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SOVEREIGNTY ON TRIAL  
THE DELAWARE-CHEROKEE RELATIONSHIP  
DIVIDED IN CONFLICT

A DISSERTATION APPROVED FOR THE  
DEPARTMENT OF HISTORY

BY

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## **Dedication**

My mother encouraged me to pursue a PhD. She not only gave me life but understood my purpose, which gave rise to telling the story of my Lenape people. Along the same lines, my son Xavier has lived each day of his life in anticipation of the end result of his mother's work. He and his two brothers, Tahkoken, and River, are truly at the heart of every word. Not only will my boys continue the rich culture and history of their grandmothers and grandfathers, but Xavier especially saw how his single mother worked incessantly to complete a dissertation that most others would have found impossible to achieve. During the last two years of this study, my brother Travis, true to our Lenape ways, often took care of my boys so that I could write and revise. Yet, I offer my most profound sense of gratitude to my father. Not only did my identity as a Lenape woman pass through him but the diligent support for this dissertation, financially, emotionally, and culturally, came from my Dad. This study would not have been possible without a lifetime of his sacrifices.

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The Lenape people lived this history. While I hope the words in this dissertation give their story the recognition so long awaited, I am sure that I have fallen short. Their complete story is exceedingly more than one individual could ever express. However, the Lenapes that I wish to thank include, James Rementer for his assistance to learn

Lenape and for providing a home for me and my children during the latter half of my doctoral work; the Delaware Elders, who shared their words and their hearts with me, the late Elgia Bryan, Evelyn Kay Thomas, John Anderson, and Kathy Buffalo; and to those Elders who await its completion, John Sumpter, Don Wilson, Kenny Brown, and the rest of the Lenape (Starhawk) Gourd Society, Titus Frenchman, Chairman of the Elders Council, Mary Watters, Rosetta Coffey, Kay Anderson, Chief Curtis Zunigha, Bonnie Thaxton, Annette and Chief Dee Ketchum, and Pat and Walter Donnell. For those who I shared drafts with such as Lenape academics, Deborah Nichols and Rusty Creed Brown, I say wanishi. Claudia Haake, a historian of the Delawares, is a priceless resource to the Lenape. To the Cherokees, Dr. Richard Allen, offered his insights and support of my study. Dr. Allen was a stabilizing influence for me throughout my research and I cannot over-state my gratitude for his encouragement.

I also wish to thank the Chief Jerry Douglas and the Delaware Tribal Council who permitted me to examine sensitive legal materials. Curtis Zunigha and Jenifer Pechonick championed my presentation to the Tribal Council. For days on end, Marilyn Cole, tribal administrator, met me at the storage facility, literally unlocking the documents. Cole took the time to do this for me while she oversaw the auctioning of what was left of the Delawares' tribal offices in 2006. Two Lenape women, Paula Pechonick and Annette Ketchum read some of the first drafts and I am thankful for their assistance. For anyone not expressly mentioned that supported my study, I am grateful.

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## **Abstract**

This study explores the conflict between two Indian nations, the Delaware Tribe of Indians (headquartered in Bartlesville, Oklahoma) and the Cherokee Nation of Oklahoma (headquartered in Tahlequah, Oklahoma). The removal of the Delawares to the Cherokee Nation in 1867 created overlapping tribal territorial jurisdictions. Neither side would compromise what they understood to be their sovereignty, land, and resources. The Delawares argue that they should fully exercise their political relationship with the United States just as any other tribal nation while the Cherokee Nation resist the Delawares' sovereignty.

Both the Delaware Tribe of Indians and the Cherokee Nation of Oklahoma are historically important. The Delawares were the first tribal nation to sign a treaty with the United States, thus setting the stage for the relationship between all Indian tribes and the federal government. The Cherokee Nation is noted in history for its legal challenges to the U.S. that defined American Indian tribes as domestic dependant nations, which is a legal basis for tribal sovereignty today.

Although numerous scholars have explored the Delawares and Cherokees, few have explored the divisive relationship between these two nations. Their relationship calls into question the legal and highly political definition of federal acknowledgement and the administrative processes thereof. With recognition comes federal resources and money. Thus, in the struggle of these two nations an important aspect of tribal sovereignty is on trial. The controversy is not just a matter of two tribal nations



defending their own territory and resources. It is a matter of nationalism, history, and identity.

Delaware-Cherokee hostility intensified in, 1979, when the Indian Self-Determination and Assistance Act became law. Up to this point, the federal government recognized the Delaware Tribe of Indians, specifically because the Delawares were recognized as eligible to reorganize through the 1934 Oklahoma Indian Welfare Act (OIWA). In 1977, the Cherokee Nation reorganized and began to insist that the Bureau of Indian Affairs (BIA) recognize the 1867 Articles of Agreement between the Delawares and the Cherokees. As a result of the Cherokee Nation's pressure, the BIA terminated its government to government relationship with the Delaware Tribe of Indians in 1979. The Delawares appealed their case to the BIA which administratively restored the Delawares' federal acknowledgement in 1996. During the eight years that the Delawares were restored to federal acknowledgement, the Cherokee Nation objected and took the BIA up the legal ladder to the Supreme Court. In the mean time, the Delaware Tribe of Indians developed a number of successful programs available only to federally recognized tribes through the Indian Self-Determination and Assistance Act, but court rulings destroyed these programs. Thus, the Delawares became the only tribe to lose its federal recognition twice in the last forty years.

While this study examines the uniquely divisive relationship between the Delawares and Cherokees, it is a study about termination and federal recognition and the rights of the tribal members that is relevant to all tribes. Thus, this dissertation illuminates important issues that are at the heart of Indian history today—sovereignty, self-determination and identity.

## *Introduction*

This study explores the conflict between two Indian nations, the Delaware Tribe of Indians (headquartered in Bartlesville, Oklahoma) and the Cherokee Nation of Oklahoma (headquartered in Tahlequah, Oklahoma). The removal of the Delawares to the Cherokee Nation in 1867 created overlapping tribal territorial jurisdictions. Neither side would compromise what they understood to be their sovereignty, land, and resources. As a direct result of the federal government's intervention into the affairs of the Delawares and the Cherokees, the two nations have been forced to engage in numerous social, political and court battles against each other. All the while, the members of both tribes often lived next door to each other, attended the same schools, shared the same territory and tribal services, and attended the same intertribal cultural programs. Yet, each nation retained its own culture and language. Each tribe hotly defended its own resources and prerogatives, directly challenging the other's claim to tribal sovereignty. The Delawares argue that they should fully exercise their political relationship with the U.S. just as any other tribal nation while the Cherokee Nation resist Delaware challenges to their sovereignty.

The conflict began in 1866, when the United States forced the Delawares to give up their lands in Kansas and to sign a treaty with the Cherokees for new homelands. The Cherokee Nation gave up some of their land to make room for the Delawares; this arrangement was not welcomed by the Cherokees or the Delawares. Both tribes signed two agreements with each other; the December 9, 1866, "Agreement between the Cherokee Nation and the Delaware Tribe" and the 1867 "Articles of Agreement between

the Cherokee Nation and the Delaware Tribe.”<sup>1</sup> The Delawares moved to the Cherokee Nation in 1867, believing they had established their new homes on a reservation of their own that was surrounded by the Cherokee Nation. But the Cherokees believed that the Delawares settled territory within the Cherokee Nation. Language in the various agreements and treaties conflicts. Still these documents were used to define the limits of both the Delawares and the Cherokees status in the U.S. as well as their relationship to each other. In 2004, a federal court held that according to the 1867 Articles of Agreement and Cherokee Treaty, the Delawares chose to “incorporate” with the Cherokee Nation by abandoning their tribal organization. Nevertheless, my study demonstrates that the Delawares maintained their tribal organization after 1867.

Conflicting legal claims of the Delawares and Cherokees resulted in the Delawares becoming the only Indian nation to lose its federal acknowledgement twice in the last forty years. The Cherokee Nation was at times able to gain the upper hand over the Delawares in federal court and by administrative fiat. In other instances, the Delawares prevailed. Thus the battle unfolded for more than a century.

The adversarial relationship between two significant tribal nations calls into question the legal and highly political definition of federal acknowledgement and the administrative processes thereof. The Delawares argue they have held a government to government relationship with the federal government since the U.S. revolution. However, when the federal government established the federal acknowledgement process (FAP) in the 1970s, and then recognized the Cherokee Nation in 1976, the Bureau of

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<sup>1</sup> *Treaty with the Delaware*, 14 Stat. 793 (July 4, 1866). *Articles of Agreement Approved by the President and the Secretary of the Interior on April 11, 1867*, 25 Stat. 608 (Oct. 19, 1888). *Treaty with the Cherokee*, 14 Stats. 799 (July 19, 1866).

Indian Affairs (BIA) rescinded the Delawares' recognition as an independent tribe. The FAP was devised for tribal organizations as a means of establishing the validity of their claims to tribal sovereignty. A great deal of money is at stake in the FAP. When a tribe is acknowledged, it will be included in the budgetary processes so that the number of their membership is counted in the total appropriation given to the Department of Interior to pass through the BIA and finally to Indian Tribes. Here lies the essential Delaware conflict with the Cherokee Nation. The Delawares' trust monies originating from the Indian Claims Hearings, totaling about four million in 1977, in addition to federal contracts and grants were all at stake.

Both the Delaware Tribe of Indians and the Cherokee Nation of Oklahoma are historically important. The Delawares were the first tribal nation to sign a treaty with the United States, thus setting the stage for the relationship between all Indian Tribes and the federal government. The Cherokee Nation is noted in history for its legal challenges to the U.S. that defined American Indian tribes as domestic dependant nations, which is a legal basis for tribal sovereignty today. With recognition comes federal resources and money. Thus, in the struggle of these two nations an important aspect of tribal sovereignty is on trial. The controversy is not just a matter of two tribal nations defending their own territory and resources. While this dissertation delineates a history of the tribes' legal arguments, I will also explain the consequences of administrative and legal decisions on the Delaware tribal members. After all, at the very heart of sovereignty are the Native American people.

The Delawares were not the only tribe to be destroyed (at least temporarily) by federal action. The Curtis Act of 1898 and the Five Tribes Act in 1906 attempted to

dissolve the governing authority of the Cherokee Nation and other tribes in Indian Territory. The federal government eventually reversed course and now recognizes the Cherokees. The Delawares struggle for restoration of recognition and sovereignty is therefore not unlike the Cherokees' fight for recognition and sovereignty.

Delaware-Cherokee hostility intensified in 1979 when the Indian Self-Determination and Assistance Act became law. Up to this point, the federal government recognized the Delaware Tribe of Indians, specifically because the Delawares were recognized as eligible to reorganize through the 1934 Oklahoma Indian Welfare Act (OIWA). In 1977, the Cherokee Nation reorganized and began to insist that the Bureau of Indian Affairs (BIA) recognize the 1867 Articles of Agreement between the Delawares and the Cherokees to have "incorporated" the Delaware people as Cherokee "citizens by blood."<sup>2</sup> As a result of the Cherokee Nation's pressure, the BIA terminated its government to government relationship with the Delaware Tribe of Indians in 1979.<sup>3</sup> The Delawares appealed their case to the BIA which administratively restored the Delawares' federal acknowledgement in 1996.<sup>4</sup> During the eight years that the Delawares were restored to federal acknowledgement, the Cherokee Nation objected and took the BIA up the legal ladder to the Supreme Court.<sup>5</sup> In the mean time, the Delaware Tribe of Indians developed a number of successful programs available only to federally recognized tribes

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<sup>2</sup> *Treaty with the Cherokee*. 1867 Articles of Agreement.

<sup>3</sup> Lafollette Butler, Acting Deputy Commissioner to Henry Secondine, Chairman Cherokee Delaware Business Committee, May 24, 1979. Dorsey and Whitney Files, Delaware Tribe of Indians, storage Box 8. Hereafter cited as DW-DTI-8.

<sup>4</sup> "BIA Announces Intent to Restore Federal Recognition to the Delaware Tribe," *Delaware Indian News* (Bartlesville, OK), July 1996. A copy of the letter was published in the newspaper. "Federal Recognition Restored," *Delaware Indian News* (Bartlesville, OK), October 1996.

<sup>5</sup> *Cherokee Nation of Oklahoma v. Norton and Delaware Tribe of Indians*, Tenth Cir. (February 16, 2005). Appeal from the United States District Court for the Northern District of Oklahoma, (D.D. No. 98-CV-903-H) 241 F. Supp. 2d 1368 (November 16, 2004). The Cherokee Nation argued that the Delaware terminated themselves in the 1867 Articles of Agreement.

through the Indian Self-Determination and Assistance Act, but court rulings destroyed these programs.<sup>6</sup>

There are many examples of one tribal nation moving within the boundaries of another, thus creating a situation of overlapping tribal boundaries and competing claims.<sup>7</sup> The Delawares are one of two tribal nations (Shawnees being the other) forcefully removed to the Cherokee Nation of Oklahoma just after the Civil War. There are more examples that could be cited. However, the aftermath of the Delaware-Cherokee situation concerns us here. How did separate overlapping native societies sort through their differences?<sup>8</sup> As a result of the BIA's termination of the Delawares in 1979, the Cherokee Nation took a paternal role with regard to the Delawares.<sup>9</sup> They acted in much the same regard as the federal government that has positioned itself throughout much of the nineteenth and twentieth centuries as the parent of Indian nations. Neither federal nor Cherokee paternalism has benefitted the Delawares. As will be seen throughout the chapters, the uneven application of law and haphazard application of Indian policy left the Delawares struggling for their very existence when other tribal nations have thrived.

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<sup>6</sup> See Roberto Iraola, "The Administrative Tribal Recognition Process and the Courts," *Akron Law Review*, 38 (May 2, 2005).

<sup>7</sup> See also Hopi/Navajo land dispute, Modoc/Klamath and Modoc/Quapaw. Each case holds similarities.

<sup>8</sup> Shawnee Tribe of Eastern Oklahoma and Keetoowah Band "within" the Cherokee Nation; Yuchi "within" the Creek Nation, Miccosuki Band within the Seminole Nation of Oklahoma, etc. Sometimes these bands/tribes have cultural connections with the hosting nation such as the Keetoowah and Cherokee. The Miccosuki, a band within the Seminoles, had a distinct language and culture previous to the removal of the Seminoles from Florida. In other cases, such as the Shawnee or the Yuchi, there were regional similarities but no substantial cultural connection to the hosting nation.

<sup>9</sup> Ross Swimmer, Principal Chief Cherokee Nation of Oklahoma to Forrest Gerard, Assistant Secretary of the Interior, 27 February 1978, DW-DTI-8.

Literature Review:

The historiography of the Delawares, or Lenape Indians, is extensive. Among the first to encounter European explorers, traders, and settlers, the Delawares have been the subject of numerous works dating back to the seventeenth century.<sup>10</sup> Following the culture and religion of the Delawares, in 1937 Frank Speck wrote *Oklahoma Delaware Ceremonies, Feasts and Dances*.<sup>11</sup> C.A. Weslager wrote the most comprehensive histories of the Delawares.<sup>12</sup> Anthropologist Herbert Kraft, has summarized the history and archaeology of the Lenape.<sup>13</sup> Kraft's work is by far the most detailed study of Delaware removal from Kansas. Kraft argues that the language of "incorporation created an ambiguity as to whether the Delawares had agreed to relinquish its tribal sovereignty."<sup>14</sup>

C.A. Weslager, the preeminent historian of the Delaware Tribe has consistently argued in favor of Delaware sovereignty. In November, 1978, Weslager wrote to the *Bartlesville Examiner* responding to a series of letters between Bruce Miller Townsend, former Chairman of the Delaware Business Committee and the Cherokee Principal Chief, Ross Swimmer. In the letter, Weslager stated that after "30 years in studying the Delaware Indians, the last ten of which relates to their movement to Oklahoma," he

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<sup>10</sup> Archer Butler Hulbert and William Nathaniel Schwarz, ed. *David Zeisberger's History of the Northern American Indians* (Ohio State Archaeological and Historical Society, 1910 reprinted 1991).

<sup>11</sup> Frank G. Speck, *Oklahoma Delaware Ceremonies, Feasts and Dances* (Philadelphia: The American Philosophical Society, 1937).

<sup>12</sup> CA Weslager, *The Delaware Indians, A History* (New Brunswick, New Jersey, Rutgers, U. of NJ, 1996). \_\_\_\_\_, *The Delaware Indians Westward Migration* (Wallingford, PA: The Middle Atlantic Press, 1978).

<sup>13</sup> Herbert C. Kraft, *The Lenape Archaeology, History, Ethnography* (Newark: University of New Jersey Historical Society, 1986).

\_\_\_\_\_, *The Lenape-Delaware Indian Heritage 10,000 BC to AD 2000* (N.p: Lenape Books, 2001).

<sup>14</sup> Kraft, *The Lenape-Delaware Indian Heritage*, 514.

proclaimed that the Delawares never intended to give up their sovereignty. To the contrary, the Delawares had “spent 250 years to maintain its identity in the face of unrelenting white pressure.”<sup>15</sup>

Luke Cramer Ryan wrote about the tribal nations’ experiences in Kansas leading up to and during the Civil War in Kansas.<sup>16</sup> Amidst the Civil War, the federal government’s lack of protection for Native American property and humanity caused great hardship among the tribal nations in Kansas. Ryan’s study gives context to the Delawares, who still relied on horses and hunting, and suffered greater atrocities and violence than their more Christianized counterparts. As a result, disdain for whites drew Delawares tighter together.<sup>17</sup> His study lends insight into why the Delawares, as a more tightly knit tribal nation, sought to remove altogether from the violence and poverty in Kansas.

