

**A LESSON
IN
ADMINISTRATIVE TERMINATION:
AN ANALYSIS OF THE LEGAL STATUS OF
THE DELAWARE TRIBE OF INDIANS**

Second Edition

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INTRODUCTION

The Delaware Tribe of Indians of Eastern Oklahoma has spent the last two years researching and compiling sufficient documentation to demonstrate the historical and legal inconsistencies propagated by the Bureau of Indian Affairs in its 1979 administrative termination of the tribe. It is the Delaware Tribe's belief that through this extensive documentation of events, the Department of Interior will be able to re-examine the incongruous actions of certain Bureau officials taken since 1979 which have served to yet again betray this nation's first treaty tribe.

The Delaware Tribe of Indians is the main body of the Delaware Tribe which was removed to Indian Territory from their reservation in eastern Kansas in accordance with the Treaty with the Delawares of 1866. Pursuant to the terms of the Delaware treaty of 1866 and the Cherokee treaty of 1866, the Delawares entered a contract with the Cherokees for the purchase of a new reservation within the old Cherokee Nation boundaries wherein the tribe would be relocated and could preserve its tribal organization. In addition, the Delawares paid a substantial amount of money to enable their members and their descendants to have the property and political rights of native Cherokees. In total, the Delaware paid the Cherokee Nation over a quarter of a million dollars in 1867 to allow 985 Delawares to remove to a 157,600 acre area where Delawares could preserve their tribal organization within the Cherokee Nation. The tribe has resided in the northeastern counties of Oklahoma since that time. Current tribal membership numbers 10,014; approximately half of the membership resides in northeastern Oklahoma. The Delaware tribal headquarters is located in Bartlesville, Oklahoma, the namesake city of the family of the former tribal chairman, Joseph Bartles.

This historical treaty tribe had maintained a continuous government to government relationship with the United States until May, 1979, when the Bureau of Indian Affairs arbitrarily and unilaterally terminated its tribal status. In its last treaty of 1866, Congress expressly reaffirmed the tribe's sovereignty and the commitment of the U.S. to protect and defend the rights of the tribe. Congress has never explicitly or implicitly passed any legislation limiting the inherent sovereign authority of the tribe. On the contrary, since 1866, Congress has repeatedly recognized the Delawares as a political tribe, possessing inherent governmental powers over its membership. Moreover, the Department of Interior even argued before the Supreme Court in 1977 that the federal government has never abandoned its special relationship with the Delaware Tribe of Indians, and that the tribe is a "federally recognized tribe", possessed of the same political powers as any other tribe in Oklahoma. Based on the arguments of the Department of Interior, the Supreme Court made the finding that the Delaware Tribe has maintained a continuous tribal existence, and today, is "a federally recognized tribe."

Rather than acknowledging its illicit administrative termination of the Delaware Tribe in 1979, the Bureau of Indian Affairs has sought to rewrite the history of the tribe, and finesse a story of self-termination occurring in 1867. This appalling rewrite of history, in contradiction to the truth evidenced in thousands of public governmental documents, was performed for the sole purpose of justifying otherwise illegal actions.

Prior to 1991 the tribe had been powerless to fight this nightmare, as the Bureau of Indian Affairs had refused to release millions of dollars of programming monies expressly appropriated for the Delaware Tribe in 1972. The appropriation statute required that before the tribe could receive its programming monies, the Delawares had to organize a legal entity which would adequately protect the interests of its members. However, for ten years the BIA maintained that the only governing document that would

adequately protect the interests of its members was one that would explicitly disclaim the tribe's sovereign status. In 1990, the Delawares capitulated and adopted a document which stated that nothing therein served to recognize or deny the recognition of the tribal status of the Delawares.

Upon surveying the forgoing discussion, it is our sincerest wish that the Department of Interior will support the tribal leaders in seeking the most expedient means of reversing this administrative termination, and assist in the reaffirmation of the sovereignty of the Delaware Tribe of Indians.

A REVIEW OF THE LEGAL STATUS OF THE DELAWARE TRIBE OF INDIANS

In order to thoroughly understand the continuity of the Delawares tribal status, the tribe has compiled this historical review spanning from first contact to the present. The BIA, however, has only questioned the legal status of the tribe since its removal to lands within the old Cherokee Nation boundaries. Therefore, this review will concentrate on the primary events surrounding the removal of the tribe to Indian Country, the subsequent recognized continuance of tribal existence, and the administrative termination of the tribe in 1979.

I. THE LENAPE PEOPLE, 1500-1829

At the time of first contact with the Europeans, the Lenape people were residing along the northeastern coast in parts of the present day states of Pennsylvania, New Jersey, Delaware, and New York.¹ The Europeans gave varying names to these Algonquian speaking people, but after 1700 the colonist eventually adopted the name the "Delaware Indians" after the middle band of the tribe which resided along the banks of the Delaware River. The Indians have always identified themselves as the Lenape, meaning the original people. All of the Algonquian tribes respectfully referred to the Lenape as the "Grandfather" tribe.²

When the Europeans arrived, the Delawares were living in three contiguous territorial areas, defined primarily by dialect. The central group, the Unami (people down the river), resided on the middle Delaware River, controlling nearly all of New Jersey, parts of Pennsylvania and the lower Hudson River; the Munsees or Monsys (people of stone country) occupied the northern territory on the lower Hudson River and the Upper Delaware River; the Unalachtigo (people who live near the sea) resided to the south.³ The Unami, Munsee, and Unalachtigo territories were further subdivided by smaller communities or villages. Although of distinct dialect, all three groups shared common lineage, customs, and political decisions.⁴ The Unami group ultimately emerged as the main body of the Delaware Tribe.⁵ Although during their removals to the west, many of the Munsees broke off and migrated into New York, Wisconsin, and Canada, identification and communications with the main Delaware Tribe were maintained.⁶ The Unalachtigo were eventually absorbed by the Unami during the removals.⁷

Prior to their removal from the east coast, the political structures of the Delawares were highly decentralized.⁸ Each village or community appeared to have its own leaders or chief who acted independent of the others; yet, sufficient cohesion existed among all the villages of the three groups that the Europeans recognized them as one people.⁹ In addition, the Delaware groups acted in concert during hunting drives, for collective defense, and in relations with other tribes.¹⁰ Although egalitarianism dominated the tribal organization and decisions of the tribe were made collectively in general council, the various villages also had chiefs and councils.¹¹ The chiefs, however, were limited by the advice of councils and the elders; their authority flowed only from the power to persuade, and a less than persuasive chief would be replaced.¹² When a singular voice was necessary, the chief with seniority, or commanding the most respect, would act as head chief on behalf of all the leaders.¹³ In times of war, a war chief would also be selected based on his proven abilities in battle.¹⁴ Though decentralized, the Delawares nevertheless maintained an interwoven social and political cohesion through membership in matrilineal clans.¹⁵

First recorded contact with the Europeans is believed to pre-date the sixteenth century. For the Delawares, the arrival of the Europeans initially meant a new source for fur trade. However, as the Swedes, the Dutch, and the English began to battle over control of the Mid-Atlantic coast, the Delawares felt the pressures to move west.¹⁶ In the late 1600s, many of the Delaware villages were already migrating west to the Ohio valley.¹⁷ By 1751, the majority of the tribe had settled in eastern Ohio at the request of the Wyandots.¹⁸ In 1770, still more of the tribe's villages moved to lands on the White River in Indiana at the invitations of the Miami and Piankashaw Indians.¹⁹ Yet another small band of Delawares moved to Cape Girardeau in southern Missouri in 1793, and settled on a tract of land which had been granted to them by the Spanish.²⁰ This "Absentee Delaware" band later migrated to Arkansas, Texas, and Western Oklahoma, and today comprise the federally recognized Delaware Tribe of Western Oklahoma.²¹ Under the Treaty of Greenville in 1795, the main body of Delawares relinquished their claims to land in Ohio and moved to Indiana to join the rest of the tribe on the White River.²²

Increasingly weary of the problems associated with white settlement, the tribe agreed under the Treaty of St. Mary's of 1818 to relinquish all their claims to the lands in Indiana in exchange for new lands west of the Mississippi.²³ Pursuant to the 1818 treaty, the tribe was moved to southern Missouri; however, the Delawares found the area unsuitable due to poor natural resources and increasing hostilities with other tribes. The tribe therefore entered a supplemental treaty in 1829 which provided for the Delaware removal to a new, permanent, reservation in northeastern Kansas on the north bank of the Kansas River between Lawrence and Leavenworth.²⁴

By the early nineteenth century, the Delaware Tribe of the west scarcely resembled the peaceful and prosperous Lenape people of the east. Two-hundred years of forced removals, disease, acculturation, and wars had ravaged the social, religious, and political structures of the Delawares.²⁵ Of the estimated 20,000 Lenape people occupying the east coast,²⁶ only 2,000 Delawares were accounted for in the removal from Indiana to Missouri.²⁷ The Delaware societal structures had deteriorated almost beyond recognition. A natural response to the chaos was the development of a centralized authority in a head chief²⁸. In 1778, the three matrilineal clans of the Wolf, the Turtle, and the Turkey, re-emerged to dominate the political organization of the tribe.²⁹ Each of the clans were represented by a chief, and of the three chiefs, the "first-among-equals" served as head chief.³⁰ Of primary significance, was the ascendancy of Kik Tha We Nund (William Anderson) of the Turtle Clan to head chief in 1806.³¹ Chief Anderson wished to unite his scattered people, revive the traditional ways, and settle them far beyond the influences of white civilization.³² Anderson recognized that the centuries of removal and acculturation had broken the spirit of his people; the only possible hope for his tribe was to move as far west as possible where the tribe could heal from the upsetting influences of the white world. In particular, Chief Anderson opposed the work of the missionaries who sought to further alienate his people from the tribe.³³

By 1831, Anderson had led the nucleus of the tribe to Kansas, and continued to try to bring the other alienated Delaware settlements in Ohio, Canada, Arkansas, and Texas to the new reservation to join the tribe.³⁴ Chief Anderson did have some success in reuniting the fragmented tribe; however, the great chief died soon after the removal to Kansas and did not get to fully realize his goal of total reunification.

II. THE DELAWARE TRIBE IN KANSAS, 1829-1866

Under the supplemental Treaty of 1829, the tribe was resettled on the forks of the Kansas and Missouri Rivers on a reservation which covered some two million acres.³⁵ Before his death, Chief Anderson had made progress in revitalizing the tribe, enabling the Delawares to again stand as the "grandfather" tribe among the removed eastern tribes.³⁶

The Delaware political structures remained much the same during the early years in Kansas. However, throughout the nineteenth century the Indian agents of the Delaware agency increasingly sought to undermine the ways of the traditionalist in order to better control the tribe. After the death of the great Chief Anderson in 1832, the next "first among equals" of the clan chiefs to ascend to head chief was William Patterson.³⁷ The tribe's clan chiefs or sub-chiefs included Captain Ketchum of the Turtle Clan, Na-coman (Nat Coming) of the Wolf Clan, Ka-cock-ta-wha (Big Man) of the Turkey Clan.³⁸ Nat Coming of the Wolf Clan succeeded Patterson as "first among equals" to head chief in 1839.³⁹ In 1849, Captain Ketchum (Turtle) succeeded Nat Coming to head chief; the chiefs of the clans then included, Anderson Sarcoxie (Turtle), Ne-con-he-cond (Wolf), and Ka-cock-ta-wa (Turkey).⁴⁰

Upon the death of Captain Ketchum in 1857, one of these three clan chiefs should have ascended to head chief; however, the tribe's U.S. Indian agent intervened and requested that the government recognize Ketchum's successor to the Turtle Clan, James Conner (grandson to Chief Anderson), as head chief.⁴¹ James Conner refused, however, claiming that the tribe would not accept him as head chief, but suggested that his estranged brother, John Conner, might agree to the government's proposition.⁴² Indian Agent B.F. Robinson wrote to the Superintendent of Indian Affairs, stating, "...I would be pleased the Indian department would authorize me to treat him [John Conner] as principal chief."⁴³ John Conner, residing for some thirty years away from the tribe, agreed to the government's proposal and returned to Kansas to take his position as head chief; apparently, his appointment was meant to bring some "civilized" influences to the tribe.⁴⁴

During this period, the U.S. Indian agents found the Christian elements of the tribe more palatable and began to act to undermine the traditional leaders actions in favor of the minority Christian element. Of primary significance was the U.S. appointment of the mixed-blood, Christian convert Charles Journeycake to Chief of the Turkey Clan in 1861.⁴⁵ It is clear the tribal leaders did not accept Journeycake as easily as the appointment of John Conner. Under tribal law, Journeycake could not even be a member of the clans because his mother was not a Delaware;⁴⁶ all clan membership and privileges were derived from matrilineal descendance. The tribe's cool reception to this intrusion is evidenced in the signatures of the Treaty of 1861, wherein Journeycake signs last, without any designation as chief or tribal delegate. The Treaty was also signed by John Conner, as head chief, Anderson Sarcoxey [Sarcoxie], chief of the Turtle Band, Ne-con-he-con, chief of the Wolf Band, and James Conner, delegate.⁴⁷

Then in 1864, Journeycake's long-time friend and in-law, Baptist missionary Reverend John Pratt, was appointed as Indian agent for the Delaware Tribe.⁴⁸ Pratt's influence in Delaware affairs as a missionary was already well known, and the local newspaper openly criticized the appointment in that Pratt had a history of leaning toward his own financial self-aggrandizement. The Leavenworth Daily Bulletin lamented:

The removal of Mr. Johnson, and the appointment of Mr. Pratt are significant facts that help to convince us that our conjectures are right...the fraud is not yet complete. The Indians have a few more acres of land. General Lane, the secretary, and the railroad men want them. They have concluded to accomplish their object through agent Pratt... We remember well that Mr. Pratt denounced the original treaty with the Delawares, by which they donated their lands to the railroad company, as a swindle, and was quite indignant over the matter until a quarter section of land was deeded to him by the company, and secretary Usher sold him another quarter for the low sum of two dollars per acre.⁴⁹

Pratt and Journeycake had been working in tandem for nearly twenty years to convert the tribe to their Baptist Christianity.⁵⁰ Just as old Chief Anderson had feared, the work of the missionaries served to further destroy the tribe's traditional social structures, resulting in fragmenting allegiances and alienation among the tribal members. Through the missionary schools, the children were lectured daily on the evils of their traditional ways. The elders and the Clan chiefs believed their children were being forced to abandon the tribe's customs and beliefs; references to the traditional Delawares as "non-civilized" or "heathens" were particularly offensive.⁵¹ As with all historical attempts to assimilate the American Indians, the missionaries were somewhat successful in destroying the natural harmony of the tribal order and beliefs, but were not as successful in supplanting their own foreign belief systems. In the face of the breakdown of the natural social orders, the tribal council was forced to adopt a code of laws in 1866 to bring some sort of artificial order to the tribe.⁵²

After settlement in Kansas, the Delawares initially resisted the missionaries and the government's efforts to create a sedentary, agricultural existence. The Delawares preferred hunting, trapping, and trading, and continued to send hunting parties deep into the west to find new sources of game. The Delawares became legendary for their hunting, scouting, and military prowess, their services often sought by the U.S. government.⁵³

Prior to their removal to Kansas, the U.S. government had assured Chief Anderson that the removal would be the last, and that the government would protect the rights of the Delawares to their new reservation against infringements by other tribes and white settlers. However, with the U.S. purchase of California, Oregon, and New Mexico, white settlers would soon be overrunning the Indian Territory; the U.S. determined that for their own protection the Indians should be removed from the direct path of the settlers. As early as 1853, Congress authorized the President to negotiate with the Indians for their removal.⁵⁴ At this point the Delawares vehemently opposed another removal or the creation of a state in Indian Country. In an April, 1854, letter to the President Pierce, Chief Ketchum reminds the government that "...our Great Father promised us solemnly that he would never again take this Country from us either by purchase or no other way because this was the last good place that he could ever move his Delaware Children to, therefore he would never again remove them out of this place."⁵⁵

Nevertheless, on May 6, 1854, the Delawares were forced to agree to allow the U.S. to offer the majority of the Delaware reserve for public sale which eventually amounted to some 558,555 acres.⁵⁶ The U.S. breached this treaty, however, by selling the lands privately, rather than at public auction, resulting in a fraud of some \$1.3 million dollars.⁵⁷ In addition, the U.S. swindled the tribe out of the 1,000,000 acre hunting strip for a mere \$10,000.⁵⁸ A hundred years later, the Indian Claims Commission determined that the same land was actually worth sixty times that amount in 1854.⁵⁹ However, the Delawares did

manage to reserve a ten mile by forty mile strip in Kansas as their "diminished reserve." The U.S. rationalized to the Delawares that the government could better protect the tribe if they occupied a smaller area. However, the depredations against the Delawares did not cease. In an 1858 letter to President Buchanan, the Delawares chiefs reported that, "Since the opening of the Territory, thieves (white men) have come in and are constantly stealing our horses, and in many instances have stripped some of our people of everything they owned."⁶⁰ In addition to stealing their land, squatters also usurped Delaware livestock, cut down their timber to build their homes, and otherwise harassed and persecuted the tribe. The Delawares had no recourse in the courts as they were not citizens; they took no action personally for they feared the white vigilante groups who would come and take all their possessions and burn their houses to the ground.⁶¹

Under increasing pressure from the railroads, the Delawares entered yet another treaty with the U.S. in 1860 which provided for the allotment in severalty of the ten mile by forty mile diminished reserve, and the remainder of the reserve to be sold directly to the Leavenworth, Pawnee, and Western Railroad Company under the supervision of the government.⁶² The treaty specified that, although allotted in severalty, individual Delawares did not receive a fee patent, and the lands were not alienable. In addition, eighty acre allotments were also set aside for those Absentee Delawares residing to the south who were expected to rejoin the tribe.⁶³

In 1861, the tribe signed a supplemental treaty with the U.S. which provided for the additional sale of any surplus Delaware lands to the railroad, and authorized the railroad to issue bonds and mortgages on the lands of the 1860 treaty to raise monies already due to the tribe.⁶⁴ The 1861 treaty also provided that if the railroad should default on the purchase of lands, the lands would again become the sole property of the U.S. in trust for the Delawares.⁶⁵

Although the Delawares had given as much as they could to appease the railroads and the government, the tribe was not to be left in peace. The depredations climaxed in the spring of 1860 and the Delawares held a number of council meetings to discuss the state of the tribe. Indian Agent Sykes reported:

...Many things tended to bring about their discontentedness. This Winter they have had a great many Ponies stolen from them, not a neighborhood or settlement has escaped the thieves. They are out of money, and have gone to the extent of their credit with their merchants. The white people around them are continually annoying them with threats, telling them they cannot nor shall not long own so much land here among them. People are cutting timber continually, and hauling it off, and according to Judge Pettit's (the Judge for this district) decision they cannot be punished for it....⁶⁶

After several general councils on the issue of whether to move to the Rocky Mountains, the southwest, or to the far west, the tribe voted in May, 1860, to leave their Kansas reservation.⁶⁷

III. DELAWARE REMOVAL TO INDIAN TERRITORY, 1860-1868

Although the tribe had formally voted to leave the Kansas Territory in early 1860, favoring Cherokee lands for their new reservation, the issue was diverted with the outbreak of the Civil War. The Delawares initially sought to persuade the tribes in Indian Country, especially the Cherokees, to remain neutral as the Delawares had determined to do.⁶⁸ The Creeks had even been promised Delaware protection against the southern sympathizers if they would remain neutral.⁶⁹ By 1862, however, the Delaware reservation had already been subject to attacks by both white and Indian secessionist - generating sentiments for revenge. The breaking point came with the arrival of the southern Indians, including 200 Absentee Delawares, from the Washita agency relating stories of starvation and robbery of all their possessions at the hands of the southern sympathizers.⁷⁰ In response, over eighty percent of the Delawares' able bodied men volunteered for service in the Union Army.⁷¹ In 1863, the Commissioner of Indian Affairs, William P. Dole, proclaimed that "no community within the limits of the loyal states can show a better record than the Delawares."⁷²

As early as 1860, Delaware tribal leaders had been visiting the neighboring Choctaw and Cherokee Tribes to discuss the purchase of lands within Indian Territory.⁷³ Residing on another tribe's land was not novel to the Delawares; during their removals to the west, the tribe was first invited by the Wyandot's to reside on their lands in Ohio, and then the Piankashaws and Miamis to reside on their lands in Indiana.⁷⁴ Much to the dismay of these tribes, the Federal government later gave the Delawares valuable consideration to remove from these lands - even though the tribe had no title to relinquish. In 1853, the Absentee Delawares, under the leadership of John Conner (head chief of the main body by 1857), had entered into an agreement with the Choctaw Nation to allow the Absentee Delawares to reside in their Chickasaw District⁷⁵ at no cost to the Delaware, provided that the Absentees would be subject to all the privileges, penalties, and laws of the Choctaw Nation.⁷⁶ Neither the main body of the Delawares, nor this band of Absentees, were ever considered to have given up their tribal sovereignty or identity when settling among the other tribes.⁷⁷ It was in light of these experiences that Chief Anderson Sarcoxie and several councilmen visited the Choctaw and Cherokee Tribes in 1860 with the ~~intent of purchasing lands from the tribes with the similar understanding that the Delawares would also~~ be subject to the privileges, penalties, and laws of those tribes.⁷⁸

However, because of the southern Indians allegiance against the federal government, a Delaware General Council was held in May, 1863, resolving to request that the government allow Anderson Sarcoxie to explore the Rockies rather than Indian Country.⁷⁹ Commissioner of Indian Affairs, William P. Dole, replied that the government did not believe the climate in the Rockies was suitable, and advised that the U.S. government greatly desired the removal of the Delawares from Kansas, "provided that they can find a location in Indian Country that can be obtained as a permanent home."⁸⁰

Although the U.S. did not specifically demand that the Delawares find a new reservation on Cherokee lands, it became readily apparent that this area had been set aside by the U.S. for the Delaware resettlement. As early as April, 1864, Agent Pratt received a telegram from Commissioner Dole directing Pratt to "[a]rrange to bring here soon the Delaware Chief and two councilors with your interpreter for the purpose of negotiating a further treaty."⁸¹ One month later, in May, 1864, Cherokee Chief, John Ross, wrote to Commissioner Dole stating, "[w]e have ... expressed a willingness to receive ...the

Delawares...[a]nd we are now ready to negotiate a Treaty with the Government that will accomplish that object, if agreeable to the Government and the Delawares....⁸²

Accordingly, Sarcoxie made yet another trip down to the Cherokee Nation in the spring of 1864.⁸³ During their negotiations the Cherokees told Sarcoxie then that they were not willing to sell outright any of their lands south of Kansas, but that the Delawares could settle on Cherokee land upon the following terms: 1) That the Delawares invest money equal to that invested by the Cherokees for the annuity; 2) That the Delawares pay the Cherokees a bonus for the right to settle on the lands; and 3) That the Delawares would enjoy equal rights with Cherokees as to laws, votes, and schools.⁸⁴ To these terms the Delawares replied, "none of them would suit our people" and that "we consider our work here finished, further deliberations unnecessary."⁸⁵

On June 7, 1864, the U.S. government warned the Cherokees that "in case an arrangement cannot be effected whereby the Delawares shall obtain a home in the Cherokee Country upon terms satisfactory to them, our negotiations may be considered at an end."⁸⁶ To this communication, Cherokee Chief Ross replied:

...We are fully apprised that the chief object with the Government in opening negotiations with us was to provide a home for the Delawares in the Cherokee Country south of Kansas and their removal from that state... the Cherokees were not willing to sell any portion of their domain that lies south of Kansas, they were willing to receive the Delawares into their Country upon terms just and liberal (emphasis added).⁸⁷

The U.S. government apparently was severely disappointed with the Cherokee's decision to fight on behalf of the Confederates. In a letter to a Union military commander regarding the Indians sentiments about the Civil War, Indian Agent R.H Carruth reports, "I can not believe John Ross, of the Cherokees, has done what the papers state. If so, all there is left to do is kindle civil war over his head."⁸⁸ These correspondences indicate that the U.S. had a two-fold purpose for negotiating a post-Civil War treaty with the Cherokees: 1) to punish the Cherokees for fighting on the side of the confederacy; and 2) to remove the Delawares from Kansas to Cherokee country as soon as possible.

In mid-June, 1864, the Cherokees unilaterally submitted a proposed treaty to the U.S. which was very similar to the treaty made with the Confederate government; however the U.S. refused to acknowledge or act upon the treaty.⁸⁹ Under the circumstances, the U.S. government felt the terms of the Cherokee's proposed treaty gave the Cherokee Nation more than it deserved, especially in light of the questionable legitimacy of the Cherokee government after its allegiance with the Confederacy.⁹⁰ Furthermore, the proposed treaty only reiterated the same terms for relocating the Delawares as did their earlier offer which the Delawares had unequivocally rejected; the U.S. government had already informed the Cherokees that until terms were reached for the Delaware removal which were satisfactory to the Delawares, the negotiations would be terminated.⁹¹

In contrast, the Delawares were invited to Washington, D.C., in June, 1864, where Agent Pratt

and Commissioner Dole negotiated a treaty for the removal of the Delawares from Kansas.⁹² The urgency of the removal on terms satisfactory to the Delawares is better understood in light of the fact that Interior Secretary Usher was the controlling shareholder in the company of Usher, Hallett & Co. which allegedly was trying to secure the remaining Delaware lands on behalf of the Union Railroad (formerly called the Leavenworth, Pawnee, and Western Railroad Co.), the railroad still not having paid the Delawares for lands purchased under the Treaties of 1860 and 1861.⁹³ To exacerbate an already putrid situation, Agent Pratt was later subpoenaed to give testimony before a Kansas state court concerning his connections to the railroad interests and the disposal of Delaware lands.⁹⁴ Thus, the circumstances surrounding this 1864 treaty were suspicious at best. This may explain why the Senate did not take action on the Treaty for nearly two years, and then the Senate declined to ratify the same just months before a new Delaware Treaty of 1866 was drafted and ratified.⁹⁵

The Delaware Treaty of 1866

On July 4, 1866, the federal government and the Delaware leaders concluded the Treaty with the Delawares, 1866, 14 Stat. 793, in Leavenworth, Kansas.⁹⁶ Special Commissioner, W.H. Watson, reported that the negotiations were delayed pending the arrival of Chief Anderson Sarcoxie, detained due to poor weather.⁹⁷ The federal government's respect for the old chief is significant in light of Agent Pratt's later attempts to discredit Sarcoxie as "those of the unfettered class."⁹⁸

By this 1866 treaty, the federal government promised that the Delawares would be removed to a reservation of their own in Indian Country, in exchange for the sale of their lands in Kansas to the Missouri River Railroad Company. Article 4 of the Delaware Treaty provided that the U.S. agreed to sell to the Delawares a "tract of land in one compact form as practicable" which would be equal in quantity to 160 acres for each man, woman and child who removed to Indian Country.⁹⁹ In addition to these lands, the U.S. was to give to the tribe twenty-three sections of land within their new reservation absolutely free to compensate the tribe for prior treaty violations.¹⁰⁰ The U.S. further guaranteed the Delawares peaceable possession of their homes, and protection from hostile Indians and internal strife and civil war, and full and just participation in any general council or territorial government established for the tribes residing in Indian Country.¹⁰¹

~~Of utmost significance, however, was that Article 11 of the treaty expressly reaffirmed the tribe's domestic-dependant status, and the commitment of the U.S. to protect and defend the rights of the tribe.¹⁰²~~ The Treaty with the Delawares was ratified on July 26, 1866, and proclaimed by the President on August 10, 1866. This renewed commitment has never been repudiated by Congress in any legislation since 1866.

The Cherokee Treaty of 1866

Upon completing the Delaware Treaty, the U.S. immediately turned to finalize an arrangement with the Cherokees to allow for Delaware removal to Cherokee lands. As posited above, the federal government had two purposes in negotiating the Cherokee Treaty of 1866: 1) To punish the Cherokee Nation for signing a Treaty with the Confederate government, forsaking its allegiance to the U.S.; and 2) To relocate the Delawares on Cherokee lands.

The U.S. made it clear that the Cherokees needed to reach an agreement with the Delawares on

terms that were favorable to the tribe loyal to the U.S. government.¹⁰³ Recall that the earlier terms that had been proposed by the Cherokee Nation looked to the incorporation of the Delawares as individuals into the Cherokee Nation, and these terms were unequivocally rejected by the Delawares.¹⁰⁴ Accordingly, the Cherokees modified their terms and submitted the following proposal to Congress:

The Cherokees will sell to the Delawares lands for their permanent homes upon these conditions, viz: That the Delawares will not sell these lands to the Government, or to other Indians, without the consent to the Cherokees; and the Cherokees will consent that the Delawares shall be governed by their own laws and customs, have the benefit of all their annuities and property, and will allow them a proper representation, according to numbers in their Legislature, and give them the benefit of their laws and customs, if it shall be the pleasure of the Delawares at any time to accept the same.¹⁰⁵

The new proposal specifically recognized the continued existence of the Delaware tribe as a sovereign entity residing on lands owned in common with the Cherokee Nation. This concept was nearly identical to the arrangement negotiated by the U.S. in 1855 for the Chickasaws residing on Choctaw lands.¹⁰⁶ With this proposal in mind, the U.S. and Cherokees drafted a treaty which would provide for the removal of the Delawares to the Cherokee Nation.

All of the 1866 treaties between the U.S. and the Five Civilized Tribes contained provisions for the sale and relocation of other tribes on their lands, however, the Cherokee Treaty contained a unique provision to allow the Cherokees to retain ownership of its lands east of the 96', while allowing tribes settling on these lands to maintain their "tribal organizations."¹⁰⁷ This unique provision was provided for in Article 15 of the Cherokee Treaty:

The United States may settle any civilized Indians ...within the Cherokee country, on unoccupied lands east of the 96', on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz:...

And should any such tribe, thus settling in said country, **decide to preserve their tribal organization, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation**, they shall have a district set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation.... And the said tribe **thus**

settled shall also pay into the national fund
a sum of money, to be agreed upon by the respective parties, not greater in proportion to the whole existing fund and the probable proceeds of the lands, herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees (emphasis added).¹⁰⁸

Thus, Article 15 provided that should a tribe settling east of the 96' decide to "preserve its tribal organization", that tribe would have to: 1) Pay a proportional amount into the national fund; and 2) Pay for such lands equal to 160 acres for each man, woman, and child to be set aside for the use of said tribe to practice its customs, laws, and usages, at a price agreed to by the tribes and approved by the President. Note, however, that even if said tribe preserved its tribal organization, the tribe would pay into the Cherokee National Fund, and "thence afterwards they would enjoy all the rights of native Cherokees." Note, also, that this language for exercising their own laws, etc., correlates with the Cherokee terms for resettlement of the Delawares which had been submitted to the U.S. Congress.¹⁰⁹ In addition, the setting aside 160 acre allotments for each man, woman, and child also directly tracts the language of art. 4 of the Delaware Treaty of 1866. Thus leaving little doubt that this unique provision in the Cherokee Treaty was drafted solely to satisfy the requirements of the Delaware removal treaty.

Of primary significance is the use of the language, "preserve tribal organization, and to maintain their tribal laws, customs, and usages" as the same language was utilized in all the 1866 Five Civilized Tribes treaties to indicate the retention of national identity and sovereignty.¹¹⁰

Article 15 of the Cherokee Treaty also provided that a tribe could choose to abandon its tribal organization. If a tribe so chose to abandon its tribal organization (terminate itself), then that tribe need only pay a proportional amount into the Cherokee national fund as the tribe's numbers sustained to the whole number of Cherokees, and such a tribe's members would then be "incorporated into and ever after remain a part of the Cherokec Nation."¹¹¹

In summary, under Article 15, a tribe settling east of the 96' could seek to preserve its tribal organization, or the tribe could terminate itself and become completely merged with the Cherokees. In order to preserve its tribal organization, the tribe would have to buy a tract of land from the Cherokees upon which to exercise its own jurisdiction, and also pay a proportional amount into the Cherokee National fund to "enjoy all the rights of native Cherokees." If the tribe chose to abandon its tribal organization, the tribe need not pay for land, but only pay a proportionate amount into the Cherokee National fund, and said tribe would then "be incorporated into and ever after remain a part of the Cherokee Nation."

It is interesting to note that under Article 15 of the Cherokee Treaty, the U.S. could settle such tribes even without the consent of the Cherokee Nation.¹¹² Also note, that the terms for removal under Article 15 were not discretionary, and the President was authorized to approve those terms agreed upon by the tribe "which shall be consistent with the following provisions..."(emphasis added).¹¹³ Thus, the President was precluded by the terms of the Cherokee Treaty from approving any agreement that did not comport with the one of the two provisions of Article 15.

Although, the Cherokees did not originally envision selling any of their lands south of Kansas, Article 16 of the Treaty did provide that those lands west of the 96° longitudinal would be sold in fee simple - the Cherokees retaining no title.¹¹⁴ Apparently, however, these lands were not as well suited for agriculture, and thus, not suitable for the Delaware needs.¹¹⁵

The Treaty between the Cherokees and the U.S. was completed on July 19, 1866, two weeks after the Delaware Treaty with the U.S., and ratified, July 27, 1866, one day after the Delaware Treaty. With both the Delaware and Cherokee Treaties finally completed, the U.S. immediately acted to remove the Delawares from their home in Kansas to a new reservation in the Cherokee Nation.

The Articles of Agreement of 1867 between the Delaware and Cherokee

On October 13, 1866, Agent Pratt, under the direction of Commissioner Cooley, wrote to Delaware Chief John Conner and Assistant Chief Charles Journeycake, directing them to go to Cherokee Country to pick out their new reservation.¹¹⁶ Pratt included in his letter, maps for unoccupied lands in Indian territory, a copy of the Delaware Treaty, a copy of the Cherokee Treaty, and instructions for the Delawares to pick out blocks of land in quantities of 80 or 160 acre allotments.¹¹⁷

Again, the U.S. had already fully concluded that the Delawares would be settled with the Cherokees, urging them to go and make their selection of lands. Accordingly, the Delawares held General Council on October 13, 1866, and selected the Delaware delegates and giving them "full and complete authority to select and secure new homes in Indian Country for said tribe, and that all their acts and doings in these premises are valid and binding upon said Delaware Indians."¹¹⁸ The appointed delegates included, John Conner, Anderson Sarcoxie, and Charles Journeycake, as chiefs, Joseph Armstrong and Andrew Miller, as councilors, and Isaac Journeycake, as interpreter.

Similarly, on November 7, 1866, the Cherokee National Council passed a resolution giving authority to the "Principal Chief, the Assistant Chief, and three others to enter an agreement with the Delawares Delegation in reference to allowing the Delawares to select a reservation from our lands lying east or west of the 96th degree of longitude...."¹¹⁹

In November, 1866, the Delaware delegation left Kansas to meet with the delegates of the Cherokee Nation. In possession of the 1866 treaties, and U.S. maps indicating the unoccupied lands of the Cherokee Nation, the Cherokee and Delaware delegates, possessing full authorization to bind the tribes, surveyed lands both east and west of the 96° longitudinal, and entered the following agreement:

The undersigned delegates from the Delaware Indians, in company with the delegates on behalf of the Cherokee Nation, have examined all the Cherokee Country west of the 96th degree that they thought would be suitable for the Delawares to settle in, and have decided that there is not sufficient good land in a body west of that line, that could be cultivated to meet the wants of the people and have, therefore, **preserving their tribal organization**, selected that part of the Little Verdigris or Canae, beginning at the Kansas line where the 96th meridian

crosses the same and running thence east ten miles; thence south thirty miles; thence west ten miles; thence north to the place of beginning, subject to the conditions mentioned in the Cherokee Treaty with the U.S. of July 19, 1866.

Under the provisions of said treaty, the price for the use of the same has to be agreed on by the two parties, subject to the approval of the President of the U.S. (emphasis added).¹²⁰

Hence the Delaware delegates, in company with Cherokee delegates, electing to preserve their tribal organization, chose a ten by thirty mile strip of land on the Caney River, or 192,000 acres as their new reservation. All that needed to be determined was the price. Pursuant to the Delaware Treaty of 1866, and in keeping with the Treaty of 1860, the 192,000 acres would provide 160 acre allotments for every man, woman, and child (1,000) in Kansas, and also provide the same for the some 200 Absentee Delawares still residing to the south on lands of other tribes.¹²¹

Upon returning home to Kansas, the tribal members were fully apprised that the delegates had entered into an agreement with the Cherokees to purchase the use of a ten by thirty mile tract of land east of the 96', of which the title would remain with the Cherokee Nation, but as between the Delawares and Cherokees, the Delaware ownership would not be disturbed.¹²² The tribal members were also told that, indeed, the tribe would preserve its tribal organization, but that the Delawares would have additional rights in the Cherokee national fund.¹²³ Settling on a ten by thirty mile strip along the banks of the Caney River was a natural transition for the Delawares - even if the tribe or individual members would not have the title to alienate. Under the 1860 treaty, the tribe had been residing on a ten by forty mile strip along the Kansas River, and under the same treaty, each man, woman, and child of the tribe had received a 160 acre allotment in severalty, without however the ability to alienate the land.¹²⁴ Accordingly, the tribe met in council on February 18, 1867, and registered in mass for the removal to Indian Country.¹²⁵

The agreement between the two tribes being completed, the tribe sent the delegates to ~~Washington, D.C., in April, 1867, to formalize the purchase of the chosen land.~~ Those delegates included, John Conner, and Charles Journeycake, chiefs, and Isaac Journeycake, and John Sarcoxie, as delegates.¹²⁶ Suspiciously missing from the delegation was the traditionalist Chief Anderson Sarcoxie.

On April 8, 1867, the Delawares entered a formal contract with the Cherokees in Washington, D.C. for the purchase of a quantity of land east of the 96' west longitudinal for the use of the Delaware Tribe pursuant to Article 4 of the Delaware Treaty and Article 15 of the Cherokee Treaty.¹²⁷ The total quantity was equal to 160 acres for each man, woman, and child who signed the February 18, 1867, registry, and any additional Delawares who might sign within one month of the signing of the agreement.¹²⁸ The Delawares agreed to pay \$1.00 per acre for a perpetual occupancy right on the land, in addition to a sum of money which would sustain the same proportion to the existing Cherokee National Fund that the number of Delawares sustained to the total number of Cherokees.¹²⁹

This was all in keeping with the terms negotiated prior to the 1866 treaties, and with the December 9, 1866, agreement between the two tribes; however, rather than only enjoying "all the rights of native Cherokees," the Articles of Agreement further provided that the Delawares would be

"consolidated with" the Cherokee Nation, and the after-born children of Delawares "so incorporated" shall in all respects be regarded as native Cherokees.¹³⁰ Thus, even though the contract's requirements or terms were taken from the Article 15 provision providing for the preservation of tribal organization, the contract also lifted part of the incorporation language from the Article 15 provision for abandoning the tribal organization. The contract, therefore, required the Delawares to pay for the rights to preserve their tribal organization, but then, slipped in ambiguous language of "incorporation" that seemingly could be interpreted to void the very right for which they were paying.

Although this interpretation of the Articles of Agreement would violate the terms of the Delaware Treaty, the Cherokee Treaty, and the December 9, 1866, agreement, nevertheless, this ambiguity has allowed the Bureau of Indian Affairs and the Cherokee Nation to periodically claim - when it suited its interests - that the Delaware terminated themselves in 1867.¹³¹ But in fact, the Delaware delegates to the Articles of Agreement had no apparent or actual authority as agents to enter a contract that might contradict the terms of the two treaties of 1866, and the already ratified Delaware-Cherokee Agreement of December 9, 1866.

On April 11, 1867, the President of the United States approved the agreement as required by Article 15 of the Treaty with the Cherokees of 1866. Note, however, that the language of that treaty expressly limited the President's discretion to vary from the requirements of Article 15.¹³² While receiving the approval of the President, the Articles of Agreement of 1867 were never submitted to or ratified by Congress, and was expressly rejected by the Delaware Tribe acting in General Council.

Delawares Refuse to Ratify the Articles of Agreement, and Protest Removal to Lands within the Cherokee Nation

The Articles of Agreement were submitted to the Cherokee National Council, and ratified on June 13, 1867.¹³³ However, on May 6, 1867, the Delaware Council flatly refused to ratify the agreement as it was explained to them.

