those beliefs, you're not going anywhere on a sovereignty scale. It isn't just money either, right? I mean, you need talented people, you need land, you need a variety of resources to sort of augment your

belief. There's a lot of things. It may be as simple as speaking the language. That has part of negotiating ability as well. A lot of things go into ability.

And then lastly, recognized. Because we don't live in a vacuum. We're all interrelated with everyone else. So there must be some notion of recognition. That's why when I think of Federal Indian Control Law, we had this -- Professor Clinton and I had some discussion about the emerging issues associated with congress, how it would recognize powers of Indian nations that might have been judicially exterminated.

It's a troubling area because that's really what it's all about. Is if we want to have a non-Indian in our jail, congress says, or the supreme court says we can't. What if we really need to? What if the non-Indians are the ones that are doing all the crimes, and they're beating out women and there's all kinds of problems? Shouldn't we be able to deal with them? But they don't recognize that authority.

A lot of people want to say, we can't. Well, I always say we can, it's just that it's not recognized, and it has consequences. But to say the federal government can prevent us from doing things, concedes far too much when you get back to that notion of belief in this whole. But they're all related, and this whole sort of amalgam of interplay is what turns, I think, the degree to which we are sovereign as a people.

So if we want to come back full circle, where are we? Our sovereignty, of course, is weakened by our poor administration.

If we can't take care of day-to-day business in terms of how we run our government, that, of course, affects our ability to carry out whatever belief we might have.

So, too, with being dependent. By definition, we're not sovereign; we're dependent upon another nation for our financial resources or our government structure. By definition, that undermines our sovereignty. If our legal system is weak and ineffective, and we are unable to resolve disputes that existed in our community, obviously, that, too, undermines our ability to carry out whatever policies we have as a sovereign people, and clearly, the future is in a direct, obvious, destructive way, undermines our ability to carry out whatever belief.

And interesting enough, I think one of the most maddening things about my own nation is that I think we have a fairly strong sense of our sovereignty beliefs. Across the board, most all the people who would feud and can't stand each other, but we fight over how we are going to carry it out.

I mean, that's maddening to me because I think the hardest thing is to have the belief. And we have it, we just fight over other things, but thus the feuding consumes it all. It doesn't matter how much you believe in it, it's just lost when it comes in terms of your sovereign existence.

So where are we with all of this? I'd have to say that it's emerging. It's emerged a few years ago, but it's coming out a

lot stronger today than it ever has, that the solution to our tribal problems are internal. They're not in Washington. They're not at the U.N. Those institutions, the United Nations, and the congress, and supreme court, at best, all they can ever do is recognize our underlying sovereignty. The congress will never bring back our languages, the congress will never make our government stronger. At best, the outside world can only back off in its situation as we seek to assert our sovereign authority.

Maybe I'm biased. Maybe it's the right answer. But it seems to me it all starts back home with how we channel our passions as a people. The rules that we have in place to govern our behaviors, how we make decisions, how we resolve disputes.

In other words, our government is a starting point for how we might move forward effectuating our beliefs, carrying them out, and having them recognized. If our governments are weak, we can't deal with problems in our families; we can't deal with the dysfunction that might exist within the housing program; we can't fight the state over taxes; we cannot do anything with any effectiveness if we don't have the right vehicle for getting us there.

Obviously, to the extent that we're all here today, I hope is a reflection of that shared view. But the debate that was had this morning was beautiful, associated with just things like the rules and the Chairman and everything else, because it was, you know, civil, spirited, and, hopefully, the reflection of the future of the Cherokee Nation in another direction about coming up with a new form of government that can be even broader and snowball and incorporate all of your citizens in finding a way to make those decisions. Battle with heart, but within a set of rules that are fair, and once they're made you can move on and deal with other problems.

So what can reform do, perhaps? It can promote better administration. If you have a system in place that allows for better organization -- Professor Clinton also gave us a number of different models in which we can think of governing. Ultimately, we don't have a clue and maybe you don't. I'd be really curious to see what you end up with by Sunday night or whenever you finish. I think this is pretty ambitious, two days, but you never know.

But it's going to be the kind of thing that even when you come up with something that you'll say is kind of simple to people, if you're really lucky, it won't stop because then you'll figure out, well, how do we implement it? What kind of laws do we put in place? And, thus, maybe an administrative cleansing would occur in terms of how to better reflect the power that has been granted by the constitutional system.

Secondly, we can reduce our dependence on others if we are better able to take care of ourselves, by definition.

Thirdly, we can strengthen our legal systems. And clearly, I know you're entertaining changes in your judiciary. Again, who knows what the right answer is, but by identifying that

there is a problem, you can find a way in which you can better promote justice.

How we resolve disputes in the nation is terribly important. I think you all know that. But it has everything to do with enhancing our sovereignty and our control over the future, if we can deal with this issue with our legal. So reform can certainly address that.

And lastly, I think this all relates back to minimizing the feud. We want to get to a point where we have a common base by which we are working, in terms of acceptance of the rule. Because ideally, I think within any sort of system of laws, you want to get to the point where you're willing to walk away from a good fight. If you loss it, we'll get back in there for the next one.

And that's really the barometer of success. If most of the people, if not all of them, can feel that the process was fair, and even though I lost, I can walk away and move on to the next issue. That's what you all are sort of seeking, I would suggest. That that's the touchstone of the best government you can get. A quest that would really be the challenge of this weekend and beyond.

I have another version of my talk, where I try to sort of lay out a process by which an indigenous nation might sort of go through to come up with solutions to some of these challenges. You're all here, so I don't need to give that talk. I mean, that would really be the first step, sort of identifying the various problems and then coming together to try to solve them.

But I have a few thoughts which you can all ignore if you want, but might be helpful. I don't know. Some you've heard, maybe it's nothing creative. I don't know.

What is the purpose of your government? These are the kind of primordial questions that maybe are beyond a weekend exercise; I don't know. What is your government for? Is your government for the purpose of establishing a cradle to grave a system of helping hands? Or is it a system of government that's designed to influence people to the minimum and provide an external protection against the state or federal government? Or somewhere in between?

That might shape how you decide some of these more specific issues that you're dealing with. What is our nation for, by the way? I know that you spent two days debating the question, so I don't know if you need to do that, but that's one thing.

Secondly, what do we know about our history? I, with respect to my own Nation, would have to be at the top of levels of ignorance in terms of history of the Shoshone people. Not raised in the long house, not raised in the traditional ways, I think it was very difficult for me to really perceive and understand that our governing tradition is hundreds of years old.

I remember when I started working for my Nation, one of the things I heard all the time was, "We don't want your white law. We don't want your white law." And I had no idea what they were talking about. I was thinking, I'm just here to help. And it was a

complicated accusation, reflective with maybe my legal training, and who I was, and that I was wearing a tie. And I even got the fact that I was there to terminate our Nation because I had been working in Washington, and thus have been sent by the Bureau on this mission to wipe us out.

But, fundamentally, when we you look at our own history, there's a lot to learn there. Professor Clinton talked about the red towns and the white towns. Why? Where was there such a strain between two peace functioning war things? Are these the kind of things that you don't mix? And in my thinking with my own nation, we had similar divisions.

Mr. Clinton talked a little bit about the way in which the Shoshone dealt with the separation of power. Men and women had separated functions. Why? Was the creator thinking of something that we're forgetting? Was there elders who came up with that?

We should find out because there's probably some meaning in there. And even though we have been colonized, and we're not the same people we were a couple of hundred years ago, my bet is that sort of extreme or that spirit sort of runs through us somewhere. And it might be worth digging up and thinking about. And maybe even revitalized.

What do we want to preserve of that? That's the other question, right? Some of it we may not want to. Maybe we don't want to have a segregated men, women, form of government because we're not the same people anymore. But at some level, that may be exactly what we need to deal with certain problems.

What are our limitations internally and externally? Internally, it seems like there are few limitations other than what we could agree on. Lots of choices. Externally, sometimes we have to deal with what congress will not recognize. And I see in your '76 Constitution you do have a federal -- I might disagree a little bit with Professor Clinton about whether the people in the Cherokee Nation are really in charge of your Nation right now, if you think about it in terms of the president or authority to sort of deal with constitutional changes and laws.

But yet, we still have this notion of testing the limits. Don't want to ever ignore what's going on outside your Tribe, but from time to time you might want to test it. Punch it in the nose, sort of deal with it in an aggressive away, just to make sure you're still alive. That's up to you to decide how you ultimately do that.

How can we convince others to accept reform? Now, the magic plan, of course, is you guys come up with something this weekend, right? I would suggest at that moment, maybe it's even unanimous, close to unanimous, that would be the ideal, you all become ambassadors for the change. You were here, and in your circles of influence, you go carry the message of what happened here. And you'll need to master everything that happened because you'll talk to your friends, your family, the people you run into.

And if this is a good thing that happens this weekend, and I hope it is, I think it's off to a good start, then each and

every one of you carry this burden of convincing others who weren't here, who don't know as much as you do, who didn't have the opportunity to get involved. And that's exiting. You're going to have three months ultimately to do that.

But how do you convince someone else that we need to be a stronger nation? It's very hard. I think it's very difficult to convince people that we should stay connected as a community. It isn't just by definition. It isn't just a given anymore. We don't live altogether in one place, especially the Cherokee Nation, the largest indigenous party. I don't know; it's probably a debate between you and the Navahoes.

But you're so large, you're scattered all over the world. To find community when you are so disparate, that's a challenge. How do you build those relationships? What is in the best of all of you? That again is one of those -- you could debate for two days that question. You each have your own perceptions of what's in the best interest for all of you. But maybe this size group is just the one that you need to really give some meaning to that issue to develop your Constitution.

And maybe just start a little bit today, and do a little bit tomorrow, and maybe ten years from now, we get a little bit more done. And if this ignites a whole revitalization of governing process that eventually absorbs all the people over time, or it goes in some other direction, I don't know.

But what is in everyone's best interest? I would suggest that the very best thing in everyone's interest is the survival of this Nation. And I would think of nothing less if I was a delegate that that's my responsibility. That what you do here is fundamentally tied to the survival of your Nation, and you as a people. And I don't think that question is any different than it was one hundred sixty years ago, five hundred years ago; it's that same burden that you have as leaders.

Now, let's get on. I'm very thankful to have been here. I'm thankful that you are well. If I have an opportunity to take any questions now or later, I'd love to do that. But I thank you again.

(applause)

MR. HANNAH: Professor, thank you very much for your comments. The Chair's privilege will be to declare a fifteen-minute break, and then we'll come back for our third and final presenter.

(recess taken)

MR. GOURD: Often times when you introduce speakers that you've recently met and had a professional relationship and a working relationship on the strength of your ideas and the work that you bring to Indian country, it's not very often when you get to welcome one of your own home. And so it is indeed an honor for me to welcome back to the capital of the Cherokee Nation, one of our own people, back to Northeastern of which he is an alumni -- you did graduate?

MR. HATHAWAY: Yes, I did graduate.

MR. GOURD: Charles Michael Hathaway is genuinely a Tahlequah product. His father rode a herd over generations of us through the Tahlequah public school systems into high school, and I hadn't seen or heard of Mike or his work for a long time.

And I live out here by Carter's Landing out in a little old community called Keys, and there's a small engine repair shop. I was there one day, and I ran into his brother, Bob. And we were just talking, and I said, "You know, we have reacquired property from the Corps of Engineers. We're looking at an international pretrade zone, a corps facility on Arkansas navigations." He said, "You need to talk to Mike." I said, "Well, where is he? I haven't seen or heard of him for years." "He's in Washington D.C." And I thought, well, okay.

And he said, "Well, he's served as General Counsel to three presidential administrations on international trade policy." And all I could do was look up and say, Thank you, Lord, for placing our homeboy in the right spot for all these years for him to put up with the people in Washington. Because the only thing good about going to Washington is coming home, but that he has survived in that and developed an incredible measure and number of friends and acquaintances, which has already served the Nation well, and it's just because of conversations and my chainsaw breaking down.

I want to introduce and welcome home, Charles Michael Hathaway.

MR. HATHAWAY: I told Charlie when he was going to introduce me, which is an honor in itself, that all he needed to say, that I was Charlie Hathaway's son and Bob Hathaway's brother, and everybody would say, okay, we know them, and that's all right. If you didn't, my brother is here in the back row, and I'm very proud to have him come as a member of the Tribe and to listen to me.

Having spent most of my life learning from him, I hope I don't embarrass you, Bob.

Will Rogers used to say, "I'm Cherokee, but I've got enough white blood that you ought to question my veracity." And I've sort of got two strikes because I'm also a lawyer now, and you all know what that's like. I left Washington, and it was so cold that I saw a lawyer there with his hands in his own pockets.

I have been honored to get to come to the convention as a delegate and also as a speaker. And what the members of the Constitutional Convention Commission asked was, if I could share some practical knowledge of how the executive branch functions with other branches of government under a constitutional setting.

Now, I did my own power-point slides for this, but as Rob Porter said, the quality of slides had already started sloping in a downhill direction, and I didn't want to continue that. So I'm going to dispense with my slides and leave the lights on. They looked even worse than Rob's, and I would be -- well, I can say that more diplomat; they didn't look as good as Bob Clinton's. Forgive

me, Rob. Let me rephrase that. I did have some diplomatic training, but I tend to forget it when I come home.

There are several reasons that I think it's useful to give some examples about how the executive branch in the federal government and in foreign governments works in the context of a Constitution system. And we've talked about constitutional systems like we have in the United States, usually with three branches of government. That's not the only form of government in the world. And the area that I worked in for many years, and still do in private practice a good deal, is in international trade.

United States negotiates mostly with governments that have a parliamentary system. And the prime minister, the head, you know, the chief of these governments is the leader of the party that has either the majority or puts together a coalition of their elected house of representatives, the lower house.

Now, that means that they have an easier time deciding on a policy, especially if they have a majority of the house, because it's their own group of supporters that put them at the head of the party. So they have an easier time getting a negotiating mandate.

United States with the possibility of a division between parties in three different pieces of the government that -- you know, apart from the judiciary, but for interpreting three pieces of the house and the senate and the executive branch, that can be split in many different ways and amongst themselves, as we are well aware from even trying to avoid watching television in the last year. We know how much divisions within in a group can play out.

In the international trade area, when you go through, in the Constitution in Article I, Section 8, Clause 2, which there are at least three of us here that know what that says without looking at it. That's the authority to regulate commerce. And then the interesting thing is, it says, "regulate commerce with foreign nations among the states and with Indian tribes."

Now, you wonder how that got so badly distorted in interpretation. Another branch of government, and with the absence of the organization and the strength to have support for what might have been a better decision out of the courts, you get interpretations that somewhat vary from what is in the Constitution.

Well, if you followed at all trade negotiations and the big debate over NAFTA and others, you find that it is the President that is leading the effort in negotiating agreements and -- well, if you just read the Constitution, it says that congress shall regulate commerce with foreign nations.

Well, how come the President is doing the negotiations? Well, once again, the court interpreted that the President's authority to make treaties, which is in Section 2 of the Constitution, says that -- just that. The President by and with the advice of the senate has the authority to make treaties. That's all it says. Well, that's been interpreted to say that he has foreign affairs power.

In the absence of subsequent legislation, the President

couldn't negotiate the foreign trade agreement. He could have negotiated NAFTA, proclaimed its affects, and it would have gone into effect. Perfectly good law.

Going back from the history of trade negotiations and this division of authority, congress tried its hand at regulating trade and what was referred to as the Smooth Holly Tariff and responded by raising barriers and accelerating a worldwide recession.

After that, in the Reciprocal Trade Agreements Act of 1934, congress said, why don't you negotiate reciprocal agreements bilaterally with other countries, they give us something, we'll give them something, and get the tariffs lowered down to where we can actually have some international commerce.

The President did that, but it was only on tariffs. Now, of course, the Constitution, once again, says congress shall have the authority for imposing taxes and customs duties and tariffs. So that's another congressional function that they delegated to the executive because, frankly, there's a lot of heat that an executive takes for making a decision.

I'm sure those of you who are on the Tribal Council or have been on any kind of committee know how difficult it is to reach a consensus, especially among politicians. The congress had a hard time telling the constituents, no, I'm not going to raise the duty for this, or, no, I'm not going to -- you know, I will lower it or I won't lower it, even though that was a good deal for the country and for the economy. So they delegate that to the President.

Now, following the old theory that the President had foreign affairs power and couldn't negotiate agreements, the President ventured along in the '60s beyond the old tariff reduction authority, and actually negotiated some agreements which required changes in U.S. law.

Our congress didn't think quite so much of that step of authority because the President had not consulted enough and brought them along. They weren't ready to do the things that the President had negotiated, and so before he gets back, really, and submits the changes, the congress passed a resolution, in Resolution S-100 that said, we don't care what you did; we reject it in advance.

And the results of that, all of that agreement fell apart completely. What happened next, and even if you follow this area, it would be -- it wouldn't be intuitive to you now. What happened next was the congress devised a way to give the executive authority to negotiate agreements that would entail changes in U.S. law. Trade law. Not just changing of duty.

And they did it with a lot of conditions. He did it with the condition that he had to consult with the congress in advance on the objectives. He had to consult in advance and ongoingly with both the congress and the private sector on what trade officers were making in negotiations. They had to give notice in advance of bringing back a deal, and then congress would vote on it up or down.

Now, that last vote on it up or down sort of mirrored the

parliamentary system. So in this area where we couldn't get anything done, it was the legislative branch that said, we'll tell you how you can behave as an executive, and we'll give you an up or down vote.

Now, that was what was used to create all of the trade agreements, basically, that the United States has that has produced a significant growth in the world economy.

What was different about the process is congress said, now, we're not necessarily going to listen to all, you know, when you agree to do a deal on gold or steel, we don't want to hear all of these executives coming in and complaining, you did this, and labor union saying you didn't do that. You do that. You ask us what we think, and we'll reserve our opinion to judge on the final verdict.

Sort of like the, we'll vote on the whole thing when we get it done, and no deal until you get the deal done. And we'll wait and see how it looks. So it turned to the executive to figure out something that would have a consensus and support that enough people in congress could vote for it and stand some reasonable chance of doing what is normally their overwhelming objective in life, which is getting elected again next time.

So what the treaty authority said, what the congress authority said in the Constitution doesn't bear any relationship at all with how business is done.

Now, for Indian tribes, that isn't that hard to understand because what has happened in treaties and in the Constitution of the U.S., tribes doesn't bear much relation to what the language says.

The language says that the President has the authority to conclude treaties. The supreme court interpreted that saying, you're in charge of foreign affairs. Well, it didn't say just for foreign countries, it said for Indian tribes.

Congress came along and said, you can't do any more treaties. We'll look the other way if you do one that is really one-sided, and we like it, but that isn't in the Constitution. Now, where's the supreme court to come along and say, wait a minute, you didn't read that right; the President can do it as long as the senate ratifies it. You're done. Don't bother with the House of Representatives; they don't deal with treaties.

