

1999 CHEROKEE NATION CONSTITUTION CONVENTION

VOLUME VI

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Northeastern State University, 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.

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THEREUPON, the following proceedings were had:

MR. HANNAH: Good morning. And the Chair would hope that everyone, in fact, slept well last night. And it is good to see you all here on this Wednesday. And it is a nice, crisp and clear day in the Cherokee Nation. And we have reassembled once again to conduct the business of our people.

I would ask that the interpreter for the convention, Ed Jumper, once again draw our focus on what we are about, and ask the good Lord to give us a blessing this morning. Ed.

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

MR. HANNAH: Mr. Secretary.

MR. UNDERWOOD: Yes, Mr. Chairman.

MR. HANNAH: Are you prepared, Mr. Secretary, to give the report of the Credentials Committee?

MR. UNDERWOOD: Prepared, Mr. Chairman.

MR. HANNAH: Do so.

MR. UNDERWOOD: We have fifty-two delegates registered and we have a quorum of thirty-nine.

MR. HANNAH: Thank you very much. Good work yesterday, delegates. Good quality debate on many good issues that were before our people. And the Chair is very pleased that all of our delegates moved well yesterday.

Chair rises early every morning to review the newspapers to see where we are. Those of you who have read the papers recognize that our work here is still being reported, in the Chair's opinion, in a factual and positive manner. So those that are watching over and remaining vigilant as to the activities of this body are seeing a true reflection of the quality of debate and government that is at hand here.

What we will strive for today is to move about our business with good speed and purpose, not in a rush, but at the same time, hopefully, we'll be passing by any extraneous activities or taking any real side trips as far as procedure so that we can arrive at yet another series of quality decisions.

The Chair is always very pleased to recognize the delegates for showing a great deal of dignity. And that's exactly what we had yesterday. I said yesterday, and I will say it again, that if you serve in a position of leadership, which each of you do by being in this body, then passion is an absolute core value. It is a non-negotiable. It is indispensable.

Passion is a part of what we are about. And the Chair is very, very pleased with the delegation that we have checked our passions and we have used them for productive powers as we have been about the discussions. And we shall do so today.

Taking up the matter at hand, our Vice-Chairman is not here for the Cherokee to query at all times. Dr. Gourd, you will draw close and make sure that the Chair is on target with regard to

our activities.

I believe you were recognized at the time of our recess, so you might start warming up. We will recall that last evening we were working in Section 14, that the good lady from Tahlequah, Chapman-Plumb, had asked for a division of this particular section and that we had focused on the division being at the word appointed.

And that after some discussion, that that word stands and has now been added. So we will at some point need to bring the remainder of this question back together and to conclude our discussion regarding the Marshal.

Mr. Baker, you're recognized.

MR. BILL BAKER: If we could start the day off, I'd like the record to show that I really didn't say that all of the Sheriffs in the state of Oklahoma were of poor quality.

MR. HANNAH: That will be entered in the record, and, Mr. Baker, once again, the newspapers are focusing on your every word. So not as the Chair, but as a long time friend of yours, Jay would tell you to be careful out there, big boy. So very true. Interesting remarks, needless to say, that are reported here.

So where we are at this point, then, is with the portion of Section 14 regarding the "Principal Chief shall appoint, with confirmation by the Council, a Marshal to serve as a ranking law enforcement officer in the Cherokee Nation. Such appointee must be a citizen of the Cherokee Nation and possess sufficient training and experience in law enforcement.

The Marshal shall serve under the direction of the Attorney General and shall be authorized to employ and deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation."

Then, of course, we see the proposal that, "there shall be created an office of Marshal." This is proposed language that we have. And that, "The Marshal shall be a citizen of Cherokee Nation and possess such training and experience in law enforcement as prescribed by law.

The duties of the Marshal shall be prescribed by law. The Marshal shall be," and as we agreed, "appointed by the Principal Chief and be confirmed by the Council for a term of five years. The Marshal may only be removed from office in conformance with Article X."

So aside from the word "appointed," we are open for business. The floor is open for debate with regard to Section 14.

MR. DOWTY: Point of information.

MR. HANNAH: Mr. Dowty. Thank you, sir.

MR. DOWTY: We were debating upon the proposal; am I correct?

MR. HANNAH: Yes, sir. We are debating on the proposal, and remembering, perhaps poorly so, but this question was divided, and it was divided more or less into the top sentence and the second sentence, and we focused on the word "appointed."

So mechanically -- and the parliamentarian is asked by

the Chair today at all times to be at his right side and give advice as to our procedure. But at this point, I believe that what we will be about is, with regard to the proposal, and we could in fact return to either sentence for debate at this point.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. Charles Gourd, delegate. I make a motion that the language be approved as it appears on the screen.

MR. HANNAH: There's a motion before us for approval of the language, and Dr. Gourd is in reference to the proposed area that you now see in highlight. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: And there is a second. And the floor is open for debate.

Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate. One thing we didn't address, or I think through our procedure, somehow or another we haven't described whether or not the Council is going to decide how many he hires, or if we are going to let him hire as many deputies as he sees fit.

So if Dr. Gourd would entertain a friendly amendment, I would suggest language, "He may hire as many deputies as he sees fit."

MR. HANNAH: And by way of clarification, Mr. Keen, in the original proposed language then, "and shall be authorized to employ and deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation."

MR. JOHN KEEN: Jay, is that within the scope of -- could we just copy that?

MR. GOURD: Yes, I'll accept that.

MR. HANNAH: Thank you very much. That would be within the scope of this Constitution, and, Dr. Gourd, I'm sure you would not object, seeing how that is language that was originally proposed. So we'll bring that down.

MR. SCOTT: Mr. Chairman.

MR. HANNAH: Mr. Scott, how are you this morning, and what say you?

MR. SCOTT: I'm Scott, delegate. And yesterday I asked for a clarification of the job titles and where it talks about the ranking law enforcement officer official, and I got an answer from Mr. Keen, but that didn't quite clarify it for me.

I woke up last night trying to figure out the answer. Talk about law enforcement. The Marshal, I understand, can use force to enforce the law. The Attorney General, I think, does not have quite the same job description there doing fundamentally different things.

The Attorney General is -- I'm not sure how to explain it, but he's to target the law rather than to enforce it. Cherokee word for lawyer is, as I understand it, means someone who argues repeatedly and with a purpose. And I think that is what the

Attorney General job really is.

And I think if the job description said the ranking lawyer for the Cherokee Nation, most Cherokee people would understand that. And if the lawyers themselves need a little more elaborate name, ranking legal counsel, or something to that effect.

But I don't think that he uses force, a law enforcement officer.

I remember Chad saying something about he thought that they should not even visit the site. So I don't want to become a lawyer and argue that point right now, but I'd like to put it as something to be considered before we take the final wording on this section here, that it is not quite the statement duty carried out as a different level.

MR. HANNAH: Thank you, Mr. Scott. And the Chair hearing that you've not requested any action by your remarks, but you have reminded us that there is obviously other elements for this debate here.

Mr. Baker, you are recognized.

MR. BILL BAKER: Thank you, Mr. Chair. Over the night and early this morning, I was in some discussion, and we need to be real mindful. I mean, if you sit there and say, we're going to appoint this Marshal, and he can employ as many people as he thinks is necessary.

And then we go on to say that they can only be removed under Article X, which is basically the same criteria for all employees of the Cherokee Nation.

Our funding is such that it changes from time to time. We might get federal dollars to operate a Marshal Service. Those dollars are subject to being cut, and if there is not a mechanism for the Tribal Council and the --

Let me put that county sheriff, for example. They have a budget. If the budget goes down, they have to make a decision that I'm either going to have ten officers and cut automobiles or I'm going to buy automobiles and cut deputies.

Our money and our funding source is not an unlimited pool of funds, and it is subject to change. And we need to put some kind of mechanism in this and several other places within this article that allows for fewer dollars and allows the Tribe to be physically responsible and --

Otherwise, you know, we're taking tribal dollars for constitutional mandates that are better served with services to our people.

MR. HANNAH: Dr. Gourd.

MR. GOURD: Thank you, Mr. Chairman. In comment first to Mr. Baker, on the second sentence where it says, "the duties of the Marshal," after the word "duties," could you insert "and authorities shall be prescribed by law"? Would that get close to -- if you have a funding level authorization and a line item budget, would that sort of get to where your thinking is?

MR. BILL BAKER: And if you will drop the word "employ," "authorize to deputize," and just drop the word "employ."

If they could be, you know, appointed deputies and not necessarily employees of the Cherokee Nation, then as long as the money is there, it's great.

MR. GOURD: Exactly. Yes. I think that part will work.

And the other thing that's been discussed, which we in commission meetings discussed at length was the difference between the word "serving under the direction of or supervision of." To whom is the Marshal directly responsible?

And our discussion finally arrived at a compromise. Instead of having the Marshal directly under the direct supervision or direction of the Principal Chief, the most logical place it seemed to us was under the Attorney General because you can look at other places in the executive, legislative or judicial.

We were trying to find a place that would fit the duties of the Marshal in relation to law enforcement. So that's why it came, and we had extensive discussion over what is the difference between "direction" and "supervision."

That's what I think what has been, I've heard comment to in here. Just by way of explanation, that was our compromise in the commission of the placement of the Marshal and use of the word "direction" rather than "supervision."

MR. HANNAH: Thank you, Dr. Gourd. Other speakers rise for debate this morning?

Mr. Keen, you're recognized.

MR. JOHN KEEN: In light of -- John Keen, delegate. In light of what Mr. Baker said, I agree with that, Mr. Baker. But I think now, since we addressed the word "employ," I think "duties of the Marshal" would cover it instead of the "duties and authorities," "the duties of the Marshal shall be prescribed by law." I don't think "authorities" needs to be in there now.

Would you be agreeable to dropping that, Mr. Gourd, a friendly amendment?

MR. GOURD: I think it would be necessary at this point in time to keep it in there because it directly relates to funding appropriations and authorities to a certain amount of money. I agree with you in principle. I think it may just clarify.

Mr. Baker, I will defer to your call on this one.

MR. BILL BAKER: I'm neutral. I don't know. Refer to the lawyers.

MR. HANNAH: Mr. Stopp, do you rise to be recognized?

MR. STOPP: Yes, I do. Gary Stopp, Cherokee County. I think that word, "duty and authorities of the Marshal shall be prescribed by law" is important to be in there for the fact that it does go back to state, federal and Cherokee Nation law.

It goes back to say, "the duties and the authorities prescribed by that law that they're under." And some of our law enforcement officials have to go through certain type of trainings and things of that nature.

That kind of ties that together. I don't believe it's a financial or funding issue in authorities. I think we took out the "employment of" was actually a funding issue.

MR. JOHN KEEN: Mr. Chair.

MR. HANNAH: Yes, sir, John.

MR. JOHN KEEN: I think that authorities is -- the duties of the Marshal would encompass pretty well everything, so I would make a motion to strike the word "authorities."

MR. HANNAH: There's a motion on the floor to strike the word "authorities." Is there a second?

DELEGATE: I second.

MR. HANNAH: There is a second. The floor is open for debate. Anyone rise in opposition to the striking of this word?

Dr. Hook, you are recognized.

MR. HOOK: I rise in opposition to striking "authorities" because the implication of the two words. "Duties" describes the responsibility of the person in that office. "Authorities" would provide for his authorization. So one is his responsibility and the other is the authorization provided to him. I think there's a clear distinction between those.

MR. HANNAH: Good man from the west, how do you rise, in favor or against?

MR. DOWNING: Against. When you deal with positions of power, you are authorized to do some things and not others. As you push that, you develop the power.

In other words, the power derives from authority. And the way that that would appear, then, the only authority that the Marshal would have would be to deputize, and we need a little more power than that. I'd like to be able to arrest the rest of you.

MR. HANNAH: Delegate Rider, you are recognized.

MR. RIDER: Delegate Rider. I'm standing for that to be in there, that authority, but I think it should be T-Y instead of I-E-S, the duty and authority of the Marshal.

I think they're dealing with -- see, law enforcement officer have a certain amount of authority about their position which is delegated by whatever paperwork they've got to back it up.

And I think that's what that should mean in there is their authority.

MR. HANNAH: Dr. Masters, you're recognized.

MS. MASTERS: I'm Masters, delegate.

MR. HANNAH: How do you rise?

MS. MASTERS: I rise to the point of clarification and the request from the Chair. I don't know what "authorities" mean. And I don't know how broad and encompassing that term is. And I would ask the Chair if he would ask a judge, who makes such decisions, to tell me what "authorities" mean.

MR. HANNAH: The Chair would ask of any of those who are here and better learned in the arena of law to speak to the issue. Anyone wish to do so?

Mr. Keen, Sr., you're recognized.

MR. KEEN, SR.: Yes, I'm Ralph Keen, Sr., delegate. The reason I second the motion to strike the word "authorities" is for the reason that authorities is not a term of art, and that I can foresee in the future some future justice having to determine what "authorities" mean. And I simply don't know what it means. So I second the motion so that the delegates here could put on the record what their intentions were for including that word.

I personally feel that "duties" covers everything. Duties covers what you can do and what you can't do. But if the convention decides that the authorities be placed in there, I would simply second the motion for the purpose of getting it on record what you meant.

MR. HANNAH: Thank you, Mr. Keen.

Good gentlemen in the back is recognized.

MR. WHEELER: Delegate George Wheeler. As a law enforcement officer with about twenty-five years of experience, I'm uncomfortable with the concept of "authority" or "authorities." We give the authority to the law enforcement officer by virtue of this Constitution or by virtue of the laws that he enforces. I would be much more comfortable with the word "duties." If we do not know what it is, I don't think we should include it.

MR. HANNAH: Thank you very much, Mr. Wheeler.

Dr. Gourd, you are recognized -- oh, I'm sorry. Delegate Clarke.

MR. GOURD: I yield.

MR. HANNAH: Yield Mr. Gourd. Delegate Clarke.

MR. CLARKE: Delegate Clarke from Muskogee. I, too, do not think that the word "authority" is appropriate in this section for this reason. By virtue of the position.

I've been a Marshal. There are duties that are prescribed by law and there are also duties that are prescribed by the administrative processes that the Marshal will have to provide oversight and supervision for, which includes maybe assisting or developing policy, supervising directions to the subordinate deputies, engaging and developing budgets and requests and presenting those to the Tribal Council and that type of stuff.

And I believe that the authority resides within the position itself as prescribed by law and by the administrative aspects. I know that's how I viewed my position. I have authority that's inherent in the position of being the Deputy Executive Director. I don't see anything that details for me what the word "authority" means.

MR. HANNAH: Mr. Baker, you are recognized.

MR. BILL BAKER: Sitting there listening to the debate and the purpose and this, that, and the other, it at least came clear to me that by putting, "the duties and authorities of the Marshal shall be prescribed by law," over the course of time within the Cherokee Nation, there --

The authority of our Marshal is very tenuous upon what

authorities we get by the compact, from the federal government, by what authorities we are able to get with the compacts, with the DA's and the sheriffs of the State of Oklahoma, with the cross-deputization and those types of things. So it is not only likely and possible, but is probable and definite that the authority of the Marshal will change from time to time.

Right now in the Cherokee Nation today, there is no law enforcement authority of a Marshal. But we are working on that, and it shall go from one extreme to the other in a very short period of time.

So I can very well see why we might want to put in this "authorities" because of the nature of those compacts and those agreements and the authorities that could change and will change. Thank you.

MR. HANNAH: Dr. Gourd, you are recognized.

MR. GOURD: Mr. Chairman, I would just call the question.

MR. HANNAH: The question has been called. Is there a second?

MR. HOOK: Point of information.

MR. HANNAH: Point of information, Dr. Hook.

MR. HOOK: Are we not considering the word "authorities"?

MR. HANNAH: Yes, we are.

MR. JOHN KEEN: Point of personal privilege, I believe.

MR. HANNAH: Yes, sir.

MR. JOHN KEEN: If we have adopted the word -- if we have adopted a singular "authority" over "authorities," I would withdraw my motion if it is "authority."

MR. HANNAH: The Chair is under the impression that what we are debating is your motion to strike the phrase "in authorities."

MR. JOHN KEEN: Plural.

MR. HANNAH: No?

MR. JOHN KEEN: My point, Mr. Chair, is if the body has agreed to the singular form of "authority," I will withdraw my motion to strike.

MR. HANNAH: Perhaps the Chair has once again lost the bid, but I do not see it on the screen, nor have I heard that we were substituting -- motion to substitute the word.

MR. RIDER: They just took it off the screen. It was on there.

MR. HANNAH: It was authority?

MR. RIDER: All law enforcement officers hold the right hand up and that's where they get their authority, just like when you go into the military. You give an oath, that's where you get your authority at. That's why I said "authority."

MR. HANNAH: Thank you.

MR. STOPP: Point of information.

MR. HANNAH: Mr. Stopp.

MR. STOPP: I'm not understanding the difference between "authority" and "authorities." I'm not real clear on that.

MR. HANNAH: Well, and I'm not either. We're going to clear that up because if we are going to debate and if we're going to take action here, then let's find out what it is that we're talking about.

Dr. Gourd, the Chair is going to need some assistance once again. Without eyes in the back of my head, I don't know what has happened on the screen. What I see is a strike-over from the phrase, "and authorities."

MR. HOSKIN: Point of clarification.

MR. HANNAH: Yes, Mr. Hoskin, you're recognized.

MR. HOSKIN: Yes, Mr. Chair, I believe the word "authority" was offered as a suggestion. It was not offered as an official amendment.

MR. HANNAH: That was the Chair's definition as well. Thank you, sir, for helping my memory. Therefore, we are in fact about the debate of the word "and authorities," plural.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Mr. Gourd.

MR. GOURD: Might I propose a friendly amendment to my amendment?

MR. HANNAH: Almost anything is possible in these chambers, Dr. Gourd. And I don't see why we should limit our experience to amending an amendment.

MR. GOURD: Since our friendly English teacher is here, she might assist. The "duty," singular, and "authority" of the Marshal, instead of pluralizing both of those words, to be grammatically correct, but "have the duty and authority," or is there a difference?

MR. DOWTY: May I be recognized?

MR. HANNAH: Good man, and you'll be recognized to assist us this morning, sir.

MR. DOWTY: Well, I tend to agree with my fellow delegate, the senior Keen, that future justices might have a problem with some of this language.

But the language, if you wish to have the language as to "duties" and "authorities," I would change "authorities" to "authority," I believe. That would be more fair. "Duties" could stay in the plural. That would be my recommendation. "Duties and authority."

And I would also say that "authority" would also encompass jurisdictional matters. And I believe that the jurisdiction of the Marshals may certainly change from time to time.

And you need to decide whether that should be prescribed by the Council.

My personal opinion would be that the Council should define what the authority of the Marshal is, and particularly with regard to jurisdictional matters. So that's my position.

MR. HANNAH: Dr. Gourd, do you accept this as a friendly amendment?

MR. GOURD: Yes, sir.

MR. HANNAH: The good man formerly of West Peavine, is this your friendly amendment, sir? Is this yours, sir?

MR. DOWTY: I will accept this.

MR. HANNAH: Very well. It's already been accepted. So, Mr. Keen, we're back to you at this point, because I believe -- how do you stand now on your motion to strike?

MR. JOHN KEEN: I will withdraw my motion to strike.

MR. HANNAH: Very well. The language stands at this point, and the floor is open for debate with regard to this paragraph. Thank you all very much.

MR. HOOK: Call the question.

MR. HANNAH: And the question has been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition --

MR. GOURD: Point of information.

MR. HANNAH: Point of information, Dr. Gourd.

MR. GOURD: I'm trying to get here. I think that we need to address one more issue in reference to the Marshal.

MR. HANNAH: In reference to that paragraph, sir?

MR. GOURD: No, sir, I would add one more. It's in reference to it, but some language needs to be added or at least discussed on the floor before we move to approve the whole clause.

MR. HANNAH: We are not at that point yet. I think what we're simply about is finishing our discussion. Remembering once again, ladies and gentlemen, that this thing has been divided, and I --

Parliamentarian, we actually have the proposal that's been divided. We had debate now on the first series of the proposal. I assume that we can call the question with regard to the first series and then debate this bottom series.

MR. DOWTY: Delegate Dowty, I withdraw my objection.

MR. HANNAH: Thank you, sir. So Dr. Gourd, how stand you; do you wish to continue?

MR. GOURD: No, I'll withdraw.

MR. BILL BAKER: Point of clarification.

MR. HANNAH: Point of clarification, Mr. Baker.

MR. BILL BAKER: I heard the talk, but I don't see it written. Did he mean to bring down, "under the authority of Attorney General," or what as part of that?

MR. GOURD: Yes, that was my intent.

MR. BILL BAKER: Is it not in that same paragraph, or is that part of the division?

MR. GOURD: It's not included in the language that we're about to discuss.

MR. BILL BAKER: Does it need to be? That would appear to be where it would be.

MR. GOURD: We can bring that back up. That was my question.

MR. HANNAH: Let's streamline this process here. If you are wanting to introduce that language into this first paragraph here where it begins with "the Marshal shall" why don't you be about that.

Whoever called for the question, the Chair will ignore that right now, and let's bring that language down and be about that part of the debate.

Dr. Gourd continue.

MR. GOURD: Thank you, Mr. Chairman. I would like to see inserted where "the Marshal shall serve under the direction of the Attorney General," and make it the second -- would it be the second or third sentence?

MR. HANNAH: Here, Charlie?

MR. GOURD: Yes. And be authorized --. I'll make that in the form of a motion.

MR. HANNAH: Very well. There's a motion on the floor to include the language. Is there a second?

DELEGATE: Yes.

MR. HANNAH: There is. And hearing no opposition, all of those in favor signify -- well, the floor is open for debate, I'm sorry.

Good delegate from Muskogee is on his way to the microphone. Calvin, good morning, sir.

MR. McDANIEL: Somebody in this room yesterday said Attorney General was the highest ranking law enforcement official in the United States. And here we're going to put this Marshal up here. And where does it say he's going to be the highest ranking law enforcement official in the Cherokee Nation?

MR. HANNAH: So far what it says, Calvin, is that "the Marshal shall serve at the direction of the Attorney General." That's what the language reads at this time.

MR. McDANIEL: In other words, Attorney General will not be considered a law enforcement officer; is that right?

MR. HANNAH: Chair would look for assistance from --

MR. JOHN KEEN: I believe in response --

MR. HANNAH: Mr. Keen, you are recognized.

MR. JOHN KEEN: The answer to that would be the Attorney General would be the ranking law enforcement official and the Marshal would be the ranking law enforcement officer.

MR. HANNAH: I think that's the difference that we have here, Calvin, is in -- the difference between the word "official" and "officer."

The good lady from Tahlequah is recognized.

MS. HAMMONS: Yes, Mr. Chairman, I would speak in opposition to the wording that we now have bolded, "shall serve under the direction of the Attorney General," for the reasons primarily stated by my colleague, Mr. Smith, yesterday.

When you have a person in the position of prosecutor directing law enforcement, I think that Mr. Smith raised valid issues that you open -- you open up a bunch of problems. I don't want to use the "can of worms" metaphor, again, but --

MR. HANNAH: It's the hollow log.

MS. HAMMONS: Hollow log full of worms.

The Attorney General should not be in the position of telling the law enforcement officers how to do their job. The Attorney General or the prosecutor should be in the position of accepting investigations that come to him or her from law enforcement officers giving them legal direction. "This is not sufficient or proper cause," or "this warrant won't work," or "this arrest has a problem."

But that is different from serving under the direction of the Attorney General. If the Marshals are under the direction of the Attorney General, the Attorney General has supervisory power over them, that makes them, I think, too close. That's too incestuous a relationship.

If one of those law enforcement officers breaks the law, what position does that put the Attorney General in? So I speak in opposition to that language.

MR. HANNAH: Mr. Baker, you are recognized.

MR. BILL BAKER: Point of information. How does this differ from the District Attorney being the head law enforcement officer in the county and the sheriff serving under them, although it's not -- it was more effective for her, but --

MR. HANNAH: We understand. I think first of all, we need to find out if that's an erroneous assumption that the -- in county government if the sheriff in fact serves under the -- in this case --

MR. BILL BAKER: Yeah, the head law enforcement official in the county is the District Attorney, so how is this totally different, and not workable?

MR. HANNAH: You are recognized, sir.

MR. DOWTY: Delegate Dowty from Tahlequah. The Attorney General once issued opinion that the District Attorney was the highest ranking law enforcement official. There was a subsequent opinion when there was some discussion about that, and the Attorney General changed opinion and found that the sheriff and the District Attorney are equal in the counties as to the level of law enforcement officiated.

The sheriff does not work directly under the District Attorney. But we do at times have to tell them what we want them to do. Because very often, we have reports brought in to the District Attorney for prosecution that are quite deficient, and we have to be very specific about what we want them to do in terms of

investigation to make their reports better so that they may be filed and that the cases are strong enough to file and go to court. And so in that sense, we do supervise the law enforcement officers in the county.

The District Attorney also has investigators who work directly under the District Attorney. In our case, we have investigators who specialize particularly in areas of child abuse and child molestation cases and that type of case, and they are specialized and trained through the District Attorney's office. And we do directly supervise the duties of those officers.

And having said that, I would like to see the Marshal be as independent as possible from supervision so that the Marshal might do the proper job and not be influenced so much by any factions of government. So the independence of the Marshal I think is important.

At the same time, I think there needs to be a level of supervision. And so as I understand the way we're set up now, if we do not adopt this language, then it leaves open the question. And I think the only entity you can look to then is the Council, insofar as the supervision of the Marshal's activities, if you do not specifically find or put in the Constitution, who is going to supervise the Marshal.

So you have two things working. You have the independence of the Marshal in the investigative process, but you need to have some level of supervision. My personal opinion is that that can be accomplished through the Council.

MR. HANNAH: Mr. Hembree, you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. I would echo the words of my nice delegate formerly from West Peavine. But I would probably go a little bit further, that I think it's imperative that the Marshal be independent.

If you serve under the direction of the Attorney General, he becomes -- he or she becomes quite powerful under this system of government. He or she can choose what areas that they want this Marshal to investigate, what areas they don't want this Marshal to investigate.

The supervision that Mr. Dowty referred to, it is an unofficial supervision. The way it works to my understanding is that in our local law enforcement, if they get a complaint or a call, they go out and they investigate it. They do a report. They turn that report over to the District Attorney's office to review it to see if that District Attorney is going to in fact recommend that this be a prosecution.

Now, if the District Attorney doesn't see that there's enough evidence or not enough proper procedure was followed under the investigation, they turn it back to the sheriff's office and say, "This is what we see was wrong with it, and if it can be fixed, it will be fixed."

But I find it highly dangerous that we would by constitutional mandate have the Marshal serve under the direction of

the Attorney General, so I oppose that language.

MR. HANNAH: Dear lady, how do you rise on this issue?

MS. STROUD: Confused. Virginia Stroud. And the other day you said that you would do anything to help us understand before we made a vote.

MR. HANNAH: Yes, ma'am.

MS. STROUD: Could we have a picture, a diagram of how we're talking because they show it -- I know Mr. Gourd --

MR. GOURD: I was just going to get a piece of paper.

MS. STROUD: So that we can see because we're changing whose authority. and I'm not sure what all offices now we have under direct with the Chief, with the Council, and we're talking about making a separate entity for the Marshals. Are they called those fishes, those bones or something, you know, the diagrams?

MR. HANNAH: An organizational chart?

MS. STROUD: Yes.

MR. HANNAH: Mr. Keen, you are recognized.

MR. JOHN KEEN: I rise in opposition to this language. I agree with Delegate Dowty and also my friend and colleague, Mr. Hembree. We have to be very careful how we do this.

We're considering this language here, and I'm opposing this language, but we need to have something in there somewhere, somehow, because when we strike this language, we're going back to his appointment.

His appointment is by the Chief, so if he's not supervised or made independent by the Constitution, if he's not supervised by that Attorney General or this issue is not addressed, he will be directly below the Chief by virtue of his appointment.

So I think it's extremely important that we consider this language. You know, we have the Chief appointing the Attorney General, and we have the Attorney General directly supervising the Marshal, as it's written now, so I'm strongly opposed to this. So with making those points, I'll defer to Dr. Gourd or whoever the Chair sees fit.

MR. HANNAH: Thank you, Mr. Keen. Do any of the delegates rise in favor of this motion?

MR. GOURD: Mr. Chairman, point of clarification. This is exactly why we're placing it on the table, sir, is that we had this discussion and that we recognized the appointment of the Attorney General and the Marshal. There still needed to be some insulator between.

If it's not going to be the Attorney General, let's say exactly. Because to put it to Council supervision, is that individual Council member, could they call in the Marshal and say, "I want an investigation," you know, "I want this person accused of this," and the election, by the way is in two weeks. You know, "I want you to go out there, and then put that in the paper on a

political incumbent."

So the insulation values in this was our only consideration. But I think, I feel it imperative that that issue be addressed. So if it is to be, you know, and prescribed by law I'm comfortable with, but I think the intent of this body for future interpretation, "put before a court" are very clear.

And I appreciate Mr. Keen's comment to that because this is exactly why we're here. And I think with this many attorneys present, we will end up with a Constitution that not only stands the test of time, but challenge in any court.

MR. HANNAH: As long, Dr. Gourd, as it can challenge the test of hollow log, we will be in good step.

Mr. Wheeler, you have been patient, and you are recognized.

MR. WHEELER: Thank you, Mr. Chairman. I would just rise to speak against the inclusion "under the Attorney General." Normally in law enforcement, that's an executive function.

I understand the problems with that in our separation of powers. It may be more natural and proper to have it under the legislative function of the Council, as they make the laws. I'm not certain how we get there from here, but that would be my suggestion.

MR. HANNAH: Thank you, sir.

Mr. Lay, you are recognized.

MR. LAY: Mr. Chairman, I'm in opposition of this language for the following reasons. First of all, I think everybody should be responsible or under the thumb of somebody, but what we've done here is we've created, with the Marshal serving under the direction of the Attorney General, we have allowed the Attorney General to be supervised by no one.

And if we will put that chart up, we would probably find that we have created a 4th branch of government. And we probably need to, you know, look at this very closely. The lady said she wanted a diagram, how that would come out. You would have the Chief here, the Attorney General all on the same line. And I don't think we realize that to start with. Thank you.

MR. HANNAH: Starr-Scott, you are recognized. How do you rise to this issue?

MS. STARR-SCOTT: I rise against this issue, and I apologize for missing the high drama last night.

MR. HANNAH: No high drama was held in these chambers last night.

MS. STARR-SCOTT: Oh, it wasn't?

MR. HANNAH: No, ma'am. There is no high drama in these chambers. What has transpired in these chambers is good and able debate. And it's all well within the confines of the decorum of this chambers, and we are all very proud to be a part of that. You are still recognized.

MS. STARR-SCOTT: I'm wondering why the Marshal has to be accountable to anyone other than the people he serves. I

guess that would be my question.

I don't think the Marshal should be accountable to the Council. I don't think seventeen politicians should be trying to supervise investigations in law enforcement. So I guess I would like to see the Marshal stand out alone.

MS. HANNAH: Thank you, ma'am.

Does any delegate in this chamber rise in support of the language?

DELEGATE: Call the question.

MR. HANNAH: The question has been called.

Thank you very much. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Hearing no opposition, then we move to consider.

MR. BILL BAKER: Mr. Chairman.

MR. HANNAH: Mr. Baker.

MR. BILL BAKER: By way of friendly amendment, I would ask that we strike that language.

MR. HANNAH: Mr. Baker, don't do that. The Chair did not recognize you after all. You were out of your seat, sir.

All of those in favor of the language to be included, "shall serve under the direction of Attorney General," please signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And therefore, the language is not included. It is stricken. And the floor is open for debate with regard to the first serial of this dividing question. What would be the pleasure of the delegates?

DELEGATE: Call the question.

MR. HANNAH: The question has been called.

And on the section, so everyone is with us now, we will be voting on this proposal here, which reads: "The Marshal shall be a citizen of the Cherokee Nation and possess such training and experience in law enforcement as prescribed by law, the duties and authority of the Marshal shall be prescribed by law. The Marshal shall be authorized to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation."

MR. JOHN KEEN: Point of order.

MR. HANNAH: Yes, Mr. Keen.

MR. JOHN KEEN: Did we second and vote on calling the question?

MR. HANNAH: The Chair heard no opposition.

There was a second and I had no opposition.

MR. JOHN KEEN: I oppose it.

MR. HANNAH: Folks, this is exactly what is going to keep us here for another eight years. Okay. The Chair does not want to short circuit any of the procedure whatsoever, but

we will in fact return, so that there is no discussion about it, okay, with regard to discussion as in was this handled properly.

The Chair was under the impression that the question had been called and seconded. Hearing no opposition, we moved to consider the question.

Mr. Hembree, you are recognized.

MR. HEMBREE: Mr. Chairman, just to indulge me for a moment. I think it would be very helpful for the delegates that when a previous question or call the question motion is made and seconded, if you do in fact object to it -- so be attentive, if you do object to that, that you make your objection known to the Chair immediately and a voice vote can take place. It does require two-thirds, but if they make an objection then and take the vote, but if you miss that, we'll be backing up and doing it forever.

MR. HANNAH: Thank you, Mr. Hembree, for that clarification. Mr. Keen, you are recognized.

MR. JOHN KEEN: I'm very uncomfortable with this as it's written. Maybe we could make a motion to lay it on the table --

MR. HANNAH: Do you make a motion to lay it on the table, sir?

MR. JOHN KEEN: -- so we may caucus before we vote on it.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second to lay this on the table.

MR. CLARKE: Mr. Chairman.

MR. HANNAH: Yes, Mr. Clarke, you are recognized.

MR. CLARKE: I agree with your first statement, that we had already, I believe, voted on that.

MR. HANNAH: Thank you for agreeing with the Chair.

MR. CLARKE: And so I challenge your decision to allow us to table this.

MR. HANNAH: Well, I tell you what, Mr. Clarke.

And Mr. Clarke, by the way, for those of you who did not hear, challenged the decision of the Chair to allow the kind gentleman to bring this to the table.

Now, folks, let's all settle down here for just a moment, okay. Let's just settle down for a moment. Mr. Keen, have a seat.

This is a very important issue for us. The Chair will tell you that if someone had speculated to the Chair, who was simply a citizen, some months ago, that we would spend this much time debating the office of the Marshal in the Cherokee Nation the Chair would have been amazed.

And yet, obviously, there are great concerns here because we are dealing with someone that in the future, I assume, would be given the duties and the authority to carry loaded firearms and

would have a badge and could in fact have other individuals armed with weapons of lethal destruction that would in fact mostly likely go out and execute the laws or enforce the laws, I should say, of our nation.

So the Chair well understands the concern that is here, and, obviously, even our own more learned delegates raise issues of concern about who should report to whom and things of that nature.

So, therefore, Mr. Clarke, I would ask that you would relinquish your request for the Chair to be challenged, that we would in fact recognize Mr. Keen's motion to put this on the table, and we would vote on that. And that if we were to be successful in putting this on the table, that more learned delegates in this room would be so directed to be about the course of action of working on language to bring back before this body.

What say you, Mr. Clarke?

MR. CLARKE: Mr. Chair, in all respect for the Chair and in the spirit of cooperation, I will do that, but I personally disagree with my relinquishing. But in the spirit of cooperation, I will --

MR. HANNAH: Then the Chair is respectful of his elders and certainly of his delegates. And kind sir, if you wish to challenge, we'll continue.

The Chair is simply trying to see to it that everyone here is satisfied with the product that we have. And, you know, I don't want anything to happen here in this chamber that later on would come back to haunt us procedurally or most importantly with regard to our decisions.

MR. CLARKE: Sir, I --

MR. HANNAH: Mr. Clarke.

MR. CLARKE: I understand, and I shall not commission this board.

MR. HANNAH: You're a good man. We have a motion on the floor to table it, and it has been seconded. All of those in favor, signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And the Chair declares that it goes on the table. And someone should be working on language.

Therefore, we continue with our deliberations. And we move past the appointment work, since that was in fact approved, and we are now about the discussion, "the Marshal shall be appointed," and for discussion, "would be by the Principal Chief and confirmed by the Council for a term of five years. And the Marshal may only be removed from office in conformance with Article X."

And the floor is open for debate. Dr. Gourd, you are recognized.

MR. GOURD: Mr. Chairman, motion to approve the language that's on the screen.

MR. HOOK: Second.

MR. HANNAH: What be the pleasure of the delegates?

MR. HOOK: We move to second.

MR. HANNAH: I'm so sorry, the Chair was distracted. So moved and seconded for -- please help the kind Chairman, Dr. Hook.

MR. HOOK: In consideration of clause at the bottom.

MR. HANNAH: To include it, sir?

MR. HOOK: Yes.

MR. HANNAH: We have a motion to accept the language, "by the Principal Chief and be confirmed by the Council for a term of five years. The Marshal may only be removed from office in conformance with Article X."

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

THE DELEGATES: Aye.

MR. HANNAH: Oh, I am sorry. I am -- once again. Once again, I am so sorry. The vote is held and we are open for discussion. We are open for discussion.

MR. WHEELER: Point of information.

MR. HANNAH: Point of information, Mr. Wheeler.

MR. WHEELER: Mr. Chairman, might it not be wise since we have already determined the word "appointed" to include that in that phrase and perhaps consider the phrase from "the Marshal shall be appointed" on, that one sentence?

MR. HANNAH: Technically, if we were to do that, sir, and include the word "appointed," which has already been approved, we would have an approved phrase inside of a sequence that has not been approved.

MR. WHEELER: Thank you.

MR. HANNAH: Very well.

MS. MASTERS: Point of clarification.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: I would like for the Chair to alleviate my confusion here. My understanding was that we divided this article -- I mean, Section 14, by the division of only one word. And that the bottom part and the top part have not been divided. Only the word "appointed" was divided.

But what we have now underlined is all one. The division was of only one word. When I was here, and I think I was here all evening, from 4:00 on.

MR. HANNAH: The good lady from California is correct, and the parliamentarian assist the Chair in ruling that by procedure under Robert's Rules, we are in fact considering this in sequel. That while the word was primarily a point of division, that it was in fact a point of division or two elements for us to consider. Now, if the good delegates would like to merge these back together again, procedurally --

MS. MASTERS: They're already together.

MR. HANNAH: Pardon me?

MS. MASTERS: They're already together. The way that it's printed there, it looks like they're divided, but actually we only divided "appointed" out. One word was divided. The rest of it is all one. The division was only of one word.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Billie.

MS. MASTERS: I hesitate to use the word "blank."

MR. HANNAH: We are not going to do that. If the Chair may be so bold, may he assist the good lady from California.

MS. MASTERS: Sure.

MR. HANNAH: Did the Chair hear you move to rescind the division on this section?

MS. MASTERS: We never did -- did we just now?

MR. HANNAH: Ma'am, I'm helping you. Did the Chair hear you make a motion to rescind the division? Your answer would most likely be "yes."

MS. MASTERS: It could be "yes," yes.

MR. HANNAH: The good lady from the west is either an attorney, an economist or a banker. If you were to do that, and you were to say "yes," then this would in fact be brought back together for our consideration.

MS. MASTERS: Yes.

MR. HANNAH: There's a motion on the floor to rescind the division. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, all of those in favor, signify by the saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the division is rescinded, and the section is once again brought into one form.

MS. SCOTT: Mr. Chairman.

MR. HANNAH: The good lady from Texas is recognized.

MS. SCOTT: Now that it's actually combined and that whole thing is tabled, I would move that we leave all of that table and move on to the next section and let that be part of the tabled section that they're thinking about.

MR. HANNAH: There's a motion to table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

DELEGATE: No.

MR. HANNAH: And the proposal for Section 14 is laid upon the table. And there seems to be a bevy of folks, and the

Chair is very pleased to see that you all are all over there, he assumes not discussing the weather.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman, motion to bring from the table Section 15.

MR. HANNAH: There's a motion on the floor to bring from the table Section 15. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, all of those in favor please signify by saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no." And the item is brought from the table.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman, and the motion to adopt the language of Section 15 as it appears.

MR. HANNAH: There's a motion on the floor to --

DELEGATE: Approve.

MR. HANNAH: That's very true. You need not do that, sir. It is already on the floor by virtue of being tabled; therefore, the floor is open for discussion on Section 15. Any delegates rise in opposition?

MR. HOOK: Sir, the question was called.

MR. HANNAH: Once again, the Chair would be pleased to hear your voices. Question has been called for; is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, we'll move to the language.

Section 15: "A vacancy of an elected office by reason of removal, death, resignation or disability of an elected official for which this constitution does not provide a process proceeding a replacement to serve out the term shall be filled by appointment by the Principal Chief with confirmation by the Council."

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no." And Section 15 has been approved.

Good work, delegates.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Dr. Gourd, you're recognized.

MR. GOURD: Motion to reconsider Article VI, Section 12, dealing with the cabinet.

MR. HANNAH: There's a motion to reconsider. Is there a second?

MR. UNDERWOOD: Second.

MR. HANNAH: There is a second. Floor is open for debate on reconsideration.

MR. WHEELER: Mr. Chairman.

MR. HANNAH: Mr. Wheeler, you are recognized.

MR. WHEELER: May we know the purpose?

MR. HANNAH: Dr. Gourd, help us along.

MR. GOURD: Thank you. I'm proposing and would offer in the form of a motion that a Secretary -- and we can work the language -- but a Secretary of Real Property be defined in the constitution.

The duties of that position would be directed toward the territorial integrity and property possessed by the Nation, both fee simple and trust in restricted property on behalf of the Nation.

And second of all, and more important I feel, be directed toward assisting those individual Indians and those families that still have restricted and trust property to preserve that land intact.

At present they are under attack from the 47 Act. The state courts, the inability of these people to afford surveys to protect the land, probating in state court. It just goes on down the list.

So I would offer that we need something directing somebody in the government to constantly be -- take vigilance over our territorial integrity and ownership of property.

MR. HANNAH: It was made clear his motion to reconsider and it has been seconded. We're open for debate. Anyone wish to rise in opposition?

MR. McCREARY: Point of information.

MR. HANNAH: Gentleman from Black Gum.

MR. McCREARY: Ken McCreary, Black Gum. If I am to understand this correctly, Dr. Gourd, is that we're going to include in Section 12 under reconsideration another cabinet seat?

MR. GOURD: Yes.

MR. McCREARY: Okay.

MR. HANNAH: Any other question or debate before this body with regard to the motion to reconsider?

Mr. Stopp, you are recognized.

MR. STOPP: Gary Stopp, Cherokee County. I guess I looked at this in the fashion of the Chief has the ability to recommend and establish cabinet positions and functions. And I look at Secretary of State as being -- I'm not sure what Dr. Gourd titled the new secretary position. Could I have that?

MR. GOURD: Secretary of Real Property.

MR. STOPP: Secretary of Real Property. I believe that would be part of the function of the Secretary of State. I believe it is something that is important -- probably Secretary of Natural Resources, something of that nature. But I believe it could be tied into one. And two, the Chief does have the ability to establish other cabinet positions.

MR. GOURD: I'm aware of that, sir. My point is, I personally feel, and having dealt with for years and years the issues of restricted and trust property both on behalf of the individual getting it placed in trust on behalf of the Nation or individuals, that at least I felt the issue should be addressed in

the Constitution. It's just an offer.

MR. HANNAH: Mr. Baker, you are recognized.

MR. BILL BAKER: I would speak in opposition as well. Like I say, we have got a real good department. The Council from time to time has put very few resources into it. I wish that we could find them to put more to help in this area. But it's something that for us to, as a constitutional convention, to create another cabinet with a Secretary, and a myriad of folks out there duplicating what we have available now, that maybe should be directed --

I agree with his emphasis on doing some of this work, but I do not think it constitutes a constitutional cabinet position and a whole other layer and expense. Those dollars and resources could better be served doing the work that he's talking about rather than creating a cabinet.

MR. HANNAH: Dr. Masters, you are recognized.

MS. MASTERS: I rise in opposition to this, also. Simply only, I understand the importance of it and I understand what the intention is trying to get to here, and I heartily agree with that.

Other than the narrowness of our description of the Attorney General, I would assume that it would be a portion of the duties of the Attorney General to assure that real property and trust lands are cared for, as the ranking lawyer of the Cherokee Nation.

Possibly that -- I can't see our duties anymore. We don't have a copy of that information, but I would think that that would fall within the duties of an Attorney General type post as opposed to a cabinet level.

MR. HANNAH: Does any delegate rise in support of the motion to reconsider?

MS. HAGERSTRAND: I certainly do rise in support of this.

MR. HANNAH: You are recognized, kind lady.

MS. HAGERSTRAND: I am Marion Hagerstrand from Tahlequah. This has been needed for a long, long time. Anybody who has kept up with Cherokee history from the time of the Dawes Commission knows that people have lost their land, and it should be investigated. We should find out why. We should retrieve this land for our people.

The people who have lost it are not able to get it back for themselves. And this is one of the big things that the Cherokee Nation could do to help the people who really need help.

Now, you all are going to eat regularly, and I'm going to eat regularly, but there are some people out there that need this help desperately. And I understand that it can be researched and gotten back, and I am highly in favor of this. We should be thinking about the people in the tribe who need help.

MR. HANNAH: Dr. Hook, how do you rise?

MR. HOOK: Point of clarification.

MR. HANNAH: Yes, sir.

MR. HOOK: I would just like to ask Dr. Gourd two questions. One, could you expand a little bit more on the area of responsibility, the extent of the scope this office would entail, and why you feel it necessary to include it in the Constitution rather than allowing it to be created later by a cabinet decision -- or a Council decision?

MR. HANNAH: Dr. Hook, I will not allow a response on that. Once again, the Chair is bound by our procedural guidelines. And what we should be debating here is the motion to reconsider.

The Chair has allowed, obviously, some debate with regard to the issue in hopes of saving some time, but what we really need to begin to focus on is if we're going to allow the good doctor's motion to reconsider this section to be opened.

MR. HOOK: Mr. Chair, I rise in support of reconsideration.

MR. HANNAH: Very well, thank you, sir.

DELEGATE: Call the question.

MR. HANNAH: Question has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: Question is before us. Shall the reconsideration of opening Article VI, Section 12 be open.

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: Secretary will conduct a standing count. All of those in favor -- and delegates will be in your seats. And once again, what we are voting on here is to reconsider Article VI, Section 12. And all of those in favor please stand.

MR. UNDERWOOD: Twenty-nine.

MR. HANNAH: The count is twenty-nine in favor. Please be seated. And all of those opposed, please stand.

MR. UNDERWOOD: The count is twelve.

MR. HANNAH: Count is twelve. Motion carries, and the section is open for reconsideration.

Dr. Gourd, do you have a motion, sir?

MR. GOURD: Was that two-thirds?

MR. HANNAH: That's right. I'm sorry. Thank you very much. Would Secretary do the calculations and see, requiring a two-thirds vote to reconsider.

Two-thirds of those voting would be twenty-eight. Twenty-nine in favor; motion passes.

Dr. Gourd, you are recognized.

MR. GOURD: Mr. Chairman, motion to table, and I'll bring this back with some definite response.

MR. HANNAH: There's a motion to table. Well, actually, we don't have a motion on the floor. There's nothing to

table. I assume that now we have reopened this section, and you are not prepared to reach a motion, are you, Dr. Gourd?

Just a moment, Mr. Stopp.

The Chair understood, Dr. Gourd, that you, by way of saying "tabling," that you wanted some time to actually prepare the language of your motion; is that correct?

MR. GOURD: Yes.

MR. HANNAH: And he does not have a motion.

There is nothing to table. And we simply have a section that is now open, correct?

Very well. Young lady from California.

MS. MASTERS: I was here waiting until we opened it so I could table it.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Would you move to table the entire section at this time? It would leave it open, and you will be able to bring it off the table whenever your motion is completed, if the Chair may be so bold.

MR. GOURD: I think in the interest of time first, if I would make a motion that we just create a cabinet position called Natural Resources.

MR. HANNAH: There's a motion on the floor to create a cabinet position titled Natural Resources; is that correct, Dr. Gourd?

MR. GOURD: Yes.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: And the floor is open for debate. Anyone rise in opposition? Chair would entertain a delegate rising in opposition to the creation of a cabinet post.

MS. MASTERS: I rise in opposition.

MR. HANNAH: And you are recognized, good lady.

MS. MASTERS: Masters, delegate. This is probably, as has already been so eloquently stated, one of the three greatest needs along with health and shelter, that our people have.

I rise in opposition only because it's being made into a cabinet level position.

I have family that is involved in this same issue right now. I feel that this should be the duties of the Attorney General, as opposed to a cabinet level position. I think our Attorney General ought to be assigned the duties of looking into the types of cases -- types of procedures that we would have to go to in order to preserve our natural resources.

These are issues that are tied up in the courts at this particular time. This is a court issue; therefore, I think the Attorney General, as the ranking lawyer in our Nation, would be the proper place to place this. And that's my only objection. I am one hundred percent in favor of this assignment of duty.

MR. HANNAH: Chair would recognize delegate rising in support of the creation of this post.

MR. STOPP: Mr. Chairman.

MR. HANNAH: You are recognized, Mr. Stopp.

MR. STOPP: Gary Stopp, Cherokee County. One of the things that we need to clarify is the difference between Attorney General and this position. At first I was against this motion, but when we looked at it -- when I looked at it again with Mr. Gourd, Dr. Gourd put it under Secretary of Natural Resources.

Understand, the natural resources is the largest asset that we have right now as a Nation. We are not putting the attention that we need on that resource. The Secretary of State will handle the federal issues with D.C. The Treasury with the Commerce of the Nation, and then our number one resource as far as our lands and everything will be handled by a Secretary of Natural Resources.

That includes our USDA issues, our tribal simple fees, trust land, things of that nature. So I am very much in support of a mandatory Secretary of Natural Resources in that framework.

Now, when we talk about the Attorney General, just to tap into that, that is one of, if there was a problem with a dispute, the Attorney General would come in and prosecute for the Cherokee Nation or the tribal member.

The Secretary of Natural Resources ensures that the whole entity of all of our lands, both individually owned and tribal owned, is safeguarded, as well as increased. I think there needs to be a major focus on our natural resources over the next four years.

I think it's an area that we have declined in, and we have lost land in, so I think as a mandatory cabinet level position, I think it's very important. Thank you.

MR. HANNAH: Chair would entertain a delegate rising in opposition to the motion.

Hearing none, the good lady from near Ramona is recognized.

MS. McINTOSH: Mr. Chairman, Dorothy Jean McIntosh, delegate from Ochelata.

I rise in support of Secretary of Natural Resources in order that the time and effort on this area of interest could be yielded to it, and that the Secretary of Natural Resources would have the support of the Attorney General.

The Attorney General, I would think would not have the time to do the work that a Secretary would and do all of the information gathering and recommendation. And I firmly support this.

MR. HANNAH: Mr. Scott, you are recognized. How rise you on this issue?

MR. SCOTT: I am fully in support. I retired about ten years ago, moved back to Oklahoma to work -- excuse me -- on this issue. And I have been able to do absolutely nothing with the Tribe so far.

And I think that it is one of the most important jobs that the Tribe should be into. And I think that it should be a

cabinet position and not left to the Attorney General.

The Attorney General would be arguing for support of the things that this Secretary would bring forward, but there needs to be somebody out there gathering and analyzing the data to where the land is, what the resources are and so forth. And I think that is something that we really need.

MR. HANNAH: Good man from Black Gum is recognized.

MR McCREARY: Mr. Chair, Ken McCreary, Black Gum. And I, too, real strongly support this particular issue, like Mr. Stopp stated, I second. I think it is an appropriate item that we need to have on it, and if we are not going to have any other opposition to it, I would call the question.

MR. HANNAH: Does any delegate rise in opposition?

MR. SMITH: I do.

MR. HANNAH: And, Mr. Smith, you will be heard.

MR. SMITH: Let me ask in rhetorical questions.

Who is the present Secretary/Treasurer? Who is the present Secretary of Health, Education and Welfare? Who is the present Secretary of Commerce and Industrial Development? Who is the present General Counsel? Who is the present Secretary of Communication?

Most of those positions aren't filled. Most of them haven't been filled for twenty years. And the Constitution now says these persons shall be appointed by the Principal Chief. This is archaic -- at least this one section was archaic the day it was printed. This section is archaic now. It binds us into an administrative mode in the future.

I object to Number 3, and I object to the whole section.

We are trying to micro-manage the day-to-day operations of the government. It's just not needed. It's not needed.

You're going to put a lot of time and energy forcing people to conform with what we think is good now. And the next thing we're going to do is, well, if Secretary/Treasurer is valuable, and if the Secretary of State is valuable, and the Secretary of Natural Resources is valuable, a Secretary of Child Welfare is valuable, a Secretary of Elderly Care is valuable, a secretary of on and on. And those are all good positions, but you hamstring the best management system and administration by setting up cabinet positions that are title only.

MR. HANNAH: Dr. Hook, you are recognized.

MR. HOOK: With great respect for Mr. Smith's logic, I stand in support of this simply because my understanding of every Native American nation, of which I'm aware of, the heart is in the land. And I believe by including this language in our Constitution it affirms our commitment to the land base; it confirms our commitment to the natural resources for which we are responsible.

And I believe that it is extremely important to include

it in the language, and subsequently we'll see whether it's implemented, but at least our position will be clear to state the importance of this.

MR. HANNAH: The Chair would entertain delegate rising in opposition to the motion.

MS. MASTERS: Call the question.

MR. HANNAH: Question has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second.

MR. STOPP: Point of information.

MR. HANNAH: Yes, sir.

MR. STOPP: Can someone explain to me what the cabinet level positions do? What are their actual purposes? Do they actually manage and supervise?

MR. HANNAH: You may ask that question, sir, with regard to the question that is before us, which would be the creation of the Secretary of Natural Resources. Does anyone here wish to assist the Chair in answering the good man's question?

Hearing none, Chair apologizes, Mr. Stopp; we are without ability to answer your question, sir.

The question is being called for, and been seconded. Is there any opposition?

Hearing none, the question before us is to include the cabinet post of Secretary of Natural Resources. All of those in favor --

MR. STOPP: Mr. Chairman.

MR. HANNAH: Yes, sir, you're recognized.

MR. STOPP: Can I provide information to that question? Can I answer my own question?

MR. HANNAH: Let me get this straight, Mr. Stopp. You can rise to ask a question to the Chair, and now you wish to answer it?

MR. STOPP: I think I can answer that question.

MR. HANNAH: In the spirit of intrigue, the Chair would recognize Mr. Stopp.

MR. STOPP: When we looked at the cabinet level positions, the cabinet level position is an advisory position to the Principal Chief in the Nation. It is not a management position or a supervisory position. It has no role in operations.

So it is truly someone who coordinates, advises, and counsels the Chief, much like the cabinet level positions for the President. It does not have operational responsibilities.

So I just want to make sure that everyone understood the difference between an Executive Director of Realty versus the cabinet level over natural resources. One is operations; one is advisory. And it can be paid or not paid.

MR. HANNAH: Thank you, Mr. Stopp. We hope your answer has helped to clarify your question.

The question is before us -- and the Chair says so with

the spirit of humor, sir. I hope you recognize that. Well said.

The question is before us, and if you vote "aye," then the Secretary of Natural Resources will be included in this section. All of those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And we have a Secretary of Natural Resources.

What would be your pleasure at this time, Dr. Gourd?

MR. GOURD: Thank you, Mr. Chairman. I would make a motion to bring from the table, Article VI, Section 14. If my numbering is right, that would be the Marshal to understand that consensus has been arrived at.

MR. HANNAH: The Chair is instructed by the parliamentarian that now that this section that we have just included -- thank you very much -- Section 12, that we will need to vote once again to approve this section in its entirety. Is there a motion --

DELEGATE: So moved.

MR. HANNAH: And is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, the question before us is Section 12:

"There shall be a cabinet composed of the following persons who shall be citizens of the Cherokee Nation. Number one, Secretary of State. Number two, Treasurer. Number three, Secretary of Natural Resources. These persons shall be appointed by the Principal Chief and confirmed by the Council.

The Council on recommendation of the Chief only, may create additional cabinet positions and departments. The Chief shall prescribe the duties and responsibilities to the cabinet members. The cabinet members shall be authorized to appoint such cabinet and assistants as they deem necessary.

The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title of responsibility as a departmental function."

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And the section is approved, and our language is added.

Mr. Clarke, you are recognized.

MR. CLARKE: I would request that we take a break. We've been here a couple of hours.

MR. HANNAH: The Chair absolutely loses concept of time from here. The good delegate is very kind to remind us that we need to take a six-minute recess. And we -- okay, ten-minute recess, and we will reconvene.

(recess taken)

MR. HANNAH: Good delegates, we are in order. Chair received a chiding during the break and would once again, as he always will do, as he always will do, he will bring an apology to the delegates.

Term was used earlier in directing some of our delegates and made reference to "learned delegates." The Chair believes that all delegates are learned. Does believe that some of them, in fact, may have educational background in certain areas.

And so the Chair would apologize to each and every delegate that is in the room, that there is obviously no intent to besmirch the intelligence or the integrity of any delegate that would be here.

There's also a chiding to the Chair with regard to his conducting of debate and allowing certain individuals to speak. And the Chair can only say that he will recognize as many people as possible. And that he will -- thank you, Mr. Baker. I'm trying to make a serious apology to the group and you are back there mocking.

And there is no intent, there is no intent from this roster to limit anyone's words or their debate or their ideas. The Chair would take personal umbrage of anyone who would challenge him.

He says that not only as the Chair but as an individual. That's not the pledge and the oath that I took, and we'll be through with that.

And so with that out of the way, the good man formerly of West Peavine is recognized, sir. What say you?

MR. DOWTY: That's not out of the way, if the Chair please. The Chair's reference to those in Adair County and the slowness thereof, I would say to the Chair that that has no application to those south of Bearing Fort Creek.

MR. HANNAH: The Chair having grown up on the north side of the Illinois river recognizes those remarks should in fact be entered into the record.

MS. MASTERS: Point of personal privilege.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: Having seen that Delegate Baker is now here, I would ask the Chair for personal privilege to state that if this conference goes on very much longer that all out-of-state at-large delegates will have residency in District 1, and his greatest fears will be realized.

MR. HANNAH: Well, if the good man from Tahlequah is not careful by once again insulting the sheriffs of all the counties in the State of Oklahoma, then he will in fact find himself with a whole gaggle of constituents that perhaps only in his wildest dreams would he have desired.

We're all back in the room. Thank you all very much for being here. And the order of business before us would be -- Dr. Gourd, you are recognized.

MR. GOURD: I wish to make a motion to approve this language, but I thought we had already done that.

MR. HANNAH: And we have.

MR. GOURD: Motion to bring to the table Article VI, Section 14.

MR. HANNAH: Motion to bring from the table Article VI, Section 14. Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, all those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the item is brought from the table. Floor is open for debate.

MR. JOHN KEEN: Mr. Chairman.

MR. HANNAH: Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate. Have a motion to amend.

MR. HANNAH: Let it be heard, sir.

MR. JOHN KEEN: I believe this will go -- well, I coordinated my language with -- the language above -- she had on the screen, so I coordinate it. But I'll try to work it into the proposal here.

MR. HANNAH: You move to substitute sir, and you're working -- just so we can stay with you, you're moving to substitute, and you're working with the proposed language; is that correct?

MR. JOHN KEEN: The underlying language, yes.

MR. HANNAH: Very well. Continue, sir.

MR. JOHN KEEN: "After a term of five years, which shall be staggered with that of the Attorney General, which shall be prescribed by law."

I would ask for assistance from the body in the correctness of my wording.

MR. HANNAH: Mr. Keen has moved a substitution into proposal, which you see in the highlight, which reads: "Which shall be staggered with that of the Attorney General, which shall be prescribed by law." Is that your motion, sir?

MR. JOHN KEEN: Yes.

DELEGATE: Second.

MR. HANNAH: And there's a second. Floor is open for debate.

MR. STOPP: Information.

MR. HANNAH: Information, sir.

MR. STOPP: Can we look at the Attorney General?

I can't remember if it was four or five years on the Attorney General.

MR. HANNAH: Five, sir.

Let's go back to the proposal. Floor is open for debate.

MR. ROBINSON: Point of clarification.

MR. HANNAH: What do you say, sir?

MR. ROBINSON: Ricky Robinson, delegate from

Tahlequah. Staggered with that, just to make sure that everybody understands, just say that the Attorney General starts in November of '99, and the Marshals appointed, confirmed at the same time.

Mr. Keen, what you are saying is that they would both go from November, '99, to November 2004, or would it be like a later date? Just wanted to make sure I understood.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: Well, the intent is to stagger those, the term of the Marshal and the term of the Attorney General, but I would prefer to call Mr. Hembree for further explanation.

MR. HANNAH: Mr. Hembree, you're recognized.

MR. HEMBREE: Thank you, Mr. Chairman.

It's my understanding that it will be staggered with the Attorney General as prescribed by law. We don't know when it's going to start; we don't know what's going to -- you know, this is sometime in the future, so whatever it is. But that the Attorney General ought to start, that's when the Marshal's office will start also.

MR. ROBINSON: That's all I wanted to know.

Thank you.

MR. HEMBREE: And also for clarification, Mr. Keen, this is not specifically -- it's not for term limits. If the Attorney General were to resign, that does not necessarily mean -- that does not mean that the Marshal would be forced to resign; is that correct?

MR. JOHN KEEN: That's the intent.

MR. HANNAH: Dr. Hook, you are recognized.

MR. HOOK: Jonathan Hook. I would like to propose a friendly amendment to the language which is stated: "Which shall be staggered with that of the Attorney General, which shall be prescribed by law."

I believe it would be clearer if you substituted "as" for "which shall" because that appears to -- or that indicates that the staggering -- let's see -- I would propose that that be substituted with "as."

MR. HANNAH: What say you, Mr. Keen?

MR. JOHN KEEN: With the concurrence of my coauthors.

MR. HANNAH: Mr. Hembree. Excuse me, would you turn around and take a look at this friendly amendment on the screen, which Dr. Hook has provided which reads "which shall be."

DELEGATE: "As prescribed."

MR. HANNAH: I'm sorry, "as provided"?

DELEGATE: "As prescribed."

MR. HANNAH: I'll get it in a minute. Somebody help me here.

MR. HEMBREE: Don't ask me anything about grammar, sir. I know nothing about it.

MR. HANNAH: In that case, Mr. Keen, it is your call.

MR. JOHN KEEN: Yes.

MR. HANNAH: Seeing it's accepted, Dr. Hook, thank you all very much. And the good man formerly of West Peavine south of Bear Fork is recognized.

MR. DOWTY: Where the bright Adair County citizens reside.

I would have a point of information and inquiry of the author. Is it the intent of this amendment that the terms of office of the Attorney General and the Marshal shall not run together or at the same time?

MR. JOHN KEEN: Yes.

MR. DOWTY: And Mr. Hembree's comments were that they would begin at the same time, and I believe that's confusing. Does the language then need to be amended in any way? If he had that interpretation, might others have that same interpretation, that they run staggered, but together?

MR. JOHN KEEN: Well, the intent of the author is --

MR. HANNAH: Mr. Keen, you are recognized.

MR. DOWTY: Excuse me, Mr. Chair. It says "staggered with," and so if the learned Mr. Hembree could misinterpret that, others might.

MR. HANNAH: Very well. Do you have a suggestion, sir? Would you make a friendly amendment?

MR. DOWTY: No.

MR. HANNAH: And once again, in true attorney fashion, you simply pointed out what is wrong and not given us the answer.

MR. DOWTY: It would cost you.

MR. HANNAH: The Chair would gladly pay its value today. The young lady is recognized.

MS. HAVENS: Edna Havens from Nowata County. I was just wondering about the language. I'm not an attorney, so I don't know all the details, but why can't we just add "the terms will not run concurrently." Does that change it?

MR. HANNAH: What say you, Mr. Keen? And I'll help you out. What say you, kind gentleman? You're recognized, sir.

MR. DOWTY: Have we in other places used other wording for that same meaning, "coextensive" or "conterminous," just in the interest of being consistent. We got rid of "coterminous"?

MR. JOHN KEEN: I would -- it would be my --

MR. HANNAH: Mr. Keen, you are recognized.

MR. JOHN KEEN: It would be my intent that the Attorney General's office is not staggered with any other office or coterminous with any other staggered office, so that I believe this would be the only meaning that could be brought from this is that it shall be staggered with that of the Attorney General as prescribed by law.

"As prescribed by law," what I meant by that was that we

wouldn't get into the dates, but just allow the Council to make separate appointments. That would allow the Council to say, then, the first term shall be three years on one, and five for the other, so that that would establish the staggered terms. So I would like my language to stand.

MR. HANNAH: Good lady from Oklahoma City is recognized.

MS. MEREDITH: I think the lady from Nowata had a wonderful idea, and I would like to move that -- move her amendment.

MR. DONN BAKER: Point of information or clarification --

MR. HANNAH: Mr. Baker, you are recognized.

MR. DONN BAKER: Donn Baker, delegate from Park Hill. If we want to try to make it clear, would you be able to put, "which shall not parallel the term of the Attorney General"? Would that clear it up for everybody?

MR. JOHN KEEN: I would accept that.

MR. HANNAH: What say you and your motion, kind lady from Oklahoma City? Do you still wish to have your motion recognized?

MS. MEREDITH: I do not accept the friendly amendment. I think that her language is much clearer and looks at the forest and not the trees.

MR. HANNAH: Very well, the friendly amendment, of course, would be accepted by Mr. Keen, if it were to be. But we have a motion that you are making of language that says what?

MS. MEREDITH: Ask the lady from Nowata.

MR. HANNAH: Motion from the lady from Oklahoma City by Nowata. What do you say?

MS. HAVENS: Edna Havens. To me, the people that read the Constitution are not going to be as informed on language. And if you can make it plainer and simpler, you're going to have more chance to get it passed because that's what the people told me when I came down here, "Would you take some of that legalese out of that so we can understand it."

So to me the term that the Marshal and the Attorney General's terms is a better phrase, but I am a layman. So I would say, "These terms will not be concurrent," period.

MR. HANNAH: There's a motion on the floor to substitute the language, "The term of the Marshal and Attorney General will not be concurrent." Is there a second?

MR. BILL BAKER: Second.

MR. HANNAH: Floor is open for debate.

MR. BILL BAKER: And Amen.

MR. HANNAH: You are recognized, sir.

MR. DOWTY: The motion just made is the language in bold in the upper paragraph; is that correct?

MR. HANNAH: It is indeed, sir. The motion that was just made and has been seconded and we are open for debate on

the phrase, "The terms of the Marshal and Attorney General will not be concurrent."

MR. DOWTY: I would rise in favor of the language. I believe it is concise. The word "concurrent" is a much used word in the law, certainly of the State of Oklahoma and has been well defined by case law. And I appreciate the delegate pointing out that someone other than lawyers can put language in that is understandable.

MR. HANNAH: Thank you very much. Which once again verifies from the Chair that we are all learned delegates here in many ways.

And, kind sir, you are recognized. How rise you on this debate? In favor or against?

MR. JOHN KEEN: In opposition of this.

MR. HANNAH: State your case, sir.

MR. JOHN KEEN: Well, I'm afraid that this could be construed to say that we cannot have a Marshal and an Attorney General at the same time.

MR. GOURD: Point of clarification.

MR. HANNAH: Point of clarification, Dr. Gourd.

MR. GOURD: I think the amendment speaks strictly to the term and when it begins and ends, rather than people that are persons who would hold that position. I think it's strictly in reference to this appointment begins and ends and it's not concurrent; therefore, it would overlay with the other. So it's clear to me.

MR. HANNAH: Mr. Baker, you're recognized.

MR. DONN BAKER: Donn Baker, delegate, Park Hill. I stand in favor. I like her language better than mine. And I think "concurrent" is a term that everybody, both lawyers and non-lawyers, know.

MR. HANNAH: Do any delegates rise in opposition to the motion before us?

Hearing none, Chair will close the debate, and the question is before us at this time, would be the substitution of language and this proposed section of Section 14. And all of those in favor of adding the phrase, "The terms of the Marshal and Attorney General will not be concurrent," please signify by saying "aye."

THE DELEGATES: Aye.

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

Motion passes. The language is inserted. And the good lady from Nowata has given a great piece of clarification to the Cherokee people.

You are recognized, Dr. Gourd.

MR. GOURD: Thank you, Mr. Chairman. My understanding at present is that we're still discussing what is on the screen. The friendly amendment that's been offered, which has now been clarified, still does not deal with the issue of, "The Marshal shall serve under the direction of." In this upper phrase

talks about the Attorney General.

It's still not defined, the placement of the Marshal in the operation, administration of the Nation. I would have hoped that that would have been addressed by those more learned than I.

MR. HANNAH: Be careful with that phrase, kind gentleman. There are those who are sensitive in the chambers. There are delegates that -- young lady, do you wish to be recognized?

MS. HAMMONS: Yes, sir.

MR. HANNAH: And you are.

MS. HAMMONS: Diane Hammons, Tahlequah. Point of information, I guess.

MR. HANNAH: Yes, ma'am.

MS. HAMMONS: I don't think that we need to put a supervisory position for the Marshal in the constitutional language. As it stands now, the Marshal has been elevated constitutionally to an appointed official.

So as an appointed official, the Marshal answers to the people of the Cherokee Nation. His duties, or her duties, will be prescribed by law, which means prescribed by the Council, has to go through to be passed by the Council.

The Marshal -- there is a concern and it is a very valid concern that the Marshal not be directly underneath the Chief. We are not operating in a vacuum here. We have seen in our Nation problems that can arise between law enforcement and the Executive.

What the drafters have done in this section to prevent such a problem is -- are two things. Elevate the office of Marshal to that of an appointed official, and put in the protection, which is found in the last sentence, "The Marshal may only be removed from office in conformance with Article X."

They put that protection in for the Attorney General, also. In other words, the Attorney General cannot be fired. The Marshal cannot be fired the same day for doing something that displeases the Executive, or the next day.

You have to go through the removal process that's outlined in Article X, which we are going to get to later. Removal process typically involves action by the Council. Hearing, opportunity to be heard. Were you complying with your duties; were you not complying with your duties?

So that would -- those protections are build in there. I don't think that we need to put anybody over the Marshal. I think that this gives the office of the Marshal independence and autonomy and places the Marshal where he or she ought to be, answering directly to the Cherokee people.

MR. HANNAH: Thank you for that point of clarification. Dr. Masters, you are recognized.

MS. MASTERS: I rise in support of the reason that is stated. As delegate Diane just said, the term -- the phrase "prescribed by law," I believe does show that we do have the Marshal in a position that our elected representatives will be able to look

very closely.

And when we get to Article X, we will be able to look even more closely and see if we need to work very closely with that article in regard to what we have done previously, and that is still before us. So I would support it as it is written now.

MR. HANNAH: Any delegates rise in opposition to the language that is before us in the proposal?

Kind sir, you rise in opposition?

MR. DOWNING: Yes.

MR. HANNAH: And we would hear your --

MR. DOWNING: Carl Downing. I am very uncomfortable with an office that is appointed that seems to have no issuing authority. It would seem to me that what we have now is an appointed Marshal who answers only to the Chief.

I'm not sure what the solution is, and furthermore, I am willing to let those delegates who live in this area work that out.

And whatever they decide, I would be perfectly happy with.

I think there was a suggestion by -- the delegate is gone, but a delegate -- that we have a line and staff chart. I wonder if -- might as well pick on Charlie -- if Dr. Gourd could develop a line and staff chart so that we could see this. Now, in my mind that line and staff chart would show that the Marshal is out here all alone with no one with whom he needed to respond. Thank you.

MR. HANNAH: Mr. Hembree, you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. The Marshal -- on a flow chart, I would perceive that the Marshal standing out there alone, and that's not necessarily a bad thing.

His duties and authority are to be prescribed by law, which means by the Council. He would be appointed by the Chief and confirmed by the Council. After that appointment, he would really have no -- he would not answer to the Chief. He would not answer to the -- his duties in whatever he was able to do would be prescribed by the Council.

If he did turn into a bad person or if she became a rogue, we have a removal process that we will be discussing in Article, I believe it's 10, to -- that both the Council and/or the people would be able to remove a bad apple. So I think the way it's worded right now is pretty good in all respects.

MR. HANNAH: Any delegate rise in opposition to the motions before us?

Mr. Clarke, you do, and you're recognized.

MR. CLARKE: I rise in opposition simply because in my mind, I can see somewhere down the road where perhaps one of our supreme court justices could make a determination, and that this person maybe would be considered as a separate branch of the government. I mean, that's how I see this. It possibly could happen that way. I may be wrong, but I don't think so.

MR. HANNAH: Thank you, Mr. Clarke. Dr. Gourd,

you are recognized.

MR. GOURD: Thank you, Mr. Chairman.

Mr. Clarke, that's exactly my point. I was thoroughly convinced that "prescribed by law" satisfied my concerns until it was suggested that on some sort of a flow chart the Marshal is off out there to himself.

And my conceptualization of a flow chart of the government, you have the people at the top, and I have yet to see even a Cherokee Nation flow chart that starts out with the people, from which all things start.

Then you have your Executive, Legislative and Judicial. And the potential for something to be somehow attached as an appendage as a Marshal out there, bothers me. And that's the only reason. But I -- you know, I'm ready to call for the question unless there's further debate. I mean, I -- Mr. Clarke, you're right on point. Thank you.

MR. HANNAH: Kind man from Black Gum is recognized.

MR. McCREARY: Call the question.

MR. HANNAH: The question has been called.

DELEGATE: Second.

MR. HANNAH: And has been seconded. And hearing no opposition, we are considering the proposal that is before us, that is underlined and shall be read:

"That the Marshal shall be a citizen of the Cherokee Nation and possesses such training and experience in law enforcement as prescribed by law. The duties and authority of the Marshal shall be prescribed by law. The Marshal shall be authorized to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee Nation.

"The Marshal shall be," obviously "appointed," we've already approved, "by the Principal Chief and be confirmed by the Council for a term of five years. The terms of the Marshal and the Attorney General will not be concurrent. The Marshal may only be removed from office in conformance with Article X."

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

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And the "ayes" have it, and the language stands.

So with this, let's now get this in its entirety for our review and approval. Before your consideration, ladies and gentlemen, will be Section 14, which shall read:

"There shall be created an office of Marshal. The Marshal shall be a citizen of the Cherokee Nation and possess such training, experience in law enforcement as prescribed by law. The duties and authority of the Marshal shall be prescribed by law.

The Marshal shall be authorized to deputize such officers as necessary to carry out the law enforcement needs of the Cherokee

Nation. The Marshal shall be appointed by the Principal Chief and be confirmed by the Council for a term of five years. The terms of the Marshal and the Attorney General will not be concurrent. The Marshal may only be removed from office in conformance with Article X."

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the language is accepted, and the section is approved. And, Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman.

MS. MASTERS: Point of inquiry.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: The flow chart that was requested by Delegate Stroud, can you tell us what time that will be available?

MR. HANNAH: Cannot, ma'am, because the Chair has not instructed anyone to draw it. What would be the pleasure of the delegates?

MS. MASTERS: May I suggest that the assisting flow chart be brought out and maybe just modifications could satisfy Delegate Stroud, if we looked at how things might look.

MR. HANNAH: Dr. Gourd, do we, in fact, have that available to us at this time, or perhaps one of the other delegates in their packet of information? Mr. Stopp, would you be helping us with that, sir?

MR. STOPP: Yes, I would.

MR. HANNAH: Excellent. Thank you very much. If you would extend that down to Delegate Stroud, she would have the opportunity to review the structures that exist currently of the Cherokee Nation.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. Not having the detailed notes, and standing now in the place of Mr. Keen until he can arrive, I would make a motion that we scroll down the screen until we come to a motion that is tabled and untable it, unless somebody has a number. I don't know what number we would be at.

MR. HANNAH: I think that's a phenomenal idea. Maybe somebody will help you with that here in just a moment.

MS. JORDAN: Mr. Chairman.

MR. HANNAH: One moment, please.

That takes us back to Article VII.

MS. JORDAN: Mr. Chairman.

MR. HANNAH: Yes, ma'am, you are recognized.

I am so sorry, ma'am, I did not see the kind lady from Tahlequah.

MS. JORDAN: Delegate Jordan. I just make a motion that we untable Section 2 of Article VII and begin where we left off yesterday.

MR. HANNAH: Which is exactly where the Chair is

prepared to take us.

Ma'am?

MS. SCOTT: My question was, should we approve Article VI first, are we through with that or is there still something left on that?

MR. HANNAH: Good question. We're going to see if there is in fact something on the table with regard to that article.

The kind lady from Texas has been very astute in recognizing that we have now worked through the entirety of Article VI. And we will now prepare to vote for it on approval in its entirety.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Yes, sir.

MR. GOURD: On an assumed motion by the lady, I would second to approve the language as discussed.

MR. HANNAH: As amended, sir?

MR. GOURD: Yes.

MR. HANNAH: The delegate asked for a reading?

THE DELEGATES: No.

MR. HANNAH: The Chair is always prepared to make sure everyone here is in agreement. Young lady, you are recognized.

MS. MILLER: I'm sorry, but isn't there a place in there about the concurrent language that we need to change again, for the Attorney General, to make it consistent, make the staggered concurrent?

MR. HANNAH: Let's go to the very top of this -- right there. Okay. You raise a question with regard to "The Attorney General shall serve a term of five years." And then here it says that "The terms of the Marshal and the Attorney General will not be concurrent."

MS. MILLER: Wasn't there another place, though, that we had that staggered language? I didn't --

MR. HANNAH: Let's go to the very top of this article and look through it section by section. That way everyone will be satisfied we're on the same page.

This is Article VI. It is the Executive section. And you'll see in Section 1 that we are describing the Executive powers of the Principal Chief.

In Section 2, we're describing the Principal Chief, the qualifications for such.

In Section 3, we describe the election of the Deputy Principal Chief.

In Section 4, we speak to in absence of the Principal Chief and the succession order.

In Section 5, we speak to the language with regard to removal, death and resignation.

In Section 6, the Principal Chief and Deputy Chief shall at times receive for their service compensation.

Section 7, the Principal Chief may on extraordinary occasions convene the Council for a special meeting.

Section 8, at one session the Principal Chief will be required to give an annual State of the Tribe or State of the Nation, I should say, Address to the Cherokee people.

Section 9, gives powers of initiatory with public trust, and definition of beneficiaries.

Section 10, Deputy Chief, by virtue of its office will advise the Principal Chief.

In Section 11, nothing in this Constitution will be construed to preventing the Principal Chief from employing such administrative assistance as he or she would require.

Section 12, discussing the cabinet, creating the position of the Secretary of State, Treasurer and Secretary of Natural Resources.

Section 13, shall be, create an office of Attorney General. The Attorney General will be a citizen. With regard to their powers. Appointed by the Chief and confirmed by the Council.

Attorney General will serve a term of five years and be removed in Article X.

14, creates the office of the Marshal, which we just approved.

And Section 15, a vacancy of an elected office by reason of removal, death, resignation, or disability of the elected official for which the Constitution does not provide a process or procedure and place to serve, and talks about how that will be done.

We've had an opportunity to see all sections of this amendment. Are there any questions or clarifications?

Mr. Gunter, you are recognized.

MR. GUNTER: I notice here we have an annual State of the Union -- or State of the Nation report by the Chief.

MR. HANNAH: Yes, sir.

MR. GUNTER: We're also required an annual State of the Natural Resources from that Secretary. And I was wondering if those should be in some way related so that the Natural Resource's report could be included in the State of the Nation message by the Chief.

MR. HANNAH: The Chair is somewhat lost here. Are you relating to the section that establishes the Secretary of Natural Resources?

MR. GUNTER: Yes, I thought we had a requirement there for him to submit an annual report.

MR. HANNAH: We'll --

MR. GUNTER: We didn't address that?

MR. HANNAH: I'm sorry, sir, the Chair does not recall requiring that. And once again, this section shall be cabinet persons confirmed by the Council on recommendation from the Chief only. Chief will prescribe the duties and responsibilities. Council made recommendation -- there is no requirement, sir, for an annual report.

Mr. Hoskin, you are recognized.

MR. HOSKIN, SR.: Charles Hoskin from Vinita, the elder, senior. I have a question that possibly may be asking, but I believe it is substantiative.

In requirements for Council members, we require that they are citizens by blood of the Cherokee Nation. In reviewing our work yesterday in the requirements for Principal Chief of the Cherokee Nation, we simply stated that they shall be a citizen of the Cherokee Nation. It appears that whether or not this body deems necessary to put "by blood" as a requirement by the Chief and the Deputy Chief.

MR. HANNAH: You make reference to Section 2?

MR. HOSKIN, SR.: Yes, sir.

MR. HANNAH: What would be the pleasure of the delegates?

MR. GOURD: Mr. Chairman. Motion to reconsider Section 2.

MR. HANNAH: Just one moment.

MR. HOSKIN, SR.: It does say "by blood" in the last sentence of the section.

MR. HANNAH: Yes, it does. It says, "which he or she was elected and shall have obtained the age of thirty years at the time of his or her election and be a citizen by blood of the Cherokee Nation."

MR. HOSKIN, SR.: But for consistency, do we need to make that apparent in the first sentence, as it is in the first sentence of the requirements of the Council?

MR. HANNAH: Sir, we can work with it here or it could be left to the style committee.

Kind man, you are recognized.

MR. DOWTY: I think it's covered. I think we've covered that. It's there in Section 2, and then the Deputy Principal Chief is subject to the same qualifications in the next section. Appreciate it being brought to the delegates attention, but I believe we covered it.

MR. HOSKIN, SR.: Thank you, Mr. Chairman.

MR. HANNAH: And thank you, Mr. Hoskin. You've raised an incredibly important question for us as we move forward.

MS. STROUD: Motion to reconsider.

MR. HANNAH: There's a motion to reconsider.

DELEGATE: Second.

MR. HANNAH: And there is a second. And all of those -- hearing no opposition, all of those in favor -- and I assume you're reconsidering this article?

MS. STROUD: Yes.

MR. HANNAH: Okay, very well, Virginia. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And the section is reopened. What would you have to reconsider, ma'am?

MS. STROUD: Virginia Stroud, Tahlequah. It has been asked by many of the non-delegates to have me present this on the floor in the form of a friendly motion. Is that the correct wording?

"That the citizens of the Cherokee Nation that are non-delegates would like to see a blood quantum of one-fourth or more to be Chief and Deputy Chief of the Cherokee Nation."

MR. HEMBREE: On order.

MR. HANNAH: On order, Mr. Hembree.

MR. HEMBREE: That would be in a form of a motion to reconsider.

MS. STROUD: It is.

MR. HEMBREE: It is. Oh, I thought she said a friendly -- actually, she got to the microphone on a motion to reconsider, and then she used the phrase "friendly." You have a motion before us, then, to require a blood quantum of one-quarter degree Indian blood for the Principal Chief.

MR. STROUD: Yes.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second, and the floor is open for debate. Mr. Hoskin, how do you rise on this issue?

MR. HOSKIN, JR.: Mr. Chairman, I rise in opposition to this amendment. We should be careful to treat all citizens of the Cherokee Nation equal. That means citizens who are not elected officials; it means citizens that are elected officials; and it means citizens that seek to be elected officials.

Placing a blood quantum may be something we desire, and it may be something that we can show that desire by reflecting it at the ballot box by saying the candidate who is one-sixty-fourth Cherokee, we may not want to split that person.

But we should not put in our constitution that we are going to discriminate on the basis of blood quantum. We shouldn't do that anymore. Thank you, Mr. Chairman.

MR. HANNAH: Virginia, I would allow you to speak and give us supporting language to your motion.

MS. STROUD: All citizens would be created and treated equally. It's only for the blood quantum for Chief and Deputy Chief. We have other Constitutions in the United States by other tribes, who have this in their constitution of a blood requirement for their Chiefs. And so we would like to see that incorporated into our Constitution.

MR. HANNAH: Good doctor, you are recognized.

MR. RICK ROBINSON: I am regrettably standing up in opposition to this amendment. Most of the people that I have talked to back in southern Adair County up on Killer Mountain, Oak Ridge, and those areas have the same feeling. Many of them think that there should also be a minimum blood degree requirement for

membership.

My opposition to this is not because I wouldn't want it to be. I actually would. But I feel -- and I don't know if this is the proper consideration, but I feel if this was put in the Constitution, we're going to automatically make sure that this is not passed by the voters.

And I don't know if that's a proper consideration or not, but like I said, in spirit, I'm in favor, but in reality, I'm in opposition.

MR. HANNAH: Thank you, sir.

Mr. Silversmith, you wish to be recognized?

MR. SILVERSMITH: Yes, Mr. Chairman. My name is Rufus Silversmith, and I represent the people down -- not by request, but I feel like since I live amongst people in Salina where we don't have a police station and/or a judge, supreme court or whatever have you, we have a community of people who predominantly speak Cherokee --

MR. HANNAH: How do you rise on this issue?

MR. SILVERSMITH: -- or at least sixty percent.

What I wish to do is speak in favor of the quantum issue.

Because I feel like that there's nothing wrong with a Cherokee feeling like he wants to be Cherokee. Because I look around the room here, and I see two-thirds white people in here telling us what I perceive to be a Cherokee.

Because I've got two daughters that are half-breeds, and the thing is, they choose to be white. They are half Indian. And by choice, they do this. So I'm aware that by blood and by contents, they have made a decision.

And I speak -- I want to speak for the people in Salina, the people that I represent. Because the preamble specifically states that "we the people" entails those people whom you people are talking about, that I sympathize with that want to be Cherokees. And I use that word emphatically because I see a lot of wanna-be's.

There's lawyers in here that are talking way over the heads of people like myself and the people that I represent. Because I don't understand a lot of this stuff because you talk too damn fast.

And what it is that I want to look at is, I want to maintain a Cherokee is still a Cherokee, you know, and not a wanna-be. Because I could go take the tail of my cat and put it on a dog and breed it and still come up with a dog. You know, I ain't got a cat and a dog -- a cat/dog, slash.

What it is I'm looking at is, I wish to maintain the integrity of the Cherokee Nation. If you people want to be it, so be it. I've got no qualms about a person that wants to be a Cherokee. I want to respect people as they are, by blood, if you're Irish, German or whatever, or Dutch.

If you're two-thirds Dutch, be a Dutch person and let me respect you as such. If you want to be able to live amongst Cherokee people, that's all right. And that's by quantum to me is

significance in the sense that if you run for office, you run for position. Anyone that represents Cherokee people, please let it be by blood, of which is an acceptable understanding. Thank you.

MR. HANNAH: Thank you, Mr. Silversmith.

MR. STOPP: Point of information.

MR. HANNAH: I will recognize Mr. Lay.

MR. LAY: Thank you, Mr. Chairman. I stand in opposition of that. Under this ruling, Chief John Ross couldn't pass that blood quantum, and that will be ridiculous.

MR. HANNAH: The good lady from Tahlequah.

MS. CHAPMAN-PLUMB: Well, first of all, I don't want to be Cherokee; I am Cherokee.

I would just like for Ms. Stroud to elaborate on the reasoning for the quantum. I see it up there.

MS. STROUD: It's just pride of not one day seeing a blond-haired, blue-eyed Chief representing me. When I go around the country and around the United States, the grandma is always a Cherokee princess. And I don't want to -- if it's my grandchild that one day decides to be Chief, and the great grandchild, and they are not enough blood quantum, they should have stayed within the people. Thank you.

MR. HANNAH: Mr. Hembree, you are recognized.

MR. HEMBREE: Ladies and gentlemen, I understand the passion and the argument of wanting a blood quantum pool of people to choose from for Chief, but be very careful, ladies and gentlemen. We're creating a document that I hope last well over a hundred years, not twenty, not forty, not fifty.

When you put a requirement of a blood quantum like that, the pool of people rightfully or wrongfully -- I mean, you can choose what you believe, but you can't choose your parents, all right. Rightfully or wrongfully, a pool of people that you're going to have possibly to choose from in the next hundred years -- and I ask you, let's make this decision based on generations.

Three generations from now there's not going to be a lot of -- I mean, there's going to be a much significant smaller of quarter blood Indian than there are today. And Mr. Hoskin is right. That could be a preference that we would choose at the ballot box.

If you have a blond-haired, blue-eyed person here, and a dark-skinned, dark-haired person here, you might want to vote for that dark-hair, dark-skin person, but you shouldn't limit based on blood quantum, ladies and gentlemen.

MR. HANNAH: The chamber will be in order. Now, listen folks, this is good debate that we have here. When a good gentlemen or a good lady has been recognized at the microphone, let's listen to them. They deserve to be heard.

MR. HEMBREE: Thank you, Mr. Chairman.

But in closing, ladies and gentlemen, this would be a bad idea. And I would ask you to think very carefully before you put this into our Constitution. Thank you.

MR. HANNAH: The good lady is recognized.

MS. MASTERS: Beg your pardon, I've been standing here.

MR. HANNAH: And the Chair apologizes once again, I'm sorry. It's very difficult for me often times to -- Billie, don't do this to me, okay. I really need your help here, okay. Will you help me?

MS. MASTERS: Yes.

MR. HANNAH: All right. You are recognized.

MS. MASTERS: Masters, delegate. If we so desire to have a quantum requirement, I believe within the Cherokee Nation that is worthy of consideration -- blood quantum by the way is not a traditional value. It was imposed on the people by the government. It's a government designation, not a tribal designation that we have had.

There are many people that have bought into this government designation that they can say what a Cherokee is by the surrender documents that they have held on us. But this is not a traditional value. This is a government project. Quantum is a government project.

Now, if we want blood quantum, it does not belong here. If we want blood quantum, we need to go back and reconsider, a Cherokee of the Cherokee Nation must be a one-quarter blood according to BIA and state standards, but not here.

Once we allow people to become citizens of the Cherokee Nation, they deserve every right of the Cherokee Nation and to serve the Cherokee Nation in any way they choose as a citizen.

So what we need to do if we want blood quantum, it needs to be in the membership category, and we need to limit the Cherokee Nation to one-quarter blood or more, according to government documents and government projects and government standards.

If we want tribal standards, then we need to look more closely. But blood quantum does not go in the document. After we have determined who our citizens are, every citizen has the right of all citizens.

MR. HANNAH: Thank you, ma'am.

The good lady is recognized.

MS. PITTS: My name is Joni Pitts, and I'm a full-blood Cherokee. And I have been here -- sitting here since Friday. I am a student here at Northeastern. I work at the Cherokee Nation. I'm an in-take worker. I take in child abuse cases from the United States on the native American children. And there are times when you have to put the phone down and go outside and take a smoke like we're doing here.

I am really nervous to stand up here. But I have already seen that I agree with this lady on her thing up here. And I believe that even though she has spoken, I feel like even though this -- it's more than likely that this will not be approved because we are over numbered by people that are not full-blood in this building.

And I have nothing against you people because my husband

is white. I have taught him the Cherokee language; I can speak Cherokee. My grandpa, everybody in my family. I have thirteen brothers and sisters, but even if you people do not pass this, at this time, when the time comes for it to pass, I will be there to vote for this. I appreciate you listening to me. Thank you.

MR. HANNAH: Thank you, kind lady.

Mr. Clarke, you are identified, sir.

MR. CLARKE: Thank you, Mr. Chair. William Clarke, delegate from Muskogee. I oppose this. I'm a Cherokee. I cannot be held responsible for what happened when my maternal grandfather was enrolled through the Dawes Commission.

I went to college on a Bureau of Indian Affairs scholarship with an amended CDIB saying that I could be nine-thirty-seconds, when the official CDIB says I am seven-thirty-seconds.

The reason I could be nine-thirty-seconds was because all of the siblings of my maternal grandfather were registered at three-quarter Cherokee. My grandfather chose to register as one-half, and based upon this government, as Dr. Masters stated, this government designation of blood quantum, I feel that if this were to pass, I would be discriminated against.

And I feel that I am sensing discrimination against me because of my color and because of people maybe considering me to be a want-to-be. Folks, I am not no want-to-be. I know who I am. I'm Bill Clarke, and I am a citizen of both a sovereign United States of America and the sovereign Cherokee Nation.

And my United States government who recognizes that I have that dual status that is a political status. And I'm proud of that. And I'm sorry because I'm not dark skinned, but I've got brothers and sisters and nephews and nieces and even great nephews and nieces that are as dark as those of you in here who are full-blooded, and they are less, my nephews and nieces, less blood quantum than what I am.

So don't be going and making those statements based upon a person's physiological appearance. I grew up here in northeast Oklahoma, and I have those Cherokee values. And I am diametrically opposed to this.

MR. HANNAH: Dr. Hook, you are recognized.

MR. HOOK: Jonathan Hook, Houston. I also am Cherokee. I have no question about that. My whole life revolves around that. My professional life, my private life, all of it. Everything I do, every day is done because I'm Cherokee.

Having said that, I support this. Because I also work very closely with many people of different nations, and I work with their children, and I am deeply concerned. We talk about the future generations. I'm concerned about the future generations.

And I would like for our Cherokee children, our dark-skinned Cherokee children to be able to look at their Chief and see someone like them. I think that's essential for their self-esteem. I think the fact that we have the highest suicide

rate, the highest dropout rates, all the problems that we face with our children, part of that is because when they look to their leadership, they see someone different than themselves.

So even though this is very difficult for me to say, because blood quantum issues were imposed on us, they're not part of our tradition. But today they are a way to possibly engender more self-esteem and self-respect in our children that need it the most.

So in many ways, regretfully, I say I think we need to support this.

MR. HANNAH: Good lady from Ochelata.

MS. McINTOSH: McIntosh from Ochelata. I rise in support of this. This will be the last time this can come before the constitutional convention. Even now lower blood quantum make it that it has to be one-fourth. It needs to be said. It needs to be approved at this time.

We have Cherokees in distress. The culmination of decades and centuries of distress. Could we not enter a new century with a blood quantum for our Chief, and the speaker behind me has some word -- documentation of other types.

MR. HANNAH: You waive the balance of your time to Ms. Stroud?

MS. McINTOSH: I do.

MR. HANNAH: Ms. Stroud, you are recognized. The kind lady from Texas will be patient.

MS. STROUD: This is the Constitution from the Creek Nation. "Indians by blood who are less than one-quarter Muskogee Indian by blood shall be considered citizens and shall have all rights and entitlements as members of the Muskogee Nation, except to hold office."

MR. HANNAH: Do you yield, Ms. Stroud?

MS. STROUD: Yes.

MR. HANNAH: Kind lady from Texas is recognized.

MS. SCOTT: Thank you, Mr. Chairman. With the greatest respect, everybody in this room and all citizens of the Cherokee Nation, I rise in opposition to this for one very personal reason. Back in Article III, Section 1, we accepted the Dawes Rolls as being the only source of authenticity for membership by blood in the Cherokee Nation.

Now, I happen to know that my grandmother and her full sister, who had the same parents and the same grandparents and on and on and on are listed differently on the Dawes Rolls. They were enrolled on the same day in the same place, and they are listed differently. I would have to assume that you would include Dawes Rolls quantum in this or --

MS. STROUD: No, we wouldn't have to. You're talking citizen; I'm talking Principal Chief.

MS. SCOTT: What I'm saying is, you've got to somehow figure how this blood quantum is calculated, and I know that the Dawes Rolls are not always correct in terms of blood quantum.

MR. HANNAH: Good lady from Tahlequah you are

recognized.

MS. HAMMONS: Thank you, Mr. Chairman.

Ladies and gentlemen, we have been here before in the Cherokee Nation. This isn't the first time this has been debated. It's been debated for centuries. The full-bloods and the mixed-bloods, unfortunately we saw that debate centuries ago. And it pains me that we're doing it again.

It also pains me to think that if we pass this, my children and my grandchildren would not be eligible to be able to run for Chief and Deputy Chief, and I would hope that it would pain those of you who are fortunate enough to be higher blood quantum than me but will have children and grandchildren that will not be as high blood quantum as you.

And while it makes me proud to see a leader of my Nation that looks like an Indian, I don't think that that ought to be the standard for whether or not they represent me, ladies and gentlemen.

Because, unfortunately, we've seen in the past few years that you can look like a Cherokee, and you can talk like a Cherokee and not care about the Cherokee people.

So the CDIB imposed quantum on us should not be the standard for whether or not we elect a Chief and a Deputy Chief. I yield the rest of my time to Delegate Stroud, as she wanted to further explain.

MR. HANNAH: Mr. Underwood, you are recognized, sir.

MR. UNDERWOOD: Just a few comments. When the last Constitution was drawn in '75, I worked on it all the way through from the very first meeting, Sam Hyder (sp) had asked me to represent the community of Paine, and I stayed with them having meetings until we got down to about six or eight fellows that met consistently.

At the end when we were getting it finished, we met with Chief Keeler, and we submitted what we had drawn up to the drafter.

And they, at my insistence all the way through, insisting on quantum. And it was as far as I know submitted that way.

It was left up at least to the drafter. I did not see the instrument that went to Washington. But when I asked about it after it had been, they said that the government would not approve -- the BIA would not approve a blood quantum.

MR. ROBINSON: Call for the question.

MR. HANNAH: Question has been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, the question before us would be the inclusion of the language in Section 2. "Quantum of one-quarter or more."

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

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And the motion does not carry, and the language is not submitted.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman.

MR. HANNAH: Dr. Gourd, thank you so much for allowing the Chair just a moment by calling you up here to be with me, to see where we are. We are still about the process, ladies and gentlemen, of reviewing to approve the entirety of this particular article.

Are there any other questions or comments? We have scrolled through section by section.

MR. GOURD: Call for the question.

MR. HANNAH: The question has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second, and hearing no debate before us at this time or opposition, all of those in favor of the sections as presented in Article VI, please signify by saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the article is approved.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Dr. Gourd.

MR. GOURD: I make a motion that the language contained in Article VII, Section 2, as I understand which has been tabled, be brought from the table.

MR. HANNAH: There's a motion before us to untable Section 2 of Article VII. And there is a second. And hearing no opposition, all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Opposed said "no."

And the question is before us, and the floor is open to debate. And the good lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: I have a proposed amendment. Would you like for me to submit that in writing rather than read it out and take up time?

MR. HANNAH: What you might do for us, young lady, would be to read it first, and if we can secure a second, and then we'd have you come down to the scribe and bring the language to the screen for debate.

MS. CHAPMAN-PLUMB: "Justices of the supreme court shall be appointed by the Principal Chief and confirmed by the Council to serve terms of six years each.

An appointment to the supreme court shall take place once every two years, except in the case of filling a vacated seat on the court for the remainder of that term.

The Council shall within six months of this constitution taking effect pass such laws as are necessary for carrying into

effect the provisions of this section."

And then I would strike from the word, "to implement this provision" all the way to the end of the sentence.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. The young lady will step forward and assist the scribe. The language will be entered. And the floor will be open for debate.

So why don't we -- while you're queuing up for that, let's wait until we get the language up so we know exactly what we're looking at.

The motion before us would be to strike nine, strike three, include the language: "The Council shall within six months of this Constitution taking effect pass such laws as are necessary for carrying into effect the provisions of this section." And striking the remainder of the paragraph. The floor is open for debate.

Dr. Masters, you are recognized. How rise you on this issue?

MS. MASTERS: Point of information. I would like for the Chair to have the maker of the motion tell us the rationale by lowering this. I am of the impression that justices of the supreme court with longer terms to complete their duties and their work are preferable.

MR. HANNAH: Chair will not make, but the Chair will request, and has done so.

MS. CHAPMAN-PLUMB: Well, I think you can probably ask some of the attorneys that practice in federal court whether they get justice better served by having a judge that is there for life or in many cases for a long time.

What happens is they begin to abuse their power, and it simply goes to their head, and it's just like electing an incumbent for twenty years. It's not generally a very good thing.

MR. HANNAH: Ms. Masters.

MS. MASTERS: I understand this rationale, but nine doesn't seem like that long, as opposed to a justice -- I know many cases where, you know, the work that would be carried out in the courts and in legal positions could easily require that length of a term. I just wondered what the rationale was, and I thank the maker of the motion.

MR. HANNAH: Mr. Stopp, you are recognized.

MR. STOPP: Point of information. Are the judges, are there a term limit on the judges, or can they be reappointed? That's the question.

MS. CHAPMAN-PLUMB: They can be reappointed.

MR. STOPP: No term limits?

MR. HANNAH: Delegates will take their seats.

Mr. Stopp, thank you, sir. Take your seats, momentarily.

My good friend from Adair County, please come take a seat. Thank you.

Question was raised with regard to a quorum. Thirty-nine would be the number needed. Forty-two are present, and we are open for business, ladies and gentlemen. And what would be the pleasure of the debate?

You are recognized, sir.

MR. DOWNING: I rise to mildly oppose this.

MR. HANNAH: Let the record reflect.

MR. DOWNING: I think my major concern is, if you have six-year terms, and they are appointed every two years, one Chief would be able to stack the system. If you have nine years, every three years, that would be very unlikely to happen.

MR. HANNAH: Thank you, sir. You are recognized, sir.

MR. HEMBREE: Delegate Hembree. Thank you, Mr. Chairman. I'm going to go back to the old adage, "if it ain't broke, don't fix it."

The terms that the current Justice Appeals Tribunal has now are six years. That has served us well. I believe if you polled former justices, that six years is just about enough. A shorter term allows for people not to get burned out on this court. A shorter term allows the justice, the Principal Chief, that during his term he will appoint at least two justices of the supreme court, which I think that's a good idea.

If a justice is doing a good job, he can be reappointed.

No doubt about that. If you have a bad justice, and we've raised issues on bad sheriffs and bad deputies and bad Principal Chiefs and bad counselors. If you have a bad supreme court justice, that's three less years you're going to have to deal with him.

Since, like I said, it is the term now, there's nothing wrong with that. It's worked well. Don't tinker with something that is working well in the Constitution.

MR. HANNAH: Mr. Lay, you are recognized.

MR. LAY: Thank you, Mr. Chairman. I think that -- I guess I rise in opposition to this, state the case to start with.

One of the things that you all tried to do as a commission here to start with was to have a Chief replace one justice at a time for a four-year term. With Susan's proposal, we got out of that. Her proposal really was because we added two more justices, and we have five now instead of three.

And so now we are at a point -- we didn't think about the point of having to rotate these guys in and out so often because we were dealing with the term of three justices instead of five. I really think we might need to revisit the number three at this time, rather than go through this rotating justices in and out every two years.

MR. HANNAH: Thank you, Mr. Lay.

Mr. Keen, you are recognized.

MR. JOHN KEEN: I would rise in support of this motion we're considering here. I'm just not quite sure about the

two years. I'm not opposed to the two years. I'm just not quite sure how that's going to work out.

Could the Chair have the author explain to me -- or the body -- I'm sorry -- just how this succession of appointments will work as written? That's the only reservation I have. I would like to ask the Chair to do that at this time.

MR. HANNAH: Delegate asked for a clarification, Chapman-Plumb. What say you?

MS. CHAPMAN-PLUMB: I say math is not my strong point. I'm not really hung up necessarily on our numbers. There's no magic in these numbers for me. Just as a philosophy, I think that a judge doesn't need to be in office unabettted; in other words, with no interruption, no chance to put a check in there for nine years. And how we get there or if we want to go there is all I'm trying to steer us towards.

And how the succession works out, I'm not as concerned about right now. What we have right now and who's going to get to a point, what, and all of that kind of stuff. I'm just trying to get us to get away from putting long pieces of language in here that deal with only something that's only going to happen one time. This time.

So what I'm trying to do is just to get it simple, and then let the Council work out the details of how we're going to get there exactly. Because I don't think we need to be about worrying necessarily about exactly how it's all going to come out this time.

I think that's political, and we don't need to be worried about that.

MR. HANNAH: Thank you, ma'am. Mr. Wheeler, you are recognized.

MR. WHEELER: Delegate George Wheeler. I rise in opposition. As it's written, the second half of it, I believe, is fine. My concern is about the number of years. I see two problems with reducing the numbers, nine and three to six and two, and here we are back at numbers again.

But if the intent is to strengthen court to give independence, I don't see that happening by reducing the number of years. And, also, increasing the turnover from every three years to every two years, I believe that the court should be an independent body as well as the Council.

We need to not reduce the independence of those, any of those branches of government. I'm concerned about the number of years. I see no good reason for this reduction.

MR. HANNAH: Dr. Masters, you are recognized.

MS. MASTERS: I, too, like the previous delegate, I'm only concerned about the years. The justices of the supreme court is a part-time appointment. I think that we did give some relief to our previous justices by increasing from five to three their burden. And I think that was a wise move that we have done here.

Looking at these numbers, if we reduce three to two, we

are possibly, in practical terms now, looking at reappointment of the justices on election years, which is every two years as we now set it out. That I think would be a difficulty. I think that probably should happen on an off year, which three would allow that to become an off year.

Because it is a part-time position, and our Chief Justices do have to still maintain their own clientele and do whatever they are about doing, I believe that the nine years would serve the Nation better.

And I'm going to -- I guess I would like to move that we divide the years from the end. Because I have no problem with the final sentence that was added. In fact, I think it enhances the section. But the numbers are my concern.

MR. HANNAH: There's a motion to divide. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second. The floor is open for debate.

DELEGATE: Call for the question.

MR. HANNAH: Question has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: And there is. And hearing no opposition, we move toward the question. Ladies and gentlemen, if you vote "yes," we are going to divide the numbers from the bottom section.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no."

The paragraph is divided, and we are at debate with regard to the numbers.

MR. ROBINSON: Mr. Chairman.

MR. HANNAH: You're recognized, good doctor.

MR. ROBINSON: Delegate Rick Robinson, Tahlequah. I feel like the nine years is too long, and maybe the six years is too short. I do want to answer to Dr. Masters' thoughts on mathematics. I assure you I'm not very good at algebra, and I thank God that algebra wasn't required when I first graduated from college.

But mathematics, now, I'm good at mathematics. Mathematically, you will have the same thing happen with nine as you had happen with six. It will take a little bit longer. But it takes almost two centuries if you go to seven. It takes almost two centuries to say that this starts out just real good, you know, after this adopted.

It takes almost one hundred seventy-some years before it would coincide, where with nine it only takes thirty-six years. So that's a major concern.

I would propose a friendly amendment to change to seven. Just on a cultural aspect, seven would stand for the seven clans.

So that's just a friendly amendment if the author would accept it.

MS. CHAPMAN-PLUMB: You can do the math.

MR. HANNAH: Okay. There's a friendly amendment, did I hear?

DELEGATE: Yes.

MR. HANNAH: And you accepted?

MS. CHAPMAN-PLUMB: Yes, I did.

MR. HANNAH: And the number changes, my good friend?

MR. GUNTER: Two years and four months.

MR. HANNAH: The Chair is always appreciative of delegates who find humor that is -- he knows is lurking in this chamber, it just needs to be brought out.

Mr. Rider, you are recognized. Mr. Littlejohn, please be patient, sir.

MR. RIDER: Jewell Rider from Seminole. I stand in support of reduction from nine to three. And in support, who better than our lawyers that are speaking against this. They know how to police their own back yard, and I think we should listen to them.

And if you read the papers very much, like I do, you see all the time about different things with judges all over the country and problems that they're having with them staying in there too long. So I stand in support of this.

MR. HANNAH: Thank you, Mr. Rider. Mr. Littlejohn, you are recognized.

MR. LITTLEJOHN: Mr. Chairman, Delegate Littlejohn. I would request that the original Constitution, Article VII, be placed up.

MR. HANNAH: On its way.

MR. ROBINSON: Mr. Chairman, point of clarification. My math is slightly off. It would be fifty-six years for it to coincide for the first time, but after that, it takes a lot longer than anybody here is going to be alive. It does take fifty-six as opposed to thirty-six the first time, then because the way mathematics works, it really jumps up.

MR. HANNAH: Thank you, Rick.

MR. LITTLEJOHN: Thank you, Mr. Chairman. I rise for the purpose of offering a friendly amendment. If I may, the rationale initially is, we have changed from three justices to five justices. We have discussed nine terms; we've discussed seven-year terms; we've discussed six-year terms.

My recommendation would be that Section 2 read: "Justices of the supreme court shall be appointed by the Principal Chief, confirmed by the Council to serve for such terms as the Council may provide," which is exactly the same language that is used in the original Constitution.

I ask that the friendly amendment be accepted because I believe that we're going to get bogged down in math, how we do it, what we do it. The Council would be better able to determine what

serves the needs of the Cherokee Nation.

MR. HANNAH: What say you, good lady?

MS. CHAPMAN-PLUMB: I would move to table this.

If somebody can give me a math tutorial.

MR. HANNAH: Motion to table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second. And the floor is open for debate. Hearing none, no opposition, all of those in favor of tabling, please say "aye."

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And it goes on the table.

MR. ROBINSON: Mr. Chairman.

MR. HANNAH: Good doctor, you are recognized.

MR. ROBINSON: I wanted to make sure everybody understood what my mathematics included. I went with the supposition that we were talking about where a Chief would be able to appoint three or more justices at a time.

Mathematically, there's not any way to set this up that the Chief may not be able to appoint at least two because you're talking about five. I just want to make sure in twenty years somebody doesn't come and shoot me because I told the wrong thing today.

MR. HANNAH: The good doctor need not worry. The blood law is not a vote. Yet.

Good delegates, what the Chair is inquiring of would be our lunch plans. It's about twenty minutes of twelve. We've had a very interesting morning of debate here on a potpourri of interesting items.

I think with the concurrence of this body, with information from Dr. Gourd, that the Chair might be so bold as to call a recess for lunch and bring us back at an appropriate hour to take up the business of the afternoon.

DELEGATE: I'll second that.

MS. JORDAN: Delegate Jordan.

MR. HANNAH: Delegate Jordan, you're recognized.

MS. JORDAN: We've got enough time, I think, to move for one for section. Why don't we move to Section 4 and least get some work started on it. You know, we're running kind of short on use of room time and those things. We could use that twenty minutes productively I think.

I know people are amazed that I keep saying let's work. Several people have said that because I was saying the first day or two, let's stop. But I'm thinking, if we're going to do this, let's work.

MR. JOHN KEEN: I would second that if that's in motion form.

MR. HANNAH: Very well. Those in favor, say

"aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no". And we are still about the work of the people.

Section 4. Mr. Underwood, as a manager, would you introduce this section and at least get it on the floor for debate? Thank you, sir.

MR. UNDERWOOD: Mr. Chairman, I would move that we consider Section 4.

MR. HANNAH: This is Article VII. There's a motion on the floor to consider.

DELEGATE: Second.

MR. HANNAH: And thank you. Hearing no opposition, all of those in favor, signify by saying "aye".

THE DELEGATES: Aye.

MR. HANNAH: And those opposed, "no." And it is being considered. And the floor is open for debate.

MR. CLARKE: Mr. Chair.

MR. HANNAH: You are recognized, good sir.

MR. CLARKE: William Clarke, delegate from Muskogee. I would like to offer a friendly amendment to this, if I may. And by doing so, I would strike the first sentence and add: "The supreme court shall employ an administrator who shall have general administrative duties in the judicial branch. The justices of the supreme court shall have supervisory authority over the administrator.

The original jurisdiction of the supreme court shall extend to all civil cases, wherein, the Cherokee Nation or an officer thereof acting in official capacity is named as a party defendant and to all other cases and controversies, as the Council may prescribe by law."

I would, after that statement, take the next sentence and just switch it with the sentence following.

MR. HANNAH: You would be offering that as an amendment, and is there a second?

DELEGATE: Second.

MR. HANNAH: And there is a second. And, sir, if you would step here and help the scribe to enter the language, then we will be open for debate.

Okay. We have a motion to strike and substitute. And you'll see the language, "original jurisdiction of supreme court shall be extended to the general superintending control over the lower courts" has been stricken.

And that language has been presented that, "The supreme court shall employ the administrator, who shall have administrative duty in the judicial branch. The justices of the supreme court shall have supervisory authority over the administrative. The original jurisdiction of the supreme court shall extend to all such cases, wherein, the Cherokee Nation or an officer thereof acting in official capacity in the name of the party defendant."

And two, "All other cases and controversies that the Council may prescribe by law. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity arising under the laws of the Constitution of the Cherokee Nation. The supreme court shall have power to issue, hear, and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and such other remedial writs as may be provided by law and may exercise such other jurisdiction as may be conferred by statute." Is that your --

MR. CLARKE: Mr. Chair, with the exception of the last two sentences that you read there, those should be switched. "In support of its original jurisdiction" should be where the "supreme court shall have power to."

MR. HANNAH: Step up here, sir, and help the scribe.

The original and appellate jurisdiction, the supreme court shall have power to issue, hear, and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by the law and may exercise such other jurisdiction as may be conferred by statute.

We are open for debate, and Mr. Scott.

MR. SCOTT: Is it open yet to offer, I hope, a friendly amendment, that in that second paragraph there's a long sentence in there telling what the supreme court has the power to do, and there's a bunch of words in there.

The only one I understand is "prohibition," which would be that can't buy and sell whiskey. I was wondering if we could have that translated into English. And since I don't speak Greek, I don't know what the proper translation would be.

MR. HANNAH: Mr. Baker, would you give us a hand here? Thank you, sir.

MR. DONN BAKER: I bet between me and Ralph Keen, we can. I can't do all of them. A writ of Habeas Corpus is a writ to produce the body. Habeas Corpus, for example, if someone illegally is put in jail, you bring a writ of Habeas Corpus. It's an extraordinary writ that is not used very often and that's why they leave it with the supreme court because it says bring the body forward.

You can use it if they're withholding children. For example, to get it on a little level, I went to court this morning where one parent wouldn't return the child from their visitation, and it's a writ.

MR. SCOTT: I wasn't really asking for a verbal explanation for myself here. I was wondering if we can write something into the Constitution that people will be able to read.

MR. DONN BAKER: Well, in my opinion, no, because those are two hundred, three hundred, four hundred years of law behind each one of them, and they have certain meanings. They are terms of art. Words of art.

But I mean, I have no way of knowing how you could --

it's put as simple as it can be made. If you attempted to try to explain what those words meant where a non-lawyer would understand, this document would be, I don't know how many pages long. I don't think it can be done.

MR. HANNAH: Mr. Baker and Mr. Scott, by friendly way of explanation, and I will speak as a Commissioner, and Dr. Gourd, you may assist. These are, as the good attorney has pointed out to us, are terms of art, and they are in fact ancient in their meaning in the arena of law.

And we recognize that most of us don't have an opportunity to see these words every day and the Commission long discussed that fact that while the words themselves would need to -- or at least we would propose that they would be a part of the Constitution, that every effort would be made, should the section be adopted and put before the voters to interpret as clearly as possible exactly what these would mean prior to the vote.

So while that explanation, as Mr. Baker pointed out, could in fact run into the hundreds of words, if not pages to explain those, that we would try to provide a supplemental document so that those without legal background would have an opportunity to understand the terminology.

MR. HOOK: Point of clarification.

MR. HANNAH: Yes, sir.

MR. HOOK: Supplemental document to be distributed how and to whom?

MR. HANNAH: That, sir, unfortunately was not contemplated, because, as we know, there is no action that the Commission contemplated that now has been endorsed by the body. We already are beyond the boundaries of the what the Commission thought, so all of their discussion at that point would be rendered moot.

I simply make my way that the Commission understood that these are terms of art in the arena of legal study, and that there would need to be every effort made to help clarify the meaning for the lay public.

MR. HOOK: Point of clarification.

MR. HANNAH: Yes, sir.

MR. HOOK: I'm sorry, I'm not familiar with what the definition of "term of art" means.

MR. HANNAH: Mr. Baker, would you help us with the phrase, "term of art"?

MR. DONN BAKER: It's one or two words that they can write a book about what it is. Any lawyer, when you use the writ of habeas corpus understands that that is a special writ that was developed in common law and for hundreds of years. It's a special, extraordinary writ to make someone produce the body. I mean, I don't know how to --

Mandamus, it's a writ that orders mandates that someone do something. For example, a judge could mandate, if for some reason they weren't paying a bill, a judge, if it was brought before

him, this would be a writ to mandate that someone did this certain thing. And they're words that I think you would have to go to law school to understand. But I don't know how else you can get around to make it any plainer.

MR. HANNAH: One moment, sir. On order, sir.

DELEGATE: I just want to be clear in my mind, is this offered as a friendly amendment? We do not know what the friendly amendment is yet.

MR. HANNAH: The Chair does not know what the friendly amendment is at this point.

MR. CLARKE: That is my friendly amendment.

MR. HANNAH: No, actually, sir -- let's just stay clear here, delegates, for just one moment. The Chair will attempt to reconstruct exactly where we are, so we all know where we are.

At the time that the introduction of this section was presented, since this is in fact revised language from the Commission, and the manager for this Section 1 was not in the room at that time, and the Chair has no way of introducing something, the Chair asked the Secretary to read this section as presented by the Commission.

It was in fact introduced; there was a second, and it was open for debate. Mr. Clarke arose -- one moment, Mr. Keen. Mr. Clarke arose, and at first asked for a friendly amendment without a manager from the Commission, nor enough of the Commissioners here to straw poll, the Chair asked would you make that by way of an amendment and understood that you did; therefore, that amendment was introduced and there was a second.

And so at this point, we are now at debate with regard to that particular piece. And now Mr. Scott has arisen, and he speaks of a friendly amendment and the Chair is uncertain if a friendly amendment has in fact been placed before the body.

Now, the Chair looks to the delegates, and if anyone wants to challenge the Chair, he's prepared to take them on.

MS. McINTOSH: Point of clarification.

MR. HANNAH: Yes, ma'am.

MS. McINTOSH: McIntosh from Ochelata. I would like to note that those words would be well described as state of the art words for their accepted usage. And I would like for the group here of attorneys to just say each word and give us a definition such as Delegate Baker did. If they will do that, we will understand these state of the art words.

MR. HANNAH: The kind lady is very kind, and we will go back once again -- Mr. Scott, would you yield to that point of information so we can describe these? Would you do that for us, sir?

MR. SCOTT: Yes.

MR. HANNAH: And the Chair is not trying to squash your point. I think the good lady raises a point of information that the Chair would like to speak to. Obviously, if we

had a broader understanding of what we are all talking about, the Chair believes that that would be helpful before we in fact start initiating some form of amendment.

Mr. Keen, you rise and move in place. How may I help you?

MR. JOHN KEEN: Mr. Chairman, just a point of information. I do have a Black's Law Dictionary that addresses the terms pretty much in layman's terms. But if the Chair will allow me a little bit of time, I will tab the book where I could quick reference them or anybody else more versed in it than I, so that they can quickly turn and read the definitions after lunch, as it's lunchtime now.

MR. HANNAH: And thank you for reminding me of the time.

MR. JOHN KEEN: And that would --

MR. HANNAH: One moment, the good for a point of information.

MS. HAVENS: I'm satisfied with what our divorce attorney has given us so far.

MR. HANNAH: And the kind delegate is thankful we're calling the proper title of the delegate from Park Hill.

MS. HAVENS: Been there three times; I know what I'm talking about.

MR. HANNAH: The kind delegate is admonished not to make anymore, you know -- don't incriminate yourself here.

MS. HAVENS: If he would just go ahead maybe in ten words or less and explain the words to us, it would satisfy me.

I do feel uncomfortable voting on something that I don't understand. Thank you.

MR. DONN BAKER: No lawyer can do anything in ten words or less. And the reason I asked Mr. Keen to look at the law dictionary is the -- and we may have to ask Justice Keen, the quo -- whatever, because I don't -- I've never used that one.

All of these, what you need to understand is, are these are special writs to enforce orders of the court. And that's why we give them to the supreme court. It is a special way, like prohibition, the writ of prohibition, it was used to prohibit whiskey.

If someone is doing something illegally or they shouldn't do it and it's brought to a judge's attention, then this judge can issue this special writ, which is an order to prohibit them from doing this, and then there could be this hearing.

But it's actually issued before the hearing, and that's why we called them a special, and we don't want just anybody giving these things out and why they're saved for the highest court because they're enforcement writs that make people do certain things.

Have you looked up quo warranto? Why don't you read that one? I can't -- and that other one, certiorari -- Ralph, why don't you do that one, too?

MR. KEEN, SR.: I would just like to, by way of

further explanation, assure everyone here that these words of art, and they are words of art, have developed over the centuries, mostly coming from the English common law.

But they all, they are definitely words of art with definitions that you can find in the law books, and they have been interpreted by the courts over the years. And they are reported, and you can research them, and all lawyers know this.

And I would say further that your current Judicial Appeals Tribunal has all of these powers, and so does every court that I know of, the higher courts.

So what we're saying here is simply this, that our courts, our highest courts, will have the same powers within our Nation as the Supreme Court of the United States has in the United States or the Supreme Court of the State of Oklahoma has in Oklahoma.

MR. HANNAH: Thank you, Mr. Keen.

Dr. Hook, you are recognized.

MR. HOOK: I guess I need the microphone. Mr. Chairman, my understanding, the consensus at the beginning of working on this document is that we were to use the most understandable language possible, and there needs to be compelling reasons to use language which would not be easily read by any of our citizens.

So I'm not saying that this should not be included, but I do say that we need to be convinced by compelling evidence of a reason to include it. We've made several changes already to clarify statements to make them more easily understandable, and any jargon, any language which is understandable only to attorneys, I think we should be very careful about including unless they are clearly compelling reasons.

MR. HANNAH: Thank you, Dr. Hook. Billie, you are recognized.

MS. MASTERS: I was taken by the language Justice Keen just gave us. And it would appear to me that in the fourth underlined section after the word "shall," if we could just put his words in, "that the Supreme Court of Cherokee Nation would have all of the rights of the United States Supreme Court and any other State Supreme Court." This would extend to all civil cases.

I appreciated Delegate Clarke's inclusion of the civil cases. That was an area that I had concern about and wanted to be put in. It is now in. But if we just put Justice Keen's words in, I think that's very clear. "Shall have all the rights of the United States Supreme Court and any State Supreme Court." I think people understand that fairly clearly.

MR. HANNAH: You make a motion for substitution?

MS. MASTERS: Yes.

MR. GOURD: Mr. Chairman, point of clarification.

MS. MASTERS: Can we have a point of observation?

MR. HANNAH: Charlie.

MR. GOURD: Thank you, Mr. Chairman. I would submit that it probably would be useful since these are terms of art, if we adopt, "shall have all the same rights of the United States Supreme Court and of any supreme court," and then just put in "such as," and then list those terms of art.

Because, you know, another thing that we've had to do and that we all have to do here, this, as I mentioned earlier, is very obviously a labor of love by every one of us here in dedication to our people.

Second of all, that it's an act of faith, and myself, when we were going through this part, I didn't have a clue of what that meant. But we do have two attorneys on the Commission who do know. So as an act of faith, I accepted what they said needed to be in there for our supreme court to function at the highest level possible. With that, I'll just --

MR. HANNAH: Thank you, Charlie. The Chair would remind the delegates that it is past the noon hour. If the delegates wish to continue, we shall. We see two delegates rising to speak, and they would be heard.

Yes, ma'am.

MS. JORDAN: Has that been accepted as a friendly amendment?

MR. HANNAH: No, ma'am, it has not. Chad, thank you for being patient for just a second. The Chair is trying very much to not lose the sequence of where we are in this process.

And, Charlie, what we have here at this point in time is a friendly amendment to language that was in fact submitted by the Commission. And in our usual roll, is there -- we'll take a straw poll from the Commission if there is --

MR. SMITH: Mr. Chair, if I can make a point of comment before the straw poll is taken.

MR. HANNAH: Yes, sir, you may.

MR. SMITH: Two things. One is the language that was up there is straight from our '75 Constitution. It has served us well for twenty years. If we don't need to change anything in the old Constitution, why change it?

Second thing, the proposed language, even though I understand it's meant in good spirit, invites mischief because under that language, the supreme court can entertain the suits between Missouri and Arkansas. We certainly can't. And then we will have to poll every of the fifty states to see if they have different powers that are not enumerated in ours.

So I would submit that I understand the concern of the delegates, but this is just one of those technical terms that we have to learn to live with like what is a hard drive and what is a CD ROM. It's words of art that we have to learn to live with.

MR. HANNAH: Thank you, Chad. Mr. Center, you are recognized.

MR. CENTER: Center, delegate. I want to make

sure that I understand when Delegate Keen said that -- when he gave a comparison of the United States Supreme Court and the State Supreme Court, and then someone, I believe, interpreted and placed up there, "shall have the rights of the United States Supreme Court."

I believe, if I heard Delegate Keen say, that we had the rights within the Cherokee Nation as does the United States Supreme Court in the United States and the State Supreme Court within the state, not the same as.

MR. HANNAH: If the Chair might be so bold, he would suggest that someone might want to bring a motion to table this language at this time.

There might be some delegates that would in fact want to meet over the lunch hour and to come back after lunch and help us all clarify exactly where we would be.

MR. HEMBREE: Mr. Chairman.

MR. HANNAH: Mr. Hembree.

MR. HEMBREE: To help us delegates out, so we know what we would be talking about over lunch, could we get a polling of the Commission to see if in fact this language is accepted as a friendly amendment?

DELEGATE: I'll withdraw it.

MR. HANNAH: Mr. Hoskin, you are recognized.

MR. HOSKIN, JR.: Is the friendly amendment to the Commissioner, or is the friendly amendment to Mr. Clarke?

MR. HANNAH: In actuality, sir, it would be a friendly amendment to the Commission, and that's what we were about to take the straw poll on, to see if it would be included because that has been our process.

DELEGATE: I think she just withdraw it.

MR. HANNAH: That has now been withdrawn? Okay, thank you, Billie, for keeping me straight on that.

Well, we have a motion on the floor, I believe, to table, and there is a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, all of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And it goes on the table. And we will recess until 1:00 p.m. and see you back in these chambers.

(recess taken)

MR. HANNAH: The good Secretary will be mindful to help the Chair pay attention to the time this afternoon. Before 3:00 today, we will need to make a decision if we were working on into the evening hours so we can notify the University with regards to the building.

The Chair will also inform the delegates that we do not have use of this facility for tomorrow, so if we do not conclude our

business here this afternoon or this evening, then we will make arrangements to find a new venue.

And at this time, I believe Dr. Gourd has been working to secure the Tribal Council chambers for us; is that correct, sir?

MR. GOURD: Yes, sir.

MR. HANNAH: We should not be fearful in our deliberation for not having facilities for us to work with. For those of you who may be fearful that, well, gee, we've really been making good pace with being able to see language and write on the screen, we have a projector available to us. It may not be quite as audio visually friendly as this particular facility, but it in fact would wear sort of along the same lines.

So with that, the Chair also reminds all the delegates that he is in fact collecting the largest collection of parking tickets known to mankind.

MS. JORDAN: Mine was exactly where you told me to park.

MR. HANNAH: But the Chairman will instruct the delegates that apparently with regard to parking regulations, following the rules is not a prerequisite for the defense of parking violations on this campus. So I'm almost to the point of just declaring open season on any place you can get and will continue to work with the authorities here on this campus.

Should we conclude this convention, I'm going over to put myself in a humble position before the president of the University, and I think at this point the count is at 3,482 parking tickets that I intend to put before him.

MR. HOSKIN: Make that 83.

MR. HANNAH: Now I hear four. Do I hear five?
Sold, okay. Thank you.

MR. GOURD: I heard a motion to create a blank.

MR. HANNAH: No. You are out of order, Dr. Gourd. There will be no more blanks.

MR. GOURD: Strictly in reference to parking tickets.

MR. HANNAH: I may try to introduce as a separate article, no blanks may ever be created in the Cherokee Nation after this. My good friend and delegate, the kind lady from Tahlequah, Ms. Chapman-Plumb, allows us to tease not only her but also the good lady of western Kansas, who now rightfully lives within the boundaries of Oklahoma and the Cherokee Nation and guides us in parliamentary procedures.

The Chair is very pleased with the delegates. This morning we've been about the business that we are assigned, and we've had an opportunity to revisit some sections, and we've had an opportunity to talk about issues that obviously are issues that are brought from the decisions of our Nation and via the delegates that are here. And it is right and good that we should have these talks.

The Chair will remind us that while delegates in this room, as well as our own George Underwood, who spent many days and

weeks and months back in the early 1970s to prepare our current Constitution, that prior to that, we had not had an assemblage of delegates since 1939, so this is not a process that we take lightly among our people, and well it should be so.

It is the governing law of our Nation, and it should be approached with a great deal of reverence and respect. So, therefore, it's right and appropriate that we spend time to address these issues, and I'm very pleased that all of our remarks are on record.

So with that, folks, it's a supposition of the Chair that we are still about the process of pressing the judicial section. That article obviously has important language for us, and we're going to return to that business at this time.

Calvin, the good man from Muskogee, is recognized. What may we do for you?

MR. McDANIEL: As far as this legal language, I would like to make a motion to -- you know, I'm not too much on parliamentary stuff.

MR. HANNAH: That's okay, Calvin. We always know where you are, bud.

MR. McDANIEL: I would like to see printed, at least one sheet with a legal term, and then following the legal term, the explanation of it. Just a separate sheet of paper. Something that we would be able to share with voters later on.

MR. HANNAH: Calvin, I think we're going to be able to address your issues. The Chair was hopeful that his instructions to various delegates over the lunch hour would be fruitful in their discussions. I think the Chair overheard a lot of discussion with regards to the terms of legal art that we have before us. And, Calvin, if you would be patient with us, my friend, I think we're going to hear some good discussions.

MR. McDANIEL: I'm not a lawyer; I know that.

MR. HANNAH: Thank you, sir. Dr. Gourd, you are recognized.

MR. GOURD: After numerous phone calls and discussions for clarification, I will propose that the first sentence, "and determine writs," and as it's highlighted there, "writs of enforcement as may be provided by code." Strike the rest of that sentence and the rest would read as it is.

That would give the Council the authority to establish the laws and the proper definitions of all the different types of writs of enforcement that would then be available to the Court.

MR. HANNAH: Dr. Gourd, your motion before the body, then, is to strike the language, "habeas corpus, mandamus, quo warranto, certiorari, prohibition, and such other remedial writs, as well as law, and may exercise such other jurisdiction as may be conferred by statute," and to substitute the word "enforcement."

Then simply, ladies and gentlemen, the language would read, "In support of its original and appellant jurisdiction, the supreme court have power to issue and determine writs of enforcement

as may be provided by code."

And is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And the floor is open for debate. Mr. Cornsilk, good to see you this afternoon, sir.

MR. CORNSILK: Mr. Chairman, it's good to be seen. Delegate Cornsilk. I would rise in opposition to this amendment, and my reason being that, if once again, we look at experience over the last twenty-four years of the Cherokee Nation's history, we have had a very lackadaisical Council that has not taken seriously the duties before it to protect the rights of its citizens.

As the Cherokee Nation government becomes bigger and stronger, that means that by the same token, the Cherokee people become weaker to it. I think in this instance we need to carefully spell out the kind of powers the court has to protect the rights of the people.

MR. HANNAH: You would have been greatly appreciated this morning, sir, and thank you very much. The kind lady from Tahlequah.

MS. HAGERSTRAND: Mr. Chairman, I'm also opposed to this. I believe we need these words in there. Now, there are a lot of big, fancy, medical words I don't understand, but the doctors do, and it's necessary.

And it's necessary for our attorneys to have these words. They say in one word what it might take a whole paragraph to say, and they're protection for us. They're a legal tool, and I believe that we need them in our Constitution. Thank you.

MR. HANNAH: Thank you, kind lady. Mr. Baker, you are recognized.

MR. DONN BAKER: Donn Baker, delegate, Park Hill. I, too, stand in opposition. And the reason is I think that we have a judicial branch, an executive branch, and a legislative branch, and to leave just writs of enforcement, and then to let the executive branch or the legislative branch say, all right, we're going to allow a writ of Habeas Corpus, but not the other one.

For example, a quo -- whatever -- is to order a public official to do his job. That would somewhat limit -- at least would give them the possibility of limiting the judicial branch. And while I understand that these are terms of art, I really and truly believe that if you want three branches of government and if you want a balance of powers, we have got to put this in here that these very special writs of enforcement exist. And to do otherwise or let any other body control it is going to be a mistake.

MR. HANNAH: How do you rise, Mr. Keen?

MR. JOHN KEEN: In opposition. John Keen, delegate. I don't believe I can articulate it any better than Mr. Baker. I believe that it gets -- it comes right to the heart of separation of powers. We can't do this.

We need to spell out, as we did with the other branches of government, we need to spell out their powers and duties. Otherwise, it cuts into the separation of powers doctrine, and it wouldn't be acceptable.

MR. HANNAH: Mr. Smith.

MR. SMITH: One of the very critical things here is, we had a judicial system for twenty years. People have relied on it, and there are cases in the mill. Any time we change any language, we provide the opportunity for a glitch, for a loophole, for a break of continuity.

So that's why I argue very strongly in keeping the language as close to what it is in our current Constitution so we can have a continuing jurisdiction without any wrinkles or problem.

So I would object to the enforcement of the other language and try to stay as close to the original language because it serves us well. It's going to minimize later problems.

MR. HANNAH: Anyone rise -- how do you rise, sir?

MR. DOWNING: Against the motion.

MR. HANNAH: Okay, what's your --

MR. DOWNING: Carl Downing. I want to do this just a little differently, because I am one of the delegates who has pleaded for simplicity and understanding, and I still believe that.

But while we are dealing with the legal part of our Constitution, it seems to me that it is necessary that we use legal terms.

MR. HANNAH: Thank you, sir. Any other delegates rise for debate?

Dr. Gourd.

MR. GOURD: Mr. Chairman, thank you. I withdraw the motion and call for the question. Is that proper?

I'm in full agreement that those things need to be listed. In the spirit of cooperation, I offered something that might clarify, but obviously it didn't.

MR. HANNAH: Without objection from the second, the motion is withdrawn. And the floor is open for debate on Section 4. The language that is before us.

And I'll once again remind everyone that this has reached procedurally a somewhat convoluted approach. The Chair would instruct the parliamentarian to stay excruciatingly close because at this point we have language that was originated by Mr. Clarke that the Chair believes to be at the upper portion of Section 4, and the bottom portion which is underlined, while it has gone through some changes, was of the original language. But at this point, the Chair would entertain debate virtually any section.

We're debating on the entirety, I believe, unless the delegate would correct the Chair. As you all know, he's always willing to be corrected. And the good man from Greasy is recognized.

MR. HEMBREE: Thank you, Mr. Chairman. And on, I believe, Section 4 in its entirety, is that where we're at?

MR. HANNAH: I believe, sir, that what we have is the Section 4 that you would see underlined. Because in actuality, it's the Chair's opinion that Mr. Clarke's motion in fact affected both the first and second paragraph.

MR. HEMBREE: I would move previous question on Section 4.

MR. HANNAH: On the entirety of Section 4?

MR. HEMBREE: On the entirety of Section 4.

MR. HANNAH: Before us at this time is a motion to consider the entirety of Section 4. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Is there opposition? Hearing none, then the section that is before us would read:

"If the original jurisdiction of the supreme court shall extend to a general superintending control over all lower courts. The supreme court shall employ an administrator who shall have general administrative duties in the judicial branch.

The justices of the supreme court shall have supervisory authority over the administrators. The original jurisdiction of the supreme court shall extend to all civil cases, wherein the Cherokee Nation or an officer thereof acting in official capacity is named as the party defendant and to all other cases and controversy as the Council may prescribe by law.

In support of its original and appellant jurisdiction the supreme court shall have powers to issue, hear, and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and such other remedial writs as may be provided by law, and may exercise its other jurisdiction as may be conferred by statute.

The appellant jurisdiction of the supreme court shall extend to all cases at law and in equity arising under the law or Constitution of the Cherokee Nation.

The supreme court shall promulgate rules of procedure relating to its original and appellant jurisdiction to ensure any litigant appearing before it receives due process of law and impartial justice, together with prompt and speedy relief.

Decisions of the supreme court shall be published and indexed and shall be final insofar as the judicial process of the Cherokee Nation is concerned."

All those in favor, please signify by saying --

MR. HEMBREE: Point of clarification.

MR. HANNAH: Point of clarification.

MR. HEMBREE: Just to make sure that we know exactly what we're voting on, Mr. Chairman.

MR. HANNAH: Yes, sir. You asked for the entirety of Section 4.

MR. HEMBREE: Yes. It was my understanding, though, that the first line of Section 4 had been struck out by --

MR. HANNAH: I am so sorry. The Chair is corrected, and thank you for being with me. That sentence, is it

intent of the delegates that that sentence to be included or struck?

DELEGATE: Included.

MR. HANNAH: Included. That would be correct.

That sentence was not stricken.

MR. HEMBREE: Well, then, I would offer an amendment.

MR. HANNAH: Okay, sir. The Chair would recognize you.

MR. CORNSILK: Point of order.

MR. HANNAH: Yes, sir.

MR. CORNSILK: I would question the amendment on the floor at this time. We had a vote on the floor for a vote and a second and no objection.

MR. HEMBREE: I withdraw my motion for previous question and would move for amendment, if the Chair would so recognize.

MR. HANNAH: The motion has been withdrawn, and the good man is recognized.

MR. HEMBREE: My amendment, Mr. Chairman, would be to strike through and delete the first sentence of Section 4, the part that is already struck through on the screen. "The original jurisdiction --"

MR. HANNAH: There's a motion to strike, and the phrase to be stricken would be, "the original jurisdiction of the supreme court shall extend to a general superintending control over all lower courts." Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second.

MR. CLARKE: Point of order.

MR. HANNAH: Hold just a moment, now. Let's all be careful on point of orders. I'd like for you to at least stand and let me see you, and we'll get the attention of it. And who would have that point of order?

Mr. Clarke, you are recognized.

MR. CLARKE: It was my intent, if I didn't state it -- I thought I did -- to strike that first sentence to start with when I made the motion and this stuff was underlined.

MR. HANNAH: And that's where I think, Mr. Clarke -- I believe that what we have here is several different iterations. Once again, folks, we're writing these things as we go along. It's easy to become convoluted and lost. And when I asked that question earlier, this side of the room over here instructed it had not been stricken.

And so right now we have a motion before us to strike that section. It has been seconded. The floor is open for debate, and you, sir, are recognized.

MR. CORNSILK: Mr. Chairman, I think that very first sentence, and if Ms. Jordan would concur with me, that strikes right to the heart of some of the problems that we faced in the lower court in the last year or so.

I would offer a friendly amendment to that. It's my personal feeling in having dealt with both courts that there does need to be some line of kinship between the two courts. If we strike that sentence, then we are breaking, I think, that line of kinship.

I know we're trying to accomplish that with the administrator, but my friendly amendment would be simply to leave that in there, leave that whole sentence -- I guess that wouldn't be friendly, would it? I didn't realize, I'm being unfriendly to Mr. Hembree there.

I guess I will just simply object to having it removed and plead with the body that we need that line of kinship between those two courts, and that the administrator takes care of whatever kinds of problems that we may have had.

MR. HANNAH: Which of the good ladies rise in support of the striking?

MS. MASTERS: I rise in support that it would be left there.

MR. HANNAH: Is there anyone who rises in favor of striking the language?

MS. JORDAN: Do what?

MR. HANNAH: Do you rise in favor of striking the language?

MS. JORDAN: I rise in favor of striking the language, and I was just --

MR. HANNAH: We would hear from you.

MS. JORDAN: I was just explaining to David that my understanding of what we've tried to do with the added paragraph is that the administrator would provide a kinship between the two tiers of the court system, and if you ever decide to add a third tier, which many systems have, your court administrator would float between all three systems.

That administrator would be able to assist the courts in supplies, housing, equipment, all of those things that need to be done that most judges don't want to have to handle. That person would be employed by the supreme court. Also, it would be under the supervisory authority of the supreme court. So it has the same meaning as the original line that we're proposing to omit at this time.

I believe, if I am sure what Mr. Clarke is intending to do, is you wanted to omit the first sentence, substitute the second language that's been passed around a good deal this morning.

MR. CLARKE: That's right.

MS. JORDAN: Thank you.

MR. HANNAH: Good lady from California.

MS. MASTERS: Point of clarification, then. Maybe the Chair could assist me here. Are we meaning that "jurisdiction" and "administrator" has the same meaning in what we're doing right now?

MR. HANNAH: Who would assist?

MS. JORDAN: Original jurisdiction normally encompasses a lawsuit. The original jurisdiction in the second line is different lawsuits that will go directly to the supreme court.

Now, the first sentence doesn't have anything to do with lawsuits, so that's where your original jurisdiction comes in. I think that second line starts with, "those things that will go good directly up to the supreme court and bypass all other tiers of the court system."

MR. HEMBREE: The original jurisdiction of the supreme court reads the --

MS. JORDAN: There's always going to be a defined amount of cases that need to go directly to your supreme court and bypass all other tiers of your court system, and that's what original jurisdiction is all about.

These other things above that are just, how do we get where we're going to have court, and where are our pencils going to come from, where are our pens going to come from, where will our desks come from, and those kinds of things.

I hate to compare us to the State of Oklahoma, and I'm not comparing us to the State of Oklahoma, but like the State of Oklahoma has an office of a court administrator provided by the supreme court that works with all other court systems in Oklahoma.

Navahos have a court administrator; City of Tulsa, Tulsa County has a court administrator; Oklahoma County has a court administrator. That person is a floater for the supreme court to all other judges to keep everything moving along so the judges don't have to do those day-to-day housekeeping activities.

MS. MASTERS: In response, Mr. Chairman.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: If that would be a court administrator, that would be clearer than just an administrator, which could be just someone that administers to the staff and the offices of the courts.

MR. HANNAH: Mr. Baker, you are recognized.

MR. DONN BAKER: I think we're all saying the same thing. As I understand, the supreme court shall employ an administrator who shall have general administrative duties, but we still put in there, in that next sentence that the justices of the supreme court shall have supervisory authority over the administrator.

This, to me, simply is, rather than the judges having to decide who buys the pencils and stuff like that, they have the power to appoint or to employ a court administrator to take care of all of that stuff, and they are over that.

I think we're all saying the same thing. And I think that first line needs to be taken out and adopted, as Mr. Clarke had, and we're all wanting the same thing, I think.

MR. HANNAH: Thank you, sir. Mr. Keen, the senior, you are recognized.

MR. KEEN, SR.: Thank you. I don't believe, Mr.

Baker, that we all are thinking the same thing. I agree with the entire section as it currently is. If we strike the first sentence, what we are doing is we're going to leave ourselves open to this same kind of problems that we've had for the last two or three years.

What we are arguing about is whether or not the supreme court can discipline district judges. I agree that we should have an administrator to do the things that this section contains, but I also believe that everybody must have a leader, and that the supreme court should be the leader, and they should have the original jurisdiction, and they should have the power to control the lower courts.

MR. HANNAH: Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, after listening to the arguments of Ms. Jordan, Mr. Baker, other learned attorneys, I continue to object and find that the first sentence in this paragraph is a direct lineal descent from the supreme court to the lower courts, and an administrator is nothing more than a glorified purchasing agent.

And the ability of the supreme court to supervise that person does not mean that the supreme court could then tell that administrator to reign in an abhorrent judge in the lower court. We have to have some direct line of descent in our court system, and that first sentence creates that line of descent.

MR. HANNAH: Chapman-Plumb, you are recognized.

MS. CHAPMAN-PLUMB: Can the judges be removed according to Article X just like everyone else? Because what we're trying to get here is courts that function as far as possible independently of one another.

Whenever you set one court up in authority over another, you've got problems. The Supreme Court of the State of Oklahoma is not the final place that you can go if you're a judge and you're disciplined by them. You can go further than that.

Because what we're talking about here is limiting the ability of any of the lower court judges to go any further than the very persons that they may be in conflict with. Let's give the disciplinary authority to the Council, like it is, I believe.

MR. HANNAH: Good doctor, you are recognized.
Mr. Keen, you are, thank you.

MR. JOHN KEEN: In response to that, you can't -- John Keen, delegate. You can't leave the disciplinary authority to the discretion of Council. That's a direct violation of our separation of powers doctrine. I'm sorry, but I just -- adamantly opposed to that.

Also -- I believe as written -- now, I'm somewhat familiar with the office of court administrator, and I believe that's a good thing. I believe that the Cherokee Nation court system needs an office of court administrator.

But as written, without that first sentence, it doesn't say in there that the court administrator has any supervisory

authority over the lower courts. It just says they shall have general administrative duties, the secretary for the courts. Nowhere do I see any supervisory authority over the judges.

Now, I also agree with Mrs. Plumb and her statement that you can go further in a disciplinary procedure with the State of Oklahoma. But, I'm sorry, but we do not have those procedures, so not to have that first line would be no procedure whatsoever. Where would you go?

We have to have -- Mr. Chairman, would you help me on this point? Where are we at on the status of the floor with this motion?

MR. HANNAH: We are in debate, Mr. Keen, with the regard to the striking of the first sentence.

MR. JOHN KEEN: Who is the author?

MR. HANNAH: The author of striking would be the gentleman opposing you on the other microphone.

MR. JOHN KEEN: Would Mr. Hembree be amendable to accepting a friendly amendment to amend his to say -- to just striking the word "original."

I also want to address Mrs. Jordan's testimony that -- I agree with her assessment of original jurisdiction, that's pretty clear that, you know, original jurisdiction is mostly for, where do lawsuits go, what court do they go to first? That's original jurisdiction. We're not talking about that.

But if we were to strike the word "original," that would address Ms. Jordan's testimony, and also it would give a direct lineal descent, supervisory authority from the high court to the low court.

As it stands right now, without that first sentence, we have no supervisory authority over the judges. And we do not have anything in place like the State of Oklahoma, so we have to have something. And it just stands to reason that judges should be supervised by judges of a higher court.

MR. HANNAH: What say you, Mr. Hembree?

MR. HEMBREE: In all due respect, Delegate Keen, I wouldn't accept that friendly amendment, and let me tell you why.

As the language that is up there underlined states, it does provide for some type of -- it does provide for supervision of a rogue judge that would come up.

That's exactly what those writs in the second paragraph say, "writs of habeas corpus, mandamus, quo warranto, certiorari, writ of prohibition." If there is a problem with a rogue judge, what someone will do is file a lawsuit, file a writ of prohibition, whose original jurisdiction would be the supreme court. That would go directly to the supreme court. And the supreme court would rule on whether that was a proper writ or not. That provides for your supervision.

That's the whole reason. Yes, it does. Because what you would have by leaving that sentence in there, what you would have is the supreme court on its own volition being able to supervise -- or

let's say, for lack of a better word, call on the carpet certain district judges.

Maybe they should have that, but they shouldn't have that on their own volition. What should happen is that, hey, there's a district judge over here who's doing really bad things, and I think that that needs to stop.

What I do as an attorney, or as a client, I hire an attorney who files what is called a writ of prohibition, whose original jurisdiction goes right to the supreme court, and that supreme court will rule on that. So, yes, it provides for it.

MR. HANNAH: Mr. Baker, you are recognized.

MR. DONN BAKER: Two points that I want to make.

First of all, let's take like a federal district judge. If you have a federal district judge that gets out of line, he goes to the senate, and there's a procedure for removal, and it goes through the legislative branch. So sometimes there is legislative branches who handle that.

Then we have like the State of Oklahoma. They have a court on the judiciary. In other words, it's a completely separate body. To me, there isn't any question that we need to provide something when we have a judge who's not doing like they're supposed to.

Every state that I know has some sort of court on the judiciary, and generally speaking, you take two or three come -- the supreme court gets to appoint two or three people; the executive branch gets to appoint two or three people; the legislature appoints two or three. You get some private lawyers; you get private citizens, and they come up with this court or the judiciary.

The problem is, as they've stated, we don't have that in the Cherokee Nation court system. And so I think the issue before us is, do we want to provide at this time a court on the judiciary? Do we want to wait and let the legislature do that?

I think hopefully we can all agree that, I don't know of any system where the supreme court controls the lower court. Whenever you get in a situation like that, I think that causes some problems. So I think we need to avoid that; although, I do think we need to have something in place, whether it's through the removal process or through a court on the judiciary.

And I have the court on the judiciary that they use in the State of Oklahoma. And it's a pretty lengthy and convoluted thing that I think would need some time and some work before we just put it before the body.

MR. HANNAH: Thank you, Mr. Baker. The good doctor is recognized.

MR. ROBINSON: Ricky Robinson, delegate, Tahlequah. I think I'm right in stating that I am in favor of striking this language. I just feel from a common sense viewpoint, not being a lawyer, but from a common sense viewpoint, that I'm afraid if this language is left in here, we will have a situation that there's really no need for the district courts.

We will make it to where the Cherokee people do not have an appeal court. Because I think if the supreme court has control of the lower courts, they can just arbitrarily take cases from and, of course, I don't know the proper language.

But I feel like that it would be too easy to make sure that things went right up to the supreme court. I feel like we need to have those two tiers. I see no problem with the Council having the jurisdiction of removing supreme court people or district court.

We've given them the power to remove the executive branch people. Wado.

MR. HANNAH: Mr. Keen, the elder, you're recognized.

MR. KEEN, SR.: I would like some time to respond to one thing Mr. Baker has stated. I don't disagree with anything he said; however, he did make reference to the court on the judiciary, and I agree that we need one within the Cherokee Nation.

But it's my belief that the state court on the judiciary was created by the State Supreme Court and, yes, we do need one. But we also need one who under the separation of power has the authority to do that, and that should be the Tribal Supreme Court.

MR. HANNAH: Thank you very much, sir. Any other speakers rise with regard to debate on this issue?

MR. RALPH KEEN: Mr. Speaker.

MR. HANNAH: Mr. Keen, you are welcomed back, and what the room needs is yet another attorney. Thank you very much.

MR. RALPH KEEN: Well, I just joined these proceedings, and my apologies for my tardiness today. But as I understand, the question before the floor is the language that is in strike-out, the first sentence up there.

MR. HANNAH: This would be correct, sir. We are at debate on whether to strike this language from the section before considering the section.

MR. RALPH KEEN: My question that comes to my mind when I see this language struck out is who will have superintending authority over the district courts if this language is struck out. And I would invite anyone to respond to that.

MR. HANNAH: Mr. Hembree. A point of information has been raised by the good Delegate Keen, the intermediate, and he asked the question that if supervisory power is not extended to this particular body, then who to; would that be correct, Mr. Keen?

MR. HEMBREE: The explanation would be supervisory power of any court actually goes to the people. For example, through the writs that we have listed up there.

Let's say, for example I'm an attorney who is in a case before a district court, and that district court judge is specifically violating a judgment or a rule or a ruling from the supreme court that I have in my hands.

What I do is I file a writ of prohibition, which goes

directly to the supreme court to hear that case. That not only insulates my position, but also insulates the supreme court because there would be a version of bias of the supreme court.

If the supreme court was actually coming down and reaching and disciplining a district court judge, you know, anybody who has any due process sure wants a fair, impartial tribunal ruling their case. If I bring the case -- if I'm an attorney and I have a district court judge violating the rule, well, I don't have the supreme court reach down and discipline them; I bring a cause of action through one of these specific writs.

And I put on my case, and my case would be very simple. Look, Mr. and Mrs. Justice, we have this district court judge violating the court rule, and I want you to order them to stop that right here and there. That's where the supervisory would come from, in my opinion.

MR. HANNAH: Thank you, sir. Mr. Clarke, you've been patient, and you are at the heart of this discussion, sir.

MR. CLARKE: If I might, sir, I would yield to Mr. Dowty and then would like to be recognized.

MR. HANNAH: You will be honored as such. Mr. Dowty, you are recognized.

MR. DOWTY: I would hope that to be informational here. Mr. Hembree made some good points. Insofar as the superintending control of the lower courts is concerned, it is provided in the second underlined paragraph by the various remedial writs.

What a remedial writ is, is a person who is grieved or injured by a lower judge is asking a higher judge to control that lower judge. That's what the remedial writs are about.

In the case of habeas corpus, you're telling the higher judge that the lower judge has put me in jail. He's holding my body. He's holding me against my will. So you ask the higher judge to set you free from the order of the lower judge. That's what the remedial writs are about.

In the case of mandamus, you're telling the higher judge that the lower judge had a clear duty to carry out, but the lower judge has refused to carry out that duty. So you ask the higher judge to make that lower judge carry out the duty that he has a clear duty to carry out.

In the case of quo warranto, you're saying to a higher judge -- and the most common time this happens is in the case of a candidate, when two candidates say, I have a right to that office. And you tell the higher judge that the lower judge has ruled wrongly and has put the wrong person in office, and you ask that to be corrected.

So you see, all of these are remedial writs that are brought against a lower -- an action by a lower judge to the higher court. So that is superintending control.

Now, the other part of superintending control. If the judge, the lower judge is so out of line and continues to create

situations where they're ruling wrongly or causing parties to be injured or grieved, then I would submit that you might consider your removal power, which is -- we're going to take up later. But the removal power will be in the hands of the Council.

So your mission, should you choose to accept it, Mr. Phillips -- it's going to be explode in five seconds -- does that help you understand what these writs are about, the remedial writs?

Again, I say, if your judge gets completely out of line, then you have the right to exercise through the Council the removal power. At the same time, the power of suspension needs to be in the hands of the removal power as well because you may need immediate action.

And you can also get immediate action through these writs. You can ask the higher court to stop the lower judge from enforcing his or her order. So you can do it -- I believe that with these two things, that you may have the control that you're looking for. But that's my informational statement to you.

MR. HANNAH: Mr. Clarke.

MR. CLARKE: Thank you, Mr. Chair. William Clarke, delegate from Muskogee. I've heard several -- a couple of interesting things that came up from Mr. Baker and from former Chief Justice Keen in regards to, I believe you referred to that court as a court of the judiciary.

I would like to hear more about that function from those people who are familiar with that before I make what I would consider to be an intelligent and wise, prudent vote.

So, therefore, I would like to make a motion to table this thing and let Mr. Baker or whoever get together and draw up some language for us to look at. I understand from Delegate Keen, Sr., that in the State of Oklahoma, anyhow, he believed that the Oklahoma Supreme Court is the one that initiated or created that particular court, the court of judiciary.

I don't know that we're locked into doing what the state does, because being a sovereign power ourselves, I think we can, if chose to, make it a constitutional thing. Or it may be more appropriate, I don't know, if it should be something that the Council should legislatively create.

But I will make a motion to table this until we can get this information, and I'd like to hear some good debate on it.

DELEGATE: Second.

MR. HANNAH: Mr. Clarke, would you yield to the floor, sir?

MR. CLARKE: I heard what Ralph said, and when he said it, I didn't know, but I've gone to check. And the State of Oklahoma's Constitution created the court on the judiciary.

I do agree with Mr. Keen that in many states, the court does it, but in Oklahoma, it's a constitutional deal. It's by our Constitution. We create a court on the judiciary. And it's their purpose to hear grievances.

And the reason you have a court on the judiciary is we

are assuming that the only judges that are going to be rogue judges are going to be the lower judges. And I think that's why the court on the judiciary has been developed in the State of Oklahoma, is they can look at a supreme court judge and discipline that judge, and then if they find that they've done something far out of line, they can ask that they be removed.

Mr. Chair, I would certainly like to, again, see some language written and hear debate on it. Because if in fact a court of the judiciary could hear these grievances, then this Nation probably would not have gone through the strife, the grief and turmoil of an illegal impeachment of the supreme court justices, the confusion and the discombobulation, that's what I come up with, of our district courts by the suspension and all of this kind of stuff, that seems to be the topic of this thing. So, again, I make a motion to table this thing until --

MS. CHAPMAN-PLUMB: I object.

DELEGATE: Second.

MR. HANNAH: There's a motion to table and there has been a second.

MS. CHAPMAN-PLUMB: I object.

MR. HANNAH: And the objection?

MS. CHAPMAN-PLUMB: I don't think we need another court. The United States Senate --

MR. JOHN KEEN: Point of order.

MS. CHAPMAN-PLUMB: -- has the power to impeach any federal judge.

MR. JOHN KEEN: Point of order.

MR. HANNAH: The good lady, if you rise to object, please object with regard to the motion to table, and that would be on procedural basis.

MS. CHAPMAN-PLUMB: I want to keep talking about it, so I object.

MR. HANNAH: I know you do. And obviously just by looking at the room here, there are several folks that want to keep talking about this for a while. And Mr. Clarke, is it still your intent --

MR. CLARKE: It is still my intent, sir.

MR. HANNAH: And there is a second. And all of those in favor will signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed will say "no."

THE DELEGATES: No.

MR. HANNAH: And the "ayes" have it. It goes on the table.

MR. CORNSILK: Mr. Chairman, division of the house.

MR. HANNAH: Division of the house. And with that, Mr. Secretary, you will conduct a standing vote. Delegates will be in their seats. Delegates will be in their seats. And all others will be in their seats; the doors will be locked.

And the vote that is before us is a motion to table the discussion on the striking of the first sentence as proposed in Section 4. And the Secretary will conduct a standing count, and all of those in favor to table, please stand.

MR. UNDERWOOD: The count is thirty-seven, Mr. Chairman.

MR. HANNAH: Thirty-seven in favor, please be seated. And all of those in opposition to the tabling of this item, please stand.

MR. UNDERWOOD: Count is fifteen.

MR. HANNAH: Count is fifteen as opposed to thirty-seven to floor. Motion passes. The item is tabled.

MS. JORDAN: Point of order.

MR. HANNAH: Yes, ma'am.

MS. JORDAN: If it would be possible for us to take about fifteen minutes, I would like to come back and present a motion for a court on the judiciary at that time. I think we can flush that language out. That would solve -- hopefully solve this problem so then we could come back to this section and then move on through.

MR. HANNAH: The Chair would --

MS. JORDAN: Fifteen minutes. We will try to put our heads together and figure some language out that might be acceptable to everybody. That's in the form of a motion.

MR. HANNAH: There's a motion.

MS. MASTERS: Point of clarification.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: Unless she knows what those of us that have been standing in line for a while are really concerned about, I don't think it could be flushed out to meet our needs. So maybe if the concerns could be expressed before the break.

MS. JORDAN: I would yield to that. I would like to see what the concerns are for -- are you -- in favor of -- can I just --

MR. HANNAH: You know, in the spirit of common sense, the answer is "yes." Now, folks the Chair will remind us all that what we are about here is obviously something that is very important. And the Chair will also remind us that we have to decide where it is that we're going to make law. And that's in this room or out in that hallway.

And the Chair cannot entertain debate, Billie, when this item on is on the table, and, obviously, we can't talk about it unless it's off the table. And if it's going to go on the table then we're going to have to talk about it outside and come back in here for those of you who have the ability.

So either we're going to put it on the table, folks, or we are going to bring it off the table. And I say this not with any chiding remarks to anyone, and certainly to the good Delegate Clarke, because, I believe, sir, you've tabled this in a spirit of, let's try to get something that's workable here.

But, folks, what we're doing, once again, is we're kind of chiding up on one another with this process thing, so in the spirit of common sense, please, respond.

MS. JORDAN: Let's just do a motion for fifteen minutes break, and we'll talk.

MR. HANNAH: There's a motion on the floor for a fifteen-minute recess. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is. And all of those in favor, signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: We're in recess for fifteen minutes.

(recess taken)

MR. HANNAH: Folks, before I gamble us back in order, technically, this would be under the auspices of the recess.

I would tell you that we are going to make a decision right now, but we need to inform the University if we are going to be here this evening, before 3:00. Is that right, Dr. Gourd?

MR. GOURD: Yes.

MR. HANNAH: The Chair would look for a nod of the head if you folks are willing to work here, and it looks like we're going to be here and so notify the University, Dr. Gourd. Dinner also.

MR. GOURD: We can go on through food. We don't have to eat.

MR. HANNAH: No, no. The Chair's rules says that -- the Chair's milestone rule says that he gets the convention to the next meal.

MR. GROVE: Are we going to be here tomorrow?

MR. HANNAH: There's a great possibility that we might be.

MR. GROVE: I hope we find out before tomorrow.

MR. HANNAH: We'll find out before tomorrow. My good friend from Grove, Oklahoma, in the heart of Delaware County, you are so right on target with logic.

Also, we do not have this chamber tomorrow. It has already been brought to my attention that some of the delegates have taken upon themselves to raise opposition to the fact that this body would move to the tribal headquarters to conduct our deliberation.

The Chair is always amazed how it is that we seem to find opposition in the most interesting places. The Chair is interested in doing one thing, ladies and gentlemen, and that is conducting these procedures in the most hospitable location and arrangement that we possibly can.

And so the Chair obviously hasn't gambled us back into business yet, but as we go along, we will obviously need to make a decision. And I'm not -- this is not a question. The Chair is

asking this for you to answer in your own mind.

If you believe that there is something that would in fact be controversial about this body meeting in our tribal headquarters, then you'll need to speak to that later on. Because, unfortunately, the managers of our convention here, Dr. Gourd, ladies and gentlemen, the Chairman of the Constitutional Commission has served a yeoman's task in working with the University; getting facilities ready; making sure that we have meals; so many things that unfortunately I feel that we have taken for granted. And, Dr. Gourd, we owe you a great deal of appreciation at this point.

So if we're going to have you to jump through some more interesting loops than you've already jumped through, by meaning that suddenly if that facility is not acceptable for us, and we're going to need to go somewhere else, then we're going to need for you to find it for us.

And so later in the day before we adjourn before the evening meal, we're going to talk about that, ladies and gentlemen.

And the Chair would be interested in hearing from those on both sides, should there be both sides with regard to that issue.

With that, Ricky, before we reconvene, you're recognized here for a moment.

MR. ROBINSON: One thing, I would like for the interpreter to come in, please.

MR. HANNAH: Is Ed available to us, Rick?

MS. COON: He went to the complex.

MR. ROBINSON: What I'm wanting to do is, we paid respects to a lady that passed away the other day. Right now, a distant cousin of mine is having her funeral services at Hart Funeral Home here in Tahlequah. She's thirty-seven years old, full-blood Cherokee I think actually sixty-three-sixty-fourths, for us worrying about blood degree.

But she's been a wonderful woman. She has been crippled for many years from a wreck, but she did not depend on the Cherokee Nation, or the State of Oklahoma, or the United States to provide her living. She went on and has worked and has raised her children.

She was the first public relations officer for Reasor's store. And some of you that have lived in that area may have noticed at Reasor's grocery store a lady that rode around in one of those little carts. And that is Donna Springwater Pooling.

She's a close cousin of my wife's, and a distant cousin of mine from two different sides of the family. You don't have to be an elder to be a great Cherokee lady. She was a great Cherokee lady. And I'm going to ask for Mr. Crittenden to say a prayer on her behalf in our native language.

Would everyone stand, please. I appreciate this time.

MR. HOOVER CRITTENDEN: (prayer in Cherokee dialogue)

MR. HANNAH: Thank you, sir. The delegates are recalled from recess, and we are in session. And what would be the pleasure of the delegates?

Tina, you are recognized.

MS. JORDAN: I have a motion for consideration for the floor. I'm not real sure. It's nowhere in this particular article, so maybe it should go -- I don't know that it should go in Section 4, but it's certainly relevant to consideration of Section 4. It probably should go at -- maybe at the end of the article. Let me just read it and then we'll get it put up on the screen.

"There is hereby created a court on the judiciary to be made up of equal representation from the three branches of government. The Council shall pass such laws as are necessary for carrying into effect the provisions of this article."

MR. HANNAH: Motion is before us. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. The floor will be open for debate. If the kind lady will assist in getting the information on the screen, we would debate the issue.

MR. HEMBREE: Mr. Chairman.

MR. HANNAH: Mr. Hembree, you are recognized.

MR. HEMBREE: Is it the pleasure of the Chair to commence with the debate at this time or wait till the language is up on the screen?

MR. HANNAH: The Chair would prefer to have the language on the screen. The Chair not deemed quite as swift as the most folks here in the room, I always feel it is best to see what it is we're talking about.

MS. JORDAN: Mr. Chairperson, could I possibly speak in favor of this and give my explanation here?

MR. HANNAH: Yes, ma'am, that would be the tradition.

MS. JORDAN: I think by passage of this section, we will have provided for three controls on your lower court system; that being the writs provided for in Section 4; that being the removal provided for, I believe in Section 10.

And now the citizens and other judges could go to the court on the judiciary that would be made up of representatives appointed by the three branches of government with each branch of government having equal representation. They could go to the court on the judiciary and say, "We have a bad judge. Bring them back in line."

That particular court on the judiciary could sanction, could fine, could suspend, or recommend removal to the legislative body, depending on the seriousness of the misconduct. The court on the judiciary works equally, whether it be a lower court judge or whether it be a supreme court judge.

I mean, as you well know, judges are humans. All of us are human, whether we're in the district court or whether we're in the supreme court. This would give the citizens and other judges the benefit of going to this court on the judiciary. It would also assure that any judge that is accused of misconduct has fair due

process in front of an independent body.

Now, you have to temper what you do in the court system.

You have to temper control of judges with that of judicial independence. If you have total control by one tier of your court system over another tier, I maintain you do not have judicial independence.

If you fail to have judicial independence, then don't vote in a district court, just have a supreme court. Don't make the people think you're giving them the right of a completely neutral appellate review, when you don't have that in your system.

I'm not advocating you do away with your district court system because I think that overloads your supreme court. But I am saying, temper your control within your court system with that of judicial independence. Thank you.

MR. HANNAH: Mr. Keen, you are recognized.

MR. RALPH KEEN: Thank you, Mr. Chairman. I would rise in qualified support, I guess I might say, if we could flush this thing out a little bit. I certainly agree a court on the judiciary is a fine concept and most jurisdictions have some equivalent to this. They have some way that the judiciary can police its own members, and this a good thing. But the skeletal outline of what we see here, we need to fill in some blanks.

First of all, who is this court going to be made up of? Is it going to be made up of citizens? Is it going to be made up of members of the Bar? I would submit to you that it needs to be made up of members of the Bar.

They will be certainly qualified to not only give due process to their fellow jurists, but they would also have the ability to better judge their conduct under the appropriate standard that they would be held to.

The other problem I have with this that we need to consider is the Council shall pass laws that are necessary. And I'm fearful here that if we're not very careful in the way we construct this, that the Council would have the ability to encroach upon the judicial powers and create a separation of powers problem with this.

So just having raised those different issues, I'll stand down for now, thank you.

MR. HANNAH: Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk.

I rise in attentive favor of this, but I do not think that it solves the basic question that we have before us, which is, shall the supreme court superintend over the lower courts. And if it's appropriate at this time, I would ask for a division of the question.

MR. HANNAH: There's a motion for division of the question.

MR. JOHN KEEN: Point of order, Mr. Chairman. The other section that we're dealing with, the superintending authority has been tabled, so my question to the good delegate is, what question are we dividing?

MR. CORNSILK: I withdraw. I wasn't aware of that.

MR. HANNAH: Oh, yes, sir. The Chair was most interested to hear where we were going to divide that, David.

MR. CORNSILK: I just have an axe to grind.

MR. HANNAH: That's okay. No problem here. We are still in debate on the Jordan proposal that's before us. Younger Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate, Sioux City, Iowa. Could Ms. Jordan be amendable to a friendly amendment?

MS. JORDAN: I was just going to say, I'm not married to this language. I got it up there so we could start a discussion. I'm very open to us flushing it out a little more specific.

MR. JOHN KEEN: My friendly amendment would be, "There is hereby created a court on the judiciary to be made up of members of the Cherokee Nation Bar Association."

MS. JORDAN: I would ask you maybe to consider something. Most courts on the judiciary have lay people as well as lawyers. And I think it would -- I would not -- I guess, John, I'm suggesting throw some lay people in there because I think you need equal representation from lay people and lawyers.

Possibly one lawyer and one lay person selected by each branch of the government, making a court on the judiciary of six. And that way you get good input from your lay people, plus from your lawyers.

MR. JOHN KEEN: That would be acceptable.

MS. JORDAN: And the sixth might pick a seventh, and that way you wouldn't have a deadlock.

MR. JOHN KEEN: That would be very fair.

MS. JORDAN: You want to suggest that as a friendly amendment?

MR. JOHN KEEN: That would be my friendly amendment.

MS. JORDAN: Where would you like that? At the end of that line maybe you want to add that?

MR. JOHN KEEN: Before "the Council shall" -- yes.

MS. JORDAN: Go ahead and give us the wording, and I think we're all going in the same direction.

MR. HANNAH: The Chair is amazed at this writing show that we have here. And in the spirit of common sense, it's quite acceptable for this to continue.

MR. JOHN KEEN: "There is hereby created a court on the judiciary to be made up of equal representation from the three branches of government. Each branch shall appoint one member of the Cherokee Nation Bar Association and one lay person or one non-member."

MS. JORDAN: You can call a "lay person" and "one citizen." One non-lawyer citizen.

MR. HANNAH: I think even the Chair will applaud on that term. We have once again reached a whole new colloquial pipe here during our debate on terminology.

MS. JORDAN: Let's just put it up there for a minute. "One non-lawyer citizen," for right now, "of the Cherokee Nation."

MR. JOHN KEEN: And with that, I'll defer.

MS. JORDAN: Wait. Why don't we, to get an -- to get our odd number, say, "and the sixth will then appoint a seventh member"?

MR. JOHN KEEN: That's acceptable. Lawyer or non-lawyer.

MS. JORDAN: And as my brethren said back here, you need a fox and a non-fox to guard the henhouse.

Might I make just one more little suggestion. These members should not be members employed by Cherokee Nation. That's true independence there.

MR. JOHN KEEN: Shall not be employed or hold any office.

MS. JORDAN: The members shall not -- let's say, "shall not be employed by the Cherokee Nation or any entities thereof." That truly creates an independent court on the judiciary.

MR. JOHN KEEN: Do we have enough lawyers to fill all of these lawyer jobs we're creating here?

MR. HANNAH: This may now be known as the economic development clause of the Constitution.

MS. JORDAN: This would be a real infrequent thing that they would probably do, but this certainly is how your more progressive judicial organizations make sure that their judges are acting properly and not doing any kind of misconduct from the bench.

MR. HANNAH: So we've had a series of friendly amendments.

MS. JORDAN: I would accept that.

MR. JOHN KEEN: Point of order. I don't mean to cause any rift here, but I believe the first four rows and below are reserved for delegates.

MR. HANNAH: That would be the case, sir, and we have delegates here in the first -- is there someone from the gallery here that is in the first four rows?

Thank you, Mr. Keen.

MS. JORDAN: And I would accept that as a friendly amendment, and thank you for the assistance.

I just want to say, I'm not married to this language. I have just put it out here to get it on the board so that we could have a good discussion about it.

MR. HANNAH: And that's where we are, debating the section. Mr. Smith, you are recognized.

MR. SMITH: This is a point of information. To evaluate this proposal, what powers does the court on the judiciary

have? Is it simply advisory, sanctioned, can we recommend such? And what model is this based on? Is there a federal or state law that you've seen this operate in?

MR. HANNAH: Perhaps one of the authors would be able to speak to the question from the good man.

MS. JORDAN: This is kind of a combination of federal and state -- I forgot -- oh, the duties. I'm open to suggestions for the duties, or we can leave that to the Council, or we could leave it to the seven of them to bring back to the Council.

MR. JOHN KEEN: I have a suggestion for the rules.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: John Keen, delegate. Delegate Jordan, I have a suggestion for the rules of the court on the judiciary. The supreme court shall promulgate the rules and submit them to the Council for approval.

MS. JORDAN: Hold on just one second.

MR. HANNAH: Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, thank you, Delegate Cornsilk. I would offer a friendly amendment to Ms. Jordan, and I guarantee you it's friendly. It's that all of these people be citizens of the Cherokee Nation.

MS. JORDAN: I agree with that. And then back to John's friendly amendment, can we just agree to say that they have sanctioning power, suspension power and recommendation of removal to the proper body and rules to be promulgated by the committee or by the court to be submitted to the Council for review?

That way we keep the court system or the people that's going to be governed by this, we keep them out of it. Let's let the court on the judiciary promulgate the rules and send it to the legislative body. That keeps both tiers of the court system out of the middle of it.

Basically, you're not going all the way to removal, which is what they -- that would go back to another body of government.

MR. JOHN KEEN: I guess what we're going to do, is we're going to -- I'm a little confused. I was thinking that we may think we may be convened on the court of judiciary in each instance, but we're not; we're creating a sitting court on the judiciary.

MS. JORDAN: And we would let them promulgate rules that they would submit to the legislative body for review and approval.

MR. JOHN KEEN: I would accept that -- I would accept your friendly amendment to my friendly amendment to your amendment --

MR. HANNAH: I'm sort of lost who's amending whose here.

MS. JORDAN: We need to figure out -- I think it would go right after the seventh member, period. I think that's where we would put it, that the court on the judiciary -- move down

one line -- down. Last line, after the first word.

I will put, "The members of the court on the judiciary shall promulgate rules of procedure insuring due process and submit to the Council for review and approval."

MR. CORNSILK: Point of information.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: If Mr. Keen or Ms. Jordan or perhaps Mr. Smith would answer whether or not the power to promulgate rules of procedure meets the question that we had, which was do they have the authority to remove, to suspend, and those sorts of things.

MS. JORDAN: We can put that back up there on rules of procedure to include," Rules of procedure to include but not limited to suspension, sanction, discipline or recommendation of removal."

MR. CORNSILK: To whom would they make that recommendation?

MS. JORDAN: They will make that recommendation to the Council, but we probably ought to make, instead of calling that "rules of procedure," we probably should say "their authority." I'm going to need some help here, guys.

MR. CORNSILK: "Their authorities shall extent to."

MS. JORDAN: "To suspension, sanction, discipline or a recommendation of removal."

It's important that we get real basic wording in here so our membership can understand it because we've got to keep in mind, we can do a great piece of work and the membership turn it down because they don't understand it. And I'm not saying that the membership wouldn't understand, I'm just saying, sometimes I don't understand it.

"Shall promulgate rules of procedure," period. Take out "to include, but not limited to."

No, it won't be rules. It would be, "the authority of the court shall include suspension, sanction, discipline or recommendation of removal assuring" -- the rest of that sentence will work.

Again, I'm not married to this language. We're getting it up here so everybody can look at it. What we're trying to do is assure that if you've got a bad judge, a citizen, or another judge has a place to go to make a complaint, bring that judge in, but assure that judge due process in front of an independent body.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: I wasn't finished whenever you called on someone else.

MR. HANNAH: I'm so sorry.

MR. CORNSILK: That's okay. I'm getting used to it. Teasing.

MR. HANNAH: Don't go there.

MR. CORNSILK: I don't know that we accomplished

my friendly amendment, which was, "shall be citizens of Cherokee Nation," and cleaned up language that was in there.

It's my feeling that we should have all seven of them be citizens of the Cherokee Nation because we have members of the Cherokee Bar Association who are not citizens of the Cherokee Nation, and I would prefer them not butting into our business.

MS. JORDAN: And I agree with his friendly amendment.

MR. CORNSILK: Thank you very much.

MR. RALPH KEEN: Mr. Chairman.

MR. HANNAH: Mr. Keen, you're recognized.

MR. RALPH KEEN: If they would accept one small, friendly amendment where it states, "The members of the court on the judiciary shall promulgate its own rules of procedure."

MS. JORDAN: I certainly would accept that. Somewhere in there, I split the sentence. We've got to put those rules to be submitted to the Council, you might split that up. I split that sentence there and it probably shouldn't have.

I would accept that amendment to -- did you make that, Ralph?

MR. RALPH KEEN: Yes. Now we've got the change in the language. We've got a verb; it should say, "to be submitted to the Council for review and approval."

MR. HANNAH: We're still working with the friendly amendment from Mr. Cornsilk.

MS. JORDAN: Mr. Chairman, Delegate Jordan again.

MR. HANNAH: Yes, ma'am.

MS. JORDAN: I think I split a sentence. I need to take that "assuring due process," and put it up at the end of the --

MR. HANNAH: Yes, just a moment, young lady. We're going to get this language hammered out here for consideration. Hold on, folks, be patient.

Does the good lady from Tahlequah have further corrections yet? I believe we are prepared to hear from you.

MS. JORDAN: I believe that to just move that "assuring due process" to the right place.

MR. HANNAH: Thank you, ma'am. The other good lady from Tahlequah is recognized, and the floor would be open for debate.

MS. CHAPMAN-PLUMB: This is just to eliminate redundancy. Let's take out a couple of words we don't need. "There is hereby created a court on the judiciary," period. Take out to be -- right to there.

MS. JORDAN: I agree with that. When we added how many can come from each branch, we no longer needed that equal representation.

MS. CHAPMAN-PLUMB: And say, "each branch of the government."

MR. HANNAH: Chapman-Plumb, what say you?

Very well, accepted. That did not hurt. Thank you all very much for indulging these kind delegates in bringing this language before us. And the floor is open for debate.

MR. HOOK: Mr. Chairman.

MR. HANNAH: Wait one moment, Doctor Hook. I want to stay focused on this one piece.

The Chair would take time to point out that our good friend Mr. Cornsilk, of course, wanting to make sure that we have citizens of Cherokee Nation, which is good and appropriate.

We have this language, though, behind "shall be a non-lawyer citizen of the Cherokee Nation," and it is in fact in this section we are describing the entirety of this court. The final sentence says, "All members of the court shall be citizens of the Cherokee Nation." Would that, in fact, take care of what Mr. Cornsilk was raising?

MS. JORDAN: That's right.

MR. HANNAH: He wants to ensure that all members of this court are in fact citizens of the Cherokee Nation.

MR. RALPH KEEN: I think we need another friendly amendment here. If you look at the first sentence -- no, actually the second sentence, "Each branch of the government shall appoint two members of the court; one shall be a member of Cherokee Nation Bar Association and the other one shall be a non-lawyer."

That could be interpreted to mean that you wind up with one lawyer on this. So I would like to insert, "Each branch of the government shall appoint two members of the court, one of whom shall be -- and the other be a non-lawyer." I think it helps to clarify a little bit.

MS. JORDAN: I think it does.

MR. HANNAH: Mr. Smith, you're recognized.

MR. SMITH: We have used the word "appoint" in past provisions to be almost a word of art now to be appointed and confirmed by the Council. I would suggest instead of "appoint," we use the word "select," which denotes more of a temporary appointment and non-tenure.

MR. HANNAH: What say you, Jordan?

MS. JORDAN: I would agree with that.

MR. HANNAH: Ma'am?

MS. JORDAN: I would suggest that we call this area Section 5, and then we could renumber everything as we go down after that.

MR. HANNAH: Ms. Masters.

MS. MASTERS: The court of judiciary at the top, right? Shouldn't all of that be capital on the front? Right.

MR. HANNAH: While you gentlemen are conferring over there, this is a moment that I spoke of earlier in the day, where we'll need to make a decision about what we're going to do tomorrow.

At this hour of the afternoon, I would not be so

presumptuous to think that there's a possibility that our work might move into tomorrow. We do not have this facility. We have made arrangements for the Tribal Complex, and the Chair would entertain any objections from any delegates with us moving to that facility.

Good lady -- just one moment, ma'am.

MS. CHILSON: Can we have assurance, is there any way to isolate us from the people who work there?

MR. HANNAH: I assume that we would have the same abilities to secure the chamber that we would have here.

Mr. Gourd.

MR. GOURD: That would also be the rules that are adopted here. Public goes in and out the back. They're not permitted to speak or make noises, et cetera. The same rules of decorum here should apply there, and I think we can do that.

MR. HANNAH: The young lady from Tahlequah is recognized.

MS. HAMMONS: Thank you, Mr. Chairman. It would truly be sad if we could not feel comfortable, safe, and completely assured of our well-being at the seat of our tribal government.

Unfortunately, ladies and gentlemen, I don't. I have had the doors locked in my face, when I went out there to address a public wrong. I have been removed from the Council chambers twice, and perhaps that was my own doing.

Let me just suggest that as it stands right now, it's not the friendliest place for this body to meet. I'll go if you want to go, but for me, I object.

MR. HANNAH: The Chair will rule and Dr. Gourd, you're -- I apologize for making this sound like an order, but I would so direct you to seek information from Northeastern State University if there is any other room on this campus that would be available to this body.

MR. GOURD: There may be other rooms, but there's nothing in the Union, I know that. Other seating arrangements that are halfway comfortable to sit in, a classroom, those are -- I remember I sat there. They're not comfortable. And I don't know of any other facilities in town to which we could get into on a short notice.

MR. KEEN, SR.: Have we tried Sequoyah School or the Job Corps Center?

MR. GOURD: There is no assembly place for seating at Sequoyah High School. The gym has bleachers, and that is about it. At the Job Corps, there's still no room with seating. They do not have auditorium seating that fits our needs, and I really cannot think of another location that has comfortable seating.

MS. JORDAN: How about Northeastern's auditorium?

MR. HANNAH: Northeastern's auditorium?

MS. COON: Mr. Chairman.

MR. HANNAH: Luella Coon is recognized.

MS. COON: You know, I think that that would be the only place for us to meet tomorrow, but if we go in there with the wrong attitude, that's up to you. Because I worked there thirty years and no one has ever done anything to me. They are friendly to you; you only have to be friendly to them.

You won't meet any better people than at the Cherokee complex. You might as well go there and see how it is. Some of you haven't been there, I'm sure. You can go in, and they'll orientate you when you go in, and you can see the offices and meet some of the nicest people. That's what I have to say.

MR. HANNAH: Thank you, Luella. Starr-Scott you are recognized.

MS. STARR-SCOTT: Yes, I would like to speak to this. I know a lot has happened in the last two years. I've been kicked, pushed and shoved. That is the home of our government. And it's a sad day if we can't go out there and conduct our business.

MR. HANNAH: Dr. Hook, you are recognized. The good lady from Ochelata.

MS. McINTOSH: I advocate that we go to the Cherokee Nation complex. All of the people in this delegation are citizens of our Nation, and we should recess and move to where the facilities are not available here.

MR. HANNAH: Very well.

MR. KEEN, SR.: Mr. Chairman.

MR. HANNAH: Mr. Keen, you are recognized, sir.

MR. KEEN, SR.: Thank you. I, for one, would not be comfortable going to the Council chambers of the Cherokee Nation. I, myself, have been subjected to hours, upon hours, upon hours of verbal abuse of the Tribal Council in that chamber. Likewise, I have been the subject of a kangaroo impeachment proceedings in that Council chambers. I personally don't want to go back.

MR. HANNAH: Dr. Hook, you are recognized.

MR. HOOK: This is obviously the saddest part of this conference that I've encountered yet. And I understand the feelings. I've been in Indian meetings where I thought I was going to come out with a knife in my back, as Ms. Scott is aware.

Is there no way that -- I would be honored to be there and have a meeting held in that facility, since it is our seat of government. Is there no way this Commission could ensure the safety and comfort of this delegation?

MR. JOHN KEEN: Friendly suggestion.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: What about our courthouse?

MR. HANNAH: I do not know about its availability, and we may have to debate.

MS. JORDAN: I still truly believe we need to be in a neutral facility for everybody. Let's try to get Northeastern to provide us some space. I believe they will. We started here with this historical event. Let's stay here to the finish and do

the historical event here. I believe that it can be done. We need to explore some more of their resources.

MR. BILL BAKER: Mr. Chairman.

MR. HANNAH: Mr. Baker.

MR. BILL BAKER: I know I'm up two rows back, but a similar facility does exist at the Indian Capital Vo-Tech in Muskogee. I realize it's twenty-eight miles away. It is an option.

MR. HANNAH: And thank you, sir. The kind parliamentarian passed me a note with the same question mark, and even the Chair feels a bit uncomfortable with us conducting the business of such a historic nature of the Cherokee Nation among the Creeks.

MR. CLARKE: Mr. Chairman.

MR. HANNAH: And that's not a slur to the Creeks, it's just simply that this needs to be conducted on Cherokee soil.

I'm sorry. Mr. Clarke, you are recognized.

MR. CLARKE: Mr. Chair, we are about the business here of creating a constitutional document that will guarantee privileges and rights to every citizen of this great Cherokee Nation. And this document, so far that I've seen, that we have approved lends itself to only enhance our concept of tribal sovereignty.

And to me, folks, sovereignty is a covenant thing between the people and the people in whom the sovereignty allows the rule. And within this concept of constitution and sovereignty, there are promises, covenant promises that's there.

And if we take it upon ourselves because -- and I understand, Senior Mr. Keen, I understand your feelings and I understand your feelings, and I understand yours, Diane. But folks, this is a legislative act that has us here today to do something that is good for our people.

And it seems as though right now what we're doing is we're putting together a document that ensures that this government will see to it that the corporate interest that it has in all of its citizens will be upheld. And I cannot in my worst nightmare see anyone who works out there at the Cherokee Nation come in and create a hoopla. I just simply cannot see that.

I believe that everyone out there believes in what we are about and what we are trying to do. And my spirit -- I'm usually such an upbeat person and people ask me, "Bill, how are you today," I tell them, "I'm blessed," because I believe that I'm blessed because who I am and what my creator has implanted in me, and that's the right to feel the joy that he has because we're his children. He wants us to act not as children of disobedience, but he wants us to act as children who care and who love and who will follow his mandates and his dictates.

And we have a responsibility here, folks, to do something that will ensure that future generations of Cherokees will not have to go through the stuff that creates the feelings, Diane, that you

have and, Mr. Keen, that you have, to lessen that type of thing would ever happen again.

And I would like just to invite you to come up to the place where I work and let's finish this there in the Tribal Council chambers.

MR. HANNAH: Good man from Black Gum.

MR. McCREARY: Mr. Clarke has stole a lot of thunder that I had in my heart. But first, I would like to commend this delegation. All the members that was in this delegation that have come in here today, have been in here for the last six days. Many of us have had many political differences over the last couple of years. Many of us have had differences over issues over the last twenty years.

But here we are sitting here together discussing, debating over issues of matters of our children, and our children's children, and our children's children for the next hundred years. Issues that are important to our Nation.

And we have been able to do that and do it with good heart. I would like to see us continue to do that together, even if it is at the complex. Keep that same spirit, keep it going no matter where we have to meet. And I will meet wherever we have to meet.

MR. HANNAH: The gentleman is recognized standing next to you, sir.

MR. SCOTT: I feel very -- it hurts me to hear a couple of our brothers and sisters that just got through saying that they wouldn't go back down there -- excuse my language. I'll try to put it the best way that I know how.

But I know that we have had problems. I have experienced the same thing that these two just got through speaking. I have experienced the same thing. I was led out of there one night, which I thought was no reason.

But I'm going to say this. I am not going to throw up my hands and let you people run me off. That is part of me down there.

That belongs to me, and I want to stay with it. And I ensure you -- I encourage all of the delegates to stick by me. Let's don't be run off by the minority.

I am a Cherokee and I will stand for my heritage until I take my last breath. I just encourage all of you to reconsider this. I feel -- really, I feel the way that they have been treated.

Like I say, I know how they've been treated and which I don't agree with any of that. But you've got my point and you know what I stand for, and that's who I am. Thank you.

MR. HANNAH: Mr. Smith, you are recognized.

MR. SMITH: I think there are two issues. One is the logistics of the building, and the other one, we've been at it for six days, and I think the seventh day is coming pretty soon. Maybe we need a day of rest.

If this building is available Saturday and Sunday, I would suggest a recess until perhaps even Friday night. Work a few

hours Friday night and finish it off this weekend. Because a lot of people do have obligations that we've set aside, and a resting period certainly may be more productive.

MR. HANNAH: Thank you, Mr. Smith. Mr. Keen, you are recognized.

MR. KEEN, SR.: Thank you, Mr. Chairman. I applaud that speech a few moments ago. I agree with that. I would like, however, to say that this University has two other facilities that would be adequate for us. One being the playhouse, and the other being the auditorium. I would like to suggest that we check those places out. If there are no other places available, then I will meet in the Tribal Complex.

MR. HANNAH: Thank you, Mr. Keen. The good lady from Tahlequah.

MS. CHILSON: Mr. Chair, I'll be brief. Chilson, from Tahlequah. I'm sorry, I think maybe I opened this log unintentionally. I wasn't talking about what was happening -- what had been happening over the last eighteen months.

What I'm talking about is the influence or perceived influence over our delegation that might be out there. You said something about we're not going to make the laws out here in the hallway, that it has to be in here, but we would have a lot more contact with other people there than we do here, and other people who are interested in what we're doing. And I don't want us to be influenced one way or the other by that. Thank you.

MR. HANNAH: Dr. Gourd, do you wish to be recognized?

MR. GOURD: Mr. Chairman, there are no facilities on this campus that has either setting tier-style or the capacity to generate something like this.

My next suggestion, I know the city doesn't have anything, and the county don't because they're hooked up with the city. The Job Corps doesn't have. The only other option that I can possibly think of is if there's a minister in here that has got a church.

But, again, I am of the opinion that with the spirit that has come together of this body, that -- and I do not believe that anybody in this room is of the opinion that this convention came together as a consequence of what has been going on, but rather this process started twenty years ago. And the vote of the people four years ago, almost.

So it seems to me that we could stay as a body in our deliberations regardless of where that should be. Thank you.

MR. HANNAH: Thank you, Dr. Gourd. Mr. Hembree you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. Ladies and gentlemen, I came here to help write a Constitution. I don't really care if it's written here, or if it's written at the Cherokee complex, or it's written under an oak tree in Greasy, to tell you the truth.

We have invested six hard days of labor that a lot of people have sacrificed a whole lot to be here, and continue to be here. I understand and appreciate the feelings that some of you have due to recent activity out at the complex, but ladies and gentlemen, what a lot of you have said and what I agree with is that under no circumstances should we write into this document what the emergency of the day is.

We are creating a document that is going to last hopefully generations. I am Cherokee. Do whatever test you want to do on my blood. I am Cherokee. And those Tribal Council chambers belong to me just as much as they belong to anybody else. And I for one would feel welcome there, especially with this body of good gentlemen and ladies that are helping to form and forge a document that is going to help bring this Tribe together and help our children for generations to come.

Let's not let this issue end our work today. I have been at it six days -- we are dangerously close to getting this thing done in just a few more hours, if we work and if we stay at it. Let's not let the fact that there have been some hard feelings in the last couple of years prevent us from doing our duty here today. Thanks.

MR. HANNAH: Mr. Center, you are recognized.

MR. CENTER: Mr. Chairman, I believe that if I haven't lost my mind that when we came in here, we did not come in here as lawyers. We did not come in here as judges. We did not come in here as justices. I believe I heard you say when I was listening that if you had any pins or any affiliations, whatsoever, please remove them. So maybe remove any influence.

That we were here not as what I mentioned before, but as delegates for the people. That place belongs to the people. That is the people's house. I know of no authority that would interrupt a Constitution Convention body of delegates; therefore, that's where we should be.

MR. HANNAH: Thank you, Mr. Center. And I will assure the body that as the Chairman of this convention that I feel that you have entrusted me more than simply to be your moderator, okay. Listen to me, people, I took this responsibility for a very important reason. And that's to see to it that we make it through this process.

And the Chair will give assurance, and I know there are those of you who will say, well, "The Chair is not nearly as big as some of those folks out there." But the Chair will remind you all he is from Adair County. And the Vice-Chair is from Adair County. And the Chair will give assurances to each and every delegate that the protection of this convention will be maintained. And I give you that as my word.

Now, folks, we have had good debate here, and I would like for us to bring it to a close so that we can be about our business. It is right and it is just that we would have these discussions, and if nothing else for the purpose of reaffirming why

it is that we are here. So with that --

MS. HAGERSTRAND: Mr. Chairman, may I say one thing, please?

MR. HANNAH: Yes, ma'am. I would not leave you at the alter box.

MS. HAGERSTRAND: I do not want to explode, and I need to say this. I'm Marion Brown Hagerstrand, and I have been locked out of that chamber out there, and I was told that I was this dangerous person. The Honorable Justice Keen has bad feelings, but I have assured him that as a dangerous person, I will take care of him. Okay?

MR. HANNAH: If the kind lady would extend that same guarantee to the kind English major from Tahlequah.

MS. HAGERSTRAND: Absolutely, yes.

MR. HANNAH: Would the kind English major from Tahlequah accept the protection of the dangerous woman?

MS. HAGERSTRAND: Don't worry about them.

MR. HANNAH: You certainly would?

MS. JORDAN: Mr. Chairman.

MR. HANNAH: Yes, ma'am.

MS. JORDAN: Delegate Jordan. With that, I make a motion upon recess today that we reconvene tomorrow at the Cherokee Nation chambers there at the conference.

MR. HANNAH: There is a motion before us. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: And hearing no debate, all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MS. STROUD: Point of order.

MR. HANNAH: Point of order.

MS. STROUD: May I suggest that we exhaust all other avenues? We were checking on the Cherokee Restaurant. The room in the Cherokee Restaurant, the meeting room.

DELEGATE: Ballroom?

MS. STROUD: Is it a ballroom?

MR. HANNAH: If it would please the delegates, we will continue to look and to bring options, but as it stands at this time, the Chair would rule that the vote has been taken, and it would be the intention of this body to reconvene at headquarters of the Cherokee Nation.

Ladies and gentlemen, let's return to the business of the day.

MR. McDANIEL: Mr. Chairman, could I say something?

MR. HANNAH: Yes, Calvin.

MR. McDANIEL: What kind of facilities has the Sequoyah High School?

MR. HANNAH: We talked about that a little bit earlier, Calvin, and came to the conclusion that there would not be adequate seating for us there that would be comfortable.

Tina, you are recognized.

MS. JORDAN: If we've tweaked Section 5 enough to have called for the question at this time, let's go ahead and vote on it, and then we can move back to Section 4, depending on the outcome of this vote.

MR. RALPH KEEN: Tina, would you mind if we label this as Section 5-A, so we don't get it confused with the other Section 5?

MS. JORDAN: That would be great. Very agreeable.

And we let the style committee, then, do any of the necessary changes on the numbers.

MR. HANNAH: Ms. Silversmith.

MS. SILVERSMITH: Mr. Chairman.

MR. HANNAH: Point of information?

MS. SILVERSMITH: I think this gentleman here wanted to say something. He was passed over, I think, three times.

MR. HANNAH: Once again, the Chair did not see the good man from Grove.

MS. SILVERSMITH: He did not stand.

MR. HANNAH: Is there something that I can help you with?

MR. HEROD: I know we're back to business, but I couldn't get your attention.

MR. HANNAH: That's okay, bud, we're going to take time for you.

MR. HEROD: Will the bus be the same going out to the complex from the hotel as it is coming down here tomorrow?

MR. HANNAH: I believe that would be the case, Dr. Gourd.

MR. GOURD: Yes, sir.

MR. HEROD: Okay, thank you. That's all I had.

MR. GOURD: And the capacity for milestones for the Chairman is available because there's a buffet line at the restaurant.

MS. JORDAN: Did I get a second to my motion?

MR. HANNAH: No, you did not, that the Chair heard.

MR. HEMBREE: Second.

MR. HANNAH: Did something happen with the kind lady from Nowata?

MS. JORDAN: We worked through it.

MR. HANNAH: Very well. So there's a motion before us to call the question, and there is a second. And what we are deliberating on is Section 5-A. And ladies and gentlemen, this would be the language.

"There is hereby a court on the judiciary. Each branch

of the government shall select two members of the court, one of whom shall be a member of the Cherokee Nation Bar Association and the other one shall be a non-lawyer. The six members shall appoint the seventh member.

The members of the court on the judiciary shall promulgate its own rules of procedure assuring due process to be submitted to the Council for review and approval.

The authority of the court shall include suspension, sanction, discipline, or recommendation of a removal. The members shall not be employed by the Cherokee Nation or any entity thereof.

The Council shall pass such laws as are necessary for carrying into effect the provisions of this section. All members of the court shall be citizens of the Cherokee Nation."

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no." And the section is approved, and the language stands.

And we are back to Section 4, ladies and gentlemen.

MS. JORDAN: Could I make a motion that we take Section 4 off the table?

MR. HANNAH: There's a motion to bring Section 4 off the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no objection, all those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no." And Section 4 is off the table.

What would be the pleasure of the delegates?

MS. JORDAN: Are we open for debate now?

MR. HANNAH: We are open for debate.

MS. JORDAN: I would like to speak in favor of the amendment to Section 4. I believe now with the court on the judiciary, the writs available to the supreme court is a method of control within this section, and the right of removal of the legislative body, that it would be proper to consider deletion of sentence one, inclusion of the next -- the remainder of that paragraph, and then going on with the information provided to us in the revised Constitution.

I truly believe with these avenues that we have provided to control the conduct of judges, that we have enough of a protection now to consider implementing Section 4 and it's passage.

I would like to address -- and I know there has been some concern. We don't want to create an independent tier of the court system. The district court will be part of the judicial branch. It was always to be part of the judicial branch.

It's says that you must temper control of judges with judicial independence. You truly want independent judicial decisions made. You do not want domination by one tier of the system over another tier of the system.

If we elect to go that route, then, please, do not implement a district court system. Keep your supreme court, and just have a one-tier system. Do not make the people think they have that minimal right of due process of appellant review, when they do not completely have a neutral process to appeal to -- or a neutral process available to them. Thank you.

MR. CORNSILK: Motion to divide the question.

MR. HANNAH: There's a motion to divide the question.

MR. CORNSILK: It's my thinking that we have two separate issues here. One being original jurisdiction, and the other being superintendent for the lower court.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second, and the floor is open for debate. Hearing no debate, then, if the vote passes, we will divide the question, and it will be divided between the stricken language and that -- thank you very much. And then it's underlined.

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: Parliamentarian reminds the delegates that in fact -- and the Chair did not make this clear, that upon returning, bringing this off the table, as you all recall, this comes back to my mind, that we have in fact the debate of the language that was in the strikeout.

So, Mr. Cornsilk, if we would rescind this activity, put this back together, and the floor will continue conducting debate with regard to the stricken sentence only.

MR. CORNSILK: Well, it is actually the stricken sentence that I want to split in half.

MR. HANNAH: I beg your pardon. The Chair did not understand that.

MR. CORNSILK: I believe there are two separate issues at debate here. One of them is whether or not the supreme court shall have original jurisdiction and how that affects the district court, and then my second issue is whether or not the supreme court shall have superintendents over the lower courts. And I think those are two completely separate issues.

MR. HANNAH: Let's make sure that now that we have a clarification of the division. There's been a motion to divide the first sentence that has been stricken, and you'll see now the division. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, all those in favor, signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And the motion does not carry and the sentence remains.

Mr. Keen, you are recognized.

MR. RALPH KEEN: Thank you, Mr. Chairman. I rise in opposition of this deletion. Me, being the author of the original language before it's been modified here, let me just take a minute to tell you where I got the language.

The language comes directly out of the Oklahoma Constitution, and I looked at several. I looked at the Federal Constitution, and there was not a good model to go by. In fact, they're structured entirely different.

But the Oklahoma Constitution, Article VII, Section 4 states, "The original jurisdiction of the supreme court shall extend to a general superintending control over all inferior courts and all agencies, commissions, and boards created by law."

Now, this is the structure of the Oklahoma system, and it's worked pretty well here since 1907. Everybody understands how it is works. There's no conflicts of power. We don't have any lower courts attempting to evade the jurisdiction of the supreme court, and yet we still have a court on the judiciary that provides balance and due process and allows the judicial branch to police its own.

And so I absolutely see no reason to move away from this language. Because what we are doing -- and we need to understand what we're doing here -- by taking out this language, and the language that we have already approved in Section 1 -- can we go back up to Section 1 for just a second, please? Thank you.

This is language we've already approved. "The judicial powers of the Cherokee Nation shall be vested in a supreme court and such lower courts as the Council shall from time to time ordain and establish."

If we delete this first sentence, then we're taking the judicial powers of one of the three branches of government and dividing it out to a supreme court and any other courts that the Council can ordain and establish. Do you see a problem with that? That's an infringement of the separation of powers.

The supreme court must have -- must carry the judicial power of the branches of government. All of the inherent judicial authority must stream or must originate from that supreme court and trickle down to the others.

If we do not -- if we delete this sentence, we're creating a branch of government that will have direct influence by the Council, which is a separate branch, to create more courts. It would also divide the authority of the judiciary among these separate bodies, and could somewhere down the road -- I don't know that it would happen, but it could happen -- could create chaos within our judicial branch.

And I just simply, absolutely would be vehemently opposed to striking out this language for those reasons. We need to have

good -- we need to have a good Constitution. We need for it to set out the structure of power by the people to each branch of government.

The Council has its legislative powers and those are clearly defined. The executive has its powers, they are clearly defined. The Deputy Principal Chief does not have the powers of the Principal Chief, nor does any of his cabinet member. Only the Chief has that executive power. Only the Council has the power to legislate and enact laws.

We have need to keep the judicial branch in conformity with that, where only the supreme court carries the ultimate, and I say ultimate judicial authority. Thank you.

MR. HANNAH: Dr. Robinson, you are recognized.

MR. ROBINSON: Delegate Rick Robinson, Tahlequah. I'm not so sure if I'm for or against right now. I know that -- I want to bring up the point of concern maybe is not so much the general superintendency by the supreme court. Part of my problem is, I don't really know what that means.

I do know that some of the concern that I have and that others have told me about their concerns is that they feel like that the supreme court should not be able to -- say the supreme court did not like the decision of the district court, to arbitrarily take that up to their court and reverse it.

From what I understand, normally, it would be the party that lost would appeal it to them. And I think the concern is simply to make sure that we have a two-tier, where if we don't like what happens in the first one, we go to the second one. Or if we like what happens in the first, that the second doesn't bring it back up and turn it around.

So that is the concern that I've gotten from individuals, to make sure that we have an appeal route. I feel much better about this with the 5-A put in, but I'm still not sure what the general superintendency would be, and I don't think it should include that the supreme court shall decide which district judge sees what case or if they don't like what a district judge did, to arbitrarily take the case to them without someone applying to them. Thank you.

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: Yes, I would like to speak in response to that. And I'll be the first to admit that this phrase of general superintending control is vague. And personally I don't like it either. I mean, it does need to be more clearly defined.

As far as docket control, the supreme court should not have the authority to reach down and manipulate or control the docket of the lower courts. And I do believe that.

And, obviously, there's other things, the decorum of the court, and the certain other procedural aspects where the supreme court needs to allow the district courts to do their job independently. No question about that.

But just because we do not like these two words doesn't mean that we need to throw the whole concept out. We can work with

this language and make it -- insert language that would still accomplish the goals and get rid of this vague terminology.

MR. HANNAH: Mr. Clarke, you are recognized.

MR. CLARKE. William Clarke, delegate from Muskogee. Before I make my comments in regards to support or non-support of this, I have a question for Delegate Keen, who wrote this language. I guess I need a quick opinion from you.

MR. RALPH KEEN: I'll try.

MR. CLARKE: In the word superintending control over all lower courts, does that remove what has been controversial over the Judicial Appeals Tribunal suspension of judges under which they felt like they did not get a due process hearing, or whatever, to whatever reason it was that they were suspended? Does that remove that and place that authority for any type of adverse disciplinary action within the court on the judiciary?

MR. RALPH KEEN: Sir, my opinion would be that it would, you know. There are concerns of due process or lack of due process that would certainly be taken up -- let me back up just a minute.

Clearly, clearly the supreme court must have rules of procedure that it operates under. And there must be some body of procedural rules for that purpose. In fact, there is language in this about promulgating their own rules of appellant procedure.

As far as this due process, if any judicial officer gets out of line, if any of these judges go on a tirade and start issuing superfluous orders, then, by the language we've already adopted, the court of the judiciary would provide a safeguard against that.

So my response to you is, yes, it would protect the due process rights of the lower judges.

MR. CLARKE: And they then would be guaranteed that they could not be suspended by the supreme court but only by the court of judiciary?

MR. RALPH KEEN: There would be a strong argument for that. The court of the judiciary may have the only authority. According to the language that was drafted, that's the only place that language appears so far. So yes, that --

MR. CLARKE: Since many of us agree that the word "superintending" is kind of vague and very broad, how would some other word substituting such as maybe a general oversight or something? Because to me, the word "superintend" -- to me the word "superintend" means to supervise. I believe that's what the dictionary calls it.

MR. RALPH KEEN: Well, sir, as I've already stated, I think some more artful language could be found as we have up there. I'm trying to think, and I don't need to be taking up the floor's time while I'm doing that thinking.

MR. CLARKE: And the reason I'm probing as I am, Mr. Chair, and please indulge me.

MR. HANNAH: And I am.

MR. CLARKE: Is because this whole process of a

suspension of our district court judges, and the district court judge that the Judicial Appeals Tribunal asserted was still a seated judge when the executive branch did not recognize the Associate District Judge Wilcoxon, that threw in total chaos the programs that are near and dear to my heart, and I have invested, I guess you might say, my soul, or part of it, into ensuring that our children and their families would be guaranteed the things that we're talking about that goes along with this, what I was describing as a covenant promise.

And I never want to ever have to sit through Council meetings where I go to Council committees -- and every Council member here who's a delegate will tell you that I have many, many, many times approached them in trying to seek some way to resolve this. Because it was my opinion that that power lay within the Council's authority to create an inferior court.

And I have at one time even attempted to get a juvenile court created for that very purpose so that our children and families would not be in some type of judicial quagmire -- or that's not even a good word for it, but in limbo, I guess.

And I'm very much opposed to this language being in there if it means that our district court judges cannot have a due process hearing before an authorized body that is constitutionally set.

And I just don't know in my mind, not being an attorney, but being a lay person who has a lot of experience working in the judicial system, I just simply do not know of any reason the '76 Constitution and the codes that go with it.

I can't make up my mind as to whether or not our Judicial Appeals Tribunal had the authority to suspend those judges without some type of due process hearing, although, I do understand that the Constitution that we currently have in place does vest them with the final word as to Cherokee Nation conflicts in the Constitution and in our laws.

And with that in mind, if I can't have a clear definition of something that will guarantee, not only due process rights to any citizen of this great Nation, I cannot support something that will not also extend that same due process rights to our judiciary, whether it be a lower court judge or a supreme court justice.

So I guess until I can see something up there that will provide me with the assurance, or as close to assurance as can be, that those children we have such a tremendous responsibility for and their families, that I have to oppose this language.

MR. HANNAH: Thank you very much, sir. Ms. Masters, you wish to be heard?

MS. MASTERS: Yes. I appreciate all the conversation that has gone on before, and I appreciate Section 5-A, although, it doesn't address my particular concerns.

I, like Mr. Clarke, have worked under a superintendent for a long time, and they don't have any undo power of removal or any of those activities. I've always seen my superintendent more as a mentor and director and a place that I can go for direction and

that kind of thing.

But what I believe about removal -- and by the way, I rise in opposition to removal of this sentence. I did make two calls during our break, and both calls I made, one to a lawyer and one to a judge, said if you take it out, how are you going to word it to put the same thing back in? And I said, "Well, I don't know because it needs to be done. It needs to be there."

My concern with it is, even though the Cherokee citizens, and let's even be more clear in the practical application of this -- say, my Aunt Ruby Mae comes in and has a court hearing for some reason, and she is maligned in court. And I say, "Well, how is that going to work its way out?"

Well, my family, which I have a lot around here, and many of them are educated, but none of them feel that they have the right to go to another judge to say one judge has done something wrong. Normally, if they go to court and the judge makes a decision, that's it. God has spoken or something, you know. That's it.

They do not know that they have within the Constitution remedial writs that they can go get a lawyer and that they can submit a writ against that judge, and with a certain amount of investment, time, money, and resources that they could get remedial writs and get this straightened out. And that's the only right that the people have if we take out that top sentence.

Superintending control, as it has been explained to me, in fact, that entire first sentence means that there is someone sort of overseeing. And if it then would be the case that Ruby Mae had been maligned in court, it could be picked up within that structure without her knowing even that she had all of these rights. So, to me, this is a protection of the people within our system.

Now, I totally agree with what Delegate Keen has said. We have no higher place to put the jurisdiction of our judicial system then within the hands of our justice.

And the third reason is because we have an experienced person here who was our first appointment in our judicial, and he feels it should be in there, and he is most experienced of all the people in this room in making those kinds of decisions.

So for those reasons, I remain against removing this, unless someone can come up with a sentence that does the same thing.

MR. HANNAH: Dr. Hook, you are recognized.

MR. RALPH KEEN: Point of information.

MR. HANNAH: Point of information, Mr. Keen.

MR. RALPH KEEN: Question was raised earlier by one of the other delegates about what exactly the language "superintending control" means. And I actually have a definition straight out of Black's Law Dictionary for "supervisory control."

"Control exercised by courts to compel inferior tribunals to act within their jurisdiction to prohibit them from acting outside their jurisdiction and to reverse their extra jurisdictional acts."

So if you took this definition, applied to the language,

it would fit squarely within the concept contemplated within the writ jurisdiction. That's what all of those writs do. They allow the supreme court to compel the inferior court to act within their jurisdiction or prevent them from acting outside of their jurisdiction.

So I would submit that the language "superintending control" is an appropriate phraseology. And I would certainly allow anyone else to look at this.

MR. HOSKIN, JR.: Point of information.

MR. HANNAH: Point of information.

MR. HOSKIN, JR.: Mr. Chairman, did Delegate Keen say that "supervisory control" is appropriate or "superintending control" is appropriate?

MR. HANNAH: Mr. Keen, respond.

MR. RALPH KEEN: I would be more than happy to change the word to match this.

MR. HANNAH: And Mr. Keen was speaking from the reference material, and the Chair recalled the word "supervisory control" was being interpreted, which is obviously different than we have here.

Dr. Hook, thank you very much, sir.

MR. HOOK: I would like to ask for a point of clarification from Mr. Keen.

MR. HANNAH: Yes, sir.

MR. HOOK: We have been talking about this issue for a long time. I would kind of like to get to the bottom line and see if I can -- my understanding, in lay terms, is that with the sentence under consideration right now, with that in place, that would establish a clear line of authority.

Without that in place, and even with it in place, there would be, with the other paragraphs which have been added, there would be recourse in whatever situation comes up.

So one establishes a clear line of authority; the other establishes recourse with the original -- with the first line up there. The attempt is to preclude the necessity for recourse.

MR. RALPH KEEN: I'll agree with that.

MS. JORDAN: Folks, can I make one suggestion here before we call for the question. I think if we'll add one sentence after this first sentence, that takes into consideration what can happen in 5-A, that we could leave this first sentence in there.

Let me read to you what that second sentence would be. "This right of superintending control does not include the right of suspension, disciplinary action or removal of any judge of the same court or lower court," because that's provided for in 5-A, in our removal action.

I would make that in the form of an amendment or motion, if I can get a second.

DELEGATE: Second.

MR. HANNAH: There's a motion on the floor, and

there has been a second. And the floor is open for debate.

Mr. Keen, you are recognized.

MR. JOHN KEEN: I submit that what that line does -- I don't see it up there.

MR. HANNAH: It's on its way.

MR. JOHN KEEN: I'll wait until the line is up there.

MR. HANNAH: Very well, thank you.

Chamber will be in order. The floor is open for debate on the Jordan amendment, which you see. Does anyone rise in opposition?

MR. JOHN KEEN: I rise in opposition.

MR. HANNAH: You may be heard, Mr. Keen.

MR. JOHN KEEN: John Keen, delegate. What we've done now is we have debated for I don't know how long, however long it's been, and now we have introduced a motion that is completely opposite of what we have been debating.

What that sentence does, it's just an attempt to negate the first sentence. If you take that, what you're prohibiting there -- where is it? "The right of superintending control does not include the right of suspension, disciplinary action or removal of any judge of the supreme court or lower courts."

What kind of superintendent control are they going to have if they don't have that right? That's just the course question. We're giving in one sentence and taking away in the other. I think it's just effectively -- I'm opposed to it.

MR. HANNAH: Thank you, Mr. Keen. Mr. Clarke, you are recognized.

MR. CLARKE: Yes, I rise in favor of that last sentence being in there for this reason. If we have approved that Section 5-A, which establishes that court on a judiciary who then would have the powers to knead out whatever appropriate discipline, then it would be my understanding that if we have a judge in the lower courts who are in violation, then the supreme court judge -- or Justices, they could and would make a referral over to that court to handle it properly.

And, therefore, I think that this wording here gets right at the heart of the matter. And it does provide that any type of adverse disciplinary action would go right straight to the new court that we just established.

MR. HANNAH: MR. Hoskin, how would you rise on this issue?

MR. HOSKIN, JR.: Mr. Chairman, I rise in favor of Delegate Jordan's amendment. The youngest Mr. Keen, Delegate Keen, said that if we include this sentence, we negate the other sentence, and that is assuming that the superintending control encompasses only suspension and disciplinary action or removal.

That is not the case. We want to have as -- Mr. Cornsilk's had a line of kinship, which is what we originally talked about. The right of removal. And those procedures are taken care

of in the amendment we proposed earlier, and in 5-A, and in Article X in the other removal section.

What this does is allow us to take off the table of superintending control this right to go into a court and remove a judge, and it allows for other supervisory control. And I would suggest that we change it from "superintending" to "supervisory" as Delegate Keen talked about a while ago.

I rise in favor of this amendment. Thank you, Mr. Chairman.

MR. HANNAH: Mr. Smith, you're recognized.

MR. SMITH: If I may make this suggestion, scroll down to 5-A, temporarily. Starting, "The line of authority of the court shall include." "The Authority to" -- then take out "the court" at the end. "Has the authority to suspend, sanction, discipline or recommendation of removal shall be reserved to the court on the judiciary."

MR. WHEELER: Point of order.

MR. HANNAH: The Chair was prepared to hear the full remarks of Mr. Smith before ruling, but the Chair would remind Mr. Smith that this section, in fact, has been approved, and the floor is open for debate on Section 5 -- excuse me, on Section 4.

MR. SMITH: It was offered only in the reference to reconcile the superintending interest. One is to show a distinct lineage of authority of the supreme court to the lower courts, and then to reconcile the interests of the -- those disciplinary actions would be reserved for the court of the judiciary.

MR. HANNAH: No action is taken. We'll return to the section. We return to debate with regard to Section 4, and the debate of the striking of the first sentence.

And, Mr. Baker, you are recognized. How do you rise on this issue, sir?

MR. DONN BAKER: Well, I rise in favor of striking. And the reason is -- what Chad just said is what will work. I'm very much opposed to putting in there that we're going to give the supreme court -- I agree that they have -- I mean, they are the supreme court. They have the superintending control.

But in my opinion, it does not include the right of suspension, disciplinary action or removal. The Oklahoma Supreme Court doesn't do that. I don't know of any supreme court where they have the right to remove a lower judge. That is left to a court on the judiciary, which we have done, or it is left to a senate or a legislative body, if it's the federal.

And I think we're going backwards here to put in this right of suspension. What I think would be more appropriate is -- I agree with that terminology, that "the original jurisdiction of the supreme court shall extend to the general superintending control over all lower courts."

And then when we drop back down, like Chad suggested, "reserve the right of suspension and disciplinary to the court on the judiciary," and I think we're where we need to be.

MR. HOOK: Point of information.

MR. HANNAH: Point of information, Dr. Hook.

MR. HOOK: I'm sorry, I'm confused. Are we now considering the second sentence, which is underlined, indicating it's been accepted? Are we considering this first sentence with the strikeout? I thought the second sentence was the last proposed amendment?

MR. HANNAH: Just a moment here, and the Chair can get you right back where we need to be. Once again, the floor is open for debate with regard to striking of the first sentence, and the Chair would be corrected if that's not the case.

Mr. Keen, what say you; is that correct?

MR. RALPH KEEN: That is correct.

MR. HANNAH: All right, very well. Dr. Hook, does that help you, sir?

MR. RALPH KEEN: Mr. Chairman.

MR. HANNAH: The kind lady from Nowata shakes her head.

MS. HAVENS: We were discussing the second sentence. That was an additional amendment.

MS. JORDAN: No, it was just a suggestion.

MR. HANNAH: It was only a suggestion. Okay. What we are discussing, ladies and gentlemen, is the strikeout of the first sentence.

MR. RALPH KEEN: Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: If I might impose upon my fellow Commissioners to make a friendly amendment on this word, "superintending," and change it to "supervisory," to be in conformance with the language that I read out of Black's Law Dictionary, would you be opposed to that?

MR. HANNAH: I think unless you hear in opposition.

MR. LITTLEJOHN: Point of information on that.

MR. HANNAH: Mr. Littlejohn, you're recognized, sir.

MR. LITTLEJOHN: We're looking up a word that we couldn't find in the dictionary, so we've come forward with another definition, and now we are changing the definition that we have found in the book?

MR. RALPH KEEN: No, we're changing the language to conform to the definition we found in the book.

MR. LITTLEJOHN: Because we can't find a definition in the book?

MR. RALPH KEEN: No, sir. We found the definition for "supervisory controls." We did not find the definition for "superintending control." And in an effort to clear this up, so we can perhaps vote on this and move ahead.

MS. JORDAN: Call the question.

MR. HANNAH: The question -- Mr. Littlejohn, I'm

sorry, go right ahead, sir.

MR. LITTLEJOHN: In Title 20, Section 52, "Superintendents will report to the inferior jurisdiction as identified by the Council of the Cherokee Nation. Just to state that the Judicial Appeals Tribunal shall have authority within the limits of their judicial action as prescribed by law to exercise a general superintendent over courts of inferior jurisdiction through and by means of decisions made and declared by the Judicial Appeals Tribunal upon questions of law, evidence and practice submitted to them in the course of the trial or examination of all causes to which they shall be allowed cognizance by law."

Would you accept that definition?

MR. RALPH KEEN: I would. What would the word be in that case?

MR. LITTLEJOHN: Leave the word "superintendent as defined by the Council of the Cherokee Nation." The amendment would be "superintendents over lower courts as defined by the Council of the Cherokee Nation."

MR. JOHN KEEN: I would make a motion to amend the word "superintending" to "supervisory."

MR. HANNAH: Now, folks. Just a moment, here, okay. This is your Chairman here. Everybody watch me here for just a second, okay. This is good and healthy debate and it's good government. Let's get back to a more formal process about working with this language.

Now, the Chair is going to disregard that he thought he heard a call for the question out here earlier. I've not heard that in a strong and clear voice, and we are apparently still discussing this one very important sentence.

Now, Mr. Keen, of the younger.

MR. RALPH KEEN: I would not accept such a friendly amendment, and I would prefer that we stay with "supervisory control," because it's clearly defined by a dictionary, which is a factual standard within the legal community.

MR. LITTLEJOHN: Point of order.

MR. HANNAH: Point of order, Mr. Littlejohn.

MR. LITTLEJOHN: Is "supervisory" now changed? I understood that the language that was to be stricken earlier was "superintendent."

MR. HANNAH: Sir, the Chair is only aware that the word that has been there all along is there.

MR. LITTLEJOHN: Thank you.

MR. HANNAH: No change. Now, just a minute, folks, before you all start pointing and telling the Chair to turn around and take a look. Let's just get control of ourselves here, all right. I know it's been a very long day. It's been a very long day for your Chair as well. It's been about six of them.

Now, has in fact the word been changed? Because if it has, it needs to go back, unless somebody comes up with a really good reason why it was changed.

MR. RALPH KEEN: If you recall, I had asked my Commissioners.

MR. HANNAH: You had, sir, and I do not recall the straw poll that was taken.

MR. RALPH KEEN: Then that's where we're at.

MR. HANNAH: We're going to do this by -- as close to the moment as we can, folks, okay. Is that all right with you all? And the Chair will look for some head nods out there. Every once in a while the Chair just wants a little bit of support from his delegation. Thank you.

And so at this time, Mr. Keen, you're suggesting that the word be changed since this was in fact language that was introduced by the Commission, it would be within the purview of the Commission to accept that. What say you, George? It would be fine for the change. What say you, Mr. Gourd?

MR. GOURD: As an act of faith, I'll say "yes."

MR. HANNAH: It's an act of faith to say "yes."

And Luella says "yes," and Mr. Hannah abstains. And therefore, you have enough Commissioners to make that change. And the word is supplanted.

MR. RALPH KEEN: Thank you, sir.

MR. HANNAH: Now, what would be the pleasure of the delegates -- Mr. Hembree, you've been standing for a while, what would you say, sir?

MR. HEMBREE: Thank you, Mr. Chairman, Delegate Hembree. The more I look at it, the more I come to the conclusion that the first sentence is mandatory enabling language that has to be in there.

Obviously, I'm going to do an amendment to Section 5-A, but I would move previous question on the amendment before us, which I believe is whether or whether or not to strike the language which has a strike-through.

DELEGATE: Second.

MR. HEMBREE: Is that correct?

MR. HANNAH: There is a motion to strike the language that is before us and it has --

MR. HEMBREE: No -- oh, yes.

MR. HANNAH: Mr. Hembree, please help the Chair. The Chair was trying to remember that perhaps you had introduced this four hours ago, that you were on the other side of the issue.

MR. HEMBREE: That's correct.

MR. HANNAH: And thank you, kind delegates, we just wanted to make sure that the Chair still has a memory that is somewhat intact on who starts what.

MR. HEMBREE: I had actually forgotten.

MR. HANNAH: The Chair remembers.

MR. HEMBREE: I would call the question --

MR. HANNAH: The question's been called and has been seconded. And what is before us, ladies and gentlemen, if you vote in the affirmative, the language in the first sentence will be

stricken.

And all of those in favor, signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And the "noes" have it, and the

language remains.

And, of course, the good delegate formerly of West Peavine abstains.

MS. JORDAN: Mr. Chairman. Delegate Jordan.

MR. HANNAH: You're recognized.

MS. JORDAN: I now make a motion that we add the supreme court -- that line you just took out -- have to go back to my notes. I'll make a motion that we put that line back in that they do not have the -- that that does not include the right to -- how was the wording? Suspend, discipline or remove.

MR. HANNAH: Kind delegate, you had a piece of paper here earlier that I saw that scrolled. If you can find that for us, then we would accept that motion.

MS. JORDAN: This line is -- I guess it's now called "supervisory control does not include the right of suspension, removal or disciplinary action of any judge of the supreme court or lower courts." This right -- I'm going to add a little bit more. "This right is specifically reserved for the court on the judiciary, and slash, or Article X, removal."

Back up there where it says "court on the judiciary," you might put "is prescribed in Article 5-A." Right there.

Now, I think if you will take that together with 5-A and Article X, it all works leaving that line in there.

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second. The floor is open for debate.

DELEGATE: Call for the question.

MR. HANNAH: The question has been called for. Is there a second?

And hearing no opposition, the language before us would read:

"This right of supervisory control does not include the right of suspension, removal or disciplinary action of any judge of the supreme court or lower courts. The right is specifically reserved for the court on the judiciary as prescribed in Section 5-A and/or Article X, removal rights."

And the Chair would remind everyone that obviously when we use 5-A, it is simply for this particular point in time, and with the committee on style, that that would have a proper reference. We will make sure that everyone understands that.

And so by voting in the affirmative, this language would be added. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And the Chair is unable to determine. The Secretary will be instructed to take a standing count. Delegates will be in their chairs.

And all of those in favor of the inclusion of the language, please stand. Mr. Secretary, please count those delegates.

MR. UNDERWOOD: The count is thirty-three, Mr. Chairman.

MR. HANNAH: Be seated. And all of those opposed, please stand. Mr. Secretary, count those delegates.

MR. UNDERWOOD: Twenty-two.

MR. HANNAH: Thirty-three in the affirmative; twenty-two, "no." Motion moves; the language stands.

MR. DOWTY: Let the record show my abstention.

MR. HANNAH: And the good delegate from West Peavine abstains.

Mr. Gunter, you're recognized.

MR. GUNTER: Probably for the Style Committee will be able to take it up, but they need to be plural, "the rights of, one, two, three," and then "these rights shall be reserved for."

MR. HANNAH: Thank you very much. We'll go ahead and drop that in, if there is no one objecting, or is there an objection?

MS. JORDAN: That's just for the style committee, wouldn't you say, the plural instead of the singular?

MR. HANNAH: We would hope so, but if we can do it here, I'm always interested in doing as much as we can do in this room together.

What would be the pleasure of the delegates with regard to the remainder of Section 4?

MS. JORDAN: I will call for the question on Section 4.

MR. HANNAH: The question has been called for on Section 4. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, we move for the consideration of Section 4:

"The original jurisdiction of the supreme court shall extend to a general supervisory control over all lower courts. The right of the supervisory control does not include the rights of suspension, removal or disciplinary action of any judge of the supreme court as prescribed in Section 5-A and/or Article X, removal rights. The supreme court shall employ an administrator, who shall have general administrative duties --"

Point of order.

MR. RALPH KEEN: Point of order. Chair, before you proceed. The language was underlined, has that already been

debated and approved or what's the status of that language?

MR. HANNAH: Well, actually, sir, there has been debate on these sections commencing at around 1:00 o'clock today, and actually it's been before. The only reason that those lines are there, I think, was just left over from earlier -- this section, Mr. Keen, has been divided three times, this section has been divided by words, by sentences and by prepositional phrases at one point.

MR. RALPH KEEN: So we are voting on the entire section?

MR. HANNAH: We are -- as indicated, we are taking up the entire section. Unless the delegation would care to challenge the Chair. And he would be welcome to that. And we are back to where the reading was, which is:

"The supreme court shall employ an administrator, who shall have general administrative duties in the judicial branch. The justices of the supreme court shall have supervisory authority over the administrator. The original jurisdiction of the supreme court shall extend to all civil cases, wherein the Cherokee Nation, or an officer thereof, acting in official capacity is named as a party defendant and to all other cases and controversies as the Council may prescribe by law.

In support of its original and appellant jurisdiction, the supreme court shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and such other remedial writs as may be provided by law and may exercise such other jurisdictions as may be conferred by statute.

The appellant jurisdiction of the supreme court shall extend to all cases at law and in equity arising under the laws of the Constitution of the Cherokee Nation. The supreme court shall promulgate rules of procedure relating to its original and appellant jurisdictions to ensure any litigant appearing before it receives due process of law and impartial justice together with prompt and speedy relief.

The sentence of the supreme court shall be published in an index and shall be final insofar as the judicial process of the Cherokee Nation is concerned."

All those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the section is approved and the language is added.

And let the record reflect that the good man from West Peavine abstained.

Scroll back to Section 2. The Chair believes that with regard to this article that we have Section 2 remaining on the table. And Section 5. What would be the pleasure of the delegates?

Mr. Keen, you are recognized.

MR. RALPH KEEN: Mr. Chair, I would move that we take Section 2 from the table.

MR. HANNAH: There's a motion to remove Section

2 from the table. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: All of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no." And it is off the table. Mr. Keen, you are recognized. Actually, sir, floor is open for debate.

MS. MASTERS: Would the Chair --

MR. HANNAH: Beg your pardon, ma'am?

MS. MASTERS: Can the Chair remind us how it was divided this morning?

MR. HANNAH: We have still a division in this particular section, and it is singularly focusing on the numbers. And so let's take up debate, ladies and gentlemen, on the numbers. Floor is open for debate. Mr. Littlejohn, you are recognized.

MR. LITTLEJOHN: Mr. Chairman, I would like to make a motion to delete everything after "terms" -- or strike through. And substitute -- that's correct, no you had it. And substitute "such terms as the Council may prescribe." That should not be struck through. I'm sorry.

MR. HANNAH: Motion on the floor. Is there a second?

MS. MASTERS: I second.

MR. HANNAH: Ma'am, do you second?

MS. MASTERS: Yes.

MR. HANNAH: There is a second. Floor is open for debate.

MR. RALPH KEEN: Mr. Chairman, point of order.

MR. HANNAH: Point of order, Mr. Keen.

MR. RALPH KEEN: What was happening with the numbers with the strikeout and the different variations?

MR. HANNAH: There was a motion earlier in the day, sir, to divide this section, and just as we have in previous occasions, and dare I bring it up, just as we did with regard to the word "appoint" and "elect" with the Marshals, the only identification in the division was with regard to these numbers. And that is what we are in debate about.

And perhaps the Chair -- erroneous, but believes that Mr. Littlejohn's amendment is in fact, while not a number, is in fact relating to the term.

MR. DONN BAKER: Mr. Chairman, I stand in opposition.

MR. CORNSILK: Mr. Chairman, point of order.

MR. HANNAH: Mr. Cornsilk, you are recognized.

MR. CORNSILK: Thank you, sir, I believe I was here before Mr. Baker.

MR. HANNAH: I believe that you were and thank you for indulging us.

MR. CORNSILK: I defer to Mr. Baker.

MR. HANNAH: Thank you very much.

MR. DONN BAKER: I stand in opposition. What we have just done by his amendment is it now says, "The justice of the supreme court shall appoint by the Principal Chief and confirm by the Council to serve." And then we're going to let the Council decide whether they serve a two-year or three-year term?

That does not help with judicial, executive and legislative branches. This Constitution needs to put in what their terms are going to be and not let some other branch of the government set that term. And that's what we would be doing by this motion.

I mean, I know the numbers are difficult, but I really feel strongly that if you're going to have this balance of powers, you're going to have to put in a term of years that the court is going to have.

MR. HANNAH: Mr. Cornsilk, you're recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk.

And amazingly enough, I would echo Mr. Baker's concerns, and I would also add that once again, looking back on the experience we have from the Council setting the terms for the Judicial Appeals Tribunal -- I think Justice Keen will concur on this -- that there was some extremely major confusion as to whether or not he was to serve a certain length of time or his term ended a certain date, and that was all precipitated by allowing the Council to set the terms for that office.

I believe we have an opportunity here to do what we have been doing in almost every office in this Constitution, and that is staggering the terms, making sure that they overlap, that we do not have conflicts of time and people running together, and doing all kinds of things like that.

So I would say that we have the time. We have the ability. Let's put some time in here. Let's set the time that these people will serve in office.

MR. HANNAH: Does any delegate rise in favor?

MR. LITTLEJOHN: Mr. Chairman.

MR. HANNAH: On point of information?

MR. LITTLEJOHN: Based upon the persuasiveness of the arguments that I've heard, and with the permission of my second, I would withdraw my motion.

MR. HANNAH: And hearing no objection from the second, the language is stricken, and the floor is open for debate on the division of the question, which is in fact the numbers.

Mr. Silversmith, you're recognized.

MR. SILVERSMITH: Honorable Chairman, what I would like to do is make a request that these people slow down and talk in plain Cherokee so all of us can hear and understand what it is you're talking about. Because I have missed the last vote because I thought we was voting on something else. Somehow or another I was trying to catch up.

You guys talking fast, you guys that sit around and do a

lot of this, you know, as a profession. But some of us from out in the country, I don't want to hear that --

MR. HANNAH: Mr. Silversmith, any time that you have a question with regard to a vote, please, get your hand up and the Chair will recognize you and see to it. We are all in unison with regard to what the question is. The good doctor from Tahlequah --

MR. SILVERSMITH: Excuse me.

MR. HANNAH: Oh, I'm sorry, sir, I thought you had left the floor.

MR. SILVERSMITH: Let me remind the honorable Chairman that what I was asking was, a simple request that all of us be considered equally, not on your opinion, but I'm over here not hearing because you can't hear through my ears. Thank you.

MR. HANNAH: Mr. Silversmith, the Chair is not exercising an opinion about someone's ability to hear; the Chair simply offered that if you do not understand what we're about to take a vote on, please indicate, and the Chair will see to it that it is clarified.

MR. SILVERSMITH: Yes, sir.

MR. HANNAH: Thank you, sir. Now, the good doctor, you are recognized. And do you rise in favor; do you rise against; how do you rise with regard to this question of numbers?

MR. ROBINSON: I'm confused now, too.

MR. HANNAH: Just one moment, then, I will clarify for us. Okay.

MR. ROBINSON: What --

MR. HANNAH: One moment, sir. It is fourteen of five, this the 6th day of our deliberation, and we have been here for a while. What we are going to do, is we're going to talk about the way we've all decided to talk about it. We've decided to talk about the numbers. And we are going to do that right now.

Ricky, how you do rise?

MR. ROBINSON: I rise in favor of seven-year terms. But I do want to point out irregardless of which one we do, since we -- I think we have, anyway, we went to five justices, that if we do go with the three, the nine -- and all of that three, this is very confusing.

And one thing we must remember, whatever number we do, essentially, whoever is Chief, August the 14th, 1999, is going to have to at least nominate and have confirmed two more justices. Maybe even three if the third spot is not filled between now and August the 14th.

Part of what we talk about, the numbers and how long it would be before a Chief would be able to actually appoint and have confirmed three justices during his term, also is affected by how the next -- or the extra two justices are staggered in, so I think even though I hate adding several more hours to our deliberations, whatever number we go with, I think we have to put in here what their terms will be to begin after August the 14th -- or after this

Constitution comes into effect.

So I just want us to remember that Constitution part. It's not just picking the number of years, but also how to stagger those terms. Thank you.

MR. HANNAH: Thank you, good doctor. Mr. Clarke, you are recognized.

MR. CLARKE: Yes, sir. I appreciate it. I stand in opposition to the term of seven years each simply because it can't be divided evenly into two.

MR. HANNAH: For the -- the number eighteen, that would be correct.

MR. CLARKE: I almost had a best seller, number eighteen. Folks, I think I have a best seller here, too, because the committee, it is my understanding that they chose mine because it could be divided into three and would not create confusion, so let's -- Dr. Robinson, this will help you not to be confused.

MR. HANNAH: Thank you, Mr. Clarke. Mr. Keen, you are recognized.

MR. RALPH KEEN: Yes, as the author of the original nine and three structure here, obviously the Commission went to some length to try to come up with a system of staggered terms for our justices, but yet still grandfather in the existing seats.

Obviously, this system was upset when we increased the members of the court from three members to five members, so what we may need here is a mathematician to try to figure this out.

But that was the intent of the nine years. It was an amount of time that worked out well with having three judges and -- you know, appoint one every three years and it would work in a good rotation.

MR. HANNAH: Mr. Baker, you are recognized.

MR. BILL BAKER: I agree with Bill that a multiple number would -- or a divisible number would work well, whether it be five-year terms or ten-year terms, that that would work the rotation perfectly.

MR. HANNAH: Thank you, Mr. Baker. The Chair would entertain any other delegate who would like to speak with regard to the numbers.

My good friend, Mr. Moore, you are recognized.

MR. MOORE: Steven Moore, delegate. The only one that makes sense up here, the only one that works out mathematically, is ten-year terms every two years.

I propose an amendment to change the terms to ten years.

MR. HANNAH: Mr. Moore, you'll have to wait until we defeat this. Hang on to that and don't forget it.

MR. MOORE: That's the only one that makes sense. It's ten-year terms every two years. I'll offer a friendly amendment.

MR. HANNAH: No, don't go there. Don't go there.

MR. MOORE: That's the only number that is the multiple of five that makes sense. Otherwise, you have overlaps or you have where there are two or three within a two-year period.

MR. HANNAH: You are recognized.

MS. JORDAN: Let's call the question then maybe we can consider those numbers.

MR. HANNAH: Exactly what we need to do here. The question has been called. Is there a --

MR. SMITH: Point of information.

MR. HANNAH: Point of information, Mr. Smith.

MR. SMITH: We're working in a vacuum. I've asked Council here to tell us what terms we presently have and when they expire. That gives us a better idea of how to put the system in place.

MR. HANNAH: The Chair will rule that that would be valid information for our consideration. We will wait on that call.

MS. SCOTT: Point of information.

MR. HANNAH: Point of information. The good lady from Texas.

MS. SCOTT: Why did we untable this if we did not have something to --

MR. HANNAH: We untabled it, ma'am, because the debate began to lag and there was absolutely no consensus and we needed some more debate. The Chair was fearful that many of the delegates were beginning to doze off and, in fact, needed something to raise our blood pressures back to reality.

MR. RALPH KEEN: On point of information. The existing structure on the Tribunal, we had three justices; they serve six-year terms staggered every two years. My father's term ended December 31, 1999. Philip Viles' term, if I understand this correctly, will be the next office to be vacated on December 31st, the year 2001.

And Justice Dowty's term, he's filling out the term by -- he might be able to speak to that better -- no, he's replacing my father. So the other term would fall either two years -- would be the year 2003. So that's how it's structured currently.

MR. SMITH: Again, please.

MR. RALPH KEEN: One term just completed, just ended, and that's the term that Justice Dowty filled -- or just came into began on December 31st, 1999 and it will go six years. Another term will end December 31st, the year 2001, and that next term will go six years, and then the third one, December 31st, year 2003. So every two years, one of these six-year terms come of age.

MR. HANNAH: The good delegate from Starr Springs is recognized.

MR. STARR: Thank you, sir. Ralph, if I may, I believe you may have misspoken there on the date. Justice Keen's term ended 31 December of '98.

MR. RALPH KEEN: '98.

MR. STARR: And the new term of Justice Dowty would have started on 1 January of 1999. And these terms end on even years, so the next one, Justice Viles will end in the year, 31 December of 2000; is that correct?

MR. RALPH KEEN: I stand corrected, yes.

MR. STARR: Thank you.

MR. HANNAH: Thank you, Delegate Starr. Floor is open for debate on the numbers.

DELEGATE: Call the question.

MR. HANNAH: Question has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: Mr. Smith.

MR. SMITH: I was going to speak against the proposition, but somebody beat me to it.

MR. HANNAH: We are moving toward the vote, sir. And the proposal that is before us is to strike "nine" and insert "seven" and to strike "three" and insert "two."

And all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: Noes have it. The "nine" and "three" remain; "seven" and "two" are deleted. The floor is open for debate, Mr. Smith.

MR. DOWTY: I need to record my --

MR. HANNAH: And once again, the good delegate from formerly West Peavine abstains.

Mr. Smith, you're recognized.

MR. SMITH: I would offer an amendment of six years, appointment take place every two years. And we further add language at the end of that sentence.

MR. HANNAH: If it is germane to the numbers, we'll add it.

MR. SMITH: I'll not add it, but let me tell you why.

MR. HANNAH: Go ahead.

MR. SMITH: That we designate the five slots, the existing three, seat one, seat two, seat three, additional two, if this constitution passes, seat four and five, and then index the last two seats to begin contemporaneously with seats two and three.

So, basically, what you would have is seat two and four starting at the same time; seat three and seat five starting at the same time.

MR. HANNAH: We will remain with the consideration of the numbers that are before us at this time. The motion is on the floor. Is there a second --

DELEGATE: Second.

MR. HANNAH: And the floor is open for debate. And Tina, you are recognized.

MS. JORDAN: I move we table this whole area until tomorrow morning and let's put some figures -- besides just these numbers, let's decide how we're going to implement this and justify our numbers. That seems to be our biggest problem.

Are we wanting one a year, one every other year, one every three years? Let's come back with numbers, and let's come back with justification of why we want those numbers. We're going to be working on this forever.

You can do five and one, six and two, seven and two, seven and three, nine and three. I mean, there's an infinite number. We need to have a justification for those numbers. I move to table this section until tomorrow morning first thing.

MR. HANNAH: There's a motion to table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor of tabling this section, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: And the item goes on the table.

DELEGATE: Orders of the day.

MR. HANNAH: Orders of the day. The Chair would inform you that it is two minutes until the hour of five, and the order of the day would state that our deliberation would go to recess for the evening meal.

Mr. Littlejohn, you're standing, sir, may we help you?

MR. LITTLEJOHN: Mr. Chairman, my suggestion to the Chair is that we recess for the day and come back tomorrow.

MS. MASTERS: Point of information.

MR. HANNAH: Point of information.

MS. MASTERS: Delegate Moore has been sitting over here working with figures, so anyone that isn't real clear on figures, he's a whiz. And he has a chart made up over here. If you would like to look at his chart he's been working on last couple of hours, it would be great.

MR. HANNAH: Thank you, good doctor. The Chair would add to that that Dr. Robinson has also shown a propensity for being able to manipulate numbers in his head as well.

And with that, Mr. Littlejohn, unfortunately the Chair would rule that due to the amount of non-verbal that we probably will come back following the evening meal. And may the Chair be so bold as to recommend that we would return at 6:30, or do you want to come back at 6:00?

I'm going to do something really, really unreal here. Let's see a show of hands. How many of you want to come back at 6:00?

Let's see those who want to come back at 6:30.

Okay. We're coming back at 6:00, folks.

Mr. Littlejohn, before --

MR. LITTLEJOHN: Point of information.

MR. HANNAH: Point of information.

MR. LITTLEJOHN: I understand that Monica Lewinsky is going to be on TV tonight.

MR. HANNAH: Thank you, Mr. Littlejohn. We're glad that made it in the record.

(recess taken)

MR. HANNAH: Good delegates, we'll welcome ourselves back from the evening meal. And the Chair is pleased to announce that the author of the number eighteen celebrates his birthday today, ladies and gentlemen. Delegate Clarke.

MR. CLARKE: I am eighteen years of age. It's this job that has caused me to turn gray and lose my hair.

MR. HANNAH: You were a younger looking man when you came here. I know I had more hair.

Everyone have a good meal this evening?

THE DELEGATES: Yes.

MR. HANNAH: It is good to go outside and breathe in the good fresh air and take sustenance among your friends, and it gives us an opportunity to sort of once again focus on the spirit that we should be about these chambers. I know that I am there.

Mr. Keen, you are recognized.

MR. RALPH KEEN: Thank you, Mr. Chairman. This time I would move that we take from the table Section 2 of Article VII.

MR. HANNAH: And I'm assuming, sir, that we once again would wish to focus on the tabling of the bifurcation of the question with regard to the numbers?

MR. RALPH KEEN: Yes.

MR. HANNAH: Excellent. And have some of our fellow delegates that have worked in the arena of mathematics had some time to talk?

MR. MOORE: Steve Moore, delegate.

MR. HANNAH: Steve Moore, you are recognized.

Mr. MOORE: I would like to make a motion to change --

MR. McCREARY: Point of clarification.

MR. HANNAH: Okay, very well.

MR. McCREARY: Have we removed it from the table yet?

MR. HANNAH: Well, it's off the table. Well, actually, we didn't vote. Yeah, I -- thank you. I went to dinner is the problem, okay. And the good man from Black Gum is correct. We need to follow this. We have a motion to untable Section 2. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: And hearing no opposition, all of those in favor say "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no." And it is untabled. Mr. Moore, you are recognized.

MR. MOORE: I'd like to make a motion to strike and replace the "six" with the number "ten."

MR. HANNAH: Is that the scope of your motion?

Mr. MOORE: Yes.

MR. HANNAH: There's a motion on the floor. Is there a second?

MR. JOHN KEEN: Second.

MR. HANNAH: There is, and the floor is open for debate. Mr. Keen, you are recognized.

MR. JOHN KEEN: Could I ask the Chair to have the author explain his intent before we get wide open here?

MR. HANNAH: Before we get too wide open, Mr. Moore, perhaps you would like to explain the number ten.

Mr. MOORE: Okay. So now I'm the author of ten?

MR. HANNAH: You are now known from this day forward as the author of ten.

MR. MOORE: Well, I think number ten is copyrighted after the movie.

MR. HANNAH: We should go to dinner more often, folks. And the Chair was pleased always to put in the record that the convention made it to yet another meal.

With that, would you speak to the rationale of how you and the fellow mathematicians have arrived at this number and what the significance would be, if it were to be accepted.

Mr. MOORE: I have no objections to six or any other really -- term. But ten makes it nice and neat. And I wanted everybody to realize with the six up there, you would have overlapping justices.

And the way it would set up, that every, with the Chief's raises, that each Chief would be able to nominate to the supreme court a minimum of three justices during his term.

And that with ten, after the initial set-up and once the rotation starts, each Chief will have two. And it's just a nice, tidy system to keep -- keep that in mind.

I just felt that everybody was complaining about too much influence, and I just felt like in one Chief's term, three justices was just a little much. And a minimum of three, because the third Chief after that would be able to put four of the five on.

MR. HANNAH: Mr. Gunter, you're recognized.

MR. GUNTER: I'm speaking for the amendment, but with the ten-year term, it seems awfully long to me. But as I contemplate that, if the Chief recommends a new justice every two years in a four-year term, he would only be able to recommend two justices and that would not stack the court, which seems to be the purpose of this staggered amendment. And if he went to five years and they changed every one year, at the end of a four-year term, the Chief would have put four people on the court.

So I don't really think we can go with less than ten

years. And if we went to five years and staggered them every year, the Chief would still be able to stack the court.

And I bring to your attention that with ten years, if the Chief should serve two terms in a row, he will have by the end of his eighth year, have put four justices on that court of five, so he still would have stacked that court. But it will be for another Chief.

And I really don't see any alternative to taking the ten-year term and the alternate years of two. I mean, it just seems to be a logical compromise.

MR. HANNAH: Thank you, Mr. Gunter.

Mr. Moore, you are recognized.

MR. MOORE: Steve Moore, delegate. Also, we need to also put in the terminology that would implement, because we're adding two judges, and we have already some judges sitting that would set up the rotation into that matter, I refer to --

MR. HANNAH: Mr. Smith.

MR. MOORE: Mr. Smith.

MR. HANNAH: Thank you, sir. Mr. Smith, you are recognized.

MR. SMITH: We looked at the existing terms. What we would have to do with the language is, say, we have five seats, the first three seats are current seats. The last two seats are the new seats. So we have seats one, two, three, four and five. The initial seats will be identified when they expire.

I believe the first seat expires 12/31, 2000. I believe that's Justice Viles. Seat two would expire 12/31, 2002, which would be the now vacant Birdwell's seat. Seat three would be Darrell Dowty's seat, which I believe expires 12/31, 2004.

Then we would have a transition period for the two new justices. Seat number four would expire 12/31, 2006, and then seat five would expire 12/31, 2008. Thereafter, the transition terms, every judge would have a ten-year term. And thereafter, every Chief would have the appointment of two.

The initial term of transition, the first time the Chief gets four slots because it's the two that's coming up regularly and then two new ones that we're adding.

So the language would have to establish the five seats, identify them by the term, initial term that they expire, and thereafter, each seat would carry ten years.

MR. HANNAH: Doctor Robinson.

MR. ROBINSON: I'll --

MR. HANNAH: Thank you very much. And Mr. Keen.

MR. RALPH KEEN: I'm rising in support of this amendment. You may like to take a call for one in opposition.

MR. HANNAH: How do you rise in this issue, Dr. Robinson?

MR. ROBINSON: I'm rising in opposition to it. I'm sorry, Delegate Rick Robinson. I'm sorry. I did really take part in their activity because I did not anticipate that it was

going to be changing from six and ten. So I can't stand up here and tell you how it could maybe work out the other way.

I just feel that ten years is too long. Just too long. I think that the same type of thing could be done for six years, maybe with a little bit more difficulty, or the same thing could be done for five years for sure.

But I'm just going to stop with my remarks and try to work on this. But I just feel that ten years is too long for any appointment, especially going from four, all the way up to ten years. Thank you.

MR. HANNAH: Mr. Baker.

MR. DONN BAKER: I also stand in opposition. I think we are going to have trouble when you start asking judges if you're willing to serve -- that's a long commitment for some judge to agree to a ten-year period. And I'm afraid that there's going to be some awfully qualified, good judges who are going to say, "I'm not prepared to accept this ten-year appointment." That's just too long. There's got to be some way.

If we look at this, we've appointed the Councilmen so many years, the Chief so many years, and I understand that some judges to the U.S. Supreme Court are for life, but most of your other judges have -- that are elected or appointed have like four-year terms.

I think a five or six year -- I don't know what the math is, but I'm afraid that we're going too far and we're going to limit the number of judges that will step forward and say, "I'm going to commit ten years to this."

MR. HANNAH: Mr. Keen, you're recognized.

MR. RALPH KEEN: I rise in support of the amendment, even though I acknowledge ten years does at first glance appear to be a very long time. But also keep in mind, we have a mind-set because all of our elected officials serve a term of four years, so that's what we're referencing it to.

You may think in the terms of our United States senators, who serve six years; they get appointed twice, then they're out for twelve years. So I don't think ten years is out of the question, even though it is a long time.

And this would certainly set up a clean system of rotation where we would have a new judge every two years, once the system is fully implemented. Of course, if a judge does not want to serve that long, they at least can resign and can be replaced.

So unless I can find some mathematical way that can work out as well as this one, with a fewer number of years, I support this amendment.

MR. HANNAH: Mr. Cornsilk, how do you rise on this issue?

MR. CORNSILK: Mr. Chairman, I rise in favor. I would disagree with the learned Mr. Baker, in that, if we look at the federal system, federal judges are appointed for life, and there doesn't seem to be any shortage of them clamoring for that position.

I also would like to say that it's critical, I think, that we remove the judges from the political play, and by putting them in for a lengthy period of time, ten years does seem like a long time because I went from ten years old to twenty years old in the '70s, but that's a -- seems like a long time to me.

Again, echoing Mr. Keen, they can certainly resign from their position. If they find themselves disable and incapable of completing that ten-year term, they can be filled by the Council in the future.

And I really do think that we need to give them an extended period of time. Give them a long breath of life on the court to know the decisions, the laws, to become familiar with that because these are the people who are making decisions which carry as much weight as the laws of the Cherokee Nation. They are making basically law. So I would agree with this and stand in support.

MR. HANNAH: Good lady from Houston is recognized.

MS. SCOTT: I also stand in support. Deborah Scott. I think that we've been talking about term limitation because we've been trying to keep people out of office. I think serving ten years really isn't going to be that big of a problem.

Typically, people do serve two terms, or try to, so eight years is something that's very normal in our elected officials or our officials. So I don't think ten years should be the hill we die on. I think that we should -- if no one can come up with some better plan, I think this is a very acceptable plan.

MR. HANNAH: The gentlemen from Starr Springs is recognized.

MR. STARR: Thank you. I speak in opposition to this ten years. I detect a great deal of maybe concern about the time, and sounds like probably the majority of folks do favor the ten.

But I also detect some concern about a Chief, I believe to use someone's earlier comments, "stacking the court." Keeping in mind this is a confirmation process, and just because the Chief makes the appointment, makes the recommendation, does not mean that the justice will in fact be seated. So I think we do not think we need to lose sight of that aspect of it.

But it just seems like ten years is much, much too long to be tied into the system. And regardless of the mathematics or regardless of everything else, I don't think it's uncommon even in our Oklahoma Supreme Court. Various numbers of justices of the supreme court come up for retention on a periodic basis. And there's not any exact number that comes up each and every time.

And, of course, they are appointed, and it's a retention process there. But it just seems likes that the six years has worked fairly well throughout the time since its inception, and it just seems as though that ten years is much, much too long to be tied in. And I'm opposed to it.

MR. HANNAH: Thank you, Mr. Starr.

Mr. Stopp, you are recognized.

MR. STOPP: Gary Stopp, delegate Cherokee County. I'm raising against this ten years for three reasons. This article that we've been working on for the past twelve, thirteen hours has significantly changed the judicial system. We have strengthened this Article dramatically. We are not looking at the same type of judicial system in the past.

I don't know if the number is six or ten, but going back to the argument of federal judges versus tribal judges, when you look at the ten years, the federal judges have a retirement system and a salary system that is very high and very lucrative to them to be in those positions. Our particular judges don't have that. That may be a factor in trying to retain someone.

In addition, we look at -- and I'm originator of Article X, the recalls. This is the first time that we have had a recall article in the Constitution. That also gives strength to appoint an elected official for the people to come back and do a recall of an individual.

So it gives you and I an option sometime during the process to look at this individual and say, they are not doing their job; we have decided to recall. That has not been in the Constitution in the past.

In addition to the strengthening in this article, we also looked at -- I may have this wrong, but it's like a court of ethics that I think we put in just a few minutes ago. I'm going to talk to that for now. That's never been in this type of article within the judicial branch. That's another strength for the people, again, to ensure that the courts are not stacked or unfair.

I'm just looking at the ten years and thinking where I was ten years ago and where I'll be in ten years. I don't know where I will be. Because it's not a full-time position, because it doesn't have full-time retirement, I don't know if we'll be able to retain and recruit someone for that position. If we can, I don't know what type of quality they will have.

But I think it is very important to look at it very closely so it's not concurrent with the Chief. That we ensure that the confirmation process is very clean. But I guess I just put it out for information that this is not the same article that we originally had. This is a much stronger article today. The Constitution as represented is much stronger. There are many options that are built in today that were not built into the original Constitution.

So I say caution to the wind on putting too much time out there. Ten years is a long time. I'm in favor of the wording besides the ten years. Thank you.

MR. HANNAH: Mr. Silversmith, you are recognized.

MR. SILVERSMITH: Good evening. My name the Rufus Silversmith and I'm a delegate from Kenwood, Salina. On a lighter note, these people, these judges, I would hope -- I'm in

favor of the ten-year, the ten-year plan, because I would hope that these people would be able to put in like seven years on the bench and maybe take a three-year vacation. Thank you. With pay.

MR. HANNAH: Thank you, sir. Starr-Scott is recognized.

MS. STARR-SCOTT: Thank you, sir. Mr. Chairman, I speak for this. I think that the -- I didn't have a problem with the "nine" and the "three" for this simple fact. The farther you can remove our court from the politics of the Tribe, the better served our people will be. The better justice that will be given to the people. That's really what we're here for. Ten years, I'll be seventy years old. If it goes as fast as the last, so what.

MR. HANNAH: The kind lady from Oklahoma City is recognized. How do you rise with regard to this issue, Mary Ellen Meredith?

MS. MEREDITH: I rise in opposition. Barbara may think the next ten years may go quickly, but I can tell you from talking to Philip Viles that the last three years have aged him considerably. And I think it's very important that ten years is an awful long time, and that I think the judges need to be changed over just because asking somebody to give ten years of their life to this is asking a lot.

And the other thing is, is it's such a long period of time and there's a real possibility that people get much older in different ways and need to be looked at more often than once every ten years.

DELEGATE: Voice of experience.

MR. HANNAH: Mr. Scott, you are recognized.

MR. SCOTT: I rise in support of the ten years.

I know when I was younger, a couple of years seemed like a long time, but I hope we will be getting mature judges here. And I have noticed that the older you get, the faster time goes by. I am in support of this.

MR. HANNAH: Thank you, sir. Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate. Mr. Stopp raised some good points in light of our court on the judiciary, I believe is how we worded it. And also recall the power to remove an appointed or elected officials.

I think that ten years is -- obviously my life, ten years is a long time. But I think that with those mechanisms that we do have in place, you know, we would be able to get them out of office if we thought that something was not right with their performance or anything of that nature.

But I also think that it's a prestigious job. It's an honorable job. I don't think we would have any problem getting any of the lawyers in this room to take it. And I think I know -- I don't know what my father's opinion would be on this, but I do know that he served an awful long time on that court. An awful long time.

I know back in the '70s, he was Chief Justice, and he was Chief Justice in the '90s. I don't know if that was continuous or not. I don't know. But I know he spent an awful lot of years on there, and he enjoyed every one of them, I think. But I rise in support of this.

MR. HANNAH: The good lady from Houston is recognized.

MS. Miller: My name is Brandy Miller from Houston. I am against the ten-year period. I think that is really way too long. The reason I say that is because I think it would result discriminating against our older, wiser people. And that there's a possibility that somebody might look at somebody, say, in their 60s, and think -- and say this -- maybe they won't even say this, I don't know if he's going to last another ten years. That might be a consideration.

MR. HANNAH: Mr. Baker, you're recognized.

MR. BILL BAKER: We're working on a novel idea over here, by tying it to every eighteen months, and making it a seven-and-a-half year term, so that the math still works out to where -- it's about to get -- it's going to work out where there will still just be two appointments in a term. And it works out to handle that. So I guess I'm opposed to ten, offering seven-and-a-half in its place.

MR. HANNAH: Are you, Mr. Baker offering a --

MR. BILL BAKER: A friendly seven-and-a-half.

MR. JOHN KEEN: Call the question.

MR. HANNAH: The question has been called. And it has been seconded. Hearing no opposition. What we have, ladies and gentlemen, is the supplanting of six and three with ten and two. If you vote in the affirmative, then ten and two will be placed in the language.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no."

THE DELEGATES: No.

MR. DOWTY: Abstained.

MR. HANNAH: And Chair rules that the "ayes" have it and that the language is included, and the good man formally of West Peavine abstained. The floor is open for debate.

DELEGATE: On what?

MR. HANNAH: On language that would need to be brought to initiate to implement. If the Chair may be so bold.

MR. RALPH KEEN: If I may ask, Mr. Chairman, whose language is that that is underscored there?

MR. HANNAH: Well, I can tell you, sir, that if we all go back in this week to somewhere around 11:45 this morning, we might know. The Chair is absolutely just -- give the Chair a moment.

MR. McCREARY: The question was divided.

MR. HANNAH: It was divided, thank you, as my

good friend from Black Gum recalled. I guess what we could do is bring us back together again and then look at the entirety of this piece. If there is no objection from the floor and to save some time on procedure, we'll bring that paragraph back.

And the floor would be open for debate with regard to the first paragraph now having been rejoined. The floor is open for debate on the first paragraph. And I see that we have a small caucus on the side.

Parliamentarian reminds the Chair that the division actually may have occurred beyond twenty-four hours ago.

Mr. Keen, you are recognized.

MR. RALPH KEEN: Mr. Chairman, we still have some delegates that are working on some implementing language for this, and it may be more efficient for us to table this section for now and revisit it whenever they come up with their proposals.

MR. HANNAH: And that would be a motion to table Section 2?

MR. RALPH KEEN: Yes.

MR. HANNAH: There's a motion on the floor to table Section 2. Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing a second, all those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those "no."

THE DELEGATES: No.

MR. HANNAH: It goes on the table. Mr. Keen, you are recognized.

MR. RALPH KEEN: Mr. Chairman, I may need a little bit of help since I was absent this morning. As I understand, Section 3 has been approved?

Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: We are now up to Section 5 of the revised proposal presented by the Commission. And I will read that section.

"The district courts of the Cherokee Nation shall be courts of general jurisdiction and shall be vested with original jurisdiction not otherwise reserved to the supreme court to hear and resolve disputes arising under the laws of the Constitution of the Cherokee Nation in both law and equity, whether criminal or civil in nature.

The Council shall enact, with the advice from the Judiciary Rules of Procedure which shall ensure that all litigates receive due process of law and impartial justice, together with prompt and speedy relief."

And my motion is that this assembly approve this language.

MR. HANNAH: Thank you, sir. The motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second, and the floor is open for debate. Mr. Keen, would you care to -- Mr. Keen the intermediate, not the younger, would you care to give us an overview of this section.

MR. RALPH KEEN: Yes, Mr. Chairman, be happy to. This simply is the section that sets up the jurisdiction structure of the district courts. This is very common structure under the two-tier system that we have now created, and it reserves all original jurisdiction except for that that is exclusive to the supreme court to the district courts. And it gives them ominous authority over all tribal laws, legal claims, equitable claims, civil or criminal.

So what we are setting up here is a court of general jurisdiction within the Cherokee Nation. And this would be the court of, what they call the fact-finding court. This is where you would receive your trial. This is where you're entitled to due process. If you don't like the decisions of this court, then you would naturally appeal it up to the Supreme Court of the Cherokee Nation.

MR. HANNAH: Thank you, Mr. Keen.

MS. MASTERS: Call the question.

MR. HANNAH: The question has been called. Is there a second?

THE DELEGATES: Second.

MR. HANNAH: There is, and hearing no opposition, the language is before us, Section 5. Are delegates all in their places? Mr. Stopp, would you join us, please?

MR. STOPP: Yes.

MR. HANNAH: Thank you, sir.

Mr. Hoskin, you'll join us? And the Chair is taking those delegates since he's doing well to discern -- is Mr. Baker here?

DELEGATE: Yeah, both of them.

MR. HANNAH: There's one. The other one -- I was just going to say, the Chair is doing well to discern six different voices during these voice votes from time to time.

Section 5 would read that:

"The District Court of the Cherokee Nation shall be courts of general jurisdiction and shall be vested with original jurisdiction, not otherwise reserved to the supreme court, to hear and resolve disputes arising under the laws or constitutions of the Cherokee Nation in both law and equity, whether criminal or civil in nature.

The court shall enact with advice from the Judiciary Rules of Procedure which shall ensure that all litigates receive due process of law and impartial justice, together with prompt and speedy relief."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no."

And the motion carries, the language is accepted and added to -- with permission and no objection, we'll go ahead and strike "circuit" and allow the word "district" to stand.

And Mr. Keen.

MS. MEREDITH: Mr. Chairman.

MR. HANNAH: The good lady from Oklahoma City is recognized.

MS. MEREDITH: May I have a quick point of privilege?

MR. HANNAH: Yes, ma'am.

MS. MEREDITH: Before it gets totally on record and gets spread around, I would like everyone to know that I certainly did not intend to impugn the justices of the Cherokee Nation or to suggest that they were getting senile. Nor did I intend to do any other judge of the Cherokee Nation.

MR. HANNAH: We simply attributed the remarks to perhaps the pre-onset of senility by the delegate.

Mr. Keen.

MR. RALPH KEEN: Thank you, Mr. Chairman.

Section 6 as contained in the revised version submitted by the Commission reads:

"The justices of the supreme court and the judges of the district court shall receive a compensation, which shall not be diminished during their continuance in office, but shall receive no other fee, gratuity or prerequisite of office, nor hold any other position of title, trust or profit within the Cherokee Nation, either directly or indirectly."

The rationale behind this language was obviously to establish not only compensation for the service of our objectives, but a compensation that cannot be remitted while they are serving. And this obviously is to protect them from any kind of reprisal from the political arena.

And the maker of the language is simply to hold our judges up to the highest standard possible that they would not receive any other type of gratuity while their tenure in office.

And with consent of the Commission, I would move that this assembly accept this language.

MR. HANNAH: There's a motion; it has been seconded. The floor is open for debate. Starr-Scott you're recognized.

MS. STARR-SCOTT: Point of information.

MR. HANNAH: Yes, ma'am.

MS. STARR-SCOTT: Where it says "within the Cherokee Nation," should that not include "or any entity thereof"? And the reason why I say that, because we've had some hairsplitting several times over CNE, CNI and the Housing Authority.

It seems to me the intent was -- is that they would not be employed with the Cherokee Nation. But if that's all that's there, then someone will come along and say, "Well, you know, CNI is

not really a part of the Cherokee Nation."

MR. HANNAH: What say you, Mr. Keen?

MR. RALPH KEEN: I would accept that as a friendly amendment.

MR. HANNAH: And, Mr. Underwood, would you have a problem with the inclusion?

MR. UNDERWOOD: No.

MR. HANNAH: Ms. Coon, would you have a problem with us including it?

MS. COON: No.

MR. HANNAH: Very well. Dr. Gourd?

MR. GOURD: No.

MR. HANNAH: Mr. Hannah, says "no." Language will stand.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, merely a point of information. If Mr. Keen would indulge me a moment. The smaller tribes throughout Oklahoma occasionally have lawyers who serve in multiple positions of -- in courts. You have Mr. Lujan, who served as supreme court judge, while at the same time serving as a judge on the Court of Indian Offenses, while at the same time serving as a justice of the Kiowa court. Are we going to try to prevent that in any way?

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: If I understand your question, you're talking about members who -- not members, but Native Americans who may perhaps serve -- tribal members who may serve on other courts for other tribes?

MR. CORNSILK: At the same time.

MR. RALPH KEEN: Simultaneously. This language would not prohibit that as it's written, and that is not an uncommon practice. Even our learned speaker who kicked off this convention serves -- and I'm speaking of Professor Clinton -- serves on the Supreme Court of the Winnebago, while on the appellate court of another tribe, and with apparently no problem there. Is that the concern that you have?

MR. CORNSILK: That is my concern. I suppose I would rise in -- I don't know. I'm not opposed to this, I just, having had to deal with certain judges who have that kind of professional judgeships all over their belts, occasionally, it's just so confusing to figure out where they are coming from and who they are serving. It may be pointless, but it just is a concern to me.

MR. HANNAH: Mr. Smith, you are recognized.

MR. SMITH: I would move to strike the language which begins "after compensation" until the word "but." I'd like to strike the words, "which shall not be diminished." Strike the words, "which shall not be diminished."

Reason for that is that we've reorganized a court. We're having five members to the court for extended periods of times. The

duties of those justices may change based upon case load.

The amount of compensation that they receive now are based upon current grounds. We should leave to the Council to determine in that budget what their compensation would be.

Since we're reorganizing the court, those who have a present seat should not be guaranteed a salary or compensation that is greater than the other justices that come on board.

MR. HANNAH: There's a motion to strike. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And it's before us, and debate is open.

MR. RALPH KEEN: Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: I would rise in opposition to this proposed additional language, and understanding that we're going to be going through a transition into a new system of new judges and a new court structure, understand that.

But there's absolutely nothing that would prevent the Council from adjusting the salary of any elected office when that term begins or when one term expires and the next one begins. And so those salaries could be adjusted at least once every two years for each seat on the court, or the district courts for that matter.

So I think there's adequate opportunity for the Council to adjust the salaries as necessity dictates. But the clear intent of this language is to protect our judicial officers from being stripped of their money for rendering unpopular decisions.

It's very plain and simple. This is taken or modeled after the federal system, which -- and I think it provides a very good insulation for our judicial officers.

We need to keep them separated from politics so they can make the very tough decisions which they are called upon to make without fear of losing their paycheck. Thank you.

MR. HANNAH: Mr. Baker, how do you rise to the strike?

MR. DONN BAKER: I rise in opposition. We've said all along that we're going to make three branches of government, and the judicial branch has got -- I can't imagine any other way to try to control a judge by going in there and cutting his salary. I think you have got to have this, "which shall not be diminished."

Plus, I mean, you're facing a lawsuit. These judges who got sworn in -- let's just say whichever ones they are now, when they were sworn in, they were sworn in for a certain amount of money. They took that job, and that's what they're going to have to be paid, and I don't think you can come in through this constitution or anything else and change the amount of money that they're getting.

It does pose a problem, but I don't think to be able -- we should not fix it to where the legislature can lower their salary

on a whim.

MR. HANNAH: How do you rise on the issue, Younger Keen?

MR. RALPH KEEN: In opposition.

MR. HANNAH: Let's hear from you, sir.

MR. RALPH KEEN: I agree with Mr. Baker, Delegate Donn Baker. I think it goes straight to the separation of powers doctrine. It wouldn't be right to -- that is in there to keep the legislature's power of the purse out away from controlling other branches of government. I think that's just an essential part of the judicial branch.

DELEGATE: Call the question.

DELEGATE: Second.

MR. HANNAH: Question has been called, and there's a second. Is there any opposition?

Hearing none, then what we are voting on, ladies and gentlemen, would be the proposal to strike the language, "which shall not be diminished." If you vote in favor on this motion, the language will be stricken; if you vote "no," it will remain. Is that correct, Mr. Keen?

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

MR. HANNAH: Excellent. All those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. DOWTY: Abstain.

MR. HANNAH: And the language stands. And the kind gentleman formerly of West Peavine abstains.

Mr. Baker, you are recognized.

MR. BILL BAKER: Thank you, sir. I had no problem with that particular language, but it does bring us back to a point that I made early on. Although I think once a judge takes a term, the Council and the Tribe and the budgets should continue at whatever they agreed upon.

But from time to time the budgets of the Cherokee Nation are such that we need some kind of flexibility, or the Council needs some kind of flexibility that the enumeration for that position might need to go down. It might need to go up, but it might need to go down from time to time.

I do not believe that we can add two extra justices at the present pay that the Chief Justice or the justices are receiving. We're spreading the work out further. Theoretically they'll even be working less, and there needs to be some flexibility to the Council to set that fee, although I do believe it's before they're appointed.

And, of course, you know, we've changed the name to "supreme court," but I don't know that we ought to cut the tribunal down just because we changed the name.

MS. STARR-SCOTT: Mr. Chairman.

MR. HANNAH: Starr-Scott, you are recognized.

MS. STARR-SCOTT: I agree with Bill to a certain extent, but I think I agree with Donny more. I think what we forget many times, from '83 to '87, our court practically had no funds. I think Philip Viles served for maybe \$300 a month, which wouldn't even pay his telephone and gasoline back and forth to Tahlequah.

But we're mandated by the Constitution to have three separate and distinct branches of government. And I think when we look at what we fund the executive at, and what we fund the legislative at, the judicial as it is today is not that far out.

I think we are obligated and mandated that we fund it, and if we have to quit hiring these slick-talking lawyers from Washington D.C., I think we ought to let those boys go, and keep our home boys.

MR. HANNAH: Mr. Keen, you are recognized.

MR. RALPH KEEN: Mr. Chairman, I would call for the question on Section 6.

MR. HANNAH: Question has been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, we move the language of Section 6 as approved would read:

"The justices of the supreme court and judges of the district court shall receive compensation which shall not be diminished during their continuance in office, but shall receive no other fee, prerequisite of office, nor hold any other position of title, trust or profit, within the Cherokee Nation --"

DELEGATE: Point of order. The word is "perquisite."

MR. HANNAH: Let me try one more time.

"Perquisite of office, nor hold any other position of title, trust, or profit within the Cherokee Nation or any entity thereof, either directly or indirectly."

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: Motion carries, language is adopted

--

MR. DOWTY: Abstained.

MR. HANNAH: And the record will show that our good friend, formerly of West Peavine, abstained.

Mr. Gunter, you're recognized.

MR. GUNTER: I just have one question there that just occurred to me. And that was if the Cherokee Nation owns some land, and a business needs their land to build a business, and they needed legal representation, would they not be able to hire this attorney because the Cherokee Nation owned the land and it would be indirectly --

MR. HANNAH: If the Cherokee Nation owned the land --

MR. GUNTER: If the Cherokee Nation own the land

--

MR. HANNAH: -- and he wishes to lease that land, would in fact one of these --

MR. GUNTER: Would it directly or indirectly apply to your ability to hire that individual? These are part-time positions, are they not?

DELEGATE: Right.

MR. GUNTER: So they have to depend on --

MR. HANNAH: Regular --

MR. GUNTER: Would those two work directly or indirectly; are they perhaps not needed?

MR. DONN BAKER: Point of clarification.

MR. HANNAH: Mr. Baker.

MR. DONN BAKER: As I understand the word "directly" or "indirectly," basically what it says is anything that could possibly come before that judge, he doesn't need to be representing them.

Whatever it is, I'd say if they're leasing land, and it could possibly come before that judge, then you couldn't hire him. He would have to tell you, "No, it's a conflict of interest." Not that there's going to be a lawsuit, but if someone brought a lawsuit, and it could possibly come before him, he would have to stay away from it.

And that's what this language is. We want to make sure that our judges are completely impartial, and they do not hold some other job with CNI or the Housing Authority or any other place where it could possibly have some influence on them in the judiciary. So I think it would prevent it.

MR. HANNAH: Thank you for the clarification, Mr. Baker. Mr. Keen, you are recognized.

MR. RALPH KEEN: Thank you, Mr. Chairman. I present Section 7 of the revised version of the Constitution. And it reads:

"Justices of the supreme court shall be subject to removal from office only for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.

The Council shall enact such laws as are necessary to carry into effect the provisions of this section, ensuring therein that due process is afforded the accused.

Judges of the district courts shall be subject to removal under the same procedures and standards as are applicable to members of the Council."

In drafting this language here, we established two separate standards. And the intent was to set a higher standard to make it more difficult to remove a judge from our supreme court.

The standards that I've read here about incompetency,

willful neglect of duty, habitual drunkenness, that is the same standard that is applicable to the Principal Chief. And I felt it being the highest members of that branch of government, that it would only be commensurate that we hold them to the same standards as the Principal Chief, and the same protection, afford them the same protections.

Judges of the district courts will be held accountable to the same standard as members of the Tribal Council.

And so with that introduction and explanation, I would move that this body would approve this language.

MR. HANNAH: Motion is before us. Is there a second?

MR. DONN BAKER: Point of information.

MR. HANNAH: Yes, sir, Mr. Baker.

MR. DONN BAKER: What is the standard for removal for those that -- if you can give it to us real quick. How do we get rid of the district judges?

MR. RALPH KEEN: That might take just a second to find, the language.

MR. DONN BAKER: We're not going to be saying that you can be a district judge and be drunk, are we, or they're corrupt? I mean, it looks to me like all of those things would be a good reason to get rid of any judge.

MR. RALPH KEEN: I have found it, sir. If we look at Article X, Section 2: "All other elected or appointed officials, shall be subject to removal from office in such manner and for such causes as may be provided by laws passed by the Council." So the Council would be incumbent to set those standards.

MR. DONN BAKER: So that's what bothers -- I don't know if I'm supposed to talk, but that bothers me that if we say this is how we get rid of the supreme court judges, what's fair for the goose ought to be fair for the gander.

I mean, I don't see that it ought to be any different. Basically, we don't know what it would take to get rid of a district judge, right?

MR. RALPH KEEN: It would have to be set by the Council, and I'm not sure what the current statutory code in place is.

MR. DONN BAKER: Would you be opposed to just making all Justices subject to that same removal deal?

MR. RALPH KEEN: All justices or all judges?

MR. DONN BAKER: All judges of any court.

MR. RALPH KEEN: I would not be opposed to that, no, but I would have to poll my fellow Commissioners.

MR. HANNAH: What say you, Mr. Underwood?

MR. UNDERWOOD: No opposition.

MR. HANNAH: Ms. Coon, would you be opposed to changing this language?

MS. COON: No.

MR. HANNAH: Dr. Gourd, what say you? Mr.

Hannah is not opposed.

MR. GOURD: I move for that friendly -- to just include all judges.

MR. HANNAH: Mr. Baker, does this meet the parameters of your friendly amendment?

MR. DONN BAKER: Yes, it does.

MR. HANNAH: Excellent. Thank you, sir. Floor is open for debate.

MR. RALPH KEEN: Mr. Chairman, we need a little more help in here.

MR. HANNAH: What are you asking, Mr. Keen?

MR. RALPH KEEN: We need to strike the last sentence.

MR. HANNAH: Okay. Without opposition, we will make that strike in relationship to the amendment that's been made. Hearing no objection, it is done.

MS. MASTERS: Call the question.

MR. HANNAH: Mr. Dowty, you are recognized.

MR. DOWTY: I'm going to abstain again, but I would like to address this to the attorneys. Perhaps Mr. Baker. If a judge was convicted of a felony drug possession, would that fit this criteria?

Because that would not necessarily involve moral turpitude. Moral turpitude goes to dishonesty, like license, stealing, but I don't know that a felony conviction for certain matters would fit this definition.

MR. HANNAH: Mr. Baker, you are recognized.

MR. DONN BAKER: I agree. I just kind of overlooked it. I think maybe didn't we mean to put, "or any conviction of a felony or a crime involving moral turpitude," is usually what we see.

MR. RALPH KEEN: I would accept that language as a friendly amendment.

MR. SMITH: May I make a suggestion?

MR. HANNAH: Mr. Smith, you are recognized.

MR. SMITH: When I was looking at that, we have three classes of crimes. Crime against persons; crimes against property; crimes against the government. And here the government would be the Cherokee Nation.

What I would suggest is that we use -- distinguish if we want to have crimes against persons, property and the government. I certainly would suggest the government.

But also on a felony, you can get convicted of a felony in state or federal court but be convicted of the same offense in tribal court, which would be deemed a crime. So we would need some language, too, or a crime conviction in tribal court, which would be a felony of -- committed in another jurisdiction.

MR. HANNAH: You wanted to propose language or just --

MR. SMITH: Just wanted to debate.

MR. HANNAH: Unless Mr. Baker has something to say in reply that would help clarify what the debate is, we might in fact well move for, if you have a motion.

Mr. Baker, what say you?

MR. DONN BAKER: Well, I agree that within the Nation there isn't any felony, but generally speaking, any felony that would be a felony -- of course, a felony in the state of Arkansas may be a high misdemeanor in the state of Texas. So we can kind of get into problems there.

The language I prefer would be conviction of any felony, wherever he gets it, or any crime involving moral turpitude, and I think that covers it. Plus, if he gets a felony conviction, more than likely he's going to lose his law license and would certainly not be able to practice as a judge anyway.

MR. SMITH: Mr. Baker, I anticipate whatever language we use here, we'll also use for the Principal and Deputy Chief because this is the mirror language. So the consideration as to the law degree may not be a critical consideration.

MR. HANNAH: Mr. Baker.

MR. DONN BAKER: I'm not married to this. I'm just --

MR. SMITH: Do we have a moment that maybe we can coccus and get your language?

MR. HANNAH: Yes.

(recess taken)

MR. HANNAH: Mr. Smith has proposed language to substitute, or to include and strike. His motion is, the language would read:

"A crime under the laws of the Cherokee Nation that are committed in some other jurisdiction would be a felony or misdemeanor involving moral turpitude or offenses against the Cherokee Nation." And striking the sentence, "or any crime involving moral turpitude committed while in office."

That is the motion, Mr. Smith, and is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. The floor is open for debate.

Mr. Smith, would you care to guide us through your rationale?

MR. SMITH: I think we need to put back in the language, "while committed in office," at the very tail of the -- unstrike "committed while in office," and strike --

MR HANNAH: The restriction of the strike line is before, "any crime involving moral turpitude." Any further explanation for us, Mr. Smith?

MR. SMITH: As we talked about earlier, in our codes there's no distinction between "felony" and "misdemeanor." That's the purpose of the first clause. If somebody is convicted of a crime in tribal court, which would generally be a felony, they would be subject to removal.

The last phrase, "misdemeanor involving moral turpitude," I concur, involves usually larceny or other offenses against the Cherokee Nation. Those are not only property crimes, but perhaps efforts for, say, extortion or such.

And the last, what you exclude from the general scope of crimes is misdemeanors against property of persons. For example, public drunk, driving under the influence, simple assault and battery. So theoretically you could get a city ticket for speeding or assault and battery, and that might invoke these provisions.

MR. HANNAH: Does anyone rise in opposition to the language that has been presented?

MR. WHEELER: I have a question.

MR. HANNAH: Mr. Wheeler, point of information.

MR. WHEELER: Why did we not want to add any other court of public jurisdiction, so that we could have someone convicted in a state or federal court that it would apply as well as Cherokee Nation courts?

MR. HANNAH: What say you, Mr. Smith?

MR. SMITH: It would appear to me that a conviction of a felony would suggest that it is with some other court. Because we don't have -- in our court we call them "all crimes," so that's the second phrase. But in other jurisdictions, you would have "felonies" and "misdemeanors," so that would imply other jurisdictions.

MR. HANNAH: Mr. Baker, you are recognized.

MR. DONN BAKER: Point of clarification. What we're saying there is a conviction of a felon, let's say that you embezzled money; you could be prosecuted in the State of Oklahoma, convicted of a felony. Or what Chad is talking about, is you could be -- embezzle money and charged in tribal court.

In tribal court, it would not be a felony because we don't have that. So that's what he's explaining. So I think it covers any felony conviction, and then he adds, if it's a crime that would be a felony in some other jurisdiction, but it was in tribal court, they need to go, too.

MR. HANNAH: Any other delegates rise for point of information, question or debate?

DELEGATE: Move the question.

MR. HANNAH: Question has been moved. Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, what we'd be voting on would be the inclusion of the underlying language which reads:

"A crime under the laws of the Cherokee Nation committed in some other jurisdiction would be a felony or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office."

It would also move to strike the language, "or any crime involving moral turpitude committed while in office."

All of those in favor of the substitution and strike, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no." Motion carries and the language stands.

And we are still discussing and open for debate on Section 7.

MR. DOWTY: I abstain.

MR. HANNAH: And the good delegate formerly of West Peavine abstains graciously.

Mr. Keen, you are recognized.

MR. RALPH KEEN: I would call the question on Section 7.

MR. HANNAH: Question has been called on Section 7. Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, the language would read as approved:

"All judicial officers shall be subject to removal from office only for willful neglect of duty, corruption in office, habitual drunkenness, incapacity, or any conviction of a felony.

A crime under the laws of the Cherokee Nation having been committed in some other jurisdiction would be a felony or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office.

The Council shall enact such laws as are necessary to carry into effect the provisions of the section ensuring therein that due process is afforded the accused."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no."

And the section has been approved.

MR. DOWTY: I would have a continued objection.

MR. HANNAH: With the exception of the former resident of West Peavine who abstains graciously.

Mr. Keen, is the impression of the Chair that Section 2 is the only section remaining in this article, and it is on the table at this time; is that correct, sir?

MR. RALPH KEEN: I would agree.

MR. HANNAH: What would be your suggestion?

MR. RALPH KEEN: I would move that we take from the table Section 2.

MR. HANNAH: There's a motion to bring Section 2 from the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: And all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

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

And it is off the table. And the younger Mr. Keen is

recognized.

MR. JOHN KEEN: Call the question.

MR. HANNAH: Question has been called.

MR. ROBINSON: Objection.

MR. HANNAH: Objection. Mr. Robinson you are --
Dr. Robinson, excuse me, sir.

MR. ROBINSON: That's all right, I was Mister
for about three years.

MR. HANNAH: Okay. Very well. Go ahead.

MR. ROBINSON: I finally grew up at forty.

MR. HANNAH: We'll haul you back to your earlier
years, sir. You are recognized.

MR. ROBINSON: Rick Robinson, delegate,
Tahlequah. I do want to apologize to the entire body for doing
this, but I was detriment in my duty. I had promised a couple of
individuals to put forth an effort to have six-year terms, and
because I was working on the math and this body has become a little
bit faster on getting stuff done, it was passed before I knew it.

So I am putting forth a motion for six-year terms, and if
I do get a second, I will give my argument based on mathematics
because I think all the other arguments have been given for and
against.

MR. HANNAH: The only portion of your motion
then, sir, to substitute the term "six" for the number "ten"?

MR. ROBINSON: Yes, I believe -- yes, it's still
every two years --

MR. HANNAH: A motion is before you to
substitute the number six for the number ten. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. The floor is
open for debate.

MR. ROBINSON: I would like to just give my
position.

MR. HANNAH: You may, sir.

MR. ROBINSON: This is for information for the
group. I consulted with Mr. Smith on their graph and Mr. Moore.
They both did a good job on that. And essentially you can work it
out either way.

I, of course, prefer the six years. And what happens is
with the presumption that this is passed, and that it is passed
before the end of 1999, which I think it will happen, this is how
both of our figures are based.

What will happen is that the next Chief, whoever that may
or may not be, will have at least four selections during his or her
first term. If the present Chief is reelected, he will actually
have five choices, if you include Mr. Dowty, Justice Dowty.

And then, thereafter, each new Chief or -- you know, each
election, after each election, there will be the opportunity for
that Chief to elect two -- or to select two justices.

So, essentially, we would be looking at in reality a

five, and then it would be two, two, two, two, until the end of the world. And Cherokees will still be left after that.

Under six years, you will have -- the next Chief will have the highest possibility of selecting three. Then it will be three for two more terms. Because of the anomaly of mathematics, there will be one term where there is four. And then beginning with the fifth term, it will be three after that. That is all I have to say. Thank you.

MR. HANNAH: Thank you, good doctor.

MR. GUNTER: Point of clarification.

MR. HANNAH: Dr. Robinson, please forgive the Chair for laughing, but I somehow knew this was coming, for some reason. The Chair is becoming more clairvoyant as we move along in this section.

Mr. Gunter, of Texas, you are recognized.

MR. GUNTER: That math confuses me. If you have five justices and they're alternating every two years -- it just doesn't work for me.

MR. ROBINSON: Can I explain that?

MR. HANNAH: Yes, sir.

MR. ROBINSON: The five justices is with the supposition, with the idea that the present Chief is Chief after August the 14th, with the idea that he has already appointed Justice Dowty.

We have a position open right now. That is Number Two. And then we have to add two. The extra two, that's three and four.

And then during the next term, Justice Viles' position comes open, and that is number five.

Now, if another person is selected as Chief, of course, that individual will only be able to select three or four according to if one office gets filled.

It's just pretty easy really. It's five, three, three, four and then three. The other way, it's four, and two from then on. Thank you.

MR. HANNAH: Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, I rise in opposition to this amendment, and my reasoning being that it's supposition is that the current Principal Chief be reelected, and I think we ought to have some sort of formula that will put my officer in there in getting all kinds of appointments. So I just don't think that it's right. We found a good system. It's going to work for us, and I think we need to stick with it.

MR. HANNAH: Mr. Keen, the Chair would be pleased to recognize you.

MR. JOHN KEEN: John Keen, delegate. I've got some fresh perspective, I hope. I guess that's what you call it.

The ten years does something, I don't know, maybe that we haven't talked about, is it gives the court a certain continuity with their opinions. And also a -- you know, with other courts continually seeing the same names on opinions, I think that might do

something for the court.

But the continuity of the ten years, it gives a political insulation, also. More so than six years does, so I would be for. I would be against the striking in that perspective. Thank you.

MR. ROBINSON: Call the question.

MR. HANNAH: Question has been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, we would be voting on the Robinson proposal to strike "ten" and include "six." If you vote in the affirmative, we will strike "ten" and include "six." All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

THE DELEGATES: No.

MR. HANNAH: Motion does not carry and remains.

MR. DOWTY: Abstain.

MR. HANNAH: And once again, Mr. Dowty abstains graciously.

MR. ROBINSON: Point of personal privilege.

MR. HANNAH: Yes, sir.

MR. ROBINSON: Just to try to be a good guy, I went ahead and voted "no" with you all. I just wanted you to know that. I wouldn't have made a difference on the "yes," anyway.

MR. HANNAH: Thank you, good doctor.

Mr. Keen, it would be the understanding of the Chair that we have moved through the entirety of this article; is that correct, sir?

MR. RALPH KEEN: No. I think we have one more issue we need to take up.

MR. HANNAH: Yeah -- true, so true. So where we are at this point is back to Section 2, and apparently we have a motion on the floor. This was the Smith proposal.

MR. SMITH: Moore proposal.

MR. HANNAH: Thank you. To include the strike.

MR. SMITH: I propose the language for the transition for the underlying provision -- you'll like this, strike, "the Council." The following -- semicolon, I'm sorry. "The following shall designate the seats and the initial term respectively." New line. "Seat one end 12-31, 2000. Seat two end 12-31, 2002. Seat three end 12-31, 2004. Seat four end of 12-31, 2006. Seat five end 12-31, 2008." New line. "After completion of the initial term, the justices shall serve a period of ten years."

MR. HANNAH: Mr. Keen.

MR. RALPH KEEN: Let's change the justices to, "Each justice shall serve a term of ten years."

MR. HANNAH: Mr. Smith has a motion before us. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second, and the floor is

open for debate.

MR. ROBINSON: Mr. Chairman.

MR. HANNAH: Yes, Dr. Robinson, you're recognized.

MR. ROBINSON: Rick Robinson, delegate. I'm in favor of this, but I want some clarification from Mr. Smith. My intent on this question is simply that of the two justices that are now seated, I would hope that this would not shorten either one of their present terms.

And so I'm not sure, you know, what Justice Viles' seat is now, and what Justice Dowty's seat is now. Does this not shorten that? I'm just wanting to make sure this doesn't shorten Mr. Viles' and Mr. Dowty's present terms.

MR. SMITH: Seat one --

MR. ROBINSON: What seat is Justice Viles in now?

MR. SMITH: Seat one.

MR. ROBINSON: Would have it normally ended in 2000?

MR. SMITH: Actually that's Darrell's seat that he picked up. I think seat two is Viles.

MR. ROBINSON: I do not know.

MR. SMITH: That would be 2002. Seat three is Birdwell's. Is that right, Darrell? That seat one is misnomered, then.

MR. STARR: Mr. Chairman.

MR. HANNAH: Mr. Starr of Starr Springs is recognized.

MR. STARR: Seat one, they're ending 31 December, that's Justice Viles' seat. That's when it terminates.

MR. ROBINSON: What was Mr. Birdwell's seat? Is he seat two?

MR. STARR: His is 2002.

MR. ROBINSON: Is that seat two, though?

MR. STARR: The way it's designated there, that's what it would be.

MR. ROBINSON: That's not my question. What is it now? Are they designated --

MR. STARR: They're all designated by the time that they expire. And then seat three is Justice Dowty, who just took office.

MR. HANNAH: Are you clarified, good doctor?

MR. ROBINSON: I just want to make sure that someone wasn't given less time. Now, if they're given a little bit more time, that's okay, as long as they're not given less time. So thank you much.

MR. HANNAH: Dr. Hook, you're recognized.

MR. HOOK: Mr. Chairman, I stand in support of this proposal, but would propose a friendly amendment. The implication of that language is that those justices seated in the

initial terms will continue their seats to serve ten years at that time. I would suggest after completion of the initial terms, each term shall be ten years or something to that effect.

MR. ROBINSON: We've got that. We have that.

MR. HOOK: Each term, not each justice.

MR. RALPH KEEN: Each term shall be ten years.

MR. HANNAH: Accepted? Very well. Any other delegates wish to be heard?

Mr. Starr, you are recognized.

MR. STARR: I'm not sure this is proper. I guess I'm a little confused as to where we stand right now. But it would seem in order that there not be any confusion whatsoever, as we speak, and as we stand now, we have two seats -- well, actually I guess we have three seats that actually have definite terms or definite expiration dates, the first coming in 31 December of 2000.

I would suggest that we designate those at this time by the ones who are occupying them at this time. Number seat one being Justice Viles; seat two would be the vacancy; seat three would be Justice Dowty. And then that way there would be absolutely no confusion whatsoever as to when terms began and ended.

I guess, if it be proper, I'd offer that as an amendment, if that's the proper way to do it.

MR. CORNSILK: Point of information.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: Is Delegate Starr suggesting that we are going to have the names of individuals Cherokee Citizens in the Constitution?

MR. HANNAH: I believe that the Chair believes that, yes.

MR. STARR: Yes, sir, I think that's the only definite way that they can be really earmarked at this point in time, since these seats are going to be carrying over and two of the three justices right now are occupying those.

MR. RALPH KEEN: Point of information.

MR. HANNAH: Good manager, you are recognized.

MR. RALPH KEEN: I understand the problem that Mr. Starr raised, but I would suggest this. Rather than putting names in our organic document, that may or may not even be applicable when it eventually goes into effect, if it does, let me suggest that we have a record of this, and it would be easy to research what seats we contemplated whenever we drafted this language. And so it would not be that difficult for a court to go back and interpret that, or the Council for that matter to interpret it.

MR. STOPP: Point of information.

MR. HANNAH: Point of information, Mr. Stopp.

MR. STOPP: The way I'm reading this, and I may be reading it wrong, it says, "after completion of initial term, each term shall be ten years."

So if you get seat five, you go through initial term,

then you get ten more years. Why would we put seat four and five as automatic? Because when this is passed, we're going to seat judges, and they would be for ten years. So four and five would just begin with ten-year terms --

MR. SMITH: That doesn't get our two-years staggered, and then we don't know when the Constitution will pass. So when it passes, we know what date four and five end. To accommodate Rex Earl, would it be appropriate to have a resolution by the convention that it's our understanding and intent to seat nominees, presently held by whomever, rather than just reading in the record, can we have a convention resolution? It would be easier to make a record.

MR. HANNAH: Mr. Littlejohn, you're recognized.

MR. LITTLEJOHN: I would offer a suggestion that Section 2 might read, "Justices of the supreme court shall be appointed by the Principal Chief and confirmed by the Council to serve terms of ten years each, after expiration of the following terms." And then let's go to terms one through five, and pick up a new -- the rest of it would be carried out.

MR. HANNAH: That's only designating it by seats and not having the names identified.

MR. LITTLEJOHN: Then you don't have your name identified, true. Then you limit your bottom sentence; that's correct.

MR. RALPH KEEN: Mr. Chairman.

MR. HANNAH: What say you, Mr. Keen.

MR. RALPH KEEN: Well, I think he also suggested to strike out the sentence starting at "appointment"; is that correct?

MR. HANNAH: Mr. Littlejohn, give me some --

MR. LITTLEJOHN: My intention was to move that down below seat five and take the place of where it now says, "after completing the initial term."

It's a matter of form, I guess, and the Style Committee could take care of it. You might want, instead of listing seat one, two, three, four, five, which I think looks good, you can, wrap them back around to have them run in a narrative style.

What I was going to suggest there is, after expiration of initial terms as follows, colon, and then delete the -- the following shall designate seats, initially.

MR. HANNAH: Again, sir.

MR. LITTLEJOHN: Delete that, after expiration of initial terms as follows. That's my suggestion.

MR. RALPH KEEN: Do we still need the sentence, after completion of the initial term --

MR. LITTLEJOHN: We do not need that.

MR. RALPH KEEN: I did not think so, okay. We delete what? Yes, I think I would accept that at this point, unless he changes it again. Does that suit you?

MR. LITTLEJOHN: That's my suggestion, to

eliminate names.

MR. HANNAH: I'll take that as a friendly amendment. It will be added; is that correct, Mr. Keen?

MR. RALPH KEEN: That's correct.

MR. HANNAH: Floor is open for debate.

MS. MEREDITH: Can we call the question before they have another brilliant idea?

MR. CLARKE: Second.

MR. HANNAH: Good lady from Oklahoma City calls the question, and the man who celebrates his birthday and invented the number eighteen has seconded.

And, Mr. Keen, before us would be the language of Section 2.

MR. RALPH KEEN: Actually, she just omitted the underlines of the striking the motion to substitute.

MR. HANNAH: And that's where we'll be -- this question would be on the language to substitute and the language to --

MR. RALPH KEEN: Yes, and she also needs to underline after, "as follows," when the seating language picks up.

MR. DONN BAKER: Point of information.

MR. HANNAH: Yes, sir.

MR. DONN BAKER: Is it too late to add the word "decade" instead of "ten years."

MR. HANNAH: Thank you, Mr. Baker. Small talk from a man who was shunning every sheriff in all seventy-seven counties of the state.

MR. RALPH KEEN: I think we're ready to proceed.

MR. HANNAH: All right, ladies and gentlemen, here's what we're going to do. We have a motion before us to include language that begins with:

"Each after expiration of the initial terms as follows, seat one ends 12-31, 2000. Seat two ends 12-31, 2002. Seat three ends 12-31, 2004. Seat four ends 12-31, 2006. Seat five ends 12-31, 2008."

And also the language to include:

"The Council shall within six months of this Constitution taking effect pass such laws as are necessary for carrying into effect the provisions of this section."

Also, in this would be the striking of the language, "to implement this provision the term of justice having the longest remaining term upon the effective date of this article shall be extended to nine years. The justice having the second longest remaining term shall be extended to six years. The justice having the shortest remaining term shall be extended to three years."

If you vote in the affirmative, the language that you see underlined would be included, and the language that has been stricken on line through will be removed. Is that correct, Mr. Keen?

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

MR. HANNAH: All those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: All of those opposed said "no."

The changes stand. The language --

MR. DOWTY: Abstain.

MR. HANNAH: Except for the good man formerly of West Peavine, who abstains graciously.

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Mr. Cornsilk, you're recognized.

MR. CORNSILK: Delegate Cornsilk. I wonder, point of information, if it might be appropriate at this time, moment to enter into the record an official motion that the intent of this body was that seat one shall be the seat occupied by Philip Viles. Seat two shall be the vacant seat. Seat three shall be the seat occupied by Darrell Dowty. And I would put that in the form of a motion, if it's appropriate.

DELEGATE: Second.

MR. HANNAH: There's a motion, and it has been seconded. All those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed "no."

THE DELEGATES: No.

MR. HANNAH: And it has been entered into the record. Thank you, Mr. Cornsilk.

Now, Mr. Keen. I assume that we are prepared to look at Section 2 in its entirety.

MR. RALPH KEEN: That would be correct, sir.

MR. HANNAH: And if there's no objection.

MR. RALPH KEEN: I would call the question.

MR. HANNAH: The question's been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: And without the Chair once again reading what he just read, all of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

And the language is adopted in Section 2 -- I'm sorry. Now, you've got me doing it, thank you. It's approved, not adopted, and the language stands. And I assume that the good delegate formerly of West Peavine abstains graciously -- and he does.

Mr. Keen, you're recognized.

MR. RALPH KEEN: Mr. Chairman, if we have no other proposals for this article, we are now ready to approve in total Article VII, the judicial article. And I motion to do so.

MR. HANNAH: Motion on the floor to approve Article VII. And it has been seconded. Hearing no objections -- we haven't seen Section 1 in so long. It's been days since we've seen Section 1. And we obviously have something dangling around there,

left over. Some final genetic hangover from another article. Mr. Keen, can you identify that sentence, sir?

MR. RALPH KEEN: Mr. Chairman, my belief is that that was language that was once part of the proposed amendment that has been orphaned.

MR. HANNAH: The Chair declares this language to be superfluous, and it will be removed.

Would you all like for the Chair to read this article to you? And there you see it.

Okay. Ladies and gentlemen, it's a very historic vote for us. And the Chair will take this opportunity to thank every delegate that has been about the room, and the great and important debate that has gone on here because if we in fact include this language, and if it in fact is a part of the document that would be passed from this body, on to the voters of the Cherokee Nation, and if they were so inclined to adopt it, then we will have, by the Chair's own personal interpretation, reclaimed very historic powers of justice for this great Indian Nation that we have.

All of those in favor of the sections that have been presented under Article VII, please say "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed said "no."

MR. DOWTY: Abstain.

MR. HANNAH: And the gentleman formerly of West Peavine abstains graciously. And the good man from Black Gum -- be careful Mr. Black Gum.

MR. McCREARY: Point of personal privilege.

MR. HANNAH: I knew you were going to do this.

MR. McCREARY: Since we have reached a momentous moment of the evening, I propose that -- I make a motion that we recess until 8:00 tomorrow morning at the designated area.

MS. STROUD: Motion to reconsider.

MR. HANNAH: Beg pardon?

MR. SCOTT: Are we coming back in this room?

MR. HANNAH: No, we are not. If we are to in fact recess for the evening, we will reconvene in the Tribal Council chambers of the great and sovereign Cherokee Nation, located beyond -- just to the west of Park Hill.

MR. McCREARY: That is my motion, that we recess and reconvene at 8:00 in the morning.

MR. HANNAH: There is a motion.

DELEGATE: It's been opposed.

MR. HANNAH: What is the question here?

MS. STROUD: I would like to -- just real quick because I'm ready to go home, too. Motion to be reconsidered between -- in Article V, after Section 12 and 13. In between there. That's where we did the Attorney General -- or diplomat, excuse me.

MR. HANNAH: "Representative," ma'am.

MS. STROUD: Yes, something, to -- go underneath there, after 12, and insert -- you have to help me, but this an

idea.

MR. HANNAH: Okay.

MS. STROUD: We're going to be importing and exporting in the near future, the Cherokee Nation, and I think we need a plan. So I would like to have somewhere a position of ambassador that would be appointed by Council to represent the citizens of the Cherokee Nation to advocate in good will, that the Council will prescribe the laws for the ambassador.

MR. HANNAH: There's a motion to reconsider on the floor. The good lady has explained her rationale for wishing to reconsider. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second and the floor is open for debate.

MR. CORNSILK: Mr. Chairman, motion to table.

MS. SCOTT: Point of information. I think this was already filled like February 2nd. It's on the Internet that we have such a position now, by Dr. Gourd. I'm just saying I'm aware that that does in fact exist.

MR. HANNAH: Very well.

MR. BILL BAKER: Orders of the day.

MR. HANNAH: Orders of the day are really beyond our scope because of the time factor.

What would be the pleasure of the delegates?

MR. GUNTER: We had a motion to dismiss.

MR. HANNAH: Beg your pardon?

MR. GUNTER: Point of order. You had a motion to dismiss.

MR. HANNAH: I'm sorry, sir?

MR. GUNTER: Point of order. You had a motion to dismiss.

MR. DOWTY: Point of order. It doesn't require a two-thirds vote to reconsider.

MS. STROUD: May I ask that we table for tomorrow?

MR. CORNSILK: That's what I said.

MS. STROUD: That would be about -- if we can talk about it tomorrow. Withdraw and bring it up tomorrow.

MR. CORNSILK: Thank you.

MR. HANNAH: Thank you, Ms. Stroud, thank you very much. The motion was withdrawn. Now, ladies and gentlemen, let's pay attention here for just a second. We're all about to head for the barn. We haven't voted on that, yet.

The clairvoyancy again, Dr. Hook, he may not have been in the beginning, but he is beginning to see things in the future. The employees of the great and sovereign Cherokee Nation usually arrive at 8:00. Is there a suggestion from the body with regard to what time we would wish to take up business?

THE DELEGATES: 8:30.

MR. HANNAH: Very well. So, therefore, we have

a motion on the floor to recess this body until 8:30 a.m. tomorrow morning, where it will reconvene in the Tribal Council chambers of the Cherokee Nation --

MR. McCREARY: I'll accept that motion of 8:30.

MR. HANNAH: Thank you, thank you. I thought you said 8:30. You did, didn't you?

MR. McCREARY: I did.

MR. HANNAH: We'll meet in the Tribal Council chambers of the great and sovereign Cherokee Nation. That is a motion.

MR. ROBINSON: Point of personal privilege.

MR. HANNAH: Good Doctor, what would you --

MR. ROBINSON: Delegate Robinson. Once again, I'm a real stickler about trash, and I have another thing, but could you please pick your trash up?

I would just think that I would like to put this out. We have done a fantastic job, and we have become much closer, but I think also tomorrow -- if everyone could listen, please, I would appreciate it.

MR. HANNAH: The good gentleman deserves to be heard, ladies and gentlemen. Thank you.

MR. ROBINSON: Tomorrow we will be probably watched by more people, and today in the atmosphere of getting things done and being cordial, we have become a little lax in, you know, calling the points real well. And I would just think that tomorrow, we probably need to once again start saying "delegate" and our name and those types of things as a help to those that will be observing. And that is just -- I thought -- we've got -- getting along so well, but sometimes we've allowed ourselves --

MR. HANNAH: We forget to recognize ourselves, good doctor, and your admonition is well accepted here.

MR. ROBINSON: Thank you.

MR. HANNAH: Mr. Secretary, do you have an announcement to make before the Chair drops the gavel and calls the vote?

MR. UNDERWOOD: A privilege. I went by my office last night. Some of you know that I'm a CPA, and I saw such a stack of tax returns. I thought maybe I had better get at them tomorrow so we could collect enough money to pay for the convention.

I appreciate having worked with all of you, and I want to assure you that as I was counting and pointing at you, I was doing it with my full hand. I appreciate the support from all of you; good to see you; good to work with you.

MR. HANNAH: You are most appreciated, good delegate.

MS. MASTERS: Point of personal privilege. The Secretary cannot leave the body.

MR. HANNAH: I wish in fact that were the case. Any other information to come before this body?

All of those in favor of the motion on -- well, first of

all, is there a second?

DELEGATE: Second.

MR. HANNAH: I hear a second. And all those in favor, signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And the opposed said "no."

THE DELEGATES: No.

MR. HANNAH: That could be a roll call vote.

DELEGATE: No.

MR. HANNAH: We are in recess.

(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 3rd day of March, 1999, in the Cherokee Nation Tribunal Courthouse, 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 June, 1999.
