

1999 CHEROKEE NATION CONSTITUTION CONVENTION

VOLUME V

TRANSCRIPT OF PROCEEDINGS, taken on the 2nd day of March, 1999, at Northeastern State University, Net Building, Tahlequah, Oklahoma, County of Cherokee, State of Oklahoma, before Marla J. Cullison, a Certified Shorthand Reporter, in and for the State of Oklahoma, commencing at the hour of 8:00 a.m.

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THEREUPON, the following proceedings were had:

MR. HANNAH: The day will begin. Good to see each and every one of you this morning. Before you follow the Secretary, give a report of the registration this morning and go over a few housekeeping activities.

Once again, I would call on the interpreter for the convention, Ed Jumper, to come and open us with a word of prayer.

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

MR. HANNAH: Christy Redick will join us this morning as time rep for today. Christy, thank you very much for allowing us to press you into service here as a volunteer. Does the Secretary have a report of the Credentials Committee?

MR. UNDERWOOD: I have a report, Mr. Chairman. Fifty-six delegates registered. Our quorum is thirty-nine.

MR. HANNAH: The numbers are here for us to be in order today.

Well, let's prepare for today's business. Now, yesterday, we did very well. Strong work yesterday. The Chair will look for the assistance of the delegates today as we move through our business in helping to control our chamber. We worked well together, and we had good, hard debate, and there was some strong passion that was shown here yesterday.

And as I remarked to a delegate early this morning, as I stood out to take the morning sun and breathe in some good Cherokee County air, if you do not come to this work with passion, then you probably should not be here. Subduing that is yet another challenge that we oftentimes have. So you are doing well. I am very proud of each and every one of you. We are holding the quorum here that I believe speaks to the quality and respect of our people.

As for our gallery, and today we have two visitors that are here with us. It is good to see you, and you are welcome here.

And I realize that my comments at this point, please understand that the Chair does not direct them to the young lady and the young men that we have in the gallery this morning, but more so for those who may decide to be here with us later today.

As you can imagine, this event is drawing a great deal of attention and we have folks that are showing up with every type of electronic device known to mankind to monitor what is going on here and to report that to the outside world.

Now, there are actually a few of your delegates that have pagers and cell phones, and I would ask that it's fine for you to use those, but you will put those in a soundless position, and you will be mindful that it will not disturb our deliberations with whatever sidebar activity that you have going on.

The Chair recognizes that we, in fact, have lives beyond the scope of these chambers, and you may, in fact, be about the process of taking care of those items that need to be taken care of, but please be aware that we would like to be able to move through

with as little disruption as possible.

I also want to mention that we will no doubt move through some voting activity today. And yesterday was an interesting selection of voice votes, standing votes and, of course, the infamous roll call vote, and a few things of that nature.

I do believe there is a great possibility that some of the folks that we had in the gallery yesterday decided to join in on some of our voice votes. And the Chair has attempted to be mindful of the mouths of those in the rear. I think you all will recall that the Chair has zero tolerance for inclusion of voices beyond the delegate line and that will be the rule of the day.

It is certainly the intent of the Chair to keep this as all Cherokee customs have been, and that would be for anyone who would wish to come and hear our deliberations and see our government at work, they are welcome in these chambers. But they are here simply to observe and to listen.

And so if at any time -- and the Chair asks the assistance of the delegates, because the acoustics here are most interesting, and certainly from this particular perspective -- that if anyone believes that a voice vote is being convoluted -- (cell phone ringing) and there's a classic example. We are all going to look around now. Lay it on the floor the stomp it three times. I know how to answer those things.

If any of the delegates believe that our voting by voice vote would somehow be convoluted by any of the visitors, then the Chair would immediately entertain that indication and will take swift action with regard to the gallery, and also will be corrective of what we're doing here on the floor.

Now, with regard to this roll call scenario --

MR. KEEN, JR.: Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: If I might make a suggestion, and I'll put it in the form of a motion if I need to. With respect to the roll call, I would propose that we would adopt a rule that no less than five people would request a roll call before this body takes one, just to help keep us from getting bogged down on this.

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

MR. JOHN KEEN: I would second that motion.

MR. HANNAH: And there's a second. And hearing no objections, all those in favor signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: The Chair rules the motion passes.

If five of us cannot get together, ladies and gentlemen, on a subject of that nature, then we have a great challenge.

I went home last night to do some reading. I thought that would be kind of an interesting way to sit back. Contrary to popular belief, I do not read constitutional law while I'm at home.

But I did go where I've been staying here in Tahlequah with my

family, and went to the family library and pulled a text.

And I thought seriously about perhaps saving this to share with you toward the close of this convention, should there be one. But I thought maybe to kind of wait for a moment to get us all in our seats and to get our mind focused on the work of today, I would share it with you today.

We're very fortunate to have writers among our people. Emmett Star was one of those. He collected a number of papers. And while there are those here in the room that, I'm sure, are being questioned with regard to the administration of one of our Principal Chiefs, John Ross, I am still reminded that his words somehow will speak through the years and have value for us.

Upon arrival in the west, Cherokee Chief John Ross settled in at Park Hill. It was there at a place called Camp Illinois in April of 1839, that he initiated a correspondence with those Cherokees that had moved some the day before, the old settlers. And I thought we might reflect on the letter that he sent to them upon the Ross contingency arriving and settling in after the Trail of Tears.

The following letter was written by Chief Ross to the western Cherokees. It says: "Friends, through the mysterious dispensation of providence, we have been permitted to meet in general council on the border of the great plains of the west. Although many of us have, for a series of years past, been separated, yet we have not and cannot lose sight of the fact that we are all of the household of the Cherokee family and of one blood.

We have already met, shook hands, and conversed together.

In recognizing and embracing each other as countrymen, friends, and relation, let us kindle our social fire and take measure for cementing our reunion as a Nation by establishing the basis for a government suited to the condition and the wants of the whole people, whereby wholesome laws may be enacted and administered for the security and protection of property, life, and other sacred rights of the community.

Our meeting on this occasion is full of interest and is of particular importance to the welfare of our people. I trust, therefore, that harmony and good understanding will continue to prevail and that the questions which may come up for consideration will be maturely weighed previous to a final decision."

I always find it amazing that oftentimes the words, and as I mentioned earlier, the passion that is required in these events, well, perhaps they have been felt and spoken before. Thank you for allowing me to share those thoughts with you on my reading from last evening.

The day is open for business. Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. On the agenda, the next order of business is to begin presentation and the discussion on the executive branch of government. Therefore, Mr. Chairman, I make a motion to approve Article VI, The Executive,

beginning with Section 1 and ask we move to conclusion.

MR. HANNAH: Motion is on the floor; is there a second?

MR. HEMBREE: Second.

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

Mr. Smith, you are recognized.

MR. SMITH: We've had this conversation before, and I guess we'll have it again, but we're here to evaluate the '75 Constitution. And sometime yesterday, we abandoned the process of posting both the '75 Constitution and your proposals to amend it.

I would request that we continue the practice of posting the Cherokee Constitution and looking at the proposed amendments per section.

MR. HANNAH: We will continue to observe those documents. Thank you, Mr. Smith.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk.

I would offer an amendment to this. And I suppose I need to write it up real quick here, but I wasn't expecting that there would not be a runoff election for the Principal Chief. It is of great concern that, to me, that we could --

MR. JOHN KEEN: Point of order.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: Delegates rising. We need to have them in written form, along with our standing rules before they are presented at the podium.

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Just one moment, gentlemen. Just one moment.

Thank you, Mr. Keen, for your point. The delegation has been indulgent of those individuals stepping to bring amendments, and we've obviously had a great deal of latitude in building our language here. And I accept your reminder of our rule in spirit, and I would also rule for our common sense.

And the Chair would remind good Mr. Cornsilk that if you have amendments, we are prepared to hear them, sir. And by no means directed at you, but all of our delegates, let's try to refrain from composing them at the microphone, if at all possible. We recognize the final language is difficult for us. The Chair, more than anyone in the room, does not do this on a daily basis. And oftentimes we move at the speed that requires us to be able to think on our feet.

So with that, you may continue, Mr. Cornsilk.

MR. HOOK: Point of information.

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

MR. HOOK: I may have missed something. Are we now considering Section 1, and if so, are we going to hear from the Commission first before considering the amendments?

MR. HANNAH: Dr. Hook, that is a good point. Thank you very much. You will notice that the Commission has

offered managers to be able to introduce those pieces. I know this is Dr. Gourd's first introduction of such. And perhaps Mr. Cornsilk would yield for a moment and the good lady would be patient and we can once again hear from Dr. Gourd with the rationale from the Commission with regard to the proposal that we see before us.

Charlie, do you want to give us some background on this or would you rather -- and feel free to direct to the other Commission.

MR. CORNSILK: (inaudible)

MR. HANNAH: Mr. Cornsilk, thank you, sir, for doing so.

MR. GOURD: Mr. Chairman, I understood that our purpose in reading that was to open debate for amendments to get the debate and discussion and all of that started. So the motion was not intended that this body accept as written everything, but maybe my motion was wrong.

MR. HANNAH: No, your motion was correct. It's just early in the morning, and we need to see the format.

MR. JOHN KEEN: Point of clarification.

MR. HANNAH: Yes, Mr. Keen.

MR. JOHN KEEN: Could I ask the Manager from the Commission to explain the rationale behind their proposal?

MR. HANNAH: Dr. Gourd, you may begin. Mr. Keen, you may assist.

MR. GOURD: Mr. Chairman, would it not be in order to read it first?

MR. HANNAH: If you would care, I will do so. We are on Section 1 of Article VI, I believe. "The executive powers shall be vested in a Principal Chief who shall be styled the Principal Chief of the Cherokee Nation. The Principal Chief shall hold his or her office for the term of four years and shall be elected by the registered voters from the same day and in the same manner except as otherwise provided by this Constitution. And they shall respectively vote for members of the Council for that particular year.

The candidate for Chief receiving the highest number of votes shall be the Principal Chief. But if two or more shall be equal in highest in votes, one of them shall be chosen by a vote of Council. A manner of determining contested elections shall be as directed by Cherokee law."

Mr. Keen, you are recognized.

MR. KEEN: Thank you, Mr. Chairman. I would just, by way of explanation or by recommendation -- and I'm taking this directly from the footnotes in the revised draft that you have -- this section had quite a bit of obsolete language that was actually implementing the language of 1975. And the language provided,

"The Principal Chief in office when this Constitution is ratified shall continue in office until the successor is duly elected in 1979 election and installed." That language has been

omitted.

And the language, "The return of the election for the Principal Chief shall be sealed and directed by the lawfully appointed election officials to the Secretary-Treasurer who shall immediately, after the organization of the Council and before proceeding to other business, open and publish the same in the presence of a majority of the Council."

That language has been omitted based on the feedback that we have from Tribal officials, that even though it's been in our Constitution, that process has never really been closely followed after the establishment of the Election Commission.

And the only substantive change that we made to the language that you see on the screen before you is one of clarification, the phrase, "The person having the highest number of votes," has been modified to read, "The candidate for Chief receiving the highest number of votes."

And with that, that is all the changes that we have made to this section.

MR. GOURD: And one of the -- to us, a logical reason to put -- make sure that was for the office of Principal Chief, in recent elections we have people getting a higher number of votes for Council than was cast for the Chief. So if it just says the candidate receiving, you know, the highest number of votes will be the Chief, you may not have even been running. So we just put the language in to clarify that. Thank you, Mr. Keen.

MR. HANNAH: You are recognized, sir. I believe I am relinquishing the floor.

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Yes, Mr. Cornsilk.

MR. CORNSILK: I believe I relinquished the floor and --

MR. HANNAH: You did, and you are once again recognized. Kind gentleman will excuse the Chair.

MR. CORNSILK: As it stands right now -- Delegate Cornsilk. I'm sorry. I'll try to follow the rules, John.

As it stands right now, this provision could see a Principal Chief elected with 200 votes. And I realize this is not a substantive change, because it's simply a rearrangement of the wording, but this would certainly supersede the legislative act which is in place right now that requires a runoff election.

And I have an amendment here written. It was written by Mr. Lay. And I've discussed this with Mr. Smith, and he is attempting to secure a copy of the legislative act. And I think that if we can table this for just a short while, and bring it back up, there are several of us who are very concerned that the Principal Chief be elected by at least fifty-one percent. So I would make a motion that we table this.

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

DELEGATE: Second.

MR. HANNAH: Those in favor, signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And the motion moves to the table.

Thank you, Mr. Cornsilk, for your comments.

Mr. Keen, you are recognized.

MR. KEEN, JR.: If I may just make one more comment on this section before we move ahead, it was never contemplated and certainly not the intent of the Commission to try to eliminate the runoff election in any way. So if we have done that inadvertently, then you have our apologies.

MR. HANNAH: Thank you, Mr. Keen, for clarifying that.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Mr. Gourd.

MR. GOURD: Not being versed in the parliamentary procedure, there was no second to the motion, and how can you table one that is not seconded or put up for discussion?

MR. HANNAH: Sir, that would be an interesting point. Thank you very much. So after the introduction of the motion by Mr. Gourd, is there, in fact, a second to accept his motion?

There was a second. And the Chair thought that he perhaps would have heard one. Thank you.

MR. GOURD: Then we proceed to Section 2.

MR. HANNAH: Continue, Mr. Gourd.

MR. GOURD: "Section 2. The Principal Chief of the Cherokee Nation shall be a citizen of the Cherokee Nation in accordance with Article III, shall have been born within the boundaries of United States of America, its territory or possession, shall have established a bona fide permanent residence within the historical boundaries of the Cherokee Nation for no less than two hundred seventy days, immediately preceding the day of the general election in 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."

We had another error. "Of Oklahoma" is included there.

MR. HANNAH: The motion is before us. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Floor is open for debate. Young lady from Ramona is identified.

MS. McINTOSH: Dorothy Jean McIntosh, Ochelata.

Mr. Chairman, I would request translator, Ed Jumper, to come in at this time.

MR. HANNAH: Yes, ma'am.

MR. KEEN, JR.: He has left the building.

MR. HANNAH: Would the kind lady wish to wait?

MS. McINTOSH: Could I be recognized at a later time when he is back in the area?

MR. HANNAH: The Chair will do so. And if Vice-Chairman will see to it that Mr. Jumper, upon his return, is brought here for us, that will be done.

MS. McINTOSH: Thank you. Then I will yield at this time.

MR. HANNAH: Thank you very much, ma'am.
Mr. Cornsilk.

MR. CORNSILK: Delegate Cornsilk. I would offer a friendly amendment to add the words, "and the requirement of Principal Chief by blood," citizen by blood of the Cherokee Nation.

MR. HANNAH: You're speaking of the first line; is that correct, sir? Mr. Cornsilk?

MR. CORNSILK: Well, the top sentence and the bottom sentence are not in accord with one another.

MR. HANNAH: Now they are, sir. Is that your friendly amendment?

MR. CORNSILK: Well, you're being redundant if you're saying he has to be a citizen twice.

MR. HANNAH: I'm not doing anything, Mr. Cornsilk. I am just trying to find out what your friendly amendment is.

MR. CORNSILK: I just want to make it perfectly clear that the Principal Chief must be a Cherokee Indian.

MR. HANNAH: And I believe the final sentence -- and the Chair would stand corrected, but I believe the final sentence will do that for us.

MR. CORNSILK: I will withdraw that.

MR. HANNAH: All right. Thank you, Mr. Cornsilk.

The young lady from the west is recognized.

MS. MASTERS: I just wanted to ask the maker of the motion, if we are going to consider within the boundaries of the United States, its territories and possessions, now we are at the point, I think, and just in the time of our history, that people can be born in other areas, due to a lot of considerations, military, children of people working abroad in the government. Do we want to limit ourselves in that way?

MR. HANNAH: Dr. Gourd.

DR. GOURD: Please restate the concluding part. I couldn't understand what you were saying about the military, and what else?

MS. MASTERS: The few words of the phrase, "within boundaries of United States of America, its territories and possessions," I wondered if we really wanted to limit ourselves in that way, since children could be born to their parents in other areas now; we have got quite a global population. Do we want to limit ourselves in that way?

MR. GOURD: We had discussion on all of these

points, especially this one. Our consideration was, if they are serving in the military on U.S. Military installation, that should be included. If, for example, they're a child of an ambassador out of Mongolia or somewhere, that would be sufficient. But by the time you go through all of the inclusion kinds of things, this would go on forever.

MS. MASTERS: It was not an inclusion, it was an elimination.

MR. HANNAH: The good delegates, once again, let's not get ourselves into a debate this morning.

MR. GOURD: I'm just saying we're willing to accept --

MR. HANNAH: You're doing fine, Dr. Gourd.

MR. JOHN KEEN: Point of information.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: I believe I conferred with a couple of people on this. I believe that the Federal Enclave Act addresses the possessions and would include people who are abroad of that nature. So that I don't believe there would be a problem with that, in that regard. If I may submit that information.

MR. HANNAH: Thank you, Mr. Keen. We'll accept that. The good doctor is recognized.

MR. ROBINSON: I'm in agreement with Ms. Master's. Delegate Ricky Robinson. I feel like -- and I don't know if I'm doing this in the proper manner, but I feel like that whole section should be struck, and it would simply say with Article III, "and shall establish a bona fide residence."

Irregardless, I don't know much about the Federal Enclave Act, but we also have citizens of the Cherokee Nation that are not citizens of the United States. I do not think that you need to be a citizen of the United States to be a citizen of the Cherokee Nation.

And we have a few hundred right now in the Philippines, in Germany, in Netherlands, in Asia. And this inclusion would be like, well, you can't be a citizen of Canada unless you're a citizen of Mexico, too.

So I feel like this needs to be dropped. And if you're a citizen of the Cherokee Nation by being able to prove that you're a direct descendent of the Dawes roll, original enrollee, you're a Cherokee.

I'll make a motion that we strike this section that's highlighted and, of course, there would have to be some cosmetics to the language to make it read right.

MR. HANNAH: Motion to strike. Is there a second.

DELEGATE: Second.

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

MS. SCOTT: Deborah Scott. I stand in support of Dr. Robinson's amendment. I think it should be eliminated from this paragraph.

MR. HANNAH: Thank you, ma'am. Mr. Cornsilk, I recognize you.

MR. CORNSILK: Mr. Chairman, David Cornsilk. I stand in support, having worked in the registration office of the Cherokee Nation for three years. I am familiar with the fact that there are Cherokee citizens living in other countries who are in no way connected to the citizenship of the United States.

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

MR. MULLON: Thank you, Mr. Chairman. Delegate Mullon. I would be in support of the striking of that language there. I can give a fairly good example. Every person in my family, all of my brothers and sisters, would be allowed -- would be able to run for Principal Chief, except for my younger sister, because my father was called to serve in the armed forces and happened to have been born in Vienna.

And it just doesn't make any sense that she would not be able to run for Chief. I don't think she has any plans to do that, but there must be a lot of Cherokees out there who would be able to serve, but couldn't because of circumstances such as that.

MR. HANNAH: The delegate raised an opposition to the motion in support to strike the language as highlighted.

Mr. Keen, you are recognized.

MR. JOHN KEEN: The language is common. It's almost everywhere for every elected office. I really think there's instances where it may be improper, such as Mr. Mullon's sister, that being an unfortunate circumstance. But you want to reach out for those few instances, look at the other side. We may have someone born and raised in Japan and knows nothing of our culture who comes over and is elected Principal Chief.

MR. HANNAH: Thank you, sir. Dr. Hook, you wish to be recognized?

MR. HOOK: Yes, I speak in support of this amendment as well. I submit that just because something is commonly accepted in other documents, there's absolutely no requirement that we include it. And that we already have the criteria for inclusion as Cherokees with our Dawes roll requirement. And any more restrictions necessary are destructive to us as a people.

MR. HANNAH: Thank you very much. Any delegates rise in opposition to the motion that is before us? Hearing none, the Chair will close the debate.

All of those in favor of the amendment submitted by the good doctor that is before you to strike this language that has been highlighted, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: And the language is stricken.

MR. CORNSILK: Mr. Chairman.

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

MR. CORNSILK: I move to take Section 1 off the

table.

MR. HANNAH: There is a motion to bring Section 1 off of the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: It's out of order because we are still in Section 2, and we have to complete this. Mr. Cornsilk, thank you for indulging us in the procedure.

Debate is open on Section 2, ladies and gentlemen. Chair will entertain. Mr. Gunter, you are recognized.

MR. GUNTER: Mr. Cornsilk, I believe, withdrew his motion to include "by blood" in the first line, did he not?

MR. HANNAH: Mr. Cornsilk?

MR. CORNSILK: Yes.

MR. HANNAH: And the scribe will make those changes. Thank you, Mr. Gunter, for being attentive to the screen.

Starr-Scott, you are recognized.

MS. STARR-SCOTT: Starr-Scott, delegate. I believe this may be just a point of information. But I think that on the residency thing for Council members, we changed that language to read "domicile," to clear it up. Will someone correct me if I'm wrong? It should be consistent throughout the Constitution.

MR. HANNAH: "Domicile," the word there.

MS. STARR-SCOTT: I would make that motion.

MR. HANNAH: You offer it as a friendly amendment?

MS. STARR-SCOTT: Yes, I would.

MR. HANNAH: Friendly amendment for substitution.

MR. GOURD: Yes, sir. Again, the Style Committee, I think it's important to note it where we can, but it's an important note to the Style Committee.

MR. HANNAH: That's fine.

MR. KEEN, JR.: Mr. Chairman, I would also recommend that we strike the words "bona fide," and just state it "shall have established" -- "it shall be domiciled."

MR. HANNAH: Thank you, Mr. Keen. Unless there is objections from the Commission with regard to what is being submitted, the Chair will move us right along.

Mary Ellen Meredith from Oklahoma City, you're recognized.

MS. MEREDITH: While we're playing with all of this, I would like to strike the word "historical," in the phrase "historical boundaries," and refer just to our boundaries. Since we've obviously seen here that some people don't understand that we are a territorial Nation, I think we ought to bring this up to the present.

MR. HANNAH: You have a motion on the floor to strike the word "historical." Is there a second?

DELEGATE: Second.

MR. HANNAH: And those in favor signify by

saying "aye."

THE DELEGATES: Aye.

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

(no response)

Debate is open. Mr. Smith, you are recognized.

MR. SMITH: I concur. I think what we need to do is come up with a definition for boundaries, so what we do is historical reference the Cherokee Nation and make that consistent through the Constitution.

MR. HANNAH: Point well taken. Anyone rise in opposition to the kind lady's suggestion to strike the word "historical"? Hearing none, Chair will move us to the question.

All of those in favor of striking the word "historical," please signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: The word is stricken. And if it would please the delegates, the officers of the convention will make note to work with the Style Committee in seeing that there's consistency in the phrasing.

The kind lady from Ramona has once again been recognized.

MS. McINTOSH: Mr. Jumper has gone out to the complex, but I think I can call on one of the delegates. The gentleman over there in the black jacket, I believe he could come up here.

MR. HANNAH: Mr. Crittenden?

MS. McINTOSH: Yes. Could you come and translate for me, please?

MR. HANNAH: The kind lady from Ramona is recognized.

MR. CRITTENDEN: The lady here has asked me to interpret for her.

(translation in Cherokee)

MS. McINTOSH: That was wonderful to be able to find someone here to translate. I didn't have to wait.

MR. HANNAH: Thank you for approaching to give voice to our native tongue with regard to this convention.

MS. McINTOSH: So let it be recorded and debated that I speak for many Cherokee voices. I've been charged as a delegate to our constitutional convention that they wish to add to the last line of Section 2 that after the word "citizen," to include:

"by 1/16th of greater blood quantum and bilingual Cherokee/English of the Cherokee Nation."

MR. HANNAH: Motion on the floor to amend the language of Section 2 to include the line:

"be a citizen by 1/16th or greater blood quantum and bilingual, Cherokee/English of the Cherokee Nation." Thank you.

Motion is on the floor. Is there a second? There is no

second, and the amendment does not proceed.

MS. McINTOSH: Mr. Chairman, I thank the delegation for their consideration. And so let it be written that it was presented.

MR. HANNAH: Kind lady from Ramona, thank you very much.

The good man is recognized.

MR. DOWNING: I think this is an extremely important discussion to have. I'm not sure how I will vote. I'm, again, not sure which side I'm on. But I would like to hear this discussed. So I will second the motion.

MR. HANNAH: Very well. There is a second. Floor is open for debate.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, I rise in vehement opposition to that proposal. Again, with my experience in the Cherokee Nation, having worked in the registration department for over three years, I would submit to this body that the Cherokee Nation people are very diverse. We've heard that many, many times since we've been here. And that ninety percent or more of the Cherokee Nation is less than one-quarter Indian.

That the most common degrees of Indian blood in our Tribe is 1/16th and 1/32nd. If we put this kind of limitation on ourselves, we are simply saying that we don't trust ourselves to lead our own Nation. We're trying to say that the people, our own children, our own grandchildren, at some point are not capable of leading this Nation, simply because they have some federally imposed degree of Indian blood.

The Cherokee Nation law, as it stands right now, imposes absolutely no degree of Indian blood on our people. We are all citizens of the Cherokee Nation, equal with one another.

I'm half. My children are three-quarters. And I pray to the Almighty that my children are going to marry full blood and I'm going to have 7/8ths degree grandchildren. But, by God, I will stand here and defend the right of every citizen in this Nation to serve in the highest office of this Tribe.

MR. HANNAH: Mr. Baker, how rise you?

MR. BILL BAKER: I rise in opposition. By this, we're saying that Chief John Ross should have never been Chief of the Cherokee Nation, that he did not meet either one of these qualifications. We're saying that we are going to put a time and date on the existence of the Cherokee Nation. If we put a grade of Indian blood on it, and add the Cherokee speaker to it, we're saying that in a hundred years or two hundred years, that we will cease to exist as a people, at least with a leader. Thank you.

MR. HANNAH: Chair would entertain the delegate that would rise in favor of the amendment for us.

MR. JOHN KEEN: I make a motion to strike the bilingual reference.

MR. HANNAH: Mr. Keen, do you rise in favor with

the amendment?

MR. JOHN KEEN: I rise with an amendment to the amendment.

MR. CORNSILK: There's already an amendment on the floor.

MR. HANNAH: Out of order, Mr. Keen. The debate is still open.

MR. JOHN KEEN: I appeal the ruling of the Chair. I am in order in making an amendment to the amendment.

MR. HANNAH: Now, ladies and gentlemen, we're going to have a vote on the appeal made by the good delegate to overrule the Chair, so we can see if we can have an amendment of the amendment.

MR. CORNSILK: Point of information.

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

MR. CORNSILK: Do we have Section 2 as an amendment, and then Mrs. McIntosh as an amendment, and then Mr. Keen as an amendment? Is that my understanding of where we're at right now?

MR. HANNAH: Thank you. The only adjustment I would make is that Mr. Keen has not been accepted for an amendment at this point.

MR. CORNSILK: That's the proposal.

MR. HANNAH: What he's proposing to do is to be able to make an amendment. So now we're going to vote to see if we will overrule the Chair. The Chair's intent was for us to be able to continue and hopefully close our debate on the issue and take the vote. But now we're going to vote to see if I'm overruled, so that Mr. Keen can introduce his amendment.

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: And, Mr. Keen, you are overruled from the Chair at this point. The debate is still open with regard to Ms. McIntosh's amendment that she has to the section.

MR. CORNSILK: Call for the previous question.

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

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, all those in favor of the amendment presented by the kind lady from Ramona, 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 we are now back to Section 2.

MS. SCOTT: Call 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 opposition, Section 2 is before us.

"The principal Chief of the Cherokee Nation shall be a citizen of the Cherokee Nation in accordance with Article III. Shall be domiciled within the boundaries of the Cherokee Nation for no less than two hundred seventy days immediately preceding the date of the general election in 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."

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

THE DELEGATES: Aye.

MR. HANNAH: All of those opposed say "no."

(no response)

And the motion carries; the language stands. And, Dr. Gourd, you are recognized.

MR. GOURD: Mr. Chairman, I would defer to a possible motion to bring Section 1.

MR. HANNAH: A possible motion?

MR. GOURD: To bring --

MR. HANNAH: The motion is here. The motion is here. To bring on the table Section 1.

MR. DOWTY: Point of information. On yesterday's business, in particular, I recall the Chair did allow myself and others to pose a friendly amendment to an amendment.

MR. HANNAH: True.

MR. DOWTY: Do I understand that that procedure is still in place?

MR. HANNAH: Sir, the Chair would rule that that is still in place. Mr. Keen did not rise with a word of offering of a friendly amendment. He was preparing to procedurally bring an amendment, as the Chair understood.

And the Chair, ladies and gentlemen, nothing {}gerkony is taking place here, okay? I simply want to keep this about the business. And we can do things together, and we can do them in a spirit of cooperation without miring this process in undue, undue procedure.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk. I move that Section 1 be brought off the table.

MR. HANNAH: There is a motion to bring Section 1 off the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And it is off the table.

MS. SILVERSMITH: Mr. Chairman.

MR. HANNAH: The young lady from Salina, I believe, is recognized.

MS. SILVERSMITH: Good morning, everyone.

MR. HANNAH: State your name for the record.

MS. SILVERSMITH: Molly Silversmith. I forgot for a moment there. I wish to make an amendment to Section 1. The second sentence that reads, "shall hold its office for the term of four years," start right there. "May hold elected office two consecutive terms, may not hold elected office of Chief for the next four terms." I think we're going to have to redo this as we did before. "May seek office again after a four-year lapse."

I know we're going to have to work with the language on that.

"Terms" instead of "lapse." Next term? It looked better on my paper, but it doesn't look that well up there.

MR. SMITH: May I make a kindly suggestion to the Chair?

MR. HANNAH: You may.

MR. SMITH: Could we go back and copy, put on the screen the language that was previously adopted by the convention to the Council?

MR. HANNAH: One moment, Mr. Smith.

MR. McDANIEL: Mr. Chairman, could I ask a question?

MR. HANNAH: Just a moment, Calvin. We're trying to bring something up on the screen, and then I'll get to your question.

MS. SILVERSMITH: We can transfer that language and insert Chief -- "Principal Chief," I should say.

MR. HANNAH: One moment, Ms. Silversmith.

MS. SILVERSMITH: Yes, sir.

MR. HANNAH: Is this your amendment that you have, that we see in underline, that,

"The Principal Chief shall be limited to two consecutive election terms in office. After having served two consecutive terms, he or she must sit out one term before seeking re-election as Principal Chief"?

MS. SILVERSMITH: Yes, sir, that's it.

MR. HANNAH: All right.

MR. McCREARY: Mr. Chairman.

MR. HANNAH: We have a motion on the floor to amend. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second., and floor is open for debate. One moment here folks, one moment.

Mr. Baker.

MR. BILL BAKER: I would like to add a friendly amendment, if I could, to that. It would be "full terms."

MR. HANNAH: Help us with where.

MR. BILL BAKER: Consecutive full terms.

MR. HANNAH: Consecutive after -- Chair assumes, Ms. Silversmith, that would be fine.

MR. SMITH: I would like to make another friendly amendment with Ms. Silversmith, if possible.

MR. HANNAH: Yes, sir, you may.

MR. SMITH: Maybe it's too much lawyer, but the word "sit out" seems to miss the point. If I could suggest he or she shall be ineligible.

MS. SILVERSMITH: I think my folks in Kenwood know what ineligible is. I will accept that.

MR. SMITH: I understand sit out, but it just --

MS. SILVERSMITH: They understand both ways, and I think they will understand ineligible.

MR. HANNAH: And being in Kenwood on many occasions, I assure you, they know what ineligible means.

MS. SILVERSMITH: I will accept that.

MR. HANNAH: You are very kind, Ms. Silversmith.

Very good.

Very patient, and you are recognized.

MR. McCREARY: Ken McCreary, Black Gum. I would like to offer a friendly amendment to this, if she will accept it, and to -- in an effort to simplify a lot of things, to strike everything after, "Principal Chief shall be limited to two consecutive elected terms in office," period.

MS. SILVERSMITH: I can't do that, sir. This isn't my personal proposal. This is from people in my area that have asked me to bring this here.

MR. HANNAH: Very well. And thank you, kind delegate. Kind man from Black Gum, thank you. And, Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, after the addition of the words "full terms," I see a slight problem and if Ms. Silversmith would entertain this for just a second. Reaching back into our own history and remembering that Principal Chief Ross Swimmer was elected to a term and then went to Washington, D.C., and then didn't stay, I guess. He could have come back because he did not serve a full term, and ran a third time. So is that okay?

MS. SILVERSMITH: That's quite all right.

MR. CORNSILK: So he was out for two years, and then he's back for a third -- even though it's three consecutive elected terms. That's fine? Okay. I just wanted to clarify that in my mind.

MR. HANNAH: Thank you, Mr. Cornsilk. Any other delegates rise in opposition or in support of the amendment that's before us?

Dr. Gourd, you are recognized.

MR. GOURD: Charles Gourd from Greater Keys, America. I fully agree with the language and the intent. But in terms of clarification, I think as was pointed out, the first

sentence takes care of everything. The second -- I mean, once you serve two consecutive full terms, that's it. To say it again, after having served two years, is ineligible for one term, which, by definition, the first sentence already took care of it. It's strictly a matter of simplicity in the Constitution and not having to say the same thing over and over. That took care of it.

MS. SILVERSMITH: Well, Mr. Gourd, the people --

MR. HANNAH: One moment, Ms. Silversmith. Okay.

Being the author, let's hear from some other delegates. The kind lady from the west is recognized.

MS. MASTERS: I don't agree that it's repetitious because what we're saying in the delegate's amendment is that if this person so desires, they can come back and serve the Nation again. The first sentence says that they're just limited to that. And I don't think this is repetitious. And I support the amendment as stated.

MR. HANNAH: The kind man from Black Gum.

MR. McCREARY: Ken McCreary from Black Gum. I support the amendment in one concept of the limited term. However, to allow the Principal Chief to come and seek another election at another time, I think is a little bit too much.

Being a factor that most times, Principal Chief or Deputy Chief normally has come up through the ranks of the Council and everything else and have served a number of years in the government of the Cherokee people. And likened with the President of the United States and other state governments, the head of the state, that is usually the culmination of their political career. And I do not see to allow them to come back after they serve a full two elected terms in office. Thank you.

MR. HANNAH: Thank you, sir.

Good doctor, you are recognized.

MR. ROBINSON: Rick Robinson, delegate from Tahlequah. This is probably more -- I'm not quite sure if I'm in support or not. I think I am in support, but I just wanted to make a clarification.

MR. HANNAH: Okay. Point of clarification.

MR. ROBINSON: As I remember with the Council, if this is passed, it would not take -- it would come into effect obviously later this year, and it would not be retroactive. In other words, you have -- well, just say Principal Chief Byrd who has been in one term now, he would still be able to run for two more terms, because I think somewhere we have in the language it is not retroactive.

MR. HANNAH: That would be correct, sir. Thank you.

Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate from Iowa. It's my understanding we have already passed the term limits for the Council. We have accepted the language in an amendment.

MR. HANNAH: They have been accepted, sir.

MR. JOHN KEEN: I think it's imperative to keep the term limits the same. If we're going to impose it one elected office, then they should be identical, if we're going to impose term limits on any other office.

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

MR. MULLON: Thank you. Delegate Mullon here. I agree with the addition of the words "full terms" in there. And I do feel like it is good clarification to have that second sentence in there because there might be -- there's a lot of ways you can interpret the first sentence if it were standing alone.

But I would suggest -- and this is probably the lawyer in me that I can't suppress -- you do, in the first sentence, refer to elected-full-terms, and in the second sentence you merely say consecutive-terms.

And I would suggest a friendly amendment that would pick up exactly the same words there, so that there is no implication that the second sentence is dealing with a slightly different situation than the first sentence.

MR. HANNAH: Ms. Silversmith, what say you?

MS. SILVERSMITH: I'm not a lawyer. After having served two consecutive elected terms, it's okay with me.

MR. HANNAH: His point is bringing similarity in the language, and without opposition, it's added.

Mr. Gunter, you are recognized.

MR. GUNTER: The affect it might have would be that if the Deputy Chief became Chief through the death of the Principal Chief and served whatever of that term, then two elected terms would be two more terms. But if you don't have elected terms, then he would serve maybe a month the first term, and only be eligible for one more term.

MR. HANNAH: Thank you, Mr. Gunter. Does anyone rise in opposition to the amendment?

MR. SILVERSMITH: Mr. Chairman.

MR. HANNAH: You are recognized, sir.

MR. SILVERSMITH: I'm Rufus Silversmith, delegate from Salina-Kenwood area. I would like to speak in opposition.

MR. HANNAH: The good gentleman needs to be heard here, folks. Thank you.

MR. SILVERSMITH: I would like to speak in opposition of the word being added in "full term," because we do have an Article XI that does constitute the fact that should a question come up as to the validity of a Principal Chief to hold office, under the guidelines of drunkenness and/or whatever disorder or dysfunctional or unaccountability. The thing is, that full term would enhance that that person go ahead and serve a term, in lieu of, should charges be brought up against for dismissal.

I think that this might override that. And I would like to have the consideration put before the delegation here that that

term, "full terms," be questioned. Perhaps even the word "full" be removed. Thank you.

MR. HANNAH: Without direction from the author, the wording will stand. Are there other delegates that rise in opposition? Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate, Iowa. What if I run for office, somehow or another I become popular enough to be elected Principal Chief in other situations, and I decided that I didn't like this; I wanted to continue to be Chief, and I'm popular enough to do so. So I decide to resign one day before I complete my term and run again.

Or what if I am so unpopular with the faction that they can have me removed every time, but I'm popular enough with another faction to be re-elected again? If we take out that wording, we will eliminate both of those situations.

MR. HANNAH: Thank you, Mr. Keen.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Delegate Cornsilk. John and I concur.

MR. HANNAH: Let the record reflect.

Mr. Dowty, you are recognized.

MR. DOWTY: Delegate Dowty from Tahlequah. I think John raises a good point. I think that if the election filing period came about in the last year of the term of the Chief, and that you could not preclude that person from refiling. So I think his point may be well taken.

MR. HANNAH: Kind man, you are recognized.

MR. DOWNING: There is a way to compromise and get around this. Somewhere, with some language, and I don't have it, you could indicate that the cutoff point for a term would be two years. In other words, if the Principal Chief were impeached after two years, the Deputy Chief serving that, that would not count against them.

If he were impeached one year into the term, then the Deputy Chief, that would count as a full term for the Deputy Chief.

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

MR. MULLON: Thank you, Mr. Chairman. Delegate David Mullon. Mr. John Keen's argument is very persuasive, and I remain in favor of the language that we've got here. If Mr. Keen were -- if he were to be elected, and I think that may happen some day, who knows, and he did what he says, that is, he resigned two days or whatever before the end of his term, the problem would be not the full, but that he wouldn't be consecutive either, because there would automatically -- the Deputy Principal Chief would become Chief, and his terms would not have been consecutive.

So I'm wondering whether this needs to be thought about very, very carefully as to how it should be worded. I don't know if we've come to a solution here.

MR. JOHN KEEN: Mr. Chairman, may I be recognized?

MR. HANNAH: Mr. Keen, you are.

MR. JOHN KEEN: In rebuttal of that statement, although you are opening up our minds, Mr. Mullon, I think the word "elected" will cover that, two consecutive elected terms.

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

MR. JOHN KEEN: Now, if I am removed or resigned, somebody else will take my place, but he will not be filling the elected term. I can then refile for the next elected term, because I didn't fill the previous -- I wasn't there for the full elected term in the last term. So "elected term," I submit, would cover that. The Deputy Chief would not be filling the elected term that would have been the elected term.

MR. MULLON: I understand your argument. But if you think about it very carefully, the two terms, whether or not the Deputy Chief is elected into that position, obviously he's not, but the two terms, term number one was elected, term number two, he would have been elected; you were elected the first time, you resign, and you are elected the second time.

The problem is, those are not consecutive because there is a direction in between them of some kind where the Deputy Chief comes between them. So they are not consecutive. I understand, but elected doesn't take care of that because they're not consecutive.

Again, I just wonder whether we need to think about how this ought to be worded very carefully to avoid these things, because some little trick like that is very possible someone would try to do something like that. I don't think that's at all improbable.

MR. HANNAH: The gentleman from Black Gum.

MR. MULLON: If I could, Mr. Chairman, I would make a motion to table this.

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

DELEGATE: Second.

MR. HANNAH: There is a second.

All 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 item is laid on the table.

MR. McDANIEL: Mr. Chairman.

MR. HANNAH: Calvin, you are recognized.

MR. McDANIEL: I want to submit a motion pertaining to what we've been talking about.

MR. HANNAH: Okay.

MR. HOOK: Mr. Chairman, point of privilege.

MR. HANNAH: Yes, sir.

MR. HOOK: I move for a five-minute recess.

MR. HANNAH: Thank you, Dr. Hook, for saving the Chair there for just a moment. Let's take a five-minute recess and we'll be back in here.

(recess taken)

MR. HANNAH: Delegates, let's take our chairs.
Thank you for indulging us for a five-minute break.

Mr. Keen, you are recognized.

MR. JOHN KEEN: With our caucus, I have -- John Keen, delegate. I believe we've come to a consensus, and I would make a motion to take Ms. Silversmith's motion off the table and offer her a friendly amendment.

MR. HANNAH: Motion to bring the Silversmith amendment off the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

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

(no response)

And the item is back on the table. And the item that you see before you is, "The Principal Chief shall be limited to two consecutive," and you'll see that language.

Mr. Keen, you're recognized, sir.

MR. JOHN KEEN: Ms. Silversmith, would you accept a friendly amendment?

MS. SILVERSMITH: Yes, sir.

MR. JOHN KEEN: I'll read this slowly, so the scribe may keep up with me. "No person having been elected to the office of Principal Chief in two consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her second term of office."

MR. HANNAH: What say you, Ms. Silversmith?

MS. SILVERSMITH: I'll accept that.

MR. HANNAH: Very well, without objection from the second, the language is added and the floor is open for debate.

MR. JOHN KEEN: John Keen, Delegate.

MR. HANNAH: John Keen.

MR. JOHN KEEN: I believe with the objections that I raised to the previous amendment, I believe this fills the gaps in there, and this would be acceptable to me.

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

MR. GOURD: Just as a point of clarification, would the definition of "person" here mean the same thing as "citizen"?