Now, one other element in what the congress did in terms of these trade agreements is, they turned what might have been a treaty into an agreement that both houses of congress were going to vote on. The House didn't get left out when a deal was struck. When you do a treaty, if you don't need implementing legislation, the House of Representative is out of it in the U.S.

By the same token, if you did a treaty on the trade agreement and the senate ratified it, the House wouldn't get the bargain. It wouldn't be in on the deal that was cut. They might not have the duty kept up high on taxable mill goods that were given to their state. They might get them lower because they didn't get a

vote.

So these things are balances between the powers. And quite honestly, as important as what's in the Constitution is, the Constitution's language itself requires someone to interpret it and support it, to say what it's going to mean. And it may or may not reflect what is actually on the face of it.

We're probably not anywhere there, and I'm sure most of us couldn't possibly envision a dispute between executive and legislative and judicial branches of our own government because these things happen in the federal government now. They also happen in a different way in parliament.

As Professor Clinton mentioned, we don't necessarily just have a majority votes. Does anybody know how many people are in the House of Lords in London? February numbers were like 1294, I think.

Do you know what the quorum is in the House of Lords? Three people. Go figure.

They can amend bills that come and promote amendments, bills that come from the -- in effect, the elected branch of government. Separation of church and state -- that doesn't make any difference. The church of England has got a reserved number of seats in the House of Lords.

But at any length, in the European communities when that was formed, they did not have a consensus of how they were going to make decisions. Are we going to change our agricultural policy and cut supports down so that French farmers will not be able to have 200 acres and drive a Mercedes? But the French weren't too keen on not having their Mercedes, so that initially was blocked. You had to have something that was called a "qualified majority" on those decisions that were made in the early days of the European communities and they gave weighted votes.

British got ten; Germans got ten; French got eight. And they made sure that things didn't get out of hand from those who were in power, and those things are being phased out now. After the (inaudible) treaty, there are some provisions of authority that were switched over to the European parliament that is directly elected.

But if you think you have seen bureaucracy in the Bureau of Indian Affairs, you've never seen anything until you've walked around in the European commissions. Those are folks who have power, and I don't know -- I've been working this area twenty-five years; I only know of one person who's left before retirement. I mean, those people know how to pay themselves. They have institutional memory beyond it.

Now, as you see some of the costs of these workings are changes in position so that there is more expertise -- and this is one of the problems -- there is more expertise in some areas in the executive branch, and congress will delegate to them because they're less likely to mess it up. There may be a very large congressional staff, and some of you either have known or know people who work on a congressional staff, they may be the experts.

But the way the systems are done and the way they balance

is not necessarily how it is put on paper, as much as how the perception of power and control is done, and how the different factions get together and do a deal.

One reason that I think I had a good time working in the interagency process where we generally operated by consensus was, what I believe to be, you know, a carry-over of the Cherokee way of doing business, which was to get along and solve the problems and get things done.

I've had other people say, how could you possibly stand to sit in meetings for as long as you did until you got all of those government agencies to agree, and then got all of what was, by the time I left it was 102 governments in different countries to sign on to the last agreement that I worked on. There are now 134 governments in the World Trade Organization. Now, you talk about getting a consensus being difficult. That gets to be a form of art, but it can be done, and many decisions in the International Trade area were done wholly by consensus.

Now, it doesn't mean you have to operate that way because there have been changes now, so that -- they kept the idea of consensus, but once they go through like a dispute, you go through a dispute caused by whether someone is abiding by the rules that you set up or not. Now you have to have a consensus to block that consensus, as opposed to a consensus to have it go forward.

In the old days, the losing party to a dispute could block the results. They could even block forming the arbitration panel to make the decisions. These are all procedures and rules that are set up and we can all see the difficulty of process sometimes has enormous impact on the results.

But in spite of what we have in the U.S. Constitution on substance, on the international trade area, there's very little of what is literally in the Constitution that is followed in the functioning of it.

Now, you might wonder -- and it has become more of the case over the years. In 1970, international trade accounted for only thirteen percent of the U.S. product. In '96, it accounted for thirty percent, or around two-and-a-half trillion dollars. Sometime not too far into the next century it will count for half of it.

Now, why is the experience of how you do these agreements, how the congress -- why is it suddenly important? Well, somebody asked me one time, what was the Native community's position on international trading. I said, "They don't have a position; they don't have an agenda." I mean, I can't think of six people that I can call on the phone and have a good conversation about it. Now, this is the growing piece of pie in the U.S. and the world's economy.

I'll give you two examples of why it's important. You look at it this way. Whether you like Bill Clinton or not, there isn't a whole lot of debate that he is a pro-Indian President, as much as you can judge that. He acknowledges the Cherokee grandmother in Arkansas, and is generally about as helpful as any

President has been in recent years.

He put forward an initiative on race, which comprised his discussion of it, the largest single piece of his State of the Union message. When they formed that commission, they had -- how many Indians were on it? None. When you look at the State of the Union message, that's reflecting, not that Clinton ever edited anything, so if you were on an agenda somewhere, and you were on the State of the Union, he could talk all night. No one debated that.

The word "Native American" appeared once, and it was in a different context. It talked about promoting economic development and private enterprise on a small scale, and it was listed in a laundry list. A couple of other times it was mentioned. You know, people who walked on the earth before there were governments here. He didn't have an Indian agenda. He didn't have a trade agenda. He didn't have an economic agenda, and he was the President.

So when Rob Porter was going through his list of the things that you have to have, you have to have something in the process to get a decision. It doesn't make that much difference what you've got on paper and what the rights are, if you aren't as educated enough advocate yourself and you've educated enough friends to have some support for you, you might have a decision-maker that is a friend.

Bill Clinton is a friend. George Bush in many ways would have been friendly. But if they don't have a support when they run it up the flag pole, if they don't have other people who understand, if you went to them and said, wait a minute, didn't the Jay Treaty, when we signed a treaty with Great Britain say that Indians on either side of the border could trade freely with each other, with the United Kingdom and with the United States, without regard -- as if there were no border there. Well, what happened to that?

Well, what happened to that was a district court judge said, well, I think the War of 1812 really superseded that. Well, the only trouble with that, if you read the Jay Treaty, it says these first ten articles are permanent. It didn't mean it could be superseded by something else. The intention was that those rights of Indians that existed at the time the U.S. succeeded in the Treaty of Paris and follow-up treaty to those rights, was something that was supposed to be a permanent right.

And it didn't say, with all due deference, it didn't say just the Seneca, it said Indians on either side of the border. So we should have -- the Cherokee Nation should be able to trade freely with the United Kingdom right now.

Now, the United Kingdom is in European union. So if you can sell with the United Kingdom, you can sell any place with fifteen different countries in Europe without restrictions.

But the courts haven't said that that's the case. And there is support for it in congress. And I will bet you if you did a quiz in Washington D.C. or almost any place else, you wouldn't find enough people that knew anything about it.

So part of getting the Constitution, getting the way the

branches work, and having the objective of what you want, what the people of the Cherokee Nation want or need to achieve, is the educational process that goes along with it for ourselves.

My dad lost his mother when he was four, and she was Cherokee, so we lost what many of you had the opportunity of doing, learning Cherokee at home. Many who had the opportunity didn't follow up on it. Many may not know the Cherokee history.

I've read all of the submissions that came into the constitutional convention of all of yours, and many of you talk, you'll know who they are, talk about culture and heritage and language. If there isn't enough understanding of that amongst ourselves, and we don't have that coming out of our government and our place in the future, we don't have much of a chance of convincing anyone that the rights that we have as a sovereign people are the rights that we have under treaties. Nobody said those treaties were subject to abrogation, but the courts have.

Well, I had a boss one time that was busy getting -- it was a case we had before the supreme court. And he was giving speeches, he was giving speeches. And somebody said, don't you think you should stay around the office; you're spending all of your time getting on the front page of the paper. He says, you don't think those supreme court justices read the newspaper. He said, they're going to know how important this is. They're going to know we have to win this case or we're in trouble.

And he was right. And I went to his designee and sat down and did the supreme court, and I came back and I said, you won that thing eight to nothing. There was only eight justices. You didn't lose them. You could tell that you were going to get every vote. He said, I pretty much guessed that. I think they had the message long before the case went up there. It's not that the courts are bias, everybody operates from the knowledge that they have and their historical understanding.

I went in two years ago to the social studies teacher at my son's school, upon seeing some of the racist stuff that they were using to teach westward expansion. I said, you know, I'm here, and I'm civil. I said, you know, God, you're lucky that my dad isn't up here. He would do something else with this textbook, and I'm just talking to you about it. It took a year for them to get rid of it.

It took a year.

In the process, we sort of lost one school head who was a casualty of some of this battle. But this was not a mean or a vicious school system. They weren't people who were racist. There were as many people who were active in civil rights. They had a minority scholarship fund. They had lots of things that they were doing. They just didn't get it. They didn't know.

And until people know enough, it isn't going to make that much difference -- well, that's not true. It will make a difference what is there, but if we want to have it really carried out, and you want to say you're sovereign and have everybody else say, you know, that's right. We want to have people who are students and

professors or Professor Clintons be justices of the supreme court, members of congress and in the senate, who will say when something comes up, by golly, this is the way it should have been a long time ago, and we're going to fix it, then what we have in our Constitution and how we carry it out and how other people perceive it is very important.

I apologize for taking as much time as I did. Really, I tried to limit myself to twenty minutes, but I couldn't do it. I did skip the slides, though, so somebody had to stay awake. It's a great honor to be here and to be a delegate. I only wish my father had been here to see it. He would have been very proud. I'm very proud that my brother came. Bob, thank you for coming.

I met many people that I hadn't seen in years, and many that I know your cousins and stuff. Frank, I want you to be sure to tell Robert MacLemore where we come. I know in a group -- this is going to be short. I mean, in terms of global, my goodness, I heard, I thought, a motion to adjourn at 6:30 or something.

If we were doing a steel agreement with Japan, we would show up and we would sit there for five days without going to bed. Maybe we would take a break and they would bring in little tea sandwiches and stuff and give them to you, and you just sat there until you wore somebody down.

But Cherokees are a lot more civilized than that. Actually, one of the things I've been proud of, those of you who are on the Constitution Convention did not get a loud enough applause this morning. I've followed, as many of you have on the Internet, your work as a group. Whether we agree with everything that they said or they did, I didn't notice a single action that they took that they didn't have a consensus.

When it looked as if it was going somewhere, I have a feeling that what they did is they said, we ought to be together on this, and they got together. All of you who have put in the hours and the time, I hope that we can justify the respect that you have earned for the Cherokee Nation and the way the Commission has done.

So, rather than give me any applause, God knows, I don't need it or deserve it, but I would like to ask for you to give the Commission another round of applause that recognizes what it's like to have a difference of opinion and reach a consensus.

(applause)

MR. HANNAH: Thank you, Professor Hathaway, for those remarks. In our stated agendas we had set aside a twenty or thirty minute period of time for a panel discussion to allow our speakers to recap their comments and take questions from the floor.

Now, obviously, we've been about the process of moving through our agenda this afternoon, and we're somewhat off schedule with regard to the original state of the plan, but what would be the pleasure of the delegates? Would we have our speakers come back to entertain questions or shall we move to conduct a bit of housekeeping business and then prepare for the evening meal?

We are restricted. We can accelerate the process,

because as earlier admissions today, Ms. McKee, who will be conducting the parliamentary procedure training later, will not be able to be with us until 6:30.

You are recognized.

MR. CROUCH: Delegate Crouch from Sacramento. I'd like to have the three presenters up for some question and answers for some period of time. There are several thoughts that they put in our minds, and there are things that they know about that they can share with us.

MR. HANNAH: Point well taken. And without really putting it to the floor to take a vote, the Chair would unofficially put it out for a general nod of the delegates.

And seeing that there is a consensus of nods, a fine Cherokee tradition, I would ask all three of our professors, Professor Robert Clinton, Professor Robert Porter, and Professor Charles Michael Hathaway, to once again mount to the podium here, and we'll move along with asking questions of these gentlemen with regard to what has been very informative. And thanking all three of them once again as they come to the platform.

(applause)

I think rather than standing here and taking some roll as being moderator, in the fine tradition of our people to be at conversation with one another. So let's take a period of time, and as it begins to exhaust, then we'll move to the remainder of our agenda.

We'll open the floor for questions or comments from the delegates with the three professors that we have before us here today.

MR. CORNSILK: My question for you is that, I think there are two schools of thought on the exercise of tribal sovereignty. One is a natural progression in relationship to other sovereigns like the state or federal government, not exercising all of the authority the Tribe may have. And then there's my school of thought, which is steamroll, and if you don't exercise it, what's the point in having it. What are your thoughts on that?

MR. PORTER: How are they different? In the sense that if you're going to deal with the state or the feds and have a relationship with the outside world, I'd rather deal with that with a steamroller than, you know, a push cart. And I think that in terms of how I would conceptualize it, they're all interrelated. You always want to approach any problem from a position of strength, strength for humans and certainly for Indians, when working together.

This wampam, the Hiawatha fellow, speaks to the great (inaudible), and reflects the notion of five arrows, five Nations, (inaudible). But any one arrow, one nation can be, and that can occur within the Nation, as well as outside with other Nations. I think they're all interrelated. As you deal with negotiations, diplomacy, maybe litigation, if you're strong, all of these answers will be the best you can do with it at the time.

And I think, lastly, you can hold up the notion of either battles in the future doing better in the future, and sometimes you stop and you've won. But I guess that I would have to say, the steamroller model is good, but you always need to be interrelated with the rest of the world.

MR. HATHAWAY: I always like steamrollers, myself. But I think what is important first in this, I think is consistent with what Mr. Cornsilk was saying, is that we have to understand what it would be and how we would express it better if we were not only -- if we were recognized as being sovereign, how would we be behaving differently? What could we do?

Now, there are only so many hours in a day, and I doubt we could accomplish all of that list in any one or more administrations of any Chief, no matter how skilled or how energetic, it's going to take a lot of time. We don't have relationships on a government-to-government basis with the United States, much less 130, 40 countries in the world.

We have a Constitution that doesn't -- in the U.S. that provides less than South Africa's new Constitution for restitution for land. And in the South African Constitution of the Dore (phonetic) for province is to prepare their own Constitutions. There's one providence, that constitutionally, they're required to provide the roll for the Zulu King.

Now, I don't recall that being imposed on Oklahoma's Constitution when they got statehood, but there are a lot of elements of sovereignty that we probably haven't even thought about yet. That doesn't mean that we ought not preface whatever we are saying by saying that we believe that we are fully sovereign and that this should be like this.

But I also kind of hate to lose a negotiation in a battle or in a court case that you might be stuck with for a long time. I'd rather be prepared to win the fights that are necessary to ensure it, and I'm not sure we're there yet.

So I say, be prepared with a steamroller and know what it is that you want, and that's going to take some work, and then be prepared that you're not going to run your steamroller into a rock that's going to break it. You know, you want to pick out something that you're going to win and win some important battles.

That's one thing, a key that I've learned from hanging around Washington for a while. You don't want to pick a battle and lose it because the next guy is going to think he's going to kick your tail, and you don't want that -- you want the perception that when you stand up to somebody, that they're going to sit down first.

I think we had one member of the Commission who probably spoke less, but she didn't have anybody standing up when she wanted to speak. Is that a fair statement? Charlie Gourd's introduction made it very clear that if they're prepared to listen, you're going to get your point across, and people have to be prepared for it.

MR. CLINTON: In response to the question, let me make a couple of observations. First of all, I'm somebody who

believes that sort of like a historical context is important. In the last quarter century as I look across, in respect to Cherokee, has seen a time where tribes are starting to rejuvenate governments and fighting for the space to assert their sovereignty.

A lot of energy has been spent in the last quarter century in fighting for that space. Tribes in Oklahoma litigate a lot of cases with the state in various ways to fight for that space to have their sovereignty recognized. That saps energy. And it saps energy that otherwise could go into actually exercising sovereignty.

In other words, fight for the space to have the sovereignty doesn't necessarily mean that you're exercising it. What it means is you're fighting for the space. But something has got to fill that space. It is building your government has to fill that space.

And so this is a time, I think in many ways, where that space and the idea of that space, though, the federal courts want to keep track of it, is there. The opportunity is there. It needs to be seized, and the space needs to be filled. We know that and there is power of force in that.

And for that reason my own basic view, I guess I would describe it as a steamroller view, I've always told tribes, use it or lose it. Basically, exercise the sovereignty, be sovereign, and really function as a government, or other people are going to look at you and say you're not. And that's the critical problem because then the space starts to contract.

So that, again, I wouldn't describe it as a steamroller. I would describe it as exercising power and building an infrastructure of government. Now, there's a downside to what I just said.

Sovereignty as a term, something all Indian tribes fight for, but never stop and think about, where does the word come from.

Word comes from the monarchy in Europe, the sovereigns of Europe. That's the way tribes were organized. You organized essentially where kinship applies. They weren't organized with a sovereign commanding other people, who was the Crown.

The problem is, if exercising sovereignty and using it or losing it means you must organize yourself in western ways, then you may not be able to express who you are as a community in the way you use it.

So the difficult problem, it's a very difficult problem, is to be able to both use it in a way which is distinctively, in your case, Cherokee, (inaudible), to use it in a way which reflects your culture about which there will be consensus and yet simultaneously, to, in fact, translate it to two different audiences.

One audience is your people, but the second audience is the people you fight with to preserve that space to be sovereign. And that's the hard challenge that you've got, it seems to me. It's to basically express in your Constitution who you are and build that

infrastructure, and yet simultaneously be able to convince your tribal community, the tribal constituents, that this is our principle Cherokee, while simultaneously being able to explain to the outside world who doesn't want to treat that as simultaneous.

That this is an exercise of Cherokee sovereignty and to protect that space, to continue to exercise it and to expand it for that matter, and that's the way I view it.

But I guess steamroller doesn't seem to ring well with me, as a metaphor for essentially exercising what is traditionally a personal prerogative of autonomy.

MR. HATHAWAY: Maybe we can use brush-hog instead.

DELEGATE: On the point of independency, it's been my observation that within our own Tribe, you know, we have a whole lot of funding. That's supposing, according to the Chief, about 150 million dollars. I think it's based on land base, population, head count and poverty level. And within my own heart, I feel like that point of basing on poverty level is an embarrassment, I think.

It's something that we have not addressed, you know, we've given lip service to, but we're not addressing. We're serving the needs of the people, but not really addressing the problem of reducing those needs, or even eliminating. And our property level is somewhere in excess of twenty-five percent family poverty level as to 10 percent nationally.

And I think it's overdue. We'll be content with perfecting our way to administering to the needs of our people, you know. In the scripture that God says, to remove -- to deliver the poor and needy out of the hands of the wicked. We have an obligation because there's so many evils connected.