When the Reverend Pratt and Assistant Chief Charles Journeycake returned from Washington, D.C. in late April, 1867, they notified tribal members that under the agreement, the Delawares were to become merged with the Cherokees, and would be subject to the laws and customs of the Cherokee government.¹³⁴ In response to this news, the Delawares held a General Council on May 6, 1867, and overwhelmingly passed a resolution rejecting the Articles of Agreement as a violation of the Delaware Treaty of 1866.¹³⁵ In particular, Chief Anderson Sarcoxie - who had not been invited to Washington - was enraged that the U.S. would allow such an arrangement in violation of the Delaware Treaty of 1866, and the December 9, 1866, agreement with the Cherokees.¹³⁶

Following the council meeting on May 6, Sarcoxie circulated the resolution and obtained the signatures of some 600 of the approximately 1000 Delawares, and delivered the same to their 'Indian Agent', the Reverend Pratt.¹³⁷ The resolution provided in part:

After thorough discussion and consultation it was agreed unanimously that the Delaware will never give up their nationality and become merged in the Cherokee Nation but

on the contrary every consideration of self preservation, pride, and desire for our happiness and prosperity as a people calls upon us to maintain our Nationality and separate existence as a tribe. And to that end whenever they remove from their present homes they will go in a body to a distinct reservation of their own as is clearly contemplated by both the spirit and the letter of the treaty made between the United States and the Delaware tribe of Indians July 4 1866. And to which your attention is respectfully called.¹³⁸

However, unbeknownst to the Delawares, Agent Pratt and Charles Journeycake had been in collusion to do away with the Delaware tribal government under the rational that the Baptist missionaries, such as Pratt and Journeycake, would have more control over the members and, thus, be able to convert them more easily.¹³⁹

Thus, when Sarcoxie gave the resolution and petition, addressed to the Commissioner of Indian Affairs, to Agent Pratt in June, 1867, Pratt did not forward it to the Commissioner. When Sarcoxie did not get a response from Washington, he wrote directly to the Commissioner in July, inquiring as to whether the Commissioner ever received the petition.¹⁴⁰

Pratt, indeed, had not sent the petition, but in a letter dated July 5, 1867, to the Commissioner, Pratt does state that "[f]or the past months there has been considerable excitement among the Delawares, having for its origins the arrangements entered into by the delegates of this tribe at Washington in April...by which the Delawares are merged into and become a part of the Cherokee people, I believe the matter however is culminated and that the arrangement will be acquiesced in."¹⁴¹

Apparently the issue had not "culminated", and Pratt was ordered to transmit the petition to the Commissioner of Indian Affairs; in his transmittal letter, Pratt states:

~~In forwarding this paper I feel constrained~~
to say that I do so only in obedience to official duty....The plan which has been adopted with the approbation of the government was in effect doing for them what emigration to the Indian Country would necessary result in, that is to say the doing away of a tribal system of government and adopting that which civilization brings....It is not therefore surprising that before this great change should go into effect the most strenuous efforts should be made by the less enlightened portion of this tribe and other tribes, to postpone the time, interpose objections, or create dissatisfaction in relation thereto...¹⁴²

Thus, Pratt does not deny that the Articles of Agreement were a violation of the Delaware

Treaty or that the majority of the tribe had refused to ratify the agreement in General Council. Pratt only reasons that it is in the best interest of the tribe, and in line with the U.S. assimilation policy.

In conclusion, Pratt maintained that Sarcoxie's petition, which demanded enforcement of the Delaware Treaty of 1866, was an expression of the "unfettered class which seek to perpetuate and keep alive old Indian customs and traditions."¹⁴³ It should be noted here that under tribal law Anderson Sarcoxie was the eldest of the chiefs and should have been recognized as head chief, and of such importance that the U.S. would not even negotiate the Treaty of 1866 until Sarcoxie had arrived.¹⁴⁴ However, less than a year later, Pratt attempts to portray Sarcoxie to the new Commissioner of Indian Affairs as "Captain Sarcoxie" of the "unfettered class." To counter Sarcoxie's petition, Assistant Chief Charles Journeycake wrote to the Acting Commissioner in November, 1867, maintaining that the "arrangements" entered into in April were in the best interests of the tribe, and that he did not countenance the expressions of Captain Sarcoxie.¹⁴⁵ Agent Pratt transmitted the letter on behalf of his old friend, Journeycake, and John Conner, James Conner, and James Ketchum, maintaining that these were the only persons with legitimate authority to act on behalf of the tribe.¹⁴⁶

By the fall of 1867, the Delawares had not received an adequate explanation as to their status, thus, in January, 1868, the famous U.S. scout Captain Fall Leaf filed yet another protest with Washington, D.C., pointing out that the Delawares already had a previous agreement with the Cherokees which had been authorized by the people, and that the delegation sent to Washington in April, 1867, had no authority to enter such an agreement that violated the terms of the Delaware Treaty of 1866 and the previously ratified agreement - under which "the Tribal organization of our people could be maintained."¹⁴⁷ (Note, however, that Fall Leaf was under the impression that the Delawares could only preserve their tribal organization if settling west of the 96', and believed that this was where the ten by thirty mile strip of land had been chosen.) Thus, Fall Leaf requested that a delegation be sent to Washington "in reference to a selection of lands and location of the Delawares in the Indian Territory, west of the Ninety sixth (96) parallel of longitude..."¹⁴⁸ This petition was also signed by over two-thirds of the Delaware Tribe.¹⁴⁹

Pratt responded swiftly to this petition, affirming that the Delawares had entered a previous agreement with the Cherokees - to purchase the ten by thirty strip of land east of the 96' longitudinal, while preserving their tribal organization.¹⁵⁰ Pratt, however, also contended that the Delawares would thereby still be subject to the constitution and laws of the Cherokee Nation.¹⁵¹ Note, that Pratt's position contradicts the very language of Article 15 of the Cherokee Treaty which provided that a tribe paying to have land set aside would thereby preserve its tribal organization, laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation.¹⁵² The distinction is clear; and if the Delawares were to be subject to the authority of the Cherokee Nation, then the language for preservation of tribal organization would be illusory.

During the spring of 1868, Assistant Chief Sarcoxie and Captain Fall Leaf continued to refuse to remove to the Cherokee Nation, and encouraged the tribal members to remain. However, the depredations and harassment against the Delawares had only increased. The people were bordering on destitution, as Pratt would not release any of their annuities until they agreed to remove to Indian Territory. In addition, in anticipation of removal, no preparation of their farms, crops, etc., had been made. The two Delaware leaders were still awaiting an adequate explanation from Washington, D.C., as their faith in Agent Pratt had been exhausted.¹⁵³ Finally in May, 1868, the Commissioner of Indian Affairs traveled to Kansas to negotiate a removal with Sarcoxie and Fall Leaf.¹⁵⁴ What kind of assurances

the Commissioner may have been able to provide is not clear, but he was able to obtain written promises from Sarcoux and Fall Leaf to remove to the Cherokee Nation, and to encourage their followers to do the same.¹⁵⁵

By the time of removal, the ambiguities of the Articles of Agreement of April 7, 1867, had yet to be resolved. Nevertheless, pursuant to their initial December 9, 1866, agreement the Delawares proceeded in mass to the ten by thirty strip of land originally selected for their use - this area covers the top three-fourths of the present day Washington, Co., Oklahoma.¹⁵⁶

The December 9, 1866, agreement between the two tribes provided for the purchase of the entire strip of 192,000 acres, enough to assure a 160 acre allotment for each man, woman, and child in Kansas (1,000), and for the 200 Absentees still living to the south.¹⁵⁷ The Articles of Agreement, however, only provided for 160 acres for each man, woman, and child listed on the February 18, 1867, registry, and those names added within a month of the signing of the agreement.¹⁵⁸ As Sarcoux had lamented in his petition, no provision was made for the landless Absentees to the south.¹⁵⁹ Thus, the Delawares were to receive 160 acres for each of the 985 Delawares who elected to remain with the tribe and remove to Indian Country, a total of 157,600 acres.¹⁶⁰ Per the Articles of Agreement, the tribe paid \$157,600.00 for this land at \$1.00 per acre.¹⁶¹

In addition to the \$157,600.00, the tribe was also to pay the proportional amount of money into the Cherokee National fund which represented a ratio of 985 Delawares to 13,573 Cherokees as compared to the total value of the Cherokee National fund, including the \$157,600.00.¹⁶² This proportional amount came to a total of \$121,824.28.¹⁶³ Both payments were made pursuant to the requirements of Article 15 of the Cherokee Treaty providing for the settlement of tribes choosing to preserve their tribal organization while enjoying all the rights of native Cherokees.¹⁶⁴

In comparison, the Shawnee Tribe also settled within the Cherokee Nation in 1869 under the Articles of Agreement between the Shawnee and the Cherokee.¹⁶⁵ The Shawnee, however, did not pay for their lands, and the Agreements specifically states that "said Shawnees will abandon their tribal organization."¹⁶⁶ In addition, the Agreement also states that "said Shawnee shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect, and with all the privileges and immunities of native citizens of the Cherokee Nation."¹⁶⁷ ~~The language of the Shawnee agreement, then, directly tracts the provision of Article 15 looking to the abandonment of tribal organization.~~

Thus, the Delawares agreed to pay \$279,484.28 to the Cherokees for a tract of land on which the 985 Delawares might "preserve their tribal organization," and to "enjoy all the rights of native Cherokees." However, during the removal nearly 200 Delawares died due to disease and hardship.¹⁶⁸ Nevertheless, in 1869 the U.S. paid the Cherokees the full amount for all 985 Delawares to resettle.¹⁶⁹ The Delawares did not object at this time because they were under the impression that they had purchased the land from the Cherokee, with only the limitation being that the tribe could not otherwise alienate the land without the permission of the Cherokee Nation.¹⁷⁰ The tribe believed and acted accordingly for nearly thirty years that if one of the 985 individual Delawares had passed away before or after reaching Indian Country, then the individual's right to an allotment would pass to the their family.¹⁷¹ Later, the Cherokees would argue, and win, that the Delawares only purchased a life estate for each of the 985 Delawares, and upon their death, the land reverted back to the Cherokee Tribe.¹⁷² Note, that the Delawares understood that they did not purchase the land in fee, however, they believed that as between themselves and the Cherokees, the Delawares owned the land.¹⁷³

By late 1868, the entire Delaware Tribe had removed to the Cherokee Nation. However, by early 1871, the majority of the tribe was preparing to remove from its wretched situation - even if it meant giving up the quarter of a million dollars already paid to the Cherokee Nation.

IV. DELAWARE TRIBE RESIDING IN THE CHEROKEE NATION, 1868-1907

The Delaware Tribe Continues to Protest the Removal to the Cherokee Nation

Although by late 1868 the Delawares had removed to the ten by thirty mile tract of land located in the Cooweescoowee District of the Cherokee Nation, the Delawares continued to protest the removal of the tribe to the Cherokee Nation.¹⁷⁴ By November 13, 1868, John Sarcoxie, Delaware Councillor, and signatory of the Articles of Agreement, wrote to Cherokee Chief Lewis Downing, requesting that the Delawares be allowed to cancel their agreement and remove west of the ninety-six.¹⁷⁵ Downing replied that it would be best for the Delawares to remain with the Cherokees, as the hand of the white man was against them.¹⁷⁶ Note, however, that the Cherokees would have lost some quarter of a million dollars, which had yet to be paid, if the Delawares had cancelled the agreement.

Of primary significance, however, was the exodus of nearly half of the Delaware tribe in 1871 from the Cherokee Nation to the lands of the Peoria under the Quapaw Agency up in the far northeastern corner of Indian Territory.¹⁷⁷ On June 1, 1871, the Quapaw Agent reported to Superintendent Hoag that 330 Delawares had left the Cherokee Nation (with 200 more preparing to follow) and were residing on the lands of the of the Peoria for which the Delawares were more than willing to pay.¹⁷⁸ The Delawares reported that they had been told that a separate tract of land had been promised to them within the Cherokee Nation, and that land had yet to be set aside.¹⁷⁹ Finally, the Delawares reported that they would never go back to the Cherokee Nation, and they were more than willing to forfeit all the monies paid by them in order to be relocated.¹⁸⁰ In particular, the Delawares claimed that the U.S. had violated the Delaware Treaty of 1866 by not providing them with a separate tract of land for their new reservation. Of course, these were the same demands for their treaty rights made by Assistant Chief Anderson Sarcoxie, Captain Fall Leaf, and seven-hundred other Delawares before the removal from Kansas.

From day one the Delawares were subjected to the worst forms of harassment and fraud at the hands of individual Cherokees. Every place they attempted to settle a Cherokee was found to own the claim and demanded pay for it; in one instance a Cherokee man claimed to own five different pieces of land and did sell them to the Delawares.¹⁸¹ A tribal headman, James Simons, acquiesced in one claim, paid \$300.00 to the alleged owner, only to be afterwards driven off at gun point by different parties.¹⁸² ~~In addition, the Delawares were also subject to many personal degradations at the hands of wandering Cherokees for which the Delawares could obtain no justice in the Cherokee Courts.~~¹⁸³ The Osages, never forgetful of their past animosity with the Delawares, also did not miss the opportunity to take revenge, and continuously harassed and threatened their Delaware neighbors.¹⁸⁴

By August, 1871, the Superintendent of the Central Kansas Agency reported to the Commissioner of Indian Affairs that he would "labor in conjunction with the Delaware Chiefs..." to urge that there be "set apart a district for the whole Delaware Tribe leaving them more to themselves - with political-educational-religious and other local privileges..."¹⁸⁵ What became of this effort is not known, however, the Delawares were moved back in mass to the Cooweescoowee District two years later.¹⁸⁶

Nevertheless, soon thereafter, the entire tribe petitioned Congress for removal to their own reservation. By 1876, even Charles Journeycake had recognized the tragic error of the Delawares removal to the Cherokee Nation. On February 26, 1876, Journeycake called a General Council at which the tribe yet again resolved to request that the U.S. abide by its treaty obligations and set aside a separate tract of land in the northwest corner of the Cherokee Nation.¹⁸⁷ Accordingly, Journeycake submitted a

petition to the U.S. Congress requesting relief:

We the undersigned your petitioners
being the Chief Counsellors & Headmen of the
Delaware Tribe of Indians in Council
Assembled do respectfully but most
earnestly request your honorable body to
_____ an act whereby we the Delaware Tribe
of Indians may be enabled to have a reservation
of our own free separate and apart from the
Cherokee Nation...giving to us our pro rata share
of the funds and lands belonging to us in the
Cherokee Nation....¹⁸⁸

Journeycake goes on to elaborate that the "seven years of bitter experience have fully convinced us of our great mistake. Our people are...[in] continual dangers, several of our people have been killed...our people...[are] moving away & living with other tribes willing to sacrifice their own lands and homes for an uncertain residence among those more peaceful districts...."¹⁸⁹

Whether this petition ever made it to the U.S. Congress is not known, however, in 1877, the Commissioner of Indian Affairs again reported that the Delaware relations with the Cherokee were not good, and the Delawares were requesting to be removed to a reservation of their own.¹⁹⁰

As the government had already envisioned the dissolution of all the reservation boundaries and tribal governments in the plan for complete integration of the Indians into white society, the Delaware's right to self-determination was not a paramount concern.¹⁹¹

The Delaware Tribe Perpetuates its Tribal Organization, National Identity, and Corporate Existence

Regardless of the intent to terminate the Delaware tribal government, upon resettlement, the Delawares continued to govern their affairs by tribal custom under the guidance of the chiefs and councilmen just as they had prior to the removal.¹⁹² The U.S. government continued to hold Delaware assets in trust and to directly oversee the affairs of the tribe as a distinct entity - through communication with the Delaware chiefs and council.¹⁹³

By 1898, the Delaware settlements boasted a council house and two churches, two schools along the Caney River, two schools along the California River, and one on Lightning Creek - all built and paid for by the Delaware Tribe.¹⁹⁴ The council was also apparently forced to employ physicians for the Delawares, for which funds the tribe had to raise as the federal government would not disburse any of the Delaware funds for physicians.¹⁹⁵ In an 1873 letter to the Secretary of Interior, the Delaware complained that their surplus funds are not being wisely managed by the "Superintendent", and demanded that their funds be expended for the "benefit of their people in establishing institutions of learning, and providing for orphans and the destitute as the council directs."¹⁹⁶

Up until 1871, John Conner continued to serve as head chief, while Anderson Sarcoxie and Charles Journeycake also continued as assistant chiefs.¹⁹⁷ By 1871, Chief Anderson Sarcoxie, eldest son

of the great Chief William Anderson, finally passed away after some fifty years of tribal leadership.¹⁹⁸ Chief John Conner also passed away during the same year, leaving a power vacuum for the newly 'unsettled' tribe.¹⁹⁹

On December 3, 1872, a council was called for the purpose of electing a new principal chief; James Ketchum won the election over Charles Journeycake in a 72-69 vote.²⁰⁰ Ketchum served unofficially for a year as head chief, however, the election was contested by the Journeycake faction and referred to Superintendent Hoag of the Central Agency in Lawrence, KS., for resolve in early 1873.²⁰¹ The Central Superintendency called for a General Council of the Delawares "for the purpose of choosing a new Principal Chief."²⁰² By mid-1873, James Conner (brother of late chief) appears in the records as Principal Chief, Charles Journeycake, and James Simon as assistant chiefs.²⁰³ Chief James Conner died just four years later in 1877. No records of a subsequent election have been found, however, by 1878, a letter to the Commissioner of Indian Affairs, E.A. Hoyt, lists Charles Journeycake as Principal Chief, and John Sarcoxie (son to the late Anderson Sarcoxie) as Second Chief.²⁰⁴

After the removal, the tribe's political structures, as defined by the matrilineal clans, had almost disappeared, and the tribe increasingly defined itself by the decisions of the entire tribe acting in general council. By 1889, the General Council had elected six delegates of the tribe that could act with legal authority on behalf of the tribe; the delegates included John Sarcoxie, Andrew Miller, Henry Armstrong, Filmore Secondine, John Young, and Arthur Armstrong.²⁰⁵ Charles Journeycake continued to serve as Principal Chief until his death on January 3, 1894.²⁰⁶ In the aftermath of Journeycake's death, the tribe was officially without leadership for over a year.

On February 1, 1895, the Department of Interior called a General Council of the tribe "for the purpose of selecting (5) five reliable Business Men as a Committee to perform the duties of the Chief...."²⁰⁷ The Muskogee Agency published notice of the meeting in the local press, and supervised the first election of the body that would come to be known as the Delaware Business Committee.²⁰⁸ The Business Committee format affected the Delaware tribal government in name only; the committee actually only mirrored the former organization of elected chiefs and delegates that had developed since 1870.²⁰⁹ The first elected members of the Business Committee included George Bullette (Chairman), John Sarcoxie, Jr., John Secondine, Henry Armstrong, and John Young.²¹⁰ Note, that Sarcoxie and Secondine are the descendants of the great Chief Anderson, and the families of Armstrong and Young were also often present as councilors in tribal business.

Although the Cherokees had absolutely no say in the administration of the Delaware tribal government and assets, the Delawares, while preserving their tribal organization, also paid to "enjoy all the rights of native Cherokees."²¹¹ Accordingly, the Delawares were entitled to all the political and property rights held by blood Cherokees.²¹² Up until the last Cherokee election in 1903, Delaware delegates were occasionally elected from the Cooweescoowee District to the Cherokee National Council.²¹³ At that time, the Cherokee Nation was divided into nine districts, each allowed two Indian male representatives for the National Committee (Senate), and three for the National Council (House).²¹⁴ During the thirty-five years (1868-1903) of viable Cherokee government, only about seven Delawares from the Cooweescoowee District had been elected to the Cherokee legislature.²¹⁵

Delawares' Religious, Cultural, and Social Practices Remain Distinct from the Cherokees

In addition to political autonomy, the Delawares also remained distinct from the Cherokees in all other facets of life. The great hostilities reaped upon the Delawares residing in the Cherokee Nation served to permanently wedge the two tribes ethnically.²¹⁶ In a letter to Pratt, Journeycake noted that "they [Cherokees] seem to hate the Delawares - they go about the [] ground as if among their enemies - well armed and ready to fight."²¹⁷

As stated above, the Delawares had settled in mass in the Cooweescoowee District in the northwest corner of the Cherokee Nation. By 1886, the Department of Interior reported that over ninety percent of the Delawares still resided in the Cooweescoowee District.²¹⁸ The Delawares primarily practiced mixed farming in the country between the Verdigris and Caney Rivers, whereas the Cherokees and Whites primarily were cattle rangers.²¹⁹ After a time the Cooweescoowee District developed into a patch-work of fenced Delaware farms developed, separated by wide ranges utilized by the Cherokees and whites for cattle ranching.²²⁰ In the 1890 Department of Interior Annual Report, the Agent for the Five Civilized Tribes, commenting on the economic state of the Delawares, reported that "[n]o one who has ever visited the Delaware settlements could fail to note the fact that they are among the most thrifty and intelligent Indians in the entire Indian country."²²¹

Although the Christian convert followers of Journeycake adopted many of the ways of white men, and attended the Delawares Baptist Churches, the Delaware traditionalists continued to exercise their ancient religious ceremonies in the Delaware Big House well into the twentieth century.²²² The traditionalists settled primarily in what is now northern Washington County, near the Big House ceremonial ground on the Little Caney.²²³ Besides separate churches and schools, the Delawares also maintained their own culture, language, religion, cemeteries, and burial rites.²²⁴

Journeycake and his followers settled near Lightning Creek, today Alluwe, forty miles to the east,²²⁵ increasing geographically the existing cultural division between the acculturated "white man indians"²²⁶ and traditional Delawares.

After Chief Journeycake's death in 1894, and with the creation of the business committee, the tribe thereafter chose a Ceremonial Chief to perform the traditional duties of the former chiefs. Such duties included comforting families after a recent death, providing burial rites, herbalism, burning cedar, presiding over ritual and name-giving ceremonies, and for some, even conversing with the dead.²²⁷ Traditionalist Charley Elkhair, served as Ceremonial Chief from 1898 until his death in 1935.²²⁸ Other ceremonial leaders continued to minister to the tribe throughout the century,²²⁹ including Willie Longbone until 1946,²³⁰ John Fall Leaf, until his death in 1963,²³¹ and William (Bill) Shawnee until 1979. Edward Leonard Thompson, a full-blood, Delaware traditionalist, fluent in the Lenape language, has performed the duties of Ceremonial Chief for the past 15 years.

Once settled in Indian Territory, the tribe immediately established its ceremonial grounds, and began annual and bi-annual religious ceremonies.²³² Believing any lapse in observance would offend the spirits and such offenses would bring ill-fortune, madness, and even death.²³³

The "Big House," the most emblematic and ritualistic Delaware ceremony, was a continuation of the 17th century harvest rituals.²³⁴ Held during the fall, it lasted twelve days,²³⁵ during which Delawares from all over would come, pitch their tents on the surrounding grounds, and prepare for the ceremony. The

Big House itself, was oriented on an east/west axis, "ten logs high" (about 14 feet at the ridgepole) extending 25 feet by 50 feet,²³⁶ with the only openings being two doors in both the east and west ends, and two large chimney holes in the bark roof. The western door was primarily for dumping ashes.²³⁷

The ceremony involved recitations of visions experienced during adolescence,²³⁸ with each reciter "Circling against the sun"²³⁹ around the two sacred fires, pausing, reciting again, and continuing to circle. During the dance, a "Mesingw" impersonator, fully costumed, covered with bearskin, and wearing a carved wooden mask,²⁴⁰ would suddenly appear upon the stage, perform and depart.²⁴¹ The face of the "Mesingw" or "keeper of the game," which provided a link to the spirit world, was also carved on both sides of the center post of the Big House. One side painted black representing evil, the other red representing good.²⁴² The Mesingw remains for many Delaware, a prevalent and revered icon, as well as an important link to the past, both spiritually and historically. Many of the Big House artifacts, including the center post, have survived in museums.²⁴³ Seating (on the floor) would depend on sex and phratry or "clan" membership.²⁴⁴ The dual fires inside, lit with a primitive fire-drill, were considered sacred and kept continually burning until the 9th day. A rattle made from box turtle shells would be passed to each dancer to indicate his or her turn.²⁴⁵ A hunting party would soon be chosen (on the fourth day) and set out to secure meat, those chosen were considered privileged and honored. Reportedly, a deer hide was sometimes hung inside near the east door as an offering.²⁴⁶ Each night the ceremony would continue with, singing, telling of visions and giving thanks to "Kee-Shay-lum-moo-kawng" (He-who-created-us-by-his-thoughts).²⁴⁷

The Big House, considered as a "representation of the whole world"²⁴⁸ was, if practiced annually, believed to avert catastrophes, earthquakes, tornados, and other physical disturbances.²⁴⁹

U. S. Senators Matthew Quay of Pennsylvania and Clarence D. Clark of Wyoming visited the tribe in 1903, and were invited to attend the Big House ceremony.²⁵⁰ Both were reportedly said to have been moved and impressed with the solemnity and sincerity of the ceremony.²⁵¹ The tribe later presented Senator Quay with a "War Cap" and made him "Head War Chief," which for the tribe "is the highest honor and esteem we can bestow" and further expressed that their friendship with the Senator would "last as long as any of the tribe exists."²⁵²

Tribal leaders, including Chief Elkhair, made an impassioned plea to the U. S. Senate in 1907,²⁵³ to have the Big House ceremonial grounds allotted and set aside for the tribe stating:

...unless relief is given by legislation this place so hallowed by traditions and associations, and so valuable to the Delawares as the shrine of their ancient religion will be lost to us, and besides suffering the anguish of seeing the old grounds desecrated, our form of religion so close to nature and sacred will be disrupted.²⁵⁴

Apparently, the commission did set aside ten (10) acres in trust for the tribe,²⁵⁵ and the ceremony continued well in to the twentieth century. The annual "Big House" was held until 1924,²⁵⁶ followed by a short-lived resurgence during World War II.²⁵⁷ Thirty years would pass before another attempt would be made during the early 70's.²⁵⁸ Elders maintain the Big House ended only because fewer tribal members were experiencing the necessary visions, the visions being absolutely vital in preserving the sacredness of the ceremony.²⁵⁹ Interestingly, the fear of cataclysmic upheavals coming upon the world,

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actually led to the Big House revival during World War II.²⁶⁰ Many still believe the non-observance of this ceremony has brought the tribe ill-fortune.

While the Big House had fixed grounds, many of the seasonal ritual dances (none were performed during the winter months, in fear of angering the winter spirits)²⁶¹ had to be planned and prepared far in advance.²⁶²

One such religious ritual, was the annual "Delaware Doll Dance" held near Dewey until the 30's.²⁶³ The Doll Dance itself involved dancers preceding counter-clockwise around a huge bonfire, and chanting songs in accompaniment with the drums.²⁶⁴ The Doll, richly decorated with ribbons, beaded moccasins, silver ornaments and silk handkerchiefs,²⁶⁵ (not dissimilar to the dancers dress) was "older than the oldest living member of the tribe." The Doll would be passed in turn from the leader to each dancer. The men would form an inner circle around the flames while the women danced on the outside. The dance would continue throughout the night until the early dawn where dancers fortunate enough to catch the bread thrown, some with wampum attached, were assured of prosperity during the coming year.²⁶⁶ Visitors were allowed to observe but not to participate or handle the Doll.²⁶⁷

Not only did the Algonquian Delaware speak a completely different language than did the Iroquoian Cherokee, the language continued to be spoken fluently well into the 20th century, with English spoken only as a second language if at all. As late as the 1930s, a Delaware interpreter was required during Business Committee meetings and General Councils.²⁶⁸ Tribal elders, remembering their distinct heritage fully intact during their youth, today tell of having been discouraged to speak their native tongue, because of (at that time) the perceived need to integrate into white culture. Delaware language classes, have continued since the 1960s to preserve what thirty years of forced integration had stolen.²⁶⁹

Upon death, members of the tribe would sit up with the deceased, each taking turns beating a drum.²⁷⁰ Burial practices involved cutting a hole in the coffin, to allow the spirit to escape, the deceased were always placed with the head facing east, and different wooden markers would be utilized to indicate sex, and status within the tribe.²⁷¹ The tribe today maintains separate cemeteries and continues many of the rituals.²⁷²

The "Native American Church" with its ritual ceremonies has continued since the mid 1880's, allowing many Delawares to worship the creator much like they had in the Big House Church.²⁷³ "Stomps," considered more significant than "Pow Wows," were held until the late 1930's.²⁷⁴ Both took on an added cultural importance after the demise of the Big House. Pow Wows throughout the 1940's, 50's, and early 60's continue to the present, sponsored by individuals, organizations, and cooperatively with other tribes, notably the Shawnee, Quapaw, and Osage.²⁷⁵ The "Lenape Indian Club," from 1953 thru to 1964,²⁷⁶ held annual Pow Wows consisting of such dances as the "War Dance," "Round Dance," "Buffalo Dance" and "Snake Dance."²⁷⁷ Since its creation in 1965, the annual "Delaware Pow Wow," has provided traditional Delawares with a forum to perpetuate the spiritual and ceremonial practices of the tribe.

Due to the wide variance in their cultures, few occasions have ever brought the Delawares and the Cherokees together socially or politically. However, between the early 1920s and the late 1970s, the leaders of the two tribes did often work together on broad issues facing all American Indians. The social boundaries between the two tribes, however, is best illustrated by the low intermarriage rate. Of the first 212 Delaware marriages after the removal, only 5 were with blood Cherokee, and only by those Delawares born after 1890.²⁷⁸

The Delaware Battle for Property Rights in the Cherokee Nation

After the removal, the U.S. government continued to hold the Delaware Tribe's assets in trust separate from the Cherokee Nation. Accordingly, the Delawares received annuities from the federal government as late as 1893,²⁷⁹ and the Cherokees held no claim to these assets. However, under the Treaty with the Cherokees of 1866, the Delaware paid a proportional amount into the Cherokee national fund which entitled them to all the rights of Cherokee citizens - including participation in any per capita or annuity payments.²⁸⁰

However, the Cherokee resented the Delaware's right to participation in the Cherokee assets, and sought to exclude all non-blood Cherokee citizens from participating in the same. In 1883, the Cherokee Nation was appropriated \$300,000.00 for payment of lands lying west of the Arkansas River, and over the veto of the principal chief, the Cherokee legislature voted to pay out the monies per capita to Cherokees by blood only.²⁸¹ The Delawares demanded that the U.S. protect their rights pursuant to their 1866 Treaty, and that if the Delawares were to be denied participation as citizens of the Cherokee Nation, then they wanted the return of their \$279,424.28 which had paid for lands and citizenship rights within the Cherokee Nation.²⁸² In response, the U.S. Congress was forced to appropriate \$75,000.00 more to pay out the Delaware, Shawnee, and freedmen citizens of the Cherokee Nation their share of the per capita payment.²⁸³ These monies were to be charged against other Cherokee assets held by the U.S., thus causing further tensions and resentment among the two tribes.

These tensions were exacerbated in Cherokee Nation v. Journeycake, 155 U.S. 55 (1894) addressing the Delawares' rights to the proceeds from the lands of the Cherokee Outlet.²⁸⁴ The Journeycake Court held that the Delawares had purchased the rights of native Cherokees, including rights in the lands and the proceeds of the lands of the Cherokee Nation.²⁸⁵

Journeycake resolved the issue of the Delawares rights as Cherokee citizens to the funds of the Cherokee Nation, but the issue of the ownership of the 157,600 acres of land still remained. With the impending forced allotment of Cherokee lands, the Delawares were informed that as Cherokee citizens, they would receive their allotments as Cherokees, and held no additional rights to the land by virtue of their 1867 purchase. ~~Under the Treaty with the Cherokees of 1866, and the Articles of Agreement, the Delawares paid the Cherokees \$157,600.00 to have a quantity of land set aside equal in amount to 160 acres for each man, woman, and child.~~²⁸⁶ Specifically, the Articles of Agreement provided:

The Cherokees...agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96' west longitude, in the aggregate equal to 160 acres of land for each individual of the Delaware tribe...and in case the Cherokee lands shall hereafter be allotted among the members of said Nation, it is agreed that the aggregate amount of land herein provided for the Delawares... shall be guaranteed to each Delaware incorporated by these articles...(emphasis added).²⁸⁷

The Articles of Agreement also assured that the ownership and occupancy of such lands would not be interfered with, provided, however that nothing therein conferred the right to alienate or convey the lands.²⁸⁸ Although the Delaware were willing to purchase less than a fee simple, as the Cherokees wanted to assure the land would not be sold to the U.S., whites, or unfriendly tribes, the Delawares wanted assurances that if the Cherokees subsequently allotted the lands, the Delawares would not be rendered landless, but would receive the 157,600 acres for which they had paid.²⁸⁹

Therefore, when the Delawares were informed that they would be taking their allotments only as Cherokee citizens (eighty acres each), the tribe lobbied for a jurisdictional statute to file suit for a determination of the Delawares' rights in the lands. In response, Section 25 of the Curtis Act sets aside 157,600 acres purchased by the Delawares as exempt from allotment until such time as the Delaware rights to these lands could be adjudicated.²⁹⁰ Section 25 also provided the jurisdictional statute whereby the Delawares could sue the Cherokees for a determination of their rights to the land.

The U.S. Supreme Court in Delaware Indians v. Cherokees, 193 U.S. 127 (1904) determined that the "Registered Delawares", those original settlers from Kansas whose name appeared on the February 18, 1867, registry, had purchased individual life estates in the amount of 160 acres a piece, and that upon their death, the land reverted back to the Cherokee Tribe. Thus, only the remaining 198 living Registered Delawares would receive 160 acre allotment, all other Delawares (902) would receive the eighty acre allotments as Cherokee citizens provided in the Cherokee Allotment Agreement.²⁹¹ The Court did not address why in 1869 the Delawares paid for individual life estates for at least 200 people who had died without even reaching the Cherokee Nation.

The Court's rationale ignored the fact that the Delaware Tribe had paid \$1.00 per acre for a perpetual occupancy right to an aggregate of 157,600 acres. The Court also ignored the significance of the fact that the Cherokee lands lying west of the 96' meridian sold in fee for only .70 per acre during the same period, and that also in 1866, the Creeks sold the U.S. their lands at .30 per acre, the Seminoles for .15 per acre, and the Choctaws and Chickasaws for only .05 per acre.²⁹² The Court intentionally ignored the controlling provisions of the Treaties and the intent of tribes and the U.S. in creating these provisions of the treaties.²⁹³ The Court had determined that this 'contract' for a purchase of land - containing no description of land - was fully integrated and that no parole evidence as to the intent of the parties, nor any evidence of the controlling treaties was necessary.²⁹⁴

According to the practical outcome of the Delaware Indians v. the Cherokees, the Delaware Tribe actually paid \$157,600.00 for only 103,840 acres at \$1.52 per acre (198 Delawares x 160 acres + 902 Delawares x 80 acres). This \$1.52 per acre amounting to twice the price for which any of the other Five Civilized Tribe's lands sold, and thirty times as much as the Choctaw lands.

Note, however, that the Shawnees also had the right to eighty acre allotments as citizens of the Cherokee Nation, yet the Shawnees only paid the proportional sum into the Cherokee national fund, and paid nothing for land.²⁹⁵ Like the Shawnees, the Delawares also paid the maximum proportional sum allowed by Article 15 of the Cherokee Treaty to enjoy all the rights of native Cherokees.²⁹⁶ Accordingly, all 1100 Delawares should have received 80 acre allotments - in addition to the purchase of the 157,600 acres. As the Delawares only received 160 acres for each of the 198 Registered Delawares (31,680 acres) at a total price of \$157,600.00, the Delawares actually paid \$4.98 per acre for a measly 31,680 acres. In the history of the Supreme Court of the United States, surely there has never been a more irrational and unjust opinion.

V. DISSOLUTION OF THE CHEROKEE NATION, 1902-1975

If indeed the Articles of Agreement gave the Cherokees any territorial jurisdiction over the Delawares, that authority was wholly abrogated by the Cherokee Agreement with the Dawes Commission, providing for the dissolution of the Cherokee Nation reservation boundaries and government.²⁹⁷

As early as 1865, the U.S. government had been looking to allotment and assimilation as a means of 'getting out of the Indian business.' In 1887 Congress passed the Dawes Severalty Act, 24 Stat. 388, providing for the allotment of Indian reservations held in trust by the U.S., the remaining unallotted lands to be purchased by the government for white settlement. Because the lands of the Five Civilized Tribes were not held in trust by the U.S., but held in fee, the Dawes Act did not apply. Nevertheless, in 1893, Congress created a commission to negotiate with the Five Civilized Tribes for the extinction of their communal titles to make way for the creation of the state of Oklahoma.²⁹⁸ The Dawes Commission, chaired by the former Senator Henry Dawes, tried unsuccessfully to negotiate an agreement with the tribes for the dissolution of the tribal governments and the allotments of their lands.

In response, Congress passed the Curtis Act of 1898, 30 stat. 495, which provided for the forced allotment and eventual termination of the Five Civilized Tribes. More importantly, the Curtis Act abolished the tribal courts and civil laws of the tribes, thus, abolishing the territorial jurisdiction of the Cherokee Nation.²⁹⁹

The Act also incorporated the Dawes Commission agreements with the Creeks, and the Choctaws and Chickasaws, and provided that if any of the tribal memberships should ratify the same, then the agreements would replace the more radical provisions of the Act.³⁰⁰ However, neither the Seminole or the Cherokees were included in this provision because the Seminole Agreement had already been ratified, and the Cherokees had refused to even negotiate an agreement. Under increasing pressures, the Cherokee Nation entered an agreement with the Dawes Commission, providing for the abandonment of its tribal organization, which was ratified by a vote of the Cherokee people on August 7, 1902.³⁰¹

The Cherokee-Dawes Agreement, ratified by Congress on July 1, 1902,³⁰² provided for the allotment of 110 average acres to each citizen of the Cherokee Nation, and for the termination of the tribal government on March 4, 1906.³⁰³ The Act defined "members" and "citizens" as citizens of the Cherokee Nation, and further closed the class of individuals who could be a citizen of the Cherokee Nation by providing that no child born to a citizen after September 1, 1902, could be enrolled in the Cherokee Nation, or participate in the tribal property of the Cherokee Nation.³⁰⁴

However the dissolution of the governments of the tribes took much longer than the U.S. had expected. By 1905, the Department of Interior was still in the process of disposing of the tribe's lands, and finalizing the enrollment, and it appeared the process would not be complete before the termination of the tribes on March 4, 1906.³⁰⁵ In order to provide sufficient time to wrap up the affairs of the tribe, Congress enacted the Five Civilized Tribes Act, 34 stat. 137, providing for the continuation of "tribal existence and present tribal governments" to the extent authorized by law.³⁰⁶

Section 1 of the Five Civilized Tribes Act of 1906, however, also provided that "no person shall be enrolled as a citizen or freedmen" of the Cherokee tribe after December 1, 1905. Thus, although the Cherokee government of the tribe was continued to the extent authorized by law, the Act prohibited the admission or birth of any new Cherokee citizens, thus, ensuring that the tribe as a legal "entity" would

disappear upon the death of the last citizen. Moreover the legislative intent of the Act was in fact to provide for the dissolution of the tribal governments upon the final distribution of tribal assets.³⁰⁷

In addition, section 17 of the Act provides that all the money arising from the sales of unallotted lands or from any other sources, having been paid into the U.S. Treasury to the credit of the tribes, shall be distributed per capita to the members then living, or to the heirs of the deceased members. Thus, the statute makes a definite distinction between members or citizens of the Cherokee Nation, and ordinary 'heirs' under estate law, who need not have any affiliation to the tribe at all. In other words, the statute vests the property rights of the Cherokee Nation in the individual Cherokee citizens appearing on the final Dawes Roll; all after-born descendants of these citizens have no interest or rights to this property as tribal members, but only as heirs or descendants of the last members of the Cherokee Nation.³⁰⁸

Although the 1906 Act provided for a limited continuation of tribal government, the Cherokees in fact, chose to completely disband their tribal government and ceased to exist as a sovereign entity.³⁰⁹ The last Cherokee chief to be elected by the people was W.W. Rogers in 1903. By 1914, the Cherokee Tribe had completely abandoned its tribal government - leaving only a periodically appointed chief to provide legal authority to dispose of the assets of the tribe.³¹⁰ Between 1917 and 1942, the Cherokees only had a chief for a total of 23 days.³¹¹

In the aftermath of the Cherokee dissolution, the Cherokees only existed as an entity for the prosecution of its claims against the U.S. and for the disposal of Cherokee property. In 1924, the Cherokee Executive Committee described the status of the Cherokee Tribe:

In the last years of the life of Chief Rogers, the last of the Cherokee chieftains, realizing that with the passing away of their government there would be no organized body left, no one having authority and no one to make a settlement with the government, talking with his Secretary, S.R. Lewis, and other men, he organized what he called the Tulsa Convention of 1916, and there assembled four-hundred twenty-six delegates....³¹²

The convention was called for the purpose of electing the Cherokee Executive Committee to negotiate a settlement with the U.S. on prior treaty violations.³¹³ However, the U.S. apparently did not recognize the Committee as a legal tribal body, and by 1924, the Superintendent of the Five Civilized Tribes called another meeting of the Cherokee citizens to select nine members of each of the Cherokee districts "to employ counsel to represent the Cherokees in presenting their claims to the Court of Claims...."³¹⁴ As the Delawares continued to own legal property rights to the assets of the Cherokee Nation, the Delaware leaders were often involved in committees formed to prosecute the claims of the Cherokee Nation.³¹⁵

In addition, the Cherokees and the Delawares were also very active in the organization of the Convention of the Indians of Oklahoma, a representative body of many Oklahoma tribes formed "for the purpose of perfecting an organization composed of Oklahoma Indians, to protect the civil and political rights and interests of said Indians."³¹⁶ During these conventions, the Delawares represented themselves, and were recognized by the all the tribes at the Convention as a separate and distinct tribe.³¹⁷ In 1924,

John W. McCracken, Delaware Business Committee, narrowly missed election to the President of the convention, but George Bullette, also of the Business Committee, was elected to sit on the Executive Council of the General Convention.³¹⁸

In 1937, the Department of Interior explored reorganizing the Cherokees under the Oklahoma Indian Welfare Act.³¹⁹ The Department determined that if the Cherokee Nation wished to organize a government under the authority of OIWA and avoid the limiting provisions of the 1906 Act, the tribal government would have no claim to the property and assets of the old Cherokee Nation.³²⁰ The Treaty of 1866 and the Cherokee Constitution vested the property rights of that Nation in certain individuals; the 1906 Act closed that class of individuals who hold the political and property rights of the Cherokee Nation. As discussed above, all after-borns are merely heirs or descendants of these final tribal members. As the property rights of the enrollees were vested by the 1906 statute in a certain class - only those persons could ever have the right to vote.³²¹ Thus, the Department determined that if the Cherokee people wished to perpetuate a government of its people, the tribe must organize a new legal entity - having no claim or responsibilities to the old Cherokee Nation property or enrollees.³²²

Eventually, the Cherokee people obtained legislation in 1946 to organize a new political entity under the OIWA which could act as a government to the Cherokee people; the entity to be organized was a band of mostly full-blooded Cherokees called the Keetoowah Band.³²³ The Keetoowahs, recognizing the need for continued tribal organization, had already obtained a federal charter in 1905, to allow a continued legal organization of Cherokee Indians after the dissolution of the Cherokee government.³²⁴ Thus, this group was reorganized under the OIWA with a new base roll to provide a governmental entity for all the blood Cherokee people who chose to join, and not just the dwindling enrollees of the Dawes Rolls.³²⁵ Formally this band was reorganized as the United Keetoowah Band of Cherokee Indians of Oklahoma.³²⁶

In 1948, a meeting of "duly enrolled" Cherokees (Dawes enrollees) was called by the Department of Interior.³²⁷ At the convention the enrollees passed several resolutions, one empowering the Chairman of the Convention, W.W. Keeler, to appoint an Executive Committee of nine members empowered to exercise the powers of the enrollees during the recesses of the Convention.³²⁸ In 1949, W.W. Keeler, was appointed Cherokee Chief by President Truman. From the time of the 1948 convention until the reorganization of the Cherokees in 1975, W.W. Keeler appointed the Executive Committee of the Cherokee Nation, ~~having the authority to act on behalf of the enrollees~~³²⁹ ~~This Executive Committee was~~ further recognized in 1961 by the Indian Claims Commission as duly authorized to act on behalf of the old Cherokee Nation.³³⁰

Throughout this period, W.W. Keeler was very supportive of an independent Delaware Tribe, and took no actions to limit the activities or authority of the Delaware tribal government. In fact, Keeler and such Delaware leaders as H.L. McCracken, and Bruce Miller Townsend, worked closely to effect the best representation of the interests of all Indians.