Other Delaware studies include: Terry Prewitt’s research paper for the Army Corp of Engineers, which strongly portrayed the values and cultural norms of the Delawares. Prewitt detailed their settlement religion, Nkàmwin, held in the Big House Church or Xingwikáon, from 1867 to 1924.<sup>18</sup> Deborah Nichols is a Delaware tribal member who has published her work on Delaware Warriors in the Civil War. In addition, Nichols has written numerous histories for the *Delaware Indian News* (Bartlesville, OK).<sup>19</sup>

Specialized books that target a Delaware audience include *Legends of the Delaware*

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<sup>15</sup> C. A. Weslager, Visiting Professor, U.S. History, Brandywine College, letter to the editor, *Bartlesville Examiner-Enterprise*, November 10, 1978, DW-DTI-8.

<sup>16</sup> Luke Cramer Ryan, “The Indians Would Be Too Near Us’: Paths of Disunion in the Making of Kansas, 1848-1870” (PhD Dissertation, University of Arizona, 2009).

<sup>17</sup> *Ibid.* 181, 187.

<sup>18</sup> Terry Prewitt, “Tradition and Change in the Oklahoma Delaware Big House Community: 1867-1924.” (Copan Lake Project, Tulsa Corps of Engineers, 1980). Nkàmwin refers to the Big House religion; Xingwikáon refers to the Big House church.

<sup>19</sup> Deborah Nichols and Laurence M. Hauptman, “Warriors for the Union” *Civil War Times Illustrated* 35, no. 7 (February 1997).



*Indians and Picture Writing*, by Richard C. Adams (Nichols wrote the Introduction), and *Delaware Trails: Some Tribal Records 1842-1907*, transcribed by Fay Louise Smith Arellano.<sup>20</sup> While studies of the Delawares date back to contact with Europeans in the early 1600s, these internal glimpses of their worldview illustrate some perspectives that would otherwise go unnoted in history.

Gender dynamics are important to any study of native societies. Even though Delaware historiography is extensive, gender perspectives are few.<sup>21</sup> Gunlög Fur recently published the first book dedicated to colonial period Delaware women's voices.<sup>22</sup> Along those same lines, Margaret Caffrey explored power dynamics between men and women within historic Delaware society.<sup>23</sup> Gender dynamics were important to the decision-making in the Delaware Tribe. Women, as both active participants in the Delawares' government and as recipients of those decisions, were influenced by the Delawares' relationship with the Cherokees.

Two recent Indian policy studies pertain to this dissertation. Each study explores how power differences adversely affect relationships between tribal nations that do and do not have federal recognition.<sup>24</sup> *Forgotten Tribes, Unrecognized Tribes, and the Federal Acknowledgment Process*, by Mark Edwin Miller, criticizes reservation and

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<sup>20</sup> Richard Adams, *Legend of the Delaware Indians and Picture Writings* (New York: Syracuse, 1997). Fay Louise Smith Arellano trans., *Delaware Trails, Some Tribal Records, 1842-1907* (Baltimore, Maryland: Clearfield Publishing Co., Inc, 1996).

<sup>21</sup> Gunlög Maria Fur, "Women's Authority and Anomalies of vision in Delaware Experiences of Colonial Encounters," Working Paper No. 98-08, *International Seminar on the History of the Atlantic World, 1500-1800* (1998) and "Cultural Confrontations on Two Fronts: Swedes Meet Lenape and Saamis in the Seventeenth Century" (PhD Dissertation, University of Oklahoma 1993). Fur compared the Delaware Indian colonization to the Saamis in Sweden.

<sup>22</sup> Gunlög Fur, *A Nation of Women, Gender, and Colonial Encounters Among the Delaware Indians*, (Philadelphia: University of Pennsylvania Press, 2009).

<sup>23</sup> Margaret Caffrey, "Complementary Power: Men and Women of the Lenni Lenape," *American Indian Quarterly* 24, no. 1 (Winter, 2000).

<sup>24</sup> Mark Edwin Miller, *Forgotten Tribes, Unrecognized Indians, and the Federal Acknowledgement Process* (Lincoln: University of Nebraska, 2004). David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001).

federally recognized tribes for their role in creating and then maintaining the status quo in the BIA's federal acknowledgement process.<sup>25</sup> Although the Delawares were not a part of his study, *Forgotten Tribes* applies to the Delawares because the Cherokee Nation of Oklahoma protested the Delawares' and other unrecognized tribal group's federal acknowledgement across the United States. The Cherokee Nation of Oklahoma has successfully opposed numerous tribal organizations seeking federal acknowledgement. The Cherokee Nation of Oklahoma is thus a powerful force in the federal acknowledgement process. David E. Wilkins and K. Tsianina Lomawaima indict the federal government for the inconsistency which has created an irregular and incoherent application of law towards American Indians. The Delawares exemplify the federal government's inconsistency but their story additionally provides a grassroots view of the legal and power differences that federal administration of Indian affairs causes.<sup>26</sup>

Scholars who have specifically examined the Delaware-Cherokee relationship include Richard C. Adams, Brice Obermeyer and Claudia Haake. Adams, a Delaware, was an attorney for his people at the turn of the twentieth century. Although his book mainly consists of copies of various documents regarding the Delawares and Cherokees, his brief comments on the subject are an important source for this period.<sup>27</sup>

Anthropologist Brice Obermeyer wrote his dissertation at the University of Oklahoma on

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<sup>25</sup> For more information on the Federal Acknowledgement Process (FAP) see: Jennifer P. Hughes, Esq., Morrisset, Schlosser, Jozwiak & McGaw, "Primer on Federal Recognition and Current Issues Affecting the Process," (Prepared for *NCAI Winter Session*, February 22, 2001).  
<http://www.msaj.com/papers/FedRecPrimer.html>.

Barbara N. Coen, "Tribal Status Decision Making: A Federal Perspective on Acknowledgment," *New England Law Review* 37, no 3 (April 24, 2003).

<sup>26</sup> Wilkins and Lomawaima.

<sup>27</sup> Richard C. Adams, *A Delaware Indian Legend And The Story of Their Troubles*, (Washington D.C. 1899).

the Delawares in the Cherokee Nation and has published a more extensive book.<sup>28</sup>

Claudia Haake is the first historian to closely examine the subject of the “Cherokee-Delaware Agreement of 1867, Past and Present.”<sup>29</sup> Her work is thus a landmark in Cherokee-Delaware historiography.

Haake argues that the Delawares were pressured to sign the 1867 Articles of Agreement.<sup>30</sup> Haake writes that the Delaware leaders were likely the victims of confused government officials who did not want to correct errors in language of the Articles of Agreement. Delaware leaders were hesitant to sign the Articles of Agreement with “ambiguous” terms, but Haake argues that the presence of government officials pressured the Delawares to sign.<sup>31</sup> There was also a distinct possibility that the Cherokees strategically placed the new language to maintain as much control as possible over the Delawares.<sup>32</sup> Deborah Nichols, Delaware member, in her article, “The Rest of the Story,” argues that the Cherokees manipulated the situation from the beginning.<sup>33</sup>

Haake also examined the intratribal dispute between the Delaware progressives and traditionalists.<sup>34</sup> This dispute complicated an already impossible situation before, during and after the 1867 Articles of Agreement.<sup>35</sup> Along with Weslager and Kraft,

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<sup>28</sup> Brice Obermeyer, “Delaware Identity In a Cherokee Nation: An Ethnography of Power” (PhD diss. University of Oklahoma, 2003).

<sup>29</sup> Claudia Haake, “Identity, Sovereignty, and Power, The Cherokee-Delaware Agreement of 1867, Past and Present,” *American Indian Quarterly* 26, no. 3 (Summer 2002). Perhaps because the Cherokee held such a powerful position with the federal government, historians of this subject encounter difficulty to such a high degree of opposition that most have backed away. More, to posit that the Cherokees have been a force of oppression runs the risk of validating a separation among Indian tribes and thus depreciating the status that Native Americans have only recently gained.

<sup>30</sup> Haake utilized sources from the National Archives that included letters from the Delawares and Indian Affairs Reports.

<sup>31</sup> Haake, 421.

<sup>32</sup> *Ibid.* 420-422.

<sup>33</sup> Deborah Nichols, “The Rest of the Story,” paper prepared for the *Delaware Indian News*.

<sup>34</sup> Although the terms “progressives” and “traditionalists” are problematic, they are commonly accepted descriptions.

<sup>35</sup> Haake, 423-425.

Haake indicates that progressive Delaware members were responsible for signing the 1867 Articles of Agreement. The mixed bloods (white and Indian parentage) aligned with progressives and the full bloods were often associated with the traditional native customs.<sup>36</sup> But the reality was even more complex. Some full-bloods were progressive and some mixed bloods were traditional and conservative. For example the progressive Journeycake preached to a Christian church congregation in the Lenape language, which shows how problematic terms like “progressive” and “traditional” are.

Haake argues that the Delawares and Cherokees continue a relationship steeped in colonialism: “In the course of this legal dispute about Delaware federal recognition, both tribes have found it necessary to forge a tradition of Native sovereignty.”<sup>37</sup> The dispute between the Delawares and the Cherokees, Haake writes, is relatively insignificant because it is a contest between two powerless political units. She says “as hollow as it [sovereignty] may be in some respects, [this does not mean it] has become entirely meaningless.”<sup>38</sup> Yet, underlying the struggle between the two tribal nations was a fight for what was left of their land, culture, resources and political autonomy. The passage of the Indian Self-Determination Act exacerbated this struggle.<sup>39</sup>

In his dissertation “Delaware Identity in a Cherokee Nation: An Ethnography of Power,” Obermeyer asserts that the Cherokee Nation sought to “control how the Delaware identify with the federal government to legitimize their economic and political

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<sup>36</sup> This terminology comes from a long line of documents in Indian Affairs to an “Election Bulletin of the Progressive Delaware,” in 1978.

<sup>37</sup> Haake, 428.

<sup>38</sup> Ibid.

<sup>39</sup> Haake, 429. Because I directly receive and live among the Delawares who gained and lost services, members who do not have access to health care or other important services, I have first hand view about the significance of federal acknowledgement.

power over the Delaware.”<sup>40</sup> Obermeyer uses a Delaware cultural precept to explain the political power struggle between the Delawares and Cherokees. According to Obermeyer, because the Delawares generally avoid straight forward engagement in conflict, the Cherokee Nation was able to “manipulate the Delaware political structure,” and “make it appear that the Delaware consent to a Cherokee identity.”<sup>41</sup> Obermeyer employs Michel Foucault’s theories about power structures to explain the native nations’ predicament: “those in subordinate positions,” such as the Delawares, only appear to “consent to the existing inequalities.”<sup>42</sup>

The Delawares’ conflict with the Cherokee Nation of Oklahoma is the subject of “A Lesson in Administrative Termination,” an unpublished manuscript by Gina Carrigan and Clayton Chambers.<sup>43</sup> This historical study was written to support the Delawares’ legal cases. Their work is based on exhaustive archival research that has been an indispensable guide for the present study.

The Cherokees’ argument against the legal recognition of the Delawares is found in Duane King’s paper entitled, “Delaware Membership in the Cherokee Nation.”<sup>44</sup> His arguments are based on some of the same basic factual information as that of Carrigan and Chambers sources, but with a different conclusion that supports the Cherokee Nation legal arguments. Overall, King, Carrigan and Chambers’ arguments were utilized to support specific legal agendas rather than independent scholarly inquiry. To assure the

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<sup>40</sup> Obermeyer, x.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Gina Carrigan, J. D. and Clayton Chambers, “A Lesson in Administrative Termination: An Analysis of the Legal Status of the Delaware Tribe of Indians” (Bartlesville: The Delaware Tribe of Indians, © 1995).

<sup>44</sup> Duane King, “Delaware Membership in the Cherokee Nation,” January 10, 1994, DW-DTI-8.

integrity of their scholarship, I examined the documents that they collected as well as other sources.

The relevance of the Delawares' case impacted more than scholarship; scholars themselves were affected by the Delawares' issues. In 2006, the *American Indian Culture and Research Journal* published "Contested Conversations: Presentations, Expectations, and Responsibility at the National Museum of the American Indian" by Joanne Barker and Clayton Dumont. This article described the National Museum of the American Indian's (NMAI) direct relationship to the Delaware Tribe of Indians and illustrated how their federal status affected the museum's ability to relate to the Delawares. The authors were cognizant of the ramifications that the Delawares experienced in terms of representation of and for their culture at NMAI, pointing out the link between termination and the Delaware Tribe of Indians. Yet, the museum promised to consult and represent a tribal people no longer able to participate in the Native American Graves and Protection Act (NAGPRA). Another irony was that the Delawares were central in the museum's presentation of Native America, although there was little in the presentation conveying the Delawares' present political reality. Lastly, one of the authors was a Delaware tribal member who had endured several swings of recognition in her lifetime:

The changing Delaware status, in the political forums where recognition matters, remains a personal challenge for Barker to negotiate. She was born in 1962 and enrolled/recognized as Delaware; terminated in 1979 as Delaware, only qualified/recognized as Cherokee; reinstated in 1996 as Delaware; and terminated as Delaware again in 2004.<sup>45</sup>

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<sup>45</sup> Joanne Barker, Clayton Dumont, "Contested Conversations: Presentations, Expectations, and Responsibility at the National Museum of the American Indian," *American Indian Culture and Research Journal*, 30 no 2: 2.

Sources:

The methodology for this study was to go straight to the tribal nations' resources and utilize numerous oral histories of Delaware and Cherokee people. There are vast collections of letters and tribal records in the Delaware Tribe's headquarters storage. To narrow the research, I sought to secure the sources specifically from the legal cases. One of the most important collections was in storage, labeled Dorsey and Whitney files, Box 8 which contains documents from the National Archives, Office of Indian Affairs and the Bureau of Indian Affairs records; the Richard Adams collections at the University of Texas and the University of Kansas, the Gilcrease Institute; newspaper articles from Kansas and Oklahoma; the Cherokee Nation and the Delaware Tribe's federal legislation, legal cases, court hearings and position papers. I received permission from the Delaware Tribal Council. As I sorted through the material, a Delaware attorney was present.

My other major source for documents was the University of Oklahoma Western History Collection. The Doris Duke Indian Oral History Collection, 1967 to 1972, contains oral histories from Delawares and Cherokees and contributed greatly to this study. In the Wilma Mankiller Collection at the Western History Library in Norman, I found the Cherokee perspective on the controversy. Mankiller was Principal Chief for the Cherokee Nation of Oklahoma while the Delaware-Cherokee dispute was underway. As the first woman Chief of the Cherokee Nation, her loyalty to Native Americans as a whole and to her Cherokee people was tested.

The last major group of resources was varied. Although the current Cherokee Nation government would not comment, I shared drafts throughout the writing of this

study with a representative at the Cherokee Headquarters, Dr. Richard Allen. To balance his support of my scholarship with what he could share about the legal cases, Allen often shared the Cherokee perspective on specific issues, such as the Keetoowahs. Attending the Cherokee symposiums that he directs gave me more insight into Cherokee political, legal and scholarly values. The *Delaware Indian News*, the *Cherokee Phoenix*, the *Bartlesville Examiner-Enterprise* and other publications were also valuable. Additionally, several Delaware Elders provided information to supplement my documentary research.

There are numerous unpublished Delaware genealogical works, family histories, and oral testimonies that have informed this study. Two that I have used in this dissertation are “KIK THA WE NUND:” the Delaware Chief William Anderson and His Descendants, by Ruby Cranor and The Story of Eliza and John A. Randall and Their Descendants, by Alta Mae Bowman.<sup>46</sup> Both lend personal circumstances to the overall story of the Lenape. James Rementer, a Delaware scholar in his own right, has studied the Lenape language and customs since 1962 and has written several articles. His work is cited extensively in almost every article or book written on the Delaware since 1970. The oral accounts of Delaware Elders and tribal leaders who experienced and recounted the Delawares’ history are also important.

### Chapter Summary:

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<sup>46</sup> Ruby Cranor, “KIK THA WE NUND” the Delaware Chief William Anderson and His Descendants, ([Bartlesville]: ©1990). Alta Mae (Randall) Bowman, The Story of Eliza and John Randall And Their Descendants, (N.p.: n.p., 1986).



Chapter one introduces the Delaware tribal nation's experience in Kansas and the key developments that led to their removal to the Cherokee Nation of Oklahoma. The Civil War left the Cherokee Nation in shambles and amenable to receiving the Delawares into their tribal territory in return for money. While the Delawares were reluctant to emigrate to the Cherokee Nation, the post Civil War violence in Kansas as well as the federal government's pressure induced the Delawares to accept removal to the Cherokee Nation. Chapter one explains how the two agreements with the Cherokee Nation came into existence as well as the Delawares' removal to the Cherokee Nation as a result of the agreements.

Chapter two describes the Delawares' numerous problems that arose because of their agreement to move to the Cherokee Nation. These problems resulted in Supreme Court rulings that dually enrolled the Delawares as both Delaware and Cherokee citizens, and yet, wiped out the reservation that the Delawares thought they had purchased from the Cherokees. The friction between the tribes intensified because the vast mineral wealth was found on lands belonging to Delaware children and original allottees. The federal governments programs of assimilation, allotment, and Indian boarding schools significantly affected not only tribal friction, but tribal members of both nations who were left in devastating poverty. Yet, Cherokees and Delawares, along with all other Indian peoples fought in World War One, forging a path towards equality in mainstream American society.