MR. JOHN KEEN: That was the intent, I believe.

MR. DOWTY: Point of information.

MR. HANNAH: Mr. Dowty, point of information.

MR. DOWTY: I would inquire of Delegate Keen if that was intended in substitution of the prior language.

MR. HANNAH: And that would most likely be the correct --

MR. JOHN KEEN: Yes, that is in substitution.

MR. HANNAH: It is substitution; it is not

added.

MR. DOWTY: Did the author understand that?

MR. HANNAH: And the author understands that what we have is that we are replacing the previous verbiage with this verbiage.

MS. SILVERSMITH: I understand that.

MR. HANNAH: And I thought you did. Thank you, Mr. Dowty, formally of west Peavine, for helping to keep us straight. Ladies and gentlemen, at all times, we want to be exactly clear where we are.

Mr. Littlejohn, you are recognized.

MR. LITTLEJOHN: Mr. Chairman, Delegate Littlejohn rises for the purpose of offering a friendly amendment to the proposed language by eliminating, at the end, "term of office," and change that term to "election." It would appear to me that term of office would have the same difficulties that Mr. Keen raised in his earlier discussion.

MR. JOHN KEEN: Was that a friendly amendment?

MR. HANNAH: It is.

MR. LITTLEJOHN: Call for it as such.

MR. HANNAH: Mr. Keen, I know that you and Ms. Silversmith are working here, so what say you?

MS. SILVERSMITH: Could I have Mr. Keen answer that?

MR. HANNAH: Yes.

MR. JOHN KEEN: I would not accept that as a friendly amendment. I believe that changes the substance.

MR. LITTLEJOHN: I'll withdraw it.

MR. HANNAH: Mr. Littlejohn, thank you very much. Floor is still open for debate.

Good doctor, you are recognized.

MR. ROBINSON: Rick Robinson, delegate, Tahlequah. I want to be in support of this amendment. It's consistent with what we're doing with the Council, and I imagine it will be consistent with any other elected office.

One thing I do want to point out is that we will have to consider at some time, to probably go back to the section on "Election of Council Members" because from what's been brought up, the way we worded it before, we have the same problem. I just want to put that out on the floor.

MR. HANNAH: Thank you very much. Any delegate rise in opposition to the amendment that is before us at this time? Hearing none, the Chair will close debate.

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

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the language stands. And we are back to --

MR. JOHN KEEN: Mr. Chairman.

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

MR. JOHN KEEN: Would this be an appropriate time to revisit the legislative articles in terms of the term limitations we imposed there?

MR. HANNAH: I'm sorry, sir, I did not understand your question. What was --

MR. JOHN KEEN: Motion to reconsider.

MR. HANNAH: So you're moving to reconsider what?

MR. JOHN KEEN: I'm not sure exactly what section it was in Article V. But the term limitations in Article V, I believe this would be an appropriate time to revisit.

MR. SMITH: Point of order.

MR. HANNAH: I will take the point of order. And who was it? Mr. Smith.

MR. SMITH: We've obligated ourselves to fix this section before we go back and piecemeal it together.

MR. HANNAH: The Chair rules you are out of order, Mr. Keen. And we thank you for the substance of your intent, and we will be mindful to revisit.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk.

I would offer a friendly amendment to Section 1, substituting the following language at Line 1, 2, 3, 4, 5, beginning with the word "the candidate." Well, I guess it's not Line 5; even further down than that. Line 6.

MR. HANNAH: We're there.

MR. CORNSILK: Striking, "The candidate for Chief receiving the highest number of votes shall be the Principal Chief, but if two or more shall be equal and highest in votes, one of them shall be chosen by a vote of the Council."

And substituting the following language. "The Principal Chief shall be elected by a majority of votes."

MR. HANNAH: There's a motion to strike and substitute is the language as it appears. Is there a second?

MR. CORNSILK: Mr. Chairman, I would offer that as a friendly amendment.

MR. HANNAH: A friendly amendment? Thank you, sir, for the clarification. Mr. Keen -- oh, Mr. Gourd.

MR. GOURD: Thank you, Mr. Chairman. I think the insertion of this would take care of the situation on the whole discussion on runoff elections. So after a poll of the Commissioners, I would stand in favor of it, after a poll.

MR. HANNAH: Mr. Keen.

MR. KEEN: I would be in favor.

MR. HANNAH: Mr. Underwood.

MR. UNDERSTOOD: In favor.

MR. HANNAH: Mr. Underwood is in favor. Ms. Coon.

MS. COON: Yes.

MR. HANNAH: In favor. Mr. Hannah is in favor, and it's accepted as a friendly amendment by Mr. Cornsilk, and the language is added. Floor is open for debate.

Mr. Smith, you are recognized.

MR. SMITH: We looked over, Mr. Cornsilk and I and some others, looked over the statutory language that's provided for runoffs. It was our concurrence that this would preserve the status quo.

MR. HANNAH: The good man from Muskogee is recognized.

MR. McDANIEL: The language at the top of screen, "No person having been elected to the office of Principal Chief."

And I think previously you put that thought of Chief there. "Principal Chief in two consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her term of office."

I'd like to add the words, "Or any following election."

MR. HANNAH: There's a motion to amend to add "any following elections." Is there a second?

MR. ROBINSON: Point of order. Maybe I'm confused, but is that germane to what we're debating now? Maybe I got confused. I need that clarified.

MR. HANNAH: We are, in fact, on this section. We're here on this section.

Mr. Baker, you are recognized.

MR. BILL BAKER: Point of clarification. When you read what he was just speaking to, I believe John's was to be "ineligible" instead of "eligible," to file for office of Principal Chief in the next following election. He shall be eligible to file a third time?

MR. HANNAH: No person shall be eligible. Are you with me?

MR. BILL BAKER: Okay.

MR. HANNAH: There you go. Thank you.

Hearing no second for the addition of the verbiage by Calvin. Calvin, you received no second. So thank you. The floor is open for debate.

Young lady, you are recognized.

MS. MILLER: I just need some information about what "file" means. And I need someone to explain to me, under Cherokee law, does a candidate who has a write-in campaign have to file for office?

MR. HANNAH: Okay. So let's make sure that we answer your questions. Number one, you're asking about is there an allowance of write-in votes; is that correct? And, Mr. Center, I would call on you from the Election Commission, point of information. Is there a right for write-in votes on the ballot?

MR. CENTER: Not at this time.

MR. HANNAH: Not at this time. And your second

question, ma'am?

MS. MILLER: Well, I guess what I'm trying to ask is, is it possible to have a candidate run a write-in campaign without actually filing for office, and, therefore, run for the third election -- third term without actually filing for office?

MR. BILL BAKER: Point of clarification.

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

MR. BILL BAKER: If you write in, it pulls it out.

MR. HANNAH: Okay. Very well. So there is, in fact, the determination for the rule.

Ms. Stroud, you are identified.

MS. STROUD: Thank you. Virginia Stroud. I liked what Calvin had to say. And I got up here and it went away. I missed it, I guess. Because -- or Mr. McDaniel, excuse me for being so personal. But I like what he had to say because then it said if I was interpreting it -- it takes me a little while to wheel through this -- that the Principal Chief couldn't run for Council, and he couldn't run for Deputy Chief. It would disqualify him for standing in there. And before I could jump up, they took it off. But I liked what he had to say, so is that called a second? And now we're finished with it; is that right?

MR. CORNSILK: Mr. Chairman, point of order.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: If Mr. McDaniel would like to make his motion again, she can certainly second it.

MR. HANNAH: That would be very true, or she could move to reconsider. And do you move to reconsider?

MS. STROUD: Yes.

MR. HANNAH: The answer is yes. And is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: And it is not being reconsidered. And the floor is open for debate.

Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate. I'm sorry, a little bit more procedurally, but would it be appropriate to divide the question in this section at this time, since we have finished with the upper portion of the paragraph?

MR. HANNAH: You move to divide the question, Mr. Keen?

MR. JOHN KEEN: Yes, I do.

MR. HANNAH: There is a motion to divide. And I am further assuming that you are moving to bifurcate this by paragraph?

MR. JOHN KEEN: Yes.

MR. HANNAH: Is there a second?

MR. CORNSILK: Second.

MR. HANNAH: There is a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And we have bifurcated the first paragraph that is up for debate. That would be where you see Section 1 and all the way to the end of the cursor. The floor will entertain discussion.

MR. JOHN KEEN: Call for the previous question.

MR. HANNAH: And the question has been called.

Is there a second?

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, we'll move the vote. All those voting in favor on this vote will have inclusion of the first paragraph;

"The Executive power shall be vested in a Principal Chief who shall be styled the Principal Chief of the Cherokee Nation. The Principal Chief shall hold his or her office for the term of four years. No person having been elected to the office of Principal Chief in two consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her second term of office."

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

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: First serial is approved and it has been added. And floor is open for debate on the second serial. Any delegates rise in favor or in opposition of the second serial?

Young lady from Tahlequah is recognized.

MS. HAMMONS: Yes, sir, Mr. Chairman, I would offer a friendly amendment reminding the chamber that I'm an English major.

MR. HANNAH: And the Chair and the delegates are pleased that you are such. You are recognized.

MS. HAMMONS: Just for clarification on the second paragraph, if we could eliminate the semi-colon and "and," and put, "The Principal Chief" in there, I think that would restore us to what we originally intended. Would the Commission accept that as a friendly amendment?

MR. HANNAH: Hearing no objection, it is so added. Dr. Hook, you are recognized.

MR. HOOK: For a point of clarification, just for my information. How much latitude will the Style Committee have in wording changes, punctuation changes, and how will that be determined?

MR. HANNAH: The Chair would respond that the Style Committee would be responsible for grammatical, punctuation, and continuity of verbiage. By way of example, when I say continuity of verbiage, that if, in fact, we are using the term councilmen and in another section the word councilor were to be used, that we would look for consistency of verbiage.

Aside from that, any changes that would affect the form of the document would not be acceptable. Mr. Keen, you are recognized.

MR. KEEN, JR.: I was just standing to support you on that. The Style Committee cannot make any changes that would affect the substance or the intent of this body.

MR. HANNAH: And as long as the Chair is involved with that process, the assurances which stand here personally that that document would, in fact, should it be the decision of this body to adopt a document and send it on for a vote of the Cherokee people who, in fact, leave these chambers in the same form or style.

Dr. Gourd, you are recognized.

MR. GOURD: I was just trying to read what is up there.

MR. HANNAH: That's fine, Charlie. The floor is open for debate and would entertain delegates with regard to the second serial that we have before us.

Mr. Keen, you're recognized.

MR. JOHN KEEN: Call the question.

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

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor of moving to vote, please signify by saying "aye."

THE DELEGATES: Aye.

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

MR. GOURD: Point of clarification.

MR. HANNAH: Point of clarification.

MR. GOURD: It was just pointed out where it says up there, following the word "Constitution," "As they shall respectively vote for members of the Council for that particular year for contemplating two-year terms for Council," would this mean an election every two years?

MS. MEREDITH: If you go back up it says four years.

MR. GOURD: Okay.

MR. HANNAH: Are we clear? Thank you, Dr. Gourd.

The second serial that we will be voting on for the approval of the inclusion then will read,

"The Principal Chief shall be elected by the registered voters on the same day and in the same manner, except as otherwise provided by this Constitution, as they shall respectively vote for

members of the Council for that particular year. The Principal Chief shall be elected by a majority of votes. The manner of determining contested elections shall be as directed by Cherokee law."

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

THE DELEGATES: Aye.

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

(no response)

Language is accepted; the serial is complete.

And so before you at this time then is -- with the return of the division is the entirety of Section 1. Those sections have been read by the Chair, and I believe the delegates can, in fact, see exactly what they have before us. All of those in favor of approval of Section 1, please signify by saying "aye."

THE DELEGATES: Aye.

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

(no response)

And the section is approved and has been added.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I assume we have now moved to Section 3; is that correct? I make a motion to approve Section 3, which reads as follows:

"The registered electors shall elect a Deputy Principal Chief who shall possess the same qualifications as a Principal Chief for a term of four years at the same time and in the same manner as herein provided for the election of the Principal Chief."

MR. HANNAH: Motion is before us. Is there a second?

DELEGATE: Second.

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

MR. McCREARY: Point of information.

MR. HANNAH: Point of information from the man from Black Gum.

MR. McCREARY: As I read that one particular paragraph, would that also be inclusive of the term limits as seen as the Principal Chief in Section 1?

MR. GOURD: Yes.

MR. HANNAH: Yes.

MR. McCREARY: Thank you.

MR. HANNAH: Floor is open for debate.

MR. CORNSILK: Point of information.

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

MR. CORNSILK: I just have a question about the term "registered electors." Is that consistent with what we've done?

MR. HANNAH: Mr. Gourd?

MR. GOURD: I'll say that's a good point. If we are going to talk about registered voters, qualified voters. I think this is an excellent point for the Style Committee to make

things consistent, so long as we understand what we're voting on as to exactly what that means.

MR. HANNAH: Mr. Keen, do you see a difference in interpretation between "voters" and "electors"?

MR. KEEN, JR.: Between the words "electors" and "voters," I'm not sure if there's any clear distinction, but I do know previously in the document, we've been consistently using the term "voters." So it would make sense to me that we would continue that.

Speech from the Election Commissioner.

MR. HANNAH: Mr. Center there, if you perhaps could lead the body to a better understanding. We do understand that there are two terminologies that are used, and that being "registered voters" and "qualified voters."

MR. CENTER: I believe I would use the word "voters" because it's consistent with the legislation of the Council in all of its document of the election act.

MR. HOOK: Point of information.

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

MR. HOOK: Could you explain the exact difference between "qualified" and "elected" voters?

MR. CENTER: I can live within the boundaries of Cherokee Nation and be qualified by Dawes, or by any other means to vote, and not be registered. But if I am registered, I am in the data base within the Election Commission of the Cherokee Nation. I can be qualified and not be in that data base. But if I'm registered, I'm in that data base, and I have a voice. I can be qualified and not have a voice.

MR. HOOK: So is "qualified voter" the same as "citizen"?

MR. CENTER: Qualified voter can be a member of Cherokee Nation and not be eligible to vote. I can hold a white card and a blue. But if I am registered to vote, I will have the credentials that is given to you by the Election Commission and be in the data base.

I can be a Cherokee within the boundaries and have all rights that are given to Cherokees and still not be eligible when the election comes to go to the poll and vote. So, therefore, I must be registered. You could be qualified, but not registered. But you can be both.

MR. HANNAH: Once again, just by way of clarification, the primary statement that he made. You may be qualified, but not registered. And registration is what will trigger your ability to participate in the election, correct, Mr. Center?

MR. CENTER: Gives you the eligibility to participate in a sanctioned election.

MR. HANNAH: Very well. Where are we here with the work of the day, ladies and gentlemen? Mr. Keen, you rise to make a point?

MR. JOHN KEEN: Yeah, a point of clarification.

In researching the terms we've thrown out here in Black's Law Dictionary, Mr. Center was right on target. And I believe "elector" would be a term we could use here. But for consistency, and voter, the first definition, the word has two meaning. But in researching it, if we used "registered voters," that would solve the problem.

MR. HANNAH: And the language is before us. The floor is open for debate on this section.

MS. MASTERS: Call the question.

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

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, we'll move to the vote. Voting in the affirmative will bring this language into approval.

"Section 3. Registered voter shall elect a Deputy Principal Chief who shall possess the same qualifications as the Principal Chief for a term of four years at the same time and in the same manner as herein provided for the election of the Principal Chief."

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

THE DELEGATES: Aye.

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

(no response)

And the terminology is passed, accepted, and it is included.

Section Number 4, Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve Section 4, which shall read as follows:

"In case of the absence of the Principal Chief from office, due to his or her death, resignation, removal or inability to discharge the powers and duties of the said office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four-year term to which the Principal Chief has been elected. In case of disability, such powers shall continue during the term of such disability. Vacancies in the office of Deputy Principal Chief shall be filled by the Council."

And I think we need to amend that "by the Council," that it would be filled by the Speaker of the Council if we're proposing that the succession call for the speaker that would be elected by the Council.

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

DELEGATE: Second.

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

THE DELEGATES: Call for the question.

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

MR. BILL BAKER: Point of clarification.

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

MR. BILL BAKER: He suggested the change in the wording. Is that how we're calling for the question?

MR. GOURD: Yes.

MR. HANNAH: Let's make sure that we have that language there. Mr. Keen.

MR. KEEN, JR.: I think we need to look at this just a little bit closer, because we're talking about who can fill the office of Deputy Principal Chief. And are we going to give that power to one individual called the Speaker of the Council, or are we going to leave that to the body of the elected officials known as the Council?

MR. GOURD: I understand your question now. The idea was, does that give the Speaker appointive powers?

MR. KEEN, JR.: Well, it would seem to do that.

MR. GOURD: Right. I see what you're saying now. We could just make a language clarification and make that point.

MR. MULLON: Mr. Chairman.

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

MR. MULLON: I would suggest that you do it by right after the word "by," inserting the words, "person who is then the Speaker of the Council."

MR. KEEN, JR.: I like that a lot better.

MR. HANNAH: Mr. Baker, you wish to be recognized?

MR. BILL BAKER: I do.

MR. HANNAH: And you are.

MR. BILL BAKER: In the legislative section, we've pretty well already spelled this out, that it will be the Speaker of the Council. I'm wondering if this might be a point to refer back to that line and section.

MR. HANNAH: You raise a good point, and we will do so.

Mr. Keen, you are recognized.

MR. KEEN, JR.: Thank you, Mr. Chairman. Article V, Section 2 provides, whenever she gets there. Down at the bottom of this,

"The Speaker shall be third in the line of succession to serve as acting Principal Chief in case of removal, death, resignation or disability of both the Principal Chief and Deputy Principal Chief."

So this contemplates having an elected official be able to fulfill the roles as an acting Principal Chief. The language that we were looking at before would actually allow the Speaker to assume the office of Deputy Principal Chief. And I don't believe that's what was intended with that. So I would prefer that the language stay as it was originally presented.

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

MR. DOWTY: Mr. Chairman, counsel's point is

well taken by Mr. Keen. We are talking about two different things. We're talking about the succession to office should -- in the first instance, the succession to office, should both the Principal Chief and Deputy Principal Chief for some reason be out of office in an emergency situation.

In the other, we're simply talking about the business is going along fine, and the Deputy Principal Chief decides for some reason to resign and to leave the office. And then who shall fill that; who shall be responsible to decide who goes into an office to fill the remaining term?

So that's two different things. So I think the language as originally proposed is appropriate.

MR. HANNAH: Thank you for the clarification, sir.

Ms. Masters, you are recognized.

MS. MASTERS: In the interest of consistency and also in meaning, the legislative section that we were just looking at said that it would be an acting Deputy Chief until the office was fulfilled by election.

To be consistent, if we placed "acting" here, it would let it be known that that person was fulfilling the role until an election could be held. I believe that's what we said in the previous one we just looked at.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: I would respectfully disagree with Ms. Masters. It's just like Delegate Dowty brought up. We're dealing with apples and oranges here. One is a line of succession to serve as acting Principal Chief, and the other one is the method for filling the vacancy of the office of Deputy Principal Chief.

Now, why do we need the Speaker to step up and assume that office just because the Deputy resigns? There's no need for succession there. We still have the Principal Chief carrying out the business of the Nation. All we need is a process to replace that official.

MR. HANNAH: Thank you, Mr. Keen. The clarifying point here for the delegates is, shall an absence in the office of the Deputy Principal Chief be filled by the Speaker of the Council or by the Council; is that correct, Mr. Keen?

MR. KEEN, JR.: That is correct.

MR. HANNAH: So, folks, let's stay focused on what we're trying to clarify here, or if the delegates would wish to select another method for doing so, they may certainly bring that forward.

MR. HOOK: Point of information.

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

MR. HOOK: I am uncertain. Have you accepted the language that is there, or is that still proposed?

MR. KEEN, JR.: That's exactly the point I was going to make. Dr. Gourd suggested that as amendment, and I would be in opposition to that amendment as a Commissioner.

MR. GOURD: I understand. I agree now. I understand what you're saying.

MR. HANNAH: You understand what we're saying, Dr. Gourd?

MR. GOURD: Yes.

MR. HANNAH: Why don't we remove that and go to our original verbiage that was brought by the Commission. Mr. Baker.

MR. BILL BAKER: Would I be out of order to ask --

MR. HANNAH: No, sir.

MR. BILL BAKER: -- that we fill in the blanks?

MR. HANNAH: The parliamentarian informs the Chair that she will take the liberty of kicking you in the shins at her earliest opportunity. So please avail yourself at the next recess.

We return to the language. The Chair would be so bold as to clarify that the vacancy in the office of Deputy Chief shall be filled by the Council. In other words, the Council would be making that decision.

And the young lady from Texas is recognized.

MS. MILLER: In the first place, in my case, I don't know that the Speaker would want to fulfill the office of Deputy Principal Chief. It might be a step down, since the Deputy Principal Chief actually seems to be sort of a glorified gopher.

Also, I thought we were trying to separate the Executive branch with the Legislative branch. So I move to strike that last sentence.

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

MR. GOURD: Mr. Chairman, is that offered as a friendly amendment?

MS. MILLER: No, sir.

MR. HANNAH: No, it was offered as an amendment. It was a motion to strike. I heard her quite plainly. And the Chair is lending an ear for a second.

MR. SILVERSMITH: Could I have her rephrase that because I was caught up in the language, and I lost the context.

MR. HANNAH: That is quite all right. Her amendment is to strike the final sentence; is that correct, ma'am?

MS. MILLER: Yes, sir.

MR. HANNAH: So she has a motion on the floor, as you see in the highlighted area, that would strike that particular sentence. Is there a second?

Mr. Mullon.

MR. MULLON: I have a point of clarification. What is the motion that is currently on the floor?

MR. HANNAH: The motion that is currently on the floor is to amend Section 4 by deleting the final sentence; is that correct, ma'am?

MS. MILLER: Yes.

MR. HANNAH: And the Chair is still listening for a second.

DELEGATE: Second.

MR. HANNAH: There is a second, and the floor is open for debate.

MR. CORNSILK: Mr. Chairman.

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

MR. CORNSILK: Delegate Cornsilk. I rise in opposition to that. I think what we were shown whenever our learned speakers told us on, was it Friday, that we have overlapping duties and inner-relationships between our government. And I think this is a classic example of that, where we have elected officials who are there serving in office. They're familiar with the government and its operations, and they can simply step up into a position that has been vacated by the unfortunate death, resignation, or whatever of these officers. So I would rise in opposition of that.

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

MR. KEEN, JR.: Thank you, Mr. Chairman. Ralph Keen, Jr., delegate. I rise in opposition to this amendment. And I echo the concerns of Delegate Cornsilk. This is one of the very important balance of powers. And it provides a fair method of the people's representatives replacing or filling a vacant seat as Deputy Principal Chief without having to hold an extensive election, or giving that authority to one individual, such as a Principal Chief. I think this is a fair balance. This has worked well for us since 1975. And I see no reason to change it.

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

MR. MULLON: I guess this is a point of inquiry here as to what the Commission intended to be the meaning of this sentence that is up for being stricken. When you say that it shall be filled by the Council, I take it, number one, that you mean by vote of the Council, right?

MR. KEEN, JR.: That would be correct. And I would just point out that this language has not been changed from the '75.

MR. MULLON: Right. I know. And it confused me for, you know, the past twenty years as well. Then my next question would be, if it's intended to be by vote of the Council, does that mean that they would select one of their numbers or that they could select anyone out there who is a Cherokee citizen?

MR. HANNAH: Speak to the intent, Mr. Keen.

MR. KEEN, JR.: They would be able to select anyone they wish. They would not be limited to their own membership. Now, that's always been my impression. Of course --

MR. MULLON: I've never known what it meant actually. I have no idea what it meant. Right now, I don't know what it means.

MR. KEEN, JR.: I agree that this would be a very appropriate time to address that ambiguity.

MR. HANNAH: We have a motion on the floor to strike the final sentence. And the floor is open for debate. And the good man formally of west Peavine is recognized.

MR. DOWTY: Delegate Dowty. If the Chair please, I would make inquiry of Delegate Keen, who is now caucusing, apparently. Did I understand the delegate to raise the concern of separation of powers by reason of this language?

MR. KEEN: Well, I did in my explanation. Of course, I'm offering my interpretation of it. The Commission, as a body, has really not had this discussion. So you're just speaking as an individual.

It would seem to be a component of the separation of powers to allow the elected body to replace a member of the Executive branch.

MR. DOWTY: Thank you.

MR. HANNAH: Starr-Scott is recognized.

MS. STARR-SCOTT: Point of inquiry of Mr. Keen.

I believe there's a legislative act in place now that says the Council shall select the Deputy Chief from its own body. How would that affect that?

MR. KEEN, JR.: If that is indeed the case, I stand corrected. I was not aware of that statute. And, of course, this language would govern any future statutory language. So if we change that, it may require a review of that statute.

MS. STARR-SCOTT: That wouldn't still allow that statute to stand?

MR. KEEN, JR.: Unless we change the language it would, yes.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: Delegate Cornsilk. I think what this little piece of information does for us, is it gives a lot of leeway to our elected officials, our Council, our representative body, to either pass legislation, which they have done to control replacing these kinds of vacancies, or to open it up to an even wider body of persons and selection.

I think that as we've heard many times over the course of these last few days, the Constitution is supposed to simply trigger an action, and then the legislative body then tells us how it will be carried out, which they have done. So I think we need to leave this piece just exactly the way it is.

MR. HANNAH: Delegate Stroud, you are recognized.

MS. STROUD: Yes, I need some clarification. Article V that we noted on yesterday in Section 2, and it says in here that, "The acting Principal Chief in case of removal, death, resignation, disability of both Principal Chief and Deputy Chief until a replacement of removal of successor can be elected."

It tells us here how we're -- what we're arguing about now, the order, and that it would be elected. Is that contradicting, or am I just not getting it?

MR. HANNAH: By way of Chair, the previous section deals with the succession of office, should there be a vacancy by both.

MR. KEEN, JR.: Both.

MR. HANNAH: Both Principal Chief and the Deputy Principal Chief, by some cataclysmic Biblical catastrophe that we are without officers in both of those offices.

MS. STROUD: We're not talking about that?

MR. HANNAH: We are now looking at the section which looks singularly at the office of the Deputy Principal Chief. It contemplates the Principal Chief is, in fact, still in power and still in office, but there would be a vacancy of the Deputy Principal Chief, and by what method would that individual be replaced, not speaking to the concern of succession of office. Would that be correct, gentlemen?

MR. KEEN, JR.: Yes.

MR. HANNAH: Excellent. Mr. Gourd, you are recognized.

MR. GOURD: By way of possible approach to this, could we say that in the case of the disability, whatever, the Deputy Chief slot is vacant, that the selection would be by appointment by the Principal Chief and confirmed by the Council?

MR. HANNAH: Dr. Gourd, are you approaching to amend?

MR. GOURD: Yes, sir. I would just make the language that in the vacancy of the office.

MR. HANNAH: And the young lady who now has the motion on the floor would liken language?

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

MR. HANNAH: And you say that that's okay, young lady. So we'll remove your motion for strike. The language will be --

MR. SILVERSMITH: Mr. Chairman, I'd like --

MR. HANNAH: One moment, my friend. Let's get this language up here so that we all sort of see what we're doing. We'll make sure that the full Commission is accepting of that. And then we'll be heard.

Delegate Mullon, you've been very patient. Please continue to be, sir.

MR. MULLON: Thank you, Mr. Chairman.

MR. HANNAH: Just one moment. I want to make sure that we have this language in place, so we know what we're talking about.

Where we are at this point, the young delegate from Texas asked for a strike. Dr. Gourd has approached with amended language.

The strike has been removed by the young delegate from Texas. And polling of the Commission, since it's a presentation of their revised document, to see if it's acceptable. How say you, Mr. Keen?

MR. KEEN, JR.: I'll pass for now.

MR. HANNAH: You'll pass for now. Very well.
Dr. Gourd, obviously you presented this, so you must be in favor of it.

MR. GOURD: I'd be in favor of it.

MR. HANNAH: The Chair apologizes for being presumptuous, but sometimes we just need to ask.

MR. GOURD: You are now clairvoyant.

MR. HANNAH: Thank you. I at least reached one moment. What say you, Mr. Underwood?

MR. UNDERWOOD: I accept the change.

MR. HANNAH: You accept the change. Luella Coon, would you accept the change?

MS. COON: Yes.

MR. HANNAH: The Chair will pass as well. Back to you, Mr. Keen.

MR. KEEN, JR.: I'll accept the change.

MR. HANNAH: You accept the change. The Chair will continue to pass. Therefore, it's accepted and entered, and floor is open for debate. And Bill John, thank you for holding. And Mr. Silversmith, please hold.

Mr. Mullon, I believe you've been standing the longest, I'll recognize you first.

MR. MULLON: Thank you, Mr. Chairman. Delegate David Mullon. This is a novel idea, I guess. I don't find it to be altogether offensive. But if I could just point something out for the members of this body to think about what we're doing here very carefully and with the law, the Constitution as it stands right now, we do not know at any given moment of time who will fill the office of Deputy Principal Chief, which is an office of great potential. And I do not think that it's anything ever meant to be a glorified anything. It's meant to be and should be a working office. And we would probably be a better Nation if we did have a very active and useful office there. And it has been in times past that way.

However, at any given moment in time, we don't know who would succeed as the Deputy Principal Chief in any event he or she were to die or resign. We don't know who that would be. And there is some value in knowing who that will be. And that's, I think, why the United States Constitution is set up that way, because you know who that will be if something like that happens.

If it were the way it once was up there on the screen, that it would be the Speaker of the Council, then you would always know who that was. And when the Speaker of the Council was chosen by the Council members, then that would be one consideration. That is, he would be a person or she would be a person who would fill the vacancy of Deputy Principal Chief, and there may be some value in knowing who that would be. This way, you don't know. It all depends on what the Chief would do and what the Council would do after that vacancy occurred.

One other thing, and that is the separation of powers business that we're worrying about here. Now, I don't see that as

happening. It's very different in having the Deputy Principal Chief as the president of the Council and filling that role, while simultaneously acting as the Deputy Principal Chief. That is a separation of powers problem that hopefully was resolved by action of this body earlier.

But in this case, you don't have someone who would be -- if you were to have the Speaker elevated to the position of Deputy Principal Chief, there is not a separation of powers problem anymore because he would no longer be the Speaker. He would be the Deputy Principal Chief.

And so I just think that ought to be considered. The way it is right now and the way that it is currently written is, there is an ambiguity there in that you don't know who is going to be your Deputy Principal Chief in the event he or she is killed. At least that you won't have a way of knowing that, if it were a designated person.

MR. HANNAH: Thank you, Mr. Mullan. Mr. Silversmith, you are recognized.

MR. SILVERSMITH: I'm Silversmith from Kenwood-Salina. I hope I speak in a voice of what their conscience is. They are in an area that I would be in opposition to the Principal Chief having this power of succeeding whoever the Speaker of the Council would be, should it be the Council.

But I think that what I'm trying to say is, I want the Principal Chief to have the power of selecting who he would, because he would have to be a Deputy Principal Chief, principally because of the politics involved.

What I would like to reaffirm, as an understanding that in fairness to the Cherokee people, which is what I keep hearing here, we're representing, I keep hearing where individual preferences from the room here is being desired, rather than the people.

So I would suggest and support the fact that somebody other than the Principal Chief would be appointing the successor to the Deputy position, principally the Council. Those people are representing the people, and their conscience is of many people. So I would entrust that that be considered in lieu of.

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

MR. BILL BAKER: Thank you, sir. I do agree with Mr. Mullan that the office of Deputy Principal Chief is a very important role, one that needs to be mindful of the day-to-day operations of the Tribe and what is going on, as he or she would be a heartbeat away of being the Principal Chief.

I also believe that we're plowing some ground here, that even though maybe the previous language was confusing for the last twenty years, the Council, in this particular case, has taken the action to put in place a statute that allows that that person be elected, as it says in the old Constitution, from out of the body of the Council.

Now, that's not such a bad deal, because those folks go

to meetings every week or, you know, several meetings a month, and they stay on top of day-to-day operations, litigation, things that are of great importance to the day-to-day workings of the Cherokee Nation, and would be best served in an emergency situation to step in without really missing a beat or having to come up to speed on what is actually going on at the Nation and what the concerns are of that day.

So, you know, we're sitting here trying to write legislation, and I can see it, and we've done it before, where legislation didn't exist. But that legislation exists. Thank you.

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

MR. DOWTY: I thank the Chair. Delegate Dowty from Tahlequah. The gentleman delegate previous to Mr. Baker, I believe, picked up on the point that I want to make. He said he did not want to see the Principal Chief succeed to the office of Deputy Chief.

Now I know that this may seem petty, but it is not. Words are extremely important in this Constitution. You have an amendment before you that causes the Principal Chief to succeed to the office of Deputy Chief. So be careful with your words.

And I would move a friendly amendment of the word "of" after "appointment" on the last line to the word "by." Now, my colleagues and I are going to have to interpret what you do here. So be very careful with your words. And I'll rise again if I see such problems. Thank you.

MR. HANNAH: And we would expect you to do so, sir. You have been appreciated by your fellow delegates.

Dr. Hook, you are recognized.

MR. HOOK: I rise in support in respect to Mr. Mullon. However, I think that the situation he speaks to is one anticipating cataclysmic action which would require immediately filing of an office. And we've already dealt with the line of succession earlier.

I believe this situation anticipates a different possibility in which there would be time by the Deputy Chief, by the Principal Chief, and by the Council, to act and not require a sense of immediacy, which is provided in the line of succession.

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

MS. MASTERS: I am rising in opposition to this final sentence that is before us here, based on both the traditional value and a personal value. The possibility of the Deputy Principal Chief becoming Chief of this Cherokee Nation is a very real one. And should that happen in this instance, it would be possible that we would have a Principal Chief that had never run for election, had never been selected by the people.

And I believe that the Principal Chief of the Cherokee Nation should always have been one that had been in an election, the people had had an opportunity to talk to, know who that person was.

And I'm in strong opposition to this final sentence.

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

MR. KEEN, JR.: Thank you, Mr. Chairman. Even though I approved of this friendly amendment as a Commissioner, I did so to get the issue out before the people and to give us more time to think about it. Now that I have, I feel that I must rise in opposition to the final sentence and offer an amendment. I would like to strike out after the word "by" and insert as the original language states, "the Council."

MR. HANNAH: One moment. Let's have one instructor to the scribe

MR. KEEN, JR.: "Filled by the Council by election from its own membership."

MR. HANNAH: And, Mr. Keen, since you make a friendly amendment to the language that is submitted by the Commission, do you approve of your friendly amendment?

MR. KEEN, JR.: I think I do, yes.

MR. HANNAH: George?

MR. UNDERWOOD: Yes.

MR. HANNAH: Luella?

MS. COON: Yes.

MR. HANNAH: Mr. Gourd?

MR. GOURD: Yes.

MR. HANNAH: Language is added. Delegate Stopp, you are recognized.

MR. STOPP: I was going to add a friendly amendment. If we put that back up, and I guess I want to discuss something if we could just for a second, what we just took off.

I guess I look at this, the Deputy Principal Chief's role has changed dramatically during this constitutional convention. The role for that Deputy Principal Chief will change in the future.

We know that that position is a heartbeat away from the Principal Chief. We also know that position will probably most likely not have direct relationship with the Council for the next four years, but we'll have a tremendous operational economical business impact to the Tribe.

My suggestion on this was to come back to this, it says, "Vacancies in the office of the Deputy Principal Chief shall be filled by an appointment by the Principal Chief from the Council and confirmed by the Council."

And I say that because I believe it does need to be an elected position. But the way it originally read there, it became an appointment of anyone, that they could be either elected or non-elected.

But I think they should draw from the Council. And I think it's the Principal Chief at that point, in a loss of his partner of that four-year term, to select the best individual that can handle the operations and the economical business affairs.

Again, an appointment by the Principal Chief from the Council and confirmed by the Council. So it locks it into the fifteen elected officials.

MR. HANNAH: Mr. Stopp, do you present that as an amendment?

MR. STOPP: I would like to present that -- is it a friendly amendment; is that what I need to do?

MR. KEEN, JR.: I would be disinclined to accept that.

MR. STOPP: I would like to make it a motion then.

MR. HANNAH: There's a motion to amend. There's a second, and the floor is open for debate.

MR. HOOK: Point of information.

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

MR. HOOK: Is he also suggesting to delete "after the Council," that last sentence, or "by election"?

MR. STOPP: Yes, it would have to be deleted, cosmetically.

MR. HANNAH: The floor is open for debate. Point of order by the good English major from Tahlequah.

MS. HAMMONS: Thank you, sir. Are we seeking to amend a motion to amend that's already on the floor; is that not what we said earlier that we didn't do?

MR. HANNAH: What we actually have here is a presentation by the Commission that has gone through a series of iterations with regard to friendly amendments. So what we see is, now the presentation by the Commission, and there is only one motion to amend.

MS. HAMMONS: I understand. Thank you.

MR. HANNAH: Thank you for allowing the Chair to also state that verbally so he knows where we are at this point.

MR. STOPP: Mr. Chair, I have a correction there. "From the membership of the Council," is what it should say.

MR. HANNAH: Make sure we get your amendment exactly the way it should be.

MR. STOPP: "From the membership of the Council."

MR. HANNAH: And unless hearing opposition from the second, then the language will stand. And Mr. Mullon, you are recognized.

MR. MULLON: Thank you, Mr. Chairman. Delegate Mullon. I guess I'm going to make a point again. I am opposed to this. It's better than it was before, because now we've come down to where there is a known body of people from which the Deputy Principal Chief would be selected.

But as it is worded right now and as the appointed language was worded before, if there is a vacancy in that office of the Deputy Principal Chief, at any given moment in time, you don't know who that person would be, number one, and you also don't know that it will be promptly filled.

Because if there is a vacancy and there's a -- and the Chief is attempting to appoint his people, and he cannot get the

Council to confirm that person, then there could be a period of time where you have no Deputy Principal Chief. It may be a very long time. It would be at least a month if he offered up one person he's turned down, and the next month at the next council meeting, he tries somebody else. Maybe that person gets down. You are creating the possibility of an extended vacancy in this office.

And it would be remedied if you were to have a clear succession by the Speaker of the Council. And the Council, remember, elects its Speaker. And that would be a consideration of the Council and its acting. It would be electing a man or a woman who would serve as Deputy Chief if there was a vacancy in the office of Deputy Chief.

We are creating a situation here where there could be no Deputy Principal Chief for a significant period of time. And I think the people should always know who that person will be at any given moment in time. You ought to be able to say that person will be, if there's a sudden death or a resignation, we will have this person who will be acting as Deputy Principal Chief. You don't know. You can have six months go by before you have a Deputy Principal Chief with this language.

MR. HANNAH: Thank you, sir. Mary Ellen Meredith from Oklahoma City, you are recognized.

MS. MEREDITH: I rise in opposition to this. I think we are bogged down. We're toying with two or three different words that, as a practical matter, when the occasion presents itself, are not going to be relevant to anything. Because the Chief, the Council will work together, however they are at that time working together, and they will come up with a Deputy Chief or a Deputy Principal Chief.

And I think the other thing that we're forgetting is, in our zeal and enthusiasm to create the world's finest Constitution that we can live with and be proud of, is we're not creating this Constitution in a vacuum. We have, as a Cherokee Nation, the annotated codes, laws. We have things that are in place, that if every time we change things in the Constitution, that's going to necessitate changing many of those laws.

There are laws that apply to the Council selection, the original language. They are in place. I think we owe it to ourselves to read those and understand those before we try to play with this up here.

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

MR. SILVERSMITH: Thank you, Mr. Chairman. I'm Silversmith from Kenwood-Salina people. I again would like to state that I'm in opposition to this stringently, because what I wish to speak in the nature of this, that the people, the Cherokee people, are represented, I think, more fairly by the Council in agreement with the gentleman before the lady who just spoke.

I think the Council will represent the people, because they're elected, would be more of a fair consideration in selecting,

rather than the Principal Chief. Because I think if the Principal Chief is selecting who he wants in those positions to fill that vacancy should not be, because the Principal Chief has chosen his running mate at the time of his election. I think he should be surrendering of that honor in picking a vacancy from the Council who are also elected by the people.

And I might say that personally, at this point, that I also am in opposition of a Commission dictating to us, trying to sell us something down in this area, because this being a position that is representative of the people. This is an office of integrity. This is an office of trust. And this is what we want to maintain.

The Commission here will be gone. But we, the Cherokee people, are left to live with, in the next number of years. We have to live this.

To again reiterate about the thing about the canutchee, canutchee is okay with me. So I say canutchee is just as valid today as the choice of the Council to pick a representative that is indicative of that which we represent. Thank you.

MR. HANNAH: Thank you, Mr. Silversmith. The Chair will remind you, please be assured that all decisions will be made here in this room, sir, by these delegates. The kind gentleman from Westville is recognized.

MR. PHILLIPS: Mr. Chairman, Harold Phillips, Adair County. I don't know just exactly -- I've kind of become lost here in whether this should be in the form of a friendly amendment, an amend, or whatever. But I think, to simplify the whole process, I would be in favor of saying that in the absence of the Deputy Principal Chief, the office would be filled by the Speaker of the House. This position, the Speaker of the House has already been selected by the Council, and probably would be the person who would be most fitted for the Deputy Principal Chief's position.

If left to the Council, probably this would be the person that would be elevated. Personally, I feel like this should be a decision not of the Principal Chief, but just to say -- and, again, I don't know how this should be submitted into this process right now, but just simply to say that the Speaker of the House would be installed to the vacated position. That would be my recommendation. Thank you, Mr. Chair.

MS. SCOTT: Call the question.

DELEGATE: Second.

MR. HANNAH: The question has been called, and a second is on the floor. And we will vote whether to end the debate and move the question. All those in favor please signify by saying "aye".

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the question is before us. And the question is before us on the Stopp language of, "appointed by

the Principal Chief and the membership of the Council, and confirmed by the Council." And in the striking of "by election from its own membership."

And all of those in favor of these additions and deletions, please signify by say "aye."

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the noes have it, and language is not submitted. And the floor is open for debate with regard to Section 4.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Mr. Gourd.

MR. GOURD: Now that we've come three hundred forty degrees, we can come back full circle to the original language. I will make a motion that: "Vacancies in the office of the Deputy Principal Chief should be filled by the Speaker of the Council."