In 1975, the Cherokee Nation obtained administrative permission to reorganize after some sixty-five years of virtually no tribal government of the Cherokee people.³³¹ The new Cherokee Nation Constitution not only lists all the Dawes enrollees as eligible for membership in the Cherokee Nation, including those Delawares and Shawnees enrollees, but also all the descendants of the Dawes Roll.³³² Although Congress has never enacted any legislation to abrogate the provisions of the 1906 Act which closed the class of Cherokee members, and the Cherokee Nation did not reorganize under the Oklahoma Indian Welfare Act, the Commissioner of the Bureau of Indian Affairs gave administrative approval of

the new constitution. The reorganization of the Cherokee Nation in this fashion has created a legal nightmare between the United Keetoowah Band and the Cherokee Nation as to which qualifies as the government of the Cherokee people for jurisdiction, government funding, and benefits provided by the OIWA.³³³ The Cherokee Nation maintains that the government of the United Keetoowahs have no rights under federal law to receive any of the benefits or privileges of a federally recognized tribe.³³⁴ Whereas the Keetoowahs argue that the membership of the Cherokee Nation is limited by federal statute (1906 Act) to those Dawes Enrollees, and the Cherokee Nation legally can claim only a handful of surviving Dawes enrollees as members.³³⁵

Sadly, within two and a half years of its reorganization, Cherokee Chief Ross Swimmer took great pains to rewrite history, therein writing out the Delaware Tribe as terminated in 1867,³³⁶ and demanding that the Department of Interior cease to recognize the Delawares as anything but Cherokee Indians (discussed in detail below).³³⁷ Mr. Swimmer reasoned that under the Treaty with the Cherokees of 1866, the new Cherokee government had a right to claim Delawares as their members, and that no other tribal entity could claim this right.³³⁸ Thus, since 1979, in order for any Delaware of the main tribe to be recognized legally as an American Indian, the individual must 'enroll' with the Cherokee Nation registry, and obtain a Certificate Degree of Indian Blood stating they are Cherokee Indians.³³⁹ In 1977, the Cherokees could only claim some 10,000 individuals as member, and by 1979 the tribe had swelled to some 40,000. Today the Cherokees boast an enrollment of some 150,000 persons.

VI. FEDERAL RECOGNITION OF THE DELAWARE TRIBE, 1900-1979

As discussed above, although it may have been at some point the intent of Agent Pratt, and his like, to "do away with the tribal system of government,"³⁴⁰ in fact, the Delawares never abandoned their tribal identity or government, and continued to maintain a continuous government to government relationship with the U.S. Congress and Executive branches up until the administrative termination of the tribe in 1979.

In further review, after the removal in 1868, the Delaware Tribe did maintain its own government, providing its own doctors, schools, churches, and cemeteries.³⁴¹ The U.S. government continued to hold Delaware tribal assets separate from the Cherokee Nation for twenty five years after the Delaware removal and until the last of the monies were paid out per capita in 1893.³⁴² The U.S. government also continued to directly supervise the government and welfare of the Delawares through the Central Superintendency in Kansas, at least until the dissolution of the Cherokee Nation.³⁴³ Following the death of the Chief Charles Journeycake in 1894, the Department of Interior in 1895 called a General Council of the Delawares, and supervised the election of five men to perform the duties of the chiefs.³⁴⁴ The Delawares did enjoy all the rights of native Cherokee citizens, as they had contracted for this right under Article 15 of the Cherokee Treaty of 1866.³⁴⁵

Despite their association with the Cherokees, however, the Delawares paid valuable consideration to retain their tribal government while residing within the Cherokee Nation - a government of the Delaware people continuously existing from the removal in 1868 to the present day.

Congressional and Executive Recognition of the Delaware Tribe During the Allotment Era, 1900-1906

The legal ambiguities created by the final version of the Articles of Agreement between the Delaware and the Cherokee remained unresolved during the meager twenty-five year residence within the old Cherokee Nation.³⁴⁶ By 1906, however, the Department of Interior, the U.S. Attorney General, and the U.S. Congress had resolved any lingering ambiguities about the Delawares and determined that the tribe had remained a fully functioning body politick - with the inherent sovereignty to govern its own affairs.

The U.S. Congress enacted legislation in April, 1904, on behalf of the Delaware Tribe, unequivocally recognizing the tribe as a political body, possessing the right to self-determination:³⁴⁷

The Secretary of Interior is authorized and directed to pay the Delaware tribe of Indians residing in the Cherokee Nation, as said tribe shall in council direct, the sum of one hundred and fifty thousand dollars in full of all claims and demands of said tribe against the United States.... Provided That said sum shall be paid only after the tribal authorities, thereunto duly and specifically authorized by the tribe.... (emphasis added).³⁴⁸

In response, on April 27, 28, 29, 1904, the Delaware Tribe met in General Council and passed a Resolution of the Tribe, defining the membership criteria of the tribe, and officially vesting the political authorities of the tribe in the General Council, the Business Committee, and two delegates to act on behalf of both.³⁴⁹ The April Resolution provided that "Delaware Tribe of Indians Residing in the Cherokee Nation consists of all Delaware Indians, now living, whose names appear upon the certain roll made by John G. Pratt, February 18, 1867...and all living descendants of such Registered Delaware Indians."³⁵⁰

Thus defining its membership, the Resolution goes on to define the "legal authorities of the said Delaware Tribe of Indians" as: 1) A General Council duly called together by the Business Committee of the Tribe; 2) the Business Committee, as elected by a vote of the people cast on Feb. 1, 1895, under the direction of W.H. Simms, Acting Secretary, dated December 21, 1894; 3) the representatives of the tribe who are duly authorized to act for the Council of said Tribe, and the Business Committee of said Tribe.³⁵¹ The Resolution goes on further to give authorization to the Business Committee to compile a membership roll for the tribe, approving each and every enrollment, to be submitted for a per capita payment of the appropriated funds.³⁵²

This resolution was sent to the Department of Interior and duly accepted as a valid expression of the tribal body.³⁵³ However, some Delawares objected to the creation of the Roll by the Delaware Business Committee, rather than the Department of Interior. Accordingly, the Delawares passed a second resolution on October 1904, authorizing the representatives of the Department of Interior to prepare the roll.³⁵⁴ Ultimately, however, the Department of Interior determined that the roll could not be produced without the assistance of the Business Committee.³⁵⁵ The Business Committee compiled a list of some 1100 Delawares, accompanied by affidavits attesting to the membership of each and every Delaware to be placed on the per capita roll.³⁵⁶ The final roll came to be known as the 1906 Delaware Per Capita Roll. This Roll has been adopted by the Delaware tribe as a base roll to define membership since that time.³⁵⁷ In December 1904, the U.S. Attorney General affirmed the validity of the Delaware Tribal Resolution, and advised that the Resolution be approved by the President of the United States.³⁵⁸

Of primary significance in clarifying the Delawares as a separate tribal entity was the 1905 opinion issued by the Comptroller General, at the request of the U.S. Attorney General and the Secretary of the Interior, addressing whether Congress intended the appropriations for individual Delaware Indians, or for the Delaware Tribe as a political tribal entity.³⁵⁹ The Comptroller General determined that the appropriation was for the Delaware Tribe of Indians, and not for the individual descendants of Delawares.³⁶⁰ In the opinion, the Comptroller determined that under Article 15 of the Treaty of 1866 with the Cherokees, the Delaware Tribe "removed from Kansas to the Cherokee country, and there maintained its tribal organization as a separate band of the Cherokee Nation."³⁶¹ In addition, the opinion recognized that while maintaining their tribal organization, the Delawares also purchased full citizenship rights in the Cherokee Nation, entitling them to the right to participate in all Cherokee funds.³⁶²

The opinion also points out that under the Delaware Treaty of 1866, only those individuals who chose to preserve their tribal relations with the tribe under the Articles of Agreement of 1867, could maintain a claim of tribal membership.³⁶³ Of note, the opinion emphasizes, "[t]he fact that some or all of the Delawares who elected to remain in Kansas and become citizens of the United States and thereby ceased to be members of the tribe, some years later [after 1868]...purchased Cherokee citizenship from the Cherokee Nation, did not reestablish their tribal relations as members of the Delaware tribe."³⁶⁴

Hence, the Department of Interior and the Department of Justice by adopting the decision of the

Comptroller reaffirmed that, indeed, although the Delawares had purchased full citizenship rights in the Cherokee Nation, the tribe also purchased the right to preserve its separate tribal organization, and continue as an inherent sovereign, separate and distinct from the Cherokees.

Executive Recognition, and Direct Supervision of the Delaware Tribal Government, 1908-1940

As discussed above, the Delaware tribal government continued in full force after the removal to the Cherokee Nation, and despite the contracted for rights to Cherokee citizenship, the Delaware Indians retained their dual membership in the Delaware Tribe. Even before the dissolution of the Cherokee Nation, the Delaware tribal government continued to administer to the Delawares under the supervision of the Department of Interior.³⁶⁵ Whereas the Cherokee tribal government dissolved in totality, with the exception of the full-blood band of Keetoowahs, the elected Delaware tribal government never ceased to exist, but in fact, continued as a tribal body throughout the twentieth century under the direct supervision of the Commissioner of Indian Affairs, or the Director of the Muskogee Area Office.

Between 1908 and 1921, the Delaware leaders continued to concern themselves with the preservation of Delaware Culture and the defense of Native American rights in general. In 1908, the tribe submitted a "Memorial of Richard C. Adams on behalf of the Delaware Indians and all other Indians Residing in the State of Oklahoma."³⁶⁶ The purpose of the memorial was to request federal appropriations for the creation of a cultural preservation retreat and retirement settlement to service all the Oklahoma tribes.³⁶⁷ The memorial cites the benefits of providing a traditional environment wherein the history, language, culture, and skills of the Oklahoma Indians could be practiced and taught to new generations, in addition to providing a permanent home for elderly Indians.³⁶⁸ In 1910, the Delawares were back in Washington, D.C. seeking further bills for jurisdictional statutes to allow "the Delaware tribe of Indians, residing in Oklahoma" to bring suit against the U.S. for yet more uncompensated treaty violations.³⁶⁹

Note, that with the dissolution of the Cherokee Nation, the Delawares were now referred to by Congress as "residing in Oklahoma," rather than within the Cherokee Nation.³⁷⁰

In 1924, the tribe participated in the General Convention of the Oklahoma Indians organized for ~~the purpose of protecting the civil and political rights and interests of said Indians.~~ Joe A. Bartles, Chairman of the Delawares, and George Bullette, and John W. McCracken of the Delaware Business Committee, and A.A. Exendine, tribal member, all attended the convention as official delegates of the Delaware Tribe of Indians. John McCracken missed election to president of the organization by only fifteen votes, while George Bullette was elected to serve on the Executive Committee, and A.A. Exendine to the Legal Advisory Committee.³⁷¹

Between 1895 and 1921, George Bullette continued to serve as Chairman for the Delaware Tribe of Indians.³⁷² In 1921, the Business Committee called no less than five General Councils of the Delaware Tribe. On February 7, 1921, the General Council discussed a "design to perpetuate the identity of the Delaware Tribe of Indians...also to take such measures as they deem necessary to protect the tribe from any judicial or legislative acts that would be in any manner injurious to the tribe or any member."³⁷³

The Business Committee members then included George Bullette and John Young, Jr., while Benjamin Haff, Stephen Miller, and C.C. Wilson, were elected to fill the vacancies of the retiring members John Young, and John Sarcoxie, and the deceased member John Secondine.³⁷⁴ The Delawares

met again in General Council on March 5, 11, and 21, of 1921 to attend to tribal business; all the business of the meetings were conducted in the Delaware language, and reported upon by the local press.³⁷⁵ The General Council met in 1922 and elected Joseph A. Bartles as Chairman of the tribe.³⁷⁶

In January and February of 1924, two meetings of the General Council was again held in Dewey, Oklahoma.³⁷⁷ On February 20, 1924, the General Council met to "submit a full and complete report of its efforts, accomplishments, and disappointments in behalf of the Delaware people for approval or rejection."³⁷⁸ The Business Committee was comprised of Joe Bartles, John McCracken, Solomon Ketchum, C.C. Wilson, and Jake Parks as interpreter.³⁷⁹

In a letter of April 10, 1926 from the Commissioner of Indian Affairs to the Delaware Ceremonial Chief, George Fall Leaf, the Department assures the Chief that the U.S. recognizes the authority of the Delaware Business Committee to act on behalf of the tribe by virtue of a formal resolution of the General Council of the tribe dated January 3, 1925.³⁸⁰ The records indicate that the Delawares also met in General Council at least once in January, 1926.³⁸¹

As early as 1935, John Collier, Commissioner, was in communication with the Superintendent of the Five Civilized Tribes Agency inquiring about the "proposed organization and constitution for the Delaware Indians near Bartlesville, OK."³⁸² Mr. Collier writes to the Superintendent to confirm the May 18, 1935, General Council of the Tribe, wherein the Delawares chose to maintain the old business committee organization, and that this organization should be the official body to represent the Delawares.³⁸³ According to the minutes, taken by the Superintendent A.M. Landman himself, the General Council of May 18, 1935, voted not to elect a chief and council for the time being, but to continue the Business Committee for four more years.³⁸⁴ During the May 18th meeting, the Business Committee members were listed as Joe A. Bartles, John McCracken, C.C. Wilson, Solomon Ketchum, and one vacancy.³⁸⁵

In 1936, John Collier was again in contact with Joe Bartles, Delaware Chairman, to notify him that the Department would be more than willing to supervise the Delawares in sorting out some internal tribal dissensions.³⁸⁶ With the passage of the Oklahoma Indian Welfare Act (OIWA), 49 stat. 1967, in 1936, the Delawares reassessed the possibility of reorganizing under an OIWA constitution.

In 1937, a Delaware tribal member wrote and requested whether the Delaware Tribe was eligible to reorganize under the new act, as some Delawares are enrolled (Dawes Roll) as Cherokees.³⁸⁷

Department of Interior Recognizes the Delawares as Eligible for Reorganization as a Tribe Under OIWA, 1940-1946

In a letter of October 25, 1940, the area office requested a "Departmental decision...as to whether or not the Delawares may be recognized as a distinct tribe or band within the meaning of the [OIWA] Act."³⁸⁸ The letter expresses that the Delaware leaders are "considering the possibilities and desirabilities of organizing" and requests a response as soon as possible.³⁸⁹

Over the signature of the Assistant Secretary Oscar Chapman, the Assistant Commissioner, William Zimmerman, issued a Departmental decision on December 3, 1940, finding "**that the Delaware Indians residing in the Cherokee area are eligible for organization as a tribe under the Oklahoma Indian Welfare Act**" (emphasis added).³⁹⁰ In particular, Mr. Zimmerman states:

While becoming Cherokee citizens, they retained their identity as members of a separate tribe and at the time of the making of the final rolls of...the Five Civilized Tribes...the final roll of the Delaware-Cherokee numbered 197, a majority of which were full-bloods....The national or tribal character of the Delaware-Cherokees was never lost or completely merged into that of the Cherokees.³⁹¹

Hence, the Delaware Tribe of Indians was fully recognized by the Department of Interior in 1940 as a tribe eligible for reorganization under the OIWA. Please, note, that under the regulations for organization under OIWA, 25 C.F.R. Prt. 81, a tribe must be listed or eligible to be listed in the Federal Register pursuant to 25 C.F.R. 83.6(b), ie...federally recognized. Hence, recognition by the Department of Interior as a tribe eligible for reorganization constituted full and complete federal recognition of the Delaware Tribe of Indians.

Also note, that the tribe was given the authorization by Commissioner Collier to reorganize under a constitution in 1935, even before the passage of the OIWA,³⁹² thereby verifying that the U.S. government had continued to recognize the Delaware Tribe as an historic, inherently sovereign - even without the supplemental authorization of the OIWA to organize.³⁹³

The effort for reorganization appears to be lost during W.W. II, however, by 1946 the Delaware Tribe was back on its feet. In 1946, the tribe met in General Council no less than five times, at which the minutes of each meeting were recorded and filed by the Department of Interior.³⁹⁴ At the General Council of February 23, 1946, the tribe voted to begin its tribal treasury again.³⁹⁵ The General Council of April 20, 1946, voted to petition the governor to have some Delaware artifacts returned to the tribe and placed in the Delaware Museum.³⁹⁶ At this meeting, the Delawares were also visited by the assistant to Governor Kerr who briefed the congregation on pending legislation in Washington, D.C. relating to the Oklahoma Indians.³⁹⁷ ~~The meeting was also attended by the President of the National Congress of American Indians, a Cherokee named Judge N.D. Johnson; the Delawares voted overwhelmingly in 1946 to join as a member of NCAI.~~³⁹⁸

The tribe met three more times during 1946, and among other things, voted to hire two attorneys to seek compensation in the Court of Claims for U.S treaty violations.³⁹⁹ General Council was held again on February 2, 1948, wherein the Chairman reviewed for the tribe how the Business Committee was set up at the behest of the Indian Department in 1895, the Committee's continuous existence, and current recognition by the Department of Interior, and the other tribal business, such as NCAI dues and attorney contracts for the Court of Claims.⁴⁰⁰

On July 14, 1951, the General Council of the Tribe met and passed a resolution redefining the tribe's membership.⁴⁰¹ The resolution sets forth that certain Delawares did not move with the tribe to Cherokee Nation, and were not listed on the 1867 roll, but later came to join the tribe and directly purchased their citizenship rights from the Cherokee Nation (referred to as 'Kansas Delawares').⁴⁰² Further the resolution sets forth that "there is some question as to whether or not the Delaware Council

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ever formally admitted and adopted said Delawares as members of the tribe"; the resolution therefore goes on to adopt five specifically named persons into the tribe, granting them full political and property rights in the tribe.⁴⁰³ The resolution further provided that "a copy of this resolution be sent to the Commissioner of Indian Affairs, Washington, D.C."⁴⁰⁴

During the 1951 General Council, Chairman Joe A. Bartles, resigned due to illness after some thirty years service on the Business Committee; John McCracken also had passed away, leaving two vacancies on the committee.⁴⁰⁵ H.L. McCracken was elected as the new chairman, the other members included, Mrs. Victoria Nolan, Mary K. Townsend, Dennis Frenchmen, and Edward T. Miller.⁴⁰⁶

U.S. Loses in Court of Claims, 1951- 1955, on Argument that Delawares were Terminated in 1867

Such is the ever repeated story of the betrayal of the Delaware Tribe at the hands of the United States government. The Department of Interior had been directly supervising the Delaware government and people since its removal to the Cherokee Nation,⁴⁰⁷ had specifically determined in 1905 that the tribe had preserved its tribal organization in 1867,⁴⁰⁸ and had been working to reorganize the Delawares under a constitution since 1935, specifically recognizing the tribe as eligible to reorganize under OIWA.⁴⁰⁹ Nevertheless, by 1952, the U.S. made an about face turn and attempted to argue before the Indian Claims Commission that the Delawares ceased to be a tribe and had terminated themselves in 1867, and therefore had no standing to bring claims on behalf of the tribe.⁴¹⁰

The specific question presented was whether or not the Petitioner in either case has the capacity to maintain a claim as a "tribe, band, or other identifiable group," within the meaning of the Indian Claims Commission Act, 60 stat. 1049 (1946). The government argued that under the Articles of Agreement, the tribe abandoned its tribal organization, and had ceased to exist as a separate and distinct tribe or band.⁴¹¹

However, the government lost on those arguments in the Indian Court of Claims, and again lost in the Court of Claims, and again lost on appeal to the federal district court.⁴¹² The Indian Court of Claims ruled that despite its removal to the Cherokee Nation, the Delawares did not give up their tribal identity:

They continued to maintain their tribal customs, practices, and their hereditary form of Delaware government. They received annual payments for many years from their own tribal funds, separate from the Cherokees. They had separate tribal funds in the hands of the United States as late as 1906. They were governed by hereditary tribal chiefs until the death of Charles Journeycake in 1895. Thereafter, they maintained a tribal council and business committee to perform the functions and duties previously performed by their chiefs.⁴¹³

Note, also that the U.S. lodged similar arguments against the Absentee Band of Delawares who had filed claims against the U.S. The U.S. asserted that the Absentees had been merged with the Caddo

and Wichitas and had ceased to exist as a band of the Delaware Tribe.⁴¹⁴ Again the United States lost on those arguments, and the Absentee Tribe today is federally recognized as the Delaware Tribe of Western Oklahoma.⁴¹⁵

Immediately following the final opinion of the federal district court, the Department of Interior again took action to organize the Delaware Tribe under the Oklahoma Indian Welfare Act.

BIA Oversees Reorganization of Delaware Tribe, 1956-1962

As discussed below, the Department of Interior had approved reorganization of the Delawares under a constitution as early as 1935,⁴¹⁶ and then, specifically approved reorganization as a tribe under the OIWA in 1940.⁴¹⁷ The process had been interrupted during W.W.II, and was brought to a screeching halt in 1951 when the government decided it could save some money by rewriting history and arguing in the Court of Claims that the Delawares had ceased to exist in 1867.⁴¹⁸ As the government lost in its bid to erase the tribe, the BIA was back again to reorganize the Delawares.

As with many tribes, the Delawares initially did not see the need to reorganize under the OIWA as their governing body had been organized by the Department of Interior and had continuously operated in a satisfactory fashion for over sixty years.⁴¹⁹ The Business Committee reasoned that the Department of Interior recognized the committee as the governing body, and therefore, no further organization was necessary.⁴²⁰

However, as early as December 8, 1956, delegates of the tribe were meeting with the Commissioner of Indian Affairs to discuss reorganization under a constitution.⁴²¹ By February 16, 1957, the Committee for the Reorganization of the Delaware Tribe was formed.⁴²² The committee's aim was to have the tribe organized under federal statute in order to take advantage of the benefits offered under the OIWA.⁴²³ Eventually the Business Committee was persuaded to meet with attorneys and the Bureau of Indian Affairs to discuss reorganization of the tribe under OIWA.

In a letter dated March 10, 1958, BIA Area Director, Paul Fickinger, refers to the "possibilities and necessities for establishing a Constitution and By-laws for the operation of the Delaware Indians in tribal affairs...."⁴²⁴

In a letter of April 1, 1958, from the Muskogee Area Director, Paul L. Fickinger, Area Director, to the Delaware's attorney, Bruce Miller Townsend, the Bureau states that "we would seek authority from the Secretary to call such an election for that purpose."⁴²⁵ Mr. Fickinger closes the letter with "May we assure you that it is our desire to assist in every way possible the members of the Delaware Tribe of Indians in working together in harmonious relationships and in the interest of all Delaware tribal members."⁴²⁶

On May 1, 1958, Townsend further met with Fickinger in Muskogee to discuss the "forth coming Delaware Tribal election," and the "mechanics necessary for getting such an election under way," including authority from the Secretary, and notice to all Tribal members through direct mail and the media.⁴²⁷ In addition, Mr. Fickinger stated that authority from the Secretary could be obtained within two weeks, and that the Area Office would be responsible for mailing thirty day notices to all tribal members, and issuing news releases, including radio and television - all at the expense of the federal government.⁴²⁸

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On August 7, 1958, the Department of Interior issued a "Public Notice to All Members of the Delaware Tribe," providing that:

[P]ursuant to the authority and direction of the Commissioner of Indian Affairs, a meeting of the Delaware Tribe of Indians will be held...on September 7, 1958.... The purpose of this meeting of the Delawares will be...:

b) Establish by proper Resolution a simple Constitution and Bylaws for the Tribe (emphasis added).⁴²⁹

Accordingly, a General Council was held on September 7, 1958, supervised by the Muskogee Area Director, wherein the bylaws of the Tribe defining the tribal government of the tribe were adopted and certified by the Area Office officials.⁴³⁰ The Bylaws were subsequently signed and approved by the Commissioner of Indian Affairs on May 31, 1962.⁴³¹ The resolution establishing the bylaws set out the authority and duties of the Business Committee, provided for a membership ordinance, an election committee, and a grievance committee.⁴³²

During the 1958 General Council, the following persons were elected to the Business Committee: H.L. McCracken, Chairman; Bruce Townsend, Vice-Chairman; Marjorie Wheelock, Secretary-Treasurer; Adam Frenchman, member and Henry Secondine, member.⁴³³

Note, that the Committee for the Reorganization of the Delaware Tribe approached the Bureau for the purpose of reorganizing under the OIWA as per authorization given by the Assistant Secretary of Interior in 1940.⁴³⁴ Note, also that at the time there were no published regulations in effect governing the adoption of a governing document under the OIWA, and no distinction appears in any of the discussions or correspondence as to organizing under by-laws or a constitution. Note, also that the election was a Secretarial Election conducted under the supervision of the Area Office, and fully funded by the U.S, and that the election notice issued by the Area Office was for the adoption of a constitution.

As will be discussed in detail below, the Delawares were requested by the BIA, pursuant to a mandate from Congress, to amend its bylaws to include specific criteria for defining its membership.⁴³⁵ Accordingly, the Delaware Tribe amended the bylaws on July 6, 1974, to provide criteria for membership in the Delaware Tribe, and also created a grievance committee and election board.⁴³⁶ However, just a few months prior to this amendment the Muskogee Area Office placed the following addendum to the Resolution adopting the Bylaws:

This certifies the photocopy of the resolution and the accompanying [] are from the official file of the Bureau of Indian Affairs, Muskogee Area Office, Muskogee Oklahoma. [] resolution is still effective and serves as the basis for the Bureau's recognition of the Delaware Tribe of

Indians as a tribal entity.⁴³⁷

Twenty years later, the Bureau would blatantly 'equivocate' that these bylaws were adopted only to facilitate the Delawares prosecution of claims against the U.S., and in no way extended federal recognition to the tribe.⁴³⁸ Note, that nowhere in the discussions and progressions for the adoption of this governing documents is there a mention of the need for an organization to prosecute claims! In fact the Delawares had been successfully prosecuting claims against the U.S. since before the turn of the century. In fact the Delawares had just finished proving before the Court of Claims that it had never abandoned its tribal organization, and had successfully managed its affairs under the guidance of the Department of Interior and the Business Committee for over sixty years. And in 1980, when a tribal members submitted a Freedom of Information Act request for proof that the 1958 Delaware Bylaws were adopted only to facilitate tribal claims, the Bureau of Indian Affairs responded that no such evidence could be found.⁴³⁹

Congressional and Executive Recognition Continues, 1962-1975

Although in the shuffle of each new presidential administration, the Delaware's sometimes seemed to be forgotten⁴⁴⁰, the tribe nevertheless continued to receive direct supervision from the Muskogee Area Office throughout the 1960s and on into the 1970s. The Delawares met in General Council in 1962, 1965, 1966, 1968, and 1970.⁴⁴¹ For the meeting in 1962, the BIA requested copies of all General Council Resolutions,⁴⁴² typed the minutes of the meeting, and distributed the same to all Delawares attending the same.⁴⁴³ These minutes were further forwarded to Washington at the request of the Commissioner of Indian Affairs.⁴⁴⁴ For each of the foregoing General Councils, the Area Office took responsibility for sending notice of the meetings to all Delawares, attending the meetings, and for supplying the minutes of the meetings.⁴⁴⁵

The U.S. Congress again specifically recognized the Delaware Tribe of Indians on October 3, 1972, as a political tribal entity, possessing the inherent authority for self government:

The funds...shall be placed to the credit of the Delaware Tribe of Indians in the United States Treasury and shall be used in the following manner: 90 per centum of such funds shall be distributed in equal shares to each person enrolled pursuant to subsection 2(c)(1), and 10 per centum shall remain to the credit of the tribe in the United States Treasury and may be advanced, expended, invested, or reinvested **for any purpose that is authorized by the tribal governing body:** Provided, That the Secretary of Interior shall not approve the use of the funds remaining to the credit of the tribe until the tribe has organized a legal entity which in the judgement of the Secretary adequately protects the interests

of its members (emphasis added).⁴⁴⁶

Thus, Congress explicitly recognized the Delawares as a tribe, possessing the authority to govern itself. The proviso that the tribe must organize a legal entity was inserted because at the time of the March 13, 1972, hearings, the Delaware Tribe did not possess a tribal roll, as distinguished from the Secretarial per capita roll.⁴⁴⁷ The sub-committee and the BIA were well aware that the Delawares were governed under their 1958 bylaws, approved by the BIA; however, Mr. Stigler of the sub-committee was concerned that the tribe did not possess a tribal roll pursuant to the governing document.⁴⁴⁸ In fact, while the bylaws set forth a provision for creating a tribal enrollment ordinance, no such ordinance had ever been enacted.⁴⁴⁹ Hence, Congress wanted to assure that the tribe organized a sufficient legal entity that would define the membership of the tribe before some million dollars in programming funds were released.

However, within a year of the passage of the statute, the Washington level BIA had apparently forgotten that the Delawares were organized under a governing document, and were unaware of the purpose of the statutory proviso, assuming that the tribe possessed no organizational document.⁴⁵⁰ The Area office, aware of the existence of the bylaws, but unaware of the purpose of the statutory proviso, informed the Commissioner, "[t]he question of the tribe being a legal entity was apparently raised in your office's inability to find an approved authorizing resolution."⁴⁵¹ But the Delaware bylaws were specifically addressed and acknowledged in the sub-committee hearings, and apparently 'forgotten' by the Washington level BIA between 1972 and 1974.⁴⁵² The sub-committee record clearly indicates that Congress did not want these funds released to the tribe until the tribe had some means of defining its membership, and creating a tribal roll.

Thus, in May, 1974, the Muskogee Area office, having made the Commissioner aware of the bylaws, certified them as serving as the "basis for the Bureau's recognition of the Delaware Tribe of Indians as a tribal entity."⁴⁵³ By July 23, 1974, however, the Commissioner of Indian Affairs finally surmised Congress' intent behind the statutory proviso, and directed the Chairman of the Delaware Tribe to proceed under the authority of section 5 of the bylaws and adopt a membership ordinance to provide criteria for tribal membership.⁴⁵⁴

However, the Delaware leaders, in attendance at the Congressional hearings, were aware of the intent of the Congressional proviso, and had already acted in General Council on July 6, 1974, to amend the bylaws to provide specific membership criteria for the Delaware Tribe.⁴⁵⁵ This amendment was subsequently approved by the Bureau of Indian Affairs on September 30, 1974.⁴⁵⁶ Although the Bureau did not attend this July 6, 1974 General Council, the minutes of the same were duly submitted to and accepted by the Bureau.⁴⁵⁷

In October, 1974, the Muskogee Area director further provided commentary and guidance to the Delawares on refining their governing document, in particular, a provision prohibiting dual enrollment.⁴⁵⁸ On June 20, 1975, Edward F. Edzards issued a general certification providing that "the Delaware Tribe of Indians is is organized and recognized per resolution dated September 7, 1958, and approved by Acting Commissioner James E. Officer."⁴⁵⁹

During this period the Delaware General Council met in 1970, 1971, 1972, and 1974 to discuss the activities of the business committee and the tribe in general.⁴⁶⁰ On June 10, 1972, the tribe met in General Council to discuss the proposed use of the Delaware judgement funds.⁴⁶¹ The Business Committee announced a plan for the programmed monies:

Our tentative plan for educational trust is to invest and use the interest which is generated for educational scholarships for Delaware students both in college and technical schools. Our plans with regard to historic and cultural purposes would be to use an amount for preservation of the Delaware history and cultural development. Our plans for the remaining funds withheld are to employ or use the monies for investments so as to generate income, provide jobs, and other job opportunities for the Delaware people with each member of the tribe owning an individual part thereof. The predominate idea is to educate tribal youth, perpetuate tribal culture, and to provide income and jobs for tribal members....⁴⁶²

Pathetically, the Delaware Tribe would not see this money, specifically appropriated for them by Congress in 1972, until some twenty years later.

In June, 1975, the Bureau of Indian Affairs would also certify that the resolution providing for the organization and recognition of the Delaware Tribe of Indians, also provided "the legal entity which in the interest of the Secretary of Interior adequately protects the interest of the members of the Delaware Tribe of Indians pursuant to the Act of October 3, 1972, Public Law 92-456, Section 4, 86 Stat. 762, 25 U.S.C. 1294 (b)."⁴⁶³

As will be discussed below, two years later, an individual Delaware tribal member named Chris White would appeal the proposed programming plan for the judgement funds, and the finding that the bylaws provided a sufficient legal entity to protect the interests of the Delaware Tribe.⁴⁶⁴ This would pave the way for the Bureau to arbitrarily revoke recognition of the bylaws in 1979, and determine that as of 1867 the Delaware Tribe ceased to exist, and that Delaware Indians only exist as Cherokees.⁴⁶⁵

Delaware Tribe Contracts Directly with BIA, IHS, DHHS, HUD, and the Oklahoma Indian Affairs Commission for the Administration of Services to Tribal Members, 1970-1979

Prior to its 1979 illicit termination, the Delaware Tribe was fast on the track of tribal government development and self-determination directly under the financial and technical supervision of the Bureau of Indian Affairs, the Department of Health and Human Services, Indian Health Service, and the Oklahoma Indian Affairs Commission.

From March 15, 1971, to late 1978, the Delaware Tribe successfully contracted from the Indian Health Services to administer its own Community Health Representatives Program.⁴⁶⁶ Under the program, the Delaware Tribe provided services for 3,782 Delawares in Northeastern Oklahoma, and services to 2,500 Native American, regardless of tribal affiliation.⁴⁶⁷ The Delaware CHR program

employed eleven Delaware tribal members; the program was staffed by one director, and a secretary, and nine community health representatives, including one specializing in child health and family planning.⁴⁶⁸

The goal of the CHR program was for the improvement of health care and health services to Indian people residing within the Claremore Service Area.⁴⁶⁹ Services provided included interpretation of Indian Health Services policies and procedures, improvement of utilization of Indian health facilities, education and participation in the environmental health program, health education in the home and community, patient care and referrals to alternate health sources, assistance to public health services in maternal and child health, tuberculosis control, alcoholism control, diabetes control, and supplemental transportation to medical services.⁴⁷⁰ Supplemental projects included in the CHR program included the implementation of domestic water and waste disposal systems under P.L. 86-121, Rural Water District program, and the BIA Home Improvement Program, and the Mutual Help Housing Program.⁴⁷¹ This program was eventually administered directly from the Delaware Tribal Center in Bartlesville for eight successful years.

On March 23, 1978, Ross Swimmer, Principal Chief of the Cherokee Nation, issued a notice to the Indian Health Service in Oklahoma City erroneously and unilaterally stating that the membership of the Cherokee Nation included all Delawares, and therefore the Cherokee Nation would be servicing the Delawares in the future.⁴⁷² On August 31, 1978, Ross Swimmer issued another notice to the Indian Health Services stating that the Cherokees had reached a contract agreement for October, 1978, and since, according to Swimmer, the Delawares had no contracting authority, "there was no need to further delay the process."⁴⁷³ On July 18, 1979, eight years after the first Delaware contract, the Indian Health Services informed the Delaware Tribe of Indians, that the BIA had issued a notice stating that the tribe did not legally exist and therefore the Delawares could no longer contract to provide Indian Health Services.⁴⁷⁴

As early as 1970, the Delaware Tribe had been receiving direct grants from the Bureau of Indian Affairs to administer its Delaware Language Classes; BIA funding for such language projects, however, had been cut out of the federal budget by 1973.⁴⁷⁵ Nevertheless, the Delaware Tribe continued with its language classes, and participated in the Delaware Language Continuing Education Work Shop Program in 1975.⁴⁷⁶

In February of 1973, the Delaware Tribe was one of two tribes in the Muskogee Area Office to receive a BIA contract grant for Tribal Government Development (TGDG).⁴⁷⁷ The objectives of the contract included: 1) coordinating an accurate official tribal membership roll to be submitted to the Department of Interior for official approval; 2) assist in preserving any land base and other natural resources the Delaware Tribe would be able to acquire; 3) develop and establish a more direct coordinations system with the BIA; 4) support the development of a stronger Tribal Council seeking the resolution of common problems and goals; and 5) to broaden the involvement of tribal members in existing and new tribal endeavors and activities by promulgating a constitution and organization plan.⁴⁷⁸

Under the 1973 TGDG contract, the Delaware Tribe was able to purchase and open a full-time tribal center at 108 S. Seneca, Bartlesville, OK., to administer to the needs of the Delaware people.⁴⁷⁹ The Delaware Tribal Center, located at the heart of the Delaware population, and within the original strip of land purchased from the Cherokees, has remained open for twenty-one years, surviving even the administrative termination. The purchase of the center in 1973 was greatly heralded by the BIA, and

surrounding tribes, including the Cherokee Nation, Osages, and Quapaws, as a positive development for the Delawares.⁴⁸⁰

Also in 1973, the Bureau of Indian Affairs and Indian Health Services had been providing direct financial support for Delaware tribal social and cultural events.⁴⁸¹ In April, 1973, Indian Health notified the tribe that it would provide free sanitation facilities at any tribal recognized celebrations.⁴⁸² The Bureau of Indian Affairs in 1973 paid over ninety percent of the labor and material costs of the Delaware Tribal supported annual Pow Wow at the Delaware traditional ceremonial grounds at Copan.⁴⁸³

In 1974, the Delaware Tribe had also submitted a contract proposal to build a half a million dollar Indian Health Center in Nowata, Oklahoma.⁴⁸⁴ The media reported that the Indian Health Center would provide Indians free medical and dental services within a 20 mile radius of Nowata (located about 20 miles from Bartlesville), to some 13,000 American Indians residing in Washington, Craig, Nowata, and Rogers Counties.⁴⁸⁵

In 1977, the Delaware Tribe also successfully contracted with the Department of Health and Human Services for a Health Planning Program, in addition to its already successful CHR program.⁴⁸⁶ The objective of the contract program was to develop long range plans related to the standard of living, education, and health of the Indian population residing in the operational area of service.⁴⁸⁷

On September 8, 1977, the Delaware Tribe adopted a resolution finding and declaring a need for a Housing Authority to function within Washington, Nowata, Craig, North Rogers, and North Tulsa Counties.⁴⁸⁸ Although the Cherokee Nation had established a Housing Authority in the late 1960s, the Delaware Tribe performed a needs assessment and determined: 1) Unsanitary and unsafe inhabited accommodations exist in the named counties; and 2) A shortage of safe and sanitary dwelling accommodations available to low income persons in said counties.⁴⁸⁹ On June 22, 1978, the Delaware findings were approved and the Organizational Transcript for the Delaware Housing Authority was accepted by the Department of Housing and Urban Development.⁴⁹⁰ The tribe was notified on June 22nd that the Delaware application for Section 8 Housing Assistance Payments Program for Existing Housing was approved in the amount of \$113,448.00.⁴⁹¹

However, on October 17, 1978, Ross Swimmer contacted HUD and demanded that it place a moratorium on the operations, funding, and performance of construction activities of the Seneca-Cayuga Housing Authority and the Delaware Housing Authority.⁴⁹² HUD denied Swimmer's request and clarified that neither the Cherokees nor the Delaware Housing Authorities would receive additional units until the two tribes had entered into a cooperative agreement.⁴⁹³ Eventually, Cherokee Chief Swimmer would file suit against the Department of Health and Human Services in 1980, demanding that the Delaware Housing Authority cease to be recognized and funded on the grounds that the Delaware Tribe was not federally recognized and therefore did not have the governmental authority to organize a housing authority.⁴⁹⁴ As will be discussed below, Mr. Swimmer lost in federal court on this argument, and today the Delaware Housing Authority exists in full force to service the people of its tribe and other under-served American Indians within its jurisdictional area.