Chapter three discusses developments from 1941 to 1979, which matured into the modern conflict between the Cherokees and the Delawares. The federal government eventually abandoned assimilation programs and encouraged constitutional governance

for tribal nations under the Indian Welfare Act. The Delawares pursued this avenue under a special act for Oklahoma, the Oklahoma Indian Welfare Act (OIWA), only to be interrupted by World War Two. The Delawares shut down their government and sent a large number of their men to battle for the U.S. At the close of the war, the federal government instituted the Indian Claims Commission (ICC). The Delawares participated, reclaiming millions of dollars lost to injustices from the 1800s in Kansas and Indiana. The Delawares also emerged in this era of history as a leading tribal nation in Oklahoma providing, health, nutrition, and housing services to all Native Americans in their service area. The Cherokee Nation challenged the Delawares' access to their claims money, as well as newly developing Bureau of Indian Affairs (BIA) programs, thus igniting the post Indian Self-Determination Act conflict. At this juncture in 1979, the Delawares lost their federal acknowledgement.

In chapter four, 1979 to 1996, the Delawares struggled to restore their federal acknowledgement. The Cherokee Nation of Oklahoma resisted their efforts at every turn, socially, legally, and politically. The Cherokees pressured the federal government to maintain the Delawares as part of the Cherokee Nation until the Delawares proved otherwise in court. There was no middle ground. Either the Delawares were federally acknowledged as a sovereign tribe, under BIA regulations, or the Delawares no longer existed as a sovereign nation. Both the Cherokees and the Delawares waged an extensive legal battle to prove their cases. The Delawares, however, pressured the BIA to retract their 1979 decision that stated the Delawares only existed as a tribe within the Cherokee Nation. The BIA, under the leadership of Ada Deer (Menominee tribal member), Assistant Secretary of the Interior, approved the restoration of the Delawares in 1996.

Chapter five covers the period from 1996 to 2004. Once the Delawares reestablished their federal recognition, the Cherokee Nation of Oklahoma immediately filed suit in court. Technically the Cherokees argued the BIA breeched the Administrative Procedures Act (APA), but the underlying argument was that the Delawares were not an independent federally recognized tribal nation. While the case brewed in courts until 2004, the Delawares quickly became an economic and political player in Washington D.C. and at home in Bartlesville. The Delawares applied for BIA monies that enabled them to hire qualified staff, who obtained additional funding and resources to run government services only for their tribal members. This was the catch. The BIA did not know where or how the Delawares would be funded and therefore directed that the Delawares provide only for their members, even though other federally recognized tribal nations provided services to all qualified Native Americans within their respective areas and jurisdictions. The Delawares accepted this but still pushed the envelope when they could. Their government and tribal members grew increasingly secure with their status, however, and when the Tenth Circuit Court of Appeals decided in favor of the Cherokees in November, 2004, the Delawares lost health, the Elders nutrition program, children and family services, and housing programs that alleviated poverty in their jurisdiction.

While this study examines the uniquely divisive relationship between the Delawares and Cherokees, it is a study about termination and federal recognition and the rights of the tribal members that is relevant to all tribes. Thus this dissertation illuminates important issues that are at the heart of Indian history today—sovereignty, self-determination and identity.



## Chapter One: Delaware Removal, 1867

In 1867, Welenuxkwe (Good Woman) gathered her six children and walked two-hundred and eighty miles from Fort Leavenworth, unorganized Kansas, to the Cherokee Nation in what was then called Indian Territory. It is not hard to imagine the anguish Welenuxkwe felt leaving a home she had worked very hard to build as well as the grave site of her eight-month-old baby. She likely thought she was abandoning him as this Delaware woman took great measures to care for her children. Grandfathers, uncles, and fathers assisted, yet Welenuxkwe was the one who was responsible for providing a home for her children. For Welenuxkwe to “remove” her surviving children to a strange location within the Cherokee Nation was a tremendous burden. Her family’s destiny was undoubtedly in question; Welenuxkwe had no idea what lay ahead or what she and her small children would need for such a trip.

The home that she was leaving had been good to her. She had more cattle than most of the Delaware ranchers. She grew corn, potatoes, and hay while raising horses, cattle and hogs.<sup>47</sup> Every year, Welenuxkwe prepared the fields to plant corn, “which she herself took to the mill.” Although she was prosperous, she had known personal hardship. Married and widowed twice, Welenuxkwe was left alone to care for her children throughout most of their young lives.<sup>48</sup> This was especially difficult during the

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<sup>47</sup> Fay Louise Smith Arellano trans., *Delaware Trails, Some Tribal Records, 1842-1907* (Baltimore, Maryland: Clearfield Publishing Co., Inc, 1996), 146. Gunlög Fur, “Women’s Authority and Anomalies of vision in Delaware Experiences of Colonial Encounters,” (Working Paper No. 98-08, International Seminar on the History of the Atlantic World, 1500-1800, 1998), 5. In Delaware society, women were primarily responsible for the production, preparation, and distribution of food for the community. This dates back to the colonial period.

<sup>48</sup> Alta Mae (Randall) Bowman *The Story of Eliza and John Randall And Their Descendants*, (N.p.: n.p., 1986) 31. The men, fathers to her children, were in and out of the home, either off to the gold rush in

Civil War when she and her children were relocated to the safety of Fort Leavenworth where she lost her baby. Welenuxkwe as well as other Delaware families faced insurmountable difficulties away from the fort, back at home in Kansas. She feared for her children's safety as the territory grew more brutal with outlaw whites who stole her livestock, squatted on her land, and violently treated her and other Indians.<sup>49</sup> Surviving the Civil War and its aftermath had been hard enough. Now she had to rebuild her entire farm and livelihood on her own.<sup>50</sup>

Notwithstanding the kinds of challenges Welenuxkwe faced before removal, the Delawares had been successful in Kansas before the Civil War. When the railroad companies trespassed on Delaware lands, however, their lives changed dramatically. Newcomers outnumbered, harassed, and attacked the Delaware people.<sup>51</sup> The Delawares were forced to live on credit and grew desperately poor. They firmly believed that they had come to an agreeable solution by removing to a new home in Indian Territory with the Cherokee Nation. As a result, tribal leaders informed Welenuxkwe that her family, along with all the other Delaware families, would be able to live on a Delaware reservation in the Cherokee Nation. She therefore submitted and signed a registry in February 1867 to receive the provisions for the trip. Perhaps she signed with some

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California or fighting in the Mexico and Civil Wars. One was dead by the time of the removal to Oklahoma due to his contracting pneumonia; and the other, who she thought had died in California, unexpectedly returned and fathered several more children soon after this time period.

<sup>49</sup> See Luke Cramer Ryan, "The Indians Would Be Too Near Us": Paths Of Disunion In The Making Of Kansas, 1848-1870 (PhD Diss., University of Arizona, 2009). Throughout Ryan's dissertation, he evidences the depth of violence against the Delawares before, during and after the war.

<sup>50</sup> Bowman, 11, 19-24, 36. Herbert C. Kraft, *The Lenape-Delaware Indian Heritage, 10,000 BC to AD 2000* (N.p.: Lenape Books, 2001), 513. Kraft explains that a huge influx of Indians (estimated between 15,000 to 17,000) fleeing from other areas overran Kansas. They experienced and brought to the Delawares, who numbered approximately 1,000, grave illness from lack of food, clothing and shelter. At least ten percent of the total influx of Indians perished.

<sup>51</sup> Ryan, 177-180.

reluctance for she and her children were the very last entries in the registry.<sup>52</sup> Not signing meant surrendering her tribal affiliation and remaining in Kansas as an American citizen. With her signature, she pledged her loyalty to the Delaware Nation.

Events in Washington D.C. had occurred, however, that changed the terms of the removal bargain. These terms were unknown to Welenuxkwe as she prepared for her family's move. The Delaware tribal leaders had negotiated another contract in April that had changed what she had agreed to on the February registry. The new agreement said that Welenuxkwe would be incorporated into the Cherokee Nation, not just that she, as a Delaware, was moving with her tribal nation to a new reservation. Yet she had no recourse but to proceed with the removal. Welenuxkwe and her people emigrated to the Cherokee Nation, beginning in the spring of 1867 through the winter of 1868.

Welenuxkwe is one example of an everyday woman in the Delaware Tribe, although her experiences show the impact of removal on an average Delaware citizen. She was more successful than most, yet she had no say in the final arrangements. As a single mother, Welenuxkwe felt the ramifications of the tribal negotiations, treaties and contracts in profound ways. But not even all of the tribal leaders had a say in the final terms of the removal agreement as we will see. Because Welenuxkwe was connected to both the progressive Delawares as well as the traditional Delawares, she exemplifies the range of Delaware experiences. Her traditional influences were several. Her sister possessed a Delaware Doll, an effigy connected to a religious rite dating back to the pre-contact period. Welenuxkwe farmed as women had for centuries in Delaware society. Welenuxkwe could be counted among the progressives, or Christian Delawares, as well. Her children went to the Pratt School along with some of the other Christian converts.

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<sup>52</sup> *Delaware Indian Agency Collection, 1867-1874, Western History, University of Oklahoma.*

Marrying tradition and innovation, she seems to have negotiated her circumstances pretty well until and after the removal. Welenuxkwe's home in Indian Territory by Lightning Creek though, turned out to be nothing like the home she was forced to leave in Kansas. Still, she had a roof over her children's heads and remained a leader of her people by assisting tribal members with their annuities and legal claims.

An overview of Delawares' removals prior to the Civil War is critical to understanding the range of Delaware motivations for signing the agreements with the Cherokee Nation.<sup>53</sup> Having relocated many times since the 1600s, the Delawares were well practiced in adapting to new environments. Historically, the Delaware Tribe had absorbed the shock for the Euro-American settlers migrating westward. After 1776, every time settlers pushed the lines of the frontier further west, the Delawares (along with other northeastern tribes) were removed to make room for Euro-American expansion, often confronting hostile Indians in the process. The original Delaware homeland extended from northern Delaware through eastern Pennsylvania, all of New Jersey, and southeastern New York, along the Delaware River. Beginning in the colonial era, war and treaties pushed the Delawares west to western Pennsylvania, Ohio, Indiana, Missouri and then to Kansas. By the time they reached Kansas, Delawares had learned a combination of diplomacy and violence to deal with other tribal nations while at the same time accepting other emigrating tribal peoples.

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<sup>53</sup> With each removal, the Delawares left former citizens along the way. For that reason, there existed numerous groups of Delawares from the east coast, up through Ohio, Indiana (into Canada), Missouri and down through Texas and Oklahoma. They either later moved to Canada or rejoined the main body in Kansas.



With each move westward, the Delawares rebuilt their Big House Church (Xingwikáon) and traditions.<sup>54</sup> Tribal leaders such as Chief Anderson Sarcoxie, Charlie Elkhair, Colonel Jackson, John and George Anderson were staunch supporters of the ancient Delaware religion and culture, Nkàmwin. No less evident was their insistence on remaining a unified Delaware nation.

Beginning in 1829, and after the final arrivals of 1831, the Delawares thrived in Kansas. Their two million acre reservation lay along the forks of the Kansas and Missouri Rivers.<sup>55</sup> The Delawares' leader William Anderson, Kik Tha We Nund, wrote in 1831 the "land is good, and also the wood and water, but the game is very scarce."<sup>56</sup> By the time he wrote this, Kik Tha We Nund was old and he died soon after.<sup>57</sup> He had lived to see his people suffer through much hardship in Missouri before triumphing in Kansas. Kik Tha We Nund fought hard to get the federal government to provide the Delaware Nation a good reservation in Kansas where he could draw in Delaware groups from the rest of the country and Mexico. In addition, he sought to revitalize Delawares' traditions.<sup>58</sup> His efforts paid off as Kansas' rich farm lands and pastures allowed his beloved people to flourish for the first time in hundreds of years. Not since their great-

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<sup>54</sup> Jay Miller, "Old Religion among the Delawares: The Gamwing (Big House Rite)" *Ethnohistory*, 44 (Winter 1997): 115. Miller states, "While the building was the locus and focus of the rite, its context was the nodal town or clan capital of a regional community involved in the essential exchange of summer crops raised by women and winter game hunted by men. During the spring runs both men and women caught and processed fish. The culmination of the women's efforts was the Green Corn or Maize rite, and that of the men's was the Mising rite, featuring the masked incarnate of the spiritual keeper of the game," 122.

<sup>55</sup> *Treaty with the Delawares*, 7 Stat. 326 (August 3, 1829).

<sup>56</sup> Weslager, *History*, 375. Ruby Cranor, "KIK THA WE NUND" the Delaware Chief William Anderson and His Descendants, ([Bartlesville?]: ©1990), 2-3. Born between 1750-1757, Kik Tha We Nund was the son of John Anderson, a white trader and his Delaware wife on the Ohio at Beaver Creek (below Ft. Pitt). His mother's great grandfather was Delaware head leader Netaawatwees, keeper of the wampum for the Unami. Netaawatwees had led the tribe to Cayuga Falls in 1758 and soon after to the Tuscarawas and founded Newcomers town. Kik Tha We Nund spent much time with his grandfather Netaawatwees until his death in 1776. Kik Tha We Nund became the head leader in 1805 when his predecessor Hockingpomska died.

<sup>57</sup> Cranor, 40. Kik Tha We Nund died in early October, 1831.

<sup>58</sup> Cranor, 5-13. Kraft, *The Lenape-Delaware Indian Heritage*, 507.

great-grandparents' days in Pennsylvania and New Jersey had the Delaware people prospered so well.

Even though they had a rough beginning, life in Kansas was better than it had been on their previous reservation in Missouri. The Department of Indian Affairs was slow to provide assistance it had promised for the removal. Eventually, to assist in their transition to new homes, the Delawares' federal Indian Agent helped them to build log cabins, modern frame houses, barns, mills, schools, and a trading post. Blacksmiths and teachers were hired. Annual cash payments, distributions of seed, tools, and livestock helped to develop farms. The Delawares even became excellent breeders of horses, cattle, sheep, and hogs. Although their reservation had dwindled to 103,000 acres by 1865, Delaware citizens cultivated 1, 878 acres of wheat, corn, potatoes, and hay. They also made use of land that was not cultivated, extracting timber for lumber, harvesting maple sugar, and collecting furs.<sup>59</sup>

In Kansas, Delaware hunters and traders were often gone for extended periods of time to obtain valuable furs and buffalo robes. Delaware men scouted, tracked, and interpreted for the U. S. army.<sup>60</sup> To take part in these endeavors required numerous warrior skills. Indeed, most men strived to prove themselves through hunting and war. Consequently the Delaware people held these warriors in high esteem and often told and sang about their feats in their Big House religious observance, Nkàmwin, held annually in the Big House Church, Xingwikáon. However, feats of valor were saved for the war dances, called Pahnàndama, held up to the early 1900s. This was an event for which

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<sup>59</sup> Arellano, 151. Kraft, *The Lenape-Delaware Indian Heritage*, 508-511. Tom Chaffin, *Pathfinder John Charles Frémont and the Course of American Empire* (New York: Hill and Wang A Division of Farrar, Straus and Giroux, 2002), 103.

<sup>60</sup> Prevost refers to the Delaware as “guides” and also lists names of Delaware Interpreters for the United States, 11-12.

warriors danced up to and struck the war post. The drum then stopped and only someone who had killed an enemy told their feat. Although rare, women sometimes participated.<sup>61</sup>

Learning skills uniquely suited to the environment such as hunting buffalo and scouting, the Delawares adapted to new conditions in Missouri and Kansas. On their reservation in Missouri, the Delawares had vied with the Osages, who taught them the art of Plains life. Nevertheless, the Osage fiercely protected their land and hunting territory in Missouri and killed several Delawares as trespassers. The Delawares learned that they would have to protect their new homes from other Indian claimants. In Kansas, war captain Swan Nuck, son of Kik Tha We Nund, led the Delawares' in battle.<sup>62</sup> The Pawnee vastly outnumbered Delaware warriors, yet the Delawares fiercely defended themselves against the Pawnee causing the federal government to intervene and force a peace agreement between the two tribal nations in 1833.<sup>63</sup>

Delaware men aided in numerous U.S. military activities. Records of their military service are found from the Mexican War, assisting Frémont to California, and supporting in a variety of Indian negotiations.<sup>64</sup> Frémont, in fact, so trusted the Delaware Indians that during a severe illness in 1857, he instructed Joseph Palmers, who was in

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<sup>61</sup> James Rementer, email to author, January 20, 2010.

<sup>62</sup> Cranor, 18-20.

<sup>63</sup> Weslager, *History*, 377-78; Grumet, 81. Kraft, *The Lenape-Delaware Indian Heritage*, 464-465. Kraft offers a sequence of fierce Delaware warriors dating back to Pennsylvania. For instance, he states, "What was painfully apparent was the Delaware's brutal effectiveness in eliminating white settlers, and the apparent ease with which the Indian warriors were able to penetrate deep into northeastern Pennsylvania and northwestern, New Jersey," 510. Sheer numbers of white settlers and the way that Delaware war parties acted autonomously, however, worked to the Delawares' disadvantage in the long run.