Poverty is just a name, you know. It also means that it's just a lot of evil connected with it. And that's just a basic problem that we have. I don't know if these people know that or they're aware of it, too, but, you know, that's on my heart.

MR. PORTER: I agree.

MR. HATHAWAY: I think one comment said there are a lot of programs and monies that have strings on them, and they also have burdens that go with them. And they, in many instances, I think some, whether well intentioned or not, that probably have the effect of perpetuating a feeling of being dependent, and therefore not sovereign and subservient. And it's a vicious cycle.

And I think the answer of having sovereignty and having the respect, whether you brand it as being in poverty or not, we would all be in poverty compared to some people. There's no doubt about that. The question really is not how much our people have in terms of materials, but the problem is that not having some minimal level keeps you from getting and having other things that are more important.

Somebody once told me one time that the current generation and this European method of passing out things to people

who aren't the ruling belief so that they'll get dependent on it is not something that is in our culture and our interest.

This person who was a columnist in Washington, D.C. said, as generations get more and more wealthy, they spent their time trying to give their children what they themselves didn't have, and not enough time giving their children what they did have. And we have to -- you know, as our cultures, if we have people who aren't able to give the children what they should have, including a language and a history and the culture and knowledge and the respect for being Cherokee.

I'm not a full blood; I can't help that. But I have enough pride in me being as much Cherokee as I am as I think is possible. And I think one of the things that we're missing, and one of the problems with having not had sovereignty and controlling our own destiny, is that too many people grew up thinking that there was something wrong with being an Indian in this country. Now, it wouldn't be hard to figure that out just from watching the way the people who controlled it behaved.

But it's not a question how much money you have or if you -- the problem is, really, if you get so much given from the government, you end up being as Justice Holmes said, a depend Nation and a dependent people. He went further than most people thought he should have and further than he could get enforced, which was a noble thing to have done. But he didn't go as far as he should have gone.

The dependency that comes with a government program, whether it's a 150 million dollars or 50 cents, isn't something that's really associated with poverty. But before the work of the Cherokee people, imagine what it would have been like if the Tribe had not been treated as Hitler treated the Ukrainians, you know, killed and moved off, and have the land.

Imagine, we wouldn't be worrying about poverty; we would be worried about whether we're providing too much foreign aid to people who are more needy. It wouldn't be an issue. But it is an issue now. One of the things sovereignty is getting -- this is the reason I feel so strongly about getting involved and getting tribes and Indians involved in the growing part of the economy and international trade is because it is hard to worry about a lot of other things if you're hungry.

My grandfather always said that. He said, you can worry about a lot of things, but not if you're hungry. You're going to worry about getting something to eat. Until basic needs are taken care of, and partly what comes from the Constitution in to get to the point that we don't need the other benefits that are coming and the strings that are attached to them.

When we say we're sovereign, we have a treaty right, maybe we'll be at a point where we say, well, you know, we're not talking about you pay us for education, you pay us because you agreed to do a treaty; you pay us back what is current day value as to what you took that was done illegally. And then we'll be square.

Well, actually, you'll be way ahead. You know, you took 26 billion dollars in gold out of the Black Hills, and I don't think the Sioux have seen a nickel of that. And that was in those days' dollars.

So I think all of these things tie in with poverty, but you have touched a chord, and I'm sorry for -- somebody accused me one time of preaching more about Indian rights than teaching.

MR. HOOK: My question probably would be most appropriate addressed in open forum. I'm not sure if we'll have the opportunity, so I'd like to ask you because of your specific comments about Constitutions.

We have been asked to serve as delegates for an extremely large number of people. And as far as I know, none of us were popularly selected. We were appointed; we were chosen at random. I would like your comments on the basis for our authority of serving here, representing a large number of people. Our role, and particularly how we can represent the interests of many of those who are most culturally distinct, those who follow traditions who may appear to not be as well represented as many other components of our Nation.

So how do we do that? What is the basis for our authority? And how do we represent best those who are most culturally unique in the state?

MR. CLINTON: I think that's a very hard and difficult question. I was commenting outside the convention that at some levels, election process here is interesting and unusual, and yet at some point, it actually represents something that probably is distinctly Native, and maybe distinctively Cherokee, for all I know.

I know, for example, of no constitutional convention that has ever been chosen by lot in the way this one was. I know of no Constitutional Convention of delegates, which are a part of it, of which have ever been chosen by lot in the way this one does.

One of the reasons I think that's distinct and unique is it suggests an equal opportunity to participate. It suggests a certain galantarianism. No one is better than anyone else. Everybody has an opportunity. And it also suggests a distinct trust in your fellow Cherokees.

Now, I don't know if everybody is going to see it the way I see it. I'm just an outsider looking in on this process. I don't know if that will give legitimacy.

Legitimacy in many ways is not in the process. Legitimacy is in the eye of the beholder. The question is not really, did we do it right. The question is, how is it going to be perceived. I've never seen a process that have that element, and I was actually quite taken by it because of its distinctness.

Now, does that ensure that, in fact, you're going to get all constituents represented? Obviously not. Sounds to me like you've identified constituencies who may not be represented. I don't purport to know, nor do I purport to speak to it even if I did. Sort of who's represented and who's not, that's not my place.

But at least my observation about this question of

building legitimacy by the process suggests to me that there's an element of your process that is unique. And I guess if I were Cherokee, which I'm not, I would see as interesting and a process of sort of building trust.

Now, any process can be sabotaged by people who don't trust you. Let me give you an illustration. The Indian Reorganization Act Constitution I've talked about are basically boiler pots. There's one real (inaudible) to that, and that's the Hopi IRA Constitution.

The Hopi IRA Constitution was carefully drafted to take account of the religious theocracies of the Hopi and to give a recognized place of the religious leaders and the traditional villagers, the Kickmunguey (phonetic).

However, the Kickmunguey (phonetic) saw it as illegitimate. So they didn't participate. They voted with their feet. Could they have done anything else to have made that document legitimate in the eyes of the Kickmunguey (phonetic). I'm not sure that they could have. So that in some cases it's not the process that produces the legitimacy, it's the way in which it's perceived.

And there's not much we can do about that. There's not much the Commission is going to do about it, except to open it up as much as they could, and it's not my place to comment on whether they did or not. That's for you folks.

MR. HATHAWAY: I'm going to add. From someone who wasn't -- I started to say wasn't able. I didn't fly all over the place with the Commissioners to attend the hearing, but I did read what was said, and there was a substantial amount of concern for more traditional interests being reflected in the Constitution and the way we function.

I wish I were. I don't feel personally qualified to tell anybody what that is. I've read, probably, twenty more books this year than I had the year before, but I don't pretend to know. Maybe most of the people who know are grandparents who have already passed away.

But I view this as progression, so that we may not end up being something that is completely traditional, but at least all of us should understand what it was. Our children should. And we should be proud of it, and we should decide that it's something that we can reflect. And we can do something differently.

I don't know that the world that we have to deal with would accept that now, and probably traditionals would be like the Hopi. They would say, you're doing your own process; this has nothing to do with us.

But I would hope we can get maybe at each stage that we do this, a step closer to understanding and respecting. And even if we didn't, in the history of the time of removal, at least, there were traditionalists who worked together with people who were the most mixed bloods. They agreed on many things. They agreed they shouldn't be removed. They worked together.

I think there's probably -- I hope there's more hope for

that in the future. Because in the ideal world, we would all be speaking Cherokee here and writing it, and we wouldn't need translation in language. But we're not there now. Maybe we will be.

MR. PORTER: A couple of thoughts as well. As far as the representation issue goes, maybe you're thinking about it in a traditional amendment. I don't know who you are thinking of.

But there's almost an internal sovereignty issue. There's all of us who think that the Constitution is the way we govern things within the Cherokee Nation. And then there might be a bunch of people who would reject that. It's paradox.

It's always possible that those who believe in this existing system could acknowledge where the limits of your authority are with respect to those within your community. You can't do anything about making respect, but you can at least restrain your own efforts in how you might undermine their interests.

And then the second thought is, in terms of process and legitimacy, and all of that, I guess maybe Mike would agree, but I think ultimately tomorrow morning at 8:00 you should lock the doors and not leave until you get it done, and really think of yourselves just as you, the seventy of you, sixty-six of you, or whatever it is, and hammer it out. Because who knows whether what you'll do makes any sense to the people outside. But you're not going to know unless you have something tangible and finite, or else all of your efforts will be wasted. It will be a great interesting two-day debate, but you won't have anything done.

So my own personal recommendation would be, do something, only because it's kind of fun, having lived through the process myself, to see whether what you do here will make any sense to people out there who you still have to convince. You have three months to do it. Maybe you'll all be wrong, and you'll all be wrong, and condemned and history will remember that, or not. They'll think this was great work and history changed for the Cherokees.

MR. HATHAWAY: Jay, if you're going to lock the doors, start now.

MR. JOHN KEEN: I've got a question. John Keen, delegate. I don't thoroughly understand the recent decision of the supreme court involving sovereignty with the Kiowas and the sovereignty issue. Could you explain that to me a little bit, the holding, and if you understand the dicta of the decision, and how that will affect the Cherokee Nation in their endeavors, and how, you know, that may limit us on what we can do and what we can't do.

MR. CLINTON: The references of the Kiowas in the supreme court last term, where the issue was whether the Tribe could be sued for off reservation or off Indian country activities.

DELEGATE: Can you please use the mike? We can't hear.

MR. CLINTON: Okay. The reference is to the Kiowa decision last term, where the supreme court faced the question

of whether the Kiowas could be sued for basically commercial activity outside of traditional Indian country areas. And the question was not whether the Kiowa had sovereignty. The question was whether they had sovereign immunity.

I've often felt the doctrines unfortunate. I wish it were labeled something else, like "governmental immunity."

In English legal tradition, there is a tradition that the Crown can't be sued in its own courts. It's often put, the Crown can do no wrong. In fact, the way in which England handled disputes with the Crown, is you petition the Crown for redress of your grievances, and the Crown passed special bills. You didn't sue the Crown in its courts.

That's where the idea of sovereign immunity comes from. It has nothing to do with idea of sovereignty, except it has the same word in it, and derives from the fact of sovereignty.

The Kiowa decision was not about the scope of the Kiowa's sovereignty. The Kiowa decision was about whether they could sue. And the conclusion in a very controversial opinion was, no, they couldn't be sued, and the sovereign immunity extended both on reservations, in other context, in this case, on Indian country activities, and the non, and it extended to commercial or governmental activities.

Now, the reality is, almost every government in the world allows some redress for hirings that the government does. What it usually does is it controls where you can do it. So the United States has sovereign immunity, but a lot of people have sued the United States. They now do it in the United States Court of Federal Claims.

The states have sovereign immunity, but they all have State Tort Claims Acts. And sometimes they limit the amount of the damage, like Oklahoma limits the amount of damage. Sometimes they don't. Tribes sometimes allow suit; sometimes don't, usually in their own courts. I've written, actually, a number of opinions with the tribes I served as Justices on, on this question. And generally both of the tribes I serve allow their tribal members to sue governmental officials to enjoin activities, to enforce civil liberties, in the tribal courts, they don't necessarily allow for suits of damages, although sometimes they do when the Council has authorized. But that's what that case was really about.

I think the more interesting question, and I may presa what Rob would say about this, is why everybody is running to federal courts to protect their sovereign immunity. Why is it that a sovereign is giving up to a court of another sovereign the power to decide what your immunity is? Yet, that's what tribes have been doing for twenty-five years.

And this gets back to what I said before, it's about time to be focusing on what you put in that space, and whether or not it's fair, and whether or not your citizens have redressed their grievances in that space. As opposed to what the other out there, the federal government or the state, is going to force you to do.

That's just a personal point. I hope that helps.

MR. HATHAWAY: You also mentioned something about the Dicta. I think the concern is that what will happen if congress passes a law that forces a different result. What the supreme court basically said without saying it is, we won't declare that unconstitutional. We won't declare that a violation of treaty rights.

So in effect, what they said to all of the anti-Indian members of congress is go ahead and pass something and you'll have our blessing. Now, if it was passed that would be the opinion that this court would be very likely to express. And I don't think there's -- there isn't really much legal debate about that now. Not necessarily the right opinion. Even if you take it logically, why are they even getting to say anything at all about what the ability of somebody to sue a tribe? The tribal laws say that themselves.

If they want to sue you, they can bring it in federal court and that's okay, but if they don't, if they're sovereign, they're going to have to say so. They have to give the permission for somebody to sue.

Now, if a tribe did that; what will happen? What would the congressional reaction, what would the -- you know, it may well be that that pill is just a little bit too big for your horse to swallow right now.

But that really is the next issue. Is something going to happen with this in congress because all the Indian communities are going to be fighting against it when it comes out, but they've already had the advance blessing from the supreme court, which means that unless somebody real quick in the debate comes up with something that the court hasn't thought of and catches on with an unpopular opinion and turns them around, so the court came out with what they basically said they would do, that the congress would reverse that. We're a long way from being there, yet.

DELEGATE: I was wondering, do you have sole conditions (inaudible; not at the mike) as far as Indian nations go.

I'm in Washington County, a Delaware of the (inaudible) they're getting it together and they're trying to form some kind of jurisdiction or whatever to the Cherokee Nation. I didn't know what law we come under if we lived in Washington or Nowata County. Cherokee law, or if it had anything like that.

MR. PORTER: Usually, my ignorance in the subject matter doesn't prevent me from talking about it, but in this case --

MR. HATHAWAY: I was looking for someone in the audience here, to see if somebody else wanted to answer that question. We can treat it like it's a community discussion.

MR. MULLON: Do you want me to respond to that question?

MR. HATHAWAY: Yes.

MR. MULLON: Delegate David Mullon. I don't know exactly what they're trying to do up there. It raises a very

interesting question. If, in fact, a jurisdictional area is recognized for them by the federal government, whether that's some part of Washington County or as much as they have often wanted, which is a lot more than Washington County.

If congress recognized that jurisdictional area, currently under the Indian Civil Rights Act, the tribe that has jurisdiction over that area has at least the power to pass laws that affect all Indian people who live in that jurisdictional area, and that would be Cherokees.

So I guess in those circumstances, it would be in turn what they look at it as. But that would be my response to it. I don't know exactly, they're asking for a district, you know, of some kind, and it really just depends on how that is formed, and who recognizes it, and for what purposes. Right now I don't know enough about it, what kind of an area they will end up with and what the jurisdiction would be for that.

MR. HATHAWAY: I think the answer to the question is, the way Indian policies usually work, is that if the federal government is going to sanction something, taking something from anyone, if they can get it from another tribe, that's so much the better. I think that's really the issue.

If they can figure out how they are going to give the Delaware who should have a good chunk of the northeast and don't, if they're going to give them something, why don't they give them something that belongs to the Cherokees instead of something that should have been theirs hundreds of years ago.

They're actually some interesting treaty rights that the Delaware have back before their removals and their extermination that would be interesting to assert on their behalf. But that's a different question.

The real issue is, if they're going to take something, who are they going to take it from? I can tell you. It will be the first person that said, don't tax me; don't tax me, tax the fellow behind the tree. The fellow behind the tree here is the Cherokee Nation.

MR. CORNSILK: My question on that would be, would carving a portion of the Cherokee Nation out as a jurisdictional territory for the Delaware create a sixth amendment, taking and open the federal government up for lawsuit?

MR. HATHAWAY: Go ahead, David.

MR. MULLON: I will speak on it. I just think it would really depend on what is taken. If they purport to take any trust land that belongs to the Cherokee Nation in that area, then certainly you would have the taking. If they were to transfer or somehow the beneficial interest in that land to Delawares, that would be a taking.

Whether or not you would, because you might recognize them as having the kind of jurisdiction that the Nation exercises within its boundaries now, and kind of set that off with them, would that alone constitute a taking; I don't know. I would kind of lean

toward the direction of doubting it.

But I will say that there are advocates in the Bureau who would like to create and splinter up the jurisdictional areas of tribes, especially large tribes, because it gives them lots of things to do. It causes problems; it causes strife among the tribes, and there's nothing better than a little bit of strife for the Bureau.

They have very strong advocates of recognizing and granting power to authorities to smaller tribes within larger tribes. There's a big movement in Washington to see to do that because they see their own existence as being threatened by the tribes with the programs and all of that.

MR. SCOTT: I have a question, I guess here. And unless we are going to be dealing with this problem here, what does this discussion have to do with writing the Constitution for the Cherokee people right now?

MS. MASTERS: As you brought up, Dr. Porter, the problems that are inherent, you identified four, primarily, and I view that as something that we can do as delegates when we write this Constitution, that we can look closely at those four problems, which were also what you have told us were solutions to the problems, was to address those four issues.

And I was wondering from the three of you, in your experience with tribes, and I view our administration as both our Council and our Executive body because they both administer for the Tribe. And the poor administration based on lack of experience and our ability to be denied this right for so long, I think is a very valid one.

Is there anything we can write in the Constitution in a check and balance sort of way or a guidance sort of way that would get at that issue that we could think about?

MR. PORTER: I've got a quick answer. I don't know if it's directly on point, but it's a story that might be helpful.

When we were working at the second issue of redraft of our Constitution dealing with courts, there was a wide range of opinion that we should have more experienced judges, that we have -- I don't think we have ever -- well, there are only five Seneca lawyers in the world, and we've never had any of us elected to the bench.

MR. HATHAWAY: Stop bragging.

MR. PORTER: Eighty percent of us are former Seneca employees, too.

The story is that, we wrote into the Constitution -- Constitution, you know, "the judges shall be trained in the law." What more could you want? You've got to be trained in the law. No, it doesn't work that way, because what does that mean?

So I remember proposing some language to the effect -- not that people should be lawyers. Actually, that might not necessarily get you where you want to be. But that there should be

some kind of training that the judges had gone through. It started off as, I think it was four weeks of some kind of training that actually my department, the justice department would provide.

By the time the Council got to it, it was gone. It just simply was a declaration in the statute to the effect that the judges would be acknowledged as being trained in the law. Gone.

So the Constitution required it, and the Council kind of took it away. The only other thing that I would perceive as a solution, is, again, if you have a broader system of legitimacy within your government. And say, for example, your Council wouldn't tolerate that kind of fooling around because there's a diversity of opinion and there are people that would ensure if you have requirement in your Constitution about training, whether it be judges or anybody else, that it would have teeth; it would have meaning.

That would be the only other way I think you can solve it. Because regardless of what you write there, there's always going to be ways to bend it and twist it. And that's not to say what you're doing is meaningless; it's just that it's the broader sense of integrity you have within the system that will ensure that those words in the spirit of what you're talking about has life in the future.

MR. HATHAWAY: I agree. I would say that what can be written can be ignored a lot faster than it takes to write it. But as with any other element of any governmental organization, the only safeguard is having the people that are affected by those decisions inform themselves enough and complain. Because whatever else we have now, we do not have the monarchy. We have elected officials.

If you have a Chief that appoints an idiot as a justice and the Council confirms them, none of them -- if that's an important issue, they shouldn't be around again after they have one term. Or if the Chief does it, the Council should hear enough from -- if he misses his job of screening the most qualified people or getting people that will be unbiased and do the best to their ability and they are well trained, or as well trained as they can be -- it's a little hard to be well trained and you don't have decisions published and available and all that sort of thing.

The system is still in the start-up phase in many ways. It's getting them, but it's the outcry that causes it. It causes it in judicial appointments everywhere. It's more direct in some ways if judges are elected, but sometimes you don't get the best judges when you -- a lot of people buy cars, or a bar of soap. It isn't necessarily the best one; it may be the best advertisement, but it may not be the best car. And it may be the same thing with elected judges.

But the real answer is for people to squawk and to be informed of when they squawk and they talk to Council members or they talk to their Chief, that this is something that's important.

Whether it happens in the U.S. or National level, the

professionals who practice before judges tend to want to have one of their own there, of course, but they also don't want to have to be trying cases before an idiot. And they have a review process, and I'm sure they hear stuff there. There should be some input from people who are qualified to judge. Is this person capable of running a trial? Are they capable of writing an intelligence decision, whether you agree with them or not?

The advice of people who are maybe better able to judge than others is what has to come in the process. It isn't something that's necessarily spelled out in the Constitution; it's spelled out in the practical common sense application of it. You have to have something there, but what you really have to have is people who are informed.

Whether it is this, or if it's the next issue, if it's a question of sovereignty, what some of these things that we're discussing now, these may not even get on the table for discussion at this Constitutional Convention, but this isn't the last amendment of the Cherokee Constitution that's going to be written.

Some of these things we've talked about may be in there; somebody will think about something that they want to work on and it may take five years, and it may take twenty years, it may take forty years. Maybe your grandkids that come up, actually get something in that you raised and discussed and thought of.

But getting it in there doesn't mean that it's always going to happen. It's only if people are educated enough to insist on a good result coming out of the process. And it can be something that's different than what's in the Constitution.

MR. CLINTON: I may be restating what I heard. I don't think I am, but I'll do it very quickly. Indian tribes long tried to assure futures through treaties, by written documents. They've written documents to control the future, and it didn't always work. It's not clear to me that a Constitution always controls the future, as Professor Porter just pointed out. The only thing you can do is just try.

The other comment I want to make, which I think also sums up both of these comments, is democracy, for better or for worse, the current Constitution of the drafts I've seen of revisions all are democratic Constitutions.

Democracy doesn't necessarily assure good government. What democracy fundamentally does, is it assures that any society gets the government it deserves. I.e., it assures that the electorate will be able to control that government, and so that ultimately for better or for worse, it's the electorate that's your assurance of good or bad administration. And the question of the informed electorate, which was just raised, is the critical one.

MR. PORTER: Jay is going to cut us off here in a second. I'm not going to be here this weekend. I just want to wish you all the best and good luck. Thank you again for having me here today.

MR. HANNAH: Very special thanks for all three

of you gentlemen for sharing your wisdom, your knowledge and your counsel here, as we embark on this process.

MS. CRAWFORD: Could I address the question on the Delaware issue?

MR. HANNAH: I would give you simply one minute to address that issue.

MS. CRAWFORD: I'm Verna Crawford, delegate. It's my understanding that the Delaware Tribe, in looking for a jurisdiction only over their tribal members, as far as looking for Cherokee trust land, they would look for land only that they own or is a sovereignty. And one reason that this could be an issue here is that the Delaware Tribe is looking at instituting a rule of non-dual membership.

MR. HANNAH: Thank you very much. As we prepare to depart for the evening meal, a few housekeeping elements. On the table outside, there are eighty copies. So those of you who may not be delegates here or those of you who are alternate status, please prepare to allow the delegates to retrieve these documents first and foremost.

And what we will speak to are handouts of proposed amendments that will be entered into debate or into consideration by agenda during the weekend's proceedings. You will see a handout from Julia Coates Foster, reviewing Article V, the Legislation section, Section 3 and 4. Michael Jay Rutledge on the Preamble, Article I, II, Section 1, 2, 3, 4 and 5. Article IX, Section 6. Article V, Section 11. Article VI, Section 16, 13, 2, not necessarily in that order. Article VII, Section 1. Article XII, Section 1 and 2. Article XV. Article XVI and XVII.

There is also a document that has made its way here before us, presented by Owen Scott. I will say simply that it is perhaps best couched as an alternative constitutional document.

Also, John Keen presents a paper with proposals for Article V, Sections 1 through 9.

Billie Masters handed out this morning to the bulk of the delegates one that is distinctive because it's on a blue handout. And, Billie, we did not replicate that handout, and simply state that if any of the delegates did not receive Billie's handout, please see her at the conclusion, and we'll see to it that we round up an additional copy.

MS. MASTERS: Would they raise their hand? I made eighty. Everybody should have one.

MR. HANNAH: And, also, out of that -- and, Billie, I will not go through all the articles that you have, simply to say, they're Articles I through XIV, also a number of them.

And Chad Smith, as well has always --

MR. SMITH: This is by Stacey Leeds, and it goes to proposed changes to Article II, Section 1. We made copies.

MR. HANNAH: If you will in fact put those on the table, Chad. Then as we depart or as we return, I will leave each delegate to their own discretion that you will be responsible

for picking up copies of these documents.

A homework assignment for the evening, no doubt, as we read through not only the revision that will be discussed tomorrow from the Constitutional Convention, but also as we enter into debate with regard to the information brought by the delegates.

We have been joined by two additional delegates this evening. Donny Baker and Rex Earl Starr. I simply ask, have the two of you taken your oath?

MR. DONN BAKER: Yes.

MR. STARR: Yes, sir.

MR. HANNAH: Then you'll be recognized and seated. Are there any other delegates that have arrived here thus far?

I'll take that as a casual question to the Convention, because tomorrow morning we will once again re-verify our delegate status to ensure that we are all qualified to be about the business that we will no doubt be about tomorrow.

MR. McDANIEL: This goes back to this sovereignty. I was wanting to know if these two will be here tomorrow or Sunday.

MR. HANNAH: These gentlemen will be available and joining us for dinner, as well as the reception. I would ask that you hold your question for them at that time. Would you do so, sir?

MR. HATHAWAY: I'll be here later, not that I can answer it. I'll be here the whole time.

MR. HANNAH: My delegate friend from Muskogee, thank you for yielding the floor.

A-ni-yun-we-ya. We are a principal people. And that's what we are about. We have successfully made it to another meal on our agenda. If Luella Coon were here, it would be (Cherokee dialect). But she's not here to correct my pronunciation, so I'll get away with it from the microphone at this time.

Our plans are this. We are going to the University Center. We are going to the second floor where we had lunch in those rooms adjacent to the ball room. We're having a reception for those gentlemen that have joined us with their wisdom here this afternoon and for the evening meal.

And we will return here to these chambers and take up our business of being about the tutorial from our parliamentarian, Ms. McKee, from Fort Gibson and a tribal member, who will give us instructions for the remainder of our agenda with regard to parliamentary procedure and Robert's Rules of Order, as we prepare to open business for tomorrow.

The Chair takes privilege in declaring a recess.

(recess taken)

MR. HANNAH: Ladies and gentlemen, if we take our seats, we'll prepare for this evening's session.

Margaret McKee is a native of Fort Gibson, Oklahoma. She is a registered parliamentarian and has been contracted by the

Commission and before this convention to prepare us for the work that we have ahead of us over the next few days and to serve in counsel to the Chair and to the officers of this convention in conducting our business in a logical format.

I was taken by the fact of visiting her home that she has original portraits of what appear to be family members from both the -- isn't it true that you're a descendant from both the -- from both sides she says. Simply from the treaty party and the Ross party. And so if those two historic factions can come together embodied in this one woman, then surely we can come together here over the next couple of days.

She is a citizen of our Nation, and she is here to work with us this evening. And her agenda is her own until we will conclude. And, Margaret, I will tell you that, you may be here to present, and there's a great possibility we may finish before you do, but we will stay with you as long as we possibly can.

Charlie, I think, is probably taking one of our professors back. Ralph, can you tell me, our allowances for this building, they're not going to come and actually degorge us into the parking lot? We're in good shape here?

MR. KEEN, JR.: We have the building until eight-thirty, at the latest.

MR. HANNAH: I think there will be more of us'ens than there will be of them'ens. We can keep the building as long as required.

Ladies and gentlemen, please welcome Margaret McKee.

MS. McKEE: Hello. I do want to mention in light of Mr. Hannah's remarks, that my earliest memories of my grandparents was them arguing about who had the worst time in the Civil War, and Granny calling Granddad -- Granddad calling Granny a -- now I've got this backwards -- a "Rebel devil," and my Granddad, of course, a "damn Yankee."

I came here this evening expecting to go through some way that you can cut your time down by properly phrasing your motions. And then I got hit with an awful lot of paper that looks like revisions or substitutes. And as to how to handle that, we're going to have to think about it for a minute or two because the time consumption is great, and I guess you don't have this building forever.

But I am going to try to start to see if we can't get together on proposing our motions and getting them to where they're in a better, easier condition to handle.

Do you all understand the difference between the main motion and a subsidiary motion, and a privileged motion, an incidental motion?

THE DELEGATES: No.

MS. McKEE: Well, your main motion, of course, brings business before the assembly. And then in order to process the main motion, you have subsidiary motions in rank. And this has worked for one hundred fifty years, so it may seem to be a little

bit confusing, but it really works. In the days of old, I understand that they had division of the house, they would stand and divide literally, and then spit on each other. I know the Cherokees would never do that.

Then the privileged motions are questions of privilege that allow you to call for the orders of the day, which I haven't heard being used here, and I think that's a good motion. And that motion does put you back on track. And that is, if you are sliding off -- the Chair is sliding off the agenda, and at twelve o'clock he calls for so-and-so and so-and-so, somebody can call for orders of the day. They have to process that.

I'm going to start with the main motion, just to run through these. The main motion, of course, brings new business before the assembly or in the case of a revision of a Constitution, that is your new business. The first motion you can use, you can't use in a Constitutional Convention, as postponed indefinitely, because that is to kill a motion.

Now your amendments, of course, come in two or three ways. And it's important that you learn how to amend because whether you strike, strike out, insert, and this kind of thing, so you can do it in a logical fashion. I'm going to come back and play with a few of these.

And then you've got the motion to refer to a Committee, which you wouldn't be using too much in this assembly; and a motion to postpone definitely, and that is the motion would be to postpone the question on the floor to the afternoon session or something to that effect.

Then limit or extend limits of debate. Now, Robert's calls for the limits of debate to ten minutes per speaker, which in the opinion of the parliamentarian, is ample time. Since the Gettysburg Address only took three-and-a-half minutes, it should be able to get your point across. But, of course, you have that privilege if the other members would allow it.

Then you've got the previous question. And this is the one that I feel is abused the most often because people holler "a question" and somebody will stop and take a vote. Because "previous question" means simply this: I move to stop debate and take a vote. You have to vote on that. It takes a two-thirds vote to stop debate. And the Chair then would handle it that way.

Outranking that is to lay the motion on the table. Now, this is another one that's abused because usually when you say lay it on the table, they think it means to kill the motion, and that's only in your legislative branches of the federal and state governments, and some others who may have adopted it. Do you all understand? I know you've seen this happen.

MS. SCOTT: Do you have this on a handout or something? Are we supposed to be writing this down? Or how is this supposed to be worked?

MS. McKEE: If I could get some handouts made of this, you could have it, yes.

MS. SCOTT: Could that happen? Who here could make that happen?

MR. HANNAH: We will make it happen. Unfortunately, I don't know that we'll have access to a copy machine this evening, but we could have it available for you as soon as possible in the morning.

MS. LANGLEY: Write it down.

MS. McKEE: I wish I had time to do this, but I really didn't. If we have time, we could have it copied by the Commission, I guess, couldn't we? By the Cherokee Nation.

Now, we're into our privileged motions. These motions can interrupt. Now, I explained to you, call for the orders of the day, to raise a question of privilege, it would be personal privilege or whatever privilege, it rarely requires a second. I guess I had better read them to you.

"Call for the orders of day. It is an order when another has the floor."

Is that making sense back there?

MS. SCOTT: I am totally new to this whole concept, and you're kind of acting like we should know some of these things. I would like to kind of lay the groundwork and teach us something we can apply tomorrow. Just telling the names isn't really helping.

MS. McKEE: I know what you mean. I don't know how to do it.

MS. LANGLEY: I move that we buy four thousand dollar's worth of red carpet for the auditorium.

MS. McKEE: Now, I will explain to you that in ordinary societies, if the Chair proceeds without a second, and it gets passed, then you don't backtrack. In ordinary society, the person making the second or seconding the motion does not need to be recognized because all that is, is to make sure that more than one person wants that motion on the floor. Does it make sense?

MR. JOHN KEEN: On the seconding of it, is that a required function then?

MS. McKEE: For the second?

MR. JOHN KEEN: Yeah, for the second.

MS. McKEE: It should be seconded because there should be more than one person in favor of it to put it on the floor.

MR. JOHN KEEN: I understand it should be, but what my question directly is, is that required?

MS. McKEE: It is required, but if it's processed without it, you already know that that means there are people who want it in addition to make their motion, so it is legal to go forward with it. Does that make sense?

MR. JOHN KEEN: So it's not required that a motion be seconded in these proceedings?

MS. McKEE: That's not what I said.

MS. LANGLEY: The Chairman is going to wait for

the second.

MS. McKEE: And the Chairman should really ask for it. And then it doesn't matter how many people second the motion either. Every one of you could second it. It's important to hurry up and second it, though.

MR. SCOTT: If it doesn't receive a second, then it will die?

MS. LANGLEY: It could if he rules that. If he does that, that means that no other person, other than who made that motion, wants to discuss that. And that's your right. Regardless whether you second something or not, because --

MR. JOHN KEEN: So the Chair can proceed to lay it out for a vote without a second?

MS. McKEE: They can, but it isn't recommended, and it's not -- it's usually done when the Chair doesn't notice it.

But after the process has been completed, then the second can't backtrack and say, well, that motion is illegal because it hasn't been seconded.

MR. JOHN KEEN: Well, I'd just like to ask permission to --

MR. HANNAH: I'll always ask for a second.

MS. McKEE: You don't say, "Do I hear a second"; say, "Is there a second?" Of course, if there is no second after the Chair does that, then it's dead.

MS. LANGLEY: We'll just proceed on.

MS. McKEE: The motion was made to buy a red carpet. Is there a second?

DELEGATE: Second.

MS. McKEE: If they move to second, you buy a red carpet. Do we have any discussion? The maker of the motion has the first right to debate. It's important when you do debate out here that you would say, "I rise to speak in favor," or "I rise to speak against."

DELEGATE: If I want to be heard on the red carpet, and I say, "What shade of red"?

MS. McKEE: Well, this is when you start your amendment.

DELEGATE: She just said "red carpet," you know.

MS. McKEE: Well, that's picky. Let's process it, and then we'll get into what shade.

Anyway, where was I?

MS. LANGLEY: I speak in favor of the motion. I think red carpet would look lovely in here.

MS. McKEE: Now, the Chair is obligated to try to get somebody to speak against it. It goes back and forth.

MR. DONN BAKER: I speak against the motion. Is that what you would say?

MS. McKEE: Yes.

MR. DONN BAKER: I like blue better. Or do I just say what I like?

MS. McKEE: That's fine. Don't sit down yet.
You want to amend that motion by striking red and inserting blue.

MR. DONN BAKER: I thought I just wanted to
speak against it.

MS. LANGLEY: He made a motion. When he was
recognized, he moved that we strike red and insert blue. We'll work
our way through that.

MR. DONN BAKER: I'll do better next time.

MS. LANGLEY: Now, where is the word
S-E-C-O-N-D?

DELEGATE: Second.

MS. JORDAN: He could be amended, too, right?

MS. McKEE: Yes. It has been moved and seconded
to amend the motion by striking red and inserting blue. Is there
any discussion on the motion to amend?

The maker of the motion to amend speaks first.

MR. JOHN KEEN: At that point, if I wanted to, I
would just stand up and say, "Yes, I want to discuss it."

MS. McKEE: You would say, "Madam Chairman," and
then they bring in would be recognized. And then you would speak.

MR. JOHN KEEN: And then I would just come up to
the podium and say what I had to say?

MS. McKEE: But the maker gets to speak first.

MR. DONN BAKER: I think blue is a mellow color,
and a lot better than red fighting red.

MS. McKEE: Then you speak for amending.

Is there any discussion against the amendment?

MS. STROUD: What I wanted to know is, do we
stand up to be recognized, or do we raise our hands, or do we go to
the mike, or what do we do?

MS. McKEE: Well, it depends upon your room.

MS. STROUD: So, what are we doing here?

MS. McKEE: You're rising and addressing the
Chair. Because, otherwise, you'd have it in your rules what you're
supposed to do, probably. So you'll rise because this is a special
meeting. You wish to be recognized?

MS. STROUD: No.

MS. SILVERSMITH: Madam Parliamentarian, I rise
opposed to the amendment. I think blue is an ugly color.

MS. McKEE: We've had a speaker against; we get
two apiece. Is there anybody to speak for it?

MR. DONN BAKER: Yeah.

MS. McKEE: You can't speak until everybody else
has spoken. Not everybody else; until we have one more.

MS. SILVERSMITH: Can I call for the question,
to have discussion?

MS. McKEE: That motion is coming up a little
later, but if you want to move the previous question.

MS. SILVERSMITH: If it got down to where it was
just back and forth, back and forth. Could someone --

MS. McKEE: You could do it right now.

MS. SILVERSMITH: I would like to call for the question.

MS. McKEE: You're moving the previous question, is what you're doing.

Is there a second?

DELEGATE: Second.

MS. McKEE: It has been moved and seconded to stop debate. No discussion, because you wouldn't discuss something that you're moving to stop, right?

Those in favor will please raise their hands. Now, I'm not asking you to do that. Don't ask me to count; I'm tired. Those opposed raise their hands. Now, the Chair has the right -- how do I say this -- to determine that a two-thirds vote has been achieved. And you have the right to challenge it.

MR. HOOK: Can I go back to the point of clarification about recognizing speakers. I'm still not quite clear. The person stands who requests to be recognized. Whoever the moderator is, whoever they see standing, in that order, they will call on them. They will not be vocalized by the people standing.

MS. McKEE: That's correct. You rise and say, "Madam Chairman," and then you wait to be recognized. The Chair will recognize the person they see standing first. And I will be glad to tell you, you can challenge that, but I would sure hate to get into it.

MR. DOWTY: Madam Chair, it was recommended today that when we rise, to identify ourselves by name as delegate for the benefit of the court reporter, and I'm certain when we get in the actual process, I think that would be appropriate for everyone.