Finally, in 1978, the Oklahoma Indian Affairs Commission also approved two contracts for administration by the Delaware Tribe. On March 1, 1978, the Delaware Tribe was granted a \$5,000.00 contract by the Oklahoma Indian Affairs Commission to provide supplemental food-money for the needy;

the tribe was also granted an \$11,000.00 contract to administer an Emergency Energy Assistance Program within Washington, Nowata, Craig, and Rogers Counties.⁴⁹⁵

With the administrative termination of the tribe in 1979, all the Delaware contracts were cancelled and the programs discontinued, except that of the Delaware Housing Authority. For nearly twelve years, the tribe was helpless to administer to the needs of its people. As will be discussed below, with the eventual release of its programming funds, the tribe can now provide social assistance and support for its membership, all funded by Delaware dollars. Although the Cherokee Nation has now taken over all of the previously contracted services, a needs assessment performed in April, 1993, indicated of those one-hundred Delaware households surveyed in the Bartlesville area, only 4% had ever sought services from the Cherokee Nation, and only 8% of that 4% received the services they sought.⁴⁹⁶ The Cherokee Nation headquarters in Tahlequah are located nearly three-hours away from Bartlesville, OK., and remains totally inaccessible to its Delaware elderly and low income families in need of assistance.

VII. U.S SUPREME COURT DETERMINES THAT THE DELAWARE TRIBE OF INDIANS IS A FEDERALLY RECOGNIZED TRIBE - BASED ON THE ARGUMENTS OF THE SECRETARY OF INTERIOR, 1973-1977

In 1977, the U.S. Supreme Court made a finding that the Delaware Tribe of Indians has enjoyed continuous federal recognition by the U.S. government, and is entitled to special statutory protection by the U.S. Congress.⁴⁹⁷

In 1973, a group of Delaware descendants (called the Kansas Delawares),⁴⁹⁸ bearing no tribal affiliation to the main body of the Delaware Tribe, nor to the Absentee band, filed suit in federal district court for a violation of their Fifth Amendment due process rights, and for a violation of the Equal Protection clause of the Fourteenth Amendment, as incorporated through the Fifth.⁴⁹⁹ These Kansas Delawares were challenging the constitutionality of 25 U.S.C. §§ 1291-1297 which provided for the distribution of the judgements from the Court of Claims to the Delaware Tribe of Indians and the Absentee Tribe of Western Oklahoma. As discussed above, the statute specifically appropriated the funds for the Delaware Tribe and the Absentee Tribe, reserving a percentage of the award to "be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body...."⁵⁰⁰

Because the Kansas Delawares were not members of either tribe, they were precluded from sharing in the judgement award. These Kansas Delawares maintained that because their ancestors were part of the tribe as it was constituted at the time of treaty violation in 1854, they have right to share in the award, regardless of current tribal affiliation.⁵⁰¹ Accordingly, the Kansas Delawares brought action in federal court on the basis that 25 U.S.C. § 1294 (1972) was an unconstitutional deprivation of their equal protection and due process rights.⁵⁰²

Amazingly enough, the Kansas Delawares also argued that because the Delaware Tribe of Indians residing in Oklahoma became Cherokee citizens in 1867, they severed their relations with the tribe and had no claim to judgement award; therefore, the statute was also an unconstitutional deprivation of property on the grounds that it illegally distributed the monies to the Delaware Tribe, thereby reducing the claim of the Kansas Delawares.⁵⁰³

The U.S. Supreme Court held:

Despite their association with the Cherokees, these Indians, called the "Cherokee-Delawares" in this suit, have over the years maintained a distinct group identity, and they are today, a federally recognized tribe.⁵⁰⁴

Accordingly, the Court further held that Congress did not arbitrarily favor the Delaware Tribe over non-tribal Delaware descendants as the statute was "tied rationally to the fulfillment of Congress' unique obligation toward the Indians."⁵⁰⁵

Federal District Court: Secretary of Interior Argues the Delaware Tribe Preserved its Tribal Organization and is Federally Recognized, 1973-1975

Thus, the primary issue of the case was whether Congress could favor the current Delaware Tribe and the Absentees over other descendants of the tribe in payment for prior treaty violations.⁵⁰⁶ The plaintiffs argued: 1) that their exclusion from the award was an invidious classification in violation of the Fifth and Fourteenth Amendments; and 2) that the inclusion of the Delaware Tribe of Indians also deprives them of due process without just compensation.⁵⁰⁷

The Secretary of Interior, on behalf of the United States argued that the statute was a valid exercise of Congress' plenary authority over the recognized Delaware and Absentee tribes, and therefore, the exclusion of the non-tribal affiliated Kansas Delawares was not arbitrary and capricious.⁵⁰⁸

Of primary significance, however, were the following arguments specifically posited by the Secretary of Interior:

- 1) Under art. 15 of the Cherokee Treaty of 1866, 14 Stat. 799, and the Articles of Agreement of 1867, the Delaware Tribe preserved its tribal organization by the purchasing of land east of the 96' longitudinal,⁵⁰⁹
- 2) That art. 15 and art. 27 of the Cherokee Treaty specifically required that any tribe settling east of the 96' longitudinal on Cherokee lands, preserving its tribal organization or otherwise, must become a citizen of the Cherokee Nation; thus, the Delaware most certainly contracted for all the rights of native Cherokees, and became Cherokee citizens.⁵¹⁰
- 3) That "the mere fact that the Delaware Tribe of Indians acquired for the 'Registered' members and their descendants thereof by contract for separate consideration paid, a right to be a member or citizen in the Cherokee Nation such acquisition did not mean the abolishment of the Delaware tribal entity or abandonment of tribal membership in the Delaware Tribe of Indians."⁵¹¹
- 4) Moreover, "prior Acts of Congress, recognition by the Executive Department, and judicial decisions have recognized the continued tribal entity and existence of the 'Delaware Tribe of Indians' by the registered Delawares and their descendants since the incorporation into the Cherokee Nation since the Agreement of 1867."⁵¹²
- 5) Finally, "We submit that by historic and continued

recognition by Congress, the Executive Departments and prior judicial precedents, Congress has not by virtue of the two Acts in question brought 'a community or body of people within the range of...[their] power by arbitrarily calling them an Indian Tribe....'⁵¹³

The sworn Interrogatories submitted by the Secretary of Interior in this case state the Delaware's case in the clearest terms.⁵¹⁴

Interrogatory No. 4: State with particularity what actions the Delaware Tribe of Indians has taken during the past twenty years which you contend shows that it was exercising political power as a tribe.

Answer:The latest specific Congressional recognition of the Delaware Tribe of Indians as a federally recognized tribe is found in the 1972 legislation authorizing the tribe to use part of the award made in dockets 72 and 298. 25 U.S.C.A. 1294 (b) Defendant believes such legislative recognition clearly established that the Delaware Tribe of Indians is possessed of and is capable of exercising tribal powers to the same degree as is true for other Oklahoma Indian tribes.⁵¹⁵

Interrogatory No. 26: What activities, other than pressing of claims against the United States and holding meetings in connection therewith, did the Delaware Tribal Business Committee engage in from 1895 to 1968?

Answer: The Delaware Tribe met in regular tribal council and other meetings to conduct its tribal affairs, only part of which involved the pressing of claims against the United States.⁵¹⁶

In addition, the Secretary's Answer to Request for Admissions, No. 24, provides:

Pursuant to the Treaty of 1866 with the Cherokee Nation, the Delaware Tribe entered into the 1867 agreement with the [Cherokee] Nation and pursuant to Article 15 of the Treaty of 1866 with the Cherokee Nation, the Delaware Tribe was permitted and did "maintain their tribal laws, customs, and usages not inconsistent with the constitution and laws

of the Cherokee Nation" upon being admitted to Indian Country "east of the 96' of longitude."⁵¹⁷

The federal district court upheld the plaintiffs first contention on the grounds that the intent of the Court of Claims was to make whole the tribe as it existed at the time of the treaty violation.⁵¹⁸ The Court held, "[a]gainst the history, the statutes and the treaties involved, the designation of the two 'modern groups' for exclusive distribution of the award is discrimination reflecting no policy, but simply arbitrary and capricious action."⁵¹⁹ As discussed below, the Supreme Court overruled this holding in 1977. On the issue of the inclusion of the Delaware Tribe in the award, the district court upheld that their right to participate in the award, but based on a finding that all lineal descendants of the injured tribe should be included in the award.⁵²⁰

The U.S. government, however, successfully appealed the case to the U.S. Supreme Court on the district court's finding that the statute arbitrarily and capriciously excluded participation by the Kansas Delawares.

U.S. Supreme Court: Delaware Tribe is Federally Recognized

Whereas the federal district court was preoccupied with the concept of making whole the tribe that existed at the time of the treaty violation, the Supreme Court was solely concerned with whether the Delaware Tribe of Indians and the Absentees are federally recognized, and therefore, eligible for Congress to favor them in the distribution of claims awards over the non-tribal descendants.

Before the Supreme Court, the Kansas Delawares argued that the Delaware Tribe of Indians was abolished in 1867, and has not since been federally recognized for any purpose except for the pursuit of claims on behalf of descendants of the historic tribe.⁵²¹ Therefore, they argued the Delaware Tribe is not a ward of the federal government, and Congress can not constitutionally favor them just for claims purposes over the Kansas Delawares in a judgement distribution statute.⁵²²

In direct response, the Secretary of Interior Kleppe argued that the Delaware Tribe is a federally recognized political tribe having "tribal governments in which their members participate and which provide services (particularly social and health related services) to the community, often under programs of the Bureau of Indian Affairs...."⁵²³ Of utmost significance, is that Secretary Morton specifically stated under oath that the Delaware Tribe of Indians had always been recognized, and not just for claims purposes.⁵²⁴

Secretary of Interior Kleppe further argued before the Supreme Court that "[t]he distribution statute reflects this rational distinction between Indians who presently are members of federally recognized tribes and those whose only connection with the tribe is historical."⁵²⁵ Kleppe points out that the constitutional contentions of the Kansas Delawares is grounded on a finding that the Delaware Tribe of Indians is not federally recognized and therefore their members are no more legally Indians than the Kansas Delawares; Kleppe specifically retorts that the Delaware Tribe has been recognized by Congress and the Executive since its removal to the Cherokee Nation, and today is a federally recognized tribe,⁵²⁶ "entitled to the unique treatment and protection upheld in Morton v. Mancari, 417 U.S. 535. 551."⁵²⁷

Based on the arguments of the Secretary of Interior, the U.S. Supreme Court made the finding

that the Absentees are a "federally recognized Indian tribe,"⁵²⁸ and "[d]espite their association with the Cherokees, these Indians, called 'Cherokee Delawares' in this suit,⁵²⁹ have maintained a distinct group identity, and they are today a federally recognized tribe."⁵³⁰

Based on the arguments and documentation presented by the Department of Interior that the Delaware Tribe had paid specific consideration under a contract with the Cherokees to preserve its tribal organization when settling within the Cherokee Nation, and that the Delaware Tribe has since been fully recognized as a political tribal body by the Executive, Congressional, and Judicial Branches of the U.S. Government, the Supreme Court determined the tribe was not being arbitrarily favored over other descendants of the tribe as it existed at the time of the treaty violation in 1854. In particular, the Department of Interior absolutely denied that the Delaware had been recognized only for claims purposes.

For over three years this issue was fully litigated before the federal courts of these United States by three different Secretaries of Interior⁵³¹, and based on those arguments that the Delawares were a fully federally recognized tribe, the Supreme Court made the same determination, and accordingly held that the statute at issue did not violate the plaintiffs due process rights.

VIII. THE ADMINISTRATIVE TERMINATION OF THE DELAWARE TRIBE OF INDIANS, 1977-1979

The administrative termination of the Delaware Tribe of Indians may be one of the most outrageous examples of the ever increasing "bureaucratic imperialism" exercised by the agencies of our American government. In 1979, the Bureau of Indian Affairs consciously acted to rewrite history in absolute disregard for the truth - to justify an otherwise illicit administrative termination of an Indian tribe. What is more appalling is that the actions of these officials were prompted by the leaders of the Cherokee Nation for the purpose of forever terminating the Delaware Tribe of Indians, and solely for monetary and political gain.

Cherokee Nation Receives Administrative Approval to Reorganize Under a New Constitution, 1975-1976

As discussed briefly above, the Cherokee Nation made great progress under the leadership of W.W. Keeler, appointed Cherokee Chief by the President Truman in 1949. Beginning in 1968, W.W. Keeler began to take the initiative to reconstitute a government of the Cherokee people, as distinguished from the government of the Keetoowah Band.⁵³² By October 22, 1970, P.L. 91-495 was enacted which authorized the Five Civilized Tribes to "select" their chief, thus abrogating the provision of the 1906 Five Civilized Tribes Act providing for presidential appointed chiefs only. However, the remaining provisions of the 1906 Act, providing for the closing of the class of citizens in the Cherokee Nation and for the distribution of all tribal assets to the Dawes Enrollees or their heirs, remained undisturbed.

In 1971, Chief Keeler first announced the intent of the Cherokee Nation to draft a new Cherokee constitution patterned after the original.⁵³³ On September 5, 1975, Keeler obtained the approval of the Commissioner of Indians Affairs, Morris Thompson, for a referendum on a new Cherokee constitution. Up to this time, the Cherokee and Delaware leaders had worked closely together to better the status of American Indians in general.⁵³⁴ W.W. Keeler and the Executive Council were supportive of Delaware self-determination, and Delaware Chairman, Bruce Townsend, even sat on the drafting committee for the Cherokee Constitution in 1972.⁵³⁵ However, in August, 1975, Ross Swimmer, successful attorney and banker, was selected chief of the Cherokee Nation, and the close relationship between the two tribes quickly eroded.

On June 26, 1976, the Cherokee people ratified their new constitution, establishing a Cherokee Nation government for the first time in some sixty years. Within six months, the Delawares would begin to hear renewed inquiries within the BIA of as to the legal status of the Delaware Tribe of Indians.

Bureau of Indians Affairs Acknowledges that Delaware Tribe is Eligible to Contract for Self-Determination (P.L. 93-638) Funding

On February 1, 1977, just six months after the Cherokee reorganization, the Director of the Office of Indian Services issued a memorandum requesting a solicitor opinion concerning the legal status of the Delaware Tribe "regarding entitlement to funding under P.L. 93-638."⁵³⁶ The memorandum states: "In view of the extreme factionalism among the Cherokee-Delaware Indians⁵³⁷ and the recent formal organization of the Cherokee Nation, a question has been raised as to the nature of our relationship with that group."⁵³⁸

Note, the memorandum refers to the Delaware Tribe as "Cherokee-Delawares," a term that was utilized in the Weeks case for the sole purpose of distinguishing the three Delaware parties involved in the Weeks litigation.⁵³⁹

The memorandum also erroneously asserted, without documentation, that "[r]ecognizing the need for some order in conducting business associated with pursuing their claim against the Government, the Cherokee-Delawares in 1958, adopted a resolution setting forth certain operating procedures."⁵⁴⁰ Note, also that this contention had never been expressed by the government prior to this time, and that, as discussed above, the 1958 Delaware Bylaws were certified as the "basis for the Bureau's recognition of the Delaware Tribe of Indians as a tribal entity."⁵⁴¹

To the February 1, 1977, memorandum, Associate Solicitor Scott Keep responded in a hand written notation, "To be held in abeyance pending Supreme Court decision in Weeks -[] meeting w/ Les Gay and Bob Farring 2/4/77."⁵⁴²

On March 17, 1977, Scott Keep sent another hand-written notation to the Director of Indian Services, stating "Delaware Tribe- Weeks- Def. Morton's answers to interrogatories - Delaware as a Tribe - Ans. #4, 6, 9."⁵⁴³ Thus, the Associate Solicitor specifically advised the Bureau that the sworn interrogatories of the Secretary of Interior in the Weeks litigation established the Delawares as a tribe within the meaning of the Self-Determination Act.

On August 4, 1977, the Under Secretary of Interior, James Joseph, notified Delaware Chairman, Bruce Townsend, that he indeed was fully committed to the policy of tribal self-determination, and equally committed to supporting the will of the tribal membership as set forth in a validly approved tribal governing document, and further, that "I wish to repeat my desires for a strong and effective Delaware Tribal government."⁵⁴⁴

On August 16, 1977, Acting Deputy Commissioner, Raymond V. Butler, notified the Delaware Tribe that the Weeks decision did confirm that the Delaware Tribe of Indians was in fact a tribe within the meaning of the Indian Self-Determination Act.⁵⁴⁵

However, the letter further asserted, without documentation, that most of the Delaware tribal membership are also considered "members" of the Cherokee Nation.⁵⁴⁶ Note, that in 1977, the membership of the Cherokee Nation numbered some 10,000, while the membership of the Delaware Tribe of Indians was over 7,000, how the majority of Delawares could be considered Cherokee members is incomprehensible. Note, also, that just ten years before the only "members" of the Cherokee Nation were those individuals listed on the Dawes Roll.⁵⁴⁷ Furthermore, Mr. Butler notified the Delaware Tribe that "their status is similar to that of the United Keetoowah and that of the several organized Creek towns to the Creek Nation," and that the Delaware's Self-Determination monies would be turned over only to the "larger entity, in your case the Cherokee Nation."⁵⁴⁸ Mr. Butler also suggested to the Delawares that if they were interested in contracting under P.L. 93-638, then they should "meet with Principal Chief Swimmer."⁵⁴⁹

A memorandum of October 13, 1977, verifies that the BIA, IHS, and the Delaware tribal leaders met to confirm the eligibility of the Delaware Tribe to continue to administer its CHR program.⁵⁵⁰ The BIA established that: 1) The Delaware Tribe was a tribe as defined by the Self Determination Act, P.L.93-638; 2) That the Delawares were not considered eligible to receive P.L. 93-638 grants because of the BIA's formula for P.L. 93-638 grant funds - the Delaware's share was included in the amount

granted to the Cherokee Nation; 3) Indian Health Service because of its method of funding grants was not bound by the BIA decision; and 4) Since IHS grants were given to tribes for developmental purposes, the Delaware Tribe could be funded.⁵⁵¹

Ross Swimmer, Cherokee Chief, Declares that the Delaware Tribe of Indians does not Exist, 1977-1978

Hence, the nearly unbelievable Orwellian nightmare begins as the hand of Ross Swimmer increasingly appears in the affairs of the Delaware Tribe.⁵⁵² On November 28, 1977, Cherokee Chief Ross Swimmer responded to the October 13, 1977, memorandum confirming the BIA, IHS, and Delaware meeting, which reaffirmed that the Delaware Tribe was in fact a tribe under the Self-Determination Act.⁵⁵³ Mr. Swimmer emphatically objects to this determination stating, "LEGALLY, THE DELAWARES DO NOT EXIST EXCEPT AS CHEROKEES."⁵⁵⁴ In this letter, Mr. Swimmer states that the Articles of Agreement of 1867 provided that all Delawares would be Cherokee, and that the continued recognition by IHS of the Delaware Tribe constituted an "attempt to abrogate yet another Indian Treaty."⁵⁵⁵

Mr. Swimmer apparently had made no attempt to investigate the history of the 1867 Agreement, the provisions of the Treaty with the Cherokees providing for the agreement, nor the history of the continued existence of the Delaware Tribe of Indians.⁵⁵⁶ The government of the Cherokee Nation had been abandoned for nearly sixty years, and only reconstituted for a little over a year, and Mr. Swimmer had the gaul to question the legality of the continuously recognized Delaware Tribe of Indians - especially in light of the legal impairment of the 1906 Five Civilized Tribe Act to a legitimate government of the Cherokee Nation.

Mr. Swimmer continues,

[t]he memo states that the Cherokee-Delawares are enumerated as both Cherokees and Cherokee-Delawares. This is not legally possible under either federal or tribal law. They can not constitute a tribe in themselves and be at the same time a part of another tribe.⁵⁵⁷

Mr. Swimmer apparently never bothered to read art. 15 of the Cherokee Treaty of 1866 which specifically allowed for tribes to settle within the Cherokee Nation, and if purchasing such land, then preserving their tribal organization. Art. 15 was a particularly unique provision, especially drafted with the Delaware settlement in mind,⁵⁵⁸ providing by federal law the very situation that Mr. Swimmer rejects.

Even more ironic is that, unlike many tribes, the Cherokee Nation Constitution specifically does not prohibit dual enrollment, nor does it have a blood quantum requirement. Why? Because the 1906 Act vested tribal property rights in all the Dawes enrollees, be they black, white, or Indian, and if those enrollees die, then that statute vests by heirship the property rights of each individual enrollee in their heirs - absolutely regardless of tribal affiliation and blood quantum. Accordingly, the Cherokee Nation could not prohibit dual enrollment because those Dawes enrollees or their heirs might be members of

other modern day tribes, yet still possessing a statutory interest in the assets of the Cherokee Nation - which could not be divested by the Cherokee Constitution without specific Congressional authority.

By the spring of 1978, it appeared that the BIA was not going to give credence to Chief Swimmer's demands, and was prepared to reorganize the Delaware Tribe under the Oklahoma Indian Welfare Act.⁵⁵⁹ In a letter of January 17, 1978, from Assistant Secretary Forrest Gerard to Delaware Chairman Bruce Townsend, concerning "the Delaware Tribe of Oklahoma,"⁵⁶⁰ the Assistant Secretary assures Mr. Townsend that "[w]e will certainly continue to treat the Delaware Tribe of Oklahoma and the Delaware Tribe of Western Oklahoma [Absentees] as the only tribal organizations of the Delawares."⁵⁶¹

On January 24, 1978, the Director of Indian Health Services, Emery Johnson, notified Assistant Secretary Forrest Gerard that he has received a letter from Ross Swimmer protesting recognition of the Delawares as a tribe under the Self-Determination Act.⁵⁶² Mr. Johnson further clarifies that if the Delaware Tribe is eligible for Self-Determination Act funding, then the BIA can not legally defer their share of the funding to the Cherokee Nation. He states, "they have certain rights including the right to contract under P.L. 93-638, and the right to sanction or withhold sanctioning of a tribal organization, in this case the Cherokee Nation, which applies for a P.L. 93-638 grant to serve them."⁵⁶³ Recall that in August, 1977, the BIA had issued a policy that while the Delawares constituted a "tribe" as defined by the Self-Determination Act, the BIA policy would be to issue the Delaware Tribe's allocation of the funding only to the "larger entity", the Cherokee Nation.⁵⁶⁴

In a February 14, 1978, Memo for the Record, Bob Farring notes that Ross Swimmer planned to meet with Forrest Gerard within a week to discuss the relationship between the Cherokees and the Delawares.⁵⁶⁵

BIA Struggles with Cherokee Chief Ross Swimmer and the Legal Status of the Delaware Tribe, 1977-1978

In a Memo for the Record, dated December 20, 1977, tribal operations officer, Bob Farring, outlined the culmination of the 'Delaware Problem.'⁵⁶⁶ In this memo, Mr. Farring speculates that he believes that the Bureau could "~~justify that the Supreme Court and the 1972 Act considered this group~~ as a tribe for the purpose of claims only, and that they are still a part of the Cherokee Nation. Accordingly, they should not be recognized as anything more than a claims organization."⁵⁶⁷

Clearly, Mr. Farring had not reviewed the records of the Department of Interior regarding the continuous direct supervision of the Delaware Tribe. Moreover, Mr. Farring was in the dark as to the reasoning set forth in the Supreme Court's decision in the Weeks case that the Delawares were currently a federally recognized tribe, and not just a body organized to pursue treaty violations on behalf of the descendants of the tribe.⁵⁶⁸

Under the Supreme Court's rationale, if the Delaware tribe had only been recognized for claims purposes - then Congress could not have distinctly favored the tribe in the distribution of claims for treaty violations occurring prior to the removal to Cherokee lands, as such would be an arbitrary recognition of a group of descendants of a treaty tribe, to the exclusion of other descendants in violation of the Fifth Amendment and Fourteenth Amendment protections. Moreover, Mr. Farring, asserts that the 1958 By-laws were adopted only for the pursuit of claims.⁵⁶⁹ As discussed above, this is an absolute fabrication

asserted without any supporting evidence. Nothing in the records surrounding the Secretarial Election of 1958 refer to organizing for claims purposes.⁵⁷⁰

But, in fact, three different Secretaries of the Interior argued for four years before the federal courts that the Delawares were a federally recognized Indian Tribe -for all purposes⁵⁷¹- and argued successfully against the contentions that the Delaware Tribe was only recognized and organized for the pursuit of claims.⁵⁷²

However, in the Memo for the Record, Mr. Farring also states that the BIA could just as easily take the position that the Supreme Court and the 1972 Act "declared them a tribe..." and "we should require a meaningful constitution be drafted and submitted to the voters."⁵⁷³

In a position paper dated December 18, 1977, Mr. Farring also notes that "[b]ecause of the language of the 1972 enabling legislation for Dockets 72/298 and the Supreme Court decision in the Weeks case, the Solicitors office reasons the Cherokee Delaware are now to be considered a distinct tribal entity."⁵⁷⁴

In a Memo for the Record, February 14, 1978, Bob Farring reassessed the Delaware situation, and stated that if the Solicitor determines the Delawares to be a separate tribe, the following options were available:

- (a) Amend existing bylaws pursuant to its provisions-general council mtg. needed.
- (b) Organize under the Oklahoma Indian Welfare Act by honoring the amendment provisions of the existing bylaws
- (c) Withdraw recognition of the existing bylaws and organize under OIWA by the Bureau conducting a general council meeting for the purpose of electing a constitutional drafting committee composed of various interest groups. If organization efforts fail, the tribe would not be able to fall back on the old bylaws. Rather it would be without formal organization....⁵⁷⁵

The memo also states that the Solicitor should consider the input from Ross Swimmer who plans to meet with Forrest Gerard.⁵⁷⁶

On February 23, 1978, Cherokee Chief Ross Swimmer visited with Forrest Gerard in Washington, D.C. regarding the Cherokees' 8.5 million dollar claim against the U.S. for compensation in the Arkansas River Bed issue.⁵⁷⁷ In a subsequent meeting, Swimmer met with Scott Keep, Acting Assistant Solicitor; Ted Bilk, Director of the Office of Indian Services; Dennis Petterson, Chief, Division of Tribal Government Services; Steve Feraca and Bob Farring of Tribal Relations.⁵⁷⁸ Also in attendance was Cherokee Tribal Land Director, Robert Carlile, and Nathan Young, Treasurer of the Delaware Business Committee.⁵⁷⁹

At the meeting, Swimmer stated that he was disturbed to learn that "just recently the Department

is taking the position the Delawares are a separate tribe for governing purposes."⁵⁸⁰ Note, that Mr. Swimmer stated that recognition of the Delaware Tribe as a political governing body is "recent." Apparently, Mr. Swimmer was confused between the documented continuous recognition of the Delaware government, and the recent (2 1/2 year) recognition of his own tribal government.

Swimmer cited the 1867 Agreement and stated that neither the 1972 statute, nor the Supreme Court decision in the Weeks case changed the arrangement that the Delawares are part of the Cherokee Nation, and "that any mention of the Delawares in those two actions did not establish them as a separate political entity."⁵⁸¹ Swimmer emphasized,(just as the Kansas Delawares did and lost in the Weeks case), that those claims were for injuries that occurred before the Delaware became part of the Cherokee Nation in 1867.⁵⁸² Further, Nathan Young and Chief Swimmer argued that a general council of the Delaware Tribe had not been convened since July 6, 1974.⁵⁸³ In fact a Delaware General Council had been convened just a year and half before on May 15, 1976, and fully reported upon by the press.⁵⁸⁴ Whether Mr. Young and Mr. Swimmer were intentionally making 'misrepresentations' is not clear.

At the conclusion of the meeting, Assistant Solicitor Scott Keep stated that he would postpone his final opinion on the issue until Swimmer had the opportunity to submit his opinion in writing. In response, Swimmer threatened suit in federal court if the BIA decision was not favorable.⁵⁸⁵

In a follow up letter of February 27, 1978, to Assistant Secretary Forrest Gerard, Mr. Swimmer asserted:

While visiting with Mr. Lavis and Mr. Keep last week it became apparent that there is serious consideration being given to reorganizing the Cherokee-Delawares as a separate tribe.⁵⁸⁶

Blatantly fabricating the Delaware history, Swimmer continues,

Recently a group of Delaware-Cherokees realized that prior to their merger with the Cherokee the U.S. government had not dealt fairly with the former Delaware Tribe. This group organized itself and adopted bylaws for the purpose of pursuing claims on behalf of the Delaware Tribe as it existed prior to 1867 (emphasis added).⁵⁸⁷

In fact, as discussed above, the Delaware Tribe had been continuously supervised directly by the Superintendent of the Central Agency after its removal to the Cherokee Nation.⁵⁸⁸ In fact, pursuant to article 15 of the Cherokee Treaty of 1866, the Delaware Tribe gave significant consideration to the Cherokee Nation, under a contract, to allow the Delawares to settle within the Cherokee Nation, and preserve its tribal organization.⁵⁸⁹ In fact, the phrase "preserve tribal organization" was boiler plate language in all the 1866 Five Civilized Treaties meaning, retained sovereignty.⁵⁹⁰ In fact, the Department of Interior organized the Delaware Business Committee in 1895 upon the death of the last tribal chief.⁵⁹¹

In fact, the Business Committee had been successfully seeking claims against the U.S. as early as 1900.⁵⁹² In fact, the Delaware Business Committee format was a change in the name of Delaware government only, and several of the former assistant chiefs, and tribal council sat on the Business Committee up until the early 1920s.⁵⁹³ In fact, Joseph A. Bartles, descendant of Chief Journeycake, served continuously as Chairman of the Delaware Tribe from 1922 to 1951.⁵⁹⁴ In fact, the Department of Interior had attempted to reorganize the tribe under a constitution as early as 1935 - prior to the adoption of the OIWA.⁵⁹⁵ In fact, the Assistant Secretary of Interior gave explicit approval for the Delawares to reorganize as a tribe under the OIWA in 1940 because despite its association with the Cherokee Nation, the tribe had never lost its national identity.⁵⁹⁶ In fact, during the 1950s termination era, the DOI presented Swimmers' arguments before the Court of Claims and lost.⁵⁹⁷ In fact, the Kansas Delawares presented Swimmers' arguments before the U.S. Supreme Court in 1977 and lost.⁵⁹⁸

The most outrageous fabrication, however, is that the tribe "organized itself and adopted bylaws for the purpose of pursuing claims on behalf of the Delaware Tribe as it existed prior to 1867."⁵⁹⁹ First, the tribe did not organize "itself" in 1958, rather the Area Office, with Secretarial consent, issued notice and supervised a General Council, called by the BIA for the purpose of adopting a constitution.⁶⁰⁰ Second, the tribe had approached the BIA to reorganize under the OIWA as they were authorized to do in 1940 by the Assistant Secretary.⁶⁰¹ Third, no where in the records is there a mention of organizing to pursue claims, and the assertion is ludicrous in light of the fact that the tribe had pursued claims against the U.S. for some sixty years under the DOI organized Business Committee prior to the adoption of the bylaws in 1958.⁶⁰² Finally, the U.S. Supreme Court specifically overruled the District Court's reasoning that the judgement monies were to compensate the tribe as it existed prior to 1867.⁶⁰³

With further audacity, Mr. Swimmer states that while the Delawares may have successfully pursued their claims, they belong to the Cherokee Nation, and the "Tribe they now belong to is responsible for their well being and to see that their money is properly accounted."⁶⁰⁴ In addition, he asserts, "[s]ince they have no Tribe, it is important that these funds be spent under the supervision of some tribal authority of which there is only one - the Cherokee Nation" (emphasis added).⁶⁰⁵

Ironically, Mr. Swimmer also complains that there has been no accounting to the Cherokee Tribe for anything done by the Delaware Business Committee.⁶⁰⁶ This may be because the Cherokee Tribe terminated itself in 1902, and did not reconstitute until 1976, while the Delaware Business Committee had been actively governing the Delawares for over eighty continuous years.

On March 9, 1978, Mr. Swimmer writes the Assistant Secretary again transmitting a legal brief which he had commissioned on behalf of the Cherokee Nation, addressing the issue.⁶⁰⁷ In this letter he asserts that if the BIA determines that the Delaware are a separate tribe, the BIA should advise them that they can not also be Cherokees; in addition if they are determined to be a separate tribe, then the Cherokee per capita money paid to the Delaware must be returned to the Cherokee Nation.⁶⁰⁸

Note, that in 1866, the Cherokee Nation was in dire need of money after the Civil War,⁶⁰⁹ and that under the Cherokee-Delaware contract of 1867, the right owing to the Cherokee Nation was the right to money, the rights owing to the Delawares was a right to occupy land within the Cherokee Nation while enjoying all the privileges of native citizens, and the right to preserve its tribal organization.⁶¹⁰ The Cherokees did not contract for the right to claim Delawares as their tribal members, and in fact, nearly half the Delaware Tribe freely removed itself from the Cherokee Nation just a year after the forced settlement therein, readily forsaking the monies already paid to the Cherokee Nation.⁶¹¹

On March 17, 1978, Associate Solicitor Scott Keep received a hand-delivered copy of the brief of the Cherokee Nation respecting its position on the Delaware's legal status.⁶¹² The brief reiterated Mr. Swimmer's earlier fabrications, again without documentation. However, of primary significance, was the contention that the Supreme Court's decision in the Weeks case, finding the Delaware Tribe to be federally recognized, was contrary to the facts and the law, and moreover, has no validity as pure dictum.⁶¹³

In fact, the Supreme Court made its finding based on four years of heavily documented federal litigation; the holding of the case that the Fifth and Fourteenth Amendment rights of the Kansas Delawares were not violated was based solely on the finding that both the Absentee tribe, and the Delaware Tribe were federally recognized Indian tribes for whom Congress had the authority to enact special legislation in their favor over non-tribal descendants of the tribe as it existed at the time of the treaty violation.⁶¹⁴ Accordingly, the finding that the Delaware Tribe was federally recognized was not "gratuitous" or dictum, and may well support a future declaratory judgement regarding the legality of the 1979 administrative termination.

The brief further alleges that in the suit before the Supreme Court, the "Cherokee Nation was not involved in or party to that litigation."⁶¹⁵ Yet in October, 1978, Ross Swimmer proudly admitted to the press that in fact he was fully aware of the suit filed by the Kansas Delawares in 1975, and openly supported them in their litigation.⁶¹⁶

The Cherokee brief goes on to state that recognition of the Delaware Tribe as a distinct sovereign entity is a violation of the Cherokee Treaty of 1866, 14 stat. 799.

In fact, art. 15 of the Cherokee Treaty provides that if a tribe settling within the confines of the Cherokee Nation purchased land for their occupancy, said tribe shall have the right to preserve its tribal organization.⁶¹⁷ In addition, all tribes settling within the Cherokee Nation would have to pay into the Cherokee national fund, and would thereafter enjoy all the rights of native Cherokees.⁶¹⁸ As has been well documented, the Delawares paid \$1.00 per acre for an occupancy right in lands within the Cherokee Nation, and in addition, paid the per capita amount to allow each and every Delaware to enjoy the political and property rights of native Cherokees. In addition, the terms of art. 15 were not discretionary, the provisions specifically stated that the President could only approve an agreement between two tribes ~~which comported with the terms of art. 15.~~⁶¹⁹ ~~As the tribe did pay for their lands under art. 15, any gratuitous language provided in the 1867 Articles of Agreement that otherwise contradicted the rights paid for under this provision of art. 15 of the Cherokee Treaty would be null and void.~~

Moreover, note, that the Cherokee Nation subsequently amended its constitution providing that all individuals residing with the Cherokee Nation would, indeed, be "taken and deemed to be citizens" thereof, and thus, enjoying all the rights of native Cherokees.⁶²⁰ According to the facial reading of the text of art. 15 of the Cherokee Treaty, failure to recognize the continued sovereignty of the Delaware Tribe would be a violation of that treaty; not to mention a violation of the Delaware Treaty of 1866, which explicitly reaffirmed the continued guardianship of the U.S. government over the Delawares.⁶²¹

The Cherokee brief goes on to state that the Delaware tribe has only met twice in General Council since 1867.⁶²² Again it is not clear whether this assertion was grounded in flagrantly negligent ignorance, or whether it is an intentional, and arrogant disregard for the truth. In fact, the Delaware Tribe of Indians met in General Council at least fifty documented times between 1867 and 1978, most of which were called and supervised by the BIA, and/or reported upon by the press.⁶²³

1960.6991.01

In another blatant 'disregard for the truth', the Cherokees asserted that since 1867, there had been no separate identifiable tribe.⁶²⁴ Considering that there had been five heavily documented litigations on the issue between 1950 and 1977, this blindly ignorant statement borders on unethical practice by the authoring attorney.⁶²⁵ The brief also states that after 1895, the Delawares maintained no formal tribal leader - and that the 1895 business committee was formed to prosecute claims for treaty violations.⁶²⁶ Again these statements cite to no supporting documentation, and the entire foregoing documentation of this narrative illustrates the patent ignorance of such an assertion.

Finally, the Cherokee brief goes on to say that "there is no separate political organization serving tribal needs."⁶²⁷ Yet compare the article published in the Cherokee Nation News on July 31, 1973, which fully extols the advancements of the Delaware Tribe in the opening of their new full-time office in Bartlesville to serve the needs of its people, and of the programs contracted by the Delaware Tribe from the BIA and Indian Health Service.⁶²⁸

BIA Solicitor Affirms that the Delaware Tribe is a Distinct, Federally Recognized Tribe

As stated above, the Solicitor's office received a hand delivered copy of the Cherokee brief on March 17, 1978.⁶²⁹ Within three days, Associate Solicitor Scott Keep issued a decision rejecting the position of the Cherokee Nation.⁶³⁰ On March 20, 1978, Associate Solicitor Scott Keep issued the following memorandum to Bob Farring of the Tribal Relations Branch:

Attached are copies of the Answers to Interrogatories and Answers to Request for Admissions in the Weeks case which I believe make it impossible or inadvisable for the Department to take the position now that the Delawares are not a tribe.⁶³¹

Recall that the Solicitor's Office issued the same response the year before in February, 1977, stating that the Weeks case would be dispositive on the issue of whether the Delawares are an independent tribe.⁶³²

In March, 1977, Scott Keep affirmed that Secretary of Interior Morton's answers to the Interrogatories in the Weeks case verify the "Delawares as a tribe."⁶³³

The Solicitor's decision on the legal status of the Delaware Tribe should have been dispositive, however, on March 23, 1978, three days after the Solicitor's decision, Cherokee Chief Ross Swimmer unilaterally issued a notice to the Indian Health Service in Oklahoma City stating that the membership of the Cherokee Nation included all Delawares, and therefore the Cherokee Nation would be servicing the Delawares in the future.⁶³⁴ On August 31, 1978, Swimmer issued another notice to the Indian Health Service stating that the Cherokees had reached a contract agreement for October, 1978, and since the Delawares had no contracting authority, "there was no need to further delay the process."⁶³⁵

Not to be defeated, Chief Swimmer next submits a less than accurate testimony to Congress in

an attempt to have the 1972 Act amended or appealed.

Cherokee Chief Ross Swimmer Seeks Repeal of the 1972 Congressional Recognition of the Delaware Tribe

On April 3, 1978, within two weeks of the issuance of the Solicitor's decision, Chief Swimmer next turns to Congress to redress the Delaware situation. On April 3, 1978, Swimmer submitted testimony in support of H.R. 8674 which sought to amend the Delaware distribution statute,⁶³⁶ 25 U.S.C. § 1292 (1972), which had excluded the Kansas Delawares from the distribution, and had specifically set aside programming funds for the Delaware Tribe of Indians.⁶³⁷

Recall, that during the Weeks litigation the Secretary of Interior submitted sworn interrogatories which stated "[t]he latest specific Congressional recognition of the Delaware Tribe of Indians as a federally recognized tribe is found in the 1972 legislation authorizing the tribe to use part of the award made in dockets 72 and 298. 25 U.S.C.A. 1294 (b)."⁶³⁸ The Associate Solicitor Scott Keep also specifically cited these interrogatories as the definitive answer to the legal status of the Delaware Tribe.⁶³⁹ Hence, Swimmer's next step was to seek amendment or repeal to that statute.

In his testimony, Swimmer first asserts that "[c]ertain Delawares referred to in these hearings are, in fact, Cherokees."⁶⁴⁰ He goes on to ignorantly state that the "in 1854 the Kansas-Nebraska Bill opened the flood gates leading to the destruction of the Indian Titles of many Tribes, including the Delawares in Kansas. The social conditions of the Delawares around 1854 doubtless accounts for the fact that the Tribe split up with a part settling in Western Oklahoma, afterwards to be known as the "Absentee Delawares."⁶⁴¹

Of course, as discussed earlier, the Absentee Delawares were a small band that split from the tribe in the late 1700s, migrating to the south, and had never resided with the main body of the tribe in Kansas.⁶⁴² Mr. Swimmer seems to have no problem presenting his own un-researched speculations of history as fact.

Mr. Swimmer does explain that under art. 15 of the Treaty with the Cherokees of 1866, "there was a provision for a relocating Tribe to maintain its tribal sovereignty or be totally incorporated into the Cherokee Nation and become citizens thereof. ~~On April 8, 1867, an agreement was reached between the Cherokee and Delawares whereby all members of the Delaware Tribe would become members of the Cherokee Nation, with the same rights and immunities and the same participation in the national fund as native Cherokees.~~"⁶⁴³

Mr. Swimmer thereby, assumes that because the Delawares entered an agreement to have the same rights and immunities as native Cherokees, the Delaware Tribe thereby did not choose to preserve its sovereignty under art. 15. However, if Mr. Swimmer had bothered to read all of art. 15 of the Cherokee Treaty he would have realized that even tribes choosing to preserve their sovereignty were also required to pay into the national fund, and "thence afterwards would enjoy all the rights of native Cherokees."⁶⁴⁴

Mr. Swimmer's testimony continues: "As a result of the complete integration of the Delawares into the Cherokee Nation, the Cherokee Nation has served as the tribal government for these people since 1867."⁶⁴⁵

Recall that upon removal to the Cherokee Nation, the Delaware Tribal government continued in full force, directly supervised by the Central Superintendency.⁶⁴⁶ Recall some twenty years after the removal, the Department of Interior reorganized the tribal government into the Business Committee format to perform the previous functions of the Chiefs.⁶⁴⁷ Recall that the Cherokee Nation voted to dissolve their government in 1902, and had no government of the people between 1914 and 1976.⁶⁴⁸

Mr. Swimmer's lies continue: "Various descendants of the Delawares have organized from time to time including the Business Committee represented at these hearings. This Committee's function has been single purpose. To act as a vehicle for pursuing claims on behalf of the Delawares against the United States, which claims arose prior to 1867"(emphasis added).⁶⁴⁹ First, the Business Committee had been continuously in existence from 1895 to the date of the hearing in 1978, and had received continuous direct supervision from the Department of Interior.⁶⁵⁰ Second, while the Business Committee did not pursue claims on behalf of the descendants of the Delaware Tribe as it existed before removal to the Cherokee Nation, but in fact, had pursued claims on behalf of the sovereign Delaware Tribe; this fact was fully documented during the 1950s Court of Claims litigations, the 1970s Weeks litigation, and was an ultimate fact relied upon by the Supreme Court in its decision in the Weeks case.

Cherokee Chief Swimmer brings his point home: "The Judgement Fund Distribution Act obviously did not intend to suggest that 'programming' monies be set aside for Tribes that no longer exist....If programming monies were set aside, then provisions should be made for the funds to be administered under the supervision of the Cherokee Tribe....We [Cherokees] are concerned when a small group [7,000] of Indians get control of large sums of money for tribal programs when no tribe exists."⁶⁵¹ These false statements reveal their self-interest in obtaining control of the some million dollars in Delaware programming funds, for which the Delaware Tribe had fought in court to obtain since 1952.

Finally, Mr. Swimmer again outright lies, maintaining that the Cherokees "have a representative government for the Delawares which they do not have."⁶⁵² Note, again, that the Delaware Tribe had maintained its traditional form of government for twenty years after the removal to the Cherokee Nation, and had continuously maintained a democratically elected business committee of the tribe since 1895! In contrast, the Cherokee Nation had no democratically elected government between 1902 and 1976!

To Mr. Swimmer's chagrin, Congress did not act on H.R. 8674 by the close of the 1978 legislative session, and the Delaware Tribe managed to escape termination for five more months. Accordingly, in October, 1978, the Tahlequah Agency specifically informed a Mr. Chris White, Delaware tribal member, employed by Mr. Swimmer at the Cherokee Nation, that under art. 15 of the Cherokee Treaty of 1866, the Delaware Tribe preserved its "tribal organization (Business and Grievance Committee), tribal laws, customs, and usages so long as they were not inconsistent with the Constitution and Laws of the Cherokee Nation," and accordingly, the Cherokee Nation had no jurisdiction to intervene in Delaware politics.⁶⁵³

Incredibly within six months, the Bureau of Indian Affairs, in complete disregard to the opinion of the Solicitor's office, explicitly revoked federal recognition of the Delaware Tribe of Indians. Note, however, than in late October, 1978, the Delaware Tribe in General Council voted Chairman Bruce M. Townsend from the office of Chairman of the tribe, replacing him with Henry Secondine.⁶⁵⁴ As early as December, 1977, BIA solicitor, Duard Barnes, had suggested that the BIA should not be in such a hurry about responding to the challenges to the Delaware status, "in that there would be an election next November, etc."⁶⁵⁵ This reference to a Delaware election can only mean that so long as Chairman Bruce M. Townsend, attorney, was in charge, the BIA would have a difficult time revoking recognition of the

tribe. Note that Mr. Townsend had been involved in tribal politics since the mid-1950s, and had even assisted the Director of the Area Office in drafting the Delaware Bylaws in 1958.⁶⁵⁶ In addition, Chairman Townsend was also present during the Congressional hearings preceding passage of the 1972 Act which explicitly recognized the political authority of the tribe.⁶⁵⁷ And finally, Chairman Townsend worked with three different Secretaries of Interior for over four years in federal court to document the continuous, recognized tribal existence of the Delaware Tribe of Indians.⁶⁵⁸ Sorely disappointed by the tribe's failure to re-elect him as chairman, and by the tribal disapproval of Townsend's proposed attorney fees for the Weeks litigation, Chairman Townsend was now effectively out of the picture.

Against the Opinion of the Solicitor, the BIA Declares that the Delaware Tribe of Indians Does Not Exist, 1979

On February 6, 1979, the BIA published its first ever list of Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs.⁶⁵⁹ Conspicuously missing from the list was the Delaware Tribe of Indians. In conjunction with this list the BIA also published the final regulations governing the process by which a non-recognized tribe could petition the Bureau of Indian Affairs for federal recognition.⁶⁶⁰

On February 26, 1979, BIA Acting Deputy Commissioner, Martin Seneca, issued a notice to the "Cherokee-Delaware Business Committee" providing that under the authority of the Congressional proviso of the 1972 Act:⁶⁶¹

I have determined that the existing organizational structure, as set forth in the bylaws, is not capable of adequately protecting the interests of the Cherokee Delaware people...Until such entity is established, as determined by this office, we will give no further consideration to any proposed plan for use of 72 and 298 program money....⁶⁶²

Recall that the 1972 statutory proviso requiring the tribe to organize a legal entity was inserted only for the purpose of assuring that the Delawares develop adequate criteria to develop its own tribal roll distinct from a Secretarial per capita roll before the programming funds were released to the tribal government.⁶⁶³ Recall that this requirement had been met by the tribe in July, 1973.

Why was this issue resurfacing seven years after the passage of the act? Acting Deputy Commissioner Seneca reasoned that as tribal member, Chris White, had appealed the plan for the use of the programming funds, "this is the first time we have been faced with the question of whether there exists an entity that meets the statutory requirements as it relates to the use of program funds."⁶⁶⁴ Either an extremely negligent survey of the BIA files, or an outright intent to lie, led Mr. Seneca to make this assertion, as the issue in fact had been fully addressed by the BIA in 1973-74.⁶⁶⁵

Acting Deputy Commissioner Seneca continues that Mr. White's appeal raised a further question regarding "the relationship between the Delawares and the Cherokee Nation."⁶⁶⁶ He states that while the tribe may have been recognized for claims purposes, for governmental purposes, the Delawares "must look to the Cherokee Nation of which they are an integral part."⁶⁶⁷ In organizing a new legal entity

which may 'protect the interests of the Delawares', the letter provides:

[W]e would encourage you to provide an opportunity for a representative of the Cherokee Principal Chief to help insure that any proposal is in harmony with the Cherokee Constitution. Included among those provisions needing clarification is the membership criteria. In that this organization is a tribe within the Cherokee Nation, its membership would necessarily extend only to those persons of Delaware ancestry who qualify for membership in the Cherokee Nation in line with the 1867 Agreement.⁶⁶⁸

In a letter to the Muskogee Area Director dated the same day, Mr. Seneca states that the new Delaware organizational document would require the approval of the Chief of the Cherokee Nation.⁶⁶⁹ Mr. Seneca continues, "the new structure will clarify the tribe's relationship with the Cherokee Nation...."⁶⁷⁰ To develop this new structure, Mr. Seneca directs that only two of the duly elected Delaware Business Committee shall serve on a five person organizational committee, and third non-elected Delaware would be appointed by the BIA, and the three could then appoint two more to sit on the committee.⁶⁷¹

However, the Delaware Bylaws and Business Committee were left in tact, and this did not comport with Mr. Swimmer's plan for complete termination of the Delaware Tribe. Accordingly, on Cherokee Nation letter head, Chris White writes again to the Commissioner of Indian Affairs, lamenting that since "the Central Office has agreed with my contention that a governmental process does not exist that adequately protects the best interests of our tribal members [Delaware]....then why has the Bureau allowed the business committee to function?"⁶⁷²

On May 24, 1979, Acting Deputy Commissioner La Follette Butler notified the Chairman of the "Cherokee Delaware Business Committee" that:

Our research has shown that the 1975 bylaws was adopted for the purpose of pursuing claims against the Federal Government relating to the period before the Delawares became part of the Cherokee Nation (emphasis added).⁶⁷³

Hence, the outright fabrication becomes etched in stone. The Acting Deputy Commissioner continues, "[d]ue to misunderstandings about the nature of that document, some have felt this organization, established for the Delawares a relationship with the Federal Government separate from that of the Cherokee Nation; such is not the case."⁶⁷⁴ Note that these "some" that the Acting Deputy Commissioner referred to included three former Secretaries of Interior.⁶⁷⁵

Accordingly, Mr. Butler, Acting Deputy Commissioner, in further exercise of his temporary autocracy, terminates the Delaware Tribe of Indians:

I hereby withdraw the Bureau's approval of the 1958 Delaware Bylaws, as amended. Further I am withdrawing recognition of those officials elected or appointed pursuant to those bylaws. Our direct dealings with the Cherokee Delaware Indians is only for purposes of claims matters. Our government to government relationship is with the Cherokee Nation which has within its membership the Cherokee Delaware Tribe (emphasis added).⁶⁷⁶

Recall, that in the Weeks case, the Secretary of Interior specifically denied the assertion that the Delaware Tribe of Indians was recognized only for claims purposes.⁶⁷⁷ Recall that the Supreme Court specifically overruled the federal district court's finding that Congress had appropriated money only for the descendants of the tribe as it existed at the time of the treaty violation in 1854, the Supreme Court finding that the appropriation was for the presently composed, federally recognized Delaware Tribe of Indians.⁶⁷⁸

Note, also that this Acting Deputy Commissioner created a new tribe called the "Cherokee Delaware Tribe" when the Delawares and the federal government (prior to 1977) had never officially called the tribe anything but the Delaware Tribe of Indians.

Accordingly, Mr. Butler informed the duly elected Chairman of the Delaware Tribe of Indians, Henry Secondine, direct descendant of the great Chief Anderson, that the Bureau will deal with the adult membership of the tribe directly until there "can be established an appropriate entity to speak on behalf of the Delawares within the Cherokee Nation."⁶⁷⁹

On June 7, 1979, the Acting Deputy Commissioner issued a letter to all Delaware Tribal members stating:

Because of the 1867 Agreement and related laws, we recognize the membership of the Cherokee Delaware Tribe to be as follows.

All persons whose names are included on, or the names of whose lineal ancestors are included on, the Delaware per capita payment roll, and who are also members of, or eligible for membership with, the Cherokee Nation of Oklahoma through the Cherokee Dawes Commission (emphasis added).⁶⁸⁰

Note, that this Acting Deputy Commissioner has not only renamed the Delaware Tribe of Indians, but he has also redefined the membership criteria of the tribe as defined by statute.⁶⁸¹ Recall, that in 1977, the Bureau had erroneously claimed that although the Delaware Tribe was a tribe within the meaning of the Self-Determination Act, the tribe could not receive funding because most of its members were also

members of the Cherokee Nation.⁶⁸² Of course, as stated above, this was an impossibility because in 1977 the Delaware tribe claimed some 7,000 members, while the Cherokee only 10,000. Therefore, the BIA here tries to retroactively re-define the membership of the Cherokee Nation to assure that all members of the Delaware Tribe would also be members of the Cherokee Nation.

Note also, that under the newly published BIA Federal Acknowledgement Regulations, any non-recognized Indian tribe would be ineligible to petition for federal recognition under the regulations if the majority of the tribe's membership also belonged to another federally recognized tribe.⁶⁸³ Hence, even though Congress had explicitly defined the membership of the tribe in the 1972 Act, the BIA has redefined it here to assure that the Delawares would not be eligible to petition under the regulations.

The "Message to Members of the Cherokee Delaware Tribe" continues that "those Delaware who registered under the provisions of the 1867 Agreement, and their descendants, are considered to be native Cherokees."⁶⁸⁴ And further, that the Secretary may withhold his approval of a proposed plan for the use of the program funds until there is organized a legal entity which the "Secretary feels will adequately protect the interests of the tribe and its members concerning claims (emphasis added)."⁶⁸⁵

Note, that Mr. Butler is tracking the language of 25 U.S.C. § 1294(b), however, the statute says nothing about "claims." The reference here is purposely misleading, a knowing misrepresentation, and an example of the technique employed by Ross Swimmer and certain BIA officials to reconstruct history to suit their purpose.

Not to leave any loop holes for a rebirth of the tribe, the Acting Deputy Commissioner suggests to the membership that perhaps they might like to vote to issue all the programming funds out per capita, thus making it "unnecessary to establish a further formal organizational structure."⁶⁸⁶ Clearly, the BIA was aware that it was going to be difficult to "organize" the Delaware Tribe pursuant to federal statute, and yet, still maintain that the tribe was not federally recognized. Accordingly, just as Mr. Swimmer tried (and failed) to persuade Congress to have the 1972 Act amended to require that the Delaware tribal funds be distributed per capita, here the BIA tries to persuade the tribal members to vote to have those funds distributed per capita.

Of course with the BIA termination of its tribal status, the Delawares ceased to be eligible to contract for those services it had been providing to its members since the early 1970s, including the Community Health Representative Program, the Tribal Government Development Program, the Health Planning Program, and any BIA, and DHS funding for tribal social and cultural events.⁶⁸⁷

Moreover, as will be discussed below, the BIA also withheld millions of dollars in programming funds, specifically appropriated by Congress for the Delaware Tribe of Indians, until such time that the Delaware Tribe adopted a governing document which explicitly denied the tribe's sovereign status.

Congress Specifically Refuses To Revoke the Federal Recognition Provided in the 1972 Act, 1980

In 1980, the Kansas Delawares were back in Congress seeking again to amend the 1972 Act thereby including the non-tribal descendants in the distribution of Delaware judgement funds. The Committee Report indicates that Congress was rather confused as to why the Supreme Court of the United States determined that the Delaware Tribe was federally recognized but that the BIA maintains they are part of the Cherokee Nation.⁶⁸⁸

The Kansas Delawares were triumphant in 1980, and managed to get Congress to pass another act amending the 1972 act, and allowing for the Kansas Delawares and several other descendency groups to partake in the judgment fund distribution.⁶⁸⁹ However, the 1980 Act does preserve, and even expands, the programming monies for the "Delaware Tribe of Indians."⁶⁹⁰ Even though the Committee report indicates that some ambiguity existed as to the legal status of the Delaware Tribe of Indians, Congress only clarifies that nothing in the Act should be construed as giving federal recognition to either the Kansas or the Idaho Delawares:

Nothing contained in this Act shall be construed as recognizing the Kansas Delaware Indians, the Kansas Delaware Tribe of Indians, Incorporated, the Idaho Delaware Indians, or the Delawares of Idaho, Incorporated, as federally recognized Indian tribes.⁶⁹¹

Thus, although Congress could have included the "Cherokee Delawares" in this list, it specifically declined to do so.

IX. DELAWARES FIGHT THE ILLICIT ADMINISTRATIVE TERMINATION OF THE TRIBE, 1979-1994

Delaware Members Refuse BIA Pleas to Distribute the Programming Funds Per Capita, 1979 -1984

As discussed above, the BIA was going to be hard pressed to organize the Delaware Tribe pursuant to the mandate in 25 U.S.C. § 1294 (1972) which would "adequately protec[t] the interests of its members," while maintaining that the tribe was not federally recognized. Recall, that the proviso for organizing a legal entity was for the sole purpose of assuring that the tribal governing document contained criteria specifically defining the membership.⁶⁹² Recall also, that this proviso had been satisfied in 1973 with the amendment of the Delaware Bylaws.⁶⁹³ However, by 1979, the BIA, of course, had no interest in determining the intent of Congress in creating the proviso, and had used the same to revoke recognition of the Bylaws and of the officials elected thereunder. If the BIA did not otherwise get the programming funds distributed per capita, it was going to have to find some way to organizing the tribe pursuant to federal statute, and yet still maintain that the entity does not exist. Thus, the first plan would be to get the tribal members to vote to have the funds distributed per capita.

By revoking recognition of the elected leaders of the Delaware Tribe, the BIA then had direct access to the tribal members themselves. In its attempt to deal directly with the adult membership of the tribe, the BIA called a meeting of the tribe in Tulsa on September 8, 1979.⁶⁹⁴ The press reported:

During the BIA called meeting the Delaware people overwhelmingly indicated their support of the Business and Grievance Committees. Most wanted the 10% remaining funds from docket 72 and 298 programmed for establishment of a tribal land base, an educational scholarship program and tribal programs for the elderly and tribal government administration. They did not want to be subjugated to the Cherokee Nation and desire to maintain their federally recognized status as a tribe. Some 60 Delawares voiced their views along these lines and appeared to have the major support of the estimated 400 present (emphasis added).⁶⁹⁵

In late 1980, the Bureau of Indian Affairs held an all mail-out referendum of the Delaware Tribe, requesting a vote to either distribute the Delaware programming funds per capita, or adopt the BIA drafted "Articles of Agreement with the Cherokee Nation."⁶⁹⁶ Apparently the proposed Articles of Agreement with the Cherokee Nation was to be the organization of a "legal entity" which would adequately protect the interests of the Delawares. The proposed document purportedly would have given the Cherokee Nation final approval for the administration of the Delaware programming funds.⁶⁹⁷ The

Delawares resoundingly rejected both proposals of the BIA.

At this point the Delaware Tribe's struggle against the administrative termination was diverted as Cherokee Chief Ross Swimmer filed suit against the Delaware Tribe of Indians, the Housing Authority of the Delaware Tribe, and the Department of Housing and Urban Development, maintaining that the Delaware Tribe was ineligible to organize a housing authority as it was not a federally recognized tribe.⁶⁹⁸

Cherokee Nation Files Suit in Federal Court to have Delaware Housing Authority Declared Illegal, and Loses

On December 20, 1977, the Organizational Transcript for the Housing Authority of the Delaware Tribe of Indians was received by the HUD Area Office and was found to be legally acceptable on January 24, 1978.⁶⁹⁹ On June 4, 1980, the Delaware Housing Authority and HUD entered into a Conventional Low Rent Annual Contributions Contract and also entered into an Annual Contributions Contract for Mutual Health Home Ownership Opportunities Program.⁷⁰⁰ On September 19, 1980, the Cherokee Nation of Oklahoma and the Housing Authority of the Cherokee Nation filed suit in federal court to prohibit HUD from contracting with the Delaware tribe.⁷⁰¹

For three more years the issue of the Delaware's legal status was again litigated in federal court for the sixth time in thirty years. Initially the Department of Housing and Urban Development answered as a defendant, maintaining that the Delaware Tribe of Indians was a federally recognized tribe.⁷⁰² However, by 1982, the Department of Interior had been impleaded into the action and sent a solicitor's memorandum to HUD instructing it to come in line with the Bureau's position on the issue.⁷⁰³

The primary significance of the case was the 1982 Solicitor's memorandum which for the first time in history alleged that the 1867 Articles of Agreement between the two tribes had been ratified by Congress in 1888 and, therefore, Delawares were defined as Cherokees by statute.⁷⁰⁴ The 1888 statute to which the Solicitor refers was an appropriations statute which sought to reimburse the Delawares, Shawnees, and Freedmen for a per capita payment of the Cherokee Nation which had been illegally paid out only to Cherokees by blood.⁷⁰⁵ Note in the past, Cherokee Chief Ross Swimmer, and later the BIA, had only argued that the Treaty with the Cherokees of 1866 had terminated the Delaware Tribe of Indians.⁷⁰⁶ This of course, was ludicrous in light of the fact that the Cherokee Treaty did not even mention the Delaware Tribe. However, during the HUD litigation the BIA then argued that the contract between the two tribes (Articles of Agreement), which had been entered into pursuant to the Cherokee and Delaware Treaties of 1866, now had been ratified by Congress in 1888. Therefore, the BIA and the Cherokees were implying therein that Congress had terminated the Delaware Tribe of Indians.

But in fact, Congress in no way "ratified" this agreement between the two tribes by virtue of the 1888 Act. Congress has demonstrated in the past that when it intends to ratify such an agreement, it explicitly states that intent. For example in 1877, Congress passed "An Act to Ratify an Agreement with Certain Bands of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians."⁷⁰⁷ This federal statute states, "That a certain agreement...is hereby, ratified and confirmed."⁷⁰⁸ In the Curtis Act of 1898, Congress also ratified the allotment agreements of the Choctaws, Chickasaws, and the Creek Nations, with explicit language: "The agreement made by the Commission...is hereby ratified and confirmed...."⁷⁰⁹

In contrast, Congress expressed no language of ratification or confirmation in the 1888 appropriations statute.⁷¹⁰ The 1888 statute, passed twenty-one years after the formation of the Agreement, only recites the language of the Articles of Agreement which recognized that Delaware tribal members purchased the right to enjoy all the rights of native Cherokees. Recall that the U.S. government expressly reaffirmed the government to government relationship between itself and the Delaware Tribe in article 11 of the Treaty with the Delawares of 1866.⁷¹¹ The Supreme Court has been very specific to note that it will not find a Congressional intent to abrogate Indian Treaty rights without express legislative language, or "clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian Treaty rights on the other, and chose to resolve that conflict by abrogation of the Treaty."⁷¹² The legislative history of the act provides no such evidence.⁷¹³

In addition, the Solicitor memorandum of 1982 also states:

[I]t is our position that the Delaware Tribe no longer exists as an independent governmental entity. We believe the Delaware Tribe by its own actions, and through an exercise of its powers, caused itself to be amalgamated with and consolidated into the Cherokee Nation of Oklahoma.⁷¹⁴

Recall, that the Articles of Agreement of 1867 were submitted and ratified by the Cherokee Nation legislative body, whereas, the Delaware Tribe expressly refused to ratify the Articles of Agreement in General Council, and specifically protested any "incorporation" with the Cherokee Nation as a violation of the Delaware Treaty of 1866.⁷¹⁵ Recall also that the Delaware Indian Agent did not deny that the Articles of Agreement were expressly rejected by the Delaware Tribe in General Council or that the agreement was a violation of the Delaware Treaty; rather, Agent Pratt only reasoned that the doing away of tribal government was in the best interest of the tribe and in keeping with the government's policy of assimilation.⁷¹⁶ Also note, that as a principal of international law, a treaty is considered conclusive and binding from the date of its signature; however, when the agreement has a bearing on individual rights, the agreement is not conclusive or binding until there is an exchange of ratifications.⁷¹⁷

After three years litigation on the issue of whether the Delaware Tribe was federally recognized, the Federal Court determined in 1983 that the issue was not pertinent, and that since the Delaware Tribe satisfied Webster's Dictionary definition of a tribe, the Delawares satisfied the requirements for the Oklahoma Housing Authority Statute, 63 Okl. Stat. Ann. § 1057.⁷¹⁸

Accordingly, the non-existent Delaware Tribe of Indians currently enjoys direct federal recognition through several Memorandum of Agreements between the United States of America, the Delaware Tribe of Indians, and the Housing Authority of the Delaware Tribe of Indians.⁷¹⁹

Upon conclusion of the Housing Authority case in 1983, the Delaware Business Committee again turned to the issue of obtaining the release of the millions in programming funds appropriated for the tribe by Congress in 1972.

Delawares Must Adopt a Governing Document that Explicitly Denies their Sovereignty Before the BIA will Release the Tribe's Judgement Funds

By late 1979, the Bureau was well set in its edited, revised, history of the Delaware Tribe of Indians, and had no interest in rectifying its blatant errors. According to the Bureau the Delaware Tribe had not existed since 1867, except for claims purposes. Not only was the tribe now ineligible to contract for federal dollars to provide services to its members, the BIA also would not release any of the tribe's private judgment fund money until the Delawares organized a legal entity that specifically denied its sovereign status in deference to the Cherokee Nation.

On August 29, 1979, Bob Farring, BIA staffer, drafted a letter to the Muskogee Area Director regarding the development of a Delaware governing document that would satisfy the 1972 legislation which appropriated millions of dollars in programming funds for the Delaware Tribe, provided that the tribe organized a legal entity which in the opinion of the Secretary would adequately protect the interest of its members.⁷²⁰ In his letter, Mr. Farring states:

The purpose of this document is to set forth procedures for the use by the Delaware Indians within the Cherokee Nation of Oklahoma to pursue certain non-governmental objectives, primarily to administer any Delaware judgment funds that are programmed pursuant to a plan approved by the Secretary of Interior as required by 25 U.S.C.A § 1294 (b).⁷²¹

Recall, yet again, that the proviso for a legal entity was inserted by Congress to insure that the tribe developed adequate membership criteria to define who would be the beneficiaries of the funds. Yet, here, Mr. Farring goes on to assert that the only legal entity that will adequately protect the interests of its members is one that specifically denies its sovereignty:

A further purpose of this document is to acknowledge the relationship between the Delawares and the Cherokee Nation.... This relationship is confirmed by Article III, Section 1, of the Constitution of the Cherokee Nation of Oklahoma. Accordingly, this document is subordinate to the Cherokee Constitution and is intended for dealing with those non-governmental issues (primarily claims matters) that are unique **to those Cherokee citizens who are of Delaware ancestry** (emphasis added).⁷²²

The reality of the Bureau's actions began to take hold by early 1980, and accordingly, the

Business Committee contacted the new Commissioner of Indian Affairs to review the actions taken by the alternating stream of Acting Deputy Commissioners in 1979.⁷²³ On March 17, 1980, Bob Farring noted in a "Briefing for a March 17, 1980 Cherokee-Delaware Delegation," that the "non-recognized business committee wish to have the Bureau now change its plans and again extend recognition to the business committee and the old bylaws."⁷²⁴

On March 13, 1980, the Bureau also responded to a Freedom of Information Act request submitted by a tribal member, requesting evidence that the 1958 Delaware Bylaws were adopted for the pursuit of claims only.⁷²⁵ The response provides no evidence that the bylaws were adopted for the pursuit of claims, rather the BIA provides, "[l]ong-time Bureau staff members [who?] attest to the existence of a letter signed by the Associate Commissioner, James E. Officer, which accompanied his May 31, 1962 approval of the 1958 Bylaws...We are now unable to locate a copy of the letter."⁷²⁶

As discussed above, in late 1980 the Delaware tribal members voted down the Articles of Agreement with Cherokee Nation drafted by the BIA to provide the requisite legal entity which would adequately protect the interest of the Delaware tribal members.⁷²⁷ Particularly offensive to the tribal members was the provision of the Articles of Association which gave the Cherokee Nation the ultimate authority to administer the Delaware programming funds.

On November 8, 1980, the General Council of the tribe met and voted to return to the old political structure of Chief and Tribal Council.⁷²⁸ In addition, the tribe voted to develop a formal constitution and bylaws to replace the old 1958 bylaws. In 1981 the General Council voted to create an Executive Council to exclusively handle the business affairs of the tribe.

In November, 1982, the Delaware Tribe of Indians in General Council adopted a formal Constitution and Bylaws, comporting with all due process requirements.⁷²⁹ The Delaware Constitution followed the usual OIWA format, vesting the supreme authority in the General Council, defining the powers of the Tribal Council, membership criteria, rights of members, elections requirements, and terms of office.⁷³⁰ The new Delaware Bylaws set forth the Duties of the Officers, and the procedures for conducting tribal council meetings, and elections.⁷³¹ During this General Council, the Delawares elected Henry Secondine to Chief, and Lewis B. Ketchum, Mike G. Standeford, Sally R. Farley, Howard Barnes, Ruben B. Adams, and Larry Brooks to the Tribal Council. Lewis B. Ketchum was appointed to Assistant Chief, and in 1983, became Principal Chief upon the resignation of Henry Secondine. As early as 1982, the Delaware Tribe had also drafted the Criminal and Civil Ordinances of the Delaware Tribe of Indians. By 1984, the Tribe had fully implemented the Delaware Tribe Tobacco Control Ordinance providing for the regulation and taxation of cigarettes sold by Delaware tribal members on restricted Indian lands.⁷³²

In November 1983, the General Council amended its Constitution to provide for the creation of Tribal Courts.⁷³³ The Delaware Tribe has been continuously governed by this document to the present. The 1983 General Council also voted overwhelmingly to pass a resolution calling for the withdrawal of legal and property ties with the Cherokee Nation.⁷³⁴

However, the Bureau would not accept this tribe's new organization as sufficient to protect the interests of the Delaware Tribal members to allow for the release of the tribal judgement funds because the Constitution did not specifically deny its federal recognition and did not define its membership in relation to the Cherokee Nation. In fact, the Bureau did not recognize any persons from the Delaware

Tribe as having the authority to act on the tribe's behalf.

In response the Delawares renewed their efforts in Washington, D.C. to reverse the administrative termination of the tribe and to effect a release of their judgement funds. In July of 1984, 93% of the Delawares had voted in an impartial mail-in poll to elect to be recognized as Delawares, rather than Cherokees.⁷³⁵ On October 15, 1984, the Delawares received a letter from Deputy Chief, Wilma P. Mankiller, which stated that "our official response to your request for support in your effort to establish a separate tribal organization is that we will neither support nor hinder your efforts."⁷³⁶

Yet, on August 11, 1984, the Cherokee Nation Tribal Council passed a resolution calling for a per capita pay out of the programming funds appropriated for the tribe in 1972.⁷³⁷ By September, 1984, the Bureau again was trying to get Congress to issue per capita the Delaware Programming Funds. In a letter of September 26, 1984, the BIA informs Congressman James R. Jones:

For purposes of pursuing claims against the United States, the Cherokee Delawares, in 1958, adopted an organizational document known as the bylaws....when compared to the requirements of the 1972 act, that organizational document failed to comply with such statutory provisions...The Bureau has made several unsuccessful attempts to assist the Cherokee Delawares in developing an adequate legal entity so that the remaining judgement funds could be programmed. Since these efforts have failed...we believe it is in the best interests of the Cherokee Delawares [to distribute the remaining funds in equal shares].⁷³⁸

While the Bureau and the Cherokee Nation again failed in its efforts to get the monies paid out per capita, the Delawares also failed in their efforts throughout 1984 and 1985 to get their administrative termination reversed. By now the lies were so deeply etched in stone, it seemed that the Delawares would never be able to rectify the immoral and illegal termination of their tribe.

Accordingly, in late 1985, some Delaware leaders agreed to the Cherokee Nation's proposal that the Delawares accept a "tribe within a tribe status" so as to facilitate the release of the millions in judgement fund. In response, the Cherokee Nation tribal council passed a resolution in 1985 which "authorized" the Delaware Tribe of Indians to:

[A]dopt and present a governing document, properly titled, to the Delaware Citizens for their adoption or rejection....Upon approval of the Delaware Citizens of the a governing document, an election for tribal officers shall be held and a referendum regarding use and/or distribution of the

judgement fund belonging to the Delaware
Tribe shall be held.⁷³⁹

In addition, the resolution placed the authority to determine what persons would be responsible for the drafting of this governing document in the Principal Chief of the Cherokee Nation.⁷⁴⁰

By 1986, Cherokee Chief Ross Swimmer had been appointed to the head of the Bureau of Indian Affairs as Assistant Secretary of the Interior. Deputy Chief Wilma P. Mankiller rose to Principal Chief upon Swimmer's resignation. At the Delaware General Council of 1986, Lewis B. Ketchum was elected to another term as Chief of the Delawares. The Delaware committee appointed under the Cherokee resolution had submitted yet another draft of a new Delaware Constitution.

However, in an October 7, 1986 letter from Chief Mankiller to Chief Ketchum, Mankiller discusses a recent meeting with the Assistant Secretary Swimmer and the Muskogee Area Director concerning the latest Delaware draft.⁷⁴¹ Mankiller states that during the meeting, "[t]he BIA staff seem to feel the draft constitution prepared by the Committee is inconsistent with the intent of Legislative Act 16-85."⁷⁴² In addition, the Cherokee resolution also required a BIA supervised referendum, and yet the BIA had up until that time stated that it could not supervise an election by a non-federally recognized tribe. However, Mankiller noted that the Assistant Secretary Swimmer "stated that the BIA can pick up the cost."⁷⁴³

In a letter dated December 12, 1986, Acting Area Director Dennis Springwater, a Cherokee tribal member, also rejects the proposed constitution of the Delaware Tribe, and posits:

The 1972 law (25 USCA 1294 (b))
provides the Assistant Secretary-
Indian Affairs must be assured
there is an organized legal entity
which will adequately protect the
interest of the tribe and its
members concerning claims.⁷⁴⁴

Note, that Mr. Springwater outright re-writes the requirements of the 1972 Act. Recall that the Act stated that ten percent of the Delaware judgement fund would be set aside to be used as the tribal governing body directs, provided, "That the Secretary of the Interior shall not approve the use of the funds remaining to the credit of the tribe until the tribe has organized a legal entity which in the judgment of the Secretary adequately protects the interests of its members."⁷⁴⁵ No mention is made of the Assistant Secretary [who just so happens to have facilitated the administrative termination of the tribe], and no mention is made of "claims."

In addition, Mr. Springwater also provides some suggested changes to the draft constitution. Primarily, Mr. Springwater suggests that the Delaware membership of the Delaware Tribe be defined as those persons appearing on the 1906 Delaware per capita roll and their descendants and "also members of or eligible for membership with the Cherokee Nation of Oklahoma through the Cherokee Dawes Commission Rolls."⁷⁴⁶

In a subsequent meeting on July 16, 1987, when asked why the Delaware Tribal membership was stated in these terms, Springwater responded:

The reason that phrase was inserted, if you'll read the act that governs the disposal of those [dockets], 72-298, the same wording is included. Those are the rolls that you had to trace back to be eligible to be paid in this payment.... This identifies the people on the Dawes Roll, as [] to the other Delaware Bands.... The purpose of the phrase was to exclude the other Delaware Bands (emphasis added).⁷⁴⁷

Oh, really? If Mr. Springwater had read the Act which governs the disposal of the judgement funds for dockets 72 and 289, he would note that Congress did not define the Delaware Tribe in relation to the Cherokee Dawes Roll, but in fact defined the membership of the Delaware Tribe as those persons whose "name or name of lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary of Interior on April 20, 1906."⁷⁴⁸ Even after 1980, when Congress amended the 1972 Act to include the non-tribal Kansas Delawares, the distribution statute still did not mention Mr. Springwater's definition of membership in the Delaware Tribe.⁷⁴⁹

Either Acting Area Director Springwater never read the Congressional Acts for which he is claiming responsibility for implementing, or he is intentionally trying to assure that all the members of the Delaware Tribe of Indians can also be claimed as members of his tribe, the Cherokee Nation.

In 1990, the Delaware Tribe of Indians, weary of fighting ten years of lies and deceit, compromised and approved the "Trust Document of the Delaware Tribe of Indians," as the requisite legal entity to protect the interests of the tribal members.⁷⁵⁰ The Trust Document was approved by the BIA and the non-recognized Delaware leaders in 1990, and was ratified by the membership of the Delaware Tribe on September 21, 1990.⁷⁵¹ The Trust Document follows the format of the usual OIWA constitutions, but provides for the creation of a governing body in a Trust Board, rather than a tribal council.⁷⁵² Note, however, the Trust Document does impose the additional membership requirement that all Delaware Tribal members also be members or eligible for membership in the Cherokee Nation. The document further states in the preamble:

...the existence and factum of approval by the Secretary of the Interior will neither be considered as an indication of the existence or the non-existence of the status of the Delaware Tribe of Indians as being that of a Federally recognized tribe possessing governmental powers...⁷⁵³

The Delaware Tribe, therefore, never acquiesced to the Bureau's demand for the adoption of a governing document that would deny the tribe's sovereignty. The Delaware leaders also wanted to assure that all relevant parties understood that the adoption of the trust document did not in any way otherwise affect the validity of the Delaware Constitution - duly adopted by the Delaware Tribe in General Council. Accordingly, the "Notice" for the referendum on the adoption of the document also specifically stated that "[t]his trust document is solely for the purpose of administering the judgement funds benefitting Delaware Indians as a result of the awards in Dockets 72 & 298."⁷⁵⁴

Thus, nearly twenty years after Congress specifically appropriated the judgement funds for the Delaware Tribe of Indians to be used as the governing body directs, the tribe finally was able to begin to receive the interest off the money to fund the administration of the Delaware Tribal Center and numerous social programs for its members.

The U.S. government still holds the principal of \$4.1 million in trust for the non-existent Delaware Tribe, and directly oversees the administration of the annual budget, and the activities of the Trust Board. Note, that even though the very definition of "termination" is the termination of the trust responsibility of the federal government, the BIA still maintains that the Delaware Tribe of Indians ceased to exist in 1867, and the U.S. government currently has no direct government to government relationship with the tribe.

Current Status of the Delaware Tribe of Indians

The Delaware Tribe currently has a bicameral form of government, under both a Trust Document and Constitution. The Trust Board consists of seven members elected at General Council whose only responsibility is to direct the expenditures of the interest on the judgement fund. In other words, the Trust Board holds the purse strings. The Chief and Tribal Council are also elected at General Council under the requirements of the Delaware Constitution, and are directly responsible for all other facets of tribal policy, including the management of the money, assets, and land owned by the Delaware Tribe, as distinguished from the Delaware Trust Board.

The Bureau only recognizes the existence of the Trust Board, and does not give any credence to the Delaware Chief or Tribal Council. Lewis B. Ketchum has served continuously as Chief of the tribe since 1983, and has also served as Chairman of the Trust Board since its creation. And of course, recall that the U.S. recognizes the existence of the Housing Authority of the Delaware Tribe of Indians, although not the tribe itself.⁷⁵⁵

Since receiving the interest from the judgement funds the tribe has made great progress in stabilizing and streamlining the operations of its tribal headquarters, and the administration of the Delaware Community Service Programs. The Delaware Tribe currently funds and administers the following programs to its tribal members:

1. Education Committee: Currently provides a limited number of \$500.00/semester scholarships for full-time, and \$200.00/semester for part-time students attending colleges, vocational schools, professional and graduate schools. The committee also reimburses a small portion of graduation expenses on a case by case basis.

2. Community Services Committee: Provides Student Eye Glass and Elderly Eye Glass assistance for up to \$125.00; Burial Assistance for up to \$500.00; Utility Assistance for up to \$50.00 on an

emergency basis; Housing Assistance: Up to \$250.00/mo. for up to three months; Drug & Alcohol Counseling Services: Reviewed on a case by case basis; Medical Service Transportation: Reviewed on a case by case basis; Medication Assistance: Up to \$25.00/mo. not to exceed \$300.00/yr; Hospital Equipment Assistance: Reviewed on a case by case basis; Dental Services: Up to \$125.00. The Community Services Committee also funds the Delaware Indian News to keep all tribal members informed on tribal issues.

3. Cultural Preservation Committee: Provides Delaware Language Classes, Drum & Dance lessons, and provides monetary and volunteer services to promote the following annual activities: The Delaware PowWow, Copan, OK.; War Mothers Dance, Copan, OK.; Fall Leaf Dance, Copan, OK.; Delaware Day, Copan, OK. In addition, the Cultural Preservation Committee submitted a proposal to the Corp of Engineers in 1993 to lease the old Delaware Big House Ceremonial Grounds for a permanent ceremonial site. This proposal was turned down because the Corp of Engineers said the Delaware Tribe, although owning a significant number of lands, is not an legal entity with which the Corp could enter a lease.

4. Tribal Operations: The tribe has run the Delaware Tribal Headquarters full-time since its opening over twenty years ago. Today the tribal center has a full-time staff which provides assistance to the tribal members in obtaining their CDIB cards, genealogy research, notary services, and community referrals.

5. Delaware Tribal Gift Shop: In addition to the Trust Board funds, the Delaware Tribe also owns a gift shop adjacent to the tribal headquarters which provides a modest income to the tribe.

The Delaware Tribe has approximately 10,100 enrolled tribal members, half of which reside within Oklahoma. Although there are no official figures, the Delaware Tribe estimates that only about forty percent of the tribal members have enrolled with the Cherokee Nation, and of recent, they have only done so to obtain a C.D.I.B. so as to qualify for Indian Health Services.

Indian Health Services will not accept a Delaware Tribal membership card, and demands a C.D.I.B. Many Delaware elders, some living since the turn of the century, are in dire need of medical services, and have been forced for the first time in their lives to enroll with the Cherokee Nation, and ~~obtain a Certificate Degree of Indian Blood stating that they are Cherokee Indians.~~

The Current Efforts of the Delaware Tribe of Indians to Reaffirm its Tribal Sovereignty

After 1986, the Delaware Tribe had laid to rest for a time the seemingly futile battle against the illegal administrative termination of the tribe. Believing that as they have always been a tribe, the Lenape did not need the U.S. government to certify the obvious. However, the morale of the tribe has sunk to an all time low as tribal members increasingly find that their leaders are impotent to act in their interests and helpless to defend their rights as Native Americans. To the outside world they must present themselves as Cherokees to qualify legally as an American Indian. In addition, it has become abundantly clear to the tribe that the policies and prerogatives of the Cherokee Nation government will never serve in the best interests of the Delaware people.

Although the tribe as an entity and a government has continuously existed from time immemorial,

with each passing year, the significance of formal federal recognition increases. Prior to 1979, the federal government kept no "list" of recognized tribes, and thus, the Delaware government was recognized throughout the world by virtue of its very physical existence. However, each year the tribe finds that the outside world is increasingly measuring the existence of tribes by whether the tribal name appears in Federal Register. The tribe can not exist as an island and must engage in dialogue with the outside world. State and local communities, businesses, courts, museums, universities, even other tribes, have begun to view with a skeptical eye any community of Indians whose name does not appear on the BIA's official roster. The tribe can not carry on a dialogue in the best interest of its members if the world does not believe it exists.

Just to name a few examples, tribal members of late have been advised by their attorneys that the Delaware Tribe is not a legal entity to which they might will their land or cultural artifacts. Tribal leaders were recently told by the Army Corps of Engineers that it did not have legal capacity to enter a lease, or contract to develop a permanent ceremonial ground. The IRS informed the tribe that it could not qualify as a non-profit organization as an Indian tribe, but would have to set up an artificial corporation to gain non-profit status. A new generation of museum curators and university professors now do not even know that the tribe still exists, even though their institutions had relied heavily on this tribe in the past to understand and define history and cultural artifacts. Under the Native American Graves and Repatriation Act, the tribe can not even retrieve the artifacts that they had previously loaned such institutions for study and safe keeping. As the trend to rely solely on the BIA's Federal Register list is expanding, there will come a time when any tribe not appearing on that list will be considered a fraud. What will happen in the future to all the deeds, contracts, wills, government documents, etc., that names a tribe which can not legally exist?

Accordingly, in October, 1992, the Delaware Tribal Council resolved to go to any lengths to reaffirm the sovereignty of the tribe. Under Resolution 92-12, the Delawares adopted a strategy to secure federal recognition, separate and distinct from that of the Cherokee Nation. The goals of resolution 92-12 included:

1. Obtain a favorable agreement with the Cherokee Nation in order to amend the Articles of Agreement of 1867;
2. Submit a documented petition pursuant to 25 CFR Prt. 83 for federal recognition to the BIA;
3. Prepare a bill for submittal to the U.S. Congress for reaffirmation of Delaware Tribal Sovereignty.

Although the concept of having to document its continuous existence and prove itself yet again to the BIA as an Indian Tribe seems thoroughly ludicrous, the tribe nevertheless filed its Letter Petition to the Branch of Acknowledgement and Recognition on December 7, 1992, pursuant to 25 C.F.R. Prt. 83. The Delaware Federal Recognition Project has been working since that time to gather sufficient documentation to verify the continuous political and cultural existence of the tribe, and to document the illicit rewrite of their history by the BIA in 1979.

The Delaware Tribal Council then passed a resolution requesting the acquiescence of the Cherokee Nation in its efforts, and submitted the same to the Cherokee Nation in January, 1993. Cherokee Chief Wilma Mankiller stated that she would support the effort if the Delaware people voted to "separate."

In November, 1993, the Delaware Tribe of Indians held a costly nation-wide all-absentee ballot vote on the issue of obtaining federal recognition separate and distinct from the Cherokee Nation. The initiative vote was preceded by five widely publicized community meetings wherein the tribal leaders and attorneys explained all the intentions and legal implications of a separate federal recognition. The Delaware members voted in favor by an overwhelming 88% to seek a separate recognition.

In October, 1993, the Delaware Tribal Council sent a proposed Memorandum of Agreement to the Cherokee Nation Tribal Council, which addressed all the legal concerns of both tribes. However, the leadership of the Cherokee Nation never submitted the proposed agreement to its tribal council for comment, amendment, adoption, or otherwise. Since that time, the Cherokee Nation has not given any good faith indications that it will support the Delawares in their effort. Most specifically, at the annual 1993 NCAI Conference the Delaware delegates submitted a general resolution requesting NCAI support for Delaware efforts. The Anadarko Area Caucus voted unanimously to adopt the resolution and to submit the same to the floor. However, Cherokee delegates in another committee protested the resolution as an intertribal dispute. Chief Mankiller, personally sent a fax to NCAI President Gaioshkobosh requesting that the resolution be deemed an intertribal dispute. Many NCAI activists pressed the Delaware delegates to submit the resolution to the NCAI floor, regardless of the protests of the Cherokees. However, the Delaware delegates, in deference to the Cherokee representatives, voted to allow the resolution to die in committee.

On April 20, 1994, yet another Acting Deputy Commissioner of Indian Affairs, Walter R. Mills, notified Mr. Lewis B. Ketchum that the BIA would not consider a petition for recognition from the Delaware Tribe, "because the relationship was created through congressional action."⁷⁵⁶ And Mr. Mills continues on to repeat the same BIA revised history of the Delaware Tribe as was created in 1979 to justify the termination of the tribe.

In particular, Mr. Mills states that the 1867 Agreement between the two tribes was "confirmed by Congress on October 19, 1888 (25 Stat. 608)." Recall, as discussed above, the 1888 statute, passed twenty years after the agreement, contains absolutely no language of confirmation or otherwise. The statute merely reiterates the terms of the Agreement, and provides that the Delawares paid a substantial consideration to enjoy all the rights of native Cherokees.⁷⁵⁷ While the letter does address the two Supreme Court cases which spoke to the Delaware's rights as native Cherokees, Mr. Mills letter makes no mention of the five federal litigations addressing the retained sovereignty of the Delaware Tribe.

In addition, Mr. Mills states that Congress has "defined" the Delaware as Cherokee, but does not state that Congress had terminated the tribe. Under 25 C.F.R. Prt. 83, the tribe is only ineligible to petition by act of Congress, if that tribe has been terminated. Since the 1888 statute could never muster the test of a termination statute, Mr. Mills also informs the Delaware Tribe that it is a "splinter group" of the Cherokee Nation and, therefore, is not eligible to petition under Prt. 83.3 (d) of the acknowledgement regulations.

While the Delawares really have no interest in spending five years and hundreds of thousands of dollars documenting a tribal existence that hundreds of commercial authors, and the Department of Interior, have already verified right up to the present, the tribe has, nevertheless, appealed the basis of this letter as a complete fraud.

END NOTES

1. Sue N. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy Pt. 1" (Ph.D. diss., Bryn Mawr College, 1977), 91-93.
2. Roger James Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867" (Ph.D. diss., Ball State University, 1972), 4.
3. Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 4-5.
4. Id. at 3.
5. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, PT. 1," at 92.
6. Herbert C. Kraft, The Lenape: Archeology, History, and Ethnography, (Newark: New Jersey Historical Society, 1986), xvii.
7. Supra note 3, at 5.
8. Ives Goddard, Delaware, ed., Bruce G. Trigger, Handbook of North American Indians, vol. 15, (Washington D. C.: Smithsonian Institution Press, 1978), 216.
9. Id.
10. Id.
11. Id.
12. Robert S. Grumet, The Lenapes, ed., Frank W. Porter III., Indians of North America, (New York: Chelsea House Publishers, 1989), 22-23.
13. Supra note 8.
14. Supra note 8.
15. Grumet, The Lenapes, at 17.

16. Supra note 8, at 220-221.
17. For a detailed description of the early westward migrations of the Lenape, see Goddard, Delaware, at 220-24.
18. Delaware Tribe of Indians v. United States, 2 Ind. Cl. Com. 2-253, 2-256 (1952).
19. Id.
20. Id. at 2-259.
21. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 76-77 (1977).
22. Treaty with the Wyandot, Etc. (Treaty of Greenville), Aug. 3, 1795, 7 Stat 49.

23. Supra note 2, at 105.
24. Id.
25. Id. at 110.
26. Grumet, The Lenapes, at 14.
27. Clinton A. Weslager, The Delaware Indians, A History, (Somerset, NJ: Rutgers University Press, 1970), 353.
28. Goddard, Delaware, at 216.
29. Id. at 222; See also Ruby Cranor, Kik Tha We Nund, The Delaware Chief William Anderson and his Descendants, (n.p.: n.d), 2, (available at the Delaware Gift Shop, Bartlesville, OK).
30. Id.
31. Supra note 27, at 335; See also Cranor, Kik Tha We Nund, The Delaware Chief William Anderson and his Descendants, at 1-14.
32. Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 105.
33. Id. at 78.
34. Clinton A. Weslager, The Delaware Indian Westward Migration, (Wallingford, PA: The Middle Atlantic Press, 1978), 219.
35. Treaty with the Delawares, Aug. 3, 1829, 7 Stat. 326; Claimant's Exhibit No. 1,132, Delaware Tribe of Indians v. United States, (Doc. No. 241) 2 Ind. Cl. Com. 2-253 (1952).
36. The removal of the eastern tribes to the west invariably created tensions with the plains tribes who resented the tribes' infringement upon their hunting grounds. During the Indian frontier wars beginning in 1833, the eastern tribes continually sought to confederate with the Delawares for protection. In 1833, the Delawares declined a Cherokee invitation to attend a council to discuss the formation of such a confederacy; the Delaware council was apparently suspicious of the Cherokee, and feared the Cherokee would be hostile to the United States and to the Delaware representatives. In 1847 the Winnebagos also requested an alliance with the Delaware to defend against the Dakota Sioux. Delaware war chief, Anderson Sarcoxe [Sarcoxie], sent word to the Menomies, Potawatomies, Kickapoos, Shawnees, Wyandots, Sacs, and Foxes of the proposed allegiance; however, each tribe would agree to the alliance only if the Grandfather tribe also agreed. The Delaware, as usual, deferred to the U.S. government's request that the tribes' not confederate for an all out Indian war. See Ferguson, "White River Delawares: An Ethnohistoric Synthesis, 1795-1867," at 148-151.
37. Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 169.
38. Id. The Clans' assistant chiefs included Ne-con-he-cond of the Wolf Clan, and Chief Anderson's three sons, Anderson Sarcoxe war chief of the Turtle Clan, Secondyne of the Turtle Clan, and Swanock of the Wolf Clan.
39. Supra note 37, at 170.

40. Id.; Cranor, Kik Tha We Nund, at 162. In addition, James Secondine served as assistant chief to Anderson Sarcoxie of the Turtle Clan.
41. As Per tribal law, Chief Ketchum's will had named his nephew, James Conner, to ascend to his position "as a chief". Ketchum's appointment was for Chief of the Turtle Clan, not as head chief -since the "*first-among-equals*" of the clan chiefs had always served as head chief. Will of Capt. Ketchum, Chief of the Delawares, Delaware Nation, Oct. 20, 1856, National Archives, Rec. Group No. 75, 1858, Delaware R600, Washington, D.C.; See also Weslager, The Delaware Indian Westward Migration, at 221.
42. Letter of James Conner, Delaware, to U.S. Government, n.d., National Archives, Record Group No. 75, 1858, Delaware R600, Washington, D.C.
43. Letter of May 8, 1858, from B.F. Robinson, Indian Agent, Delaware Agency, to A.M. Robinson, Supt. Ind. Affairs, National Archives, Record Group No. 75, 1858, Delaware R600, Washington, D.C.; Weslager, Delaware Indians, A History, at 389.
44. Id.
45. Id.; See Weslager, The Delaware Indians: A History, at 391. Note, Charles Journeycake is a signatory on the Delawares' Treaty with the United States of May 6, 1854 (10 Stat. 1048), but as a councilor and not as a chief.
46. Harry M. Roark, Charles Journeycake, Indian Statesman and Christian Leader, (Dallas: Taylor Publishing Co., 1948), 20. Journeycake's mother was a half-white, half-Wyandot Indian who had later married into the Delaware Tribe.
47. Treaty with the Delawares, July 2, 1861, 12 Stat. 1177.
48. "For President Abraham Lincoln- The Delawares and a Sharp Financial Operation," Daily (Leavenworth) Bulletin, 1864, Pratt Roll No. 6, fr. 0281, microfilm. In the spring of 1860, Charles Journeycake's eldest daughter, Nannie Journeycake, married Lucius Pratt, eldest son to Reverend John G. Pratt. Weslager, Delaware Indians, A History, at 385; See also Clara Gowing, "Life Among the Delaware Indians," Kansas State Historical Quarterly, Vol. XII, (Topeka: State Printing Office, 1911-12), 187.
49. "For President Abraham Lincoln - The Delawares and a Sharp Financial Situation," Daily (Leavenworth) Bulletin Newspaper, 1864, Pratt Roll No. 6, fr. 0281, microfilm.
50. Weslager, Delaware Indians, A History, at 384-87; See also Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 168.
51. Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 168.
52. See Report of John G. Pratt, U.S. Indian Agent, Delaware Agency, Kansas, September 19, 1866, (enclosing "Laws of the Delaware Nation of Indians" adopted in General Council July 21, 1866) as reprinted in Report of the Secretary of the Interior, 1866, 247-248; See also Memorial of the Delaware Indians, S. Rep. No. 16, 58th Cong., 1st Sess. 189 (1903).
53. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 108; See also Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 158-59.
54. Weslager, Delaware Indians, A History, at 401.

55. Letter of April 10, 1854, from Capt. Ketchum, Chief of the Delawares, Delaware County, Indian Territory, to President Franklin Pierce, Kansas Collection, University of Kansas Libraries, Lawrence.

56. Treaty with the Delawares, May 6, 1854, 10 Stat. 1048.

57. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 79 (1977).

58. Delaware Tribe of Indians v. United States, 2 Ind. Cl. Com. 2-253, 2-256 (1952).

59. Weslager, Delaware Indians, A History, at 404. The Court of Claims determined that the U.S. purchase of the Delaware Outlet for \$10,000.00 was an unconscionable transaction. Delaware Tribe of Indians v. United States, 130 Ct. Cls. 782 (1955).

60. Letter of October 26, 1858, from the Delawares to President Buchanan, National Archives, M234, roll 275, microfilm.

61. Id.; Letter of February 10, 1860, from Thomas B. Sykes, U.S. Indian Agent, to _____, National Archives, M234, roll 275, microfilm, as cited in Weslager, Delaware Indians, A History, at 407-8.

62. Treaty with the Delawares, May 30, 1860, 12 Stat. 1129.

63. Id.

64. Treaty with the Delawares, July 2, 1961, 12 Stat. 1177; See also Weslager, The Delaware Indian Westward Migration, at 223.

65. Id.

66. Letter of February 10, 1860, from Thomas B. Sykes, U.S. Indian Agent, to _____, National Archives, M234, roll 275, microfilm, as cited in Weslager, Delaware Indians, A History, at 407-8.

67. Id.; Letter of March 12, 1860 from Thomas B. Sykes, U.S. Indian Agent, to _____, National Archives, M234, roll 275, microfilm.

68. Letter from the Delawares, John Ross Collection, File No. 69-19, Thomas Gilcrease Museum of American History and Art, Tulsa; The Delawares advised the Cherokees:

"...Grandchildren, we are very sorry that our white brothers in the states have gone to war with each other. We are sorry for it. Grandchildren, we advise the Indians to take no part in this war between our white brothers of the north and south, but to stay at home and attend to their own business, and let our white brothers settle their quarrels between themselves."

69. Letter of January 3, 1861, from the Delawares to O puth la yar ho la, Muscogee Chief Warrior, and our Loyal Grandchildren, Delaware Nation, Kansas recited in Memorial of the Delaware Indians, S. Rep. No. 16, 58th Cong., 1st Sess. 161 (1903):

"...If bad men of the south ask you to go to war against the President, stop your ears, don't listen to them; they are your worst enemies...Grandchildren, we are ready and willing to help you. Our brave warriors will spill

their blood for you...."

70. Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 160; Annie Heloise Abel, The American Indian as Participant in the Civil War (Cleveland: The Arthur H. Clark Co., 1918), 206- 7.

71. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 108; See also Ferguson, "White River Delawares: An Ethnohistoric Synthesis 1795-1867," at 158-59.

72. Id. at 161.

73. Letter of November 20, 1860, from Thomas B. Sykes, U.S. Indian Agent, to _____, National Archives, M234, roll 278, microfilm.

74. Supra note 18.

75. In 1837, the Chickasaw and the Choctaw entered into a Treaty with the U.S. providing for the removal of the Chickasaw to lands within the Choctaw Nation, to be "held on the same terms as the Choctaw [] hold it, except without the right of disposing of it...." (11 Stat. 573). In addition, the Chickasaws would pay for the right to have "all the rights and privileges of Choctaws," but the Chickasaws reserved to themselves the right to maintain control of their funds. (art. 1, Treaty with the Choctaw and Chickasaw, Jan. 17, 1837, 11 Stat. 573). However, dissensions between the two tribes soon arose as the Chickasaws found themselves at the mercy of the Choctaw government. To clarify the situation, the U.S. and the two tribes entered another treaty in 1855 specifically setting off a district for the exclusive jurisdiction of the Chickasaw tribe, while leaving the lands held in common by the two tribes. (Treaty with the Choctaw and Chickasaw, June 22, 1855, 11 Stat. 611).

76. Agreement between a band of Delaware Indians and the Choctaw Nation, June 26, 1853, Chickasaw, Vol. 53, 9, Oklahoma Historical Society, Oklahoma City.

77. This is evidenced by the fact that the U.S. subsequently signed several treaties with the main body to provide the removal of the Delawares from those borrowed lands. In addition, the band of Absentees later left of their own free will and migrated to Oklahoma to eventually settle with the Wichita and Caddo tribes in Anadarko.

78. Letter of November 12, 1860, from Thomas B. Sykes, U.S. Indian Agent, to _____, National Archives, M234, roll 275, microfilm; Letter of November 28, 1860 from the Delawares to the Cherokees, John Ross Collection, File no. 60-16, Thomas Gilcrease Museum of American History and Art, Tulsa.

79. Pratt Papers roll no. 8, fr. 0002, microfilm; See also Memorial of the Delaware Tribe of Indians, at 167.

80. Letter of May 29, 1863, from William P. Dole, Commissioner of Indian Affairs, Washington, D.C., to F. Johnson, U.S. Indian Agent, Quindaro, KS., as reprinted in Richard C. Adams, A Delaware Indian Legend and The Story of their Troubles, (Washington, D.C.: n.p., 1899), 47-8.

81. Telegram of April 29, 1864, from William P. Dole, Commissioner of Indian Affairs, Washington, D.C., to Reverend John G. Pratt, U.S. Indian Agent, Pratt Papers, roll no. 6, fm. 00125, microfilm.

82. Letter of May 25, 1864, from John Ross, Cherokee Chief, et. al., to William P. Dole, Commissioner of Indian Affairs, Washington, D.C., The Papers of Chief John Ross, Volume II, 1840-1866, ed., Gary E. Moulton, (Norman: University of Oklahoma Press, 1984), 580.

83. Letter of August 29, 1864, from Reverend John G. Pratt, U.S. Indian Agent, to the Honorable Wm. P. Dole, Commissioner of Indian Affairs., Washington, D.C. The letter requests reimbursement to Sarcoxie's delegation to defray the expenses of the trip "to explore the Cherokee Country last season." It is unclear whether Sarcoxie went in the fall of 1863, or the spring of 1864.

84. Letter of June 8, 1864, from John Ross, Cherokee Chief, to Mr. James Steel, Washington, D.C., June 8, 1864, John Ross Collection, File No. 64-24, Thomas Gilcrease Museum of American History and Art, Tulsa; See also Moulton, The Papers of Chief John Ross, Volume II, 1840-1866, at 586.

85. Id.

86. Id.

87. Id.

88. Letter of October 9, 1861, from R.H. Carruth to General J.H. Lane, Commanding K Brigade, Humbolt, KS., as reprinted in, Memorial of the Delaware Indians, at 161.

89. Proposed Treaty at Washington, June, 1864, John Ross Collection, File No. 64-32, Thomas Gilcrease Museum of Art and History, Tulsa; See also Moulton, John Ross, Cherokee Chief, at 180.

90. Moulton, John Ross, Cherokee Chief, at 179.

91. Supra note 84.

92. Telegram of April 29, 1864, from William P. Dole, Commissioner of Indian Affairs, Washington, D.C., to Reverend John G. Pratt, U.S. Indian Agent, Pratt Papers, roll no. 6, fr. 00125, microfilm; Weslager, The Delaware Indians, A History, at 415-16; "The Delawares and a Sharp Financial Operation," Daily (Leavenworth) Bulletin, June, 1864, Pratt Papers, roll no. 6, fr. 0281, microfilm; In Executive Session, Senate of the United States, May 4, 1866, proclaiming that the Senate failed to ratify the June 15, 1864 treaty, Pratt Papers, roll no. 6, fr. 00893, microfilm; See also Pratt Papers, roll no. 6, fr. 00892, microfilm.

93. "A Big Swindle on the Tapis: Lane, Wilder, Secretary Usher and High Officials in Washington Implicated," Daily (Leavenworth) Bulletin, June 1864, Pratt Papers, roll no. 6, fr. 0281, microfilm. See also Letter of March 22, 1862, from P. C. Ferguson to the Hon. Lyman Trumbull, U. S Senator, as reprinted in, Memorial of the Delaware Indians, at 167.

94. Shoemaker, Miller and Co. v. William A. Simpson, Civ. No. _____, Kan. Ct., 1870.

95. In Executive Session, Senate of the United States, May 4, 1866, proclaiming that the Senate failed to ratify the June 15, 1864 treaty, Pratt Papers, roll no. 6, fr. 00893, microfilm; See also Pratt Papers, roll no. 6, fr. 00892, microfilm.

96. Message of the President of the United States, July 20, 1866, Exec. Doc. CC., 39th Cong., 1st Sess. 555.

97. Transmittal Letter of July 4, 1866, from W.H. Watson, Special U.S. Agent, Leavenworth, KS., to D.N. Cooley, Commissioner of Indian Affairs, Washington, D.C., Exec. Doc. CC., 39th Cong., 1st Sess. 555 (1866).

98. Letter of August 6, 1867, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

99. Treaty with the Delawares, July 4, 1866, art. 4, 14 Stat. 793.

100. Id. at art. 14.

101. Id. at art. 5. Note, Article 9 of the treaty also provided that any "competent" Delawares could choose to dissolve their tribal relations and to become citizens of the United States. Such individuals would then be allowed to remain in Kansas, and receive a fee patent for those Delaware lands already allotted to them under the Treaty of 1861, and would also receive in cash or bonds their proportional share of the funds held by the U.S. to the credit of the tribe.

102. Id. at art. 11.

103. Letter of June 8, 1864, from John Ross, Cherokee Chief, to Mr. James Steel, Washington, D.C., June 8, 1864, John Ross Collection, File No. 64-24, Thomas Gilcrease Museum of American History and Art, Tulsa; See also Moulton, The Papers of Chief John Ross, Volume II, 1840-1866, at 586.

104. Id.

105. Congressional Document, John Ross Collection, File-33, n.d., Thomas Gilcrease Museum of American History and Art, Tulsa.

106. Supra note 75.

107. Treaty with the Cherokee, July 19, 1866, art. 15, 14 Stat. 793.

108. Id.

109. Supra note 105.

110. For example the Seminole Treaty of 1866 provided:

The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of persons and property within the Indian Territory, Provided, however, said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, and customs.

In addition, the Treaty with the Choctaw and Chickasaw of 1866, and the Treaty with the Creeks of 1866, contain identical language to indicate that any legislation passed by the U.S. Congress would not

diminish the right to self-governance.

111. Article 15 of the Treaty between the U. S. and the Cherokee:

The United States may settle any civilized Indians, ...within the Cherokee country, on unoccupied lands east of 96', on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the United States, **which shall be consistent with the following provisions, viz:** Should any such tribe or band of Indians settling in said Indian country **abandon their tribal organization**, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, **they shall be incorporated into and ever after remain a part of the Cherokee Nation**, on equal terms in every respect with native citizens.

112. Treaty with the Cherokee, July 19, 1866, art. 15, 14 Stat. 799.

113. Id.

114. Id. at art. 16.

115. See Letter of February 6, 1868, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Ind. Affairs, Pratt Papers, roll no. 8, fr. 00021, microfilm.

116. Letter of October 13, 1866, from John G. Pratt, U.S. Indian Agent, Washington, D.C., to Chief John Conner and Charles Journeycake, Delaware Reservation, KS.:

For your information all those lands in the Indian country which are open for settlement and selection together with a map thereof and also a copy of your Treaty as well as that of the Cherokee are herewith furnished to you for your guide and you may select lands in quantities of eighty or one hundred and sixty acres as you may deem wise.

Reprinted in, Roark, Charles Journeycake, Indian Statesman and Christian Leader, at 47.

117. Id.

118. John G. Pratt, Original Account Book of the Delawares, no longer in print, cited in, Roark, Charles Journeycake, Indian Statesmen and Christian Leader, at 48.

119. Cherokee National Records, roll CHN 8, Vol. 250, National Council, fr. 0273, 0055, and 0095, microfilm, Oklahoma Historical Society, Oklahoma City; "Resolution of the Cherokee National Council", Nov. 7, 1866, Laws of the Cherokee Nation, 1839-1867, as cited in, Adams, A Delaware Indian Legend, and The Story Of Their Troubles, at 25.

120. Letter of December 9, 1866, John Conner, Delaware Chief, Camp on the Canae [Caney] River, Cherokee Nation, to Wm. P. Ross, Cherokee Chief, Cherokee Nation, Kansas Collection, Vol. 10, p.46-48, University of Kansas Libraries, Lawrence, KS.

121. Letter of November 7, 1866, from Edward S. Menager, U.S. Indian Agent, Fort Gibson, Cherokee Nation, to _____, Pratt Papers, roll no. 7, fr. 00021, microfilm; Protest Petition of June 13, 1867, from the Delaware Tribe of Indians, Delaware Nation, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm; Treaty with the Delawares, May 30, 1860, 12 Stat. 1129; Letter of February 6, 1868, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Ind. Affairs, Pratt Papers, roll no. 8, fr. 00021, microfilm.

122. See Deposition of Simon Secondine, December 6, 1898, Crt. of Claims No. 21139; Deposition of Mary C. Beysian, December 7, 1898, Crt. of Claims No. 21139; See also, Message of Cherokee Delegates, Senate Select Committee on Indian Affairs, June 19th, 1890, S2322. S4005, 51st Cong., as cited in, Adams, A Delaware Indian Legend, at 26.

123. Id.

124. Treaty with the Delawares, May 30, 1860, 12 Stat. 1129.

125. See Letter of February 6, 1868, from John G. Pratt, U.S. Indian Agent, Kansas, to Thomas Murphy, Supt. Ind. Affairs, Washington, D.C., Pratt Papers, roll no. 8, fr. 0021, microfilm.

126. Articles of Agreement between the Cherokee Nation and the Delaware Tribe of Indians, April 8, 1867, Washington, D.C., Pratt Papers, roll no. 7, fr. 00212, microfilm.

127. Id.

128. Id.

129. Id. The Delawares were aware that they were paying \$1.00 an acre for only an occupancy right on a quantity of land upon which they might preserve their tribal organization; however, the Delawares believed that as between themselves and the Cherokees these lands belonged to the Delaware without the right to alienate. Although the Cherokee Treaty of 1866 and the Articles of Agreement provide that the Delawares would not have a right to alienate the land, Cherokee Chief D. W. Bushyhead gave testimony before the U.S. Congress that the Cherokees had absolutely no interest in the lands of the Delawares. The U.S. Supreme Court in Delawares v. Cherokees, (1904) reaffirmed that the Delawares had paid \$1.00 per acre for an occupancy right. In consideration that the Cherokee lands just a few miles west sold in fee for .70 an acre, and some of the Chickasaw lands sold in fee for as low as .30 an acre, there is little doubt that the Delawares understood that they were paying this high price for a perpetual occupancy right on lands to be set aside to preserve their tribal organization while residing within the Cherokee Nation.

130. Supra note 126.

131. See, e.g., Letter of May 24, 1979, from La Follette Butler, Acting Deputy Commissioner, Bureau of Indian Affairs, to Henry A. Secondine, Chairman of the Delaware Business Committee; "Message to Members of the Cherokee Delaware Tribe," June 9, 1979, from Martin E. Seneca Jr., Acting Deputy Commissioner, Bureau of Indian Affairs; Defendant's Request for Finding of Fact, Delaware Tribe of Indians v. United States, Ind. Cl. Comm. Docket No. 27-A, filed June 16, 1952.

132. Supra note 113.

133. Resolution of the Cherokee National Committee, June 15, 1867, Cherokee National Records, roll CHN 8, fr. 0014, microfilm.

134. See Protest Petition of the Delaware Tribe of Indians of Kansas, January 16, 1868, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

135. Protest Petition of June 13, 1867, from the Delaware Tribe of Indians, Delaware Nation, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

136. Id. The authorship of the Petition is attributed to Anderson Sarcoxie whose name appears first on the names of the petition.

137. Id.

138. Id.

139. See Letter of August 6, 1867, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt Indian Affairs, transmitting the June 13, 1867, Protest Petition of the Delaware Tribe of Indians (supra, note, 136), National Archives, M234, Roll no. 275, microfilm; See also Weslager, The Delaware Indians, A History, at 419-421.

140. Letter of July 8, 1867, from Chief Anderson Sarcoxie to the Hon. Commissioner of Indian Affairs, July 8, 1867, National Archives, M234, roll 278, microfilm.

141. Letter of July 5, 1867, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

142. Letter of August 6, 1867, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, transmitting the June 13, 1867, Protest Petition of the Delaware Tribe of Indians (supra note, 136), National Archives, M234, Roll no. 275, microfilm).

143. Id.

144. Letter of July 4, 1866, from W.H. Watson, Special U.S. Agent, Leavenworth, KS., to D.N. Cooley, Commissioner of Indian Affairs, Washington, D.C., transmitting the negotiated treaty of 1866, Exec. Doc. CC., 39th Cong., 1st Sess. 555 (1866).

145. Letter of November 8, 1867, from John Conner, Delaware Chief, Charles Journeycake, Assistant Chief, James Conner, Councilman, Andrew Miller, Councilman, James Ketchum, Councilman to Hon. Charles Mix, Acting Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

146. Letter of November 8, 1867, from John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, Atchinson, KS, transmitting Delaware letter, Kansas Collection, University of Kansas Libraries, Lawrence.

147. Letter of January 16, 1868, from Capt. Fall Leaf, Delaware, to the Hon. Commissioner of Indian Affairs, National Archives, M234, roll 275, microfilm.

148. Id.

149. Id.

150. Letter of February 6, 1868, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, Washington, D.C., Pratt Papers, roll no. 8, fr. 00021, microfilm.

151. Id.

152. Treaty with the Cherokee, July 19, 1866, art. 15, 14 Stat. 799.

153. Letter of February 1, 1868, from Rev. John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, Washington, D.C., Pratt Papers, roll no. 8, fr. 00020: "The removal has not been general with Sarcoxie's people who under the influence of their advisors seem to be awaiting some information from Washington otherwise they would have been en route. It would be well for your Department to inform Sarcoxie that his action in this matter is working detrimentally to the best interests of the class he represents."

154. Memorandum of Meeting with Commissioner of Indian Affairs, Agent Pratt, Capt. Fall Leaf, and other Delawares, May 5, 1868, Pratt Papers, roll no. 7, fr. 00757, microfilm.

155. Memorandum of Agreement of Capt. Fall Leaf, May 5, 1868, Pratt Papers, roll no. 7, fr. 00754, microfilm, (providing "...do hereby agree that we ourselves will remove to the Cherokee Country, and use our own influence to do the same, and to settle in that portion of the Cherokee Country designated and described in the Articles of Agreement...").

Memorandum of Agreement of Capt. Anderson Sarcoxie, Chief, John Sarcoxie, Councilman, June 6, 1868, Indian Territory, Pratt Papers, roll no. 7, fr. 00790, microfilm, (providing, "...do hereby agree that we together with our people have come to this country from the late Delaware Reservation....This instrument is not to be considered as any impediment in any further negotiations or arrangements which we may wish to make with the Cherokee Nation.")

156. See Letter of December 9, 1866, John Conner, Delaware Chief, Camp on the Canae [Caney] River, Cherokee Nation, to John Ross, Cherokee Chief, Cherokee Nation, Kansas Collection, Vol. 10, p. 46-48, University of Kansas Libraries, Lawrence, KS.

157. Letter of December 9, 1866, John Conner, Delaware Chief, Canae [Caney] River, Cherokee Nation, to John Ross, Cherokee Chief, Cherokee Nation, Kansas Collection, Vol. 10, p.46-48, University of Kansas Libraries, Lawrence, KS; See also, Treaty with the Delawares, May 30, 1860, 12 Stat. 1129.

158. Articles of Agreement between the Cherokee Nation and the Delaware Tribe of Indians, April 8, 1867, Washington, D.C., Pratt Papers, roll no. 7, fr. 00212, microfilm.

159. Protest Petition of June 13, 1867, from the Delaware Tribe of Indians, Delaware Nation, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

160. Report of the Commissioner of Indian Affairs, 1869, (Washington, D.C.), 484.
161. Id.
162. Id.
163. Id.
164. Treaty with the Cherokee, July 19, 1866, art. 15, 14 Stat. 793.
165. Agreement between the Shawnee and the Cherokees, June 7, 1869, as reprinted in, H. Rep. No. 2614, 49th Cong., 1st Sess. 9 (1886).
166. Id.
167. Id.
168. Memorial of the Delaware Indians, at 171; Deposition of Simon Secondine, December 6, 1898, Court of Claims No. 21139, p. 8.
169. Annual Report of the Commissioner of Indian Affairs, 1869, (Washington, D.C.), 484-85.
170. Deposition of Mary C. Beysian, December 7, 1898, Court of Claims No. 21139, pp.36-40; Deposition of Simon Secondine, December 6, 1898, Court of Claims No. 21139, p. 7.
171. Id.
172. Delaware Indians v. Cherokee Nation, 193 U.S. 127, 24 S.Ct. 342 (1903).
173. See Deposition of Simon Secondine, December 6, 1898, Crt. of Claims No. 21139; Deposition of Mary C. Beysian, December 7, 1898, Crt. of Claims No. 21139; See also, Message of Cherokee Delegates, Senate Select Committee on Indian Affairs, June 19th, 1890, S2322. S4005, 51st Cong., as cited in, Adams, A Delaware Indian Legend, at 26; Letter of December 9, 1866, from John Conner, Delaware Principal Chief, Camp on the Canae, Cherokee Nation, to Wm. P. Ross, Cherokee Principal Chief, Cherokee Nation, Kansas Collection, vol. 10, University of Kansas Libraries, Lawrence.
174. Weslager, Delaware Indians, A History, at 427; The Report of the Commissioner of Indian Affairs, 1886, listed 600 of the 642 Delawares as still residing in the Cooweescoowee District, S. Rep. No. 1278, 49th Cong., 1st Sess. 46 (1886).
175. Morris L. Wardell, Political History of the Cherokee Nation, (Norman: University of Oklahoma Press, 1977), 218. The son of Chief Anderson Sarcoxie, John Sarcoxie was in fact a signatory on the Articles of Agreement, however, being that he neither spoke English, nor could he write, it is doubtful that he was aware of the intended ambiguities written into the Articles of Agreement. See Weslager, The Delaware Indian Westward Migration, at 229.
176. Wardell, Political History of the Cherokee Nation, at 218.
177. Letter of June 1, 1871, from George Mitchell, U. S. Special Agent, Quapaw Agency to Enoch Hoag, Supt. of Indian Affairs, Court of Claims No. 21139, pp. 472-73.
178. Id.

179. Id.

180. Id.

181. Id.

182. Id.

183. Id.

184. Weslager, The Delaware Indians, A History, at 364-66, 428-29; See also Cherokee National Records, November 18, 1868, roll CHN 8, fr. 0462, microfilm.

185. Letter of August 19, 1871, from Enoch Hoag, Supt. Indian Affairs, Lawrence, KS., to Commissioner of Indian Affairs, Washington, D.C., Kansas Collection, University of Kansas Libraries, Lawrence, KS.

186. Weslager, The Delaware Indians, A History, at 428.

187. Petition of February 24, 1876 from the Chiefs and Headmen of the Delaware Tribe, Lightning Creek, to the Honorable Senate of the United States and House of Representatives in Congress Assembled, Pratt Papers, roll no. 1, fr. 01076, microfilm.

188. Id.

189. Id.

190. Annual Report of the Commissioner of Indian Affairs, 1877, (Washington D. C.).

191. See, Letter of February 6, 1868, from Rev. John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Ind. Affairs, Washington, D.C., Pratt Papers, roll no. 8, fr. 00021, microfilm.

192. Deposition of Simon Secondine, December 6, 1898, Crt. of Claims No. 21139; Deposition of Mary C. Beysian, December 7, 1898, Crt. of Claims No. 21139; Memorial of the Delaware Indians, at 34-5.

193. Eg., Supt. Enoch Hoag calls a General Council of the Delawares at their council house at Lightning Creek on Sept. 10, 1873, for the purpose of hearing the Delaware complaints. Supt. Hoag also intercedes into the election dispute of prior year and calls a new election for the tribe. See Letter of Dec. 26, 1873 from John B. Jones, U.S. Special Agent, to Enoch Hoag, Supt. Indian Affairs, Lawrence, KS., Kansas Collection, Vol. 12, University of Kansas Libraries, Lawrence.

194. Deposition of Mary C. Beysian, December 7, 1898, Court of Claims No. 21139, p.39; Deposition of Simon Secondine, December 6, 1898, Court of Claims No. 21139, p. 39; Letter of December 26, 1873, from John B. Jones, U.S. Agent, to Enoch Hoag, Supt. of Indian Affairs, Lawrence, KS., Kansas Collection, Vol. 14, University of Kansas Libraries, Lawrence.

195. Id.

196. Letter from Delaware Council to the Columbus Delano, Secretary of the Interior, Washington, D.C., n.d., Kansas Collection, University of Kansas Libraries, Lawrence.

197. Id.; Letter of January 4, 1871, from Superintendent, Central Superintendency, to Commissioner of Indian Affairs, transmitting letter of the Chiefs and Council of the Delaware Tribe of Indians in the Cherokee Nation, Kansas Collection, University of Kansas Libraries, Lawrence.

198. Id.; Letter of December 26, 1873, from John B. Jones, U.S. Indian Agent, Tahlequah, to Enoch Hoag, Supt. Indian Affairs, Lawrence, KS., Kansas Collection, Vol. 7, University of Kansas Libraries, Lawrence.

199. Petition of the Delaware Tribe, 1872, to Hon. Columbus Delano, Secretary of the Interior, Kansas Collection, Vol. 7, University of Kansas Libraries, Lawrence.

200. Id.

201. Id.; Letter of April 6, 1873, from Supt. Enoch Hoag to Charles Journeycake, Asst. Chief Delaware, "Letters on File, Office of Indian Affairs," Humanities Research Center, University of Texas, Austin, TX.; See also Letter of December 26, 1873, from John B. Jones, U.S. Indian Agent, Tahlequah, to Enoch Hoag, Supt. Indian Affairs, Lawrence, KS., Kansas Collection, Vol. 7, University of Kansas Libraries, Lawrence.

202. Id.

203. Letter of June 20, 1873, from Delaware Council, Lightning Creek, Cherokee Nation, to Enoch Hoag, Supt. Indian Affairs, Lawrence, KS., "Letters on File, Office of Indian Affairs," Humanities Research Center, University of Texas, Austin, TX.

204. Id.; Letter of March 17, 1877, from Delaware Council, Lightning Creek, Cherokee Nation, to E.A. Hoyt, Commissioner of Indian Affairs, Washington, D.C., "Letters on File, Office of Indian Affairs," Humanities Research Center, University of Texas, Austin, TX.

205. Ex. Doc. No. 18, U.S. Senate, 52d Cong., 1st Sess. 147 (1903).

206. Roark, Charles Journeycake, Indian Statesmen and Christian Leader, at 78.

207. Letter of January 16th, 1895 from D.M. Wisdom, U.S. Indian Agent, Union Agency, to J. H. Bartles, Bartlesville, I.T., certified copy from the United States Indian Office, Muskogee, Oklahoma.

208. Id.

209. Deposition of Simon Secondine, December 6, 1898, Court of Claims No. 21139, p. 9.

210. Memorial of the Delaware Indians, S. Rep. No. 16, 58th Cong. 1st Sess. 42-49 (1903).

211. Treaty with the Cherokees, July 19, 1866, art. 15, 14 Stat. 799.

212. Articles of Agreement between the Cherokee Nation and the Delaware Tribe of Indians, April 8, 1867, Washington, D.C., Pratt Papers, roll no. 7, fr. 00212, microfilm; Cherokee Nation v. Journeycake, 155 U.S. 196, 214 (1894)

213. Weslager, Delaware Indians, A History, at 442, citing, Emmet Starr, History of the Cherokee Indians, (Oklahoma City: 1921), 266-83.

214. Id.

215. Id.

216. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 114.
217. Letter of June 1, 1870 from Charles Journeycake, Delaware Chief, Lightening Creek, Cherokee Nation, to Rev. John G. Pratt, U.S. Indian Agent, Lawrence, KS. Pratt Papers, roll no. 1, fr. 00993, microfilm.
218. Report of the Committee on Indian Affairs, U.S. Senate, on the Condition of the Indians in the Indian Territory, S. Rep. No. 1278, Pt. 2, 49th Cong., 1st Sess. 46 (1886).
219. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, Pt. 1," at 115.
220. Id.
221. Memorial of Delaware Indians, at 170.
222. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, Pt. 1," at 125.
223. Id.
224. Id.
225. Weslager, The Delaware Indians, A History, at 444.
226. Sue N. Roark-Calnek, "Delaware Religion and Ethnic Identity: The Last Fifty Years," presented at the 1980 meetings of the American Society for Ethnohistory, San Francisco, October 22-25 at 140.
227. Id. at 443.
228. Id. at 448-449.
229. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, Pt. 1," at 123.
230. Ruby Cranor, Some old Delaware Obituaries, (n.p., n.d.), 44 (available at Delaware Tribal Center, Bartlesville, OK.).
231. Id. at 28.
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232. Jean Faulconer, "Only Few recall Delaware Indian 'Big House' Rites", Tulsa Tribune, Monday, October 29, 1962, sec. 2, 15.
233. Frank G. Speck, Additional notes to the Big House Ceremony, as told by George T. Anderson" unpublished notes, n.d., History Room, Bartlesville Public Library, Bartlesville.
234. Goddard, Delaware, at 231.
235. Id. at 232.
236. Faulconer, "Only Few recall Delaware Indian 'Big House' Rites," at 15.
237. Id.
238. Goddard, Delaware, at 231.

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239. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, Pt. 1," at 158.
240. Goddard, Delaware, at 234.
241. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, Pt. 1," at 157.
242. Goddard, Delaware, at 232; Weslager, The Delaware Indians, A History, at 13.
243. "From the Big House", Tulsa World, Sunday, November 7, 1993. Artifacts from the Delaware Big House Ceremony on display thru 1994 at the Philbrook Museum of Art, Tulsa.
244. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 154, 163; Affidavit of Nora Thompson Dean, March 25, 1974, Weeks v. United States, 406 F. Supp. 1309, (1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).
245. Goddard, Delaware, at 234.
246. Speck, "Additional notes to the Big House ceremony, as told by George T. Anderson," unpublished notes, n.d., History Room, Bartlesville Public Library, Bartlesville.
247. Weslager, 441; Today Magazine, June 6 1976, "last of the Delawares" Joel N. Shurkin, 19
248. Horace Leonard (H. L.) McCracken, "The Delaware Big House" Chronicles of Oklahoma, Summer 1956, Vol 34, No. 2, at 186
249. Speck, "Additional notes to the big House Ceremony, as told by George T. Anderson"
250. "Matthew Stanley Quay, Memorial addresses delivered in the Senate and House of Representatives," S. Rep. No. 202, 58th Cong., 3rd Sess. 71 (1905).
251. Weslager, The Delaware Indian Westward Migration, at 233.
252. Letter of January 1, 1903, from the Delaware Indians, Weldon (Copan), Indian Territory, to U. S. Senator Matthew S. Quay of Pennsylvania.
253. "Report of the Select Committee on indian affairs to investigate matters connected with affairs in Indian Territory," S. Rep. No. 5013, Pt. 2, 58th Cong, 2nd Sess. 1498 (1904).
254. Id.
255. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 153.
256. Affidavit of Nora Thompson Dean, March 25, 1974, Weeks v. United States, 406 F. Supp. 1309, (1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D); Goddard, Delaware, at 232.
257. Weslager, The Delaware Indians, A History, at 14; Elizabeth West, "The Delaware Church (Hingh-Gweek Cown)," June 9, 1970, p. 7, unpublished paper, History Room, Bartlesville Public Library, Bartlesville.
258. Letter of February 15, 1973 from Bruce Miller Townsend, Chairman, Delaware Business Committee, to Congressman Clem McSpadden, Washington, D.C.

259. Affidavit of Nora Thompson Dean, March 25, 1974, Weeks v. United States, 406 F. Supp. 1309, (1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

260. Weslager, The Delaware Indians, A History, at 14; West, "The Delaware Church," at 7.

261. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 152.

262. Id.

263. "Delawares Stage Big Annual 'Doll Dance': Ancient Custom is observed in full glory at grounds close to Dewey," Bartlesville Examiner-Enterprise, August 8, 1922, History Room, Bartlesville Public Library, Bartlesville.

264. Id.

265. See Figure 18, by Charles Childers, Central States Archeological Journal, Vol 19, No. 1, January 1972, 30.

266. Speck, "Additional notes to the big House Ceremony, as told by George T. Anderson," unpublished notes, n.d., History Room, Bartlesville Public Library, Bartlesville.

267. "Delawares Stage Big Annual 'Doll Dance': Ancient Custom is observed in full glory at grounds close to Dewey," Bartlesville Examiner-Enterprise, August 8, 1922.

268. Letter of February 11, 1924 from Jake Parks, Interpreter, Delaware Business Committee to Joe A. Bartles, Chairman, Delaware Business Committee, regarding translation of the General Councils and Committee meetings:

...sometimes it seems as though the very
thought is different at least one
has to dig at the thought contained in the
matter and then reformulate it, as it
were and express it in the Delaware language
... I would like to suggest if I may, that
when a matter is put to a vote they
should raise their right hand, instead of
saying 'aye' or 'no' because many of them are
too backward to say aye or no.

269. Delaware Language classes by Mrs C. O. Anna Davis and Elizabeth West during the 1960s, 1970s, Linda Poolaw, during the 1970s, Nora Thompson Dean, during late 1970s and early 1980s, and Lucy Blalock and the Delaware Cultural Preservation Committee continuing into the 1990s.

270. Newspaper clipping dated September 23, 1914, "His Last Letter," History Room, Bartlesville Public Library.

271. Weslager, The Delaware Indians, A History, at 441-442; See also Affidavit of Nora Thompson Dean, March 25, 1974, Weeks v. United States, 406 F. Supp. 1309, (1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

272. Joel N. Shurkin, "Last of the Delawares," Today Magazine, June 6 1976, p. 19.

273. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 365.
274. Sue N. Roark-Calnek, "Delaware Religion and Ethnic Identity: The Last Fifty Years," p. 140, presented at the 1980 meetings of the American Society for Ethnohistory, San Francisco, October 22-25, 1980.
275. Id. at 217-8; See also "The War Dance," Dewey Globe, Friday, September 9, 1921; Newspaper clipping dated August 12, 1923, "Indian Stomp and War Dance", History Room, Bartlesville Public Library, Bartlesville. Note, "smokes" were held with the Osages and Shawnee until the turn of the century. See Bartlesville Magnet, Friday, July 22, 1898. The various sponsors of the stomps and powwows included, the Bartlesville Indian Women's Club, the Washington County Indian Association during the 30's, Lenape Indian Club between 1954-1964, the Delaware Pow-Wow from 1965 to the present, the Inter-Tribal Indian Club during the 70's, and the Lenape War Mothers.
276. Newspaper Clipping "Lenape Club Pow Wow Saturday" dated June 23, 1960, copy provided by Mr. James A. Rementer, Delaware historian.
277. "Lenape Indian Club Pow Wow" flier dated Sept 11, 1954, copy provided by Mr. James A. Rementer, Delaware historian.
278. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy," at 114.
279. Id. at 114-115.
280. Cherokee Nation v. Journeycake, 155 U.S. 196 (1894).
281. See Act of October 19, 1888 (25 Stat. 608).
282. Weslager, The Delaware Indians, A History, at 447.
283. Act of October 19, 1888 (25 Stat. 608).
284. Cherokee Nation v. Journeycake, 155 U.S. 196, 214 (1894)
285. Id.
286. Articles of Agreement between the Cherokee Nation and the Delaware Tribe of Indians, April 8, 1867, Washington, D.C., Pratt Papers, roll no. 7, fr. 00212, microfilm.
287. Id.
288. Id.
289. See, Letter of December 9, 1866, John Conner, Delaware Chief, Canae [Caney] River, Cherokee Nation, to John Ross, Cherokee Chief, Cherokee Nation, Kansas Collection, Vol. 10, p.46-48, University of Kansas Libraries, Lawrence, KS, (recognizing the difference in title for lands purchased east of the 96', rather than west of the 96'); Letter of June 8, 1864, from John Ross, Cherokee Chief, to James Steel, Commissioner of Indian Affairs, Washington, D.C., in Moulton, John Ross, Cherokee Chief, at 586, (stating that "we are unwilling to begin to dribble away the Territory set apart for them & their posterity and to initiate the policy of introducing into that Territory small and independent Tribes who without members sufficient to maintain themselves should be liable to bring upon the Cherokees at no remote day the state of affairs that now calls for the removal of the Delawares...."); See also Congressional document, John Ross Collection, File-33, n.d., Thomas Gilcrease Museum of American History and Art, Tulsa (providing that the

Cherokees will sell lands to the Delawares provided that these lands could not be sold to the government, etc., without the consent of the Cherokees).

290. An Act for the Protection of the People of Indian Territory, Section 25, 30 Stat. 495 (1898).

291. Delaware Indians v. Cherokee Nation, 193 U.S. 127, 24 Sct. 342, 348 (1904).

292. Cherokee Nation v. Journeycake, 155 U.S. 196, 214 (1894).

293. Delaware Indians v. Cherokee Nation, 193 U.S. 127, 24 Sct. 342, 345 (1904).

294. Id.

295. Agreement between the Shawnee and the Cherokees, June 7, 1869, as reprinted in, H. Rep. No. 2614, 49th Cong., 1st Sess. 9 (1886).

296. Under art. 15 of the Treaty with the Cherokees of 1866, 14 Stat. 799, a tribe that paid for their land east of the 96', thereby preserving their tribal organization, also had to pay into the national fund a sum "not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country (emphasis added)."; See also Report of the Commissioner of Indian Affairs, 1869, Department of Interior, 484, detailing the amount and the purpose of the monies paid by the Delawares to the Cherokees under the treaty.

297. Cherokee-Dawes Allotment Agreement, July 1, 1902, 32 Stat. 716.

298. 27 Stat. 612, 645 (1893).

299. See Harjo v. Kleppe, 420 F. Supp. 1110, 1124 (1976).

300. Curtis Act of June 28, 1898, 30 stat. 495.

301. Muriel H. Wright, A Guide to the Indian Tribes of Oklahoma, (Norman: University of Oklahoma Press, 1951), 73.

302. 32 Stat. 71 (1902).

303. Cherokee-Dawes Allotment Agreement, July 1, 1902, sec. 11, 63, 31 stat. 848.

304. 32 stat. 716, sec. 7, 26 (1902).

305. See Harjo v. Kleppe, 420 F. Supp. 1110, 1128-29 (1976).

306. An Act to Provide for the Final Disposition of the Affairs of the Five Civilized Tribes in the Indian Territory (Five Civilized Tribes Act), April 26, 1906, sec. 27, 34 stat. 137.

307. Harjo v. Kleppe, 420 F. Supp. at 1129.

308. For example, the Cherokee Nation Distribution Statute, 25 U.S.C. § 991, Oct. 9, 1962, 76 Stat. 776, provided for the per capita distribution to all persons whose names appear on the rolls of the Cherokee Nation; section 992 of the same statute provides that a share payable to a deceased enrollee shall be

distributed to his heirs or legatees. Thus, the heirs of the enrollees took their shares as "heirs", and not members of the Cherokee Nation.

In contrast, the Delaware per capita payment under 25 U.S.C. §1292, was paid out in equal shares to all members of the tribe because the Delaware tribal roll had never been closed.

309. Wright, A Guide to the Indian Tribes of Oklahoma, at 73; See also Transcript of the General Convention of the Oklahoma Indians, February 26, 1924, Brady Hotel, Tulsa, OK, referring to the "passing away of their government."

310. Cherokee Nation News, Oct. 29, 1968, at 8; Wright, A Guide to the Indian Tribes of Oklahoma, at 73; See also Transcript of the General Convention of the Oklahoma Indians, February 26, 1924, Brady Hotel, Tulsa, OK, referring to the "passing away of their government."

311.

Andrew B. Cunningham	17 days	Nov. 8-25	1919
Ed M. Frye	1 day	June 23	1923
Richard B. Choate	1 day	Unknown	1925
Charles B. Hunt	1 day	Dec. 27	1928
Oliver P. Brewer	1 day	May 26	1931
W.W. Hastings	1 day	Jan. 22	1936
J.B. Milam	1 day	May 1	1941

312. Transcript of the General Convention of the Oklahoma Indians, Feb. 26, 1924, Brady Hotel, Tulsa, OK., 2-3, Bartlesville Public Library, Bartlesville.

313. Id.

314. Letter of May 6, 1924 from S.R. Lewis, Cherokee Executive Committee to George Bullette, Treasurer, Cherokee Executive Committee, Tulsa, OK., Delaware Archives, Bartlesville.

315. Id.

316. Transcript of the General Convention of the Oklahoma Indians, Feb. 26, 1924, Brady Hotel, Tulsa, OK., filed at the Bartlesville Public Library, Bartlesville, OK.

317. Id.

318. Id.

319. Memorandum to Indian Organization, Oct. 25, 1937 from Director of Lands, Department of Interior, to Daiker, stating, "[t]he existing tribal government should be permitted to exercise control over the present tribal assets and any benefits accruing therefrom should be distributed in accordance with the final rolls of the Cherokee Nation....It is not believed that the Oklahoma Welfare Act may be used as authority to reorganize the existing tribal government of the Cherokee Nation."

320. See Id.

321. Id.

322. Id.

323. An Act Relating to the status of the Keetoowah Indians of the Cherokee Nation in Oklahoma, Aug. 10, 1946, 60 Stat. 976.

324. Wright, A Guide to the Indian Tribes of Oklahoma, at 74-75.

325. See Constitution and Bylaws of the United Keetoowah Band of Cherokee Indians, Oklahoma, art. IV., October 3, 1950; See also Memorandum to Indian Organization, Oct. 25, 1937, from Director of Lands, Department of Interior, to Daiker, Indian Organization.

326. Indian Tribal Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54368 (October 21, 1993).

327. Letter of November 12, 1964, from Virgil N. Harrington, Area Director to Commissioner of Indian Affairs, Washington, D.C.

328. Id.

329. Lowe, Marjorie J., "W.W. Keeler: The Cherokee Perspective," Mar. 10, 1993, unpublished paper.

330. Id.

331. Constitution of the Cherokee Nation, states that it was approved by the Commissioner of Indian Affairs, Morris Thompson, on September 5, 1975. The Cherokee people ratified the same on June 26, 1976.

332. Constitution of the Cherokee Nation, June 26, 1976, art. III, sec. 1.

333. For, eg., Letter of May 2, 1991, David Boren, U.S. Senator, and Don Nickels, U.S. Senator, to Manuel Lujan, Secretary of the Interior, "questions arising out of the Cherokee-Keetoowah dispute are not novel or isolated."; Letter of July 3, 1979, from Theodore C. Krenzke, Office of Indian Services to Henry Bellmon, U.S. Senator, "Mr. Swimmer proposed Congressional action to revoke the band's corporate charter as a means of resolving the problem."

334. Letter of July 11, 1979, from Henry Bellmon, U.S. Senate, to Forrest Gerard, Asst. Secretary of Interior; See also Making Appropriations for the Department of the Interior and Related Agencies, for the Fiscal Year Ending September 30, 1992, and for other Purposes, H. Rep. No. 102-266, 102 Cong., 1st Sess. (Oct. 17, 1991), providing:

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 with the jurisdictional service area of 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.

Note, this provision is commonly referred to as "Amendment 86".

335. See Allogan Slagle, J.D., "BURNING PHOENIX: A Study of the Federal Acknowledgement, Reorganization and Survival of THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, and of CHEROKEE NATION OF OKLAHOMA'S Efforts to Terminate the Band," (1993) (Available from the Headquarters of the UKB, P.O. Box 746, Tahlequah, OK.).

336. See Infra Part VIII; For example, see Memorandum in Support of the Cherokee Nation, attached to Letter of March 17, 1978, from Michael S. Yarcschuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Department of Interior.

337. Id.

338. Id.

339. As discussed earlier, the small band of Absentee Delawares residing to the south with the Caddo and Wichitas reorganized in the early 1970s under the Oklahoma Indian Welfare Act as the Delaware Tribe of Western Oklahoma; however, this band had been alienated from the main body for over two hundred years, and maintains a base roll which does not include any of the descendants of the main body.

340. See Letter of August 6, 1867 from John G. Pratt, Indian Agent, Delaware Reserve, Kansas, to Thomas Murphy, Supt. of Indians Affairs, Atchinson, KS., National Archives, m234 roll 278, microfilm.

341. Supra notes 194, 195, 272.

342. Roark-Calnek, "Indian Way in Oklahoma: Transactions in Honor and Legitimacy, PT. 1," at 114.

343. Supra notes 196, 202, 204.

344. Letter of January 16th, 1895, from D.M. Wisdom, U.S. Indian Agent, Union Agency, to J. H. Bartles, Bartlesville, I.T., certified copy from the United States Indian Office, Muskogee, Oklahoma.

345. Supra note 280.

346. The U.S. Congress had recognized the contractual rights of the Delawares to the assets and property of the Cherokee Nation (25 stat. 609), but no legislation was ever passed specifically limiting or terminating the inherent sovereignty of the Delaware Tribe. And as late as 1890, the Commissioner of Indian Affairs reported to the Committee on Indian Affairs that pursuant to the Delaware Treaty of 1866, the Delawares been moved to a new 157,600 acre reservation purchased from the Cherokees in Indian Territory. But moreover, the Department of Interior never ceased to directly administer to the Delaware Tribe through the tribe's elected chiefs and council.

347. 33 Stat. 222 (1904). In the 1903, the Delaware Tribe began to prosecute at least five separate claims against the United States for numerous uncompensated treaty obligations under special jurisdictional statutes. The U.S. and the Delaware Business Committee agreed to an settlement agreement for the claims providing for a \$157,000.00 aggregate payment if the tribe agreed to drop all pending suits.

348. 33 Stat. 222 (1904).

349. Resolution of the General Council of the Delaware Tribe of Indians, April 21, 1904, filed in the Records of the Bureau of Indian Affairs, Department of Interior, Washington, D.C.

350. Id.

351. Id.

352. Id.

353. See Letter of April 30, 1904, from J. Blair Shoenfelt, U.S. Indian Agent, Union Agency, to the President of the United States, certifying the validity of the Delaware Resolution of April 29, 1904.
354. Letter of December 31, 1904, from W.H. Moody, U.S. Attorney General, to Secretary of Interior; See also Letter of October 31, 1904, from J. Blair Shoenfelt, U.S. Indian Agent, Union Agency, to Hon. Commissioner of Indian Affairs, Washington, D.C., attached, Proceedings of the Delaware Council Assembled at Dewey, Indian Territory, October 12, 13, 1904.
355. Letter of August 14, 1905, from Acting Commissioner of Indian Affairs to the Secretary of Interior, Department of Interior, Washington, D.C., filed with the Office of Indian Affairs, file no. 51-1898, Washington, D.C.
356. Letter of Jan. 12, 1905, from U.S. Indian Agent, Union Agency, to Hon. Commissioner of Indian Affairs, Washington, D.C.
357. Constitution of the Delaware Tribe of Indians, art. 1, November 1982; By-Laws of the Delaware Tribe of Indians, as amended, July 6, 1974; See also 25 U.S.C. § 1292 (1972).
358. 25 Op. Att. Gen. 308 (1904).
359. 11 Decisions of the Comptroller 496 (1905).
360. Id.
361. Id.
362. Id.
363. Id.
364. Id.
365. Supra notes 196, 202, 204.
366. S. Rep. No. 592, 60th Cong., 2d Sess. (1908).
367. Id.
368. Id.
369. S. Rep. No. 374, 61st Cong., 2d Sess. (1910).
370. Id.; See also, 43 stat. 812, 813 (1925); Cf. 30 stat. 490 (1898) and 33 stat. 188 (1904).
371. Transcript of the General Convention of the Oklahoma Indians, February 26, 1924, Brady Hotel, Tulsa, OK.
372. See Bartlesville Magnet Newspaper, April 12, 1895, reprinting, Letter of Feb. 18, 1895 from Wm. H. Simms, First Assistant Secretary, Department of Interior, to Commissioner of Indian Affairs, Bartlesville Public Library, and, Bartlesville Examiner-Enterprise, March 7, 1921, Bartlesville Public Library.
373. Bartlesville Examiner-Enterprise, February 11, 1921, Bartlesville Public Library, Bartlesville, OK.

374. Id.

375. Bartlesville Examiner-Enterprise, Feb. 11, March 7, March 23, 1921, Bartlesville Library, Bartlesville, OK.

376. Delaware Tribe of Indians v. United States, Ind. Cl. Com., Docket No. 27-A, Deposition of Joe A. Bartles, Tulsa, OK.

377. Letter of December 24, 1923, from Joe A. Bartles, Chairman, Delaware Tribe, to Jake Parks, Copan, OK.; Notice of Call for General Council to the Delaware Indians, February 11, 1924 from Delaware Business Committee, Dewey, OK. in the files of the United States Indian Office, Muskogee, OK.

378. Letter of February 21, 1924 from Chas. E. Burke, Commissioner of Indian Affairs, Washington, D.C., to Joe A. Bartles, Chairman, Delaware Tribe, Bartlesville, OK; Letter of February 8, 1924 from Joe A. Bartles, Chairman, Delaware Tribe, to Hon. S.E. Wallen, Supt. of Indian Affairs, Muskogee, OK.

379. Id.

380. Letter of April 10, 1926, from Chas. H. Burke, Commissioner of Indian Affairs, to Chief George Fall Leaf, and James Wilson, Delaware Indians, in the files of the United States Indian Office, Muskogee, OK.

381. Letter of December 23, 1926, from Joe A. Bartles, Chairman, Delaware Tribe, to W.M. Gulager, Muskogee, OK.

382. Letter of July 1, 1935, from John Collier, Commissioner of Indian Affairs, to A.M. Landman, Supt., Five Civilized Tribes Agency, in the files of the United States Indian Office, Muskogee, OK.

383. Id.

384. Minutes of the meeting of the Delaware Indians on May 18th, 1935, held at Dewey, Oklahoma, in the school auditorium at 1:30 p.m., in the files of the United States Indian Office, Muskogee, OK.

385. Id.

386. Letter of March 23, 1937, from John Collier, Commissioner of Indian Affairs, to Joe A. Bartles, Chairman, Delaware Business Committee, in the files of the United States Indian Office, Muskogee, Oklahoma.

387. Letter of September 23, 1937, from Ben Dwight, Organization Field Agent, to Minnie A. Garret, (responding to Ms. Garret's inquiries).

388. Letter of October 25, 1940, from A.C. Monahan, Regional Coordinator, to Commissioner of Indian Affairs, Washington, D.C., in the files of the United States Indian Office, Muskogee, OK.

389. Id.

390. Letter of December 3, 1940, from Assistant Commissioner, William Zimmerman, Jr., to A.C. Monahan, Regional Coordinator, filed as Ind-Org. 71534-40, Bureau of Indian Affairs, Department of Interior, Washington, D.C.; See also Letter of October 9, 1950, from D'arcy McNickle, Chief Branch of Tribal Relations, Washington, D.C. to Joe A. Bartles, Chairman, Delaware Business Committee, transmitting copies of the 1940 Zimmerman letter.

391. Letter of December 3, 1940, from Assistant Commissioner, William Zimmerman, Jr., to A.C. Monahan, Regional Coordinator, filed as Ind-Org. 71534-40, Bureau of Indian Affairs, Department of Interior, Washington, D.C.
392. See supra note 382.
393. See Harjo v. Kleppe, 420 F.Supp. 1110, 1140 (1976).
394. Minutes of the Delaware Council and Business Committee Meetings, Feb. 23, 1946, April 20, 1946, Oct. 26, 1946, Nov. 22, 1946, Nov. 30, 1946, in the files of the United States Indian Office, Muskogee, OK.
395. Minutes of the Delaware Council and Business Committee Meetings, February 23, 1946, in the files of the United States Indian Office, Muskogee, OK.
396. Minutes of the Delaware Council and Business Committee Meetings, in the files of the United States Indian Office, Muskogee, OK.
397. Id.
398. Id.
399. Supra note 339.
400. Delaware Business Committee Report to the Delaware Tribe, February 2, 1948, Bartlesville, OK.
401. Resolution of the Delaware Tribe of Indians in Council Assembled this 14th Day of July 1951, Bartlesville, OK.
402. Id.
403. Id.
404. Id.
405. Minutes of the Delaware Tribe of Indians in Council, July 14, 1951, Bartlesville, OK.
406. Id.
407. Supra notes 196, 202, 204, 344, 349, 354, 358.
408. 11 Decisions of the Comptroller 496 (1905) as requested by the Secretary of Interior and the U.S. Attorney General.
409. Supra notes 382, 390.
410. Delaware Tribe of Indians v. United States, Defendant's Request for Finding of Fact, Ind. Cl. Comm. Docket No. 27-A, filed June 16, 1952.
411. Id.
412. Delaware Tribe of Indians v. United States, 2 Ind. Cl. Com. 253, (1952), 130 Ct. Cls. 794 (1955), aff. as to parties, 128 F. Supp. 391 (1955).

413. Delaware Tribe of Indians v. United States of America, 2 Ind. Cl. Comm. 253, Docket No. 27-A, 241 (1952).
414. Delaware Tribe of Indians v. United States, consolidated with, Absentee Delaware Tribe of Oklahoma, Delaware Nation, v. United States, 130 Ct. Cls. 782; 128 F.Supp. 391 (1955).
415. Id.; Indian Tribal Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54368 (October 21, 1993).
416. Supra note 382.
417. Supra note 390.
418. Defendant's Request for Finding of Fact Delaware Tribe of Indians v. United States, Ind. Cl. Comm. Docket No. 27-A, filed June 16, 1952.
419. Letter of March 4, 1957 from Edward Wilson, Committee for Organization of the Delaware Tribe, to the Members of the Delaware Tribe of Indians, Bartlesville, OK.
420. Id.
421. Memorandum Report of the Delaware Delegates and the Commissioner of Indian Affairs, December 8, 1956.
422. Letter of March 4, 1957 from Edward L. Wilson, Committee for Reorganization of the Delaware Tribe, to the Members of the Delaware Tribe of Indians.
423. Id.
424. Letter of March 10, 1958, from Area Director, Tribal Programs to Burt, Seigel & Franklin, Attorneys at Law, Tulsa, OK., (carbon copy to H.L. McCracken).
425. Letter of April 1, 1958, from Paul L. Fickinger, Area Director, Bureau of Indian Affairs, to Bruce M. Townsend, Smith & Townsend, Attorneys at Law, Tulsa, OK.
426. Id.
427. Letter of May 7, 1958 from Bruce M. Townsend, Smith & Townsend, to H.L. McCracken, Phillips Petroleum Co.
428. Id.
429. Public Notice to All Members of the Delaware Tribe, August 7, 1958, from Paul L. Fickinger, Area Director, Muskogee Area Office, Bureau of Indian Affairs, Muskogee Oklahoma.
430. Resolution Establishing the By-Laws Under which the Delaware Tribal Business Committee Shall Speak and Act in Behalf of the Delaware Tribe of Indians, September 7, 1958.
431. Id.
432. Id.

433. Letter of May 31, 1962, from H.L. McCracken, Chairman, Delaware Business Committee, to Marie L. Wadley, Tribal Affairs Officer, Muskogee Area Office.
434. Supra notes 421, 424.
435. See Letter of July 23, 1974 from Jose A. Zuni, Commissioner of Indian Affairs, to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
436. Resolution Revising by-laws under which the Delaware Tribal Business Committee shall Speak and Act in Behalf of the Delaware Tribe of Indians, July 6, 1974, approved by the BIA Area Director. September 30, 1974.
437. Resolution Establishing the By-Laws Under which the Delaware Tribal Business Committee Shall Speak and Act in Behalf of the Delaware Tribe of Indians, September 7, 1958, certified on May 17, 1974.
438. Eg., Memo for the Record, February 14, 1978, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C., Subject: Cherokee-Delaware; Letter of May 24, 1979 from La Follette Butler, Acting Deputy Commissioner of Indian Affairs, Washington, D.C., to Henry Secondine, Chairman, Cherokee Delaware Business Committee, Bartlesville, OK.
439. Letter of March 13, 1980, from John Geary, Acting Director, Office of Indian Services, Bureau of Indian Affairs, Washington, D.C., to James A. Lewis, Delaware Indian, Alhambra, CA.
440. Apparently in 1962, the Muskogee Area Office was not even initially aware of the 1958 Election, or of the direct approval given for the election from the Secretary of Interior. This is evidenced in a letter of May 31, 1962 from H.L. McCracken, Delaware Chairman, to the new Muskogee Area Tribal Operations Officer, Marie L. Wadley, who had requested a copy of the roster of the Delaware tribal officers.
Mr. McCracken requested to know whether there was a problem with recognition of the tribe as it appeared a letter to the Commissioner implied as much. However, the Commissioner did give official approval of the resolution providing for the organization of the tribe on the same day, May 31, 1962.
441. Letter of November 27, 1962, from Marie L. Wadley, Tribal Operations Officer, Bureau of Indian Affairs, Muskogee Area Office, to H.L. McCracken, Chairman, Delaware Business Committee; Letter of May 20, 1965, from Virgil N. Harrington, Area Director, Bureau of Indian Affairs, Muskogee Area Office, to All Members of the Delaware Tribe of Indians, giving notice of the General Council; Letter of June 20, 1966, from Lonnie Hardin, Acting Area Director, Bureau of Indian Affairs, Muskogee Area Office, to ~~All Members of the Delaware Tribe of Indians, giving notice of the General Council;~~ Letter of October 7, 1968, from Virgil N. Harrington, Area Director, Muskogee Area Office, to Mr. Robert Wilkins, "Delawares to Meet," Bartlesville Examiner-Enterprise, Aug. 30, 1970.
442. Letter of November 26, 1962, from Mary K. Townsend, Delaware Secretary, Bartlesville, OK., to Marie L. Wadley, Tribal Operations Officer, Muskogee Area Office, Muskogee, OK.
443. Letter of October 29, 1962, from Mary K. Townsend, Delaware Secretary, Bartlesville, OK., to Marie L. Wadley, Tribal Operations Officer, Muskogee Area Office, Muskogee, OK.
444. Letter of December 20, 1962, from Assistant Area Director, Muskogee, OK., to Commissioner, Bureau of Indian Affairs, Washington, D.C.
445. Supra note 389.

446. 86 Stat. 762; 25 U.S.C. § 1294 (b) (1972).
447. Senate Hearing of the Subcommittee of Indian Affairs, March 13, 1972, H.R. 5200.
448. Id.
449. Resolution Establishing the By-Laws Under which the Delaware Tribal Business Committee Shall Speak and Act in Behalf of the Delaware Tribe of Indians, section 5, September 7, 1958.
450. Letter of February 5, 1974, from Thomas J. Ellison, Acting Area Director, Muskogee, OK., to Commissioner of Indian Affairs, Washington, D.C., Re: The Delaware Tribe of Indians.
451. Id.
452. Id.; Senate Hearing of the Subcommittee of Indian Affairs, March 13, 1972, H.R. 5200.
453. Supra note 437.
454. Letter of July 23, 1974 from Jose A. Zuni, Acting Deputy Commissioner of Indian Affairs to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
455. Resolution Revising the By-laws Under which the Delaware Tribal Business Committee Shall Speak and Act in Behalf of the Delaware Tribe of Indians, General Council, July 6, 1974, approved by the Area Director on September 30, 1974, Delaware Archives, Bartlesville.
456. Affidavit of June 20, 1975, from Edward F. Edzards, Acting Area Director, Muskogee Area Office, to Whom It May Concern, attesting that the Delaware Tribe of Indians is organized and recognized per resolution.....was amended on July 6, 1974, and approved September 30, 1974, pursuant to delegation of authority from the Commissioner, Bureau of Indian Affairs.
457. Letter of August 1, 1974 from Joe Ragsdale, Superintendent, Tahlequah Agency, to Mary K. Townsend, Secretary-Treasurer, Delaware Business Committee.
458. Letter of October [], 1974 from Thomas Ellison, Muskogee Area Director, to Bruce M. Townsend, Chairman, Delaware Business Committee.
459. Affidavit of June 20, 1975, from Edward F. Edzards, Acting Area Director, Muskogee Area Office, to Whom It May Concern, attesting that the Delaware Tribe of Indians is organized and recognized per resolution.....was amended on July 6, 1974, and approved September 30, 1974, pursuant to delegation of authority from the Commissioner, Bureau of Indian Affairs.
460. Letter of September 2, 1970, from Frank F. Sokolie, Tribal Operations Officer, Bureau of Indian Affairs, to Robert Wilkies, "Delawares to Meet," Bartlesville Examiner-Enterprise, Aug. 30, 1970; "Agenda" for Special Delaware Tribal Council, Dewey High School Auditorium, March 20, 1971; Notice of General Council, June 10, 1972, to Delaware Tribal Members from Bruce M. Townsend, Chairman, Delaware Business Committee; Delaware Newsletter, Vol. I, Number 1, September 21, 1972; Minutes of General Council of the Delaware Tribe of Indians, Washington Co. Fairgrounds, Dewey, OK., July 6, 1974.
461. Notice of General Council, June 10, 1972, to Delaware Tribal Members from Bruce M. Townsend, Chairman, Delaware Business Committee, copies filed in the Delaware Archives, Bartlesville, OK; Delaware Newsletter, Vol. I, Number 1, September 21, 1972.

462. Delaware Newsletter Vol. I, Number I, September 21, 1972.
463. Supra note 459.
464. Letter of Oct. 4, 1977, from Chris C. White, Tahlequah, OK., to Thomas J. Ellison, Area Director, Bureau of Indian Affairs, Muskogee, OK.
465. Infra note 661.
466. Applicants Staff Competency Experience, Memorandum, 1978, Delaware Tribal Center, Bartlesville, OK, 2; "Delaware Tribe Opens Full-Time Central Office in Bartlesville," Cherokee Nation News, July 31, 1979, vol. 6, no. 31.
467. Applicant's Staff Competency Experience, Memorandum, 1978, Delaware Tribal Center, Bartlesville, OK.
468. Id.
469. Pamphlet, "Northeastern Delaware Tribe: Community Health Representative Program,"[n.d], Delaware Tribal Center, Bartlesville, OK.
470. Id.
471. Id.
472. Letter of March 23, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Luke McIntosh, Area Indian Health Services, Oklahoma City, Ok.
473. Letter of August 31, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Luke McIntosh, Indian Health Services, Oklahoma City.
474. Letter of July 18, 1979 form Carolyn J. Wells, Contracting Officer, Indian Health Administration, to Delaware Tribe of Indians, Bartlesville, OK.
475. Letter of October 26, 1973, from William Shipely, Adult Education Officer, Muskogee Area Office, to Bruce Miller Townsend, Chairman, Delaware Tribal Business Committee.
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476. Letter of September 24, 1975 from Henry A. Secondine, Vice-Chair, Delaware Business Committee, to Tribal Membership for a Delaware Language Workshop and Seminar, Delaware Tribal Center. Note, however, the tribe has no documentation as to the source of funding for this project.
477. Grant Award Letter, U.S. Department of Interior, Grant No. G00C14202055, to the Delaware Tribe of Indians of Oklahoma, February 1, 1973.
478. "Delaware Tribe Opens Full-Time Central Office in Bartlesville," Cherokee Nation News, July 31, 1973, vol. 6, no. 31, p. 1.
479. Id.
480. Id.
481. Id.

482. Letter of April 19, 1973, from James A. Clerk, Jr., Asst. Area Director, Dept. of Health, Education, and Welfare, to Bruce M. Townsend, Delaware Business Committee.
483. Letter of June 26, 1973 from Mary K. Townsend-Crow, Secretary-Treasurer, Delaware Tribe of Indians, to Joe A. Ragsdale, Superintendent, Tahlequah, OK.
484. "Indian Health Center Proposed," Tulsa World, June 8, 1974.
485. Id.
486. Award Letter of September 27, 1977, from Department of Health and Human Services to Delaware Tribe of Indians, Bartlesville, OK, Contract No. 246-77-C-5214.
487. Applicant's Staff Competency Experience, Memorandum, 1978, Delaware Tribal Center, Bartlesville, OK.
488. Delaware Tribal Resolution 77-21, "A RESOLUTION FINDING AND DECLARING THAT THERE EXISTS A NEED FOR A HOUSING AUTHORITY FOR THE COUNTIES OF WASHINGTON, NOWATA, CRAIG, NORTH ROGERS AND NORTH TULSA IN OKLAHOMA."; Notice, September 12, 1977, from the Delaware Tribe of Indians, released to the press.
489. Id.
490. Applicant's Staff Competency Experience, Memorandum, 1978, Delaware Tribal Center, Bartlesville, OK.
491. Id.
492. Letter of November 6, 1978, from Emil L. Huber, Area Manager, Area Director, Department of Housing and Urban Development, to Ross O. Swimmer, Principal Chief, Cherokee Nation.
493. Id.
494. Cherokee Nation of Oklahoma v. Delaware Tribe of Indians, Civ. No. 80-C-540-B (N.D. Okla. 1980).
495. Applicant's Staff Competency Experience, Memorandum, 1978, Delaware Tribal Center, Bartlesville, OK.
496. Delaware Tribal Needs Assessment, April 1993, copy and analysis available from the Delaware Tribe of Indians, 108 S. Seneca, Bartlesville, OK., 74003.
497. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 77 (1977).
498. The designation of "Kansas Delawares" historically referred to those Delawares who had chosen to sever their tribal relations with the Delaware Tribe under art. 9 of the Treaty of 1866, 14 stat. 793, and remain in Kansas, rather than removing to Indian Territory but then later (after 1868) individually purchased citizenship rights in the Cherokee Nation, with personal funds, to allow them to settle with the main body of the Delaware Tribe, residing in the Cherokee Nation. In 1951, the Delaware Tribe in General Counsel passed a resolution adopting into the tribe five specifically named descendants of the Kansas Delawares who had maintained tribal affiliation throughout history.
- It is therefore unclear from the record whether the plaintiffs in this case, designated the "Kansas Delawares" are individuals who remained in Kansas, or individuals who had severed their ties with the

tribe, but later joined by virtue of their individual purchase.

499. Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

500. 25 U.S.C. § 1294 (1972).

501. Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

502. Weeks v. United States, 406 F.Supp. 1309, 1310 (1975).

503. Id. at 1340.

504. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 77 (1977).

505. Id. at 86.

506. Weeks v. United States, 406 F.Supp. 1309, 1323 (1975).

507. Id.

508. Brief of the Defendant Secretary of Interior on the Constitutionality of Public Law 90-508 (25 U.S.C. §§1181-86) and Public Law 92-456 (25 U.S.C. §§ 1291-97), Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975)(Civil No. 74-368-D).

509. Brief of the Defendant Secretary of Interior on the Constitutionality of Public Law 90-508 (25 U.S.C. §§1181-86) and Public Law 92-456 (25 U.S.C. §§ 1291-97), p. 59-60, Weeks v. United States, 406 F.Supp. 1309 (1975)(Civil No. 74-368-D).

510. Id. at 59.

511. Id. at 61.

512. Id. at 64.

513. Id. at 67.

514. Answers of the Defendant Rogers C.B. Morton, Secretary of Interior, to Interrogatories, Weeks v. United States, 406 F.Supp. 1309 (1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

515. Id.

516. Id.

517. Defendant's Answer to Request for Admissions, Weeks v. United States, 406 F.Supp. 1304 (1975) (Civ. No. 73-586-E, consolidated, Civ. No. 74-368-D), filed March 17, 1975.

518. Weeks, 406 F.Supp. at 1304 (1975).

519. Id.

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520. Weeks, 406 F.Supp. at 1341 (1975).
521. Brief for the Appellees, p.21, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977) (No. 75-1495); Appellees Motion to Dismiss or Affirm, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977)(No. 75-1495).
522. Brief for the Appellees, p. 27,Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977) (No. 75-1495).
523. Reply Memorandum for the Appellants, Thomas S. Kleppe, Secretary of Interior, p. 2, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1975) (No. 75-1495).
524. Answers of the Defendant Rogers C.B. Morton, Secretary of Interior, to Interrogatories, Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).
525. Brief of the Defendant Secretary of Interior on the Constitutionality of Public Law 90-508 (25 U.S.C. §§1181-86) and Public Law 92-456 (25 U.S.C. §§ 1291-97), Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975)(Civil No. 74-368-D).
526. Id., at fn. 32.
527. Reply Memorandum for the Appellants, Thomas S. Kleppe, Secretary of the Interior, p.2, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977).
528. Delaware Tribal Business Committee v. Weeks, 430 US 73, 77 (1977).
529. The Court recognizes the tribe as the "Delaware Tribe of Indians", but notes that for clarity in the discussion of the case, they were dubbed 'Cherokee-Delawares'. See, fn. 8, 430 U.S. at 77.
530. Delaware Business Comm., 430 U.S. at 77 (1977).
531. Rogers C.B. Morton was the Secretary of Interior at the initiation of the case; Stanley K. Hathaway is named in the published district court opinion; and Thomas S. Kleppe is names as Secretary of Interior in the briefs presented to the Supreme Court.
532. In 1968, W.W. Keeler instituted the CHR program, and Cherokee Housing Authority for Cherokee Indians, and began the effort to obtain legislation to allow the Cherokee people to elect their own chief.
533. Lowe, Marjorie J., "W.W. Keeler: The Cherokee Perspective," March 10, 1993, unpublished, p. 9.
534. See, eg., "Delaware Tribe Opens Full-Time Central Office in Bartlesville," Cherokee Nation News, July 31, 1973, vol. 6, no. 31, p. 1-2.
535. Id.; "Delaware Tribe Instrumental in Development of Oklahoma," Bartlesville Examiner-Enterprise, Aug. 10, 1972.
536. Memorandum of February 1, 1977, from Director of Indian Services, Bureau of Indian Affairs, Washington, D.C. to Associate Solicitor of Indian Services. Note, Mr. Scott Keep responded to the memorandum, and therefore, is assumed to the be Associate Solicitor to whom the memorandum is addressed.

537. This reference to 'extreme factionalism' can only refer to a challenge issued by some Delawares regarding the fees charged by Mr. Townsend for four years of federal litigation in the Weeks case.
538. Memorandum of February 1, 1977, from Director of Indian Services, Bureau of Indian Affairs, Washington, D.C. to Associate Solicitor of Indian Services.
539. The Supreme Court even recognizes the tribe as the "Delaware Tribe of Indians", but notes that for clarity in the discussion of the case, they were dubbed 'Cherokee-Delawares'. See, fn. 8, 430 U.S. at 77.
540. Supra note 536.
541. Supra note 437.
542. Notation written, dated, and initialized on the original Memorandum of February 1, 1977, from Director of Indian Services, Bureau of Indian Affairs, Washington, D.C. to Associate Solicitor of Indian Services.
543. The notation further states, "from Scott Keep 3-17-77 This is a response to our Feb. 1 memo."
544. Letter of August 4, 1977 from James A. Joseph, Under Secretary, Department of Interior, Washington, D.C., to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
545. Letter of August 16, 1977 from Raymond V. Butler, Acting Deputy Commissioner, Bureau of Indian Affairs, Washington, D.C., to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
546. Id.
547. See Cherokee-Dawes Allotment Agreement, sec. 26, 32 Stat. 716, July 1, 1902; See also Letter of November 12, 1964, from Virgil N. Harrington, Area Director, Muskogee Area Office, Bureau of Indian Affairs, to Commissioner of Indian Affairs, Washington, D.C.; 26 U.S.C. § 991,992 (1962).
548. Letter of August 16, 1977, from Raymond V. Butler, Acting Deputy Commissioner, to Bruce M. Townsend, Chairman, Delaware Business Committee.
549. Id.
550. Letter of October 13, 1977 from Associate Director for Management of Indian Health Services to Director, Oklahoma City Area.
551. Id.
552. "Swimmer Calls Ouster Try 'Childish'," Bartlesville Examiner-Enterprise, Oct. 29, 1978, 1-2.
553. Letter of November 28, 1977, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Dr. Henry Johnson, Director of Indian Health Service, Oklahoma City, OK.
554. Id.
555. Id.
556. Supra notes 99, 102, 107, 110, 127, 513, 517.

557. Letter of November 28, 1977, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Dr. Henry Johnson, Director of Indian Health Service, Oklahoma City, OK.
558. Supra p 11.
559. Memorandum for the Record, February 14, 1978, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.; Cf., Letter of February 27, 1978 from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of Interior, Washington, D.C.
560. Letter of January 17, 1978, from Forrest Gerard, Asst. Secretary of Interior, Washington, D.C., to Bruce M. Townsend, Chairman, Delaware Tribe of Indians.
561. Id.
562. Letter of January 24, 1978, from Emery Johnson, Director of Indian Health Services, Oklahoma City, OK., to Forrest Gerard, Asst. Secretary of Indian Affairs, Washington, D.C.
563. Id.
564. Letter of August 16, 1977 from Raymond V. Butler, Acting Deputy Commissioner, Bureau of Indian Affairs, Washington, D.C., to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
565. Memo for the Record, February 14, 1978, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C., Subject: Phone call from Chris White.
566. Memo for the Record, December 20, 1977, from Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C., Subject: Cherokee-Delaware.
567. Id.
568. Supra note 516.
569. Supra note 556.
570. See supra notes 416, 417, 421, 423, 424, 429.
571. Brief of the Defendant Secretary of Interior on the Constitutionality of Public Law 90-508 (25 U.S.C. §§1181-86) and Public Law 92-456 (25 U.S.C. §§ 1291-97), Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975)(Civil No. 74-368-D).
572. Answers of the Defendant Rogers C.B. Morton, Secretary of Interior, to Interrogatories, Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).
573. Supra note 566.
574. Position Paper, December 18, 1977, Delaware Tribe of Oklahoma, attached to Memo for the Record, December 20, 1977, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.
575. Memo for the Record, February 14, 1978, from Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.
576. Id.

577. Memo for the Record, February 24, 1978, from Bob Farring, Tribal Relations Officer, Bureau of Indian Affairs, Washington, D.C.

578. Id.

579. Note, that Nathan Young, although a member of the business committee, was not authorized by the Delaware Business Committee or the General Council to represent the Delawares on this issue; in addition, Mr. Young apparently was at political odds with Chairman Bruce Townsend, who was not invited to attend the meeting.

580. Memo for the Record, February 24, 1978, from Bob Farring, Tribal Relations Officer, Bureau of Indian Affairs, Washington, D.C.

581. Id.

582. Id.

583. Id.

584. "200 Attend Delaware Tribal Council Session," Bartlesville Examiner-Enterprise, May 16, 1976, p. 10.

585. Memo for the Record, February 24, 1978, from Bob Farring, Tribal Relations Officer, Bureau of Indian Affairs, Washington, D.C.

586. Letter of February 27, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Forrest Gerard, Assistant Secretary of the Interior, Washington, D.C.

587. Id.

588. Supra notes 196, 202, 204, 344, 349, 359.

589. Supra note 517.

590. Supra note 110.

591. Supra note 207.

592. Supra notes 194, 281, 348, 349, 412.

593. Supra notes 209, 210.

594. Supra notes 376, 372.

595. Supra note 382.

596. Supra note 390.

597. Defendant's Request for Finding of Fact Delaware Tribe of Indians v. United States, Ind. Cl. Comm. Docket No. 27-A, filed June 16, 1952.

598. Brief for the Appellees, p.21, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977) (No. 75-1495); Appellees Motion to Dismiss or Affirm, Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977)(No. 75-1495).
599. Letter of February 27, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Forrest Gerard, Assistant Secretary of the Interior.
600. Supra notes 424, 425, 427, 429, 430.
601. Supra notes 391, 421, 422.
602. Supra notes 194, 281, 348, 349, 412.
603. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977).
604. Letter of February 27, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Forrest Gerard, Assistant Secretary of the Interior, Washington, D.C.
605. Id.
606. Id.
607. Letter of March 9, 1978 from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Forrest Gerard, Assistant Secretary of Interior, Washington, D.C.
608. Id.
609. Affidavit of S.H. Benge, Former Member of Cherokee National Senate, June 10, 1897, as reprinted in S. Rep. No. 16, 58th Cong., 1st Sess. 35 (1903).
610. Articles of Agreement between the Cherokee Nation and the Delaware Tribe of Indians, April 8, 1867, Washington, D.C., Pratt Papers, roll no. 7, fr. 00212, microfilm; Brief of the Defendant Secretary of Interior on the Constitutionality of Public Law 90-508 (25 U.S.C. §§1181-86) and Public Law 92-456 (25 U.S.C. §§ 1291-97), p. 59-60, Weeks v. United States, 406 F.Supp. 1309 (1975)(Civil No. 74-368-D).
611. Letter of June 1, 1871, from George Mitchell, U. S. Special Agent, Quapaw Agency to Enoch Hoag, Supt. of Indian Affairs, Court of Claims No. 21139, pp. 472-73.
612. See bottom notation on Letter of March 17, 1978 from Michael S. Yaroshcuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Interior.
613. Memorandum in Support of Cherokee Nation, attached to Letter of March 17, 1978, from Michael S. Yarcschuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Department of Interior, Washington, D.C.
614. Weeks v. United States, 406 F.Supp. 1309 (1975), rev., Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977).
615. Memorandum in Support of Cherokee Nation, attached to Letter of March 17, 1978, from Michael S. Yarcschuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Department of Interior.

616. "Swimmer Calls Ouster Try Childish," Bartlesville Examiner-Enterprise, October 29, 1978.
617. Treaty with the Cherokees, July 19, 1866, art. 15, 14 stat. 799.
618. Id.
619. Id.
620. Constitution and Laws, Cherokee Nation, ed. 1892, pp. 31-33.
621. Treaty with the Delawares, July 4, 1866, art. 11, 14 Stat. 793.
622. Memorandum in Support of the Cherokee Nation, p. 9, attached to Letter of March 17, 1978, from Michael S. Yaroshcuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Interior, Washington, D.C.
623. Clayton Chambers, "Chronology of the History of the Delaware Tribe of Indians, 1778-1994," (Bartlesville: Delaware Tribe of Indians, 1993).
624. Memorandum in Support of the Cherokee Nation, p. 9, attached to Letter of March 17, 1978, from Michael S. Yaroshcuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Interior, Washington, D.C.
625. Delaware Tribe of Indians v. United States, 2 Ind. Cl. Com. 253, (1952), 130 Ct. Cls. 794 (1955), aff. as to parties, 128 F. Supp. 391 (1955); Weeks v. United States, 406 F.Supp. 1309 (1975), rev., Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977).
626. Supra, note 624, at 7.
627. Id. at 8.
628. "Delaware Tribe Opens Full-Time Central Office in Bartlesville," Cherokee Nation News, July 31, 1973, p. 1, 2.
629. See bottom notation on Letter of March 17, 1978 from Michael S. Yaroshcuk, Attorney for the Cherokee Nation, to Forrest J. Gerard, Assistant Secretary of the Interior.
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630. Memorandum of March 20, 1978 from Scott Keep, Division of Indian Affairs, Solicitor, Department of Interior, to Bob Farring, Tribal Relations, Bureau of Indian Affairs, Washington, D.C.
631. Id.
632. Memorandum of February 1, 1977 from Director of Office of Indian Services to Associate Solicitor of Indian Services.
633. Memorandum of March 17, 1977 from Scott Keep, Associate Solicitor, Department of Interior, to Director of Office of Indian Affairs, Bureau of Indian Affairs, Washington, D.C.
634. Letter of March 23, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Luke McIntosh, Area Indian Health Services, Oklahoma City.

635. Letter of August 31, 1978, from Ross O. Swimmer, Principal Chief, Cherokee Nation, to Luke McIntosh, Indian Health Services, Oklahoma City.

636. Transcript of testimony of Ross O. Swimmer, Principal Chief, Cherokee Nation of Indians in Oklahoma, RE: House Bill H.R. 8674 (1978).

637. 86 Stat. 762, 25 U.S.C. § 1294 (b):

The funds...shall be placed to the credit of the Delaware Tribe of Indians in the United States Treasury and shall be used in the following manner: 90 per centum of such funds shall be distributed in equal shares to each person enrolled pursuant to subsection 2(c)(1), and 10 per centum shall remain to the credit of the tribe in the United States Treasury and may be advanced, expended, invested, or reinvested **for any purpose that is authorized by the tribal governing body**: Provided, That the Secretary of Interior shall not approve the use of the funds remaining to the credit of the tribe until the tribe has organized a legal entity which in the judgement of the Secretary adequately protects the interests of its members (emphasis added).

638. Answers of the Defendant Rogers C.B. Morton, Secretary of Interior, to Interrogatories, Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).

639. Memorandum of March 20, 1978 from Scott Keep, Division of Indian Affairs, Solicitor, Department of Interior, to Bob Farring, Tribal Relations, Bureau of Indian Affairs, Washington, D.C.

640. Transcript of testimony of Ross O. Swimmer, Principal Chief, Cherokee Nation of Indians in Oklahoma, RE: House Bill H.R. 8674 (1978).

641. Id.

642. Supra notes 20, 21, 63, 121, 159, 625.

643. Supra note 640.

644. Treaty with the Cherokees, July 19, 1866, art. 15, 14 Stat. 799.

645. Supra note 640.

646. Supra notes 196, 202, 204, 344, 349, 359.

647. Supra note 207.

648. Supra notes 297, 301, 309.

649. Supra note 640.

650. See supra Part VI.

651. Supra note 640.

652. Id.

653. Letter of October 17, 1978, from Joe M. Parker, Superintendent of Tahlequah Agency, Tahlequah, OK., to Chris White, Personnel Department of the Cherokee Nation, Tahlequah, OK.

654. "Delaware Body Elected," Bartlesville Examiner-Enterprise, Nov. 5, 1978; "Delaware Committee Nixes Bruce Townsend," Bartlesville Examiner-Enterprise, Nov. 12, 1978.

655. Memo for the Record, December 20, 1977, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.

656. Letter of April 1, 1958, from Paul L. Fickinger, Area Director, Muskogee Area Office, Bureau of Indian Affairs, to Bruce M. Townsend, Smith & Townsend, Tulsa, OK.

657. Senate Hearing of the Subcommittee of Indian Affairs, March 13, 1972, H.R. 5200.

658. Rogers C.B. Morton was the Secretary of Interior at the initiation of the case; Stanley K. Hathaway is named in the published district court opinion; and Thomas S. Kleppe is named as Secretary of Interior in the briefs presented to the Supreme Court.

659. Federal Register, February 6, 1979, pp. 7235-7237.

660. Id.

661. Letter of February 26, 1979 from Martin Seneca, Acting Deputy Commissioner, Washington, D.C., to Cherokee-Delaware Business Committee, Bartlesville, OK.

To review, Congress specifically recognized the Delaware Tribe of Indians as an inherent political body in 1972 under 25 U.S.C. §1292 (b). Under that statute, ten percent of the Delaware judgement funds:

[S]hall remain to the credit of the tribe
in the United States Treasury and may be
advanced, expended, invested, or reinvested
for any purpose that is authorized by the
tribal governing body: Provided, That the
Secretary of Interior shall not approve
the use of the funds remaining to the
credit of the tribe until the tribe has organized
a legal entity which in the judgment of the
Secretary adequately protects the interests
of its members.

662. Letter of February 26, 1979 from Martin Seneca, Acting Deputy Commissioner, Washington, D.C., to Muskogee Area Director, Bureau of Indian Affairs, Muskogee, OK.

663. Senate Hearing of the Subcommittee of Indian Affairs, March 13, 1972, H.R. 5200.

664. Supra note 661.
665. Supra notes 450, 451, 452, 453, 454, 456, 459.
666. Letter of February 26, 1979 from Martin Seneca, Acting Deputy Commissioner, Washington, D.C., to Muskogee Area Director, Bureau of Indian Affairs, Muskogee, OK.
667. Id.
668. Id.
669. Letter of February 26, 1979 from Martin Seneca, Acting Deputy Commissioner, Washington, D.C., to Muskogee Area Director, Bureau of Indian Affairs, Muskogee, OK.
670. Id.
671. Id.
672. Letter of May 7, 1979 from Chris White, Recruitment Coordinator, Cherokee Nation, to Commissioner of Indian Affairs, Department of Interior, Washington, D.C.
673. Letter of May 24, 1979 from La Follette Butler, Acting Deputy Commissioner of Indian Affairs, Washington, D.C., to Henry Secondine, Chairman, Cherokee Delaware Business Committee, Bartlesville, OK.
674. Id.
675. Rogers C.B. Morton was the Secretary of Interior at the initiation of the case; Stanley K. Hathaway is named in the published district court opinion; and Thomas S. Kleppe is named as Secretary of Interior in the briefs presented to the Supreme Court.
676. Supra note 673.
677. Answers of the Defendant Rogers C.B. Morton, Secretary of Interior, to Interrogatories, Weeks v. United States, 406 F.Supp. 1309 (W.D. Okla. 1975) (No. Civ-73-586-E consolidated, No. Civ-74-386-D).
678. Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 77 (1977).
679. Letter of May 24, 1979 from La Follette Butler, Acting Deputy Commissioner of Indian Affairs, Washington, D.C., to Henry Secondine, Chairman, Cherokee Delaware Business Committee, Bartlesville, OK.
680. Message to the Members of the Cherokee Delaware Tribe, July 7, 1979, from M.E. Seneca, Jr., Acting Deputy Commissioner, Bureau of Indian Affairs, Washington, D.C.
681. See 25 U.S.C. § 1181 (1968); 25 U.S.C. § 1292 (1972).
682. Letter of August 16, 1977 from Raymond V. Butler, Acting Deputy Commissioner, Bureau of Indian Affairs, Washington, D.C., to Bruce M. Townsend, Chairman, Delaware Tribal Business Committee.
683. Federal Register, February 6, 1979, pp. 7235-7237.

684. Message to the Members of the Cherokee Delaware Tribe, July 7, 1979, from M.E. Seneca, Jr., Acting Deputy Commissioner, Bureau of Indian Affairs, Washington, D.C.
685. Id.
686. Id.
687. See supra notes 466, 475, 477, 481, 486.
688. H. Rep. No. 96-1136, 96th Cong., 2d. Sess. 5 (1980).
689. P.L. 96-318, 94 Stat. 970 (1980).
690. Id.
691. Id.
692. Senate Hearing of the Subcommittee of Indian Affairs, March 13, 1972, H.R. 5200.
693. Affidavit of June 20, 1975, from Edward F. Edzards, Acting Area Director, Muskogee Area Office, to Whom It May Concern, attesting that the Delaware Tribe of Indians is organized and recognized per resolution.....was amended on July 6, 1974, and approved September 30, 1974, pursuant to delegation of authority from the Commissioner, Bureau of Indian Affairs.
694. Letter of August 29, 1979, from Edwin S. Moore, Acting Area Director, Bureau of Indian Affairs, Muskogee Area Office, to "All Adult Cherokee-Delaware Indians."
695. "Delaware General Council Meeting Set, Bartlesville Examiner-Enterprise, September 19, 1979, p. 2.
696. Letter of October 3, 1980 from Delaware Business Committee to the Members of the Delaware Tribe of Indians; Minutes of the General Council of the Delaware Tribe of Indians, November 8, 1980, Dewey, OK.
697. Id.
698. Cherokee Nation of Oklahoma v. Housing Authority of the Delaware Tribe of Indians, Civ. No. 80-C-540-B (N.D. Okla 1983).
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699. Transcript for the Organization and Establishment of the Housing Authority of the Delaware Tribe of Indians, December 20, 1977; Letter of January 24, 1978, from Billy V. Austin, Deputy Director, Department of Housing and Human Development, Oklahoma City, OK., to Housing Authority of the Delaware Tribe of Indians, Bartlesville, OK.
700. Finding of Fact and Conclusions of Law, Cherokee Nation of Oklahoma v. Housing Authority of the Delaware Tribe of Indians, Civ. No. 80-C-540-B (N.D. Okla 1983).
701. Cherokee Nation of Oklahoma v. Housing Authority of the Delaware Tribe of Indians, Civ. No. 80-C-540-B (N.D. Okla 1983).
702. See Letter of August 12, 1982, from Leggette for Solicitor, Office of the Solicitor, Department of Interior, Washington, D.C., to Robert S. Kenison, Associate General Council for Assisted Housing and Community Development, HUD, Washington, D.C.

703. See Id.

704. Id.

705. An Act to Secure to the Cherokee freedmen and others their proportion of certain proceeds under the act of March third, eighteen hundred and eighty-three, 25 Stat. 609 (1888).

706. Supra notes 555, 676, 680.

707. An Act to Ratify an Agreement with Certain Bands of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians, 44th Cong., 2d Sess., Ch. 72, Feb. 28, 1877.

708. Id.

709. 30 Stat. 495 (1898).

710. 25 Stat. 609 (1888).

711. Treaty with the Delawares, art. 11, July 4, 1866, 14 Stat. 793.

712. U.S. v. Dion, 106 S.Ct. 2216, 2220 (1986).

713. Cherokee Freedmen and Others, H. Rep. No. 844, 50th Cong., 1st Sess. 1 (1888).

714. Letter of August 12, 1982, from Leggette for Solicitor, Office of the Solicitor, Department of Interior, Washington, D.C., to Robert S. Kenison, Associate General Council for Assisted Housing and Community Development, HUD, Washington, D.C.

715. Protest Petition of June 13, 1867, from the Delaware Tribe of Indians, Delaware Nation, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm; Protest Petition of the Delaware Tribe of Indians of Kansas, January 16, 1868, to Commissioner of Indian Affairs, Washington, D.C., National Archives, M234, roll 275, microfilm.

716. See Letter of August 6, 1867, from Reverend John G. Pratt, U.S. Indian Agent, to Thomas Murphy, Supt. Indian Affairs, transmitting the June 13, 1867, Protest Petition of the Delaware Tribe of Indians, National Archives, M234, Roll no. 275, microfilm.

717. J.W. Beam v. U.S. and Sioux Indians, Indian Depredations, 2561, Dec. 2, 1907, citing 9 Wall. 34, and 6 Pet. 749.

718. Findings of Fact and Conclusions of Law, Cherokee Nation of Oklahoma v. Housing Authority of the Delaware Tribe of Indians, Civ. No. 80-C-540-B (N.D. Okla. 1983).

719. Eg., Memorandum of Agreement Between the United States of America, and the Delaware Tribe of Indians, and the Housing Authority of the Delaware Tribe of Indians, signed November 9, 1993, by authorized agents of each party.

720. Letter of August 29, 1979, to the Muskogee Area Director, from Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.

721. Id.

722. Id.

723. Letter of February 4, 1980, from Chris White, Delaware Tribal Member, to Theodore Krenzke, Bureau of Indian Affairs, Washington, D.C., appealing Mr. Krenzke's approval for "individual Cherokee-Delawares to meet with the Commissioner."

724. Memo for the Record, March 17, 1980, Bob Farring, Tribal Relations Branch, Bureau of Indian Affairs, Washington, D.C.

725. Letter of March 13, 1980, from John Geary, Acting Director, Office of Indian Services, Bureau of Indian Affairs, Washington, D.C.

726. Id.

727. Minutes of the Delaware Tribal Council, February 14, 1984, Bartlesville, OK.

728. Minutes of the General Council of the Delaware Tribe of Indians, November 8, 1980.

729. Resolution of the Delaware Tribe of Indians in General Council, November, 1982, Bartlesville, OK., adopting the Constitution and Bylaws of the Delaware Tribe of Indians.

730. Constitution and Bylaws of the Delaware Tribe of Indians, adopted November, 1982.

731. Id.

732. Minutes of the Delaware Tribal Council, July 18, 1984, Bartlesville, OK.

733. The Constitution and Bylaws of the Delaware Tribe of Indians, as amended, November 5, 1983.

734. See "Consideration of Resolution to Withdraw Legal and Property Ties with the Cherokee Nation," Delaware Indian News, December 26, 1983.

735. See Resolution No. 84-001 of the Delaware Tribal Council, August 17, 1984, Bartlesville, OK.

736. Letter of October 15, 1984, from Wilma P. Mankiller, Deputy Principal Chief, Cherokee Nation, Tahlequah, OK., to Mike Standeford, Assistant Chief, Delaware Indians, Bartlesville, OK.

737. See Resolution No. 84-002 of the Delaware Tribal Council, August 17, 1984, Bartlesville, OK.

738. Letter of September 26, 1984, from Theodore Krenzke, Director, Office of Indian Services, Bureau of Indian Affairs, Washington, D.C., to Hon. James R. Jones, Member, U.S. House of Rep., Tulsa, OK.

739. An Act Relating to the Recognition of the Delaware Tribe of Indians within the Cherokee Nation of Oklahoma; Authorizing the Drafting of a governing document by the Delaware Citizens; providing for a Referendum on Other Issues, and Declaring an Emergency, Legislative Act 16-85, Cherokee Nation Tribal Council, October 12, 1985.

740. Id.

741. Letter of October 7, 1986, from Wilma P. Mankiller, Principal Chief, Cherokee Nation, Tahlequah, OK., to Lew B. Ketchum, Chief, Delaware Tribe of Indians, Bartlesville, OK.

742. Id.

743. Id.

744. Letter of December 12, 1986, from Dennis Springwater, Acting Area Director, Muskogee Area Office, Bureau of Indian Affairs, to Lewis B. Ketchum, Delaware Tribe of Indians, Bartlesville, OK.

745. 25 U.S.C. § 1294 (b) (1972).

746. Supra note 744.

747. Transcript of the BIA-Delaware-Cherokee Meeting, July 16, 1987, Tulsa Airport Sheridan, Tulsa, OK.

748. 25 U.S.C. § 1292 (c)(1) (1972).

749. Public Law 96-318, 94 Stat. 968 (1980), provided that the Secretary shall provide a roll based on 1) the Registry filed in the Office of the Commissioner of Indians Affairs pursuant to Article 9 of the 1866 treaty with the Delawares; 2) the 1906 per capita roll; 3) the Register prepared on February 16, 1867, listing those Delawares choosing to remove to Indian territory.

750. Letter of November 9, 1990, from Dennis Springwater, Acting Area Director, Muskogee Area Office, Bureau of Indian Affairs, Tahlequah, OK., to Lewis B. Ketchum, Delaware Tribal Office, Bartlesville, OK.

751. The Trust Document of the Delaware Tribe of Indians, September 21, 1990, approved by the Deputy to the Assistant Secretary - Indian Affairs, October 31, 1990.

752. The Trust Document of the Delaware Tribe of Indians, September 21, 1990, art. II, sec. C, approved by the Deputy to the Assistant Secretary - Indian Affairs, October 31, 1990.

753. The Trust Document of the Delaware Tribe of Indians, September 21, 1990, approved by the Deputy to the Assistant Secretary - Indian Affairs, October 31, 1990.

754. NOTICE OF ELECTION, n.d., mailed to all Delaware Tribal Members under the supervision of the Bureau of Indian Affairs.

755. Memorandum of Agreement between the United States of America, the Delaware Tribe of Indians, and the Housing Authority of the Delaware Tribe of Indians, November 9, 1993.

756. Letter of April 20, 1994, from Walter R. Mills, Acting Deputy Commission of Indian Affairs, Bureau of Indian Affairs, to Lewis B. Ketchum, Bartlesville, OK.

757. See 25 Stat. 609 (1888).

**CHRONOLOGICAL OVERVIEW OF THE LEGAL STATUS OF THE
DELAWARE TRIBE OF INDIANS**

1831: Chief William Anderson leads the main body of the Delaware Tribe to new (2 million acre) reservation in Kansas.

1854: April 10, in letter to President Franklin Pierce, Chief Ketchum reminds the President of the promise to never again remove the Delaware from their homes.

1866: July 4, Treaty with the Delawares, 14 Stat. 793, provides for the removal of the tribe to a new reservation in Indian Territory./ **July 19,** Treaty between U.S. and Cherokees, 14 Stat. 799., art. 15 provides that all tribes that the U.S. removes to the Cherokee Nation east of the 96' must pay headrights and will enjoy the rights of native Cherokees, but such tribes could also pay for their lands and thereby preserve their tribal sovereignty./ **November 7,** Cherokee National Council passes resolution to enter agreement with the Delawares allowing for a reservation lying east or west of the 96'./ **December 9,** Delaware delegates, electing to preserve tribal organization, in company with Cherokee delegates, make agreement for 10 x 30 mile tract in Indian Country east of the 96'./**February 18,** Delaware Tribe accepts Dec. 9th agreement, and 985 Delawares elect to preserve their tribal relations and enroll for removal to a new reservation in Cherokee Nation. Those not enrolling on the Feb. 18th registry would thereby remain in Kansas, sever their tribal relations, and become U.S. citizens.

1867: April 8, Articles of Agreement between Delawares and Cherokee signed in Washington D. C., provides that Delawares must pay for lands per art. 15 of the Cherokee Treaty to preserve tribal organization, but also refers to "incorporation" Delawares into Cherokee Nation./**June 13,** Cherokee National Council ratified the Articles of Agreement./**May 6,** Delaware Tribe acting in General Council refuse to ratify the Articles of Agreement due to the reference of "incorporation", majority of Delawares sign resolution rejecting the same as a violation of the 1866 Delaware-U.S. Treaty./**August 6,** Agent Pratt grudgingly transmits the Delaware Resolution rejecting the Articles of Agreement to the Supt. Ind. Aff., presenting the resolution as an "expression of that unfettered class, which seek to keep alive old Indian customs and traditions."

1868: January 16, Three-fourths of the Delaware Tribe again petitions the Commissioner of Indian Affairs, protesting the Articles of Agreement as a violation of the 1866 Treaty; Delawares now face starvation and poverty in Kansas./ **May 5,** Commissioner of Indian Affairs travel to Kansas, after assurances from the Commissioner, Delawares proceed to Indian territory. / **September 21,** Agent Pratt reports sickness during the tribes removal; 200 of 985 Delawares die during the removal. /**November 13,** Delawares request to cancel the agreement with the Cherokees.

1870: June 1, Journeycake writes Agent Pratt and tells of individual Cherokee depredations upon the Delaware.

1871: June 1, 330 Delawares, with 200 more following, unilaterally leave the Cherokee Nation, and residing on lands of the Peoria, state they will never return./ **August 19,** the Superintendent of the Central Superintendency informs the Commissioner of Indian Affairs of the intent to arrange a separate district for the Delawares in the Cherokee Nation.

1873: Delaware Tribe moved back in mass to the Cherokee Nation, but no separate district is ever set aside as promised.

1876: February 24, Delaware leaders including Charles Journeycake, petition Congress for a separate reservation, explaining "seven years of bitter experience have fully convinced us of our great mistake."

1877: Commissioner of Indian affairs reports Delaware/Cherokee relations are not good, and the Delawares are requesting to be removed to a reservation of their own.

1889: Delaware General Council elects six persons to act with legal authority on behalf of the tribe.

1893: U. S. Government still holds Delaware assets in trust separate from the Cherokee Nation.

1894: U.S. Supreme Court determines that Delaware Tribe contracted for all Delawares to enjoy the rights of native Cherokee, including communal property rights. Cherokee Nation v. Journeycake, 155 U.S. 55 (1894).

1895: February 1, After the death of Chief Journeycake in 1894, the Dept. of Interior calls a General Council for the purpose of selecting (5) men to perform the duties of Chief. /Delawares choose a Ceremonial Chief to perform the traditional spiritual duties of the chief.

1898: Delaware settlements include a Council house, a Doctor, two churches, two schools along the Caney River, two schools along the California River, and one on lightning Creek, traditional religious grounds, and cemeteries - all built and paid for by the Delaware Tribe.

1902: August 7, Cherokee people ratify the Cherokee-Dawes Agreement providing for the dissolution of their reservation boundaries, and the abandonment of tribal government./ Congress ratifies the same.

1904: April, Congress passes legislation appropriating funds to be used as the "tribal governing body directs."/ **April 27-29**, Delaware in General Council, pass a resolution defining membership criteria, and officially vested the political authorities of the tribe in the General Council and the Business Committee; Resolution duly accepted by the Department of Interior as valid expression of the tribal body.

1905: The Comptroller General opinion determines that, under art. 15 of the 1866 treaty with the Cherokees, the Delaware Tribe "maintained its tribal organization," and that in 1904 Congress appropriated monies for the Delaware Tribe as a political tribal entity, and not for the descendants of the tribe; Opinion approved by the Attorney General and the Secretary of Interior.

1906: Delaware Per Capita Roll, compiled by the Delaware Business Committee, is approved by the tribe and the Department of Interior; thereafter the 1906 roll serves as the base roll for Delaware tribal membership.

1906-1921: Delaware Business Committee and General Council continue to work toward pursuing tribal goals; George Bullette continued as Chairman of the Delaware Business Committee until 1922.

1922: Joe Bartles elected Chairman of the Business Committee. Interpreter still required during Business Committee and General Council meetings.

1935: John Collier, Commissioner of Indian Affairs, proposes an "organization and Constitution" for the Delaware Tribe.

1936: Oklahoma Indian Welfare Act (OIWA), 49 Stat. 1967.

1937: Department of Interior determines that old Cherokee Nation is ineligible to reorganize under the OIWA.

1940: December 3, Assistant Commissioner William Zimmerman issues a departmental decision, finding the Delaware Tribe eligible for organization under the OIWA.

1941: January 23, Assistant Secretary, Oscar L. Chapman, specifically approves Zimmerman's determination of the OIWA eligibility of the tribe.

1946: February 23, Tribe votes in General Council to begin tribal treasury once again./ **April 20**, General Council votes to petition the Governor for return of Delaware artifacts; Delawares overwhelmingly vote to join the National Congress of American Indians (NCAI)./ **August 4**, Congress passes special legislation to allow Cherokees by blood to reorganize under OIWA as the United Keetoowah Band of Cherokee Indians.

1951: July 14, General Council of the tribe passes resolution redefining membership; Joe Bartles resigns due to ill health after 29 years (1922-51) as tribal Chairman. H. L. McCracken elected tribal Chairman.

1951-1955: Delawares file suit against the U.S. for numerous treaty violation; U. S. argues and loses in Court of Claims on argument that the Delaware Tribe ceased as a political tribe in 1867; Court of Claims determines that U.S. treaties with Delawares were "unconscionable" and that lands sold to the U.S. under the 1854 Treaty were worth sixty times amount paid to Delawares.

1958: March 10, BIA discusses "possibilities and necessities for establishing a Constitution and By-laws for the operation of the Delaware Indians in tribal affairs."/ **May 1**, Area Director states that permission for Secretarial Election could be obtained

within two weeks./**August 7**, DOI issues notice to all Delawares for a General Council to adopt a Constitution and Bylaws./ **September 7**, the Delaware General Council passes resolution to adopt proposed bylaws; Muskogee Area Office oversees election and certifies Delaware Bylaws.

1962: May 31, Bylaws signed and approved by the Commissioner of Indian Affairs.

1965-70: The tribe continues to receive direct supervision from the Muskogee Area Office. /General Councils continue with BIA issued notice and attendance. /H. L. McCracken dies in office December 28, 1970; Bruce Miller Townsend continues as tribal Chairman.

1970-1979: The Delaware Tribe contracts directly with the BIA, DHHS, HUD, and the Oklahoma Indian Affairs Commission for the administration of services to tribal members.

1971: March 15, The Delaware Tribe contracts with IHS to provide services to its tribal members.

1972: October 3, Congress appropriates programming funds for the Delaware Tribe to be used as the "governing body directs," thereby specifically recognizing the Delaware Tribe as a political tribal entity, possessing the inherent authority for self-government.

1973: The Delaware Tribe contracts for a Tribal Government Development Grant (TGDG) and opens full-time tribal center at 108 S. Seneca Bartlesville, enabling the tribe to more effectively administer to its members.

1974: July 6, Delaware Tribe amends Bylaws in General Council to provide specific membership criteria so as to satisfy the 1972 Congressional proviso that the tribe must first organize a legal entity which will adequately protect the interests of its members.

1975: June 20, The Muskogee Area director issued a general certification providing that the Delaware tribe is organized and recognized per the 1958 Bylaws, as amended.

1976: June 26, Cherokee people ratified new constitution, establishing a Cherokee Nation government for the first time in over sixty years.

1973-75: Secretary of Interior submits sworn interrogatories to federal court stating that Delaware Tribe is a distinct tribal entity, possessed of the same political powers as any other tribe in Oklahoma; Secretary specifically argues that Delaware Tribe is federally recognized for all purposes, and not just for the purpose of claims.

1977: U. S. Supreme court makes the finding that the Delaware Tribe of Indians has enjoyed continuous federal recognition by the U. S. Government based on four years of arguments by three different Secretaries of Interior. Weeks, 430 U.S. 73./ **March 17**, Associate Solicitor determines that Delawares are a tribe within the meaning of the Self-Determination Act./ **August 4**, the Under Secretary of the Interior notified Delaware Chairman Bruce Townsend that he was fully committed to the policy of tribal self-determination and a "strong and effective Delaware Tribal Government."/ **November 28**, Cherokee Chief Ross Swimmer objects to continued recognition of the Delaware Tribe, emphatically stating that "Legally the Delawares do not exist..."

1978: February 27, Letter of Ross Swimmer to the Asst. Secretary Gerard, stating: 1) Delaware tribe has not existed since 1867; 2) Recently Delawares organized themselves to pursue claims against the U.S.; 3) and, "since they have no Tribe, it is important that these funds [Delaware programmed judgement funds] be spent under the supervision of some tribal authority of which there is only one - the Cherokee Nation."/ **March 20**, Associate Solicitor determines that the U.S. position in the Weeks case makes it "impossible" for BIA to claim Delawares are not a tribe./ **April**, Cherokee Chief Ross Swimmer makes an unsuccessful bid to Congress to have the 1972 Delaware Judgement Funds turned over to the Cherokee Nation./ **November**, Bruce Townsend, Delaware attorney, is defeated in his bid for re-election to the chairmanship of the Delaware Tribe.

1979: February 6, Delaware Tribe does not appear on first published BIA list of federally recognized tribes./ **February 26**, Acting Deputy Commissioner issues notice to the "Cherokee Delaware Business Committee" that from that time forth, the Delawares will only be known as Cherokee, and that the tribe is only recognized for "claims purposes." Further that a sufficient legal organization does not exist to release the programming funds, and therefore, the BIA will not release the programming funds./ **May 24**, Acting Deputy Commissioner, informs Delaware Chairman of the withdraw of Bureau recognition of the 1958

Bylaws, as amended, and any officials elected pursuant to the Bylaws./ **June 7**, Acting Deputy Commissioner sends "Message to Members of the Cherokee Delaware Tribe" stating that the BIA defines the Delawares as those on the 1906 Delaware roll and those who are members or eligible for membership with the Cherokee Nation./ **September 8**, during a BIA called "General Council", tribal members reject being called Cherokees and being subjugated to the Cherokee Nation, and expressed their continuing support for the Delaware Business Committee./ The Delaware Tribe is effectively terminated.

1980-83: Cherokee Chief Ross Swimmer files suit against Delaware Tribe and HUD maintaining that Delawares Housing Authority is illegal as the tribe is not federally recognized. Swimmer loses. During litigation, BIA sends a letter to HUD stating that Delawares terminated themselves in 1867, and have not existed since that time except for claims purposes.

1982: Delaware Tribe in General Council adopts a Constitution and Bylaws following usual OIWA format; BIA will not recognize as sufficient legal entity to protect the members of tribe, and therefore, will not release 1972 programming funds.

1983: Delaware Tribe in General Council amends Constitution to provide for tribal courts and resolves to withdraw legal and property ties with the Cherokee Nation. Lewis B. Ketchum becomes Delaware Chief upon resignation of Henry Secondine.

1984: July, 93% of Delawares vote to be recognized as Delaware and not Cherokee./ **August 11**, Cherokee Nation Tribal Council passes resolution calling for a per capita pay out of the Delaware programming funds appropriated in 1972./ **September**, BIA lobbies Congress to pay Delaware Programming funds per capita. Congress does not comply.

1985-89: Delaware Tribal Council travels to Washington D. C., seeking to reaffirm the Delaware Tribe's recognized status./ Tribe continues to struggle for recognition and release of programming funds.

1986: BIA informs "Cherokee Delaware" that it will not release the Delaware Programming Funds until Delawares adopt a governing document that denies tribal sovereignty and defines tribal membership by the Cherokee-Dawes Roll./ Lewis B. Ketchum re-elected to Chief.

1990: September, To facilitate the release of the programming funds, Delaware Tribe adopts a "Trust Document" which states that nothing therein is to be construed as providing or denying the federal recognition of the tribe./ **November**, Lewis B. Ketchum also elected to Chairman of the Trust Board, and re-elected as Chief.

1991: Delaware Tribe begins to receive the interest off the now \$4.1 Delaware programming funds./ BIA holds the principal in trust, and directly oversees the management and administration of the monies./ Delawares set up numerous social assistance programs for its members with the money./ Delaware Tribe continues to be governed under both the Constitution and the Trust Document.

1992: October, Delaware Tribal Council passes Resolution 92-12 which sets forth a strategy to reaffirm the sovereignty of the Tribe./ Resolution 92-12 seeks to: 1) Obtain a favorable agreement with the Cherokee Nation; 2) Submit a documented petition pursuant to 25 CFR Part. 83; 3) Submit a bill to the U. S. Congress for reaffirmation of Delaware tribal sovereignty./ Delaware Federal Recognition Committee forms, and begins legal and historical research to document the continuous recognized tribal existence./ **December**, Delaware Tribe files a Letter Petition with the BIA giving notice of its intent to petition under 25 CFR Part. 83.

1993: October, Delaware Tribal Council sends a proposed Memorandum of Agreement for submittal to the Cherokee Nation Tribal Council; CNO staff never submit the MOA to the Cherokee Tribal Council./ **November 19**, The Delaware Tribe held a nation-wide all absentee ballot vote on Delaware Resolution 92-12; the vote was preceded by four town meetings, wherein all issues concerning separation were openly discussed and commented upon by tribal members; 88% overwhelmingly responded in favor of separate recognition./ Cherokee Nation opposed Delawares' bid at NCAI for a resolution of general support to reaffirm the sovereignty of the tribe.

1994: February, Delaware Tribal members receive notice that Cherokee Nation has contracted to administer their Individual Indian Money accounts containing the Delaware judgment funds./ Delaware Tribe does not receive prior notice./ **March**, Delaware Tribe files letter of objection to the delegation of Delaware IMM accounts to the Cherokee Nation on the basis that at least the BIA recognizes the tribe for claims purposes./ Cherokee Chief Wilma Mankiller holds town meeting with Delawares and claims that Delaware Tribe did not exercise the option to preserve its tribal organization under the 1867 agreement, and that much has to be resolved before the Cherokees could support the Delawares in their effort./ **April**, BIA informs Delaware Tribe

that it is not eligible to petition for recognition under 25 CFR Pt. 83, because Congress has defined the tribe as Cherokees, and that the Delawares are considered a "splinter group." / **May**, Delawares object to the factual basis of the denial for eligibility to petition, and requests directions on the appeal process. Wilma Mankiller holds another meeting with the Delawares and erroneously states that the Delaware leaders, against her suggestion, requested a damaging BIA solicitor opinion regarding their legal status, and still much needs to be done before the Cherokees could support the Delawares in their effort. / **June**, BIA informs tribe that since all Delawares are members of the Cherokee Nation, the Cherokees have the right to contract the IMM accounts without Delaware approval, and that appeals should be filed with the Cherokee Nation.

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