<sup>64</sup> Although Chaffin's book *Pathfinder*, consistently refers to the "Delaware Indians" composing Frémont's expedition party, he does not list them. Among those Delawares identified are: Crane (the only Delaware to die on the expedition), Connor, James Sagundai, and Captain Wolf. Cranor lists, Captain James Swannuck (english name), old he cum un, another son of War Captain Swan Nuck (James Swannuck), was one of the twelve Delawares chosen to assist on the Frémont expedition; Wa le numb, second son of Swan Nuck and grandson of Kik Tha We Nund, assisted with the wars in Florida, 1836-37. Wa le numb was also inducted into the Army to fight the Mexicans in California, 20-21. Timothy Crumrin, "An American Life: Captain John Conner of Indiana and the West," <http://www.connerprairie.org/historyonline/cjc.html> (accessed May 5, 2008).

charge of the party, to rely on Delaware Captain Wolf's guidance. To re-unite him to his party, Frémont needed the escort of another Delaware, Solomon, after his illness subsided.<sup>65</sup> Additionally, several Delaware men served as interpreters for the U.S: Charles Ketchum, Paschal Fish, Isaac Journeycake, James Ketchum (Que Sha To Wah), Jacob Ketchum, and Ben Love are just a few examples.<sup>66</sup>

Not all relations with other Indians were violent. More often, the Delawares enjoyed pleasant, even kin-like relations with neighboring nations. The Delawares welcomed other Indians, such as the Wyandot, Shawnee, Muncie, and even some Chippewa, into their society who relocated southward in Indian Territory.<sup>67</sup> The Muncie, a group of Moravian Christian Indians, bought a small parcel of land from the Delawares for their reserve in 1837. In addition, a group of Muncie, from Stockbridge, New York (some of whom were originally Delawares from New Jersey) joined the Delaware Nation on the reservation the following year. In the mid 1700s, many Delawares lived among the Wyandot in Ohio, particularly along the Sandusky. As each tribe moved west in the 1800s they continued to host each other. In Kansas the Delawares allowed their "uncles," the Wyandot, to purchase 23,000 acres from the Delaware Reservation in 1843.<sup>68</sup> These close relationships, however, do not suggest that the Delawares believed that other tribes had merged with their own. Simply put, Indians from other nations were often regarded as kinsmen, and the Delawares accordingly negotiated with them to share their resources. This frame of reference helps to explain the Delawares' relations with the Cherokee

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<sup>65</sup> Chaffin, 425.

<sup>66</sup> Prevost, 12.

<sup>67</sup> Ibid. vii.

<sup>68</sup> Weslager, *History*, 399-401. Prevost, vii.

Nation later in the nineteenth century.<sup>69</sup> Moreover, while the Delawares worked out amicable arrangements with other tribes, the Delawares were attracting splinter groups of Lenape back to the main body of their people, just as Kik Tha We Nund had envisioned.

In Kansas, the Delawares developed a prosperous and well educated community. John Shawnee, for instance, was a common Delaware yet he spoke seven languages.<sup>70</sup> Alongside a powerful Nkàmwin religion and Doll Dance tradition, the Delaware Reservation included missions from the Baptist, Moravian, and Methodists churches. Due to a massacre of Delaware Christian converts at Gnaddenhutten (Ohio), March 8, 1782, many Delawares abandoned Christianity. Consequently, missionaries among the Delawares worked in difficult circumstances for more than fifty years after the massacre.<sup>71</sup> Nevertheless, in the spring of 1841 the Delawares had a full Baptist seminary with twenty-five converts.<sup>72</sup> The Reverend John G. Pratt was in charge of the Baptist mission and was later appointed the Indian Agent for the Delawares.<sup>73</sup> He turned the mission into a boarding school for Delaware boys and girls, who were taught to read and write English and in addition received instruction in arithmetic and geography and learned to sing hymns in Lenape.<sup>74</sup> Ninety-three Delaware children attended the school

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<sup>69</sup> The federal government and other tribal nations also understood this as a normal practice in the nineteenth century. Take, for instance, Angie Debo's statement about the pre Civil War Indian territory population, "This intermingling of tribes seldom caused any difficulty. The Choctaws and the Chickasaws had a treaty by which the members of either tribe were entitled to all the privileges of citizenship in the other when residing within its jurisdiction," *And Still the Waters Run, The Betrayal of the Five Civilized Tribes*, (Norman: University of Oklahoma Press, reprint. Originally published [Princeton, N.J.]: Princeton University Press, 1940), 12.

<sup>70</sup> Prevost, 12.

<sup>71</sup> Roark, 16-18.

<sup>72</sup> *Ibid.* 35.

<sup>73</sup> Prevost, 12. Years later, one of Pratt's sons married Charles Journeycake's daughters.

<sup>74</sup> Weslager, *History*, 385-86.

in 1865-1866.<sup>75</sup> Some Delawares disliked the school; its growth nonetheless testified to the Delawares' adjustments to life on the American frontier.<sup>76</sup>

A warning that this relatively comfortable situation was not to going to last was the growing interference of the federal government in the Delawares' tribal politics. At first, the federal government merely favored certain Delaware men as leaders and rewarded them. For instance, the U.S. paid annuities to all Delaware citizens as a result of treaty provisions while paying signature chiefs more than the rest of the tribe.<sup>77</sup> As time progressed, federal involvement dominated the Delawares' leadership. Even though these Delaware men were often intelligent and leaders in their own right, they were frequently at odds with men who had been chosen by the tribe.<sup>78</sup> The Office of Indian Affairs rigged an election for Charles Journeycake, who became Chief on October 4, 1861.<sup>79</sup> Journeycake was not favored among the Delaware people but he and Connor

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<sup>75</sup> Arellano, 166-167

<sup>76</sup> Cranor, 21. Future leader of the Big House religion, Nkàmwin, and known as the most traditional Delaware in the settlement period, Charlie Elkhair, or Co cul lup poo wha (he who walks turning around slowly) also spelled and interpreted Kokwølupuxwe (He Walks Backward), born of the Turkey clan, attended the Baptist Mission School in Kansas.

<sup>77</sup> Weslager, *History*, 382. Cranor writes that in the St. Mary's Treaty, 1818, "in a private and confidential agreement between the parties... Captains SWAN NUCK, PUSHIES, SAKINDIATHIN, and SAS AN COX ITE shall receive from the government a life time annuity of \$100 each." These were Chief Anderson's sons. Chief Anderson petitioned the Government in several more letters to pay his sons (and daughter in one letter) annuities for their removal to Kansas Indian Territory, 6-14.

<sup>78</sup> Roark, 41. Charles Journeycake "headed the list" of members under Pratt's Baptist mission. Like many Indian men of his time, Journeycake spoke numerous languages in addition to his native Delaware (Shawnee, Wyandotte, Seneca, and Ottawa) and preached in each language.

<sup>79</sup> Weslager, *History*, 391. The office of Indian Affairs instigated and then influenced the nomination and appearance of a popular election. Journeycake's election violated Delaware customs as Journeycake was Wolf clan and he replaced a member of the Turkey clan—clan member was to replace clan member by tradition. Jan Brown November, 1996, personal interview. A Journeycake descendent, Brown confirmed that the Journeycake family was Wolf clan. Roark, Harry M. "Charles Journeycake Indian Statesman and Christian Leader" (PhD Dissertation, Central Baptist Theological Seminary, April 1948), 20-21 and 44. Charles mother was Sally Journeycake, a white woman and devout Christian. His father was Solomon Journeycake, a Delaware. Roark cites his clan as Wolf and states, "in 1855, he was chosen as one of the Chiefs of his people." Prevost, 11. List of the Delaware Chiefs in Kansas: Captain John Ketchum, Captain Anderson, Charles Journeycake, James Secondine, James Connor and Captain John Connor.

became the future signatories to the 1867 Articles of Agreement with the Cherokee Nation.

The federal government dominated the Delawares in other ways. They had plans for the Delawares' Kansas lands. Even before the *Kansas-Nebraska Act* of 1854 was passed, Indian Commissioner George W. Manypenny had begun inquiries about removing the Indian nations from Kansas. The Delawares were unwilling to negotiate their removal. Subsequently the controversy over whether Kansas would be a free state or a slave state became the vicious local war known as "Bleeding Kansas."<sup>80</sup> Non-Indian proslavery advocates settled and built towns along the Missouri River, on the Delaware Reservation. The federal government then pressured the Delawares to sign a treaty that authorized 558,555 acres of reservation land to be sold at auction.

Yet, the U.S. ignored the terms of this 1854 Treaty with the Delawares.<sup>81</sup> The U.S. sold the lands privately, rather than at public auction as stipulated in the treaty, resulting in a loss to the tribe of \$1.3 million dollars. The minimum auction price for public land would have at least been one dollar and twenty five cents an acre. The federal government sold the Delawares' land to squatter organized companies in Topeka and Lawrence.<sup>82</sup> These circumstances were repeated, including the sale of a one-million acre hunting strip that sold for a mere \$10,000. The land was actually worth \$617,980—sixty times the amount it sold for in 1854. Unfortunately, the Delawares' leaders participated in defrauding the tribe. Delaware Chiefs "Ketchum, Sarkoxey, Secondyne, Neconhecond, and Kockkatawha" [sic] received money from the sale of the Delawares' hunting strip while the Delaware General Council had no idea the sale was even taking

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<sup>80</sup> Nichols and Hauptman, 3.

<sup>81</sup> *Treaty with the Delawares*, 10 Stat. 1048 (May 6, 1854).

<sup>82</sup> Weslager, *History*, 402. Carrigan and Chambers, 5. Kraft, 511-512. Roark, 46.

place.<sup>83</sup> (These questionable land sales were eventually contested a century later in the *Delaware Indian Claims*.<sup>84</sup> In total, the Delawares recovered over ten million dollars from the loss of their reservation in Kansas.)

Delaware Captain Ketchum, Tah Lee Ock Whe, died three years later in 1857 naming his nephew James Connor, Ah Lah A Chick (the son of his sister Me King Ees), as his heir. James, however, deferred to his older brother John.<sup>85</sup> This transition in leadership shows how involved the U.S. had become in tribal politics. Captain Ketchum was holding true to Delawares' tradition in naming the son of his sister as his benefactor. The federal government, however, favored John because he was a known quantity; he had collaborated with them as a leader of the Delawares in Texas as well as in battles against the Comanche. Even though James Connor conceded in his letter that his older brother John was not an acceptable choice among the Delaware people, he pledged to assist him.<sup>86</sup> James was appointed to Council soon after.<sup>87</sup>

In 1860, the U.S. demanded that the Delawares sell their unassigned lands to the Leavenworth, Pawnee, and Western Railroad Company even though they did not receive full compensation. This was their hunting territory for buffalo and other wild game. A supplemental treaty followed in 1861 provided that the Leavenworth, Pawnee, and

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<sup>83</sup> Weslager, *History*, 404-405. Weslager relays that according to Richard C. Adams the Council never formally approved this treaty, which he said was "concocted in defiance of the law and in violation of former treaties for the express purpose of taking the Indians' lands away from them." Weslager also documents that these Chiefs were rewarded in the treaties of 1854, 1860 and 1861, 414.

<sup>84</sup> 130 Indian Claims Commission, 794, 1952. 21 Indian Claims Commission 344, *Delaware Tribe v. U.S. Court of Claims*, 1955.

<sup>85</sup> Crumrin and Cranor, 6. John Conner was born in 1802 to William Conner, a white trader, and Mekinges, youngest daughter to Kik Tha We Nund. William stayed in Indiana while his wife and six children removed to Missouri in 1820. John was favored because of his participation in the federal government and military expeditions, some of which were against other Indians and others to negotiate for peace. He was fluent in several languages and translated for the U.S. Cranor, 109, 117-118, 129. Cranor writes about Captain Ketchum using a different name, *Que Sha Too Wah*. She cites the letter of deferment on 130.

<sup>86</sup> Cranor, 130.

<sup>87</sup> *Ibid.* 131.



Western Railroad Company would issue bonds and mortgages to repay the Delawares. The only protection for the Delawares in this treaty was that if the railroad defaulted, the lands would revert back to the nation.<sup>88</sup>

It mattered little however because, in addition to the railroad, the American settlers flooded the Delawares' lands. The sheer number of squatters and trespassers caused Indian Agent B.F. Robinson to beg for assistance.<sup>89</sup> The settlers stole Delaware horses and timber without fear of the local law. Starvation and destitution rendered the Delawares powerless on their own lands. As a result, the Delawares lost their livelihoods and many were forced to live on credit.

These problems—the U.S. influence over their politics; corrupt land sales; incursion of white settlers—were too difficult to overcome. The Delawares held a series of council meetings to address their mounting difficulties. They voted to leave. Several options were explored, including the Rocky Mountains, the southwest, and even the far west. When the Tribal Council requested permission to explore the Rockies in 1863, the federal government denied them.<sup>90</sup> Head leader of the turtle clan, Anderson Sarcoxie, or Sa Cox Ie, had first explored the idea of the Cherokee Nation in 1858.<sup>91</sup> Delaware tribal leaders had also visited the Choctaws and the Cherokees again in 1860. Delaware leader John Connor had previously assisted the Absentee Delawares coming up from Texas to Oklahoma to enter an agreement with the Choctaws.<sup>92</sup> In fact, in 1853 the state legislature of Texas had considered John Connor a Chief for the Absentee Delawares in

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<sup>88</sup> Carrigan and Chambers, 7.

<sup>89</sup> Weslager, *History*, 406. Roark, 46.

<sup>90</sup> Weslager, *History*, 408. Carrigan and Chambers, 8.

<sup>91</sup> Cranor, 66, 72. Sa Cox Ie was Kik Tha We Nund's son.

<sup>92</sup> Carrigan and Chambers, 8. "The Absentee Delaware agreed to purchase land from the Chickasaw District, "provided that the Absentee would be subject to all privileges, penalties and laws of the Choctaw Nation."

Texas.<sup>93</sup> The main body of Delawares sought a place large enough to include the Absentee Delawares. In 1864 though, the Kansas Delawares realized that the federal government's intention was for the Delawares to live among the Cherokees.<sup>94</sup> In that same year the Cherokees proposed:

- 1) The Delaware invest money equal to that invested by the Cherokees for the annuity; 2) Pay the Cherokees a bonus for the right to settle on the lands; and 3) The Delaware would enjoy equal rights with Cherokees as to laws, votes and schools.<sup>95</sup>

Sa Cox Ie flatly declined the offer.<sup>96</sup>

In 1864, the Delawares' leadership was invited to Washington D.C. to negotiate the removal. The Delawares agreed to a treaty with the Secretary of Interior Usher, who was a "controlling shareholder" in the Union Railroad (previously the Leavenworth, Pawnee, and Western Railroad Co.). Thus he had ulterior motives to gain access to the Delawares' land. The railroad had still not paid the Delawares for the lands purchased in 1860-61. The situation became even worse. Delaware Indian Agent Pratt was alleged to have interests in the railroad. In light of the evident conflict of interests from the parties petitioning for the removal, the proposed 1864 treaty with the Delawares was not ratified by the Senate.<sup>97</sup>

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<sup>93</sup> Cranor, 117.

<sup>94</sup> Ross to Dole, 25 May 1864 and Dole to Ross, 26 May 1864, *Ross Papers*, (Tulsa: Gilcrease Institute), DW-DTI-8. Gary Moulton, *John Ross, Cherokee Chief*, (University of Georgia Press, Athens Georgia, 1979), 179. Moulton says that in the summer of 1864, to place the Cherokee Nation in a better position after having sided with the Confederacy, delegates John Ross, Evan Jones, James McDaniel, Lewis Ross and Lewis Downing proposed a treaty to President Lincoln that included the sale of their neutral lands for \$500,000 and "the admittance of the Delaware into the Cherokee Nation with a permanent home."

<sup>95</sup> Carrigan and Chambers, 8.

<sup>96</sup> Ross to Steele, 8 June 1864, *Ross Papers* (Tulsa: Gilcrease Institute), DW-DTI-8. Weslager, *History*, 9.

<sup>97</sup> "The Delawares and a Sharp Financial Operation," *Leavenworth Daily Bulletin*, 1864, DW-DTI-8. Weslager, *History*, 10. Weslager gives a detailed description of how the railroad companies came to take

The Delawares were at the forefront of the Civil War in Indian Territory. Both in battle and by providing refuge to Indians who were loyal to the Union, especially the Five Tribes, the Delawares contributed significantly to the Union's victory. Most importantly the Delawares aided unionists in the Cherokee Nation. At the order of Union Colonel Weer, Captain Greeno led his Kansas Indian regiment, including the Delaware enlistees, into the Cherokee Nation, rescued Cherokee Chief John Ross and his family from the Confederacy, and returned them to the Union lines in the summer of 1862.<sup>98</sup> The Delaware nation gave the Cherokee refugees shelter at Ft. Leavenworth.<sup>99</sup> During the war years, Ross lived in Philadelphia with his wife's family. He negotiated with President Lincoln to assist the Cherokees in Kansas who were living in dire poverty.<sup>100</sup> Ross's sons James, Allen, Silas and George served in the Third Regiment of the Federal Indian Home Guards alongside the Delawares and other Kansas Indians.<sup>101</sup> In 1863, Ross was elected to lead the Union Cherokees and as such, Ross convinced his Nation to abolish slavery.<sup>102</sup> Opehleyahola, Chief of the Creek Nation, requested a temporary home for the loyal Creeks on the Delaware reservation, which the Delawares permitted in 1864.<sup>103</sup>

In 1864, however, conditions were changing dramatically within the Delaware General Council. In earlier times, the Indian Agents attended the Delawares' council

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over the Delaware reserve. Although all previous treaties had been with the federal government, making treaties with the Delawares enabled the railroad monopoly to overtake the Delaware reservation. President Lincoln received a letter from fifty Delawares stating that they would not recognize the 1860 treaty because they believed Agent Sykes had given alcohol to the Chiefs before they each signed. 410-414. Weslager also described the delegation that went to Washington D.C. and the unquestionable interest that the railroad had in the negotiations of this treaty, 415-416.

<sup>98</sup> Robert J. Conley, *The Cherokee Nation A History*, (Albuquerque: University of New Mexico Press, 2005), 176.

<sup>99</sup> Ibid.

<sup>100</sup> Moulton, 176-177.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid. 178.

<sup>103</sup> Cranor, 119.

meetings to seek approval for decisions affecting the tribe. In 1864 though, Agent Sykes no longer sought the full Tribal Council's vote, let alone the General Council, to make decisions on behalf of the Delawares. He merely required the Chiefs' signatures for important matters.