MS. McKEE: That's standard procedure in a convention.

DELEGATE: Every time when we restate what it is that we're actually voting on, (inaudible) --

MS. McKEE: The question is on the motion to amend the amendment by striking red and inserting blue. That's what the Chair would have to say.

MR. RALPH KEEN: Madam Chairman, Delegate Ralph Keen. I would just ask that while we go through the learning exercises that you would go ahead and ask the delegates to stand and present their name, so our court reporter can --

MS. McKEE: That's good practice. Thank you. Did you hear him?

DELEGATE: No.

MS. McKEE: The Chair asks that when you're getting ready to stand, that you stand and that you give your name, and also that you speak whether you are speaking for or against. And when the presiding officer is here, and they need to select one for and one against, they need to know what you're rising to do, in

order to call the proper person.

MR. POTEETE: Madam Chair.

MS. McKEE: Mr. Poteete.

MR. POTEETE: What is the proper way to require, and the proper way to proceed? If I want to know perhaps on the last motion, is that a debate, or motion, or something of that kind? Is that a point of information?

MS. McKEE: Yes, it is. And that requires no second, nothing. The Chair stops everything and answers you.

MS. SILVERSMITH: Madam Chair.

MS. McKEE: Yes.

MS. SILVERSMITH: I cannot -- I did not hear that these people -- Molly Silversmith.

MS. McKEE: Molly.

MS. SILVERSMITH: I cannot hear the people when they talk over here, and I make the motion that we go up to the mike. This is important what we're doing. We've got to hear each other. We've got to understand each other. I don't want to go home and say, what did they say; what did they say? This is too important. This is too important. I want to hear everything. And if we go up to the mike when we do have something to say.

MS. LANGLEY: So we'll have to move this mike back over. What you want to do if you want to address --

MS. SILVERSMITH: You don't have to do it right now, but --

MS. LANGLEY: Well, we might as well practice it right, if that's the way you want to do it. So if you want to address the motion on the floor, you go stand at the mike. Get in line at the mike.

MR. RUTLEDGE: It's easier when you're on the outside. When you're on the inside, you have to cross everyone, and it's a little harder. If you could raise your hands if you can't hear us.

DELEGATE: It would be nice if everybody would speak up. Just do it.

MR. HOOK: Madam Chairman, point of information. Doctor Hook. Will the Chair repeat every statement which is made? Every motion, everything, so that -- it's very difficult to hear. So if we can't have microphones, which I think, I personally think we should find some way to have microphones available. But if we absolutely cannot, it needs to be restated; otherwise, how can you vote on something you don't understand?

MS. McKEE: I thought that, too, until Deborah told me it cost a thousand dollars per mike.

DELEGATE: Can't they come up to the podium if you're going to make it --

MS. McKEE: I think it would, if they're going to make it.

DELEGATE: What did you say?

MR. KEEN, JR.: Madam Chairman, Ralph Keen,

delegate. Let me explain the arrangements on the microphones. I realize now after one day of this, that this arrangement is a little deficient.

We did, in fact, try to get cordless microphones, but NSU did not have any to offer us. I'm not sure what we could come up with in the short time that we have, but we will make an attempt. But until we can come up with a better system, the PA, we're simply going to have to come to these mikes. Because I agree with the delegate over here, that this is far too important a process to not fully understand what is being debated on the floor, not fully understanding what you're in fact voting on. So that's my statement.

MS. McKEE: Thank you.

MR. POTEETE: How about if we do like this? Instead of reserving three rows and saying everybody has got to get in them, if we've got to have access to a mike, and I don't need it, it's obvious, I can speak plenty loud enough, and some of you are well familiar. The longer I go, the louder I can get if it's necessary.

We could block off from our visitors and observers and reserve some seats higher up for them, and all of us sit closer to the ends. We'll look like a funny congregation, but we will have access. And those of us who are loud can sit further into the middle because I don't have any trouble, and Mr. Rutledge hasn't had any trouble.

MS. McKEE: The convention, they can make those arrangements any way that they want to. Usually, most convention halls will have -- and I'm sure not knocking this one; it's one of the best I've ever seen. They'll have an aisle in the middle here and one on the side so you don't have to walk so far to get to one.

MR. HATHAWAY: Madam Chair.

MS. McKEE: Yes.

MR. HATHAWAY: Mike Hathaway, delegate. We've solved this problem in our local legislature in Arlington by having people, once recognized, then form a queue at a microphone. They do not need to stand and go to the microphone to be recognized, because there may be a long line, but if the Chair recognizes speakers, he can recognize them in order, and then they can go to the microphone. And if they do any speaking other than to say, "Mr. Chairman," once they're recognized, they speak into the microphone only. And then they can be heard.

And then you don't have to have a stampede to get in line for the microphone to request being recognized by this Chair. Especially, since you might not be recognized anyway. And if you aren't, there's no point in going over and standing in line.

If the Chair recognized speakers, he can recognize one at a time. He can wait for them to go over there, or the Chair can recognize one speaker. And if there's only two people, they can get -- the second person can go to another microphone. You basically don't have to speak from where you are, and you don't need to be in

line to be recognized. You're recognized from where you stand up, but you speak in the microphone. If you're going to speak a lot, you sit on the end of the aisle, so you don't have to crawl over everybody.

MS. McKEE: When one person is recognized and speaks for, and that person is supposed to speak before another person is recognized. Really and truly, even though lining up -- and I've seen it done, and I've approved of it many times, but according to Robert's, they're not supposed to line up. Of course, I don't know how many microphones they had back in the 1800s, but that's what the man says.

DELEGATE: Madam Chairman. I can't believe with the resources we have in this room that some of us can't come up with some microphones before tomorrow.

MR. KEEN, JR.: I just came up with something. I've got a suggestion. We may not be able to get cordless mikes, but there are two more inputs for regular hand-held mikes available. And if I can find some with rather long cords, it might be possible to pass those microphones out by via the pages, as people are recognized.

MR. DOWTY: I have a large number of microphone cords; I'll bring them tomorrow.

MR. KEEN, JR.: Super. We've got two more inputs, and that would give us a total of four mikes. We'd have one on each side, and then two to pass around to the delegates.

MR. PEACOCK: I have a sound system company in Tulsa. I can bring microphones, but they're not cordless.

MS. McKEE: That's okay.

MR. DOWTY: I can bring a mike with a power pack, but it's not cordless, but it does have to be corded. And I can bring a couple of additional microphones. Two additional mike stands.

MR. KEEN, JR.: That would be helpful. Do they have long cords?

MR. DOWTY: I've got some cords. I can bring in at least three or four mikes.

MR. KEEN, JR.: I've got two additional inputs.

MR. PEACOCK: If you've got extra long cords, I can bring as many mikes as you need. You've got mikes also?

MR. DOWTY: Yes.

MS. McKEE: In cases of this kind, the Chair might ask if the people would like to step over to the side to discuss this while a motion is on the floor. I'm just saying that to you, not to be rude, but to show you that you need to be processing your motions without too much interference.

So the question is on, is that we're buying a red rug with an amendment to strike red and insert blue. So you're voting on striking red and inserting blue. Is there any discussion further on striking red and inserting blue? That would give you a blue rug.

Those in favor of the amendment to strike red and insert

blue, say "aye".

THE DELEGATES: Aye.

MS. McKEE: Those opposed say "no."

THE DELEGATES: No.

MS. McKEE: The Chair will ask to retake that

vote.

Those in favor of the amendment to strike red and insert blue, will please say "aye".

THE DELEGATES: Aye.

MS. McKEE: And those opposed "no."

THE DELEGATES: No.

MS. McKEE: The Chair is in doubt. Those in favor of striking red and inserting blue will please raise your right hand. And those opposed, raise your right hand.

There being twenty in favor and sixteen against, the "ayes" have it. And you have voted to not -- now, see what I'm doing here. I'm telling you what you voted on, the effect of it, and that's very important. Because sometimes you get lost, there's been so many things happening.

MS. JORDAN: Delegate Tina Jordan. Point of information. Does it take a simple majority or two-thirds?

MS. McKEE: An amendment?

MS. JORDAN: For that change.

MS. McKEE: An amendment takes a majority. I get confused with people with a simple majority. A majority is a majority, and two-thirds. But if you're used to saying simple majority, we might correct you.

MR. DONN BAKER: Madam Chair.

MS. McKEE: Yes.

MR. DONN BAKER: Donn Baker. What if we didn't like the way you just counted?

MS. SILVERSMITH: I didn't like it, myself.

MR. DONN BAKER: I'm just wondering if we really get to that. Do you call for division?

MS. McKEE: Division, yes.

MS. LANGLEY: You just leap up and do that.

MS. McKEE: No recognition or nothing.

MR. DONN BAKER: I can just jump up and holler "division"?

MS. McKEE: The division has been called for. The Chair will retake the vote. Those in favor of striking red and inserting blue will please rise and be counted.

There are twenty-five in favor of. Be seated, please. Now, you see I'm saying for you to rise and be seated each time, rather than let people wonder what you're supposed to do next.

And those opposed to striking red and inserting blue, please rise. And be seated.

MS. STROUD: Madam Chairman, Virginia Stroud. How do we get like a roll call? How do we get a voice?

MS. McKEE: You can always ask for a roll call

vote. It's not done in ordinary societies too much, but it's often done at conventions, unfortunately.

MS. LANGLEY: The other option is to ask for a counted vote, and if you don't believe whoever is in front, you ask for a count-off vote. One, two three, four, you count yourself, there's different ways to do it to keep it out of the roll call vote, because roll call vote does take a lot of time up.

MS. McKEE: Yes, it does.

MS. LANGLEY: There was a fellow this morning that moved to limit debate.

MR. LITTLEJOHN: He left.

MS. LANGLEY: So one thing I could do is I say, "Madam Chair, I move to limit debate on the motion on the floor to two speakers of two minutes each."

MS. McKEE: Is there a second?

MS. BIRMINGHAM: Second.

MS. McKEE: It was moved and seconded to limit debate on the motion to two minutes -- two minutes and two speakers.

There's no debate on this, those in favor of limiting debate to two minutes and two speakers will rise. Two-thirds vote. Well, you don't have to. The negative has it, and the motion lost.

MR. CORNSILK: Madam Chairman.

MS. McKEE: Yes.

MR. CORNSILK: I have a question. Suppose under adverse circumstances that you have recognized the two people who will rise and speak, one for and one against an amendment or a motion, and someone jumps up who's really in favor of it, but is going to pretend to be opposed and might speak weakly, how do you prevent that?

MS. McKEE: I don't think you can help the poor fellow. You've got a problem.

MR. CROUCH: Madam Chairman.

MS. McKEE: Yes.

MR. CROUCH: Jim Crouch, delegate from Sacramento. What happens if the Chair is restating a motion, they've confused me, instead of clarifying it for me. How do I stop the process?

MS. McKEE: You rise and state that. "Madam Chairman," give your intentions or whatever and she or he will have to restate it.

MR. CROUCH: What do I say, "I'm confused"? How do I --

MS. McKEE: Say, "I'm in doubt of your comments," or "I don't understand them," or whatever.

MR. CROUCH: "I don't understand your statement or your motion"; any of those would work?

MS. McKEE: Anything would work.

MR. HANNAH: And this is entirely possible. I want you all to know that. And if at any time that you get confused without having to admit that you're confused, just say, "Hey, Jay,

could you clarify this one more time," and we will repeat it, and repeat it, and repeat it until we've got what it is that we're going to vote on. Is that okay?

MS. McKEE: That's very good, Mr. Hannah.

MS. MEREDITH: Could you explain it with different words if you don't understand it?

MR. HANNAH: We'll draw pictures up here if we have to.

MS. LANGLEY: He shouldn't do that. He should only state the motion, what the motion is. If you want it stated with different words, you need to make an amendment.

MR. HANNAH: And that is why it is so very important, if you can help you, Ralph, on the terminology, at what point that we might bring these pieces of information to the Chair.

Because if you'll recall from this morning, we had a few motions that were made that I think even some of us who were making the motions were a bit confused about what we were saying. And so when we passed them down to the podium, at that point I was able to read exactly what the delegate was saying.

MS. McKEE: It was right after the motion was already processed.

MR. HANNAH: The speed of getting these to the podium, we'll need to pick that up tomorrow.

MS. LANGLEY: Just waive it, and the pages will come get it from you.

MS. McKEE: The motion on the floor is that we buy a blue rug. Those in favor say "aye."

THE DELEGATES: Aye.

MS. McKEE: Those opposed say "no."

THE DELEGATES: No.

MS. JORDAN: Point of information.

MS. McKEE: Point of information.

MS. JORDAN: Tina Jordan, delegate. What is the carpet that we started with?

MS. McKEE: I have written "rug." But if it's the point "carpet," the Chair is in error. You never, ever want to be afraid that you made a mistake. In fact, if you want to know the truth, it usually endears you to the public instead of trying to wiggle out of it.

MS. JORDAN: My question was, is that the proper way to ask, do you use rug or do you mean carpet?

MS. McKEE: The Chair was mistaken, and the motion then -- restate the motion. The motion is that we buy a blue carpet. And those in favor say "aye". Those opposed say "no". I mean, the Chair doesn't mess around.

MS. SCOTT: Point of information. When do we fill out the motion information, and how does that fit in?

MS. McKEE: Ask your presiding officer.

MS. SCOTT: Would that be something that -- (inaudible) -- I move to buy red carpet, and that would be a motion?

MS. McKEE: That's an awful short motion. The writing out is absolutely for motions that are hard to repeat, couldn't repeat it if you didn't.

MS. SCOTT: So we wanted to make a motion on something that's been for the Chair that I didn't say, write it, and be writing it down while the conversation is going on about other things?

MS. McKEE: Yeah. I don't know of any other way to do it. Yes.

MS. JORDAN: Tina Jordan, delegate. Point of information. If we're just trying to change, say, a number or a date, do we need to write the motion out or can that just be from the floor?

MS. McKEE: Only long motions. And I believe it said that in the standing rules that you probably haven't adopted yet.

MR. KEEN, JR.: Madam Chairman. Delegate Ralph Keen. I'd like to speak to this because this was an issue that we took up whenever the Commission attempted to draft some proposed standing rules. And it's an issue that we struggle with.

When we require that motions be in writing and when could they just be raised orally, and the answer that we came up with, and the delegates can agree or disagree or change it, but what we came up with was that any motion which affects the substantive language of the Constitution -- in other words, like a motion to amend language that is pending on the floor, or any type of motion that would actually change language needs to be in writing.

Now, the standard rule is broader than that, and it simply states -- and you can correct me if I'm wrong -- but any motion in length should be in writing. So that's something we need to think about whenever we take up our standing rules tomorrow morning. Just exactly how do we want to proceed, what are we going to require to be in writing?

MS. McKEE: Now, you might want to think of this possibility, Mr. Keen, that if the motion was short, like I move that we buy a red rug, they can be recognized and make a motion, and then send it up. Would that satisfy the Chair?

MR. KEEN, JR.: I believe it would. I mean, of course, our Chairman could speak to that better than I could. But it's really for two reasons. One, for the Chair's own edification, so he could read back a very long motion and accurately repeat it, but it's also just for historical documentation purposes so we can kind of document the whole process and how it came about.

MS. MASTERS: Mr. Vice-Chairman, when we go to the mike and we read our motion so that we read exactly what we've got, then the page should take it up. If we pass it up to the page while we're waiting in line, we can't read our motion as we've written it, unless -- I mean, we're not going to make two copies of everything.

MR. KEEN, JR.: That is true.

MS. MASTERS: So the page should just keep standing by there and take it on up to them, and they can hand it and they can take it up.

MR. KEEN, JR.: That would make sense to me.

MS. McKEE: I'm going to use this to make a point, and these delegates or any members of assembly, regardless of whom they are addressing, they address the Chair. If they want to ask a question, they ask it of the Chair, and the Chair turns around and asks it of the Deputy, et cetera, et cetera. It's very important.

MS. LANGLEY: So if you want to ask somebody that's speaking a question, you ask him the question, and he directs it to the Chair. That kind of keeps it in order.

MR. SANDERS: Jack Sanders, Tulsa County. Is there any way we can cool this place down a little bit?

MR. KEEN, JR.: I thought we had that under control earlier.

MS. McKEE: That's a question of personal privilege. There is no second required, no vote required; the Chair just usually directs somebody to do whatever it takes.

DELEGATE: If I want to just replace language in a certain paragraph, we just say, I move to replace article so-and-so and paragraph so-and-so to the following language, or how does that --

MS. McKEE: I move to substitute.

DELEGATE: Article so-and-so with the following language.

MS. McKEE: The original motion is perfected as far as amendments go, and then they amend or whatever they want to with the substitute, and if the substitute is amended to satisfaction, then the question is, shall a substitute replace the original motion?

Now, that's one of the more difficult ones to handle. It used to be my favorite.

DELEGATE: If that's what I want to do, is that what I say, "I wish to --"

MS. McKEE: Substitute.

DELEGATE: Substitute.

MS. McKEE: It's really amend the substitution.

DELEGATE: I want to substitute article so-and-so, substitute so-and-so, to the following language. That's how you say that?

MS. McKEE: That would work. Depends on what your substitute is about.

DELEGATE: I want to know how to say this.

MS. McKEE: Unless you had three paragraphs or something.

MR. MacLEMORE: Frank MacLemore, Dallas. I have a question regarding your previous point, not understanding. And this may be more directed to Jay. What if I don't understand, and I

-- Cherokee is my first language. I think in Cherokee. You've explained it to me three different times and drawn me pictures, and I still don't understand it. So I request that you explain it to me in Cherokee. What are you going to do?

MR. HANNAH: I'm going to call Ed Jumper to the microphone. Ed has served as the interpreter for the Commission during all of our public hearings. He is quite fluent in Cherokee, and he will step forward and describe it to you in our Native tongue.

MS. McKEE: And I do want to impress on everybody how impressed I was, and am, with your invocation this morning. It's the most beautiful language in the world, and I wish that I spoke Cherokee as my first language.

Do you all realize that my grandmother's side of the folks of the family, their children weren't allowed to speak in their Native language in the boarding schools.

MS. LANGLEY: Another thing I could move, as we're discussing this question we're trying to work on, I can say, "I move to recess for five minutes because I need to caucus with everybody."

MS. McKEE: I don't much care for the word "caucus."

MR. JOHN KEEN: Madam Chair, John Keen, delegate. Could you clarify that for me? Are there limits on that, or certain occasions when you're not able to do that?

MS. McKEE: Do what?

MS. LANGLEY Language: Ask for a recess?

MR. JOHN KEEN: Yes.

MS. McKEE: No, that's a privileged motion, too. It has to be taken as a vote. If you're making a motion to recess when there's business on the floor -- when there's no business, it's a motion.

MR. JOHN KEEN: Then it would be a majority vote.

MS. McKEE: Yeah, but then they can discuss it and amend it and do all of that to it. But if it's a motion pending, then he has to take a vote, or she.

MS. LANGLEY: But you can move to amend it and say, "Madam Chairman, I wish to amend it to ten minutes." Then vote it to ten minutes, or not. Sometimes that helps if things get really feudy and you need to talk with some people and you're trying to be polite, and don't want to talk to everybody, and you can't hear each other, and that kind of thing.

He might do it himself. If he sees confusion is reining, maybe take a five-minute recess and kind of talk to each other for a minute, just kind of get things back in kilter. And that's a thing you could use to help get yourself back together and understand what is going on.

MS. McKEE: I'll take this time to make this point, too. If the Chair does that, or for whatever reason, the

Chair can say -- and this is one of my favorite motions -- it's a routine affair on a motion; "If there are no objections we will recess for ten minutes to reconvene," and whatever time it is. The Chair states, "It's now seven-ten; please be back by seven-twenty."

MS. LANGLEY: Somebody did correct this morning; someone objected, and he or she just said, "I object," and then you do a vote on it. If you don't feel that that's something you should do, and just say, "I object."

MS. McKEE: Any motion that is routine, the Chair can use general consent. Meaning, if there are no objection, we'll be doing this and so. You're doing it to save time. And if there is an objection, you can go right ahead with procedure with whatever is called. But if anybody objects, of course, then you're back where you were.

Do you all understand that if there are no objections? And it should be used more often, in my opinion, because after all, saving time means a lot when you start to think, in a convention. Everything is scheduled, and you can get kicked out of your house if you don't adjourn in time.

Yes.

MR. GUNTER: Jerry Gunter, delegate. I've got a couple of questions about our votes we took this morning. We delayed the vote on the adoption of the rules and the adoption of the proposing rules for the convention; is that correct? I was given a copy of the proposed rules for the Convention, which has like eighteen specific rules. The other items, the adoption of rules, what rules are they talking about?

MS. McKEE: They're talking about Robert's Rules of Orders.

MR. GUNTER: That was done.

MS. McKEE: Yeah. The standing rules has it in there.

MR. GUNTER: This is the only one that will be voted on tomorrow?

MS. McKEE: Yes.

MR. GUNTER: One thing that occurred to me, is that in that revised Constitution that we were sent that had the items changed that had been the topics of discussion, I guess, at the Convention, had, I believe, seventy items that had been changed there. And I think it's wise that the delegates think about that, that if we're going to be voting on at least seventy amendments to the Constitution, that if we spend ten minutes apiece on them, that's seven hundred minutes.

MS. McKEE: I know that's long.

MR. GUNTER: I think that each time one of us speaks, we occupy the time of seventy other people. And I think we need to be aware of that. And parliamentary procedure is kind of good manners written out.

MS. McKEE: Very good point.

MR. GUNTER: But I'd like to think that we -- if

we want to have something to discuss, it should be worth a trip to the microphone or something, because you're taking up my time and sixty-nine other people's time, and we've got a lot of stuff to move through, and I hope it doesn't take forever.

MS. McKEE: Mr. Keen.

MR. KEEN, JR.: I was just going to make a comment to that. In that document there's in fact seventy footnotes, as you pointed out. But many of those footnotes only relate to change in numbering of different sections, renumbering of sections because we omitted one entire article and merged it with another article, and that forced a complete renumbering from that point forward.

So there are not actually seventy substantive changes. A lot of them are very minor. But I just wanted to point that out. I can't give you a definite number of how many changes are made.

MR. GUNTER: But it's a lot.

MR. KEEN, JR.: Yes, I would say there is a few.

MS. McKEE: And remember, too, that editorial changes, changes in paragraphs, numbering and this kind of thing, is something that in this Convention, they've adopted a rule for a Style Committee, which at many other conventions it's up to the Secretary. But you don't vote on those kinds of things to take up time.

Yes.

MR. HOOK: Does that include in the Preamble, things like placement of commas, things like that?

MS. McKEE: Yes. Because that would be foolish, really, to stop and think about it, to argue over that. Some are grammar, and some are not.

This is another thing, too, the parliamentarian is supposed to do, and that is keep the presiding officer alert and correct unobtrusively. My mentor said that a parliamentarian is supposed to be like an iceberg, half submerged, so they don't make a big noise, but they try to do this, and usually by passing notes and this kind of thing. But that doesn't preclude the presiding officer from asking the parliamentarian to clarify something. Do you see the difference?

MS. LANGLEY: We want to make sure you knew why we would be doing that so you wouldn't think I was doing anything secretive; I'm just trying to help him out. Some people say, little notes passed back and forth -- I'm probably saying, "You didn't get a second"; "You might recognize three more people." We want everyone to know what we're saying. We thought we had better tell you that up front.

MS. McKEE: Remember, the presiding officer rules, not the parliamentarian, not anybody else. And when you ask, and it's done frequently, he may need to be corrected, we ask for a ruling from the parliamentarian. The parliamentarian can't rule on anything.

MR. DOWTY: Darrell Dowty, delegate. Question

of information. If a delegate is out of the room, but say there's a motion on the floor, and the delegate does not address a motion, in fact, but addresses an entirely different substantive matter, how does that call to the Chair's attention? What is the proper way to do that?

MS. McKEE: The motion, of course, would be that the delegate's motion is out of order because the person is never out of order unless you're into serious disciplinary areas. So are you saying the Chair then would --

MR. DOWTY: I'm just asking who calls that to the Chair's attention?

MS. McKEE: A person could do that from the assembly.

MR. DOWTY: What would be the proper procedure?

MS. McKEE: Usually they say that they rise to a point of order. No second, no nothing. Make sense? This is why you really do need these motions here, but I don't have -- I can do it real fast. I don't have the votes on them.

MS. LANGLEY: The main motion, you can move to amend it. You can have a secondary amendment on it, like we did the blue to the red. We could have done another amendment if somebody wanted a light blue. Somebody talked about the different colors of red. That would be a secondary amendment to that blue. And that's as far as you can go.

MS. McKEE: So then you take the vote first, the discussion, and vote first on the amendment to the amendment, and then on the amendment to the original motion.

MS. LANGLEY: So you need to understand that you can go ahead and amend the amendment on the floor once. So if you want to do like two different parts of that same amendment, like you want to change the word to rug instead of the carpet, instead of color, that's two different motions. So the one to change it to light blue will be addressed, and then the person who wants to change the carpet to rug and vice versa will be addressed. Because you can only have an amendment and a subsidiary amendment on the floor at one time, so the third one won't be allowed.

MS. SCOTT: Madam Chair, Deborah Scott. What do you do when some of our comments are going to be kind of complicated, and so it may be required more than one amendment? How do you have discussion and kind of thrash it out before you start voting on the amendments?

MS. McKEE: You were supposed to have it in order for amendment and for discussion when you present it, yes. I don't know what you mean -- you mean talk between yourselves?

MS. SCOTT: Well, I mean, there may be something that's presented, and there may be a group that want it totally different, and it may need to be some dialogue about how that can come to -- (inaudible) -- when does that dialogue, can you call a break, or everybody talk or you come back --

MS. McKEE: The Chair could do that, if there

are no objections. We'll recess to iron that out, but it should be moving on with something else. You shouldn't stop.

MS. LANGLEY: If I wanted to do that, for instance, you would speak against the motion in part of your two-minute speech or whatever you're allowed, and say, "I feel the better wording would be blah, blah," and just go on.

MS. McKEE: Then the Chair will ask, and it's the Chair's duty to ask if that is your intention. And many times -- it's a good place to say this -- many times the Chair will rephrase that motion that isn't properly presented and say, "Now, is this what you really want"? Maybe not like that, but, "Is this your intention," and that way it will get it in proper language.

MS. SCOTT: Then there will be one submotion on that motion, correct? And then we all start all over. We say, no, and they then we try again.

MS. McKEE: Amendment to the amendment, and then you go backwards.

MS. LANGLEY: You move up. You have the main motion here, and then you have an amendment, the amendment to the amendment. You come back down. Back to the main motion; somebody else has another amendment to that; back up again, up to two levels.

Did either accept it or -- (inaudible) -- accept this one; you're back to the main motion. Again, when you come to the next one, you do the same thing.

MS. McKEE: Now, we're up to lay on the table. Everybody loves that one because they think it kills the motion, and it really is never supposed to be used for that. It's a temporary postponement. And if I moved, and it passed to lay a motion on the table, and I happen to go to the restroom and come back, Deborah could take it off the table, and I missed the vote. See?

It's really for something that you -- say a speaker is here and his time has come to speak, and the motion is pending, and you'll say that I move to lay it on the table, and it doesn't kill it, no. I've been to some tribal meetings, too. And you tell us not to kill it, you have to have a rule to that order, but you shouldn't have it.

MS. STROUD: I am so confused. We've got all of these people who wrote things that they wanted to add to the revised Constitution. We're going to go through and vote on each one of these papers; is that right? Or each one that --

MS. McKEE: No.

MS. STROUD: So these two papers have a question on Article V.

MS. McKEE: I haven't even seen them yet.

MS. STROUD: I just glanced at them.

MS. McKEE: But the Chair probably has read them, right?

MR. HANNAH: I beg your pardon?

MS. McKEE: When these come up, you'll be handling them a certain way. We probably need to talk about it.

MR. HANNAH: Let's talk about that, Madam Chairman. This morning we referenced the concept that we were reaching an agreement about the adoption of our agenda, of moving through the articles as a framework, obviously, the revision that we're putting before the Convention. And we talked about the concept of voting on items in seriatim.

And I would like for you to lead us through a discussion specifically as this lady has raised, because this is at, I think, the root of most of our debate and discussion tomorrow, and if we're not very careful tomorrow, we could find ourselves sort of spinning in the ditch for a moment.

So once again referring back to your agenda, you will see that in the morning, it is our intent to go through and do a read-through, and that is all that it is intended to be, is a reading of the revised Constitution that is before you.

Now, in that, we'll see a powerpoint presentation, you will see the revised language, and you will see footnotes that will harken back to the original language. Now, the presenters, and I believe we have four or three presenters that will move through certain sections. We will attempt to take license to identify perhaps the rationale that we have behind it, or to clarify a certain element with regards to why that change has been initiated in that particular section.

After that, I believe your agenda then will call that we'll have, quote, unquote, "second reading."

MS. MASTERS: Mr. Chairman.

MR. HANNAH: Motion to consider. This is the infamous Number 3 on Page 3 that we talked about this morning. The motion to consider the draft revised Constitution by seriatim, by article and by section. By article and by section. Virtually line for line. And consideration by article and section, open discussion, debate, and it says roll call vote or voice vote.

Now, with regard to any type of change or an amendment that would be desired from a delegate to bring to the floor, during that particular reading of each of those articles and sections, would that in fact be the appropriate moment for this lady to stand?

MS. McKEE: Yes, you would be processing each of those separately, but the vote, when you vote it separately, then go down to the next one, and so on and so on to the end. At the end of this, the Chair would then say, "Are there any other further Amendment to any of these articles?" So you see, you have the opportunity then if you have thought it over and decided there should be something else to raise that question.

MR. JOHN KEEN: John Keen, delegate. My question, during the second reading, that's when the delegates will have the chance to pose questions and debate, and then it calls for a vote. And then I guess my specific question is, I think after that, I'm slated on the agenda to present one that I've written, that I'm going to propose.

MR. KEEN, JR.: It's in the context of this.

MS. LANGLEY: If you want to change the Preamble, when the Chair announces that -- my understanding, I may be wrong. In Section 3, the Chair will announce -- well, title, somebody has got a motion out there to change the title, they'll stand up. Now, how are you going to address these once these are printed and given to us? How are you going to do that in order?

MR. KEEN, JR.: That's indeed the question that we have to decide. What was contemplated was that our revised Constitution would be on the table for consideration by article and section. So for example, Preamble, now we've already gone through a reading of that, so we don't need to present it again. It will be open on the table for debate, discussion or amendment. And my thinking is that if someone doesn't like what we're proposing then they rise and they move to amend our language.

MS. LANGLEY: What if there's four people that have four different proposals; how are you going to figure out which order they're going to be --

MR. KEEN, JR.: That's where we need to tap into your wisdom.

MS. McKEE: Would you know this in advance?

MR. KEEN, JR.: I don't know.

MS. MASTERS: You go first, second and third and fourth.

MS. McKEE: There's one article and there's a motion to substitute. You can substitute, and then if you want to really go through it, you can substitute for the substitution. That's pretty time-consuming, but it's possible.

MR. KEEN, JR.: That seems like what we're faced with.

MR. RUTLEDGE: I actually called down ahead of time down here to see if I could get my things put on the agenda. I understood that's how we were supposed to do it. I was told that wasn't the case. So now I'm hearing we were supposed to be on the agenda after all.

One of the questions I asked the Chairman earlier in a note, would it be easier just to go ahead and make a motion perhaps to amend the agenda to include all the other ones that have already been submitted, all the written ones that have been submitted, rather than waste time making a motion to amend, getting up and voting on each one of them.

We know they're on the table. It might save a little bit of time to amend the agenda to put them on there and consider them within the context in whatever order you deem proper.

MR. KEEN, JR.: That would be one way to approach it, if we're going to do that. Then do we draw some kind of cutoff period for those amendments that -- what you're suggesting. Let me just restate it as I understand you. That we take all recommendations that we've received from the delegates that are not already an agenda item, and have one vote to amend the agenda to include those items; is that correct?

MR. RUTLEDGE: Yes.

MR. KEEN, JR.: If we do that, when do we draw a cutoff line?

MR. RUTLEDGE: I'm looking to the Chair. I don't know if you can stop debate now and stop people from making other motions from the floor. At least we know these are here now and present. We'll approach these first, and then if there's any further amendments, they'll come to the floor at that time.

MS. McKEE: When you adopt your rules -- well, you've already adopted Robert's Rules. That's what Robert's gives you, a limit on debate, so you'd have to move to amend that.

The Chair really, in my opinion, would say whatever decision you make to expedite it, let's say, if there are no objections, this will be handled this way, and that way it saves you all of that time. Now, if there's an objection, you have to vote that way.

MS. MASTERS: I have a concern, I guess the word is. If the Commission goes through the entire document once, is that what we're hearing? That they'll go through the entire document once, and then we go through it a second time, and we get a limited time to present our amendments or whatever; is that what we're talking about right now?

MR. KEEN, JR.: Well, essentially. The first time is just a presentation of the document, and then the second time around would be open for consideration or debate.

MS. MASTERS: That's what I'm objecting to, going through it twice like that and having the Commission say, well, this is what we mean; this is our rationale, without any discussion or without equal time given at that first reading and that first point.

MS. McKEE: Robert's calls for a read-through and then consideration of. And Robert's does call for a read-through first in total.

MS. MASTERS: A straight read-through is fine.

MS. McKEE: Now, wait a minute. You can dispense with that if the Chair wants to do that. But I'm understanding that you people are going to discuss your purposes of these things, those of you who are involved in it, to enlighten the delegation on the reasoning behind it. Is that true?

MR. KEEN, JR.: That's exactly correct.

MS. MASTERS: But we would like equal time to do that, too. Because the Commission is not just delegates. The Commission's work doesn't proceed through this process. Everyone's a delegate now and equal to, in time and consideration.

MS. McKEE: Well, this would come up whenever they put it on the floor. I don't see how they would benefit.

MS. LANGLEY: They like to speak first because they made it.

MS. MASTERS: A read-through, I'm not objecting to a straight read-through. I'm objecting to giving their rationale

and discussion that went behind it and the time behind that. A straight read-through, I don't have a problem with that. Although, I think we've all read it and are familiar enough with it.

But having it presented twice with one body giving all of their rationale and how they arrived at it, and then us being limited to a minute or two minutes and given the same amount of consideration, because we've all worked on the amendments, also.

MS. McKEE: They originated them. I think that it sounds reasonable to me, but I'm not going to be a voting delegate.

MR. HOOK: Madam Chair. John Hook. Isn't this session now strictly to discuss parliamentary procedure, not to discuss the agenda for tomorrow?

MS. McKEE: That's very true, but this is sort of going to apply. Also it's to help you process tomorrow's business. But if you need to get away from it, then that's when you make that motion, to stop discussion.

MR. LITTLEJOHN: Point of information. Dwayne Littlejohn, delegate. If, as Ms. Masters was relating, the Commission reads it and gives the rationale for changes, is that not an argument in favor of? -- an opportunity to argue against, so we would have an argument -- I'm sorry. I apologize. I'm trying to clarify what -- make sure I understood what it is. So we have an argument for with no argument against, and then we come back the second time, and then we would have an argument for and an argument against.

MS. McKEE: If the Bylaws Committee proposes a set of amendments, that Chairman, they have the right to give their rationale or their reasoning.

MR. LITTLEJOHN: I just want to make sure I understood what the issue is.

MR. JOHN KEEN: Do we have a Bylaws Committee?

MS. McKEE: I use Bylaws instead of -- that's your Commission.

MR. JOHN KEEN: Is the Commission acting as a committee during this?

MR. KEEN, JR.: No, we are not acting as a committee, but our committee is sponsoring this event and our committee organized this event, so that's what --

MS. McKEE: Somebody came up with the proposed amendments.

MR. JOHN KEEN: I was confused as to whether we had a Bylaws Committee or not.

MS. McKEE: No, no. And that's my mistake for calling it Bylaws.

MR. SCOTT: I forgot what I was going to say. Several people have proposed versions of the same article. This morning I heard a discussion of having a choice of A, B, C and D. How can that be handled with this procedures?

MS. McKEE: Well, you will have to vote on them

one at a time. You don't get a chance to just say, I choose.

MR. SCOTT: Well, there's several people have proposed different versions. Some of them have the same idea, but they use different wordings and different lengths of write-up to get to the same point. Somebody else will have a completely different point, but they're all concerning the same article.

MS. McKEE: Well, you'd have to take them as they're presented and vote on them one at a time. However, if it's repetitious and the meaning is the same, then you don't consider them both.

MR. SCOTT: Well, I was wondering how you could consolidate. Maybe there are good points in one of them, and something else, a good point in another one, if you don't want the whole thing. I'm just wondering how, with these procedures we're talking about, you can come up with the best combination of the various solutions. I don't know how to do that. And that's my question.

MS. McKEE: I'm thinking you could move your point as a substitution. But then it makes me believe you have two on the floor already, and that wouldn't work.

MS. LANGLEY: Another thing is negotiation, caucusing, which could even happen tonight. If some of you feel that so-and-so, and so-and-so could be combined, you ought to go to those sponsors and say, could you guys get together and come up with one proposal tomorrow instead of us having two, and here is how I would like it, and let's talk about it tomorrow morning at breakfast, or whichever way you want to do it. Just because they've given it to you in writing doesn't mean you have to consider it. They can choose to withdraw it and substitute, whatever you all come up with.

MS. McKEE: I think the Chair should make recommendations.

MS. MASTERS: Can't it be amended, also?

MS. LANGLEY: Sure, that would be more time.

MS. MASTERS: If you want to amend it, then that would be amended.

MS. McKEE: But you see, the point is that one person can't change the way it's going to be handled. It takes the vote of the entire body.

MR. CROUCH: I think we are going to get bogged down tomorrow, and I think that some of larger groups that I've worked in, it's been very effective to take people for which an issue is a major item and send out what we call the witchhead out into the hall to have a caucus to work out acceptable language between the conflicting parties.

So, for example, there is an issue around appropriate participation, for those of us who don't live in the fourteen-county area, that probably by two o'clock tomorrow should be a caucus out in the hall, or we'll end up processing on five different ways in which that might occur.

There's a version that's in the official revised version that talks about, you can run for Council anywhere. There's Julia Foster's version out in Albuquerque; there's a fellow behind me from Tulsa; and I haven't read all the others. I suppose Mr. Rutledge deals with it, too.

So what I was going to suggest, although the hour is late, perhaps that is one way as we arrive at these places where there's multiple resolutions already on the floor tonight, our Chair and other committee members could identify those and already come tomorrow with the list of caucuses that would need to be held or we could as we bottom into them, excuse the combatants out into the hall until they've arrived at a conclusion.

MS. McKEE: You mean do the consulting on your own time? I think that's great.

MR. CROUCH: I'm saying either tonight these guys could work out where the multiple languages are, and we don't even process them in the second reading, but send them straight to caucus, or tomorrow as we bump into those hard spots, it might be that the Chair would establish a caucus and the people in that issue would have to leave this room, lose their voice in the other issues while they're over there solving the conflict.

MS. McKEE: Do we have provisions for caucusing?

MR. KEEN, JR.: No.

MS. McKEE: You do or don't?

MR. KEEN, JR.: No, we do not.

MS. McKEE: I think that really and truly the Chair and the Deputy-Chair should get together and see what they're about. I haven't seen some of these. The ones I saw you take were repetitious.

MR. KEEN, JR.: Let me explain just a little bit about what has happened. We originally requested that the delegates, if they wanted to be placed on agenda -- and we did this by certified letter about three weeks ago or longer than that, actually. We requested that you submit those proposals to us in writing seven days prior to this Convention, and your name would be placed on the agenda, and you will be given the opportunity to submit your proposal.

Now, there's been a number of questions arise since then, and now we have a number of delegates who are coming up with proposals at the last minute, as we see, and we'll probably have many more tomorrow morning. So we're faced with this dilemma of what do we do. Do we not allow these people to present, you know, we stick with the agenda that's been adopted here? Certainly, we do not want to squelch open debate and discussion.

MS. McKEE: Usually, the assembly will decide that. As I said, if they're tired enough or particularly they're just sort of repetitious, but there's little bitty point of difference. They'll straighten it out if you'll ask them what they want to do and put the question in that manner. Not always, of course, but that's really a problem. We still have a time limit.

Yes.

MR. LAY: My name is Lay. I'm a delegate. What you just said is correct. But I sent mail and so forth to Charlie Gourd. He sent me an E-mail stating I didn't have to do that. What I was going to do is change some small things in a couple of places. So what you're saying, you did send that letter, but I got an E-mail, and I've got a copy of it that says I didn't have to do that. Now, you're kind of chewing us out for wanting to make some small changes.

MS. McKEE: What kind of small changes are you talking about? Is it punctuation, grammar, this type of thing?

MR. LAY : No, ma'am, it's body. But what Charlie Gourd said, if it was outside the scope of the Constitution, then I had to submit it like he's talking about. And it was not outside. It had to do with the Constitution. So he argued me into not sending all of that in. And now you're telling me I should have.

MR. KEEN, JR.: No, sir, I'm not. Let me clarify my statement because it was not intended as any type of chewing out. I was trying to explain how this thing has kind of evolved, and now we're faced with this problem that you just stated. And we certainly do not want to exclude anybody unfairly. We need to have set rules that everybody lives by. But if there had been some exception made to those rules or someone had been told that they were not going to be required to conform to them, then they shouldn't apply to anybody.

And that's kind of where we're at with this because certain people were told some things; other people were told others.

So here we are. And I think this is a very healthy discussion we're having tonight so we can try to sort this out.

MR. DOWNING: I'm assuming that the Chair will do nothing to limit or prevent discussion; however, if the Chair decides to do that, there's a very simple procedure, move to suspend the rules.

MS. McKEE: That's very true.

MR. DOWNING: You know, it takes two-thirds vote for it, but -- of course, or challenge the Chair.

MS. McKEE: It doesn't make sense if you're suspending it for one item.

MR. KEEN, JR.: But we better avoid that situation altogether if we can.

MR. RUTLEDGE: Delegate Rutledge. I know there's quite a few amendments with the same thing. I'm willing to meet with other people and consolidate and make one proposed change or something like that. That's fine with me. We're working, obviously, without knowing who else would be here, or what their proposals would be. So I'm willing to do that and come up with a language.

MS. McKEE: I think it's an excellent idea, and can be done.

MR. RUTLEDGE: (inaudible)

MS. MASTERS: There is a procedure in the Tribal Council model in our value structured in our traditional ways of doing this. And that was, if it did come to a point where we needed to stop and caucus, not that people would leave the room and caucus or miss out on any business, but the Chair would just -- or the spokesperson, the Chair, the person that was leading the discussion and was speaking would just simply say, we're going to have a ten-minute caucus; would the people get together, give their rationale, and do we want to do that before the entire body. And that was just exactly the way it would be happen. They would just move off to the side, and they wouldn't lose their voice votes or they wouldn't go out to caucus.

MR. CROUCH: If acoustics would allow, that sounds fine.

MS. McKEE: This would be done. The Chair would take a motion from the floor to have it done.

MS. MASTERS: We do have that within our traditions and our values.

MS. LANGLEY: One more parliamentary thing we need to talk about. Another is a courtesy resolution. Traditionally, a courtesy resolution is just saying thank you or thanking certain staff members, et cetera.

So you could propose to add people to it. For instance, if you wanted to do things, or something like that, but only the positive vote will be taken on it. You never take a negative vote on a courtesy resolution. So we wanted to warn you of that so you wouldn't feel like you were out of line. That's just the normal way.

MR. HANNAH: Okay, people, listen up for a second. Jay Hannah, delegate, Moseley's Prairie. We need to do a little work here right now. I'm going to rescue our parliamentary from her training session here for a second. She has come here to, in fact, lead us through a better understanding of parliamentary procedure, and you now are inside of the circle with regard to the challenge of how we do this in a logical and democratic fashion.

I want to say right at the very front, there's no one here in this room and no one about the Commission and no designs of anyone to limit debate or to limit a voice of the items that are being brought by you delegates here. Because, after all, ladies and gentlemen, you are the delegates of the Cherokee Constitutional Convention.

Now, what I would like to do in an open exchange is for us to visit here for a moment about what we are going to do tomorrow. Let's come to a consensus about what we're going to do tomorrow. Because if we do not, I am fearful that what will happen is that we will become embroiled in a series of positioning statements, and perhaps -- I would not even venture to say why. Perhaps out of ignorance. Perhaps out of fear that there's someone here with some particular agenda. Perhaps for any number of

reasons.

But we want to be able to have open and clear and honest debate about the issues that are here. Now, I've already heard some very good comments here tonight. The gentleman who I know has presented language with regard to the Preamble has already stepped forward in a voice of consensus and said, Hey, look, I'm willing to get with those of the rest of you who have initiated issue with regard to the Preamble, and we'll hammer these things out so that we, in fact, do not have to look at an amendment, upon an amendment, upon a substitution, upon an amendment. Because after awhile, this thing could move into more iterations than a DNA strain if we're not careful, okay? And I don't think we want to go there.

This is where the Chair looks out for a nod in the audience. I saw at least three. Okay. We're getting better.

So let's talk about -- I think I want to open, gentlemen, the discussion with regard to the presentation by the Commission. Now, as stated earlier, it was our intent as a Commission to say, Look, we have held a number of public hearings; we have heard the citizens of the nation, and we have spent many weeks and/or months in discussion about these various points, and we have attempted within the constraints of our knowledge and ability to stream them together into a revised Constitution that is, in fact, a common sensical approach, so that one amendment does not, in fact, abrogate another amendment, so that they are in concert with one another. That there is, in fact, a closure of these concentric circles that we saw today and spoken about by one of our learned professors.

MR. KEEN, JR.: Jay, if I might interject.

MR. HANNAH: Please do.

MR. KEEN, JR.: There was an issue raised a few moments ago by Ms. Masters regarding us presenting, not only just to read-through, but some of the rationale that went into our proposed revisions. And that actually comes from the statute which created this Commission, and I'll site it to you.

"Upon completion of public review and comments, prepare" -- and it's directing the Commission to do this -- "prepare an interim report to the Cherokee people detailing the proposed amendments, alterations, revisions or new Constitution at an at-large Constitutional Convention."

Now, we interpreted that as being a duty and obligation, of not only preparing proposed amendments, but presenting those to the delegates of this Convention. And so we feel like this is not only within our discretion, but, in fact, a statutory obligation we carry to present these in a full and unfettered fashion for your consideration.

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Sir.

MR. CORNSILK: I rise in opposition to that interpretation. My interpretation of it was that your statutory obligation is to present to this body the proposed amendments and changes to the Constitution as voiced by the people who were at the

meetings that you held all across the Cherokee Nation.

MR. RUTLEDGE: I guess my big question, Mr. Chairman -- I'll address the Chair.

MR. HANNAH: See, you've already had an affect on us here this evening.

MR. RUTLEDGE: Is there not much more you need to explain to us than what was in the footnotes? Because I went through the record that was on the Internet, and I saw where you made your changes. I understood exactly why you were making them. Maybe in the interest of time, we already understand that. I'm curious whether everyone else does.

MR. HANNAH: Your point is well taken. And, therefore, I turn back to my fellow Commissioners. I will speak frankly. This is one of the -- I think one of the great attributes of growing up in Adair County. And I hope that at the end of this process that we will all continue to be exactly who we are, and that is citizens of the Cherokee Nation.

Obviously, the unspoken element that is here is that we do not, or at least there's an underlying theme I think here that says, we don't want the Commission to bring these revised proposals as, quote, unquote, go through and have undue time for endorsement or explanation of those reasons, as though we are here, quote, unquote, selling that revised Constitution to you.

MR. RUTLEDGE: That wasn't my point.

MR. HANNAH: Thank you. You helped to clarify in my mind, so at least I could articulate that point. I come back to my fellow Commissioners and ask the question, that if we've, in fact, posted on the Internet; we've posted all of the items here; we've footnoted those changes, then should we not move to simply initiate a reading of that revised Constitution?

MR. KEEN, JR.: If we, in fact, have the right under Robert's Rules to be the first persons to initiate debate on it?

MR. HANNAH: Yes.

MR. KEEN, JR.: Then there's our option.

MR. HANNAH: There's our option.

MR. KEEN, JR.: It would be a very limited opportunity for some of the more lengthy sections, but that would be an opportunity for us to make our explanations.

MS. McKEE: (inaudible)

MR. HANNAH: Yes, ma'am.

MS. McKEE: (inaudible)

MR. HANNAH: Ms. McKee points out to us that from Robert's Rules that if the delegates have the material in hand, which you in fact do, with regard to the revised Constitution, that we can dispense with the first reading. Now, gentlemen --

MR. RUTLEDGE: Mr. Chairman.

MR. HANNAH: One second, please.

This would allow us to move our reading of the revised Constitution and contemplate amendment or debate with each one of

those articles as we proceed through.

Your point.

MR. RUTLEDGE: My question earlier was -- it wasn't answered -- is there more information you need to present to us? Because if there is, I do want to hear it. My question was, do we have more information or not?

MR. KEEN, JR.: In response to that, I would say, yes, in several areas of the Constitution. Some of those footnotes are fairly well detailed, and many of them are self-explanatory, but some of them are not. The one on the judicial article, for example, I put a simple footnote because there were so many changes implemented, I didn't want to have a half page long footnote, and I was pressed by time anyway. So that would be an example, yes, there is some additional things that we would like to relate to the delegates.

MR. RUTLEDGE: Does that apply to all of them, or just certain ones?

MR. KEEN, JR.: Just certain ones.

MR. RUTLEDGE: Then could we perhaps have those, identify which ones of those -- (inaudible) -- and dispense with your before speech otherwise.

MR. KEEN, JR.: Are you suggesting that we dispense with the readings and just address the things that are not adequately treated in footnotes?

MR. HANNAH: No, I believe what the gentleman is suggesting, that we, in fact, have a reading of the entirety of the revised Constitution, but only limit our remarks of explanation for those sections that, in fact, require explanation. Would that be correct?

MR. RUTLEDGE: I would even be willing to dispense of the reading, but tell us what the information is that we don't know.

MR. HANNAH: Sir.

MR. DOWNING: Carl Downing. Jay, I assume that tonight is an effort to gain better knowledge, and you have had input. However, if tomorrow you debate, you will have to answer.

MR. HANNAH: I hear you, sir. I hear you. Once again, we've taken this turn to the podium this evening, and I am appealing to everyone's sense of common sense. And, once again, for our earlier mandate that we seek consensus, I think it is incredibly important for us to leave these chambers this evening with a better understanding of what we're coming to do here tomorrow, or we will, in fact, find ourselves right back at this juncture tomorrow. And time is of the essence for us.

Ms. Silversmith, I believe.

MS. SILVERSMITH: Mr. Chairman, Molly Silversmith. Tomorrow when we come in, we're going to go to this revised thing, are we not? This is what we're going to talk about and look at?

MR. HANNAH: That is what we're discussing.

MS. SILVERSMITH: When we come in, we're going to see Article I, Federal Relationship. The Chair -- Mr. Chairman, we can read it together, then you can ask the body, anyone have amendments or -- and if they're -- or how many amendments, or -- you may have five people that want to amend something in here.

Could those five people, as the gentleman suggested, go to their little place over there, work out -- find out what their notes are, maybe three of you have the same notes. It can go quickly, hopefully. But it can. While they're doing that, we move on to the next one. And we go to Article II, Bill of Rights.

MR. HANNAH: Wait a minute. I'm a sound student of non-verbal communications, and I'll tell you that I think that I --

MS. SILVERSMITH: But we're actually reading through it, is what we're doing. What you wanted to do in the first place.

MR. HANNAH: What was proposed. What was proposed to be done. And, you know, you need to carry through with your example. By the way, you're on a good roll; stay there. So you're talking about this simply being a read-through and --

MS. SILVERSMITH: We are reading through, as you wanted them to do. In the meantime, we're taking care of the people that have amendments.

MR. HANNAH: We need to work through this element, because as Ms. McKee points out, at least from an academic standpoint, we would not halt the Convention to actually go into a caucusing mode. So it won't be, for instance, that we would actually read the Preamble and that we discover that there are eight different amendments to that. We identify those eight individual --

MS. SILVERSMITH: No, we do not identify them.

MR. HANNAH: The Chair now declares five minutes of caucus time, and you eight people go to the back room and come back with a singular --

MS. SILVERSMITH: And we go on.

MR. HANNAH: And we go on.

MS. SILVERSMITH: As he said, you may miss one, but you can still hear us if you stay in here.

MR. HANNAH: We're going to hear from Mr. Scott, our fine man from Muskogee.

MR. SCOTT: Say I'm in the caucus on the first item here, and a second one, I may also have opinions on that second one, also.

MS. SILVERSMITH: Sure. Sure. But, see, you're in the room and you can hear. We're not going to vote -- not going to go without you. When you get through with your caucus, the caucus on the Article II, Bill of Rights, may be over here, and you go join them.

MR. HANNAH: Let me just warn that I think in theory this sounds fascinating.

MS. SILVERSMITH: I think that's what we're

going to have do. We're going to have to try and fix this.

MR. HANNAH: Then let us hold that thought. I think you have framed that well for us, and we now know what your proposal would be for us. I'd like to hear from this gentleman.

MR. RUTLEDGE: I think that sounds wonderful, except that I think I'm going to have quite a few amendments. (inaudible) -- caucus. I honestly just did not make a lot of amendments. I think there are legal reasons why.

MS. SILVERSMITH: I don't think we're going to run into that kind of problem on every article.

MR. HANNAH: Which I believe that your point is exactly what Mr. Scott is raising. It would be impossible for you to participate in two caucuses, caucusie, or whatever the plural form would be. I must be careful with that. I might actually come up with a Hispanic phrase, definitely a Latin phrase, to describe it.

MR. RUTLEDGE: Mr. Chairman, perhaps we should go back to my original suggestion, that both of us who have multiple amendments on the same article or section, before all of this starts tomorrow morning, see if we can't iron out the differences.

MR. HANNAH: Let me rest with that idea. We may, in fact, move in that direction. One moment. I'd like to recognize Mr. Cornsilk.

MR. CORNSILK: I have a question for the Commission just as a point of information. David Cornsilk, delegate.

The Legislative Act that creates the Commission and empowers them to take testimony from Tribal members also, as Mr. Keen pointed out, asked that you present a report of proposed amendments. And it was my understanding that this Commission would present that report to us. And in looking at the proposed Constitution you have, I know from having attended a couple of those meetings, that some of the proposed amendments by citizens of the Cherokee Nation are not incorporated in there. And as a delegate, and a person, who I suppose is representing an extremely large percentage of the Cherokee population, I want to know what those people said.

MR. HANNAH: And this, David, thank you, is the point that brings us back to the original intent of the Commission of reading through the revised Constitution and giving you the benefit of our discussion.

Ladies and gentlemen, I will tell you that many hours of debate were spent among the Commissioners in looking at a wide variety of suggestions. And when taken in singular form, they, in fact, make a great deal of sense. When brought into total scope of the Constitution, they, in fact, begin to bring other questions to other sections.

And as a Commission, we reached a consensus to generate the document that we have placed before you. And it was our intent by this agenda to give you the rationale of our debate and of our

thinking. And before we re-recognize you, have I misstated in any way?

MR. KEEN, JR.: No, you have not. I would only add that it would have been physically -- it would have been impossible to incorporate each and every suggestion of each and every Tribal member you heard from because many of them are conflicting, completely at odds.

So, obviously, that's what brought about all the debate and discussion on behalf of the Commission, is that body of seven people tried to come to some consensus using our own rationale, our own thoughts, arguments, in conjunction with what we had heard from Tribal members, to come to what we felt would be a fair recommendation for the delegates at this Convention.

MR. CORNSILK: Am I re-recognized?

MR. HANNAH: Yes, sir, you are.

MR. CORNSILK: I just simply want to point out to you that good citizens of the Cherokee Nation came to you in good faith that you would present to this body their comments, whether they be in conflict or not. And that we would know what those people's comments were. And we could then, as a body, eliminate them as we went along.

And I feel like -- this is no disparity remark against the Commission because I know you all worked hard. But you have basically denied this body the voice of the people who you went out and took comments from. I know that there were lots of work put into that. I'm not trying to deny you your right to claim that. What I'm telling you is that, I came to you and spoke, my dad spoke to you, and several people here were at all the meetings, and now I don't know what all of the people said because I didn't go to all of them.

But I think the legislative act said that you are duty bound to tell me what they all said. You don't decide for yourself that this one is good and that one is bad; that you present all of them to us, and let us, as a body, decide that.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: Go ahead.

MR. GOURD: I'd like to respond to part of that.

That was one of the purposes of the court reporter and in posting all of those comments on the Internet. Now, if it's expected that we run copies of those and read what everybody said, we could be here for quite some time.

The other thing that we did in looking at all of the comments that were submitted, a number of those are mostly legislative functions. We have discussed at length that we're going to generate a document which includes a whole series of recommended legislative actions that the Council can take, which would, I think, go a long ways toward alleviating a lot of concerns that people have as far as the law of the Cherokee Nation, that we don't necessarily have to put into the Constitution, and it become a restrictive document, and hamper future Councils and the people of the future to

have to go back and make amendments as things change in life.

We wanted to look at this Constitution and make those changes that are most appropriate now for the near future with these legislative recommendations, and that's -- I mean, that -- to say we discussed at length.

MR. CORNSILK: (inaudible)

MR. GOURD: Well, we can. We can run copies of all of those. It's about this tall, and we can start reading exactly what everybody said. That was the other purpose; we posted that as soon as they became available, so everybody would know exactly what everybody else said, to the extent to which they have Internet access. That was my next statement. If you want us to run copies and start reading them, I guess we can do that.

MR. HANNAH: Gentlemen, one moment, please. This gentleman has been standing for some time.

MR. HOOK: I yield to you.

MS. BERRY: Berry, delegate. I would like to point out that none of the testimony from Houston, Oklahoma City, California, Kansas, none of that, we have had access to none of that. So all we have is what the Commission tells us, and I just want to point that out.

MR. KEEN, JR.: Let me offer an explanation for that, ma'am. It is really a logistical problem. All of those meetings were reported, but we -- to date, we still have not received the transcript from the Sacramento meeting, nor from the Houston meeting. And we just recently, I think, about three days ago, we got one in on the other one you mentioned. So we've just simply not had time to get that on the Internet.

MR. HANNAH: And by way of information, if you would accept my report, it is a good and clear one. I was the only Commissioner to meet with Cherokee citizens in the city of Houston, some of which are here this evening. And so, therefore, if I misstate the tenure of our meeting, feel free to bring it to my attention and make corrections.

A status report which is of the Commission, which has been lightly circulated, was reviewed at that meeting, and I would say that the bulk of the elements that were endorsed as far as, you know, telling the Commission, please, look at these issues, were, in fact, the same issues that have been raised almost to the letter within our progress report.

So outside of anything that would be styled as new in form from our other hearings, was not a part of our Houston meeting.

Obviously, with the delay in receiving the written testimony from those who took the record there, we are at somewhat of a disadvantage.

Dr. Hook.

MR. HOOK: John Hook. And that was basically one of the ones I wanted to address, that was the lack of information on Houston at the meetings. But in your statement of presentation, amplification, clarification during the read-through

of the proposed comments, would that include a summary of other perspectives, other comments on those specific issues, would that be a part of your comments?

MR. KEEN, JR.: My short answer to that would be, no, because we haven't compiled a comparative list like you suggest. It could be part of the finalized document, but it wouldn't be something that we could have prepared by tomorrow.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: Mr. Chairman, John Keen, delegate. I'd like to rise in support of the Commission. My personal feeling is I believe I submit to the convention that they have complied with the legislative act. They've compiled a report; they took the testimony; they compiled a report and presented it to us.

Now, as I understand, the question is, how are they to present it to us? I think we should be dealing with that more and with the lack of information to the delegates. I also submit to you that there's delegates from each of the meetings here.

I live at-large. I was at the Kansas meeting. I was appointed from my testimony at the Kansas meeting. And if there's any questions about the testimony there, I as a delegate out of that meeting, would be happy to address any of that.

But I submit that the Commission has done their job, and has done a good job. And I would like to see us get back to the order of business tomorrow, rather than argue issues that would be moot, that we can't do anything about at this late hour.

MR. HANNAH: Thank you, Mr. Keen, sir.

MR. CROUCH: Mr. Crouch, delegate. I think the issue sort of boils down to people wanting to have some form of first reading for the handy work that they've brought to the meeting. And it is in no way a reflection of the work that you've done.

I absolutely believe that the analogy is right. This group -- this committee, the Commission had the responsibility to bring consensus out of all of that various input and share it back with us, and I think they've done that admirably.

But we do have the issue of people working on developing language themselves, wanting to make sure that they have the equivalent to a first reading opportunity for their own English. And I think if we would focus on that, I personally think that you can do it by literally doing that. Letting everybody that has got something in print, give them five minutes or ten minutes to stand up behind it and walk through their whole thing, equivalent to the Commission's first reading, then go back to the Commission, the official language for second reading. And we would all be informed of the various amendments, and we could work it from there.

MR. HANNAH: You bring a good suggestion to us.

Thank you, sir.

Ma'am.

MS. CRAWFORD: Delegate Crawford. This morning

we approved the agenda as it stands, and I would be in support of the agenda and with what we've already approved.

MR. HANNAH: Let me please state that until we do likewise, that is, in fact, the direction of this Convention. I would be hard-pressed to take us in any other direction, unless you as a Convention decide differently.

Sir.

MR. RUTLEDGE: Delegate Rutledge. The point that was just made, I'm afraid if we do stick with the proposed agenda the way it is, we're going to get bogged down with motion after motion after motion of our amendments. Vote, motion, vote, and it's going to slow us down further. It might be a little more expeditious to amend the agenda slightly and do it that way.

MR. HANNAH: Mr. Littlejohn.

MR. LITTLEJOHN: Point of information. If the Commission had its way, and we all read as it were written, the revised, is it the Commission's desire that this revised Constitution as written be adopted? Is the Commission satisfied with that document that has been presented?

MR. HANNAH: That is that question that --

MR. KEEN, JR.: I'll take a shot at it.

MR. HANNAH: You go first shot; I'll start working on my answer.

MR. KEEN, JR.: Are we satisfied with it? Well, to a consensus we are. Is it a perfect document? Probably not. Do we feel like it is a workable document to function as a Constitution? We truly believe that it would function. But that's not saying that we are not open to the thing being changed or amended by the will of the delegates. We consider this recommendations; at the very least, a starting point. A framework in which to work from and --

MR. HANNAH: If I may pick up on that. That is exactly the spirit of the Commission. We have structured a document that, yes, we have all endorsed. But I think the vernacular is that we recognize that there are margin adjustments to this document that is best left not to a Commission, but left to delegates.

By way of example, and I know this is probably ill advised for me to do, but you all are going to help me because I think it is best for us to use real examples, rather than talk about if our carpet will be red or blue, which by no means is an expungement of your work here. But let's talk about something legitimate for a moment.

There is a proposal in the revised Constitution that calls for an expansion of Tribal Councilors, and it is coupled together with, obviously, a staggering of terms, and these are items that we have heard in our public hearing.

But to set those into motion, the question came before us in discussion, well, do we turn around after adopting this Constitution and hold a whole new series of special elections? And if so, what would, in fact, be the financial burden of that upon the

Tribe?

And what we came about after quite some debate, as I recall in that room, several hours, was simply to -- we reached a consensus that we place before you that those additional Councilmen would, in fact, be appointed by the Chief, confirmed by the Council, and there's an entire -- as you have read in your document, a formula for getting us to that new expanded Council.

Now, back to my good friend, Mr. Cornsilk. We have heard that in our hearings that, obviously, statistics are true. When our Tribe -- when our Constitution that we operate under now was formed, we were probably less than forty thousand Cherokees. Today we are over two hundred thousand.

We have heard concerns with regards to representation. We made allowances for such. We made allowances for staggered terms. How that is instituted, we made a recommendation, we reached a consensus with it, but it's obviously something that may well -- you know, an immediate example would be, no, we don't want for these to be appointed and confirmed, we want to initiate a special election of all of those individuals.

So when you ask the question, is it a document that we can endorse, we have, from its frame and its substance, and it is something that is not from our own obvious contrivance as much as it is an entitlement, if I may use that easy word -- of the voice that we heard from the Cherokee people.

Mr. Poteete.

MR. POTEETE: I think that what the Commission has done, is what they were asked to do, based on the discussions that Council had when it passed legislation. We wrestled at length with, how do we choose delegates for such a Convention? We only have an election every four years; how are we going to choose a group of delegates to come together? We couldn't figure that out. We talked about bringing in experts. Then we decided that -- then, of course, we don't always agree between all of us.

MR. HANNAH: And you did the right and noble thing. You left it for us to decide.

MR. POTEETE: We talked about whether we should bring in experts to help advise us how to structure a Constitutional Convention, whether we should read an autobiography to see how they did it. Of course, all of that contracted; it doesn't work for us, for our situation.

What we came up with, is we're going to, each branch of government appoint some people that we can agree on, and we're going to put their best minds to work for the seventh person, and then we're going to ask them to come forward and go out and hear what the Cherokee people say, and try to summarize that, and try to balance it, and try to come up with the starting point.

And actually, what we thought when we first started was that they would weigh it all out; they would give us some kind of analysis and say, we heard this from this many people; this from this many; this category over here is obviously best left to

legislation, rather than to casting in stone in the Constitution. And so we'll take that -- we'll take what they bring us, and we wrestled with whether the Council should be the final approval of what would go to the people or whether we should leave it to the Commission.

And the Commission, after it was pointed out to us that at any time this Council could propose amendments to the Constitution at any given election, we have that option at all times. So we left it to these learned gentlemen and Ms. Coon to sort this out. We couldn't think of a better way.

So, now they've brought this in. And I think what they want to do with the read-through -- I do not get the idea that they're trying to shove this at us, but I think what they want to do is to explain what their reasoning is behind -- after they weighed all the things, they looked at this, and they looked at that, and this is a legislative matter that's best left to legislation.

And now we've come together, and Mrs. Berry pointed out, or someone did -- this gentle woman pointed out that we had approved the rules, and they have legitimately stuck to it.

The first item of business in the morning is to set up the rules by which we're going to conduct this. And that's what we're trying to do now is sort it out and get our minds together. It's going to be a horribly cumbersome process if we go through, and it's going to be, as you indicated, stacking one piece on top of the other.

And if we send a caucus out, I think it's too much to hope that they're going to reach a consensus and come back. The best thing we might hope for is that they can come back and say, here are two alternatives; we can frame it this way or that way, and boil it down like that.

And I would submit to you for discussion before I sit, that perhaps we should organize ourselves around, choose up committees in which people would get together and sort out the options of which we'll be voting on, into committees.

The other thought I had was that we have too much to do. The delegates want to have input. They don't want to come in and say, yes, we vote for this, or no we don't want to vote for it. Three days is probably not long enough to conduct this kind of Convention. Fifteen minutes is not long enough to hear a change to the organic document, if that's the word for it, the basis on which we live. It needs to be sorted out further.

And so we need to think about that as we go through. And maybe even consider that we can't do all the work that has to be done now, and let's don't rush this thing. Perhaps we need to recess and come back later after we have come up with some consensus from the group and go out into the community again and let the Cherokee people react to this.

I feel very strongly that we'll get more public reaction and more participation, after we say, these are the matters that are being put forward, and we're going to come back and finalize that

before we put it on the ballot. Yes, it's expensive, but it can be a lot more expensive to turn out something that the Cherokee people didn't support, and it wasn't a good document. That could be horribly expensive in the long run. I appreciate the opportunity to speak.

MR. HANNAH: Thank you, Troy. Let me say, before I recognize the gentleman to my right, that there is one phenomenal safeguard in what we are about, for those of you who may be concerned that we will be about rushing towards a process, is that this Convention, and if we are to bring amendments or a document, it will be to bring them before the voters of the Cherokee Nation. Our people will, in fact, have the final say in what is going on here; not this Convention.

Sir.

MR. DOWNING: Carl Downing. Point of information.

MR. HANNAH: Yes, sir.

MR. DOWNING: Could you read or have read the enabling legislation that created the Constitutional Commission or Convention?

MR. HANNAH: It is rather lengthy, but --

MR. DOWNING: Well, I'm more interested in the duties. I think someone read that a minute ago and --

MR. HANNAH: We can refocus on that.

MR. KEEN, JR.: We're going to see if we've got copies of that.

MR. HANNAH: While we retrieve that, I'll take this gentleman's point.

MR. CROUCH: Jim Crouch, delegate from Sacramento. Jay, since you raised the issue, I will now ask the question. I'm very concerned that to some extent people are focusing on the idea of having something ready for the Cherokee people to review by May 22nd, and I am concerned that that's not enough time for this group to do their work, but much, much more importantly for the Cherokee community across the country to review that work and to see if they have an opinion on it.

And I am wanting to know who has the call on when this would be put to the people?

MR. HANNAH: Our interpretation thus far has been that that call is of the Commission. And my two Commissioners that exited, perhaps they'll -- the question was raised that if we are, in fact -- or if we come of a like mind that this process is one that should in fact be elongated, who has the responsibility of actually calling this before the voters of the Cherokee Nation? In other words --

MR. KEEN, JR.: Under our legislature, I believe our Commission carries some responsibility.

MR. HANNAH: That would be my answer as well. I can only speak to the reality of the situation. And the reality is very simplistic. Our current Constitution called that the question

would be asked of our people twenty years hence, if, in fact, that they would wish to call a Constitutional Convention.

There was absolutely no, as you have read the Constitution, no outline as to how that should be done. And in 1995, that question was, in fact, in compliance with the Constitution placed on the ballot, and the Cherokee voters overwhelming said, yes, we will have one.

Now, I'm not here to explain why that this initiative was not taken up in 1995, or 1996, or 1997. I will tell you because there's great a possibility that maybe you do not know, is that those of us serving on the Commission received phone calls from various entities within the Tribal government that the Rules Committee -- if I speak out of turn, Bill John, be sure and help me -- but the Rules Committee was at that point, and I'm thinking March of 1998, was beginning the process of reviewing the establishment of a Constitutional Convention process. March, April, May, June, July.

And I'll simply say a lot of it was perhaps seeded in the fact that we've had a lot of discussion in our Tribal government. Would that be a diplomatic way of saying it? And it was not until July that the enabling legislation, because before the Commission could be independently launched to be about our duties, it would, in fact, have to have enabling legislation identifying our role and having it approved by the Tribal Council. At that point, we would be launched as an independent Commission. It was not until August, as I recall --

MR. GOURD: It was passed on July the 27th. We had our first meeting on August the 8th.

MR. HANNAH: On August the 8th. So at that point, we were more or less given the instructions, okay, it's August the 8th, and we would like for you all to initiate public hearings. We would like for you to move through what we're about to read, which is within the scope of work in our legislative act No. 10-98.

And our discussion was, as a Commission, that if we could, in fact, reach consensus and identify those issues that needed to be brought before the Cherokee people, that we would do so in time for the election of May 22nd, 1999. To not do so, would obviously postpone us to a second general election, or we would have to seek a special election.

And depending upon the position of the administration of the Tribe, that it might be left to the Commission to actually seek what I guess is known as a secretaries election. And we felt that that would probably not be the best course of action.

So we have been moving with the prospect that we would, in fact, be able to reach consensus on issues that would, in fact, need to be brought before the people in time for the May election.

MR. JOHN KEEN: Mr. Chairman, John Keen, delegate.

MR. HANNAH: Sir.

MR. JOHN KEEN: I call for orders of the day so

we can go home and do some work.

MR. HANNAH: It is my favorite, as well. And with that -- Mr. Keen, before we move to your call, and I know that I'm not following procedures, but I would ask that you indulge me, okay?

Because I will say this, ladies and gentlemen, I will be a good man, and I will be an honest citizen of this Tribe. And if you think I stand here with the same amount of knowledge that either of these ladies have, that is an inconsistency. But I will see to it that we move with fairness at all times.

We had the question raised about the empowering legislation. Are there copies available for this gentleman to review?

MR. UNDERWOOD: We do not have them. We'll run another set tonight.

MR. HANNAH: If that will satisfy you in lieu of us, once again, reading to you, I think you would have an opportunity to see the scope of our work here.

Therefore, looking at the hour, and that we have a call for the orders of the day, and the order of the day is for us to conclude at this particular time with our training session. But I will entertain this kind gentleman.

MR. SANDERS: Jack Sanders, Tulsa County. Let me make this suggestion tonight. When we leave here, when we go home, let's get on our knees, everybody, and talk this over. And in the morning when we get up, if we have a quiet time, do the very same thing. By looking to our Heavenly Father, he will give us the road to travel and in holding our meeting. There will be no squabbles, no quibbles. You let him lead us and the Cherokees, we won't have any problems. We're all brothers and sisters in Christ. And I think if we look to him, we'll have a successful meeting.

MR. HANNAH: Troy.

MR. POTEETE: I'd like to move that this gentleman open and close each session with a prayer. Benjamin Franklin, when they formed the Constitution of the United States, said, if God can keep a sparrow in the tree, he knows all about you and the hairs on your head. How do you think we're going to form a Constitution if we don't go to God in prayer. And the way they got through this Constitution then, they had a day of fasting. We've been predominately a Christian nation since before the removal, and that would probably get us further than all the bickering we could do.

MR. HANNAH: Troy, thank you for those comments.

MR. POTEETE: That was a motion I would like to have documented.

MS. COON: Seconded.

MR. HANNAH: We are not in session for accepting motions of that nature. Thank you, Mary Ellen, for trying to -- Troy, we all heard you here this evening, my friend. And with that I will say that we must be about the business of our people, and we

must be about it with a good clear voice and we will reconvene here tomorrow morning at eight a.m. to do just that.

We will discuss the taking of our photograph in the morning, which we'll probably do as close to this proximity as we possibly can to move on to the business of the day.

Thank you all and good evening.

(PROCEEDINGS ADJOURNED)

C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss
COUNTY OF MUSKOGEE)

I, Marla J. Cullison, a Certified Shorthand Reporter, in and for the State of Oklahoma, DO HEREBY CERTIFY that the said Transcript of Proceedings was taken by me in stenograph on the 26th day of February, 1999, at Northeastern State University, Net Building, Tahlequah, Oklahoma, and that the foregoing Proceedings was later reduced to computer-aided transcription form under my supervision, and that the same is a full, true, correct, and complete transcript of said Proceedings.

I FURTHER CERTIFY, that I am not an attorney for, nor relative of any of the parties involved in this action or otherwise interested in the event of same.

WITNESS MY HAND AND SEAL this _____ day of August, 1999.