DELEGATE: Second.

MR. HANNAH: There's a motion on the floor with a second, and the floor is open for debate. Mr. Mullon, you are recognized.

MR. MULLON: Let me begin with a question. The motion is to approve it? Is that how it is reading right now?

MR. GOURD: It's intended that the Speaker become -- it means by --

MR. MULLON: I think what you're suggesting that --

MR. GOURD: That the Speaker becomes the Deputy Chief --

MR. MULLON: That would be filled by the person who is then -- and what I would speak to that, if it reads that way, I would be very much in support of that. I think, as I've said before, it's important that the people know who is going to be filling that position, not after it happens sometime and wait for somebody to come up with somebody that they can elect, but they should know at any given moment who that person is going to be.

Because there may be circumstances arising at that very moment, maybe circumstances related to the fact that the person is no longer the Deputy Chief, that you need to have somebody in there in that position, and you can't wait until next week until somebody gets elected, or you can't wait until next month until the Council acts. You need to know who is going to be in that position.

Otherwise, we're saying this really is just a potential position; it doesn't really have that much importance. And I don't think it should be. I think the Deputy Principal Chief is an extremely important position, and the people should always know, at any given moment in time, if there is an accident or a death, who that person is going to be, and not have to wait until the Council can go through the politics of electing a Deputy Principal Chief.

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

MR. LITTLEJOHN: I'm here for a question. I'm not real sure -- what do we do in the event that the Speaker of the Council does not want to be Deputy Chief? What do we do in the event that the Deputy Principal Chief is used by the then Principal Chief as a quote, "Chief of Staff," to be more actively involved with the quote, "administrative process of the government"?

I have a question in that regard, and I would appreciate those that are more learned than I explain that to me.

MR. HANNAH: And the Chair would entertain a response. Mr. Mullon, would you care to --

MR. MULLON: Thank you, Mr. Chairman. Yes, I would. You wouldn't have a person who did not want to be Deputy Principal Chief, because he wouldn't run for Speaker of the Council.

That would be part of the job. If he didn't want to be Deputy Chief, that could be a question that his fellow Council members could ask him when he was running for that office. Do you realize that if the Deputy Chief died, you will be Deputy Chief? And if he says yes, but I don't want to do that, then I think they need to look around and find somebody who will do the job.

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

MS. MASTERS: No. We have point of the information.

MR. HANNAH: One moment here. Just one moment.

I'm sorry, I did not hear the point of information. The good man in the rear. You are recognized, Mr. Scott.

MR. SCOTT: I would like to know whether or not the wording there, "shall be filled by the speaker," should mean that he could be Deputy Chief, or whether he would fill it by giving the job to somebody else. So I would say he should become.

MR. HANNAH: The kind delegate raises an interesting query for us in this. Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I think I see the point. We need to strike "shall be filled by" and just go with "the Deputy Chief shall be the person who is then." Is that your point, Mr. Scott? Mr. Mullon, does that further clarify?

What was done was just the word filled was still in there, which was the question of appointed or not. This just seems to further clarify that whoever the speaker is, is going to be.

MR. MULLON: Mr. Chairman, may I be recognized?

MR. HANNAH: Yes, you may.

MR. MULLON: I agree that there was ambiguity the way it was reading before.

MR. HANNAH: The Chair -- hold it, folks. I understand. And let's just stay. We're hammering out government here. Okay. And so if you will just indulge the Chair for just a little bit. Let's not take the remainder of our lives, but let's spend some time looking at what we're doing here. Mr. Mullon, please continue.

MR. MULLON: I appreciate the ambiguity that was pointed out was that, is the Deputy Principal Chief going to be the person who is the Speaker, or is the vacancy going to be filled by his appointment. In other words, is he going to be able to designate somebody.

And I think that that's a good point. We do not want to leave that ambiguity. The intent is, as Mr. Gourd said, that we want a succession to occur here, and that is the person who is the Speaker.

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

MR. HOOK: Point of information.

DELEGATE: Second.

MR. HANNAH: There is a second. Those in favor of ending debate, please signify by saying "aye".

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the debate is still --

MR. HOOK: Point of information.

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

MR. HOOK: I am unclear. Has the language, which was underlined, been accepted as a friendly amendment by the Commission, or is that what we're, in fact, favoring?

MR. HANNAH: In actuality, it was a motion that was made by Dr. Gourd. There was no opposition that was raised by the Commission. And, folks, let me speak from the Chair here for just a moment, okay?

Now, let's be very careful about what we're doing with regard to this Commission, and us, and things of that nature. Let's not get into a gigantic fifteen iterations of let's go back and see if the Commission is going to endorse this. To tell you simply this has already gone through enough iterations that I believe that it now belongs to you. I believe it belongs to you. Mr. Keen, if you take deference with me, sir, I will gladly stand down.

MR. KEEN, JR.: No. I, in fact, agree with you, and I feel like we should vote on the underlying language as the question before us.

MR. HANNAH: So the Chair views that the language that is here is of the delegates. And I'll once again remind the delegates that there is no greater authority that exists in this room or outside this room than those that are seated and standing before the Chair. And so with that, Mr. Keen, what was your point, sir, with regard to the question?

MR. KEEN, JR.: I had no point.

MR. HANNAH: Okay. Very well.

MS. MASTERS: Call the question.

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

DELEGATE: Second.

MR. HANNAH: All those in favor please signify by saying "aye".

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the debate is still open. And, Dr. Gourd, you are recognized.

MR. GOURD: Mr. Chairman, would it be helpful if the words, the whole sentence were reworded to say, "The Speaker of the Council shall assume the office of Deputy Principal Chief if a vacancy is created"?

MR. HANNAH: Would you please repeat that, Dr. Gourd?

MR. GOURD: "The Speaker of the Council shall assume the office of Deputy Principal Chief if a vacancy is created."

MR. HANNAH: Then I'm assuming we would strike the language previous to.

MR. GOURD: Yes, sir.

MR. HANNAH: The Chair has lost the procedure. So has the parliamentarian. The best thing to do is to get us back.

MS. MASTERS: I withdraw my motion.

MR. HANNAH: And the Chair will accept that since he doesn't really remember exactly what the motion was. I'm sure it was a good and noble motion that you have withdrawn, and the Chair is very thankful for that. Dr. Gourd has placed an amendment before us at this time. Is there a second?

MR. LITTLEJOHN: Point of information.

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

MR. LITTLEJOHN: Does the Speaker vacate the position of Speaker?

MR. HANNAH: Yes. No dual offices here. Mr. Phillips, you are recognized.

MR. PHILLIPS: Mr. Chair, Harold Phillips, Adair County, delegate. The question has been brought up as to whether the position would be an active position or whether it would, in fact, be for the remainder of the term. So I would suggest that we add to that, "for the remainder of that term."

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

MR. GOURD: Fine. Fine.

MR. PHILLIPS: Thank you, sir.

MR. HANNAH: Thank you, Mr. Phillips.

MS. MASTERS: Point of clarification.

MR. HANNAH: Yes, ma'am.

MS. MASTERS: As has been pointed out to us so ably twice before, we have been very careful to put the "then Speaker of the Council." Is that relevant in this situation, I would ask the Chair?

MR. HANNAH: I believe that that has been

cautioned to this group by our former resident of Peavine. Mr. Dowty, if you're with us here, would that be your supposition? The "then"? Help us, Billie. The "then Speaker of the Council"?

MS. MEREDITH: Mr. Chairman.

MR. HANNAH: One moment, ma'am.

MR. DOWTY: I don't think that's necessary.

MR. HANNAH: That is not necessary.

MR. DOWTY: There is no doubt who the Speaker is.

MR. HANNAH: There is no doubt who the speaker is. "then" will be withdrawn and the kind lady from Oklahoma City is recognized.

MS. MEREDITH: Mr. Chairman, I would move that we have a five-minute recess to let people write this out, so we don't go at this forever.

MR. HANNAH: Dr. Gourd. The only reason for the Chair's hesitation, it's about twenty minutes after the hour of eleven at this point in time. Dr. Gourd, what are we doing for lunch today?

MR. GOURD: I assume we're eating over there. I'll go find out.

MR. HANNAH: I think that's a good assumption. Let's go ahead and pretend that we are going to eat over there at noon today.

MR. GOURD: There has been comment awhile ago, folks wanting to know if we could all go to the wild onion dinner. If we had known about it ahead, I would have arranged a bus. Since the whole point is to raise funds for the Indian Symposium and the Indian Heritage Club at Northeastern, I would request that we take up a collection as a donation from this body assembled to that Heritage Club at Northeastern.

MR. HANNAH: You may solicit donations in the anteroom, sir. We are back to the debate at hand, and there has been a suggestion of a five-minute recess. And the Chair is inclined not to initiate the five-minute recess unless we are, in fact, going to have like minds come together again and hammer the language.

I would need to see some head nods here if we feel that five minutes is needed. And the Chair does see the nods. And those of you delegates who are interested in this language will return in five minutes after we recess, and we'll speak to the issue. Thank you.

(recess taken)

MR. HANNAH: As we are making our way to our seats, Dr. Gourd reminds us that he had talked about the donations that would be going toward the Indian symposium. I will also remark that Ed Jumper has verified that the lunch that was spoken of to begin at eleven o'clock was on a first-come-first-serve basis. So wild onions are probably a pretty delicate premium at this point.

Secretary Underwood was unwilling to give us his --

(inaudible) -- so, therefore, we will simply pass the box and let it stand for such. And once again, this donation would be going for the support of the Native American symposium that is held here at Northeastern.

We're back in session, ladies and gentlemen. And we have an amendment that is coming up on the screen. We're in the business right now of putting a supplanted amendment. Dr. Gourd has approved of this. So as soon as the language ends, we'll take a look at it.

So the amendment language that you'll see before you is, "In any event of the death, resignation, or removal of the Deputy Principal Chief or his or her inability to discharge the powers and duties of the office, the person who's then the Speaker of the Council shall succeed to the office of Deputy Principal Chief for the balance of term. In the case of temporary disability, said person shall serve as acting Deputy Principal Chief for the duration of the disability, and thereafter shall resume the office of the Speaker."

Language is before us. And without opposition from the second, floor is open for debate.

Mr. Stopp, you are recognized.

MR. STOPP: In opposition of the last sentence of this, maybe you can offer a friendly amendment, the word "temporary disability" becomes real obscure. What does "temporary" mean? The first portion I have no issue on, but does "temporary" mean sixty days, thirty days, a year? Who defines that and how long is that?

MR. HANNAH: Mr. Mullon?

MR. MULLON: If it is disputed -- I'm going to assume that if it's disputed, there would be a court that would decide it. If someone tried to contend that the Deputy Principal Chief is temporarily disabled or no longer disabled or still disabled, and there's a dispute over it, it would end up in court. That could be said about almost anything, even the previous paragraph. So if it is disputed, it's obviously going to end up in court.

MR. HANNAH: Thank you, Mr. Mullon. The Chair would entertain speakers with regard to the motion that is before us.

MR. HEMBREE: Move for the question.

MR. HANNAH: Question has been called for. And hearing no opposition, we'll move to the vote for consideration. So what is before us at this time is the language that you see that has been underlined. And it reads,

"In the event of the death, resignation or removal of the Deputy Principal Chief or his or her inability to discharge the powers and duties of the office, the person who is then the Speaker of the Council shall succeed to the office of the Deputy Principal Chief for the balance of the term. In the case of temporary disability, said person shall serve as acting Deputy Principal Chief for the duration of this disability, and thereafter shall resume the

office of the Speaker."

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

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the motion passes, and the language is entered.

Vice-Chairman Keen, I assume that we are back to the totality of Section 4.

MR. KEEN: That would be correct.

MR. HANNAH: So ladies and gentlemen, before us at this time, Section 4.

"In case of the absence of Principal Chief from office due to his or her death, resignation, removal or inability to discharge the powers and duties of said office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four-year term to which the Principal Chief has been elected.

In case of disability, such power shall continue during the term of such disability. In the event of the death, resignation or removal of the Deputy Principal Chief because of inability to discharge the powers and duties of the office, the person who is then the Speaker of the Council shall succeed to the office of the Deputy Principal Chief for the balance of the term.

In the case of temporary disability, said person shall serve as acting Deputy Principal Chief for the duration of the disability and, thereafter, shall resume the office of Speaker."

The language is before us. All those in favor please signify by saying "aye".

THE DELEGATES: Aye.

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

DELEGATE: No.

MR. HANNAH: And the language is added, and Section 4 is approved. And Dr. Gourd.

MR. GOURD: Yes, sir.

MR. KEEN: Dr. Gourd is preoccupied.

MR. GOURD: Do you know how long it's been since I've seen that much money in one place?

MR. HANNAH: Dr. Gourd. Move to Section 5.

MR. GOURD: Mr. Chairman, I make a motion that we adopt the language of Section 5.

"The Council may, in the case of removal, death, resignation or disability of the Principal Chief, Deputy Principal Chief, and the Speaker of the Council, provide the law that such officers shall then act as Principal Chief until the disability removed or a successor shall be elected."

DELEGATE: Second.

MR. HANNAH: Motion is on the floor, and it has been seconded. The floor is open for debate. And Mr. Keen. Mr. Mullon.

MR. MULLON: A little bit of grammar issue here.

I know it may sound sort of absurd, but when you use, in the series that you've created there, Principal Chief, Deputy Principal Chief, and the Speaker of the Council, by use of the word "and," I think -- I take that back. I'm satisfied with it.

MR. HANNAH: Thank you, Mr. Mullon.

Good doctor, you are recognized.

MR. ROBINSON: Rick Robinson, delegate. This is more just a point of clarification. I think I understand it right, what we're saying here. I also want to say that we've been working a lot on how to substitute. I pray to the great Creator above us that none of these ever have to be put into effect, especially in relationship to death.

But what we're talking about, let's say all three of these individuals are on the Tribal plane and there's a death of all of them at the same time or within a close amount of time, that's the purpose of this section; am I right, Mr. Keen?

MR. KEEN, JR.: Yes, sir, you are.

MR. ROBINSON: Thank you.

MR. HANNAH: Mr. Hembree, we welcome you this morning, and you are identified.

MR. HEMBREE: Thank you, Mr. Chairman. I'm going to attempt to set a record here. This is what a Constitution calls for, which, you know, states a broad term and then calls for an enactment of it. Ladies and gentlemen, no controversy here. I move the previous question on Section 5 in toto.

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

DELEGATE: Second.

MR. HANNAH: And there is a second. And hearing no opposition, we'll move for the vote of accepting Section 5. "The Council may, in case of removal, death, resignation or disability of Principal Chief, Deputy Principal Chief and the Speaker of the Council, provide, by law, what officer shall then act as Principal Chief until this disability be removed or a successor shall be elected."

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

THE DELEGATES: Aye.

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

(no response)

And the language is accepted.

And, Dr. Gourd you are recognized.

MR. GOURD: Thank you, Mr. Chairman. Make a motion to approve the language of Article 6. "The Principal Chief and Deputy Principal Chief shall, at stated times, receive for their service the compensation not inconsistent with Article IX."

MR. HANNAH: Motion is on the floor. Is there a second? Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Floor is open for debate. And the gentle lady from Tahlequah -- is exiting the

room. She was standing up.

Mr. Hembree, you are recognized.

MR. HEMBREE: Yes. I'll try to beat an old record here. Mr. Chairman, it is my understanding, if I may direct the question to Mr. Gourd, that this just allows that the Principal Chief and Deputy Principal Chief would receive a salary for their services, correct? I move previous question on Section 6.

MR. HANNAH: Move for the question. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, we'll move for acceptance of the Section 6. "Principal Chief and Deputy Principal Chief shall at stated times, receive for their service the compensation not inconsistent with Article IX."

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

THE DELEGATES: Aye.

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

(no response)

And the motion passes and the language is accepted.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion that we approve the language contained in Section 7. "The Principal Chief may, on extraordinary occasions, convene the Council at the seat of government pursuant to Article V, Section 5, and such notice and other laws as may be prescribed by the Council.

The purpose of said meeting must be stated, and the Council may consider only such matters as are testified in the cause of the extraordinary meetings. Before the extraordinary meetings may be legally sufficient to conduct business, a quorum of the Council must be present."

MR. HANNAH: Motion is on the floor. Is there a second?

DELEGATE: Second.

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

MR. McCREARY: Point of information.

MR. HANNAH: Point of information from Black Gum.

MR. McCREARY: I just want a clarification of "extraordinary occasions." Does that also include emergencies or anything of that nature?

MR. GOURD: In the case of some catastrophic event.

MR. HANNAH: Outside of the ordinary, sir. The Chair would entertain --

MS. MASTERS: Call the question.

MR. HANNAH: Ms. Masters.

MS. MASTERS: Call the question.

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

DELEGATE: Second.

MR. HANNAH: Hearing no opposition, we move for adoption of the language for Section 7 -- excuse me, approval of Section 7.

"The Principal Chief may, on extraordinary occasions, convene the Council at the seat of government, pursuant to Article V, Section 5, in such notice and other laws as may be prescribed by the Council.

The purpose of said meetings must be stated, and the Council may consider only such matters as are specified in the call for the extraordinary meeting. Before the extraordinary meetings may be legally sufficient to conduct business, a quorum of the Council must be present."

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

THE DELEGATES: Aye.

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

(no response)

And the language is accepted, and it is added. Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I submit for approval the language in Section 8,

"At one session of the Council annually, the Principal Chief shall communicate by message, delivered to the Council, upon the condition of the Cherokee Nation, and shall recommend such matters to the Council as he or she shall judge expedient."

MR. HANNAH: Motion is before us. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Floor is open for debate. Mr. Hembree, you are recognized.

MR. HEMBREE: Mr. Gourd, I understand that this section just calls for a state of the Nation address?

MR. GOURD: Yes, sir. And the discussion among the Commission would make this an annual event, at least once. And it's not perceived that the Principal Chief would go and give a state of the Nation at every Council meeting. We've had a lot of discussion about that, which involves the idea of separation of power.

MR. HEMBREE: Mr. Chair, I move previous question on Section 8.

DELEGATE: Second.

MR. HANNAH: There's a second. Hearing no opposition, we'll move to --

MR. HEMBREE: Section 8.

MR. HANNAH: Thank you, Mr. Hembree. For section 8.

"At one session of the Council annually, the Principal Chief shall communicate by message, delivered to the Council, upon the condition of the Cherokee Nation, and shall recommend such matters to the Council as he or she shall judge expedient."

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

THE DELEGATES: Aye.

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

(no response)

And the motion carries, and the language is added in.
Doctor Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I want to make a motion to approve the language contained in Section 9, "Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation.

The Principal Chief may cause to be formed and operated, trusts, the beneficiaries of which shall be the Cherokee Nation, and these trusts shall be granted such powers as provided by law for public trusts. Authorization for these trusts, however, must be approved by a majority vote of the Council."

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second. Floor is open for debate. And Billie Masters, you are recognized.

MS. MASTERS: I rise to place an amendment.

MR. HANNAH: What would your amendment be?

MS. MASTERS: This is in addition to this section. Following the words "business of the Cherokee Nation," I would like to add "with advice and consent of the Council." The rationale for this is that the business of the Cherokee Nation, the ability to contract and allocate funds and commit funds is properly seated within our legislative body and that phrase, "business of the Cherokee Nation" being so unlimited, it is a conflict of interest, and also it blurs the lines of power.

MR. HANNAH: The amendment is before you. Is there a second?

DELEGATE: Second.

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

Good doctor, you are recognized.

MR. ROBINSON: Delegate Rick Robinson, Tahlequah. I think that this again is something that is not necessary. This is a legislative matter, and I have some other personal problems with it. But I think the best way to approach my opposition is that this is something for the legislature to prescribe the exact way to handle this. Thank you.

MR. HANNAH: Mr. Hembree, how rise you?

MR. HEMBREE: In opposition, Mr. Chairman. The good lady is correct that the powers that she had just described are seated in the Council legislative. The term "business of the Cherokee Nation" is meant to be broad because the Chief does many,

many other things as the executive head of state that are not necessarily prescribed as conducting contracts, et cetera, et cetera, what she has just mentioned.

So if you add that clause in there, what you would be is basically you could argue that the Chief could not do a single thing without consent of the Council, even as much as answer a phone call.

So in that instance, I think that is overly burdensome language and powers that are already set in the Constitution for the legislative branch, and rightfully so.

So with that, I would move previous question on the amendment.

DELEGATE: Second.

MR. HANNAH: The question is called, seconded. Hearing no opposition, we vote with regard to the amendment that was submitted by Ms. Masters, underlined, wording, "with advise and consent of the Council."

All of those in favor, please signify by saying "aye".
(no response)

And those opposed said "no".

THE DELEGATES: No.

MR. HANNAH: And the language is stricken. We're back to Section 9. What would be the pleasure of the delegates?

Mr. Hembree, you are recognized.

MR. HEMBREE: I would call previous question on Section 9.

DELEGATE: Second.

MR. HANNAH: Previous question is called, seconded. Hearing no opposition, the Chair would read for your consideration, Section 9.

"Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation.

The Principal Chief may cause to be formed and operated, trusts, the beneficiaries of which shall be the Cherokee Nation, and these trusts shall be granted such powers as provided by law for public trusts. Authorization for these trusts, however, must be approved by a majority vote of the Council."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed said "no."

The language is accepted, and Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve the language in Section 10, which reads as follows: "The Deputy Principal Chief shall by virtue of office, aid and advise the Principal Chief in the administration of the government."

MR. HANNAH: Motion is before you; is there a

second?

DELEGATE: Second.

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

MR. HEMBREE: Move general consent.

MR. HANNAH: Move for general consent. Those in favor, signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And general consent is accepted into the language as Section 10.

Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve the language contained in Section 11, which reads as follows:

"Nothing in this Constitution shall be construed as preventing the Principal Chief from employing such administrative assistance as he or she deems proper."

MR. HANNAH: Motion is before you. Is there a second?

MR. HEMBREE: Second.

MR. HANNAH: There is a second. Floor is open for debate. Chair would entertain debate. Mr. Hembree, you are recognized.

MR. HEMBREE: Call the question on Section 11.

MR. HANNAH: 11.

MR. HEMBREE: 11, right?

MR. HANNAH: 11.

MR. HEMBREE: 11.

MR. HANNAH: Thank you, Mr. Hembree. Thank you.

Question has been called on Section 11, and the language reads that, "Nothing in this Constitution shall be construed as --" took a little bit of a jump there. Coming back to Section 11. Thank you, young lady.

"Nothing in this Constitution shall be construed as preventing the Principal Chief from employing such administrative assistance as he or she deems proper."

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

THE DELEGATES: Aye.

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

(no response)

Motion passes, language is added.

And Dr. Gourd you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion for approval of the language in Section 12.

"There shall be a cabinet composed of the following persons who shall be citizens of the Cherokee Nation. Number 1, Secretary of State; Number 2, Treasurer. 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 of cabinet members.

Cabinet members shall be authorized to appoint such staff and other assistance as they deem necessary.

The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title or responsibilities of any foregoing department or function."

MR. HANNAH: Motion is before you. Is there a second?

MR. HEMBREE: Second.

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

MR. GOURD: Just as a quick note, the 1975 Constitution, as the footnotes indicate, have a number of cabinet offices named and listed. At that time, they fairly well followed like the Federal Health Education and Welfare. And I realize that it's been amended and changed, education and social services and that sort of stuff.

Our thinking on this was, if we have a Secretary of State, we're splitting the Secretary-Treasurer and the Treasurer for two different functions. The Secretary of State needs to be a person charged with the responsibility for the maintenance of the records. That's where things would be filed and the Treasurer the physical responsibility.

And we thought instead of numbering a whole bunch of them out here, and defining them for now, we would just leave it with two for present purposes. Thank you.

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

MR. KEEN, JR.: Just a point of information, Mr. Chairman. As Dr. Gourd just laid out, what you see here is in fact a combination of what was formerly Article 8 in the '75 Constitution. So as we're considering this session, we're also considering the different concerns that appeared in the Article 8 of the old one.

The rationale for that is nothing -- Dr. Gourd has already expressed it, but I'll just reiterate. We really saw no need to have a separate article for the cabinet. And there's always been some discussion about, well, does that relate a pseudo fourth branch of government. So based on that rationale we consolidated the language in Article 8 into the language in Section 12 of our proposed, The Executive Branch.

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

MS. MASTERS: Thank you. Since we've moved the Deputy Principal Chief away from the legislative body, and the Deputy Principal Chief has not previously been a member of the cabinet, despite the fact that they are so close to assuming the duty, I was wondering if it would not serve the interest of the people well if the Deputy Chief was not assigned to be a member of the cabinet.

MR. HANNAH: You make that by form of a motion?

MS. MASTERS: The reason I am not making it in the form of a motion is if we wanted to think about it. But as I think about it, I guess I will. I'll make a motion that the Deputy Chief become a formal member of the cabinet of the Cherokee Nation.

MR. HANNAH: Motion is before you; is there a second?

Hearing no second, the motion dies. Debate is still in order on Section 12.

Mr. Keen, you're recognized.

MR. KEEN, JR.: Mr. Chairman, I would call for orders of the day, pointing out it is now high noon.

MR. HANNAH: Orders of the day indicate that it is high noon.

MR. HEMBREE: Can you delay that motion for just a second, sir?

MR. KEEN, JR.: Yes.

MR. HEMBREE: Because I would like to move previous question on Section 12. Previous questions has been called for. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, Section 12 is before us.

"There shall be a cabinet composed of the following persons who shall be citizens of the Cherokee Nation. Number 1, Secretary of State; Number 2, Treasurer. 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 of cabinet members.

Cabinet members shall be authorized to appoint such staff and other assistance as they deem necessary.

The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title or responsibilities of any foregoing department or function."

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

THE DELEGATES: Aye.

MR. HANNAH; Those opposed said "no."

(no response)

And the language is added.

Mr. Keen, you are recognized.

MR. KEEN, JR.: I would now call for orders of the day.

MR. HANNAH: Orders of the day state that at high noon that we would break for lunch, and we shall do so. We will be in recess for one hour, returning here at one o'clock.

MR. HEMBREE: Where is lunch?

MR. HANNAH: Charlie. Lunch is in the Union. At our usual place? Cedar room, and that is the third floor.

(lunch recess taken)

MR. HANNAH: We are in session. Mr. Hembree you are recognized.

MR. HEMBREE: Has Section 13 been proposed by the Commission?

MR. HANNAH: It has not, sir.

MR. HEMBREE: I will wait.

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

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve Section 13, which reads as follows. "There shall be created an office of Attorney General who shall prosecute the criminal laws and shall be the ranking law enforcement official in the Cherokee Nation. The Attorney General shall be a citizen of Cherokee Nation admitted to practice law before the highest court of the state in which he or she is a resident.

The Attorney General shall be elected by the registered voters of the Cherokee Nation to serve a term of four years, staggered with those of the Principal Chief and Deputy Principal Chief. The Attorney General shall be authorized to employ such prosecutors and other assistants as deemed necessary to carry out the duties of office."

Shall I proceed all the way through, or do you want to do it --

"Prosecution shall be by way of information based on probable cause after due investigation, except in criminal matters involving appointed or elected officials of the Cherokee Nation. In such cases, the Attorney General shall appoint a special prosecutor who shall conduct a Grand Jury investigation composed of twelve citizens with the authority to issue indictments for criminal violations found.

In all cases, the Attorney General shall retain complete prosecutorial discretion. To implement this session, the office of Attorney General shall be initially filed by appointment of the Principal Chief with confirmation by the Council until the 2001 election is conducted."

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: Second. The floor is open for debate.

Mr. Hembree, you are recognized.

MR. GOURD: Just one quick --

MR. HANNAH: Thank you so much, Dr. Gourd. Give us some background.

MR. GOURD: Just by way of brief background, this is another in the series of issues that the Commission discussed the pros and cons this way or that way as far as the Attorney General being elected or appointed. We've had extensive discussion. There are good points to be made from each side of that discussion.

What we finally arrived at, as we have in the others, is that, okay, let's write it as "elected" and the delegates can sort it out, because we were equally in favor of "appointment" or "election," so that's why we came down with elected. Thank you.

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

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. Mr. Chairman, there seems to be two distinct propositions in this section, so I have a suggestion first. I am going to move that the question be divided. And I would take privilege on the Chair that we take out the second paragraph first. I have an amendment to the second paragraph, but my motion is to divide the question from Paragraph 1 and Paragraph 2.

MR. JOHN KEEN: Second.

MR. HANNAH: Motion to bifurcate, and it has been seconded. Those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed "no."

(no response)

Motion carries. The section is divided. And although it reads in three paragraphs, we will, in fact, focus on the division of the two. And the second shall be taken first.

And, Mr. Hembree, you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. I have an amendment that, beginning with the word, "Prosecution shall be by way of information based on probable cause after due investigation," my amendment would be to put a period after the word "investigation," and strike the remainder of the paragraph.

In words of some explanation here, ladies and gentlemen, the idea of a special prosecutor very well may be an excellent idea. And it may or may not should be implemented.

But as I understood it earlier, we need to paint in broad strokes when we're talking about this Constitution, ladies and gentlemen. This would be a great legislative idea. It should be a legislative suggestion to the Council.

The problem with the wording as it is in there, is that if I were a person who wanted to deal in details, and since I'm an attorney, I do that, I would find it very easy to use this section to possibly cripple the government of the Cherokee Nation. At it states, it says, "Except in criminal matters." Now that, in and of itself, the term "criminal matters" is one of those hog troughs that we have talked about that attorneys can feed off of.

"Involving appointed or elected officials of the Cherokee Nation. In such cases the Attorney General shall," that's mandatory language, "shall appoint a special prosecutor who then shall conduct a grand jury."

Ladies and gentlemen, I can make allegation after allegation in accordance with this language, and it constitutionally require special prosecutor after special prosecutor to be appointed, which would then require Grand Jury after Grand Jury being called.

This shouldn't be a constitutional right. This very well

may be a good piece of legislation that should go through committee, should be reworked, and maybe eventually implement it. I don't know. But definitely, this is not a constitutional right. And that's why I would ask that it be stricken.

MR. HANNAH: Mr. Hembree has asked to amend by strike. Is there a second?

DELEGATE: Second.

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

Mr. Smith, you are recognized.

MR. SMITH: May I ask Mr. Hembree if he would consider an amendment after I can explain. I move to strike the first sentence of that paragraph 2. Here is why. Criminal prosecutions may be by indictment or by information. We have no place in our statutory Constitution provisions for an indictment for a Grand Jury. So that's not possible.

We have already included in our Bill of Rights that prosecution shall be of a due process. Due process is a term of art which would ensure, before a criminal charge be filed, that criminal prosecution to be subject to due process and probable cause in filing the complaint and certain protections.

So, Mr. Hembree, if you would consider striking the whole paragraph.

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

MR. HEMBREE: I would accept that.

MR. HANNAH: It's accepted. And if there is no objection from the second, the entirety of the second paragraph stands for your review for strike. Are there delegates who would rise in opposition to the motion? Hearing none -- oh, Ms. Stroud, you will find a microphone, and you are recognized.

MS. STROUD: Thank you. I may be totally out of line here, but as I'm reading it, and if we strike this, then we can't get any of our appointed officials who have done something wrong, we don't have any way of making them be held accountable. Am I incorrect? Or maybe this is a point of question or clarification?

MR. HANNAH: Point of information. Mr. Smith, would you assist?

MR. SMITH: I believe this paragraph makes it harder to prosecute public officials, not easier.

MS. STROUD: Where do we take them to now?

MR. SMITH: You treat them like everybody else.

If they've committed a crime, the police bring the evidence to the prosecutor, the prosecutor files charges, and it proceeds like anything else.

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

MS. HAMMONS: Thank you, Mr. Chairman. Diane Hammons. I speak in support of this amendment. Let me just point out that the language that we have stricken, treated elected or appointed officials differently than anybody else who was suspected

of a crime within the Cherokee Nation.

In other words -- and I guess I'm speaking to you, Ms. Stroud, or to anybody else -- it gave them preferential treatment. I have never known, in my many years as a prosecutor, of a law that mandated differential treatment based upon who the alleged criminal was. And that's what this language says. It says that you have to treat these people different, based upon not what they have done, not upon a class of crime, which is done all the time, but based upon who they are. And that's wrong, ladies and gentlemen.

And this language should be stricken. I agree that a special prosecutor is a fantastic idea for legislation or regulation. But with the striking, everyone is treated the same way, and it's an equal playing field. And I would support it.

MR. HANNAH: The other good lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: One of the ways to look at it, if you look in our own federal system, how long it took for Ken Starr to conduct his investigation and to bring that all about, we're talking about a major expenditure of time and resources, and it's really not necessary. Those people can be prosecuted if they do wrong, just like ordinary citizens can be.

MR. HANNAH: Mr. Keen, you rise in opposition?

MR. JOHN KEEN: I rise in opposition. They can be prosecuted just like anybody else, but, you know, sometimes that doesn't happen because of political alignment with different groups. I'm not making any specific references, but in general, sometimes that doesn't happen.

I would like to see it in there. But I agree that it is -- it's mostly a legislative issue. One way to keep it in there might be that we direct the legislative branch to create a provision for a special prosecutor, rather than doing it in the Constitution, and rather than hoping that the legislative branch will do it. We could direct the Council to pass a law to that effect, and let them work out the finer points of it.

But I would like to see some -- I would like to have some guarantee that our elected officials are going to have a process that they will be held accountable to. And rather than create that here, maybe we should direct them to pass legislation to that effect.

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

MR. HEMBREE: In response to the good gentlemen's comments, I believe his concerns are amply considered and covered in other areas of this Constitution. Striking this specific language about a constitutional right to require a special prosecutor, and that would then be required to call a Grand Jury, I think is overly burdensome, and it would not be good government.

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

MR. KEEN, JR.: I rise in opposition to striking this language. And I concur with my brother's position on this, understanding that we should not legislate in the Constitution. And

this normally would be a matter for the legislature to undertake.

One of the intentions of this language being in here was to provide another check and balance to protect elected and appointed officials from abuse of prosecutorial authority. That was the intention of it.

So, you know, if we strike out the language or just make a very simple statement regarding the implication of a special prosecutor, then I would suggest that. But that was the intent, was to try to provide some protection for our elected appointed officials.

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

MR. POTEETE: I move the previous question.

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

DELEGATE: Second.

MR. HANNAH: And there is a second. And hearing no objection, we'll move to --

MR. CORNSILK: Object.

MR. HANNAH: There is an objection. Those in favor of stopping debate, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed "no."

DELEGATE: No.

MR. HANNAH: And the question is closed.

The amendment that is before us is from Section 13, with the separation of the question from the first and second paragraph, second paragraph having been selected first. And the kind delegate has moved that the entirety of the paragraph be stricken.

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

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: Ayes have it. Paragraph has been stricken.

Mr. Keen, you are recognized.

MR. JOHN KEEN: I make a friendly amendment to include the language that I talked about earlier. If the Chair will indulge me, I will have it written down in just a couple of minutes.

Would you entertain a friendly amendment to that, as the Commission?

MR. HANNAH: When you say that, are you in reference now to --

MR. JOHN KEEN: To directing the Council to pass legislation for allowing a special prosecutor.

MR. HEMBREE: On order.

MR. HANNAH: On order.

MR. HEMBREE: Not to disrupt the good gentlemen's idea, however, I do believe it would be in more proper form if it was actually written out and presented to the Commission, so we would know what the friendly amendment was. And until such

time, let's continue on with this.

MR. HANNAH: Very well. And we return now to the first of the sequence of paragraph 1. Mr. Smith, you are recognized.

MR. SMITH: We're probably headed to the same place. I'll refer to Mr. Hembree.

MR. HANNAH: Kind man from Greasy.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. I'm going to propose an amendment. And I do expect debate and possibly this amendment would be amended. But let's get the ball rolling, so to speak.

In Section 13, after the word "shall be" in line -- let me just read it. "There shall be created an office of Attorney General who shall prosecute the criminal law and shall be the reigning law enforcement official of the Cherokee Nation. The Attorney General shall be a citizen of the Cherokee Nation, admitted to practice law before the highest court in the state in which he or she is a resident. The Attorney General" -- okay, here is where my amendment begins. "The Attorney General shall be --" delete the words "elected by registered voters of the Cherokee Nation." Add "appointed by the Principal Chief and confirmed by the Council."

I'll go ahead and read it and hand the good lady the language. "Confirmed by the Council to serve a term coterminous with that of the Principal Chief who appointed him or her. The Attorney General may be removed from office only as provided in Article" -- I'm going to put it in 11, which is the old Constitution, would be Article X in the revised working document. And I'll hand the --

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

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

Mr. Cornsilk, you are recognized. Do you stand in opposition?

MR. CORNSILK: Mr. Chairman, I stand in opposition. I believe that our own history will tell us that an appointed Attorney General is a politicized animal, a product of the Principal Chief's office, and cannot, maybe can, depends on the temperament of the individual, but probably would not be capable of carrying out the duties of his office without some political inclination.

I think we looked at the example in Washington, D.C. of Janet Reno and all of the other previous Attorney Generals before her. We see political activity whenever we have questions regarding the criminal activity or whatever activities might be prosecuted by that person. They just become political.

I think the electoral process would separate the Attorney General from all of the other elected offices in the Cherokee Nation and make them at least non-political for three-and-a-half years out

of their term.

MR. HANNAH: Mr. Smith.

MR. SMITH: Stand in favor in response to Mr. Cornsilk. How greater politicization can you have other than these stomping out the communities? You make it a political office, and you make this office as available as to who wants it or whatever motives, or for whatever agenda they may have.

Even though appointments and a consultation has some downfalls, I would prefer that over a general election. Plus, you need to consider the additional expense. Mr. Mullon is not here, is he?

MR. HANNAH: He is not.

MR. SMITH: He is an Attorney General from the Creek Nation. His observations, I think, are very germane. And I would like for -- at sometime we may have to ask to table this to get his observations, because we have had extensive discussions as to where the political fulcrum is between appointed and elected.

If I could regurgitate some of what he said, in essence, being elected makes you vulnerable to not just the Principal, it makes you vulnerable to all fifteen or seventeen Councilmen come election time, just not one elected office.

MR. HANNAH: Dr. Robinson.

MR. ROBINSON: Rick Robinson, delegate. And I'm standing in favor of this. The learned Chad Smith took most of my comments, but I just went to reiterate that in due respect to Mr. Cornsilk, I feel like if this position is elected, it will become much, much more a political item.

MR. HANNAH: Mr. Poteete, you are recognized. How do you stand?

MR. POTEETE: In support, but I would like to speak to the fact that there is a better way to do this than have a term coterminous with the Chief, since that is a consideration that Mr. Cornsilk has brought us, we say we don't want this to be someone that is at the Chief's mercy.

To reiterate what Chad said, this will be a publicized thing, if it was elected. He might even be more beholden to the Chief because it's a national election, it's expensive, and he would wind up running as a team probably. That's not a good thing.

But instead of having terms coterminous, I suggest that we either make the term longer, so it overlaps each Chief's term, or we make it staggered in some way perhaps by having the first appointment for a two-year term.

I think to achieve that, we need to strike the language that says "coterminous" and leave in the -- or a two-year term. I'm not quite sure. But I would like to plant that idea and maybe have a few minutes to think about that. Or have a five-year term. But we don't want this where the Chief is bringing in his own Attorney General. That doesn't achieve much. What if he needs prosecuted?

MR. HANNAH: Good lady from Tahlequah is recognized.

MS. HAMMONS: Mr. Chairman, Diane Hammons. Mr. Mullon and I did have a long discussion about this, as Mr. Smith and Mr. Mullon apparently did. I was originally, and I think probably still am, leaning in favor of an elected Attorney General. I've had the privilege of serving under three elected Attorney Generals for the State of Oklahoma. And it's my opinion in that case anyway, the Attorney General, while a politician, primarily answers to the people and does not have to worry about basically his boss, the government.

I object to the language as written, not so much for the appointment, but because as I said, I'm almost -- Mr. Mullon almost completely swayed me towards appointment. But I do object to this as written because of the coterminous term. I assume that any of my colleagues or members of the Bar are going to fulfill their oath and prosecute who they think needs to be prosecuted based upon the evidence, not who that person happens to be.

It is harder to do that if you have a coterminous term and were appointed by that person, know you came in with them and you're leaving with them. I still think that an attorney would fulfill their oath, but we're making it harder by putting that on there. So I'm in objection or opposition to this line of language.

MR. HANNAH: Ms. Stroud. Turn on your microphone, please, and identify yourself. Thank you.

MS. STROUD: Virginia Stroud. I would like to see a five-year inserted in the four-year staggered. That way, it would give time for the next Attorney General, when he came in, to have one year of mentoring with the cases that might be still pending.

MR. HANNAH: Do you move to include the language?

MS. STROUD: Yes.

MR. HANNAH: Motion on the floor to include the language by amendment of inserting --

MR. JOHN KEEN: Point of order.

MR. HANNAH: Point of order. Thank you.

MR. JOHN KEEN: Too many amendments.

MR. HANNAH: Too many amendments. Yeah, we are -- Ms. Stroud, the Chair has the phenomenal ability to both survey the room and keep the quorum in the chambers and turn around and see where we are. You have the Chair at a distinct disadvantage by knowing exactly where we are in this. We have a series of amendments on this. And I would ask you to withdraw.

MS. STROUD: Okay. It's withdrawn.

MR. HANNAH: Thank you very much. Mr. Hembree, you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. The points that are being brought up are very good points.

However, I like the language as written, and I like that term "coterminous" for a couple of reasons.

Number one, I'm going to probably say something that a

lot people don't believe, but I sure do. I'm an attorney. The person who takes this office will be an attorney. I took an oath when I was an attorney to uphold the laws. This Attorney General will also do that. And I believe in that oath. And I believe in the ability of attorneys to do a good thing, regardless of all the jokes that you hear, or the slurs that our profession goes through, and I mean that sincerely.

The office of Attorney General, I think, should be coterminous because that person is going to need to work with the Chief and the executive branch on a very close level to make sure that the laws of the Cherokee Nation are, in fact, carried out.

Now, there is another exception that I would be in favor of. And this is also an idea to kind of plant in people's heads here. I would be in favor of an elected Marshal by the populous that would be in charge of enforcing the laws of the Cherokee Nation. That is not made as an amendment. But that's just an idea stated out.

MR. HANNAH: The Chair will remind the delegates, stay germane. We're not discussing those that are toting badges yet.

MR. HEMBREE: I know. But those are my comments. And I am in favor of this at this time.

MR. HANNAH: Thank you very much. The kind man from Black Gum is recognized.

MR. McCREARY: Thank you. Ken McCreary, Black Gum. Well, on the basis, I do agree on the appointment of an Attorney General versus being elected. It would take the politics out of it.

However, on the basis of having the Attorney General to be staggered with the Principal Chief would have a couple of things.

It would also take the perception that the Attorney General is working directly for or under the Principal Chief or have control of him. And by doing so, it will give that perception to the people that the Attorney General is not in control of the Principal Chief.

And I think it would be a little bit better if it was staggered.

MR. HANNAH: Thank you, sir. Mr. Smith, you are recognized.

MR. SMITH: Good gentleman from Black Gum stole my argument.

MR. HANNAH: Thank you, Mr. Smith, for yielding. Mr. Gunter, you are recognized.

MR. GUNTER: I'm not familiar with the term "coterminous." Does that mean that if a Chief were to be removed or something, that his term would end after the Attorney General's term would end, and, therefore, his replacement would then appoint his Attorney General?

MR. HANNAH: Term meaning in parallel. And with regard to the remainder of the question, the Chair would look for any assistance.

MR. JOHN KEEN: Point of clarification.

MR. HANNAH: Yes, sir.

MR. JOHN KEEN: Is the word in the dictionary?

MR. HANNAH: The Chair is unaware if the word is in the dictionary.

MR. JOHN KEEN: It's not in Black's Law Dictionary.

MR. HEMBREE: Oh, I made it up, John.

MR. HANNAH: The good man from Greasy is well within his bounds to create words, ladies and gentlemen. But the Chair would remind the good man from Greasy that we have folks who live beyond the boundaries of Greasy to read this in the future.

MR. GUNTER: Cherokees are known for making up words.

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

MR. POTEETE: Excuse me, I want to --

MR. HANNAH: One moment, I want to finish clarifying for this gentlemen.

MR. GUNTER: Also, I think that an elected Attorney General would rely more on politicking to become elected than an appointed Attorney General, and that he would spend a good bit more of his time in becoming elected in politics anyway.

MR. HANNAH: There you have it. Mr. Poteete, you are recognized.

MR. POTEETE: I think there's probably a consensus that we ought to appoint. I'm not sure about that. But what I would like to do is urge the delegates to vote against this amendment, and we'll come back with a fresh amendment that maybe can gain consensus and that would be for staggered terms of appointment. So with that in mind, I move the previous question.

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

MR. JOHN KEEN: Second.

MR. HANNAH: There has been.

Those in favor, please signify by the saying "aye".

THE DELEGATES: Aye.

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

THE DELEGATES: No.

MR. HANNAH: Debate is still in order. Calvin, you are recognized.

MR. McDANIEL: I just want to make a couple of comments about the language up here. I didn't take Latin in high school. I'm not a lawyer. So I don't know what all of these terms mean. But I think I know what that one means there. But if they would put that in plain terms, where everybody could understand it, instead of throwing these legal expressions at us, it might take a little bit more room up there to spell it out, but I'd rather have them spell it out than use the terms I'm talking about.

MR. HANNAH: Kind delegate from Muskogee, thank you, sir. Mr. Hembree, you changed sides of room and you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. I would move to table my amendment.

MR. HANNAH: There's a motion to table. 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: And all opposed say "no."

(no response)

And the motion goes on the table. Thank you, Mr. Hembree.

Mr. Poteete, you are recognized.

MR. POTEETE: Well, as soon as we get this cleared off, I'm going to try to offer an amendment that I think will gain support.

MR. HANNAH: And --

MR. POTEETE: The amendment will be, "Attorney General shall be appointed by the Principal Chief and confirmed by the Council to serve a four-year term staggered with those of the Principal Chief."

MR. HANNAH: One more time, sir.

MR. POTEETE: "Appointed by the Principal Chief and appointed by the Council to serve --"

MR. HANNAH: One moment here because we want to hear this language. And with the indulgence of the delegates, we will place it at the end of the paragraph so you will know where it is. Mr. Poteete, continue.

MR. POTEETE: "The Attorney General shall be appointed by the Principal Chief and confirmed by the Council to serve a four year term staggered with those of the Principal Chief and Deputy Principal Chief." That would put the election falling at the same time. If we went to the five-year term, we'd have to have a special election.

MR. HANNAH: Motion is before you. Is there a second?

MR. HEMBREE: I second.

MR. HANNAH: And floor is open for debate. And you are recognized, sir.

MR. HEMBREE: The good gentleman, would you except a friendly amendment? And since we shouldn't have to worry about special elections because it's going to be an appointed position, by your amendment. But instead of the terms of a four-year staggered term, if you would just implement a straight five-year term, that would necessarily overlap, at least by one year.

MR. POTEETE: I must be in default if I'm going to worry about an election. I must be in a default if I'm worried about an election. I'll accept. If Chad will concur, so we can move along here.

MR. HANNAH: Gentlemen, the Chair will remind you this is not a committee of three, that the delegates will make the choice. And have we entered the friendly amendment? Okay. And it has been accepted by Mr. Poteete.

MR. POTEETE: Yes.

MR. HANNAH: And hearing no other comments, you are recognized, Mr. Gunter.

MR. GUNTER: The first five-year term, the Attorney General will interject the next term by one year. The second Attorney General will interject the next term by two years. The next Attorney General will go into three years, if they are on a five-year term versus a four year term, until we'll have four Attorney Generals in a twenty-year period and five Chiefs is what I'm saying.

MR. HANNAH: This is correct.

MR. GUNTER: And the problem -- if you have staggered terms, the first term would be for six years, or two years, if they are going to alternate.

MR. HANNAH: The good man is recognized.

MR. DOWNING: Carl Downing. It seems to me that what we have here is a commingling of appointment and elected responsibilities. If you want the Attorney General elected or selected by the Chief, then their terms should coincide. If you want them to -- if you want the Attorney General to be an elected position that is free from the influence of the Chief, then you would want a staggered term. But it seems to me like we're trying to do two things here.

If the Chief appoints the Attorney General, that Attorney General is going to have some obligation to him. If you don't want any obligation of the Attorney General to the Chief, then you need to elect him separately, and in that case, I would think that staggered terms would be very good.

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

MR. LAY: Thank you, sir. Delegate Lay, from Ochelata. I stand in opposition of this because we have already staggered terms for Council previously in the legislative articles, and we could elect this Attorney General. I'm big on electing people. And run him with the staggered term of Council, which would not be run him with the Chief, Vice-Chief. And that would take care of that. Thank you.

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

MR. SILVERSMITH: Thank you, Mr. Chairman. I'm Silversmith from Kenwood-Salina, I just happened to take that the Attorney General should be appointed by the Principal Chief. I really don't like two guys getting together because of one guy's choice or the other, judgment on whether or not it would be sufficient for the office by qualification.

What I would like to maintain is the fact that the Council, the Attorney General, and have the Chief approve of this,

basically because the Council again or a majority of the representative of more people, that person would more be apt to -- the Council would be more apt to reflect the interest of the people in the appointment of the Attorney General in the event that he does serve five years or whatever term. I think that would be -- more suffice to the disagreement of the delegation here. This is my position from the people where I come from. Thank you.

MR. HANNAH: Delegate Baker, you are recognized.

MR. BILL BAKER: A lot of this debate has to do with supposing that a Chief is going to be elected this year, and this Constitution is going to be done this year, and the appointment is going to be made immediately, and five years down the road it will overlap one year of the term.

In being very practical about all of this, it's very conceivable that the Chief will be elected, and an Attorney General might not be appointed for a year or two before this becomes an enabling Constitution. I don't know that five years is a good number. I don't know that keeping along the terms is not a better idea.

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

MR. JOHN KEEN: Would Mr. Poteete entertain a friendly amendment? I would propose six-year terms rather than five-year terms. They would overlap three Principal Chief terms to two Attorney General terms.

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

MR. POTEETE: I think so. I'm open to ideas. I just know we need to do something here. Some better heads than mine can speak to it by acceptance.

MR. HANNAH: And it's accepted, and it's entered. And your second, hearing no objection, Mary Ellen Meredith, you are recognized.

MS. MEREDITH: I rise I guess in puzzlement.

MR. HANNAH: In what, ma'am? You are in puzzlement?

MS. MEREDITH: Yes. We are suggesting the Attorney General be appointed. Under the 1975 Constitution, the Chief can appoint, the Council can confirm a cabinet level position of Attorney General any time they want to, and that hasn't been done. I think the language provides that they can add one if they want to any time they can. So I think that you have to make it mandatory for the Chief to appoint. Well, you do. You have "shall."

MR. HANNAH: The kind delegate is less puzzled. Thank you.

MS. STROUD: Point of information.

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

MS. STROUD: Thank you. I'm unclear. I'm feeling like if the Chief appoints the Attorney General, then the Attorney General is going to have to listen to what the Chief says

that he has to do. But is an Attorney General accountable to the Chief, or who is the Attorney General accountable to? So that I can make that clear.

MR. HANNAH: Mr. Keen, will you make a statement, please?

MR. KEEN, JR.: Yes. Thank you, ma'am. If I could have the scribe go down lower on the page. Oh, my word. We struck that language. In the language that we previously had, the final sentence of it was, "In all cases, the Attorney General shall retain complete prosectorial discretion."

And the reason that was in there was to alleviate any concern that the Chief would be deciding who was prosecuted under the law and who was not. That should be the exclusive purview of the Attorney General. So that is in response to that point of information, but now we may need to raise it as an amendment.

MR. HANNAH: Very well. The kind lady from Houston is recognized.

MS. SCOTT: Deborah Scott. Point of information as well. Under Number 40, the footnote, the purpose of this was to create an elected office of Attorney General. And now we have moved, I think, to an appointed office of an Attorney General. Then it speaks to Ms. Meredith's question of, do we not already have the capability of creating, appointing an Attorney General, so now we're --

MR. HANNAH: Scribner's question here. Simply put, the documents have not been updated. Is that correct, Mr. Vice-Chairman?

MR. KEEN, JR.: That would be correct. That footnote can be deleted.

MR. HANNAH: The good doctor is recognized.

MR. ROBINSON: Delegate Rick Robinson. I am in favor of the appointment and confirmation of the Council. I don't like the fact of a five or six year term. I am sure that Mr. Smith or Mr. Hembree or someone could come up with language that would assist me in what I would like to have.

Whoever is Chief, starting August 14th, that Chief, whoever he or she may be, should make this appointment as soon as possible, and this person should only serve during the rest of that four-year term with the Chief.

And in answer to the one question is, once this person is appointed, the way I understand it, the Chief cannot just arbitrarily remove that person. The person would have to be removed by some article that we have somewhere that gives the process of removing any appointment or elected official.

So once again, I'm in favor of appointing confirmation, but I would like for that appointment to go along with whatever is left of that four-year term.

MR. HANNAH: Ms. Chapman-Plumb, you are recognized.

MS. CHAPMAN-PLUMB: Thank you, Mr. Chairman.

Ms. Scott, I think in answer to one of your questions, what we're doing here, whether the person that serves in this position is elected or appointed, is we are mandating that that position be filled, where, right now, we don't have a mandate. That's up to the Chief right now. So it would be a mandate that we have this office and that the office be filled.

You know, the way to eat an elephant is one bite at a time. We're trying to eat the whole elephant. What we need to do is to divide this question and decide whether we are going to have an elected or an appointed Attorney General and move on from there. So my motion is to divide the question.

MR. HANNAH: Motion for division. Is there a second.

DELEGATE: Second.

MR. HANNAH: And there is a second. And all of those in favor, please signify by the say "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed say "no."
(no response)

And this question is divided. Where is the question divided?

That might be a good point for us to launch on. That would be overly common sensical, would it not? Chapman-Plub, would that help? Why don't you stay with the Chair on this just a moment, so he doesn't get lost.

MR. LITTLEJOHN: Point of order.

MR. HANNAH: Yes, Mr. Littlejohn.

MR. LITTLEJOHN: I believe the Hembree proposal was tabled and you need to go up about five more lines up there.

MR. HANNAH: About five more lines? Thank you, sir. Thank you very much, Mr. Littlejohn. The word "elected" has been identified. And --

MR. LITTLEJOHN: Let's fill in the blank.

MR. HANNAH: I almost said that. I had to slap myself mentally for thinking it. What we are going to do here, folks, is decide whether it's elected or appointed. And we will take up the question of the word "elected."

And 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 elected will stand.

Second part of our question, now that we've had the elected piece.

MR. HEMBREE: On order.

MR. HANNAH: On order, Mr. Hembree.

MR. HEMBREE: I will challenge the Chair on that vote, and would request a roll call vote.

MR. HANNAH: A roll call vote, actually.

MR. HEMBREE: God be it for me to try to waste time, but I think there was a confusion as to the question. I think a roll call vote would be in order.

MR. JOHN KEEN: For clarification of the question, Mr. Chairman.

MR. KEEN, JR.: Mr. Chair, point of order. Mr. Hembree, this morning, before you jointed us, we -- you may have been here, adopted a rule for five voices for roll call vote. So I would ask the Chair to --

MR. HEMBREE: Are there four others?

MR. HANNAH: Mr. Hembree, the Chair will find out if there was, in fact, other voices.

Although the Chair is more than willing to oftentimes relinquish the administration of this room, he has not been so designated by this body. And the Chair would see hands of other individuals who wish to see roll call. One, two, three, four, five, six, seven, eight. There is enough to do so. Roll call vote will be called for.

And let's just take a second here, folks. Perhaps the Chair has, in fact, muddied the question. And we will certainly look for assistance of clarification. But we had divided the question. And the question was with regard to the word "elected" or "appointed." And we were taking a vote on our stance with regard to the word "elected."

MS. CHAPMAN-PLUMB: I think Troy's proposal is what is on the table; is that correct? Or did he withdraw it? Well, if his isn't, then what I'm moving is that we amend the original presentation of the Commission to change the word "elected" to "appointed." There is your motion. I think that's what you were looking for.

MR. HANNAH: That is where I think we were.

MR. McCREARY: Point of information.

MR. HANNAH: Point of information.

MR. McCREARY: Mr. McCreary, Black Gum. I do believe the gentle lady was asking for a division of the question. If you'll scroll down, the division of the question would be, "The Attorney General shall be appointed by the Principal Chief." Break it.

Under the Poteete proposal. And that was going to be the question in reference to where we were posing, where the -- let's scroll back up to the word "elected." That's the question there in reference to "elected." That's the way I understood it. Am I correct?

MR. HANNAH: One moment, sir. Mr. Keen.

MR. KEEN, JR.: I think we're getting a little bogged down in procedure here.

MR. HANNAH: I think we are indeed. And we're going to get this straightened out here, folks, just really quickly, because I think we all know the question that we want to ask ourselves. And if we will simply get through the procedure of it,

we'll be able to ask. So let's all stay focused here.

MR. KEEN, JR.: I'm not sure that we necessarily have to change language on the screen for the simple question that is before us. We just need to simply state the question and call for a vote. And obviously the question is whether or not they should be elected or appointed.

MR. HANNAH: And the Chair has, in fact, asked that question, and we have, in fact, voted on it. The Chair was challenged, and we've asked for a roll call vote. More than five of you have, in fact, asked for that, and we shall do so. Mr. Smith.

MR. SMITH: Point of order. All of our discussions has been -- we started out with bifurcating this, and all of our discussion has focused on the last part of the first paragraph about elected or appointed. And I've deferred the discussion on the earlier part of that paragraph, but now it becomes germane. It becomes germane because I don't think we understand what the classic role of an Attorney General is versus a prosecutor. What you're really doing in this situation --

MR. JOHN KEEN: Point of order. The debate is closed.

MR. HANNAH: Mr. Keen, the kind gentleman will be heard.

MR. SMITH: I think we're confused, and we haven't had the discussion along these lines. An Attorney General, if you go look at the top of this paragraph, is being charged with the prosecution of criminal laws which shall be the ranking law enforcement official. That's not what an Attorney General is. That's what a prosecutor is.

And if we can really have a little bit of discussion about what we want the Attorney General to be, and his role to law enforcement, and that role as the prosecution, the idea if he's appointed or elected may become much clearer. I'm saying the call for a vote is premature.

MR. HANNAH: Our procedures are clear, and we have stood by them so far, and we will do so at this point. A roll call vote has been asked for and in excess of five members have asked for such.

Mr. Secretary, you will prepare for roll call vote.

MS. HAMMONS: Point of clarification.

MR. HANNAH: Point of clarification.

MS. HAMMONS: Please state, Mr. Chairman, what we're voting for.

MR. HANNAH: And what we are voting on -- Mr. Vice-Chairman, draw close, so that we make sure that we all understand. It is referring once again to the interest of the division of the question. And, effectively, are we going to elect or appoint. And by voting -- using the word as we did during the voice vote elect, if you vote in favor, the Attorney General will be elected; if you vote no, then obviously they will not be elected.

MR. HOOK: Point of personal privilege. I

understand that we need to stand by the rules that we have adopted.

But we're also about trying to understand and make the best decision possible. The point of information, I would like for Mr. Smith to articulate a little bit more about the role as he perceives them before we make a decision on this.

MR. HANNAH: Well, one thing that we could do to clear this up, is if my good gentleman over here could, in fact, withdraw his request for a roll call vote. And what say you, sir?

MR. HEMBREE: I would withdraw it.

MR. HANNAH: Thank you very much. And the Chair will declare that the previous vote was --

Mr. CORNSILK: Mr. Chairman, point of order.

MR. HANNAH: Just one moment, sir.

I understand. I assume that with Mr. Hembree's withdrawal of his request for a roll call vote, that the seconds will withdraw?

MR. CORNSILK: That's what I wanted to find out if that is necessary.

MR. HANNAH: Yes, it is. And the Chair was about to ask for such. And hearing no opposition, he will concur or conclude that there is no opposition to withdraw Mr. Hembree's motion. Now, with regard to --

MR. POTEETE: Mr. Chairman.

MR. HANNAH: One moment, sir. The Chair rules that the voice vote was invalidated due to the challenge, and the floor is open for debate.

MR. POTEETE: I would like to withdraw my motion. Susan would like to withdraw hers, and we would like to just talk about Section 13 before we start offering amendments and have some good explanation and debate and not get staggered down with all of this.

MR. HANNAH: The Chair thanks you very much. So with the assistance of the scribe, let's go through here and see exactly where we are. The Hembree proposal, which has been tabled, is obviously still on the table. The request then by Chapman-Plumb to bifurcate the question has been removed; is that correct?

MS. CHAPMAN-PLUMB: That is correct.

MR. HANNAH: So that, the question with regard to "elected" now is no longer before us. The Poteete proposal has now been removed.

MR. POTEETE: Mr. Chairman.

MR. HANNAH: Yes, sir. You are recognized.

MR. POTEETE: I suggest to you all whether we want -- if we really want to elect someone, it should be on staggered terms, the way the Commission has written it. So let's talk about that now.

MR. LAY: Mr. Chair.

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

MR. LAY: Thank you, sir. Mr. Hembree has just brought to my attention that the first thing, besides whether we

elect him or appoint him, we need to probably talk about, and I think he would ask Chad and Mr. Hembree and any other attorney here to ask whether we even want an Attorney General.

And, apparently, my thinking about what an Attorney General is versus a prosecutor, I'm thinking that they're the same thing, but if they're not, I would like to hear all the attorneys speak to that.

MR. HANNAH: Mr. Lay, thank you very much for raising the question. Chad, you are recognized.

MR. SMITH: Thank you. We do have a number of criminal defense attorneys and other attorneys, Tina, Rex Earl, Todd, and Diane, and I stand corrected, but an Attorney General is basically the lawyer for the Cherokee Nation. He does all to the Cherokee Nation, both civil and, to the lesser degree, criminal.

The Attorney General for the United States, rarely prosecutes. He's not the movement usually in prosecution. It's more of a local prosecutor, a local U.S. Attorney. In the state system, it's the District Attorney. But the Attorney General is the Tribe's overall lawyer.

And then when you get into, it says, "Shall prosecute the criminal laws," it begins to become restrictive on his duties. And particularly bothersome is the language, "Shall be the ranking law enforcement officer in the Cherokee Nation."

What you have to understand is that a lawyer is a representative; he is not a movant or a party. One of the worst things that a prosecutor can do, in my point of view, is to go to a crime scene because he then becomes a witness; he may become a party.

What his duty is, is to stand off and represent the Cherokee Nation or represent law enforcement prosecutions. So it become very compromising to say the Attorney General shall be the ranking law enforcement official because then he becomes part of the problem, perhaps, instead of the representative of the parties.

The prosecutor, and you come down and authorize the authority of prosecutors, that may be advisable. But the prosecutor's sole job is to look at the information that is brought to him, evaluate that, and decide whether to file charges or not. The prosecutor, again, is the Cherokee Nation's lawyer for criminal actions. He represents no one else. He doesn't represent the victim. He doesn't represent complaining parties. He represents the Cherokee Nation.

Considering all of that, you do, in many ways, hamstringing your administration by electing an Attorney General because the Attorney General should be the one that he turns to, the Tribe turns to for its superior legal advice.

MS. STROUD: Does the Attorney General again have to go to the Principal Chief? If he doesn't like him, he can kick him out?

MR. SMITH: The mechanics of his tenure is of question. But all we're having now is a discussion as to the

particular roles of Attorney General, a prosecutor, and the ranking law enforcement. And I think if we understand those things, we can make our decision whether he being elected or appointed more intelligently. Mr. Dowty certainly is experienced in this field, and I would invite his comments.

MR. HANNAH: Mr. Dowty, would you please assist?

MR. DOWTY: Thank you. Delegate Dowty from Tahlequah. And Delegate Hammons may be able to address the specific duties of the Attorney General of our State. But I was going to rise at the appropriate time when we got back to the body of this particular section to suggest to the delegates that if you were to pass this section, restricting your Attorney General to the prosecution of criminal laws, that would be a great disservice to the people because the office of the Attorney General can be much more broadly utilized by the people. As Mr. Smith says, it is the attorney for the Nation.

The Attorney General could advise the Council, advise the various committees, and could issue opinions, upon the proper request of the entities, of the government. But if you lock it into the language of your Constitution, you limit the Attorney General just to the duties that you will have prescribed in this section.

And so if you proceed in this manner, I would certainly suggest that you add language that other duties may be imposed upon the Attorney General. And whether that be by the Council's action, you need to leave this office broadly defined in terms of duties so that it may be more properly utilized to the benefit of the people.

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

MR. HOOK: Point of information. I would like to ask the learned advocates here if they can help. Are we discussing the possibility of changing the title in this section to "prosecutor" and have the same responsibilities as stated, or are we suggesting restating the responsibilities of Attorney General in this section?

MR. HANNAH: Mr. Dowty.

MR. DOWTY: I don't know what the desire of the body is of the delegates. But the language you have placed before you now defines really the duties of the prosecutor and not the duties of the Attorney General.

In our code, I believe there is a position of Attorney General by legislation, and duties to some extent have been defined there in the code. If you wish to create the constitutional office of Attorney General, I would suggest that you may look there first for the language that you might wish to bring into this Constitution, defining that position, if it is your desire to make the Attorney General a constitutional office.

MR. HOOK: Point of information.

MR. HANNAH: Point of information.

MR. HOOK: You are in consultation right now, the one I wanted to ask, but could the Commission give some of its rationale for including this and help clarify this?

MR. KEEN, SR.: Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. KEEN, SR.: If I may, I may be able to clear up some of the misunderstandings here. Ralph Keen, Sr., delegate, and I am retired from the United States Department of Justice. I think what we're doing here is we're talking about the way two different political entities deal with the same position of Attorney General. What you've been hearing is an implication, I suppose, of how the State Attorney General functions.

My experience has been with the federal system. In the federal system, the Attorney General is the top law enforcement officer. I worked with the U.S. Attorney's Office in Muskogee. The only thing we did was prosecute and go to court.

Now, it's true that many of the federal agencies had lawyers who advised them on a broad range of activities, but they did not work for the Attorney General. The Attorney General of the United States is the chief officer in the Department of Justice. And the Department of Justice includes not only the United States Attorney's Office, but the Federal Bureau of Investigation, Drug Enforcement Agency, and a host of others. But the Attorney General of the United States is the chief law enforcement officer of the United States.

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

MR. SCOTT: Owen Scott, delegate. And in clarifying the duties of Attorney General that we're talking about here, I have a question. I see in our Section 13 that we have under discussion, "Attorney General shall be the ranking law enforcement official of the Cherokee Nation." Something coming up in another section about the Marshal to serve the ranking enforcement officer in the Cherokee Nation, I just wonder which one of these men are going to be the ranking. Are we talking about the same understanding of "law enforcement officer"?

MR. HANNAH: You raise a good question, Mr. Scott. It will be addressed at the appropriate moment. Mr. Keen, you're recognized.

MR. KEEN, JR.: I can address this question.

MR. HANNAH: Please do.

MR. KEEN, JR.: The language in Section 13 with respect to Attorney General makes him the chief or the ranking law enforcement official, "official" meaning he's put in office and has all the rights and privileges of any Nation official.

The other language you're referring to just simply makes him the ranking law enforcement officer.

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

MR. BILL BAKER: Thank you, sir. I am so confused. We've talked about the Attorney General being elected, being appointed, being the prosecutor. We've talked about the state duties of one. We've got a general counsel now that the Tribunal has ruled cannot assist the Council because it's a separation of

powers issue.

If it's full time, and elected, then what are we going to pay him, and where are we going to get the money to pay him? If it's a part time, similar questions come up. Are they going to interface with Law and Justice and that battery of attorneys, or is there a separation issue yet?

I'd say that this section is a can of worms that may be best laid on the table, and better minds than mine get together and think this one through for a while because I think we're going to be here all day long, and not come up with anything better than what we've got.

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

DELEGATE: Second.

MR. HANNAH: And all of those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And it is laid upon the table.

And Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve the language in Section 14 to read as follows: "The Principal Chief shall appoint, with confirmation by the Council, a Marshal to serve as the ranking law enforcement officer in the Cherokee Nation.

Such appointment 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."

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. Mr. Gourd, any further comments?

MR. GOURD: This section has been created. It's a brand new one. It has the idea of an Attorney General.

MR. HANNAH: Very well. Thank you very much.

Mr. Keen, you are recognized.

MR. KEEN, JR.: Thank you Mr. Chairman. Ralph Keen, Jr. Obviously, this section creates a permanent position for a Marshal. And obviously, that was contemplated to create a permanent law enforcement arm of the Executive branch.

But my thinking now, with the proposal we just laid on the table, these two are interrelated in so many different ways. If we choose to make the Attorney General elected, we may want to keep this one appointed, as the Commission had originally recommended. Or if we choose to have the other one appointed, we may want to have this one elected. So I think that it may be wise if we lay this on the table now.

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

DELEGATE: Second.

MR. HANNAH: There is a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

Section 14 goes on the table. Dr. Gourd, you are recognized for Section 15.

MR. GOURD: Thank you, Mr. Chairman. I make a motion to approve the language for Section 15 to read as follows.

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

MR. HANNAH: Motion is before you. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. If there are no additional comments, floor is open for debate.

Mr. Hembree, you are recognized.

MR. HEMBREE: I did not mean to be recognized.

MR. HANNAH: Then don't go up by the --

MR. CORNSILK: Point of information.

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

MR. CORNSILK: My question would be that if we have provisions for the replacement of an elected official throughout the Constitution, wherever they are named, what is the purpose of this section?

MR. KEEN, JR.: I can respond to that.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: We are also undertaking to possibly create an office for Attorney General, and maybe perhaps a Marshal. And without going through a really elaborate process about how those offices would be replaced or fulfilled, then this is just kind of a general catchall for anything that is not otherwise provided for.

MR. CORNSILK: I will move to table this.

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

DELEGATE: Second.

MR. HANNAH: There is a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed "no."

THE DELEGATES: No.

MR. HANNAH: And it is laid on the table.

MR. McCREARY: Point of personal privilege.

MR. HANNAH: Gentleman from Black Gum is recognized.

MR. McCREARY: I call for a ten-minute recess.

MR. HANNAH: And the Chair will so indulge you, sir. A ten-minute recess has been called.

(recess taken)

MR. HANNAH: Delegates, take your seats, and we will be in order. Mr. Keen, you are recognized.

MR. JOHN KEEN: I would like to make a motion to reconsider Article 6, Section 3 for the purpose of addressing a subject I believe we missed. I don't believe that we set the term limitations for the Deputy Principal Chief the same as the others.

MR. HANNAH: Thank you very much, Mr. Keen. There's a motion to reconsider before us.

DELEGATE: Second.

MR. HANNAH: There is a second. Those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed "no."

(no response)

MR. JOHN KEEN: I'll give my motion to the scribe.

MR. HANNAH: Very well.

Mr. Baker, you are recognized.

MR. BILL BAKER: I believe Mr. Keen has gone to "meddle'n."

MR. HANNAH: How appropriate for you to make that observation, Mr. Baker.

The kind lady from Oklahoma City.

We would not report it that the good delegate from Tahlequah, Mr. Baker, made the comment that Mr. Keen had gone to "meddle'n," which is not a town south of Keota. It is, in fact, a verb.

MR. JOHN KEEN: Make a motion we accept that language.

MR. HANNAH: The motion is before us and has been seconded.

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

THE DELEGATES: Aye.

MR. HANNAH: And those opposed "no."

(no response)

And we are back to our previous section.

Mr. Keen, I believe that with the sections from Article VI --

MR. KEEN, JR.: I think Section 13, 14 and 15 are all on the table.

MR. HANNAH: Are all on the table. And hearing no motion that they will be brought forward, then we would be prepared to --

MR. KEEN, JR.: Are you ready?

MR. HANNAH: Are you prepared?

MR. KEEN, JR.: I'm prepared. Mr. Chairman. Delegate Ralph Keen. And with the other previous sections being tabled, we can move ahead to Article VII, the Judicial article. And I would like to state, before I even start, that this is a complete rewrite of the Judicial, Article VII, appearing in the 1975 Constitution. So if the scribe can pull the '75 and pull it on the bottom, I would appreciate it. And dealing with this article section by section, we'll start with Section 1.

"The judicial powers of the Cherokee Nation shall be vested in the Supreme Court and such lower circuit courts at the Council shall from time to time ordain and establish. The Supreme Court shall be composed of three members, all of whom must be citizens of the Cherokee Nation, admitted to practice law before the highest court of state of which they are residents.

The circuit court shall initially be composed of one presiding judge and two associate judges, all of whom must be citizens of the Cherokee Nation and admitted to practice law before the highest court of the state of which they are residents."

MR. HANNAH: Motion is before you.

Is there a second?

DELEGATE: Second.

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

And the kind lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: I'd like to propose an amendment. I would like to change the number of Supreme Court justices from "three" to "five." And I'd also like to compliment the Commission's work that they've done here. It shows really a lot of work has been put into it. A lot of thought. And I think basically you have a good product here. Maybe we can tinker with it just a little bit and get on with business.

With regard to the five members, I sit on a number of boards and committees, various kinds of efforts through my church, through my job, all kinds of things like that. It never ceases to amaze me how a group of people can get together and from ideas of one person, two people, three people, four people, five people, and come up with something that no one of those people thought of before they entered the room or the meeting, and come out with a good decision.

I just think that increasing the Supreme Court to five members will increase the quality of the decision-making, and it will also ease the burden.

One thing, there might be some cost considerations. But, in fact, if you have five people doing less work, you might have less expense as opposed to three people having to do a lot of work.

That really doesn't have anything to do with the constitutional considerations. It's just a practical consideration. But I think we can raise the quality of decision-making just as a byproduct if we raise that number to five.

MR. HANNAH: The good lady has submitted the number five. Without resorting to the filling of the blank, is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

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

DELEGATE: No.

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

Motion carries.

MR. KEEN, JR.: Mr. Chairman, point of order.

Was that vote --

MR. HANNAH: The Chair lost the vote. And strike that. There is a motion on the floor to increase the number to five. Is there a second?

DELEGATE: Second.

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

Mr. Keen, you are recognized.

MR. KEEN, JR.: I would like to raise this as a point of information. I don't necessarily oppose increasing the number to five, provided that there is an adequate workload to really necessitate five individuals. And I would like to call upon our former Chief Justice, my father, Ralph Keen, and allow him to speak to that issue, if he would.

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

MR. KEEN, SR.: I am Ralph Keen, Sr., delegate, former Chief Justice of the Judicial Tribunal. I've been asked whether or not the increase in the number of justices to five would be beneficial. I think the answer to that depends on what the workload is. And in the past, the workload was heavy and it would have been justified. In the future, I don't know. It depends on what we do in other places of this Constitution.

What I'm referring to is, I think if we haven't already done it, we're going to be taking up an item that will limit the Supreme Court to judicial review only. If that's the case, then five Justices are not needed.

I always felt that they should be limited to judicial review only. But, unfortunately, we had to take care of many other things on the old Constitution. So it's a matter of choice, if you want to spend, under our current dollars, another fifty to \$75,000 on the office or not. I don't think it's needed if you limit their work to only judicial review.

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

MR. BILL BAKER: I tend to agree with former Chief Justice Keen. We've got about all the lawyers in the Cherokee Nation in this room, and we're about to fill all the spots. It would again mainly be a budgetary item that we need to be mindful on this Constitution as we create these layers of positions and

safeguards. We're coming close to throwing the baby out with the bath water, folks. We need these dollars in the communities for service, and be mindful of it, please.

MR. HOOK: Mr. Chairman.

MR. HANNAH: Kind gentleman.

MR. HOOK: Call the question.

MR. HANNAH: The Chair has recognized this delegate making his way to the microphone. And you are recognized.

MR. CLARKE: Mr. Chair, William Clarke, delegate from Muskogee. I'm inclined to agree with both former Chief Justice Keen and Mr. Baker. And I would ask that we table this portion until we come to some type of decision in terms of whether or not our supreme court will be just an appeals court for review only.

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

DELEGATE: Second.

MR. HANNAH: There's a second. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: And it is placed on the table.

Mr. Keen, you are recognized.

MR. HEMBREE: On order. On order, Mr. Chairman. Far be it for me to waste time, but --

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

MR. HEMBREE: Oh, I'm sorry about that.

MR. HANNAH: That's quite all right.

MR. HEMBREE: Basically, by that vote, we have tabled Section 1, correct?

MR. HANNAH: We have tabled the discussion with regard to the motion that was made by Delegate Chapman-Plumb with regard to the number five. And the Chair would be glad to stand corrected.

MR. CLARKE: That was my intent.

MR. HANNAH: That was the delegate's intent, and probably a left-handed way of getting there, but --

MR. HEMBREE: So our discussion is continuing.

MR. HANNAH: The discussion continues with Section 1.

MR. KEEN, JR.: Point of information, Mr. Chairman. I might explain the Commission's rationale behind the different label for the courts. Obviously, under our existing system, they have been termed "district courts." This was actually a suggestion brought about by our former commissioner, George Wickliffe, and he went back to the Constitution of 1839 where they were nominated as circuit courts then, with the consideration that the Council had the ability to establish these courts wherever they were needed throughout the Nation.

And also, obviously, the term "district" brings about an inference that there are, in fact, judicial districts, something that we have not moved to in this Nation. So I always thought of it as something of a misnomer to have a district court without judicial districts. So that was just by way of explanation on that term.

MR. HANNAH: Good lady from Tahlequah is recognized.

MS. JORDAN: I would like to propose an amendment to the motion. Where it says, "one presiding judge and two associate judges," I would suggest to you, given the fact that the lower court appears to be on a growth pattern because of the juvenile caseload, the adoption caseload, which is on the verge of a -- and maybe Mr. Clarke may want to address this -- is on the verge of an explosive type era, exploding into numerous cases that may be coming into the lower court system from other court systems.

I would suggest to you that we maybe think about -- leave the one presiding judge, and where we have the word "two," I would take out -- delete the word "two" and just put in "associate judges." Just leave it "associate judges." I don't believe I would put a number there. Or just take out "presiding judge" and -- just take out the numbers and let the legislative body, as there would be growth --

Could we just hold on just a second and have just a minor caucus?

MR. HANNAH: Yes, ma'am. Not any problem.

MR. GOURD: Point of information.

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

MR. GOURD: Thank you, Mr. Chairman. Charles Gourd, delegate. One of the other things that was, I think, brilliantly drafted by Mr. Keen in this is that it specifically gives the Council the authority to create such lower courts, these circuit courts, as from time to time the Council should ordain and establish. The purpose is, this is a number to start.

And unless there's some indication, I think in the Constitution, of a number from which we start, then there's that question. This gets the process started. And as the child welfare caseload expands, they could go immediately to the Council and say, we need another judge. But this gives the Council the constitutional authority to do that, for purposes defined by the Council.

So that's just a point of clarification. And that way, the numbers in here are for placement to get the system started.

MR. HANNAH: Thank you, Dr. Gourd. Ms. Jordan, you are recognized.

MS. JORDAN: Delegate Jordan from Tahlequah. After a short caucus, the line, the suggestion, the amendment would be after "shall," delete the word "initially," strike through "initially be composed of," and then put "judges as prescribed by law." And delete the word "all." Strike that.

That leaves it to the Council to consider the number of

cases that the lower court has now. And as we -- or as the lower court should expand in the future, it would leave growth potential there. Thank you.

MR. HANNAH: The amendment is before us. Is there a second?

DELEGATE: Second.

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

MR. KEEN, JR.: Thank you, Mr. Chairman. Ralph Keen, Jr., delegate, rising in opposition to this proposed amendment. If you look down to the language under Section 3 of the Commission's recommendation, you'll find this language: "Additional circuit judgeships may be created only by referendum vote of the people."

And the reason that is in there is to constitutionally determine who has the authority to create new judgeships.

Now, I know different systems operate in different fashions, but many state systems require a vote of the people to create a new judgeship. And it's the consensus of the Commission that that should be the case in the Cherokee Nation, that the Council should not be free to create circuit judgeships.

Now, let me be clear here. They can create administrative judgeships, but when you're talking about judiciary, we're also talking about separation of powers issues here as well.

And so for circuit judgeships, that should go to a vote of the people to create those offices, obviously on the recommendation of the Council. They would be the ones to put the question on the ballot. So they would have the ability to regulate the need for district judges, but it would only be through a vote that those offices are created.

MR. HANNAH: Gentleman from Muskogee is recognized.

MR. CLARKE: Thank you, Mr. Chair. William Clarke from Muskogee. I want to rise in favor of this last amendment. And I would need some further clarification of what Delegate Keen just stated.

But from being responsible administratively over our court-related social service programs, there is a potential nightmare that's going to be coming our way as a result of a federal law that went into effect about a year ago that's called the Adoption Safe Families Act. And all states have now had to adopt that.

So we are getting requests from state social workers, state courts, whatever, to bring a lot of those cases into our tribal district court so that we can facilitate those adoptions of kids who are out there in the child welfare system, tribal kids, Cherokee kids.

And I agree wholeheartedly with what Tina Jordan said. This is going to create a situation where we're going to have to do something. So if in the administrative -- I'm asking for

information now -- if in the administrative law judges, I believe you indicated that the Council would have authority to declare or to approve, would those administrative law judges have the judicial authority and powers to enter orders that would, in effect, make children wards of the Cherokee Nation, place children in the custody of the Cherokee Nation for protection, terminate their rights of parents, and to, in effect, order permanent placement such as adoptions?

MR. HANNAH: Mr. Keen?

MR. KEEN, JR.: In response, I would say no, that that would require a court of record, which would be our circuit courts. And, again, the real issue before us here is how many judges we're going to start this system with, and then who's going to have the authority in the future to expand the number of judgeships. So I hope I was responsive to your question.

MR. CLARKE: Sir, may I be recognized again?

MR. HANNAH: If you would hold, I would -- how much time do you have remaining? You have two minutes remaining? Okay.

MR. CLARKE: If that's the case, then another question. Could not the Council, or does not the Council, then -- would they have the authority, then, to establish, or would it be up to the supreme court or the district court to establish a juvenile and a family court division within our judicial system?

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: A juvenile in family court, that kind of mixes several different possibilities. If you're talking about making provisions within a court system, that would fall upon the judiciary because that is under a separate branch of government.

MR. HANNAH: Thank you very much, sir. Mr. Hembree, you are recognized.

MR. HEMBREE: Thank you, Mr. Chairman. Delegate Hembree. I have a question to Mr. Keen, where he stated that additional circuit judges could be created by referendum of the people. My question is, wouldn't you find that overly burdensome and cumbersome to have a petition referendum or an election on whether to create a judgeship?

Could you not see a circumstance in which a judgeship would be needed, and we would necessarily be two or four years out from an election in which to have that referendum in the first place, or be in the -- an enviable task of having to call a special election to create a circuit court? Wouldn't it be the better practice that the Council, if they saw a need, as representatives of the people, have the authority to create a circuit courtship?

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: We're dealing with two different issues here, and let's try not to get them too intertwined. As far as creating the circuit court, the Council does have that authority already.

Now, as far as creating the judgeships for who will

preside in those courts, your question is, would it be too burdensome to have to wait for the next election so that vote would be placed before the people.

In response to that, I've got -- first of all, as it stands right now, we do not have, I don't think, an overbearing caseload that three judges cannot handle.

Second of all, if the caseload was increased that much, there's always possibility of a Special Master being appointed for a court until the next election could be brought about.

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

MR. BILL BAKER: Once again, we're comparing apples with oranges. When you get to the district court, all of a sudden it is not the same budget constraint that we have with the Tribunal or with the supreme court or whatever we call it. It is funded through self-governance. It comes to the Tribe as we get authority to handle things in our district court.

And as we expand our Tribe, not only in numbers, but in authority through the federal government, it is conceivable that in a short period of time, that we'll have more caseload in the district court than three judges could possibly handle. I think it is very restrictive to say we've got to wait for an election; we've got to put it on the ballot; we've got to advertise it; we've got to get the people to approve it, when we're talking federal dollars to take care of Cherokee people and get services to the kids and families of the Cherokee Nation.

I would caution -- I mean, you know, the funds could come available, just like they did when district courts were established.

The old '75 Constitution never envisioned even having a district court or the need for one, but through federal funding and services that we could contract for, to give to our people, that's where the legislature came up with the idea, is because the federal dollars are there, and they could see the services that could go to the people.

So, I caution. I do not throw up an amendment, but like I say, folks, think about it and come up with a way that we, as a Tribe, can grow with this Constitution without the burdens of a special election. And I stand down. Thank you.

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

MR. SMITH: I will propose -- and I'm not sure if this is friendly or hostile -- but to strike the word "circuit" throughout the article. I understand the historical significance, but it adds to more confusion than we have now for almost ten years.

None of the lower courts to be district courts, and a district court can be the whole Cherokee Nation which, in effect, it is.

The district court of the Cherokee Nation covers fourteen counties. That eliminates confusion further. Circuit courts often denote an intermediate appellant court. You have district courts. You have the 10th Circuit Court of Appeals. You have the U.S. Supreme Court. It makes things simple if we just keep with what

we've got, district court.

Further, I would object to the election of judges because you will generally see that the quality of judges in the federal bench, it is much higher than the state judges as a general rule, because the federal judges are appointed; they have some stability and tenure.

The state judges have to be elected, and they're subject to political pressure. And when we use the words, "such lower courts" on the second line, not to say that to circuit court. "Such lower courts," and that gives the Council flexibility to create administrative law courts and other district courts, juvenile courts, special masters. We can respond as the need arises.

And I concur with the representative, because ten years ago, we never anticipated until the Greasy Ballpark case, that we would have criminal jurisdiction. With the exercise of sovereignty, we don't know where this leads to.

This is the exact place where we can see that absolute flexibility is critical. We have to be able to move with the times and the demands. And to put numbers in where it is not necessary restricts us, because we can't go back and change this. We have to have the expenses of the constitutional referendum.

MR. HANNAH: Ms. Jordan, what say you?

MS. JORDAN: I would agree with that.

MR. HANNAH: Very well. Without opposition from the second, the language is submitted. Mr. Keen, do you wish to be recognized?

MR. KEEN, JR.: Yes. I would like to speak on the terminology again on the courts. I do agree with Mr. Smith that it may cause some confusion because we're changing the name of the court. But I disagree that it necessarily infers to an appellate court.

The courts of Arkansas, courts of general jurisdiction, have two varieties. They have chancery courts and they have circuit courts, and their circuit courts are courts of general jurisdiction, as were the courts under the Cherokee Nation in times past.

So as far as that language, I'm not really stuck on that.

I mean, folks, I'm not going to argue one label over the other. But it might be wise just to divide the question and resolve that issue.

But the other underlying issue that we're dealing with here, we're kind of toying with, as Mr. Smith has already brought up, and it would help us resolve this issue, is whether or not the lower court judges, district or circuit, however you want to refer to them, are going to be appointed or elected. And if they are going to be appointed, then the number up here, that all really becomes moot.

So I'm not sure how to proceed on this. It may be wise to call for a division on the question with respect to that. That actually comes out of Section 3. We're dealing with Section 1.

So given that, if there's -- perhaps it may be best to

proceed if there's no other debate to be raised with respect to Section 1, maybe we should table that amendment or that section and come back to it after we take up some of these other issues.

MR. HANNAH: You have a motion for tabling of Section 1.

MR. GOURD: Second.

MR. HANNAH: And there's a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

And the item is laid upon the table. Mr. Keen, you are recognized.

MR. KEEN, JR.: Is our table getting full yet?

MR. HANNAH: The Chair will bring in another table if need be.

MR. KEEN, JR.: "Section 2. The Justices of the Supreme Court shall be appointed by the Principal Chief and confirmed by the Council to serve terms of nine years each. An appointment to the supreme court shall take place once every three years, except in the case of filling a vacated seat on the court for the remainder of that term. To implement this provision, the term of the 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, and the justice having the shortest remaining term shall be extended to three years."

And some rationale behind this is, for a staggering of -- not only a staggering of the terms of our Supreme Court Justices, but also to provide a little political balance of power. Under the current system, the justices serve six years. And the way that works out mathematically, any Chief serving a term of four years could very often have the ability to appoint two-thirds of our court.

And so the rationale of this is to try to elongate the terms of the Supreme Court Justices so any one Chief would normally only have the ability to appoint one justice of the supreme court per term.

MR. BAKER: Point of order.

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

MR. BAKER: I'm not wanting to cut off this explanation at all, but until we get back to Section 1 and decide whether there's three or five, this section is moot to a discussion until we find out how many. Because I'm sure these numbers will change if we go to five members, and we can spend a great deal of time working this one out, only to be for naught. So if we could move on.

MR. KEEN, JR.: And I would stand down to that logic. So for that reason, I would move that we table Section 2.

MR. HANNAH: In actuality, kind Manager, I will

remind you that made your motion and moved to the explanation without a second. Therefore, it's not apportioned. You may move to Section 3. Thank you.

MR. KEEN, JR.: Thank you, sir. Section 3. "Circuit judges shall be elected pursuant to the requirement set forth in Article 9 and shall serve terms of four years each. Additional circuit judgeships may be created only by a referendum vote of the people. To implement this provision, the current appointed district and associate district judgeships shall continue in office until the next regular election is conducted."

Mr. Chairman, I think the import of this language is clear, and I would move that it be approved by this body.

MR. HANNAH: Motion has been made for Section 3. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is. And the floor is open for debate. Mr. Hembree, you are recognized.

MR. HEMBREE: Mr. Chairman, I would move to amend Section 3, the first sentence, after the words "shall be," strike through the word "elected," and add the word "appointed by the Principal Chief to be confirmed by the Council."

MR. HANNAH: There is an amendment before us. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is. Floor is open for debate. Anyone rise in opposition? Would you care to rise in favor, sir?

Mr. Baker.

MR. BAKER: Could I offer a friendly amendment to go ahead and strike, "the additional circuit judgeships may be created by referendum vote of the people" and add, "created by the Council"?

MR. HEMBREE: I'm not going to accept that as a friendly amendment, Mr. Baker, because I think that's a whole different issue. I would like to dispose with the issue of whether they're going to be appointed or elected first, and then get to that.

MR. HANNAH: Thank you, Mr. Baker. Kind sir, you are recognized.

MR. CLARKE: William Clarke, delegate from Muskogee. I stand in favor of Mr. Hembree's amendment. I agree wholeheartedly with Delegate Smith and his statement in regards to basically the quality of judges you get through the appointed process.

One of the things -- the reason I'm doing this is because I have such a concern for our juvenile court system, because about six or seven years ago, I certified our juvenile programs to receive federal dollars on a multi-year basis, based upon the fact that our social service programs and our judicial orders would have specific safeguard languages that the feds require for those fundings.

So in my experience of twenty-one years with the State of Oklahoma in their juvenile bureau, I saw judges coming in every so often through the elected process, and we had to go through the process of training those judges. And, folks, sometimes judges don't like lay people telling them how things need to be, and that cost us, time after time after time, because we were always getting audited by the feds on those particular safeguards, and we just failed because of that.

I think that the appointed judges, I would like to see them have a term longer than four years to provide continuity in these type of matters.

So I stand for this particular amendment, based on those reasons. And I would ask you all, if you're not familiar with those type of things, please understand that I know what I'm talking about.

MR. KEEN, SR.: Point of information.

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

MR. KEEN, SR.: Will the judges, as contemplated in Section 3, be full-time judges -- will the judges be full-time judges or will they be part-time judges?

MR. HEMBREE: I have no idea. I don't know.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: I cannot answer that question either.

MR. HEMBREE: That would have to be a legislative enactment, to tell you the truth. We're just creating the office, and it's going to be up to the legislature to --

MR. KEEN, SR.: The reason I ask that question is, is currently all judges are part time. If you're going to answer a question of how many judges you need, you need to, first of all, establish whether they are part time or full time. A full-time judge can handle an awful lot more cases than a part-time judge can. And all of them, at the present time, are part time.

Our associate district judges and our district judges are practicing attorneys on the side, and they do not occupy the job full time. The Judicial Appeals Tribunal judges are also part time.

So if we're talking about full-time positions, we don't need near as many. If they're part time, of course, that's a different story.

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

MR. BILL BAKER: Yes. In answer to Mr. Keen's question, he's absolutely correct. They're all part time. I think, at least in the foreseeable future, that they will continue to be part time. And that's why I have a problem with electing, because they're liable to run and think it's a full-time job and require the pay of full time. But that's not what we have got. We have sporadic; we have it where maybe we need a half a dozen judges or three judges three days a month to come in and do the services for a docket.

I don't think that one judge could, working full time, could do just justice to our system. But I think that three or five judges on a part-time basis, and working out in the community, could bring a lot of expertise to this Nation and to our court system, rather than getting kind of focused on just one aspect of the law. But I anticipate it continuing like it is for a great deal of time into the future.

MR. HANNAH: Thank you, Mr. Baker. Mr. Keen.

MR. KEEN, JR.: Thank you Mr. Chairman. Ralph Keen, Jr., delegate. And as I have done at least once before in these proceedings, I'm going to rise. I'm rising in favor of the amendment. And I realize that this is in contrast to the recommendation of the Commission. And this is my personal view.

Whenever we're talking about the difference, as far from a practicing attorney's standpoint, which I am, and we're talking about the difference in the way an appointed court operates and an elected court operates, it is a world of difference.

In the states courts that we have in Oklahoma, all of our judges are elected. Dockets tend to move very, very slow. Dockets get balled up. Judges obviously, by definition, they are politicians. Even though they, I'm sure, try to separate that from their judicial duties. But, nonetheless, when election time rolls around, they are still politicians. They have to get elected.

Where in contrast, in the federal court system, the district courts, we have appointed judges. And those -- as a matter of fact, they are appointed for life, and I don't advocate that for a moment. But it does allow them to carry out their job, focus on their job, not worry about political influence or political clout. And it allows them to operate their courts in a much more efficient manner.

And there's also a down side to this as well. But, by and large, I think as far as the operation of the courts, I think an appointed system functions more efficiently than an elected system.

MR. HANNAH: Thank you, sir. Does any delegate rise in opposition to the amendments before us? Mr. Hembree, you are recognized.

MR. HEMBREE: I will call the question.

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

DELEGATE: Second.

MR. HANNAH: There is a second. All of those in favor of calling the question, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: And those opposed say "no." (no response)

And so we are prepared to take up the Hembree amendment, which you will see before you in Section 3, as "be appointed by the Principal Chief to be confirmed by the Council" with the striking of the word "elected." Mr. Vice-Chairman, is that your understanding of where we are?

MR. KEEN, JR.: That would be correct, sir.

MR. HANNAH: All right. So by voting in favor of this, the language changes will be as presented. All those in favor please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: Motion passes; language stands.

And we are open for debate on Section 3.

Ms. Jordan, you are recognized.

MS. JORDAN: I would propose an amendment to Section 3. At the end of the first sentence, I would propose we add, "In the event of a judicial vacancy, any successor duly appointed and confirmed shall only serve the balance of the term of the vacancy they are filling."

MR. HANNAH: The amendment is before you. Is there a second?

DELEGATE: Second.

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

MS. JORDAN: Could I --

MR. HANNAH: Continue.

MS. JORDAN: Can Delegate Jordan speak in favor of this motion and explain my reasoning behind this?

MR. HANNAH: Yes, ma'am.

MS. JORDAN: This way, if someone leaves the court system, we bring another person up. They are nominated by the Chief, confirmed by the Council, and it clearly delineates here that they are only finishing a term, they're not getting a new four year term. That way, if you have a certain number of judges that you are wanting to keep in the court system, given the current caseload, this gives you that control factor. Thank you.

MR. HANNAH: Thank you, ma'am. Any delegate rise in opposition to the amendment that is before us? Any delegate wish to be heard? If not, the Chair, hearing no opposition --

Mr. Gunter, you are recognized.

MR. GUNTER: One question. Would this prevent the person from being appointed for an additional term?

MR. HANNAH: No. Any other delegate wish to be heard or raise the question? In that case, hearing no opposition, we will move for the vote to accept the language. And the language would read:

"In any event of a judicial vacancy, any successor duly appoint and confirmed shall only serve the balance of term of the vacancy they are filling."

All of those in favor --

MR. JOHN KEEN: Just a moment.

MR. HANNAH: Question.

MR. KEEN, SR.: I think we might better clean up the language here. "In the event of a judicial vacancy."

I know what has been proposed. I think I understand what they want. But I also feel that the way it's written, it doesn't say, "prior to the expiration of a term." So if someone's term expires, it becomes a judicial vacancy, and that is not clear in that respect.

MR. HANNAH: Ms. Jordan, would you respond?

MS. JORDAN: Well, what we're debating here, I believe, is death, incapacity, resignation. Do you have a friendly amendment to propose?

MR. KEEN, SR.: No, I don't oppose this at all. I'm simply asking that we state what we mean.

MS. JORDAN: Mr. Keen, Jr., are you wanting to propose a friendly amendment?

MR. KEEN, JR.: Well, not right now. He did not hear you clearly.

MS. JORDAN: I think it's pretty clear at this point. Now, we could leave to the Style Committee, if they're wanting to put in there "any vacancy created by death, resignation, or incapacity," but I don't think we really need that.

MR. KEEN, JR.: Why don't we go ahead and insert the language and vote on it?

MS. JORDAN: Okay. Let's just say after vacancy, "in the event of a judicial vacancy created by one of the" -- let's just say "created by death, vacancy" -- you want to say "death, disability and incapacity"? Well, basically, when they're gone, let's get somebody else. We could put in a dozen words here.

MR. JOHN KEEN: Or resignation.

MS. JORDAN: Upon expiration, you don't have a balance. So I think that language really is not needed. Take it out. I want to vote on what we've got. I'm not offering a friendly amendment to myself.

MR. JOHN KEEN: Point of information.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: Point of clarification. Maybe the Vice-Chair can clarify it.

MR. KEEN, JR.: Actually, I was speaking to a friendly amendment or the lack thereof, you know, for consistency and clarity in the document. The language we've already used in the other provisions is this: "Due to his or her death, resignation, removal or inability to discharge the powers and duties of the office."

And I would offer that as a friendly amendment to Ms. Jordan.

MR. HANNAH: Ms. Jordan, be careful in your answer.

MS. JORDAN: I'm going to say, let's stay with what we have. I believe this will work. I really do. This document is getting so wordy. I mean, it's going to be a hard sell to the membership as it is. We're already talking twenty-two pages.

If we can leave some words out, let's do it. I think the thought is there. Unless there's a real opposition to it, let's go with this wording.

MR. HANNAH: What say you, Mr. Keen? What is your course of action?

MR. KEEN, JR.: I would propose it as an amendment to her amendment. I believe the paper and ink are not that expensive. And this is a fundamental law for our land. We need to be clear.

MR. HANNAH: Amendment has been proposed. Is there a second?

MR. JOHN KEEN: Second.

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

MR. JOHN KEEN: I have another point of clarification or information. I'm getting confused on the rules of what I'm supposed to say.

Ms. Jordan, maybe if you could answer this. Are we going to -- I'm afraid that we're changing everything around so much, that we are going to forget to put in there that these judges have to be Cherokee somewhere. Are we going to address that in a different section or -- I believe that's on the table. I don't know. I'm kind of lost on procedure.

MR. HANNAH: Let's stay looking at what we're looking at.

MR. JOHN KEEN: But there's nothing in there -- I don't see anything saying they have to be Cherokee.

MS. MEREDITH: It's in another section.

MR. JOHN KEEN: Would Ms. Jordan entertain a friendly amendment to that effect at this point or --

MS. JORDAN: I believe it's in another section, John. I may stand corrected.

MR. JOHN KEEN: I was just getting lost in the procedure. I just wanted to make sure that we get that in there.

MS. JORDAN: Section 1 has been tabbed. It says they must be citizens of the Cherokee Nation. Well, now, wait a minute. That is the supreme court. "Must be citizens of the Cherokee Nation for the circuit court also," so it's in Section 1.

MR. JOHN KEEN: I'm clear.

MR. HANNAH: Satisfied, Mr. Keen? Thank you.

Let's get us back to our language. And where we are, folks, in case some of you have lost the bid, is that we have Section 3 that we have been about debate. And the kind lady from Tahlequah has presented language that you see in underline. And the kind gentleman from Stilwell has offered language that you see in highlight. And that would be what we're about to debate on at this time.

And the Chair would entertain delegate who would speak against or someone who would speak in favor.

MS. JORDAN: Delegate Jordan. Could I speak?

MR. HANNAH: Yes, ma'am.

MS. JORDAN: I would offer a friendly amendment to Ralph, Jr., that, let's remove, or inability to discharge the power -- "or inability," and just go with "death, resignation or removal." If there is an inability, that's taken care of under our removal statutes. And then they would be removed, they would be out of office.

Because there's been some question about what "inability" actually means. I would just like to take that language out, suggest in the way of a friendly amendment to your motion.

MR. KEEN, JR.: Well, seems to me like "inability" would encompass like temporary incapacity, if they're sick or if they have long-term illness, where they may have to temporarily set aside the duties of their office. And your suggestion is to strike that altogether?

MS. JORDAN: Just that, "or inability." We may want to add something on the --

MR. KEEN, JR.: I would agree with that.

MR. HANNAH: So now in a historic first, we have a friendly amendment to the amendment that is amending what we started with. The Chair just wanted to make sure that everyone was clear on that. Are you with me, folks? That would be correct, Mr. Vice-Chair?

MR. KEEN, JR.: Yes.

MR. HANNAH: And you've accepted that language. And the floor is open for debate on the kind gentleman's amendment from Stilwell.

MR. JOHN KEEN: Call the question.

MR. HANNAH: The question has been called.

DELEGATE: Second.

MR. HANNAH: And hearing no discussion, then we are voting right now, folks, on the highlighted language that you see, "due to death, resignation, removal from said office."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: Motion carries; language is included. And we're now back to the kind lady from Tahlequah's piece that you see that is in underline before us in Section 3.

MR. HEMBREE: Mr. Chairman, I'd move previous question.

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

DELEGATE: Second.

MR. HANNAH: And hearing no objection, we would go to the vote on the language. And the language would read that: "In the event of judicial vacancy due to death, resignation, removal from said office, any successor duly appointed and confirmed shall only serve the balance of the term of the vacancy they are filling."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Motion carries; the language is included. And we are back to Section 3. Floor is open for debate.

And the former resident of West Peavine is recognized.

MR. DOWTY: Thank you, Mr. Chairman. Prior to voting on the entire language of Section 3, in the third line, before "removal," we need to add the word "or."

MR. HANNAH: Thank you. We will accept that as a Scribner's error.

MR. DOWTY: Thank you.

MR. HANNAH: Floor is still open for debate. Mr. Hembree, you are recognized.

MR. HEMBREE: Yes, Mr. Chairman. Delegate Hembree. I would move to amend Section 3, second to the last sentence, which begins with "additional." And have it read, "Additional circuit judgeships may be created"; strike the words "only by referendum vote of the people," and add the words "as deemed necessary by the Council."

MR. HANNAH: The amendment is on the floor. Is there a second?

DELEGATE: Second.

MR. HANNAH: There's a second. Floor is open for debate. Any delegate rise in favor or against the kind man? Mr. Smith, you are recognized.

MR. SMITH: In the first section, we talk about the Council having the authority to create the lower courts, and that would be duplicitas here. If you're going to create a court, you're creating a judgeship. So I think we ought to just strike "additional circuit judgeships," on down to the end.

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

MR. HEMBREE: Run that by me one more time, Mr. Smith.

MR. SMITH: I think in the first section the Constitution gives the Council authority to create lower courts, yet duplicitas in creating a lower court is creating a judgeship. They are one in the same. So it's redundant.

MR. HEMBREE: I would agree with that, and I would accept that as a friendly amendment.

MR. SMITH: From there down, just cut it off.

MR. JOHN KEEN: Point of clarification. The language that is struck through is back in the section we are considering now, right?

MR. HANNAH: The amendment that is before us is Mr. Hembree's, and it would strike the language that you see on the screen. Is that correct, Mr. Vice-Chair?

MR. KEEN, JR.: Yes, I would concur.

MR. HEMBREE: All the way to the end.

MR. GOURD: Just a point of clarification.

MR. HANNAH: Dr. Gourd.

MR. GOURD: Mr. Keen, earlier you mentioned there was a difference between the Council, as in Section 1, "authority to create courts," there was a difference between creating courts and creating judgeships, and now we're told there is not.

MR. KEEN, JR.: Well, now that we have gotten it away, it appears that there's not from the way we are proceeding here, that the Council is going to be able to create courts and judgeships by legislation.

MR. GOURD: By the operation of law, and that would just --

MR. KEEN, JR.: Yes.

MR. GOURD: Okay. Thank you.

MR. HANNAH: Any other delegates rise to speak to the amendment that is before us? If not, hearing no objection, we will move to consider the language that would be stricken. And what would be removed from Section 3 would be "additional circuit judgeships may be created as deemed necessary by the Council created only by a referendum vote of the people to implement this provision. The current appointed district and associate district judgeships shall continue in office until the next regular election is conducted."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Motion carries. The language is stricken.

The kind gentleman from Black Gum is recognized.

MR. McCREARY: Section 3, in the first line, point of information. I would like to clarify it as to pursuant to the requirement set forth in Article IX, what section under Article IX are we talking about?

MR. HANNAH: Sir, this would have originally been referencing the piece that is before you of the revised Constitution. And Manager Keen is turning to that page and will read the section for you, or you may do so with your own handout.

Actually, that is Article IX, set forth in Article IX.

MR. KEEN, JR.: That may be a typographical error.

MR. HANNAH: In that case, then, the good Manager will be embarrassed.

MS. MEREDITH: Isn't Article IX a fiscal one? So this article, shouldn't these courts be set up pursuant to all the rules of the fiscal years and how they are set up and all the other budgetary matters of the Council, so that actually you want to refer to Article IX, and actually you're not referring to one individual section?

MR. HANNAH: Thank you, Mary Ellen, for bringing that to us. Mr. Keen.

MR. KEEN, JR.: That is an incorrect reference. It should say Article VIII. I missed it by one. Article VIII, Section 2.

MR. HANNAH: And that would be Article VIII of the revised Constitution?

MR. KEEN, JR.: Article VIII, Section 2, yes. And it states "any citizen by blood of the Cherokee Nation who is 25 years of age." And it sets forth the criteria for the candidates for Council.

MR. HANNAH: That is now being corrected to read Article VIII. And the floor is open for debate on Section 3.

MR. HEMBREE: Move previous question on Section 3.

MR. DOWTY: Just a moment, if I may be recognized.

MR. HANNAH: And you are recognized.

MR. DOWTY: I think that Article VIII language went along with the elected language that was earlier struck; is that not correct?

MR. KEEN, JR.: You are correct, sir, and we may need to look at that now.

MR. DOWTY: So, therefore, the language pursuant to the requirement set forth in Article VIII should be stricken. Is a motion in order?

MR. HANNAH: A motion is in order.

MR. DOWTY: I would move to strike the language of --

MR. HANNAH: I can do it for you. There is motion on the floor to strike "pursuant to the requirements set forth in Article VIII." Is there a second?

DELEGATE: Second.

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

MR. BILL BAKER: Point of order.

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

MR. BILL BAKER: Awhile ago, did we not change it to "district court" instead of "circuit"?

MR. HANNAH: Laid on the table, sir. Thank you very much for bringing that up. Seeing no further opposite or debate then, we will move to strike the language, if it would be your pleasure.

Once again, the vote that we will be taking would be the strike, "pursuant to the requirements set forth in Article VIII."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: And the language is stricken and we

are open for debate on Section 3. Mr. Smith, you are recognized.

MR. SMITH: Move to withdraw from the table the discussion whether it would be circuit or district judges.

MR. HEMBREE: Second.

MR. HANNAH: There is second to withdraw from the table.

MR. DOWTY: May I be recognized?

MR. HANNAH: You may be recognized.

MR. DOWTY: I would ask the Chair, could that issue be taken up in Section 3, where the word "circuits" are included? And when we resolve that matter, that all other references to "circuit," should we decide not to use that, be corrected?

MR. HANNAH: It's germane to the section. So the floor is open for debate.

MR. SMITH: I move that we strike "circuit," insert "district judges."

MR. HANNAH: Motion to strike "circuit".

DELEGATE: Second.

MR. HANNAH: And that's strike and insert "district." And it has been seconded. Floor is open for debate.

MR. CLARKE: Call the question.

MR. HANNAH: Question has been called. Hearing no opposition, we will move to vote on the language.

All of those in favor of striking the word "circuit" and inserting the word "district," please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: And vote carries, and the language is changed. And we are still in discussion on Section 3.

And the kind man from West Peavine.

MR. DOWTY: Mr. Chairman, a point of information. Does Section 3 relate to the district judges and the associate district judges? And if so, then I would suggest that the language "associate district judges" may be included or should be included in Section 3, if it applies to both positions.

MS. JORDAN: I would just offer a friendly amendment to Darrell, that we just call them district court judges. That takes care of everybody.

MR. DOWTY: Normally that would be true.

MR. HANNAH: Normally that would be true. The intonation of your statement signifies that normally may not be with us at times.

Mr. Smith, you are recognized.

MR. SMITH: Let me make this suggestion. Judges of the district court would include district judges and associate direct judges.

MR. HANNAH: You would feel better with that?

MR. SMITH: I would agree. That language does encompass all judges of the district court.

MS. JORDAN: Was that a friendly amendment to my friendly amendment?

MR. SMITH: It was a friendly amendment to my friendly amendment.

MS. JORDAN: Well, I agree with all of it.

MR. HANNAH: All of those in favor of the change say "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Okay, we got that taken care of. And we're back to Section 3. The floor is open for debate.

MR. McDANIEL: Mr. Chairman, I have a question.

MR. HANNAH: Calvin.

MR. McDANIEL: Where it says, "appointed by the Principal Chief to be confirmed by Council." Does that mean automatically they will be confirmed, or is there a possibility they would not be confirmed?

MR. HANNAH: The Chair would interpret the language -- the Chair would be so bold as to interpret the language to mean that they would be appointed by the Chief and confirmed by the Council. And obviously they would, in fact, need to be confirmed by the Council, which contemplates that perhaps the Council would not, in fact, confirm someone appointed by the Chief.

MR. KEEN, JR.: Yes. That would be a possibility. They would have to vote to confirm.

MR. HANNAH: So it would be possible, Calvin, for the Chief to make an appointment, for that appointment to go before the Council, and Council say, "No, we don't want that individual." There's a balance for you there, Calvin.

MR. McDANIEL: Well, okay, I understand that.

MR. HANNAH: I'm glad you raised that point, Calvin. Sometimes we need to be remembering the simplicity of what we are about.

Mr. Baker, you are recognized.

MR. BILL BAKER: An observation that we've probably done something wrong in Section 3. We've actually gone to less words instead of more. I call for the question.

MR. CLARKE: I'll second.

MR. HANNAH: The question has been called for and there is a second. Hearing no opposition, the language that is before us would be the approval of Section 3.

"Judges of the district court shall be appointed by the Principal Chief to be confirmed by the Council and shall serve terms of four years each. In the event of a judicial vacancy due to death, resignation or removal from said office, any successor duly appointed and confirmed shall only serve the balance of the term of the vacancies they are filling."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And Section 3 is approved.

Mr. Keen, you are recognized.

MS. JORDAN: Point of personal privilege.

MR. KEEN, JR.: Now that we've established the name of our lower courts, and we've established the manner in which the judges shall be seated, I will --

MR. HANNAH: Just one moment, Mr. Keen. There's a point of --

MS. JORDAN: Point of personal privilege. Could we have just a five-minute break, possibly? Just five minutes?

MR. HANNAH: The Chair is seeing that the time is twenty of four. We will indulge the delegates in a five-minute break.

(recess taken)

MR. HANNAH: Delegates will take your seats. Spectators will remove to the gallery, and the Chair will thank all the visitors here today for your decorum. Thank you very much for remaining silent and allowing the good delegates to be about their work.

Once again, if you've received this handout, and I know that you know what it is, but Mr. Keen earlier provided for you a copy of the work up to this point. And so you may spend some time reviewing that document here in the remaining moments.

Once again, the Chair will make an announcement for everyone in the room that a ring was found in the ladies room. And by virtue of it being found in the ladies room, we believe that perhaps it belongs to a lady.

MR. BILL BAKER: Describe it and I'll claim it.

MR. HANNAH: Describe it and you'll claim it? We can't do that. But it is at the main desk, and you may go and describe the ring and claim it if it is, in fact, yours.

Okay. Let's settle down here, folks. It's about six minutes until the hour of four. And someone in the gallery is saying that -- she left it in the restroom? Did you reclaim it yet, ma'am? It is at the front desk, so if you'll exit and go to the front desk and describe that for them, I'm sure that they'll make that happen for you.

Mr. Keen, you are recognized.

MR. KEEN, JR.: Mr. Chairman, I think where we left off, we just approved Section 3. And now after we've determined what we're going to -- the name we're going to use with our courts, and how those officers will be seated by appointment, I think it would be appropriate to return to Section 1, and we can continue on that. So our motion would be to --

MR. HANNAH: Let's scroll back to Section 1.

MR. KEEN, JR.: I will take Section 1 from the

table.

MR. HANNAH: Okay. Which has been tabled. And you move to untable Section 1. Obviously, there is another tabling within Section 1, and we will do this in reverse order, working our way back to where we were. And there's a motion on the floor to untable Section 1 with the exception of the tabled number, the infamous blank area there. Our kind delegate from Tahlequah is --

MS. CHAPMAN-PLUMB: We're talking about it?

MR. HANNAH: We're not talking about it. We are not untabling your number yet, so you may be seated. And I will assure you, young lady, that you'll have an opportunity to speak to your number once it's the appropriate moment. But there's a motion on the floor. Is there a second? And there is a second.

MR JOHN KEEN: Second.

MR. HANNAH: And there's a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And Section 1, with the exception of the number, is untabled, and the floor is open for debate.

MR. JOHN KEEN: Point of information.

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

MR. JOHN KEEN: Or clarification, I'm sorry.

The struck through language, is it not included in this? Did we vote on that? What is the situation with the language that has been struck through?

MR. KEEN, JR.: As I recall, that was a motion raised by Ms. Jordan.

MS. JORDAN: I'm going to withdraw my motion there. After consultation with several others, I think probably initially we should provide for a minimal court system to start with and then add as needed.

MR. HANNAH: Thank you very much. And with the permission of your second, your motion is withdrawn, the strike-over language is removed. And, Mr. Keen, by way of your question, that brought us exactly back to where we were, because obviously we were on Number 3. We had tabled the good lady from Tahlequah, and then Ms. Jordan, of course, we were about the discussion of the stricken area when we decided to table the entirety.

So now, we're once again making our way back to where we were. Now we are prepared to discuss the entirety of Section 3 with the exception, of course, of the Chapman-Plumb table of three.

MR. KEEN, JR.: I would just note for the delegates that the verbiage related to the name has already been changed to district court. So we have taken care of that detail. And unless there is further debate, I would move to untable Ms. Plumb's motion.

MR. HANNAH: Motion to untable, bring off of the table, the Chapman-Plumb number. Is there a second?

DELEGATE: Second.

MR. HANNAH: And there's a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

Hearing no opposition, and the Chair states that the number is back off the table. And Delegate Chapman-Plumb is recognized.

MS. CHAPMAN-PLUMB: Well, I know we've heard a lot of talk about cost. And really, in my personal opinion, we may overpay those Tribunal Justices right now, just as a point of personal information. I'm serious.

But what we are talking about here is decision-making, and quality decision-making. I would just ask you, if you were going to appear in front of the United States Supreme Court, and they were going to decide a matter that was very important to you, would you want your decision to be able to be made by two people?

I just don't think that that is the best way. And I think these layers are good. I think they're an excellent idea because a supreme court should not be burdened with matters that can be taken care of by lower court judges.

And the objective being, that the things that get to the supreme court are the very most important cases that affect the very most number of people inside the Cherokee Nation. And right now, as it stands, two people can decide those. I just think we need to have more people deciding those cases.

MR. HANNAH: Ricky, you are recognized.

MR. ROBINSON: I'm in favor, but do we need to have somebody in opposition first?

MR. HANNAH: I will recognize you at this time.
You're there; we're here; let's go.

MR. ROBINSON: Delegate Ricky Robinson from Tahlequah. I also, of course, have a concern about cost, and I have some of the same concerns that Ms. Plumb has, that Justice Dowty is probably making too much money. But that's something for the Council to decide.

I feel like what we're doing with this whole article is probably going to make it possible that the Tribunal -- supreme court, whatever they're called now, and I think it should be called the supreme court. That if we do this right, they're not going to have to hold court as often. And that's my hope here.

I also feel the same as Ms. Plumb, that we need a larger distribution of power among the judicial branch of the supreme court. And I'm in favor of having five members. I think it's a good compromise between three or seven. I think it's enough to really ensure due process. But we don't need as many as whatever the supreme court has, seven or nine, of the United States.

MR. HANNAH: Thank you very much, sir. How stand you on the issue, Mr. Cornsilk?

MR. CORNSILK: I rise in favor of the amendment.

And my reason being that having -- Chad, don't look over here when I say this -- practiced some form of law before the Judicial Appeals Tribunal.

There have been many incidents before the Tribunal where I won a few and lost a few and questioned both. At times, there have been one judge make a decision, at other times there were two, sometimes all three. And still, the diversity of opinion that you get whenever you get all the opinions written by the nine justices of the U.S. Supreme Court was not there. It didn't address all of the breadth of the question we were asking.

And I would also offer to you that the court is the last place of the people. Once we've exhausted everything else, we've been to the Council; we've been to the Chief; we've been everywhere else there is to be, the court is our last resort.

And in order to attain justice, there really needs to be a greater diversity of opinion, so that whenever those people are sitting there bantering that around and looking at the issue that I or you or anyone else has brought before them, they can take in every single avenue and aspect of that, every bit of law that might apply.

And so I would offer to you that five justices would provide greater justice for anyone, whether they be on one side or another of an issue, for anyone coming before our highest court.

MR. HANNAH: The Chair would entertain a speaker arguing against the motion.

MR. HEMBREE: Call the question.

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

DELEGATE: Second.

MR. HANNAH: There's is. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

Hearing no opposition, then we are prepared to vote on the language that would strike three and include five.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

Motion passes, language is included.

DELEGATE DOWTY: Delegate Dowty abstains.

MR. HANNAH: Delegate Dowty abstains, and the record will reflect.

Mr. Smith, you are recognized.

MR. SMITH: We were visiting this briefly, but I would move to strike the language beginning with, "The district court shall initially be composed," to the end of that paragraph.

Here is why. The first of this paragraph we say that Council may establish lower courts if necessary. And the third would provide for appointment of judges. And we already have on statutes, we have in section -- Title 20, Section 11, we have the establishment of the Cherokee Nation District Court. Section 12, the composition, "The District Court of the Cherokee Nation shall be composed of one or more district judges and associate district judges, appointed by the Principal Chief and confirmed by the Council, as needed for the orderly administration of justice."

So this is a bit redundant. And we already have a process by statute, the composition for it, so we need to leave it as flexible as possible. And if we leave it flexible, we can grow and change. If not, we're going to have problems with conflict with the statutes, which is serving us well now.

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

DELEGATE: Second.

MR. HANNAH: There is a second, and the floor is open for debate.

How stand you, Mr. Baker?

MR. BILL BAKER: I stand with Mr. Smith. That was my point exactly. And like I say, we've got the judges; we've got the system set up. So it doesn't -- I think this is all moot from the standpoint of adding all of this new language when this Constitution passes, it will already be in place. Thank you.

MR. HANNAH: Does any delegate rise in opposition to the strike? Hearing none, without opposition, the Chair will move towards the consideration of the question, which would be to strike the language striking, "The district court shall initially be composed of one presiding judge and two associate judges, all of whom must be citizens of the Cherokee Nation and admitted to practice law before the highest court of the state of which they are a resident.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And the language is stricken.

And the Chair would entertain debate on Section 3. Mary Ellen Meredith of Oklahoma City, you are recognized.

MS. MEREDITH: I would like to move that we -- after the language, "Before the highest court of the state of which they are residents," my nationalistic little heart tells me that it ought to be before the highest court of the Cherokee Nation.

Although I do understand that the requirement for practicing before the highest court of the Cherokee Nation is to be able to practice before the highest court of the state of which you are a resident. But I would like for it to say "Cherokee Nation" in the Constitution, rather than referring to the state.

MR. HANNAH: You make that by way of a motion?

MS. MEREDITH: That's what I move.

MR. SMITH: May I offer a friendly amendment?

MR. HANNAH: And the Chair did not hear the kind lady's first words. Thank you very much. And we'll ask you to remove the curtness from your voice in previous answers, thank you.

Is there a second? The Chair would hear a second.

DELEGATE: Second.

MR. HANNAH: Thank you. Oftentimes, ladies and gentlemen, the Chair is quite busy in trying to supervise the room, understanding exactly what is going on on the screen, and sometimes needs the aid of being able to hear from time to time, and is very appreciative for the indulgence of the delegates.

We have a motion. We have a second. And the floor is open for debate.

MR. SMITH: I offer a friendly amendment.

Instead of "state," "highest court of the jurisdiction of which they are a resident."

MR. BAKER: Before she accepts that, can I say something?

MS. MEREDITH: Excuse me, I thought it was my motion.

MR. HANNAH: One moment, folks. I'll tell you what, it's late in the day, okay? It's late in the day. We're not going to reduce this room to a series of conversations. We're going to keep our decorum all the way through. And the kind gentleman has offered a friendly amendment. And what say you, ma'am?

MS. MEREDITH: Mr. Chairman, I would like to apologize to you.

MR. HANNAH: No apology is needed. You are a good friend, a good delegate, and none is needed whatsoever. And what say you with regard to the friendly amendment made by Mr. Smith?

MS. MEREDITH: Okay. If I'm understanding it, he's saying the highest court of the jurisdiction of the Cherokee Nation? Is that what you're saying?

MR. SMITH: No, it would read "highest court of the jurisdiction of which they are residents." Because, for example, you could have Ralph Keen, Philip Viles, they couldn't be judges because they weren't residents of the Cherokee Nation proper. They were residents outside the Cherokee Nation.

You can have judges that you want to bring over from Arkansas. You might even have a judge that you want to have temporarily sent from Canada who resides there, or Mexico. But it's a broad generic term.

The problem of saying before the highest court of the Cherokee Nation, is that to practice in front of our court is by court rule, and it may not be as stringent as you would want.

For example, the Court of rule could be modified to say laymen, or paralegals could practice for certain purposes and they

would be eligible to be a Supreme Court Justice. That would deviate from the initial intent of the provision.

MR. HANNAH: Mr. Baker, you have been patient. You are recognized.

MR. BILL BAKER: Well, with that language up there, I was standing on behalf of our delegate from Kansas City, Mr. Rutledge, who made it clear on two or three occasions that he wanted to bring before this body that he lives in Kansas City, Missouri, and practices in Kansas, and he didn't want to be excluded from being one of the attorneys at the trough.

MR. HANNAH: Thank you, Mr. Baker. And another round of thanks for Mr. Scott for providing us with perhaps the most prodigious analogy of the entire convention.

Mr. Cornsilk, you are recognized.

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk. I rise in tentative support of this. And my only concern with it is that it doesn't seem to take into account the potential for attorneys who have been disbarred. And I would -- you might be disbarred in the jurisdiction in which you live, but perhaps not in another jurisdiction, but yet, you've still been disbarred.

MR. HANNAH: Thank you, Mr. Cornsilk. You are recognized.

MS. MEREDITH: May I address that, Mr. Chairman?

MR. HANNAH: Yes.

MS. MEREDITH: I am told that my original understanding, that in order to practice law in the Cherokee Nation, you had to be admitted to practice bar in your state. My assumption there was not correct, so I would therefore like to withdraw my motion.

MR. HANNAH: Very well. It's withdrawn. The floor is open for debate on this section.

MR. HEMBREE: Mr. Chairman.

MR. HANNAH: Mr. Hembree.

MR. HEMBREE: I move the previous question on Section 1, article --

MR. KEEN, JR.: Before we do that, I think we need to correct a little language. And we've already been through this over and over on the terminology of residence versus domicile. And I would move that we would insert that by acclamation.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. HANNAH: And those in favor said "aye."

THE DELEGATES: Aye.

MR. KEEN, JR.: Now, the "of" should be "in" of the state in which they are domiciled. Okay.

MR. JOHN KEEN: I second that previous question.

MR. HANNAH: The question has been called for Section 1, and it has been received, a second by the younger Mr. Keen. And without objection, the language shall read that:

"The judicial powers of the Cherokee Nation shall be

vested in the Supreme Court and in such lower courts as the Council shall, from time to time, ordain and establish. The Supreme Court shall be composed of five members, all of whom must be citizens of Cherokee Nation admitted to practice law before the highest court of the state in which they are domiciled."

MR. ROBINSON: Mr. Chairman, point of clarification.

MR. HANNAH: Point of clarification, sir.

MR. ROBINSON: I'm just not quite sure. I wanted to have clarification on what Mr. Baker talked about, like in the case of Mr. Rutledge.

MR. HEMBREE: On order. That's not --

MR. ROBINSON: Okay, thank you.

MR. HANNAH: And thank you, Mr. Hembree. You were recognized. We will say this, whether it is within the confines of exact procedure or not, everyone will, in fact, be clear as to what it is we are voting on. Everyone. And what we are voting on is Section 1.

And the Chair has read, and if you are inclined to vote in favor, the language will be added. And all of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: And the motion carries and Section 1 is approved.

DELEGATE DOWTY: Delegate Dowty abstained.

MR. HANNAH: Delegate Dowty abstains. What is the pleasure of the delegation?

MR. McDANIEL: Mr. Chairman, I have another question.

MR. HANNAH: There's a question from my good friend from Muskogee. Yes, Calvin.

MR. McDANIEL: If this goes in effect, in other words, it will do away with "Tribunal Justice"; is that right?

MR. HANNAH: Yes, sir. And the Chair would be so bold to attempt to explain. And if he is in need of correction from any of the learned delegates here, would accept that. Effectively, it would, in fact, stand down the Tribunal and would create a supreme court. What would be the pleasure of the delegation?

MR. CORNSILK: Mr. Chairman, point of information.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: Would it be appropriate at this time, since we finished with one section, to go back and review another section we did a long time ago, or are we bound to continue on?

MR. HANNAH: We're obviously not bound to continue on, and your appropriate direction would be a motion to

reconsider. And you would state that article and section.

MR. CORNSILK: I would offer a motion to reconsider in Article V, Section 12. And if the delegates would indulge me for just a moment, I would explain why. The portion of it that I'm deeply concerned about, it says,

"In accordance with Article XII of the treaties of the Cherokee, dated November 12th, November 28th, 1785, Treaty of Hopewell, and Article VII of the treaty with the Cherokees dated December 29th, 1835, Treaty of New Echota." And I'll stop there.

My concern is that the Treaty of 1835 has never been recognized by the Cherokee Nation as a valid treaty. That treaty was negotiated by an unauthorized group of tribal leaders, and those persons went to Washington without the approval of the Cherokee people or the leadership that was recognized by the Tribe.

And I'm not saying that at some point that treaty might not be recognized by the Cherokee Nation, but at this time, there is the potential that we have residual rights in the east to land, \$20 million worth of gold was taken from the ground in Dolanagah which we were never paid for. And if we, at this time, recognize this treaty in this Constitution, we are saying that we validate that and that we accept the provisions of it.

And I would offer an amendment to reconsider. And then, again, after that is done, I'll offer an amendment to strike that information.

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

DELEGATE: Second.

MR. HANNAH: And there is a second. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: And the motion carries, and we're reconsidering.

MR. CORNSILK: Mr. Chairman, I would offer a motion to strike -- well, I guess I will say substitute, beginning at the comma after the "Treaty of Hopewell," and replace, "and Article VII of the treaty with the Cherokees dated December 29th, 1835, Treaty of New Echota" with, "And other valid treaties."

MR. HANNAH: The amendment is before you. Is there a second?

DELEGATE: Second.

MR. DOWTY: Point of information.

MR. HANNAH: Point of information.

MR. DOWTY: Though the treaty we're striking, the language in the treaty, as I recall, was the language that gave us the --

MR. HANNAH: Please use the microphone, sir.

MR. DOWTY: I'm going to direct that the language from the treaty that we're extracting is the one that

provided for the delegate to the House of Representatives.

MR. HANNAH: It is correct, sir.

MR. DOWTY: And the other treaty which remains gave us the right to a Deputy to Congress, I believe.

MR. HANNAH: That is correct, sir. And we find ourselves on somewhat of a historical point of dilemma here. Due to the nature of the headman who, in fact, initiated the Treaty of New Echota. Floor is open for debate. Mr. Smith.

MR. SMITH: I object, stand in opposition. Even though that I would have to concur that the Treaty of New Echota was fraudulent on its face, the federal government ratified it by one vote. Eleven years later, after the Cherokee Civil War, there was a Treaty of 1846. And the right that we're trying to invoke is in the treaty of New Echota, and that's the language that we use, and I think we should continue to use it.

But in the Treaty of 1846, there is a disclaimer that would go to Mr. Cornsilk's concern in Article X, it says: "It expressly agrees to nothing in the foregoing treaty contained shall be so construed as in any manner take away or bridge any right to claim which the Cherokees may now have residing in the states east of the Mississippi River or may, under the Treaty of 1835 and the supplement thereto."

So this 1846 Treaty is a general disclaimer as to any rights we may have had in the old country. The Treaty of 1846 was ratified by the Treaty Party, the Cherokee Nation Government Party, the old settlers, and the federal government.

I think it's important to cite the 1835 Treaty because that is a clear delineation of our right to send a delegate to the United States. Therefore, I stand in objection.

MR. HANNAH: Any other delegate rise in support of the motion that's before us?

MR. CORNSILK: Mr. Chairman, might I respond?

MR. HANNAH: Yes, you may. You are recognized, sir. And the good doctor will be patient.

MR. CORNSILK: I would defer. He needs information.

MR. HOOK: I would just like to ask Mr. Cornsilk if he is aware of any other valid treaties that address this issue.

MR. CORNSILK: Mr. Chairman, I think what we're talking about here is the difference of interpretation between Deputy to Congress and representative, and the different language between the two. It's my thinking that they meant the same thing, but -- and I think that's what the framers of this Section 12 thought by putting the two of them together here.

And by changing this wording to say, "and other valid treaties," we're including the treaty of 1835 if it's valid, and any subsequent treaty that might have similar language in it. And you all can vote this down if you want. I mean, it's up to you. But it's just my thinking that I just don't want to trade what rights we may have, residual in the east, for a Delegate to Congress. I stand

down.

MR. HANNAH: Thank you, sir. Mr. Smith, you are recognized.

MR. SMITH: If Jim Wilcoxon was here, I think he would confirm that the turn of the century with the Indian Claims Commission there were an exhaust of claims made for loss of lands in the old Cherokee Nation. Those have pretty much been settled or disposed of. So I think the window there for going back and making those claims is extreme.

MR. HANNAH: Thank you, Mr. Smith. The young lady is recognized.

MS. CHILSON: Point of information.

MR. HANNAH: State your name for the record.

MS. CHILSON: Chilson, Tahlequah.

MR. HANNAH: And how may we help you?

MS. CHILSON: The bottom line of what we're trying to do in Section 12 is to send a delegate. Do we have to, in the Constitution, reference the treaties at all in order to do this?

MR. HANNAH: The Chair would be so bold as to state that if we are going to initiate a provision for creating a delegate to the House of Representatives, that we should find some medium to provide that. And the referencing by both treaties would, in fact, do so. And the Chair would stand corrected, if that's not an adequate answer.

Any other delegate wish to speak on this issue? Hearing none, the question will be brought before the group, if there is no debate. And the motion is before us by Mr. Cornsilk to add the language, "And other valid treaties." Is that correct, Mr. Cornsilk?

MR. CORNSILK: That is correct.

MR. HANNAH: And to strike the language in Article VII of the treaty with the Cherokee dated December 29, 1835, Treaty of New Echota.

All of those in favor of the revision, please say "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: And the Chair declares that the amendment did not stand and that the language remains. And you are recognized.

MS. HAMMONS: Thank you, Mr. Chair. I would move to reconsider Section 1 of Article VII, Judicial, which I believe that we have just finished. May I explain why? Article VII, Section 1. Move to reconsider Article VII, Section 1.

MR. HANNAH: Very well. Please continue.

MS. HAMMONS: Yes, Mr. Chair, thank you. There was some discussion earlier about the concern when we were visiting Article VII, Section 4 -- I'm sorry, Section 3, that we deleted the requirement that the district judges be citizens of the Cherokee Nation. And we went back and said, well, that's in Section 1, look

at the final sentence. We've now deleted the final sentence. So I can find no place where we say that the lower court judges must be citizens of the Cherokee Nation.

MR. HANNAH: Delegates will be patient. These are important words. Mr. Dowty, you are recognized.

MR. DOWTY: Mr. Chairman, are we on the motion to reconsider?

MR. HANNAH: We have a motion to reconsider. And the Chair would be awaiting a second.

MR. DOWTY: I would second it.

MR. HANNAH: There is a second.

MR. DOWTY: And with the explanation that I would move that we vote.

MR. HANNAH: And that's what we're going to do. Hearing no objection, all those in favor to reconsider --

MR. KEEN, JR.: Point of order.

MR. HANNAH: Point of order.

MR. KEEN, JR.: In our haste to slash out, you know, unnecessary language that is found otherwise in the statute that has put us in this predicament, Section 1 now does not even reference the judges of the district courts. So now we're going to have to look at place of initial requirement perhaps in Section 3. Can I see that language, please, in Section 3?

Yes, it would fit in there.

MS. HAMMONS: If I could respectfully withdraw my motion to reconsider Section 1 of Article VII.

MR. HANNAH: It is so done without objection to the second.

MS. HAMMONS: And move to reconsider Section 3 of Article VII.

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

MR. DOWTY: Second.

MR. HANNAH: There is. Those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And we are reconsidering the section, and the kind lady is recognized.

MS. HAMMONS: Thank you. I would move to amend Section 3 after, "shall be citizens of Cherokee Nation and" --

MR. HANNAH: What say you, delegate? Is that the scope of your amendment?

MS. HAMMONS: I'm sorry, I'm trying to make sure that we encompass everything we originally had.

MR. HANNAH: Take your time, young lady.

MS. HAMMONS: "and shall be citizens of the Cherokee Nation, shall be admitted to practice law before the highest court" -- we're trying to make it --

MR. HANNAH: Take your time, young lady.

MS. HAMMONS: Yes. Thank you, Mr. Chairman. We are trying to use the same language that we used on the judges of the supreme court. If we could see what we ended up with on Section 1. I apologize. I don't remember.

"Admitted to practice law before the highest court of the state in which they are domiciled." That's it. That's my motion, Mr. Chairman.

MR. HANNAH: Very well. Thank you, young lady. The motion is before you. Is there a -- yes, ma'am, you are recognized. Delegate Linnenkohl, I believe.

MS. LINNENKOHL: I think we still need to add in there, "Before the highest court of the state in which they are domiciled."

MS. HAMMONS: I think I did say that. Thank you.

MR. HANNAH: Thank you very much for being watchful for the language.

MR. GOURD: Point of information.

MR. HANNAH: Yes, sir.

MR. GOURD: What if someone is domiciled in Oklahoma and practices in Arkansas? You have to practice law in the state in which -- I mean, my question is, the idea is --

MR. HANNAH: I see your question.

MR. GOURD: -- to have a qualified judge who is lawyerly trained, has been certified by the highest court in the state of the union or something like that. For that purpose, what difference does it make where they're domiciled? Only in reference to their intellect and credentials is their judgeship being considered, not necessarily just where their permanent then domicile is.

MR. HANNAH: The good delegate raises a question. If you're living in Evansville and you're practicing law in the state of Arkansas, just across the border.

MR. KEEN, JR.: I would respond to that. First of all, I think that would be a very rare circumstance. Usually, when lawyers live in one state and practice in another, they hold a license in more than one state.

Second, I think this is still a good requirement because the state in which you are admitted to practice law also takes regulatory authority over for your ethical conduct. So I think there is some connection there that we want to have good -- we not only want to have a learned attorney who has a license, but one who is in good standing with their state bar.

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

MR. GUNTER: This is Mr. Rutledge's concern. He lives in Kansas City, Missouri, and practices law in Kansas.

MR. GOURD: And he's living there for good reason. He's taking care of his elderly mother and father.

MR. SMITH: Could I offer a friendly amendment?

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

MR. SMITH: That it will say, "practice law before the highest court of one of the United States," and then strike, "in which they are domiciled." "Before the highest court of one of the United States."

MR. HANNAH: What says the good lady from Tahlequah?

MS. HAMMONS: I would accept that as a friendly amendment. And just as a point of information remind the delegation, if that's the will of the delegation, we're going to have to go back to Section 1 and do it to the supreme court also.

MR. GOURD: Yes, very true. I was going to do that.

MR. HANNAH: Okay, folks. Without opposition from the second, the amendment is before you. Is there any further debate? Hearing none, we will consider the language. And it would read,

"Citizens of Cherokee Nation shall be admitted to practice law before the highest court of a state of the United States," striking the language, "in which they are domiciled and shall be."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: Motion passes and the adjustments to the section are made. Section 3 is open for debate.

MR. McDANIEL: Mr. Chairman, I have a question.

MR. HANNAH: Yes, Calvin.

MR. McDANIEL: Take an attorney that's lived all of his life in Mississippi or Georgia or anywhere else; say he wants to be a judge of the Cherokee Nation of Oklahoma. I don't think it's right, myself. There are strange people that come in here, and it's not right.

MR. HANNAH: Calvin, the Chair might be so bold as to point out that what we're attempting to do is to offer this availability obviously to a citizen of Cherokee Nation, and we're attempting to ensure their qualifications. And it's perhaps a bit trusting of us to accept the fact that they have been admitted to practice in the highest courts of their state, but we've just done so.

MS. STROUD: May I make an observation?

MR. HANNAH: Ms. Stroud, you are recognized. If you'll make your way to a microphone and recognize yourself, identify yourself, I should say.

MS. STROUD: Virginia Stroud, Tahlequah. I would just like to remind the delegates that Calvin and some other people that we're forgetting are our barometers. And they're going to strike this out because they don't think it's right. I think you

ought to listen a little closer to the people that we're addressing.
Just an observation. Thank you.

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

MR. CLARKE: Listen.

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

MR. KEEN, JR.: I think we're prepared to call the question on Section 3. I believe that we are, sir.

MR. HANNAH: And hearing no objection, the language that's before us for Section 3.

"Judges of the district court shall be citizens of the Cherokee Nation and shall be admitted to practice law before the highest court of a state of the United States and shall be appointed by the Principal Chief to be confirmed by the Council and shall serve terms of four years each. In the event of a judicial vacancy due to death, resignation or removal from said office, any successor duly appointed and confirmed shall only serve the balance of the term of the vacancy they are to fill."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Motion carries; the language is added -- actually, I should say the section is approved. Mr. Keen, you are recognized.

MR. KEEN, JR.: Yes, Mr. Chairman, I now move that we reconsider Section 1 for the same purpose of clarifying this language.

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

DELEGATE: Second.

MR. HANNAH: And all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And Mr. Keen, we are at Section 1.

MR. KEEN, JR.: I would move that we amend the language in Section 1 to reflect the language in 3, with respect to the requirement.

MR. HANNAH: Is that your motion, Mr. Keen?

MR. KEEN, JR.: Yes, sir.

MR. HANNAH: The language is before us, and it strikes, "the highest court of the state in which they are domiciled," and would include the language, "the highest court of a state of the United States."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Motion carries. And the changes are made and Section 1

is approved.

Mr. Gunter, you are recognized.

MR. GUNTER: I believe there's some incorrect verbiage there. No, they took it out when they removed it.

MR. HANNAH: Thank you, Mr. Gunter. The kind gentleman is recognized.

MR. CLARKE: I believe there's some duplication there.

MR. HANNAH: Recognize yourself, sir.

MR. CLARKE: William Clark, delegate from Muskogee.

MR. HANNAH: Thank you, William. What can we do for you?

MR. CLARKE: Reading where it says, "Five members be, all of them must be citizens of Cherokee Nation admitted to practice law, citizens of Cherokee Nation."

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

MR. GUNTER: Just admitted to practice law is incorrect, I believe.

MR. HANNAH: Ms. Masters. Good to see you back. You are recognized.

MS. MASTERS: Don't we just have a duplication of the citizens of the Cherokee Nation, just kind of dropped in there twice with our editing?

MR. KEEN, JR.: Yes, I think we are.

MR. GOURD: Call for the question.

MR. KEEN, JR.: Mr. Smith has brought up one more point that I think it would behoove us to entertain.

MR. HANNAH: We are all always interested in being behooved. Thank you, Mr. Smith. You are recognized.

MR. SMITH: You will have to close your eyes if you want to be behooved. This one addresses the issue perhaps to the Judicial Appeals Tribunal once you establish the supreme court.

So to address that issue, I propose the language, "The Judicial Appeals Tribunal shall become known as the supreme court. And the seated Justices of the Judicial Appeals Tribunal shall continue their present terms as Justices of the Supreme Court."

MR. HANNAH: Once again, sir.

MR. SMITH: "And the seated Justices of the Judicial Appeals Tribunal shall continue their present terms as Justices of the Supreme Court." And that sentence should go after the next sentence. Yes.

MR. HANNAH: The Chair was behooved. This is tying language. Thank you, Mr. Smith. We need to approve the additions to this particular section. And if there are no other amendments --

MR. LITTLEJOHN: Mr. Chairman, I'd like to offer a friendly amendment.

MR. HANNAH: Yes, sir. Mr. Littlejohn, you are recognized.

MR. LITTLEJOHN: It's on the third line, "The supreme court should be known as the Supreme Court of the Cherokee Nation," would be my suggestion.

MR. HANNAH: Does anyone stand in opposition?

MR. KEEN, JR.: No opposition.

MR. CLARKE: Point of clarification.

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

MR. CLARKE: It don't make sense the way it reads to me. "The judicial power of the Cherokee Nation should be vested in the supreme court and such lower" -- okay.

MR. HANNAH: Are you there, sir?

MR. CLARKE: Yes, sir.

MR. HANNAH: Very well. We all want to be on the same page.

Mr. Gourd, I apologize for not recognizing you.

MR. GOURD: Clarification. Section 2, which is tabled, is that not the more proper place to put it that the current -- because I think it's contemplated there in setting up of the rotation. But if we're going to talk about expanding denied -- anyway, it was just a question. The assumption, I think, from the Commission was that the currently seated Justices would move into that, and that set their rotation.

So that's just a question on that. If it's proper placement would be in Section 2 rather than Section 1 because it's changing, you know, to 9 anyway. If it's not --

MR. KEEN, JR.: Dr. Gourd's point is well taken.

You know, that topic is addressed in Section 2 with respect to the continuing terms. And I don't think Mr. Smith has any objection to striking that language out. Just put a period after "Tribunal." No, wait a minute, "shall continue until present terms."

If I may have the scribe just cut that language out of this section, and we may work with it down in Section 2.

MR. HANNAH: "The Judicial Appeals Tribunal shall become known as the Supreme Court of the Cherokee"; is that correct, Mr. Keen? And the remainder of that would be removed.

MR. KEEN, JR.: Yes.

MR. HANNAH: And that would, in fact, be the amendment that's before us.

MR. KEEN, JR.: Yes.

MR. GOURD: Mr. Chairman, one more point for clarification.

MR. HANNAH: Mr. Gourd.

MR. GOURD: Thank you. "The highest court of the state of the United States," what about the District of Columbia?

MR. HANNAH: Anyone wish to address the concern of Dr. Gourd?

MR. KEEN, JR.: I'll address it.

MR. HANNAH: Please do, sir.

MR. KEEN, JR.: As you know, the District of Columbia is not a state. And unless I'm mistaken, they don't have their own independent bar association.

MR. HANNAH: That would be correct.

MR. McDANIEL: Mr. Chairman.

MR. HANNAH: Calvin is recognized from Muskogee.

MR. McDANIEL: What about Puerto Rico?

MR. HANNAH: The Chair believes it to be a fine place.

MR. McDANIEL: It's not a state. It's not a state of the United States.

MR. HANNAH: That would be very true, sir. It is, in fact, a protector.

MR. McDANIEL: Well, it's more or less a territory. Would they be qualified to come up here and do the Cherokee Nation's business or what?

MR. HANNAH: Chair does not have the knowledge to speak to the qualifications to practice law before the courts of Puerto Rico. Perhaps kind Manager can speak to it.

MS. JORDAN: Call for the question.

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

DELEGATE: Second.

MR. HANNAH: And hearing no objection, then we move to the language. Section 1 - or excuse me, the amendment, which is, "The Judicial Appeals Tribunal shall become known as the Supreme Court of the Cherokee Nation."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

And the language is added and section is approved.

MS. JORDAN: Call for Section 1 question in its entirety.

MR. HANNAH: And hearing no objection, we will move to the vote. And the section is reviewed as,

"The judicial power of the Cherokee Nation shall be vested in the supreme court and such lower courts as the Council shall from time to time ordain and establish. The Judicial Appeals Tribunal shall become known as the Supreme Court of the Cherokee Nation. The supreme court shall be composed of five members, all of whom must be citizens of the Cherokee Nation and have been admitted to practice law before the highest courts of a state of the United States."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: And the motion passes, and the section is approved.

MR. DOWTY: Delegate Dowty abstains.

MR. HANNAH: Delegate Dowty abstains.

MR. CLARKE: Mr. Chairman.

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

MR. CLARKE: May I say something, please? As an advocate for understanding and clarifying, I would appreciate if the Chair would allow Mr. Keen to address Calvin McDaniel, delegate from Muskogee's question, because, obviously, there is some misunderstanding on his part, or not understanding.

MR. HANNAH: Point is well taken. Mr. Keen, would you speak to the absence of or inclusion of language with regard to those individuals that may or may not be admitted to practice law before American territories, protectorates or other subdesignations?

MR. KEEN, JR.: Mr. Chairman, I'm not sure if I can answer his question with Puerto Rico, I think was mentioned. I do know the fifty different states, they each have their Bar Association. And I do not know if Puerto Rico has an independent Bar Association. So, I'm sorry, I'm just at a loss.

MR. HANNAH: Would there be anyone else in the chambers that would be able to help us with that? Mr. Littlejohn, you rise, sir?

MR. LITTLEJOHN: Mr. Chairman, I can tell you that the District of Columbia does have an independent bar, and there are people who are admitted to that bar.

MR. HANNAH: Very well, sir.

MR. LITTLEJOHN: I believe the protectorates of Puerto Rico also have. However, while I have the floor, may I offer a suggestion?

MR. HANNAH: Yes, sir.

MR. LITTLEJOHN: That we might want to reconsider Section 1 for the purposes of changing "have been" in the next to the bottom line to "and be admitted." I'm assuming that we would not want a justice in office who at one time was admitted, but now is not; the meaning is, "is."

MR. HANNAH: Thank you, Delegate Littlejohn. You have now successfully brought the definition of "is" into the official record of this convention.

MR. ROBINSON: Another question. Point of personal privilege.

MR. HANNAH: Just a minute here, folks. I know it is late in the day. And the Chair does not mean to run roughshod over any individual, nor does he wish for us to carry our debate to the absolute outer limits of believability. And, Calvin, I'll recognize you in just one moment, but at this time, the good doctor is at the microphone. What say you, sir?

MR. ROBINSON: Delegate Rick Robinson. I may be out of order, but if this does become a problem, I would suggest to say, "and is currently admitted to practice law."

MR. HANNAH: Thank you, sir. The Chair would

comment that, once again, that does not solve the immediate dilemma for us with regard to protection. Mr. Mullon, you are standing at this time. Would you care to be recognized?

MR. MULLON: I don't know where we've gone.

MR. HANNAH: We've gone to Puerto Rico.

MR. MULLON: Puerto Rico. I do think, but I can only say I do think that I believe that Puerto Rico and the other protectorates do have a bar. But that is something we can determine for sure by reference to Martindale-Hubble. It would take a few minutes to do that, but I'm pretty sure they do. Puerto Rico is covered by the federal court system, but I think they also have a territorial bar, I would imagine.

Mr. Chairman.

MR. HANNAH: Mr. Mullon.

MR. MULLON: I think I will call for the question.

MR. JOHN KEEN: Second.

MR. HANNAH: The question is being called, and there is a second. Hearing no objection, we'll move to the language.

MR. HEMBREE: Point of order.

MR. HANNAH: Point of order, Mr. Keen.

MR. JOHN KEEN: It would be to reconsider.

MR. HANNAH: And you are, in fact, quite a knowledgeable man, and we are very appreciative. Who has made a motion to reconsider, first off? Mr. Littlejohn, thank you.

MR. LITTLEJOHN: I'll withdraw it, if it's a problem.

MR. HANNAH: No, you're doing fine.

Motion to reconsider has been seconded. All of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

We are now into reconsideration, and what would we reconsider? Somebody like to make up a motion? Hey, folks, this is the way it's done. What are we going to reconsider? We have now agreed to reconsider, and now we need to know what we are going to reconsider, correct? Mr. Littlejohn, you are making the motion to reconsider?

MR. LITTLEJOHN: I move to strike and substitute the words that are currently up.

MR. HANNAH: Actually, it's an inclusion, is it not, and "is currently"?

MR. KEEN, JR.: The previous language was "and have been."

MR. HANNAH: Once again, the chair does not have eyes in the back of his head. Has it already been stricken?

MR. KEEN, JR.: Yes, if the scribe will put it back up there again, "have been."

MR. HANNAH: And the motion that is before us is to strike "have been" and to substitute with "is currently." All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATE: No.

MR. HANNAH: And motion carries, and the language is changed.

MR. ROBINSON: Where is our English major?

MR. HANNAH: Ms. Hammons, you will draw close here.

MR. DOWTY: Mr. Chairman.

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

MR. DOWTY: Did we just vote on the language in Section 1?

MR. HANNAH: We just voted on the language of Section 1.

MR. DOWTY: Well, I missed that.

MR. HANNAH: So sorry, sir.

MR. DOWTY: Move to reconsider.

MR. KEEN, JR.: We did not. Point of order. We just voted on the latest amendment.

MR. HANNAH: Hold it just a minute here, folks.

What we just voted on was to strike and to include "is currently," is the Chair's belief. And it, in fact, passed, and that language is before us. Mr. Dowty, what say you?

MR. DOWTY: Well --

MR. HANNAH: You say "well."

MR. DOWTY: I don't like to put out a product that is not correct. This may be addressed to the Style Committee, but it should be "are currently."

MR. HANNAH: If the good English major from Tahlequah will concur, we will take that as a Scribner's error and replace it.

MS. HAMMOND: Yes.

MR. HANNAH: I think the original motion was to include the word "are," was it not, Mr. Littlejohn?

MR. LITTLEJOHN: Yes, it was.

MR. HANNAH: Yes, it was. Okay. Let the word be changed. Thank you, Mr. Littlejohn.

Mr. Mullon, you are recognized.

MR. MULLON: I also was an English major, so let me in here.

MR. HANNAH: Okay.

MR. MULLON: My recommendation would be -- I'll explain why -- would be that you would strike that comma after "Nation," and you would put the word "be" after it, and eliminate the word "currently." Because the way I read that right now, when you say "currently," that would mean at the time of their qualification, or that they were admitted to be the judge.

But if they subsequently were disbarred, then that wouldn't disqualify them from office. If you will just stick with the phraseology that you began with, that is they must be citizens of the Cherokee Nation and be admitted to practice law, that would hold as of the time of their appointment and all times subsequent to their appointment.

I guess that would be a motion to amend it.

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

DELEGATE: Second.

MR. HANNAH: And there is. And open for debate.

MS. MASTERS: Call the question.

MR. HANNAH: Hearing no objections, all in favor of inclusion of the language, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And the motion passes, the language is included.

MR. JOHN KEEN: Point of information.

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

MR. JOHN KEEN: Are we working late?

MR. HANNAH: I beg your pardon?

MR. JOHN KEEN: Are we working late, or what is our schedule?

MR. HANNAH: You are out of order, Mr. Keen.

MR. ROBINSON: Call for order of the day.

MR. HANNAH: Orders of the day state that we will work until five o'clock. It's five minutes to the hour, and that we will take a meal in the Student Union in the cafeteria, as we did last evening for those of you who joined. Beyond that, there are no orders of the day that we would need to discuss. I would remind our delegates -- Mr. Keen, you are recognized.

MR. KEEN, JR.: I would call the question on Section 1.

MR. HANNAH: The question has been called on Section 1. And thank you very much for staying with the Chair. "The judicial powers of the Cherokee National shall be vested in the supreme court and such lower courts as the Council shall from time to time ordain and establish. The Judicial Appeals Tribunal shall become known as the Supreme Court of the Cherokee Nation. The supreme court shall be composed of five members, all of whom must be citizens of the Cherokee Nation and be admitted to practice law before the highest court of a state of the United States."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. DOWTY: Delegate Dowty abstains.

MR. HANNAH: Mr. Dowty abstains. Thank you. Reminiscent of 1776. And the section is approved.

What would be the pleasure of delegates at this time?

MS. JORDAN: Let's do dinner, and then continue on.

MR. HANNAH: The Chair would entertain a time for return. We will recess these chambers until 6:15.

(dinner recess taken)

MR. HANNAH: Delegates, let's take our seats. And as the Chair is always pleased to announce, we have successfully made it through yet another meal. And we are ready for the evening section here.

We've had a number of our delegates that have caucused over the meal period. They are still working on some finalization of language, and I think that we'll see something from them here in the not too distant future. And at this time, we may, in fact, want to revisit yet another session.

And, Mr. Keen, you are recognized.

MR. KEEN, JR.: Yes. Mr. Chairman, as you just stated, I think they were ready to back up and take Section 13 of Article VI off the table, the section on the Attorney General.

MR. HANNAH: As you all recall, we did table Section 13. There's a motion to bring this section off the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is. All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

And it's off the table and is before us, Section 13. As you all recall, this is the Attorney General section and also the one dealing with the Marshal. And the floor is open for debate.

MR. SMITH: Mr. Chair, I propose a substitution of language which appears on the screen for Section 13 and ask, at first, if it deals with the Attorney General.

MR. HANNAH: The substitution -- the substitution is, in fact, the green underscore; is that correct? It's not? The entire section. Okay.

"There shall be created an office of Attorney General. The Attorney General shall be a citizen of the Cherokee Nation admitted to the practice of law before the highest court in the state in which he or she is a resident. The duties of the Attorney General should be prescribed by law. The Principal Chief shall appoint, upon the confirmation of the Council, the Attorney General. The Attorney General may be only removed from office in conformance with Article X."

MR. SCOTT: Point of privilege.

MR. HANNAH: Yes, sir.

MR. SCOTT: I wonder, could you change that to just a slightly larger font so we'll be able to read it?

MR. HANNAH: And your request, sir, is met. Can you read that, Mr. Scott?

MR. SCOTT: Yes.

MR. HANNAH: Okay. Very well. There it is before you. There is a motion to substitute the language that you see at the bottom of the screen for Section 13. Is there a second?

DELEGATE: Second.

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

MR. SMITH: Mr. Chair, I'm going to entertain some change of language by Mr. Mullon by agreement.

MR. HANNAH: Very well. Mr. Mullon.

MR. MULLON: That would be the -- going down to the second to the last sentence which begins with, "The Principal Chief." Basically recast that sentence so that it would read, "The Attorney General shall be appointed by the Principal Chief and confirmed by the Council."

MR. SMITH: I accept that amendment.

MR. HANNAH: The language is accepted, and without objection to the second is added.

MR. GOURD: Clarification.

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

MR. GOURD: Thank you, Mr. Chairman. I would request that the language in reference to "practice law before the highest court of the state in which is domiciled" be the same as that for the judges with references admitted to practice before the highest court in the state in the United States that we just finished talking about a little bit ago.

MR. MULLON: One of the changes you would make then is right at the beginning of that line, where it says "admitted to practice," and you would put the word "be admitted."

MR. GOURD: The highest court of a -- of the United States. Yeah.

MR. MULLON: Right. And then you get rid of the domicile stuff. And I don't know whether this came out in the earlier discussion. That does actually make sense, because nearby, a lot of people live in Kansas City, Kansas, but practice in Kansas City, Missouri.

MR. HANNAH: It was a part of our discussion earlier, and I think we now have clarified that somewhat. The good lady from Oklahoma City is recognized.

MS. MEREDITH: I would like to ask if they would accept a friendly amendment to change the "be only" to "only be." It says "the Attorney General may be only removed from office." It sounds like you are keeping him from doing something even more deadly.

MR. MULLON: Right. Okay.

MR. HANNAH: Kind lady is thanked, and it is changed.

Dr. Hook, you are recognized.

MR. HOOK: Yes, sir. In deference to our good representative from Muskogee, and in honor of his elder, I really think we need to consider a friendly amendment would which include after "state," "protectorate or territory," so that no one is excluded who might be an asset to the Nation.

MR. HANNAH: Mr. Smith.

MR. SMITH: I don't know how to say it tactfully, but we need to draw the line someplace and that's the place to draw the line. We do not need protectorates and Guam and Indonesian. Just cut it right there.

MR. HANNAH: What say you, Dr. Hook?

MR. HOOK: I make a formal amendment to amend the language.

MR. HANNAH: There is a motion to amend the language to include, and forgive me for dropping the language, but would you say, "districts, territories and protectorates"?

MR. HOOK: "Of a state protectorate or territory of the United States." She has it. And also "protectorate, district or territory."

MR. HANNAH: The amendment is before you. Is there a second? The Chair would hear the second.

DELEGATE: Second.

MR. HANNAH: And does. The floor is open for debate.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Dr. Gourd.

MR. GOURD: Thank you, sir. I would ask the question that where the Council prescribes the duty, would that include the term of office?

MR. HANNAH: Dr. Gourd, forgive me, sir, but I think that we are debating at this point. The Chair would be corrected, if he is incorrect. After all, he has had the evening meal, and that sugar thing once again.

And I think we are talking right now, we have debate on the floor with regard to the introduction by Dr. Hook in deference to our good delegate from Muskogee who phrases protectorate, district and territory. And Mr. Mullon, you are recognized.

MR. MULLON: Well, I guess I really don't have any strong feelings about it one way or the other, except -- and this isn't a strong feeling, but a mild feeling, about that proposed amendment.

And that is that being admitted to the highest court of the state, in the United States, is kind of a known quantity. We all have some understanding that they have state bars and they have general. By this time, in the history of the United States, they've kind of worked their way into probably a pretty good bar, and the rules of admittance are, you know, not something that you just pay \$10 and get a --

What I don't know is what the rules of admission are for the courts before Guam. And so it's a little bit more of an unknown

quantity about that. I really don't -- you know, I don't feel that there's anything outrageous about that.

MR. HANNAH: The good lady from Tahlequah.

MS. MASTERS: I rise in support of this amendment that is before us. It was pointed out to us earlier that the district does have a bar, and all of the protectorates and territories of the United States are mostly made up of military bases. And the number of Cherokees that spend time in the military is pretty high.

So there could possibly be an opportunity to bring home a very learned scholar. If this phrase only would bring home one, they could make a difference in our Nation, as one person has often done such things.

By putting it in, we don't take anything away from the spirit of the section, and taking it out could deny us in the future. So I would say that we should leave the broadest door to any Cherokee to be able to serve the Nation.

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

MR. DOWTY: I rise in opposition. There may be Cherokees who are represented before the bar of military justices of the various branches. There may be citizens of Cherokee Nation who are, in fact, admitted to the bars of foreign countries. I agree with Mr. Smith that we need to draw a line, and I agree with where he has drawn that line.

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

MR. BAKER: Yes, sir. I also stand in support, out of respect, and we might run out of lawyers within the United States for what we're doing.

MR. HANNAH: The Chair is in doubt of the remarks of the good delegate, but the kind lady from Oklahoma City is recognized.

MS. MEREDITH: Can I ask a question?

MR. HANNAH: Yes, ma'am.

MS. MEREDITH: Are there attorneys who only practice law in the District of Columbia and are they not recognized by D.C.?

MR. MULLON: Oh.

MR. HANNAH: You may respond, Mr. Mullon.

MR. MULLON: Yeah, there are an awful lot of lawyers who practice in Washington D.C. We have all heard about some of them. I guess, if I could say one more thing about that, is that if we get an appointment of an Attorney General from Guam, if it turns out that the people, you know, that he's not qualified, that would come out and the Council wouldn't confirm him, I assume.

So there is that protection. This is just not a one unilateral appointment. You do have the Council confirming it. And if he's really not a very well trained lawyer, that would probably come out.

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

MR. JOHN KEEN: Call the question.

MR. HANNAH: The question is being called. Is

there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no objection, we'll move the question. The question before us is to include the language, "protectorate, district or territory." All of those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

THE DELEGATES: No.

MR. HANNAH: Chair is unable to determine the vote from this juncture of the room. And the Secretary is instructed to take a standing count. All of those in favor of the motion, please stand.

MR. UNDERWOOD: Mr. Chairman, please state what we're voting on and how --

MR. HANNAH: Mr. Poteete, you might want to come down and be a part of the delegation, sir, for the vote. What we are voting on is that if you say yes, we will include the language, "protectorate, district or territory" in Section 13. All of those in favor, please stand.

THE DELEGATES: (standing)

MR. UNDERWOOD: Count of sixteen, Mr. Chairman.

MR. HANNAH: Please be seated. All of those in opposition, please stand.

THE DELEGATES: (standing)

MR. UNDERWOOD: Count is thirty-five.

MR. HANNAH: Count is thirty-five. Sixteen for; thirty-five against. Motion does not carry, and the language is not added. And we return to Section 13.

And the Chair would take just a brief moment, if he may.

Thank you all very much for what you have done. I realize that to the good, learned gentlemen and ladies that we have here in the group that may feel that we have gone through an exercise of expending some time, and what we have done is, in many ways, shown some respect for those that are here in the room. And the Chair would simply say that he is very appreciative for taking that time.

And Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. My question has to do with since the duties of the Attorney General are prescribed by law, my question is, is there a reference anywhere to the term of office, or does one that are appointed when new administration comes in, offer their resignation and possible reappointment, is the question.

MR. SMITH: There are two questions. The duties we have established in Title 51. We have got an Attorney General on the books, and his duties are prescribed in Cherokee statutes, so that's why that is there.

The thing that is of debate that Dave and I have began a mild debate and anticipate here is the last sentence. I anticipated the Attorney General and the next session's Marshal is to be a

professional. Somebody you hire, and as long as he's doing a good job, you keep him in, like a city attorney, or a district attorney, or an assistant district attorney. He may be removed in conformance to Article X, which is basically a vote of the Council.

So, in essence, a term limit is not anticipated because once he gets on, he stays on until the Council says you've outlived your welcome.

MR. GOURD: If we're not appointing justices for life, it seems that the Attorney General shouldn't enjoy that privilege.

MR. SMITH: Well, it's how you anticipate this person to be. I don't see it as a political appointment. I see it as the best hired hand you can. Same thing with the Marshal.

MR. HANNAH: Gentlemen, the Chair is willing to allow such exchanges because, ladies and gentlemen, we need to, you know, move through the language, and it is best that we allow those who will raise. Dr. Gourd, good questions, and those who will bring good answers to the debate for all of us to hear. Dr. Gourd, you are recognized.

MR. GOURD: Thank you, Mr. Chairman. I would, therefore, make a motion that the Attorney General serve a term of four years, staggered with those of the Principal Chief and Deputy Principal Chief.

DELEGATE: Second.

MR. HANNAH: And there is a second, and we'll bring it on the screen. The floor is open for debate.

Mr. Mullon, you are recognized.

MR. MULLON: We're focusing on that language, so the duties, I guess, we'll be reserving for future debate. The term of the office would serve two functions. It's got to be long enough that he can get his job done or she, and yet, at the same time, there should be something in the term language that will serve a purpose, that is a very important purpose, and that is to the greatest extent possible, to eliminate politics from the way he exercises the duties of his office.

And by staggering the term over the two separate terms, or two other terms, it does some of that. But it's also kind of confusing because it's kind of hard to say when he exactly would be appointed, and what happens if the Attorney General is appointed, or what if one resigns in the third year or is disabled or killed or whatever -- probably killed -- then you will have -- that ambiguity arises, and you don't know what exactly you should do.

I, myself, have thought a lot about this problem. And I don't think that the Attorney General's term of office should be, as they say, coterminous with the term of the Principal Chief who appoints him. I do not think that that should be the same term of office because as you get toward the end of the term, or toward the end of the appointment, it becomes -- it just becomes more political, for one.

And number two, you have a complete change in the office

of your highest law enforcement person in the land. And he's out, and for a period of time, you're going to have somebody coming in. And I will say, from personal experience, that is extremely, extremely difficult.

And my feeling has been for some time that the office of the Attorney General should be an appointment, confirmation, and it should be for at least five years, so there is always an overlap with -- from one administration to the next of at least a year.

And I know some others have the idea that it ought to be six years, and I don't have a problem with that. But I think it should be at least five years. And there are offices in the federal government where that has been nominated by statute for a five-year term to do exactly that. That is to eliminate as much as possible the politics from the job.

And I know that as an election approaches, politics become increasingly -- you know, a much greater pressure of politics comes on the office of the Attorney General as you get near an election. As I mentioned, and several people here, that what generally happens is, people who don't like this candidate or that candidate starts bringing dirt in your office and saying, "I want you to prosecute that guy." And then they go public with it, and they accuse the Attorney General of being somebody's lackey if they don't prosecute them. And then the other way around as well.

And the politics would be somewhat removed if you gave him a term that went over -- extended into the second -- the next administration. The politics would be removed and you would have some continuity.

MR. BILL BAKER: Point of information.

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

MR. BILL BAKER: I'm hearing a lot, and I am so confused, as I would be willing to bet a lot of folks in this room are. And I think the confusion could be cleared up pretty easily if, one, we knew what an Attorney General does and we're clear on that point.

I mean, is it a prosecutor? Is it an advisor to the Chief? Is it over law and justice? Is it an advisor to the Council? What are these functions and how is the Cherokee Nation to utilize this person?

And it would have a whole lot to do with whether he was politically tied to the Chief or not tied to the Chief, whether the Council could go to him for information or not. I think if we had a clarification and maybe could come up with what his duties are, then a lot of this would be germane.

MR. HANNAH: Thank you, Mr. Baker. And the Chair believes you to be correct. Obviously, the terminology of Attorney General is one that we're all familiar with. Unfortunately, the two terms seem to separate with regard to federal Attorney General and the Attorney General that we have elected here in the state of Oklahoma. And I'm hopeful that these gentlemen will be able to initiate a differentiation by the code.

MR. SMITH: Thank you, sir.

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

MR. SMITH: In our Tribal Codes Annotated, we have Title 51, Section 51 and the following sections that I read to you were incorporated from our codified laws of 1892. The problem is that this Attorney General has never been filled, as I understand.

But briefly, 51, "The office of Attorney General shall be created. The Attorney General shall be a person of high legal ability and level of attainments, appointed by the Principal Chief with advise of the senate of the Council. And his term of office should be coextensive with that of the Principal Chief appointing him."

52, "The Attorney General shall attend all sessions of the Judicial Appeals Tribunal, defend and prosecute any suit before said court, in which the Cherokee Nation may be interested or inquiry as the case may be, he may be required by the Principal Chief."

53. "He shall give his opinion in writing on all questions affecting public interest when required by the Principal Chief."

54. "The Attorney General shall represent the Cherokee Nation when required by the Principal Chief in all civil suits for either the Cherokee Nation of the United States or in the Cherokee Nation of a party."

And it goes on and provides that, "The Attorney General prosecutes suits of indebtedness, prosecutes appeals. He should record his opinions."

And Section 58 provides, "The Principal Chief is authorizing the power to suspend in the case of nonperformance of any of the duties herein assigned to him."

MR. HANNAH: Thank you, Mr. Smith. The good lady from Tahlequah is recognized.

MS. HAMMONS: Thank you, Mr. Chairman. I was one of the coauthors of this. And the reason we did it this way, so that the duties of Attorney General shall be prescribed by law was to, one, recognize the laws that we've already got in place, acknowledge that we are not operating in a vacuum. And try to resist the urge to legislate in the Constitution. We should not be in the Constitution setting about all the duties of the Attorney General.

So by reference to -- we created the office, which has never been done before in the Constitution. "There shall be created an office of the Attorney General." Put in the minimum requirements here, left the duties up to the Council to prescribe, provided for the way the Attorney General is to take office, which that wasn't part of my language, by the way. Provided for the staggered term and provided removal provisions.

So we thought -- we were trying to address the main concerns we thought of the delegation, which was create the office;

don't get into a fight here in this forum about exactly what Attorney General should do. Leave that up properly, we thought, to the Council, but then address the way that the Attorney General takes office and how the Attorney General may be removed.

So we were resisting the urge to try to define that down to the letter in this chamber. Thank you.

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

MR. GOURD: Thank you, Mr. Chairman. Then by the reading of the statute that is already in place, "Shall serve a term coterminous," is that the right word you used? At the same time as the Principal Chief that appointed him, is that -- coextensive, thank you.

So that was my question. Does the "prescribed by law," and there is a definition of the term in there. But I just think it would be helpful to have the term described in the Constitution. And I think that if it meets the statute that's there, I would have no problem with making sure it meets what is already there.

MR. HANNAH: Dr. Gourd, then, you would withdraw your amendment and have the language -- and here is where we're going to need to be careful, because obviously -- let's all stop for just one brief minute. The good lady will be recognized in just a moment. And let's see exactly where we are.

Folks, we are creating a post, if we, in fact, approve this section, called the Attorney General. And we've been about the process during this debate, trying to determine what that Attorney General is going to do. And we've had afternoon discussion about well, do we view this Attorney General as though they are a federal Attorney General or a state, and, in actuality, existing in the Cherokee Code, we have a description of the office. So we have had the other half, so to speak, of the cake all along. We've not had the office, but we've had the description of the duties thereof.

It may well please these gentlemen that we would need to have minimum standards, or at least minimum duties described within the Constitution. And I'm sure that they will assist us in that. So that that information from the code can be brought to the Constitution to tie to the code, if that were to be the pleasure of the delegates.

And with that, I will come back then and ask the question, Dr. Gourd, would it be your intent to withdraw your motion with regard to the staggered terms? Because, obviously, that is in conflict with, if I understand, what is in the code; is that correct?

MR. KEEN, JR.: Point of information.

MR. HANNAH: Yes, sir.

MR. KEEN, JR.: Even though that may be in conflict as the code is currently written, if this is adopted by the people, this code would have to be --

MR. HANNAH: That's true.

MR. KEEN, JR.: -- changed to conform to it.

This is what governs. This is the fundamental law. So just because it's in the code doesn't mean that we can't put it in here, or we can't -- we don't have to accept it.

MR. HANNAH: That's very true. And I simply heard you in your earlier remarks with regard to paralleling the code. Do you still wish for your amendment to stand?

MR. GOURD: Well, what Mr. Keen just pointed out was what I was going to say next. Is that if the -- I'm not just permanently attached to the number 4. Although, we have an offer of eighteen, I wouldn't want to go that far.

MR. HANNAH: Delegate Clarke may be brought to the forefront at any moment, ladies and gentlemen, to offer a number.

MR. GOURD: Five wouldn't bother me. I just want a term defined, you know.

MR. KEEN, JR.: If I may, would you accept five as a friendly amendment to your proposal?

MR. GOURD: Yes.

MR. KEEN, JR.: And I'll speak as to why.

MR. HANNAH: You are still recognized, sir. I simply wanted to give a signal to the good lady from Tahlequah to be patient.

MR. KEEN, JR.: Delegate Mullon raised a very good point with the possibility of political influence during the election years. And we need to do everything we can to try to insulate this officer so he can carry out his duties, he or she can carry out their duties.

And by making their term five years, it would stagger them, not only with the even number of years of the Councilors being elected every two years, but it would also stagger with that of the Principal Chief, and there would only be an overlap, I think, every ten years or something like that. It would take longer than that.

But anyway, the term would remove or help insulate this office. I do believe and I do stand in favor of the amendment. I do believe the Constitution needs to set the term of this office. We should not leave that to the leisure of the legislature.

MR. GOURD: I would accept that as a friendly amendment and, therefore, after "five years," put a period. And if my math doesn't fail me, as it usually does, the next time that this rotation would come up is the next time they're scheduled to be a vote on a call for a Constitution Convention in twenty years.

MR. HANNAH: Thank you, Dr. Gourd. Your math is correct. And the kind lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: How does this fit in with Article VIII, as it now stands, where we have a position of General Counsel provided for as a cabinet member? The only reason I ask is because --

MR. KEEN, JR.: Point of information.

MR. HANNAH: Point of information, sir.

MR. KEEN, JR.: The General Counsel was omitted

from the section under the revised recommendation as a cabinet office. Now, of course, that office can still continue, but we did remove it out of the Constitution, along with most of the others, set up the frame work in two minimum officers, the Secretary of State and the Treasurer to conduct the business of the Nation. And beyond that, it would be up to the Principal Chief to create cabinet positions.

MS. CHAPMAN-PLUMB: Where is Article VIII? I haven't seen anything.

MR. KEEN, JR.: We can back it up. We need to back it up.

MS. CHAPMAN-PLUMB: I'm talking about Article VIII of the original -- of the '76 Constitution.

MR. HANNAH: Where is Article VIII?

Just a minute here, folks. This kind lady has a good question, and let's make sure that we're clear. Dr. Gourd.

MR. GOURD: Yes. It is now contained under Section 12, which deals with the cabinet. We felt it appropriate that cabinet officers be put in the administration where they usually function. And it also gives the appearance in the section on fiscal stuff, you might be creating a fourth or department of government with the cabinet just stuck off out there in the appendage. So we placed it here under the executive department of the cabinet, and moved that whole section of cabinet under the executive department.

MS. CHAPMAN-PLUMB: Okay. And then within that, there are what cabinet members provided for?

MR. GOURD: In this -- our revision we're proposing a Secretary of State and a Treasurer. And then the Chief can make recommendations to title cabinet positions and departments upon confirmation by the Council.

And the reason we did that is, when it was originally drafted, the federal government had the Department of Health, Education and Welfare who had a Secretary of Health, Education and Welfare. That's been amended to Education and Social Services. No, the Secretary of Education has been separated out. And then there's a Health separated out. It just doesn't bind the future in terms of defining the cabinets in here because it just makes it easier.

MS. CHAPMAN-PLUMB: Right. Okay.

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

MR. KEEN, JR.: The language that already has been debated and approved by this body appears in Section 12 of Article VI of our revised copy.

MS. CHAPMAN-PLUMB: What line are you referring to?

MR. GOURD: The cabinet.

MS. CHAPMAN-PLUMB: The cabinet. Okay.

MR. HANNAH: The two cabinet positions that we're debating on today.

MS. CHAPMAN-PLUMB: Let me ask one more

question. The description that Chad read of the Attorney General's duties, was that -- where did that come from? The code as it now stands?

MR. HANNAH: From the Cherokee code.

MS. CHAPMAN-PLUMB: Because what it sounds like to me is that that person is the General Counsel for the Tribe under that description, if that's what we're accepting. I think we need to decide what that person is going to do.

MR. MULLON: Mr. Chairman.

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

MR. MULLON: Right now we're focusing on the term more than the duties, and the duties was kind of what --

MR. HANNAH: Got us here.

MR. MULLON: -- got us here. But I have a proposal for the duties, but I guess we should move on with the term of office that's been proposed there.

MS. CHAPMAN-PLUMB: What if the Chief decides he wants General Counsel for the Tribe and, you know, goes in front of Council to have that done, then does that -- what does that do to what we're doing here now?

MR. HANNAH: The good lady, she's raised a good question, and please use the microphone as much as possible so our good delegates can hear your question. And it was, does the --

MS. CHAPMAN-PLUMB: What if the Chief decides, under Article XII where he has the ability to create a cabinet level position with the approval of the Council, what if he decides he wants General Counsel?

MR. HANNAH: With the approval of the Council?

MS. CHAPMAN-PLUMB: Why do we need this, then, if he has the ability to do that?

MR. MULLON: May I respond?

MR. HANNAH: Yes, sir, you may.

MR. MULLON: Under Article XII, he could create almost anything. And I guess he could preempt almost anything that we do in the Constitution, as long as it was an -- I just don't think that's going to happen.

One thing that this does is it makes the -- basically, the Attorney General is going to be the Nation's lawyer as opposed to the Chief's lawyer. There is nothing that would stop the Chief from having his own lawyer.

MS. CHAPMAN-PLUMB: I'm not in opposition, I'm just trying to get it really clear here.

MR. MULLON: Right. I think if this were in the Constitution, you would be saying that the person who often serves as General Counsel for the Tribe, which is what most smaller tribes do have, a General Counsel, and we have had one in our past. But this would be replacing the General Counsel.

And the Chief can say, you know what, I think we need two General Counsels. We need our Attorney General, a constitutional General Counsel, and I want another one. And I guess if he can

convince the Council the wisdom of that, then he could have a General Counsel, too.

MS. CHAPMAN-PLUMB: I'm sorry for some of my questions because part of it is because I wasn't here this morning, but I just wanted to make sure I'm clear.

MR. MULLON: This would be very much like the General Counsel for the Nation.

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

MR. POTEETE: I put it to whoever can answer it.

Don't we contemplate in the duties here that we will create an Attorney General who can render an opinion for the various boards and commissions of the Tribe for the Council members for the Chief in order that every time we need to interpret the law, we don't have to run down and try to get an advisory opinion from the courts who are not equipped to deal with -- that's not a judicial function?

MR. MULLON: I don't know that we would want to make it a constitutional duty to render opinions. But it is in the code, giving the opinion. And that's why the other language at the tail end of that proposed amendment, that I haven't actually made yet, which we're supposed to be discussing in the future, but we're kind of doing it now. But that's where they should have other such duties as a Council may prescribe by law.

MR. HANNAH: Mr. Poteete.

MR. POTEETE: If we don't incorporate that into the Constitution, and I'm not suggesting we put anything here that we don't have to, but will those opinions have the force of law just because the Council saw fit in their wisdom to establish a statute that said so? Will that give it the same standard that an Attorney General's opinion with the state of Oklahoma has that it would be good law until the court overturned it? Can we create that statutorily as a Council?

MR. HANNAH: Mr. Mullon.

MR. MULLON: Yes, we could, and I would be very much afraid to vest this office with that kind of power in the Constitution that his opinions have a course of law until overturned by a court. I don't think that would be a good idea. I don't think it's a good idea --

MR. POTEETE: Okay.

MS. SCOTT: Call for the question.

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

MS. HAMMONS: Point of clarification.

MR. HANNAH: Point of clarification. The good lady from Tahlequah.

MS. HAMMONS: Are we on the Attorney General serve a term of five years, or are we on Mr. Mullon's --

MR. HANNAH: I beg your pardon, ma'am?

MS. HAMMONS: I'm sorry, Mr. Chairman, what question is being called?

MR. HANNAH: The Chairman will endeavor to instruct the delegates. And the question that is before us in sequence would be at the bottom, which is the piece that was introduced by Dr. Gourd, and that would deal with the Attorney General shall serve a term of five years. That would be the correct sequence.

And if that is, in fact, the question that is before us, and the Chair looks about the room and believes it to be, and all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And the language is added.

Which now brings us back, ladies and gentlemen, to the first sequence of tower debate on Section 13, which would be the underlined area:

"The Attorney General shall represent the Nation in all criminal cases in the courts of the Nation and in all civil actions wherein the Cherokee Nation is named as a party and shall have such other duties as the Council may prescribe by law."

And the floor is open for debate. Mr. Keen, you are recognized.

MR. KEEN, JR.: Thank you, Mr. Chairman. I rise in support of this amendment. I think it is a nice balance of setting the minimal duties of the Attorney General, yet still allowing the Council to prescribe other duties for him. And as it's already been spoken of several times, we already have a statute on Attorney General, clearly lays out in fine detail what their duties are, and I do support this language.

MR. HANNAH: Dr. Gourd, how do you rise, or do you wish to be recognized?

MR. GOURD: I was just calling for the question.

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

MR. MULLON: Yes. If I can first do a little Scribner work here.

Stay away from the machine, Mr. Keen. Stay away from the machine, Mr. Keen. Not that the Chair doesn't trust you.

MR. JOHN KEEN: Point of clarification.

MR. HANNAH: If you're going to ask something about your brother's typing skills.

MR. JOHN KEEN: I'm familiar with them.

MR. HANNAH: In that case, Mr. Keen, you're recognized.

MR. JOHN KEEN: I am sorely confused. We approved the five years?

MR. HANNAH: Yes, sir, we did.

MR. JOHN KEEN: I was under the delusion that we called the question, and we were voting on whether we were going to vote. We approved it though.

MR. HANNAH: Mr. Keen, by your own admission,

you are delusional. Take your seat, and let the record reflect. Have we made our Scribner's correction here?

MS. LINNENKOHL: Point of order.

MR. HANNAH: Ms. Linnenkohl of Texas is recognized.

MS. LINNENKOHL: Unless I'm delusional, I don't think that this amendment was formally presented and seconded, the underlying section right here.

MR. HANNAH: Is that correct, delegates? The Chair would give great apology.

MR. KEEN, JR.: She may be correct. I don't remember it either. I know we debated on it some, but I don't know if it's been introduced.

MR. GOURD: Mr. Chairman.

MR. HANNAH: Dr. Gourd.

MR. GOURD: If that's the case, then I make a motion that we accept the language contained in Section 13, if the good Chair would read it.

DELEGATE: I'll second it.

MR. HANNAH: Just a moment here. No, I don't think you want to make that motion, Dr. Gourd.

MR. KEEN, JR.: The motion we need is to consider this amendment to the proposed Section 13.

MR. HANNAH: Let me help you all. The Chair actually knows what is going on for once. Well, he did until he turned around and couldn't see it. There we go. Thank you, young lady. An OSU graduate to boot.

There is a motion to amend on the floor. And the motion before us is to include the language,

"The Attorney General shall represent the nation in all criminal cases in the courts of the Nation and all civil actions wherein the Cherokee Nation is named as a party and shall have such other duties as the Council may prescribe by law."

Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second.

MR. GOURD: Mr. Chairman, point of clarification.

MR. HANNAH: Yes, sir.

MR. GOURD: Have we already approved the five years?

MR. HANNAH: Yes, sir, we have. And you were in the room when it happened. You snooze; you lose. The Chair does not appreciate the delegates playing with the Chair's mind at this hour of the day and at this length of the week.

Is there a second to the amendment that has been proposed by Mr. Keen?

DELEGATES: Yes, there is.

MR. HANNAH: And there is. And hearing no objection, then we would move to vote for the acceptance of the

language.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And the motion passes, and the language is included in Section 13.

Now, ladies and gentlemen, we are back to looking at Section 13, and the floor is open for debate. Mr. Lay, you are recognized, sir.

MR. LAY: The debate is, I'm not real sure what we've gone -- the process that we've gone through here. I would like some clarification.

Number one, we need to split that after the first sentence and decide whether we want an Attorney General or not.

Number two, the testimony that the Commission received, I believe, was in effect that an Attorney General was going to be a prosecutor, not a counsel to the executive branch of government. And we had -- you know, we listened to the statute that was read off, and that was not what the testimony was about, that you all received.

And so I would like to -- let's stop right now and decide whether we want an Attorney General or not. Split that out. And then let these delegates decide, not the attorneys, what we want that man to do, or woman. Thank you.

MR. HANNAH: So, Mr. Lay, you propose a motion to divide?

MR. LAY: Yes, sir.

MR. HANNAH: And the division and bifurcation of Section 13 would be effective in the first sentence. There's a motion before the body. Is there a second?

DELEGATE: Second.

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

MR. JOHN KEEN: Call the question.

MR. HANNAH: The Chair will determine if there is debate. And seeing none, the question has been called. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, we will move for the question. The question is, "There shall be created an office of Attorney General."

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

Motion carries, and we have Attorney General.

MR. MULLON: Call for the question on the second.

MR. HANNAH: Thank you very much. The question has been called for on the second serial of Section 13, which -- is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, we will move to the consideration,

"The Attorney General shall be a citizen of the Cherokee Nation and be admitted to the practice of law before the highest court of a state of the United States. The Attorney General shall represent the Nation in all criminal cases in the courts of the Nation, and in all civil actions wherein the Cherokee Nation is named as a party and shall have such other duties as the Council may prescribe by law.

The Attorney General shall be appointed by the Principal Chief and confirmed by the Council. The Attorney General shall serve a term of five years. The Attorney General 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: Those opposed say "no."

(no response)

And the second series is approved. Second series has been approved. The entire section is before us for Section 13.

MR. KEEN, JR.: Point of order. The original motion was on a motion to substitute, so that's what we just approved. In two different parts, but that's what we approved, correct?

MR. HANNAH: Correct.

MR. KEEN, JR.: You need to copy this over to the top, please. Now, if the scribe will delete the old language.

MR. HANNAH: The Hembree proposal is tabled. And I guess the question here, just from a protocol standpoint, is if we want to leave the Hembree proposal in its tabled form, because if this is removed, I'm not sure that we have it anywhere else. Is Delegate Hembree with us? He is absent from the chambers. What is the pleasure of the delegates?

MR. BILL BAKER: I move to bring the Hembree proposal off the table.

MR. HANNAH: Okay. There's a motion to bring the Hembree proposal off the table. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is a second. And hearing no opposition, it's off the table, and the floor is open for debate.

MR. SMITH: Call for question.

MR. HANNAH: Call for the question. Is there a second?

DELEGATE: Second.

MR. HANNAH: And hearing no opposition, all of those in favor of the Hembree proposal --

MR. CORNSILK: Mr. Chairman, point of

information.

MR. HANNAH: Yes, sir.

MR. CORNSILK: Would you please read that to me?

MR. HANNAH: I was just getting ready to do so, sir, but I'm sure you couldn't see me here do that part. The Hembree proposal:

"The Attorney General shall be appointed by the Principal Chief and confirmed by the Council to serve a term coterminous with that of the Principal Chief who appointed him or her. The Attorney General may be removed from office only as provided in Article X."

MR. KEEN, JR.: Point of order.

MR. HANNAH: Mr. Keen.

MR. KEEN, JR.: Mr. Chairman, all of these issues that he proposed in his amendment have been dealt with by prior debate, and they are part of the language we have already approved. My suggestion is that his proposal is moot.

MR. HANNAH: I beg your pardon?

MR. KEEN, JR.: That his proposal is moot. All of his issues have already been argued and debated by previous questions.

MR. HANNAH: The Chair will rule that the information is moot, and it will be stricken.

MR. KEEN, JR.: And if the scribe will also delete the rest of that language we've already voted to substitute in the last paragraph. The language that begins, "To implement this section." That has also been -- thank you.

MR. HANNAH: There we go. Section 13. Mr. Keen, you are recognized.

MR. KEEN, JR.: Section 13 has been approved in toto, although, be it by two separate votes. So my inclination would be that we are finished with Section 13.

MR. HANNAH: Your inclination would be incorrect. And the Chair would entertain a motion to approve Section 13 in its total.

MR. KEEN, JR.: In its entirety. I so move.

DELEGATE: Second.

MR. HANNAH: There is a second. Hearing no opposition --

MR. CLARKE: Mr. Chairman.

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

MR. CLARKE: Could I request a point of clarification? Based on something that Delegate Lay said, I don't read anything there about whether the Attorney General shall cause the laws to be prosecuted, or is that just inherent in it?

MR. SMITH: If I could.

MR. HANNAH: Mr. Smith, if you would, sir.

MR. SMITH: If you look at the language, "shall represent the Nation in all criminal cases," in the style of a criminal case and a juvenile case, it's the Cherokee Nation versus a

defendant. That requires the Attorney General to prosecute the criminal and juvenile cases.

MR. HANNAH: Mr. Clarke.

MR. CLARKE: Okay. That's all I wanted to know.

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

MR. GOURD: I second the motion. I was waiting for someone to vote.

MR. HANNAH: Very well. And Section 13, in its entirety will read, if passed.

"There shall be created an office of Attorney General. The Attorney General shall be a citizen of the Cherokee Nation and be admitted to the practice of law before the highest court of a state of the United States. The Attorney General shall represent the Nation in all criminal cases in the courts of the Nations and in all civil actions wherein the Cherokee Nation is named as a party, and shall have such other duties as Council may prescribe by law.

The Attorney General shall be appointed by the Principal Chief and confirmed by the Council. The Attorney General shall serve a term of five years. The Attorney General 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: Those opposed say "no."

(no response)

And the language is accepted, and Article XV stands.

Dr. Gourd, what say you?

MR. GOURD: I would like to make a motion to reconsider Article VI, Section 12, dealing with the cabinet.

MR. SMITH: If I could interject, Mr. Chair. I may ask Mr. Gourd if he would allow me to interject. We have the next section in this Section 14, following Section 13, which is extremely similar, dealing with Marshals. I think if we go to that, we can finish that article totally.

MR. JOHN KEEN: Mr. Chairman.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: I would suggest to the Chair that the next section following the one we just approved --

MR. HANNAH: Which would be Section 14?

MR. JOHN KEEN: Yeah.

MR. HANNAH: We just approved Section 13.

MR. JOHN KEEN: That's good reasoning.

MR. HANNAH: Thank you, sir.

MR. JOHN KEEN: It makes a lot of sense to go ahead and deal with that, since our mind is on those issues at this point in time.

MR. HANNAH: Dr. Gourd, would you indulge your fellow delegates?

MR. GOURD: Yes.

MR. HANNAH: Thank you very much. And the motion for reconsideration is withdrawn. Section 14 is tabled, I

believe.

MR. SMITH: Move to take it off the table.

MR. HANNAH: There is a motion to bring Section 14 off the table. Is there a second?

DELEGATE: Second.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And Section 14 is now off the table, and the floor the open for debate.

MR. SMITH: If I may, by way of explanation, to make one correction, we changed the syntax of the sentence, "The Principal Chief shall appoint." I would ask that we use the same syntax there as we used for the Attorney General.

If you copy down the sentence, "The Attorney General shall be appointed by the Principal Chief confirmed by the Council," copy that down to the bottom part. Copy that down to the proposed part. Then delete the previous sentence.

MR. HANNAH: Mr. Smith, you have a motion to substitute language?

MR. SMITH: Yes.

MR. HANNAH: And is there a second?

MR. SMITH: Scribe, the last sentence, you need to take out the Attorney General again, the bottom part there.

MR. HANNAH: We have a motion to substitute language, and as you have seen. I'm really confused about which sentence came down now. Mr. Smith, you'll help to clarify for us. Mr. Keen.

MR. KEEN, JR.: Mr. Chairman, what we have here is a Section 14 that he's presenting as an amendment.

MR. HANNAH: He's presenting?

MR. KEEN, JR.: Yes.

MR. HANNAH: I guess that would be correct.

MR. KEEN, JR.: So we have the Commission Section 14 on top and his proposal replacement on bottom.

MR. HANNAH: Very well. So we will wait then for -- are you prepared to offer this, Mr. Smith?

MR. SMITH: Yes.

MR. HANNAH: Okay. The motion before us, ladies and gentlemen, is to substitute the language that you see at the bottom for Section 14. Therefore, it would read,

"There shall be created an office of Marshal. 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 appointed by the Principal Chief and confirmed by the Council. The Marshal may be only removed from office in conformance with Article X."

Is that your motion, Mr. Smith?

MR. SMITH: It is. And in furtherance of it, if I could speak for it.

MR. HANNAH: You may, sir.

MR. SMITH: The Oklahoma -- or the Cherokee Nation Statutes 51, Section 61 provide two sections that deal with the Marshal by Cherokee statute. We have:

"A Principal Chief, as authorized to appoint a Marshal and to deputize such number of Cherokee law enforcement as needed for the effective enforcement of tribal law within the jurisdiction of the Cherokee Nation."

Section 62. "It should be the duty of the Marshal to attend upon the courts to serve all summons and other processes which may be placed in his hands appointing to the tenor of the mandates therein contained, to take all necessary and often measures in the execution and the judgment of the courts committed to him to execute and also to arrest and cause to be tried all persons who may be charged with criminal offenses."

This language came out of our 1892 codes which were brought forward in 1991.

MR. HANNAH: There is a motion to substitute. Is there a second?

DELEGATE: Second.

MR. HANNAH: There is, and the floor is open for debate. Mr. Keen, you're recognized.

MR. KEEN, JR.: Yes. I would move for a division of the question. I would divide it after that first sentence, "There shall be created an office of Marshal," and then the remainder.

MR. HANNAH: Motion for a division of the section.

MR. JOHN KEEN: Second.

MR. HANNAH: There is a second. Is there debate? Hearing none, all those in favor, please signify by saying "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."
(no response)

Floor is open for debate on the first serial which reads, "There shall be created an office of Marshal."

MR. CLARKE: Call the question.

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

DELEGATE: Second.

MR. HANNAH: Hearing no opposition --

MR. SMITH: I object.

MR. HANNAH: There is an objection. The floor is open for debate.

MR. SMITH: There is a legitimate question. I don't mean to delay things. But the Marshal may only be removed

from office in conformance with Article X. The anticipation there again is like we previously argued with the Attorney General. If the Marshal is doing a good job, you keep him in office until the Council removes him. This does not have a term for the Marshal. So that's a consideration. I just wanted the delegates to be aware of that issue.

MR. JOHN KEEN: Point of order.

MR. HANNAH: Mr. Keen.

MR. JOHN KEEN: We are debating, "there shall be created an office of Marshal"?

MR. HANNAH: That is correct, sir. And after the delegate was finished, the Chair will remind you all that we have divided this question. And if the debate that was before us was, "there shall be a created an office of Marshal," and hearing no debate, the question has been called and seconded, I believe. Did the Chair hear a second?

MR. JOHN KEEN: Second.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

(no response)

And motion passes, and there shall be a Marshal. We are now, at this time, taking up debate to approve the second serial.

Mr. Keen, you are recognized.

MR. JOHN KEEN: John Keen, delegate. I would be opposed to the motion as it's written, as far as, "The Marshal shall be appointed by the Principal Chief and confirmed by the Council," and the rest of the removal language.

It's my contention that since we did vote to have the Attorney General appointed, I think, as far as checks and balances go, we should have an elected Marshal. An elected Marshal is more accountable to the people, and he would serve at the pleasure of people and not the pleasure of the Principal Chief or the Council.

I think that's a very, very important thing that we need to do. In almost all societies that I know, we elect sheriffs. And I would contend that this be related to a sheriff of a county. So I am opposed to it as written because it's appointed and not elected.

MR. HANNAH: Mr. Dowty, you are recognized, if you wish to be.

MR. DOWTY: The good delegate did not propose an amendment?

MR. HANNAH: He did not.

MR. DOWTY: Then I do propose a friendly amendment to the author in the interest of consistency, the last line of words "be only." In the previous section that we dealt with, with this language, I believe that those were reversed.

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

MR. SMITH: No objection.

MR. HANNAH: No objection. It's entered without

objection from the second. The kind lady from Texas is recognized.

MS. SCOTT: Deborah Scott. Point of information. In the first selection, we had the Marshal being reporting to the Attorney General. How is that going to be addressed at this point?

MR. HANNAH: Mr. Smith.

MR. SMITH: I was an Assistant D.A. for about ten years, and then for the Cherokee Nation, a prosecutor. The role of prosecutor, to me -- and I stand to be corrected by other counsel. The prosecutor is a lawyer, and a lawyer is a representative, and he has a client. If the lawyer steps out of the role of being a lawyer, then he becomes a client to the party. He's no good to himself or the Cherokee Nation.

The Cherokee Nation prosecutor and the Attorney General here shall be serving the Cherokee Nation, his client. If he goes to the court, the Cherokee Nation versus defendant, is the Cherokee Nation.

If he has to supervise the Marshal, and that's where we collected the other section, "The Marshal can serve under the direction of the Attorney General," he's no longer the lawyer for the Marshal. He is the Marshal's supervisor. He's the Marshal's employer. The Marshal becomes his agent. There is a merger of parties. It becomes almost inbred.

The Attorney General needs to have a distance from the Marshal so that he can evaluate the work product of the Marshal. The Marshal can go out, do an investigation, make his case, and pitch it to the Attorney General. Say, "Hey, I am going to go do this search warrant," or, "I want to go arrest this guy"; "I want to do this." And the Attorney General should have the distance, as a legal representative to say -- with his independent decision making say, "Huh-uh, that ain't good enough."

If you marry the two together as supervisor and employer, you have them working in concert, and you break what I think is a very necessary relationship for good law enforcement.

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

MS. HAMMONS: Thank you, Mr. Chairman. I rise in support of this language. And I'm going to offer one of our friendly amendments in just a second, but I would like to address the point Mr. Keen made.

Normally I am all for everybody being elected. That's important to me. However, the Marshal of the Cherokee Nation, I would submit to you, is different than the sheriff of one of our counties. I think that it is important for the Marshal of the Cherokee Nation to be well versed in Indian law and Indian country and all of the intricacies that go with having to be an Indian police officer. And so much of that is regulation and case law.

And I just think that training and qualifications are more important, perhaps, for a Cherokee Nation Marshal than for an elected state position. And I think that appointment with

confirmation by the Council in this instance, as far as the Marshal goes, is the best solution.

So I would support this language. My friendly amendment is after, "The Marshal shall be appointed by the Principal Chief for a term of five years."

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

MS. HAMMONS: I just think that like the Attorney General, it shouldn't be the same term. It shouldn't be coterminous with the Chief.

MR. SMITH: I'm not excited one way or the other about it. I think if you get a good hand, you need to leave him in. But if that's the consensus of the group, I'll concur.

MR. HANNAH: Without objection from the second, the language is entered. Good lady wish to yield?

MS. HAMMONS: No. If you would indulge me, could we move that to the "for a term of five years" to the end of the sentence? Mr. Mullon has convinced me it reads better that way by whispering in my ear here. "The Marshal shall be appointed by the Principal Chief and be confirmed by the Council for a term of five years." That's my friendly amendment. I'm sorry.

MR. HANNAH: And it has been accepted?

MR. SMITH: Yes.

MR. HANNAH: Very well. Thank you, ma'am. The kind delegate from Black Gum is recognized.

MR. McCREARY: Thank you. Ken McCreary, Black Gum. In this context, the Marshal -- I agree with this particular section, the reason being, to have a Marshal to be elected, you're putting him in the political arena. I've been in the political arena with the law enforcement for about thirty years.

And, two, to have an elected official, it just takes away the aspect for good law enforcement for the people because he's out there doing whatever it is for politicians, not doing it as a law enforcement officer.

And I agree with Mr. Smith in his aspects of keeping the Attorney General's office and the Marshal's office separate. That way you have a good working relationship. You can't have them married together.

I do disagree with the five-year term. However, if that's the will of the people, I would conform to that. But I do believe that the appointment is a much better way of coming up with a law enforcement official who is truly experienced and trained to handle that situation, other than having somebody that has sufficient training and experience. Because sometimes you may not have somebody with more than minimal requirements run for that office. Whereas, when you appoint somebody, you try to get the highest qualified individual for that position.

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

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Mr. Cornsilk, would that be you,

sir?

MR. CORNSILK: I hope it is. Delegate Cornsilk. Now, John, correct me if I'm wrong here, but the Marshal would be elected by the entire population of the Cherokee Nation?

MR. JOHN KEEN: Yes, he would.

MR. CORNSILK: I would submit to you and to our friends from outside the Cherokee Nation that the Marshal is enforcing laws of the Cherokee Nation on the people in the Cherokee Nation. I don't want to be a nit-picker about who gets to elect the people that boss me around, but I think it's really critical here that we look at the issue very carefully as to this guy that's going to be enforcing the laws of the Cherokee Nation that apply only to the people who live in the Cherokee Nation, and whether or not we would allow people to vote for that person who have no stake in that. And I would be opposed to this person being elected for that reason.

MR. STOPP: Mr. Chairman, I would like to make a comment.

MR. HANNAH: Thank you, good delegate. At this time, that is not the case here before us. Delegate Stopp, you are recognized.

MR. STOPP: I'm opposed to this. I would like to add a friendly amendment to this language. Over the last four years, we've had a real issue, and as Chief of Staff of the operation for Life 14, I have an issue with the problems we've had with the Marshal services.

A five-year term really concerns me. I do agree that they should be concurrent with the Chief, but I do look at it from the standpoint, even starting off maybe with a three-year term or something like that. I think it would be more prudent at this time. I'd like to offer that as a friendly amendment to three years.

MR. SMITH: Not accepted.

MR. HANNAH: Not accepted, sir. What is your course of action, Mr. Stopp? Do you withdraw?

MR. STOPP: I'll withdraw at this time.

MR. HANNAH: Thank you very much. The kind lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: Point of information. There are laws that affect our Cherokee citizens and, in fact, affect people who are not Cherokee outside of the territorial boundaries. For instance, if you -- and I've had this happen. If you have a child that you would like to adopt, and you live in New York State and the child is Cherokee --

MR. HANNAH: Please use the microphone as much as possible. I want to hear your kind words.

MS. CHAPMAN-PLUMB: If you have a child that you would like to adopt, and you are not a citizen of the Cherokee Nation, you live in the state of New York, and the child is found to be Cherokee, you come under the jurisdiction of our court system. So it involves people other than just those who live in the

fourteen-county area.

I also would like to make a motion that we divide this question and discuss the appointment or election of this individual before we go on and try to figure out the term and those kind of things.

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

MR. JOHN KEEN: Second.

MR. HANNAH: And debate is open. What we're dividing is simply -- actually isolating the word "appointed." Would that be your -- yes, it would be. Someone called the question?

MR. HOOK: Yes.

MR. HANNAH: Is there a second?

MS. MASTERS: I thought we divided the question.

MR. HANNAH: We have divided the question, and we divided the question with regard to the --

MS. MASTERS: The single word?

MR. HANNAH: Yes, ma'am, which is an unusual divide, but it seems to be at the heart of what we're doing.

MS. HAMMONS: Point of order.

MR. HANNAH: And the kind English major from Cherokee County is recognized.

MS. HAMMONS: Have we divided it or are we about to vote on whether to divide it?

MR. HANNAH: We are about to vote on whether to divide it. And if it were to be divided, this would be the division. I want everyone to be clear on what it is that we're about to do. Because all we've talked about was, you know, the kind lady was wanting to divide, but we really didn't talk about where.

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

THE DELEGATES: Aye.

MR. HANNAH: Those opposed say "no."

DELEGATES: No.

MR. HANNAH: And we are divided. And the division is set at "appointed," which I believe was the intent of the good delegate. And the floor is open for debate.

And, Mr. Clarke, you've made your way to the podium; you are recognized.

MR. CLARKE: Mr. Chairman, I would like to have a point of clarification, from Delegate Chapman-Plumb, if I may.

MR. HANNAH: And she will draw attentive and be prepared to assist you with your question, sir. What might that be?

MR. CLARKE: I understood her to say awhile ago that if an adoptive -- prospective adoptive parent out of the state of New York wished to adopt a Cherokee child, that they would have to come under the jurisdiction of our Tribal courts. Did I understand that?

MS. CHAPMAN-PLUMB: I'm not sure it's germane to

what we're trying to do.

MR. CLARKE: It is as far as understanding where you're coming from in regards to the Marshals and their jurisdiction in the election of the Marshals.

MS. CHAPMAN-PLUMB: Well, the Indian Child Welfare Act gives the Cherokee Nation the right to superintend over the adoption of that child. Your department. I mean, you can help me out here. I'm not --

MR. CLARKE: Okay. I guess I'd like to clarify our process, because we do have an administrative procedure in which, whenever the District Court of the Cherokee Nation places a child in the custody of a Nation, then that placement of that child is not the court's responsibility, but it's our responsibility to place that child.

And so we do have a mechanism in which I can authorize that adoption to take place in a court, wherever the adoptive parents choose to do so. We've done that ever since I've been here.

So the potential jurisdiction is correct. If we wish to bring that child to the Tribal court, then we can request that.

MS. CHAPMAN-PLUMB: My point is just, there are circumstances where the duties of the Marshal might be needed outside of the fourteen-county area.

MR. CLARKE: Okay.

MR. HANNAH: Thank you very much. Mr. Keen, you are recognized, the elder.

MR. KEEN, JR.: Thank you, Mr. Chairman. I rise in opposition to this amendment. And let me restate. I'm speaking in favor of having an elected Marshal. Of the several offices that we have considered and created today, one of which is the delegate to the House of Representatives of Congress, the Commission recommended that that be an elected office; it is now appointed. The office of Attorney General, the Commission recommend that that be elected; it is now appointed.

Now, we're down to the Marshal. And once again, we're debating this appointment versus election. I just feel that -- notwithstanding, I understand that there are certain special requirements our Marshal needs to have. Special training in the area of Indian law. But all of those can be set out by the Council, by the way of statutory requirements for the job, or prerequisites. Certain training standards and things.

I feel like we do need this as an additional check and balance in our system, that the Marshal would be accountable to the people of which he serves, and he would be out working among the people which he serves, which would -- so there would be a direct accountability between him and the members of the Cherokee Nation.

So for all of these reasons, we've not added an elected post yet. Oh, that was the other thing. The district court judges, we recommended, be elected. And they are now appointed. So I think we need a little balance here.

MR. HANNAH: Thank you, Mr. Keen. Mr. Lay, you

are recognized.

MR. LAY: Yes, sir. Thank you. I stand in opposition to appoint. And I agree with Mr. Keen. We have had several posts that we have now added to the Tribal Complex. And all of our lawyers sat here and told us they should be appointed, not elected, and had a lot of good reasoning for it, I'm sure. But we just keep appointing, appointing, appointing.

And I don't know, I guess we just got through adding a lawyer awhile ago, just another lawyer to the Tribal Complex. I look back and see the stricken part of that enforcement, that these people wanted us to provide a prosecutor, not just another lawyer down there handing out drawing a salary.

And now we're going to appoint another person, this Marshal. I would rather have had the Marshal appointed and the other guys elected. I'm against this now. Thank you.

MR. HANNAH: Thank you, Mr. Lay. Good gentleman from Black Gum is recognized.

MR. McCREARY: I'll defer to my cousin to the north.

MR. HANNAH: Excellent. Mark, good to see you.

MR. RAPER: Mr. Chairman, I have trouble about the term limits of a Marshal because it is a law enforcement agency, and they should not be in the political circus. We have U.S. Marshals that have served years without being elected because of the work they do. It's private and government matters.

And the Cherokee Marshal Service goes through many government lands around the boundary of the Cherokee Nation. And they have to be CLEET certified, and they have to go through political science. It's not for office, but it's for police work. That's all.

MR. HANNAH: Thank you, sir. Gentleman from Black Gum.

MR. McCREARY: Thank you. Ken McCreary, Black Gum. I'd like to point out, we don't need to go into a knee-jerk just because we have made appointments for the other offices to take the Marshal service or the law enforcement division and make them an elected position and put them into the political arena.

We have, in the past, unfortunately, used it as a political football. And that's not what we need to do. We need to keep this as a professional organization. I have been a professional all my life. And to keep these people, not just myself or somebody -- somebody to come into that, that is highly trained for this. And the only way you can do that is by an appointment, and go through a selection process.

To do it by election, you don't have that selection process, other than by the people. And not everybody knows the qualifications of that particular individual, other than what they hear in the papers and advertisement and the campaigns. That's not always true.

So I do believe that we need to have that in our

appointment position. This is what we're talking about. Just the appointment. I'm not going to talk about the rest of it. So I am for and strongly for appointed positions.

MR. HANNAH: The gentle lady is recognized.

MS. CHILSON: Chilson, delegate from Tahlequah.

I rise in opposition to appointed. I think that our people, if we've all talked to them, they're going to be looking at this, and they're going to see a lot of appointed, appointed. And I think they want a voice. They want to take the voice back. I think they're capable of choosing someone qualified. And I believe that this should be an elected office. Thank you.

MR. HANNAH: Mr. Smith.

MR. JOHN KEEN: Point of order. Mr. Smith, the author of the amendment, everybody is supposed to be able to debate before the author.

MR. HANNAH: Well taken, sir. Mr. Hembree, what say you?

MR. HEMBREE: I would yield to the kind sir. He's been standing up longer than I have. So I would give to Mr. Smith before I make my comments.

MR. HANNAH: If not for you not wishing to incur the wrath of any other delegates, then I would go to the gentleman behind you, if you will yield your time? Do you yield your time? What about you, Mr. Gourd?

MR. GOURD: If these guys are being friendly, I'll try it.

MR. JOHN KEEN: Mr. Chairman, I would like to be recognized.

MR. HEMBREE: I'll speak.

MR. HANNAH: I will be speaking to these gentlemen over here. Thank you.

MR. HEMBREE: So much for kindness. Mr. Chairman, I believe it's very important that some segment of the law enforcement arm of the Cherokee Nation be directly responsible to the people. There was a good argument of whether that should be Attorney General or that should be the Marshal.

Now, I was in favor of the Attorney General being appointed because I believe it's important that that official be appointed because he's going to work so closely in tune with both the legislative and the executive branch of this government.

However, this Marshal that we are creating by Constitution subscription is -- his job is going to be enforcing the laws that the legislature, executive branches make together. There is nothing wrong with that person being directly responsible to the people. I think the people would appreciate it.

And in reaction to the good sir from Black Gum's remarks, there is nothing wrong with the people making that choice. That's a -- the people, in all likelihood, are a pretty good barometer of whether a person is qualified to hold an office. Very seldom do you get just a complete idiot elected. You do sometimes, but very

seldom. Just as it is very likely that sometimes you get a complete idiot appointed, okay.

This person is going to be enforcing the laws. There is no reason why he shouldn't be held directly responsible to the people. Thank you very much.

MR. HANNAH: Good doctor, you are recognized.

MR. ROBINSON: Rick Robinson, delegate from Tahlequah. I'm for this position to be appointed for several reasons. They have already been mentioned. I do know that from some personal experience as a young teenage man, and my family coming from Adair County, that many times an elected sheriff in this staff are very underqualified.

And I think that if we had appointed, and that the Council would be very studious, adhere to their duty in making sure that those requirements for the Marshal and the Marshal's staff, the Deputy Marshals, be of high training, that this would be a lot better appointed than elected.

I am somewhat concerned about a long ballot being placed before the citizens of the Cherokee Nation, just as I'm glad that we are going to present this as a whole document. One time I heard we was going to present it to their vote by amendment.

MR. HANNAH: Close the argument here, Doctor.

MR. ROBINSON: So, thank you.

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

MR. GOURD: Thank you, sir.

MR. KEEN, JR.: Point of order. This gentleman has been standing here for some time.

MR. HANNAH: And thank you, sir. Thank you so much. I simply did not note that he had taken to the floor prior to Dr. Gourd having stood in line with three delegates on the other side. Is that your inclination, sir, to speak at this time?

MR. JOHN KEEN: I've been on the floor much longer than anybody else, Mr. Chairman.

MR. HANNAH: And I assure you, sir, that no one is more aware of that than the Chair. You are recognized.

MR. JOHN KEEN: John Keen, delegate. I know I raised this issue, but I haven't got to speak on it since it has been raised as a single issue, and I want to address it as a single issue.

I think it is just ridiculous to say that the people of the Cherokee Nation are not smart enough to elect their own people.

That is the most ridiculous argument I have ever heard. It angers me, and I'm sorry. I'll lower my voice, Mr. Chairman.

MR. HANNAH: Thank you, sir.

MR. JOHN KEEN: But it angers me to hear people saying that we aren't smart enough. We don't have enough sense to assess the qualifications of our people out there doing our job. I submit to you that the Cherokee people are some of the smartest people around. Look at the congregation we have here. You people

are going to be voting for him, him or her. Do you think you're not smart enough to assess the qualifications of our Marshal?

And look at the line we are creating here. Appointment, appointment, appointment, appointment. What that does is give a direct line from the top to the bottom. Where is the accountability there? Nowhere. It goes all the way to the top.

I submit to you, we have to draw a line somewhere and start giving the people a voice in this.

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

MR. BILL BAKER: Thank you, sir. I speak in favor of the appointment for several reasons. And I do believe that we would have many smart candidates that would run for this office, qualified candidates, good candidates.

But it reminds me of a story that Sam Ed Bush told me over in Sequoyah County. He said that there was a murder or a killing, is what he said. The D.A. called the sheriff, told the sheriff to go investigate it and sweep the area. When the D.A. showed up, they had taken a broom and swept the area. This is this truth.

When they got to talking about it a little further, they found out that it was between the Smiths, just over in Arkansas, and the Joneses in Oklahoma. The D.A. asked if they knew these people very well. And he says, "Yeah, there's about 146 voters out there." And he had literally swept the area.

The elected people count votes. Elected people count votes. And if you want true, fair, prosecution, fair representation, then believe in your Council, believe in their ability to screen whoever the Chief -- whoever that might be, brings to them for good, quality police protection.

Second caveat, I would say that many, many of the county sheriffs in the state of Oklahoma, if they were Cherokee, could run and become elected only to be refused to be seated by the BIA. It is very stringent, your qualifications, your background. You can be a sheriff in Oklahoma and not be a Marshal for the Cherokee Nation.

Thank you.

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

MR. GOURD: Mr. Chairman, I am rising in support of the Marshal being appointed. I think that while there may be some concern about all of this appointed, I think that it should raise the level of consciousness of the voters when they vote for the Principal Chief precisely because of this.

I know when I go and I vote in the presidential election, for example, I count what seats are going to come up open in the supreme court during the next term and carefully consider and measure that. So I think that's an important qualification to think about a Principal Chief with these appointed powers in my best interest. So I stand in favor of the appointed.

MR. HANNAH: The kind lady from Tahlequah is recognized.

MS. CHAPMAN-PLUMB: I stand in opposition to the appointment. First of all, I think it's a good thing whenever everybody in the Cherokee Nation has the qualifications of this person brought to their attention. Who is this person? What are they doing? I think we can make that decision. I think we can read. We can understand that there might be some things that they need that a normal law enforcement officer doesn't have.

And second of all, I think it would be a darn good thing if the only person, the only people that answer -- I think it would be great if they count votes, because that's who I want them to answer to, the people who elected them, and no one else.

MR. HANNAH: Good lady from Tahlequah is recognized.

MS. MASTERS: I rise in opposition to the appointed position also, for all of the reasons that have been said here. But this person is directly over the people, and that has a huge bearing on where this person's allegiance is to and who they have to go to for confirmation.

So I believe that it should be elected. And if we do elect, I believe it should be for six years, so that it would coincide. The person that is in the Marshal's position, if they're doing their job, it's going to take awhile for the people to understand the type of person they are, develop trust in their decision-making, and then their ability. And I would suggest that we align this with our normal election process, which is every two years, and make it elected for six-year terms.

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

MR. CORNSILK: Mr. Chairman, Delegate Cornsilk.

Once again, in the spirit of cooperation with our non-residents, I have changed my mind. I stand in opposition to appointment. And I give you this one reason. And that is that if the Cherokee people, by some fluke of their ballot casting, elect a baffoon, we will have somewhere in this Constitution the power of removal. We could take that person out. And that makes them accountable to the people.

And it really offends me, and I don't want to get into a shouting match with anyone, but it really offends me that someone would imply that I, being a representative of many Cherokee people who are just like me, although some people might disagree with that, could not sit down and look at a piece of election material and make a sound decision about someone who's going to enforce the laws that affect me directly -- not only me, but my family, my children, my parents.

I stand in favor of electing this person, because I want to have that person accountable to me as an elector, if they're going to come haul me out of there. And speaking from experience again, the head Marshal of the Cherokee Nation at one time, after this controversy began, grabbed me by my arm, twisted my arm and drug me out of the council chambers. I want you to know that if that person had been an elected position, I would have been out

there busting my butt to get him removed from office. So I think elected is much better than appointed.

MR. ROBINSON: Call for the question.

MR. HANNAH: The question has been called. Kind lady, you've been standing for a while.

MS. SCOTT: Well, I'm going to support the question as an ex-patriot Cherokee. And I think we need to look at this in such a way, you want your representatives to be the people that carry your voice forward. And it's really not the Marshal. The Marshal is not carrying your voice.

You elect a Councilman that you talk to, and he's going to carry your opinions forth and enact law and legislation. A Marshal is going to fulfill a function. It's like a doctor doing a surgery. You need certain skills to do certain things.

So we're trying to get a person into this position that has the skills. It's not like an elected position that this person is going to take your voice forward and help change something that you need changing.

So I think we need to kind of divide, bifurcate yet once again, that thought, and think about this as being someone who is going to perform what our elected officials ask them to do, and not carry our voice forward.

MR. ROBINSON: 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 opposition, we will move for the vote.

MR. McDANIEL: Mr. Chairman, I've just got something to say.

MR. HANNAH: Okay. Just one moment here. Yes, Calvin.

MR. McDANIEL: Get Ms. Roensberg to roll that up to the top of the screen?

MR. HANNAH: Sure. The young lady will move the verbiage to the top of the screen for Calvin to be able to view.

Calvin, does that help? And what we are looking at here is this word "appointed" up here.

MR. McDANIEL: Yes, sir.

MR. HANNAH: And that's exactly what we are going to be voting on, ladies and gentlemen. And if you vote in the affirmative, then this position will be appointed.

We've had a call for a roll call vote. And in our earlier rules, we'd ask for five delegates to submit that request. And the Chair looks to see if there are other individuals. That is enough to do so. Mr. Secretary, prepare for the roll. Our electronic ballot is working, and it will be utilized, and it will be on the screen. Clarification, sir.

DELEGATE: Question for what, and no for what?

MR. HANNAH: If you vote yes, this position will

be appointed; if you vote no, it will not be. And I realize that the procedure would probably require us to bring back the question of election, but let's all agree at this late hour that if this does not carry, then the word "election" would be supplanted.

So if you vote yes, the position of Marshal will be appointed. Does everyone understand that? The Chair would entertain some head nods here at this time. Thank you all.

MR. JOHN KEEN: A vote for yes would be appointed, right?

MR. HANNAH: I beg your pardon?

MR. JOHN KEEN: A yes vote would be appointed?

MR HANNAH: You have to vote yes to be appointed. All right? No, we're not going to gag him. The entertainment value is too great to the Chair. Mr. Secretary, call the role.

MR. UNDERWOOD: Adair.

MS. ADAIR: Yes.

MR. UNDERWOOD: Alberty. Bill Baker.

MR. BILL BAKER: Yes.

MR. UNDERWOOD: Donn Baker. Jack Baker. Berry.

MS. BERRY: Yes.

MR. UNDERWOOD: Birmingham. Burnett.

MS. BURNETT: No.

MR. UNDERWOOD: Center.

MR. CENTER: No.

MR. UNDERWOOD: Chilson.

MS. CHILSON: No.

MR. UNDERWOOD: Clarke.

MR. CLARKE: Yes.

MR. UNDERWOOD: Colson.

MS. COLSON: No.

MR. UNDERWOOD: Coon.

MS. COON: Yes.

MR. UNDERWOOD: Cornsilk.

MR. CORNSILK: No.

MR. UNDERWOOD: Crawford.

MS. CRAWFORD: Yes.

MR. UNDERWOOD: Crittenden, Don.

MR. DON CRITTENDEN: No.

MR. UNDERWOOD: H. Crittenden.

MR. H. CRITTENDEN: No.

MR. UNDERWOOD: Crouch. Bill Davis. Earl Davis. Bryce Downing. Carl Downing.

MR. CARL DOWNING: Abstain.

MR. UNDERWOOD: Dowty.

MR. DOWTY: Yes.

MR. UNDERWOOD: Foster.

MS. FOSTER: Yes.

MR. UNDERWOOD: Gourd.

MR. GOURD: Yes.

MR. UNDERWOOD: Gunter.
MR. GUNTER: Yes.
MR. UNDERWOOD: Hagerstrand.
MS. HAGERSTRAND: No.
MR. UNDERWOOD: Hammons.
MS. HAMMONS: Yes.
MR. UNDERWOOD: Hannah.
MR. HANNAH: Abstain.
MR. UNDERWOOD: Herod. Hathaway. Havens.
MS. HAVENS: Yes.
MR. UNDERWOOD: Hembree.
MR. HEMBREE: No.
MR. UNDERWOOD: Hook.
MR. HOOK: No.
MR. UNDERWOOD: C. Hoskin, Jr.

C. Hoskin, Sr.

MR. HOSKIN, SR.: Yes.
MR. UNDERWOOD: Johnson. Jordan.
MS. JORDAN: Yes.
MR. UNDERWOOD: Keen, J.
MR. JOHN KEEN: No.
MR. UNDERWOOD: Ralph Keen, Jr.
MR. KEEN, JR.: No.
MR. UNDERWOOD: Senior. Lay.
MR. LAY: No.
MR. UNDERWOOD: Littlejohn.
MR. LITTLEJOHN: No.
MR. UNDERWOOD: Linnenkohl.
MS. LINNENKOHL: Yes.
MR. UNDERWOOD: Masters.
MS. MASTERS: No.
MR. UNDERWOOD: McDaniel.
MR. McDANIEL: No.
MR. UNDERWOOD: McIntosh.
MS. McINTOSH: Yes.
MR. UNDERWOOD: McCreary.
MR. McCREARY: Yes.
MR. UNDERWOOD: MacLemore. Melton. Meredith.
MS. MEREDITH: Abstain.
MR. UNDERWOOD: Miller.
MS. MILLER: No.
MR. UNDERWOOD: Moore.
MR. MOORE: Yes.
MR. UNDERWOOD: Mullon.
MR. MULLON: Abstain.
MR. UNDERWOOD: Peacock. Phillips.
MR. PHILLIPS: No.
MR. UNDERWOOD: Pitts. Plumb.
MS. CHAPMAN-PLUMB: No.
MR. UNDERWOOD: Poteete.

MR. POTEETE: Abstain.
MR. UNDERWOOD: Raper.
MR. RAPER: Yes.
MR. UNDERWOOD: Rider.
MR. RIDER: Yes.
MR. UNDERWOOD: Robinson.
MR. ROBINSON: Yes.
MR. UNDERWOOD: Rutledge. Sanders. Barbara

Scott. D. Scott.

MS. SCOTT: Yes.
MR. UNDERWOOD: Owen Scott.
MR. SCOTT: No.
MR. UNDERWOOD: M. Silversmith.
MS. SILVERSMITH: No.
MR. UNDERWOOD: R. Silversmith.
MR. SILVERSMITH: No.
MR. UNDERWOOD: Smith.
MR. SMITH: Yes.
MR. UNDERWOOD: Spencer.
MR. SPENCER: No.
MR. UNDERWOOD: Starr. Stopp.
MR. STOPP: No.
MR. UNDERWOOD: Stroud.
MS. STROUD: No.
MR. UNDERWOOD: Twining.
MS. TWINING: No.
MR. UNDERWOOD: Underwood, yes. Viles.

Wheeler.

MR. WHEELER: Yes.
MR. UNDERWOOD: Whitfield.
MR. WHITFIELD: No.
MR. UNDERWOOD: Wilson.
MR. WILSON: No.
MR. HANNAH: Mr. Secretary, what are the results

of the election? The Chair was busy here for a moment.

MR. UNDERWOOD: The Secretary is busy here for a moment.

MR. HANNAH: Okay. Let's all be busy here for a moment.

MR. UNDERWOOD: My account was twenty-five yes, and thirty-nine no.

MR. HANNAH: The Chair would instruct the Secretary to once again reconcile the vote.

MR. UNDERWOOD: Will do.

Mr. Chairman, my count was twenty-eight yes -- twenty-eight no, I'm sorry, and twenty-five yes. And five abstentions.

MR. HANNAH: The delegates will be patient while the Chair has asked for a clarification.

Ladies and gentleman, we've had a request for a recess.

I would certainly like to convene one. It was my inclination not to do so until the results of this election were, in fact, verified. But if delegate would be trusting of the Chair while we continue to do just a little bit of research. Let's take a -- and the Chair needs to see some head nods here. Would it be okay to do a recess?

Then we will come back and we will finalize this decision upon return in ten minutes.

(recess taken)

MR. HANNAH: Delegates, let's make our way to our seats. Thank you very much. The Chair thanks the kind visitors in the gallery this evening. We are mindful of the decorum of the chamber during our deliberation.

Let's go back to the results of the election. The results of the election are twenty-five yes; twenty-eight no; five abstentions. The motion does not carry. And if not appointed, then what would be the pleasure of the delegates?

MR. HEMBREE: Mr. Chairman, I move that we -- I'll move an amendment to supplement the language "elected." And I think it would be appropriate, through parliamentary procedures, to take a vote on the word "elected" at this time.

DELEGATE: Second.

MR. HANNAH: There's a second. Hearing no objection --

MR. CORNSILK: Mr. Chairman.

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

MR. CORNSILK: Point of information. I would -- and I don't know if this is even appropriate.

MR. HANNAH: That's okay. Let's go down that road and see what it looks like.

MR. CORNSILK: I would suggest to those persons who abstained, that an abstention is a tool used to avoid a conflict of interest, a tool used to avoid casting a vote when you lack knowledge of subject matter, and it is not something to be used simply because you don't want people to know how you voted, or -- and I'm not accusing anyone of that, I just want you to understand my thinking of it -- or it's not a tool to simply say I don't care one way or the other. When you participate in the debate, you should vote.

MR. HANNAH: Thank you.

MR. JOHN KEEN: Mr. Chairman, point of order.

MR. HANNAH: Mr. Keen on point of order.

MR. JOHN KEEN: With all due respect to Mr. Hembree, his motion is dilatory in nature for the reason we have just decided this. We only have two options, appointed or elected.

That was the question. And implore the Chair to rule it dilatory.

MR. HEMBREE: Mr. Chair, may I respond, sir?

MR. HANNAH: Both of you gentlemen will stand at ease for a second.

MR. BILL BAKER: Point of information.

MR. HANNAH: Mr. Baker.

MR. BILL BAKER: The point I'm trying to make is, had this vote been reversed, and it would have been twenty-eight yes, and twenty-five no. It is my opinion that it still would not have passed because of the five abstentions. And so to make a rule on that, I think would be out of order.

MR. HANNAH: Mr. Hembree.

MR. HEMBREE: I didn't understand Mr. Baker's comment. Could you repeat that, please, sir?

MR. BILL BAKER: A majority vote of the delegates that cast a vote would have been thirty. There was twenty-eight against, twenty-five or six for, so it would not have passed had it been twenty-eight to twenty-five the other direction.

MR. HEMBREE: Precisely, sir. And that's why we need to take another vote.

MR. BILL BAKER: We're on the same page.

MR. HEMBREE: Right.

MR. HANNAH: That is where we are at this time. Mr. Hembree, have you, in fact -- you've made your motion to --

MR. HEMBREE: I've moved --

MR. HANNAH: Let's clarify it for all the delegates so we know where we are.

MR. HEMBREE: I move to delete the word "appointed" and add the word "elected" to the language.

MR. HANNAH: Is there a second?

DELEGATE: Second.

MR. JOHN KEEN: Renew my point of order.

MR. HANNAH: Mr. Keen, restate it, sir, and I will try very much to satisfy your desires here for information.

MR. JOHN KEEN: Mr. Hembree's motion is dilatory in nature. That was the question that we just voted on. I implore the Chair to rule it as such in nature because it would be dilatory to the process to go through another roll call vote. I ask the Chair to certify the results of the last election and declare the vote valid.

MR. HANNAH: The Chair has certified the results of the last election. And I believe that -- and help me. And the Chair apologizes for perhaps being just a bit tired here at this day and at this particular time. Are you saying that, therefore, if the word "adopt" did not pass, that automatically "elect" would be the --

MR. JOHN KEEN: Yes, I am, sir. That's my intention. That's my contention.

MR. HANNAH: I guess the Chair would point that there are other avenues for selection of a Marshal, rather than by --

MR. JOHN KEEN: The debate was -- I'm sorry, may I be recognized?

MR. HANNAH: The Chair would finish his sentence for just a moment. There would, in fact, be other avenues for a Marshal to be placed in office.

You are recognized, Mr. Keen.

MR. JOHN KEEN: The debate was very pointed between "elected" and "appointed." That was the question we had before us. Mr. Hembree's motion would be out of order and dilatory. He would have to make a motion that would require debate on a separate subject.

MR. HEMBREE: Mr. Chairman, if you would so indulge me, I will try to explain the reasoning behind my motion.

MR. HANNAH: And, sir, I will indulge you. And I would tell Mr. Keen that simply because the scope of our debate may have, in fact, focused on those two particular arenas, does not obviously limit the choices of the delegation. Mr. Hembree, you are recognized.

MR. HEMBREE: My motion is based simply on this.

In order for an amendment to pass this body, it must receive a majority number of votes of the members present and voting. When you take into account the five abstentions that were cast, the -- well, number one, "appointed" did not pass, regardless. It received only twenty-five amount of the votes.

But let's say, let's just switch this, let's mirror image this vote for "elect." In that case, the "elect" would receive twenty-eight; the "appoint" would receive twenty-five. There are still five abstentions. Neither one of those is a majority vote. So, therefore, neither one of them would pass. That's why the "appointed" failed.

So I have to make a separate motion on "elect," and we have to see if "elect" is going to pass by a majority vote. And that's the reason for my motion.

MR. JOHN KEEN: I'm going to ask the Chair to rule.

MR. HANNAH: And the Chair has ruled. And, kind sir, I would recognize you.

MR. DOWNING: I move this as a point of personal privilege. I would like for you to obtain from the parliamentarian whether an abstention is a vote or not.

MR. HANNAH: Chair would call on the parliamentarian.

MS. LANGLEY: I've been trying to find the reference to that. Normally an abstention is not considered a vote, but I can't find the reference yet.

MR. HEMBREE: On order.

MR. HANNAH: Mr. Hembree.

MR. HEMBREE: Abstentions are counted in the tally, present and voting. They may not cast a vote, but they are to be taken into the number when you are discussing a majority of whether something passes or not. That's my opinion.

MR. HANNAH: Thank you for your opinion, Mr. Hembree.

MR. DOWNING: Mr. Chair.

MR. HANNAH: You are recognized, sir.

MR. DOWNING: Thank you. It is my opinion that it is not, and I believe we better get somebody who has more than opinion.

MR. HANNAH: The Chair is pleased that there is an opposing opinion. Therefore, the room being balanced, we will, in fact, await the research from the parliamentarian, the reason she's here with us. Mr. Baker, do you have an opinion in the middle, sir?

MR. BILL BAKER: I have an opinion. I don't have a speaker, but I have an opinion. It would appear that our electronic balloting is a program from Robert's Rules. And if you'll look up there under number voting, it says fifty-eight in the top right-hand corner. And just below that, it says majority, thirty. And I think that's a pretty good guide for what a majority is in this case.

MR. JOHN KEEN: Point of order. Information.

MR. HANNAH: We'll be respectful and we'll recognize the good man from Westville.

MR. PHILLIPS: Mr. Chair, in my opinion, it seems like we're getting a lot of opinions here on this.

MR. HANNAH: The good delegate would wish to add his to the monologue that we have here?

MR. PHILLIPS: In my opinion, when a person abstains from voting, that means that they do not wish for their feelings or their vote to be counted. If that vote, if that abstention is made a part of the total, then that vote would be a no vote.

So it's my opinion that the abstentions should not be counted in the total; otherwise, that vote would be a no vote, and that person, if he wanted to vote no, he would vote no. He wouldn't abstain. That's my opinion. Thank you.

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

Mr. Stopp, would you wish to add to this hollow log, sir, or why do you rise?

MR. STOPP: I just have a question. That's all I have.

MR. HANNAH: Excuse me, kind Delegate, I believe that we may have just slopped over the top of this. And the parliamentarian will approach the microphone.

MS. LANGLEY: Page 414.

MR. JOHN KEEN: You're on the same page as I am.

MS. LANGLEY: If he does not wish the vote, he answers "present" or "abstain." So it means you do not wish to vote. It's not a vote.

MR. JOHN KEEN: Exactly.

MR. HANNAH: It is the opinion of the Chair now, after having consulted with the parliamentarian, that the motion did not carry. And, Mr. Hembree, you are recognized.

MR. HEMBREE: I think technically, we need to go ahead and take a vote on "elect," although I was -- it was pointed

out to me that I was wrong on my calculations of abstentions.

MR. HANNAH: And you are a good man, sir, for having admitted that.

MR. HEMBREE: And I would be the first to admit it into the record.

MR. KEEN, JR.: Mr. Chair.

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

MR. KEEN, JR.: A point of information on the spreadsheet. I don't know if Delegate Baker was here the day that this was devised. This is not a special program. This is one that Delegate Philip Viles put together for us. And it's just simply a mathematical computation.

MR. BILL BAKER: And I see it says twenty-seven-and-a-half now.

MR. KEEN, JR.: Exactly.

MR. HANNAH: Ricky, you are recognized.

MR. ROBINSON: Delegate Rick Robinson from Tahlequah. I disagree with Mr. Keen in one point, in that I feel like we still need to vote on whether it's elected. One thing -- one reason is to make sure that no one can say that it wasn't clear. Also, there are other options. The Marshal could be hired by the Principal Chief.

MR. JOHN KEEN: Point of order.

MR. HANNAH: Point of order by Mr. Keen. What say you, Mr. Keen?

MR. JOHN KEEN: The Chair has ruled. We are at a vote. Is that true?

MR. HANNAH: Actually, the Chair has ruled that -- I accepted a motion to -- if I recall, by Mr. Hembree, who made a motion that obviously since the word "appoint" did not make it, and he suggested that the word "elect" be placed, and it received a second. And so, therefore, we would be open for debate on the word "elect," if the Chair would be correct.

MR. HEMBREE: That's correct, sir.

MR. HANNAH: And that's where we are, Mr. Keen.

MR. JOHN KEEN: Call the question.

MR. HANNAH: Actually, sir, I would return to the kind gentleman who was at the microphone before your point of order and see if he would at least like to finish his sentence.

MR. ROBINSON: I want to make that a motion.

MR. HANNAH: Ricky, now, be careful. Perhaps you would like to withdraw after all? Thank you, Ms. Scott.

MR. JOHN KEEN: Call the question.

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

DELEGATE: Second.

DELEGATE: Roll call.

MR. HANNAH: And I see the hands of five other individuals who wish to -- one hand, Mr. Clarke, will be sufficient. Thank you very much. We recognize you are, in fact, the author of

the number eighteen, but we would prefer you keep your tentacles down.

MR. STOPP: It is roll call, right?

MR. HANNAH: Mr. Stopp, do you have a point of information, sir?

MR. STOPP: It is roll call, right?

MR. HANNAH: Just a moment here, folks. I want to hear Mr. Stopp for just a moment. What is point of information?

MR. STOPP: It is roll call, right?

MR. HANNAH: Well, and that's what we were doing. It takes five of us to be able to do that. You had your hand up. Is that what you're asking for, sir? Are you asking for a roll call vote?

MR. STOPP: The question is, I notice there were fifty-eight votes that were in this room. Are we sure that fifty-eight votes that are going to be cast?

MR. HANNAH: We are not sure of anything, sir, until the votes are counted. And that is the rule of democracy. And I'd like to say, if I could have a hand that asks for a roll call vote, Mr. Stopp. Are you asking for --

MR. STOPP: Yes, roll call vote.

MR. HANNAH: Okay. There we go. You have got it now. And one, two, three, four, five. We have enough to do so.

MS. MASTERS: Point of order. Do we call the delegates to the section?

MR. JOHN KEEN: Mr. Chairman, point of order.

MR. HANNAH: Okay, just a minute here, folks. Just a minute. Okay. Now, the Chair recognizes it's fifteen to nine. The Chair recognizes that we've had good and healthy debate here this evening on, obviously, an issue that is sensitive to all of us. And we are going to reach a "cat stone" of our decorum for this day by leaving these chambers, hopefully, at some point this evening, pretty much the same way that we came in. We're all going to be of good spirit and good mind as we go out.

So the Chair is going to settle us all down here for just a moment. And we have had a call for roll call vote. And there are obviously those individuals that are standing by some point of order, and they will be recognized. And the good lady will be recognized first.

MS. HAMMONS: Thank you, sir. And I am smiling in good spirits.

MR. HANNAH: Thank you, ma'am.

MS. HAMMONS: One of our delegates just walked in. And point of order, is that delegate going to vote on this? Is this a separate election, separate vote, or part of the original, part of the prior?

MR. HANNAH: Okay. Just a moment. You've asked a question that is somewhat vague, because you say "one of our delegates just walked in." Which delegate would you be speaking about? Someone who has been outside; been here before; been here

two days ago; hasn't been here at all? The Chair needs to know specifically.

MR. JOHN KEEN: Point of order. I'll raise it specifically.

MR. HANNAH: Just a moment, Mr. Keen. I'm speaking with this lady over here.

MS. HAMMONS: I would defer to Mr. Keen.

MR. HANNAH: Okay. Thank you very much. Mr. Keen, you're recognized.

MR. JOHN KEEN: I would ask the Chair to admonish the younger Mr. Hoskin not to vote.

MR. HANNAH: Take your seat, Mr. Keen.

MR. JOHN KEEN: As he just walked in.

MR. HANNAH: Take your seat, Mr. Keen.

Mr. Hembree, you are recognized.

MR. HEMBREE: Mr. Chairman, when a person -- when I received my credentials, it is my understanding that I had the right to vote at any time on any question, whether I was gone for four hours or four days. That the only time that I would not be allowed to vote is during the exact voting process itself.

MR. HANNAH: You're doing well. Stay there.

MR. HEMBREE: The voting process itself, when the chambers would actually be sealed. Other than that, as a sworn-in delegate, I would have the right to vote on any question.

MR. STOPP: Information.

MR. HANNAH: Mr. Stopp.

MR. STOPP: Were we not in a voting process? We took a break between the finalization of the vote and the casting of the vote. So we were not in that order?

MR. HANNAH: Mr. Stopp, no, we were not. And the Chair will clarify once more exactly where we are and where we have been, so that we're all going to be together on this.

MR. McCREARY: Move to table.

MR. HANNAH: Out of order.

Now, where we were, just so we're on all the same page, is that we had a vote on the word "appoint." And the Chair was uncertain, with regard to the issues that were raised by the parliamentarian, and we declared a recess after that vote for the Chair to determine the finalization of the vote. And it was finalized, and the Chair ruled.

And then a motion was made by Mr. Hembree with regard to the word "elect." And there was a second. And there was some spontaneity of debate. And then the question was called, and it was seconded. And then you, sir, asked for a roll call vote, and the Chair went through to identify, as we agreed this morning, five hands to be able to call a roll call vote. And we were preparing to go to the vote.

Now, with regard to Mr. Hembree's remarks, you all recall yesterday that we went through this little islet yesterday for a brief moment in time. And it was agreed upon that at the moment of

vote that the delegates would, in fact, be in their chairs and that the doors to the chambers would be closed. And that would be the intention of the Chair at this time.

And if there are delegates that are here and they are, in fact, delegates true, then it would be the Chair's rule that they would have the ability to vote if they are in their seats and the doors are closed. Mr. Keen, you are recognized.

MR. KEEN, JR.: I would just like to back up every statement, everything you've just stated. Unless we adopt a rule otherwise, the doors to the chambers will be closed when voting begins. That had not happened. In my opinion, this delegate has every right to vote.

MR. HANNAH: Thank you, Mr. Keen. The Chair is very appreciative for the concurrence of the Vice-Chairman. Now, with that, the Chair would direct all point of order.

Tina, you're recognized.

MS. JORDAN: Can we see the wording again that we're voting on and tell us again what it is?

MR. HANNAH: Yes, ma'am, I assure you.

MS. JORDAN: I'm to the point now, I need that clarification.

MR. HANNAH: Okay. And, Tina, thank you very much for doing that because I think --

MR. SPENCER: Point of order.

MR. HANNAH: The Chair would finish his sentence, and then the kind man will be recognized. I believe that we have, in fact, convoluted exactly the atmosphere of the chamber here this evening on this procedure. But we will, I assure the kind lady that before any vote is cast, that we will know exactly what the question is and what yes or no will mean in the vote. And you, kind sir, are recognized.

MR. SPENCER: Delegate Spencer. It is my understanding that when I call for clarification of a vote, that a yes vote was for the election and no -- I mean, a yes vote was for appointment, and no was for election.

MR. HANNAH: The last vote that we took was yes for appointment, and it did not pass. That would be correct. And now we have a question before us which has been entered into. It has been moved, and it has been seconded. And that would be a question of elect.

Mr. Stopp, how rise you?

MR. STOPP: Could we go back to the minutes, to where we went to the original vote and see what exactly we voted on?

We have a reporter here. I believe the gentleman back is actually right. "Yes" was for the appointment and "no" was for the elected.

I think if we go back to that point, we'll understand where we are.

MR. HEMBREE: Point of information.

MR. HANNAH: One moment, Mr. Stopp. Mr. Hembree?

MR. HEMBREE: Mr. Chairman, if you would so indulge me, I believe that motion would be -- I mean, that statement

by Mr. Stopp would be, in effect, a motion to challenge the Chair on his ruling.

MR. HANNAH: Ruling of the election?

MR. HEMBREE: Right.

MR. HANNAH: And therefore --

MR. HEMBREE: A vote would have to be taken.

MR. HANNAH: That would be correct. Is that your statement?

MR. STOPP: I really didn't know what I challenged, but I will challenge it now. I didn't want to show the Chair no respect; I was wanting to go back and see what we've voted on. But if that's what I've done, I guess I have.

MR. BILL BAKER: Mr. Chair, point of information.

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

MR. BILL BAKER: Now, challenging the Chair takes two-thirds to override; is that correct?

MR. HANNAH: Just a moment here, folks. The Chair believes it to be a majority, because it's been done before, and it most likely will be done again.

MR. CORNSILK: Mr. Chair.

MR. HANNAH: Mr. Cornsilk, you are recognized during this brief period of intermission.

MR. CORNSILK: Thank you very much. It seems to me that we're getting hung up on rules and regulations. And I understand that's a lot of what we're about, to maintain order. But we have an opportunity here to walk out of this room, all of us knowing that we voted on this, and I would really hate to see us all just kind of break down into chaos, which it looks like what we've done, we're spinning our wheels, and not vote.

MR. HANNAH: Mr. Cornsilk --

MR. CORNSILK: I understand that's where you're heading.

MR. HANNAH: Mr. Cornsilk, we are not adhering to chaos, and you will take your seat.

MR. CORNSILK: I think we are.

MR. HANNAH: Mr. Cornsilk.

MR. CORNSILK: Yes, sir.

MR. HANNAH: The Chair would implore you to not go there. Do not go there, sir. Do not do that.

MR. CORNSILK: Mr. Chairman.

MR. HANNAH: Please. I ask, please.

MR. CORNSILK: Very well.

MR. HANNAH: If, in fact, there was confusion induced prior to the election by the Chair, which the Chair believes to be the case, then an apology will come from the Chair to the delegates, and I will declare that the election is invalid. And we will once again re-clarify exactly what we're going to vote on.

And without the reread from the court reporter, the Chair did at one point make a statement in attempting to clarify for a

delegate that by voting in favor of the election, that the word "appoint" would, in effect, be the language. And that by way of simple expression, if it did not pass, the word "elect" would therefore be supplanted.

The Chair did not, by that statement, perhaps confuse some of delegates, and also further, the Chair was in error -- in err by not presupposing that there would be other methods for this body to determine. It might well be that the Marshals would want to pace off at ten paces with 45 revolvers. It might be that they would be want to meet at the Chewey stompgrounds for a spirited game of stickball.

So the Chair declares that the election is invalid, and it shall be taken again. And the Chair, once again, apologizes to the delegates. He realizes that the passions are running very high in this room with regard to this basic issue. Not so much that it's over the office of the Marshal, but because it's over the voice of the people.

So with that, unless there would be additional challenges to the Chair, or if this group would like for the Chair to step aside, that's well within the parameters of the delegates.

Mr. Lay, what say you, sir?

MR. LAY: Mr. Chairman, first of all, I think that you and this Commission are doing an excellent job. I will not stand for you to step aside. I don't see how we could have gotten this far.

MR. HANNAH: The chamber will be seated.

MR. DOWNING: Mr. Chairman.

MR. HANNAH: Kind sir, you are recognized.

MR. DOWNING: Is there a way that the parliamentarian can quickly give us a procedure that would allow us to vote only once?

MR. HANNAH: Interesting question. You need time to think about this, young lady?

Like, everybody in favor of appointment, raise your hand. Everybody in favor of election, raise your hand. Something along those lines? Would that be basically, sir, what you're thinking of?

MR. DOWNING: I'll withdraw it.

MR. HANNAH: Mr. Vice-Chairman, you will draw close and assist the Chair in instructing the delegates on this vote. The Chair would be so presumptuous to think that this body would ask for another roll call vote. He would look for a series of head nods. He sees them.

Mr. Secretary, you're going to prepare to call the roll, and the scribe is going to prepare with the electronic balloting that we have.

MR. MULLON: Mr. Chair.

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

MR. MULLON: Thank you. Point of information.

I would like to know -- I would like to be really clear exactly what it is, the motion that we're voting on.

MR. HANNAH: That's what the Chair is getting ready to do, Mr. Mullan. We're going to be really, really clear.

We are voting on the word "appoint." "Yes" means that the word "appoint" is added to the language. "No" means that it is not. "Yes" means that the word is added to the language. "No" means that it is not.

Are there any questions from the delegates with regard to what we're doing here? Are there any questions among the delegates of what we are doing here?

Hearing none, Mr. Secretary, you are instructed to call the role.

MR. UNDERWOOD: Adair.

MS. ADAIR: Yes.

MR. UNDERWOOD: Alberty. Bill Baker.

MR. BILL BAKER: Yes.

MR. UNDERWOOD: Donn Baker. Jack Baker. Berry.

MS. BERRY: Yes.

MR. UNDERWOOD: Birmingham. Burnett.

MS. BURNETT: No.

MR. UNDERWOOD: Center.

MR. CENTER: No.

MR. UNDERWOOD: Chilson.

MS. CHILSON: No.

MR. UNDERWOOD: Clarke.

MR. CLARKE: Yes.

MR. UNDERWOOD: Colson.

MS. COLSON: No.

MR. UNDERWOOD: Coon.

MS. COON: Yes.

MR. UNDERWOOD: Cornsilk.

MR. CORNSILK: No.

MR. UNDERWOOD: Crawford.

MS. CRAWFORD: Yes.

MR. UNDERWOOD: Don Crittenden.

MR. DON CRITTENDEN: Yes.

MR. UNDERWOOD: H. Crittenden.

MR. H. CRITTENDEN: No.

MR. UNDERWOOD: Crouch. Bill Davis. Earl Davis. Bryce Downing. Carl Downing.

MR. CARL DOWNING: No.

MR. UNDERWOOD: Dowty.

MR. DOWTY: Yes.

MR. UNDERWOOD: Foster.

MS. FOSTER: Yes.

MR. UNDERWOOD: Gourd.

MR. GOURD: Yes.

MR. UNDERWOOD: Gunter.

MR. GUNTER: Yes.

MR. UNDERWOOD: Hagerstrand.

MS. HAGERSTRAND: No.

MR. UNDERWOOD: Hammons.
MS. HAMMONS: Yes.
MR. UNDERWOOD: Hannah.
MR. HANNAH: Abstain.
MR. UNDERWOOD: Herod. Hathaway. Havens.
MS. HAVENS: Yes.
MR. UNDERWOOD: Hembree.
MR. HEMBREE: Pass. That is not an abstention.
MR. HANNAH: Thank you, Mr. Hembree.
MR. UNDERWOOD: Hook.
MR. HOOK: No.
MR. UNDERWOOD: C. Hoskin, Jr.
MR. HOSKIN, JR.: Yes.
MR. UNDERWOOD: C. Hoskin, Sr.
MR. HOSKIN, SR.: Yes.
MR. UNDERWOOD: Johnson. Jordan.
MS. JORDAN: Yes.
MR. UNDERWOOD: John Keen.
MR. JOHN KEEN: No.
MR. UNDERWOOD: Ralph Keen, Jr.
MR. KEEN, JR.: No.
MR. UNDERWOOD: Ralph Keen, Sr. Lay.
MR. LAY: No.
MR. UNDERWOOD: Littlejohn.
MR. LITTLEJOHN: No.
MR. UNDERWOOD: Linnenkohl.
MS. LINNENKOHL: Yes.
MR. UNDERWOOD: Masters.
MS. MASTERS: No.
MR. UNDERWOOD: McDaniel.
MR. McDANIEL: No.
MR. UNDERWOOD: McIntosh.
MS. McINTOSH: Yes.
MR. UNDERWOOD: McCreary.
MR. McCREARY: Yes.
MR. UNDERWOOD: MacLemore. Melton. Meredith.
MS. MEREDITH: No.
MR. UNDERWOOD: Miller.
MS. MILLER: No.
MR. UNDERWOOD: Moore.
MR. MOORE: Yes.
MR. UNDERWOOD: Mullon.
MR. MULLON: Pass.
MR. UNDERWOOD: Peacock. Phillips.
MR. PHILLIPS: No.
MR. UNDERWOOD: Pitts. Plumb.
MS. CHAPMAN-PLUMB: Yes.
MR. UNDERWOOD: Poteete. Raper.
MR. RAPER: Yes.
MR. UNDERWOOD: Rider.

MR. RIDER: Yes.
MR. UNDERWOOD: Robinson.
MR. ROBINSON: Yes.
MR. UNDERWOOD: Rutledge. Sanders. Barbara

Scott. D. Scott.

MS. SCOTT: Yes.
MR. UNDERWOOD: Owen Scott.
MR. SCOTT: No.
MR. UNDERWOOD: M. Silversmith.
MS. SILVERSMITH: No.
MR. UNDERWOOD: R. Silversmith.
MR. SILVERSMITH: No.
MR. UNDERWOOD: Smith.
MR. SMITH: No.
MR. UNDERWOOD: Spencer.
MR. SPENCER: No.
MR. UNDERWOOD: Starr. Stopp.
MR. STOPP: No.
MR. UNDERWOOD: Stroud.
MS. STROUD: No.
MR. UNDERWOOD: Twining.
MS. TWINING: No.
MR. UNDERWOOD: Underwood, yes. Viles.

Wheeler.

MR. WHEELER: Yes.
MR. UNDERWOOD: Whitfield.
MR. WHITFIELD: Yes.
MR. UNDERWOOD: Wilson.
MR. WILSON: No.
MR. HANNAH: Two people passed. Call for the
votes from the two passed. Mr. Hembree. Is that correct, sir?
MR. UNDERWOOD: Yes, Hembree.
MR. HEMBREE: Abstain.
MR. UNDERWOOD: Mr. Mullon. Mr. Mullon.
MR. MULLON: Yes.
MR. UNDERWOOD: I'm sorry?
MR. MULLON: Yes.
MR. UNDERWOOD: Thank you.

Count, Mr. Chairman. Twenty-nine, yes; twenty-seven, no;
two abstentions.

MR. HANNAH: Motion carries. Reconciliation of
the vote is completed. Twenty-nine yes; twenty-seven no; two
abstentions. Motion carries.

MR. CORNSILK: Mr. Chairman, I challenge.
MR. HANNAH: And how do you do so, sir?
MR. CORNSILK: With my count. And I will just
ask to review it.

MR. UNDERWOOD: The reconciliation stands, and
the vote stands.

MR. HANNAH: Mr. Cornsilk stands down on his

challenge, and the reconciliation stands, and the pronounce of the vote stands. Good sir, you are recognized.

MR. DOWNING: I would like to commend the Chair for its willingness to maintain the order of evening in the face of criticism. That also means I get to criticize you.

MR. HANNAH: I assure you, sir, that the Chair, growing up in Adair County, is quite used to criticism. The Chair having been married a number of years, and having a teenage daughter is used to criticism. And being human, sir, he also recognizes that criticism will no doubt be a part of his life for many years to come. The mark of good Cherokees will be to accept it graciously and to do what is right. And that's what we're about doing here this evening.

And so the vote stands.

What is the pleasure of the delegates? The kind gentleman from Black Gum is recognized.

MR. McCREARY: I move to recess until eight o'clock tomorrow morning.

DELEGATE: Second.

MR. HANNAH: There is a motion on the floor to recess until eight a.m. tomorrow morning, and there is a second. And hearing no contest, all of those in favor signify by saying "aye."

THE DELEGATES: Aye.

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

MR. BILL BAKER: No. Roll call.

MR. HANNAH: You'll need to find four other people, Mr. Baker. I don't think you're going to do it.

(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 2nd day of March, 1999, at Northeastern State University, Net Building, Tahlequah, Oklahoma, and that the foregoing Proceedings was later reduced to computer-aided transcription form under my supervision, and that the same is a full, true, correct, and complete transcript of said Proceedings.

I FURTHER CERTIFY, that I am not an attorney for, nor relative of any of the parties involved in this action or otherwise interested in the event of same.

WITNESS MY HAND AND SEAL this _____ day of August, 1999.