But the Delawares themselves were not passive recipients of Indian Agent's actions and federal policies. They thought of themselves as a nation that would exist forever as the following letter shows:

Delaware Reservation, Feb. 3, 1864

To the Department of the Interior:

We wish to write a few lines to the Government to explain to him our ideas. We wish to be friendly with the Government as always have been. What leads us to take this step is what we hear concerning Indian affairs. We are anyhow in the dark and wish to hear from the Government as soon as he receives this letter. We have settled our affairs at home and wish to remain Indians, and to preserve our Nation. It was a Nation from the earliest times. The chair of Nesane, our old chief, is again filled and our women, children and young men are rejoicing in hope of a benefactor. Caca-towa, who died three years ago... We have always had three bands in our tribe. My Great Father knows this. Anyhow I have only spoken yet of two seats being filled. But the many braves, we have always had one head brave. This had been our rule from times past and we wish it to be our rule for time to come. We wish them to let our Great Father in Washington know that in the seat of Nesane, in the wolf Band, we have placed Ben Simon, as Chief, and James Simon as Second Chief. And in the seat of Coca-towa, in the Turkey Band, we have placed Joseph W. Armstrong, as Chief and Joseph Thomas as Second Chief. In the Turtle Band, is yet no one, but the head brave of the whole tribe, Captain Fall Leaf, has the confidence of all and the councilors of the tribe are all elected. We expect and hope that the Government will sanction our choice. We call ourselves Delaware Indians. Before the Government of the United States was formed we were a Nation and for time to come, as far as human mind can conceive, we wish to be a Nation.

We trust in God

John Moses (One hundred and fifty Delaware signed this petition.)<sup>104</sup>

The letter clearly demonstrated that the Delawares thought of themselves as a unified nation of Indians, and they wished to remain so in the future. Despite outside interference, they observed their traditional clan system of leadership. The letter provides names of the Delawares' leaders that did not appear elsewhere in the public record except in later protests to the Office of Indian Affairs in 1867 and 1868. Moreover, the letter shows that the Delawares themselves sought answers to their concerns rather than trust Indian Agent Pratt or the signature Chiefs.

By 1866, the climate was thus potentially explosive. Whatever faith the majority of Delawares had in their leadership was declining –especially because the Chiefs were estranged from the General Council decisions. Yet, they could not remain in Kansas with the extreme hardships and violence. The Delawares were fighting for their lives. They had been in this position many times, though, and realized that the nation needed to negotiate the best possible future for their families.<sup>105</sup>

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<sup>104</sup> *Richard C. Adams Papers*, (University of Kansas, Kenneth Spencer Library), 8: 380-382. Nichols and Hauptman, 6. The authors explain that the “title ‘captain,’” was “a traditional honor that dated back at least to the 1700s. Warriors were under the command of Captains, especially in times of war, and did nothing without their consent. Black Beaver and Falleaf were both Captains.

<sup>105</sup> Francis Paul Prucha *American Indian Treaties the History of a Political Anomaly* (Berkeley and Los Angeles: University of California Press, 1994), 3, 26, 31-34. The Delawares, at times, were skilled negotiators. For instance, the Delaware Nation signed the first treaty with the newly formed United States government at Fort Pitt in 1778. This established the precedence for a political and legal system in what became unlike any other relationship with native peoples in the world and what Prucha calls a “*Political Anomaly*.” As a result, the Delawares became known as the first treaty tribe. In the *Treaty of Fort Pitt*, the Delawares negotiated to be head of an organized Indian state with representation in the U.S. Congress. Although the Treaty of Fort Pitt seems a valuable historical document, it was no less wrought with the same underpinnings as the future 1867 Articles of Agreement. John Killbuck, a signer of the Fort Pitt Treaty complained that he had “been deceived” as he had “not understood the interpreter.” This resulted in a contested cross current of communication and miscommunication within a “middle ground” where the Delawares’ were often key negotiators. Ironically, for the Delawares in 1867, Indian Territory (Oklahoma)

Consequently, the Delawares agreed to a treaty with the U.S. that seemed to assure a good future.<sup>106</sup> The Delawares would be able to choose and purchase a tract of land large enough to accommodate 160 acres for every man, woman and child from the tribes in Indian Territory. The land would be taken from those areas already forfeited to the government from Choctaw, Chickasaw, Creek, or Seminole, reservations or that *would be* relinquished from the Cherokee Nation. No less important was that the government would reimburse the Delawares for the lands sold to the Leavenworth, Pawnee, and Western Railroad, monies they still owed the Delawares. Individual Delawares were able to dissolve their tribal membership if they wished to stay in Kansas and become U.S. citizens.<sup>107</sup> Had the Delawares as a nation sought to give up their nationality, they would have elected to stay in Kansas.<sup>108</sup>

Other guarantees were as follows: The Delawares would have “peaceable possession of their homes and protection from hostile Indians, internal strife, civil war, and full and just participation in any general council or territorial government established with the tribes residing in Indian Country”; Article 11 “expressly reaffirmed the tribe’s domestic-dependant status, and the commitment of the U.S. to protect and defend the rights of the tribe.”<sup>109</sup> Under these guidelines the Delawares were reassured about their removal to Indian Territory. There was no question that their sovereignty was in danger

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was conceived of well before the Delaware Nation ever actually set foot there. The Delawares had negotiated an Indian state a century earlier.

<sup>106</sup> *Treaty with the Delaware*, 14 Stat. 793, (July 4, 1866).

<sup>107</sup> Weslager, *History*, 422-423.

<sup>108</sup> Ryan, 202. Ryan states that “only twenty-one adult Delawares, along with their fifty-four children who claimed U.S. citizenship under the 3<sup>rd</sup> article of the 1866 Delaware treaty” remained in Kansas and “Nearly all of these twenty-one adults were married to whites.”

<sup>109</sup> Carrigan and Chambers, 10. The authors state, “This renewed commitment has never been repudiated by Congress in any legislation since 1866.”

if they remained in Kansas. The new treaty with the United States government seemed to insure their future sovereignty.

While Chief John Ross lived in Philadelphia during the Civil War, he had negotiated for the Cherokee Nation's safety and future with President Lincoln. In 1864, Ross with a Cherokee delegation advanced "a plan that would have placed the Cherokee in an advantageous position."<sup>110</sup> They proposed to sell the neutral lands and to "admit the Delaware into the Cherokee Nation with a permanent home."<sup>111</sup> In response to Captain Anderson Sarcoxie's previous rejection in 1864, the Cherokee Nation softened their language and merely requested that in any agreement, the Delawares not sell any land without Cherokee Nation approval. The Delaware leaders who accepted the Cherokees' offer while in Washington D.C., would also be governed according to their own "customs" and retain their federal benefits (annuities and property). The Cherokees would furthermore "allow them [Delawares] a proper representation, according to numbers in their Legislature."<sup>112</sup>

John Sarcoxie (son of Anderson Sarcoxie, or Sa Cox Ie), Charles Journeycake, Joe Armstrong, and Andrew Miller attended the Delawares meetings with the Cherokee in October in Washington and then in Indian Territory in November, 1866 and officially accepted the proposal to settle within the Cherokee Nation.<sup>113</sup> Accordingly, the Delaware and Cherokee delegates met on the Cherokee Nation and chose a tract of land in November 1866. They surveyed lands east and west of the ninety-sixth longitude and

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<sup>110</sup> Moulton, 179.

<sup>111</sup> Ibid.

<sup>112</sup> Carrigan and Chambers, 11. The idea was much the same as other tribal nations already in Indian Territory, such as the Chickasaws residing on the Choctaw lands. The only difference in the Cherokees' case was that their treaty contained the provision that the Cherokee would retain ownership of its land east of the ninety-sixth while permitting other tribes to settle. The incoming tribal nation would have a choice of whether to maintain its sovereignty.

<sup>113</sup> Cranor, 74.

established the terms of the agreement with the Cherokee.<sup>114</sup> Because the lands west of the ninety-sixth longitude were unsuitable to cultivate and the Delawares wanted to “preserve their tribal organization,” the delegates elected land on the Little Verdigris or Canae River, east of the ninety-sixth longitude. Beginning at the Kansas line, they chose a ten by thirty mile strip of land or 192,000 acres as their new Delaware Reservation, which was 100 square miles less than their Kansas holdings.<sup>115</sup> The Delawares and Cherokees signed the Agreement on December 9, 1866.<sup>116</sup>

Even so, the Delawares were deeply apprehensive about the December 9 Agreement, and in January Captain Falleaf formally protested the land choice east of the ninety-sixth longitude. Enlisting the signatures of 701 Delaware members, a majority, Falleaf petitioned the federal government. The Delawares’ objected to the choice east of the ninety-sixth because they feared it would grant the Cherokee Nation jurisdiction over the Delawares. In February, 1867, the Delaware leaders informed their citizens, however, that the Delawares would retain their tribal membership as well as hold additional rights in the Cherokee national fund.<sup>117</sup> The December 9, 1866 Agreement seemed solidly in place until, for unknown reasons, Delaware leaders were summoned to

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<sup>114</sup> *Laws of the Cherokee Nation*, (1866), “Resolved by the National Council. That the Principal Chief Assistant Principal Chief and the others be appointed by the Principal Chief as Commissioners to allowing the Delaware to select a reservation from our lands lying east or west of 96 of Longitude, according to the provisions of the Treaty of July 19<sup>th</sup>, 1866.” *Ross Papers*, (Tulsa: Gilcrease), Cherokee Roll # 8, vol. 250, DW-DTI-8. Also on the roll was the following agreement (stamped with a Congressional Seal), “The Cherokee will sell to the Delawares lands for their permanent homes upon these conditions viz: 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,” (file 1316 No. 4026-1972, N.D.).

<sup>115</sup> John Connor, Principal Chief to John C. Pratt, U.S. Indian Agent, Delaware Indian Agency for said Delaware Tribe of Indians, 13 October 1866, DW-DTI-8.

<sup>116</sup> “Reaffirming the Sovereignty of the Delaware Tribe of Eastern Oklahoma,” © 1994 attached to proposed Resolution, Recognizing the Continuous Sovereign Existence of the Delaware Tribe of Indians, DW-DTI-8, 2.

<sup>117</sup> Carrigan and Chambers, 14. “Reaffirming Sovereignty,” 2.



another meeting with the Cherokee in Washington D.C. in April, 1867 to negotiate the terms and “purchase of land for our new homes.”<sup>118</sup>

The delegates met in Washington D.C. on April 8, 1867. There were problems. First, Cherokee Nation Chief John Ross had died. He had negotiated the July 19, 1866 Cherokee Treaty from his death bed. His replacement was nephew William Potter Ross, who had been groomed by his uncle for the position of Principal Chief.<sup>119</sup> Second, the terms of the agreement had been altered. Third, not all of the Delawares’ leaders were there. If the Delaware negotiators did their best to retain the original terms, they were ultimately induced to concede. After many arguments and much discussion between the leadership of the Delawares (John Connor, Principle Chief, Charles Journeycake, Isaac Journeycake (interpreter) and John Sarcoxie) and the Cherokee (William P. Ross, Principal Chief, Riley Keys, and Jesse Bushyhead) the 1867 Articles of Agreement were signed.<sup>120</sup> The Department of the Interior, although not a party to the agreement, assured the Delawares that it was “in their best interests, and that the government would make certain that the Cherokee lived up to the terms of the agreement.” Reluctantly, it seems, the Delaware leaders signed.<sup>121</sup> The contract entitled each Delaware man, woman and child one-hundred and sixty acres for their use at one dollar per acre for a “perpetual

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<sup>118</sup>“ Protest made by Capt. Sarcoxie and others on behalf of the Delaware tribe of Indians,” Delaware Nation June 13, 1867, DW-DTI-8.

<sup>119</sup> Conley, 183. Moulton, 107 and 137. Moulton gives additional details of the relationship between John and nephew William. John spent time with William in Washington. William was a Princeton graduate and established the Cherokee Advocate with his uncle and he was the editor.

<sup>120</sup> *Articles of Agreement Approved by the President and the Secretary of Interior on April 11, 1867*, 25 Stat. 608 (1888).

<sup>121</sup> Weslager, History, 424

occupancy right on the land,” along with a proportional share of the Cherokee National fund.<sup>122</sup>

The Commissioner of Indian Affairs and the Kansas government wanted the Kansas Indians to relocate to the Cherokee Nation. Thomas Ewing, a railroad speculator and promoter, was the Cherokee Nation attorney who had stood by the Cherokees during the 1867 Articles of Agreement meeting. As one historian states, “The Cherokee had one of the most ambitious and ruthless men in the country as their attorney and he wanted the Delaware out of Kansas.”<sup>123</sup> In addition, she noted that another prominent Cherokee who was friendly to the Delawares, James McDaniel, might have taken up for the Delawares’ interests, but he died in D.C. soon after the 1867 Agreement was signed.

Some Delawares may have thought that because they had federal government guarantees in their treaty, the Delawares’ were secure in their rights as a tribal nation. That security was surface deep. The 1867 Articles of Agreement stated:

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe, registered as above provided, shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other,) in the national funds, as native Cherokees, save as hereinbefore provided.

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<sup>122</sup>*Articles of Agreement*, The Cherokees...agree to sell to the Delawares, for their occupancy, a quantity of land east of the 96° west longitude...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, to include their improvements according to the legal subdivisions, when surveys are made (that is to say 160 acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the native citizens thereof...And the said Delawares further agree that there shall be paid, from their funds, now or hereafter to come into possession of the United States, a sum of money, which shall sustain the same proportion of the existing Cherokee National fund, that the number of Delawares registered as above mentioned, and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee Nation.

<sup>123</sup> “The Rest of the Story,” *Delaware Indian News* (Bartlesville, OK), October 2006.

And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees.<sup>124</sup>

Although the above language does not directly state this, the language refers to Article 15 of the Cherokee Treaty. By this provision, a tribal nation living within the Cherokee Nation could retain their own tribal organization *or* choose to become “incorporated” as Cherokee; in that case the tribe would “in all respects be regarded as native Cherokees.” Thus, according to contemporary Delaware attorneys, “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.”<sup>125</sup> In other words the 1867 Articles of Agreement contained a loop hole that left Delaware sovereignty undecided. Here lies the crux of the matter from the Delawares’ perspective. If the interpretation is that the Delawares “voided the very right for which they were paying,” meaning the right to retain their tribal organization, then the 1867 Articles of Agreement violated the terms of the 1866 Delaware Treaty with the U.S. government, which had guaranteed sovereignty. Moreover, the Delaware General Council ratified the December 9 Agreement in February, 1867, by the Delaware General Council. Delaware leadership in Washington D.C. had no authority to contradict the December 9 Agreement, which differed from the later April, 1867 loophole of incorporation and the 1866 Treaty (nor did the Cherokee or the U.S. for that matter).

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<sup>124</sup> *Articles of Agreement.*

<sup>125</sup> Carrigan and Chambers, 15.

On May 6, the Delaware General Council rejected the 1867 Articles of Agreement. The 1867 Articles of Agreement were not “submitted to or ratified by Congress” as was normally the case when a treaty was made with tribal nations.<sup>126</sup> Indian Agent Pratt and Assistant Chief Charles Jouneycake explained to the General Council that the Delawares would merge with the Cherokee and would be subject to the same laws and customs as Cherokee citizens. Old Chief Anderson Sarcoxie (Sa Cox Ie), who it seems was intentionally not invited to Washington for the negotiation of the 1867 Articles of Agreement, was beside himself with anger because the Articles of Agreement violated the 1866 Delaware Treaty with the U.S. and the terms of December 9 Agreement with the Cherokees. Sa Cox Ie consequently led the first petition and resolution in protest of the 1867 Articles of Agreement by obtaining 600 signatures of the 1000 Delaware members. The petition stated:

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.<sup>127</sup>

The petition further insisted that the Delawares obtain a reservation of their own.<sup>128</sup>

Anderson Sarcoxie (Sa Cox Ie) submitted the petition and resolution to the Delaware Indian Agent. But unbeknownst to Sa Cox Ie, Pratt refused to forward the

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<sup>126</sup> Ibid.

<sup>127</sup> “Protest.”

<sup>128</sup> Ibid.

resolution to the Commissioner of Indian Affairs.<sup>129</sup> After receiving no response from the Commissioner regarding the resolution, Sa Cox Ie wrote him directly to ask whether he had received the protest resolution. But Pratt, who firmly believed in assimilating Indians to U.S. society, had already sent a letter to the Commissioner affirming that he believed the Delawares would “acquiesce” to the merger with the Cherokee. Pratt accused Sa Cox Ie of representing the “old Indian customs and traditions,” which was accurate. After all Sa Cox Ie was eighty-two years old. Pratt seemed to believe a move to the Cherokee Nation would enable the federal government to civilize the Delawares. The Commissioner, however, ordered Pratt to submit Anderson Sarcoxie’s (Sa Cox Ie) Petition. Pratt expressed his unwillingness to do this insisting that the tribal government system should be destroyed. At the same time he fulfilled the order submitting the petition to the Commissioner, Pratt also forwarded a letter from Charles Jouneycake claiming that John Conner, James Conner, James Ketchum, and he constituted the “legitimate authority” who had acted on behalf of the tribe’s best interest.<sup>130</sup>

Through January, 1868, the Delawares remained in doubt about their standing. Captain Falleaf therefore filed another petition protesting both their leaders and the negotiation of the 1867 Articles of Agreement. Again, the Delaware signatures claimed that the 1867 Articles of Agreement violated the 1866 Treaty and the previous 1866 Agreement with the Cherokee. The petition repeated the express desire for the Delawares to remain a unified tribal organization. This petition was signed by two-thirds of the Delaware Tribe.<sup>131</sup>

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<sup>129</sup> Carrigan and Chambers, 17.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

During the spring of 1868, Sa Cox Ie and Falleaf along with three-hundred of their followers resisted removal to the Cherokee Nation.<sup>132</sup> Indian Agent Pratt would not release any of the Delawares' annuities until the resisters moved. In combination with the Kansas settler's harassment, Pratt's actions made circumstances unbearable for the Delawares. They began to submit and moved in December 1867 continuing throughout the spring of 1868. Each family paid for their own preparation and travel. John Connor was joined by his brother James and thirty families including George Washington and John Q. Connor, John Bullette and other Christian Delawares. The Indian Agent Pratt joined the Christian Delawares in their slow trek to their new homes.<sup>133</sup>

Nearly two-hundred Delaware people perished from disease and hardship. Genealogist and family historian Ruby Cranor noted that "the trip was just too much for John Conner as he passed away in 1869, shortly after moving."<sup>134</sup> Sa Cox Ie and Falleaf held out through May 1868, when the Commissioner of Indian affairs came to them in Kansas to negotiate their removal and they sadly submitted. Sa Cox Ie's wife, We me o nah axh qua, died on their trek in June. Accompanied by their son Big John and his wife Lizzy, they were joined by Simon Whiteturkey's family. From our perspective, the route seems short, a distance of one-hundred and eighty to two-hundred miles. But moving during the winter was hard especially for the sick and aged.<sup>135</sup> On June 6, 1868, Sa Cox Ie and his son John wrote:

We, the undersigned, Capt. Anderson Sarcoxie, a chief and Capt. John Sarcoxie, a councilman of the Delaware tribe of Indians do hereby aver that we, together with our people have come to the country from the late Delaware Reservation in the

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<sup>132</sup> Richard Adams, *Legend of the Delaware Indians and Picture Writings* (New York: Syracuse, 1997), xx.

<sup>133</sup> Cranor, 132.

<sup>134</sup> Ibid. 120.

<sup>135</sup> Weslager, *History*, 425.

state of Kansas and are now settled here in good faith in accordance with the agreement entered into between the United States, the Cherokee Nation and the Delawares in Washington in the month of April 1867.

This instrument is not to be considered as any deterrent in any future negotiations or arrangements which we may wish to make with the Cherokee Nation.<sup>136</sup>

The Delawares removed mostly to the area identified in the December 9, 1866 Agreement—modern day Washington County, Oklahoma. Unlike their removal from Missouri to unorganized Kansas, there was no preparation (for the Delawares’ reception in Indian Territory). For instance, Welenexkwe stayed with one of the Ketchum families for many months until she obtained her tract of land. Most Delaware families remained destitute until they could claim tracts of land to settle on. The 1867 Articles of Agreement, that excluded 200 of the Absentee Delawares, among which was Black Beaver, did not account for the full 192,000 acres per the December 9, 1866 Agreement. Instead the final product was an area of 157,600 acres for the 985 Delaware people who paid the \$157,600.00 for a reservation. They additionally bought the proportional amount for their number of members to be placed in the Cherokee Nation fund. The Delawares thus bought the “rights into the Cherokee Nation” that exist today.

The Agreements of 1866-67, removal, and associated events laid the foundation for future conflicts between the Delaware and the Cherokee nations. In the next chapter these conflicts will begin to unfold.

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<sup>136</sup> Cranor, 77.

**Chapter Two: The Delaware Tribe of Indians Settle Within the Cherokee Nation,  
Indian Territory, 1868-1941**

From the spring of 1867 through the winter of 1868, the Delaware Indians began to establish their place among the tribes already in Indian Territory. Many of the Delawares, especially those who arrived later, resented forced removal to Indian Territory under the Cherokee Nation. These Delaware groups believed the United States had repeatedly violated the 1866 Treaty and that the Cherokee Nation had reneged on the original December 9, 1866 Agreement. They were also angry with the Delaware leaders who had signed the April 1867 Articles of Agreement with the Cherokee Nation. As court decisions and the Dawes and Severalty Act solidified the Delawares' subordinate status within the Cherokee Nation, the Delawares' grievances against the Cherokee Nation intensified the Delawares' fury.

After their arduous journey from their former Kansas lands, Delawares rebuilt homes in the territory that would become their permanent national headquarters. According to the terms of the 1866 and 1867 Agreements, most Delaware settled along the Little Verdegris and the Caney River on the ten by thirty mile strip the tribal nation had purchased, the Cooweescoowee District where approximately ninety percent of the Delawares remained for the rest of the century.<sup>137</sup> Yet, Delaware settlements can also be found in five modern day counties within the former boundaries of the Cherokee Nation. Often those Delawares settling outside the Cooweescoowee District were Christian

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<sup>137</sup> Herbert C. Kraft, *The Lenape-Delaware Indian Heritage, 10,000 BC to AD 2000* (N.p.: Lenape Books, 2001), 514. The district was designated from Cherokee Chief John Ross' Indian name. Much of this area became modern day Washington County. Gina Carrigan, J. D. and Clayton Chambers, "A Lesson in Administrative Termination: An Analysis of the Legal Status of the Delaware Tribe of Indians," (Bartlesville: The Delaware Tribe of Indians, © 1995), 23.



converts, establishing themselves in locations such as Nowata, Ochelata, Ramona, Vinita, Old Alluwe, Lightning Creek, Hogshooter Creek, Lenape (later renamed Lenapah), and Ketchum.<sup>138</sup> According to the 1867 Articles of Agreement, Delaware members could serve in the Cherokee National Council as representatives of the Cooweescoowee District, one of nine districts electing Senators to the National Council. James Connor was the first Delaware to be elected to this position soon after the Delawares arrived in the Cherokee Nation in 1869 followed in succession by Joseph Thompson (upper Caney), John Bullette (Alluwe), George Swannock, John H. Secondine (California Creek), John Young (forks of Caney), Arthur Armstrong (Turkey Creek), Samuel Tiblow, and John Sarcoxie (lower Caney).<sup>139</sup>

The Delawares had little preparation for their new homes in the Cherokee Nation. The federal government did not provide resettlement compensation as it had for the Delawares' Missouri to Kansas removal. In Kansas, the Delaware Indian Agent had provided log cabins, frame houses, barns, mills, schools, and a trading post. In Kansas, Blacksmiths and teachers were hired and annual cash payments, distributions of seed, tools, and livestock helped to develop Delaware farms and ranches.<sup>140</sup> In Oklahoma, newly arrived Delawares were desperately poor. Although the Delaware leaders repeatedly demanded payment for the land, railroad bonds, horse and livestock that had been stolen before their removal from Kansas, it was all to no avail.<sup>141</sup> Tragically, within the first year, those Delaware settlements along the Caney River were flooded.

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<sup>138</sup> Toni Jollay Prevost, "The Delaware and Shawnee Admitted to Cherokee Citizenship and the Related Wyandotte and Moravian Delaware," (Bowie, Maryland: 1993), 29. *Doris Duke Oral History Collection*.

<sup>139</sup> Weslager, 442.

<sup>140</sup> Robert S. Grumet, *The Lenapes* (New York: Chelsea House Publishers, 1989), 82.

<sup>141</sup> J.D. Cox, Secretary of the Interior to the Honorable J.G. Blaine, Speaker of the House of Representatives, Washington D.C., 15 March 1870, Dorsey and Whitney-Delaware Tribe of Indians- Box 8, hereafter cited DW-DTI-8. N.G. Taylor, Commissioner to the Hon. O.H. Browning, Secretary of the

Adding to their hardships, a number of Delaware families clashed with Cherokees because they attempted to settle on lands already claimed by Cherokees.<sup>142</sup> Citing letters of the Indian Commissioner, historian William G. Mclaughlin explained how the Cherokee exploited the Delawares. Shortly before their arrival some “unscrupulous Cherokees” rushed into the Cooweescoowee District, “placing four logs in a square, to signify an intention to build a home, they then drove stakes at the corners of the best tracts in the Delaware region.”<sup>143</sup> Even though the Delawares as a unit had already paid the Cherokee Nation for the land, so called individual Cherokee “owners offered to sell them their” own land back “for \$300 to \$400 each.” The Cherokees then “harassed (Delawares)...killed Delaware livestock that wandered onto their (claims), and threatened to shoot any Delawares who did.”<sup>144</sup> There were cases where Cherokees claimed more than one tract of land.<sup>145</sup> The Delawares seldom found sympathy in the Cherokee court for these conflicting claims.<sup>146</sup>

Unfortunately, this was only a difficult start to a problematic existence.

According to the historian Terry Prewitt, who has examined Delaware society and religion in this period, the Delawares who removed to the Cherokee Nation experienced

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Interior, 9 February 1869, DW-DTI-8. After payment was made to the Delawares who remained in Kansas as U.S. citizens, the remainder of the compensation was given to the Delawares as a Tribe and held in the treasury, \$470,070.26. Yet, in a later *Report to the House of Representatives from E.S. Parker, Commissioner to the Hon. J.D. Cox, Secretary of the Interior in 1882*, DW-DTI-8, there remained a sum value of \$14,720 for lands from Kansas. The Delawares were suspicious about the fate of their monies.

<sup>142</sup> Weslager, *History*. 428. William Newcomb, Jr., *The Culture and Acculturation of the Delaware Indians* (Ann Arbor: University of Michigan, 1956), 106.

<sup>143</sup> William G. McLoughlin, *Champions of the Cherokees Evan and John B. Jones* (Princeton University Press: Princeton, New Jersey, 1990), 457.

<sup>144</sup> *Ibid.*

<sup>145</sup> Carrigan and Chambers, 20.

<sup>146</sup> According to Angie Debo, *And Still the Waters Run*, “because of the limited application of federal law most of the period, crime flourished in the Indian Territory,”<sup>19</sup>. This meant that the Delawares had only one option for appeal, the Cherokee Nation.

the most “material, behavioral, and social change,” of any of their predecessors.<sup>147</sup>

Within fifty years of settling in their new environment, the Delawares lost some of the mechanisms that they had previously relied upon to sustain their society. One of the most important was the prohibitions against marriage to outsiders.<sup>148</sup> Because the Delawares settled in small clusters within Indian Territory, they could not consistently continue to contain marriages within the tribal nation. In essence, there were small pockets of related Delawares who were surrounded by a larger number of outsiders and in total there were less than a thousand Delaware spread over a great distance. In the Lenape language, there is not a word for cousin because cousins, no matter how distant, are considered brothers and sisters. Since Delaware custom discouraged marrying a brother or sister, or any subclan member for that matter, Delawares gradually increased marriage to partners outside of their culture. Further, each of the Delaware groups was part of a larger community of Indian peoples, and later, whites “who dominated the political and economic interests of the region.”<sup>149</sup> To illustrate the case, while the Delawares numbered close to one-thousand members in Oklahoma by the turn of the twentieth century, the census listed 109,393 whites in 1890, 339,560 in 1900, and 538,612 in 1907.<sup>150</sup> The Delawares held on to their native religion as strongly as possible.

Nevertheless it slowly eroded because of pressures from the surrounding community.

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<sup>147</sup> Terry Prewitt, “Tradition and Change in the Oklahoma Delaware Big House Community: 1867-1924.” (Copan Lake Project, Tulsa Corps of Engineers, 1980), 6-7.

<sup>148</sup> Ala Marie Carson “New Light on a ‘Forgotten Pioneer,’” (N.D., Wyandotte County, KS), newspaper clipping courtesy of the archives of James Rementer. Interview with John Sumpter, December 6, 2008. “If you look at the history of things, the traditionalists at least, sought to keep within the tribe. It wasn’t until Christianity was brought in that outsiders married into the tribe. And still, it was frowned upon.” Sumpter also stated that “the old timers saw what was happening to the Osage when they got to Oklahoma but the problem was that they couldn’t marry within their own clan either. So what choice did they have?”

<sup>149</sup> Prewitt, 6-7.

<sup>150</sup> Debo, 93.

Encroaching whites were not the only problem. Cherokees and Osages harassed the Delaware to the point that many fled their homes.<sup>151</sup> Although lands along the Caney River were Osage indigenous hunting grounds, the Osage were settled on a reservation in Kansas during the mid-1800s. Like the Delawares the Osages were removed to Oklahoma to Cherokee lands. Unlike the Delawares, Osages bought their reservation from the Cherokee Nation for seventy cents an acre, thirty cents less an acre than the Delawares.<sup>152</sup> Not wanting to share hunting areas for scarcer and scarcer deer, Osages raided livestock, stole horses and in one instance, murdered a Delaware. Four years after their removal to Indian Territory, nearly one-half of the Delaware Tribe left the Cherokee Nation for the lands of the Peoria (the Quapaw Agency) in 1871. They claimed that they had not been given the separate tract of land in the Cherokee Nation that they had been promised in 1866. These Delawares were willing to forfeit their monies paid into the Cherokee Nation if only the federal government would provide them with a separate tract of land for their own reservation.<sup>153</sup> The federal government threatened to use force so the unhappy Delawares moved back to the Cherokee Nation in 1873.<sup>154</sup>

The Delawares were able to work out a diplomatic truce with the Osages through annual gatherings called smokes. Several oral interviews with Delaware elders refer to these smokes with the Osage. Nora Thompson Dean, for instance explained how the Delawares and Osage worked out their differences even under the most difficult of circumstances—the tragic death of one of their young men:

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<sup>151</sup> Weslager, 428. Prewitt, 8.

<sup>152</sup> Joe Williams, "Bartlesville," (Bartlesville: TRW Reda Pump Division, 1978), 20.

<sup>153</sup> The Delawares bought citizenship rights for \$121,824 for retaining Delaware sovereignty in accordance to Article 15 of the 1866 Cherokee Treaty with the United States in addition to a sum of \$157,600 for the land.

<sup>154</sup> Richard Adams, *Legends of the Delaware*, xx.

My father told me the story about the origin of the smokes between the Delaware and the Osage people. Long ago there was an elderly lady and her name was Wahokie (?) [Grandma Wahonie or Mahwataise (Bundle in Good Condition)]...who had one son. He was looking for his mother's horses out in the Osage hills. And he was killed in the hills, presumably by the Osages. So, when they found his body, there were two arrows on top of it, the young man's body. So, the Chief of the tribe at that time---they wanted peace with all the neighboring tribes. So, they went over to the Osage country, and negotiated with them. So they decided to have smokes between the two tribes. One year we went to the Osage people and we smoked the pipe of peace with them and exchanged gifts and the following year they would come over here and do the same, we had big dinners, smoked the pipe of peace and exchanged gifts. So this story was told to me by my late father as being the origin of the smokes about once a year. And the last one, I was told was held up here north of Dewey.<sup>155</sup>

Grandma Wahonie was a famous Doll Keeper, a most sacred aspect of Lenape religions and culture. Under traditional means of justice then, her son's murder would have meant taking the life of an Osage in exchange for the death of her boy. That the circumstances were negotiated into a celebration of friendship is extraordinary for both the tribes. Fred Falleaf stated the happy sentiment of these smokes:

Well, they used to have those out west of Copan, over here. This little town of Copan, right west of there, ' about two miles, I guess. On top of the hill, they used to have smokes up there. And they'd go on for two weeks lot of times. They'd have the biggest time you ever heard of. And when the Osage come over here, the Delaware would give them – they were to have one day left to give their stuff to their friends. Well, lots of times they would give them horses, blankets, just whatever they wanted to give them; And they'd have a big time, dance every night, and they'd have a big go round. Then the next year, well then, the Delawares would go over there – Pawhuska. Over around in there somewhere, I guess Pawhuska. They'd go over there and they'd have a smoke over there and

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<sup>155</sup> *Doris Duke Oral History Collection*, T-296 Nora' Thomson Dean, Delaware, Western History, University of Oklahoma.

they would do the same thing there. And then they give a lot of horses away there. Different kinds. And they'd have races.<sup>156</sup>

Delaware and Osage reciprocity enabled them to establish peaceful coexistence while sharing hunting territories. The Delawares hosted a smoke in their territory one year and the next year the Osages reciprocated by hosting it in their nation. They were successful because both tribal nations resorted to older traditional Indian values of negotiations and justice.

The Delawares were unable to secure the same results with the Cherokees. The Cherokee functioned under a constitution that created a strong centralized power in their government. In dealing with the Cherokees, the Delawares confronted a bureaucratic and legalistic Indian nation. Delaware individuals appealed to Cherokee courts, but the Tribe could not appeal as a sovereign unit in the Cherokee Nation on a basis of equality. In light of such opposition, the Acting Commissioner of Indian Affairs Enoch Hoag, declared “so long as these interests continue separate from the Cherokees, they (the Delawares) will require separate organization.”<sup>157</sup>

The other peoples surrounding Delawares were only one piece of the puzzle. An increasingly dominant Christian religion also undermined Delaware traditions. Over time Delaware political leaders became increasingly separated from their customary religious leadership. A deep division, defined by both geography and religion, emerged between the traditional and Christian Delawares which exacerbated internal and external

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<sup>156</sup> Fred Falleaf, Delaware, T-299, *Doris Duke Oral History Collection*, Western History, University of Oklahoma.

<sup>157</sup> Enoch Hoag, Acting Commissioner of Indian Affairs to H. R. Clum, March 1873, *Richard, C. Adams Collection*, (Austin: Humanities Research Center, University of Texas), DW-DTI-8.

politics.<sup>158</sup> Most traditional Delawares lived along the Caney River while most Christian Delawares lived everywhere else in the Cherokee Nation. From 1873 well into the next century, Christians dominated the Delawares' political leadership. John Connor, a Christian of Lightning Creek, remained the head chief from 1867 to 1871.<sup>159</sup> Anderson Sarcoxie, a Baptist minister on the lower Caney, and Charles Journeycake, a Christian of Lightning Creek, were assistant chiefs during the settlement period. In 1871, Chiefs Anderson Sarcoxie and John Conner passed away. So the Tribe called for a General Council which elected a principal chief, James Ketchum, a Christian.<sup>160</sup> The vote was very close; Ketchum won over Journeycake by three votes.<sup>161</sup> Ketchum was from the town of Ketchum, which is named for the family. From the Alluwe community, James Connor, younger brother to John, became chief in 1873 with assistant chiefs Charles Journeycake and James Simon.<sup>162</sup> James Connor passed away in 1877. At this point the Delawares gave proper title to their leadership and Charles Journeycake became Principal Chief in 1878 with John Sarcoxie, son to Anderson Sarcoxie, as his Second Chief. Concerned about the Delaware's legal challenges to the Cherokee Nation and the United States government, the General Council elected six representatives, or delegates, to oversee these legal matters: John Sarcoxie, Andrew Miller, Henry Armstrong, Filmore Secondine, John Young and Arthur Armstrong. Journeycake served until his death in

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<sup>158</sup> Prewitt, 7.

<sup>159</sup> Timothy Crumrin, "An American Life: Captain John Conner of Indiana and the West," <http://www.connerprairie.org/historyonline/cjc.html> (accessed May 5, 2008). Conner was appointed Principal Chief in 1858.

<sup>160</sup> Two Delaware Indians, Henry Tiblow and Joe Thomson to Enoch Hoag, Superintendent, 4 December 1872, *Richard C. Adams Collection*, (Austin: Humanities Research Center, University of Texas), DW-DTI-8.

<sup>161</sup> Petition of Tribal Council to the Honorable Columbus Delano, Secretary of the Interior regarding Ketchum's election, 1872, DW-DTI-8. Carrigan and Chambers, 21-22. The vote was seventy-two for Ketchum and sixty-nine for Journeycake.

<sup>162</sup> According to "An American Life," James was originally nominated to the position before his brother John, but James turned down the offer.

1894. This latter group was the first generation of the Delawares' leadership originating in Indian Territory and all were Christian.

The relationship with the Cherokees posed the greatest threat to the Delawares. The Delawares therefore took their grievances about the Cherokees to Congress and subsequently took the Cherokee Nation to federal courts to clarify the Delawares' legal status. Nine years after the Articles of Agreement, Charles Journeycake assembled a General Council on February 26, 1876. During this meeting, the Delaware General Council, the supreme authority for the tribe, petitioned Congress for a "peaceful district," for a reservation.<sup>163</sup> Another year went by and in 1877 the Commissioner of Indian Affairs reported that the Delawares demanded their own reservation because their relationship with the Cherokees was impossible.<sup>164</sup> Yet, the U.S. was embarking on an assimilation campaign and it was well underway by this time.<sup>165</sup> The federal government was unlikely to acquiesce to a small tribal nation's request for a reservation because the government planned to terminate tribal nations altogether.

By the time the Plains Indian Wars ended in 1890, the federal government had implemented a revised allotment and civilization policy. This was a three-pronged attack on Indian cultures aimed at the complete assimilation of Indians into American society. First, tribal lands would be broken up into one-hundred and sixty and eighty acre homestead allotments. Second, Indians who received allotments would become U.S. citizens. Finally a universal government Indian school system would retrain Indians to be

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<sup>163</sup> Charles Journeycake to the Honorable Senate of the United States and House of Representatives in Congress Assembles, 24 February 1876, DW-DTI-8.

<sup>164</sup> Commissioner of Indian Affairs, *Annual Report*, 1877, DW-DTI-8. Carrigan and Chambers, 21.

<sup>165</sup> Fred Hoxie, *A Final Promise The Campaign to Assimilate the Indians 1880-1920* (Lincoln: University of Nebraska Press, 1984 Bison Books edition, 2001). See Chapter 1, "The Appeal of Assimilation," 1-39.



productive American citizens.<sup>166</sup> In 1887, Congress passed the *Dawes Severalty Act*, also known as the *General Allotment Act*. In Indian Territory, allotting Indian lands was pursued forcefully to prepare for Oklahoma statehood in 1907.<sup>167</sup>

The Dawes Act was filled with inconsistent ideals that purported to define American citizenship. If an Indian proved himself worthy of being an American, then he was given a stamp of approval called “competent.” If not, he was eligible for an allotment but the federal government controlled the land restricted from total ownership. *Competency* and *restrictions* were distinguished by several legal definitions but generally Indian allottees with lesser degree of Indian blood were deemed competent while allottees with higher degrees of Indian blood were judged incompetent.<sup>168</sup> Those Indians who were deemed competent were awarded with unlimited rights to their allotment. This meant that they could keep, lease, or sell their allotments without the oversight of the federal government and they were given U.S. citizenship. Indian peoples who were termed incompetent were unable to exercise full control over their allotted land. This meant that the federal government would have to approve any transactions regarding the allotment. Most often, the land was inalienable for a certain number of years. However, an individual Indian with higher blood quantum, say one-half or more Indian blood, who possessed a boarding school education might be deemed competent. The entire process

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<sup>166</sup> Francis Paul Prucha, ed. *Americanizing the American Indians Writings by the “Friends of the Indians,”* (Lincoln: University of Nebraska Press, 1973), 6. According to Prucha, the end of the reservation system had more to do with the “Friends of the Indian” than the U.S. military, 2-5. He states that out of 138,000,000 acres in 1887, only 48,000,000 were left by the ending of the policy in 1934, 10.

<sup>167</sup> Debo, 31. American Indian Lawyer Training Program, Inc. (AILTP), *Indian Tribes as Sovereign Governments A Sourcebook on Federal-Tribal History, Law, and Policy* (Oakland: AIRI Press, 1988), 9.

<sup>168</sup> Although I disagree with the use of “degree of Indian blood” or the way this term was utilized to define and undermine Indian peoples, “blood” is nonetheless the exact term that the Dawes Commission used to create the Dawes rolls. Unfortunately, blood is the only way to explain how the breakdown between competency and restrictions were distinguished no matter how inaccurate or immoral. For more information on this, see Debo, 103-113 and 183-187.

of determining competency was subjective and based on the inconsistent judgments of the Bureau of Indian Affairs field clerks. This practice continued with little non-Indian opposition until 1926.

The Five Civilized Tribes, which included the Cherokee, Choctaw, Chickasaw, Creek, and Seminoles, vehemently opposed the allotment of their lands. Each of their tribal governments held off the federal government until 1893 when Congress created the Dawes Commission specifically to negotiate and then arrange for the individualization and civilization programs even though the government had no idea how to conduct such an extraordinary land transaction.<sup>169</sup> Because of the great degree of tribal opposition to allotment, Congress passed the *Curtis Act* of 1898 in effort to begin the abolishment of the Five Civilized Tribe's governments, courts, and civil laws—the essence of the Cherokee Nation's territorial jurisdiction. The dissolution of the Cherokees' government was intended to facilitate the allotment of tribal property and individual Cherokee citizens.

The Delawares' position within the Cherokee Nation complicated the allotment issue. The first court battle that began to test and define the Delawares' rights as Cherokee citizens was *Journeycake v. Cherokee Nation* in 1893, which resulted from the dispute of payments for Cherokee Nation lands lying west of the Arkansas River.<sup>170</sup> The Cherokee Nation paid out this money per capita to Cherokees “by blood” only. Citing the 1866 Delaware Treaty with the United States, the Delawares insisted that if they were not to receive shares as “citizens” of the Cherokee Nation then the Delaware Tribe sought

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<sup>169</sup> Debo, 31. Senator Henry Dawes served as Chairman of the commission until his death in 1903. Debo notes that the Chairman position was frequently filled with others but for various reasons Dawes always stepped back into the role and therefore served as the only stable member to Chair the commission.

<sup>170</sup> *Journeycake v. Cherokee Nation*, 28 Ct. Cl. 281 (1893).

to recover the money they had originally bought Cherokee citizenship rights. The Delawares further contended that the United States was responsible for protecting the Delawares' rights.<sup>171</sup> The Cherokees argued that adopted citizens meant the same as adopted whites, who were entitled to "individual rights, privileges and benefits...without acquiring any right or title to the Cherokee domain or the proceeds thereof."<sup>172</sup> The Cherokee Nation further argued that the Delawares received monies from former Delaware lands while the Cherokees, by blood, were not privy to Delaware monies.<sup>173</sup>

The Delawares won the case. The court ruled that the "two communities in the matter of property were independent of the other but both subject to the constitution and laws of the Cherokee Nation" and that as "new citizens" the Delaware had become "*ipso facto* sharers in this common property and entitled to their pro-rata part of the proceeds thereof."<sup>174</sup> In *Journeycake v. Cherokee Nation*, the Delawares had argued for their dual citizenship and the court agreed. The judge examined tribal citizenship rights and verified the struggles that the Delawares faced in opposing the Cherokee Nation. Foremost, the Court ruled that the Delawares had in fact purchased rights typically extended to those who were born Cherokees.<sup>175</sup> Those rights included access to Cherokee lands. Yet this issue proved a bit deeper than what appears on the surface. The question of citizenship for native societies was tied to tribal land holdings, or communal land. In the Cherokee Nation, communal land ownership had metamorphosed to fit a constitutional and highly centralized government.<sup>176</sup> While in many other Indian

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<sup>171</sup> Weslager, 447.

<sup>172</sup> *Journeycake v. Cherokee Nation*, 294.

<sup>173</sup> *Ibid.* 299-300.

<sup>174</sup> *Ibid.* 281 and 292.

<sup>175</sup> Carrigan and Chambers, 26.

<sup>176</sup> *Journeycake v. Cherokee* 302-321.

societies communal land was held in common among all members of the nation (meaning each member was a stakeholder), the Cherokee Nation government took communal land ownership a step further controlling and authorizing land for Cherokee citizens as a right of occupancy.<sup>177</sup> The Delawares in contrast were steeped in a system of communal land ownership—still hunting and gathering in combination with farming and rarely building fences for their livestock. The Delaware people as a body owned the land and the General Council controlled land use by consensus. Thus, the Delawares could press on as a unified body of people.

*Journeycake* exposed many Delaware grievances since coming to the Cherokee Nation. For instance, the Cherokee Nation was supposed to have provided for the Delawares' education. Instead the Delawares built their own schools, churches, and even employed a physician.<sup>178</sup> The Delawares continued their form of tribal governance, distinct culture, and social norms separate from the Cherokee people through the era of the *Dawes Severalty Act*, Oklahoma statehood, and through the next century.

Nevertheless, the odds were increasingly against the Delawares. The federal government suspended annual payments to the Delawares until 1893, when it alleged that

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<sup>177</sup> Ibid.

<sup>178</sup> "Petition from Tribal Council to the Honorable Columbus Delano regarding Ketchum election," n.d., 1872, DW-DTI-8. The document asks for the Delaware surplus funds to be used for "establishing institutions of learning and providing for orphans and the destitute." Cherokee Agency to Honorable E. Hoag, Superintendent, 26 Dec. 1873, DW-DTI-8. Carrigan Chambers, 21. Roark, 71. Delaware Baptist mission churches were built at Charles Journeycake's home on Lightning Creek, the Caney River, and Silver Lake (near Bartlesville) by private donations. Deposition of Mary Beysiau, December 7, 1898, *Delaware v. Cherokee*, 1898. Beysiau states, "We wanted to send our children to school at Tahlequah and did send them there, but they sent them back and said they had no room and they had to come back afoot. My boy did that. We tried too, to get children into the orphan asylum but they would not take them. Deposition of Simon Secondine, December 6, 1898, *Delaware v. Cherokee*. Secondine testified that the Delaware built two good churches and two schools on California Creek, two schools on the Caney, and one on Lightning Creek.

no money remained in the federal account.<sup>179</sup> In 1894, the Cherokee Nation contested the outcome of the *Journeycake* ruling of 1893. *Cherokee Nation v. Journeycake* declared that the Delawares were equivalent in all respects to Cherokee citizens and that they had no “distinct body of lands, as in the case of other tribes” while the Delawares existed “within the limits of the Cherokee Reservation.” The ruling also declared that no Cherokee citizen could be “deprived of his or her right and interest in the property without doing an injustice.”<sup>180</sup> While this ruling now recognized Delaware rights under Cherokee sovereignty, it was a major defeat to the Delawares who believed that they had purchased a reservation.

In spite of this major setback that wiped out the very reservation that they had purchased, the Delawares continued governance of their tribal nation. In 1895, the Department of the Interior called for the Delaware General Council and the Delawares to form a Business Committee. Five Delaware men would serve on the Business Committee to act in the capacity of the chief. George Bullette, of the Connor and Bullette family lineages and a member of the Alluwe community, was elected Chairman, while John Sarcoxie Jr., from the lower Caney, John Secondine of California Creek, Henry Armstrong, from Turkey Creek, and John Young from the forks of the Caney, were voted to fill the remaining seats.<sup>181</sup>

A new legal decision further reduced the Delaware estate. According to *Delaware Indians v. Cherokees*, 1904, communal and individual “ownership” of the

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<sup>179</sup> Message from the President of the United States, *Department of the Interior*, Washington, December 22, 1886, DW-DTI-8. *Report from the Committee on Indian Affairs*, May 27, 1890, DW-DTI-8. Weslager, *History*, 446-447.

<sup>180</sup> *Cherokee Nation v. Journeycake*, 155 US 196, (1894).

<sup>181</sup> D.M. Wisdom, Indian Agent, Union Agency to J.H. Bartles Esq., 16 January 1895. Wm. H. Sims, First Assistant Secretary to the Commissioner of Indian Affairs, 18 February 1895, DW-DTI-8.

157,600 acres that the Delawares thought they had purchased outright were mere life estates.<sup>182</sup> Even though the case stalled the federal government's allotment process, the United States refused to become "a party in the suit, claiming that it was a dispute between the Delawares and the Cherokee."<sup>183</sup> Indeed, *The Oklahoman*, called the resulting clash between the two tribes "bitter."<sup>184</sup> Another report claimed that the slow decision of the Supreme Court had caused the Cherokee much hardship.<sup>185</sup> According to the ruling, only those original Delaware individuals still alive and whose name appeared on the February 1867 registry had purchased one-hundred and sixty acre allotments. By this logic, upon the death of the original Delaware allottee, the land reverted back to the Cherokee Nation.<sup>186</sup> Delaware descendants would be allotted eighty acres per individual and one-hundred and ten per head of house-hold, the same as Cherokee individuals and families. In addition to the ruling that there was no distinct body of land set aside for a Delaware reservation, this decision stripped Delaware descendants of the land that would have been allotted to the two-hundred people (and their descendants) who had perished without reaching and living on the Cherokee Nation. Moreover, the price they had paid into the Cherokee Nation, a dollar an acre, was more than they would have paid for

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<sup>182</sup> *Delaware v. Cherokees*, 193 U.S. 127 (1904). "Quay Resolution Provides that Segregated Delaware Indian Lands Remain Excluded," *The Oklahoman*, 9 January 1904. Because the Delaware had purchased the 157, 600 acres that this area would remain sectioned off separate from the Cherokee. Senator Quay was sympathetic to the Delawares' claims and "presented a memorial of the Delaware tribe of Indians, now residing in the Cherokee Nation, praying for relief relative to their rights and ownership of such lands."

<sup>183</sup> Weslager, *History*, 451.

<sup>184</sup> "Argument in Indian Case Supreme Court Considering Case of the Delaware Indians versus the Cherokee Nation," *The Oklahoman*, 2 December 1903.

<sup>185</sup> "Delaware Case Decision," (Vinita) February 13, 1904, news clipping from private archives of James Rementer.

<sup>186</sup> Adams, xxix. According to "Delaware Case Not Argued, Crowded Out in U.S. Supreme Court—It involves 157,000 Acres land in Cherokee Nation," *The Oklahoman* (2 December, 1903), there were two-hundred and thirteen originally registered Delawares still alive. The article clearly supported the argument that at the time of the *1867 Articles of Agreement*, no one had any inkling that the Delawares were merely purchasing life estates; the entire concept of purchasing life-estates was an "afterthought" about the contract and yet it was argued throughout the litigation.

reservation lands in other Indian nations. Thus, the Delawares overpaid for lands they did not even get to call their own.<sup>187</sup>

*Delaware v. Cherokee* also struck a blow at individual Delawares who had improved their land believing that they owned it outright. These Delawares had to quickly sell, often at a loss, or face losing the equity altogether. This ruling applied to thousands of acres of land spread throughout the Cherokee Nation.<sup>188</sup>

Conflicts over land ownership were compounded by conflicts over the ownership of mineral resources. The first commercial oil well in Oklahoma was named after a Delaware girl, the Nellie Johnstone No. 1, which blew on March 25, 1897 and produced over 1.5 billion barrels of oil.<sup>189</sup> This oil well was a product of complicated networks of intermarried whites, Delawares, Osages, and Cherokees. William Johnstone (father to Nellie), George B. Keeler and Michael Cudahy drilled the Nellie Johnstone well across the river from Jacob Bartles' mill in what would later become Bartlesville, a major area of the Delawares' settlement. Keeler, who happened to be fluent in Osage sign language, married a Cherokee, Josie Gilstrap in 1872.<sup>190</sup> Johnstone married Lillie Armstrong, granddaughter of Charles Journeycake, in 1882.<sup>191</sup> In 1898, the Santa Fe Railroad ran south from Caney, Kansas, down through Copan, Dewey and Bartlesville, Oklahoma, to the Collins coal mine in present day Collinsville. A settler from 1873, Jacob Bartles was

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<sup>187</sup> In *A Delaware Indian Legend And the Story of Their Troubles*, (Washington D.C., 1899), Adams notes that the Delawares were quoted fifteen cents an acre in the Seminole Nation and thirty cents an acre in the Creek Nation, 22.

<sup>188</sup> Adams, xxxi.

<sup>189</sup> "History of Bartlesville and Washington County, Oklahoma," BARTLESVILLEHISTORY.ORG, <http://myweb.cableone.net/gmeador/bvhisgra.htm>, (accessed July 28, 2008). "History of Bartlesville and Washington County, Oklahoma," BARTLESVILLEHISTORY.ORG, Oil and Washington County Carrel, <http://myweb.cableone.net/gmeador/oil.htm>, (accessed July 28, 2008).

<sup>190</sup> Williams, 25. His Grandson W.W. "Bill" Keeler would head the future Phillips Petroleum and become Chief of the Cherokee Tribe.

<sup>191</sup> Ibid. 24.

married to Nannie Journeycake, the daughter of Chief Charles Journeycake and the couple built the first non-Indian church and Sunday school.<sup>192</sup> Bartles also began the first post office in 1874, and developed the first trading post and store on Turkey Creek.<sup>193</sup>

Because some Cherokees realized the extreme wealth that could be generated through land and business development, the first *Journeycake* ruling had infuriated the Cherokee government and individuals. Cherokees instigated personal feuds, interrupted Delaware social functions, and sometimes murdered Delawares.<sup>194</sup> The Cherokees excluded the Delawares in business deals with oil and mineral companies because the Cherokees claimed sole ownership of mineral rights.<sup>195</sup> Under the *Curtis Act* of 1898, the Secretary of the Interior could grant mineral leases to companies on Indian lands with payments accruing to the tribal government. On the Cherokee Nation, this included mineral rights on 181,920 acres, much of it within Delaware allotted lands. A company pursuing oil for instance, would owe no royalties to any individual Delaware or to the Delaware Tribe as a whole. Richard Adams, a Delaware who held land with significant claims to be filed, fought persistently to overturn this practice and his influence led to the Delawares' inclusion in the *Cherokee Allotment Act of 1902*. Afterwards, Delaware allottees were at least able to claim an individual Delaware's right to lease to the company of choice.<sup>196</sup>

This tug-of-war between the Delawares and the Cherokee over mineral rights was significant because of the importance of the oil industry to the region. Oil created the

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<sup>192</sup> "Bartlesville Area History: Bartlesville Indian Tribes," <http://myweb.cableone.net/gmeador/bvhisgra.htm>, (accessed July 28, 2008).

<sup>193</sup> Williams, 33.

<sup>194</sup> Charles Journeycake to the Honorable Senate of the United States and House of Representatives in Congress Assembled, 24 February 1876, DW-DTI-8. Weslager, *History*, 450.

<sup>195</sup> Weslager, *History*, 450.

<sup>196</sup> Adams, xxxii-xxxiii.



city of Bartlesville. H.V. Foster, who began the Indian Territory Illuminating Oil Company in 1901 from the neighboring Osage's oil lease, became the richest man in the West at the time.<sup>197</sup> Eventually, his company became Cities Service Oil Company, headquartered in Bartlesville until 1971, when it moved to Tulsa. The Cities Service Oil spin offs led to companies such as OXY USA, Citgo, and Williams Natural Gas Co.<sup>198</sup> Frank Phillips came to Bartlesville with his brother Lee Eldas in 1903. They managed a number of banks and oil companies and began their first successful well in 1905 which led to the founding of Phillips Petroleum's world headquarters, and remained in Bartlesville until 2002 when the company merged with Conoco.<sup>199</sup> The Delawares, on the other hand, experienced none of these future benefits and instead declined deeper into poverty.

The Cherokees' gains were lost to the persistence of the assimilation policies. While many of the Cherokee citizens resisted the Curtis and allotment policies, the Cherokee government reluctantly submitted to an agreement with the Dawes Commission in August, 1902. Ratified July 1, the Dawes agreement with the Cherokee terminated the Cherokee tribal government on March 4, 1906. Each Cherokee head of household received a one-hundred and ten acre allotment and any individual born to a Cherokee citizen after September 1, 1902 could be "enrolled in the Cherokee Nation, or participate in the tribal property of the Cherokee Nation."<sup>200</sup> Yet, the date was unrealistic because the task of allotting and finalizing the rolls was too immense. Congress therefore passed the *Five Civilized Tribes Act*, 1906, providing for the legal continuation of the Cherokee

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<sup>197</sup> History of Bartlesville, 2.

<sup>198</sup> Ibid. 3.

<sup>199</sup> Ibid.

<sup>200</sup> Carrigan and Chambers, 28.

Nation until the death of the last citizen. Certain proceeds from the unallotted lands were to be distributed to the citizens of the Cherokee Nation and their descendants were to hold interest or property rights as heirs to the original enrollee. The Five Tribes Act also enabled the federal government to use the surplus money to wrestle away the education systems from the tribes and thus redesign what was formerly a Cherokee public school system to federally administrated boarding and day schools. The Cherokee had over four million acres allotted and when it was complete, only seventy-three thousand was left as surplus land. The Cherokee Nation could have chosen to continue their government, albeit with extreme limitations. Instead, the Cherokee tribal government essentially ceased to exist after 1917.<sup>201</sup>

The Cherokee Nation's submission to the Dawes Commission directly affected the Delawares. The Delawares' 157,600 acres were treated the same as Cherokee lands and divided up into the one-hundred ten acre allotments to head of household and eighty acres for individuals and then released to the enrolled citizens. Yet the Delawares were enrolled separately from the Cherokee Nation. Their original allottees had what we know today as the D-allotments.<sup>202</sup> Generally speaking, although a few-hundred Delawares removed to a Mexican reservation, the Delawares were unsuccessful in their attempts to resist the allotment policies.<sup>203</sup>

As with many other Indian people at the time, the Delawares ultimately submitted to the federal programs and some individuals lost significant amounts of land in selling to

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<sup>201</sup> Carrigan and Chambers, 258. Weslager, *History*, 453.

<sup>202</sup> Weslager, *History*, 453. Kraft, 526. This occurred with the exception of the original living Delaware members who had removed and settled in the Cherokee Nation.

<sup>203</sup> "May Settle in Mexico," (1898) and "Moved to Mexico," (1899), news clippings from the private archives of James Rementer.

the government or canny businessmen.<sup>204</sup> Grafters provided transport and lodging to Indians who wished to locate an allotment. The Grafter guided an Indian who picked an allotment location and surplus land. Surplus land was the amount of land that would be left-over once all the allotments were designated. The Indian signed over the surplus land to pay for the services that the grafter had provided.<sup>205</sup> With an eye towards the entire allotment, Grafters kept track of Indians who might be granted competency. With such ploys and dubious practices, the historian Angie Debo explained how individual allottees in the Five Tribes lost five million acres in three years when their restrictions were removed from 1904 to 1907 for statehood. This was the majority of wealth in Indian country.<sup>206</sup> The Delawares lost significant land holdings because much of their land held rich mineral reserves. Members of the Dawes Commission who gave the approval to remove restrictions were often in key positions of trust companies who sought the mineral wealth. They were usually a president, vice-presidents, director or stockholder.<sup>207</sup>

In combination with the other civilization policies, the Dawes Severalty Act seriously impacted the Delaware communal land ownership, as it did with every other Indian nation across the United States. Breaking up the land into checkerboard patterns impeded the ability of Delaware men to hunt and women to gather and farm as they had for centuries. Delaware farmers were pressured to fence in their allotments and livestock, when previously they rarely recognized formal boundaries.

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<sup>204</sup> Brice Obermeyer, "Delaware Identity in a Cherokee Nation: An Ethnography of Power" (PhD diss., University of Oklahoma, 2003), 171. Obermeyer gives the example of Albert Exondine, who had to cede his entire cattle ranch to the federal government.

<sup>205</sup> Debo, 98-99.

<sup>206</sup> Ibid. 89, 92.

<sup>207</sup> *Memorial From Richard C. Adams, Representing the Delaware Indians, Concerning the Dawes Commission and its Action in Connection with the making of the Delaware segregation, etc.*, 58<sup>th</sup> Congress, 2d Session, Senate, Doc. 58 part 2, February 5, 1904. Debo confirms this, 118.

Most disturbing and devastating to Indian families was that the federal government often separated Delaware children from their parents by sending them to boarding school (if they met the restriction requirements based on blood degree) where they were punished for speaking their own language or practicing any measure of their Indian culture.<sup>208</sup> James Thompson (Ohëlëmitakwsi) recalled that they cut his long hair and removed his earrings. He was punished for speaking Lenape with his friend, Willie Longbone.<sup>209</sup> Patricia Donnell, Delaware Elder, recounted her mother's experiences at Chilocco Indian Boarding School: "She and other students were never allowed to speak their tribal language, nor even to wear any items of clothing or jewelry that was of native origin."<sup>210</sup> Their harrowing experiences in Indian boarding schools coupled with the deplorable practice that separated mothers and fathers from their children for years at a time completely devastated many Delaware families.

Moreover, allotment revealed the differences between Delaware agricultural practices, which were emblematic of their Big House religion (Nkàmwin) and white farming.<sup>211</sup> The Delaware farmers used traditional practices, such as planting the three sisters—corn, squash and beans—together and in that order. These farming techniques emphasized self-sufficiency on small scale units rather than large scale cultivation demanded by commercial crops, according to Terry Prewitt, a historian of the Delaware

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<sup>208</sup> James Rementer, "The Native Languages of North America, Especially Lenape," in *Teacher Resource Packet* part of *Native Peoples, Continuing Lifeways*, (Frankfort KY: Kentucky Heritage Council, 1994), 4. Ktsianina Lomawaima, *They Called It Prairie Light the Story of Chilocco Indian School* (Lincoln: University of Nebraska Press, 1993). Robert A. Trennert, *The Phoenix Indian School Forced Assimilation in Arizona, 1891-1935* (Norman: The University of Oklahoma Press, 1988).

<sup>209</sup> Rementer, 4.

<sup>210</sup> Ibid.

<sup>211</sup> Jay Miller, "Delaware Gamwing (Big House Rite)," *Ethnohistory*, 44 (Winter, 1997): 122-123. Prewitt, 3

settlement period.<sup>212</sup> The reallocation of land at the turn of the century disrupted the original land claims and brought the Delaware under “extreme pressure” to conform to the civilization policies and the ramifications of Oklahoma statehood. The Delawares remained as a “people of similar mind within a reasonably well-defined region,” wrote Prewitt.<sup>213</sup> Only at the turn of the century did the Delawares experience a higher birth than death rate and only because of the increase of marriages to non-Indians or Indians from other tribal backgrounds.<sup>214</sup>

Unfortunately, the city of Bartlesville also grew out of the head-rights of the Delaware Indians. Grafters abused the Dawes Act by serving as court appointed guardians of Indian children whose parents were considered incompetent. Competent Indians could lease or sell their allotment and mineral rights and possibly receive royalties as a result of such transactions. Incompetent Indians could merely reside and raise crops on their land because the Dawes Commission controlled the ownership. Therefore, guardians of children from incompetent Delaware Indian parents often stood to gain access to significant mineral wealth by leasing their ward’s land, collecting her per capita payments and after 1908, selling the minor’s allotment. Sixty thousand Indian minors owned twenty-five million dollars in oil wealth in Oklahoma.<sup>215</sup> In one such case,

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<sup>212</sup> Prewitt, 22-24. Many of the large scale farms that developed in the area were wheat farms consisting of 400-500 acres as opposed to Delaware’s 160 acre farms.

<sup>213</sup> Prewitt, 14. Deposition of Mary C. Beysiau, December 7, 1898, *Delaware v. Cherokee*. Mrs. Beysiau stated “I never measured the land when I settled I thought it belonged to me and commenced to farm....[t] was not sectionized at the time... We have no laws but we have a custom. They govern their affairs as a Delaware people.”

<sup>214</sup> Prewitt, 19.

<sup>215</sup> Debo, 183.

Phillips Petroleum, through their Lewcinda Oil Company, began thanks to Frank Phillips' guardianship of eight year old Delaware Anna Anderson's allotment.<sup>216</sup>

In 1904, Congress appropriated \$150,000 for any outstanding claims that the Delaware had against the U.S.<sup>217</sup> This was part of larger claims legislation that arose from suspicious looking Secretary of Interior expenditures of tribal monies.<sup>218</sup> Although the Delawares were not fully satisfied with the payoff, the General Council, under the Business Committee Chairman Bullette, recognized that this was the highest amount that they could likely receive; so they accepted.<sup>219</sup> Accordingly, the Delawares passed a resolution that defined: 1.) Its membership as those who were living at the time or those who descended from the 1867 registration; 2.) The leadership of the Tribe as the General Council called together by the Business Committee; 3.) The Business Committee, and; 4.) Those who represented the Delawares in legal matters.<sup>220</sup> The Department of Interior accepted the resolution. The Tribe subsequently requested that the Department of Interior approve a newer, more current membership roll. The two governments cooperated. The Delaware Business Committee compiled the original list to submit the affidavits for the validation of each and every Delaware to be on the final roll that the

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<sup>216</sup>There are two different meanings listed for the same pronunciation but different spellings in *Voices of the Big House*. The account offered by Terry Prewitt lists her as *enxinau*, or that's all you see of her, 19. Grumet states Anna was the daughter of Sam Anderson and Josie Bullette Anderson of Post Oak, 159. Obermeyer, 143. "History of Bartlesville and Washington County, Oklahoma," BARTLESVILLEHISTORY.ORG, Oil and Washington County Carrel, <http://myweb.cableone.net/gmeador/oil.htm>, 2, accessed July 28, 2008. Robert S. Grumet, ed., *Voices from the Delaware Big House Ceremony* (Norman: University of Oklahoma, 2001), 19.

<sup>217</sup> Hearings Before a Select Committee of the United States Senate Appointed by Resolution of June 30, 1906 to Investigate Matters in the Indian Territory Connected with the Five Civilized Tribes, DW-DTI-8. Union Agency, Muskogee, Indian Territory to the Honorable Commissioner of Indian Affairs, 12 January 1905, DW-DTI-8.

<sup>218</sup> Debo, 84.

<sup>219</sup> Deposition of Joe Bartles, 130 Indian Claims Commission 794, No 27-A, 1952, DW-DTI-8.

<sup>220</sup> Resolution of the Delaware Indians in Council at Dewey Oklahoma, October 13, 1904 agreeing to conditions prescribed in Act of April 21, 1904, DW-DTI-8.

Department of Interior approved in 1906.<sup>221</sup> But to approve this roll, the Department of Interior had to address the question of the Delaware and Cherokee connection. For this reason, the Comptroller General declared that the appropriation was solely for the Delaware as a Tribe, not for individual descendants of the Delaware. He also stated that the Delaware had bought citizenship rights in the Cherokee Nation as dual citizens because they retained a Delaware tribal membership.<sup>222</sup> The Delawares currently use this 1906 final base roll to determine tribal membership.

While the gulf was widening between the Delawares who practiced their native religion and those Delawares who observed Christianity (and increasingly participated in the political organization of the Delawares and Cherokee), the backbone of the Delawares' identity, separate and independent from the Cherokee, lay with those who practiced their ancient native traditions. The customary leaders before and at the turn of the century, or "traditionalists," were recognized in religious and ceremonial capacities.<sup>223</sup> Most of these Delaware members congregated and lived in the northern section of the district, between Dewey and Copan.<sup>224</sup> Grandpa Elkhair, or Kokwəluxwe (He Walks Backward), headed the Big House Church, or Xingikáon, up to 1924. As Prewitt states in *Voices of the Delaware Bighouse Ceremony*:

Widely acknowledged as the most knowledgeable elder of his era, Elkhair was one of the most respected elders of the traditional Eastern Oklahoma Delaware community up to the time of his death in 1935.

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<sup>221</sup> Union Agency to Commissioner of Indian Affairs.

<sup>222</sup> Carrigan and Chambers, 33.

<sup>223</sup> Weslager, 443. Kraft, 521.

<sup>224</sup> Kraft, 516, Prewitt, 7.

Certain Delawares who had proven themselves held significant roles in the Xingikáon such as singers or Tələka: these included Jake Parks or Məçpahkúxwe (He Who Walks When The Leaves Are Worn Out) and Willie Longbone or Pwethəkkmən (He Pushes, Moves, Kicks, Or Rolls Something This Way).<sup>225</sup> Examples of women included Sarah Wilson Thompson or əhəlináoxkwe (Two Women That Look Alike Woman), Minnie Fouts or Wəməhələkwe, (Reverberates Everywhere Woman) and Liza Falleaf or Tatkowínau, Sally Falleaf, Rosie Frenchman and Mary Drum.<sup>226</sup> Grandma Wahoney, or Mahwataise (Bundle in Good Condition), is one of the most famous matriarchs of the families who kept a sacred Doll used in the Doll Dance.<sup>227</sup> This meant not only that Mahwataise was accountable to care for and re-dress the Doll in traditional clothing every year but it was her family's responsibility to sponsor the annual Doll Dance—another Delaware religious practice dating back to the contact period, and possibly pre-contact. Grandma Wahoney resided close to Coon Creek, near Caney, Kansas (before statehood, this area was part of Indian Territory) and she lived to be approximately one-hundred and five by the time of her death in 1908 and even then could not speak a word of English.<sup>228</sup> After Grandma Wahoney's death, Julius and Minnie Fouts continued to host the Doll Dance. Julius had been reared by his biological uncle. Charlie Elkhair, who adopted Julius as a young boy, immersed him in the strong religious traditions of the Post Oak community.<sup>229</sup> Another prominent location for the Doll Dance was at the stomp

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<sup>225</sup> Grumet, 8.

<sup>226</sup> Ibid. 19 and 161.

<sup>227</sup> Several Delaware families maintained the Dolls.

<sup>228</sup> "Mahwataise," news clipping, DW-DTI-8.

<sup>229</sup> Obermeyer, 54 and 82. Julius wife, Minnie Bullette Longbone, was sister to George Bullette. Minnie and Julius adopted George Bullette's daughter.



grounds west of Dewey.<sup>230</sup> Nora Thompson Dean (Touching Leaves Woman), a traditional and full blood Delaware who grew up in Glenoak, recalled that the last Doll Dance occurred in 1932.<sup>231</sup>

The Delaware clan and leadership identity passed through matrilineal lines. Clans (Turtle, Turkey, and Wolf) were strongly involved in the Xingwikáon, