

# OKLAHOMA TRIBAL CONCERNS

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OVERSIGHT HEARING  
BEFORE THE  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
OF THE  
COMMITTEE ON  
NATURAL RESOURCES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION  
ON  
NATIVE AMERICANS IN OKLAHOMA AND THEIR TRIBAL ISSUES

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JANUARY 20, 1994—TAHLEQUAH, OK

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**Serial No. 103-65**

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# OKLAHOMA TRIBAL CONCERNS

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THURSDAY, JANUARY 20, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON NATURAL RESOURCES,  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,  
*Tahlequah, OK.*

The subcommittee met, pursuant to call, at 10:35 a.m. in the Council Chambers, W.W. Keeler Tribal Complex, Tahlequah, Oklahoma, Hon. Bill Richardson (chairman of the subcommittee) presiding.

## STATEMENT OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SYNAR [presiding]. The Subcommittee will come to order. Obviously you have noticed I am not Bill Richardson. I am Mike Synar, due to the weather, Mr. Richardson's plane has been delayed. We expect him here literally within the next 30 minutes, and as soon as he does arrive, we will have him join us.

I thought it was important to get started, however, because I do not want to really cut this off or try to squeeze too much into a short amount of time. What we thought we would do is start with the first panel in anticipation of Mr. Richardson coming.

First of all, let me welcome each and every one of you all here today. This is literally the first hearing in my tenure in Congress, and I think probably in the last 15 years in Oklahoma, dealing with the issue of Oklahoma Native Americans and the tribal issues. Many of you all are familiar that we have over 250,000 Native Americans in our great state of Oklahoma, representing over 37 different tribes. You are also familiar with the fact that we are the only non-reservation state in the nation. This gives us a unique status when we deal with issues with respect to our Native Americans.

I want to start by first of all thanking Chief Wilma Mankiller for hosting today, and particularly Lynn Howard and her staff for all the hard logistical work. This is not something that is easy to do and we appreciate the fact that they have gone to such great lengths these last few weeks.

The hearing today is an attempt for us here on the federal level to exchange ideas with others, to wrestle with hard questions and hear first-hand about successful programs that are underway in Oklahoma with our Native Americans. It is also an opportunity to explore federal legislation and bureaucratic changes which are so critical in the relationship between Native Americans and our federal government.

I think the goal is to find a better way to achieve a balance, a balance between finite resources and more funding for social services, as well as improving the federal trust responsibilities and including successful self-governance as we begin to proceed through the next decade and into the next century.

With new global competition and the need for local economic development, I think today's hearing will help us learn first-hand how the federal government, state government, as well as the sovereign nations which are represented here today can work together to improve the quality of life for Native Americans in Oklahoma.

Now let me give you a couple of rules so that everyone will know that we are not trying to pick on anybody. These are the rules that the Subcommittee has always had, whether they meet here in Oklahoma or around the country or in Washington. We are going to ask each one of the panelists as they come up to be recognized and their entire testimony will be made part of the record, but we would ask you to present your testimony in summarized form in no more than five minutes. The lights that you see on the table in front of you are important. We will have a green light for the beginning of your testimony, when the amber light comes on you have one minute remaining, and when the red light comes on we would ask you to complete the sentence that you are on so that we can get as much testimony in today as we can.

Now, for those of you who are not necessarily testifying today, we will also allow two weeks for the record to remain open, and we will have all those testimonies and materials submitted for the record that are to be included in this hearing. So we hope that you will take advantage of that too.

At this time I would insert into the record the statement of Chairman Richardson and background information on the subject of today's hearing.

[The statement follows:]

STATEMENT OF CHAIRMAN BILL RICHARDSON  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
OVERSIGHT HEARING ON  
OKLAHOMA TRIBAL CONCERNS  
JANUARY 20, 1994  
TAHLEQUAH, OKLAHOMA

GOOD MORNING.

THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES WILL COME TO ORDER.

THIS SUBCOMMITTEE WAS FORMED AT THE BEGINNING OF THE 103RD CONGRESS AT THE URGING OF SEVERAL MEMBERS OF CONGRESS INCLUDING MYSELF AND MIKE SYNAR, AS WELL AS INDIAN TRIBES ACROSS THE COUNTRY WHO FELT NATIVE AMERICAN ISSUES DESERVED MORE VISIBILITY IN THE HOUSE OF REPRESENTATIVES. WE ARE RESPONSIBLE FOR LEGISLATION AND OVERSIGHT OF MOST PROGRAMS WHICH AFFECT THE QUALITY OF LIFE FOR ALL NATIVE AMERICANS. I AM PROUD TO HAVE BEEN CHOSEN TO CHAIR THIS MOST IMPORTANT PANEL.

IN OUR FIRST YEAR OF EXISTENCE, THIS SUBCOMMITTEE HAS PROVED TO BE ONE OF THE MOST PRODUCTIVE IN CONGRESS. WE HELD OVER TWENTY HEARINGS AND PASSED 5 BILLS INTO LAW. WE BROKE A 6 YEAR LOG JAM ON LEGISLATION TO IMPROVE TRIBAL JUSTICE SYSTEMS. THE SUBCOMMITTEE INVESTIGATED AND CONDUCTED OVERSIGHT IN THE AREAS OF GAMING, URANIUM MINING CLEAN UP, BIA REORGANIZATION, LEAKY UNDERGROUND STORAGE TANKS, TRUST FUND MANAGEMENT, YOUTH DETENTION FACILITIES DAM SAFETY, AND OTHER MATTERS.

WE WORKED WITH OTHER COMMITTEES OF THE HOUSE TO ENSURE AMENDMENTS HELPFUL TO TRIBES WERE INCLUDED IN ENVIRONMENTAL LEGISLATION, MINING REFORM, AND TAX PROVISIONS.

THE SUBCOMMITTEE ALSO TOOK THE TIME TO VISIT TRIBES IN

CONNECTICUT, WYOMING, MONTANA, ARIZONA AND CALIFORNIA TO SEE AND HEAR FIRST HAND THE CONCERNS OF INDIANS IN THOSE STATES.

WE HAVE BEEN VERY BUSY BUT AS EVERYONE HERE KNOWS - OUR WORK HAS JUST BEGUN.

I WANT TO THANK MY GOOD FRIEND AND COLLEAGUE, MIKE SYNAR, FOR INVITING US DOWN HERE. HE IS A VERY STRONG ADVOCATE FOR INDIANS IN WASHINGTON. WHEN MIKE GRABS HOLD OF AN ISSUE YOU CAN BE ASSURED OF THREE THINGS:

1. IT WILL BE INVESTIGATED THOROUGHLY
2. A WORKABLE SOLUTION WILL BE PROPOSED AND
3. HE WILL CARRY THE FIGHT UNTIL THAT SOLUTION HAS BEEN IMPLEMENTED.

HE IS ONE OF THE MOST EFFECTIVE LEGISLATORS IN WASHINGTON.

I'M SURE MOST OF YOU KNOW THAT MIKE TOOK ON THE ENORMOUS ISSUE OF INDIAN TRUST FUND MANAGEMENT WITHIN THE BIA. THIS WAS AN ISSUE THAT WENT IGNORED FOR DECADES BECAUSE IT WAS THOUGHT TO BE TOO BIG, TOO CONFUSING AND IMPOSSIBLE TO FIX. WELL, MIKE WENT AT IT HEADLONG! HE SPENT 5 YEARS PICKING IT APART AND GETTING TO THE HEART OF THE ISSUES. HIS BI-PARTISAN SUBCOMMITTEE REPORT EXPLAINED IN GREAT DETAIL THE INEFFICIENCY WITH WHICH THE BIA MANAGES TRIBAL AND INDIVIDUAL INDIAN ACCOUNTS INCLUDING THE FACT THAT THERE IS NO RECONCILIATION OF THESE ACCOUNTS AND THE LOW RATE OF RETURN TRIBES RECEIVE ON THEIR INVESTMENTS.

MIKE HAS A BILL PENDING BEFORE THIS SUBCOMMITTEE WHICH WILL BEGIN TO ADDRESS SOME OF THE PROBLEMS WITH THE CURRENT MANAGEMENT OF THESE FUNDS. I AGREE WITH HIS APPROACH TO ALLOW TRIBES MORE ACCESS AND CONTROL OVER THEIR ACCOUNTS. THIS BILL IS A GOOD FIRST STEP IN

THE RIGHT DIRECTION AND I EXPECT THE SUBCOMMITTEE TO VOTE ON THIS MEASURE VERY SOON.

I ALSO WANT TO THANK PRINCIPAL CHIEF WILMA MANKILLER FOR ALLOWING US TO USE THE CHEROKEE TRIBAL COUNCIL CHAMBERS TO CONDUCT THIS HEARING. YOU AND YOUR STAFF HAVE BEEN MOST ACCOMMODATING. THE CHEROKEES AND OTHER GREAT INDIAN NATIONS OF OKLAHOMA HAVE A LONG AND UNIQUE HISTORY WHICH I AM COMMITTED TO LEARNING ABOUT THROUGH THIS AND FUTURE HEARINGS.

MY CONGRESSIONAL DISTRICT IS IN NEW MEXICO AND INCLUDES OVER 20 INDIAN PUEBLOS AS WELL AS PARTS OF NAVAJO AND APACHE RESERVATIONS. I KNOW THEM AND MOST ISSUES OF CONCERN TO THEM QUITE WELL. I BELIEVE THAT IT IS IMPERATIVE THAT AS CHAIRMAN OF THIS SUBCOMMITTEE, I TRAVEL TO PARTS OF INDIAN COUNTRY OUTSIDE THE SOUTHWEST SO THAT I CAN HAVE A BETTER UNDERSTANDING OF HOW NATIONAL INDIAN POLICY AFFECTS DIFFERENT REGIONS. THIS IS WHY I AM HERE TODAY - I AM HERE TO LISTEN AND LEARN ABOUT YOUR CONCERNS. I LOOK FORWARD TO HEARING FROM ALL OF THE WITNESSES.

RECOGNIZE MIKE SYVAR FOR STATEMENT

## BACKGROUND

The State of Oklahoma was originally to be the "Indian Territory" to the West of the Mississippi which was promised to the Indian tribes of the Southeastern United States. The 1830s was the decade when the policy of "Indian removal" was adopted by Congress and implemented by the Jackson Administration. The tragic "Trail of Tears" was the result of Indian removal and many Indian people died on that journey West. Scores of other tribes from all around the United States were also moved to the State of Oklahoma.

With the passage of the Dawes Act, known as the General Allotment Act, in 1887, the ~~tribes~~ of Oklahoma were divided up into individual allotments in an effort to make the Indians farmers.

Today there are no reservations in Oklahoma, although there is a great deal of land held in trust by the United States. The Indian population of Oklahoma is the largest of any state and exceeds a quarter of a million individual Indians. There are thirty seven Federally recognized tribes in the State of Oklahoma. The second largest tribe in the United States, the Cherokees, are located in Tahlequah which is the is the of the Subcommittee hearing. There are two Area Offices of the Bureau of Indian Affairs in Oklahoma: one in Muskogee and another in Anadarko.

Of interest to the Oklahoma Indians are the following issues:

## SELF-GOVERNANCE

The Self-Governance Demonstration Project began in 1988 as an amendment to the Indian Self-Determination Act. Under Title III of the Act participating tribes can consolidate programs and prioritize spending. In 1991 an amendment to the Demonstration extended the duration of the Project to 1996. A bill to make Self-Governance permanent passed the Senate in November. Chairman Richardson is sponsoring a companion bill and the House Subcommittee on Native American Affairs will hold hearings on Self-Governance early in the 2nd session of the 103rd Congress. The Cherokee Nation is the largest tribe to enter into a Self-Governance compact with the Secretary of Interior. Other tribes in Oklahoma are concerned about budget shortfalls under the Project and have proposed changes to the permanent Self-Governance bill.

## HEALTH CARE

On November 20, the President's proposed Health Security Act was introduced in both Houses of Congress. Majority leader Gephardt introduced HR 3600 on the House side along with 99 co-sponsors. under the bill, Native Americans would be eligible to receive health care by enrolling in health plans offered through newly created regional health alliances. However, the option for Indian people to continue receiving care through the Indian Health Service is included in the bill. Oklahoma tribes are concerned about how

his proposal will allow for the improvement of health care services to Indian people. HR 3600 has been referred to the Subcommittee and we will be holding hearings on it.

#### **ECONOMIC DEVELOPMENT**

The State of Oklahoma and the Indian tribes of the State have thus far been unsuccessful in negotiating Class III gaming compacts. As a result, there are many bingo halls in the State but no full scale casinos as yet. Agriculture and energy resources provide economic development for some Oklahoma tribes. Tribal concerns include problems with the State and tribal job stimulation.

#### **BIA REORGANIZATION**

The tribes of Oklahoma are concerned about the recent proposal to consolidate the Anadarko Area Office with the Muskogee Area Office. The BIA has confirmed that Oklahoma is the only state where such a consolidation is planned. It is estimated that the 258 positions in the two Offices would be cut in half. The Oklahoma tribes are concerned that the provision of services will decline. The Subcommittee believes that changes such as this should always be done in consultation with the affected tribes. As yet this does not seem to be the case.

Mr. SYNAR. I call on our first panel, if they would come forward. We have the Honorable Wilma Mankiller, Principal Chief of the Cherokee nation; Bill Anoatubby, the Governor of the Chickasaw Nation in Ada and Larry Nuckolls, the Governor of the Absentee-Shawnee Tribe.

Welcome. It is a great honor to see some old friends who I have worked with through the years. I think it is only appropriate that we start with the host today. So Wilma, the chair is yours.

**PANEL CONSISTING OF HON. WILMA P. MANKILLER, PRINCIPAL CHIEF, CHEROKEE NATION; HON. BILL ANOATUBBY, GOVERNOR, CHICKASAW NATION, ADA, OK; AND HON. LARRY NUCKOLLS, GOVERNOR, ABSENTEE SHAWNEE TRIBE, SHAWNEE, OK**

**STATEMENT OF HON. WILMA P. MANKILLER**

Ms. MANKILLER. Thank you. Since we are chairing and I would like to give other people an opportunity to testify, my testimony will be brief, and then we have written comments to submit for a formal part of the record.

I would like to thank you, Congressman Synar, and also thank the staff, your staff and Congressman Richardson and his staff for doing this field hearing in the state of Oklahoma. All too often, Oklahoma is neglected and we have to fight to be included in many of the things in Washington, D.C. As you know it is an ongoing problem in many federal programs to make sure that Oklahoma is included and not excluded because it is not considered to be a reservation state. So it is an important signal to all of us in Oklahoma that you are here.

One of the issues that I wanted to comment on, and probably the most important issue today for the record, is the issue of self-governance. Our tribe is one of the first tribes that entered into the self-governance compact, along with a number of other tribes, and the self-governance program has allowed us to have control over the allocation of our own resources. We are very concerned that the U.S. government will see this as just another demonstration project and will not make this legislation permanent.

I know that Congressman Richardson in the House and Senator McCain in the Senate have both been interested in making this legislation permanent, and we strongly support that. It has allowed us to allocate the resources where they are most needed, and respond to local needs, and it has been successful from our standpoint. So we wanted to make sure that we are very strongly supporting that.

I also believe that the self-governance project or demonstration project, as it is now known, should include both the Bureau of Indian Affairs and the Indian Health Service. This piecemeal way of dealing with self-governance just through the BIA is not going to work. I think it has to be kind of across-the-board.

Briefly, one of the other issues—and this is explained much more fully and at length—is the fact that still in the allocation of resources for health care, Oklahoma tribes and tribal people are under-funded. There has to be more equity in the funding for tribal

people in Oklahoma. Governor Anoatubby has taken a leadership role on making sure that we are funded.

Just to give you an example, in Oklahoma, the average health care cost per person is about \$2700 per year, less than \$900 is available, however, to individual Indian clients through IHS and other federal programs. So that is a huge issue.

We are also very, very concerned that the message of self-governance that the United States Congress puts forward in these bills gets filtered down to every level of the bureaucracy. Always there are these great speeches about supporting tribal governments and that sort of thing in Washington from the leadership, but it needs to permeate every layer of these agencies, people we deal with on a day-to-day basis. I think that is very, very important. As you know, we have had chronic funding problems in Indian health care, which limits our ability to provide health care. And that is also more fully explained in the written testimony.

Health care is not the only issue we are concerned about. The BIA funds for operating Indian schools are terribly insufficient. The fact that our school, Sequoyah Indian School, has managed to provide a decent education to students with the kind of funding we receive today is nothing short of a miracle. And if we did not have the kind of dedicated teachers that we have and staff there working with the students, then we would not be able to do the kinds of things that we are doing now. Almost every year, the Cherokee Nation Tribal Council augments the funding there.

Let me sum up by also pointing out that finally and most importantly, that the Bureau of Indian Affairs now has a consolidation program that would consolidate the Muskogee and the Anadarko offices, which is both unfair to the tribes on the western part of the state and to the tribes in this part of the state. If they choose Tulsa, the people on the west side will have to drive across the state to go to Tulsa. If they choose Anadarko, we will have to drive across the state to go to Anadarko. There surely is a way of streamlining those offices in a more efficient way so that the tribes on the west side are served and we are served. I think that is very, very important.

And I would like to make a couple of comments later on the trust fund issue if there is an opportunity to do so. Thank you very much. [Editor's note.—The book *Tahlequah, NSU, and the Cherokees* can be found in the committee's files.]

[Prepared statement of Ms. Mankiller follows:]

**TESTIMONY OF WILMA P. MANKILLER,  
PRINCIPAL CHIEF OF CHEROKEE NATION,  
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,  
COMMITTEE ON NATURAL RESOURCES,  
U.S. HOUSE OF REPRESENTATIVES  
JANUARY 20, 1994**

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Mr. Chairman, my name is Wilma Mankiller; I am the Principal Chief of Cherokee Nation, the second largest Indian tribe in the United States. I want to thank you for this opportunity to testify on behalf of my people on the importance of Self-Governance and what that term really means in Indian country. Before I begin I will point out that my written testimony addresses issues and problems that I will not get to in my oral testimony. So I refer the Chairman and the Subcommittee to my written testimony for a more complete statement of Cherokee Nation's concerns, especially in regard to Congressional support of Indian economic development programs.

We at Cherokee Nation applaud your commitment to advancing the policy of Self-Governance and your efforts to make it a permanent federal program. Cherokee Nation was among the first tribes to enter into a Self-Governance compact with the United States under Title III of the Indian Self-Determination and Education Assistance Act. Having just executed a compact for IHS programs last summer, Cherokee Nation has now assumed its responsibilities as a Self-Governance tribe to review and enhance the delivery of health services through restructuring of the Cherokee Rural Health Network. We believe it is essential to the long term success of our health programs that Self-Governance be made permanent. We urge you to consider including IHS within the scope of HR 3508 when mark-up begins.

The status of Indian tribes as sovereign governments, especially Self-Governance tribes, places a heavy responsibility on both the tribes and the federal government to assure that health programs for Indians are responsive to needs and lead to improvement of the overall health of persons served by the Indian health care system. The solemn covenants to provide adequate health care to the tribes made by the federal government were not merely gratuitous promises to Indian people. Rather, these are obligations of the government arising out of treaties, agreements, and statutory law in return for cessions of millions of acres of land and other significant considerations given by Indian people to the United States.

Despite Congress' lofty expressions in the Indian Health Care Improvement Act to promote the highest level of health care for Indians, Congress has failed to provide adequate funding to achieve the clearly-stated purposes of that Act. In Oklahoma, the average health care cost per person is approximately \$2700 per year. Less than \$900 is available to Indian clients through IHS and other federal programs.

We also feel that the complex funding mechanisms proposed by the President in his American Health Care Security Act may be inadequate to fully fund the cost of delivering health

services by Indian Health Service or Self-Governance tribes undertaking IHS programs at levels consistent with the government's trust obligations to Indian people. To be consistent with the principles of Self-Governance, we feel that the Administration should have consulted with the tribes in drafting the Indian and IHS sections of the bill. We hope Congress listens carefully to the tribes in the upcoming debate on national health care legislation and its impact on Indian people.

The recent elimination of funding through the Centers for Disease Control, interrupting a number of IHS AIDS programs, is an example of how funding cutbacks impact Indian country. We are faced with an alarming increase in HIV-positive Native Americans and patients who have developed AIDS. We are expanding our AIDS awareness programs just as the funding for AIDS programs through IHS is being reduced. Essential AIDS treatment drugs such as AZT have been eliminated from the IHS pharmaceutical formulary. The wisdom of putting tribes in control of their own destiny through Self-Governance will be seriously undermined if they are denied the very resources necessary to make adequate health care available to Indian people.

By assuming full responsibility for planning, designing and implementing health, social and educational programs and services previously undertaken by BIA or IHS, Self-Governance tribes have become acutely aware of the inadequacies in the funding and the allocation of funding appropriated by Congress for other Indian programs besides health care.

Chronic funding problems are by no means confined to Indian health care. Indian education programs have experienced a similar fate throughout the 20th Century. Since the birth of this country, the United States Senate approved some 400 treaties with Indian tribes, 120 of which contain education provisions. Nearly one billion acres of land were ceded by tribes in these treaties which the federal government viewed in part as agreements to acquire Indian land in exchange for education. Now, 125 years after the close of the treaty period, education programs for Indians remain critically underfunded.

For instance, funds allocated by BIA for operating Indian schools are simply insufficient to meet the basic education needs of Native American students. We have first-hand knowledge of this problem through our experience in operating Sequoyah Indian School on the highway just west of this complex. The formula used to allocate BIA school funds, based on the "Weighted Student Unit" ("WSU") formula, continues to use dollar figures that were determined to be grossly inadequate nearly four years ago. The national average of expenditures per student in non-Indian schools is \$5245, and in Oklahoma, \$3791. BIA schools are allocated a paltry \$2,619 per WSU. The present BIA allocation should be increased to at least the \$3499 per WSU recommended by a BIA Working Committee 2 1/2 years ago.

Similar funding deficiencies have occurred in the Johnson O'Malley Program. JOM has been a supplemental program since 1934. Since 1986, JOM has been experiencing a simultaneous steady decline in funding and steady increase in student participation. JOM funding should be increased by at least \$10 million per year from the current \$23 million to \$33 million per year in order to match this sharp increase in student participation.

Notwithstanding the general inadequacy of Indian education funding, our education programs always seem particularly vulnerable in the struggle for federal dollars. Each year, for example, desperately needed funds are set aside for Indian Adult Education programs. The mere \$3.5 million intended for FY 1994 has been diverted out of the program and into Flood Relief. We do not question the merits of the Flood Relief program, but we do question the wisdom of tapping of critically needed Indian education dollars.

Another area experiencing chronic problems is the funding of the government's contract support obligations under its annual funding agreements and 638 contracts with tribes. In past years, BIA has consistently underestimated contract support needs, a practice which leads to an inevitable shortfall in this item of cost. The shortfall in FY 1992 of approximately \$16 million was funded with FY 1993 programmatic dollars. Cherokee Nation feels that the BIA should not have to siphon program funds to pay indirect cost obligations. A recent announcement in the Federal Register indicates that the FY 1993 shortfall will be funded with 1994 contract support monies, and this, in turn, will contribute to a potentially greater shortfall in FY 1995. Part of the shortfall problem can be attributed to the lack of incentive to keep indirect cost rates as efficient as possible. Currently, the process actually tends to penalize those tribes with efficient contract support cost rates. The Subcommittee should consider requiring the agencies to develop a methodology for addressing the tribes' indirect cost needs.

The contract support cost shortfall problem is insidious, but the Bureau appears to be doing little about it. This Subcommittee should confront BIA and demand a solution. We recommend that BIA be required to prepare a 5-year forecast of contract support needs, that the forecast be revised annually, that each year the projected needs be reported to Congress and the tribes, and that the projected need be included within Interior's annual budget request to Congress. We suggest that you consider including language to this effect in H.R. 3508.

Cherokee Nation and several other Self-Governance tribes feel that the Subcommittee should also consider a clarifying change in Section 403(d) of H.R. 3508 relating to transfers of federal funds to the tribes under their annual funding agreements. The Senate Committee has interpreted this same language in Senator McCain's bill to authorize lump-sum payments to the tribes on semi-annual or quarterly basis, but the Bureau and IHS appear to be taking the position that they are nevertheless bound by Treasury regulations which would prohibit such payments. We disagree with the agencies' position but would request that you clarify Section 403(d) to expressly authorize lump-sum payments under funding agreements entered into under Title III or the new Title IV of P.L. 93-638.

I would also request that the Subcommittee consider another clarifying change to Section 403(b)(1) of H.R. 3508, one which would expressly authorize tribes to include in their compacts employment and training programs undertaken pursuant to P.L. 102-477, the Indian Employment, Training and Related Services Demonstration Act. The Departments of Interior and Labor appear to be taking the position that these valuable programs cannot be integrated into a Self-Governance compact. Again, we disagree with their position but feel that the most expedient solution would be a clarifying change to Section 403(b) of H.R. 3508.

Again, Chairman Richardson, we greatly appreciate your interest in Indian issues and your support for the Self-Governance project. I for one feel that Self-Governance has the potential to occupy a central position in federal Indian policy in the coming century. Accordingly, the manner in which Self-Governance is implemented in these early years of the program, and the level of financial support it receives from Congress, will fix the course for the program over the next decade or longer and will determine whether it ultimately succeeds or becomes yet another wrong turn among the many, many wrong turns in the history of Indian affairs in our country. As this Subcommittee takes on the cause of Self-Governance, it should be aware that although the program has been federally mandated as a demonstration project for several years, it has not been accepted at all levels of BIA and IHS. We continue to experience agency resistance to implementation of Self-Governance, especially within IHS.

Because the purpose of the Self-Governance program is to enhance the inherent sovereignty of tribal governments and strengthen the government-to-government relationship between the United States and Indian tribal governments, the program should be strictly limited to specific, federally-recognized Indian tribes. Tribal organizations, alliances, and/or coalitions which are not federally recognized as tribes should not be admitted as direct participants in the program. The Subcommittee should consider adding language to the permanent Self-Governance bill making it clear that only federally-recognized tribes are eligible.

The success of the Self-Governance program depends upon Congressional support of offices of self-governance within Interior and Indian Health Service. For example, in the Interior's office, one staff person performs all budget functions and coordinates finance activities for more than \$100 million in self-governance funding. With the possibility of Navajo Nation and numerous smaller tribes entering the program, funding through the program soon may exceed \$500 million per year. Clearly, the staffing of the office must be increased and its operations adequately funded to accommodate the workload of such a rapidly expanding program. With the gradual expansion of the Self-Governance program over the next several years there should be proportionate increases in the financial support of the two offices of Self-Governance.

As more and more tribes are admitted into the Self-Governance program, and especially if Navajo Nation adopts Self-Governance, the need to restructure and streamline BIA and IHS will become unavoidable. I would like to ask the Subcommittee to keep two considerations in mind as the process of restructuring unfolds.

First, the growth of the Self-Governance program and the concomitant streamlining of the agencies should not be viewed as an opportunity to cut back the funding of Indian programs. Senator McCain has expressed his sensitivity to this danger and warned against it. I think this Subcommittee should also be vigilant against efforts to cut programmatic funding as the federal agencies, once our principal advocates of Indian programs, play a smaller roll in the management of Indian programs as a result of Self-Governance.

Second, the Subcommittee should ensure that the tribes themselves are consulted and participate in the planning and implementation of agency restructuring. There is real danger that the agencies will give only lip service to tribal participation.

An example of this has just occurred within the BIA here in Oklahoma. The Department of Interior, after consulting few if any affected tribes and with almost no planning, suddenly announced about 12 days ago that the Anadarko Area Office would be consolidated with the Muskogee Area Office and the combined office moved to either Oklahoma City or Tulsa. Frankly, we were appalled that such a hasty, drastic move would be taken with little if any input from the tribes.

I have always advocated the streamlining of BIA. However, any streamlining should be carefully planned, equitable, and involve meaningful participation of affected tribes. Restructuring should occur across the board at all administrative levels of BIA, including the Central Office. What has happened here in Oklahoma was a rash, virtually unplanned act of budget slashing. We ask that this Subcommittee inquire into the Department's decision to combine the two area offices and determine whether any consideration was given to the Department's ability to discharge its trust responsibility to Oklahoma tribes and individual Indians.

Once again, I want to thank the Subcommittee for this opportunity to testify and for its decision to come here to Cherokee Nation to conduct this hearing.

**ADDENDUM TO TESTIMONY OF WILMA P. MANKILLER,  
PRINCIPAL CHIEF OF CHEROKEE NATION,  
BEFORE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
JANUARY 20, 1994**

In addition to the Self-Governance issues raised in my oral testimony, I would like to bring a few important legislative initiatives to the Subcommittee's attention relating to economic development. The Self-Governance is only one side of the coin of Indian sovereignty; the other is tribal economic self-sufficiency, the achievement of which will require substantial support from Congress. We ask that the Subcommittee consider the following recommendations.

**I. EXTENSION OF OVERSEAS PRIVATE INVESTMENT COVERAGE TO INVESTMENTS IN INDIAN COUNTRY.**

The Subcommittee may recall that in 1992, S. 2746 was introduced into the Senate. This bill would have extended the jurisdiction of OPIC and the benefits of OPIC's programs, which include grants, loans and political risk insurance, to private investments in tribal businesses and enterprises. We feel that the extension of OPIC jurisdiction and programs to Indian country is consistent with the organization's primary mission of fostering development, as well as its secondary goals of improving U.S. competitiveness, stimulating trade, and creating American jobs. The truth is, Mr. Chairman, that you do not have to travel to South America to find the depressed economic conditions of Third World countries. The same conditions can be found in most Indian areas, communities and reservations right here in the U.S.A.

Tribes such as the Cherokee Nation have actively sought private investment in the past. Investors, however, often are hesitant to make financial commitments due to the complicated trust status of Indian lands, the lack of infrastructure in Tribal areas, and the unfamiliar political organization of Indian and Native communities. Extending OPIC programs to private investments in Indian areas would help overcome investors' fears and stimulate desperately needed economic development.

**II. INDIAN TRIBAL BOND ISSUANCE REFORM**

The Securities Act of 1933, as amended, requires that all securities which are publicly offered be registered with the Securities and Exchange Commission unless there is an applicable exemption. There is no exemption for securities of Indian Tribal Governments. Thus, the bond issues of Indian tribal governments have relied on one of two exemptions—either the securities have been sold on a private placement basis to institutional investors (as was done with the Cherokee Nation bonds) or they have been secured by a letter of credit from a financial institution (as was done by the Warm Springs Tribe of Oregon).

The need for Indian Tribal Governments to rely upon the private placement or the letter-of-credit exemptions results in a smaller market of investors as well as considerably higher cost of capital than if the securities could be publicly offered. Furthermore, the securities issued by

states, political subdivisions of states, and public instrumentalities are expressly exempt from registration under the 1933 Act.

We feel that the appropriate amendments to the 1933 Act placing the securities of Indian Tribal governments on the same playing field as the securities of other governments would correct an inequity and enhance the competitiveness of tribal governments in capital markets.

### **III. BUY-INDIAN ACT/MINORITY BUSINESS PERFORMANCE BONDING**

Presently, only BIA and IHS are authorized to give preference to Indian-owned businesses under the Buy-Indian Act of 1910. Congress voted to amend the Act in 1988 to include all federal expenditures within Indian Country. However, the amendment was pocket vetoed by the President and though later reintroduced, no action was taken.

We recommend that the Subcommittee consider introducing legislation similar to the 1988 Buy-Indian Act amendments. However, we suggest that the "bond guarantee" programs of the 1988 amendments for small contractors be reviewed carefully to ensure that it gives meaningful assistance to qualified contractors who are unable to secure bonding elsewhere.

### **IV. MORTGAGE REVENUE BONDS**

Under current law, Indian housing authorities may issue mortgage revenue bonds only if they do so in accordance with state law and persuade the state to share its bond authority. Such sharing is unlikely, given the number of constituents that compete for this prize. In the past, we have urged Congress to change the law to grant the authority for Indian housing authorities to issue mortgage revenue bonds independent of state law. No legislative action has been taken on this consideration.

Because of the special needs of housing in Indian Country, Congress should reconsider enhancing the mortgage bond capacity of Tribal and Indian housing authorities. If issuance authority independent of state law is unacceptable, a less favorable but nevertheless beneficial step would be an allowance for states to increase their bond capacity with a portion of that increase to be dedicated to Indian housing needs.

### **V. TOURISM**

On August 4, 1993, Cherokee Nation staff offered testimony in a Joint Hearing before the Subcommittee of Aviation and the Subcommittee on Surface Transportation in support of H.Con.Res 110, calling for the President to convene a White House Conference on Tourism. The Cherokee Nation sees tourism as a viable growth industry for Indian economics. Obviously many of the state and local tourism initiatives agree because of the emphasis placed on promoting Indians or Indian events as tourist attractions. This is especially true in Oklahoma—which is an irony to many Indian people, who fail to realize any benefit from a substantial portion of these Indian promotions.

Even with this interest in American Indians, tribes are overlooked as potential partners in tourism. A notice of proposed rule-making was issued by the United States Travel and Tourism Administration in Volume 58 Number 13, Friday, January 22, 1993, of the Federal Register. In the proposed rules, the Travel and Tourism Administration proposed a matching grant program for international tourism trade development. Eligible applicants were "programs which shall at a minimum involve the participation of two or more States; one or more States and one or more political subdivisions of the States; or one or more States and one or more nonprofit organizations," plus other programmatic qualifiers. Indian tribal governments were not specifically identified as eligible applicants. As we have discovered, unless tribes are specifically identified, they often are presumed to be excluded from program eligibility.

Mr. SYNAR. Bill.

**STATEMENT OF HON. BILL ANOATUBBY**

Mr. ANOATUBBY. Good morning, Mr. Congressman. We certainly appreciate the opportunity to be here today. Obviously you have the written testimony, we appreciate you entering that into the record.

Mr. SYNAR. Bill, pull that microphone a little bit closer. Can you hear him in the back? There you go.

Mr. ANOATUBBY. We certainly share many of the same concerns that Chief Mankiller does.

As far as self-governance is concerned, we are also a tribe that is participating in self-governance with the Bureau of Indian Affairs. We believe that that office should certainly be given the attention that it needs at the Washington level. We have had a little difficulty in getting funding to Chickasaw Nation. We believe that they are under-staffed. And I do not mean that we need to add a bunch of other folks over there, I think there needs to be some sharing of resources within the Bureau of Indian Affairs to assist this office.

In addition, Indian Health Service is setting up an Office of Self-Governance and again, this could be duplicative. I believe the National Congress of American Indians passed a resolution which would ask the federal government to set up one office of self-governance. I am not sure about the other leaders, how they feel about this, but I personally believe that could be more efficient as long as they get the support from Congress and from the administration that is required for it to function properly. It would be much more efficient.

And in addition, relating to self-governance, we have a government-to-government relationship with the federal government. And as far as that is concerned, I believe that all agencies of the federal government who have programs which are intended to benefit the Indian population, that those programs should also be included in the self-governance program or the self-governance effort.

I know that there are some moves already being made in addition to Indian Health, some in the Department of Labor and other agencies, to consider this concept. But it is one that can make the future of Indian tribes and its people and the services that are provided to its people much more efficient and will meet the needs of its people much better than any large government such as the federal government could do. It brings the decision-making down to the local level and it also allows the elected officials of an Indian tribe to be accountable to its constituency, much more accountable. And we are able to provide the programs much better.

Other issues, of course gaming, we believe that Congress in its consideration of the amendments to the Gaming Act, we ask that our representatives and those people who are most interested in dealing with the needs of Indian people, give it special attention and protect what we have. I know there has been an effort across this country to diminish the ability of Indian tribes to function within the gaming arena and mostly it is coming from other governments and those who maybe feel like they should have jurisdiction over these things. As far as the Chickasaw Nation is con-

cerned, we derive considerable income from our gaming operations and it provides many programs that we could not offer otherwise if that income was not there. So we need the protection of Congress on this issue.

Education, housing—you know, we always have to ask for housing. We appreciate Congress including housing in the budget this last year and we hope that that will continue in future years. We echo the words of Chief Mankiller that Indian Health Service needs to be given appropriate funding, but with this new health reform that is being considered in Congress right now, we need to protect Indian Health Service and the special relationship that we have, Indian tribes and the United States government, and it is also an opportunity for Indian Health to be better funded so that it can serve the needs of our people.

Thank you very much for being here. Thanks for the opportunity to say a few words to you.

[Prepared statement of Mr. Anoatubby follows:]

**Testimony of  
Bill Anoatubby, Governor of the Chickasaw Nation  
Before the House Subcommittee on Native American Affairs  
January 20, 1994  
Tahlequah, Oklahoma**

Mr. Chairman, on behalf of the people of the unconquered and unconquerable Chickasaw Nation, we bid you and the members of the House Subcommittee on Native American Affairs welcome to Oklahoma, the state with the largest concentration of Native Americans.

My name is Bill Anoatubby, and I am the governor of the Chickasaw Nation. One of the Five Civilized Tribes, the Chickasaw Nation encompasses more than 7,648 square miles of south central Oklahoma. The Chickasaw Nation is unique among the relocated tribes of America in that we did not trade our homelands for new lands in the West; we purchased our lands from the Choctaw Nation. Our tribal population places us as the 13th largest Indian tribe in the United States, according to the 1990 Census.

We are pleased that the House Subcommittee on Native American Affairs has enabled us to bring our concerns to you directly. There are many issues facing Indian tribes today and we are struggling to deal with them all. In order that the primary concerns of the Chickasaw Nation might be presented to you in an easy-to-understand format, this testimony is divided into sections, by federal agency of concern and not necessarily by importance. Following the agency headings are some areas of general concern which might not directly apply to specific federal agencies.

**Bureau of Indian Affairs**

**Area Office Consolidation**

The Bureau of Indian Affairs has long been a friend to the Chickasaw Nation. We have enjoyed a most cooperative working relationship with the BIA on both an area- and agency-level. The high degree of sensitivity displayed by the Muskogee Area Office in dealing with the Five Civilized Tribes is a testimony to the emphasis which this

federal agency has placed on the policies devised and enacted by Congress.

Historically, the Five Civilized Tribes have been shown great deference by the Congress and by the United States Government. We have been dealt with separately on many issues of importance, including the methods used to administer trust and restricted property belonging to our citizens in eastern Oklahoma. Numerous federal laws have been adopted by Congress which deal directly and strictly with the Five Civilized Tribes. Our various tribal relationships with the United States have been, at times, strained; however, the Chickasaw Nation was one of the very first tribes to sign treaties of peace with the United States. We were allies of the United States in the fight for American independence. Our warriors fought alongside the men of General George Washington, often making war against other Indian tribes who had sided with the British. We put the lives of our young men in jeopardy because we were fighting for the ideals espoused by the fathers who were hoping to build a new country. We, too, believed in those ideals and we worked alongside our friends in the fight for independence.

Our efforts, our friendship and our sacrifices were rewarded with the forced eviction and removal of our ancestors from their homelands. This, we also accepted and eventually we founded our new nation here in Indian Territory. We overcame the hardships which were presented to us. We accepted the challenges which we found in our paths. We made new friends and we worked hard to establish our own new government. The government founded by our ancestors relied heavily-- as we continue to do today-- on the special government-to-government relationship that our two mighty nations have enjoyed for so long.

Today, we are informed that the federal government is planning to consolidate the Muskogee Area Office of the Bureau of Indian Affairs with the Anadarko Area Office. Before such action is taken, it is imperative that arduous and careful consideration be given to the special relationship which has developed between the Five Civilized Tribes and the United States. Congress has recognized this relationship

time and time again. The Five Civilized Tribes have historically been dealt with separately from other tribes because of their unique qualities and the requirements of that relationship. It is the responsibility of the United States, through treaties and by law, to act as and to serve as our trustee to the very best of the federal government's ability. And, while we respect the needs of the federal government for streamlining and elimination of waste, we nevertheless expect the federal government to respect its commitment to the Five Civilized Tribes in the making of such decisions which have the potential for long-term impact upon our people.

The decision to consolidate the two area offices was one which was made without consultation with the leaders of the tribal governments. It is a decision which is deserving of more study. It is a decision in which we must take part.

The needs-- even the legal requirements-- of the tribes located in the eastern part of Oklahoma are different from the needs and legal requirements of the tribes in western Oklahoma. Attempting to consolidate the services of both area offices will result in confusion and, we fear, loss of the same high quality of representation we have come to know and expect from the Bureau of Indian Affairs. The trust responsibility alone which is owed to the various tribes in Oklahoma must be given adequate consideration in making such a decision.

Should the government find legal basis to carry out its plan for consolidation of the two area offices, and regardless of the final decision which is made, we urge every consideration be given in arriving at the location of such a combined area office. Locating that office in Oklahoma City is, in our opinion, not the best solution. Oklahoma City was part of what was known as "Unassigned Lands." It was never a part of Indian Country and, consequently, it should not be considered as the site for a combined BIA area office. We suggest and highly recommend that Tulsa be the site for such an office. Tulsa is located inside Indian Country. It has a history which is rich in Indian culture. It has the conveniences and the services which can only be offered by a larger metropolitan area. Tulsa is, in our opinion, by far more preferable than

Oklahoma City.

**Self-Governance**

The Chickasaw Nation is fortunate to be one of the tribes selected to participate in the Bureau of Indian Affairs' self-governance program. In that process, we have found the Bureau of Indian Affairs to be most cooperative in providing assistance. Our experiences to date indicate that the BIA has taken self-governance seriously and that the commitment of the BIA to the program is without equal among other federal agencies.

We strongly support the BIA's efforts in self-governance; however, it is easy to see that the current staffing of the BIA is causing problems in processing and negotiating compacts with the various tribal governments involved in self-governance. Adequate staffing must be provided to the BIA in order that it may successfully complete this long-range effort.

Self-governance finally affords the tribal governments the ability, the opportunity and the authority to truly provide for their respective citizens by meeting the specific needs of the various tribal governments' constituencies. We commend the BIA for working so hard to make self-governance the reality that it has become.

**Indian Health Service**

**Self-Governance**

The Indian Health Service is also embarking upon the road to self-governance. The Chickasaw Nation is only beginning the process with the Indian Health Service; however, the IHS approach to self-governance is far different from that taken by the Bureau of Indian Affairs.

Beginning with the implementation of the Public Law 93-638, the Indian Self-Determination and Education Assistance Act, the IHS has set its own path, and that path has been one that is far different from other federal agencies. In self-governance, it appears that the Indian Health Service is again clearing a path through its own

internal bureaucratic jungle.

Although we are just beginning self-governance with the Indian Health Service, we have already experienced an attitude which is not truly conducive to the free exercise of tribal governmental powers and authorities under self-governance programs. This lack of freedom is due, in part, to the hierarchical and somewhat convoluted machinations utilized by the Indian Health Service in arriving at its managerial determinations. Despite these internal problems in dealing with the IHS, we continue in our efforts.

As with the BIA, we believe that the Indian Health Service could better serve its functions under self-governance if it were made a permanent program. One of the main problems is the lack of staffing to adequately carry out the functions and responsibilities under self-governance. The IHS approach has been to add staff to care for self-governance and thus they have created an entirely new tier within their own bureaucracy. This method appears to be unwieldy and should perhaps be re-examined.

#### Medical Staffing Concerns

There is a special relationship between tribal governments and the federal government in the provision of medical/health care to the Indian people. This relationship exists not just because of treaties between the various tribes and the United States, but because it is a method whereby *nations* are dealing with *nations* on a government-to-government basis. Through the years since its advent in 1955, the Indian Health Service has become the primary health care provider and is relied upon, in some cases exclusively, by the Indian people.

There is a hospital located inside the Chickasaw Nation which, when it was fully staffed, had 20 physicians. It now has only five physicians on staff, yet the patient load has increased dramatically. The Indian Health Service has responded to the need for clinical physicians at the facility by engaging the services of flow-through contract physicians, some of whom are only at the hospital for five days. This provides inconsistent health care and is extremely costly.

We are concerned that the Indian Health Service is not placing sufficient emphasis on the recruitment of physicians or on the retention of those physicians which are already employed by the IHS. The quality of overall health care provided through the Indian Health Service for the Indian people has deteriorated and, in these times of national concern over health care for all Americans, the single most important agency in the provision of health care in Indian Country is simply not meeting the needs of the Indian community. The Indian Health Service should be encouraging the recruitment of capable physicians so that its facilities might be fully staffed and operated with the utmost efficiency and care for patients.

#### Health Care Reform

The reform of the health care industry in the United States is an important issue. The Indian Health Service has long been providing rationed health care to the Indian people and we must make certain that the services already being provided by the IHS is not eliminated, reduced or restricted.

Although there are now more than a dozen proposed plans to institute major health care reforms in the nation, Indian tribes must concern themselves with ensuring that the services provided by the Indian Health Service are maintained and provided *in addition to* any other services which will be mandated by federal health care reform. The services called for in President Bill Clinton's Health Care Reform Act do take into consideration the services already provided by the Indian Health Service; however, the minimum health care package being proposed is more than is available or is being provided by the IHS. Indian people deserve no less than other Americans when it comes to adequate health care. Funding for the Indian Health Service must be increased in order that Native Americans receive the same type and level of health care services as will all other Americans.

#### Indian Health Service Funding in Oklahoma

The Oklahoma City Area of the Indian Health Service provides services to the largest single concentration of Indian people. In fact, 23% of the users of IHS facilities

reside inside Oklahoma. Yet, when it comes to funding provided to the various IHS area offices for operations and services, the Oklahoma City Area receives only about 13% of the IHS funds allocated for the areas operated by the Indian Health Service. On a per capita basis, the Oklahoma City Area is the lowest-funded area in the entire Indian Health Service.

It is not logical or reasonable that medical/health services which are provided through IHS facilities in other areas are not available in Oklahoma because of a lack of sufficient funding.

### **Economic Development**

Indian tribes are striving to attain economic self-sufficiency through the development of their individual tribal economies. Such efforts have been repeatedly encouraged by the Congress and by the various agencies of the federal government. The tribes have eagerly accepted the challenge through their entry into the world of business, yet there seem to be few incentives offered by the federal government to encourage the development of true tribal economies.

Those incentives could be accomplished through the federal government's further encouragement of economic development in Indian Country throughout the United States. Tax benefits and other incentives are helpful, but such incentives do little good if companies and businesses are not encouraged to take advantage of the added benefits of doing business in Indian Country.

### **Terminology in Federal Legislation**

Through the years, tribal governments in Oklahoma have been overlooked or omitted from legislation coming from the Congress due to the use of the term, "reservation," when defining applicability of programs or funding. With few exceptions, there are no reservations in Oklahoma, yet there is indeed "Indian Country" in the state, and parcels of land which qualify under the federal definitions of Indian

Country abound in almost every county.

Because the tribes in Oklahoma are struggling just as hard, if not harder, than tribes which are located on true reservations, they must be included in federal legislation which address problems and solutions in Indian Country. We suggest the more readily applied term, "Indian Country" be used in language contained in federal legislation.

Mr. Chairman, it has been an honor to be able to meet with you and to present this testimony before the Subcommittee. We appreciate your coming to Oklahoma and listen to us. We look forward to working with you and the members of the Subcommittee on these and other issues of importance in the years to come.

Mr. SYNAR. Larry, welcome.

### STATEMENT OF HON. LARRY NUCKOLLS

Mr. NUCKOLLS. Thank you. First, I would like to thank this Committee for allowing me to testify and your efforts, Congressman Synar and Chief Mankiller for giving us the opportunity for you to come to Oklahoma.

There are some issues that I would like to be able to discuss with this Committee today. We have been a tier one tribe since 1990. This is one of the first agreements that my tribe as a government had entered into in any type of agreement with the United States since 1890 and the treaty of 1860. We felt that it was going to be another good government relationship, government-to-government, our government with the United States.

I would like to comment on some problems that we have experienced and some recommendation. I personally negotiated the BIA compact and this past year, in 1993, I personally negotiated the IHS compact. I think there are some problems in the areas when you negotiate a compact with the Indian Health Service and they have established their own office of self-governance. That is not fair, it is not equitable and it definitely is not honorable. When you have to negotiate with an agency of the federal government, vying for their dollars as they vie for the dollars out of Congress. My biggest concern in that area—at least with the Bureau of Indian Affairs, we had an office of self-governance that we felt like was reliable with integrity where they would be able to move forward with us and assist us as an advocate. IHS, we have not found that to be the case.

A fine example of shortfall funding I think that this Committee and Congress needs to look at, historically BIA has utilized the shortfall funding to fund the tribes rather than using programmatic monies and administrative dollars. The classic example—I would like to be able to comment on this—our annual funding agreement this year has been shortfalled in the decrease by some \$170,000 where the Bureau of Indian Affairs, their stable funding has not been decreased. So in one hand, we do have a government-to-government relationship. On the other hand, when you are dealing with the bureaucracies and the agencies of the federal government, you end up sometimes losing. We historically have gone in after the hard dollars, programmatic dollars, administrative dollars, but this year in the 1994 annual funding agreement, we are taking a decrease. Those are some of things that we are running into.

And the Absentee-Shawnee, we do support permanent legislation for self-governance. What little that we have been able to participate in the major line items we have had, made a difference to this date in that we have been able to serve more people in education, our tribal courts have been able to expand, our police department has been able to expand.

The stable funding that four tribes from the northwest has requested and received for 1993, we are asking this Committee for that support. We are seeking now our stable funding base.

The recommendations I think that our tribe would have since we have been in it since the inception, since 1990, would be that Congress take a real hard look on how the Bureau of Indian Affairs

funds the shortfall of the self-governance tribes. I cannot reiterate enough that rather than using shortfall to offset the expenses of the administration of the federal agency, they are using the shortfall money to finish up our annual funding agreements, and it is really terrible in that they are not streamlining, they are not doing anything over there, at least on the Bureau side, to modify their administrative costs.

Our tribe has felt the wrath of it in this year's funding agreement. We are a small tribe, we feel like it is a government-to-government relationship. Indian Health Service and the Bureau of Indian Affairs are agencies of the federal government, they are not the federal government, they are not the United States of America—they are an agent. They do have trust responsibilities but at the same time, our agreements are not with BIA and IHS, it is with the United States.

To sum up, we have presented written testimony for the record. A summation here is that we are requesting support from this Committee to the Appropriations Committee on stable funding. And again, I do appreciate being allowed to come forth on behalf of my tribe to testify.

Thank you.

[Prepared statement of Mr. Nuckolls follows:]

**TESTIMONY BEFORE HOUSE SUBCOMMITTEE  
ON NATIVE AMERICAN AFFAIRS**

**JANUARY 20, 1994  
Tahlaquah, Oklahoma**

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**Prepared by:**

**Larry Nuckolls  
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Congressman Bill Richardson  
Chairman  
Subcommittee on Native  
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1522 Longworth H.O.B.  
Washington, D.C. 20515

My name is Larry Nuckolls and I am the Governor of the Absentee Shawnee Tribe of Oklahoma. At this time I would like to thank this Honorable Committee for the opportunity to testify on behalf of the Absentee Shawnee Tribe of Indians of Oklahoma. I will be giving testimony to this Committee today on our efforts and our attempts as a sovereign for self determination through the Demonstration Project of Self Governance. I feel with the experience that we have gained through our efforts to succeed in this project can assist other Tribal Governments to be successful in the future.

First I would like to tell this committee something about the Shawnee. The history of our Tribe has been a long journey that started in the Ohio area in the 1700's to today's location in Oklahoma. Even though our existence began with what we Shawnee call the Creator, we feel that as a Sovereign Nation from time to time we must evaluate our position and then seek resolution for the benefit of our people. Through compacts and agreements with the United States it strengthens our position as a Sovereign Nation and again as a true government.

As the Governor of our Tribe I was the first of our modern day leaders to enter into a compact with the United States, the first such agreement since 1890 and the Treaty of 1860. It was in 1990 that I signed this Compact and to this day, I believe that it was then the beginning of a new relationship between the United States and the Absentee Shawnee Tribe.

This Compact that we as a Sovereign participated in allowed our Tribal Government to begin to take our rightful place with other Sovereigns within these United States. This Compact was a first in over 100 years that allowed our Government to implement much needed programs that we determined were needed for our people rather than the federal government. With this Compact and the savings of Tribal resources in the beginning years of the Compact we were able to serve more people than the Bureau of Indian Affairs had in the past.

As we experienced a period of sovereignty with the added resources through self governance, we also experienced federal agencies that were hostile to change. These agencies of the federal government have in my opinion completely ignored the Acts of Congress. Our Government has moved steadily forward regardless of these acts of hostility and the shortfall of funding even in the face of adversity with these agencies that represent the United States. We have continued to use our resources and offset the shortfall of funding in an effort to insure our own self determination and through self governance.

The Government of the Shawnee believe that these Compacts that we have entered into are with the United States and not with the Bureau of Indian Affairs or the Indian Health Service. These agencies of the federal government are not governments of their own making, but are merely agents that carry out the trust responsibilities of the United States. We have consistently identified needs for more resources than the Bureau of Indian Affairs has agreed to in our annual funding agreements.

We have over a four year period identified numerous shortfalls in the area of housing, education, police protection, courts, health care, social services and human resources. We have repeatedly been denied our fair share of funding sources by the Bureau and the Bureau of Indian Affairs continues to ignore Congressional Acts to streamline and reduce their administration. The Bureau it appears has in the opinion of this Governor made every effort to insure that this demonstration project will fail.

The Absentee Shawnee has also entered into a Compact with the Indian Health Service for 1994. I negotiated this Compact as well as the first Bureau of Indian Affairs Compact for our Tribe. The problems that we experience with the Bureau of Indian Affairs are now the same as with the Indian Health Service except for what I consider one major issue. My concern is, the Indian Health Service operates their own office of self governance. It is and still is a serious question of fair and honorable negotiations even among honorable participants. When the Bureau of Indian Affairs first started the process we had what I consider at least an impartial self governance office to negotiate with my tribe, unlike the negotiations with Indian Health Service. It is my belief after negotiating with both agencies of the federal government that their intention may on the face be well intended, but the difficulty that we self governance Tribes experience is by no means of the imagination fair and equitable.

We would recommend to Congress and this Committee to take the appropriate steps in not allowing these agencies of the federal Government to use shortfall funding in our annual funding agreements, instead use Program Funds and Administrative dollars to fulfill annual funding agreements for self governance Tribes. The agencies should use these funds for their shortfall when they streamline and reduce their administration. The classic example of short fall funding is our Tribe's FY-94 Funding Agreement where we were reduced in excess of \$170,000.00. At the same time the Bureau of Indian Affairs has increased their stable funding, while we as a sovereign with a Compact have taken a decrease.

The Tribe's overall economic and social standing has altered little in the previous four years of compacting. We are cognizant that no single program or activity can adequately address all situations faced by our membership, however, by continuing to utilize Tribal resources plus a carefully planned and organized approach to our locally established needs will result in success for our membership.

The intent of Congress and the Clinton Administration for re-inventing Government has gone on deaf ears. On October 26, 1993 the President signed Executive Order 12875 that allows for waivers to local, State and Tribal governments to encourage a better government to government relationship. Even with a Presidential Executive Order and Acts of Congress we continue to have difficulties in obtaining waivers with the Bureau of Indian Affairs and Indian Health Service. Without the approval of waivers we cannot effectually attain what the President and Congress intended self governance to be.

Our Tribe throughout the years has relied upon the federal government's assistance and resources for our self determination. Through self governance and Tribal initiative's our Government has developed an infrastructure of Government to insure economic stability. We have created a political sub division by a legislative Act and developed a Tribal Development Authority. This body politic's goal is to develop economic enterprises that stimulates Tribal employment. Upon review of the 150 employee's of our government and including all Tribal enterprises we found that our employee's annual wages were 60 per cent below the 1990 census report for the average family income. Our belief is if we can attain economic stability we become less reliant on the federal Government. We have applied for waivers for this body politic and as this date we have receive no reply. If waivers are granted to this Tribe we can then begin to raise the quality of life for our members through our efforts in economic development.

After reviewing our efforts in the demonstration project and the difficulties that we as a sovereign experienced with the Bureau of Indian Affairs. We feel that stable funding is the only avenue this sovereign has to enable for our Government to improve the overall economic conditions and the general welfare of our people.

We ask this Honorable Committee for support on behalf of this sovereigns request for stable funding to the House Sub Committee for Interior appropriations. If we are successful we will be the fifth Tier one (1) Tribe to receive stable funding. Our Tribe has determined that the funding level that we request is based on what we could have received in the negotiation process with the Bureau of Indian Affairs and on our unmet needs that has lacked adequate funding through the years. This funding request is for \$2.6 million which includes Indirect Cost.

With our request for stable funding and with the support of this Committee, this sovereign can began to take its rightful place with other Governments. It will allow our Tribe to began to properly plan a future without the negotiation process with the Bureau of Indian Affairs annually for our people. This will allow us to utilize needed Tribal resources to establish economic stability and rely less on the federal agencies of the United States. The stable funding will finally allow us to determined our future as a sovereign Government.



IN REPLY REFER TO:

## United States Department of the Interior



BUREAU OF INDIAN AFFAIRS  
 ANADARKO AREA OFFICE  
 P.O. BOX 368  
 ANADARKO, OKLAHOMA 73005

M. 11 91

Larry Nuckolls, Governor  
 Absentee Shawnee Tribe of Oklahoma  
 2025 S. Gordon Cooper  
 Shawnee, Oklahoma 74801

Dear Governor Nuckolls:

The Absentee Shawnee Tribes Higher Education Scholarships base funding amount for self governance purposes, as explained in my November 3, 1993 memorandum, is \$42,545.

At the time the Absentee Shawnee (resolution AS-88-66); Citizen Band Potawatomi (resolution Pott-88-72); Iowa (resolution I-88-48); Kickapoo (resolution K-88-27); and Sac and Fox (resolution SF-88-100); Tribes decided to contract their portions of Shawnee Agency programs the Tribes met, developed and unanimously agreed to the formula that was utilized to divide the Agency resources for P.L. 93-638 contracting purposes. The resulting percentage share of programs by Tribe in accordance with that agreed upon formula was Absentee Shawnee 21.3%; Citizens Band Potawatomi 31.7%; Iowa 7.4%; Kickapoo 17.5%; and Sac and Fox 22.1%.

The FY 1990 Shawnee Agency Higher Education Scholarships funding that was divided among the contracting Tribes in accordance with the agreed upon formula was \$180,300.

The Absentee Shawnee Tribes 21.3% resulted in an FY 1990 allocation of \$38,400.

A Congressionally mandated .52% general reduction resulted in an FY 1991 allocation of \$38,200.

For FY 1992, the FY 1991 general reduction (\$200) was restored, a 9.2546% general increase (\$3,600) and 638 pay cost (\$545) were added which established the \$42,545 Scholarship program base for self governance purposes.

The assertion that the Shawnee Agency and the Area Office in 1990 unilaterally moved Absentee Shawnee Higher Education Scholarships funds in the amount of \$39,369 and Adult Education funds in the amount of \$5,503 to the Sac and Fox Aid To Tribal Government line item is not true.

The Oklahoma Area Education Office and the Central Office Education

Office were contacted and requested to provide this office with documented evidence to support the above allegation.

The Central Office Education representative denied providing such information to the Oklahoma Area Education Office. The Oklahoma Area Education Program Administrator could find no evidence where Absentee Shawnee Scholarships nor Adult Education funds were moved to the Sac and Fox Aid To Tribal Government program. The Education Program Administrator did find documented evidence that in June 1990 the Shawnee Agency, at the request of the Sac and Fox Nation, reprogrammed the Sac and Fox Nations shares of Scholarships and Adult Education funds to the Sac and Fox Nation Aid To Tribal Government program for inclusion in a CTGP contract.

The Oklahoma Education Program Administrator has assured me that his office will clarify to you the error or misunderstanding which occurred during the dialogue between his staff and your self governance staff.

I support your Tribes efforts to achieve the goal of self governance. As I have expressed to all parties during pre-negotiations and negotiations I am equally responsible to all twenty-four (24) Tribes within the Anadarko Area and therefore have determined each Tribe, regardless of size, (population or otherwise) would receive an equal share of Area Office funds. My support is further evidenced by the fact I have opted not to establish a residual amount for trust service functions assumed by the Area Office under self governance, as to do so would have reduced the amount of funds available to self governance compact Tribes, thereby reducing their chances for success.

Contrary to your memorandum, the compact Tribes have been provided complete and accurate financial data. No information has been withheld during the negotiation process, as I have said on several occasions, there is nothing to hide.

Sincerely,  
*LW Collins*  
Area Director



## Absentee Shawnee Tribe of Oklahoma

2025 S. Gordon Cooper  
 Shawnee, Oklahoma 74801  
 (405) 275-4030 FAX: 275-5637

Office of the  
 Governor  
 Larry Nichols

November 2, 1993

L.W. Collier, Area Director  
 Anadarko Area Office  
 Bureau of Indian Affairs  
 P.O. Box 368  
 Anadarko, OK 73005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. Collier:

As a result of our telephone conversation of November 1, this office assigned our Tribal Office of Self Governance staff to pursue the issue of our conflicting Higher Education Scholarship allocation.

The Office of Indian Education was contacted and Mr. Ron Ellis was unable to shed any light on the discrepancy, however, Mr. Ellis agreed to contact Mr. Joe Herrin [(202) 208-7658], of the Central Office concerning the matter.

At approximately 9:15 a.m., Mr. Ellis contacted the Tribe and provided the following information pursuant to the issue.

According to Mr. Ellis and Mr. Herrin, in 1990, the Shawnee Agency unilaterally moved Absentee Shawnee Higher Education Scholarship funds in the amount of \$39,369.00 to the Sac and Fox "Aid To Tribal Government" line item, and further moved Absentee Shawnee Adult Education funds in the amount of \$5,503.00 to the Sac and Fox "Aid To Tribal Government" line item.

A search of our records reveals no Bureau notification of this movement of funds to the Absentee Shawnee Tribe, nor does there appear any form of consent by the Tribe to authorize the re-programming of those funds.

Mr. Ellis and Mr. Herrin continue their information by indicating that, in 1991, the Shawnee Agency moved the sum of \$38,200 to the Absentee Shawnee Higher Education Scholarship line item.

From 1992 through 1994, Higher Education Scholarships line items are "0", with the explanation that all such funds are contained within the "Self Governance" line item as a single consolidated sum.

The Office of Indian Education reportedly contacted the

Absentee Shawnee Tribe in late December, 1992 or early January, 1993, and requested to be informed of the dollar amount allocated by the Tribe, under Self Governance, to Higher Education Scholarships and was correctly informed that the amount was \$117,000.00, however, it was not stated that the sum of \$100,000.00 of this overall total was tribally generated funds and not direct Self Governance funds from the Bureau of Indian Affairs. Based on this inadvertent error in semantics, the Office of Indian Education subsequently used the figure to develop its financial information.

This office's point of contention centers at the unilateral action of the Shawnee Agency in 1990, our first year of Self Governance Compacting, which clearly shows the actual degree of "commitment" to Self Governance of the Bureau of Indian Affairs, at least at the Shawnee Agency and Anadarko Area Office levels.

The sum which was re-allocated to our neighboring Sac and Fox Nation, \$44,863.00, does not appear to be an appreciable sum, however, when viewed against our 1994 Higher Education Scholarship award of \$42,545.00, it represents a funding increase of 105%; and when viewed against the backdrop of the number of years since 1990, represents nearly \$180,000.00.

One of the highest priorities of the Absentee is the provision of Higher Education opportunity, and in 1993, the Absentee Shawnee Tribe will expend in excess of \$250,000.00 of its own tribally generated funds to provide Higher Education Scholarship grants to eligible Indian students. Had the Tribe had access to the near \$180,000.00 referenced above, a large portion of these tribal funds may have been utilized in another need area of the Tribe.

Since our entry into Self Governance, we, as have other Self Governance Tribes, have complained regarding the overt and covert actions of Area and Agency offices in failing to completely disclose accurate and complete financial data. Without such accurate and complete financial data, Self Governance Tribes cannot and will not achieve the goals of Self Governance, of Congressional intent, nor of the letter of the law.

It is the position of the Absentee Shawnee Tribe of Oklahoma that actions of the Agency and Area, such as that taken in 1990, must cease. The statute requires that good faith negotiations occur by and between the United States and the several Indian Tribes and Nations when the authorities of Title III of P.L. 93-638, as amended, are exercised by tribal governments, yet there regularly occurs these revelations concerning the lack of good faith by agents of the Federal government and line officials of the Bureau of Indian Affairs.

During our annual negotiations, the Shawnee Agency and Anadarko Area Office constantly contend that our Self Governance activities will "adversely impact" other Indian Tribes and Nations served by those agencies, yet apparently no such concern exists when BIA actions adversely impacts this Tribe.

The Absentee Shawnee Tribe believes it is entitled to the full funding it should have received in 1990, 91, 92, and 93, which, if based on the amount reallocated to our neighbors in 1990, would total \$179,452.00. We further believe that we are entitled to a justification and explanation regarding the Bureau's actions which has resulted in this loss of Absentee Shawnee funds to a neighboring Tribe.

It is my belief that, as our forefathers before us have also entered into agreements and treaties with the United States, the United States government and the government of this tribe have entered into a solemn agreement. Each of us should be assured that honest, full faith and credit has been exercised by each of the parties. The Absentee Shawnee Tribe assumed that the agents of the Federal Government had presented its information in this manner, however, it now is apparent this was not the case.

Thank you for your prompt response to this correspondence.

Sincerely,

  
Larry Muckolls  
Governor

cc: The Honorable David L. Boren  
The Honorable Don Nickles  
The Honorable Daniel Inouye  
The Honorable John McCain  
The Honorable Ben Nighthorse Campbell  
The Honorable Bill Brewster  
The Honorable Mike Synar  
The Honorable Dave McCurdy  
The Honorable Ernest Istook  
The Honorable Glenn English  
The Honorable James M. Inhofe  
The Honorable Sidney Yates  
The Honorable George Miller - House Natural Resources  
Committee  
The Honorable Bill Richardson - House Subcommittee on Native  
American Affairs  
Ada Deer, Assistant Secretary-Indian Affairs  
William Lavell, Director, Office of Self Governance

Mr. SYNAR. Thank you, Larry. Thank all of the panelists.

Let me begin with you, Bill, if I could. Let us focus in on health care here. I really have a two-fold question. First of all, how many doctors is your particular tribe short of. And secondly, on the funding, as we have funding for Oklahoma tribes and tribal members, how does that compare per capita versus reservation tribal members or outside the state? Have you all as a group looked at the under-funding?

Mr. ANOATUBBY. Yes, we have. Let me address your second question first, if I may.

Mr. SYNAR. All right.

Mr. ANOATUBBY. Several years ago, in 1989 I believe, we were afforded some of the information, for the first time that I am aware of. At that time, it showed that the tribes in Oklahoma, the Indian Health Service system in Oklahoma, was funded at about 11 percent of the total funding and we had 23 percent of the population. Of course, we are aware that there are other factors besides population that must be taken into consideration, but there is a huge disparity between that 11 percent and 23 percent and we see no justification for that.

Mr. SYNAR. Now has that improved at all over the years?

Mr. ANOATUBBY. Yes, sir, the last figures that we have been able to obtain—and they are becoming ever more difficult to obtain—I believe in 1990 it was 13 percent of the funding that we now receive. So it has been improved, and obviously we appreciate the efforts of yourself and other members of Congress that have taken that on and have assisted in us receiving funding in Oklahoma, but the disparity still exists.

As far as the doctor situation, I think that all Indian Health Service facilities have this problem, but I cannot identify each one. I know at Carl Albert Indian Health Facility in Ada, we have 20 positions for physicians and as of last week, we had six people who were on staff. The rest of the positions, or the need has been filled by what I would consider a revolving door of contract doctors that come and stay two weeks, three weeks at a time. Others may stay a little longer, but they are among the minority. And many of our Indian people that seek health care may not see the same doctor twice and that is, in my opinion, a very difficult situation to deal with. I know that most people in this room can identify that you would not want to see a different doctor every time you go, especially when you are under continuing care for a particular illness.

So we see recruitment and retention as a major problem, at least in Ada. And I believe that same thing holds true for many of the other facilities in the country. We believe there are problems within the system that cause that. And as far as identifying those, we would need people who are more technical in the area of health to help us there.

The Indian Health Service system needs to be—we need to have a restructuring. You know, when you have doctors all throughout the systems—we have doctors in Oklahoma City, we have doctors in Washington—if we simply had their services in the field, it would be a lot better.

I think some of the administrative positions within Indian Health Service could be better filled by people who have administration background, not necessarily a doctor.

There are a lot of other questions like that that I believe need to be answered or at least dealt with. In Oklahoma, more specifically, we have not ever asked—getting back to funding—we never asked that money be taken from another state or another region to come into Oklahoma. We would just like to have a more equitable situation as far as funding is concerned.

Mr. SYNAR. And with that deviation, one would argue that that should be corrected.

Wilma, let me explore with you, if I could, this self-governance issue. I guess the question I have is, is this a better system now than the self-determination contracts that we were operating under? Secondly, those who have opposed self-governance have done it because they feel some of the smaller tribes will be losing money because of it, at the benefit of the larger tribes. And finally, should the education programs that you mentioned in your testimony, should they be included in it? Flesh those issues out for us a little bit.

Ms. MANKILLER. Okay. Well I think that, to start with your first question, this is just another step in the whole self-determination process. My actual job here for many years—I have been here almost 17 years—was to contract programs from the Bureau of Indian Affairs and Indian Health Service, so I have a long history of doing that. So at first, there was the Self-Determination Act, which allowed us to take over programs, and then there was the tribal consolidated—I forgot, some sort of tribal consolidation program anyway—which was the next step. And then there was self-governance. And it is the way I think things should be done. I think that they should be done incrementally. And I do not think we could have moved directly from self-determination in 1975 into self-governance. So I am pleased with the way it has been done. It has been steady, sure, conservative growth to where we are today. So I think self-governance is a good thing.

I do not think that it takes money away from small tribes. The fact is, as Chairman Nuckolls pointed out, many of the small tribes were the first to get involved in self-governance and it was only later that our tribe and the other larger tribes got involved in the process.

Mr. SYNAR. Let me, if I could, just interrupt you and take this opportunity to introduce the person we really came to hear from, my colleague from New Mexico, Bill Richardson, who is here. Sit right here, Bill.

Let me proceed with the questions, and what we will do is come back to Congressman Richardson for his opening remarks.

Go ahead, Wilma.

Ms. MANKILLER. That is all. I think I answered your questions.

Mr. SYNAR. Larry, let me ask you one question. You spent a considerable amount of time in your testimony, as well as in your comments, commenting on funding shortfalls.

Mr. NUCKOLLS. Yes.

Mr. SYNAR. The issue of funding shortfalls is not unique to your tribe, is it?

Mr. NUCKOLLS. No, sir.

Mr. SYNAR. Okay. When you talk about stabilizing funding, describe the concept to me and what you would like to see.

Mr. NUCKOLLS. Well stable funding would allow our tribe, if we got appropriated the dollars through the Bureau of Indian Affairs annually once we identify our needs and shortfalls, indirect costs that are included in that, would allow our tribe, which is a smaller tribe of close to 2800 people. That would allow us to start planning our future. We would know exactly how many dollars we are going to get each year, compared to this year when we went in and negotiated and the Office of Self-Governance in the Bureau of Indian Affairs arbitrarily decreased our funding level over \$170,000. I mean, you cannot plan any type of government if your funding shortfalls are that amount.

In 1990, I realized, negotiating the first funding agreement on behalf of our government, that my question at that time was, is this shortfall money going to be used to fund our annual funding agreement, and if so, if you do not streamline and reduce your organization, we are going to end up really taking a bad situation in years to come. And in fact, in 1993, this past year, when I sat down and negotiated it in good faith, we have now been decreased by over \$170,000 and the Bureau of Indian Affairs has maintained, and in fact has got an increase in their budget. I cannot understand if it is a government-to-government relationship and an agreement that we have entered into from government-to-government, why then all of a sudden we are decreased and they have increased their stable funding. So it would allow us to move forward in different areas of economic development, job stability, education, things of that nature, as a small tribe, because we are not a large tribe. So we have identified our shortfalls.

And also, historically, the amounts of dollars that we should have been getting all this time to provide housing, health care facilities and things of that nature, because we are not big. One of the things I would like to comment on is that we have had to negotiate IHS this year, we are under compact for that. And as Governor Anoatubby was remarking a minute ago that the severity between doctors from one area to the other. We went in and tried to negotiate in good faith with Indian Health Service at Rockville, Maryland to get into the major line items, special pay, \$33 million in special pay. Why does my tribe participate in special pay whenever I can entice someone to come in and sit down as a doctor—it is difficult if we are not able to access. And those are the funding levels I am talking about.

So stable funding to my government means the difference between daylight and dark in that stable funding will allow us now to plan for the future. Right now, we cannot when we take a decrease of over \$170,000.

Mr. SYNAR. Thank you.

Let me pause there and take this opportunity now to appropriately welcome my colleague, Bill Richardson, from New Mexico. For those of you who are not familiar with Bill, he is the chairman of the Subcommittee on Native American Affairs for the Committee on Interior. He also happens to be a colleague of mine on Energy

and Commerce, and we go literally back as far as two members can.

There is probably not another member that I have agreed with more, not only Native American issues, but most issues before Congress. He is also one of the deputy whips of the United States Congress, which shows you the status that he holds. We disagree about one thing: it infuriates him when I look at him and put my arm around him and say, "I have the largest Native American Congressional District in the country, not you." He gets very mad about that. But the fact is, the census data does not lie and so you are now in the largest Native American Congressional District in the country and we are glad to have you here.

[Applause.]

Mr. RICHARDSON [presiding]. Well Mike, thank you very much. And my apologies to all of you for my tardiness. We left Santa Fe at six o'clock this morning, we had a small plane, and some of the weather around Tulsa was a little diverting, so we are a little bit late.

I do confess, Chief Mankiller, I know that you are hosting us here today, that I did go around for 12 years telling everybody that I had the largest Indian Congressional District in the country, mainly because you know the Navajo Nation is in four states, a good chunk of it is in New Mexico. And I would like to claim that the entire population of the Navajos were in New Mexico. So with that, I was able to surpass Mike Synar by a few thousand.

I am now in the largest Indian Congressional District in the country, I concede that, I have seen the census data. But I have also come here because you have a very rich tradition in this state of Indian country and Indian issues which are important, not just for our Subcommittee, for our country.

I am also very glad to be here in Mike Synar's District. I think one of the things that you will learn about Mike Synar, besides the obvious friendship that we have, is when he grabs hold of an issue, you can be assured of three things. One, it is going to be investigated thoroughly; two, a workable solution is going to be proposed; and three, not only will he fight for the solution being advanced but until it is implemented, he never lets go.

Needless to say, he is one of the most effective legislators in Washington on a variety of issues. And I do not have to tell you this, but when it comes to Native American issues, he is always there. And you know that he has been the one that pioneered the issue of BIA trust fund mismanagement. In other words, how can we be more efficient as we administer programs through the BIA. For five years, he has taken up the issue of the BIA fund mismanagement. How can we properly invest tribal funds, make money on them and ensure that for future generations the funds are there for our tribes?

This bipartisan Subcommittee has proposed a bill which we, I think for the first time in the history of our Committee, we have had a Subcommittee on Native American Affairs and we are going to move shortly on Congressman Synar's bill, which as you know, deals with ensuring that the trust funds, the entire issue that we are discussing today, among many others, will be disposed effectively and efficiently.

We are concerned about the management of these funds and I think what is very important is that tribes have more access and control over these funds. That is not happening and we are here today to talk about a variety of issues. I think my good friend and colleague has already initiated some of those questions.

I also want to thank Principal Chief Wilma Mankiller. I understand you were in New Mexico recently.

Ms. MANKILLER. In fact, we are planning to have—I am chairing a conference to have Janet Reno come to the University of New Mexico and listen to our tribes who have issues. Every tribe in the country will be invited and we hope you will be able to attend. I think it will be the first week in May, in Albuquerque.

Mr. RICHARDSON. Of course. And I also want to thank you, as I said earlier, for allowing us to use the Tribal Council Chambers to conduct this hearing. You and your staff, needless to say, have been very accommodating. The Cherokees and the other great Indian nations of Oklahoma have a long and unique history which I am committed to learning about.

Let me now if I could ask Chief Mankiller—earlier I understand you said that you wanted to discuss the trust fund management issue. Do you want to tell us what you think we should do with that?

Ms. MANKILLER. Well first of all, I am encouraged that there is apparently a Senate bill that is going to address the trust fund management situation, and I know that Mike has been working on this for a long time. My concern is that Bureau of Indian Affairs needs to see itself as sort of a—someone who has fiduciary responsibility for monies. What concerns me about this whole issue is if you are a corporation or a private citizen and you have assets, you can take them to an asset manager and they have a responsibility to take care of your assets. If they do not, you fire them. Well what has happened in this case is that basically tribes do not have any other choice except to use this particular asset manager. And I guess, so that I do not go on and on about the issue, you know more about it than I do, that is my big concern, that there be some mechanism so that people have some control over what is going to happen with their money.

There have been 18 separate GAO studies that have talked about the mismanagement, millions and millions, tens of millions of dollars that have been lost. And all the studies, including the last one in the late 1980s, project that there will be many more millions lost because of recordkeeping problems and all kinds of problems. And it just seems to me that in the real world this would not go on. If you have money, you take it to somebody, they manage it, they invest it, you get a good return on it. And if they do not do a good job, you do something else.

And so I guess my big concern is that there be some other mechanism available to tribes for dealing with that.

Mr. SYNAR. I think, Wilma, you are absolutely right. Bill and I would tell you that this has been a story that is one of the sad chapters of American history. If this had happened with social security, we would have had a war over this. Regarding the two billion dollar trust fund that we have the fiduciary responsibility to manage on behalf of the tribes and individual members, regrettably

I could tell you today and Bill would concur, that, if we went to Albuquerque and asked them for an accounting, just a reconciliation of the individual accounts, they could not give it to you. And this is after literally staying on their backs for five years.

The legislation that Bill and I are supporting will try to do that at a minimum. But, secondly, we must get the kind of asset control that is so critical. Literally, people have gone bankrupt because they cannot get the monies that are owed to them, and tribes have literally been unable to function. And this is something which, as the Oversight Chairman for the BIA, I intend to solve. I have to tell you that Bill Richardson has made this one of his highest priorities as Subcommittee Chairman, so I think we are looking at completing this as soon as possible.

Mr. RICHARDSON. Chief Mankiller, let me ask you a question which I know is very sensitive here in Oklahoma and which I think you discussed earlier before I arrived. The consolidation of the area offices here, the BIA offices. What is your view about that? I have felt that we have to consolidate BIA offices—I do not have a state-by-state plan, but I do think we have to be more efficient in the way we dispense BIA management over Indian nations. It is my view, and I think many of us including Mike, have promoted the concept of self-governance, a lot of these self-determination initiatives, where the tribe basically is dealing and running most of the management from the BIA. That is my view in the long range, that we should move in that direction.

But again, tell me about the particular situation in your state and maybe the two Governors would also like to discuss this because this is within our jurisdiction, and I could not come here without discussing it with you.

Ms. MANKILLER. Mr. Chairman, I am happy to comment on that. I have been a long time advocate for streamlining the Bureau of Indian Affairs. It is my view that tribes, as they become involved in self-determination and then later self-governance, have changed dramatically, and the Bureau of Indian Affairs has not changed accordingly to accommodate the changes. I do believe that there should be streamlining.

My problem with the present plan, this particular plan, is the fact that it is not applied uniformly. Only Oklahoma is being asked to consolidate and to make these kinds of changes and it is not being applied uniformly. Whatever changes that are made to reduce services to tribes from the Bureau of Indian Affairs should be done nationwide, but it should not just be focused on Oklahoma. The idea, as I understand it, is that we will consolidate in Oklahoma, have a massive reduction in force in Oklahoma and then we will do it in the other states. Well I do not buy that. I think that whatever plan is devised should be applied uniformly across the United States at the outset.

But I want to make it clear that I am not against streamlining, I am not against becoming more efficient or reducing the force, just the concept of that in general. But this specific plan, I do not think is fair.

Mr. RICHARDSON. Governors.

Mr. ANOATUBBY. Good morning, Mr. Congressman, Mr. Chairman, appreciate the opportunity to be here. I think the Chickasaw people would want me to give you greetings.

Mr. RICHARDSON. Thank you.

Mr. ANOATUBBY. And I most certainly do that. I usually have a longer introduction. We are known as unconquered and unconquerable.

Addressing the issue of consolidation, obviously I think most people want efficiency and they want streamlining, they want the most effective system that you possibly can have—I know we do. The nationwide committee that sat down as a task force to reorganize the Bureau of Indian Affairs made some recommendations along these lines as well. I think that those people's opinions should be considered.

I am not real sensitive on this issue, but I think it would have been nice if the tribes that were affected would have been consulted.

Mr. RICHARDSON. You were not consulted? The BIA did not consult you?

Mr. ANOATUBBY. No, we were not consulted, we were advised.

Mr. SYNAR. The Congressional delegation was not consulted. [Laughter.]

Mr. ANOATUBBY. And I know in the thick of things, sometimes you forget people, but there was a large group of people that were forgotten. And again, some people may be more sensitive about that than others, but I truly believe that if a plan had been developed that we could live with, perhaps it would have been a little easier to swallow.

But I also believe that if there are savings that are going to be achieved, that that savings should go to the local level, not be withdrawn. More especially in Oklahoma because of the under-funding in Oklahoma. We are drastically under-funded in the Bureau of Indian Affairs programs as well as Indian Health, as I pointed out earlier. We certainly cannot stand to lose those dollars.

I know in an effort to streamline government, as far as the federal government is concerned, one of your major reasons for doing that is to save money. Well if you are going to save money in the area offices, please by all means let the Indian tribes share in those savings and utilize it—utilize those savings for dollars that will be benefiting the Indian people. And those are our major concerns, Mr. Congressman.

Mr. RICHARDSON. Governor Nuckolls, you were not consulted either on this?

Mr. NUCKOLLS. By letter after it was done.

Mr. RICHARDSON. By letter afterwards.

Mr. NUCKOLLS. Afterwards.

I served on the national task force to reorganize the Bureau of Indian Affairs in 1990–1991. I saw first-hand with the Inspector General's office coming in and some of the things that we were working on during that era. My biggest concern is that when we do streamline the Bureau of Indian Affairs that the dollars will go back to the taxpayers that provide those dollars. To streamline an organization as large as the Bureau of Indian Affairs, I think that if there is any savings, it needs to go to the tribes.

You know, I made a remark earlier that our agreement as a government is with the United States and the BIA, IHS, Bureau of Land Management and all the other agencies are just that, they are agencies. It is very difficult to say that here in Oklahoma, we need one area office. If it is going to be one area office and there is a savings across the board, I am in total agreement with Chief Mankiller that it needs to be done nationwide, that if there is a savings, it needs to go to the tribes.

Still yet, it was beyond my thinking and logic, I think in the middle 1980s that the tribes did get together, did some consultations, they came up with recommendations and the Bureau of Indian Affairs never implemented them. Then all of a sudden we come up with a national task force to reorganize the Bureau and still hashing over the same thing, constantly.

Our classic example is they get an increase, we get a decrease this year in our annual funding agreement. You know, where is the sanity in that?

So I feel very strongly that there needs to be streamlining, reorganization. We sent down a document one time down to Anadarko, they sent it back to us, we sent it back to them, they sent it back to us. Then it was finally right, we sent it back and it was right across the hall, the guy could have walked across with the document and gave it to them and saved time.

Mr. RICHARDSON. Let me just ask one final question. Governor Nuckolls, you raised this issue of the health care in Oklahoma, and you have been on many task forces. Obviously we have a similar problem with Alaska and California, huge Indian populations but for some reason, you are under-funded when it comes to health care allocations and that is the IHS making some of their funding needs assessments.

Governor Anoatubby, what do we need to do with this? Should we deal with this in the health care, the national health care bill, or do we have to do this internally within the IHS? This strikes me as flagrantly wrong.

Mr. ANOATUBBY. Well obviously we are not certain of what was intended or what will happen within the reform package. We know if we were properly included, the Indian Health Service would get more funding and we would be more likely to be able to serve the needs of our people. One thing that I mentioned earlier is that we believe that that unique relationship that exists between the Indian nations and the federal government should continue, and that may mean that Indian Health Service will have to be treated differently than the other agencies.

Obviously, the funding, as I mentioned earlier, the disparity that exists, the last figures—and I have those with me and we may wish to turn those over to you—

Mr. RICHARDSON. Yes, would you submit these for the record?

Mr. ANOATUBBY. Most certainly, I will do that.

Mr. RICHARDSON. They will be inserted in the record.

Mr. ANOATUBBY. We presented those last year on our trip to Washington as the five civilized tribes, as you will recall, Congressman Synar.

The current figures we do not have, but the latest figures show that we had about 13 percent of the funding for Indian Health

Service and between 22 and 23 percent of the population. And again, the difference is unwarranted, even though there may be other factors that will be considered.

And how do we deal with it? Goodness, that is a real challenge, but I truly believe that we must give our attention to it. We have never asked that the funding from other parts of the country come to Oklahoma, but if additional funding becomes available, then we need to get in Oklahoma a share that will continue to make up this disparity.

A couple of years there after we made our first trip to D.C.—Washington, on this matter, that has been about four years ago I believe, funding began to come to this area. But as far as I can tell now that same—that is not being continued. We are going to have to bring it back up as an issue. The funding—you cannot provide good health care unless there is proper funding. And in the reform package, what we have seen, some of the integrity of the system that we have now may be affected. We want most certainly to protect the relationship that we now have. And I hope I answered your question.

Mr. RICHARDSON. In fact, Marie from our staff is telling me that that portion of the national health care plan has been referred to our Subcommittee, so we are going to deal with this issue and I know Mike and I have talked about working together on the self-governance provisions, which were the subject of the first part of your testimony.

And lastly, on the area offices, I must say that I agree with you. I was unaware that the consolidation just affected you. It does not surprise me that the BIA did not consult you, sometimes their level of consulting with even—I am the Chair of their Subcommittee, maybe the staff has been consulted about this but I was not. And I do not think that is right. I do think that if we are going to consolidate, it should be shared equally, including New Mexico, I can tell you that. I have said before in New Mexico that my area offices, they need a little consolidation, they have got too many people. We need the funds to go directly to the tribe and the tribe can manage those funds. And I think you here in Oklahoma, from what I understand, you manage your tribes very efficiently and I think the record has shown that over the years. And so for this reason, Mike and I will go back and work on this.

One thing, Chief Mankiller, that I do want before I leave, which is this afternoon, I told Kate Boyce that I wanted an autographed copy of your last book, because I think it shows the strength that you have brought to leadership in Indian country. And I must say I know this is not a hearing testimonial, but many of us have admired you over the years for the work you have done, not just in Indian country, but for our country.

Ms. MANKILLER. Thank you.

Mr. RICHARDSON. So I want to thank you. Do you want to add—

Mr. ANOATUBBY. Yes, Mr. Chairman, I wanted to add one more thing before we get too far away from Indian health.

The five tribes, the Cherokee, Choctaw, Chickasaw, Creek and Seminole, have a committee that, since the reform was first discussed, they have been reviewing the Indian Health Service and

the reform package, and we have some recommendations for you and we would like to present those to you as soon as we can.

Mr. SYNAR. That will be very timely, because both Bill and I will be on the committee of jurisdiction that will write this legislation and our schedule is to begin markup in late February.

Mr. ANOATUBBY. In fact, at the Inter-Tribal Council meeting last Friday, those recommendations were adopted by the Council.

Mr. RICHARDSON. Chief, did you want—

Ms. MANKILLER. All I wanted to comment is to add to that, that when we looked in Washington at the health care reform package, it was kind of blank, there were not many details, we came home and decided to create our own details. That is the five tribes' recommendation, so they are real and we have spent a lot of time on them.

Mr. RICHARDSON. Could you submit those for the record? Are they completed?

Ms. MANKILLER. Yes, I can.

Mr. RICHARDSON. So you will submit them for the record of this hearing?

Ms. MANKILLER. Sure.

Mr. RICHARDSON. And I will ask your staff, perhaps Kate and others, to immediately meet with our staffs, because Mike is correct, we are marking up in the Energy and Commerce Committee, the Health Subcommittee, in mid-February, and our Subcommittee on Indian Affairs has jurisdiction on the Indian component. So please, let us not wait much longer.

I want to thank the three distinguished witnesses. My apologies again for being late. I hope in the days ahead as my chairmanship unfolds, to visit your nations, unless you do not want me there.

Mr. ANOATUBBY. We welcome you.

Mr. RICHARDSON. Thank you all very much. We will now proceed to the second panel. We will start with the Honorable Bill S. Fife, Principal Chief, Creek Nation; Honorable Martha Banderas, Vice Chairperson, Apache Business Committee, Anadarko, Oklahoma; Mr. Perry Hauser, the Chairman of the Oklahoma Indian Gaming Association, Seneca, Oklahoma; and Diane Kelly—I know she is here because she was at the airport picking me up—Recording Secretary, National Congress of American Indians for Eastern Oklahoma. Although I know that her testimony, because of the weather in Washington, did not arrive, but I know that she can give the testimony without looking down at any piece of paper.

Mr. SYNAR. Bill, if I could while they are coming forward, I would also like to recognize a number of our state representatives and state senators—Herb Rozelle, Larry Adair and Bob Culver, are all here representing the state today. We also have Senator Boren's office here.

Anyway, we want to thank all them. You guys wave your hands, we really appreciate you all being here today to assist us.

[Applause.]

Mr. RICHARDSON. Mr. Fife, please proceed.

Let me mention to the witnesses because of the time constraints, we are urging witnesses to keep their statements to within five minutes so that we can engage in a good Q&A session because we find in our Subcommittee that is the most productive part for us.

So if you can, we will allow a little bit of latitude. The Chief Counsel of our Committee here, renown Ph.D.s will be administering the little green light. So when you see the red light, it means that if you could please wrap up.

**PANEL CONSISTING OF HON. BILL S. FIFE, PRINCIPAL CHIEF, CREEK NATION, OKMULGEE, OK; PERRY HAUSER, CHAIRMAN, OKLAHOMA INDIAN GAMING ASSOCIATION, SENECA, OK; DIANE KELLY, RECORDING SECRETARY, NATIONAL CONGRESS OF AMERICAN INDIANS FOR EASTERN OKLAHOMA**

**STATEMENT OF HON. BILL S. FIFE**

Mr. FIFE. Good morning, Mr. Chairman, Congressman Synar.

I have come to this oversight field hearing to address important issues and concerns of the Muscogee Nation and generally those of Indian country.

A most important issue is economic development. Over the last 25 years, the federal government has taken a myriad of approaches to economic development on Indian reservations. Nevertheless, tribes still are greatly lacking in this area. The Muscogee Nation has focused on economic development as a means to empower Muscogee communities with tools required to become self-determined. It is a means to strengthen Muscogee families to meet problems head-on. Economic development allows the Muscogee government to responsibly provide its citizens the services they need.

Economic development is capacity-building, the capacity of the tribal government, to expand its tax base, to provide investment opportunities for its citizens and building capacity for education loans and housing through bond programs, the capacity to regulate commerce within its jurisdictional boundaries. It is also the capacity of the local community to provide local employment and the capacity of individuals to earn a living, to earn a decent wage to raise their standard of living.

The assertion of tribal sovereignty has allowed the Muscogee Nation to enter into the gaming business. With revenues generated from the operations of our bingo facilities, the Muscogee Nation supplements dollar-for-dollar Bureau of Indian Affairs allocations for program services.

The Muscogee Nation economic development projects have not only provided funds for health services, higher education, scholarships and nutrition programs for the elderly, but most importantly, have created real jobs where there were no jobs at all. This is merely the first step to tribal self-sufficiency through self-determination.

Let me illustrate to you the many obstacles the Muscogee Nation must overcome before economic development is allowed to prosper. Valuable resources, both financial and human, have been squandered on unnecessary litigation concerning tobacco taxation in the state of Oklahoma. These resources have been used to advance—should have been used to advance the general well-being of the citizens of the Muscogee Nation. The cause of the problem is not necessarily state government versus tribal government wrestling for control. It is the maze of federal law that imparts federal instru-

mentality jurisdiction on the state courts over exclusive tribal jurisdictional matters.

Approximately 50 statutes target specifically the five tribes of eastern Oklahoma's land, minerals and tribal sovereignty. Legislative reform is the only possible alternative for resolving the misinformation, misconceptions and termination policy contained in the specific statutes. Federal statutory reform should not take place without tribal consultation.

One point is Class III gaming compacts with the states. All across the United States, state governments and tribal governments are entering into compacts as mutual partners and sharing in the benefits of economic development. The Indian Gaming Regulatory Act and subsequent judicial decisions regarding the Act make Class III compacts an option of the state and not an option for the tribes. This is the case in Oklahoma. Our tribe has negotiated in good faith with the state. To date, there are no Class III gaming compacts in the state. Federal legislative reform must take place to resolve the impasse that has occurred. Again, the exercise of tribal sovereignty must be provided for in order for economic development to occur.

Let us not misinterpret the Muscogee Nation's position to be one of inaction on the part of the Congress. Public Law 103-176, the Indian Tribal Justice Act, is a long overdue initiative. The Native American Trust Accounting and Management Act, H.R. 1846, is one the Muscogee Nation supports and urges enactment.

Legislation must be passed to make self-governance demonstration projects permanent. We urge your support on this measure. In a declining resource economy, only tribal redesigned BIA functions, services and activities, will accommodate more and better with less. However, many of the obstacles to Indian economic development for the five tribes of eastern Oklahoma would vanish if existing termination laws were rescinded and reflected the current U.S. policy of tribal self-determination.

Full restoration of the Indian Financing Act must be considered during the next session of Congress. The Direct Loan and Grant Program for the Bureau of Indian Affairs must be restored in a manner whereby tribes are not competing against individual Indians for the same funds.

And finally, Mr. Chairman, I ask that Congress give much attention to the administration's initiative to cut all fiscal year 1994 federal programs by three percent. I think this has an effect on every program we have. Health care, it would mean a decline in us providing health services. A three percent budget cut means the Muscogee Nation would have more diabetes complications, higher infant mortality rates, more pulmonary disease and cardiac arrests. It would restrict us.

And I just ask that you carry back to Washington when Congress assembles a message that is simply that tribal government development is economic development. And I appreciate your time here today.

Thank you.

Mr. RICHARDSON. Thank you, very eloquent.

[Prepared statement of Mr. Fife follows:]

**TESTIMONY ON ECONOMIC ISSUES**

**BEFORE  
THE SUBCOMMITTEE ON NATIVE AMERICANS  
COMMITTEE ON NATURAL RESOURCES  
HOUSE OF REPRESENTATIVES**

**Field Hearing  
Tahlequah, Oklahoma**

**Submitted by  
Bill S. Fife, Principal Chief  
Muscogee (Creek) Nation**

STATEMENT TO THE U.S. HOUSE of REPRESENTATIVES  
COMMITTEE on NATURAL RESOURCES  
SUBCOMMITTEE on NATIVE AMERICAN AFFAIRS

CONCERNING INDIAN ECONOMIC DEVELOPMENT

TAHLEQUAH, OKLAHOMA

JANUARY 20, 1994

Good morning Mr. Chairman and Mr. Synar. I am Bill Fife, Principal Chief of the Muscogee (Creek) Nation. It is a pleasure to appear at this oversight field hearing and share with you the issues and concerns of the Muscogee (Creek) Nation and generally those of Indian country.

Economic development means different things to different people. Over the last twenty-five years the Federal government has taken a myriad of approaches to the pressing problem of economic development on Indian reservations.

Economic development means to the Muscogee (Creek) Nation the opportunity to empower Muscogee communities with the tools required to become self-determined. It means strengthening Muscogee families to weather the mighty storms that life delivers. It means to the Muscogee (Creek) Nation to responsibly provide to the citizens of the Muscogee Nation the services deserving of them.

To accomplish the task of local community development and the strengthening of families the Muscogee (Creek) Nation must be afforded the opportunity to exercise all of those duties, obligations, and responsibilities, that a sovereign government exercises. I submit to you today that the exercise of tribal sovereignty is in fact economic development.

The assertion of tribal sovereignty has allowed the Muscogee (Creek) Nation to enter into the gaming business. With the revenues generated from the operation of bingo facilities the Muscogee (Creek) Nation supplements dollar for dollar Bureau of Indian Affairs allocations for program services. Muscogee Nation economic development projects have not only provided funds for health services, higher education scholarships, and nutrition programs for the elderly, but most importantly have created real jobs where there were no jobs before.

This is merely the first step down the long road to tribal self-sufficiency through self-determination. Let me illustrate to you the many obstacles the Muscogee (Creek) Nation must overcome before economic development is allowed to prosper in the Muscogee Nation.

Valuable resources, both financial and human, have been squandered on unnecessary litigation concerning tobacco taxation in the state of Oklahoma. These resources should have been used to advance the general well being of the citizens of the Muscogee Nation. The

cause of the problem is not necessarily state government versus tribal government wrestling for control. It is the maize of cumbersome and confusing federal laws that imparts federal instrumentality jurisdiction on the state courts over exclusive tribal jurisdictional matters. Approximately fifty statutes target specifically the Five Tribes of eastern Oklahoma's land, minerals, and tribal sovereignty, for overt intentional divestiture of the very resources required to exist as a people and a tribal government. Legislative reform is the only possible alternative for resolving the misinformation, misconception, and termination policy contained in the specific statutes.

Should federal statutory reform not take place forthwith, with tribal consultation, real Indian economic development will not take place. Jurisdictional issue will continue to consume scarce tribal resources and the quality of life in the Muscogee (Creek) Nation will remain below that of the poorest nations.

One point is Class III gaming compacts with the states. All across the United States state governments and tribal governments are entering into compacts as mutual partners and are sharing in the benefits of economic development. The Indian Gaming Regulatory Act, and subsequent judicial decisions regarding the Act, make Class III compacts an option of the state government.

This is the case in Oklahoma. The Muscogee (Creek) Nation has negotiated in good faith with the state of Oklahoma. To date no Class III gaming compact has been approved. Federal legislative reform must take place to provide for the impasse that has occurred. Again the exercise of tribal sovereignty must be provided for in order for economic development to occur.

Do not misinterpret the Muscogee (Creek) Nation's position to be one of inaction on the part of the Congress. P.L. 103-176, the Indian Tribal Justice Act, is a long over due initiative. The Native American Trust Accounting and Management Act, H.R. 1846, is one the Muscogee (Creek) Nation supports and urges enactment.

Legislation must be passed to make the Self-Governance Demonstration Project permanent. S. 1618 to accomplish this goal has passed out of the Senate. The House companion bill H.R. 3508 must be passed out of the House as well. We urge your support for this measure. In a declining resource economy only tribally re-designed BIA functions, services and activities, will accommodate more and better with less. However, many of the obstacles to Indian economic development for the Five Tribes of eastern Oklahoma would vanish if existing termination laws were rescinded or reflected the current United States policy of tribal self-determination.

Full restoration of the Indian Financing Act must be considered during the next session of the Congress. The Direct Loan and Grant Program, formally a part of the Bureau of Indian Affairs Credit and

Finance Program, must be restored in a manner where tribes are not competing against individual Indians for the same source of funds.

Finally, Mr. Chairman I ask the Congress give much attention to the administrations initiative to cut all FY-94 federal programs by 3%. One would not think 3% amounts to very much. In the area of health care, which the Muscogee (Creek) Nation is an Indian Health Service '638 contractor, a 3% cut represents basic life preserving medical procedures, quality medical professionals, medicines the Muscogee (Creek) Nation is already financially strained to provide, health care facilities to provide health services accessible to the elderly, children, and rural communities. A 3% budget cut means to the Muscogee (Creek) Nation more diabetes complications, a higher infant mortality rate, and more pulmonary disease and cardiac arrests.

I end this presentation of the issues and concerns of the Muscogee (Creek) Nation regarding Indian economic development with one thought I ask you to carry with you to Washington when the Congress assembles and that is simply tribal government development is economic development.

I thank you for your time and the opportunity to present this message today. Okes Ce.

Mr. RICHARDSON. Chairman Hauser, welcome.

### STATEMENT OF PERRY HAUSER

Mr. HAUSER. Mr. Chairman, I would like to apologize to you and Mike both for not having the written statements in, but I have been involved in a national meeting in Green Bay and I have luggage somewhere between Green Bay and who knows where. But Green Bay, I do appreciate the Oneidas up there, they did have record cold temperatures for us while we were there.

Indian gaming is the new buffalo for the tribes in Oklahoma. We all have our own governments and we have our own regulations set up. We comply with federal statutes. To us, we are a small tribe in northeastern Oklahoma, we went from four employees eight years ago to 79 employees now, two of those having to be doctors. This is economic development we all started with what we made from gaming. Gaming is a very lucrative business when it is properly managed as the tribes in Oklahoma are all striving to do, to comply with the federal statutes.

Gaming expanding in Oklahoma—as Mike has referred to, we are the Bible belt. We have real nice gaming in Oklahoma that is where you can send your grandmother to have a nice evening out, well-lighted, protected. It is the beginning for economic development and self-sufficiency for the tribes.

We have started two optometry facilities, we are looking at a sign development company. We have started these all with our own monies. We are gradually trying to employ more people.

Where we are located in northeastern Oklahoma, we just had a major company shut down and left 3,500 people unemployed. We are now employing—over 30 percent of our employees are non-Indian. We are branching out each day into wider areas. We need the opportunity to be able to expand gaming with the modern electronic facilities that are available for more accurate accounting and allowing us to keep track of where our funds are going. Our monies, most of the tribes here, you ask them how much they make and they will give you a real nice round figure of “it is our business and not yours.” We have taken our monies and we now provide \$300 per semester for every tribal member that is enrolled in college. We provide eyeglasses for them, we provide hearing aids for them, we provide emergency prescriptions for them. We now provide burial service for our people. This is all done with our money. We have never had our money before. We make in excess of \$100,000 a month.

Seven years ago, we thought \$5000 was a major accomplishment. The employment of our people, the self-esteem an individual has when they have a job and can be able to take care of their family.

Gaming is very important and very critical to us. Every time I go to D.C., that is three kids that are not going to get their textbooks bought. I have been to D.C. about 14 times since last March. We are supporting the Inouye process of clarifying the federal law to allow tribes to game and game with accountability, respectability and legally.

The tribes in Oklahoma are all supporting this process. We hope to have this process in place. Senator Inouye, at our last meeting, said sometime in February there would be a bill, an amendment

to 100-497, to clarify some of the gray areas. Most of the other tribes in Oklahoma know I am a specialist in gray areas. I tend to do things in the gray areas a lot. When they clarify gray areas, we do not do it no more.

We need your support in allowing the tribes to gain with accountability and legally game, and we do not need the state involved in it. If we have a compact and you have got a national commission setting up there, why do we need to go through the state and then go to the national commission for the same thing? The state of Oklahoma, the Governor or whatever we have in that position at this time, has chose to ignore Indian tribes—has chose to ignore the Indian population. And the Indian people in Oklahoma do appreciate you taking the time to come to Oklahoma and listen to our concerns and not ignore us as people.

I appreciate your time.

Mr. RICHARDSON. Thank you very much.

Madam Kelly.

#### STATEMENT OF DIANE KELLY

Ms. KELLY. Thank you, Chairman Richardson, Congressman Synar.

I am very happy and pleased to be here representing the National Congress of American Indians today, which is the oldest national Indian organization nationwide. We represent 158 federally recognized tribes throughout the United States.

I would like to apologize and beg your indulgence, Mr. Chairman and Mr. Synar. We have a 12-page written testimony that will be forthcoming. I guess you are aware that we are having inclement weather back in Washington. The testimony did not arrive on time and I was asked to come up and just make a few comments, so I will not take up a whole lot of your time.

The four issues that are on the agenda: self-governance, health care reform, gaming and economic development are four issues that the National Congress of American Indians has worked very hard and diligently with a lot of the tribes in making sure that these things are brought forth to the Congress and the Senate, to take specific issue on.

The National Congress of American Indians is very supportive of making self-governance a permanent program within the Department of Interior as well as IHS. The self-governance programs have demonstrated the Indian self-determination for the tribes and we feel like this is a step forward for Indian tribes. We are very supportive of this and committed to working with those tribes and other tribes that are forthcoming for self-governance, self-determination.

When we talk about gaming and economic development, NCAI had a very extensive economic development forum in Omaha, Nebraska just recently, put together a very lengthy economic development document which was put together by a lot of tribes that have economic development ventures out there. I believe that a copy has been forwarded to your office. So we do a lot of work in economic development, and then when we talk about gaming, we fully support the work of the gaming task force and the work that they are doing on issues that are detrimental to the tribes themselves that

are going out into the gaming operations for the economic development and bringing back monies to the tribes to help with funding programs such as education and health.

When we talk about health care reform, the National Congress has done a lot of extensive work with a lot of the tribes in putting together testimony in support of some of the reorganization as far as health care reform for the Indians nationwide.

The National Congress would like to say, in our closing remarks today, that we want you to remember that we are out here and that we appreciate you having these hearings today, giving the tribes an opportunity to make comment. And we want the Congressional side to remember that we want consultation and we want to have input before these changes are actually made, and we do not want to be ignored.

Thank you.

Mr. RICHARDSON. Thank you very much. I will first recognize—before I recognize Congressman Synar for his questions, I will put in the record the testimony of the Apache Tribe of Oklahoma, Honorable Banderas' testimony. That will be fully inserted in the record.

[Prepared statement of Ms. Banderas follows:]

**APACHE TRIBE of OKLAHOMA****TESTIMONY - FIELD HEARING****SUBCOMMITTEE on NATIVE AMERICAN AFFAIRS  
of the COMMITTEE ON NATURAL RESOURCES**

**10:30 a.m.; JANUARY 20, 1994  
CHEROKEE TRIBAL COUNCIL CHAMBERS  
W.W. KEELER TRIBAL COMPLEX  
TAHLEQUAH, OKLAHOMA**

The Apache Tribe of Oklahoma has determined that the future of the Tribe must rely upon the effort of the Apache People. This will be accomplished by Tribal legislation and Tribal economic projects that will provide the required budgetary needs essential to Tribal services: government; health; education; jobs; housing; and, etc. The Apache membership must develop to the fullest extent all available Tribal resources.

The Apache Tribe of Oklahoma is not demanding additional federal dollars to provide these services to the Tribal membership. Only, the full cooperation of Congress to develop the resources available to the Tribe under existing treaty agreements and existing federal law. This Federal/Tribal cooperation will ensure that the needs of the Tribal membership are addressed into the future.

The Apache Tribe of Oklahoma will take this opportunity to address four areas of vital Tribal integrity. The identified areas are presently not providing the most benefits to the Tribe as was the intent of Congress. Although, these subjects have not met the goals for the Native Americans; these problems can be corrected by a sincere Federal/Tribal effort. The Apache People are requesting your attention and assistance in these important topics.

First, Tribal Gaming operations. The recognition and support of the basic principles of the Indian Gaming Regulatory Act (I.G.R.A.). The intent of Congress was to acknowledge that Native American Tribes have the sovereign ability to engage in gaming activities as a means of economic development. Economic Development projects will provide capital investments funding to develop other non-gaming ventures; funding that is sorely needed in Western Oklahoma.

Congress identified Tribal Gaming as a resource for the Tribe to attain self sufficiency. Tribal independence from the Federal and State assistance: removing people from welfare programs; creation of jobs and career opportunities; providing for safe roads; Tribal assistance with the infrastructure of municipalities that have high Tribal population.

Gaming resources will provide for a strong Tribal Government. Governmental

TESTIMONY - Jan. 20, 1994 - Apache Tribe of Oklahoma  
Subcommittee on Native American Affairs  
Committee on Natural Resources

services are the legislative, the judicial, the law enforcement, and administrative branches.

The Apache Tribe of Oklahoma is requesting the active participation of the Subcommittee in opposing any legislation that will specifically limit the ability of the Apache People to engage in Tribal Gaming operations, as was the intent of Congress set forth in the Indian Gaming Regulatory Act. Legislation that is being lobbied for by non-Indian special interest; as an example, the testimony of Donald Trump. Testimony of rampant organized crime infiltration into Indian Gaming operations. The I.G.R.A. specific intent is to regulate Indian Gaming and to ensure that Indian Gaming is shielded from organized crime and other corrupting influences. Donald Trump cited the "uneven playing field" of Indian Gaming as an advantage over non-Indian Gaming, and the "look" of some Tribes involved in gaming activities. Not only a blatant racist commentary but a ludicrous observation; considering the enormous sums of venture capital available to non-Indian Gaming. Testimony also noted that the Tribal membership were not receiving the actual moneys generated from Tribal Gaming operations. The I.G.R.A. was written to ensure that the Tribe is the primary beneficiary of the gaming operation; and, the National Indian Gaming Commission (N.I.G.C.) was created to ensure that all the ideals and goals set forth by Congress are met.

Although, the N.I.G.C. is relatively new as a functioning body, the intent of Congress as set forth in the I.G.R.A. is evidently working. Referencé the testimony given to the House Subcommittee on Native American Affairs, on October 5, 1993, by the F.B.I., the I.R.S. and the Department of Justice. There is no organized crime with in the Indian Gaming Industry. Indian Gaming operations do not have criminal infiltration and are better regulated than non-Indian Gaming operations.

The Apache Gaming operations need the Subcommittee support in the Indian Gaming Negotiation process between the States and the Indian Nations, a negotiation process set forth by Sen. Inouye and Sen. McCain. Negotiations that require a substantial investment of time and resources in an effort to find workable solutions to gaming problems that arise between the States and the Indian Nations. This is a positive step in eliminating expensive litigation and demeaning adversarial positions between the States and Indian Nations. We are attempting to find meaningful solution that will allow the States and the Indian Nations to redirect valuable resources into more positive and constructive directions.

Second, United States Indian Public Health Service. The inadequate and unrealistic situation of the present policy of Indian Health care. Specifically, the Anadarko Agency Service Area. A service area that has one hospital facility for the health care of seven Tribes in the Anadarko Agency. A hospital that was originally constructed and budgeted to accommodate 25,000 individuals; and today has 65,000 active medical charts. The health needs of the Native Americans with in this service area are drastic and require immediate attention. A Federal/Tribal cooperation that will re-evaluate present Public Health Service policy and incorporate realistic and positive methods of providing health care.

Also, it is essential to re-evaluate the present policy of funding existing health care facilities. All Tribes with in the Anadarko Agency have very restrictive and closed Tribal enrollment policies. This trait places all the Tribes at a severe disadvantage

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when our service area must compete with large population service areas that are based upon very liberal and open enrollment policies. The Public Health Service must include these Tribal policies and develop a more realistic policy of funding allocation.

Third, the Area Office. C.F.R. Court System. Present C.F.R. court system is not responsive to the requirements of the Tribe. The Tribe has endeavored to create the proper atmosphere for economic development. This is being accomplished with new Tribal legislation that allows and encourages business activities. But, the present C.F.R. court system discourages and inhibits Tribal business enterprises. Specifically, the explicit exclusion of non-Indian prosecution within the C.F.R. At present, anyone with an ax to grind can bring actions against the Tribe (usually, by identifying individuals who have specific responsibilities for Tribal operations) without fear of redress or court expense. Whereas, the Tribe must redirect resources to answer the charges: i.e., employees spending time and Tribal money in activities not in the scope of their job descriptions; budgeting of funds for legal counsel with funds that could be used in areas more beneficial to the Tribe. Limited ability of the present C.F.R. court system to adequately meet the needs of the Tribe. Albeit, in economic development or as an impedance to Tribal goals and activities. The Apache Tribe of Oklahoma needs: active support and assistance with developing and implementing an Apache Tribal Court; use the B.I.A. resources to be an advocate of the Tribe's sovereignty. Place the immense power of the B.I.A. legal framework at the disposal of the Tribe. Ensure that the objectives behind the concept of the C.F.R. court system are realized, the legal assistance and protection is extended fully to the Tribe.

Law Enforcement. The Tribal Smoke Shop, located in the main Tribal Complex administration building, Anadarko, OK, has been burglarized three times in the last three years. No perpetrators have been identified or charged in any occasion. Vandalism at the Apache Tribal Trading Post have been rampant and has created an unnecessary burden upon the revenues generated from the convenience store operation. The Tribe is required to rely upon a system that is wholly understaffed and under financed for the jurisdictional areas that it has responsibility. The Tribe is clearly at a disadvantage when the compliance or enforcement of Tribal ordinal law is necessary. The Tribe needs the concentrated effort by the B.I.A. to develop the Tribal resources and personnel to implement a Law Enforcement program Tribally operated.

Economic Development. The Apache Development Authority, a separate entity of the Tribe with the responsibility of developing business projects for the Tribe, has received information from the B.I.A. loan officer that there are no funds available at this time. Limited access to necessary technical assistance for completion of financial packages and business plans. Time frames for accessing B.I.A. funding are usually detrimental to Tribal business enterprises. The B.I.A. emphasis needs to be placed upon supplying the necessary technical assistance and funding of Tribal business projects in a more expeditious manner.

Higher Education and Vocational Training. These are vital areas that must be addressed to ensure the continued progress of the Tribe. Funding allocated to these areas are wholly unrealistic to existing conditions with in the Tribal framework.

Housing. Specifically, the drastic reductions to the Home Improvement Program (H.I.P.) that are being contemplated at this time. Due to the changes that have been

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implemented by H.U.D., approximately 30% of the Tribal membership within the three main population areas in the Tribal Reservation boundaries cannot qualify under the Tribal Indian Housing Authority. These Tribal members must rely on the continued assistance provided by the H.I.P.

Finally, the Anadarko Agency. Realty/Appraisal Department. No continuity of personnel and policies. Realty officers are trained at this level with all the learning mistakes, that normally are incurred in any education process, and are made at the Tribes expense. These are at times dramatic in the result to the Tribe or individual member. All mistakes are considered a normal part of the process of B.I.A. personnel acquiring job skills; but, the mistake applied to the Tribe or individual is often traumatic. The Tribe or Tribal member has no open avenue or means for rectifying B.I.A. mistakes. The Agency involvement in the Trust Status application process is not necessary. Most decisions or determinations are made in the Regional Field Solicitor's office or the Washington, D.C., Solicitor's office. Agency personnel are limited in the scope of tasks they are given to complete. The Superintendent should be given the responsibility of ensuring that all departments exert the necessary effort for the rapid completion of Trust status applications.

Lease compliance. No adequate effort to insure that property improvements or land use covenants are being complied with on Tribal and individual tribal members' land. No knowledge or willingness to adequately enforce compliance with Oil & Gas leases. Often the correct names or expiration dates are unknown at the Agency Realty level. The Tribe has been informed that the Trust Status application approval process that meets a snag. The snag was identified by a lawyer ("Solicitor"). If all decisions are to be made by the B.I.A. legal staff, then the time and effort of the B.I.A. Realty staff are being unnecessarily wasted. The Tribe has determined that three farming and grazing leases are not being complied with the covenants written into the contracts. Two leases within the K.C.A. properties, Lawton, OK, are exceeding the permitted allowable number of livestock to graze. One lease at the Anadarko "Old Town" properties, was approved for a lease renewal without fence improvements and terracing being done on the previous lease. We are asked to work with each new administration in a cooperative effort that will eventually grant us great rewards. This has not been the case nor can we expect it ever to be so. When the Tribe exerts any initiative for solving problems within the system we are reminded that we must work within the scope of the C.F.R. But, when the B.I.A. personnel operate within the system, they are using "approved" policies and procedures ("B.I.A.M.") not the law (C.F.R.). The Tribe suggests pre-approval of key personnel appointments and assignments. A process established to ensure that key personnel are not given jobs in critical areas for the sake of B.I.A. promotion. Removal of unnecessary staff from the trust status application process. Create a closer liaison with the B.I.A. lawyers (Solicitors) and the Tribe. A Lease Compliance officer who would report directly to the lessor. "Open door," policy to work directly with the lessors for determining the scope of each lease and the legal alternatives for lease compliance.

Superintendent. The present "Revolving Chair" policy of appointments to this most important position, must be stopped. The only cause for a Superintendent to leave the Anadarko Agency post, should be for incompetence. A determination to be

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made by the Tribes being serviced by the Anadarko Agency. The Superintendent has no authority or control of department actions. The Superintendent has no effective communication with Tribal governments. Since 1987, Clem Cearly, Dennis Pogue, Mitchell Choteteau and Evaline Gomez have been given a most important title of "Superintendent"; with, an undermined number of "acting" Superintendents being appointed during this period. The Tribe, since the administration of Cearly, has attempted to place parcels of land into trust status. Each person who has held the position of Superintendent could only ask or request immediate action from his staff to assist the Tribe in its endeavors. The Tribe was notified directly by the Area Director's solicitor of noncompliance of Bingo management and federal marshal's impending actions. The Superintendent, Mitchell Chouteau, was not aware of the proceedings and could offer no assistance to the Tribe to correct the matter. Overall lack of involvement in the placement process by the Tribe. The Superintendent's responsibilities are critical and administered without proper Tribal oversight; i.e., the administration of essential Tribal resource shares (the percent of federal funding available for essential Tribal services). A defined period of appointment. For example, a five (5) year period before the Superintendent is eligible for voluntarily leaving his position. Increase the Superintendent's authority to act and increase the Superintendent's ability to enforce its operational mandates with the Agency personnel. Present B.I.A. policy requires the Tribe to initiate all activities at the Agency Superintendent level. If this is to continue, then a more enhanced system of communication must be implemented to achieve the desired results.

Contracts. No cooperation granted the Tribe in its attempts to contract essential services granted under the Indian Self-Determination and Education Assistance Act (P.L. 93-638). The Tribe has determined that for progress of Tribal goals to be ensured, the Tribe must implement its own Judicial and Law and Enforcement programs. To accomplish this, the Tribe must contract for its share of the federal funds available and are being expended in the Anadarko Agency C.F.R. court system and B.I.A. police unit. This Tribal action will be undertaken with contracts available through P.L. 93-638 funding. The Tribe officially notified Bryan Pogue of this intent, by letter dated September 15, 1992. To date, requests for specific information and assistance cited at 25 CFR Chapter I, Subchapter M, Part 271, Subpart B, Section 271.16, 271.17, 271.18, have not been received from the Anadarko Agency personnel. The Tribe is dependent upon the "good-will" of the Anadarko Agency personnel to comply with the law, again at the required liberal interpretation of B.I.A. policies and procedures (B.I.A.M.). The Tribe is required to postpone, delay or shelve Tribal planning until Agency personnel have adequate time to address the Tribal requests for assistance. The Tribe would suggest that the Anadarko Agency make all future activities are in strict compliance with the C.F.R. in response to the Tribe's request for information and assistance, concerning P.L. 93-638.

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The Apache Tribe of Oklahoma wishes to express its appreciation to the Honorable Bill Richardson, all participating members and all staff personnel of the Subcommittee on Native American Affairs of the Committee on Natural Resources, for holding this field hearing; and, for inviting the Apache Business Committee to take part in the testimony being given to day.

This document is being submitted by Martha Banderas, Vice Chairperson, Apache Business Committee, Apache Tribe of Oklahoma. Ms. Banderas is being assisted by Martin Bitseedy. Mr. Bitseedy provides assistance directly to the Apache Business Committee, and also serves as the Chairman of the Apache Development Authority of the Apache Tribe of Oklahoma. Mr. Bitseedy is also the Vice Chairman of the Oklahoma Indian Gaming Association.

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# Apache Tribe of Oklahoma

Post Office Box 1220  
Anadarko, Oklahoma 73005

January 18, 1994

The Honorable Bill Richardson, Chairman  
Subcommittee On Native American Affairs  
Committee on Natural Resources  
Washington, D.C. 20515-6201

Dear Congressman:

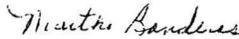
The following are the representatives of the Apache Tribe of Oklahoma, to attend the Field Hearing, on January 20, 1994, in Tahlequah, Oklahoma:

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Sincerely,



Martha Banderas, Vice Chairperson  
Apache Business Committee  
Apache Tribe of Oklahoma

Mr. SYNAR. Thank you, Bill. First of all, Diane, you should have announced this is your 50th anniversary of the Congress.

Ms. KELLY. It is.

Mr. SYNAR. This is an excellent opportunity to advertise that, and it shows the staying power that the Congress has had. We are very proud of that.

Ms. KELLY. Thank you. I would like to invite you to our convention in Denver in November.

Mr. SYNAR. I will try to put it on the schedule. I will be busy up until then they tell me, I think.

Ms. KELLY. I will remind you.

Mr. SYNAR. Bill, it is always good to have you here and you have done such an excellent job with the Muscogee Tribe. Your vision of economic development is something that I think is probably second to none throughout Oklahoma.

I would be interested to know what kind of cooperation you have gotten out of the state Chamber of Commerce and the local chambers in the counties where the Muscogee Creek Tribe is located. Do you all have a partnership that is working together trying to strengthen economic development?

Mr. FIFE. Yes, we are members of the local Chamber there in Okmulgee and we have taken it upon ourselves to go out and meet with the state chamber staff and their executive director, to become part of the local chamber and other chambers within our jurisdictional area. We feel like the only way that we can survive is for everyone to be working as a team, and I think we have good relationships with not only the chamber, but the Lions Clubs, the Rotary, the school systems. We have an excellent relationship with OSU-Okmulgee and OSU-Stillwater, along with the medical school in Tulsa and others in our area.

Mr. SYNAR. Let me focus in on economic development. If I were to pose the question: What is the major obstacle for getting economic development for the tribe? Would it be education levels that are lacking, or would it be a need for a financial package that you can put together, would it be location, would it be resources? What would be some of the obstacles that you all have found?

Mr. FIFE. Well we have multiple obstacles. First of all, as you said, education. We must educate our people in order for them to be productive, to be able to fit in some of the jobs that we would like to create in our area. Location, I do not feel like it is a problem. I do not think that putting together a financial package is a problem. But sometimes the type of business we go into can create a problem. You know, in the United States Constitution it says that only the United States Congress can regulate commerce with Indian tribes. Sometimes we have a little interference from the state government wanting to regulate some of our business, and we would like for—one of the recommendations that we would like for the Congress to do is exercise its jurisdiction under the commerce clause and work with the tribes a little more and make this law more clear.

Mr. SYNAR. Good.

Chairman Hauser, let me ask you a question. I was a little distressed with your testimony. It seems that you have all but thrown up your hands that we are not going to a compact in Oklahoma,

and even if we do, you claim it is really dual regulation, one for Oklahoma and then with the National Gaming Board. Is it over? Is the gap just so large between what the tribes want in Oklahoma and what Oklahoma is willing to live with? I think Bill and I need to know what specific problem exist—where exactly is the gap?

Mr. HAUSER. The biggest gap we have right now, Mike, in Oklahoma is the state and the Governor. The Governor was put in this process in 100-497, it was not the state legislature, it is the Governor. The Governor can be the stumbling block. And the Governor we have at this time chooses not to acknowledge there are Indians. And he has other priorities.

Mr. SYNAR. Have there been any discussions?

Mr. HAUSER. We have had one compact that was placed through and there was obstacles placed within that compact that are impractical. Declaratory judgments pertaining to the Johnson Act. That is why we are going back to the federal law that—when you have a compact in place, the Johnson Act should not pertain and the Johnson Act simply means you have a gambling device in an area where it is not legal. We have had regulations put out by the National Commission, Mr. Hope in his great wisdom done what he was supposed to do and that was forestall Class III as long as possible.

Mr. SYNAR. Who is negotiating on behalf of the state or the Governor?

Mr. HAUSER. Bob Nance.

Mr. SYNAR. And he is out of the Attorney General's office?

Mr. HAUSER. He is a private attorney that they hired through the—when we call him and ask him questions, he would have to talk to the Governor's counsel, then the Governor's counsel would talk to the Governor and then three weeks later we might get an answer of no.

Mr. SYNAR. Let me ask this question. Given what you all have requested in the compact, there is nothing inconsistent with the other compacts around the country, is it?

Mr. HAUSER. None whatsoever.

Mr. SYNAR. It is almost a model taken from other states?

Mr. HAUSER. It is the same, you know, why reinvent the wheel. If it works somewhere else, let us put it in. We have an off-track betting compact that the state of Oklahoma has actually written that OTB contract. The only problem is they still will not pass it. They keep kicking it back, keep kicking it back.

We had a clause in there that says "good faith negotiations," there has been no good faith out of Oklahoma. We have tried working with the state and any area, it has to be good for everyone in the area. Dollars coming in, there is a spinoff, a seven dollar turnover within the communities. It is good for everyone when business develops. In our area, employment, we need employment bad.

Mr. SYNAR. Let me focus in on that. You know, I am sympathetic to the problems. We met with you all on a number of occasions in Washington and we are a little bit in a Catch 22. We have sent this responsibility down to the states, and it would be a little bit improper now for the federal government to try to direct the state what to do, but we realize that these things have to come to closure.

Of the 37 tribes in Oklahoma, how many of them are on the verge or presently involved in gaming?

Mr. HAUSER. There are 32 operations in operation right now. Some tribes have multiple operations. The Class III concept, we are trying to put together a package now that is a modification just of bingo and others. And I personally feel—I do not think in Oklahoma, you are going to see full blown casinos as you see in Las Vegas, you will not see that.

Mr. SYNAR. Let me focus in on that. As Chairman of this effort, you have probably better familiarity than anyone with what everybody is doing. You know, one of the fears that I have, and again not trying to direct what you are doing, is that we are going to have 32 different operations going on and we are going to kill the goose that laid the golden egg. We are going to have so many that it is not going to be worthwhile for anybody. Is that a fear that the tribes have?

Mr. HAUSER. That is one thing you have got to address in business. All people are not going to be successful. Senator Inouye has brought this up, that the government should have a responsibility to now allow the tribes to enter into a business or an operation or function that they are going to fail.

The markets are there in Oklahoma and we are keeping most of them scaled to our areas. And as far as working with the local government, we painted the courthouse in Ottawa County. I mean we work well with the local government. But when it gets somewhere above the local government and into the state, then you get into this large mass ball, and one time I proposed to the state, back in 1986 or 1987, I said what would it take for you guys to leave us alone? The two gentlemen from the Tax Commission took that totally wrong and what they were preparing to do was not what I intended. [Laughter.]

I talked to our District Attorney for about an hour about what happened in that situation.

Mr. SYNAR. And they think I have an edge. [Laughter.]

Mr. HAUSER. It has to benefit the state when we bring more. The regulations, we are willing to pay for whatever they do on a cost basis. That is outlined in the federal law. If they would just—our biggest frustration right now is if they would work with us, not the state as the population, the people that are in the bottleneck, and I will say our bottleneck is Governor Walters. That is the bottleneck right there, is Oklahoma City.

Mr. SYNAR. Let me turn it over to Bill, thank you very much. Thank all of you. [Laughter.]

Mr. RICHARDSON. I am going to come back to the Indian gaming issue because this is very important and this is probably the main activity of our Subcommittee and we have held five oversight hearings. But to Chief Fife, we talked earlier in the past panel about the self-governance concept. Do you think for economic development this would be positive for the Muscogee Nation, a permanent self-governance compact? You also mentioned—maybe I can wrap two questions into one—the specific concerns in your tribe over the health care, the three percent on infant mortality and diabetes. Educate me. Are there high incidents of these two maladies in the Muscogee Tribe?

Mr. FIFE. Yes, there are, very high. I do not know what the exact percentages are, but I can say that we probably lead—the Indian people lead the state in diabetes, in the occurrence of diabetes. Infant mortality, it is very high rates there.

But what I was alluding to is that three percent does not seem like very much, but when you have a small budget and you get very—you heard testimony earlier about the gross under-funding that we receive here in Oklahoma compared to other areas of the United States for Indian health care or Bureau of Indian Affairs funding. Then this really restricts what we can do. We work on a shoestring. The monies that we receive, the monies that we generate through gaming, primarily go back to supplement the Bureau of Indian Affairs and the Indian Health Service programs, and I would say that we match those programs almost dollar-for-dollar in the services that we provide.

Mr. RICHARDSON. On the self-governance issue, is that the direction you think we should go?

Mr. FIFE. Well we are under a self-governance compact today.

Mr. RICHARDSON. But making it permanent for you?

Mr. FIFE. I feel like it would be good for us to have a permanent self-governance opportunity under that law.

Mr. RICHARDSON. Let me go to you and to Chairman Hauser on the gaming issue. And I want the audience to know what our position in the House has been, at least the Subcommittee. And let me also mention that this Subcommittee works very hand-in-hand with the minority, and Congressman Craig Thomas of Wyoming is not here, but his counsel, counsel Houghton is here. It has been our view, at least my view, that the Inouye process is a good one, where we are looking at ways to resolve the lack of clarification and the lack of specificity perhaps in the Indian Gaming Act.

But I as a Chair in the House have chosen not to participate in it. We have a different process in the House. We have had five oversight hearings. I am not sure that the Act needs changing. I am very, very concerned about any further infringements on Indian sovereignty. Now that is my position and I am concerned, obviously too, when you get testimony from—I think it was 49 out of the 50 Governors that wanted us to ditch the entire Indian Gaming Act and basically have total state control of Class III and other issues. So I am concerned I guess on the other side that if we enter into a process of negotiation that perhaps we are dissipating the gains that we have already made on Indian gaming. But obviously in Oklahoma, there is a problem.

Chairman Hauser, you stated it very eloquently, a lot better than without your prepared testimony. And I am wondering, and maybe Mike, with his intensive solution expertise, how do we deal with your problem here? As I understand what you are telling me, if there is Class III in Oklahoma, that this would be a very positive economic development boon for you, but that the compact that you are trying to negotiate with the state has not resulted in anything, that it is basically—as Mike might have said, it is going nowhere.

What do we do? Do we have to clarify the Act to make it happen for you? Are there any other ways that we can resolve your problem?

Mr. HAUSER. With clarification of the Act or clarifying partially the regulations. See we had regulations written off of the law that do not comprehend or do not follow the law. And what is being proposed now is a regulatory scheme of a two-tiered basis of the actual National Chairman and a regulatory group down here that will help as T&TA to bring people up to complying with the law.

The compact we have in Oklahoma was for VLTs, it is a video lottery terminal. That is a random generator like you select lottery tickets for powerball. With the entanglements within the law and then the Cavazone decision being laid out, that kind of throws everyone up and stops. We had to go to court to get a declaratory judgment that would hold the state harmless from violating any of the laws. The compact was just dead.

One was negotiated, one and one only. Signed off on but went nowhere. The other compacts have been backlogged. Governor Billman had my first intent to compact and it has been just forestalled, forestalled, forestalled, wait until the federal law is passed. And if the states receive some guidance somewhere that this is something that will benefit everyone—again, we are—they have chose to ignore us in Oklahoma and I do not think Class III gambling is right for every part of the state. There are areas where Class III gaming is not the type of gaming that people in the general populous want. In the market areas that it is, it is a boon to the area. It will help economically bring the monies in, bring people from out of state. We bring people from out of state every day, every day coming into our facilities from out of state.

The law being clarified or amended to clarify some of the gray areas and what the position of the National Chairman is. We have almost a dictator up there at this time. We have nothing up there at this time. We have a lame duck and a person with a two-year extension on their—two years left on their term.

Mr. RICHARDSON. Chairman Hauser, next time you are in Washington, come by and see me because I think, while I did say we are looking at the Inouye process very positively, we are reserving judgment and I have not fully talked to Mike about what he thinks we ought to do with the Act itself. Maybe some clarifications may be in order, state-specific or—but I am fully reserving judgment. You are completing the process in February?

Mr. HAUSER. That is what we have been—

Mr. RICHARDSON. But I need to educate myself more because you have got such—you have 37 tribes in Oklahoma, and what you have is no Class III anywhere, is that correct?

Mr. HAUSER. That is correct.

Mr. RICHARDSON. So there has not been one successful compact.

Mr. HAUSER. There is a compact in place but it has never functioned.

Mr. RICHARDSON. Okay. Mike, maybe we can talk about this further, but I would like, perhaps if you come next time, the weather permits us ever to go back, to discuss this further.

Mr. SYNAR. Thank you all. This has been very helpful and we appreciate it and we look forward to further dialogue.

Mr. RICHARDSON. We will call the third panel; the Honorable Elmer Manatowa, Chief of the Sac and Fox Nation; Mr. Leonard Harjo, Tribal Planner, Seminole Nation; Ms. Carmelita Skeeter, Di-

rector, Indian Health Care Resource Center and Mr. Mathew Kauley, Director, Association of American Indian Physicians accompanied by Mr. Thomas McGaeze, Treasurer of the Seminole Nation.

I want to welcome all of you—

Mr. SYNAR. Before we do that, if I could make one more introduction.

Mr. RICHARDSON. Absolutely.

Mr. SYNAR. We have the entire Cherokee Council that took the whole day off to be here. If they would stand, I would like to thank them for all being here, the Council of the Cherokee Tribe.

[Applause.]

Mr. RICHARDSON. Before I turn to Elmer Manatowa, let me mention that with me—you know, Congressman Synar and I chair these hearings and we work very hard, but we have some very dedicated and capable staff with us. I already mentioned Rich Houghton, who is the minority counsel, who is with us. Marie Howard, who is also on the Subcommittee on Native American Affairs, she handles many of the issues that we are dealing with today. And Tadd Johnson, the Chief of Staff of the Native American Affairs Committee. And Mike, is there anybody else we should recognize?

Mr. SYNAR. My whole staff is here, but you all know them, so we will not go through that. Let us get on with this panel.

Mr. RICHARDSON. Okay, Chief Manatowa.

**PANEL CONSISTING OF HON. ELMER MANATOWA, PRINCIPAL CHIEF, SAC AND FOX NATION, STROUD, OK; LEONARD HARJO, TRIBAL PLANNER, SEMINOLE NATION, WEOWOKA, OK; CARMELITA SKEETER, DIRECTOR, INDIAN HEALTH CARE RESOURCE CENTER, TULSA, OK; AND, MATTHEW KAULEY, DIRECTOR, ASSOCIATION OF AMERICAN INDIAN PHYSICIANS, OKLAHOMA CITY, OK**

#### **STATEMENT OF HON. ELMER MANATOWA**

Mr. MANATOWA. Good morning. It is my pleasure to be here and I am glad to also welcome both of you here. Mike, back to his home state. I was not scheduled, as you can see, by the panel information earlier, to be here this morning. I was to go to Washington to the big tepee, or the big tepee in Washington. But the power outages and airline delays presented a problem, so I am very happy to make the switch to be here this morning. And I am glad, Mr. Richardson, that you recognized Tadd at least. Tadd and I have known each other for a long period of time and I try to visit with him about every time I come to Washington, he is very, very helpful to us.

Mr. RICHARDSON. Did he tell you to say that?

Mr. MANATOWA. Yes, he did. [Laughter.]

I will present a summary this morning of our testimony. We have the written statements that will go into the record, and of course I would request—we have some additional information that we would like to put into the record to further expand on the things that we have. So I understand the record will be open—

Mr. RICHARDSON. Without objection, we will insert it in the record.

Mr. MANATOWA. All right, I appreciate that very much.

So I will summarize just briefly on some areas as we go through here today. I want to recognize also a lady that I have with me this morning, Suzanne Battese, who is the Assistant Director of our Health Unit. Suzanne has helped us and I would like to offer, if we have the time, for her to say a few things. This is my expert in the health area.

I will summarize briefly in the area of self-governance and of course, we are a self-governance tribe since we are entering into our third year of self-governance with the BIA this year. We were the first tribe in the nation to enter into a self-governance project with Indian Health Service.

In addition, this past year, we have entered into a prototype self-governance project along with eight northern Pueblo tribes with the Department of Agriculture. This is a prototype project of self-governance and it is the only one in the nation. So we are taking self-governance step by step further.

Hopefully in the future, as you have heard here this morning, we can expand self-governance to all agencies in the United States that have monies that deal with Indians. It is our feeling that it should be.

Of course we would ask you to provide full support for the passage of the permanent legislation for self-governance. We are asking—which will ensure the Congressional language is supportive of a tribally-oriented negotiated rulemaking process. Tribal stable base budgets for self-governance tribes are needed to strengthen tribal government operations.

Earlier this morning, I think you heard Governor Nuckolls state his wish to stabilize the government so we can plan from year to year on what we are going to do.

I urge the Assistant Secretary for Indian Affairs to make a selection of the Director of the Office of Self-Governance and that the individual selected is knowledgeable of the department, administrative and tribal affairs wise.

As has happened to Indians, we seem to be the last to receive, like our Assistant Secretary, Ada Deer, one of the last departments to get a full appointment, and I am afraid we are going to come around to the selection of the self-governance office director the same way. We will have interims, interims and interims. But let us please make a selection very quickly.

The gaming recommendations, you have heard several things here today. We want to eliminate state involvement in gaming compacts or establish effective policies and procedures to ensure good faith dialogue between states and tribal governments. I see the light is coming on, so I am going to have to go a little further and faster.

In the area of economic development, I do not think the states or the federal government has really given us the support needed to validate the economic impact of Indian tribes within their respective states. I and several other tribal leaders, along with the Oklahoma State Department of Commerce and through your office, Congressman, with Tadd, is working on some amendments to the Tax Status Act of 1982. Those are all prepared, it has been approved by National Congress and we will be working very hard to

make sure that those things are passed through that will enable tribal governments to assist or take advantage of the tax-exempt bonding which will assist again the tribal economics packages within the state.

Trust fund management. Congress needs to direct the BIA to be consistent in the application of policies of investment for tribal trust funds as well as individual trusts.

Congress needs to direct the BIA to provide tribes more influence over how their funds are invested and allow for tribal input on the specific investment of funds.

And at this point, I see the red one is on, so I would hope that we would be able to have our Director say a little bit more. But in health care reform, we would like the inclusion of the self-governance tribes in any future health care reform planning sessions.

Just as you have heard with the recent announcement of combining the two BIA area offices, the consultation process many times is by letter telling us it has been done. And we think that is going to happen again with health care reform. We would like to have greater consideration to the every day operations of Native American medical care facilities, provide a clear understanding of the self-governance tribes/nations relationship with Indian Health and the state alliances.

Irregardless of what financial formula is developed, please allow self-governing tribes and nations, as well as other Native American Indian nations to take active part in the development of any formula that would affect them.

I see my time is out. I would like to go further, but—

Mr. RICHARDSON. Chief, we will allow perhaps in the questions, your counsel to say a few words, but we have to move on. I will ask if we can, to please stay to the five minutes.

Mr. Harjo.

[Prepared statement of Mr. Manatowa follows:]

**TESTIMONY OF THE SAC AND FOX NATION  
FOR THE U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS FOR  
THE COMMITTEE ON NATURAL RESOURCES**

**FIELD HEARING  
CHEROKEE NATION TRIBAL COMPLEX  
JANUARY 20, 1994**

**SUPPLEMENTAL SHEET**

The following representatives will be providing oral and written testimony at the Hearing on behalf of the Sac and Fox Nation.

Elmer Manatowa  
Principal Chief  
Sac and Fox Nation  
Route 2, Box 246  
Stroud, OK 74079  
(918) 968-3526

Suzanne Battese  
Deputy Health Director  
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**SELF-GOVERNANCE RECOMMENDATIONS**

-Provide full Committee support for the passage of H.R. 3508 to bring permanency to the Self-Governance Demonstration Project.

-Insure the Congressional language for H.R. 3508 is supportive of a tribally oriented negotiated rule-making process.

-Tribal stable base budgets for Self-Governance Tribes are needed to strengthen Tribal Government operations.

-Support supplemental funding requests to cover the BIA deficit in contract support funds to Indian tribes for Indirect Costs.

-Urge the Assistant Secretary - Indian Affairs to make a selection of the Director for the Office of Self-Governance; and, that the individual selected is knowledgeable of Departmental, administrative and tribal affairs.

**GAMING RECOMMENDATIONS**

-Eliminate State involvement in Tribal Gaming Compacts or establish effective policies and procedures to ensure a good faith dialogue between States and Tribal Governments to conduct negotiations.

-Development of an appeals process for Indian tribes in the event States fail to negotiate with Tribes in good faith.

**ECONOMIC DEVELOPMENT RECOMMENDATIONS**

-Federal Government support is needed to validate the economic impact of Indian tribes within their respective States. Furthermore, to assist tribes in developing a better dialogue with State governments to promote Tribal business development.

-Address the built-in inequities in the abilities of tribes to compete with neighboring non-Indian jurisdictions.

-Begin the process of overcoming historical barriers created and sustained by failed and flawed federal policies and practices of the past two hundred years.

**TRUST FUND MANAGEMENT RECOMMENDATIONS**

-The Congress needs to direct the BIA to be consistent in its application of policies for the investment of Tribal Trust Funds as well as Individual Trust Funds accounts.

-The Congress needs to direct the BIA to provide tribes more influence over how their funds are invested and allow for tribal input on the specific investment of the funds.

**HEALTH CARE REFORM RECOMMENDATIONS**

-Inclusion of Self-Governance tribes in any future Health Care Reform planning sessions.

-Give greater consideration to the everyday operations of a Native American medical care facility. Understand how we provide care.

-Provide a clearer understanding of the Self-Governing tribes/nations relationship with Indian Health Service and State Alliances.

-Irregardless of what financial formula is developed, please allow Self-Governing tribes/nations, as well as, all other Native American tribes/nations to take an active part in development of any formula that would effect them.

**WRITTEN TESTIMONY OF ELMER MANATOWA  
PRINCIPAL CHIEF  
SAC AND FOX NATION**

**BEFORE**

**THE U.S HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF  
THE COMMITTEE ON NATURAL RESOURCES  
FIELD HEARING**

**AT**

**THE CHEROKEE NATION TRIBAL COMPLEX  
TAHLEQUAH, OKLAHOMA**

**JANUARY 20, 1994**

Mr. Chairman, I thank you for this opportunity to present testimony on behalf of the Sac and Fox Nation. I would also like to express my appreciation to Congressman Mike Synar for his efforts to provide a forum for the Oklahoma tribes; and, to Chief Wilma Mankiller of the Cherokee Nation for hosting today's Hearing.

I am Elmer Manatowa, Principal Chief of the Sac and Fox Nation and assisting me today is Ms. Jo Burtrum, Health Director. The Sac and Fox Nation appreciates the expressed interest by the House Subcommittee on Native American Affairs for holding this hearing to elicit information on the Self-Governance Demonstration Project, trust fund management, gaming, economic development and health care reform.

**SELF-GOVERNANCE**

The Tribal Self-Governance Demonstration Project, originally authorized in P.L. 100-472, Title III of the Indian Self-Determination Act Amendments of 1988, allows Tribal Governments to negotiate the transfer of programs, services, functions and activities from the Federal bureaucracy through Compacts of Self-Governance and Annual funding Agreements. Tribal Councils set priorities on allocation of these financial resources and manage their affairs with a minimum of Federal involvement. These management principles and processes are empowering our Tribal Governments to be directly responsible and accountable to service delivery and development activities; dramatically reduces the time, paperwork and expense by the Federal bureaucracies serving Indian Country; and, offers real potential for improving the government-to-government relationships between Indian Tribes and the United States.

Participation in Public Law 100-472 has reaffirmed the Sac and Fox Nation's status as a sovereign Nation with the authority to interact with other entities on a government to government basis. Compact status has provided the Sac and Fox Nation with the recognized legal authority to determine the most effective way to address issues at the local level. Flexibility in the manner in which programs and budgets are administered and services are provided has been the most positive outcome of Compact status.

**RECOMMENDATIONS**

-Provide full Committee support for the passage of H.R. 3508 to bring permanency to the Self-Governance Demonstration Project.

-Insure the Congressional language for H.R. 3508 is supportive of a tribally oriented negotiated rule-making process.

-Tribal stable base budgets for Self-Governance Tribes are needed to strengthen Tribal Government operations.

-Support supplemental funding requests to cover the BIA deficit in contract support funds to Indian tribes for Indirect Costs.

-Urge the Assistant Secretary - Indian Affairs to make a selection of the Director for the Office of Self-Governance; and, that the individual selected is knowledgeable of Departmental, administrative and tribal affairs.

**GAMING**

The Sac and Fox Nation has been unsuccessful in negotiating with officials of the State of Oklahoma in the development of a Gaming Compact. State involvement in Tribal Gaming Compacts must either be eliminated or additional Congressional direction with specific step-by-step procedural instructions must be given to the State for entering into Gaming Compacts or else the Tribe will continue to be halted from the finalization of any such Gaming Compact. In essence, the State of Oklahoma has failed to negotiate with the Sac and Fox Nation in good faith while we have attempted full cooperation. The 11th U.S. Circuit Court of Appeals ruled on Tuesday, January 18, 1994, that states cannot be sued by Indian tribes seeking to force them to allow gambling casinos on Indian lands. States are able to claim immunity under the 14th Amendment to the U.S. Constitution. Under this court decision, tribes have no recourse to force states to comply with the Indian Gaming Regulatory Act.

**RECOMMENDATIONS**

-Eliminate State involvement in Tribal Gaming Compacts or establish effective policies and procedures to ensure a good faith dialogue between States and Tribal Governments to conduct negotiations.

-Development of an appeals process for Indian tribes in the event States fail to negotiate with Tribes in good faith.

**ECONOMIC DEVELOPMENT**

The State of Oklahoma is almost entirely comprised of tribal jurisdictions and boasts the largest Native population in the country; however, true cooperation between the State and Tribal Governments is yet to be realized. Tribal Governments are able to provide economic incentives because of their unique status. The State has not fully realized or simply chooses not to participate in the joint benefits which can be gained by the economic opportunities for the benefit of all of the population. The Oklahoma Department of Tourism is the only State Department which has shown an active interest in the economic impact of promoting Indian tribes and the Sac and Fox Nation has participated in several projects with their Department. It is time for the remaining State Departments to become involved in economic development efforts to initiate cooperative efforts and promote the benefits of doing business with Tribal Governments.

The negative aspects of the Compact status have not come from within the Sac and Fox Nation but from forces outside. There is a great need to create a permanent option for tribes to interact with the U.S. Government on this basis. The U.S. Senate has enacted S. 1618, the "Tribal Self-Governance Act of 1993". The Sac and Fox Nation fully supports your introduction of a corresponding measure, H.R. 3508. The Self-Governance Tribes are pioneering through negotiated agreements more independent management of financial resources and the assumption of responsibilities and authorities associated with the transferred funds.

The Tribal Self-Governance Demonstration Project is a forerunner to the Clinton Administration's "Reinvent Government" initiative in which the policies and goals are almost identical. President Clinton's October 26, 1993 Executive Order on "Enhancing the Intergovernmental Partnership" in reducing regulatory burdens and streamlining the regulations waiver process for State, Local and Tribal Governments directly supports our Self-Governance objectives. We truly believe Tribal Self-Governance provides excellent working examples of the broad Clinton Administration policy goals.

Unless action is taken soon by the Administration, the bi-partisan Congressional support for Tribal Self-Governance as a Tribally driven project, the initiative will be abruptly halted by an obstructionist bureaucracy. The permanent legislation authorizes up to twenty Tribes a year to enter Self-Governance as well as a negotiated rule-making process directly involving Tribal leadership in regulatory decision-making.' It is imperative that the negotiated rule making process be tribally oriented. The Federal bureaucracies unwillingness to accommodate change will likely translate to a stalemate over the most promising Indian Affairs policies since the Indian Self-Determination Act of 1975. This would be most frustrating and disappointing, considering the similarities to the expressed Presidential policies.

In advancing the Self-Governance initiative, we are also proposing a Tribal base budget concept that would offer stability to Tribal management and operations. The BIA has now informed tribes that they are now estimated to receive only fifty percent of Tribal negotiated Contract Support Funds or indirect costs in FY'94. In these instances, Tribal governments are being blamed for bureaucratic ineptness and criticized for finally beginning to recover their true indirect costs. Inflation adjustments are rarely a consideration for Tribes, although the Federal Agencies annually receive this most basic provision.

The Office of Self-Governance will soon lose a valued individual, Mr. William Lavell, Director, as he will be retiring at the end of this month. The Tribes have been aware of his pending retirement for several months and Ms. Ada Deer, Assistant Secretary - Indian Affairs has been requested to take action for his eventual replacement. However, to date, a candidate has not been selected. It is critical that the individual selected for this office has the knowledge, skills and abilities to lend strong administrative experience to the Director's position, have a solid understanding of the U.S. Department of the Interior, but just as important, is the need to have a strong line of communication and understanding of Tribal Governments participating in this Tribally driven initiative.

The Indian Tribal Governmental Tax Status Act of 1982 needs to be amended in order to provide that tribes and tribal subdivisions may issue tax-exempt bonds under the same rules that apply to states and their political subdivisions. The only additional restrictions that would apply to tribes and tribal subdivisions should be that (a) the facilities financed by located within or in close proximity to the exterior boundaries of an Indian reservation, and (b) with respect to certain private activity bonds issued by a tribe or tribal subdivisions, an Indian ownership or Indian employment test must be met. Amendments need to replace the current restrictions on the issuance of tax-exempt bonds by tribes and tribal subdivisions with a provision that such bonds are to be issued under the same restrictions that apply to states and their political subdivisions. Amendments should also exempt bonds issued by tribes or tribal subdivisions from the prohibition against tax-exempt bonds being guaranteed by the Federal Government (with an exception for so-called "FDIC bonds"). This would enable the tribes to combine the benefits of this bill with those of the Indian Finance Act loan guaranty program (25 U.S.C. 1498, et seq.).

The Omnibus Budget Reconciliation Act of 1993 contains certain tax incentive provisions that in effect set the foundation of the Administration's program for development assistance to economically-distressed communities, including Indian Country. The tax incentives are part of the package referred to as the Empowerment Zones and Enterprise Communities provisions.

The President's Community Enterprise Board presents a rare opportunity to develop a coordinated effort to achieve measurable economic progress in Indian Country. It is an opportunity to gain Presidential support for an Indian economic agenda that has been developed by Indian people.

#### **RECOMMENDATIONS**

-Federal Government support is needed to validate the economic impact of Indian tribes within their respective States. Furthermore, to assist tribes in developing a better dialogue with State governments to promote Tribal business development.

-Address the built-in inequities in the abilities of tribes to compete with neighboring non-Indian jurisdictions.

-Begin the process of overcoming historical barriers created and sustained by failed and flawed federal policies and practices of the past two hundred years.

#### **TRUST FUND MANAGEMENT**

When it comes to the Trust Fund Management, the only thing the BIA has been able to prove is its years of inability to manage Indian trust funds. Past BIA investment policies and practices have resulted in a lack of realization of maximum investment and return opportunities. Tribal dollars have not been utilized in a manner consistent with the Tribe's desire for maximum gain and required safety. It appears as though Tribal funds are only invested to the degree in which the BIA's fiduciary responsibility is to be maintained at a minimal status. Meanwhile, our funds have been invested by the BIA in 3% or 4% CD's, while the Sac and Fox Nation has been able to prove that we can guide investment funds towards a 10% or higher rate of return.

The BIA is able to achieve a greater return on individual's accounts than they are able to obtain for Tribal Trust Fund accounts. Certainly, there is a need for consistency in the management and investment systems of these monies. Tribes should be allowed to provide a greater influence over how funds are invested, while working with the BIA to insure the investments are still secured to protect the Government's interest in maintaining the trust responsibility to the Tribes for their Trust Funds.

**RECOMMENDATIONS**

-The Congress needs to direct the BIA to be consistent in its application of policies for the investment of Tribal Trust Funds as well as Individual Trust Funds accounts.

-The Congress needs to direct the BIA to provide tribes more influence over how their funds are invested and allow for tribal input on the specific investment of the funds.

**HEALTH CARE REFORM**

Health Care Reform as it relates to the Native American Tribes/Nations, and especially the Self-governance tribes, leaves room for some concerns.

The PROPOSED Health Security Act indicates that the health programs that are mentioned in this ACT will be provided by Indian Health Services. However, just a few days ago we received information from Dr. Harry, Director, Indian Health Services Oklahoma Area Office in which he has indicated that 2,051.7 Full-Time employee hours will be cut in Fiscal Year 1994, this amounts to a reduction in staff force of approximately 84 employees. It is our understanding that this reduction may affect direct medical care services in some Indian Health facilities across the Oklahoma area. Please, understand that we in Oklahoma are not the only area to have reductions in force, this is Indian Health Services cuts nation wide.

Please, help us to understand how we are to become involved with this Health Care Reform when the very services that we depend on today are being cut. Is this effective or efficient? We think not!

We have a problem with the enrollment for benefits which is covered in Section 8302 in the President's Health Security Act. Why are Native Americans who already receive health benefits and are enrolled in their respective tribes/nations be required to enroll again. The way we understand this section is that unless a Native American ENROLLS listing an I/T/U (Indian/Tribal/Urban facility) as a primary care provider, then IHS and/or tribal facilities will not be responsible for payments of medical care. The failure to clearly explain this section, could and will result in undo financial hardship for the tribal members themselves and provides another wedge of distrust between tribal members and the very system that is trying to bring about Health Care Reform.

This brings about another concern. Every state will have a state Health Care Alliance, this Alliance will then be the over-sight agency for the distribution of all medical care payments. I.H.S. is to be a separate alliance, however, the compacting tribes/nations will have to decide if they want to remain under the I.H.S. umbrella or possibly join the State Alliances. Since many states have had State Alliance in effect in one manner or another, this leaves the compacting tribes in a very precarious state. There is no smooth flow of information regarding this concept. Oklahoma, for example, began with a Governor's Health Care Task Force and has now graduated to being a Health Care Alliance. It seems that it may very well be every tribe/nation for itself.

Section 8303. AUTHORIZATION OF APPROPRIATIONS discusses the dollar amounts needed to carry this out. What was the formula used to determine these amounts? How much input has the compacting tribes/nations had in regards to this formula? As far as I have determined there has been little input regarding the formula.

Section 8310. Infrastructure. This section deals with construction and renovation of medical facilities. This section deals only with Indian Health Service, what about the tribal and/or compacting medical facilities. We too, provide much needed medical care, and we like most I.H.S. facilities are cramped, out-dated and in general, not practical to operate, and yet we do. Because we are compacting will we be over-looked or denied additional monies. What is going to be the criteria for this endeavor, where will it begin and when? Within this Section, is also provides for IHS to have a revolving loan program, how will this be managed?

Section 8311. Financing. This section provides for the "establishment of a comprehensive benefit package fund. This fund is to be administered by "the health program of the Indian Health Service". How does this effect the compacting tribes/nations?

Presently, there are at least seven (7) proposed Bills before the U.S. Congress that addresses Health Care Reform in some manner. However, little consideration has been afforded to the Self-Governing Tribes/Nations, at this time we are requesting that the Self-Governing Tribes/Nations be given the opportunity to participate at a higher level than currently exists.

#### RECOMMENDATIONS:

-Inclusion of Self-Governance tribes in any future Health Care Reform planning sessions.

-Give greater consideration to the everyday operations of a Native American medical care facility. Understand how we provide care.

-Provide a clearer understanding of the Self-Governing tribes/nation's relationship with Indian Health Service and State Alliances.

-Irregardless of what financial formula is developed, please allow Self-Governing tribes/nations, as well as, all other Native American tribes/nations to take an active part in the development of any formula that would effect them.

**CLOSING**

Congressman Mike Synar has stated that "Recent economic indicators suggest that 1994 will mean a stronger American economy." "We need to make sure that this national recovery doesn't by-pass any of our Native American communities." We agree with Congressman Synar wholeheartedly. The issues you have chosen for this Hearing speak well of your sensitivity to the priorities of the Tribal Governments as these are issues that must be addressed both nationally and in the State of Oklahoma. The Federal Government's performance towards Native Americans over the past centuries has indeed been egregious. The time has come for Tribal Governments to receive their proper recognition, overcome the numerous obstacles that are constantly placed before us and return to us our rightful Governmental authority.

Chairman Richardson, in closing and on behalf of the elected officials of the Sac and Fox Nation, I would like to thank you for the opportunity to express our views on these issues which are vital to the Sac and Fox Nation. We respectfully request to leave the record open for us to submit additional testimony on these issues at a later date.

**STATEMENT OF LEONARD HARJO**

Mr. HARJO. Mr. Chairman, Congressman Synar, on behalf of Principal Chief Jerry Haney of the Seminole Nation, I would like to take this opportunity to present our written statement. Thank you for giving us the opportunity to present our written statement to the Subcommittee on Native American Affairs on issues of concern to the Seminole Nation.

As you all have heard, many of the areas in which Indian tribes are interested in is gaming, health issues—one concern briefly with regard to health is that if you would—in consideration of how you all feel we should fit into the health care system, we would like to ask that you not place Indian people in a position of having to choose between their rights as U.S. citizens and their rights as Indian people.

As stated earlier, with regard to gaming, we would like to ask you all to ensure that the tribes in Oklahoma are placed in a legal position that allows us to benefit from Class III gaming and other areas that are being enjoyed by tribes in other parts of the country.

One of the things that has not been mentioned this morning that we would like to urge Congress to consider passage of is Senate Bill 391, which deals with granting Indian tribes equal treatment under the Internal Revenue Service Code with respect to the unemployment tax. At the present time, the Seminole Nation is not a participant in the state unemployment system, yet we are required by law to pay the federal unemployment tax and our employees receive no benefits from the payment of that tax. And we would like your consideration in allowing us other options than just simply participating in the state system.

The focus of our written comments—and I would like to highlight some of those—deals with the trust fund management issue. We would like to commend Congressman Synar and your Committee on House Resolution 1846. However, there are some areas that we would like you to consider amending prior to passage.

As some of you may know, and I think Congressman Synar particularly, who assisted then Congressman Watkins in obtaining the trust fund distribution for the Seminole Nation, we have a rather large trust fund. In 1991 we received \$38 million as a land claim in Florida. Since that time, we have enacted several programs that benefit our people, and as of the beginning of this year, we still had about \$38 million in our accounts in Albuquerque.

In the last couple of years, we have been working with the Bureau on improving management of those funds, and we were rather surprised to learn that when we compared the Bureau's performance against the Shearson-Lehman/American Express Intermediate Government Bond Index, that in a two year period beginning in the second quarter of 1991 and ending in the second quarter of 1993, the Bureau had under-performed that index by the tune of about \$5.1 million. So we have a very strong interest in seeing that trust fund management improves and that we be given more of an opportunity to manage those funds.

The first area of amendment deals with the demonstration plans. We are requesting that prior to finalizing any provisions regarding demonstration plans, that Congress consider adding provisions that clarify the status of the Seminole Nation and other similarly situ-

ated tribes. For example, in 1990, the Distribution Act pertaining to the Seminole Nation is a unique law that provides trust fund management and it has provisions in that particular law that may run into conflict with what you are proposing. In particular, our law authorizes Secretarial approval of tribal investment decisions under a plan approved by the Secretary. It is similar to the demonstration program concept, but you know, we want to ensure that we do not sacrifice in terms of participating in this law, some of the things we have already gained specifically from Congress.

Second, it has been our experience in dealing with the Bureau and the trust fund management group, that there are some areas that need to be addressed in terms of definitions with respect to key terms. Things such as interest, investment income, interest rate. In talking to the Bureau and other people and in the investment community, you find different interpretations of what those terms mean and we feel that you ought to explicitly define some of those areas within the law that is being proposed.

The third item has to do with the Secretary's fiduciary responsibility. We are very concerned that the current form of the language that is written in the bill might be interpreted as the exclusive definition to federal trust responsibility. And we feel that that would be contrary to the current fiduciary standards that have been established by federal courts.

In particular, we would like to see the language within the law, and we have got recommendations in our statement, that the introductory language to one of the subparagraphs, subparagraph (e) be clarified so that interpretation cannot be made by someone else outside.

The fourth item has to deal with information and compensation for losses. In reviewing the bill, we did not have any idea what you meant by Section 102 and we would like to see some clarification there if possible.

One area in addition, I will conclude on this, has to do with making sure that the tax consequences of investment and interest income on trust funds that are taken out from under the management of BIA retain their tax-exempt status, particularly with regard to distribution to tribal members.

I would like to thank you again for giving us the opportunity to make our comments.

Mr. RICHARDSON. Very good testimony, Mr. Harjo, you have been very helpful to us as we have developed this legislation.

Ms. Skeeter.

[Prepared statement of Seminole Nation follows:]

**STATEMENT OF JERRY G. HANEY, PRINCIPAL CHIEF  
OF THE SEMINOLE NATION OF OKLAHOMA**

Before the Subcommittee on Native American Affairs,  
House Committee on Natural Resources

January 20, 1994, Tahlequah, Oklahoma

**PRELIMINARY STATEMENT REGARDING LEGISLATIVE NEEDS**

Mr. Chairman, thank you for this opportunity to present a written statement to the Subcommittee on Indian Affairs regarding issues which are of serious concern to the Seminole Nation of Oklahoma. Due to my absence from the state, my representatives at the hearing today are Leonard Harjo, Economic Development Director of the Seminole Nation, and Thomas McGeisey, Jr., Treasurer of the Seminole Nation. Mr. Harjo will give verbal testimony highlighting some of the concerns expressed in my written statement.

At this time the Seminole Nation of Oklahoma is in a reorganization process. During the past two years the Nation has adopted a Code of Laws which contains titles on a variety of topics, including judgment fund programs, courts, evidentiary rules, civil procedure, juvenile law, criminal laws, elections and finance, including trust fund management. The Nation is currently updating other laws, including its economic development law and gaming code.

This tribal legislative activity reflects the Nation's current goals of strengthening its governmental powers, protecting tribal trust assets and the assets of tribal members, pursuing land acquisition, and engaging in economic development and gaming activities to increase tribal revenues. Consistent with these goals, the Seminole Nation's major concerns today are as follows:

- (1) Consider amendments to H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act, prior to passage;
- (2) Enact Senate Bill 391, which would result in the ability of tribes to provide unemployment compensation benefits to tribal employees;
- (3) Place Oklahoma tribes in a legal position which allows them to enjoy the benefits of Class III gaming enjoyed by other tribes;
- (4) Streamline the trust acquisition process to allow more timely approvals of trust acquisitions;
- (5) Solve restricted land problems of individual members of the Five Tribes through passage of federal legislation

amending a series of discriminatory federal laws which have resulted in the wholesale loss of Five Tribes lands, eroding the jurisdictional land base of the Nations;

- (6) Address special health care needs of Indians; and
- (7) Increase tribal court funding.

A more detailed explanation of these needs are provided below. Please be advised that our main focus here is on trust fund management, due to time constraints which prevent us from providing a more detailed statement regarding other concerns. Although all concerns may not be thoroughly presented here, the Seminole Nation considers all of the above issues of great importance to the Nation and other Oklahoma tribes.

## I. MANAGEMENT OF TRIBAL TRUST LANDS

### A. Introduction

In 1976 the Seminole Nation of Oklahoma and the Florida Seminole Tribe were awarded compensation for lands taken by the federal government in the early 1830s, in Seminole Nation v. United States, Indian Claims Commission Dockets 73 and 151. The Oklahoma share, which was approximately \$ 11.1 million, increased to approximately \$ 42.2 million as of May 1, 1991, when distribution between the two tribes occurred. Since distribution in 1991, the Seminole Nation has spent several million dollars on tribal programs. The Seminole Nation of Oklahoma had more than \$ 38 million remaining in trust at the beginning of 1994.

For the past year the Seminole Nation has engaged in an educational process based in part on presentations by investment firms regarding investment management. By legislation the Nation has established the Seminole Nation Trust Fund Management Board, which is comprised of the Principal Chief, Treasurer, three General Council members and two persons with experience in financial management.

The Trust Fund Management Board is particularly interested in possible methods of improving investment returns while maintaining tribal funds in trust. The Board is currently developing an investment policy statement for future approval action by the General Council. The policy statement will be provided to OTFM and eventually may be used by a consultant who directs BIA management of Seminole Nation trust funds. This potential plan of action is consistent with a 1992 letter from the BIA Office of Trust Fund Management, which states that the Seminole Nation may hire outside consultants to provide investment directions to OTFM without the necessity of an investment plan and without taking funds out of trust.

The Trust Fund Management Board desires improved management of Seminole Nation trust funds by the BIA. A calculation based on comparison of the Shearson Lehmann American Exchange Intermediate Government Bond Index (hereinafter referred to as SLAE IG Index) with the Seminole Nation of Oklahoma judgment fund investment returns for a two year time period beginning with the second quarter of 1991 through the second quarter of 1993 indicates BIA underperformance in the approximate amount of \$ 5.1 million. A similar calculation of the BIA rate of return for Seminole Nation investments from late 1976 or early 1977 through the first quarter of 1991 indicates underperformance in the approximate amount of \$4 million.

Due to the size of its trust fund and estimated lost investment income, the Seminole Nation has a particularly strong interest in federal trust fund management, as well as a strong interest in its potential role regarding investment of its trust funds.

The Seminole Nation supports the concept of proposed federal legislation introduced by Congressman Mike Synar on April 22, 1993, H.R. 1846, entitled the Native American Trust Fund Accounting and Management Reform Act (hereinafter referred to as H.R. 1846), but it has several serious concerns regarding the bill. The Seminole Nation requests Congress to consider possible amendments of the bill prior to passage.

**B. Suggested Amendments to H.R. 1846**

**1. Demonstration Plans**

The proposed federal legislation, H.R. 1846, Sections 203 and 204, would authorize development of demonstration plans by tribes which would "demonstrate a new approach" for the management of tribal or individual Indian funds held in trust by the United States for such tribe or the members of such tribe. Such a plan could include management (including investments) of funds directly by the tribe in financial institutions selected by the tribe, subject to supervision and oversight by the Secretary.

The Seminole Nation requests that prior to finalizing the provisions relating to demonstration plans, Congress consider adding some provision clarifying the status of the Seminole Nation and other similarly situated tribes. The 1990 federal Seminole Nation judgment fund law is a unique law regarding trust fund management which must be taken into account before provisions of current proposed federal legislation related to demonstration projects is finalized and enacted.

The Seminole Nation's 1990 federal law authorizes Secretarial approval of tribal "investment decisions" under a "plan". It is similar to the demonstration plan concept in that it sets similar,

but not identical, standards for Secretarial review. It is also similar to the demonstration plan concept in that it limits Secretarial liability for approval of an "investment decision," although the federal Seminole law does not expressly place the same type of supervisory requirements on the Secretary as the proposed sections dealing with demonstration plan. <sup>1</sup>

The federal Seminole Nation judgment fund law authorized the Seminole Nation to submit a usage plan to Congress for approval. The usage plan which received Congressional approval is codified in Title 18-A, § 109 of the Code of Laws of the Seminole Nation. The usage plan authorizes Secretarial approval of an "investment plan" which could result in taking funds out of trust. The usage plan requires a Secretarial approval decision within sixty days of receipt of the investment plan; this is inconsistent with the demonstration plan requirements of approval within ninety days. <sup>2</sup>

The Seminole Nation's usage plan requires an annual audit of funds managed under an investment plan, with a report to be given to the General Council and interested tribal members. The report would include financial statements, amount of interest earned from each investment and statement of the investments of the fund with

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<sup>1</sup> Public law 101-277, Act of April 30, 1990, \_\_\_ Stat. \_\_\_, Section 4 provides: " (e) Tribal investment decisions under a plan shall be subject to the approval of the Secretary. Approval shall be granted within a reasonable time unless the Secretary determines, in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this section." It further provides: "(f) Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this section, for any losses in connection with such investment decision."

<sup>2</sup> Title 18-A, § 109(b) of the Code of Laws of the Seminole Nation of Oklahoma provides: "(b) Investment Plan; General. If in the future the Seminole Nation of Oklahoma desires to undertake investment of some portion or all of the funds, the tribal governing body may present an investment plan to the Secretary for approval. Approval shall be granted within sixty (60) calendar days of receipt of the investment plan unless the Secretary determines, in writing, that the plan would not be reasonable or prudent or would otherwise not be in accord with the provision of the Act. Upon approval of the investment plan by the Secretary, funds to be managed under the investment plan are to be transferred to the Seminole Nation of Oklahoma at a mutually agreed time. Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this plan, for any losses in connection with such investment decision."

an appraisal at market value. See Title 18-A, § 109(c) of the Code of Laws of the Seminole Nation.

The provisions of the proposed law regarding demonstration projects should be clarified to state its effect on similar but not identical provisions in the Seminole Nation judgment fund federal legislation and federally approved usage plan (which is not an investment plan, but which authorizes development of an investment plan). The proposed federal legislation should expressly state whether it is intended to be controlling over prior inconsistent special federal legislation governing a particular tribe's judgment fund management.

The proposed federal legislation should include provisions which define the standard of review to be used in determining the success of demonstration projects and in determining authorization of taking property out of trust.

## 2. Definitions

The proposed bill, H.R. 1846, fails to contain definitions of key terms used, or which should be used, in the bill. The following terms should be defined in the bill to avoid future disputes over interpretation of the legislation: "interest", "investment income", "investment functions", "interest rate", "appropriate amount of interest", "investment plan", "investment decision", "investment policy statement", "loss", "principal", "protection against substantial loss of principal", "transfer of funds", "trust funds," and "type of deposit or investment."

## 3. Secretary's Fiduciary Responsibility

Proposed federal legislation, H.R. 1846, would statutorily define the Secretary's fiduciary duty by establishing required conduct related to trust fund management. Section 301 of H.R. 1846 would amend 25 U.S.C. § 162a to add a new sub-section (e), which begins with the language "The Secretary shall properly discharge the trust responsibilities of the United States under this section by..." and then lists numerous fiduciary duties, including accounting systems, reconciliations, written policies and procedures and adequate staffing.

In its current form this language might be interpreted as the exclusive definition of the federal trust responsibility. This would be contrary to current fiduciary standards established by caselaw. The fiduciary duty of the United States with respect to tribal trust funds includes the obligation to maximize the trust income by prudent investment. Cheyenne-Arapaho Tribes of Indians of Oklahoma v. United States, 512 F. 2d 1390, 1394 (U.S. Ct. Cl. 1975) The United States has the burden of proof to justify less than a maximum return. Id.

The proposed introductory language in subparagraph (e) should be clarified so that it cannot be interpreted in the future as limiting the federal trust responsibility. This could be accomplished by changing the first sentence in subparagraph (e) to read: "Proper discharge of the Secretary of Interior's trust responsibility shall include, but not be limited to, the following requirements..." The following sentence might be added at the end of the section: "Nothing herein shall be interpreted as limiting the fiduciary duty of the United States with respect to tribal trust funds to maximize the trust income by prudent investment."

#### 4. Information and Compensation for Losses.

Section 102 of the proposed H.R. 1846 appears to provide only marginal relief to tribes by authorizing the Secretary to make payments to an Indian tribe in full satisfaction of any claim of the tribe for interest on amounts deposited or invested on behalf of the tribe before the date of its enactment, if the tribe was not paid the appropriate amount of interest on such funds, said payments to be in an amount equal to the interest which would have been earned if funds of the tribe had been deposited or invested in accordance with 25 U.S.C. § 162a.

This provision appears to refer to incorrect division of interest payments in various tribal accounts, resulting in losses by some tribes prior to the effective date of the act. It does not expressly require the Secretary to report losses to the tribes or define documentation required to prove losses. Perhaps the intent is that when audits of tribal trust funds are completed, tribes will discover the losses in the resulting reports. However, this is not clear, and should be clarified.

Although the proposed legislation contains accounting requirements in Section 501, there is a question as to whether it fully addresses the issue of potential future losses by the BIA. The legislation should define the documentation the BIA needs to establish the existence of and amount of losses after passage of the bill. It should expressly state responsibility of Interior Department to inform accountholders of losses.

Section 102 does not appear to include compensation for loss of investment income due to the failure of the BIA to maximize the returns by prudent investments. Although this provision does not expressly eliminate the ability of tribes to bring legal actions against the federal government for breach of trust, it might be wise to add the following provision:

Nothing contained herein shall preclude an Indian tribe from filing an action in federal district court or in the United States Court of Claims for an accounting, loss of interest and loss of investment income based on breach of fiduciary responsibilities.

**5. Tax Consequences for Interest and Investment Income Earned from Trust Funds Managed Pursuant to Demonstration Project or Plan and Withdrawn from Trust.**

Section 207 of the proposed legislation provides that funds managed pursuant to a demonstration program and distributions made from such funds, will be treated in the same manner as if the funds were managed directly by the Secretary for IRS income tax purposes. It is suggested that provisions regarding taxation be contained in a separate chapter, and provide as follows:

Interest and investment income from trust funds managed pursuant to a demonstration plan or pursuant to a plan otherwise authorized by federal law and approved by the Secretary of Interior, and interest and investment income from funds which have been disbursed to a tribe for authorized program uses, shall not be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member who would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of \$2,000, any other Federal or federally assisted program.<sup>3</sup>

**6. Audit Requirements**

Although H.R. 1846 does not contain provisions requiring completion of the audit of tribal trust funds prior to removal from trust, according to House Rep. 102-499 at 18, fn. 59, a series of appropriations laws have prohibited transfer of funds under a contract with any third party for the management of tribal trust funds until the funds held in trust for such tribe or individual have been audited and reconciled and the tribe has been provided with an accounting of such funds, and the appropriate committees of Congress and the tribes have been consulted about the terms of the proposed contract or agreement. H. Rep. 102-499 at 18, fn. 59. The firm of Arthur Anderson is currently working on the required audit, which may be completed in 1995.

The proposed legislation should include a provision which would afford tribes the option of withdrawing funds from trust prior to completion of the audit of tribal trust funds, without losing the right to recover any lost income from the BIA.

**II. UNEMPLOYMENT COMPENSATION BENEFITS FOR TRIBAL EMPLOYEES**

The Seminole Nation has had no unemployment coverage for its

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<sup>3</sup> This proposed language is similar to language contained in Section 8(b) of the federal legislation concerning the Seminole Nation.

employees since 1986, when the State of Oklahoma prohibited it from re-entering the state system due to a tax debt to the state. While tribal employees have received no benefits, the tribal liability for federal unemployment taxes has continued.

The Seminole Nation is working to correct this problem by pursuing state legislation which would allow it to return to the state system. However, a better remedy is presented in the form of S. 391, which would enable tribes to be treated like state and local governments and non-profit entities under the Federal Unemployment Tax Act. This would enable tribes to pay into, or "reimburse" the unemployment compensation fund only those amounts received by their unemployed workers. The Seminole Nation, as well as the other members of the Inter-tribal Council of the Five Civilized Tribes, supports passage of this law, which is badly needed by Indian tribes nationwide. (See attached Inter-tribal Council Resolution No. 94-08.)

### III. CLASS III GAMING

The Seminole Nation successfully engages in Class II gaming activity. The Nation is interested in pursuing Class III gaming, and in 1992 submitted a request to the state for negotiations on a Class III compact, a request which has been virtually ignored. The Seminole Nation now finds itself in the same position as other Indian tribes in Oklahoma, burdened with case precedent which prevents Class III compacting in Oklahoma. A legislative remedy in the form of amendments to the Federal Indian Gaming and Regulatory Act is needed to correct this problem, as Oklahoma tribes are now at a standstill, watching other tribes nationwide reap the benefits of Class III gaming.

### IV. TRUST ACQUISITIONS

The Seminole Nation wishes to acquire and place land into trust as expeditiously as possible. It is the Nation's understanding that trust acquisition in Oklahoma can be a long process, sometimes taking years. The Nation desires some form of remedy which would allow more timely trust acquisitions.

The Nation is also concerned that federal regulations and legislation may be moving in the direction of restricting trust acquisitions by the Nation in the Oklahoma City area. This land is commonly believed to be "unassigned lands," because at the turn of the century during the allotment period, no tribe had possession of the land. In truth, this area was within the original domain of the Seminole Nation and Creek Nation following removal to Indian Territory in the 1830s. The loss of this land by the Seminole Nation due to treaties forced upon the tribes after the civil war was inequitable. The federal government may now add insult to injury by denying the Seminole Nation its rightful claim to acquire trust property in this area in the form of regulations which might

define the original reservation boundaries of Oklahoma tribes as they existed at the time of allotment. Such a restriction should not be placed on the Seminole Nation.

#### **V. RESTRICTED LAND PROBLEMS**

The Seminole Nation and the Cherokee, Choctaw, Chickasaw and Creek Nations) have been working on the development of amendments to a series of federal laws, including the Act of August 4, 1947, 61 Stat. 731, which deal with the rights of individual tribal members in matters affecting their restricted Indian lands. These laws include provisions which require that heirs be one-half or more Indian blood in order for inherited property to retain its restricted status. They give state courts jurisdiction over approvals of leases and conveyances of restricted lands and over probates of estates involving restricted lands. They have resulted in the wholesale loss of Indian lands throughout the twentieth century, a process which must be halted. It is anticipated that the Inter-tribal Council of the Five Civilized Tribes will submit draft legislation amending the unfair laws this spring. (See attached Inter-tribal Council Resolution No. 94-03.)

#### **VII. TRIBAL COURT FUNDING**

Federal funding assistance is needed for tribal courts. The Seminole Nation has not to date amended its constitution to expressly authorize the exercise of judicial powers and is currently using a Court of Indian Offenses to address its Court needs. Funding for a tribal court is a concern which is impeding the Nation's progress toward full self-government.

#### **VIII. HEALTH CARE REFORM**

**(STATEMENT BY JAMES FACTOR, ASSISTANT CHIEF, SEMINOLE NATION OF OKLAHOMA, AND CHAIRMAN, OKLAHOMA AREA INTER-TRIBAL HEALTH BOARD):**

The Government guaranteed American Indians health care through treaties, acknowledged the federal responsibility of elevating the health status of American Indians to the highest possible level in the Indian Health Care Improvement Act of 1976, and now the Health Care Reform Act will give the Indian Health Service up to five years (1999) to renovate and expand to provide all the services guaranteed in the comprehensive benefits package.

Again the American Indian is at a crossroad, which path or choice to follow. Should we stay with Indian Health Service or take one of the available health plans? As American Indians, we already have the unique right of being guaranteed health care, so WHY MUST WE BE FORCED TO MAKE A CHOICE? American Indians must be allowed to stay with an improved I.H.S., which is a treaty right, AND (not "or") also be able to participate in any other available health alliance plans, which is our right as United States

citizens.

The per capita expenditures on health care for American Indians is less than a third of what is spent on the general U.S. population. The division of I.H.S. funding within its twelve Areas even shortchanges the Oklahoma Area on a per capita basis. This must be addressed in the proposed changes.

Restructuring of the I.H.S. gives us an opportunity to reduce any administrative waste, but must not affect the ability to provide health care service. Consultation with the tribes is essential in solving this problem.

Full consultation with Tribal leaders, Congress, and the Clinton Administration is necessary, if this health care reform plan is to be effective.

#### CONCLUSION

The Seminole Nation appreciates the efforts of this Subcommittee to address the needs of Indians. The Seminole Nation will assist your efforts to further our common goals in every way possible.

Jerry G. Haney  
Principal Chief  
Seminole Nation of Oklahoma

**THE INTER-TRIBAL COUNCIL  
of the FIVE CIVILIZED TRIBES  
Resolution Number: FY 94-08**

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes represents over 250,000 Indian people throughout the United States, and

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes hereby finds that Indian tribes which do not participate in state unemployment systems are still required by federal law to pay federal unemployment taxes, without any resulting benefit to tribal employees;

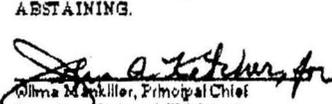
WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes hereby recognizes that unemployment compensation is essential to tribal employees and their families;

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes hereby finds that Indian tribes should be recognized by federal law as having the same status as states and municipalities for federal unemployment tax purposes, and that an Indian tribe should be exempt from payment of such federal taxes if they opt to develop their own unemployment compensation systems for unemployment compensation of tribal employees;

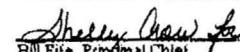
WHEREAS, S 391, federal legislation now pending before Congress, provides a mechanism to meet tribal unemployment tax needs;

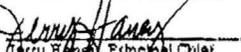
NOW THEREFORE BE IT RESOLVED, that the Inter-tribal Council of the Five Civilized Tribes supports passage of S 391.

Adopted by the Inter-Tribal Council of the Five Civilized Tribes meeting at Pountshhead Lodge, Oklahoma, on January 14, 1993, by a vote of 25 FOR, 0 AGAINST and 0 ABSTAINING.

  
Olma Mackiller, Principal Chief  
Cherokee Nation of Oklahoma

  
Holly Roberts, Chief  
Chickasaw Nation of Oklahoma

  
Bill Fite, Principal Chief  
Muscogee (Creek) Nation

  
Jerry Eaney, Principal Chief  
Seminole Nation of Oklahoma

  
Bill Anostubby, Governor  
The Chickasaw Nation

### STATEMENT OF CARMELITA SKEETER

Ms. SKEETER. Good morning. I met you in Little Rock about a year and a half ago, you took me to dinner when we were there, about 50 Indians came in to get—

Mr. RICHARDSON. Did I pay or—

Ms. SKEETER. You paid, thank you very much. [Laughter.]

I am Carmelita Skeeter, I am the Executive Director of the Urban Health Program in Tulsa. Tulsa has the second largest Indian population in the United States, LA is number one.

We have two urban programs in Oklahoma, Tulsa and Oklahoma City. Initially we were funded out of Title V, Indian Health Care Improvement Act, but in 1985, we went to Congress, asked that our money be taken out of Title V, moved over to Indian Health Service, line item Hospitals and Clinics, and we became a demonstration project under Indian Health Service. That has proven very beneficial for Oklahoma, the two urban clinics in Oklahoma. We were able to do that because Oklahoma is a contract health care state.

We have enjoyed the increases; as IHS has got their small increases, we have received ours. Up until that time, we were fighting with Congress every year to keep our money in because they were always writing the urban Indians out of the budget. That is not saying that we are home free, we still have a great need. Like I said, we have the second largest population of Indians in Tulsa.

Our comprehensive health program includes two family practitioners, mental health, alcohol/drug abuse, AIDS funding for testing and counseling. We have a child welfare program and we have a WIC program which is contracted with the Cherokee Nation, and we have had that since 1979.

Our program is in dire need of a new facility. Congress gave us \$325,000 this past session to go towards a new facility and we have entered into a federally qualified health center compact with the state of Oklahoma for medicare and Medicaid. That is increasing our reimbursement on our third party. We were told initially from Indian Health Service that collecting third party monies would go towards your facility and upgrading everything in your facility to be JCAH accredited.

This past funding cycle, Indian Health Service is coming back saying, well since we are being cut in our funds, that money now needs to go to your base to provide direct services. We have not received the facility yet, we have not received the accreditation, so we still need the money to go for the first intended purpose and not to be taken out to go for basic health care.

We do support the position that the President has of keeping Indian Health Service separate from the state alliances, because any time any Indian funds or any Indian programs come into the state—and I do not know that Oklahoma is unique in that area—but any time Indian money comes into the state of Oklahoma, some way Indians never receive it.

With our program, this past year we had our AIDS contract cut with the state because of the state tight budget. Last year we had another program cut that was for alcohol and drug abuse prevention. These are very high priority needs in the Indian community. The state of Oklahoma says they have a budget reduction, so the

automatically do with the Indian money that should be coming to us to help teach AIDS prevention and alcohol and drug abuse prevention. The programs that I had in place were very beneficial to the Indian youth in the city of Tulsa. As you know, the alcohol and drug abuse rates in Indians is extremely high.

I have not received any other justification from the state of Oklahoma other than to say they had a budget cut and this is where they were cutting their funds. We have 21 AIDS/HIV patients at this time. The youngest is three years of age. So with the reduction in funds from the state, the reduction in funds from Indian Health Service, we do not know where we are going to get the money to continue to take care of these patients.

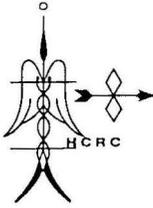
So I want to request strongly, if the federal money is coming into the state of Oklahoma for Indian programs, I need the federal government to see that the state is actually getting that money out to Indian programs. And I am sure Oklahoma is receiving those funds. Where they are going, I have no idea, because from everyone I talk to, they are not coming down to the Indian urban programs or the tribal programs. So I think that is something that we need to look into.

The BIA has made another recommendation to cut urban programs in Indian child welfare by 10 percent. The program I have now is only \$46,000 to serve 17,000 Indians and as you know, there are more Indians moving to the urban areas all the time. Once they get there, then they are faced with the hardships of unemployment, divorce, alcohol, drugs and all of the other variables of living in the urban area. We have a court case pending now of the death of a child from abuse. So if the BIA continues to cut back, then they are totally ignoring the urban population of Indians and I know that the tribes have the law behind them and the money is to go to them first. But they have to consider the urban population, and particularly in Oklahoma.

I see I have the red light. I have turned in written testimony with some more hard data on it. So thank you very much.

Mr. RICHARDSON. Thank you very much. Nice to see you again.  
Mr. Kauley.

[Prepared statement of Ms. Skeeter follows:]



**INDIAN HEALTH CARE RESOURCE CENTER OF TULSA, INC.**

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(918) 582-7225, FAX (918) 582-6405

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W R I T T E N    T E S T I M O N Y

HOUSE INTERIOR SUBCOMMITTEE ON  
NATIVE AMERICAN AFFAIRS

PRESENTED BY  
CARMELITA SKEETER, EXECUTIVE DIRECTOR  
INDIAN HEALTH CARE RESOURCE CENTER OF TULSA, INCORPORATED  
TULSA, OKLAHOMA

On Behalf of  
INDIAN HEALTH CARE RESOURCE CENTER OF TULSA, INCORPORATED  
TULSA, OKLAHOMA

January 20, 1994

WRITTEN TESTIMONY

ORAL TESTIMONY BY WITNESS: CARMELITA SKEETER, EXECUTIVE DIRECTOR  
FOR: INDIAN HEALTH CARE RESOURCE CENTER OF TULSA, INC.

Congressman Bill Richardson and Congressman Mike Synar:

Indian Health Care Resource Center is a nonprofit comprehensive health care facility. Our mission is to elevate the physical and mental health of the urban Indian population of Tulsa to the highest level possible. Indian Health Care is an Indian Clinic for all Federally Recognized Tribal members. We provide outpatient, medical, dental, mental health, chemical dependency, optometry, HIV/AIDS testing, counseling, outreach, Women, Infants, and Children (WIC) Nutritional program, and pharmacy services for Tulsa's 18,000 Indians and their dependents. We have a grant from Administration for Native Americans (ANA) for economic development. We are funded by federal, state and private grants and contracts, third party reimbursements, and private donations. We are State certified for Federally Qualified Health Centers (FQHC) and receive cost-based reimbursement rather than fee for service reimbursement. We have been in operation for 17 years.

For nine years, we were funded out of Title V, Indian Health Care Improvement Act. In 1985, Congressional action moved our funding from Title V to 01 Line Item for Hospitals and Clinics of Indian Health Service (IHS) budget. This action made us a national demonstration project for IHS. We are one of two organizations in the nation. Oklahoma City Urban has this status. The new Indian Health Care Improvement Act has given us this status until year 2000, Section 512 of PL 94-437. Oklahoma City and Tulsa are to be treated as service units in the allocation of resources and coordination of care and shall not be subject to the provisions of the Indian Self-Determination Act for the term of such projects. The Secretary shall provide assistance to such projects in the development of resources, equipment and facility needs.

Indian Health Care's biggest need today is a facility that meets all the federal and state laws regarding Americans with Disabilities Act. We have made a big step in that direction with the \$325,000 given to us in the last federal budget passed. This \$325,000 plus our third party collection will enable us to lease a new facility.

We support President Clinton's Health Security Act proposal on how it affects IHS and tribes.

American Indians and Alaska Natives who are eligible to receive services also will be eligible to receive services according to the current version of the Health Security Act. This will guarantee a level of care to Indian people not based on availability of funds.

American Indians would be able to enroll in IHS programs to receive services at IHS facilities, a tribal health care facility or an urban Indian program.

If American Indians enroll in a health care program other than IHS, they must pay the same average amount for services as non-Indians. Individuals cannot be enrolled in IHS and another health care program simultaneously.

We support this proposed health plan for American Indians so the Indians will not get left out of universal health care. It has been historical that anytime funds and responsibility of Indian programs are turned over to the State, Indians get the short end of the funds.

The Oklahoma State Health Department did not award any HIV/AIDS prevention, education and testing funds to any Indian programs this year. Indians have the highest STD rates and teen pregnancies of any minority group. We have high alcohol and drug abuse. With all these factors, our race is a prime target for HIV/AIDS. The State of Oklahoma and IHS are not showing enough concern for this deadly disease. Indian Health Care Resource Center now has 21 HIV/AIDS patients, the youngest being three years old.

IHCRC did receive a contract from the state, but this is for gay males and youth of color. We are to educate safe sex of gay men and youth that have sex with men.

Our youth program on alcohol and drug abuse prevention was not renewed this year through the Oklahoma State Mental Health and Alcohol Abuse Department. This program was five years old. We taught children running for fun and competition. We held self-esteem classes, American Indian culture, songs, beadwork, flute making, and sweat lodges. This program was started so we could teach Indian children there are other ways of living besides alcohol and drugs.

Both of these issues deal directly with the heart of problems in the Indian community today and the nation at large.

We are asking the Congress to please review these programs and make sure funds are available for programs such as ours and nation-wide. We need to make sure if federal funds come to states for Indians that the Indians do receive them. It seems as soon as the states have budget shortfalls, the Indians suffer. IHS funds are not near the level that Indians need for health promotion and disease prevention. Until these funds can be increased, our health status will always be below the national norm.

BIA reorganization is decreasing urban funding by 10%, which Indian Health Care Resource Center of Tulsa, Inc. (IHCRC) cannot afford.

As everyone knows, the Indian population in urban areas is on the rise. Tulsa, Oklahoma alone has the second highest urban American Indian population in the United States. When Indians move to the urban areas, they lose their support systems, and fall into situations such as lack of employment, lack of health care, and poverty, not to mention alcohol and drug abuse, and divorce, which put undue stress on the family and make children vulnerable to neglect and child abuse. Ultimately this results in legal trouble for the families. The children are picked up by DHS and put in foster care. Urban programs are needed to help act as the liaison for the tribe and city court system or DHS. With the decrease in funding from the BIA, IHCRC can no longer fill this role. It has not been a problem for the big tribes of Oklahoma, such as the Creeks and the Cherokees, but it is a problem for the small tribes that do not have

the resources to help these families. IHCRC does not have the resources, even as a BIA grantee. IHCRC realizes the funds are for the tribes, but their members are in the urban areas too.

This past year, IHCRC was funded \$46,000 for two staff people. IHCRC had changed its objectives from DHS and court intervention to Family Preservation and Safe Home Placement. Safe Homes are certified by IHCRC and the State of Oklahoma. Mothers can temporarily place their children in Safe Homes, while they receive inpatient services for substance abuse problems. It is believed that women will more likely accept treatment if they do not fear the loss of their children.

Family Preservation is an alternative to placement. Working in the home, family preservation addresses family stresses, prevents removal, protects children, and keeps the family intact while enhancing its ability to function. This model meets Indian Child Welfare policy (23.3) of promoting the stability of Indian families. It addresses the service population's social problems leading to abuse and neglect. It targets children who fall under the Indian Child Welfare Act and would require mobilization of tribal resources should the State child welfare board become involved. Family Preservation promotes a "quick in - quick out" approach, to enable the family to regain control of their family with a new positive outlook.

Family Preservation is a cost effective program that uses a home-based systemic approach. It treats the family as a whole based on family and caseworker selected solutions. It teaches family skills that promote family independence and use of community resources for problem resolution.

Facts:

- The city limits of Tulsa, Oklahoma has the second largest urban Indian population in the nation (1990 Census).
- Indians are approximately 5% of Tulsa's total population.
- Cherokee, Creek, and Osage Nations' boundaries all meet in Tulsa.
- IHCRC serves 17,091 American Indians living within the city limits of Tulsa, Oklahoma and their dependents. Some 5,461 (32%) are children under 18 years of age. (1990 Census).
- Of the 661 confirmed child abuse and neglect cases in Tulsa County, an estimated 80 (12.3%) are Indian children.
- 73% of IHCRC clients earn incomes less than \$10,000 per year (IHCRC 1988). \$12,500 is a "very low income" for the Tulsa metroplex area (HUD 1990).
- 32% of Tulsa's Indian population over 25 have not completed high school; this compares to 28% for the general population (1980 Census).
- 8.9% of the Indians enrolled in high school will drop out (Tulsa Public Schools 1991).

- The undereducated are less likely to be trained in life coping or parenting skills and will more than likely have difficulty in meeting basic living needs.
- In 1990, there were 1,219 births to teens in Tulsa County; 12% (147) were Indian (Oklahoma Department of Health 1991).
- 1,013 (12.3%) of the State's confirmed abuse and neglect cases in 1990 were American Indian (Garrett 1991).
- Tulsa Indians have substance abuse problems, mostly with alcohol.
- In 1990, 70.2% (708) of the adult Indian arrests in Tulsa County were for alcohol/drug violations. Drunkenness made up 68% (483) of those arrests (Oklahoma State Bureau of Investigations, b, 1991).

In addition to Safe Home Placement and Family Preservation Services, availability and accessibility to services are also important factors that are met by IHCRC. IHCRC is centrally located for most of the Indian population. It is within safe walking distance from the central exchange point for all intercity bus routes. And, for Indians without transportation, IHCRC has four (4) vehicles to access clients to services. Perception and cultural barriers limit the use of child welfare programs by American Indians. Most other Tulsa programs are downtown, as is IHCRC. However, other agencies (non-Indian) are seen as intrusive, and too "white". Cultural barriers prohibit the use of other agencies. IHCRC has an understanding of customs, belief, humor, behaviors, and preferences that are specific to individual tribes, which brings about positive relationships between IHCRC staff and clients, and does not delay delivery of services.

Finally, the services IHCRC provides are not duplications of other tribal programs. The three (3) tribes with boundaries in Tulsa do not provide family preservation, counseling, parenting skills, recreational activities, or temporary placement. All three (3) tribes were contacted last year concerning the proposed services of the BIA program. All responded the services would enhance tribal programs and add to the continuum of care for Indian children.

Please do not support the reduction of the availability of funds for smaller tribes and urban programs such as IHCRC. The total number to be served by IHCRC's Family Preservation Services this year is 185. Reductions in funding limit the number of children that have the potential to live in normal, functional families without the fear of abuse and neglect.

IHCRC has been able to grow and meet some of the health needs of Indians in Tulsa with your help from Congress. Please continue to support us. Thank you for the time you have allowed me to speak.

**STATEMENT OF MATTHEW KAULEY**

Mr. KAULEY. Thank you, Chairman Richardson for the invitation to testify before the Subcommittee.

In 1971, the Association of American Indians was founded as an educational, scientific and charitable non-profit corporation, with a mission to raise the health status of American Indians to a level equal to that of the predominant non-Indian American population.

AAIP recognizes that manpower issues and the health status of Native people should be on the forefront of discussions when devising a new system of health care delivery. The issue of manpower shortage is clearly one which stands in the way of elevating the health status of Native Americans. The Indian physician is capable of delivering western medicine within the social context of an Indian community. Health care reform needs to assure culturally appropriate health care is provided and available to Indian consumers. AAIP is concerned that Indian communities may not be competitive and fall by the wayside. If this happens, then we are denying Indian people culturally appropriate health care which is a key element for improving the health status of American Indians and Alaska Natives.

In 1986, a study of Indian health by the Office of Technology Assessment reported that in the early 1950s, 56 percent of Indian deaths occurred in individuals younger than age 45. By 1982, that had only improved to 37 percent of Indian deaths occurring to those younger than 45, compared with only 12 percent of U.S. all races deaths occurring in that age group. In 1993, the Indian Health Service publication "Trends in Indian Health" reported the leading cause of death for American Indians and Alaska Natives was disease of the heart. IHS also reported tuberculosis to be at 520 percent greater; alcoholism 433 percent greater; diabetes 188 percent greater and accidents 166 percent greater than those for the U.S. all races population. The morbidity and mortality statistics represent a crisis in health care for American Indians. In the words of Gerald Hill, M.D., President of the Association, "I deem these numbers to be unacceptable." Health reform should not inhibit the progress we are making with Indian people. In the past decade AAIP has promoted culturally appropriate health care for American Indians and Alaska Natives. AAIP has advocated for traditional health care and the recognition of traditional healers. In addition, health care reform should include adequate funding. Historically, IHS allocations have been inadequate to meet the medical needs of Native American populations throughout all of Indian country, which in essence created rationed health care and deferred health services.

In manpower, in the Native American student, we have an incredibly valuable resource. We must promote the pursuit of health careers, namely by reaching out to undergraduates and high school students.

Mr. Chairman, I am reading portions of my report that I developed for specifically my presentation and I see that my time is running out. So I would like to move down to my recommendations.

And these are some very specific recommendations.

Health care reform should increase the recruitment, preparation and retention of American Indian and Alaska Natives into medical, nursing, public health and other health professions.

Expansion of the Indian Health Service Scholarship Program and Loan Repayment Program to fund all eligible applicants.

Establish a one physician pay system for all federal physicians. For example, Veterans Affairs physicians are funded through Title 38 funds and make an average of 25 to 30 thousand dollars more per year than IHS physicians.

Increase the bargaining power of Indian health care facilities in recruiting and retaining physicians to make them competitive with the VA system.

Establish equitable pay for IHS physicians to improve the vacancy and turnover rate of physicians in the IHS. Thus providing a higher quality and continuity of care for American Indians and Alaska Natives.

Expand the National Health Service Corps and related programs to attract and retain American Indians and Alaska Native health professionals to serve in Indian communities.

Change the rules regulating H.R. 2685, Physician's Comparability Allowances to enable to the IHS, Public Law 94-437 physicians to receive comparable pay during their payback obligations, thus serving as an incentive to remain in the IHS.

Finally, I strongly urge the Subcommittee recognize the importance of accessible, quality and culturally appropriate health care for all Native Americans/Alaska Natives.

I appreciate this opportunity to present testimony on behalf of the Association of American Indian Physicians. Thank you.

[Prepared statement of Mr. Kauley follows:]

**Subcommittee on Native American Affairs of the Committee  
on Natural Resources  
January 20, 1994  
Tahlequah, Oklahoma**

Matthew Kauley  
Association of American Indian Physicians  
1235 Sovereign Row, Suite C-7  
Oklahoma City, OK 73108  
Telephone #405-946-7072  
Fax #405-946-7651

Summary of Comments: Health Care Reform

**AAIP**

1235 Sovereign Row, Suite C-7  
Oklahoma City, OK 73107  
(405) 946-7072



## INTRODUCTION

Thank you Chairman Richardson for the invitation to testify before the Subcommittee on Native American Affairs on Health Care Reform and issues that affect Indian people. My name is Matthew W. Kauley, Acting Executive Director for the Association of American Indian Physicians (AAIP). In 1971 AAIP was founded as an educational, scientific and charitable non-profit corporation with a mission "to raise the health status of American Indians to a level equal to that of the predominant non-Indian American population." AAIP recognizes that manpower issues and the health status of Native People should be on the forefront of discussion when devising a new system of health care delivery. The issue of manpower shortage is clearly one which stands in the way of elevating the health status of Native Americans. The Indian Physician is capable of delivering western medicine within the social and context of an Indian communities. Health Care Reform needs to assure culturally appropriate health care is provided and available to Indian consumers. AAIP is concerned that Indian communities may not be competitive and fall by the way side. If this happens then we are denying Indian people culturally appropriate health care which is a key element for improving the health status of American Indians and Alaska Natives.

### **Health Status of American Indians**

AAIP recognizes the health condition of American Indians continues to remain poorer than the U.S. population. The most persistent and significant indicator of the health status of American Indians is the fact that Indians do not live as long as other Americans. A 1986 study of Indian health by the Office of Technology Assessment (OTA) reported that "In the early 1950's, 56 percent of Indian deaths occurred in individuals younger than age 45. By 1982, that had only improved to 37 percent of Indian deaths occurring to those younger than 45, compared with only 12 percent of U.S. All Races deaths occurring in that age group." In 1993, the Indian Health Service publication "Trends in Indian Health" reported the leading cause of death for American Indians and Alaska Natives was "diseases of the heart". IHS also reported tuberculosis to be at 520% greater, alcoholism 433% greater, diabetes 188% greater, and accidents 166% greater than those for the U.S. All Races population. The morbidity and mortality statistics represents a crisis in health care of American Indians. In the words of Gerald Hill, M.D. President of the AAIP "I deem these numbers to be unacceptable". Health Care reform should not inhibit the process we are making with Indian people. In the past decade AAIP has promoted culturally appropriate health care for American Indians and Alaska Natives. AAIP has advocated for Traditional Health Care and the

recognition of traditional healers. In addition, Health Care Reform should include adequate funding. Historically, IHS allocations have been inadequate to meet the medical needs of Native American populations throughout all of Indian country which in essence created rationed health care and deferred health services.

### **Manpower**

In the Native American student we have an incredibly valuable resource. We must promote the pursuit of health careers, namely by reaching out to undergraduate and high school students much as the AAIP presently does but on a larger scale. We must make available the role models and resources necessary to motivate our young people. Working with Native Americans must be made a viable career option with competitive salaries, adequate support staff, as well as adequate facilities being important factors in the recruitment and retention of medical staff. Again this addresses the issues of provider shortages and high turnover rates, both of which greatly effect the health status of Native Americans/Alaska Natives. Stable medical staffs are much more likely to integrate into communities, thus allowing for community input concerning medical care and community needs. There must be trust and cooperation between providers and communities before any prevention or public health procedures can take place. The IHS Quality Management Workgroup on Health Professions Recruitment and Retention, Final Report, March 1993 reports that "Recruitment of health care professionals has been a major concern of the Indian Health Service for the past decade, enhanced by the decrease in National Health Service Corps scholarship recipients that began in 1986. Retention of health care professionals is essential in order for the IHS to accomplish its mission". The committee further stated that problems in housing, isolated locations, administrative support and low pay contributed to the poor retention rate for providers. The report also recognized Lawton, Ada, Sallisaw, Stilwell and Salina as crisis sites.

### **Recommendations**

Health Care Reform should increase the recruitment, preparation and retention of American Indian and Alaska Natives into medical, nursing, public health and other health professions.

Expansion of the Indian Health Service Scholarship Program and Loan Repayment Program to fund all eligible applicants.

Establish a one physician pay system for all federal physicians. For example Veteran Affairs physicians are funded through Title 38 funds and

make an average of 25-30 thousand dollars more per year than IHS physicians.

Increase the bargaining power of Indian health care facilities in recruiting and retaining physicians to make them competitive with the VA system.

Establish equitable pay for IHS physicians to improve the vacancy and turn over rate of physicians in the IHS. Thus providing a higher quality and continuity of care for American Indians and Alaska Natives.

Expand the National Health Service Corps (NHSC) and related programs to attract and retain American Indian and Alaska Native health professionals to serve in Indian communities.

Change the rules regulating H.R. 2685, Physician's Comparability Allowances (PCA) to enable the IHS, PL. 94-437 physicians to receive comparable pay during their payback obligations, thus serving as an incentive to remain in the IHS.

Finally, I strongly urge the Subcommittee recognize the importance of accessible, quality and culturally appropriate health care for all Native Americans/Alaska Natives. I appreciate this opportunity to present testimony on behalf of the AAIP. Thank you.

Mr. RICHARDSON. Congressman Synar.

Mr. SYNAR. Thank you, Bill.

First of all, let me thank this panel for being here. The bad news is that we have run out of time if we are going to have the opportunity for Bill and the Subcommittee to meet with tribal leaders, so we will have to cut this pretty short.

But I want to leave the record open to submit questions to this panel for deeper investigation.

The good news is that this panel, which focused in on health care, is really still ahead of where we are. We still have adequate time to sit down with the tribes, and I know that they are going to be making a number of recommendations to Bill and I so that we can use that as we mark up the bill in the Health Subcommittee. So let me invite you to not only submit testimony, but to come together and give us those kinds of recommendations that will assist us.

Since we are near the end, let me just say how terrific this hearing has been. I cannot recall in my tenure in Congress a better presentation by Oklahomans to the federal government about issues that affect every single citizen in this state. And I think it has been an excellent opportunity for not only Bill but myself to get a real grasp of the issues that are facing not only Native Americans but the individual tribes. And I want to thank all the witnesses for being here.

Again, I want to thank Wilma and her staff, but particularly Lynn Howard for doing this. And as I said, we will leave the record open for two weeks for those who did not have an opportunity to express their testimony verbally today.

So Bill, thank you.

Mr. RICHARDSON. Thank you. This hearing is adjourned.

[Whereupon, at 12:31 p.m., the subcommittee was adjourned.]

## UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA

P.O. BOX 746 TAHLEQUAH, OKLAHOMA 74465-0746

TELEPHONE: (918) 456-5491 FAX (918) 456-9601

JOHN ROSS  
CHIEFJIM HENSON  
ASSISTANT CHIEFJIMMIE LOU WHITEKILLER  
SECRETARYCLARA PROCTOR  
TREASURER

31 January 1994

Tadd Johnson, Chief of Staff  
HOUSE NATURAL RESOURCES COMMITTEE  
SUB-COMMITTEE ON NATIVE AMERICAN AFFAIRS  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Johnson:

Enclosed herewith is documentation pertinent to the federal recognition of **THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA (UKB)** and copies of the blatant suppressive and oppressive efforts of Cherokee Nation of Oklahoma and the Muskogee Area Office of Bureau of Indian Affairs toward the UKB.

The UKB was not invited nor notified of the field hearing held at Cherokee Nation of Oklahoma Headquarters, Tahlequah, until a facsimile was received at 2:00 p.m. on the afternoon of January 19 prior to the hearing at 10:00 a.m. on January 20, 1994. The UKB Headquarters are within three (3) miles of the Cherokee Nation of Oklahoma hearing site. Invitations were mailed to other Oklahoma Indian tribes dated January 7, 1994.

The UKB is organized under the Oklahoma Indian Welfare Act of 1936 and the Indian Reorganization Act of 1934. Additionally, the UKB possesses a Constitution and Corporate Charter approved by the U.S. Congress.

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 COUNCIL MEMBERS
 

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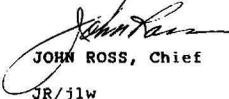
ALLOGAN SLAGLE  
CANADIAN DISTRICTJIM PROCTOR  
FLINT DISTRICTROBERTA SMOKE  
SALINE DISTRICTEMMA SUE HOLLAND  
COOWEESCOOWEE DISTRICTRICHARD MANUS  
GOINGSNAKE DISTRICTCHARLIE BIRD  
SEQUOYAH DISTRICTADALENE SMITH  
DELAWARE DISTRICTSUSAN ADAIR  
ILLINOIS DISTRICTMOSE KILLER  
TAHLEQUAH DISTRICT

"RESPECT FOR OUR ELDERS"

Tadd Johnson, Chief of Staff  
House Sub-Committee on Native American Affairs  
31 January 1994  
Page 2

As a result of the exclusion of the UKB at the field hearings,  
please enter this letter and information into the Congressional  
Hearings Records for your committee as an OFFICIAL PROTEST TO THE  
CONTINUED ENFORCEMENT OF AMENDMENT 86, PL 101-116.

Sincerely,



JOHN ROSS, Chief  
JR/jlw

Encl.

1. Letter to Merritt Youngdeer, BIA Area Director
2. Letter from Deborah J. Maddox
3. Talking Points
4. An Executive Summary of UKB's Status
5. D'Arcy McNickle
6. An Historical Overview of the UKB
7. American Tax Dollars At Work
8. Letter to Honorable Al Gore
9. Letter to The Oklahoma Congressional Delegation
10. Invitation by Natural Resources Sub-Committee on  
Native American Affairs (01/07/94)
11. Invitation by Cherokee Nation (01/19/94)
12. Copy of News Clipping - Tulsa World - Jan. 23, 1994

TO: HONORABLE BILL RICHARDSON, CHAIRMAN  
 [ATTN: MR. TADD JOHNSON, CHIEF OF STAFF]  
 HOUSE NATURAL RESOURCES COMMITTEE  
 SUBCOMMITTEE ON INDIAN AFFAIRS  
 1324 HOUSE LONGWORTH OFFICE BUILDING  
 WASHINGTON, D. C. 20515

FR: UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA  
 (UKB)  
 CHIEF/SPOKESMAN JOHN ROSS  
 (918) 456-5491/FAX 456-9601

DA: JANUARY 20, 1994  
 RE: FIELD HEARING, TAHLEQUAH, OKLAHOMA, JANUARY 20, 1994

Thank you for allowing the United Keetoowah Band (UKB) to submit testimony before the Committee regarding the circumstances of the Band.

We remain a federally recognized tribe organized on October 3, 1950 under OIWA and IRA. The UKB's status controversy (April 1979 - October 1993) is resolved, according to the Department of the Interior. In direct talks with Acting Commission Wyman Babby on 18 October 1993, we learned that there no longer remains any doubt of the current Federal recognition and historical existence of the UKB. Therefore, the Band's name appears again on the Federal Register notice of recognized indian entities.

The UKB believes it is essential that Congress understand the recent events in UKB interactions with the Federal government and other entities. Our experience proves that it remains possible in the 1990s for a historical Tribe to have Federal recognition, and to lose it. It is possible for a tribe to have a continuously-functioning government duly organized and under OIWA (1936) and IRA (1934), to find its name on the Federal Register listing of recognized existing entities, and still to find itself terminated administratively and unilaterally, without remedy, recourse, or opportunity for protest. It is time for Congress to

reconsider carefully the latitude of discretion the BIA is allowed to exercise to the detriment of the tribes in these matters of tribal status, to consider the ulterior agendas of persons challenging the status of tribes, and to listen more carefully when a tribe tells you, "We exist." The conduct of the BIA and of CNO in this clearly has been unconscionable, as has been the failure of Congress to carry out its investigative function before effectively TERMINATING A FEDERALLY RECOGNIZED TRIBE. Members of Congress recently have made many sober statements for the record that the Federal-Indian relationship is so sacrosanct that it is virtually inviolable, once undertaken. Therefore, they say, any unacknowledged or terminated tribes must be subjected to a BIA inquisition at the acknowledgment candidate's expense in order to assure accuracy and the quality and character of the relationship. Further, they claim that no tribe should be legislatively acknowledged, out of fairness to the tribes whose names already appear on the Federal Register, and to those seven tribes out of the hundreds of acknowledgment candidates who have survived the 25 C. F. R. 83 process. Where were these highly distinguished members of Congress, and how did they vote, on the day Congress passed Amendment 86, P. L. 101-116 in 1991? Why is it unnecessary to subject the challengers of a tribe, particularly a recognized tribe, to the same level of scrutiny? The events surrounding the passage of this Amendment 86 prove that the majority of Members of Congress simply were not vigilant about the Federal-Indian relationship, because it took a majority to approve Amendment 86. Because Amendment 86 remains in effect, according to the BIA, we can only conclude that majority of Members of Congress still do not understand that if you are going to require tribes to meet standards to get "in the door" to the Federal-Indian relationship, you should make sure it is at least as difficult to thrust tribes out in the cold. We have become much more aware of the similar problems of other tribes around the country. We can see that we are not the only recognized tribe to be stripped of status due to administrative termination or lack of congressional oversight. The problem here certainly is not the result of congressional micromanagement of the BIA in the execution of policies on status clarification, but one of telling the BIA to costs down, and giving BIA staff plenary power to make up laws and policies to fit each case. Our problem was not one of nonrecognition, but of termination and unacknowledgment. The Federal-Indian relationship is not treated sacrosanct, as long as a simple accommodation of one Member of Congress by others (legislative logrolling) can terminate a tribe for the record in less than half an hour regardless of the outcome. Tribes and the public have heard grave protestations from Congress for years, regarding the need for a grueling process for acknowledging tribes. As time goes on, the process gets worse, and yet acknowledged tribes find themselves easily terminated. What we needed before the creation of the acknowledgment process was a process or policy for keeping tribes acknowledged. Our experience makes the promise of self-

determination and self-governance insubstantial to us. The BIA and its friends told us in 1976 that it was "necessary" to create a prolonged and inquisitorial administrative process for testing tribal existence, allegedly to assure the sanctity and gravity of the Federal-Indian relationship once it is undertaken. The 25 C. F. R. 83 process does not protect or elevate the status of recognized process. The process itself and other tests for tribal status have become a pious fraud. What did the "recognition policy" do to prevent Amendment 86 in 1991? No member of Congress noticed that allowing our summary termination would violate the policies undergird 25 C. F. R. 83. The purposes the process serves are these: define tribes out of "existence," or keep them in a nightland until they are too weak to fight, and wither away. What we need is a "Schindler's List" for tribal people.

We no longer can accept as credible the pious assurances from Members of Congress that the administrative procedures for the review of tribal status are equitable and subject to vigilant congressional oversight. The UKB received no benefit of review at all before we were administratively terminated in 1991. Instead, after the passage of Amendment 86, we were subjected to suggestions or demands from various quarters, including CNO and its friends, that we undertake the 25 C. F. R. 83 process. If the acknowledgment process is fair, and fair for all, and if the essential test of that process is the determination whether a contemporary community of persons enrolled in the tribe presently exists and has internal cohesion, then let CNO and these others prove they can meet the tests today, or at ten year intervals. There are recognized tribes that lack rolls and yet claim as members persons scattered throughout the planet who lack contact with their government or other tribal members. When these advocates of the present policies and processes for status clarification understand how easily Congress can strike unilaterally, perhaps they will call for reform of the 25 C. F. R. 83 process and the Solicitor's Opinions. When witnesses testify to your Committee about how wonderful the BIA's status clarification processes are, maybe some should ask if they know what happened to us.

We never can forget the treatment at the hands of tribes that claimed after Amendment 86 that our only recourse was to spend the next ten years in yet another process of status clarification, although Amendment 86 rendered us ineligible to receive even an ANA grant to do a Federal acknowledgment petition! Some of these parties knew, or should have known, that the UKB succeeded in the 1940s in winning a ten-year battle to reaffirm our historical existence. Why do we have to do it again, and for whom? In 1944, we overcame the effects on us of a defective Solicitor's Opinion of 1937 regarding the right of one of our subordinate factions (the Keetoowah Society, Inc.) to reorganize separate from the Band under OIWA and IRA. We proved that the Keetoowah corporation was subordinate to the Band. The

only authority the BIA produced at the 1991 hearing on Amendment 86 was a copy of that defective 1937 Kirgis Opinion on the Keetoowah Society, Inc.! The BIA failed to produce the determination of Acting Commissioner Darcy McNickle of 1944 that reaffirmed our historical status, or the testimony of Interior Secretary Fortas in 1946 supporting the passage of our Act of status clarification. We can only conclude from our experience that anyone who opposes the status of any recognized tribe for any reason can have a ready ear somewhere in Congress and the BIA. Any "interested party," whether a tribe or private interest, can get a tribe terminated with a convincing lie, minimal effort and no proof at all. We wonder who profitted from this transaction, and how. We are sure our case is not an exception.

If the clarification of our status and the 21 October 1993 publication of our name in the Federal Register is any indication, it appears that the present administration is attempting to clean up the tribal acknowledgment mess that has accumulated during the last 14 years, during which we have been subjected to unremitting calumny and abuse at the hands of the Department, CNO and its supporters. While we are very grateful for recent reforms, and our own restoration, must remains for Congress to do. This first thing that we hope Congress will do is expressly rescind Amendment 86 of P. L. 101-116 and repudiate the policy of Termination once and for all. We know from our experience that Termination sentiment remains very much alive in part because it is largely unconscious. The easy way to get rid of a problem is define it out of existence: that is how Congress terminated us. We also pray that Congress will reaffirm that status of all Indian tribes that have made treaties and alternative contractual agreements with the United States. What is our recourse? Everyone responsible for what happened to the UKB can claim sovereign immunity. Local governments were turned against us. We learned that we could rely on few friends, for whom we are grateful. Separated from the company of "recognized tribes," we have been subject to attack from all sides. This is what it is to be a recognized tribe that the Nation decides to forget,

In 1991, the UKB hoped that Congress would at least allow us to respond to the attacks on the Band, or that the committees of jurisdiction would hold a hearing to allow the UKB to present testimony regarding our status. The UKB hoped to avoid needless inconvenience and embarrassment to all concerned at the time, but we also realized the duty had been imposed upon us to disprove scurrilous allegations regarding our status made by the BIA and CNO at hearings that led to the passage of Amendment 86, P. L. 101-116 (1991). Instead, fearing embarrassing disclosures, Principal Chief Wilma Mankiller advised members of Congress in 1991 that the UKB did not want to have a hearing, after all. Again, as usual, no one consulted us, or listened to us when we attempted to correct the Mankiller administration's

misstatements.

According to FOIA disclosures dated December 10 and 20 1993, as reflected in the republication of our name in the Federal Register, we are fully recognized, do not need to clarify our status as a historic tribe, and have no valid issue of "dual enrollment" with Cherokee Nation of Oklahoma (CNO). Specifically, within the meaning and current standard interpretation of 25 C.F.R. 83.2 (k), the UKB has no dual enrollment conflict with CNO. This is because CNO has no current BIA approved roll, or roll within the meaning of "tribal roll" or "tribal roll for tribal purposes" according to the BIA Manual (Enrollment Supplement 1983). The UKB does not need to amend its Charter or Constitution to resolve any previously presumed dual affiliation problem with CNO.

The record at the Interior budget hearings before Congressman Aucoin includes testimony regarding certain findings and determinations that the BIA allegedly had made in 1980 against the Band. "Quotes" from these entirely fictitious "findings," included in Congressman Synar's briefing book, provided the sole justification for the passage of Amendment 86. The December 1993 FOIA disclosures from the BIA prove that the much-touted 1980 BIA written determination never existed, that there never was any such determination at any date, that there is no dual enrollment problem between the UKB and CNO, and that all the allegations against the UKB were utterly false. According to the BIA's disclosure to the UKB of December 20, there never was any contingency plan for restoring services or rights to land acquisition to the UKB in the event our alleged/non-existent "dual affiliation" problems were resolved.

Worse still, since our status has been restored, we also have learned recently through the FOIA process that BIA interference with our sovereignty and self-determination has continued in spite of this turn of events. In mid-November 1993, staff of the Muskogee agency (specifically, Mr. Dennis Wycliffe) deliberately published false information through Arkansas newspapers regarding our status as a tribe, in spite of the clarification of our status and the republication of our name in the Federal Register on October 21, 1993. We even received a written apology signed by Ms. Deborah Maddox of the BIA's Central Office in Washington, D. C., dated December 10 and sent December 27, 1993. In the letter on the Wycliffe misrepresentations, Ms. Maddox reviewed the Muskogee Agency's posture on the UKB's status and situation.

The BIA's second recent FOIA release to the UKB dated December 20 (mailed December 27) 1993 shows that the Muskogee Agency's position on the UKB remains fundamentally and logically at odds with what the Central Office knows is true. For instance, as the December 20 FOIA disclosure from the BIA shows, CNO has no roll. If CNO has no roll, how can anyone enrolled in a different tribe

be dually enrolled? Rights to benefit due to descendency from the 1907 Cherokee Dawes Commission (Final Secretarial Judgment) Roll allow persons on that roll or descended from that roll to participate in programs and judgment funds, and allow persons certified as Dawes enrollees or their descendants to register with CNO. Rights of a registree who belongs to the descendency class of CNO remain intact as a legal matter regardless of a registree's affiliation outside the CNO registration class, in a historic tribe that has a roll. Membership in a descendency class stemming from the creation of a Federal judgment roll must not be confused with an individual's right to enjoy tribal membership through enrollment in a federally-recognized tribe, as approved by a recognized Tribal Council. CNO Tribal Council, to our knowledge, does not act on membership issues. Unlike the UKB Constitution and Ordinances, the CNO Constitution does not even allow the CNO Council to take such actions.

On August 24, 1992, Acting Assistant Secretary Ron Eden sent the UKB a letter, informing the Band of its separate, autonomous status and funding eligibility. The paper trail we received under FOIA release of December 20, 1993 proved that this letter went through a series of drafts between April and August 1992, during which time the BIA's position changed remarkably, as staff of the Solicitor's Office worried about the obvious defects of the Department's position. The Department's 1992 retreat from its 1991 position and misrepresentations is not widely known.

On August 26, 1992, CNO and Eastern Band of Cherokees adopted a joint resolution declaring themselves to be the only federally recognized Cherokee tribes. We recall well the role that one of the attorneys for Eastern Band of Cherokees (Mr. George Waters) has had in promoting the present Acknowledgment process as an advisor to NCAI in 1978, and the prominent place he has held in advocating a grueling acknowledgment process for other tribes. Mr. Waters has insisted that the 25 C. F. R. 83 acknowledgment process is insurance against precisely the sort of degradation of tribal sovereignty that his clients -- the Eastern Band of Cherokees -- has helped to perpetrate against the UKB.

We are quite aware than in his testimony on S. 1315 (the Federal Acknowledgment Process Reform Bill) in October 1991 that Chief Taylor of Eastern Band testified that only two recognized Cherokee tribes exist: Eastern Band and CNO. The BIA accepted and condoned the joint resolution against the UKB of CNO and Eastern Band, even though the UKB had received that memo from Ron Eden on August 24, 1992 declaring that we were an autonomous recognized sovereign eligible for separate BIA funding and services, but for Amendment 86. In view of CNO, the Eastern Band of Cherokees, and certain others, the UKB was effectively terminated under Amendment 86, P. L. 101-116 (1991). Early in January 1993, Principal Chief Mankiller of CNO (dis)informed governors of at least 20 states in writing, with no consultation or authorization

from the BIA (see 20 December 1993 BIA FOIA release), that the UKB was unacknowledged, and that at best, we deserved to have to endure the arduous 25 c. F. R. 83 Acknowledgment process to resolve our status.

As the direct result of Amendment 86, we receive no tribal funding. Due also to Amendment 86, as narrowly interpreted, we were unable to get an ANA grant to clarify our status, though unacknowledged tribes such as the Delaware Tribe have received such assistance. The Delaware Tribe resides within CNO's former boundaries, is claimed to be unrecognized, and therefore is not subject to Amendment 86, at least for now. When and if their status is restored, will the Delawares, too, be subject to Amendment 86? Congress should ask why CNO so resents our efforts to survive, while Creek Nation (Muscogee) lives in apparent harmony with the Creek Towns that reside within the boundaries of the old Creek Nation. We have paid out of our own sweat and dollars to clarify our status as a tribe organized under OIWA and IRA in the face of virtually unanimous opposition from the government. Now, it appears, we continue to be punished, because of what we have won.

Although we believe the adoption of amendment 86 in 1991 was inequitable and groundless, we still tend to our business as best we can. We want to be treated as the good neighbors we have tried to be, but CNO has used every ploy imaginable to prevent our survival even outside Oklahoma. Therefore, we have been unable to get cooperation from the BIA in putting even donated land into trust outside CNO's former boundaries. CNO invariably intervenes with local governments and civic groups in Arkansas or anywhere else we seek opportunity for economic development to prevent our efforts to relocate, even though our relocation is a heroic effort to accomodate CNO. The BIA's FOIA disclosure to the UKB of December 10, 1993 (sent December 27, 1993) reflects that a campaign of libel and deceit by CNO against the UKB runs unimpeded and openly abetted by BIA personnel, as always. However, sincere, gracious and well intended, the December 27, 1993 apology from Ms. Deborah Maddox for any damage resulting from the BIA staff's willing participation in these sordid attacks on the UKB is no substitute for stopping the damage at its source.

In summary, since 1991, the UKB has been able to obtain clear proof (primarily, through research in the National Archives and Agency records, in Tribal Council files, and corroborated through disclosures from the BIA pursuant to the Freedom of Information disclosure process) that the allegations against the UKB that lead Congress to adopt Amendment 86 to P. L. 101-116 in 1991 were entirely unfounded. If the record had been clarified in 1991, we would not have been subjected to what amounted to de facto administrative termination at the time. Amendment 86 in p. L. 101-116 (1991) remains in effect. The UKB respectfully requests

that Congress consider this information and rescind Amendment 86 as soon as possible. In compliance with Amendment 86, since we cannot get permission from CNO to put land in trust within our current boundaries, the UKB has placed request before the BIA to put land into trust for us outside the 14 northeastern counties of Oklahoma, but so far nothing has happened. We also have requested that the Central Office remove the UKB from under the supervision of the Muskogee Agency, due largely to the obviously abusive conduct of that Agency's staff toward the Band and its members: to date, the Department has taken no action on this request, although Acting Commissioner Babby assured us of timely action on 18 October 1993. We therefore respectfully request again the immediate rescission of Amendment 86, and that these remarks and any others we may provide will be added to the present hearing record. We appreciate your attention in this matter, and invite any inquiries you may have.

*John R. ...*  
*Secretary*

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA  
 P.O. BOX 746 TAHLEQUAH, OKLAHOMA 74465-0746  
 TELEPHONE: (918) 456-5491 FAX (918) 456-9601

JOHN ROSS  
 CHIEF

JIM HENSON  
 ASSISTANT CHIEF



JIMMIE LOU WHITEKILLER  
 SECRETARY

CLARA PROCTOR  
 TREASURER

January 3, 1994

Merritt Youngdeer, Area Director  
 BUREAU OF INDIAN AFFAIRS  
 101 North 5th Street  
 Muskogee, Oklahoma 74401

Dear Mr. Youngdeer:

THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA (UKB) has been provided a research paper dated 12 December 1993 from Deborah J. Maddox, Acting Director, Office of Tribal Services, Washington, D.C. (copy enclosed).

The UKB, under the Freedom of Information Act, requested and received the explanations of numerous topics/items from the Central Office in Washington, D.C. However, only two items are pertinent to this letter: (condensed questions)

1. Is the Cherokee Nation of Oklahoma (CNO) organized under the Oklahoma Indian Welfare Act of 1936?

BIA response - **NO**

2. Has the CNO Tribal Council approved the current CNO "tribal roll;" does the CNO have a current tribal roll within the meaning of the federal-Indian Law; does any departmental determination exist that, while both the UKB and CNO have separate current rolls (assuming CNO has a current roll within federal-Indian law), the two tribes have a common base roll, either by common choice, mutual agreement, Act of Congress, or administrative override of the determination of the Band

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 TAHLEQUAH DISTRICT

"RESPECT FOR OUR ELDERS"

Merritt Youngdeer, Area Director  
 BUREAU OF INDIAN AFFAIRS  
 January 3, 1994  
 Page 2

that the base roll of the UKB shall be the 1949 Base Roll as amended on 16 March 1985.

BIA response - We are not aware of a BIA approved roll  
 (For CNO - emphasis added).

Mr. Youngdeer, how can the Muskogee Area Office determine a dual membership for the UKB and the CNO when the BIA Central Office has a different view from the Muskogee Area Office and declares the CNO has no Secretarial/BIA-approved tribal roll? Also, evidence exists that CNO has dual membership with various other tribes. Why are you not concerned with this CNO dual membership? Why is the CNO NOT required to amend its Constitution? CNO has no authority to amend or reopen the 1907 Dawes' Roll without Congressional consent. The CNO Tribal Council has NOT approved its own registration membership.

Clearly, the UKB, as a matter of law, is to be treated as any other federally recognized Indian tribe. The UKB has a government-to-government relationship with the U.S. Government. The BIA trust responsibility of protecting the sovereignty of tribal governments and overseeing tribal administrations, including the UKB, is extremely important. Mr. Youngdeer, the Muskogee Area Office has failed miserably with regard to the UKB. Please be advised that the UKB refuses to tolerate any further oppressive actions initiated or propagated by BIA area officials!

The UKB officials demand the BIA to certify and accept the UKB membership roll WITHOUT AN AMENDMENT TO THE UKB CONSTITUTION unless the BIA fairly and non-prejudicially announces that ALL tribes MUST abolish dual memberships.

Again, there exists NO Secretarial/BIA-approved membership roll for the CNO nor any roll common to both the CNO and the UKB. ONLY THE UKB HAS A SECRETARIAL AND BIA-APPROVED TRIBAL ROLL. Therefore, there is not now nor has ever been a dual membership problem between the UKB and the CNO and NO need exists for a UKB Constitutional Amendment. The CNO arguments on the dual

Merritt Youngdeer, Area Director  
BUREAU OF INDIAN AFFAIRS  
January 3, 1994  
Page 3

membership enrollment of the UKB and CNO are erroneous and ambiguous as well as fundamentally unsound. THE UKB, AS THE ONLY CHEROKEE TRIBAL ENTITY POSSESSING A TRIBAL ENROLLMENT PURSUANT TO FEDERAL INDIAN LAW, DOES CURRENTLY HAVE AN EXCLUSIVE ROLL OF 7,600+ MEMBERS.

Sincerely,

  
JOHN ROSS, Chief Spokesman

ATTEST:

  
JIMMIE LOU WHITEKILLER, Secretary

cc:

Secretary of the Interior Bruce Babbitt  
Assistant Secretary Ada Deer  
Senator Inouye, Chairman, Senate Committee on  
Indian Affairs  
Deborah Maddox, Acting Director, Office of Tribal Services



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240



IN REPLY REFER TO  
Tribal Government Services - TR  
#4478

DEC 27 1993

11 1 1993

Mr. John Ross  
United Keetoowah Band of  
Cherokee Indians in Oklahoma  
P.O. Box 746  
Tahlequah, Oklahoma 74465-0746

Dear Mr. Ross:

Thank you for your letter of November 15, 1993, under the Freedom of Information Act request, on behalf of the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB), regarding statements by Mr. Dennis Wickliffe to the Madison County Record newspaper. Your letter has been referred to our office for response.

We have been advised by Muskogee Area Office (Area Office) staff that although the Bureau of Indian Affairs (BIA) does not recognize those elected to the position of Chief, Assistant Chief or Treasurer, they do recognize the secretary and the use of a chairman protem to conduct UKB business. Therefore, the UKB does have a viable governing body in place.

We have been further advised that the UKB has approximately 3,000 members who are not enrolled with the Cherokee Nation and is working towards separating its membership from the Cherokee Nation by amending its constitution. This amendment would prohibit dual membership and require those members who are also enrolled with the Cherokee Nation to relinquish that membership.

The separation of membership would also help acquire separate funding for services to the UKB membership. There would be a distinct service population and the UKB members would not have to receive services through the Cherokee Nation.

Area Office staff was unaware that Mr. Wickliffe had talked to the newspaper or that he made these comments on behalf of the BIA until they were notified by Central Office staff. We regret any inconvenience these comments may have caused.

Sincerely,

Acting Director, Office of Tribal Services



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240



PLEASE REFER TO:

Tribal Government Services - TR  
#4188

DEC 27 1993

DEC 2 1 1993

Mr. John Ross  
United Keetoowah Band of  
Cherokee Indians of Oklahoma  
P. O. Box 746  
Tahlequah, Oklahoma 74465-0746

Dear Mr. Ross:

On September 13, 1993, we acknowledged receipt of your August 10, 1993, Freedom of Information Act request, and said we would respond at a later date. We regret the delay in following-up on that request. Our research took longer than anticipated,

You have requested information on 14 items. We will respond on those points in the order presented in your letter.

1. *A copy of the official and authenticated Charter and Constitution of the Cherokee Nation of Oklahoma (CNO) adopted under the terms of the Oklahoma Indian Welfare Act of 1936 (OIWA), and under the Indian Reorganization Act of 1934 (IRA), as the OIWA provides that provisions of the IRA shall apply to Oklahoma tribes after 1936.*

No OIWA or IRA constitution was adopted. The Constitution of the Cherokee Nation of Oklahoma was adopted on June 26, 1976, and approved by the Commissioner of Indian Affairs on September 5, 1975. A copy is enclosed.

2. *Documentation showing it was the intent of the Commissioner to approve the 1975 draft CNO constitution as draft Constitution within the meaning of IRA of 1934 as it applies to Oklahoma Indian Tribes through the OIWA of 1936, to be submitted to approved CNO voters in a Federal secretarial election comporting with the terms of IRA of 1934.*

We are not aware of any documentation on this matter.

3. *Any documented congressional action that supersedes the 1936 Act's requirement that the Cherokee Nation of Oklahoma reorganize under the terms of OIWA and of IRA in order to relieve itself of continuing congressional restrictions on its exercise of inherent sovereignty, and any departmental determination of the extent to which the Cherokee Nation of Oklahoma may exercise "inherent sovereignty", as diminished under earlier legislation, except by means or reorganizing under the 1936 and 1934 Acts.*

We are unaware of any documentation on this matter.

4. *Any documentation showing that the 1947 Act (requiring that Cherokee descendency be determined through descendency from the 1907 Cherokee Dawes Commission Roll), no longer applies, for the purposes of Cherokee Nation (under the 6 September 1839 Constitution, and the Act of 1906) and of Cherokee Nation of Oklahoma (as of the current Constitution).*

We are unaware of any documentation on this matter. The Cherokee Nation of Oklahoma (Cherokee Nation) reorganized pursuant to its inherent sovereign authority.

5. *Any Act of Congress, or the Department's written determination, if any, allowing the Cherokee Nation of Oklahoma to add to or amend the 1907 Cherokee Dawes Commission Roll, or to adopt a Tribal Roll without a valid CNO OIWA/IRA constitutional provision providing for such adoption.*

We are unaware of any documentation on this matter. The Cherokee Nation reorganized pursuant to its inherent sovereign authority.

6. *Any departmental determination, consistent with the approved Constitution of Cherokee Nation of Oklahoma, and the Secretary's determination in the affirmative Federal recognition case of the San Juan Southern Paiute Tribe in 1989, that the Cherokee Nation of Oklahoma Tribal Council has approved the Cherokee Nation of Oklahoma Tribal Roll and the Cherokee Nation of Oklahoma has a current Tribal Roll within the meaning of Federal-Indian law; also, any departmental determination that, while both the Cherokee Nation of Oklahoma and the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) have separate current tribal rolls (assuming Cherokee Nation of Oklahoma as a current roll within the meaning of Federal-Indian law), that the two tribes have a common Base Roll, either by common choice, mutual agreement, Act of Congress, or administrative override of the determination of the Band that the Base Roll of the UKB shall be the 1949 Base Roll as amended on 16 March 1985.*

We are not aware of a Bureau of Indian Affairs' approved roll.

7. *Any written justification of special treatment for the Creek Tribal Towns of the Muskogee Creek Nation, who were exempted from application of the 1980 Gerard letter regarding separate services, as cited in Mr. Ronald Eden's testimony, recalling that he said, "we started out changing the policy because of another tribal issue; namely, that the Creek towns did not want to continue receiving their services from the Creek Nation."*

By his November 30, 1989, memorandum to the Muskogee Area Director, Assistant Secretary - Indian Affairs Eddie F. Brown, rescinded the January 16, 1980, Forest Gerard memorandum requiring these three tribal towns, Alabama-Quassate, Kialegee and Thlopthlocco, to receive their funding and services through the Creek Nation. A copy is enclosed.

3. *Any 1980 or other departmental determination stating:*

*There is not justification for contracts and/or grants with UKB to provide the same services to those portion of the Cherokee Nation that would be served under the Nation's contracts and/or grants.*

We are not aware of any documentation on this matter.

9. *Any evidence that, in preparing Assistant Secretary Brown's or Ron Eden's testimony, or in addressing the concerns of Principal Chief Wilma Mankiller, the Department ever reviewed the files concerning the organization of the UKB, or its quarterly or final reports or other correspondence regarding the UKB Enrollment Update project, 25 November 1984 - 16 March 1985 to determine whether the two tribes share a common base roll, or that the UKB utterly or substantially failed to meet its contractual obligations under that grant.*

There is no written documentation establishing that these actions were taken.

10. *A copy of the Department's file copy of the Letter that Acting Assistant Secretary of the Interior for Indian Affairs Ron Eden sent to the UKB on 24 August 1992 confirming the Band's autonomy, separate recognition, and independent eligibility for services and trust land acquisition.*

You received a copy of this letter on August 26, 1993, when the UKB delegation met with Department of the Interior's (Department) staff in Washington, D.C. A copy is enclosed for your convenience.

11. *Any departmental authorization or verification of the claims of Principal Chief Mankiller, in letters she sent to governors of the United States during January 1993, characterizing the United Keetoowah Band of Cherokee Indians in Oklahoma as an unrecognized group, pretending to be Indians, and deserving only to avail themselves of the 25 C.F.R. 83 process to clarify their status.*

No documentation exists. The UKB is a federally recognized tribe.

12. *Any departmental finding indicating that the UKB is eligible to avail itself of the 25 C.F.R. 83 process to clarify its status, or that any congressional mandate requires it to do so. Are we terminated, or not?*

As stated in Number 11, the UKB is a federally recognized tribe, and, therefore, is not terminated. The UKB does not need to use the process in 25 C.F.R. Part 83. It is included in the list of tribes developed under Part 83. We are enclosing a copy of the "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs", as published in the FEDERAL REGISTER on October 21, 1993, by the Department. The UKB is listed on page 54368.

13. *Any documented effort of the Department to clarify or correct its testimony to Congress, in the 101st or present Congress, as presented by Mr. Ron Eden to Mr. Aucoin's Committee, and any documented plan to restore the service eligibility of the UKB under the present administration.*

We are unaware of any documentation on this matter.

14. *Any Departmental interpretation as to the extent and duration Amendment 86 in H.R. 101-16 (1992) in the contemplation of Congress.*

We are unaware of any exiting interpretations of the appropriations language. This language states, "That until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation shall be expended by any other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation:".

We hope we have adequately addressed your concerns. If we can be of further assistance, please advise.

Sincerely,

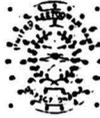


ACTING Director, Office of Tribal Services

Enclosures

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA  
 P.O. BOX 746 TAHLEQUAH, OKLAHOMA 74465-0746  
 TELEPHONE: (918) 456-5491 (918) 456-9462

JOHN ROSS  
 CHIEF



JIMMIE LOU WHITEKILLER  
 SECRETARY

JIM HENSON  
 ASSISTANT CHIEF

NORMA JEAN FOURKILLER  
 TREASURER

TALKING POINTS

1) Federal legislation greatly diminished the inherent sovereignty of Cherokee Nation, leaving certain, primarily administrative functions intact (1890-1906), under the direct supervision of the President and his agent, generally the Secretary of the Interior. References to the "dissolution" of the Cherokee Nation government appeared in the history and in the language of certain legislation. The government was essentially dissolved, with the exception of certain residual powers, on 4 March 1906.

2) Having failed at efforts to keep a tribally-elected, rather than presidentially-appointed, Cherokee government in force, the Keetoowahs realized that they were on their own, and resolved to rely on their original governmental form, the foundations of which they brought with them to Oklahoma. Keetoowah Society, Inc., in anticipation of the eventual dissolution of the Cherokee Nation, acquires a Federal Charter (20 September 1905; see 24 April 1944 determination of D'Arcy McNickle, Tribal Relations Branch).

3) Subsequent Federal legislation restored certain aspects of the inherent sovereignty of Cherokee Nation, dealing with administrative functions, in order to protect residual property interests (1906-1930s).

4) Acting Solicitor Frederic L. Kirgis found the Keetoowah Society ineligible to reorganize under OIWA and IRA. (Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs: 1917-1974, Vol. 1 (Washington, D. C.: U. S. Department of the Interior, 1975), p. 774; Opinion, Keetoowah -- Organization as a Band 29 July 1937)

5) The Department of the Interior found the Cherokee Nation, organized under the revised 6 September 1839 Constitution, a government essentially dissolved in 1906, to be ineligible as such to reorganize under OIWA and IRA. Field investigators found Cherokee citizens, with the exception of the Keetoowahs, have abandoned tribal relations and have no interest in reorganization. [MEMO TO INDIAN ORGANIZATION, 25 October 1937, from Director of Lands (WDW) to Daiker, Indian Organization (enclosure 1310901)]

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ADALENE SMITH  
 DELAWARE DISTRICT

SUSAN ADAIR  
 ILLINOIS DISTRICT

MOSE KILLER  
 TAHLEQUAH DISTRICT

"RESPECT FOR OUR ELDERS"

6) The Keetoowah Society, Inc., and other Keetoowah factions, started organization work under the supervision of A. C. Monahan, Regional Coordinator for Organization at Five Civilized Tribes Agency, upon the discovery that indeed the Keetoowah Indians had a basis for claiming historical existence as a recognized polity of Indians, August 1939. Investigators later find Kirgis was ignorant of the existence of the 20 September 1905 Keetoowah Society, Inc. Federal Corporate Charter, and its legal effect. In a determination of 24 April 1944, Tribal Relations Branch officer D'Arcy McNickle categorically repudiated the Kirgis Opinion, and in a meeting on 5 June 1944 with BIA Chief Counsel Ted Haas, agreed that rather than simply ask the Solicitor to rescind the old Opinion and submit another, that the Department would recommend to the Secretary and Congress that Congress pass legislation to clarify the status of the Keetoowah Indians, thereby allowing the Band to reorganize under OIWA and IRA.

7) Congress, on the advice of the Acting Secretary and other agencies, passed the 10 August 1946 Act acknowledging the UKB's eligibility to reorganize under OIWA and IRA. The legislative intent and statute itself contemplate recognition of a united entity, initially a coalition government.

8) UKB reorganized under OIWA and IRA, adopting a Charter, Constitution and By-laws in a Federal secretarial election on 3 October 1950, and proceeded to function with virtually no Federal assistance as a federally-acknowledged tribe. The Charter provided for the eventual recognition by sub-charter of any other Cherokee descendant group with whom its own members are allowed to share membership, at the discretion of the UKB Council. During Termination, the BIA refused to cooperate with every development proposal in keeping with the OIWA and IRA that the UKB Tribal Council submitted.

9) After 1960, the BIA and Cherokee Nation or Tribe investigated the possibility of establishing services and programs for Cherokees in the 14 county region, formerly Cherokee Nation, concluding that the only possible solution was to make the UKB the vehicle for providing programs and recognition.

10) Once Cherokee tribal programs were off the ground, the UKB had little success retaining control of the very programs they fostered, and even access to services. Independent ventures failed as well, partly due to the (documented) collusion of their own legal counsel, Earl Boyd Pierce, with BIA and CNO officials to stop the UKB.

11) The Act of Oct. 22, 1970, 91st Cong., 2nd Sess., P. L. 91-495, 84 Stat. 1091 (1970), the Bellmon Bill, "Authoriz[ed] Each of the Five Civilized Tribes of Oklahoma to Select Their Principal Officer . . . ." Federal court challenges determined that the presidentially - or secretarially - appointed Principal Chiefs of Cherokee Nation since 1906 were bona fide heads of state. Other litigation addressed the question whether the Cherokee government was terminated in 1906. On 2 October 1975, Commissioner Morris Thompson and Principal Chief Ross O. Swimmer approved a draft CNO Constitution determining that the automatic citizenship class shall consist of the Cherokee Dawes Commission enrollees, and that descendants shall be eligible for registration as member-descendants.

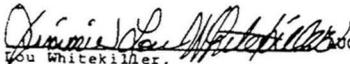
12) Commissioner Louis Bruce, in American Indian Tribes and their Federal Relationship, Plus a Partial Listing of other United States Indian Groups (Wash., D. C.: U.S. Dept. of Interior, BIA, March, 1972) declared that the UKB is a fully recognized Class 1 OIWA/IRA tribal entity, while Cherokee Nation remained an unorganized Class 3 service population.

13) On 5 July 1976, Cherokee voters adopted the draft Constitution, purporting to supersede the 1906 constitution, but CNO leaders claim in Federal court that the old Constitution was dead in 1906, or that the present government is the full successor to the 1839 - 1906 government, as circumstances demand. The 1976 Constitution purported to sanction affiliation of any CNO registree with any "clan" or other subordinate entity within CNO. The Harjo case determined that the 1906 and related Acts did not terminate the Five Tribes as such, and that the 1936 Act assured them the enjoyment of their inherent sovereignty, as a general principal. That case did not consider or discuss the 25 October 1937 Land Division determination regarding the eligibility of Cherokee Nation to avail itself of the benefits of OIWA and IRA, or contain any reference to the intent of Congress, the BIA and the UKB regarding the implications of UKB reorganization. No provision at Federal case law, and no Act of Congress, allowed CNO to avail itself of the benefits of OIWA and IRA reorganization free of the duty of actually taking the steps to reorganization.

14) In the Federal Register, Vol. 44, No. 26, Tuesday February 6, 1979, pp. 7235-7236, the Secretary of the Interior listed the UKB as a federally-recognized, service-eligible entity. The Department has since characterized this and similar publications as binding determinations of the Department regarding the recognition of tribes, both in Federal litigation and in congressional hearings.

15) Characterizing the organization of federally-acknowledged tribes listed in the 6 February 1979 Federal Register notice, on 20 November 1979, Ms. Patricia Simmons, Tribal Relations Specialist, submitted to the Chief, Branch of Tribal Relations, a detailed report titled, "Organizational Status of Federally Recognized Indian Entities." Simmons surveyed a category (p. 2) of "Officially Approved Organizations Pursuant to Statutory Authority (Indian Reorganization Act; Oklahoma Indian Welfare Act; and Alaska Native Act), finding (p. 3), UKB had a Council organized under a Federal Corporate Charter. Cherokee Nation (with a Council) was listed in the "Other" category of "Officially Approved Organizations Outside of Specific Statutory Authority," (p.7).

16) Principal Chief of Cherokee Nation Ross O. Swimmer denied UKB's historical existence for the first time of record to Oklahoma Senator Henry Bellmon, in a Letter, 27 April 1979. Swimmer claimed the UKB was "created" by the accidental inclusion of their name in the 6 February 1979 Federal Register notice; see also Letter, 30 April 1979, Principal Chief of Cherokee Nation Ross O. Swimmer to Oklahoma Senator David Boren, denying UKB's historical existence.

Signed  AUGUST 17, 1993.  
 Jimmie Lou Whitekiller,  
 Secretary,  
 United Keetoowah Band of Cherokee Indians in Oklahoma,  
 a Federally-recognized Indian Tribe

## TALKING POINTS

1) Federal legislation greatly diminished the inherent sovereignty of Cherokee Nation, leaving certain, primarily administrative functions intact (1890-1906), under the direct supervision of the President and his agent, generally the Secretary of the Interior. References to the "dissolution" of the Cherokee Nation government appeared in the history and in the language of certain legislation. The government was essentially dissolved, with the exception of certain residual powers, on 4 March 1906.

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3) Subsequent Federal legislation restored certain aspects of the inherent sovereignty of Cherokee Nation, dealing with administrative functions, in order to protect residual property interests (1906-1930s).

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10) Once Cherokee tribal programs were off the ground, the UKB had little success retaining control of the very programs they fostered, and even access to services. Independent ventures failed as well, partly due to the (documented) collusion of their own legal counsel, Earl Boyd Pierce, with BIA and CNO officials to stop the UKB.

11) The Act of Oct. 22, 1970, 91st Cong., 2nd Sess., P. L. 91-495, 84 Stat. 1091 (1970), the Bellmon Bill, "Authoriz[ed] Each of the Five Civilized Tribes of Oklahoma to Select Their Principal Officer . . . ." Federal court challenges determined that the presidentially -- or secretarially - appointed Principal Chiefs of Cherokee Nation since 1906 were bona fide heads of state. Other litigation addressed the question whether the Cherokee government was terminated in 1906. On 2 October 1975, Commissioner Morris Thompson and Principal Chief Ross O. Swimmer approved a draft CNO Constitution determining that the automatic citizenship class shall consist of the Cherokee Dawes Commission enrollees, and that descendants shall be eligible for registration as member-descendants.

12) Commissioner Louis Bruce, in American Indian Tribes and their Federal Relationship, Plus a Partial Listing of other United States Indian Groups (Wash., D. C.: U.S. Dept. of Interior, BIA, March, 1972) declared that the UKB is a fully recognized Class 1 OIWA/IRA tribal entity, while Cherokee Nation remained an unorganized Class 3 service population.

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13) On 5 July 1976, Cherokee voters adopted the draft Constitution, purporting to supersede the 1906 constitution, but CNO leaders claim in Federal court that the old Constitution was dead in 1906, or that the present government is the full successor to the 1839 - 1906 government, as circumstances demand. The 1976 Constitution purported to sanction affiliation of any CNO registree with any "clan" or other subordinate entity within CNO. The Harjo case determined that the 1906 and related Acts did not terminate the Five Tribes as such, and that the 1936 Act assured them the enjoyment of their inherent sovereignty, as a general principal. That case did not consider or discuss the 25 October 1937 Land Division determination regarding the eligibility of Cherokee Nation to avail itself of the benefits of OIWA and IRA, or contain any reference to the intent of Congress, the BIA and the UKB regarding the implications of UKB reorganization. No provision at Federal case law, and no Act of Congress, allowed CNO to avail itself of the benefits of OIWA and IRA reorganization free of the duty of actually taking the steps to reorganization.

14) In the Federal Register, Vol. 44, No. 26, Tuesday February 6, 1979, pp. 7235-7236, the Secretary of the Interior listed the UKB as a federally-recognized, service-eligible entity. The Department has since characterized this and similar publications as binding determinations of the Department regarding the recognition of tribes, both in Federal litigation and in congressional hearings.

15) Characterizing the organization of federally-acknowledged tribes listed in the 6 February 1979 Federal Register notice, on 20 November 1979, Ms. Patricia Simmons, Tribal Relations Specialist, submitted to the Chief, Branch of Tribal Relations, a detailed report titled, "Organizational Status of Federally Recognized Indian Entities." Simmons surveyed a category (p. 2) of "Officially Approved Organizations Pursuant to Statutory Authority (Indian Reorganization Act; Oklahoma Indian Welfare Act; and Alaska Native Act), finding (p. 3), UKB had a Council organized under a Federal Corporate Charter. Cherokee Nation (with a Council) was listed in the "Other" category of "Officially Approved Organizations Outside of Specific Statutory Authority," (p.7).

16) Principal Chief of Cherokee Nation Ross O. Swimmer denied UKB's historical existence for the first time of record to Oklahoma Senator Henry Bellmon, in a Letter, 27 April 1979. Swimmer claimed the UKB was "created" by the accidental inclusion of their name in the 6 February 1979 Federal Register notice; see also Letter, 30 April 1979, Principal Chief of Cherokee Nation Ross O. Swimmer to Oklahoma Senator David Boren, denying UKB's historical existence.

## A BRIEF UKB CHRONOLOGY

. PRECONTACT TO 1730s: Ani-gi-du-wah-gi, the Keetoowah People, find their source at Keetoowah, a Mother Tribal Town in Swain County, North Carolina, and its affiliated smaller towns. Political succession proceeded through elected Captains, a Chief, and Beloved Women.

. 1730s TO REMOVAL: Despite cultural and political disruption between the American Revolution and the Removal period, the Keetoowah Indians retained what they could of their primary rules and ways. They enforced laws through customary sanctions and the law of blood, maintaining their own local tradition despite major changes in general Cherokee society. The Keetoowah Indians were part of the core Red/War groups who had allied with the French. Some began to move to what became Arkansas territory as early as the end of the Seven Year War in 1763. The Keetoowahs who allied with the British during the Revolution joined that first wave of emigrant Keetoowahs. The Chickamaugas followed after their attack on a white trading party at Muscle Shoals, Tennessee River, in 1794. They all settled among the Western Cherokees (Old Settlers). The U. S. officially recognized Western Cherokee Tribal Council and their territory in 1817. Other Keetoowahs followed, first to Arkansas and then to Indian Territory. By 1819, they numbered about 6,000.

The U. S. Supreme Court established some of the most important case law regarding Cherokee Nation during this period:

Cherokee Nation v. Georgia, 30 U. S. (5 Pet.) 1 (1831).

Worcester v. Georgia 31 U. S. (6 Pet.) 515 (1832).

. 1838-1839, FORCED REMOVAL TO ARKANSAS AND OKLAHOMA: The remnants of the War Party in the eastern states were too weak to oppose structural changes in Cherokee government. As removal of the Eastern Emigrants proceeded, the Keetoowah Indians lived as they always had, relying on subsistence agriculture, fishing and hunting, practicing the old religion, maintaining social cohesiveness at various towns in Cherokee territory, with gatherings and daily interactions across factional and family lines. The Western and Eastern Cherokees were forced to form a coalition government under a Constitution dated 6 September 1839. John Ross (Chief from 1828-1866) maintained support from the Keetoowah traditionals because of his opposition to removal and his marriage to a fullblood.

. 1838 to 1860, KEETOOWAH REORGANIZATION IN OKLAHOMA: Knowing that Civil War would threaten their government and society, and committed to honoring treaties with the U. S., Keetoowahs reorganized under a Constitution written by a fullblood Cherokee Baptist Minister, Budd Gritts (1858-1859). Followers of the Jones family (non-Indian church leaders) also were instrumental in the reorganization of the Keetoowahs in the 1850s. Starting from a base of born Keetoowahs, the band drew in and adopted fullbloods from all nine Districts, but primarily from a region composing five northeastern Oklahoma counties today. Called the Keetoowah Society, they revived the role their Mother Town of Keetoowah enjoyed in pre-contact and pre-Removal historical times. Their leaders were "Captains," under a Head Captain, or "Chief." In 1857, the War Department offered the town the military reservation of Fort Gibson, from which the Cherokee Council created the town of Keetoowah. The Cherokee Council voted to move the Capitol there from Tahlequah, but Chief Ross vetoed the plan. The Keetoowahs elected Louis Downing their Head Captain, and later helped him to victory as Principal Chief.

. 1860-1865, KEETOOWAH INDIANS IN THE CIVIL WAR: All loyal Keetoowahs opposed the Southern Confederacy and supported the Union. The Pin Indians, a particularly aggressive faction, fiercely resisted assimilation and invasion by all non-Indians. The Council of Keetoowah town (Fort Gibson) met until May, 1863. Convening at Cowskin Prairie that year, the Keetoowahs denounced the Confederate Cherokees and celebrated the abolition of Slavery. While the Keetoowah Indians remained loyal to the end of the Civil War, they shared the common humiliation of all Cherokees resulting from the punishment of Cherokee Nation for its official alliance with the Southern Confederacy. The 1866 Treaty abrogated all others to the extent they were inconsistent, but the Keetoowah delegates to the Treaty convention reluctantly signed.

. 1866-1890, UKB FACTIONALISM AND CONFLICT: Immediately after the Civil War, conflicts arose over the purposes and direction of the Keetoowah organization. While some Keetoowahs wanted to preserve the ancient Keetoowah culture, language and religion in pure form as possible, others preferred to amalgamate the old ways with aspects of non-Indian culture, including christianity. (The Cherokee Tobacco 78 U. S. 616 case was decided in 1871.) The Keetoowahs elected Dennis Bushyhead as Principal Chief in 1879 and 1883. One political party called itself the Keetoowah Party in 1879 in order to win fullblood votes. The Society lost controlling influence in tribal politics with the increase of intermarriage and the increasing influence of mixed-bloods.

In 1887, the General Allotment Act (Dawes Severalty Act) authorized the allotment of tribal lands to individual Indians and families. The Act did not apply to Cherokee Nation (24 Stat. 338, Sec. 339, 1887). The land of Cherokee Nation had to be allotted through an agreement in 1901, following actions of the U. S. to limit the sovereignty of Cherokee Nation. The 1889 Act established Federal courts in Indian territory, conferring limited civil jurisdiction on tribes, and criminal jurisdiction over certain crimes, excluding only Indian vs. Indian matters from Federal jurisdiction. The Act terminated certain of Cherokee Nation's governmental powers over prescribed territories and over its citizens. In 1889, reacting to the threat of allotment, the political mission of the Society altered when a convention amended the 1859 Constitution to include both religious and sectarian functions, and to allow open meetings. All claimed to worship the same God, as Keetoowahs.

. 1890s to 1901, PREPARATIONS FOR STATEHOOD; THE CHEROKEE AGREEMENT, AND THE DISSOLUTION OF INDIAN TERRITORY AND CHEROKEE NATION, AND ALLOTMENT: Congressional investigations from the 1870s forward confirmed widespread corruption in the Indian Service and the Five Tribes governments. Proponents of Oklahoma statehood pressed for elimination of the original tribal governments in the 1880s, seeking control of land, oil, and minerals. The 1893 Act created the Five Tribes Commission to negotiate with the Five Tribes for extinguishment of tribal title in order to facilitate the creation of a state of Oklahoma in Indian Territory, and starting the allotment process. Proponents of an Indian State of Sequoyah lost. The 1895 Act extended Arkansas criminal laws over Indian territory, leaving intact exclusive tribal jurisdiction over tribal members. The 1897 Act conferred civil and criminal jurisdiction on the United States courts in the territory over all persons regardless of race, in addition to imposing the laws of Arkansas and the United States throughout Indian territory. The Five Tribes Commission concluded negotiations without the cooperation of the Five Tribes, making the

Curtis Act of 1898 inevitable.

The Curtis Act (1898) forced the Five Tribes to allot their lands. This Act seriously and deliberately weakened the Five Tribes' governments. The Act granted territorial towns the right to establish municipal governments under the laws of Arkansas, rendered the civil laws of the tribes unenforceable in Federal courts, and abolished tribal courts. The Act prohibited payments by the United States to tribal officers for disbursement to tribal members. The Creek, Choctaw and Chickasaw tribes benefitted from the incorporation of provisions of tentative agreements with these tribes, providing that if the several agreements were ratified by these tribes, the provisions of the respective agreements would replace conflicting provisions of the Curtis Act. The Cherokee Nation had refused to negotiate a tentative agreement, and took the full body blow of the Curtis Act.

Though all Keetoowahs opposed allotment originally, the Keetoowahs split over how to handle the issue after Cherokee Nation's 31 January 1899 election on the Cherokee Agreement. The mixed-bloods of Cherokee Nation won in the popular election to approve the agreement, and Congress ratified the it on 1 March 1901 (31 Stat. 848). The agreement provided that Section 13 of the Curtis Act would not apply to Cherokee lands, and that "no Act of Congress or treaty provisions inconsistent with this agreement shall be in force in said nation" except Sections 14, 27 and 28 of the Curtis Act. These authorized the incorporation of towns, the location of Indian inspectors in Indian Territory, and abolished tribal courts. The Agreement did the following:

- 1) Prescribed the manner of the allotment of all Cherokee land;
- 2) Prescribed the manner of establishing town sites under the supervision of the Secretary of the Interior, including sale of town lots;
- 3) Established schools;
- 4) Continued the Cherokee Advocate newspaper;
- 5) Reserved land for town sites, churches, cemeteries and the like;
- 6) In Section 58, provided that "The tribal government of the Cherokee Nation shall not continue longer than March 4, 1906, subject to such future legislation as Congress may deem proper;"
- 7) Conferred U. S. citizenship upon Cherokees;
- 8) In Section 72, provided that "Nothing contained in this agreement, however, shall be construed to revive or re-establish the Cherokee courts abolished by said last-mentioned Act of Congress (Curtis Act), or the authority of any officer, at any time, in any manner connected with said courts;"
- 9) In Section 75, provided that "No act, ordinance, or resolution of the Cherokee national council in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Cherokee government as herein limited, shall be of any validity until approved by the President of the United States."

This Agreement effectively placed the Cherokee Nation under the direct management of the United States.

In November 1899, the Keetoowah Society convened in Tahlequah to pass resolutions critical of the Cherokee Council and the Dawes Commission, particularly with regard to plans to dispose of Cherokee land and to create a roll without the consent of the Cherokee Nation. They challenged amendments

to the Constitution, and resolved to enroll only under protest. The Keetoowahs in convention at Big Tucker Springs on 6 September 1901 decided to enroll with the Dawes Commission led to a final schism between Keetoowah factions. Redbird Smith left the meeting with eleven of his traditionalist supporters to resist enrollment actively, forming the Nighthawk Keetoowahs.

Several hundred Keetoowah Indians, including several groups that started out as members of the Keetoowah Society and left with the Nighthawks in 1901, coalesced to form a number of secretive, traditionalist, exclusive factions. Most of these groups started near Gore, Vian, or Proctor, and adjoining areas. These groups were nascent within the Keetoowah Society as early as 1893, and derived from Goingsnake fire or various of the Four Mothers Nation fires. Like the Nighthawks, these groups generally refused until 1910 or later to accept the work of the Dawes Commission.

While they fully intended to maintain tribal government and functions regardless of the fate of the Cherokee Nation, the Keetoowahs as a body officially acquiesced under protest to the effect of all the legislative provisions that would dissolve Cherokee Nation's government and allot Cherokee lands. They learned that they could not prevent the 1893 Act, the Dawes Commission enrollment, U. S. citizenship, the Curtis Act and the abolition of tribal courts, the Agreement with the Cherokee Nation of April 1, 1900, the 1906 Act and the virtual political dissolution of the corrupt Cherokee government as of 4 March 1906, presidential approval for all tribal ordinances affecting tribal or individual lands after allotment, and the allotment in severalty of Cherokee lands. See Cherokee Nation v. Southern Kansas R. R., 135 U. S. 641 (1890) and Cherokee Nation v. Journeycake, 155 U. S. 196 (1894).

1901 TO 1906, THE FIVE TRIBES ACT, AND THE REORGANIZATION OF THE KEETOOWAH SOCIETY, INC., THE CREATION OF THE NIGHTHAWK KEETOOWAHS, AND OTHER FACTIONS: During this period, the Keetoowah Indians lived throughout most of the old Cherokee districts, with the smallest constituencies in Cooweescoowee and Canadian Districts. The majority of the Keetoowah Indians later formed the political entity known as the Keetoowah Society, Inc., on 20 September 1905, because they knew that the Cherokee Nation was about to dissolve for political and practical purposes, leaving Cherokee Nation with no other general representative government unless the Keetoowahs carried on as a political body. The Keetoowah Indians believed they had to resort to their earlier governmental forms. Using a Federal Corporate Charter (20 September 1905) from the Territorial District Court in Tahlequah, as the Keetoowah Society, Inc., this faction functioned as a polity composed of a Chief and Council for the express purpose of carrying on the political and social functions of a Band. Because opposing factions like Redbird Smith's Nighthawks opposed any political organization they could not dominate, the Keetoowah Society, Inc., Inc., could not fully represent the interests of the Keetoowah Indians until they resolved such differences. Such a reconciliation was impossible until the Nighthawks resolved to be a religious and social organization with no political interests.

Robert Owen, head of the Union Agency of the Five Civilized Tribes, one of Oklahoma's first U. S. senators and a Cherokee descendant, presented a memorial for the Keetoowah Society, Inc., at the Sequoyah Convention in 1905. He worked with attorney Frank Boudinot, the Keetoowahs' legal counsel after 1896 and Secretary after 1901, to prosecute claims against the U. S. in behalf of the Keetoowahs. The Keetoowah Society, Inc., elected Frank Boudinot

Chief of the Tribe in 1905, but with no legal effect on Cherokee Nation except within the Keetoowah Society, Inc. Like the Nighthawk Keetoowahs and other Keetoowah factions, the Keetoowah Society, Inc., granted membership to some who were less than fullblood but who were socially and politically fullblood.

1906-1934, THE GROWTH OF THE KEETOOWAH GOVERNMENTAL ORGANIZATION PRIOR TO IRA: The Five Tribes Act of 1906 provided for final disposition of the property and legal affairs of the Five Tribes, with special emphasis on the allotment process, and the establishment of municipalities in Indian Territory, clearing the way for statehood. The Act adopted language from various of the agreements with the Five Tribes, and drastically limited the sovereignty of Cherokee Nation:

Section 11 [Tribal Taxes Abolished] . . . Provided, That all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

Section 28 [Tribal Government Preserved to the Extent Not Terminated] . . . Provided, That the Tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes or nations are continued in full force and effect for all purposes authorized by law, until otherwise provided by law. . . . but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year; Provided, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States; Provided further, That no contract involving the payment of expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.

The Cherokee Nation still had a special trust relationship with the Federal government, and had not been terminated in the sense that tribes were during the 1950s. Congress expressly extended the existence of the Cherokee Nation, and intended that members could elect to continue its functions, or abandon tribal relations as they saw fit. The Cherokee Tribe retained on paper the basic powers necessary to carry on self-government, including the right to choose a form of government and select representatives, and to disburse assets.

However, Cherokee Nation's members did not choose to carry out these functions, and abandoned virtually all the governmental activities the Act allowed them to preserve. The presidentially-appointed Principal Chief constituted the sole Cherokee government. By the 1930s, the Department found no extant functional Cherokee Nation government, but only a shell, consisting of the presidentially-appointed Principal Chief, whose main function was to sign papers disposing of Cherokee assets. Also, after all the legislation of the 1890s to 1907, congressional limitations on Cherokee Nation's sovereignty

far outweighed the retained attributes.

After 1907, the Nighthawk Keetoowah Society, in true sectarian spirit, named itself the "Original Keetoowah Society," based on the prophetic insights of several of the leaders. John Smith, son of Redbird Smith, and would-be prophet, continued to issue prophetic utterances in this vein throughout his life, long after the Nighthawks had adopted an official stance that they were not a political organization:

This is the original Kee-Too-Wah Society. . . . Any other organization or body functioning or claiming representation under the name of the Kee-Too-Wah Society are fictitious and impostors. (26 May 1937)

John Smith, the most influential Nighthawk leader among Redbird Smith's sons, had lost virtually all credibility among Keetoowahs by the 1930s due to his disastrous support of the Oneida con artist Chester Polk Cornelius. Cornelius nearly destroyed the Nighthawk organization with failed get-rich-quick development schemes that left many members landless and destitute. Some Nighthawk spokesmen and leaders now erroneously claim the UKB is a splinter of their religious cult, though the Nighthawks officially withdrew from all political activity after 1901, and barred its members from affiliating with any other groups or entities, including Christian churches. As the number of tribal towns associated with the Nighthawks dwindled from 21 in about 1900 to 3 in 1937, the remnants of the "non-political" Nighthawk faction eventually collapsed into a variety of factions. These included two ceremonial grounds run by opposing factions of Redbird Smith's own family at Redbird's and at Stokes Smith's grounds, as well as the Goingsnake "Seven Clans" fire, the Medicine Springs Fire or Medicine Society, and the Four Mothers Nation.

Other Cherokee political factions arose among the Keetoowahs, partly due to concerns about potential claims, partly to organize formally as a federally-recognized Tribe: the Cherokee Emigrant Indians, the Cherokee Immigrant Indians, and the Eastern and Western Emigrants. These factions of Oklahoma Keetoowah Cherokees by blood pulled together a coalition from the northern 14 counties of Oklahoma between 1920 and 1924, electing a Chief (Levi Gritts), and an Executive Council of Cherokees by Blood out of the body of the Keetoowah Society, Inc. During the 1930s, the majority of Keetoowah factions, now without any support of the dwindling Nighthawk separatists, supported the idea of reorganizing all the Keetoowah Cherokees in all the old clan districts as a united Band under the proposed Indian Reorganization Act. The Cherokees by Blood, representing all Cherokee descendants rather than Keetoowahs alone, failed in 1932 to obtain standing as a party to the Cherokee claims litigation. However, the Keetoowahs persisted as a political body apart from the Cherokees by blood.

1934-1937, THE IRA: The Land Division in the Department of the Interior concluded in 1934 that, unlike the other Five Tribes, Cherokee Nation was neither interested in reorganizing, nor capable of doing so. Unlike the other Five Tribes, Cherokee Nation had stopped electing officers and holding meetings. Most members simply had abandoned tribal relations after 1906, and by the Great Depression, were leaving Oklahoma by the thousands. Only the Keetoowah Indians were willing and probably able to reorganize in Oklahoma with great success, if the factions would only pull together. CNO could only reorganize under OIWA and IRA today through an election relying almost entirely on absentee ballots.

At the Muskogee hearing concerning the draft Indian Reorganization Act on 22 March 1934, Keetoowahs shouted down their opponents and presented John

Collier and his staff with a formal petition and letter supporting the IRA, and orchestrated a motion from the assembly roundly endorsing the legislation. Shortly thereafter, the Commissioner received a telegram, opposing reorganization. Though supposedly wired from the Keetoowah Council, upon investigating, the Commissioner learned the message was a forgery. Collier publicly praised the Keetoowahs for their enthusiasm and understanding for reorganization in a variety of writings and press releases. Interior Associate Solicitor Felix Cohen monitored the Keetoowahs' efforts to reorganize. Keetoowah leaders offered plans for reorganization, along with lists of members who supported IRA. Neither the Cherokee Principal Chiefs nor any general representative body of Cherokee Nation itself showed any support, while various non-Keetoowah Cherokees wrote to the Commissioner denouncing the plan. A. M. Landman, Five Civilized Tribes Superintendent, predicted that the mixed-bloods would control any pan-tribal Cherokee organization. Landman believed that a fullblood organization was best suited to represent the fullbloods. However, each faction demanded recognition as the exclusive representative government of the Tribe.

. 1937-1939, OIWA AND EARLY ATTEMPTS TO A REORGANIZE KEETOOWAH GOVERNMENT WITHIN CHEROKEE NATION'S FORMER BOUNDARIES: Oklahoma Senator Elmer Thomas, who believed the IRA should be restricted to reservation Indians, co-authored the Oklahoma Indian Welfare Act to allow Indians living on allotted lands in the state to avail themselves of the benefits of IRA. Though the participation of Oklahoma Indians in the IRA was not possible until the Thomas-Rogers Act of 1936 enabled reorganization under IRA through the OIWA, the Keetoowahs began planning to organize under the legislation. Just as A. M. Landman had predicted, the Keetoowah Society, Inc., at the urging of Levi Gritts, sought permission to represent the Keetoowah Indians, while certain other factions still demanded recognition as the exclusive representative government of their own small following, if not of the Tribe.

BIA anthropologist Dr. Charles Wisdom conducted research on the Keetoowah Indians starting 5 May 1937 with the cooperation of Organization Field Agent Ben Dwight. Wisdom did not realize the Keetoowahs had a Federal Charter predating to the dissolution of Cherokee Nation, showing the Keetoowahs' intent to maintain a governing entity within Cherokee Nation despite the effect of other Federal legislation. While the Nighthawk Keetoowahs were willing to submit to an interview, the Nighthawk leaders later utterly rejected the idea of participating in organization, primarily because they were not to be the focus of the project. Levi Gritts's effort failed when Associate Solicitor Frederick Kirgis issued his Keetoowah Organization as a Band Opinion (29 July 1937), based on Charles Wisdom's brief ethnographic study, concluding that the Society, or any of its factions, standing alone, was only a society of the Keetoowah Indians, and never had been a governing polity within the Cherokee Nation.

A Land Division decision in October 1937 stated that the Cherokee Nation government under the 6 September 1839 Constitution was ineligible to reorganize to undertake the functions of the 1906 government. Congress had dissolved most aspects of the inherent sovereignty of the Cherokee Nation government as set out in the 6 September 1839 Constitution. [(MEMO TO INDIAN ORGANIZATION, 25 October 1937, from Director of Lands (WDW) to Daiker, Indian Organization (163618); see also Solicitor's Opinion, 1 October 1941, 1 Op. Sol. on Indian Affairs 1076 (U. S. D. I. 1979)] The decision binds CNO, despite the Harjo v. Kleppe court's finding that the Five Tribes still

existed in 1972, and that the citizens of those tribes had the right to organize governments under OIWA and IRA. Thus, while the Cherokee Nation was not terminated, any new organization of the Cherokee Tribe would have to be an entirely new entity. Field investigators reaffirmed that Cherokee citizens forming the general class of Dawes enrollees, with the exception of the Keetoowahs, had abandoned tribal relations and had no interest in reorganization.

1939-1946, THE UNION OF KEETOOWAH FACTIONS TO FORM THE UKB: Contrary to post-1979 accounts by CNO, the UKB Base Roll was the BIA-approved 1949 UKB Base Roll, not the 1907 Cherokee Dawes Commission Roll. Neither Principal Chief Jesse B. Milam nor W. W. Keeler had any role except as bystanders in the UKB reorganization. The UKB was never intended to be a mere loan association. The UKB was federally-chartered under Section 3 (not Section 4) of the OIWA. The UKB never identified itself with the Nighthawk cult, because most UKB members belonged to Protestant denominations.

In June 1939, Organization Field Agent Ben Dwight informed Regional Coordinator of Organization for the Five Civilized Tribes Agency, Muskogee, A. C. Monahan, that Kirgis had been unaware of the Keetoowah Society, Inc.'s Federal Corporate Charter (20 September 1905). In obtaining that Charter, the Keetoowah Indians had established recognition as a polity of Indians. That recognition should have made them eligible to reorganize under OIWA and IRA. Realizing the legal effect of that document, A. C. Monahan assigned Ben Dwight and A. A. Exendine to help the Band to organize a coalition government between 1939 and 1946 including the Society, Inc. and other factions as well.

The United Keetoowah Cherokee Band of Indians (UKB) formed a Constitution and By-laws in 1939, and held popular elections between 1939 and 1946, seating a Chief, Reverend John Hitcher (1939-1946), and a Council. The UKB undertook land acquisition efforts for the purpose of establishing a Federal trust land base in Oklahoma in 1942, but the Department would not cooperate without congressional approval. Some Five Civilized Tribes Agency employees hoped to use the Band as a vehicle for restoring the Old Cherokee Nation, or at least for reorganizing all the Cherokee Dawes Commission enrollees and their descendants under OIWA and IRA. However, the 25 October 1937 decision of the Director of Lands, Land Division, Department of the Interior, prevented that result. The UKB decided by 1942 to remain a "Keetoowah" Cherokee polity including only Cherokee descendants who met the UKB membership requirements. The Department determined that an organization of the Keetoowahs, reuniting the various Keetoowah factions and other Cherokees of one-half blood or more who wanted to participate, did not conflict with the residual government of the Cherokee Nation. The latter was to retain its 1906 status under an appointed Principal Chief.

D'Arcy McNickle's determination of 24 April 1944 found the UKB was a historical tribe (see full text below). Rather than merely ask the Solicitor to rewrite the opinion, Acting Interior Secretary Abe Fortas asked Congress to pass the 10 August 1946 Act acknowledging the UKB's historical status and eligibility to reorganize under OIWA and IRA. The legislative history and intent contemplated recognition of a united body of Keetoowah Indians of 1/4 degree Indian blood or more, with the possibility of enrolling persons of lesser degree in the future. Keetoowah Indians of all factions and communities worked with the Organization Field Agents through Five Tribes Agency after 1946 to reunite under a common secular leadership, although every UKB Chief from 1939 to 1979 was a protestant clergyman. UKB interest in

Cherokee-related issues was entirely restricted to interests of the UKB constituency, composed primarily of restricted Indians, non-Dawes enrollees, and other Keetoowahs who remained loyal to the Keetoowah political ideals.

. 1946-1950, THE KEETOOWAH INDIANS ACT AND THE UKB REORGANIZATION: Reverend Jim Pickup (1946-1954, 1956-1957, 1960-1967) succeeded Reverend John Hitcher (1939-1946) at the latter's death in 1946, continuing as Provisional Chief until reorganization was complete. Pickup continued as Chief, alternating with Jeff Tindle, until 1967. Due to the Kirgis Keetoowah - Organization as a Band Opinion (29 July 1937), the UKB reorganization process could not begin until Congress agreed to offer the UKB the opportunity to reorganize under OIWA and IRA. The Organization Field Agents, congressional staff, and Acting Interior Secretary Abe Fortas, Congressman Stigler and Senator Thomas supported the proposed UKB reorganization, based on the results of additional research and the success of organizing efforts. Congress passed the Keetoowah Act on 10 August 1946, as part of a package measure including a gift of land to the Cheyenne-Arapaho Tribe in Oklahoma.

Although in the 1930s the plan was to organize half-bloods only, the 1946 Act did not contemplate the organization of an adult Indian community under Section 479 of the IRA, but of a sovereign tribe in the full sense under Section 476 of the IRA. Therefore, the 1949 UKB Base Roll was open to quarter-bloods, anticipating the future adoption of other Cherokee descendants of lesser blood. The reorganization process took another four years. On 1 May 1949, anticipating the roll the UKB would have in managing their share of Cherokee Nation property, the BIA named Chief Jim Pickup as Trustee for Cherokee Nation assets. On 9 May 1950, Secretary Warne signed the approved UKB Charter, and issued a statement that the UKB treaty rights could be found in the treaties of the Cherokee Nation. The UKB corporate Charter, Constitution and By-laws were adopted 3 October 1950 by the majority of qualified voters. Thereafter, the UKB, incorporating all the factions of the Keetoowah Indians of the Cherokee Tribe throughout the nine districts of the old Cherokee Reservation, continued to repose its secular governmental authority continuously in democratically-elected Chiefs (also informally called, in the 1940s, "Presidents"), Executive Officers, and a Tribal Council, with other subordinate officers and officials as needed.

The 1939 Roll, reaffirmed in 1949, became the foundation of the Base Roll, subject to amendment by 3 October 1955, though the UKB updated it in 1985 with secretarial approval. During the periods of open enrollment, consistent with the 1950 enrollment laws, members of 1/4 or more Cherokee ancestry, using the Dawes Roll or any other acceptable proof of Cherokee ancestry by blood, were adopted into the Band. Enrollment remained open, though enrollment ordinances changed several times.

. 1950-1964, THE UKB DURING TERMINATION: Despite undocumented and spurious claims to the contrary, archival sources demonstrate that the Band continued to survive and function as a tribal entity since reorganization, although not without heated election controversies and partisan feuds, such as those between the Jeff Tindle (1954-1956, 1957-1960) and Jim Pickup (1956-1957, 1960-1967).

With the aid of Earl Boyd Pierce, Esq., the UKB resumed efforts to borrow money in order to acquire a tribal trust land base, through the OIWA/IRA revolving credit. In refusing to extend loans to the UKB, the BIA relied on the point that the UKB was not organized under Section 4 of the OIWA as a loan association, but was a recognized tribe organized under

Section 3. When the policy was changed making the Section 3 organizations eligible to apply, another general policy of BIA Superintendent W. O. Roberts and the Eisenhower Administration prevented loans for such trust land acquisition. When UKB Chief Jeff Tindle attempt to have Principal Chief W. W. Keeler replaced, Muskogee Area Director Fickinger seized on the occurrence of a UKB election dispute to declare the UKB without a government. When the Band appealed, the BIA Commissioner Glenn Emmons admonished Fickinger on his refusal to recognize UKB's Council.

Between 3 October 1950 and 3 October 1960, while the Secretary retained approval authority over the UKB, but the Department determined that such authority lapsed on 3 October 1960 (see Letter, 15 October 1961, from Assistant Chief Tribal Operations Officer Pennington to Muskogee Area Director Virgil N. Harrington, regarding Harrington's 7 August 1961 inquiry as to the effect of Sections 5, 6 of the UKB's Charter on secretarial approval authority after 3 October 1960). Principal Chief W. W. Keeler never obtained supervisory authority over the UKB, except covertly, by arranging with Area Director Harrington and the UKB's attorney to receive all information regarding their private undertakings so that he could veto them if they did not suit him.

After Chief Pickup resumed office, replacing Chief Jeff Tindle, the BIA began to work with the UKB to make the Band the vehicle for delivering services to its own members and to other service-eligible Cherokees. In 1963, the BIA and Cherokee Nation realized that because of restrictions in the Band's Charter that could not be lifted without a secretarial election, the UKB was unable to engage in land transactions that involved long-term leases or sale of acquired tribal lands. The UKB continued to seek trust land acquisition for tribal housing and its own governmental offices and business, with no cooperation from the BIA.

Members of the UKB Tribal Council continued to administer enrollment and to verify qualifications of prospective members, approving enrollment updates through formal Council action. A 4 June 1963 enrollment ordinance required new members to prove 1/2 or more degree of Cherokee Indian blood, but the 23 November 1964 enrollment ordinance restored eligibility to quarter bloods. All enrollment ordinances continued to rely upon the 1949 UKB roll.

1964-1976, THE UKB DURING RECONSTRUCTION OF CHEROKEE NATION:  
Cherokee Nation or Tribe and the UKB embarked on joint enterprises in the early 1960s. The UKB Council and Chief Pickup tried to help all Cherokees, regardless of UKB affiliation, by acting as the Cherokees' sponsoring federally-acknowledged tribal organization for the purpose of bringing in funds and programs to Oklahoma. Chief Jim Pickup, as Trustee for the trust assets of Cherokee Nation (4 May 1949 - 17 May 1967), wanted the UKB Council's joint and concurrent control over Cherokee trust assets, programs and services within the boundaries of the old Cherokee Nation to continue, for the benefit of the UKB's own members.

UKB Chief Jim Pickup and UKB Chief Bill Glory (1967-1979) attempted to work cooperatively with Cherokee Nation, even though UKB members bitterly criticized both of them for being too accomodating and giving away the rights of the UKB. Some leading members of the UKB Council even resigned in protest. Relations deteriorated irreparably between Chief Glory and Principal Chief W. W. Keeler by 1974. Keeler evicted Glory from the small UKB tribal office housed in the CNO tribal complex at Tahlequah after Glory retired from the Cherokee Nation Housing Authority. Cherokee Nation attempted thereafter to

close all doors to UKB participation in Cherokee property and activities.

The Act of Oct. 22, 1970, 91st Cong., 2nd Sess., P. L. 91-495, 84 Stat. 1091 (1970), the Bellmon Bill, "Authoriz[ed] Each of the Five Civilized Tribes of Oklahoma to Select Their Principal Officer . . . ." However, Commissioner Louis Bruce, in American Indian Tribes and their Federal Relationship, Plus a Partial Listing of other United States Indian Groups (Wash., D. C.: U.S. Dept. of Interior, BIA, March, 1972) declared that the UKB is a fully recognized Class 1 OIWA/IRA tribal entity, while Cherokee Nation remained an unorganized Class 3 service population. Federal court challenges later determined that the presidentially - or secretarially - appointed Principal Chiefs of Cherokee Nation since 1906 were bona fide heads of state, but those decisions had no legal effect on the status of the UKB.

1976-1990, THE UKB DURING CHEROKEE NATION OF OKLAHOMA'S SELF-DETERMINATION: CNO opposed the UKB's continuing efforts to establish a land base, tribal office complex, businesses, and to maintain a separate roll. CNO began exploring ways to terminate the Band, including through administrative and congressional action. The course of choice was to request nullification of the UKB Corporate Charter as provided in Section 8 of that Charter.

CNO adopted a non-OIWA/IRA government under a 5 July 1976 Constitution that Commissioner Morris Thompson and Ross O. Swimmer co-approved 2 October 1975. CNO claimed this document to be the legal equivalent of an OIWA Charter, Constitution and By-laws. CNO claimed that the UKB and CNO shared a common base roll and service population, and that CNO should control all funding and trust assets within the former boundaries of Cherokee Nation. Litigation addressed question whether the Cherokee government was terminated in 1906. The BIA supported CNO's claim that the OIWA and IRA abolished the effect of the 1906 Act in that the Tribe was eligible for the benefits of OIWA and IRA; however, no one has explained how any Tribe can avail itself of the full benefits of OIWA and IRA without reorganizing accordingly. Congress, having limited the inherent sovereignty of Cherokee Nation, began to restore it through piecemeal legislation in the 1980s. The BIA also gave CNO special dispensations that went around the intent of OIWA and IRA. UKB's organization under OIWA / IRA became a liability, when Swimmer slurred the OIWA, IRA and 1946 Act, claiming the UKB was a "created" tribe lacking any sovereignty.

UKB political and governmental activities and economic development efforts were muddled during the early to mid-1970s, dissolving into factional disputes between Chief Bill Glory and the Tribal Council. The feud led to the development of a Shadow or Underground government under the leadership of Tom Hicks, Henry Doublehead and Willie Jumper. Eventually, Jim Gordon (1979-1983) was elected as the new Chief to succeed Glory after Tom Hicks withdrew. UKB's Council, gridlocked during the mid-seventies, returned to an even keel when the Council sought aid from Muskogee Agency to restore order and clear the wreckage left after Chief Glory's chaotic administration.

The years of Chief Jim Gordon's administration (1979-1983) were fraught with controversy and a taste of the unrelenting harassment of CNO to come. Under Chief Gordon, the Enrollment Committee expanded enrollment activities, under a series of new ordinances. For a time, eligibility expanded, though few outside the original eligibility classes availed themselves of the opportunity. New additions to the Roll occurred through Council resolutions in 1980, and in another series of additions, concluding in October 1982. During these years, the UKB attempted to participate in various programs and development strategies with mixed success, due to lack of resources, lack of

cooperation from the BIA and the State, direct interference from CNO, and the UKB's own internal political confusion and distress.

In the Federal Register, Vol. 44, No. 26, Tuesday February 6, 1979, pp. 7235-7236, the Secretary of the Interior lists the UKB as a federally-recognized, service-eligible entity. The Department has since characterized this and similar publications as binding determinations of the Department regarding the recognition of tribes, both in Federal litigation and in congressional hearings.

Principal Chief of Cherokee Nation Ross O. Swimmer denied UKB's historical existence for the first time of record to Oklahoma Senator Henry Bellmon, in a Letter, 27 April 1979. Swimmer claimed the UKB was "created" by the accidental inclusion of their name in the 6 February 1979 Federal Register notice; see also Letter, 30 April 1979, Principal Chief of Cherokee Nation Ross O. Swimmer to Oklahoma Senator David Boren, denying UKB's historical existence. The claims that the UKB is a sovereign inferior to CNO, that the UKB has no rights as a Federal-Indian tribe, regardless of source or basis, do not antedate 6 February 1979, and probably are no earlier than 27 April 1979.

In May 1979, Assistant Deputy Commissioner Martin Seneca issued a decision requiring the UKB and CNO to issue concurring resolutions to obtain P. L. 93-638 "tribal organization" funding. CNO Principal Chief Ross O. Swimmer lobbied successfully with Assistant Secretary Forrest Gerard to overturn the Seneca determination. However, in characterizing the organization of federally-acknowledged tribes listed in the 6 February 1979 Federal Register notice, on 20 November 1979, Ms. Patricia Simmons, Tribal Relations Specialist, submitted to the Chief, Branch of Tribal Relations, a detailed report titled, "Organizational Status of Federally Recognized Indian Entities." Simmons surveyed a category (p. 2) of "Officially Approved Organizations Pursuant to Statutory Authority (Indian Reorganization Act; Oklahoma Indian Welfare Act; and Alaska Native Act), finding (p. 3), UKB had a Council organized under a Federal Corporate Charter. In the "Other" category of "Officially Approved Organizations Outside of Specific Statutory Authority," (p.7), Cherokee Nation (with a Council) was listed.

On 16 January 1980, Gerard eliminated requirements that CNO obtain concurring resolutions from the UKB to apply for any Federal program funds serving Cherokees. CNO continued to claim that the UKB and CNO have a common population, though very few CNO members ever were eligible for membership in the UKB. The Band obtained a P. L. 93-638 Grant to amend the 1949 Base Roll and produce a current (1986) Roll. In the first month of the project, the BIA reaffirmed that the UKB Base Roll was distinct from the 1907 Cherokee Dawes Commission Roll, and therefore was a Base Roll distinct from CNO's.

The Band transmitted the updated 1949 Roll, the newly approved and duly adopted 1986 Membership Roll, and the Final Report of P. L. 93-638 Grant G08G142002 to the BIA's Muskogee office as a deliverable on 16 March 1986. The Band submitted these records to Federal District Court with a cover note from the BIA Muskogee Area Office, in the course in litigation in 1987 in Cordelia Tyner, a/k/a/ Cordelia Tyner Washington, and the United Keetoowah Band of Cherokee Indians v. State of Oklahoma, ex re., David Moss, District Attorney and David Moss, individually; M. Denise Graham, individually, No. 87-2797, U. S. D. C., N. D., Oklahoma., when the State subpoenaed a copy of the Band's tribally-certified roll.

In 1988, the Department found that the 1976 Cherokee Nation was, as

constituted, "the full successor to the Cherokee Nation of the first decade of this century." (Letter, 4 February 1988, Hazel E. Elbert, Acting Assistant Secretary of Interior for Indian Affairs, to James G. Wilcoxon, Esq., Wilcoxon and Cate, Muskogee, Oklahoma) However, unexplained questions regarding the Tribe's inherent sovereignty, precisely because it is the full successor to the Cherokee Nation as dissolved in part and preserved in part in 1906. The Department did not find that CNO had any authority over the UKB, a tribe organized separately under OIWA and IRA. Elbert did find that the 25 October 1937 Land Division Opinion remained in effect.

UKB Membership Ordinance 90 UKB 9-16 16 September 1990 provides that any descendant of 1/4 Cherokee Indian blood of any enrollee on the 1949 UKB Base Roll, or on any other historical Cherokee Roll, shall be eligible for enrollment in the UKB. Final determinations of Cherokee Indian blood quantum rest with the UKB Tribal Council. Under that ordinance, UKB members who held affiliation of any kind with any other federally-acknowledged tribe were required to relinquish that membership. The UKB continues to require relinquishment for new applicants, but is setting up the process for an IRA election to change enrollment requirements to require relinquishment and to ban dual affiliation.

Finally, in 1990, after a systematic review of the United Keetoowah Band's enrollment and membership files (and a comparison of those data with the Cherokee Nation of Oklahoma's data), the BIA Muskogee Area Office confirmed, that more than 3,000 members of the United Keetoowah Band, including its Base Enrollees, never were registered with Cherokee Nation of Oklahoma, and therefore never had any form of dual affiliation with that entity. Some 4,700 UKB members either never voluntarily registered with Cherokee Nation of Oklahoma, or once were registered (voluntarily or involuntarily), but subsequently voluntarily relinquished their CNO registration. On 24 July 1992, Rosella C. Garbow, Muskogee Area Tribal Operations Officer, declared:

This is to certify that records created in 1985 show that the United Keetoowah Band of Cherokee Indians in Oklahoma has approximately 4,700 enrolled members residing within their service area.

Over 250 more UKB members have relinquished their affiliation with any other federally-recognized tribe since that date. The 1986 United Keetoowah Band Roll, completed during the P. L. 93-638 grant, was known to be an official Tribal Roll for all purposes, duly adopted by the Tribal Council, and authenticated by the BIA, within the meaning of Federal Indian Law. It is up-to-date, and there are regular monthly additions through adoption, and clarifications of exclusive affiliation through relinquishment from Cherokee Nation of Oklahoma.

Regardless of Dawes descendancy, it is the policy of the United Keetoowah Band of Cherokee Indians in Oklahoma that all lineal descendants of the 1949 Base Roll and current roll are automatically eligible for membership in the Band. The UKB hoped that the enrollment update and other status clarification efforts would result in separation of their population from CNO's, and would lead to the development of a UKB land base and separate programs. However, a separation of the two populations required the cooperation of CNO, and that was virtually impossible for the UKB to obtain. The UKB sought to finance litigation to obtain a clarification of their political and economic rights, but CNO intervened with all agencies, foundations, corporations, local governments and Congress to prevent any

successful business ventures.

. CONCLUSION: 1990-1993, THE CHEROKEE NATION OF OKLAHOMA'S CAMPAIGN TO TERMINATE THE UKB: In 1990, in a desperate effort to prevent the Secretary from extending to the UKB the full rights of a properly organize OIWA and IRA tribal government, Ross O. Swimmer wrote a letter to Assistant Secretary Brown. This letter concluded that the UKB should not be recognized at all, because the UKB Base Roll was the not BIA-approved 1949 UKB Base Roll, not the 1907 Cherokee Dawes Commission Roll, because Principal Chief W. W. Keeler had the UKB reorganized to suit his own purposes, because the UKB was only intended to be a loan association, and because the UKB, though federally-chartered under Section 3 of the OIWA, was always trying to ride the coattails of the Nighthawk Keetoowahs in order to establish a tribal identity. Swimmer's claims became the core of the case against the UKB thereafter in litigation and in hearings. The CNO had terminated a tribe by creating a new mythology.

The premise upon which Assistant Secretary Forrest Gerard relied in penning the 16 January 1980 Letter barring separate funding for the United Keetoowah Band was the same one upon which Congress relied in declaring the United Keetoowah Band ineligible for separate funding and land acquisition in Oklahoma (at least for the purposes of the 101st Congress) within the former boundaries of Cherokee Nation (in Amendment 86 to H. R. 101-116, the FY 1992 Interior Budget Appropriations Bill). That defective premise was that Cherokee Nation of Oklahoma and the United Keetoowah Band share the same Base Roll.

Having reviewed the history of the UKB in brief, the reader should perceive readily the problems with Mr. Ron Eden's testimony to Congressman Aucoin's committee in April 1991 [at the U. S. House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April 1991)]. The hearing record contained a brief discussion of the BIA's reasons for moving to rescind the 16 January 1980 Letter of Assistant Secretary Forrest Gerard. Gerard's policy prevented separate services and land acquisition for the United Keetoowah Band and the Creek Tribal Towns. The speakers commented on the autonomous status of the United Keetoowah Band organized under the 1934, 1936 and 1946 Acts. Chairman Aucoin then cited what purported to be the Department's own long-standing determination that the Band had failed to carry out its contractual obligations under one P. L. 93-638 grant. Realizing that Eden was loath to agree that the Band was unrecognized or did not deserve recognition, Congressman Aucoin suggested that notwithstanding other law or equities, the Band did not deserve a chance to contract services for the benefit of the Band:

Just one second, Mr. Eden. In 1980, looking at Mr. Synar's background information, he says on page 4 of his background paper that, "In 1980, upon reviewing a funding request from the UKB, the Department of the Interior issued the following policy." This is not the full quote but the conclusion of the quote:

There is no justification for contracts and/or grants with UKB to provide the same services to those portions of the Cherokee Nation which would be served under the Nation's contracts and/or grants. The only funding the BIA issued was a 1984 grant of \$70,000 to help the UKB establish a tribal roll and identify its unique service population. To date, however, the BIA has concluded that the UKB

has failed to accomplish either task.

What about that?

Mr. Eden. Correct.

Mr. AuCoin. Those are the Department's own words in 1980.

Mr. Eden. Well, that is the policy that we're talking about as a result of the membership of the Cherokee Nation and the Keetoowah Band having the same enrollment criteria and traced to the same base roll. That was the reason that essentially the Gerard policy was put in place.

Mr. AuCoin. Why did you change the policy then?

Mr. Eden. Well, we started out changing the policy because of another tribal issue; namely, that the Creek towns did not want to continue receiving their services from the Creek Nation. [U. S. Congress, House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April 1991); emphasis added]

The date "1980" appears several times in this testimony, always alluding to a finding of the Department supposedly made that year regarding the Band's competency to carry out contractual obligations. Eden twice expressly confirmed the existence of that determination in "the Department's own words." Eden did not address the discrepancy between the date of the alleged negative "finding" and the date the grant was awarded, much less admit the "finding" never existed. The "finding" was a citation in Cherokee Nation's briefing materials supplied to the Committee and the BIA. What is most surprising is that evidently, no one at the hearing noticed the falsehood due to a strictly "ends-oriented" agenda.

The Band is in receipt of Muskogee Area Tribal Operations Officer Rosella C. Garbow's 24 July 1992 finding that the UKB has an Oklahoma resident population, and service area population, of 4,700, of whom nearly 4,000 now are exclusive UKB members. The Band received Ron Eden's 24 August 1992 determination as Acting Assistant Secretary that the UKB is an autonomous, federally-recognized American Indian Tribe, entitled to separate services and land acquisition in Oklahoma. The alleged "1980 decision of the BIA" only would be significant -- if it existed -- because it purported to reflect on the question whether the Band deserved to serve its own needs, or whether the Band and its members should be compelled to rely on Cherokee Nation of Oklahoma for programs and services. The implication is that the Band was incapable of meeting contractual obligations. The alleged BIA determination obviously could not have been a 1980 "decision" by the Department of the Interior on the UKB's ability to provide satisfactory performance on a 26 November 1984 P. L. 93-638 grant.

The purpose of the 1984 grant was not to enable the Band to "identify [the UKB's] unique service population," simply by declaring the roll exclusive, once complete. The purpose of the grant was to allow the UKB to update and verify the contents of individual members' files, in order to correct the 1949 Base Roll and to update the current roll so that the Band could identify its exclusive membership. (Letter, 24 July 1992, Area Tribal Operations Officer Rosella C. Garbow TO WHOM IT MAY CONCERN) Without additional clarification from the records of CNO registration, as confirmed by the BIA after the completion of the project, identification of the unique UKB service population (comprised of those who never had been citizens of any other recognized tribe, and who had relinquished any CNO status) would have been impossible. Identifying the UKB's unique population has continued to be

challenging since 1986, because CNO routinely re-registers UKB members who relinquish CNO registration, without their consent or knowledge. CNO now requires UKB members to "show good cause" and imposes a 180-day waiting period before honoring relinquishments. With people supposedly clamoring to register with CNO and over 150,000 on the CNO registry, it is amazingly difficult for UKB members to prevent CNO from registering against their will.

Apparently, Congressman Synar's briefing book did not contain a copy of the P. L. 93-638 contract letter to the UKB, correspondence and reports generated during the project, or the Band's voluminous Final Report on the Grant, because that document would have shown the purpose of the Grant and its successful completion. The BIA and Congress ignored the Band's submission of the Final Report, the amended 1949 Base Roll and updated 1986 Roll. Congressman Aucoin concluded with a final question:

[A]ssuming no enactment in 1946 or any other year allowing the UKB to organize under section 3 of the Oklahoma Indian Welfare Act, would or could the BIA recognize the UKB as a new tribe or band? Amplify that for the record because obviously Mr. Synar believes that there may be the need for a record to be laid and perhaps legislation to be amended. [U. S. Congress, House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April 1991)]

The only item the BIA used to "amplify the record" was the Kirgis Keetoowah - Organization as a Band Opinion of 29 July 1937. The Department found it inconvenient to cite Acting Secretary of the Interior Abe Fortas's finding, supporting the plan to allow all the various factions of the Keetoowah Indians to reunite and reorganize as a Band. (Senate Report 79 Cong., 2nd Sess., No. 978, 1946, Testimony of Acting Secretary of Interior Abe Fortas; see also, House Report 79th Cong., 1st Sess., No. 444, 1946 and House Report 79th Cong., 2nd Sess., No. 2705, 1946) The Department conveniently forgot that there already was a Federal Charter for the Keetoowahs in 1905. The BIA and Congress refused to refer to records of the Organization Field Agents from 1937 to 1946, or to the legislative history of the 1946 Act, that showed why and how the UKB was reorganized. Congress even accepted without question Ross O. Swimmer's bizarre story that Congress recognized the UKB in order to accommodate Principal Chief W. W. Keeler in some way.

Congress passed Amendment 86 to the FY 1992 Interior Budget, agreeing to delete funding for the United Keetoowah Band of Cherokee Indians in Oklahoma, providing further in the legislative history that until such time as Congress enacts contrary legislation, Federal funds should not be provided to any group other than the Cherokee Nation within the jurisdictional area of the Cherokee Nation. Unless the UKB is able to move entirely out of Oklahoma, the result was this technically deficient language, which nonetheless represents the express legislative termination for the purposes of eligibility of the first tribe since 1962:

. . . until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation.

As Acting Assistant Secretary, Ron Eden issued a determination on 24 August

1992 that the UKB is entirely separate and autonomous from CNO, and is recognized as a properly organized OIWA and IRA tribal government that neither has been terminated nor barred from the Federal-Indian relationship.

Meanwhile, the nebulous status of CNO continues to receive blanket endorsements from the BIA and summary approvals of Congress. With the approval of the Secretary, the Councils of CNO and the Eastern Band of Cherokee Indians of North Carolina adopted a concurring resolution without notice to the UKB in August 1992 that they are the sole federally-recognized Cherokee tribes. Principal Chief Mankiller announced in January 1993 to all U. S. governors that the UKB is an unrecognized Indian group. While claiming that she has made the resolution of differences with the UKB a personal and political priority, Mankiller has campaigned for the express legislative termination of the UKB. CNO has signed a new self-governance program to take effect in October 1993, and enjoys piecemeal restoration of the inherent sovereignty of Cherokee Nation under the 1906 Act, based largely on the misconception that the CNO is organized as a democratic OIWA and IRA government. In a Letter, 7 July 1993, from John Ross, Chief Spokesman, to Rosella C. Garbow, Director, Training and Operations, BIA, Muscogee Area, asking for clarification on the following points:

1. Has the Cherokee Nation of Oklahoma ever proposed having an O. I. W. A. election to adopt a Charter?
2. Does CNO claim to have a Charter?
3. Does CNO claim to have a "blanket" concurring resolution from the UKB for CNO use of the UKB Charter?

Rosella C. Garbow initialed the memo and advised that the answer to all three questions was, "No." There will be no level playing field between the CNO and the UKB, as long as Congress and the BIA authorize CNO's continuing attack on the UKB's sovereign interests. If the fate of the UKB serves as precedent, no other small recognized tribe is safe.

AN EXECUTIVE SUMMARY OF THE UKB'S STATUS  
WITH REVIEW UNDER THE CRITERIA OF 25 C. F. R. 83

"The Keetoowahs themselves have never accepted the view that they are not 'the people' and that they do not speak for the real interests of the ancient Cherokee world. They continue to this day to speak and act in all patience as if the decrees of the courts and the acts of the Congress had never been. But they are still puzzled at the failure of the United States to understand the simple thing they have always said, namely that Keetoowah is Cherokee and should never have been considered anything else."  
-- from Position Paper on the UKB, 24 April 1944, D'Arcy McNickle,

## THE STATUS OF THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA

The purpose of the following narrative is to lay to rest certain popular misconceptions about the political identity of the Keetoowah Indians who compose a recognized Indian tribe. The most damaging of these misconceptions arose during the concerted, well-financed campaign by the Cherokee Nation of Oklahoma and the Department of the Interior to falsify the record of the UKB's existence and organization to accomplish the Band's termination. That campaign started on or about 27 April 1979. The UKB hopes that Congress, Indian nations and voters will learn from this account how the involuntary termination of tribal existence still is possible.

\* \* \*

After 1968, Congress took steps to halt or reverse the unilateral administrative and legislative termination of tribes. P.L. 100-297, Title 25 U. S. C. Section 2502 (April 28, 1988), formally rescinded P. L. 83-108 as a statement of the "sense of Congress," at least for the purposes of the 100th Congress. Congress declared that there shall be no unilateral termination of any federally-recognized tribe. See legislative history at 1988 U. S. Code Congressional and Administrative News, p. 101. Termination still happens, through third-party challenges to the tribal status of tribes that are recognized. Aggressive lobbying, litigation, and defamation are effective tools for competing governments and business interests who find any particular tribe's inherent powers and rightful property claims to be inconvenient. The UKB example provides an important case study of the continuing termination process.

This narrative begins at what could be the end. The effect of an obscure amendment to the FY 1992 Interior budget was to declare the Band ineligible for separate services or Federal trust land acquisition, and therefore effectively terminated as a sovereign. The legislative history of Amendment 86 is illustrative of the UKB's interactions with the U. S. Congress, the BIA, Cherokee Nation of Oklahoma, and the State of Oklahoma since 1979.

Knowing well that the purpose of a \$100,000 line item in the FY 92 Interior budget was to allow the UKB to maintain a current distinct Tribal Roll, Cherokee Nation of Oklahoma intervened to prevent the funding allocation. Congressman Mike Synar's testimony against the UKB during the hearings on FY 1992 Interior appropriations quoted from what he said was a BIA assessment of the UKB's performance under its 1984 P. L. 93-638 grant to update the UKB Roll. At the hearing, Chairman Les Aucoin clearly viewed this quote as the single most important charge against the UKB. At the appropriations hearing, BIA witnesses verified that the statement was an authentic quote from a 1980 BIA report.

No one at the hearing, no member of Congress, no staff member ever read the alleged quote carefully enough to notice the date of the alleged BIA "determination." No one at the hearing read from or cited the 1984 grant approval letter from the BIA to the UKB informing the Band of the award and its terms. No one cited the UKB's 1986 Final Report or read from the Band's cover letter. No one invited the UKB to respond, or listened when the UKB learned about the hearing and attempted to respond to the accusations of Congressman Synar and CNO. No member of Congress ever has asked whether it was physically impossible

for there to be a 1980 BIA negative assessment of the Band's performance on a project which did not exist until 1984, and which the Band completed in 1986. The UKB Tribal Council's Final Report to the BIA on their 1984 P. L. 93-638 grant accompanied an approved and updated roll. That roll was verified by the BIA Muskogee Area Office for use as evidence in Cordelia Tyner, a/k/a/ Cordelia Tyner Washington, and the United Keetoowah Band of Cherokee Indians v. State of Oklahoma, ex re., David Moss, District Attorney and David Moss, individually; M. Denise Graham, individually, No. 87-2797, U. S. D. C., N. D., Oklahoma (1987), when the State of Oklahoma demanded that the UKB produce a current approved Tribal Roll. Contrary to post-1979 accounts by CNO, the UKB Base Roll was and still is the BIA-approved 1949 UKB Base Roll, not the 1907 Cherokee Dawes Commission Roll. A comparison of the grant letter and the UKB's Final Report proves that Congressman Synar's 1991 allegations against the UKB were false.

It is impossible to write a valid program evaluation four years before a project starts and six years before it ends. If the BIA was prescient enough in 1980 to foresee the UKB would fail to perform on its 1984 grant contract by 1986 and issue a report in 1980 making that finding, why did the Assistant Secretary grant the award in the first place? If the new Congress is incapable of rescinding Amendment 86, no Indian sovereign is safe.

\* \* \*

Another charge against the UKB dating to 1979 is that it is a splinter group of the Nighthawk Keetoowah religious organization, or alternatively, that it is a bogus organization wrongfully claiming a political identity and affiliation with the Nighthawk Keetoowahs. The UKB never identified itself with the Nighthawk cult. Most original UKB members belonged to Protestant denominations, and most of the Chiefs have been fundamentalist preachers or church leaders; that is the plain truth.

Chadwick Smith, a Cherokee affiliated with Cherokee Nation and enrolled with the UKB, has been an employee of Cherokee Nation since the 1970s. While he serves as legal counsel for CNO and as a judge in CNO's magistrate court system, he also represents the Nighthawk Keetoowahs regarding their false claim that the UKB is a splinter group of the "Nighthawk" Keetoowah Society, created at some unknown date between 1905 and 27 April 1979 (the date when Ross O. Swimmer's claims against UKB's status emerged). Chadwick Smith leads a group of "Reformed Keetoowahs" dedicated to neutralizing UKB political activity, by termination if possible. Ironically, Chadwick Smith is a grandson of Rachel Quinton, a faithful UKB Council representative for the Canadian District, as well as Secretary and Clerk during the 1950s, 1960s and 1970s, who never saw the UKB as a creature of CNO. Throughout most of her later years, Secretary Rachel Quinton unsuccessfully promoted reconciliation between Stokes Smith, the Chief of the Nighthawk contingent in her day, and the UKB Council, hoping that Stokes Smith's would encourage his followers to join the UKB. Mr. Smith's personal crusade against the UKB repudiates his membership in the UKB, and dishonors the memory of his own grandmother.

Federal records and official accounts attest that the Nighthawk Keetoowah Society broke away from the old Keetoowah Society about 1905

as a result of a disagreement regarding the political future of the community. The history of the "Nighthawks" as a secretive religious cult in the strict anthropological sense is well-established in scholarly writings. Today, the two main opposing factions of Keetoowah Nighthawks at Stokes Smiths Grounds and at Redbird Smith's Grounds still claim (separately, and in opposition to each other and the rest of the world) to be the arch-conservative bastion of Cherokee tradition. The Nighthawks generally have barred members from affiliation in any other political, religious or social organizations. The Nighthawks' "non-political" religious organizations shunned most Christian influences as a doctrinal matter, though Redbird Smith himself venerated Christ at the end of his life. Therefore, it is most interesting to find that in 1991, the Nighthawk Keetoowahs at Stokes Smith's Grounds reversed a policy of over 80 years' standing to attack the political status of the UKB, adopting a new agenda that suited Chad Smith's professional aspirations quite well. Chad Smith, his father and certain cronies have used their dual affiliation with CNO and the UKB to mount a widely-advertised campaign to terminate the UKB from within.

The Keetoowah Society, Inc., incorporated on 20 September 1905, and worked to keep the Keetoowah factions united. The Corporation led the struggle for the right of the UKB to reorganize, but its long-time leaders lost credibility and following to the UKB after 1939. By 1950, most members of the various Keetoowah factions had joined the UKB, even though the leaders of these factions never officially resolved their philosophical differences. While the Nighthawk Keetoowahs recorded under 900 current members (and the membership at the two remaining, opposing grounds has continued gradually to decline), the official UKB enrollment was around 1,500 in 1939, and grew to over 3,000 by the time of the IRA election in 1950. The UKB has a resident Oklahoma service population of 4,700, of whom about 4,000 hold exclusive UKB membership. The weak basis for the "Nighthawk" legend appears below in a detailed chronology and analysis of events leading to the acknowledgment of the UKB in 1946 as a federally-recognized tribe entirely distinct from the Nighthawk organization or from Cherokee Nation.

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On 27 April 1979, Ross O. Swimmer claimed that the UKB was created as a Section 4 loan association under OIWA, only to enable individual Cherokees to obtain personal loans. UKB was never intended to be a mere OIWA loan association. The UKB was federally-chartered under Section 3 (not Section 4) of the OIWA, and never received any OIWA loans, because the BIA refused to allow them to participate in the program, even after the rule changes made them eligible, as a Section 3 chartered Tribe.

Ross O. Swimmer later claimed (8 May 1990) that Principal Chief W. W. Keeler personally arranged the acknowledgment and reorganization of the UKB after 1950 in order to assure that Cherokee interests would be represented in Federal claims actions. While Swimmer's 8 May 1990 claim is false in stating that Keeler had any significant role in the 1946 Act or the UKB reorganization, it supports the theory that the UKB is entitled to standing as a party in any claims actions regarding the trust assets of the old Cherokee Nation. As the records demonstrate, neither Principal Chief W. W. Keeler, nor his immediate predecessor Jesse B. Milam, had any role except as bemused bystanders in UKB's

reorganization. We have found no evidence that Keeler knew what a Keetoowah was until he was appointed to Cherokee Nation Executive Committee on 30 July 1948, months before he succeeded Milan.

Swimmer's fallback position was that the UKB never properly reorganized under OIWA and IRA, notwithstanding the 1946 congressional recognition of the Band's eligibility to reorganize, due to a 1937 Solicitor's Opinion by Frederic L. Kirgis. In Keetoowah -- Organization as a Band Kirgis determined the Keetoowah Society, Inc., was ineligible under OIWA and IRA to reorganize as an Indian tribe. Swimmer was silent regarding the written findings of the Five Civilized Tribes Agency Organization Field Agents (Ben Dwight and A. A. Exendine) and of their Regional Coordinator, A. C. Monahan (between June 1939 and 1946). Swimmer seemed conveniently ignorant of the documented BIA organization field work with the UKB after 1937, and the legislative history of the 1946 Keetoowah Indians Act. In debunking Swimmer's follies, this narrative reviews the entire documented history of the UKB's reorganization under the OIWA and the IRA. The narrative describes the Band's near eradication between 1979 and 1992 due to administrative termination and legislative logrolling. The narrative concludes with a brief discussion of measures the UKB is undertaking to survive.

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This story of the near-termination of the UKB begins with an account of the Band's formal congressional recognition. The 1937 Keetoowah Society, Inc., Opinion lost all significance in the congressional acknowledgment of the UKB. Congress knew all about the Opinion, and agreed with the policy basis, but disagreed with the fact-finding and conclusions. The 1937 Kirgis Opinion relied on the understanding that the various Keetoowah factions that had broken away since 1900 had never formed a coalition government. He ignored the significant point that, though the Keetoowah Society, Inc., had lost much of its right to claim dominion over all Keetoowah Indians due to factionalism, the Keetoowah Society had obtained a Federal Charter from a territorial court in Tahlequah on 20 September 1905, recognizing it as a polity of Indians. The Keetoowah Indians already had been federally-acknowledged as a political entity, a tribe.

CNO claims that the 1946 Keetoowah Act was somehow an error, but the legislative history behind the 1946 Keetoowah Act shows the UKB's recognition was no fluke. In endorsing the bill, Acting Secretary of the Interior Abe Fortas relied on ten years of BIA organization work, finding that it was possible for the majority of Keetoowah Cherokees to unite to form a coalition government by consensus, even if it meant abandoning their own factions, including the Keetoowah Society, Inc., itself. U. S. Congress recognized the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) as a Tribe of Indians residing in Oklahoma under the Act of August 10, 1946 (60 Stat. 976). The Band subsequently incorporated under Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (46 Stat. 1967), the OIWA. The Secretary of the Department of the Interior approved the Band's election (October 3, 1950) to ratify the amendments to the UKB Tribal Constitution and Bylaws, and to adopt a Corporate Charter under the OIWA. The UKB remains an autonomous, distinct, federally-recognized tribal entity. The UKB has reserved to itself all the rights and privileges secured to organized tribes under

Section 3 of the Indian Reorganization Act.

CNO also claimed in statements to the BIA (1990 - 1991) that, regardless of the 1946 Act, the reorganization of the UKB was fundamentally defective or never completed, and that therefore the Band should never be recognized. BIA representatives adopted this line in discussions with Keetoowah representatives visiting in Washington, D. C., in 1991, claiming that they simply could not locate signed copies of the UKB Charter, Constitution or By-laws, or proof that the 3 October 1950 Federal election ever had happened. The UKB's findings in Federal archival holdings in 1990 and 1991 proved not only that these documents existed, but that BIA staff had made no reasonable effort to look for them, or simply were lying.

On 27 April 1979, Ross O. Swimmer also claimed that the UKB never had conducted any governmental or community functions as a Tribe, and that it had abandoned tribal relations voluntarily at some undefined time between 1969 and 1979. The inclusion of the UKB's name on the Interior Secretary's 6 February 1979 Federal Register listing of federally-recognized tribes, therefore, was a fluke. Swimmer did not bother to check departmental determinations on the UKB's status during the 1970s, or request documentation of continuing tribal relations; Swimmer simply undertook systematic efforts to void the status of the UKB. In separate letters dated 27 April and 30 April 1979, Swimmer asked Congress to exercise its authority under Section 8 of the UKB Charter to nullify the Charter. However, the Department concluded that Congress also would have to void the UKB Constitution to complete the transaction, and that spelled TERMINATION. TERMINATION was not a popular word any more.

Thereafter, Swimmer made the termination of the UKB a personal crusade. These efforts are a primer for third party challenges of tribal status throughout the United States. U. S. Secretaries of Interior and Assistant Secretaries of the Interior for Indian Affairs from Gerard to Swimmer ignored the congressional mandate respecting the sovereign rights and entitlements of the UKB. While he was Assistant Secretary from September 1985 to January 1989, Swimmer used his office to promulgate a series of negative determinations against the UKB. Afterwards, Swimmer freely cited decisions of his own administration as authority in lobbying his successor, Dr. Eddie Frank Brown. Although the CNO successfully blocked all Federal funding, services, and trust land acquisition for the Band while Brown was in, the BIA never altered its basic position, consistent with the 1946 intent of Congress, that the UKB enjoys a government-to-government relationship with the United States. See Letter, 10 July 1989 Decision, Acting Superintendent Cecil Shipp, Tahlequah Agency, BIA, "TO WHOM IT MAY CONCERN," verifying the "Federal recognition of the United Keetoowah Band of Cherokees of Oklahoma as a federally recognized tribal entity;" also, Letter, 24 July 1992 Decision, Area Tribal Operations Officer Rosella C. Garbow TO WHOM IT MAY CONCERN, certifying and authenticating the UKB's Roll; and Letter, 24 August 1992 Decision, Acting Assistant Secretary Ronald Eden to Chief John Ross, UKB, confirming that the UKB is an autonomous fully federally-recognized Tribe, eligible for separate services and land acquisition, but for Amendment 86 of P. L. 101-116, 2nd Sess., 1991. CNO failed to challenge these determinations in any way under the APA.

In a Letter dated 10 November 1989, Senator Daniel K. Inouye, Chairman of the Senate Committee on Indian Affairs, to John Ross, then Treasurer of the UKB, Senator Inouye assured the UKB:

Your status as a recognized tribe is not in question. However, the decision of the BIA in 1980 to designate the Cherokee Nation as the recipient of 638 grants and contracts, to the exclusion of your tribe, is now being reviewed. It is certainly my hope that the review will be favorable to the right of the United Keetoowah Band to contract for its own programs and services.

In United Keetoowah Band - Cherokee Nation, 30 October 1990, a memorandum from Dr. Eddie Frank Brown to the Solicitor of the Department of the Interior, Brown covered the Department's position paper on the UKB issue. The Assistant Secretary concluded, "the United Keetoowah Band has been recognized as a tribe since 1950, and we do not want to withdraw that recognition. Absent Congressional action, we do not have the authority to do so." The memorandum substantiated the sovereign claims of the UKB from 1939 to the present, except that he had failed altogether to review the record and determinations of the BIA and the Band proving that the UKB has a distinct, 1949 Base Roll and separate membership criteria from CNO. Referring to the OIWA, the Position Paper recalled:

The OIWA allows "the Indians of Oklahoma to exercise substantially the same rights and privileges as those granted to Indians outside of Oklahoma by the IRA." H. R. Report No. 2408, at 3. Thus, the Indian governments that reorganized under Section 3 of the OIWA are of the same legal and independent character as those non-Oklahoma Indian tribes that reorganized pursuant to Section 16 of the IRA (25 U. S. C. Section 476).

The equities here are not on the side of the U. S., Oklahoma or CNO. The UKB, as a matter of Federal-Indian law, is a government organized under OIWA and IRA since 1950. The UKB is in no sense subordinate to the CNO. The UKB Charter and Constitution are senior to the 1975 CNO Constitution (CNCA), which is not a proper organic document under OIWA and IRA. CNO has had the opportunity to accept funds and contract out programs under P. L. 93-638 to the exclusion of the UKB, allegedly on behalf of and for the benefit of the UKB, and now is participating in Self-Governance agreements with the U. S., purporting to represent the interests of the UKB. CNO is incompetent to represent the interests of the UKB, lacks sovereign interests over the affairs of the UKB, and has had no formal intersovereign relationship the UKB since 4 March 1906. To test these statements, one needs only to review the status and history of Cherokee Nation since at least 1898.

\* \* \*

Notwithstanding the Agreement with the Cherokee Nation, April 1, 1900, which declared the intent of Congress that the governments of the Five Civilized Tribes would expire in 1906; and notwithstanding other statutes that pared away particular governmental functions of Cherokee Nation and the other four Nations in the meantime; the 1906 Act nonetheless preserved certain residual, primarily executive powers of the Five Tribes' governments, while restoring none of the terminated functions, or the revoked Constitutions. Under the OIWA (1936), any Oklahoma tribe theoretically could form a council, adopt a constitution,

by-laws, and charter with secretarial approval, and reorganize under the IRA, just as tribes in other states could. However, in a Memorandum to the Indian Organization Division regarding the eligibility of Cherokee Nation in particular to avail itself of the benefits of the OIWA, the Director of Lands of the Department of the Interior determined on 25 October 1937 (File #163618), that:

It is not believed that the Oklahoma Welfare Act may be used as authority to reorganize the existing tribal government of the Cherokee Nation. On the contrary, the Act appears to contemplate the creation of a new, separate and distinct organization, to adopt its own constitution and bylaws and to procure a charter of incorporation without regard to the existing government.

It is believed that the powers and jurisdiction of the new organization should be limited to the property and other benefits to be acquired under the Act. Those persons whose names are on the final rolls of the Cherokee Nation have certain rights in the remaining assets of the tribe, and if any attempts were made to deny them the right to vote on matters that may affect such rights, it would doubtless give rise to litigation.

CNO claims all the benefits and advantages of OIWA and IRA reorganization, with none of the burdens or responsibilities. CNO claims to be full and exclusive successor to the powers and assets of the Old Cherokee Nation, with the right to discriminate among classes of descendants with impunity. CNO claims title to all the IRA purchases for a Cherokee tribe organized in Oklahoma under OIWA and IRA, although the only such tribe is the UKB. No Act of Congress, judicial determination or administrative decision ever has contradicted or reversed the 25 October 1937 determination expressly.

\* \* \*

The Act of Oct. 22, 1970, 91st Cong., 2nd Sess., P. L. 91-495, 84 Stat. 1091, the "Bellmon Bill," "Authorizing Each of the Five Civilized Tribes of Oklahoma to Select Their Principal Officer, and for Other Purposes," exemplified efforts to overrule the BIA's interpretation of the 1906 Five Tribes Act, under which the U. S. appointed the Principal Chiefs. The Act restored the Cherokee Dawes enrollees' and descendants' right to select leaders, but did not revive suspended powers which earlier legislation had dissolved, suspended, or conditioned. While restoring the opportunity to exercise certain inherent rights of sovereignty, the Bellmon Bill extended to the Cherokee Nation no exemptions from the procedural requirements for organization under the OIWA.

In 1971, Cherokee Nation reelected Principal Chief W. W. Keeler in an informal national plebiscite. In Harjo v. Kleppe, 420 F. Supp 1110 (D.D.C. 1972), aff'd. sub nom. Harjo v. Andrus, 581 F.2d 949 (D.C.Cir. 1978), the U. S. Supreme Court determined that the Curtis and Dawes legislation had preserved the governments of the Five Tribes to the extent Congress had not limited their powers. OIWA, IRA, and later legislation made it possible for some of the Five Tribes to organize new governments in the 1970s and regain aspects of their sovereignty that earlier congressional Acts had restricted or eliminated. However, eligibility to reorganize is not the same as reorganization; reorganization, as the UKB can attest, can be an excruciatingly

demanding process.

As a matter of administrative convenience, the Secretary of the Department of the Interior and Congress condoned the unconventional quasi-reorganization of the CNO that followed the last term of Principal Chief W. W. Keeler (1971-1975). As the Cherokee Nation drafted a Constitution, the CNO properly relied on Harjo in concluding that CNO indeed had retained aspects of inherent sovereignty through the years; however, their analysis did not consider the problem of the erosion of Cherokee Nation's sovereignty through congressional and administrative acts which still had its effects on Cherokee Nation, leaving intact only unaffected aspects of inherent sovereignty. Commissioner of Indian Affairs Morris Thompson approved the Constitution for referendum on 5 September 1975, as "seconded by Principal Chief of the Cherokee Nation, Ross O. Swimmer" on 2 October 1975. Voters approved the Constitution the next year in a tribal election, not a secretariially-supervised Federal election in a manner comporting with Federal regulations governing the conduct of OIWA and IRA elections (now at 25 C. F. R. Section 81). Article I of the CNO Constitution, "Federal Regulations," stipulates that:

. . . [T]he Cherokee Nation shall never enact any law which is in conflict with any Federal law.

Objectively speaking, the content and structure of the CNO Constitution itself flagrantly violated Federal law regarding reorganization of Oklahoma tribes, if reorganization under OIWA was the intent of the framers. However, Article I of the CNO Constitution, "Federal Regulations," also stipulates that:

The Cherokee Nation is an inseparable part of the Federal Union. The Constitution of the United States is the Supreme law of the land; . . . [Emphasis added]

This language leads one to conclude that the CNO depends for its primary source of Constitutional, sovereign authority on the sovereign power of the United States, under the U. S. Constitution, and secondarily on the residual inherent powers remaining to the CNO since 1906, to the extent that Congress has restored those powers since the Agreement with the Cherokee Nation, 1 April 1900. Since CNO has not availed itself of the opportunity to reorganize under OIWA and IRA, the form of organization under which the Tribe now operates requires only secretarial condonation of the actions of a Principal Chief, whom CNO voters now select and may remove from office, operating under a governmental form of administrative convenience. The 1975 CNO Constitution, then, is a means for CNO to conduct business as other tribes do, while leaving the 1906 status quo of Federal management of, and authority over, Cherokee Nation affairs essentially intact. This means that, though selected by voters, the Principal Chief of Cherokee Nation is essentially a colonial Viceroy subject to the will of the U. S. Executive Branch. CNO's Constitution, at "Article XVIII. Adoption" stipulates that:

This Constitution shall become effective when approved by the President of the United States or his authorized representative and when ratified by the qualified voters of the Cherokee Nation at an election conducted pursuant to rules and regulations promulgated by the Principal Chief.

The legal effect of this Article depends entirely on precisely the same

presidential or secretarial deputization of the Cherokee Nation Principal Chief, and approval of the Principal Chief's actions, that Congress contemplated in the 1906 Act. The 1975 CNO Constitution purported to supersede the 6 September 1839 Cherokee Nation Constitution (CNCA, "Article XVI. Supersedes Old Constitution 1839," stating, "The provisions of this Constitution overrule and supersede the provisions of the Cherokee Nation Constitution enacted the 6th day of September 1839.") This simply reflects the common understanding that since the old Constitution was a dead letter in 1906, any new approved Constitution supersedes the old.

Every other Oklahoma tribe that organized under OIWA and IRA had to obtain secretarial approval of a Constitution, then secretarial approval of an OIWA draft charter. Thirty percent of the qualified voters were then supposed to ratify a Constitution, and then the Charter, in separate sequential Federal elections. By law, the Charters (not the Constitutions) of OIWA/IRA organized Oklahoma Indian tribes delineate most of the powers of such tribes. CNCA, the annotated Code of Cherokee Nation of Oklahoma, contains the 1975 Constitution, code, treaties, agreements, and Self-Determination legislation, and even the 24 January 1983 speech of President Reagan on Indian Policy, but one searches in vain for any mention of the Oklahoma Indian Welfare Act or the Indian Reorganization Act because the CNO Constitution evolved largely outside the body of modern Federal-Indian law which is mandatory for other Oklahoma tribes, including the UKB. Despite occasional explorations of the possibility of reorganizing, Cherokee Nation of Oklahoma never has proposed or received an OIWA Charter from the Secretary of the Interior, or submitted its approved Constitution to a secretariaily-supervised election as the OIWA, 25 C. F. R. 81, and 25 U. S. C. 476/479 of the IRA require.

In contrast, in helping to draft the UKB Charter of 1950, the BIA ordered the UKB to design the document so that the UKB itself could extend such a Charter to an organization composing the non-Keetoowah Dawes enrollees of Cherokee Nation. Oddly enough, until the UKB alters its Constitution to make 1/4 Cherokee blood quantum mandatory for future members under the proposed Amendments, the Cherokee Dawes Roll descendency group composing the population of Cherokee Nation of Oklahoma still has the right, in theory, to apply for reorganization under UKB jurisdiction, with the consent of the UKB Council. Of course, to date, the Cherokee Nation of Oklahoma never has sought an OIWA charter through the UKB. In 1950, the Secretary declared, in approving the UKB Charter, Constitution and By-laws, that "All officers and employees of the Interior Department are ordered to abide by the provisions of the said [UKB] Constitution and By-laws." [Letter, 9 May 1950, William E. Warne, Assistant Secretary, approving the Constitution and By-laws. \*: IV] Recall that the CNO Constitution, Article I, "Federal Regulations," stipulates:

[T]he Cherokee Nation shall never enact any law which is in conflict with any Federal law.(Cherokee Nation of Oklahoma Constitution, CNCA, 2 October 1975)

Cherokee Nation's laws attacking the sovereign rights of the UKB plainly violate Federal law. Neither Congress nor the BIA appear to care.

If the Constitution of Cherokee Nation of Oklahoma has any legal

effect, then the actions of CNO toward the UKB since 1975 which contradict the organic documents or laws of UKB are entirely ultra vires. CNO refuses to recognize the existence of the UKB, while claiming that the UKB and its members are citizens and subjects of CNO. The Keetoowah Band, which now is the UKB, remained when the Old Cherokee Nation Constitution was revoked in 1906. The Cherokee Nation's claims of jurisdiction over the UKB died with the old organization, though the Cherokee Nation or Tribe continued to exist for certain purposes as the 1906 Act provides.

The reorganization of the UKB under OIWA and IRA affirmed conclusively the separate sovereign interests and identity of the UKB. (Recall that Article XVI of the 1975 CNO Constitution expressly overruled and superseded "the provisions of the Cherokee Nation Constitution enacted the 6th day of September 1839.") Nothing in the CNO Constitution expressly recognizes the UKB or its members or entitles them to membership or registration in CNO. In contrast, while recognizing the Delaware Tribe as a part of CNO which is allowed separate organization under CNO subject to CNO authority, CNO bars the Delaware Tribe from undertaking any actions contradicting the authority of CNO (Cherokee Nation of Oklahoma Constitution, CNCA, 2 October 1975)

Congress has restored certain powers to CNO since 1937, thereby making it easier for CNO to function without reorganizing the Cherokee Tribe under an OIWA/IRA government. The BIA and Congress have limited the effects of pre-1096 legislation on the Cherokee Nation in ways that have allowed CNO to exercise aspects of sovereignty that Congress had diminished or restricted in 1906, including aspects of criminal and civil jurisdiction. In 1991 (proving that despite all the self-righteous cant to the contrary, Lobbying is all), Congress extended permission in Amendment 86 to P. L. 101-116 for CNO to undermine the property and governmental rights of the UKB. The impact on UKB and its members has been dangerously discriminatory. The effect is the confiscation of a vested property right without due process.

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The bar against UKB's eligibility for any Federal funding, including funds from the Administration for Native Americans, may be permanent. At the same time that the BIA conceded the Band's existence as an autonomous entity (24 August 1992), the BIA also acknowledged the Band's eligibility to receive land in trust. From then on, the CNO undertook a campaign with the support of the Oklahoma delegation to assure that the UKB will have no opportunity to acquire land in trust in any other state. On 26 January 1993, Principal Chief Wilma Mankiller of Cherokee Nation of Oklahoma included the UKB in a list of some 40 unrecognized petitioning groups claiming Cherokee extraction in an advisory letter to governors in their respective states, although the name of the UKB appears on the Federal Register listing of recognized tribes. The official excuse from CNO spokesperson Mr. Lee Fleming for this flagrant misrepresentation was that the letter was intended "for information" only, and therefore, CNO could not be held responsible. To the contrary, Chief Mankiller's shield is sovereign immunity, since her letter purported to be an official intergovernmental communication. The UKB has received no gesture of apology or retraction for this "error," and shall receive none. The actions of CNO require the approval of the

Secretary; therefore, these calculated attacks have the official authorization of the Secretary.

Cherokee Nation of Oklahoma, ever confident that political pressure eventually will lead to the congressional revocation of the UKB Charter or to a requirement that the UKB submit to the acknowledgment process at 25 CFR 83, already have characterized the UKB in deliberately fraudulent public statements as a petitioner for acknowledgment. In a determination published in the body of the Proposed Rule Regarding Department of Interior Policy on Recognition of Indian Tribes, Vol. 56, No. 161, Federal Register 47320 (Sept. 18, 1991), the Secretary finally declared that when any third party attacks the status of a federally-recognized tribe, the Department will protect only tribes who have survived the 25 CFR 83 process; any other tribe's only recourse is to use the Federal acknowledgment process to vindicate itself. CNO has tried and failed repeatedly to force the UKB to submit to the tests of the acknowledgment process to eliminate the Band. At this point, the UKB, though a recognized tribe, is ineligible even to apply for funds for status clarification from the Administration for Native Americans for which unrecognized tribes are eligible due to CNO's intervention. The UKB's status problems stem entirely from the perception that the UKB competes with CNO, and from the false perception that both share the identically same population; ironically, that competitive atmosphere emanated directly from CNO's decision to eliminate the UKB.

THE NON-PETITION OF THE NON-TERMINATED, TERMINATED, UNACKNOWLEDGED UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA FOR RESTORATION UNDER 25 C. F. R. 83 (NOT TO BE CONFUSED WITH A REQUEST FOR RECOGNITION)

In 1990 and 1991, Principal Chief Wilma P. Mankiller demanded of the BIA and Congress that the UKB be compelled against their own will and best interests to submit to the Federal acknowledgment process to prove their status as a tribe. Initially, she demanded congressional hearings that would compel the Band to produce, in effect, a complete documented petition seeking acknowledgment. Having achieved the de-facto termination of the Band in the passage of Amendment 86 to P. L. 101-116, she did an about-face, claimed in a letter to the appropriate congressional leaders and committees that neither CNO nor the UKB wanted a hearing on the matter in spring of 1992 in Tahlequah, and that Chief John Ross had agreed to send a similar request. Chief Ross never made such an agreement and never sent any such letter.

The narrative and bibliographies below will address the criteria for acknowledgment in 25 CFR 83.7 that require the Band to prove that it:

- (a) [Has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "Aboriginal;"] (b) [Is a Tribe, a substantial portion of which inhabits] a specific area or [lives] as a community viewed as American Indian and distinct from other populations in the area and [prove that its] members are descendants of an Indian tribe which historically inhabited a specific area;
- (c) Has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present;
- (d) Provides a copy of a governing document or statement describing in full the membership criteria and procedures through which the group currently governs its affairs and its members;
- (e) Has membership consisting of individuals who have established descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity;
- (f) Has membership composed principally of persons who are not members of any other tribe; and,
- (g) Is not expressly terminated or otherwise forbidden to participate in the federal-Indian relationship by statute.

The Band has met criterion 25 CFR 83.7, in that the Band has provided on many occasions to all interested parties and the public:

- (d) . . . a copy of a governing document or statement describing in full the membership criteria and procedures through which the group currently governs its affairs and its members," consisting of a 3 October 1950 Charter, a 3 October 1950 Constitution and By-laws, over 50 years of resolutions, ordinances and statutes, a 1949 Base Roll as amended in 1985, and continuing enrollment updates between 1949 and the present.

Other membership-related criteria of 25 CFR 83.7 require the Band to show that it:

- (e) "Has membership consisting of individuals who have established

descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity;" namely, the Keetoowah Band of Indians of the Cherokee Tribe; and,

(f) "Has membership composed principally of persons who are not members of any other tribe."

The narrative will address criterion (g) later.

United Keetoowah Band of Cherokee Indians in Oklahoma meets the criteria the Acknowledgment and Research Branch of the BIA uses for determining existence an Indian Tribe (25 C.F.R. 83.1-11, redesignated 1985). The following section applies historical Federal, tribal and other records to demonstrate that the Band can satisfy the requirements of 25 Code of Federal Regulations Sec. 83. 7 (a) - (g). Bibliographical citations are in the full narrative and appendices. Below appears a summary of the accompanying narrative, establishing the evidence supporting the Band's contention that it meets the following criteria for acknowledgment in 25 CFR 83.7. The UKB will demonstrate that the Band:

(a) "[Has been identified from historical times until the present on a substantially continuous basis, as 'American Indian,' or 'Aboriginal,'" as cited in Federal, Territory, State, Tribal records and scholarly sources;

(b) [Is a Tribe, a substantial portion of which inhabits] a specific area or [lives] as a community viewed as American Indian and distinct from other populations in the area and [prove that its] members are descendants of an Indian tribe which historically inhabited a specific area," as cited in Federal, Territory, State, Tribal records and scholarly sources; and,

(c) "Has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present," as cited in Federal, Territory, State, Tribal records and scholarly sources.

In the narrative, a note ("a", "b", and/or "c") follows each statement, indicating which one or more of these criteria that particular statement addresses. The Brief UKB Chronology covers the same basic points.

1. At the old Mother Town of Keetoowah in Swain County and its affiliated smaller towns, North Carolina, political succession continued through elected Captains and a Chief (pre-contact until about 1833; a, b, c).

2. The Keetoowah Indians, despite great disruption of their culture and political town structure between the American Revolution and the Removal period, retained as much as they could of their primary rules and ways, by enforcing traditional laws through customary sanctions and the law of blood (a, c).

3. Following their removal to Indian Territory with the Old Settlers (mostly between 1805 and 1835; a, c) as well as Eastern Emigrants (1835-1840; a, c), the Keetoowah Indians reorganized under a Constitution in 1858 in Oklahoma, drawing in Keetoowah adherents from all nine Districts, but primarily from the region composing five northeastern Oklahoma counties today (b).

4. The Keetoowah Indians called their organization the Keetoowah Society, and throughout the nine Districts, they worked to resume the

role the Mother Town of Keetoowah enjoyed in pre-contact and pre-Removal historical times under the leadership of local headmen called "Captains" and a Head Captain or "Chief" (a, b, c).

5. As early as the Civil War, conflicts arose about the purposes and directions of the organization, so that while some Keetoowahs wanted to preserve the ancient Keetoowah culture, language and religion in pure form as possible, others preferred to amalgamate the old ways with what they wanted from non-Indian culture, including christian churches (a). Indeed, the followers of the Jones family of church leaders were instrumental in the reorganization of the Keetoowahs in the 1850s (a).

6. In their efforts to preserve the Keetoowah group as a political entity, some factions preferred a more militant role in opposing the Southern Confederacy, particularly the so-called "Pin Indians;" but all loyal Keetoowahs supported the Union (a, c).

7. While the Keetoowah Indians remained loyal to the end of the Civil War, they shared the common humiliation of all Cherokees resulting from the punishment of Cherokee Nation for its official position of siding with the Southern Confederacy (a, c).

8. The Treaty of 1866 abrogated all earlier treaties to the extent they were inconsistent with the 1866 Treaty. The Keetoowah delegates to the Treaty convention very reluctantly signed (a, b, c).

9. When congressional investigations led to the discovery of widespread corruption in the Indian Service and the Five Tribes governments, and when proponents of Oklahoma statehood pressed for elimination of the original tribal governments, the Keetoowah Indians had to make difficult decisions regarding the direction of the tribe (a, c).

10. While they intended to maintain a tribal government and functions regardless of the fate of the Cherokee Nation as a whole, the Keetoowah Society eventually acquiesced to the Agreement with the Cherokee Nation, April 1, 1900, the Curtis Act and the 1906 Act, to the political dissolution of the corrupt Cherokee government that the Keetoowahs loathed anyway, and to the allotment in severalty of Cherokee lands (a, b, c).

11. When Cherokee Nation was dissolved, members of the Society lived throughout most of the old Cherokee districts (but with small constituencies in Cooweescoowee and Canadian Districts; a, b, c).

12. Many Keetoowahs regarded the prospect of allotment of the Tribe's lands in severalty as so calamitous that they withdrew from the Keetoowah Society (a, b). Several hundred of these Keetoowah Indians formed a number of secretive, traditionalist, exclusive factions as early as 1893, including the Nighthawk Keetoowahs, that refused until 1910 or later to accept the work of the Dawes Commission (a, b). These groups were clustered around Gore and Vian, in Sequoyah County.

13. In 1905, knowing that the Cherokee Nation was about to dissolve for useful purposes, the Keetoowah Society reorganized. Using a Federal Corporate Charter from the Territorial District Court in Tahlequah, as the Keetoowah Society, Inc., this faction attempted to function as a polity composed of a Chief and Council (20 September 1905) for the express purpose of carrying on the political and social functions of a Band, but because it omitted opposing factions that arose after 1900, never fully again represented the interests of the Keetoowah Indians as

a body (a, b, c).

14. The other main faction, the Nighthawks, some of whose leaders now erroneously claim the UKB is a splinter of their religious cult, withdrew from political activity and barred its members from affiliation with any other groups or entities, including christian churches (a, b, c).

15. As the number of tribal towns associated with the Nighthawks dwindled between 21 in about 1900 to 3 in 1937, the remnants of the "non-political" Nighthawk faction eventually split into a variety of factions, including two ceremonial grounds run by factions of Redbird Smith and his family, as well as the Goingsnake "Seven Clans" fire and the Four Mothers Nation. Other Cherokee political factions of Keetoowahs arose, partly due to concerns about potential claims, partly to organize formally as a Tribe. These factions of Oklahoma Keetoowah Cherokees pulled together a coalition from the northern 14 counties of Oklahoma between 1920 and 1924 to elect a Chief (Levi Gritts), and an Executive Council (a, b, c).

16. During the 1930s, the Keetoowah factions, now without any support from several dwindling groups of Nighthawk separatists, supported the idea of reorganizing all the Keetoowah Cherokees in all the old clan districts as a united Band. They hoped to avail themselves of the benefits of the proposed Indian Reorganization Act. At a hearing in Muskogee on 22 March 1934, Keetoowahs showed up in force to present John Collier and his staff with a formal petition and letter of endorsement for the Bill (a, b, c). Collier complemented the Keetoowah Band's enthusiasm and understanding for reorganization in a variety of writings and press releases. Felix Cohen, Associate Solicitor for the Department of the Interior, carefully monitored their public, highly organized efforts in support of IRA (a, c).

17. The Land Division in the Department of the Interior concluded in 1934 that while the Cherokee Nation was neither interested in reorganizing because most members had abandoned tribal relations, nor even capable of doing so, the Keetoowah Indians were willing and probably able to reorganize in Oklahoma with great success, if the factions would only pull together (a, b, c).

18. Though the participation of Oklahoma Indians in the IRA was not possible until the Thomas Bill of 1936 enabled reorganization under IRA through the OIWA, the Keetoowahs never lost sight of their goal, and the Keetoowah Society, Inc., sought permission to represent the Keetoowah Indians, including the various factions whose members refused to join the Keetoowah Society, Inc. (a, b, c). This effort faltered briefly when Associate Solicitor Frederick Kirgis issued his Keetoowah Society Opinion in 1937, saying that the Society, standing alone, was only a society of the Keetoowah Indians, not a Band [Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs: 1917-1974, Vol. I (Washington, D. C.: U. S. Department of the Interior, 1975), p. 774] (a, b, c).

19. Undeterred, the Keetoowah Indians began working with the Organization Field Agents through Five Tribes Agency after 1937. It was only after the Kirgis Opinion that BIA's Five Civilized Tribes Regional Organization Director A. C. Monahan learned that the Keetoowah Society, Inc., was the source for all the other factions, and that the

Corporation had held a Federal Corporate Charter as a political entity since 20 September 1905. Monahan ordered agents Dwight and Exendine to aid the factions to reorganize. D'Arcy McNickle's determination of 24 April 1944 found the UKB was a historical tribe. Rather than merely ask the Solicitor to rewrite the opinion, the Acting Secretary, Abe Fortas, to request congressional action allowing the UKB to reorganize under OIWA and IRA.

20. The UKB adopted a Constitution and By-laws. They elected officers between 1939 and 1946, seating a Chief, Reverend John Hitcher, and a Council (a, b, c). Work among various factions united most Keetoowahs (a, b, c).

21. Some Five Civilized Tribes Agency employees hoped to use the Band as a vehicle for restoring the Old Cherokee Nation, or at least for reorganizing all the Cherokee Dawes Commission enrollees and their descendants under OIWA and IRA, because the Director of Lands, Land Division, Department of the Interior, already had decided that while the Cherokee Nation was not terminated, any new organization of the Cherokee Tribe would have to be an entirely new entity whose property rights would stem from the OIWA and IRA. [(MEMO TO INDIAN ORGANIZATION, 25 October 1937, from Director of Lands (WDW) to Daiker, Indian Organization (163618); see also Solicitor's Opinion, 1 October 1941, 1 Op. Sol. on Indian Affairs 1076 (U. S. D. I. 1979)]

22. The Secretary determined that an organization of the Keetoowah Band, made by reuniting the various Keetoowah factions who wanted to participate, does not conflict with the residual government of the Cherokee Nation. The latter was to retain its 1907 status, as a body under a Principal Chief whom the President (later, the Secretary of the Interior) appointed to carry out responsibilities regarding the disposition of the assets of the Old Cherokee Nation (a, b, c).

23. The UKB carried out its own governmental functions in Oklahoma as a reorganized body, without interfering with the Cherokee Nation, its Principal Chief or his functions, because the UKB interests in Cherokee-related issues was entirely restricted to interests of the UKB constituency. That constituency consisted primarily of restricted Indians, non-Dawes enrollees, and other Keetoowahs who remained loyal to the Keetoowah political ideals (a, b, c).

24. So, the United Keetoowahs finally decided by 1942 to remain exclusively a "Keetoowah" polity that would include only those of Cherokee descent who met the membership requirements of the united Band (a, b, c). On 24 April 1944, Assistant Commissioner D'Arcy McNickle found that the UKB was a historical tribe, and meeting with BIA's Chief Counsel on 5 June 1944, recommended that Congress pass legislation to clarify the UKB's status and right to reorganize as a tribe under OIWA and IRA.

25. Since the UKB reorganization process could not begin until Congress agreed to offer the UKB the opportunity to reorganize under OIWA and IRA, Acting Secretary Abe Fortas, Congressman Stigler and Senator Thomas, among others, supported the effort, and on 10 August 1946, Congress did pass the Keetoowah Act as part of a package measure that included a gift of land to the Cheyenne-Arapaho Tribe in Oklahoma. The reorganization process took another four years (a, b).

26. The UKB, incorporating all the factions of the Keetoowah Indians of

the Cherokee Tribe throughout the nine districts of the old Cherokee Reservation, has reposed its secular governmental authority in the line of democratically-elected Chiefs (also informally called, in the 1940s, "Presidents") Executive Officers and Tribal Council under its OIWA corporate Charter, Constitution and By-laws, since 3 October 1950 (a, b, c).

27. Between 3 October 1950 and 3 October 1960, while the Secretary retained approval authority over the UKB according to the UKB organic documents, the Secretary could have authorized the Principal Chief of Cherokee Nation to act as the Secretary's agent in approving decisions of the UKB; but the Secretary made no such delegation of authority to Principal Chief Keeler. Any such delegation of authority would have expired on 3 October 1950, according to the Department's own determination (see Letter, 15 October 1961, from Assistant Chief Tribal Operations Officer Pennington to Muskogee Area Director Virgil N. Harrington, regarding Harrington's 7 August 1961 inquiry as to the effect of Sections 5, 6 of the UKB's Charter on secretarial approval authority after 3 October 1960). Finally, despite undocumented and spurious claims to the contrary, archival sources demonstrate that the Band has continued to survive and function as a tribal entity since reorganization under one unified government, despite internal factionalism characteristic of all governments (a, b, c).

28. When the UKB Council attempted to establish tribal offices at various sites, and when the UKB created an Enterprise Board and attempted to engage in economic development ventures to serve its members and finance advocacy activities within the fourteen northeastern counties of Oklahoma, CNO consistently intervened and made off with the opportunity or spoiled it whenever possible, rationalizing that a UKB opportunity is a CNO opportunity. For example, the UKB attempted to develop a bingo business at Roland, Oklahoma, and had arranged an economic development plan and approached the BIA with a land acquisition request, the BIA denied the request, and promptly handed the business opportunity directly over to CNO. CNO easily obtained secretarial approval of their Roland land acquisition request, and now runs Bingo Outpost on the spot, while claiming that the UKB is unrecognized, selling sovereignty, and only wants recognition to do gaming. When the UKB established over a score of smokeshop operations throughout a three-county region, CNO and the State cooperated to undermine and shut down all the operations. (a, b, c)

29. In 1987, in the course of intervening to take over the UKB's opportunity to buy an abandoned horserace track in Rogers County called Will Rogers Downs, CNO retained a law firm to investigate CNO's legal status to determine whether it would be legally possible for CNO to engage in a horserace track operation. (DeGeer and Bread, "Federal Legislation Affecting Cherokee Nation," Memo to Gene Stipe, Stipe Law Firm, McAlester, Oklahoma, 2 November 1987) This evaluation of the legal status of Cherokee Nation of Oklahoma as of Fall 1987 surveyed or contained:

- \* Overview of the history of the laws impacting the Five Civilized Tribes
- \* 19 Treaties with the U. S. (and limitations imposed therein)
- \* Curtis Act of 1898

- \* 1901 Cherokee Agreement
- \* Cherokee Constitution
- \* Jurisdictional Map
- \* Solicitor Opinions believed to be pertinent.

This analysis does not claim that CNO has reorganized under OIWA or IRA, referring instead to the 1906 Cherokee Nation Constitution, as superseded in the 1976 CNO Constitution, and the legal effect of various Acts of Congress preserving or limiting CNO's sovereign authorities. The memo describes limitations on the inherent sovereignty of the tribe that congressional legislation has imposed since 1890, which only reorganization under OIWA and IRA could remedy. The memo does not deal with the relationship between the CNO and the UKB, doubtless because the authors realized the CNO has no sovereign authority over the UKB. The memo concluded that CNO's claims to inherent sovereignty are in doubt, and the writers recommended that CNO comply with all state laws, as a precaution, in any development venture. (a, b, c)

30. In 1990, a group of Cherokee Nation of Oklahoma members called the Reformed Keetoowah Party attempted to sweep out the UKB Council, claiming that the UKB was a subsidiary of CNO and never had been federally-recognized, and that the UKB was attempting to start a Civil War in order to create a new tribe. An election contest and lawsuit marred John Ross's succession to the office of Chief. In November 1990, at the urging of Principal Chief Wilma Mankiller, the BIA's Area Office directed staff to review files at the UKB Enrollment Office and compile a list of UKB members who never had registered voluntarily in CNO, finding over 3,000 living members with exclusive UKB enrollment. CNO's continuous interference with internal UKB politics, and an election dispute in 1990 resulted in a determination by the Department of the Interior to force the UKB to operate under a BIA approved Council, pending a new election.

The 3 October 1950 Charter, approved by Secretary of the Interior William Warne on 9 May 1950, and the Constitution and By-laws, approved by a popular vote by over 30% of qualified UKB members in a secretarially-authorized and supervised Federal election on 2 October 1950, remain very much intact and effective. Due to secretarial acquiescence, the Band eliminated secretarial approval of its governmental acts as cited in their governing documents by operation of law on 3 October 1960. Also, the Charter, Constitution and By-laws, Enrollment Ordinances, Base Roll, and many updates as recommended by the Enrollment and Membership Committee and adopted by the Tribal Council in individual resolutions from 1950 to the present, show the membership criteria and procedures by which the Band has governed its affairs, regarding membership.

The issue of UKB membership receives more extensive review below. It is sufficient here to add that the members of the UKB Tribal Council always have participated in enrollment activities and in the verification of qualifications of prospective members, and always have approved enrollment updates through formal Council action. Tribal membership criteria have altered through the years, as conditions and needs have changed. The 1939 Roll, reaffirmed in 1949, became the foundation of the Base Roll, subject to amendment in the first five years after approval in 1950. During that period, consistent with the

1950 enrollment laws, members of 1/4 or more Cherokee ancestry, using the Dawes Roll or other acceptable proof of Cherokee ancestry by blood, were adopted into the Band. Enrollment activities continued for fifteen years. In 1963, the UKB Council worked on an updated roster as the result of additional membership field work, and for a short time, the enrollment ordinances required new members to prove 1/2 or more degree of Cherokee Indian blood. Enrollment work continued sporadically, until in 1978, when the UKB Council sought aid from Muskogee Agency to restore order following the latter years of Chief Glory's somewhat chaotic administration, and the Enrollment Committee started work on a new addition of adoptees, under a series of new ordinances. New additions to the Roll occurred through Council resolutions in 1980, and in another series of additions, concluding in October 1982.

Using funds from a 1984-1986 \$70,000 P. L. 93-638 grant to update and revise the Roll, the UKB reinvestigated and updated all members' files and brought their contents up to date, with the active cooperation of Muskogee Agency staff and technical assistance. Comporting with the terms of the grant, the Enrollment and Membership Committee and Enrollment Specialist compiled a list of all members who had met the blood quantum requirements in effect at the date of each individual member's enrollment, then verified which members were 1/4 or more degree, and which members had responded to requests for current information regarding residency, marital status, family status, and other information. The staff compiled information on deaths since the last enrollment update. Information regarding members whose files were incomplete as a result of this investigation, including those who were considered less than 1/4 degree Cherokee, appeared on a separate list of members whose files were incomplete or somehow deficient, and yet who were considered entitled to membership. The Band delivered these compilations to the Muskogee Agency in 1986, and submitted these records to Federal District Court for the Northern District of Oklahoma in Tulsa in 1987, upon subpoena by the State of Oklahoma, as a tribally-certified roll. Cordelia Tyner, a/k/a/ Cordelia Tyner Washington, and the United Keetoowah Band of Cherokee Indians v. State of Oklahoma, ex re., David Moss, District Attorney and David Moss, individually; M. Denise Graham, individually, No. 87-2797, U. S. D. C., N. D., Oklahoma. See also: Appeal from U S. D. C., N.D. Okla. D. C. No. 87-C-29-E, 14 March 1991.

UKB Membership Ordinance 90 UKB 9-16 16 September 1990 provided that any descendant of 1/4 Cherokee Indian blood of any enrollee on the 1949 UKB Base Roll, or on any other historical Cherokee Roll, shall be eligible for enrollment in the UKB. Final determinations of Cherokee Indian blood quantum continue to rest with the UKB Tribal Council. Under that same ordinance, UKB members who held affiliation of any kind with any other federally-acknowledged tribe were required to relinquish that membership.

THE TERMINATION OF THE UKB

For reasons that shall become evident below, the UKB has difficulty responding to the following criterion in 25 C. F. R. 83.7, requiring the Band to show that it:

- (g) Is not expressly terminated or otherwise forbidden to participate in the federal-Indian relationship by statute.

\* \* \*

In 1991, Congressman Mike Synar (2nd District, Oklahoma) cited in testimony to a congressional hearing a purported 1980 BIA finding that the UKB had failed to perform its contractual duties under the 1984 grant, because it had not separated registrars of CNO out of the UKB roll. (U. S. Congress, House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April 1991)) Neither the hearing's Chair., Congressman Les AuCoin, nor another witness, Mr. Ronald Eden, caught the patent logical inconsistency in the testimony, in that it would be physically impossible for any employee of the BIA, however prescient, to issue a finding in 1980 about a contracting party's performance on a grant that was not issued until four years later and not completed until six years later. Further, the alleged "finding" was entirely false. A simple perusal of the Grant Letter and Final Report from the UKB Council on the completion of the Enrollment Project would have allayed any real concerns of Congress that the UKB might be incapable of using P. L. 93-638 funds properly.

The real problem was that CNO never wanted the UKB to have separate Federal funds, and certainly never wanted the UKB to have a distinct Tribal Roll. Although the UKB has made repeated efforts to sort out the Roll, and though in 1990 and 1993 the UKB Tribal Council was able to obtain current information (from the Muskogee BIA Agency, not from CNO) regarding the number of UKB members registered at CNO, these numbers have continued to shift as UKB members have attempted to relinquish CNO registration. CNO has been distinctly uncooperative since 1980 as UKB has attempted to develop an exclusive Roll. The CNO actively has encouraged UKB members to re-register after relinquishing their CNO registration, or has refused to accept and record relinquishments (even of UKB officers and administrators). In some cases, CNO has issued apparently unsolicited original registration documents to UKB members and their families who never have applied for registration with CNO in obvious attempts to keep records confused, and to substantiate their claims of dual affiliation. The UKB regularly denies contract services eligibility to UKB members when they attempt to use their UKB credentials to qualify for services, demanding that only CNO credentials are valid. Individuals who offer UKB credentials in the first instance at CNO service agencies characteristically find great difficulty in receiving services afterwards, upon displaying valid CNO credentials. It clearly is inconsistent for CNO to claim the UKB Roll is duplicative of the CNO register, while CNO simultaneously denies the validity of the UKB Roll. However, as a rule, logical analysis rarely comes into play in CNO's discriminatory treatment of members of the UKB.

Cherokee Nation of Oklahoma has claimed (since 1979) that all members of the UKB are eligible automatically for registration in

Cherokee Nation of Oklahoma, because Cherokee Nation of Oklahoma requires exclusivity of "registration" except for members of the UKB. This contention is untrue, among other reasons, because many UKB members are neither Dawes Commission Cherokee enrollees nor descendants. Cherokee Nation of Oklahoma also has contended (since 1984) that all Cherokee Nation of Oklahoma registrees were (technically) eligible for enrollment with the UKB. CNO is not competent to make this allegation, because UKB membership is a matter for the UKB Council, not any official, Council, or agency of Cherokee Nation of Oklahoma or of the U. S. to decide. In the Muskogee hearings for the American Indian Policy Review Commission on 13 May 1976, Ross O. Swimmer testified, "I think that the tribe's right to define its own membership is extremely important." (AIPRC Final Report, 17 May 1977, p. 522) The American Indian Policy Review Commission found:

There are two specific problems facing the Five Civilized Tribes: (1) the reliance on the 1907 Dawes Commission rolls as the sole major determinant of the tribal membership; and (2) the inclusion of the descendants of the freed slaves of the tribes, as a result of treaties made after the Civil War, on the tribal rolls.

All descendants of those persons on the Dawes Commission rolls are considered tribal members for purposes of voting in tribal elections and referendums, and distribution of judgment moneys. Therefore, many persons of very little Indian blood are allowed to vote in tribal elections, making decisions which may affect their lives not at all, while affecting Indians greatly.

The other membership problem plaguing the Indians of the Five Civilized Tribes is the inclusion of freedmen bands. After the Civil War, the reconstruction treaties of the tribes said that they would provide lands for their freedmen. These freedmen were given allotments which have long since passed into fee simple status. However, the descendants of these freedmen are considered tribal members because of the treaty provisions. It seems strange that the United States has violated almost every provision of those 1866 treaties, yet it holds the Five Civilized Tribes to their word. Again, these people do not identify as Indians, the Federal Government does not recognize them as Indians, yet they make decisions affecting Indians. Clearly, Congress should allow the tribes a method for restricting their membership to persons of Indian descent rather than imposing a Federal definition based on descendancy from the Dawes Commission rolls. The final irony of the situation is that, although the tribes must keep the descendants from the Dawes Commission rolls for tribal political purposes, the Bureau of Indian Affairs provides services only to tribal persons of one-quarter or more Indian blood. (Muskogee hearings, 13-14 May 1977, AIPRC Final Report, 17 May 1977, p. 522)

Cherokee Nation of Oklahoma allows registration for voting purposes for non-freedman Cherokees of any degree or source of Indian blood, while the UKB requires the class of future members (i.e., all those adopted after 1949) to demonstrate 1/4 degree Cherokee Indian blood.

Because Cherokee Nation of Oklahoma never has reorganized under an OIWA Charter and IRA Constitution, CNO cannot evade restrictions under the Act of 1906 preventing Cherokee Nation from adopting new enrollees,

or a new roll. The 1947 Act required those claiming descent from Cherokee Nation to demonstrate that descent by proving lines tracing from persons on the final Dawes Commission Roll of Cherokee Nation. The UKB are not similarly restricted, because the UKB is not part of or subordinate to Cherokee Nation of Oklahoma or subject to the authority of CNO's Principal Chief. Cherokee Nation of Oklahoma contends that its reliance upon the Dawes Commission Roll to determine Cherokee descent and its registration of Cherokee Dawes descendants is as good as the formal adoption of a Roll, for the purposes of proving dual affiliation of UKB members; but the Dawes Roll is not the UKB Base Roll. CNO never adopted any new Roll, or even updated the Cherokee Dawes Roll, which closed on 4 March 1907. When the last of the Cherokee Dawes Roll enrollees dies, the closed Roll will be vacant. CNO never provided for formal adoption of any UKB members individually or corporately, as members of an adoption class, as CNO did in the case of the Delaware Dawes enrollees. Therefore, looking to the precedent of Secretary Manuel Lujan's San Juan Southern Paiute determination (1989), like the Navajo Tribe in the early 1980s, CNO today has no real tribal roll, except for the original Cherokee Dawes Roll.

In attempting to comply with the terms of the 1984 P. L. 93-638 Enrollment Update Grant, GO8G14204002, the Band's Registrar initially requested the Department's permission to rely on the 1907 Cherokee Dawes Commission Roll for information. The Band lacked access to their own enrollment records, the original copies of which had been in Federal custody since 1950. (Letter, 9 January 1985, Jane E. McGeisey, Registrar, United Keetoowah Band, to BIA, Tahlequah Agency, re: "Updating from 1949 Base Roll") This letter is the only plausible source we know for the allegation that the United Keetoowah Band ever was substantially out of compliance with the terms of the 1984 P. L. 93-638 Grant, although the Band resolved the problem by relying primarily on the 1949 United Keetoowah Band Base Roll. The Department's response was unambiguously clear in saying that the United Keetoowah Band's Base Roll is not, and cannot be, the 1907 Cherokee Dawes Commission Roll:

A memorandum from the tribal registrar is being returned to you due to non-compliance with the present grant. You are locked in with the 1949 base roll as required by the terms of the present grant. This situation can be cleared up with the Muskogee Area Office Tribal Operations staff when they are assigned for technical assistance to assist the United Keetoowah Band in the enrollment process shortly. (Letter, 23 January 1985, Acting Superintendent Cecil Shipp, Tahlequah Agency, Bureau of Indian Affairs, to Chief John Hair, United Keetoowah Band; emphasis added)

Upon being assigned to supply technical assistance to the Band, the BIA Muskogee Area Tribal Operations staff should have supplied the United Keetoowah Band's Registrar with access to, if not copies of, the materials in the 1949 United Keetoowah Band Roll Card File.

Correspondence in the NARA, Washington, D. C., shows that the BIA took custody of the 1949-1950 Card File supporting the United Keetoowah Band's 1949 Roll in 1950. However, the Band was unable to find or use these materials in compiling the enrollment update, and the BIA made no disclosure to the Band regarding the location of the Card File. For records on receipt and storage of records relating to the enrollment and

reorganization of the United Keetoowah Band, see generally: Central Classified Files of the BIA, Department of the Interior. Box 330. Accessions 57A-185. Records for 1948-1952. Cherokee Nation. 00-219 (010.-020.; 050.-059., Box # 12), File # 43292; originally in Box # 36, Accessions 56A-588, 1-58, 14/46:49-1, 1946. Transmittal letters of Area Director W. O. Roberts, Five Civilized Tribes, attest to the receipt and archiving of these materials.

Between November 1984 and March 1986, UKB enrollment staff and members of the UKB Tribal Council compiled a list of all members who had met the membership requirements in effect at the date of each individual member's enrollment, including those on the 1949 Roll. Lacking the 1949 Card File, the Band replaced applications for all 1949 enrollees, as well as all enrolled since then whose file jackets were incomplete, defective or missing. The Band verified which members were 1/4 degree Indian blood or more, for whom current addresses and other information was absent, or whose status as active members was otherwise uncertain. The enrollment staff updated all files and compiled two final lists of current members as of 1986, including the most current information regarding residency, marital status and the like. The project staff also compiled information on deaths since the last enrollment update.

At the end of the project, the Band prepared a current (1986) Roll of full members in good standing confirmed by the Council to be of 1/4 degree Cherokee Indian blood or more. The Band approved a separate list including Associate or Honorary members, and full members who at one time had been in good standing but whose files still were incomplete or deficient at the end of the Grant. Some files were impossible to update despite good faith efforts by the staff and Council (due to the members' failure to respond to inquiries and supply a current address, or due to uncertainty whether the persons even were alive). Some Associate Members enrolled since 1949 moved to the 1986 list of Full Members in good standing, due to blood quantum clarifications. The final count from the enrollment office was 1376 UKB 1949 members. Of the 1949 files, 764 were amended or updated, either by revised application or proof of demise. The new total, including the 1949 Base Roll and 1986 Current Roll, was 6,050. The UKB completed the 1949 United Keetoowah Band enrollment update, and the Tribal Council certified the enrollment update and the new 1986 Membership Roll on 15 March 1986.

The Band transmitted the updated 1949 Roll, the newly approved and duly adopted 1986 Membership Roll, and the Final Report of P. L. 93-638 Grant G08G142002 to the BIA's Muskogee office as a deliverable on 16 March 1986. The Band submitted these records to Federal District Court with a cover note from the BIA Muskogee Area Office, in the course in litigation in 1987 in Cordelia Tyner, a/k/a/ Cordelia Tyner Washington, and the United Keetoowah Band of Cherokee Indians v. State of Oklahoma, ex re., David Moss, District Attorney and David Moss, individually; M. Denise Graham, individually, No. 87-2797, U. S. D. C., N. D., Oklahoma., when the State subpoenaed a copy of the Band's tribally-certified roll. After the completion of the enrollment project, a series of burglaries and incidents of vandalism occurred at the UKB headquarters in Tahlequah, resulting in damage to or destruction of some files and other property. However, all members' files predating 15 March 1986 had been certified already as to their status as of that date. Also, increased

security at the tribal offices and continuing updating of files in the course of conversion of the enrollment system to automation has improved record-keeping.

Finally, in 1990, after a systematic review of the United Keetoowah Band's enrollment and membership files (and a comparison of those data with the Cherokee Nation of Oklahoma's data), the BIA Muskogee Area Office confirmed, that more than 3,000 members of the United Keetoowah Band, including its Base Enrollees, never were registered with Cherokee Nation of Oklahoma, and therefore never had any form of dual affiliation with that entity. Some 4,700 UKB members either never voluntarily registered with Cherokee Nation of Oklahoma, or once were registered (voluntarily or involuntarily), but subsequently voluntarily relinquished their CNO registration. Since 1950, the UKB has continued to add to its open Roll, and in 1990 adopted a new Enrollment and Membership ordinance, which as amended, continues in effect. Since 1990, over 450 enrolled members of the Band voluntarily have relinquished their affiliation with any other Indian entity. Hundreds of the original UKB members and Dawes enrollees who had registration or membership in CNO have died. On 24 July 1992, Rosella C. Garbow, Muskogee Area Tribal Operations Officer, declared:

This is to certify that records created in 1985 show that the United Keetoowah Band of Cherokee Indians in Oklahoma has approximately 4,700 enrolled members residing within their service area.

UKB members have continued to relinquish their affiliation voluntarily with any other federally-recognized tribe since that date. The 1986 United Keetoowah Band Roll, completed during the P. L. 93-638 grant, was known to be an official Tribal Roll for all purposes, duly adopted by the Tribal Council, and authenticated by the BIA, within the meaning of Federal Indian Law, in 1991. It is up-to-date, and there are regular monthly additions through adoption, and clarifications of exclusive affiliation through relinquishment from Cherokee Nation of Oklahoma.

Regardless of Dawes descendency, it is the policy of the United Keetoowah Band of Cherokee Indians in Oklahoma that all lineal descendants of the 1949 Base Roll and current roll are automatically eligible for membership in the Band. The UKB hoped that the enrollment update and other status clarification efforts would result in separation of their population from CNO's, and would lead to the development of a UKB land base and separate programs. However, a separation of the two populations required the cooperation of CNO, and that was impossible for the UKB to obtain. As a result, the UKB must continue to finance litigation to obtain a clarification of their political and economic rights. In January 1993, the UKB Council has asked the Secretary to convene a secretarially-supervised Federal election to amend the UKB Constitution, requiring 1/4 Cherokee blood and exclusive enrollment in the UKB as qualifications of future membership, while requiring current members to relinquish affiliation in any other tribe by a set date.

Having reviewed the history of the UKB in brief, the reader should perceive readily the problems with Mr. Ron Eden's testimony to Congressman Aucoin's committee in April 1991 [at the U. S. House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11

April 1991]]. The hearing record contained a brief discussion of the BIA's reasons for moving to rescind the 16 January 1980 Letter of Assistant Secretary Forrest Gerard. Gerard's policy prevented separate services and land acquisition for the United Keetoowah Band and the Creek Tribal Towns. The speakers commented on the autonomous status of the United Keetoowah Band organized under the 1934, 1936 and 1946 Acts. Chairman Aucoin then cited what purported to be the Department's own long-standing determination that the Band had failed to carry out its contractual obligations under one P. L. 93-638 grant. Realizing that Eden was loath to agree that the Band was unrecognized or did not deserve recognition, Congressman Aucoin suggested that notwithstanding other law or equities, the Band did not deserve a chance to contract services for the benefit of the Band:

Just one second, Mr. Eden. In 1980, looking at Mr. Synar's background information, he says on page 4 of his background paper that, "In 1980, upon reviewing a funding request from the UKB, the Department of the Interior issued the following policy." This is not the full quote but the conclusion of the quote:

There is no justification for contracts and/or grants with UKB to provide the same services to those portions of the Cherokee Nation which would be served under the Nation's contracts and/or grants. The only funding the BIA issued was a 1984 grant of \$70,000 to help the UKB establish a tribal roll and identify its unique service population. To date, however, the BIA has concluded that the UKB has failed to accomplish either task.

What about that?

Mr. Eden. Correct.

Mr. AuCoin. Those are the Department's own words in 1980.

Mr. Eden. Well, that is the policy that we're talking about as a result of the membership of the Cherokee Nation and the Keetoowah Band having the same enrollment criteria and traced to the same base roll. That was the reason that essentially the Gerard policy was put in place.

Mr. AuCoin. Why did you change the policy then?

Mr. Eden. Well, we started out changing the policy because of another tribal issue; namely, that the Creek towns did not want to continue receiving their services from the Creek Nation. [U. S. Congress, House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April 1991); emphasis added]

The date "1980" appears several times in this testimony, always alluding to a finding of the Department supposedly made that year regarding the Band's competency to carry out contractual obligations. Eden twice expressly confirmed the existence of that determination in "the Department's own words." Eden did not address the discrepancy between the date of the alleged negative "finding" and the date the grant was awarded, much less admit the "finding" never existed. The "finding" was a citation in Cherokee Nation's briefing materials supplied to the Committee and the BIA. What is most surprising is that evidently, no one at the hearing noticed the falsehood due to a strictly "ends-oriented" agenda.

Recall Muskogee Area Tribal Operations Officer Rosella C. Garbow's 24 July 1992 finding that the UKB has an Oklahoma resident population, and service area population, of 4,700, of whom nearly 4,000 now are exclusive UKB members. The Band received Ron Eden's 24 August 1992 determination as Acting Assistant Secretary that the UKB is an autonomous, federally-recognized American Indian Tribe, entitled to separate services and land acquisition in Oklahoma. The alleged "1980 decision of the BIA" only would be significant -- if it existed -- because it purported to reflect on the question whether the Band deserved to serve its own needs, or whether the Band and its members should be compelled to rely on Cherokee Nation of Oklahoma for programs and services. The implication is that the Band was incapable of meeting contractual obligations. The alleged BIA determination obviously could not have been a 1980 "decision" by the Department of the Interior on the UKB's ability to provide satisfactory performance on a 26 November 1984 P. L. 93-638 grant.

The purpose of the 1984 grant was not to enable the Band to "identify [the UKB]'s unique service population," simply by declaring the roll exclusive, once complete. The purpose of the grant was to allow the UKB to update and verify the contents of individual members' files, in order to correct the 1949 Base Roll and to update the current roll so that the Band could identify its exclusive membership. (Letter, 24 July 1992, Area Tribal Operations Officer Rosella C. Garbow TO WHOM IT MAY CONCERN) Without additional clarification from the records of CNO registration, as confirmed by the BIA after the completion of the project, identification of the unique UKB service population (comprised of those who never had been citizens of any other recognized tribe, and who had relinquished any CNO status) would have been impossible. Identifying the UKB's unique population has continued to be challenging since 1986, because CNO routinely re-registers UKB members who relinquish CNO registration, without their consent or knowledge. CNO now requires UKB members to "show good cause" and imposes a 180-day waiting period before honoring relinquishments. With people supposedly clamoring to register with CNO and over 150,000 on the CNO registry, it is amazingly difficult for UKB members to prevent CNO from registering against their will.

Apparently, Congressman Synar's briefing book did not contain a copy of the P. L. 93-638 contract letter to the UKB, correspondence and reports generated during the project, or the Band's voluminous Final Report on the Grant, because that document would have shown the purpose of the Grant and its successful completion. The BIA and Congress ignored the Band's submission of the Final Report, the amended 1949 Base Roll and updated 1986 Roll. Congressman Aucoin concluded with a final question:

[A]ssuming no enactment in 1946 or any other year allowing the UKB to organize under section 3 of the Oklahoma Indian Welfare Act, would or could the BIA recognize the UKB as a new tribe or band? Amplify that for the record because obviously Mr. Synar believes that there may be the need for a record to be laid and perhaps legislation to be amended. [U. S. Congress, House Interior and Insular Affairs Committee Hearings on 101-116 on FY 1992 Interior Appropriations, United Keetoowah Band of Cherokee Nation (11 April

1991]]

The only item the BIA used to "amplify the record" was the Kirgis Keetoowah -- Organization as a Band Opinion of 29 July 1937. The Department found it inconvenient to cite Acting Secretary of the Interior Abe Fortas's finding, supporting the plan to allow all the various factions of the Keetoowah Indians to reunite and reorganize as a Band. (Senate Report 79 Cong., 2nd Sess., No. 978, 1946, Testimony of Acting Secretary of Interior Abe Fortas; see also, House Report 79th Cong., 1st Sess., No. 444, 1946 and House Report 79th Cong., 2nd Sess., No. 2705, 1946) The Department conveniently forgot that there already was a Federal Charter for the Keetoowahs in 1905. The BIA and Congress refused to refer to records of the Organization Field Agents from 1937 to 1946, or to the legislative history of the 1946 Act, that showed why and how the UKB was reorganized. The Department ignored the 24 April 1944 determination of Assistant Commissioner of Indian Affairs for Tribal Relations Branch D'Arcy McNickle, which recommended that the Department jettison the Kirgis Opinion as fatally defective. It is worth the reader's while to review this document, so it is reproduced here in its entirety. It was this determination that reflected the Secretary's views in recommending the passage of the 1946 Act as a measure clarifying the status of the UKB:

In 1937 the Solicitor's Office ruled that the Keetoowah Society of Cherokee Indians was not a band for the purpose of organizing under the Oklahoma Indian Welfare Act. The opinion characterized the organization as "a secret society representing the most conservative portion of the Cherokee Indians", and having for its objective in the beginning, opposition to slavery, and subsequently opposition to allotment. The Solicitor's decision was based largely on information obtained from a report compiled by Charles Wisdom, an anthropologist attached to the Indian Office.

Mr. Wisdom in examining into Cherokee history made these conclusions: (1) That while the name Keetoowah was derived from an ancient town, there is no historical connection between the society and that original political group; (2) That there exists only a cultural and mystical relationship between the two.

Using the foregoing information the Solicitor, in rejecting the Keetoowah Society's request for recognition as a band, held that a band is a political body, having the functions and powers of government. Likewise, it must possess a common leadership, concerted action and a well-defined membership; moreover, the membership is perpetuated primarily by birth, marriage and adoption. The opinion drew a distinction between the Keetoowah Society and the Creek towns, holding that the latter were independent units capable of political action and particularly the initiation of hostile proceedings; not only were they the functioning political subdivisions of the Creek Confederacy or Nation, but they were the original independent units of government of the Creek Nation. The Solicitor went on to say that "neither historically or actually" was the Keetoowah group a governing unit of the Cherokee Nation but rather it was a society of citizens within the Nation with common beliefs and aspirations.

This argument of the Solicitor's Office accepts as fact a

fiction which, for its own reasons, the United States Government has insisted on treating as a fact for more than a hundred years. There was not aboriginally a Cherokee Nation. There were among the Cherokee people a number of towns and there was an elaborate interrelationship between these towns, as there was also intertribal relationships as between the Cherokees and the various tribes in the Tennessee valley and along the Eastern Seaboard. The Cherokee people were located in four general areas, referred to as the Lower Settlements, the Valley Settlements, the Middle Settlements and the Overhill Settlements. In a recent study of the Cherokee s published in Bulletin 133 of the Smithsonian Institution by Dr. William Harlan Gilbert, Jr. (1943), the following passage is found:

The central area of the Cherokees, comprising the Kituhwa (Middle) and the Valley Settlements, was the heart of the tribe.

Later, during the Revolutionary course [and] after the removal in 1838 only fragments of the people remained. Quoting again from Gilbert:

By far the largest and most important of the remnant Cherokee groups after the removal were those clustering around the juncture of The Ocona and Tuckaseegee Rivers near the old settlement of Kituhwa in the heart of the old Middle Settlements.

Moreover, the term "Kituhwa" (Keetoowah) is used to designate one of the two dialects still spoken in the Eastern Cherokee area.

The foregoing information lends considerable color to the contention of Mr. Boudinot, namely, that the term "Cherokee" never should have been taken as a tribal name; that in actuality "Cherokee" is derived from "Tsalagi" which may or may not have been used by the Cherokees themselves -- Boudinot claims that it was a place name of minor importance, not properly a tribal designation. Mooney's article in the American Handbook observes that the people also called themselves "Ani-Kituhwagi" meaning "People of Kituhwa", which he describes as "one of their most important ancient settlements". Mooney also points out that the Delawares and other tribes called them "Kittuwa".

At the very least, then, the term "Keetoowah" was originally the name of a Cherokee town, perhaps the most important of the ancient towns; and in its broadest implication it may be that the term is a more appropriate cognomen for the entire people. Taking it at its least implication, Keetoowah is, historically at least, on a par with the Creek towns in that it was originally an independent unit of government. Hence the Solicitor is wrong in saying that Keetoowah was not historically a governing unit.

Next it remains to explore whether the original significance of Keetoowah, as being somehow associated with the heart and the center of the Cherokee people, went with the people when they were expelled from the original homeland. The Solicitor assumes that the contrary was true: that the term was only resurrected in the stressful days before the Civil War when the Cherokee people found themselves split on the slavery issue, and that it was again

invoked when the fact of tribal dissolution approached. As I point out above, the Solicitor characterizes it as a secret society. The question deserves more research than it has had up to now. Emmett Starr in the "History of the Cherokee Indians" (quoted by Wisdom), presents facts which indicate that Keetoowah was a living thing and that it went with the people. Writing about Red Bird Smith, who was the moving spirit in the founding of the Night Hawk Branch of the Keetoowah organization, Starr points out that Red Bird was born near Fort Smith, Arkansas, in 1859, while his parents were enroute to Indian Territory, and that his father, Pig Red Bird (the name Smith was added by white people), was an ardent adherent of the ancient rituals and customs, which he taught to his son. Red Bird then went on to become one of the Chief expounders of the religious beliefs and moral codes of the old life. When the Keetoowahs drafted their constitution in 1858, they did so not as a private and exclusive society, one feels, but as a group of trustees might organize in order to keep intact the property and the spiritual estate of the people facing peril. Previously, there had been no occasion for such formal organization because Cherokee laws and customs had continued to function. By 1858 many non-citizens had come into the Nation, factionalism became strong, and it was necessary to adopt measures in self-protection. The Keetoowahs even adopted a flag in the heat of the Civil War, around which they rallied support for the cause of the North. In February 1863 they abolished slavery unconditionally and forever (Mooney). In all of this that acts as a nation, certainly, not as a private, voluntary association.

The record, incomplete as it is, seems clearly to indicate that the Keetoowah group, whether we call it a society, a faction, or a band, did exercise independent political action, even to the point of initiating hostile proceedings. It has been a formally organized body at least since 1858, with representative districts, and for many years it had a common leadership. The fact that the original body split into factions ought not to persuade our judgment as to the true nature of Keetoowah. At present there is in evidence a real desire on the part of all factions to reunite in a common organization.

In considering the status of the Keetoowah association, one ought not to lose sight of the total history affecting the Cherokee Indians. As I pointed out earlier, the United States government insisted on treating with the Cherokee Nation when there was no such entity, and more than there ever was a Creek Nation. The pressures exerted by the United States Government resulted in producing numerous counterpressures within the Cherokee society. Those elements within the tribe who were compliant and willing to concede the demands made by the United States in time were recognized as comprising the corpus of the tribe; those who resisted were treated as a malcontent minority. At a most critical juncture in Cherokee history, on January 31, 1899, a general election was held for the purpose of accepting the Dawes Commission terms. The Keetoowahs, that is to say, the Indian element off the Cherokee Tribe, refused to participate and as a result their

interests were defeated by 2015 votes. The membership of the group was more than sufficient to carry the election if they had mustered their full strength. From this indication we gather that at that time the Keetoowahs actually represented a majority within the tribe.

The Keetoowahs themselves have never accepted the view that they are not "the people" and that they do not speak for the real interests of the ancient Cherokee world. They continue to this day to speak and act in all patience as if the decrees of the courts and the acts of the Congress had never been. But they are still puzzled at the failure of the United States to understand the simple thing they have always said, namely that Keetoowah is Cherokee and should never have been considered anything else.

I propose that we bring this matter again to the attention of the Solicitor and try to get a revision of the 1937 opinion. (Position Paper on the UKB, 24 April 1944, D'Arcy McNickle)

In light of this memo, it is clear that the 1946 Act that followed was not a Federal acknowledgment bill at all. As history shows, the Secretary simply abandoned the Solicitor's Opinion and promoted status clarification legislation. Congress even accepted without question Ross O. Swimmer's bizarre story that Congress recognized the UKB in order to accommodate Principal Chief W. W. Keeler in some way, although Keeler's appointment to the Executive Committee of Cherokee Nation came two years after the passage of the 1946 Act. Keeler was not Principal Chief of Cherokee Nation until several months later, when the UKB reorganization process was virtually complete.

Disregarding all legislative precedent and the 100th Congress's repudiation of termination, Congress passed Amendment 86 to the FY 1992 Interior Budget, agreeing to delete funding for the United Keetoowah Band of Cherokee Indians in Oklahoma, providing further in the legislative history that until such time as Congress enacts contrary legislation, Federal funds should not be provided to any group other than the Cherokee Nation within the jurisdictional area of the Cherokee Nation. Unless the UKB is able to move entirely out of Oklahoma, the result was this technically deficient language, which nonetheless represents the express legislative termination for the purposes of eligibility of the first tribe since 1962:

. . . until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation.

As Acting Assistant Secretary, Ron Eden issued a determination on 24 August 1992 that the UKB is entirely separate and autonomous from CNO, and is recognized as a properly organized OIWA and IRA tribal government that neither has been terminated nor barred from the Federal-Indian relationship.

Meanwhile, the nebulous status of CNO continues to receive blanket endorsements from the BIA and summary approvals of Congress. With the

approval of the Secretary, the Councils of CNO and the Eastern Band of Cherokee Indians of North Carolina adopted a concurring resolution without notice to the UKB in August 1992 that they are the sole federally-recognized Cherokee tribes. Principal Chief Mankiller announced in January 1993 to all U. S. governors that the UKB is an unrecognized Indian group. While claiming that she has made the resolution of differences with the UKB a personal and political priority, Mankiller has campaigned for the express legislative termination of the UKB. CNO has signed a new self-governance program to take effect in October 1993, and enjoys piecemeal restoration of the inherent sovereignty of Cherokee Nation under the 1906 Act, based largely on the misconception that the CNO is organized as a democratic OIWA and IRA government. In a Letter, 7 July 1993, from John Ross, Chief Spokesman, to Rosella C. Garbow, Director, Training and Operations, BIA, Muscogee Area, asking for clarification on the following points:

1. Has the Cherokee Nation of Oklahoma ever proposed having an O. I. W. A. election to adopt a Charter?
2. Does CNO claim to have a Charter?
3. Does CNO claim to have a "blanket" concurring resolution from the UKB for CNO use of the UKB Charter?

Rosella C. Garbow initialed the memo and advised that the answer to all three questions was, "No." There will be no level playing field between the CNO and the UKB, as long as Congress and the BIA authorize CNO's continuing attack on the UKB's sovereign interests. If the fate of the UKB serves as precedent, no other small recognized tribe is safe.

This concludes the UKB's formal response to CNO's 1991 demand that the UKB submit to the Federal acknowledgment process to regain its status as a federally-recognized Tribe. The UKB cannot submit to the acknowledgment process, because according to Mr. Peter Taylor, formerly of the Senate Committee on Indian Affairs staff, the UKB is de-facto terminated, or forbidden to participate in the Federal-Indian relationship, at least within the original territory described in the 1950 UKB Charter. While refusing to serve the UKB or put lands in trust, or even to finance an IRA election to amend the UKB Constitution due to the effect of Amendment 86 in P. L. 101-116, the BIA claims that the UKB is non-terminated; and since the UKB still is listed as federally-acknowledged, the UKB cannot petition for acknowledgment because the Band is recognized. However, the Band is ineligible for ANA funds to document a Federal acknowledgment petition because ANA/IHS presumes the UKB is terminated and barred from recognition. CNO declares now that the UKB does not exist, and that it never did, so that the UKB never was recognized, and never was terminated. Therefore, the legislative termination of the UKB is the termination that never was, and represents the weirdest paradox at Federal-Indian law: unrecognized/recognized, non-terminated/terminated. A quantum physicist couldn't make sense of this quadruple negative. But any school child can see there's a naked emperor in there somewhere.

Congress, tribes, and the American people can learn important lessons from the protracted travail of the UKB. The UKB is a congressionally recognized tribe, while CNO is an administratively condoned, legislatively diminished tribe unorganized within the meaning of OIWA and IRA. In the interests of fair play, future claims of those

attacking tribal sovereignty should receive far more scrutiny. Claims that a particular tribe's sovereignty can still be suspect after it has reorganized should be the subject of thorough investigation. The reader may be sure that the UKB will pursue exactly such an investigation in this case. The United Keetoowah Band of Cherokee Indians in Oklahoma offers the following documented briefing as the Band's only available recourse in view of Cherokee Nation of Oklahoma's campaign of political libel. Supporting documents are at the UKB Office, at 2450 S. Muskogee Ave. (P. O. Box 746), Tahlequah, OK 74464 (918) 456-5491.

April 24, 1944

In 1937 the Solicitor's Office ruled that the Keetoowah Society of Cherokee Indians was not a band for the purpose of organizing under the Oklahoma Indian Welfare. The opinion characterized the organization as "a secret society representing the most conservative portion of the Cherokee Indians," and having for its objective in the beginning, opposition to slavery, and subsequently opposition to allotment. The Solicitor's decision was based largely on information obtained from a report compiled by Charles Wisdom, an anthropologist attached to the Indian Office.

Mr. Wisdom in examining into Cherokee history made these conclusions:

- (1) That while the name Keetoowah was derived from an ancient town, there is no historical connection between the society and that original political group;
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Using the foregoing information the Solicitor, in rejecting the Keetoowah Society's request for recognition as a band, held that a band is a political body, having the functions and powers of government. Likewise, it must possess a common leadership, concerted action and a well-defined membership; moreover, the membership is perpetuated primarily by birth, marriage, and adoption. The opinion drew a distinction between the Keetoowah Society and the Creek towns, holding that the latter were independent units capable of political action and particularly the initiation of hostile proceedings; not only were they the functioning political subdivisions of the Creek confederacy or Nation, but they were the original independent units of government of the Creek Nation. The Solicitor went on to say that "neither historically or actually" was the Keetoowah group a governing unit of the Cherokee Nation but rather it was a society of citizens within the Nation with common beliefs and aspirations.

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Cherokee published in Bulletin 133 of the Smithsonian Institution by William Harlan Gilbert, Jr. (1943), the following passage is found: "The central area of the Cherokees, comprising the Kituhwa (Middle) and the Valley Settlements, was the heart of the tribe." Later, during the Revolutionary course after the removal in 1838 only fragments of the people remained. Quoting again from Gilbert: "By far the largest and most important of the remnant Cherokee groups after the removal were those clustering around the juncture of The Oconee and Tuckaseegee Rivers near the old settlement of Kituhwa in the heart of the old Middle Settlements."

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The foregoing information lends considerable color to the contention of Mr. Boudinot, namely, that the term "Cherokee" never should have been taken as a tribal name; that in actuality "Cherokee" is derived from "Tsalagi" which may or may not have been used by the Cherokees themselves--Boudinot claims that it was a place name of minor importance, not properly a tribal designation. Mooney's article in the American Handbook observes that the people also called themselves "Anti-Kituhwagi" meaning "People of Kituhwa", which he describes as "one of their most important ancient settlements." Mooney also points out that the Delawares and other tribes called them "Kittuwa".

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Smith was added by white people), was an ardent adherent of the ancient rituals and customs, which he taught to his son. Red Bird then went on to become one of the Chief expounders of the religious beliefs and moral codes of the old life. When the Keetoowahs drafted their constitution in 1853, they did so not as a private and exclusive society, one feels, but as a group of trustees might organize in order to keep intact the property and the spiritual estate of a people facing peril. Previously, there had been no occasion for such formal organization because Cherokee laws and customs had continued to function. By 1858 many non-citizens had come into the Nation, factionalism became strong, and it was necessary to adopt measures in self-protection. The Keetoowahs even adopted a flag in the heat of the Civil War, around which they rallied support for the cause of the North. In February 1862 they abolished slavery unconditionally and forever (Mooney). In all of this they acted as a nation, certainly, not as a private, voluntary association.

The record, incomplete as it is, seems clearly to indicate that the Keetoowah group, whether we call it a society, a faction, or a band, did exercise independent political action, even to the point of initiating hostile proceedings. It has been a formally organized body at least since 1853, with representative districts, and for many years it had a common leadership. The fact that the original body split into factions ought not to persuade our judgment as to the true nature of Keetoowah. At present there is in evidence a real desire on the part of all factions to reunite in a common organization.

Membership, according to earlier information, was voluntary and was restricted to Cherokee Indians of one-half or more degree. This was a factor in leading the Solicitor to hold that the group could not be classed as a band. Mr. Boudinot now informs us (see his letter of April 11, 1944) that the previous information was incorrect; that as a matter of fact, membership is acquired as a right of birth. The Constitution of 1858, when it is translated, should throw some light on this point.

In considering the status of the Keetoowah association, one ought not to lose sight of the total history affecting the Cherokee Indians. As I pointed out earlier, the United States government insisted on treating with the Cherokee Nation when there was no such entity, any more than there was ever a Creek Nation. The pressures exerted by the United States Government resulted in producing numerous counterpressures within the Cherokee society. Those elements within the tribe who were compliant and willing to concede the demands made by the United States in time were recognized as comprising the corpus of the tribe; those who resisted were treated as a malcontent minority. At a most critical juncture in Cherokee history, on January 31, 1899, a general election was held for the purpose of accepting the Dawes Commission terms. The Keetoowahs, that is to say, the Indian element of the

Cherokee tribe, refused to participate and as a result their interests were defeated 2,015 votes. The membership of the group was more than sufficient to carry the election if they had mustered their full strength. From this indication we gather that at that time the Keetoowahs actually represented a majority within the tribe.

The Keetoowahs themselves have never accepted the view that they are not "the people" and that they do not speak for the real interests of the ancient Cherokee world. They continue even to this day to speak and act in all patience as if the decrees of the courts and the acts of the Congress had never been. But they are still puzzled at the failure of the United States to understand the simple thing they have always said, namely, that Keetoowah is Cherokee and should never have been considered anything else.

I propose that we bring this matter again to the attention of the Solicitor and try to get a revision of the 1937 opinion.

D'Arcy McNickle

AN HISTORICAL OVERVIEW OF THE UKB

By John Ross

THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA (UKB) is a federally recognized Band of Cherokees which has all the sovereign rights as all other federally recognized tribes in the United States. This sovereignty of the UKB comes from the KEETOOWAH PEOPLE and NOT from the federal government. The people themselves are supreme and have the absolute power in their right to govern themselves! This self-governance right is above politics, states, nations, and governments and binds the UKB members together. THIS IS THE POLITICAL SOURCE OF GOVERNMENT - FROM THE PEOPLE!

The Keetoowah legends originated in ancient times and the stories have been orally passed through the generations. The legend reveals the Creator named the people "KEETOOWAH," which means "PRINCIPAL PEOPLE" or "PROTECTED PEOPLE." The word "Cherokee" has NO meaning in the Cherokee Language; it is simply a version of a Choctaw word meaning "Inhabitants of the Cave Country."

When white people came to this country, Indians had all sovereign powers. As time passed, the Keetoowah/Cherokee people lost most of their powers as treaties were made with the United States Government; treaties which inhibited and lessened the rights of Indian people. These U.S. treaties did NOT create additional rights for Indians.

Before the year 1812, the governments of Indian tribes were equal to the U.S. Government. However, the U.S. Government asserted power over all Indian people and governments. The U.S. Supreme Courts have ruled the U.S. Constitution has complete and absolute control over all Indian affairs, that Indian people are "wards" of the U.S. Government and "placed" the subject "wards" under the guardianship of the United States Government.

In 1859, the Keetoowah Society adopted a Constitution and had a membership limited to fullblood Keetoowah/Cherokees who opposed the intervention of "mixed blood" people in internal affairs. During the Civil War, the fullblood Keetoowah/Cherokee Indians sided with the North (Union) while the mixed bloods joined the Confederacy (South). During the Civil War, the Keetoowah Society adopted a flag and, in February, 1863, passed a law which unconditionally abolished slavery forever. In the mid-1890's, the U.S. Congress approved the Dawes' Act which provided for the allotment of lands belonging to the Five Civilized Tribes. Then, in 1898, the Curtis Act was approved by Congress to abolish the court systems of the Five Civilized Tribes and the original Cherokee Nation was forced into allotment. The white people had brought with them the English concepts of land ownership and this concept was not understood nor desired by the Keetoowah/Cherokee people.

## AN HISTORICAL OVERVIEW OF THE UKB

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After much harassment and force from the U.S. Government, the Keetoowah Society met in 1901 and reluctantly voted to comply with the Dawes' Act requirements. Redbird Smith, a member of the Keetoowah Society, adamantly opposed the actions and decision of the Keetoowah Society and, with his followers, formed the religious organization of the Nighthawk Keetoowahs, never to participate in the Keetoowah Society again.

While congressional legislation was pending in 1905 for the abolishment of the government of the Cherokee Nation, the Council of the Keetoowah Society appeared before the Federal Territorial Court, Tahlequah, requested and were granted an incorporation. The Keetoowah Society, Incorporated, recognized the urgency for an organization to carry on the following for the Cherokee people:

1. To replace the defunct Cherokee Nation.
2. To protect the rights of Cherokee lands and monies.
3. To protect unsettled claims against the U.S. Government.

The Keetoowah Society, Incorporated, sought congressional approval for a lawsuit against the federal government on eleven claims (said approval for only nine claims was granted in 1924). Frank Boudinot and associates, C.C. Calhoun, Ralph Case, and Frank Nebeker, were contracted to pursue the claims. These attorneys, at their own expense of thousands of dollars, employed expert accountants to audit the records of the federal government for the preceding one hundred years. The accountants discovered numerous large amounts due the Cherokee people.

In 1939, some leaders of the Keetoowah Society, Incorporated, sought organization as **THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA**. In 1946, this organization was authorized to organize under the **OKLAHOMA INDIAN WELFARE ACT OF 1936**. The UKB became the successor of the Keetoowah Society, Incorporated, of 1905 and the Keetoowah Society of 1859. This organization is **NOT** to be confused with the non-federally recognized religious group called the Nighthawk Keetoowahs (members of the Cherokee Nation of Oklahoma - CNO)!

On October 3, 1950, the UKB overwhelmingly approved the UKB Constitution and By-Laws and the UKB Corporate Charter by referendum vote. Today, 1993, there are approximately seven thousand, six hundred (7,600) Keetoowah members (membership requirements - one-fourth to four-fourths degree of Keetoowah/ Cherokee Indian blood).

In 1970, the Cherokee Nation of Oklahoma finally received approval to **SELECT** (not elect) a chief. Prior to this decision,

## AN HISTORICAL OVERVIEW OF THE UKB

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the "Chief" of CNO was SELECTED by the U.S. President and selection was made only to establish a liason for oil and gas leases. The "Chief" of the CNO ACTUALLY HAD NO AUTHORITY TO ACT ON BEHALF OF THE CHEROKEE PEOPLE! There was NO elected Council of the CNO from 1906 until the adoption of a CNO Constitution in 1976 and APPROVED ONLY BY THE COMMISSIONER OF INDIAN AFFAIRS (administratively approved), unlike the UKB which was approved by the U.S. Congress (legislatively approved). THE CHEROKEE NATION OF OKLAHOMA DOES NOT HAVE A CORPORATE CHARTER!

After the adoption of a CNO Constitution in 1976, the Bureau of Indian Affairs gave technical assistance for funding to the CNO organization, manipulatively diverted funds, programs, and lands from the UKB to CNO through the subterfuge of W.W. Keeler, Earl Boyd Pierce, the BIA, the Oklahoma Congressional Delegation, and the federal government. THIS MASTERED SUBTERFUGE CONTINUES TO DATE!

In 1979, the BIA denied funding to the UKB and denied a UKB land base request in 1985. The UKB has NOT received ANY FEDERAL FUNDING FOR BENEFIT TO UKB MEMBERS! A grant of \$70,000 was received by the UKB in 1984 for an enrollment update. Many UKB members are denied federal services contracted by the CNO due to prejudices by the CNO toward the UKB. Most of the injustices done by the CNO are documented and sent to BIA offices in Washington, D.C.

In 1989, the UKB sued the Secretary of the Interior to place lands in trust and to receive separate federal funds in the Old Cherokee Nation Territory. The Secretary of the Interior stated in Federal Court that the UKB WAS eligible to receive PL #93-638 federal funding but denied the acquisition of trust lands except through the CNO consent. Immediately, the CNO instructed the Oklahoma Congressional Delegation to deny the court-related decision of PL #93-638 funding for the UKB. This was immediately accomplished through the efforts of Congressman Mike Synar and Senators David Boren and Don Nickles by the passage of Amendment #86. The Oklahoma Congressional Delegation ultimately deprived eastern Oklahoma of thousands of dollars and jobs through passage of this amendment, not to mention human rights violations under the U.S. Constitutions, Fifth Amendment. Cherokee Nation of Oklahoma has repeatedly attempted to legally terminate the UKB through the Bureau of Indian Affairs. These attempts were unsuccessful so Congressman Mike Synar and Senator Don Nickles have been directed by the CNO to effect political termination of the UKB, and a defacto termination has been accomplished.

## AN HISTORICAL OVERVIEW OF THE UKB

Page 4

Regretfully, the top positions of the BIA area office are held by Cherokee Nation of Oklahoma members. Thus, a conflict of interest exists which results in flagrant discrimination against Keetoowah/Cherokee people of higher degrees of Indian blood in violation of federal law.

In comparison, the Creek Nation Chief, Bill Fife, has "embraced" the Three Creek Tribal Towns (organized separately under the OIWA as is the UKB) and provided support and technical assistance for them to receive federal funding and programs. The Cherokee Nation of Oklahoma IS NOT ORGANIZED UNDER THE OKLAHOMA INDIAN WELFARE ACT! Perhaps this fact intimidates CNO and results in discrimination of the UKB members.

If a legal analysis of the CNO were made, serious problems regarding CNO federal recognition would surface:

1. The Curtis Act of June 28, 1898 (30 Stat. 495-504) abolished CNO tribal government and the court system.
2. The Cherokee Allotment Agreement of July 1, 1902 (32 Stat. L, 716) resulted in a relinquishment by CNO to all CNO members' individually restricted lands. Thus, the federal government has jurisdictional control of the individually restricted lands.
3. The Five Civilized Tribes Act of April 1, 1906, (34 Stat. 137) abolished tribal taxation authority of the Five Civilized Tribes. Thus, the U.S. President was authorized to appoint chiefs.
4. The enrollment rolls of the Cherokee Nation were closed June 21, 1906. CNO has a ONLY A VOTER REGISTRATION LIST (OF WHICH APPROVAL IS NOT REQUIRED BY CNO COUNCIL! THUS, NO "TRUE" CNO MEMBERSHIP ROLL EXISTS.

**THESE CONGRESSIONAL ACTS HAVE NEVER BEEN RESCINDED!**

This discrimination and mal-treatment of UKB members and the collusion between the BIA and CNO is no trivial matter and has created the necessary move of the UKB away from Oklahoma. The search presently is in the State of Arkansas.

The proposed move of the UKB will resolve the problems which the BIA, CNO, the Oklahoma Congressional Delegation, and the State of Oklahoma have regarding UKB sovereignty. Contrary to the opinion of the CNO, the UKB wants to take nothing away from the Cherokee

AN HISTORICAL OVERVIEW OF THE UKB  
Page 5

Nation. All the UKB demands is to be able to govern and serve its members as a fully recognized tribe organized under the provisions of the Oklahoma Indian Welfare Act.

The plan to move to Arkansas is a result of a decision policy of the Bureau of Indian Affairs that the Cherokee Nation of Oklahoma has jurisdiction over all lands in the fourteen counties of the Old Cherokee Nation. The BIA made this policy without any investigation or research to validate CNO authority.

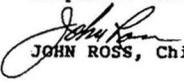
If such a BIA investigation were made, it would reveal that CNO is NOT the Old Cherokee Nation and the CNO IS NOT organized under the Oklahoma Indian Welfare Act! Further, between 1946 and 1950, a determination was made by then-Commissioner of Indian Affairs, William Zimmerman, that the UKB WAS eligible to acquire U.S. trust lands in the Old Cherokee Nation reservation area. These questions were asked at that time:

1. "What if the Cherokee Nation reorganized?"
2. "How would the two Cherokee entities exist?"
3. "Would there be problems of co-existence between the two entities and two chiefs within the Old Cherokee Nation?"

It was determined that they could co-exist and there should be no problem with their coexistence. Commissioner Zimmerman reasoned that the circumstances existing between the CNO and UKB were identical to those between the Creek Nation and the Three Creek Tribal Towns. Zimmerman believed NO problems would arise from the separate recognition of the UKB.

Therefore, an official investigation is hereby requested regarding the termination of UKB federal funding, the prejudice of the Muskogee Area BIA Office (most BIA upper management people have conflicts of interest concerning the UKB and CNO), and the favoritism and collusion efforts existing among the Oklahoma Congressional Delegation.

To reiterate, the UKB is presently requesting lands in Arkansas (in areas to be determined by the UKB Council) be placed in U.S. trust status for the UKB in order to provide and improve social, economic, and living conditions of UKB members. These provisions are established and mandated by law under the Oklahoma Indian Welfare Act, the UKB Constitution and By-Laws and UKB Corporate Charter!

  
JOHN ROSS, Chief Spokesman

AMERICAN TAX DOLLARS AT WORK!

Possible fraud and malfeasance by the Cherokee Nation of Oklahoma (CNO) with the knowledge of the Muskogee Area Office of Bureau of Indian Affairs (BIA) to secure a reported 85 MILLION DOLLARS IN 1994 (and other federal program funds) by the use of fraudulent "head counts."

According to known and deduced information reported by CNO and other documentation, the B.I.A. and other agencies of the federal government continue to fund numerous programs using possibly fraudulent feasibility reports (see "F.Y.I.," page 11, UKB NEWS December, 1993). The B.I.A. is aware of the situation and is flagrantly condoning and allowing their agency as well as other federal agencies to continue this waste of taxpayer dollars.

The UKB, through a historical narrative (416 pages) compiled by Allogan Slagle, UKB Councilman and attorney, has reported these discrepancies and/or deficiencies to the U.S. Secretary of the Interior, the Senate Committee on Indian Affairs, and other pertinent agencies in Washington, D.C.

THE U.S. GOVERNMENT AND THE BUREAU OF INDIAN AFFAIRS GUIDELINES RECOGNIZE ONLY THOSE PERSONS 1/4 TO 4/4 DEGREE OF INDIAN BLOOD AS "INDIANS!" Therefore, Cherokee Nation of Oklahoma contracted for SELF-GOVERNANCE funds which use "HEAD COUNT" PROCEDURES FOR FUNDING INSTEAD OF BLOOD QUANTUM REQUIREMENTS and began a vigorous campaign to REGISTER (NOT ENROLL) MEMBERS!

Of the 155,000+ CNO REGISTERED MEMBERS, approximately fifty percent plus (50%+) live OUTSIDE THE ORIGINAL 14-COUNTY AREA OF OLD CHEROKEE NATION!

NO WONDER THE CNO IS ATTEMPTING TO SUPPRESS UKB EFFORTS TO EXPAND AND RECEIVE SEPARATE FUNDS!

Note:

The "For Your Information" article includes 3,700+ exclusive UKB members from 1/4 to 4/4 blood degrees! Additionally, approximately 9,000 members of the Delaware Tribe are included in the CNO total.

Even though CNO registered members living outside the Old Cherokee Nation who are not eligible to receive services, UKB exclusive members who never registered with CNO or have relinquished CNO registration, and Delaware and Absentee Shawnee members are included in CNO "head count," millions of tax dollars continue to flow into Cherokee Nation of Oklahoma.

According to CNO documentation, the below listed breakdown of registration membership of CNO as of December 31, 1992, with blood quantum percentages is submitted:

NUMBER OF MEMBERS	-	PERCENTAGE/BLOOD QUANTUM
21	-	1/2048 or .049/1,000 of 1%
333	-	1/1024 or .098/1,000 of 1%
2,451	-	1/512 or .195/1,000 of 1%
7,454	-	1/256 or .39/100 of 1%
13,338	-	1/128 or .78/100 of 1%
18,669	-	1/64 or 1.56/100%
21,994	-	1/32 or 3.125/100%
21,836	-	1/16 or 6.25/100%
19,929	-	1/8 or 12.5/100%
17,147*	-	1/4 or 25/100%
8,495*	-	1/2 or 50/100%
4,162*	-	3/4 or 75/100%
4,181*	-	4/4 or 100%

Additionally, it has been reported by W.W. Hastings Indian Hospital employees that two newborns possessing 1/4096 or .024/1,000 of 1% were born during 1993.

Surely with all existing regulations and requirements of the federal government of any/all federal programs, there must be a means by which to follow a "money trail" to the ultimate intended monetary uses of the federal funds. The UKB submits that the methods of accounting for program dollars are possibly co-mingled in a CNO tribal dollar-pool and any attempt to follow said money trail would be futile. Why is this blatant misuse of taxpayer funds existing? Surely the Oklahoma Congressional Delegation is aware of the dilemma. Perhaps this waste should be addressed by Congressman Synar and Senators Boren and Nickles in their undaunting support of CNO.

Another extremely important issue I want to address is the proposed Cherokee Nation of Oklahoma proposed **RELINQUISHMENT OF INTEREST IN THE 96-MILE PORTION OF THE ARKANSAS RIVERBED BETWEEN THE ARKANSAS STATE BORDER AND THE THREE-FORKS AREA NEAR MUSKOGEE IN EXCHANGE FOR OTHER FEDERAL LANDS NOW UNDER FEDERAL CONTROL!**

**THE CHEROKEE NATION OF OKLAHOMA IS ALLOWING THE EROSION OF CHEROKEE SOVEREIGNTY!** The Chickasaw Times, October/November, 1993, article provided documentation for this erosion is included in this paper. This plan, together with the takeover of the I.H.S. facilities in Claremore and Tahlequah and plans to include services to indigent non-Indians should bring all Indian people to their senses.

According to the Corporate Charter of THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA (UKB), we are "to protect any interest which the United Keetoowah Band or its members may have treaties made with the Cherokee Nation." No one with the organization purporting to represent the Cherokee interests has contacted the Band concerning the Arkansas Riverbed! But, it appears THE "CHEROKEE NATION" MEMBERS HAVE NOT BEEN CONSULTED EITHER.

The founders of our Band limited the powers of its government by stating "NO LAND BELONGING TO THE BAND OR INTEREST IN LAND SHALL EVER BE SOLD OR MORTGAGED." Possibly Mike Synar's Cherokee organization follows the philosophy of the Cherokee Nation of existing solely to dispose of its remaining assets and land.

A handwritten signature in cursive script, appearing to read "John Doe" or similar, written in dark ink.

UNITED KEETCOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA  
 P.O. BOX 746 TAHLEQUAH, OKLAHOMA 74465-0746  
 TELEPHONE: (918) 458-5491 FAX (918) 458-3601

JOHN ROSS  
 CHIEF

JIM HENSON  
 ASSISTANT CHIEF



JIMMIE LOU WHITEKILLER  
 SECRETARY

CLARA PROCTOR  
 TREASURER

January 14, 1994

Honorable Al Gore  
 United States Vice President  
 The White House  
 Washington, D.C. 20508

Dear Vice President Gore:

Please accept this letter of appreciation for your efforts to consolidate the Muskogee and Anadarko Area Offices of the Bureau of Indian Affairs consolidation efforts in the State of Oklahoma.

Opposition from U.S. Senators Boren and Nickles and Congressman Synar are expressed daily in this state. However, this negative intercourse of the distinguished and influential Oklahoma Congressional Delegation is certainly not an innovation with regard to THE UNITED KEETCOWAH BAND OF CHEROKEE INDIANS (UKB). The UKB has experienced oppression from this powerful delegation for years.

Enclosed herewith are copies of two area newspaper articles which are self-explanatory. Merritt Youngdeer, Area Director, Muskogee BIA, complains that the Muskogee Office should remain due to the fact approximately 76% of the Indian population in Oklahoma lives in Eastern Oklahoma. Also, of the 76% quoted by Merritt Youngdeer, the majority are members of DECENDANCY LISTS, NOT INDIAN TRIBAL MEMBERSHIP ROLLS. Perhaps your office should investigate five billion dollars being distributed to Indian tribes in 1994, the majority of said funds "earmarked" for tribes with DECENDANCY LISTS AS OPPOSED TO TRIBAL ROLLS in your efforts to eliminate the misuse of taxpayers dollars and reduce the deficit of the federal government.

---

COUNCIL MEMBERS

ALLOGAN SLAGLE  
 CANADIAN DISTRICT

JIM PROCTOR  
 FLENT DISTRICT

ROBERTA SMOKE  
 SALINE DISTRICT

EMMA SUE HOLLAND  
 COOWEESCOOWEE DISTRICT

RICHARD MANUS  
 GOINGSNAKE DISTRICT

CHARLIE BIRD  
 SEQUOYAH DISTRICT

ADALENE SMITH  
 DELAWARE DISTRICT

SUSAN ADAIR  
 ILLINOIS DISTRICT

MOSE KILLER  
 TAHLEQUAH DISTRICT

"RESPECT FOR OUR ELDERS"

Honorable Al Gore  
 United States Vice President  
 January 14, 1994  
 Page 2

Please be apprised that NONE of the Five Civilized Tribes currently has an Indian blood quantum requirement. THE U.S. GOVERNMENT RECOGNIZES ONLY THOSE PEOPLE POSSESSING 1/4 TO 4/4 DEGREE INDIAN BLOOD AS "INDIANS." (In some cases, the federal government requires 1/2 to 4/4 degree of Indian blood for recognition as an Indian. Approximately 90% of the descendanty list of the Cherokee Nation of Oklahoma is LESS THAN 1/4 DEGREE INDIAN BLOOD and more than fifty percent (50%) live OUTSIDE the boundaries of the Old Cherokee Nation and, thus, receive no benefits. The government of the Cherokee Nation of Oklahoma is repeatedly selected by ABSENTEE VOTERS.

Merritt Youngdeer's statistics may be true, Mr. Gore, but only approximately one-eighth of the 76% are under total jurisdiction of the BIA. The Cherokee Nation of Oklahoma (155,000+ members), the Creek Nation (37,180 members), and the Chickasaw Nation (39,515 members) are contracted self-governance tribes directly with the federal government - not the Muskogee Area BIA Office! The Creek Nation is the only properly organized tribe (under the Oklahoma Indian Welfare Act/Indian Reorganization Act) to compact for self-governance funds in Eastern Oklahoma. The total number of Indians NOT UNDER JURISDICTION OF THE MUSKOGEE BIA AREA OFFICE IS 231,695 TO DATE! Tribes entered into self-governance contracts with the federal government in order to be FREE OF THE DIRECT CONTROL OF THE BIA. IT MAKES NO SENSE THAT IT REMAINS A PRIORITY THAT THE SELF-GOVERNANCE TRIBES RETAIN TIES TO A BIA OFFICE. IT IS DIFFICULT TO UNDERSTAND WHY CHIEF MANKILLER AND THE OKLAHOMA CONGRESSIONAL DELEGATION ARE TAKING SUCH A STRONG POSITION IN SUPPORT OF THE AREA DIRECTOR, MERRITT YOUNGDEER.

In one enclosed article, Wilma Mankiller, Cherokee Nation of Oklahoma Chief, complained she was not contacted regarding the possible consolidation of BIA offices. Mr. Gore, NONE of the tribal leaders with whom I am acquainted were notified of this action. You should know the Cherokee Nation of Oklahoma eliminated jurisdictional responsibilities of the Muskogee Area BIA Office four years ago when it became one of the first tribes in the nation (and the first Oklahoma tribe) to sign a self-governance compact with the federal government.

The State of Oklahoma benefits substantially from the federal assistance received by federally recognized Indian tribes within its borders. The effect on the economy of Oklahoma (as well as other states, including Alaska, Arizona, New Mexico, etc.) is synonymous with the effect of state-located military bases.

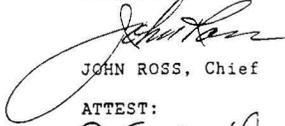
Honorable Al Gore  
 United States Vice President  
 January 14, 1994  
 Page 3

Three high-level BIA government officials are employed in the Muskogee Area Office whose responsibilities are supposedly to oversee all tribes in Eastern Oklahoma. However, over three-fourths of the Indian population in Eastern Oklahoma belong to tribes which have self-governance compacts with the federal government (Cherokee Nation of Oklahoma, Chickasaw Nation, and Creek Nation). Additionally, the Choctaw and Seminole Nations, as well as other Oklahoma tribes, are seriously considering self-governance compacts. There is NO reasoning in the fact three (3) high-level BIA officials (with exorbitant salaries) remain in said office when fewer duties are required. This will alleviate the need of two area offices in the State of Oklahoma!

Waste of taxpayers' monies by the BIA is rampant throughout the nation through years of misteasance, malfeasance, and nonfeasance. Mr. Gore, if said consolidation of BIA offices is achieved as well as other money-saving techniques, please make sure the monies saved are reinvested in improving the lives of "real" Indians throughout America.

The ideas and efforts expressed by the Clinton-Gore administration are certainly appreciated and long overdue. Best wishes in your endeavors.

Sincerely,



JOHN ROSS, Chief

ATTEST:



JIMMIE LOU WHITEKILLER, Secretary

cc:

Bruce Babbitt, Secretary of the Interior  
 Ada Deer, Assistant Secretary of the Interior  
 U.S. Congressman Tim Hutchinson  
 Loretta Avent, Special Assistant to the President for  
 Intergovernmental Affairs  
 U.S. Senator Dale Bumpers  
 U.S. Senator David Pryor  
 U.S. Senator Daniel Inouye

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA  
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JOHN ROSS  
 CHIEF



JIMMIE LOU WHITEKILLER  
 SECRETARY

JIM HENSON  
 ASSISTANT CHIEF

NORMA JEAN FOURKILLER  
 TREASURER

May 4, 1992

TO THE OKLAHOMA CONGRESSIONAL DELEGATION:

We realize the Oklahoma Congressional delegation has attempted to "terminate" us in practice through the language in the last BIA appropriation bill. We know that you have undermined our right to self-government because you think you can benefit politically through alliance with the Cherokee Nation of Oklahoma.

Perhaps you have yet to realize that your action did a disservice to the State of Oklahoma.

You must be the only Congressional delegation in the U.S. to promote legislation to deny federal funding to a part of your own state. We estimate that you cost the Oklahoma economy from two to three million dollars for this year alone in direct federal assistance because of your ill-conceived effort to have one instead of two tribes eligible for funding. We think Oklahomans should know this.

Further, we have been contacted by people not only in Arkansas, but also Missouri about moving to their states since the Oklahoma Congressional delegation has made it clear that it does not respect our rights. We wonder, what has the State of Oklahoma ever done for the fullblood Cherokees? In our case, we know that our welfare is certainly not being looked after by the Oklahoma delegation.

Gone are the days when Oklahoma had a congressional delegation with people such as Senator Thomas and Representative Rogers who visited fullblood communities and urged passage of a bill, the OIWA, designed to allow fullbloods to reorganize themselves to better their lives. It took Senator Thomas nearly ten years to specifically provide for the organization of the Keetoowahs. Since then, Oklahoma has allowed the BIA to subvert the Keetoowah's recognition. Now, with fullblood communities still in poverty since most of the millions of dollars of federal money goes to the White Cherokees, your efforts to render us totally powerless may, instead, have opened us to "a land of opportunity".

----- COUNCIL MEMBERS -----

JACOB COBB  
 CANADIAN DISTRICT

JIM PROCTOR  
 FLINT DISTRICT

JACKSON MCCLAIN  
 SALINE DISTRICT

EMMA SUE HOLLAND  
 COOWEESCOOWEE DISTRICT

RICHARD MANUS  
 GOINGSNAKE DISTRICT

MARY STIGLET  
 SEQUOYAH DISTRICT

ADALENE SMITH  
 DELAWARE DISTRICT

SUSAN ADAIR  
 ILLINOIS DISTRICT

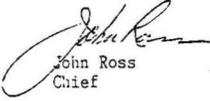
MOSE KILLER  
 TAHLEQUAH DISTRICT

"RESPECT FOR OUR ELDERS"

Oklahoma Congressional Delegation  
May 4, 1992  
Page 2

Since you have not treated our fullblood people with any respect here in Oklahoma, we assume we can seek a better life for ourselves elsewhere with your blessing. If not with your blessing, then we will seek allies wherever they may be in order to free us from being Oklahoma's slaves - using us for your economy but not recognizing our rights as people.

Sincerely,



John Ross  
Chief

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 01-17-04 BY 60322 UCBAW/STP

MIKE SYNAR  
23 DISTRICT OKLAHOMA  
COMMITTEES  
ENERGY AND COMMERCE  
JUDICIARY

GOVERNMENT OPERATIONS

TO 00184869601

Congress of the United States  
House of Representatives  
Washington, DC 20515-3802

P. 001  
2329 RAFFERTY HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3802  
(202) 525-2701

DISTRICT OFFICE  
2822 FEDERAL BUILDING  
126 SOUTH MAIN STREET  
MUSKOGEE, OK 74401  
(918) 687-2533

January 7, 1994

Lewis B. Ketchum  
108 S. Seneca Avenue  
Bartlesville, Oklahoma 74003-2834

Dear Lewis:

I would like to draw your attention to an event that I believe will be of interest to you.

At my request, on January 20, 1994, Rep. Bill Richardson, Chairman of the Natural Resources Subcommittee on Native American Affairs, will hold a field hearing in Tahlequah. I would like to encourage you to attend this event. The committee will hear testimony on a range of economic issues critical to Native Americans. The issues will be: health care reform, trust fund management, self-governance, economic development, and gaming. The hearing will be held at the Cherokee Nation Tribal Complex (located on Highway 62 just west of Tahlequah) in the Tribal Council Chambers from 10:30am to 12:30pm.

I hope that you will be able to attend this important event. Please contact Tonya Davis or Tracy Weisler of my Washington, DC staff if you have any questions.

With best wishes,

Sincerely,



MS/td



*Cherokee Nation Principal Chief Wilma P. Mankiller  
invites  
Tribal Chiefs and Chairmen  
to attend a luncheon with  
U.S. Representative Bill Richardson  
Chair, Sub-Committee on Native American Affairs  
of the  
House Committee on Natural Resources*

*12:30 p.m. Thursday, January 20, 1994  
Talking Leaves Job Corps  
W.W. Keeler Cherokee Nation Tribal Complex  
Four and one-half miles south of Tahlequah on U.S. 62*

*This informal luncheon will provide you with the opportunity to  
meet personally with Congressman Richardson.*

*Congressman Richardson will be in Tahlequah at the request of*



**CHEROKEE NATION**  
P.O. Box 948 • Tahlequah, Okla. 74465 • (918) 456-6485  
FAX (918) 456-6485

Wilma P. Mankiller  
Principal Chief  
John A. Ketcher  
Deputy Chief

fax transmittal form

DATE: 1-19-94  
TO: John Boss  
FROM: Lynn Howard  
Public Affairs

FAX NR: 918-456-9601  
number of pages including this page: 2  
COMP CODE: 3070.05



# Cherokee Population Up

## Growth Rate Near 400%

By Rob Martindale  
World Senior Writer

The population growth rate of the Cherokee Nation has far outstripped that of other Indian tribes, the state of Oklahoma, and the United States over the past decade.

One of the most ambitious tribes in America in terms of self-governance, the tribe in 1983 had 41,440 members. Today, it has 152,000 — almost a fourfold increase.

The population boom has been fueled by newborns, but tribal figures show that record numbers of people annually are becoming new citizens of the Cherokee Nation.

To show the tribe's rapid expansion in relation to other segments of the population, here are some comparisons:

■ The Cherokee Nation population growth rate from 1983 to 1993 was just short of 400 percent, growing by 111,000 to 152,000.

■ The state of Oklahoma population dropped from 3,290,000 in 1983 — when a record high was set — to a projected 3,231,000 in 1993.

■ The United States population grew by 10 percent, from 233,792,000 to a projected 257,927,000 between 1983 and 1993.

■ The total Indian population in Oklahoma, with 35 tribes, grew by 33 percent from 169,459 to 227,420 between the 1980 and 1990 census.

■ The Cherokee Nation population in 1983 was 41,440. It is projected to reach 152,000 by 1993.

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■ The Cherokee Nation population in 1983 was 41,440. It is projected to reach 152,000 by 1993.

R. Lee Fleming, registrar to the Tahlequah-based Cherokee Nation, said registration generally is at its peak during times of economic downturns.

In 1985, when low oil price flattened Oklahoma's economy and thousands left Oklahoma in search of jobs, the Cherokee Nation had its highest enrollment of new citizens.

The tribe's population went to 67,890 in 1985 from 48,200 in 1984.

When the economy is sour Fleming said, people look for other means to help them with basic needs and if the state and federal government cannot provide them "they are going to look to the Cherokee Nation offer."

See Cherokee on News 3

The Cherokee Nation's population grew from 41,000 in 1983 to 152,000 in 1993.



Oklahoma's population dropped from 3,290,000 in 1983 to a projected 3,231,000 in 1993. U.S. population grew from 233,792,000 to a projected 257,927,000 between 1983 and 1993.

The total Indian population in Oklahoma grew from 169,459 to 252,420 between the 1980 and 1990 census.

## ...Cherokee

Continued from News 1  
over 50 services to tribal members, including free hospital care.

Other services include higher education opportunities, programs for infants, housing assistance, burial assistance, food donations and loans and grants that might not be available to non-members.

Since 1989, the Cherokee Nation population increases have averaged around 12,000 a year with around 85 percent through newborns.

Five percent of the people applying for membership are found to be ineligible.

To become a tribal member, a person must have an ancestor on what are commonly known as the Dawes Commission rolls. The enrollment took place from 1899 to 1906, the year before Oklahoma gained statehood.

At that time, an individual was required to live within the Cherokee Nation, which today covers 14 counties in eastern Oklahoma, and their names had to appear on previous tribal records.

The Cherokee Nation Citizenship Commission was responsible for the rolls.

During the 1899-1906 period, the blood degrees required to be on the rolls ran from full-blood to 1/256th.

Although there was a blood degree at the time for Cherokees, Fleming said, "you also have people on the final rolls who were non-Indian.

"You had African-Americans, Caucasians who married into the

tribe. You had Delaware Tribe individuals. You had Shawnee Tribe individuals."

This is due in part, Fleming said, because of what he called "a historical legal relationship the tribe had with its people."

Non-Cherokees being on the original rolls is little different than Asians or Europeans becoming American citizens, he said.

Cherokees, he said, have had contact with non-Indians dating back several centuries.

Today, the required blood degree for membership in the Cherokee Nation is from full blood down to one in 2,048 or 1/2,048th.

The blood degree minimum might appear low, but is explainable, Fleming said.

He noted that John Ross, "our greatest principal chief," was one-eighth Cherokee. Ross was born in the late 1700s.

"His descendants, if they married non-Indians, would fall into that category of one over 256, or maybe one over 512 or maybe one over 1,024, or maybe one over 2,048," Fleming said.

Other tribes in Oklahoma have similar or no blood quantum requirements as long as an applicant can show the slightest amount of Indian blood.

Spokesmen for both the Creek and Seminole nations said they had no set blood degree requirement. The member with the least blood degree in the Okmulgee-based Creek nation is one over 1,028, a tribe spokesman said.

Fleming said a person with a one over 2,048 degree of Cherokee

blood "would be a descendant of the least degree that you find on the final roll, which is just four generations away."

In 1987 when Fleming became the tribe's registrar, the Cherokee Nation had an 18-month backlog on processing citizenship applications.

With the change from a manual operation to a computerized system, applications now can be processed within four weeks, he said.

American Indian tribal governments were dissolved by federal legislation in the late 1900s.

When the Cherokee Nation was revitalized in the 1970s, a new constitution allowed for tribal members to live inside and outside of Oklahoma, and members were required to have at least one descendant on the original rolls.

About 65 percent of the 182,000 registered Cherokees live in Oklahoma and 24 percent reside in other states or foreign countries, Fleming said.

The addresses of the remaining 11 percent are listed as unknown, he said.

At the turn of the century when the final roll was processed, there were approximately 43,000 Cherokee citizens, he said.

Including those not registered with the tribe, the U.S. Census of 1990 reported about 340,000 individuals claiming to be Cherokees.

In addition to the Oklahoma-based Cherokees, the Eastern Band of Cherokees headquartered in North Carolina counts about 10,000 members, Fleming said.



*Oklahoma Indian Mineral Owners Association*

COMMENTS  
ON THE  
OVERSIGHT HEARING ON OKLAHOMA TRIBAL AFFAIRS  
TO THE  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
HELD  
JANUARY 20, 1994  
CHEROKEE NATION OF OKLAHOMA  
TAHLEQUAH, OKLAHOMA

SUBMITTED  
BY  
EDDIE JACOBS, CHAIRMAN  
FEBRUARY 9, 1994



*Oklahoma Indian Mineral Owners Association*

COMMENTS ON THE OVERSIGHT HEARING ON OKLAHOMA  
TRIBAL CONCERNS SUBMITTED TO THE SUBCOMMITTEE  
ON NATIVE AMERICAN AFFAIRS BY THE OKLAHOMA INDIAN  
MINERAL OWNERS ASSOCIATION

These comments were prepared by members of the Oklahoma Indian Mineral Owners Association in response to the January 20, 1994, Oversight Hearing on Tribal Concerns held by the Cherokee Nation of Oklahoma, Tahlequah, Oklahoma. For the past decade, the association have submitted numerous times their comments, recommendation and rationale concerning matters relative to their vested interest. Despite agendas centered on tribal issues, the mineral owners managed to "slip in the back door" (sic) many times just to try to deliver a position paper to an official of the Bureau of Indian Affairs or tribal official, on the issue. As the Chairman of the association, I approached the two Oklahoma Area Directors present at a united tribal Indian organization meeting, in regard to a general question and was told I shouldn't be talking to them, that my voice was in the room where the tribal officials were. Despite the exclusion, we persist in our continued obligation to the membership, to express their concerns and obtain reliable assistance from the agencies of the Department of the Interior. The association elders like to point out their comments made regarding the BIA realignment, in that they recommended "streamlining the Bureau's Task Force April 23, 1991. A copy of the associations comments submitted at that meeting are enclosed. Those issues we addressed were tribal jurisdiction, land consolidation and the individual Indian monies (IIM) accounts trust fund interest reconciliation, to no avail.



## Oklahoma Indian Mineral Owners Association

A potential concern is the economic development of the individual Indian's mineral resources, especially here in the State of Oklahoma, where remain vast amounts of oil and gas that have yet to be subject to secondary recovery. Past recommendations to the BIA have been one of indifference regarding mineral enhancement for these resources. The BIA royalty management function has been a disaster to this point, despite the Federal Oil and Gas Royalty Management Act (1983), an Act that went to settlement agreements instead of the enforcement of the regulations, in two court cases, (the Navajo and Kauley vs Lujan and Hodel). The recommendation of the Oklahoma Indian mineral owners is that all royalty management functions be consolidated under one agency, which could be the Mineral Management Service (MMS). A Department of the Interior agency that has shown to be making efforts towards communication and systems improvement.

Indian bingo and other ventures were points of discussion at the Hearing. There was no mention of tribal or allottee mineral resources potential addressed. The mineral owners have some very definite ideals which can be discussed at a future date.

One major concern that needs legal attention ( that has two Tribes here in the State of Oklahoma in court) is the question of Tribes jurisdiction on allotted lands. In that those Tribes are in litigation by the imposition of severance taxes on allotted land. We contend there may be a violation of the Privacy Act on the data being received concerning the Individual Indian Monies (IIM) accounts, and that the fiduciary responsibility and obligation is the role of the Secretary of the Interior relative to our interests.

Another major concern is, the escheatment of individual Indian lands tht continue to be carried out by the Tribes under the Anadarko Area Office, Anadarko, Oklahoma, despite the agencies' notice to agency Superintendent's that no Tribes have a consolidation agreement with the BIA. The BIA continues to condone the practice, by the Tribes signing of lease agreements in the fractionated interest of the mineral owner.

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The Oklahoma Indian Mineral Owners will continue to be actively involved, whenever we are informed of any future meetings or hearings, that may have any potential effect to our land and mineral resources.

A Indian Mineral Owners Consultation Forum, sponsored by MMS/BLM/BIA and the Native Rights Fund has been scheduled for the mineral owners to express their concerns, issues and questions, and to discuss ways services can be improved. The important followup to the forum is, will there be a equitable and reliable trust and respect to the mineral owners concerning their mineral interest, and can there be a better line of communication for all concerned.

ATTACHMENTS  
(1-15)

P.O. BOX 25665 . OKLAHOMA CITY, OKLAHOMA . 73125-0665

January 20, 1994

Honorable Bill Richardson, Chairman  
House Native American Affairs Subcommittee  
U.S. House of Representatives  
Washington, D.C. 20515-6201

Honorable Bill Richardson:

We attention you to the letter that was addressed to Congressman Glen English Oklahoma City office, regarding Senate bill S.410 and H.R. 1425 legislation, that greatly concerned the Oklahoma Indian mineral and land owners.

At the time the inquiry was being pursued at the Bureau of Indian Affairs, relative to the legislation, H.R. 1425 had been tabled and was to be acted on the day of inquiry. We are still unaware of its status. We appreciate any information regarding the legislation status, and inquiry into the lack of communication, despite the advisement to provide that information to the Indian landowners. After all, these lands are our vested interest. So, wouldn't our just being informed, go beyond concern, that is to the point of rights as landowners of those properties.

Mr. Richardson, mineral and land owners are just beginning to realize the impact of the Indian Land Consolidation Act and the escheatment of those lands, which is an intangible asset, and which has the potential for production and development.

Eddie Jacobs, Chairman

Oklahoma Congressional Deleg.



Honorable Daniel K. Inouye  
The President of the United States



*Oklahoma Indian Mineral Owners Association*

P.O. BOX 25665 . OKLAHOMA CITY, OKLAHOMA 73125-0665

January 20, 1994

Congressman Mike Synar  
Rayburn House Office Bldg.  
Washington, D.C. 20515

Dear Congressman Synar:

Enclosed is correspondence that has transpired relative to your proposed congressional legislation, H.R. 6177 & H.R. 1846, in the endeavors of the Oklahoma Indian Mineral Owners (OIMOA), and my prior personal pursuit concerning assurance of the reconciliation of the Individual Indian Monies (IIM) trust funds accounts. And, we are requesting your response to the present status of those bills.

We further request your inquiry into the SPECIAL PROJECT undertaken by the Office of the Trust Fund Management, Mr. Jim Parris, Albuquerque, N.M. It is our understanding that the reconciliation of the TRIBES trust funds accounts has been underway for a while. Our concern is when the individual IIM accounts reconciliation will begin.

I personally, have attentioned Mr. Parris to initiate the individual SPECIAL PROJECT, by providing a compilation of IIM documentation dating back to 1916 of my deceased father, Mr. Johnny Jacobs IIM account, that had transferred to my name as his sole heir to the revenue sources. Your inquiry, assistance, and timely response to these concerns will be most appreciated.

Those monies that could be reconciled and generated to the individual IIM accounts, could have a tremendous economic impact, considering the multiplier effect, to the State of Oklahoma, and especially the sustenance of our Indian people.

Again, Congressman Synar, your endeavors into these matters that concern the individual Indian are most appreciated.

Sincerely,

*Eddie Jacobs*

Eddie Jacobs, Chairman



*Oklahoma Indian Mineral Owners Association*

P.O. BOX 25665 . OKLAHOMA CITY, OKLAHOMA . 73125-0665

Congressman Glenn English  
252 Old Post Office Bldg.  
Oklahoma City, Ok. 73102

Dear Mr. Ken Talley:

Per our telephone conversation 11-16-93, that was upon the direction and request of Mr. Eddie Jacobs, Chairman, Oklahoma Indian Mineral Owners Association, relative to the U.S. Senate bill S.410 that was passed on February 18, 1993, and the inquiry into the present status of the House of Representatives H.R. 1425 legislation.

Attached enclosures is the Bureau of Indian Affairs (BIA) March 31, 1993 Memorandum, whereby the BIA was to provide the vital information to the Indian allottees land-owners, and the Public Notice that was submitted to local community newspaper in the Cheyenne and Arapaho Tribes districts by the Concho Agency, El Reno, Oklahoma. Upon further inquiry to the Concho Realty officer, Mr. Scott McCorkle as to the proper notification to the individual land-owners, he related that thir office got in trouble and were soundly reprimanded for the release of the information and language content that was send out, and further reminded that they were not in the lobbying business.

The association and the Cheyenne and Arapaho Indian land-owners oppose the passage of the proposed legislation by Petitions that are being circulated, which will be attentioned both to the Senate and House of representatives.

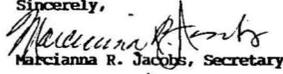
The association stresses that well-defined stipulations and provisions need to be addressed before such an act of Congress is legislated. Many concerns are some Tribes present financial stability and capability, and over-sight by the BIA of present self-determination contracts funding and audit findings.

Ken Talley

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Mr. Talley, the Chairman, Mr. Eddie Jacobs extends his thanks for any assistance into this matter, that greatly concerns the individual Indian land-owners of their allotted farming and grazing interests. Mr. Jacobs would appreciate an acknowledgement of his inquiry soon as possible.

Sincerely,



Marcianna R. Jacobs, Secretary

O.I.M.O.A.

## Attachments

cc:

Oklahoma Congressional Delegation.

Bill Richardson, Chairman, House Native  
American Affairs Subcommittee, U.S. House of Rep.

Daniel K. Inouye, Chairman, Senate Committee on Indian Affairs,  
U.S. Senate.

The President of the United States  
Office of the President  
Washington, D.C. 20500.

Sidney R. Yates, Congressman.

Bruce Babbitt, Secretary of the Interior.

Ms. Ada Deer, Bureau of Indian Affairs

Board of Directors, O.I.M.O.A.



*Oklahoma Indian Mineral Owners Association*

P.O. BOX 25665 . OKLAHOMA CITY, OKLAHOMA . 73125-0665

MUSKOGEE DAILY PHOENIX

JANUARY 27, 1994

P.O. BOX 1968

MUSKOGEE, OK. 74402-1968

**LETTER TO THE EDITOR:**

Your front page story Friday, January 21, 1994, titled "Tribes Target Critical Concerns" is of great concern to me, as Chairman of the Oklahoma Indian Mineral Owners Association. I was fortunate to read in the Daily Oklahoman, Tuesday, January 18, about the tribal hearing being held in Tahlequah. The Vice-Chairman and myself were able to attend, hoping to hear input from our respective tribal officials.

Chief Mankiller's statement that Oklahoma is often left out of such hearings, perhaps may be that Oklahoma has only one reservation, and very little tribal land in comparison to the individual Indian lands. It doesn't surprise me the statement Congressman Synar made, that Congress has seen little results in resolving the issue of BIA mismanagement. At a past Muskogee community meeting I attended, I asked Congressman Syar when Congress would enforce BIA to comply with the Federal Oil and Gas Royalty Management Act (FOGRMA-1983), he apologized and replied that he was sorry, but, that he had done all he could do. Like Chief Mankiller said, "You fire them." But, the mineral owners are advocating that the BIA royalty management functions be consolidated with the Mineral Management Service (MMS), who are in receipt of our monies, and could have the capability for disbursements.

The association's concern is some tribal officials assumption of tribal jurisdiction, over individual Indian lands. Contrary to the trust relationship for those lands that exist with the United States government upon the allotment of those lands to the individual Indians.

A case in point is the gross production tax that is being imposed on the individual members of the Five Civilized Tribes, by the State of Oklahoma, but, not on the Tribal lands. If those Tribes have jurisdiction, then why are they allowing their tribal members to be subject to a State gross production tax? Likewise, the BIA should also be questioned as to why the tax is only imposed on those Tribes throughout the United States. Further questionable, is a BIA Solicitor's advise to the individual mineral owners that they were subject to State and Federal taxes on the royalties they received, and were to be reported as income. Yet, the royalty share has already been reduced by the States' gross production tax.

Another point to be addressed is, the numerous Tribes in the State of Oklahoma that are imposing taxes on the Oil and Gas companies which do business on the individual Indian's lands, and have very adverse effects. Currently, there are two court cases pending in Oklahoma, to decide if the Tribes have jurisdiction over those lands. There is one Tribe where several companies are paying in taxes "in protest", and those monies were supposed to be held in escrow, but, are being depleted. In addition, it must be noted that, to secure a fee patent for those lands, can only be issued upon an individual owners request, through the agent of the Department of Interior. Even those that are under the State District courts, have a BIA Solicitor in attendance.



*Oklahoma Indian Mineral Owners Association*

LETTER TO THE EDITOR....cont.

JANUARY 27, 1994

Back when the Tribes or BIA Task Force were talking "BIA realignment" the association were advocating "stream-lining the BIA". The consolidation of the two BIA Area Offices should be canceled out. Consideration needs to be attentioned to the unique laws and policies that has to be maintained by the Muskogee Area Office of some of the Tribes, specialized personnel, counter to the Tribes under the Anadarko Area Office. Especially, the individual oil and gas leases, as well as the surface leases, and Tribes in the self govern-ance project. Internal office stream-lining of each Area Office could be con-sidered.

Reflecting on the issues addressed in the hearing, it appears the most affected will be the individual Indian land and mineral owners. We failed to hear the tribal officials address such issues as ; land consolidation (the escheatment and non-payment of individual lands by Tribes); economic develop-ment of natural resources (oil and gas); tribal jurisdiction; BIA royalty man-agement; and individual Indian monies (IIM) accounts trust funds interest pay-ments prior to 1985. The elected tribal official must be a voice in behalf of the constituency they represent. It is good to see Tribes whose governing body is the individual Indians, a tribal council, that has authority over the use of their lands and resources by a voice or referendum vote.

The association will be submitting comments, rationale and recommendations concerning those and other issues, and we trust that any further hearings or meeting will be advertised statewide, and will address the individual's concerns.

Eddie Jacobs, Oklahoma City

*Eddie Jacobs*

COLLECTION AND DISBURSEMENT STATISTICS  
INDIAN TRIBAL DISTRIBUTIONS  
FISCAL YEAR 1993

Tribes	Apr	May	Jun	Jul	Aug	Sep	Fiscal Year To Date
Wichita, Caddo, Delaware	\$148.48	\$165.72	\$156.37	\$153.62	\$150.54	\$139.74	\$1,989.11
Blackfeet	43,098.04	72,475.50	43,684.10	42,352.84	44,440.22	44,083.80	614,090.22
Ft. Mohave	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cheyenne-Arapaho	19,373.33	20,591.39	21,519.18	24,090.32	42,381.02	48,267.32	364,572.59
Astriboliner-Stoux	34,214.20	40,745.77	37,955.37	38,845.52	43,051.68	39,062.69	487,345.04
Hopi	0.00	0.00	0.00	0.00	0.00	0.00	15.69
Jicarilla Apache	853,380.48	776,747.70	1,113,686.26	732,025.29	899,820.66	391,011.78	9,659,567.90
Creek-Thlopthocco/1836 Act	13,379.00	12,000.00	12,689.00	12,240.00	2,004.91	1,731.55	33,976.46
Choctaw	3,573.33	12,303.31	12,689.00	12,905.85	14,927.68	1,202.45	193,661.05
Seminole	407.77	359.31	2,768.40	357.77	364.45	2,675.22	4,612.83
Cherokee, Choctaw, Chickasaw	30,737.66	28,596.67	37,576.15	23,806.53	22,585.64	21,139.22	349,145.74
Chickasaw, Choctaw	35,494.34	12,442.91	21,224.90	23,520.84	25,838.62	23,815.81	640,615.46
Havajo	1,043,411.03	1,335,916.77	1,276,877.84	1,191,193.56	2,539,644.20	1,183,851.88	16,225,283.61
Pawnee	272.38	339.52	338.94	351.21	203.08	276.10	3,899.93
Chickasaw	60.00	407.39	834.74	0.00	469.14	353.54	5,042.19
Chillico Indian School	11,357.31	15,146.32	14,353.78	62,610.05	16,350.24	15,700.58	205,374.71
Chippewa-Cree	100,038.00	116,531.74	119,487.02	149,978.94	106,055.23	109,905.69	1,418,843.75
Alabama-Coushatta	449.01	1,777,450.27	951,056.25	1,065,370.98	917,561.49	1,308,132.36	8,607,977.00
Sac and Fox	1,096,356.01	1,777,883.80	951,056.25	1,065,370.98	917,561.49	1,308,132.36	12,989,393.25
Southern Ute	544,140.31	521,923.42	489,446.55	409,492.01	512,900.09	468,514.32	6,558,554.83
Ute (Northern Ute)	567,665.76	652,446.68	486,119.85	783,763.02	589,581.66	557,522.56	7,757,630.34
Shoshone and Arapaho	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tohono O'Odham/Papago	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Citizen Band Potawatomi	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Subtotal	\$4,506,284.84	\$5,637,454.55	\$4,744,799.88	\$4,746,641.80	\$6,064,035.30	\$4,347,498.84	\$59,806,494.80

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**COLLECTION AND DISBURSEMENT STATISTICS  
INDIAN ALLOTTED DISTRIBUTIONS  
FISCAL YEAR 1993**

BIA Office-Allotted	Apr	May	Jun	Jul	Aug	Sep	Fiscal Year To Date
Needles	\$437,287.95	\$366,157.50	\$342,701.47	\$399,058.45	\$396,085.45	\$319,939.35	\$4,790,387.17
Rocky Mt	1,239.33	1,125.76	1,105.42	1,024.55	1,025.11	8,793.15	57,397.47
Cheyenne River	1,247.80	1,155.98	1,123.34	1,100.55	1,175.84	6,683.73	17,235.47
Concho	350,232.08	311,356.94	302,126.27	413,307.80	451,224.95	284,163.01	4,071,661.94
Crow	3,811.41	2,933.21	2,801.84	2,904.93	8,472.88	4,001.99	46,548.32
Ft. Belknap	47,457.35	27,928.94	32,895.02	6,838.50	5,730.92	6,084.82	118,323.84
Ft. Belknap	56,383.36	56,383.36	56,383.36	56,383.36	56,383.36	56,383.36	56,383.36
Ft. Puck	94,083.36	95,471.19	155,452.93	37,683.49	67,205.10	90,261.03	313,133.72
Michigan	48,487.67	55,471.68	155,227.33	94,481.31	91,208.86	183,200.00	1,221,780.08
Muskogee	142,066.52	131,870.15	126,422.89	137,597.95	149,556.02	137,599.21	1,987,776.64
Navajo	268,123.60	208,656.87	214,083.08	184,894.61	196,178.08	137,926.16	2,714,003.67
Navaho	36,115.64	38,125.04	37,182.53	31,221.52	37,429.89	22,238.75	427,352.57
Navajo	15,407.41	20,781.32	12,285.36	20,408.48	12,407.35	16,223.54	1,193,014.10
Southern Ute	10,071.19	-7,598.32	915.92	1,087.35	12,748.26	16,950.20	12,365.56
Turtle Mountain	154,594.56	165,821.16	131,190.81	151,871.29	132,560.41	156,105.15	2,090,296.02
Utah and Durey	19,384.34	22,141.58	21,697.76	21,892.50	20,156.56	18,316.69	251,971.95
Wind River	1,141.59	1,317.50	1,274.46	1,300.45	1,154.09	1,075.07	14,833.78
Wind River Settlement							
Subtotal	\$1,677,499.13	\$1,502,425.25	\$1,475,869.50	\$1,584,676.53	\$1,647,069.44	\$1,303,447.43	\$19,582,844.91

**INDIAN TRIBAL AND ALLOTTED DISTRIBUTIONS**

Distributor	Apr	May	Jun	Jul	Aug	Sep	Fiscal Year To Date
Cook Inlet Region, Inc. (CIRI)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tribal	4,506,284.84	5,637,454.55	4,744,759.88	4,746,641.80	6,064,035.30	4,347,498.84	59,806,494.80
Allotted	1,677,499.13	1,502,425.25	1,475,869.50	1,584,676.53	1,647,069.44	1,303,447.43	19,582,844.95
Total	\$6,183,783.97	\$7,139,879.80	\$6,220,629.38	\$6,331,318.33	\$7,711,104.74	\$5,650,946.27	\$79,389,339.75

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SATURDAY  
OKLAHOMAN & TIMES

Weekend Markets

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## Settlement Proposed in Indian Royalty Suit

By Bob Vandewater  
Staff Writer

A potential settlement has been reached in a 1984 class-action lawsuit alleging federal officials failed to properly manage oil and gas royalty interests in western Oklahoma on behalf of thousands of Indians.

The proposed settlement is expected to lead to the opening of an office of the Interior Department's Minerals Management Service in Oklahoma City this year. However, the

settlement will have to be approved by a federal court before the case can be resolved. Oklahoma Indian Legal Service attorney Steven Hager said this week.

An estimated 7,000 American Indians, most of them in Oklahoma, are included in the class action. Any of them interested in learning more about the potential settlement may get more details by attending either of two meetings scheduled next week. Hager

said.

The first meeting will be held Wednesday at 7 p.m. at the Wichita Tribal Office in Anadarko. The second meeting is scheduled at 7 p.m. Thursday in the Concho Conference Room at the Cheyenne and Arapaho headquarters in Concho.

A federal court hearing is expected to be set in Oklahoma City. A federal judge will hear members of the class who have any objections to the proposed settlement, Hager said.

The class consists of all Indian allottees who own restricted mineral interests in the Anadarko Basin geological formation.

Government action early in this century allotted mineral ownership on lands in the Anadarko Basin to certain American Indians. However, it restricted those Indians' ability to directly manage their interests. Instead, federal agencies were given various trust responsibilities for management, collection and distribu-

tion of royalties, Hager said.

But Indian allottees in Oklahoma have not been paid untold millions of dollars over the years due to management failure by the government — principally the Minerals Management Service, Bureau of Indian Affairs and Interior Department, said Jeffrey Southwick, an Oklahoma City lawyer.

Southwick is attorney for about 25 Indian allottees who now have a case filed in 1980 pending in

federal claims court in Washington, D.C. They allege they are due about \$3 million in back royalties for two gas wells in western Oklahoma that have been producing for about 20 years.

"It makes me sick to my stomach," he said. "If you ever wanted to see an example of real government bungling, this is it."

He said his clients at times have gone many months without receiving

See INDIAN, Page 28

## Indian

From Page 28

any payment at all for their royalty share of gas production. And the government, ever over his clients' objections, has sold and continues to sell gas from the wells at a fraction of its fair market value.

The government for years continued to sell gas on behalf of his clients for about 20 cents per thousand cubic feet even though average market prices in the 1980s ranged to more than 10 times that amount. In recent years, the price has averaged closer to \$1.50, he said.

Southwick testified a couple of years ago before a unit of the Senate Select Committee on Indian Affairs during its probe of alleged wrongdoing.

Southwick said his current case is before the claims court in Washington, D.C., because plaintiffs cannot seek monetary damages against the government in federal court in Oklahoma City.

But Hager said the parties he represents in the separate 1984 class action case in Oklahoma City federal court seeks a declaratory judgment of wrongdoing by the federal government and

an order for remedial action.

In that case, David Kaulley along with some other Indians allege the government failed to enforce and comply with the federal Oil and Gas Royalty Management Act of 1982 and other regulations concerning management of oil and gas properties. Kaulley, of Shawnee, is a Cheyenne-Kiowa Indian.

The 1982 law requires the government to collect oil and gas royalties that are due Indian allottees and transfer the money to individual Indian accounts in a timely manner — generally within a few months of oil and gas production. The law also requires giving Indian royalty owners detailed information showing they are accurately paid.

But Hager said many

Indians with Anadarko Basin interests are not paid for many months at a time.

When they do receive payments, there often is little or no explanation accompanying them and the interest required by federal law is not included.

Minerals Management Service officials said in filed court documents that work backing and computer malfunction caused their inability to pay Kaulley in a timely manner during the early 1980s.

But the Kaulley lawsuit alleges "complete incompetence" on the

part of government officials to properly manage the Indian properties.

Hager said the case has dragged on for years while the court encouraged settlement negotiations between the parties.

"This is one of those cases that no lawyer in his right mind wants to take to trial," Hager said. "It's extremely complex. You'd have to understand a whole lot of oil and gas geology and Indian law and everything else."

Eddie Jacobs.2908 N.W.28th.Oklahoma City,Oklahoma.73107

February 8, 1993

Bureau of Indian Affairs  
Office of Trust Funds Management  
505 Marquette N.W. Suite 700  
Albuquerque, New Mexico 87102

Dear Mr. Parris:

Aside from the lengthy response time, in regard to my initial requests to examine my IIM account documentation for Oil/Gas royalty interest earnings, this letter is in response to your reply dated January 29, 1993. It seems to indicate to me that my requests could be considered, based on the superficial review of the documents.

In your opinion you stated that, the necessary process and retrieval of additional information for a more in-depth review would be recognized as a valid task. Then, am I to assume, or can I be assured that such a special project can be undertaken, or is underway, and is there a projected completion date?

If there are found to be additional interest due, upon completion of a special project to audit or reconcile the IIM accounts, will those monies be subject to taxation? I understand that those monies could be subject to taxes based on the fact they are interest monies. But, according to the Internal Revenue Service (IRS) statute of limitations, the collection of unpaid taxes on monies that are not paid past their statutes where there is no fraud on the tax payors part, and that the tax-payor had done nothing to cause the delay, then those monies would be exempt from taxation. Since the Office of Trust Funds Management would be issuing such payment, would your office contact the IRS to confirm such understanding on my part. And, if such is confirmed by the IRS, the 1099 information provided for 1992 may be in error.

Parris

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In regard to other tax matters, as a member of one of the Five Civilized Tribes of Oklahoma, my royalty share is subject to a gross production and excise tax deduction. And to-date I have yet to receive 1099 information for those transactions, which was to be provided in a timely manner. What agency is responsible to provide the information?

As Chairman, of the Oklahoma Indian Mineral Owners Association (OIM OA), there are some issues that need to be addressed that concern the mineral owners that, perhaps can be responded to by your Department. Specifically, a January 22, 1993 Public Notice issued by the Anadarko Area office which was scheduled for processing January 27, 1993. (Enclosure) Until all IIM accounts have been reviewed, how can such a change even be considered, to actually assure that negative royalty suspense amounts actually exist? As you are well aware, once a transaction takes place, there is a considerable time delay until a proper adjustment is made. The Public Notice is far too short a time for any individual response, to comprehend, question, or raise an objection, if any, to such an action, that probably has been implemented, as in many past instances.

A final, but most important issue is the lack of communication between the BIA and the individual Indian regarding his vested interest. An example is the route I have had to resort to, to initiate a dialogue with your office. By securing a 1-800 number, the local Oklahoma City office of the Mineral Management Service (MMS), there has developed a inter-related networking, whereby an individual Indian issue relative to his interest can be addressed, by an exchange of information between the MMS and BIA, and relayed on to the individual before resorting to a possible non-productive agency visit. We suggest that the BIA consider a 1-800 number to be available for any initial contact.

Parris

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In closing, it must be noted that all the mentioned issues were documented and provided to the Senate Select Committee on Indian Affairs in May, 1989. In those hearing, there was a comparison made that the Indian problem was like some insect that appears every twenty years and makes a lot of noise, and then goes back to a dormant stage. It is hoped that with a change in the administration there will be, a stream-lined direction taken by the BJA, and that action and decisions can be implemented in better timely manner. Instead of costly, time consuming studies and reports under-taken, and stone-walled in many past instances.

I request a reply in ten (10) working days.

Sincerely,

*Eddie Jacobs*  
Eddie Jacobs

ATTN:

Congressional Delegation - Oklahoma  
Senate Select Committee/Indian Affairs  
Sidney R. Yates - Congressman  
Secretary of the Interior  
Muskogee Area Office - Area Director  
Mineral Management Service - Oklahoma City, Ok.  
O.I.M.O.A. - File

Enclosures (4)

**DOCUMENTS**

**FROM**

**PUBLIC  
COMMENTS**

April 23, 1991



## Oklahoma Indian Mineral Owners Association

### COMMENTS

In recent years there has been a number of problem areas of the Federal bureaucracy and its indecisiveness of Indian issues which have been the attention of much controversy. However, many of those situations are not unique, despite the fact that many have been attentioned and addressed with recommendations by the Office of Inspector General (OIG) and Government Accounting Office (GAO) they still exist, because decisions or solutions were never clearly determined.

The trust-relationship that exists between the Federal Government and the American Indians is definitely very unique. The Trust that exists for Tribes, likewise exists through the General Allotment Act and other similar Acts to certain individual Indians, also is a unique trust-relationship.

However, the recent attitudes and opinions that the Federal agencies have chose to assume "that the Tribes are the voice to speak for the individual Indian" appear to be unfounded, and in most instances are an infringement by the Tribes in that trust-relationship between the individual Indian and the Federal Government.

The ambiguity of Federal or Tribal government jurisdiction over the individual Indian's allotted land and mineral is definitely a circumvention of trust by both entities. Not to mention the recent administrative and court decisions that seem to imply the position the Federal government has taken.

Therefore, there should be a "streamlining" of the Bureau of Indian Affairs (BIA) rather than an re-alignment of that agency, if Tribes are to assume or have assumed jurisdiction over the allotted lands and mineral interest--the individual Indian would no longer be seeking the service of BIA agency and area offices.

Considering such suppositions it would seem to be an appropriate time for Tribes to begin exercising more self-determination. For some, it should begin by scrutiny of Tribal Constitutions for amendment or revision; education of Tribal members about Tribal government before any change is undertaken, and securing their confidence and support. Many Tribal elected officials are initiating changes that are causing friction and faction among Tribal members, changes which should be taken to a referendum vote by the members. Any circumvention and usurpation of authority by elected officials places them outside their scope of authority and not under the sovereign immunity of the Tribe. Some of those changes that have been initiated are Tribal taxes, establishment of law and order codes, and other issues where jurisdiction is questionable over allotted lands and minerals.

FILED

Submitted by:

*Edwin Parker*

Date:

*4-23-91*

JOINT TRIBAL/BIA/DOI ADVISORY TASK FORCE ON DIA

The Individual Indian Monies (IIM) accounts that are maintained by the BIA have never been audited. These accounts are managed by BIA Indian Investments Center. The late posting of interest is a major problem, along with erroneous posting, non-payment of annual rental, and a number of other reasons the IIM accounts need to be audited. Numerous OIG and GAO reports over the years have pointed out this problem-area. A reconciliation of these accounts was directed by Congress more than five years ago and at this point has barely begun. A recent news story reported that two (2) billion dollars held in many of those trust accounts for Tribes and individuals are over a hundred years old.

Today the Federal government relate that they need to see consistency across Indian country. Yet, there are problems that isolate the individual members of the Five Civilized Tribes, such as the selective legislation that was passed years ago that continue to penalize those individuals in the areas of their blood quantum and taxation. The blood quantum issue is perhaps the most obvious in that, Congress legislated that in order for those members to retain their land and mineral interests in trust status the blood degree would be one-half (1/2) degree or more. The Five Civilized Tribes only require a one-quarter (1/4) blood degree for full-citizenship. Thereby, with the government requiring 1/2 degree and not 1/4 degree, that accelerates the loss of the trust lands and minerals. The taxation specifically imposed on the members of the Five Civilized Tribes subjects their minerals to a State gross production tax that reduces the royalty share of the individual Indian, yet that same individual cannot document the tax withheld and receive credit on personal taxes that they file. In addition, the taxation itself is in even a more unique situation, in that the Five Tribes trust minerals are not subject to a State gross production tax. No other individuals within their respective Tribes in the United States are subject to such taxation. The disparity among the Tribes and individual lands and minerals have resulted in a hapless situation where the fiducial relationship cannot be carried out by the government. Legislation needs to be enacted to bring these prejudicial bias into consistency with other Tribes. However, a unique alternative for the Five Tribes and individuals in Oklahoma would be to seek relief of taxation under the disclaimer clause of the Oklahoma Constitution. In light of the controversy of court decisions and the intrusion of taxation by the State, all Tribes in Oklahoma should consider such endeavor.

The Indian Land Consolidation Act (ILCA) 1983 is having adverse effects on individual Indians in Oklahoma, even though the U.S. Supreme Court ruled the Act unconstitutional in May of 1987. The Tribes, as benefactors may not choose to resolve this individual Indian situation, likewise, the BIA with less interest-holders have a reduction of their work load. What is questionable in this situation is: who assumes the legal contract for compensation of the individual Indian's interest, the BIA or Tribes? Also, the other problem area of the situation is the heirship by probate or will--despite the "less than two per cent (2%) interest," the BIA must still determine and should not

subject any individual to such a controversial provision that assumes possession or jurisdiction over an allotment, whose jurisdiction is yet questionable. The ILCA escheatment is not even consistent with the descent and distribution laws that governs the estate.

There are many other Areas where the individual Indian definitely shares a vested interest, through their right as a tribal member and ~~that~~ power to voice their preference in tribal trust land, minerals, monies and future government issues. However, the complacent attitude by the tribal officials and federal agencies have the tendency to view those individual interest with adversity and uncertainty.

As individual Indians in a united effort, have reviewed what the trustees of our interest have and have not carried ~~out~~ <sup>out</sup> our best interest.

Perhaps the realignment of the Bureau is not the answer, perhaps it is that individual Indians, who comprises a Tribe that is needed to shape the destiny of Indian people ~~through the~~

Eddie Jacobs, Chairman.

Recognized this 23<sup>rd</sup> day of  
April, 1991 by Assic.  
Board Officers and Members.



Oklahoma Indian Mineral Owners Association

COMMENTS AND RECOMMENDATIONS  
ON  
BUREAU OF INDIAN AFFAIRS  
REALIGNMENT PROPOSAL

The Oklahoma Indian Mineral Owners Association (OIMOA) contend, and believe the current recommendations by the Bureau of Indian Affairs (BIA) realignment proposal to be disadvantageous to the future services of the allotted lands and natural resources of allottees and heirs of allottees. As one of our main concerns is the services of the royalty management functions of oil and gas, and or, any other natural resources that are developed, or have the potential for development and recovery on individual and tribal lands.

Many of the proposed BIA changes date back to 1950, and a reverse of old plans that were never implemented for one reason or the other, would be a return to a state of regression that would be deleterious to the fiduciary responsibility.

Also, the Senate Select Committee on Indian Affairs hearings in 1989 addressed other recommendations that need to be taken into consideration. One of those recommendations was, with input from RMAC, for the royalty management functions to consolidate all functions under one agency. Senators DeConcini and McCain recently introduced Senate Bill-2751 "To Reform Certain Indian Programs and for Other Purposes" establishes major changes, but still needs further clarification and additional considerations.

In Oklahoma, where over 90% of the trust land and minerals are owned by allottees and heirs of allottees, the Tribes do not speak for, or in behalf of those interests. The OIMOA has persevered in their efforts for better services and responsible accountability of those trust interests. Despite, no Tribal support and recognition, of the need for assistance.

Throughout the consultation meetings by the BIA officials with Tribes on reservations and Indian country: once again they failed to apprise, include and take into consideration the views, concerns and opinions of the allottees and heirs of allottees, of their proposed changes and priorities of realignment; along with a lack of response despite OIMOA importune correspondence of recommendations and rationale to the offices of tribal officials, and the Assistant Secretary of the Bureau of Indian Affairs.

A very important fact that is highly questionable is, that the BIA has been remiss in their trust responsibility to the allottees and heirs of allottees, in the taxation of their mineral resources by Tribes. Oklahoma is rather unique in that the majority of trust lands and minerals are presently in question, as to the taxation jurisdiction over the allotted land and mineral interest. Whereby, a number of Tribes in Oklahoma have levied a tribal gross production tax on the allotted mineral holdings, at the same time the taxes were levied on tribal trust lands. In some instances the taxation of tribal and allotted resources were without consultation and, or a consent, or a consensus of the members of the Tribe for taxation on the tribal trust lands, and likewise on the trust resources of the allotted lands and minerals. To date the only party to question the authority to tax the allotted resources are lawsuits by oil and gas companies. There the allottee and heirs of allottee are at a standstill, by lacking the monetary and legal resources to nurse the issue of authority.

The new production tax levies and the possible violation of authority to tax allotted resources by Tribes, do not reduce the royalty share of the individual owners. But, these new taxes have had, and will have an adverse effect on future leasing and development of Indian lands and minerals. The reason for these adverse effects is that the State of Oklahoma collects a state gross production tax on allotted lands by taxing the oil and gas companies doing business on Indian lands. And until the courts decide who has the right to tax on allotted lands and minerals, both the State and Tribes will collect taxes. The entities that will suffer in the duration of the dual taxation are the individual Indian, future development, recovery and leasing of resources of their allotted lands.

In light of the fact, that Tribes are involved in taxation lawsuits involving allotted lands: the BIA need to consider a retrospect of a Tribes authority, the probability of a Tribal Constitution violation and usurpation of the authority of tribal members and their civil rights; and render an opinion from the Office of the Solicitor.

The heirs of allottees of the Five Civilized Tribes of Eastern Oklahoma have long been subject to discrimination that needs remedied in areas of State Court jurisdiction, taxation and leasing, because of historical selective legislation. Language needs to be added to SB-2751 to make members of the Five Civilized Tribes consistent with other Indians throughout the United States. The individual members of the Five Civilized Tribes that still own minerals are also subject to the State gross production tax which does affect the royalty share payments, reducing the royalty share, by levying the State gross production tax first. Then the royalty rate is paid out, less the gross production tax, thus losing credit for those monies that have already been taken out, or taxed. If the Tribes in Oklahoma are declared to have jurisdiction over the allotted lands, then the Five Civilized Tribes will again be subject to discrimination through the possibility of taxation by Tribes, and the situation that now exists in Oklahoma. Historically, Congressional legislation has been worded in such a way that has placed Oklahoma in a dubious position.

The Oklahoma Indian mineral owners appreciate the past opportunity for having representatives of the association serve on the Royalty Management Advisory Committee (RMAC). We hope to see the rechartering of RMAC, and concur with the recommendations of the Senate Select Committee on Indian Affairs, that additional Indian allottees be represented on RMAC.

It must be stressed that a concept such like RMAC needs to be implemented to solely address the Indian royalty functions and concerns, such as an Indian advisory committee. Preferable Indians, and not necessarily tribal officials, who have a vested interest and insight into areas where changes are needed, so as to obtain the input of a cross-section of Indian country.

The allottees and heirs of allottees of OIMOA concur with the recommendations of the Senate Select Committee on Indian Affairs and RMAC for the consolidation of the royalty management functions under one agency, the Mineral Management Service (MMS).

If the royalty management functions are not consolidated under one agency, the Indian situation and solution will continue in a state of uncertainty with the fragmentation of those functions within the Department of Interior (DOI) agencies, BIA and BLM. RMAC will not be upholding its true obligation.

Should RMAC be rechartered without the consolidation of the royalty management functions, RMAC will not be effective unless it broadens its scope to cover all functions of BIA and BLM.

In conclusion, the Oklahoma Indian Mineral Owners Association view the realignment of the BIA in the area of the royalty management functions, with skepticism from past and present experiences, and see that Bureau encountering a myriad of problems in the implementation process, not to mention the interim period.



Oklahoma Indian Mineral Owners Association

November 18, 1991

Steven C. Moore, Class Counsel  
Native American Rights Fund  
1506 Broadway  
Boulder, Co. 80302

NOTICE OF DISAPPROVAL OF THE PROPOSED  
CLASS SETTLEMENT AND AGREEMENTS OF KAULEY  
VS. LUJAN CIV NO. 84-3306T.



*Oklahoma Indian Mineral Owners Association*

November 18, 1991

CLERK OF THE COURT  
U.S. DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF OKLAHOMA  
3210 U.S. COURT HOUSE  
200 N.W. 4TH STREET.

NOTICE OF DISAPPROVAL OF THE PROPOSED CLASS  
SETTLEMENT AND AGREEMENTS OF KAULEY VS. LUJAN  
CIV NO. 84-3306T.



*Oklahoma Indian Mineral Owners Association*



NOTICE OF DISAPPROVAL OF THE PROPOSED CLASS  
SETTLEMENT AND AGREEMENTS OF KAULEY VS. LUJAN  
CIV NO. 84-3306T.

The individual Indian allottee and heirs of allottees of the OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION (OIMOA): who own interest in oil and gas leases on all allotted lands administered by the Bureau of Indian Affairs within the State of Oklahoma; and whose members maintain that the effects of the failure of the Department of the Interior's royalty management function and the non-compliance of the Federal Oil and Gas Royalty Management Act (FOGRMA - 1982 ) have resulted in violations of the allottee trust relationship; and further maintain that the terms and conditions of the proposed Class Settlement of KAULEY VS. LUJAN will cause irreparable harm to any and all future claims of the allottee; and dispute the claim that the proposed class settlement serves as a class action for the class of all Indian allottees who own interest in oil and gas leases on allotted lands within the Anadarko Area. Major concerns of the proposed terms of the settlement were presented to allottees and heirs by the Class Counsel June 19 and 20, 1991 at Anadarko and Concho, Oklahoma. Therefore, in the best interest of the allottee, the following concerns and rationale are addressed as they appear in order on the settlement agreement.

A. TIMELINESS OF PAYMENT.

Whereas the non-Indian royalty owner receives payment 60 days from the date of production, the government contends that they have 90 days to pay the allottee. FOGRMA requires that from the time of the sale of the product, the energy companies have 30 days to issue payment and reports and by the end of the following 30 days payment should be received by the allottee. OIMOA contend that the extra 30 days is a result of the fragmentation of the service of the agencies involved; and that that issue be resolved by the placement of all royalty management functions under one Department of Interior agency, the Mineral Management Service.

B. INTEREST PAYMENTS

The Explanation of Payments (EOP) reports do not identify the Interest Payments as such. The interest that accrues as a result of the government's delay of monies is subject to taxes according to the rulings of the Internal Revenue Service (IRS). Is that interest that has accrued as a result of late payments by the oil and gas industry subject to taxes? Should the allottee be subject to taxes on tax exempt monies, by the delay of the government timeliness of payment. The allottee need to be provided tax information, and which agency will be providing 1099 Statements. No tax statements have been provided to the allottee by any of the agencies, only for the Individual Indian Monies (IIM) account interest that has accrued. In the Settlement Agreement, the Department of Interior claims they are now distributing interest earned, with the



## Oklahoma Indian Mineral Owners Association



### B. INTEREST PAYMENTS ( continued )

payments, but with no code numbers indicated on the Explanation of Payment (EOP) report, the allottee cannot be assured that interest is being paid. The Department mentions the holding of approximately \$650,000 in undistributed interest on payments received for all Indian allottees nationwide. Yet, this is only a small share of over 2 billion dollars held in the Investment Center in Albuquerque, NM. that is totally comprised of interest to Tribes and individual Indians, that has been accruing since the turn of the century. How could this class action be binding on all Indian allottees across the nation, especially with Sections 22 through 28 of the Settlement Agreement?

### C. EXPLANATION OF PAYMENT REPORTS

Section 9 of the Settlement terms contains statements of contradiction, and does not fully meet requirements of FOGRNA. The revised format is notably clear, but all the relevant information which should be received by the allottees is not included on the EOP's. The importance of the EOP's statements need to be addressed to the allottee to have a fully understanding in the process and accountability of royalty payment, etc.

Section 10, the Department of Interior (DOI) states the EOP's and payment checks are received within the same 24 hour period. The OIMOA contend that statement to be contrary to the actual time difference of two (2) weeks, up to on month between the date the payment checks and EOP's are being received by the allottee. Many times, the information does not add up to the amount for the check. The allottees trust that the simultaneous distribution of both reports and payment checks does not create addition days to receipt of payment.

Section 11, are items that were introduced by a working Systems Improvement Panel, that was part of the Royalty Management Advisory Committee (RMAC) of the Mineral Management Service (MMS), whose recommendations were wholly contingent on funding. The Chairman of the OIMOA was directly involved in those recommendations as a member of the Panel.

Section 12, states that the Department will seek input from plaintiffs in any data and format changes. OIMOA members question just how this input is to be retrieved from the plaintiffs. If the Department will only be addressing the concerns of this class action suit, then you can be assured that other allottees from other areas throughout the United States will need a forum to address their concerns. The RMAC was a good working tool, but had a limited scope for coverage. All three agencies of the Department that are involved with royalty management functions should be a part of RMAC, along with allottees from all of Indian country.

Section 13 and 14, addresses audits which should be a priority of Indian leases, is an issue that continually needs to be addressed, and will be an important issue for years to follow. The "Indian Spot Audit Team", if



## *Oklahoma Indian Mineral Owners Association*

Section 13 and 14 ( continued )

it is to be funded could be effective, but at least 10 auditors would be needed to provide just minimal coverage for Oklahoma alone. Oklahoma has the largest number of allottees in the United States. The Oklahoma Indian Allottee generate on a ratio of 4 to 1 royalty payments for the entire portion of Indian country, Tribes and other Indian allottees.

Perhaps the only part of the Settlement agreement that is not already mandated by FOGRMA is the proposal for a "local" office. At the June 19 and 20th meetings, the class counsel for the plaintiffs stated that the office would only be for members of the class action. That is not a very cost effective proposition, in that the mineral owners of the eastern area of the State should have access to same office. The Class counsel was of the assumption that Indian preference would be applicable in the hiring of the local office personnel, that indication was misleading to many potential applicants. But, the special provision under CFR - 43 precludes the hiring of any Indian who have any mineral interests in trust, or even the appearance of any mineral involvement. Of the Departments' three royalty management agencies the Bureau of Indian Affairs is the only agency with Indian hiring preference. OIMOA members are concerned with the hiring of former Bureau of Indian Affairs personnel, regarding past experiences of a detached attitude to any matter or issue that the allottee have attempted to rectify.

Section 18, the allottees need full disclosure and clarification to a Major Portion Analysis methodology that will assure the allottees they will be receiving full value for their mineral resources. *Kauley vs. Lujan* does not offer a solution to arrive at a equitable settlement to the allottee. The Indian allottee was not involved in any major portion analysis methodology process. However, objections were raised by allottees when the government proposed a method of average pricing from the bottom to the top of the price scale to reach a 51% average price, which would have provided a smaller price of less percentage difference to the allottee. Data base of the Oklahoma Tax Commission must be corrected, prior to value comparison, to prevent erroneous information to be forwarded into establishing a majority price.

Section 21, At least a proposed "look back" program would warn the Indian allottee that no check would be received. But, if the "look back" can identify a zero dispersal, it should be capable to disseminate information as to why no royalty payment will be received. The proposed program does not address the recourse action the allottee can pursue, as to why no payment was received.



OKLAHOMA INDIAN MINERAL CONES ASSO. MEETING  
11-15-91

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+ Nias cable	Box 169 Ceehe, Okla. 73527
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24. Cecil Johnson	P.O. Box 64 Amarok Okla

IN THE UNITED STATES COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

DAVID KAULEY, MARY LIMPY,  
and THELMA HAAG, on behalf  
of themselves and all others  
similarly situated,

PLAINTIFFS,

vs.

CASE NO. CIV-84-3306-T

UNITED STATES OF AMERICA  
and DONALD P. HODEL, as  
Secretary of the Interior,

DEFENDANTS.

**JOINT RESPONSE TO OKLAHOMA INDIAN MINERAL  
OWNERS ASSOCIATION NOTICE OF DISAPPROVAL  
OF PROPOSED CLASS ACTION SETTLEMENT**

Pursuant to the Court's Order of November 20, 1991, the parties to this action file this response to the objection to the proposed settlement, filed by the Oklahoma Indian Mineral Owners Association (OIMOA) on November 19, 1991.

**A. INTRODUCTION**

1. It is apparent from the Notice of Disapproval (hereafter, "Notice") that twenty-four (24) members of the Oklahoma Indian Mineral Owner's Association (OIMOA) held a special meeting on November 15, 1991, in Anadarko, Oklahoma. The purpose of this meeting was to specifically respond to the settlement documents mailed members of the Kauley class. Some of the OIMOA members at said meeting are members of that class.

2. The mailing of the Notice of Proposed Settlement was made in October of this year by the Bureau of Indian Affairs, pursuant to the Court's order of October 1, 1991. The mailing went to over 7,000 individual Indian allottees from the Anadarko area. A

mailing of this size was necessary because this lawsuit was designated as a class action by this Court on October 23, 1987, under Rule 23 of the Federal Rules of Civil Procedure.

3. Rule 23 requires individual notice to class members in pending settlements of class action litigation. Each of the twenty-four OIMOA who were members of the Kauley class should have received that notice. Moreover, each of those persons received the 1987 notice of the pending class action designation in this suit, if they owned mineral interests in the Anadarko Basin.<sup>1</sup> The parties to this proceeding, and, to the best of our belief, the Court, did not receive any opposition to the class action designation from either the OIMOA or any individual person objecting to the settlement. Indeed, the parties are unaware of any real opposition to the class action designation filed with this Court or indicated to any representative of the parties between 1987 and the present.<sup>2</sup>

4. In general, OIMOA's comments can be characterized as agreeing with much of the Settlement Agreement, but believing that it should go further on certain issues, or disputing whether the Department is complying with the Settlement Agreement. In response to the first concern, it is the very nature of a settlement of litigation that neither party obtains exactly what it sought. However, in this case, it is clear that the Plaintiffs have obtained substantial commitments from the Department and would significantly benefit by its approval.

5. The Court may also note that OIMOA has questioned the Department's implementation of the Settlement Agreement before it has been approved. The Department has taken many steps to implement portions of the Settlement Agreement prior to its approval simply because it believed some of these changes are needed, and as a show of good faith. Nevertheless, any skepticism OIMOA may feel concerning the Department's further implementation of the Settlement Agreement should be reserved until there is an approved Settlement Agreement.

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<sup>1</sup> This notice is also required under Rule 23 of the Federal Rules of Civil Procedure.

<sup>2</sup> It should be noted by the Court that Plaintiffs' counsel have received upwards of 200 telephone calls seeking information about the settlement. Of those calls, none expressed reservation or objection to the settlement proposal.

6. As an added fact, the representatives of the class met with OIMOA officers in Anadarko in 1987. At that time, OIMOA was asked to join the lawsuit as a party plaintiff. The Association declined the invitation and has held firm to its non-party status since that time.

7. The first assertion of the OIMOA in its Notice is that it believes that the

"failure of the Department of the Interior's royalty management function and the non-compliance of the Federal Oil and Gas Royalty Management Act (FOGRMA -1982) have resulted in violations of the allottee trust relationship."<sup>3</sup>

This assertion merely restates the Plaintiffs' basis of this litigation. The settlement negotiated between the parties reflects the Plaintiffs' primary goal of compliance with FOGRMA.

8. The OIMOA next states that the terms and conditions of the proposed settlement "...will cause irreparable harm to any and all future claims of the allottee..."<sup>4</sup> This general assertion can only be responded to by addressing each of the OIMOA's specific concerns. The parties will do so in the following sections.

9. Finally, the OIMOA "disputes the claim that the proposed class settlement serves as a class action for the class of all Indian allottees who own interest in oil and gas leases on allotted lands within the Anadarko area."<sup>5</sup> No specific or general arguments are given as to why the suit was not properly certified as a class action. As explained earlier, OIMOA was given the opportunity to participate in a class of all Indian mineral owners in the State of Oklahoma, and refused to join. No challenge to the class as certified was filed by OIMOA or any individual objector to the settlement. A challenge to the certification is out of time and hardly appropriate now. However, because the

<sup>3</sup> OIMOA's Objection at Page 1, Paragraph 1.

<sup>4</sup> OIMOA's Objection at Page 1, Paragraph 1.

<sup>5</sup> OIMOA's Objection at Page 1, Paragraph 1.

challenge to the certification of the class is limited to this one assertion, it is possible that it was only meant as a general protest to the settlement. Therefore, the parties will address OIMOA's concerns in the order they were given.

### B. TIMELINESS OF PAYMENT

10. The time period in which the royalty payments are made has been the subject of extensive litigation and discovery in both this case and a similar case brought by Navajo allottees.<sup>6</sup> In both cases, the Plaintiffs have recognized that the Department must have some time to receive, process, and disburse the royalty payments received. In general, oil or gas is produced and sold in one month by a lessee. The lessee receives payment for the oil or gas and then makes payment to the Department by the end of the second month. These activities account for thirty to sixty days, which is the general industry practice.

11. Since the Department receives the bulk of the royalty payments from lessees at the end of the month, the payment schedule agreed to in the settlement give the Department 30 to 32 days to deposit the check received from a lessee/payor into a general account, apportion the payment to specific leases, transfer the money to the appropriate Bureau of Indian Affairs (BIA) office, and then divide the royalty payment among the multiple Indian allottee owners.

12. Approximately 75 to 80 percent of the payments are distributed within twenty days of receipt by the Mineral Management Service (MMS). Within thirty days of receipt by MMS, approximately 95 percent of the royalties have been distributed.

13. The Plaintiffs in this matter have been given extensive information concerning these functions. They have agreed that the described time periods are reasonable. In fact, the Department maintains that, given the complexity of the accounting and disbursal tasks to be completed, no shorter time period is possible.

14. OIMOA contends that the thirty-day disbursal time period could be avoided if all

<sup>6</sup> Shii Shi Keyah Association v. Hodel, Case No. CIV-84-1622 M (Dist. Ct. N. M. 1984).

royalty management functions were placed under one Department of the Interior agency. OIMOA suggests that this designated agency be the MMS.<sup>7</sup> This proposal is not unlike the proposal submitted by Plaintiffs and extensively researched and negotiated. After extensive consideration, the parties agreed that even if centralization of these functions would shorten the time for disbursement (a conclusion the government believes is highly questionable), it would also involve a risk of reduced accuracy of payment and would reduce other benefits provided to the Plaintiff class in the remainder of the settlement. In the final analysis, it was determined by the parties that the proposal contained in the settlement agreement provides the best balance between rapid payment, local involvement of the BIA, computerized monitoring by a centralized MMS office, and the establishment of a local MMS office.

### C. INTEREST PAYMENTS

15. The OIMOA raises several issues in this paragraph. Each will be addressed separately. First, the BIA is working on an enhancement to the system to provide for a transaction code on the Explanation of Payment (EOP) Report to indicate the payment of late interest from a lessee/payor. The agreement also contemplates the MMS, BIA and the Allottees negotiating on additional enhancements to the EOP, if warranted after using the current reporting form for a period of time.

16. Second, the OIMOA raises a question concerning the tax status of two different types of interest earned on royalties.<sup>8</sup> The tax status of interest income, including who should provide a 1099 statement, is clearly beyond the scope of this lawsuit and settlement. However, the Internal Revenue Service has ruled that such income is taxable.<sup>9</sup> Only Congress could change this scenario by amending the Internal Revenue Service Code. While the Department will examine OIMOA's request, it is not related to FOGRMA compliance or this settlement and should not concern this Court.

<sup>7</sup> OIMOA's Objection at Page 1, Paragraph 2.

<sup>8</sup> OIMOA's Objection at Page 1, Paragraph 3.

<sup>9</sup> IRS Rev. Rule 67-284.

17. Finally, the OIMOA raises the issue of the distribution of previously accrued interest.<sup>10</sup> OIMOA's concerns relate to Page 5, Paragraph 8 of the Settlement Agreement. OIMOA states that the \$650,000.00 for accrued interests is "only a small share of over 2 billion dollars held in the Investment Center in Albuquerque, N.M. ..."<sup>11</sup>

18. To put the OIMOA's comments in perspective, it should be noted that the Settlement Agreement does not determine a dollar figure which should be distributed, but rather a method by which interest held (whatever the amount) will be distributed in a timely and fair manner. This limitation is consistent with the parties' position that this is a lawsuit for FOGRMA compliance, not for damages. If the actual interest for all Indian allottees nationwide is determined to be greater than \$650,000.00, then that greater amount will be distributed.

19. It must also be noted that the two billion dollars the OIMOA refers to is largely the principal held for all Indian tribes and allottees, and is not exclusively or primarily interest income.

20. Finally, the OIMOA is correct in questioning whether the Settlement could be binding on all Indian allottees across the nation. It is not, and is not intended to be. While it is likely that the Department of Interior will approach other allottee groups with an offer to distribute previously accumulated interest income with this same methodology, this Settlement Agreement will not in any way bind those allottees.

#### **D. EXPLANATION OF PAYMENT REPORTS**

21. The OIMOA asserts that the EOP reports do not met the statutory requirements of FOGRMA, but offer no specifics which the parties can address. The parties negotiated for the changes and improvements to the EOP over a period of several years. Both MMS and the BIA convened a series of public meetings in Indian country nationwide over the

<sup>10</sup> OIMOA's Objection at Page 1, Paragraph 3.

<sup>11</sup> OIMOA's Objection at Page 2, Paragraph 1.

past few years to discuss the format of the EOP report. The parties believe that the OIMOA was aware of the meetings and had substantial participation in them.

22. The parties are in agreement that the revised EOP has every data element necessary to enable the Allottee to determine the basis of a royalty payment, which has been the major concern of the Allottees from the outset.

23. One cornerstone of the settlement agreement is the Oklahoma City office of the MMS and the bi-monthly meetings between that staff and the Allottees. These meetings will address the ongoing and evolving concerns and needs of the users of the system. If the OIMOA and its members have specific ideas and recommendations for the MMS on the substance and format of the EOP, they can discuss them with the local staff at these meetings.

24. Furthermore, the OIMOA has misinterpreted Section 10 of the Settlement Agreement. That section states that the royalty checks and EOP reports are mailed, not received, within the same 24-hour period. The BIA has discussed this issue with OIMOA and determined that the claim is based upon the assertions of one allottee, a Mr. Leland Friday. The BIA investigated and determined that another royalty owner, located 70 miles further away from Anadarko than Mr. Friday, received his royalty check and EOP on the same day, or on the following day, but never more than that time.

25. Individual class members raised the issue of the late EOPs at the meetings held in June, 1991, between class members and their legal counsel and expert witnesses. In every individual instance, with one or two exceptions, every person raising this problem was confusing the EOP with another report received from the BIA, called an Individual Indian Moneys (IIM) report. Ongoing education between the Department and the Allottees, and the plan to mail the check and report in the same envelope, will cure the problem to the extent that it still exists.

26. In any event, the OIMOA has missed the point that this payment system is only temporary until such time as equipment for mailing the EOP and the check in the same envelope is purchased and installed. This is a major improvement and concession that

the Plaintiffs have obtained in the Settlement. It appears that the OIMOA does not object to this provision, and should, in fact, support it as a major improvement.

#### E. FISCAL AND PRODUCTION ACCOUNTING SYSTEMS

27. The OIMOA does not appear to object to Section 11 of the settlement agreement, but rather points out that Mr. Jacobs was involved in the recommendation of the Royalty Management Advisory Committee (RMAC), which led to this change. As indicated in OIMOA's comments, the negotiations and settlement between the parties are intimately connected to RMAC, along with initiatives and changes in Departmental policy and continued communication with the Allottee community.

28. It should also be noted that feedback from Allottees is one of the fundamental purposes of the bimonthly meetings in the settlement. The more questions provided by Allottees, the better and more responsive the MMS management system will be. Further, input on the data contained in the reports will be delivered to Plaintiff's counsel for review. The Department will discuss any concerns raised by the information with counsel.

The remainder of the OIMOA comments are clearly beyond the scope of this suit. However, to avoid any confusion, the Department wishes to clarify that it is well aware that it needs to comply with duties FOGRMA imposes for management of all Indian allottee mineral royalties. However, the Settlement Agreement in this case can only represent the specific negotiated resolution for this particular class of Allottees.

29. It is important for the Court to understand that the "Indian Spot Audit Team" is not the Department's exclusive, or even major means of providing audit coverage. MMS has an entire audit strategy/system in Lakewood, Colorado, which is designed to result in coverage for over 90 percent of Indian royalties primarily through audits of the largest royalty-paying companies. This audit strategy provides substantial audit coverage.

30. However, the Department has agreed with Plaintiffs that an additional type of coverage by a spot audit team, located in Oklahoma, would provide improved protection to the allottees. This team, which is currently operating at a level specified by the

Settlement Agreement, strategically targets all Oklahoma Indian royalties through reviews of specific royalty issues and leases mostly related to the companies excluded from the overall audit strategy described above. The work of the spot audit team is based on referrals from local Indian lessors and knowledge of Oklahoma mineral production and sales issues. Thus, the Department is providing a multi-layered strategy for Oklahoma Indian lessors in which the preponderance of royalties are routinely and systematically audited, and in which local knowledge, provided in part by allottees, targets the remaining lease/issues audit coverage.

31. While the number of auditors is obviously of concern to OIMOA, it should be noted that the Plaintiffs have received significant concessions from the Department after lengthy and complicated negotiations. OIMOA does not protest the establishment of the Indian spot audit team, but simply claims that more auditors are needed. The Department believes that the resources committed to the Indian audit strategy fully comply with the requirements of FOGRMA. The Oklahoma allottees will have ample opportunity to judge the adequacy of the audit program because the Settlement Agreement includes the stipulation for routine provision of audit statistics and results to allottees at local meetings.

#### H. MAJOR PORTION ANALYSIS

32. Major Portion Analysis (MPA) is the most difficult and complex issue addressed in this litigation. The parties spent a great deal of time reviewing and negotiating this issue. Plaintiffs' counsel hired two experts to assist them in negotiating and have obtained a resolution which they believe provides significant benefits to the class. The Department is taking action, in consultation with Plaintiffs' counsel, to develop an adequate basis of information to perform a valid major portion analysis. The parties firmly believe that the Settlement Agreement represents the best possible negotiated resolution of this issue.

33. Nothing in OIMOA's comments provide a specific criticism of the proposed MPA plan. It is impossible to address this issue without such specificity. However, the Court may be assured that the parties firmly believe that the proposed resolution to this issue is

a very positive step forward.

34. The settlement provides for the use of price data obtained from the Oklahoma Tax Commission (OTC), grouped by Natural Gas Policy Act category. If these categories are not available, the Agreement provides a descending order of analysis based upon the best information available. Moreover, the settlement methodology meets the requirements of 30 CFR §206.152 (3)(ii), governing MPA calculation.

### I. MISCELLANEOUS

35. Although OIMOA believes that the "look back" program proposed in the Settlement is positive, they believe it should do more. Plaintiffs originally raised the same issue, but agreed to the simplified "look back" for a number of reasons. First, it is not technically feasible for the information concerning production problems to be disbursed at the same time as royalty payments. Second, the program already agreed to will increase the BIA's cost and is arguably not required by FOGRMA. Third, the notice that will be sent will provide the Allottee with the telephone number of the local office. They may call there for further information.

In all, the negotiated resolution contained in the Settlement agreement considered OIMOA's concerns and reached an appropriate accommodation which provides a significant benefit to all allottees.

### J. CONCLUSION

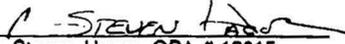
36. The conclusion of the OIMOA states that many of the provisions of the Settlement Agreement are mandated by FOGRMA. That is, of course, the point of this declaratory action and the Settlement, and is not an objection. Finally, the OIMOA states that it must approach the settlement with "guarded skepticism until we see any results of FOGRMA implemented."<sup>12</sup> Again, this is not an objection to settlement, but rather, a statement that the OIMOA will believe it when they see it. The purpose of the Settlement Agreement is to remove the last barrier to the implementation OIMOA seeks.

37. The Settlement Agreement contemplates a close, working, evolving

<sup>12</sup>OIMOA's Objection at Page 4, Paragraph 1.

relationship between Allottees and the MMS staff via the new local office, technological advances to the existing system, and improved communication between the local office and the main complex at Lakewood, Colorado. The parties believe that the settlement enables the government and the Allottees to work together to overcome the "guarded skepticism" on the part of the OIMOA members and all other Allottees who have lacked confidence in the system in the past.

Respectfully submitted this 3rd day of December, 1991.

  
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(405) 528 - 5500  
Attorneys for Plaintiffs

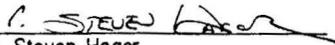
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P.O. Box M  
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(602) 871 - 5151  
Counsel for the Defendants

**CERTIFICATE OF SERVICE**

This certifies that on the 3rd day of December, 1991, I mailed a true and copy of the above Response, U.S. Postage affixed and prepaid, to Mr. Eddy Jacobs, President of the Oklahoma Indian Mineral Owners Association, at 2600 N.W. 11th Street, Oklahoma City, OK 73107.

  
C. Steven Hager



*Oklahoma Indian Mineral Owners Association*

OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION (OIMOA)  
AMENDED RESPONSE TO NOTICE OF DISAPPROVAL OF THE  
PROPOSED CLASS SETTLEMENT AND AGREEMENT OF KAULEY  
VS LUJAN CIV NO. 84-3306T

The Oklahoma Indian Mineral Owners (OIMOA) file this amended Notice of Disapproval to the proposed class settlement and agreements of Kauley vs Lujan CIV NO. 84-3306T, following a meeting with Joint Counsel of Attorneys for Plaintiffs and Defendants, held in the Office of U.S. Magistrate Pat Irwin, December 3, 1991.

INTRODUCTION

1. It is apparent that once again, the bureaucracy is attempting to compel us to accept something that is not in our best interest. Historically, this is a typical scenario. Originally, we envisioned ourselves as part of the class, however, at this point of these proceedings, the Oklahoma Indian Mineral Owners find they are at opposite sides to the Counsel for the Plaintiffs and the Counsel for the Defendants, by their Joint Response filed December 3, 1991. Class member were afforded the option of support or opposition which was solicited by the Court, and we responded with the courts invitation and accordingly with the time of notice, all within the perimeter of response for objection. The Oklahoma Indian Mineral Owners perceive our OBJECTION to be put in a defensive position brought about by the Joint Response. We seek the courts to clarify the position and circumstances of all parties involved, as to how the JOINT RESPONSE concurred.

To further clarify the OIMOA timing of opposition to the class action, members were initially informed by class counsel that they did not meet the criteria financially, and as clients if we were "diametrically opposed" we should hire our own attorneys separately (CLASS MEMBER INFORMATION SHEET - REVISED 6-23-88). It should be further noted that the class counsel's telephone calls that they received continued to seek information about the settlement, with neither expressing objection, but with reservation.

B. Timeliness of Payments

A copy of Senate Bill 2751 was introduced on June 18, 1990 by Senator DeConcini and McCain, and is being submitted for review. Such a bill along these lines could be very helpful in resolving many problem areas of the allottee. Some changes to the concept of this bill would need to be made before such a bill was passed.

C. Interest Payments

There remains many areas of concern that need to be add-

ressed for interest payments that have yet to be disbursed. Copies of numerous newspaper articles, are being provided relative to interest payment. Also, a copy of a new Comptroller General decision NO. B-243029, dated March 25, 1991, which could be utilized as a directive in regard to a term such as the settlement of paragraph 27.

D. Explanation of Payments

The new format for the EOP is an improvement, but the information being provided needs additional work. With the recent payment of interest, can interest income be accounted for on this format as to rate, period paid, and identify to principle amounts assessed? The OIMOA has always been a willing participant to improve or change any reports or conditions that would be to the betterment of their interest.

E. Fiscal and Production Accounting Systems

Historically, these systems and the manner or processes currently employed in Mineral Management Service (MMS) auditing is a primary source of distrust for allottees. MMS' current data base is maintained and volumes and values are intended to reflect lease level reporting. However, EOP's and Royalty Reports from MMS are not consistently lease level, and volumes and values are often reported as gross well levels. An examination of EOP elements does not indicate the level of data being given to allottees. Further, the accuracy of this information is also questionable. It has been, and can be shown that non-reporting or inaccurate data is being submitted by Industry.

The Settlement Agreement provides for comparisons of data submitted by payors and operators, identification of improper recoupments, allowances, and severance tax deductions, and exception reports to identify royalty rate differences. It is fundamental that the accuracy of these automated functions is dependent on the accuracy of initial data. What benefit is gained by enhancing a system yet providing no safeguards for accurate reporting.

The proposed automated functions of identification of improper recoupments, allowances, and severance tax deductions and incorrect royalty rate are elements normally discovered in auditing.

However, ~~to arrive at~~ to arrive at the point of having an audit completed involves, at times, years of waiting. One of the steps prior to an audit is the desk review. This process is nothing more than a comparison of MMS/Bureau of Land Management (BLM) data for the usual time period of one (1) year. It would seem apparent that analyzing one random year of data in the lifetime of a well is a very limited analysis and can, in no way, reflect a complete and accurate audit picture.

The Settlement Agreement provides that there was little disagreement as to the details of the Department's (MMS) Comprehensive Audit Strategy. It has been explained by Counsel for the Department and Class that this strategy is How the audit process is implemented and not the accuracy or inaccuracy of the process being implemented. This process, which can be shown is defective, should be the element to change rather than insuring that this questionable process is ever further implemented.

E. Fiscal and Production Accounting Systems

It has been stressed by counsels for MMS and the Class that this Agreement could represent a starting point to correct the entire process, and the Joint Response states "The Oklahoma Allottees will have ample opportunity to judge the adequacy of the audit program..." Why observe for any future time period, the inadequacies we have had to live with for the past years. If this is a beginning, we need to begin with accurate data and processes.

H. Major Portion Analysis

Discussion held in a meeting with Class counsel, not enough information was provided to OIMOA to determine what their methodology will be. The way the government plans to achieve an MPA are already in the new valuation regulations. Is the MPA in the settlement agreement different than the valuation regulation currently being used? At this point, the reason MPA has not been completed, a data base was not available. Why should this take up to a year for completion?

I. Miscellaneous

We are in agreement with the "look back program". Perhaps a toll-free number could be provided, such as is being provided to Industry, since a majority of Indian mineral owners do not have the luxury of a telephone. The language in Sections 25, 26, and 27 is unacceptable. "Loopholes" can be created and provides the Department a means of non-compliances with responsible accountability to carry out what is to be implemented.

Before we conclude, an important mandate of the Federal Oil and Gas Royalty Management Act (FOGRMA) that is provided was omitted in the Agreement, that is on-site lease inspections. It was pointed out by the Senate Select Committee on Indian Affairs that the BLM has done very little field work. Congress this year, mandated that all Indian leases would be inspected, a task that has never been carried out. On site inspection are the only way to accomplish certain tasks such as oil theft, oil spills, faulty equipment and other phases of compliance.

Conclusion

Upon conclusion of the December 3 informal meeting held with counsels for the Class and Department, the OIMOA representatives were informed that we either accept the whole agreement as presented, or disapprove the whole agreement. After due consideration, and the directive and authority given the Chairman of OIMOA, and discussion with members. It was agreed that OIMOA disapprove the Settlement Agreement as presented, based on the content of reasons amended, and the trust of the many members OIMOA represent. Submitted the 5th day of December, 1991.

Eddie Jacobs  
Eddie Jacobs, Chairman  
OIMOA

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DAVID KAULEY, et. al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. CIV-84-3306-T
	)	
UNUNITED STATES OF AMERICA,	)	
et.al.	)	
	)	
Defendants.	)	

PROFFER OF PROOF AND PROPOSED WITNESS LIST

This case is set for hearing on the proposed class action settlement heretofore noticed to the class. The parties expect to offer the following:

- I. Preliminary Statements.
  - A. Steve Hager and Steven Moore, for the class
  - B. Edwin Winstead and M. Kent Anderson for the government
- II. Outline of the proposed settlement.
  - A. Mr. Moore and Mr. Hager
- III. Outline of the defendant's position.
  - A. Mr. Winstead
- IV. Objections.
  - A. Oklahoma Indian Minerals Owners Association. Mr. Eddie Jacobs.
  - B. Others at the court's discretion, if presented out of time. None on file currently.

V. Proffered Witnesses. The parties are prepared to call the following witnesses. (Name, title, summary of expected testimony)

A. Plaintiffs.

1. Benjamin Binder. Computer systems design expert. Design and operation of Minerals Management Service ("MMS") oil and gas management computer systems.
2. Charles Norman. CPA/Oil and Gas Auditor. Adequacy of accounting and auditing elements of MMS systems.
3. David Kauley. Cheyenne-Arapaho Tribes. Named plaintiff.

B. Government.

1. William Collier. Area Director, Bureau of Indian Affairs, Dept. of the Interior ("BIA"). Anadarko Area. Operations of the BIA.
2. Bruce Maytubby. Area Realty Officer, BIA, Anadarko. Management of Indian royalty programs, including royalty distribution, in Anadarko Area.
3. William Titchywy. Supervisory Realty Specialist, BIA. Specific day to day operation of Area realty function.

4. James Detlefs. Chief, Fiscal Accounting Div., MMS, Lakewood, Co. MMS procedures for collection and distribution of royalties.
5. Milton Dial. Chief, Royalty Evaluation & Standards Div. MMS, Lakewood. MMS Major Portion Analysis.
6. Kenneth Moyers. Chief, Royalty Compliance Div. MMS, Lakewood. MMS royalty audit functions.
7. Gregory Smith. Program Analyst, Royalty and Management Policy Div., MMS, Lakewood. Royalty policy issues.
8. Vernan Ingram. Chief, Office of External Affairs, MMS, Lakewood. Royalty owner relations.



## MUSCOGEE (CREEK) NATION

P O BOX 580, OKMULGEE, OK 74447 (918) 756-8700

CLAUDE A. COX  
PRINCIPAL CHIEF  
PERRY R. BEAVER  
SECOND CHIEF

May 5, 1989

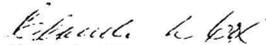
Senate Select Committee on Indian Affairs  
United States Senate  
Washington, D. C. 20510

SUBJECT: LETTER OF REPRESENTATION - EDDIE JACOBS

Please be advised that Eddie Jacobs will represent the Muscogee (Creek) Nation by providing testimony before the Committee regarding the responsibilities of Bureau of Indian Affairs in the area of oil and gas leasing and royalty payments.

If there are any questions, please feel free to contact this office.

Sincerely,

  
Claude A. Cox  
Principal Chief

CAC:bh

STATEMENT  
BEFORE  
THE SELECT COMMITTEE ON INDIAN AFFAIRS  
SPECIAL COMMITTEE ON INVESTIGATIONS  
WASHINGTON, D.C.  
MAY, 1989

STATEMENT BY EDDIE JACOBS  
MUSCOGEE CREEK NATION, MEMBER  
CREEK NATION MINERALS TASK FORCE, VICE-CHAIRMAN  
OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION, BOARD MEMBER  
ROYALTY MANAGEMENT ADVISORY COMMITTEE (RMAC), MEMBER

The members of the Five Civilized Tribes of Eastern Oklahoma have long been the exception to the presumption that "all Indians are tax-exempt", in that the non-tax-exempt status of Indian oil and gas leases for the Five Civilized Tribes and individual Indians subjects them to the Oklahoma State gross production tax, past and at present, with no inferences to substantiate the exception. Throughout the United States they are the only Indian Tribes subject to a State gross production tax. (Attachment A)

The non-tax-exempt status of the Five Civilized Tribes is an issue that has been encountered in the involvement and investigations of Tribal and individual Indian leases, specifically, the Muscogee Creek Indian leases. Being cognizant of the facts of the issue, diligent efforts have been pursued as to the validity of the State tax collection being imposed. The validity of the tax imposition must be pursued with a conscionable effort by the Bureau of Indian Affairs (BIA), so as to arrive at a conclusive fact and refund any monies erroneously collected to the Tribes and individual Indians involved. (Attachment B)

The authority of the State of Oklahoma to collect any tax from the Muscogee Creek Tribe and the individual Indian is highly questionable. That uncertainty being even more intensified in reviewing the content of the Indian Mineral leasing act of 1938: a comprehensive act designed to obtain uniformity in the leasing of Tribal lands for mining purposes, increase Indian authority in granting leases, and to protect the Indians' economic return on their property.

2.

Further review of the Indian Mineral Leasing Act of 1938 in relation to recent court decisions as late as 1987 [Crow Tribe of Indians v. State of Mont., C.A.9(Mont)1987,819F.2d 895.] point out that the courts have taken the view that the 1938 Act was to bring all mineral leasing matters into harmony with the Indian Reorganization Act of 1934. Section 7 of the Indian Mineral Leasing Act of 1938 repeals all Acts and parts of Acts that are inconsistent with this Act. Also, Report No. 1872 from the Department of the Interior, Washington, D.C. June 17, 1937 signed by Charles West, Acting Secretary of the Interior recommends the Act to bring consistency for all leasing matters as they relate to the Indian Reorganization Act of 1934. (Attachment C)

The Oklahoma Indian Affairs Commission, appointed by the Governor of the State of Oklahoma, issued a letter dated February 14, 1989 to the Oklahoma Constitution Revision Commission, that reached the conclusion that the State of Oklahoma disclaimed all taxing privileges in Indian Country. (Attachment D)

The Bureau of Indian Affairs is remiss in carrying out the fiduciary relationship that has been established by the Indian Mineral Development Act of 1982, Section 7, 25 USC 2106, by its failure to interpret questionable regulations concerning Indians, indecisiveness of decisions, and failure to carry out requests of opinions. (Attachment E)

Since the gross production tax is presently being imposed on the members of the Five Civilized Tribes, there are a number of areas that need explanation by the BIA. Initially, when a tax is collected, a report is made to the Internal Revenue Service (IRS), and all parties against whom this tax is imposed should receive a 1099 form/or tax with-holding information. Also, at this point, one must take into consideration the time period these taxes have been withheld from members of the Five Civilized Tribes. (Attachment F)

The individual allottees and heirs of the Five Civilized Tribes whose Individual Indian Monies (IIM) accounts are administered by the Muskogee Area Office do not receive any type of tax information for the gross production tax that is, or has been withheld.

3.

On December 29, 1988 I received a letter directly from the Kerr-McGee Refining Corporation, which had enclosed crude oil run statements that I had requested from the Realty Office, of the Muskogee Area Office. A week later, January 6, 1988 I received a letter from the Muskogee Area Office with a Kerr-McGee Refining Corporation 1099-Misc form for the year 1987. With the available information, a comparison was made between the 1099 form and the crude oil run statements. The 1099 form that I received only reported nine months of production, and upon request of an explanation, there was none that could be reasonable acceptable. If I had received any tax information in a timely manner, this would have altered my personal taxes. (Attachment F)

I have contacted the Muskogee Area Office and the Internal Revenue Service (IRS) office in Oklahoma City, Oklahoma trying to obtain the 1099 forms to amend prior year tax returns, and to date I have yet to receive those forms. If, and when I obtain any correct information, do I direct the IRS to the Bureau of Indian Affairs for an explanation of the circumstances such as; can prior years be amended; has this cost me money; and if there are penalties, who will those penalties be assessed against? (Attachment G)

There is another isolated problem at the Muskogee Area Office, that needs to be addressed. Which is, the imposition of the Windfall Profit Tax (WPT) in 1980 and 1981. This is the period when the WPT was first imposed, and there was at that time, some question as to whether the Five Civilized Tribes should be assessed those taxes. The indecision and failure to notify the Oil Companies in a timely manner resulted in those taxes being withheld. When a decision was finally determined that the Five Civilized Tribes were not subject to the WPT, approximately one year of taxes had been collected. There again, why was there indecisiveness by the Muskogee Area Office or BIA, in that the Five Civilized Tribes would be the exception.

Also, in that time period, the financial posting from manual to computer was in transition from the BIA to the Minerals Management Service (MMS). In the interim, the Muskogee BIA should have

filed a claim for refunds of the taxes that were withheld. The transfer of information in the posting transition was not complete, in that, not all leases had been assessed the WPT, or were identified at that time. I understand there are outstanding WPT monies due with compounded interest. However, these types of payments are not identified on monthly disbursement statements, and the IIM account holder would not be aware if any or all payments were reimbursed.

There are a number of other problems and recommendations that need to be addressed and commented on in general terms on each issue. These include: Lost or Delayed Interest Payments; Valuation issues; Non-payment and Under-payments; Leases Irregularities; Lease Monitoring; Drainage; Audit Creditability; Recoupments; Allowances; Probates; Rights-of-way. (Attachment H)

In closing, I express my appreciation to the effort now being put forth in these very important matters that have been a detriment to the Indian Tribes and Individual, we hope that the consequences of these hearings will be more than just a series of reports ---- that positive action can be taken to correct the fiduciary relationship:

(Attachment H)

part 1

## Recommendations For Problem Areas

The following recommendations are directed to the problem areas I made reference to in the July 16, 1988 statement to the Creek Nation Task Force and the Special Committee on Investigative of the Senate Committee on Indian Affairs, that individual Indian mineral and land owners continue to encounter. (copy included)

TAX ISSUES The Bureau of Indian Affairs (BIA) and the Office of the Solicitor as their legal advisor, need to issue a position paper that would specifically state their policies pertaining to tax issues that presently need clarification; and those that will be subject to change. In follow-up, the BIA needs to advise those individuals that will be affected to those tax changes, and relate the requirements of the Internal Revenue Service (IRS).

LOST OR DELAYED INTEREST PAYMENTS The BIA branch of investments made mention of a reconciliation project, but no written notice on the status of this initiative has been issued. The BIA has no auditors on staff, so independent Certified Public Accountants (CPA) firms need to be contracted, to identify the proper principle accounts which were the source of the accrued interest. Also, the interest that has accrued as a result of compounded interest on interest and at the proper rate for those periods.

VALUATION ISSUES The valuation issues could be resolved by doing majority price analysis on all Indian leases, with those analysis being used as part of completion of competent audit work.

NON-PAYMENT AND UNDER-PAYMENTS The Bureau of Land Management (BLM) will still be responsible for lease monitoring when the new Production Accounting and Auditing System (PAAS) is brought on-line for on-shore production. However, the extended period of time that BLM officials related to, "periodic checks being made once every three years," is of great concern too because Mineral Management

2.

Services (MMS) recommendations are that zero sales will no longer require a report. Individual Indians have a need to know of no sales as well as errors. Royalty payments are relied on by individuals as a sole source of income or play a major share of a monthly budget. If for some valid reason, wells are shut down temporarily, sufficient time for financial arrangements could be undertaken. If wells are to be plugged, owners need to be informed immediately so as to initiate the termination of leases.

LEASE IRREGULARITIES The BIA has not been consistent in their leasing policy. For example, mineral shares of the heirs of allottees of the Five Civilized Tribes are not placed on a competitive bid docket, yet they are under the supervision of the BIA, Muskogee Area Office. I personally was informed that to lease my mineral shares I would have to find a interested party, even though my mineral interests are in restricted trust land status. Thus, the trust status of the lands are not removed; though they are administered through the State Courts, they remain under the supervision of the BIA.

LEASE MONITORING The Bureau of Land Management maintains that due to being under-staffed, they are unable to make more frequent on-site inspections than the "once every three years," then the Indian leases need to be contracted to Indian Tribes or to private contractors; so that each lease can be inspected and reports given on a weekly or monthly basis to Tribes and BIA, for the individual to obtain access to that information.

DRAINAGE BLM needs to contract with experts and utilize the latest equipment available to conduct reservoir test. Monitoring of adjacent surrounding non-Indian leases should, also be required even when there is no lease agreement for minerals in effect for Indian owners. Without more stringent monitoring this problem will persist.

AUDIT CREDITABILITY MMS audits mineral and mining leases for Indian and Federal lands. States and Tribes can enter into 202 and 205 contracts to audit their leases, but individual Indians must rely on MMS to audit and then we are provided a summary report from BIA. BIA has not been very responsive to any request for information. MMS only provides audit coverage for mineral and mining leases, other types of monies that are generated to Individual Indian Money (IIM) accounts from other sources that BIA administer are not audited. Posting of monies to IIM accounts before 1982 sometimes took up to six months to post. Can Indians be assured that interest was ever paid which should have been credited to their IIM accounts. Today there is still an eighteen day delay for posting of royalties to the IIM accounts. I have been told interest is paid and reported on the semi-annual report of our IIM ledger account. This report cannot be understood because it is just a series of numbers, unless you have a code book the report is useless and we still question if interest was actually paid. To help solve part of this problem make the monthly and semi-annual reports so that individual Indians can at least tell if interest has been paid for delays at MMS or BIA. Audits that have been done by MMS would only catch late posting of royalties since the conversion to computers. I have pointed out that BIA was guilty of posting initial royalty payments after interest was computed on the semi-annual report to the Office of Inspector General (OIG), the OIG agreed that there was a problem but that it would have to be looked at later.

RECOUPMENTS Over-recoupments should be placed on a high priority because each dollar a Indian is entitled to means alot to them. The American Indian is one of the most economically depressed race of people in the United States. In the past recoupments have been the results of under-estimation of estimated payments for gas royalties due. Energy companies have been afforded an appeal process while Indians in the past have not been offered such an option. When the estimated payment problem is resolved the recoupments will be held to very small adjustments.

ALLOWANCES There must be periodic checks to assure that allowances are not inflated. The only check now is audit which we have been told are done on a six year cycle. If Indians were provided more information as to code numbers we could distinguish which each allowance charge represents, so inconsistencies would be recognized. With added information problems could be corrected in a timely manner. I have been told that code numbers would soon be added but as of my last monthly statement no numbers have been supplied.

PROBATES Heirs of allottees of the Five Civilized Tribes are not afforded this service by the Solicitor's office. Even when heirs meet blood quantum requirements to retain restricted trust status of their holdings, they have been told that because State District Courts administer our probates we must retain private attorneys. BIA is still responsible to these heirs but they seem to feel that there is no responsibility. In the western half of Oklahoma extended periods of time have been the rule, but as of late there has been improvement.

RIGHTS-OF-WAY The BIA should be our advocate in these matters. In the past BIA has been complacent in trespass violation situations. In cases where the land is under lease inappropriate amounts have been paid for land damages to the lessee instead of the land owner. If the BIA had a organization similar to the Royalty Management Advisory Committee (RMAC), Indians could voice our opinion before changes are implemented.

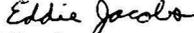
The way things are now Indians are notified of changes just before they are implemented. Right now BIA is working on a proposal to contract IIM accounts to a private banking institute. Tribal leaders were notified of a meeting in Tulsa but individual Indians and allottee organizations were not notified. When IIM accounts are discussed individual Indians need to be aware of any change because this will affect our money flow. One thing I have heard from our individual Indians is that they would like all IIM accounts audited before any transfer is made. When monies are found to be due or

owed then identify what the source of the problem was and when money is due Indians identify any interest money that would have accrued as a result of non-payment.

The more information that is provided the more Indians can understand the system and any changes that must be made. The Indians need this information in a timely manner so we can seek advice and guidance.

I appreciate this opportunity to point out and express a viewpoint of the individual Indians. If additional information is needed please feel free to contact me.

Sincerely,



Eddie Jacobs

Member, Oklahoma Indian Mineral  
Owners Association

(Attachment II)  
part 2

STATEMENT BY EDDIE JACOBS  
CREEK NATION MINERALS TASK FORCE, VICE-CHAIRMAN  
OKLAHOMA INDIAN MINERAL OWNERS ASSOCIATION, BOARD MEMBER  
ROYALTY MANAGEMENT ADVISORY COMMITTEE (RMAC), MEMBER

The Oklahoma Indian mineral owners were greatly offended by President Reagan's remarks given in response to a question raised by a student at the Moscow State University. If the President of the United States feels that Indians have been "humored", then how can Indian people have any confidence in Indian policy that we now must live with. President Reagan's statement that he would be glad to meet with the delegation of Indians in Moscow, could have been a start, but in reality it was only a gesture by a "lame duck" administration. Indians need to have a say as to the direction of their future, and I speak of Indians that are in elected tribal leadership roles, Indian organizations, and the individual Indian, all who have different points of view as to the needs and concerns of Indian people. The reason the individual Indians point of view is so important in Oklahoma, is that the majority of lands held by Indians are allotted lands, allotted land that is owned by heirs of original allottees, and whose share is often very small. Therefore, it is not economically feasible for each individual to pursue their interests accountability, so we must rely on the Bureau of Indian Affairs (BIA) for administration of our land and mineral holdings.

President Reagan also mentioned that the Indians have a "Bureau of Indian Affairs to help take care of them". However, he did not mention the fact (or was he even aware) that the BIA and other bureau agencies that administer Indian programs are currently being investigated for their negligent handling of their trust responsibility by a Special Senate Select Committee.

The Creek Nation Task Force has already discovered errors that will result in monetary recoveries for tribal leases, and the pos-

(2)

sibly potential recovery of land as well. I, personally have received substantial money recoupments that not only affect my leases, but will also impact other individual leases as well, along with a number of other issues that have yet to be resolved. In previous investigations there was little or no follow-up or response in a timely manner, and as individuals we need to see positive action and not just a series of reports as a end result. This time around we would like for these agencies to be held more responsible and efficient to the actual Indians being served.

June 2, 1988, in Oklahoma City, Ross Swimmer gave an address to attorneys, Indian leaders, and tribal court clerks in which he said, "its time to begin the phase-out of the BIA", his contention being that the BIA should work itself out of a job. Regardless, whether it be the BIA or a different version thereof, the United States Government must have an agency in existence to live up to tribal treaties, Acts of Congress, and court decisions as part of their trust responsibility. Mr. Swimmer must realize that we do not want to be treated as wards, but there is a trust to be maintained as long as there are Indians. Therefore we need to be informed in a more timely manner so that we can be actively involved in decisions that will have a direct impact on our livelihood.

In reference to President Reagan's Moscow statement that "some Indians became very wealthy because some of those reservations were overlaying great pools of oil, and you can get very rich pumping oil", he gave the impression that the Indians had a choice in living on reservations, areas of land that were set aside as reservations, with the Indians placed on those lands by treaties. In return, large tracts of the original tribal lands were taken. When Tribes accepted the smaller tracts of land, a trust was formed that certain obligations would be rendered. Indians could have had, and even today, could maintain an adequate quality of life, if what land base and mineral resources we retain are and had been properly managed.

I would like to address the following problem areas that the Indians continue to encounter that I have knowledge of through my inquiries: tax issues; lost or delayed interest payments; valuation

(3)

issues; under-payments; non-payments; leasing irregularities and monitoring; drainage; audit credibility; over-recoupments; allowances; handling of probates; and rights-of-way.

TAX ISSUES

I, personally have written to the BIA and Mineral Management Services (MMS), and have yet to receive a written opinion from the Office of the Solicitor, of taxes on the Five Civilized Tribes of Oklahoma inheired restricted trust lands.

There also seems to be a problem as to the 1099 tax forms administered by the BIA: these forms are for taxes that are withheld from Individual Indian Monies account (IIM) holders, we are not getting credit when we file our personal taxes for the Gross Production taxes that are being withheld.

LOST OR DELAYED INTEREST PAYMENTS

Posting of royalty payments have been delayed resulting in accrued interest not being paid at appropriate time intervals. At a meeting Mr. Jim Parris, Albuquerque Investment Center Officer informed mineral owners of a reconciliation of the 1081 forms which should help identify the appropriate leases to which interest monies will be paid. Presently the status of this project is unknown. I have requested an audit of my IIM account but still do not know who will conduct the audit; the BIA does not have auditors on staff, I have suggested that an independent audit be done.

VALUATION ISSUES

The Office of Inspector General (OIG) issued a report dated March 31, 1988 that points out many reasons of concern that effect Indian leases. Even with implementation of new regulations problem areas still persist.

NON-PAYMENT AND UNDER-PAYMENTS

The new Production Accounting and Auditing System (PAAS) being brought on line should resolve these problems. But the OIG report of April 1, 1988 give many reasons for concern because benefits and cost have not been determined.

**LEASE IRREGULARITIES**

There is not much documentation to support this area. The reason being that most was verbal advise given to individual Indians, advise given by BIA and Social Services personnel based on their policies.

**LEASE MONITORING**

The Bureau of Land Management is responsible for these duties: This agency does not have the staff to properly cover all the leases they must maintain; BLM checks leases only on request; They do not perform periodic checks also many times the Indian owners are elderly, so the operators are other parties have a "free run" of the lands.

**DRAINAGE**

BLM again has not been very consistant in their handling of this problem. Many times the land in question is not under lease and without proper monitoring these problems will persist.

**AUDIT CREDIBILITY**

The Minerals Management Service (MMS) has completed audits, but after further review additional monies were found to be due. The OIG April 1, 1988 report also pointed out areas of concern in auditing.

**RECOUPMENTS**

MMS which is the collection agency, also is responsible for this function. In many cases errorous estimated payments are the cause for these recoupments. Again I make reference to the OIG April 1, 1988 report that point out over-recoupments. These over-recoupments amount to about \$227,000, in royalties for Indian owned leases and unfortunately are placed on a low priority.

**ALLOWANCES**

The allowances on individual Indian monthly statements are not identified as to what they actually represent, i.e. transportation, processing, taxes and other allowances. The new regulations also give oil and gas Companies greater authority to collect allowances

(5)

without MMS approval. Our only recourse is audits, but with a six year audit cycle and there is even some question when this cycle begins. The new MMS regulations say all Indian leases will be audited within this six year time frame. MMS staff admit that this is not realistic because they do not have the personnel to accomplish this task. The end result is only random sampling audits. Again the OIG report will confirm what I have just said.

PROBATES

The BIA needs more consistency in the handling of estates. Heirs of allottee that meet certain requirements should be accorded the same privileges as the original allottees. At the present time this is not the position BIA and the Solicitor's office maintain. Members of the Five Civilized Tribes are being discriminated against, because people have been told this is their responsibility to get a private attorney as a result of the Solicitor's office being under-staffed. In the past those private attorneys who have rendered services for individual Indians have placed liens against the estates, with the end results being their shares were sold to satisfy those claims.

RIGHTS-OF-WAY

In many instances damage payments were not consistent with payments made to non-Indians. There are also cases where rights-of-way have expired and no compensation or renewal agreement made, also in the trespass violation situation, BIA has not been consistent and in some cases nothing was done.

The aforementioned problem areas are some that I have encountered. I will not say that these are all the problem areas, because as the Indian people become more informed others will unfold. Also, as new regulations changes are implemented new ones are sure to arise.

Before Indians are forced to go on to any new projects, things that have happened in the past must not be forgotten. What I am talking about is monies that have not been paid out for various reasons must be reconciled or at least a plan developed to distribute those monies. Changes in the past have caused chaos because

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personnel were either unqualified or not properly trained for the new system being brought on line.

One of Ross Swimmer's projects a couple of years ago was to have all Indians go to direct-payment an OIG report was of the opinion that direct-pay would not solve any of the Indians problems. Each time Mr. Swimmer is attentioned to a problem area he wants to "contract it out". The Indians have heard of direct-pay for some time but BIA has never set any guideline down in writing yet. The BIA must realize that Indians have a right and need to know those kinds of things since we have been advised to accept direct-pay to lighten BIA work load.

Last year the BIA told Indians their IIM accounts were going to be contracted to a private banking firm. At one point a news release was sent out saying a contract had been signed. There must have been a problem somewhere but Indians were never advised just what it was.

The Creek Nation Minerals Task Force will be making recommendations at a later date, now that problem areas have been identified. I personally plan to make recommendations and as a part of the Royalty Management Advisory Committee (RMAC) will be able to see how all advise submitted is accepted.

I express my thanks for this opportunity to voice my personal inquires. Any other assistance that I can offer, feel free to contact me.

*Eddie Jacobs*  
EDDIE JACOBS




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P.O. Box 1671 • Tahlequah, OK 74465 • (Office) 918-458-4322 • (FAX) 918-458-0322

February 3, 1994

The Honorable  
 Bill Richardson, Congressman  
 U.S. House of Representatives  
 Chairman, Subcommittee on  
 Native American Affairs  
 1522 Longworth H.O.B.  
 Washington, D.C. 20515

Re: Submission of Written  
 Testimony For Record On Hearing  
 Held in Tahlequah, Oklahoma on  
 January 20, 1994

Dear Congressman Richardson:

The enclosed written testimony is in response to the above mentioned hearing. I am hereby entering my comments on behalf of the issue of religious freedom needs of Native Americans. I am an individual Cherokee tribal member. I follow the ancient religious teachings of my people's ceremonial, tribal towns and of the Native American Church. I am also a grassroots organizer and have most recently served on the Indigenous Peoples' Steering Committee of Amnesty International as their Specialist on the Native American Free Exercise of Religion Act, S. 1021.

I have not sought nor have I been given "official" sanction to speak on behalf of my own Cherokee tribal town or of the Yuchi Chapter of the Native American Church in Oklahoma to which I belong. Therefore, I speak as an individual tribal member who has specialized expertise in the history of the development and the suppression of traditional, Native American religions and of the need for protections for this basic human right. This basic human right has too long been denied to Native Americans in the United States of America. I also speak from a specialized sensitivity and understanding of some of the principal needs of traditional religions through having been an active participant of that here in Oklahoma and through having participated in ceremonies with other tribes in other regions throughout the country.

Additionally, the Cherokee Nation of Oklahoma has passed a resolution in support of S. 1021, as have Amnesty International, USA. 98% of all the chapters of the Native American Church of Oklahoma are in active support of this legislation. Nationwide, probably 99% of the entire body of the Native American Church of North America is in support of S. 1021. At this time, there is

approximately one to two thirds and growing support from this country's federally recognized tribal governments and broad based support from representative Native American organizations.

My comments then are to urge the House of Representatives through this written testimony to support S. 1021 or similar legislation for the protection of religious freedom for Native Americans. By guaranteeing this constitutional and basic human right to Native Americans, who have historically been "the most despised minority" in the United States of America on the issue of the right to worship, you will be upholding your own Constitution, Bill of Rights and the Universal Declaration of Human Rights. And will be guaranteeing religious freedom to all people equally.

Thank you for the opportunity to bring the most pressing and important issues for Native Americans before you. Wado.

Sincerely,  
  
Julie Moss  
Economic Project Coordinator  
& Grassroots Repatriation  
Specialist

JM

Enclosure: Written Testimony



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Written Testimony Submitted  
to the  
Subcommittee on Native American Affairs of the Committee  
on Natural Resources  
United States House of Representatives

For the Record  
in response to the hearing held in  
Tahlequah, Oklahoma  
on  
January 20, 1994

SUMMARY OF COMMENTS:  
NATIVE AMERICAN FREE EXERCISE OF RELIGION

Submitted by  
Julie Moss  
Tahlequah, Oklahoma

Submitted on  
February 3, 1994

FOR THE RECORD

STATEMENT OF JULIE MOSS, CHEROKEE TRIBAL MEMBER, TAHLEQUAH  
OKLAHOMA

Written Testimony Submitted to the Subcommittee on Native American  
Affairs, House Committee on Natural Resources

As Part of a Field Hearing Hearing Held in Tahlequah, Oklahoma on  
January 20, 1994

on  
Native American Free Exercise of Religion

### I. Introduction

Indian Territory, now known as the State of Oklahoma was the last great Indian reservation. Numerous tribes were forcefully relocated to Indian Territory in a time period spanning the mid to late 1800's. Many of the tribes were split and there was tremendous suffering and loss of life and loss of significant numbers of tribal peoples. Today, there are about 40 federally recognized tribes residing in the State of Oklahoma. Within those tribes, there are estimated to be at least that many and possibly more traditional religious societies, tribal towns and re-established sacred sites, sacred fires and medicine ways of the Native Americans who reside here. There were also some tribal groups who were already here.

Oklahoma is now the state with the largest population of Native Americans in the United States of America. Oklahoma is also home of the modern Native American Church. Although the NAC is an ancient religion dating back 10,000 years or more, it was first incorporated as a legally established Church in Oklahoma in 1918. There are now NAC chapters in about 20 states with an estimated quarter of a million or more Native Americans who claim affiliation to this church. Oklahoma and many of the tribes that were removed here have long led the nation in setting legal precedents and in challenging State and other laws, policies, decisions and actions that have had effects on issues of tribal sovereignty, self determination, federal trust responsibility, treaty rights and so on. Many of the actions and efforts of the tribal groups and peoples of Oklahoma have had far reaching effects not only to Native Americans but to all peoples who look to the Constitution of the United States of America for basic human rights and the guarantees of the guiding principles of this country.

Today, in Indian Country and throughout the entire country of the United States of America, we are facing a religious freedom crisis for faith communities of all races and creeds, we are facing a human rights crisis and a constitutional crisis for the United States of America. Once again, Native Americans find

themselves at the apex of a legal and moral test of the United States Constitution and its most basic founding principles.

## II. History & Background

In order to understand why we are at this moment in time even talking about religious freedom issues for Native Americans, we have to go back and look at this crisis as a historical one that continues to this day.

In the 500 plus years since Columbus arrived, there has been a history of brutality, suppression, institutionalized religious persecution and a program of ethnocide directed toward Native Americans.

### HISTORIC TREATMENT OF NATIVE RELIGION BY THE FEDERAL GOVERNMENT:

There was a government agency (congressional) report issued in 1979. In that report it states that, "A cornerstone of federal Indian policy was to convert the savage Indians into Christian citizens and separate them from their traditional ways of life."

Christian missionaries, as government agents were an integral part of the federal Indian policy for over 100 years. The government placed entire reservations under the administrative control of church denominations. Indian lands were conveyed to missionary groups in order to convert the Indians and separate them from their traditions.

The report itself further states that "Christianity and federal interests were often identical (as) an article of faith in every branch of the government and this pervasive attitude initiated the contemporary period of religious persecution of the Indian religions."

By the 1890s, after tribes were placed on reservations, government treatment of their religions took a darker turn. In that decade, U.S. troops were called in to stamp out the Ghost Dance religion of the tribes who were confined on reservations. In 1890, Sioux Ghost Dance worshippers were slaughtered at Wounded Knee. An entire band of about 300 unarmed, peaceful followers of Chief Big Foot were massacred mercilessly by federal troops there for no other reason than that they were practicing a Native American religion. In 1892, Pawnee Ghost Dance leaders were arrested in Oklahoma. And soon that religion ceased to exist as it was suppressed among other tribes. In 1892, the BIA outlawed the Sun Dance religion and banned other ceremonies which were declared "Indian offenses" and made punishable by withholding of rations or 30 days imprisonment.

In Indian Territory now called Oklahoma, around the turn of the century, Cherokee followers and leaders of traditional religions were imprisoned for refusing to accept land allotments which as believers of their traditions, they could not accept. Allotment

was the government's program to break up the communal land base of the tribe and to make way for white settlers and statehood.

Formal government rules prohibiting tribal religions continued into the 1930's. While Indian people were not granted citizenship until 1924, there was an outright ban on their right to worship in effect until 1934.

Serious problems in Native religious freedom continued into the 1970's. There were numerous arrests of traditional Indians for possession of tribal sacred objects such as eagle feathers. There were criminal prosecutions for the religious use of peyote, there was denial of access to sacred sites on federal lands and interference with religious ceremonies at sacred sites.

So for Native America, there has been a long history of suffering from government religious persecution and suppression.

### III. CONTEMPORARY DEVELOPMENTS - THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978:

In House report 95-1308, of June 19, 1978, findings were reported of infringements by the government and others in the practice of native traditional religions during contemporary times.

These infringements and the interference with the free exercise of native religions happened because of enforcement policies and regulations carried out by branches and agencies of the government in wilderness, conservation and preservation laws. The insensitive enforcement of these laws interfered severely with the culture and religion of American Indians.

These interferences were found to be in three major areas:

- (1) Denial of Access to Sacred Sites
- (2) Restrictions on Uses of Substances, Natural Objects and Sacraments (some of these include endangered species) - to the federal government, these substances have been and are restricted because the non Indian has made them scarce or endangered, or can impose a health threat when misused or abused such as with Peyote. Although acts of Congress prohibit the use of peyote as a hallucinogen, up until the Smith Decision, (see section IV), it has been well established federal law that Peyote is constitutionally protected when used by a bona fide Native American religion as a sacrament.
- (3) Actual Interference in religious events either by federal officials or others and is unprotected by federal officials from intrusions.

After hearings in 1978, Congress recognized the need to protect Indian religious freedom, including worship at sacred sites and the use and possession of sacred objects. For these purposes, the American Indian Religious Freedom Act of 1978 was enacted by Congress and signed into law by then President Jimmy Carter on August 11, 1978.

AIRFA '78 was enacted because of this long history of institutionalized religious persecution by the U.S. government, its agencies, law enforcement and states; because Native Americans have historically been the most despised minority when it comes to religious persecution and the issue of religious freedom; because Native Americans have been singularly discriminated against and do not enjoy those religious freedoms that are purported to be guaranteed under the constitution of the United States of America and the Universal Declaration of Human Rights.

Because of all this then, the American Indian Religious Freedom Act of 1978 was passed. But it was more of a brief policy statement of intent without specific protections. AIRFA 1978 was considered a landmark and there was great hope. But Native American people immediately found out that the Act had no teeth, it had no enforcement provisions and was subject to wide, varied and loose interpretation.

Even after passage of AIRFA 1978, federal land managing agencies (forest and park service) have continued to be allowed by the courts of the U.S. to destroy irreplaceable, ancient and sacred sites. In other words, federal agencies have chosen not only to ignore AIRFA but to violate its intent. It has meant nothing to those who have been responsible for violations of the human and constitutional rights of Native people. They have continued to violate those rights with impunity to this day.

#### IV. Current Developments in Native American Religious Freedom

In recent times, there have been issued two momentous decisions by the U.S. Supreme Court. In 1988, the Supreme Court struck a tremendous blow to American Indian religious freedom as well as to the Constitution of the United States in what is called the Lyng decision.

Lyng v. NW Indian Cemetery Protective Association was a case involving access to sacred sites high up in the Chimney Rock area of Six Rivers National Forest in northern California. The Lyng decision virtually nullifies the free exercise clause of the U.S. constitution and rules that Indians stand outside the purview of the First Amendment entirely when it comes to protecting tribal religious areas on federal lands for worship purposes.

Case No. 2: Employment Division Department of Human Resources v. Smith, (1990). The high court was asked to protect the First

Amendment rights of members of the Native American Church who were fired from their jobs for off duty religious use of Peyote. Oregon was not at the time, one of the 28 states who currently recognize exemptions for the religious use of Peyote. So Smith says that the First Amendment should not protect this form of worship because state law made Peyote use illegal and contained no exemption for native religious use. The Supreme Court denied constitutional protection for an entire Indian religion of pre-Colombian antiquity which involves sacramental use of a cactus plant called Peyote. Smith cut back to minute dimensions, the doctrine that requires governments to accommodate at some cost, minority religious preference. This is the doctrine on which all prison religion cases are founded.

NAFERA 1993 (S. 1021):

So this brings us to the reason that the Native American Free Exercise of Religion Act of 1993, (NAFERA), has been introduced. And the reason why more and stronger protections are needed for Native American right to worship. For all of the above mentioned reasons, then the NAFERA has been introduced. The proposed Act covers five major areas:

(1) Protection of Sacred Sites - this section upholds, and affirms Native American religious sacred sites. It requires notice to tribes for any federal activity that may impact specified lands. It requires federal agencies to respect Native religions. It provides access to sites for religious purposes. It allows the temporary closing of some public designated lands at specific times for religious ceremonies. It requires the Secretary of the Interior to identify lands with historic aboriginal or religious ties. And to promulgate regulations to enable consultation to meet unique needs of Indian tribes and Native practitioners. It allows for the means to receive input from tribes and act on this for less intrusive alternatives on federally sponsored activities.

(2) Traditional use of Peyote - This section affirms and acknowledges religious use of Peyote by Native Americans. It allows that the use, possession or transportation by an Indian of Peyote for bonafide ceremonial purposes is lawful and shall not be prohibited by the government or any state. No Indian shall be penalized, or discriminated against on the basis of such use, possession or transportation.

(3) Prisoners Rights - this section allows that Native American prisoners shall have on a regular basis comparable to access afforded to Judeo-Christian religions, access to: traditional leaders, materials for religious ceremonies and facilities. Long hair is allowed if it is a religious custom and if prisoner is a sincere adherent. It prohibits penalties and discrimination against Native American Prisoners. It provides for the promulgation of regulations to implement the Act. This section tries to bring more equity for Native American religions

in the prisons with the Judeo-Christian faiths.

(4) Religious Use of Eagles & Other Animals & Plants - This section deals with existing laws and processes. It recognizes and acknowledges Native American religious uses of these things. It authorizes the development of a plan to insure the prompt disbursement of Eagles or parts for religious use in the existing application process. It allows the allocation of sufficient numbers of Eagles to meet the need. It allows for simplifying and shortening the cumbersome application process. It allows for the creation of regional advisory councils to reform the current system for disbursement if needed. It also recognizes and allows for tribal law if there is in place tribal laws to deal with disbursement, (or a permit process), of Eagles on tribal lands.

(5) restoration of the "compelling state interest test" as the legal standard for protecting Native religious freedom which was thrown out by the Supreme Court in the Smith decision, the well known Peyote case mentioned above.

#### V. CONCLUSIONS/RECOMMENDATIONS

Native American right to worship and the associated legal battles to gain that right, have long been recognized in the mainstream legal community as the miner's canary on issues of importance to all Americans of all faiths and their religious freedoms within the context and protections of their own Constitution and Bill of Rights. Until significant right to worship protections are put into place for the most "despised minority" for a start with passage and support of S. 1021 and other legislation like it, then the institutionalized religious persecution will continue.

Even with the passage of remedial legislation, history tells us that Native Americans will continue to have to fight to protect and preserve their religious traditions. But, at least with the passage of this and other similar legislation, we will see the significant beginnings of equal parity for Native American religions with other major and minor religions of the world.

Therefore, I urge the U.S. House of Representatives through the Committee on Natural Resources to support the Native American Free Exercise of Religion Act, (S. 1021) or introduce similar legislation. This will be a significant step toward bringing some long denied equality to Native American right to worship.

## **Oklahoma City Area Office Funding**

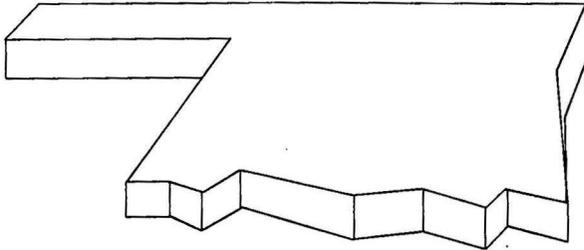
For the past four years, the Inter-Tribal Council of the Five Civilized Tribes has prepared a detailed study on the funding levels of all of the area offices of the Indian Health Service. Those studies have consistently revealed that the Oklahoma City Area Office is the lowest-funded of all of the IHS area offices on a per capita analysis. Despite the fact that Oklahoma has the largest single concentration of Indian population of all the states, it continues to receive some of the lowest funding for some of the most basic of health programs.

Although some improvement in funding of the Oklahoma City Area Office has been seen, it is incomprehensible that this office, which provides services to the IHS' largest user population, consistently receives the lowest level of per capita funding for medical and health services programs.

Funding for IHS area offices is currently allocated by the IHS based upon a modified resource allocation methodology which relies upon historical funding for each of those areas. This method simply does not reflect the true need for the area offices.

The Oklahoma City Area Office, which has the highest user population of all the IHS area offices, receives the lowest per capita funding in all program funding, with the exception of dental programs. The Inter-Tribal Council of the Five Civilized Tribes has repeatedly demonstrated the disparity of funding among all the area offices, yet Oklahoma still lags far behind the other areas.

# Indian Health Service Funding in Oklahoma:



***1992 Update***

Presented by The  
Inter-Tribal Council of the  
Five Civilized Tribes

March, 1992

Prepared by the  
Chickasaw Nation  
Office of Inter-Governmental Affairs

## Indian Health Service Funding in Oklahoma: 1991 Update

In recent years, tribal governments in Oklahoma have concentrated their united efforts to focus congressional attention on the inequity of funding for the Indian Health Service. In 1988, with 23% of the total Indian population of the United States living inside Oklahoma, the Oklahoma City Area Office of the Indian Health Service received only 11% of the total IHS budget. Although some improvement has been seen, inadequate and inequitable funding remains the number one problem in providing decent, safe health care to the more than one-quarter million Indian people who reside in Oklahoma. This report updates the figures for IHS funding in Oklahoma in relation to IHS funding in other area offices, with the utilization of figures for fiscal year 1990. An analysis is drawn throughout this booklet which contrasts the IHS funding levels of 1989 and 1990.

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## Budget Increases: 1989 compared to 1990

Graph 1-1 shows the budgets, by area office, including the total budget for each area office and the recurring funds for each area office. Table 1-1 gives the total amounts and percentages of increase for each area office, and contrasts the recurring budget for fiscal year 1989 with the recurring budget for fiscal year 1990, also by area office.

Although the Oklahoma City area showed an increase of 17.6% in fiscal year 1990, six other area offices showed larger percentages of increase. In the total amounts, the Oklahoma City Area Office ranks third in recurring budget funds. The user populations of the two area offices which receive more funding *combined* provide services to a population which is only about 30% larger than that served by the Oklahoma City Area Office-- yet their combined funding is nearly 2.4 times larger!

Overall, the Oklahoma City Area Office contains 22.2% of the total population of the Indian Health Service's patient load in the entire United States (See Graph 1-2 and Chart 1-2). In order to provide health care services to that percentage of population, the Oklahoma City Area Office receives only 12.7% of the total IHS budget.

**\*\*The user populations of the two area offices which receive more funding *combined* provide services to a population which is only about 30% larger than that served by the Oklahoma City Area Office-- yet their combined funding is nearly 2.4 times larger!**

**\*\*The Oklahoma City Area Office contains 22.2% of the total IHS user population in the United States-- yet that area office receives only 12.7% of IHS funds!**

GRAPH 1-1

**PER CENT BUDGET INCREASE FY 90/FY 89**  
**TOTAL BUDGET AND RECURRING BUDGET (In Percent)**

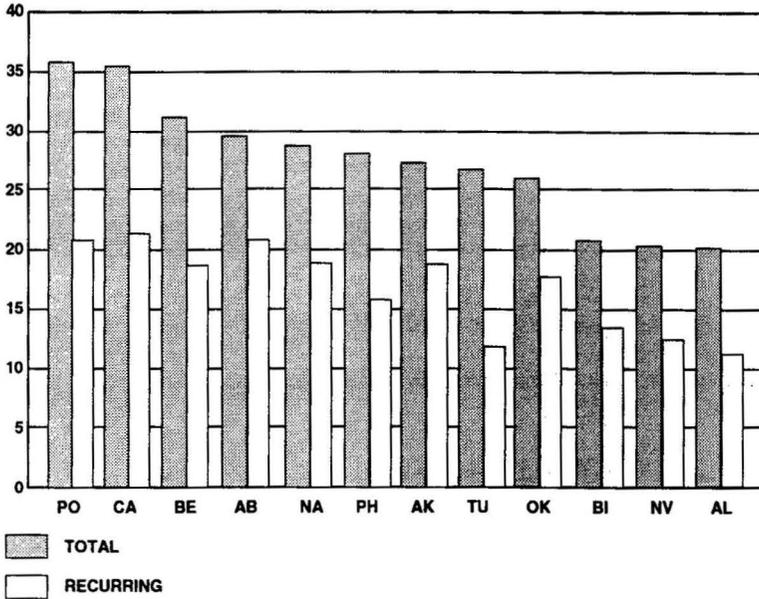


Table 1-1

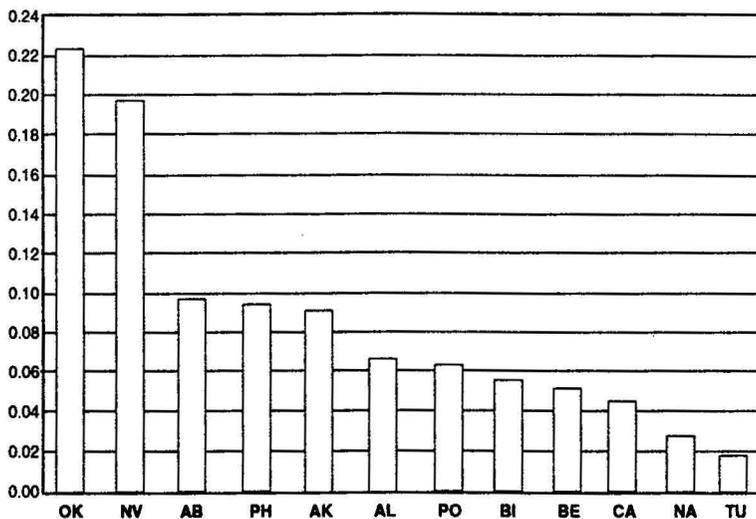
AREA	FY 89 RECURRING BUDGET	FY 90 TOTAL BUDGET*	PERCENT INCREASE	FY 90 RECURRING BUDGET	PERCENT INCREASE
PO-Portland	\$55,791,600	\$75,800,000	35.9	\$67,263,100	20.6
CA-California	\$36,280,500	\$49,204,800	35.6	\$43,663,400	21.0
BE-Bernidj	\$43,176,900	\$56,671,800	31.3	\$51,210,100	18.6
AB-Aberdeen	\$84,216,900	\$109,258,400	29.7	\$101,879,300	21.0
NA-Nashville	\$37,528,600	\$48,412,300	29.0	\$44,559,800	18.7
PH-Phoenix	\$94,051,300	\$121,084,900	28.7	\$108,718,700	15.6
AK-Alaska	\$135,098,000	\$171,474,000	26.9	\$159,488,700	18.1
TU-Tucson	\$18,568,200	\$23,469,400	26.6	\$20,755,900	11.8
OK-Okla. City	\$107,117,000	\$134,622,100	25.7	\$125,971,100	17.6
BI-Billings	\$58,096,300	\$70,097,000	20.7	\$65,777,800	13.2
NV-Navajo	\$119,729,500	\$144,231,300	20.5	\$136,071,000	12.8
AL-Albuquerque	\$57,824,700	\$69,441,900	20.1	\$64,517,500	11.6

\*FY 90 Total Budget Includes Both the Recurring and Non-Recurring Budget

SOURCE: Budget Review Book, December, 1990, Table 6, Division of Resource Management, IHS, Rockville, MD

GRAPH I-2

**IHS INPATIENT/OUTPATIENT USER  
Population by Area, FY 1990, by Percent**

**Table 1-2****NUMBER OF ACTIVE USERS BY AREA, FY 90**

Area	FY 1990	Per Cent
OK-Okla. City	224,579	22.2
NV-Navajo	197,171	19.5
AB-Aberdeen	97,094	9.6
PH-Phoenix	95,280	9.4
AK-Alaska	92,930	9.2
AL-Albuquerque	67,453	6.7
PO-Portland	63,301	6.3
BI-Billings	53,949	5.3
BE-Bemidji	51,684	5.1
CA-California	45,693	4.5
NA-Nashville	31,087	3.1
TU-Tucson	17,966	1.8
TOTAL	1,038,187	

Source: FY 89 User, Adjusted by IHS, Rockville, MD, for Health Service Priority System (HSPS)

## Oklahoma: The Largest User Population of IHS Services

## **Oklahoma Still Ranks Last in Per Capita Expenditures**

Graph 1-3 shows that the Oklahoma City Area Office, which provides IHS services through clinics, hospitals and contract health services to more Indian people than any other area office, continues to receive funding which gives it the lowest level of per capita expenditures. According to the figures provided in Table 1-3, those expenditures of the Oklahoma City Area Office, on a per capita basis, are not only the lowest of any area office, they are \$348.35 less than the national average of all the area offices for per capita expenditures. This means that the per capita expenditures in the Oklahoma City Area are only 46.8% of the national average.

The Alaska Area Office, which has the highest per capita expenditures of all the area offices (\$1,568.73), has total funding which exceeds the Oklahoma City Area Office's funding by nearly \$39 million-- yet they provide services to 131,649 fewer people! Just to bring per capita expenditures up to the national average in the Oklahoma City Area Office will require an additional \$78,232,094 each fiscal year.

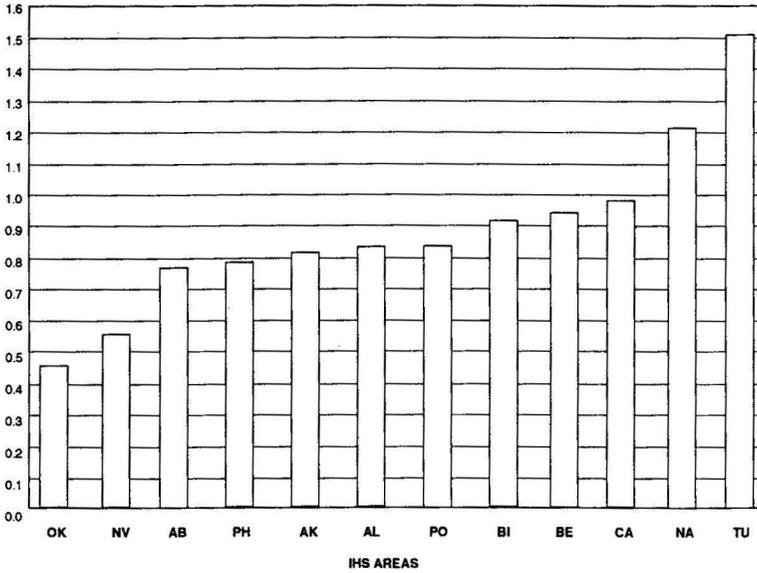
*\*\*Per capita expenditures of the Oklahoma City Area Office are \$348.35 less than the national average.*

*\*\*Per capita expenditures in the Oklahoma City Area are only 46.8% of the national average.*

**OKLAHOMA CONTINUES TO RANK DEAD LAST  
IN PER CAPITA EXPENDITURES  
FOR HOSPITALS, CLINICS AND CONTRACT  
HEALTH SERVICES**

GRAPH 1-4

**PER CAPITA FUNDING, FY 90**  
**Hospital and Clinics/CHS Recurring (in thousands)**



**Table 1-4**

Areas	Number of Active Users 1990	Total Hospital & Clinic and CHS (Recurring)	Per Capita
OK-Okla. City	224,579	\$146,586,427	\$456.25
NV-Navajo	197,171	\$139,963,786	\$557.28
AL-Albuquerque	67,453	\$68,072,690	\$764.32
CA-California	45,693	\$50,791,469	\$788.66
BE-Bemidji	51,684	\$54,009,102	\$805.19
PO-Portland	63,301	\$71,962,342	\$821.03
AB-Aberdeen	97,094	\$100,804,556	\$834.56
TU-Tucson	17,966	\$19,552,292	\$908.24
PH-Phoenix	95,280	\$110,890,995	\$944.79
BI-Billings	53,949	\$63,645,469	\$880.45
NA-Nashville	31,087	\$45,174,512	\$1,204.54
AK-Alaska	92,930	\$178,693,701	\$1,514.47
<b>TOTAL</b>	<b>1,038,187</b>	<b>\$811,970,800</b>	<b>\$782.10</b>

Source: Budget Review Book, December 1990, Table 6, Division of Resource Management, IHS, Rockville, MD

## **Recurring Funds for the Oklahoma City Area Office Place Oklahoma in Last Place in Per Capita Expenditures**

Recurring funds, which are those funds budgeted to each area office on an annual basis, give the Oklahoma City Area Office last place in per capita expenditures. Graph 1-4 shows the rankings of all area offices in recurring funds.

In Table 1-4, the per capita expenditures in this category place Oklahoma in last place, with per capita expenditures of \$456.25. That is \$325.85 less than the national average. To bring Oklahoma's recurring funding level just up to the national average will require an additional \$73,179,067 per year.

The Area Office with the highest per capita expenditures is again Alaska, with per capita expenditures of \$1,514.47. Alaska's annual per capita expenditures amount to \$1,058.22 per person more than Oklahoma's. Alaska, with only 8.9% of the Native American population in the United States, receives 17.3% of the IHS recurring funds. Oklahoma, with 21.6% of the total Native American population, receives only 12.6% of the IHS' recurring funds.

**\*\*Oklahoma, with 22.2% of the total U.S. population  
of Native Americans, receives only  
12.6% of IHS' recurring funds**

**\*\*Oklahoma's per capita expenditure of IHS recurring  
funds amounts to only 58.3% of the national average**

**\*\*More than \$73 million will be needed just to  
bring Oklahoma up to the national average**

Exhibit A

**PER CAPITA FUNDING, FY 92**  
 Services Appropriation Allocations (In Thousands of Dollars)

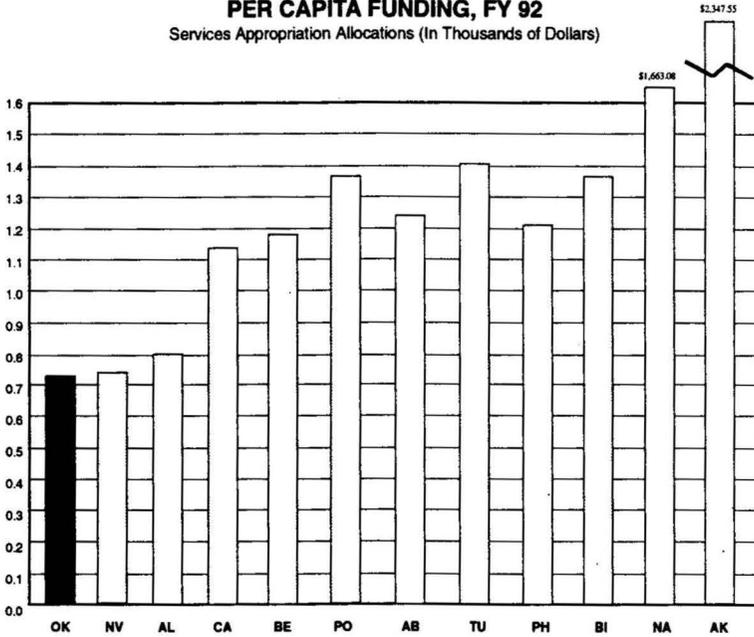


Table 1-4

POPULATION AND PER CAPITA FUNDING BY AREA, FY 90

Area	Number of Active Users 1990	Services Appropriations Allocations	Per Capita
OK-Okla. City	246,750	\$182,633,681	\$ 740.16
NV-Navajo	226,754	171,448,242	\$ 756.09
AL-Albuquerque	74,064	94,218,492	\$1,272.12
CA-California	58,011	66,343,100	\$1,143.63
BE-Bernidji	58,854	69,055,323	\$1,173.33
PO-Portland	70,553	96,433,697	\$1,366.83
AB-Aberdeen	103,615	128,472,774	\$1,239.91
TU-Tucson	18,799	26,658,764	\$1,418.09
PH-Phoenix	111,765	135,616,118	\$1,213.40
BI-Billings	59,324	81,529,393	\$1,374.30
NA-Nashville	34,167	56,822,615	\$1,663.08
AK-Alaska	87,225	204,765,436	\$2,347.55
<b>TOTAL</b>	<b>1,143,286</b>	<b>\$1,423,937,924</b>	<b>\$1,309.04 (Avg.)</b>

## **Oklahoma Ranks Lowest in Two out of Three Individual Funding Categories**

The Oklahoma City Area Office ranks lowest in funding, in comparison with all other IHS area offices, for alcoholism treatment and sanitation, and ranks third lowest in funding for the public health nursing program (See graphs 1-5, 1-6 and 1-7). Only the Alaska and California area offices receive less funding for the public health nursing program. All other areas receive higher levels of funding than the Oklahoma City Area for alcoholism and sanitation services, though the problems of alcoholism and sanitation are not demonstrably less in Oklahoma than in the other areas.

Table 1-5 provides the total budget levels for sanitation, public health nursing and alcoholism for all area offices, as well as per capita expenditures for each. In sanitation spending, the Oklahoma City area receives a little more than one-half of the national average. The same is true for public health nursing funding. Alcoholism funding for the Oklahoma City Area Office is about 2.5 times less than the national average.

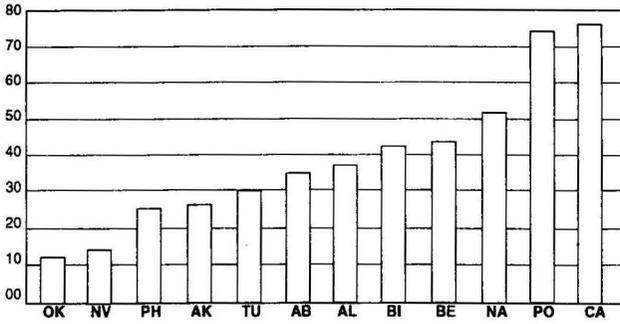
**\*\*In all instances of funding for alcoholism, sanitation and  
public health nursing, Oklahoma receives funding  
which is far less than the national average**

**\*\*The Oklahoma City Area Office's funding for alcoholism  
is about 2.5 times less than the national average**

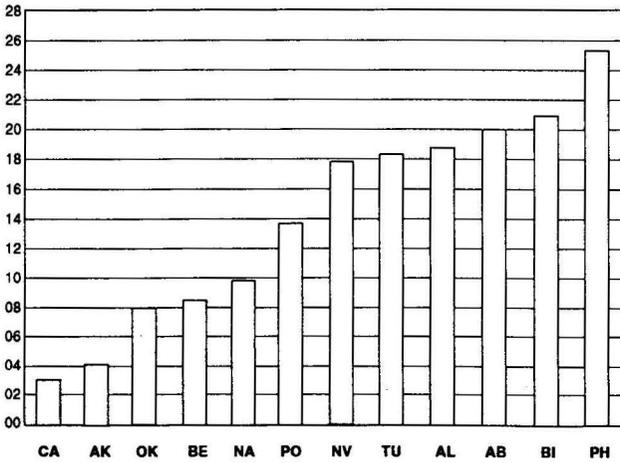
**\*\*Oklahoma ranks lowest in per capita expenditures  
for alcoholism and sanitation services**

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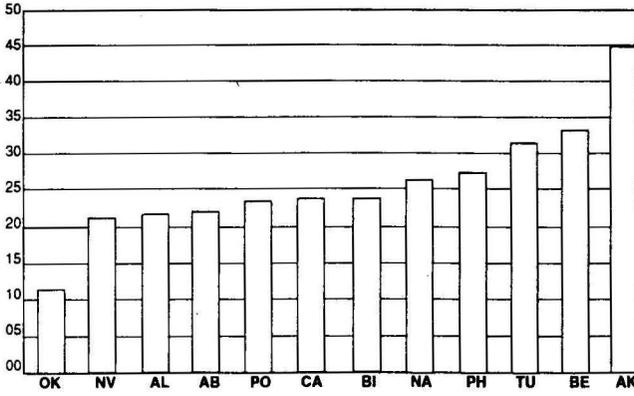
**GRAPH 1-5**  
**PER CAPITA FUNDING, FY 91**  
 Alcoholism (Recurring) (In Dollars)



**GRAPH 1-6**  
**PER CAPITA FUNDING, FY 91**  
 Public Health Nursing (Recurring) (In Dollars)



GRAPH 1-7  
PER CAPITA FUNDING, FY 91  
Sanitation (Recurring) (in Dollars)



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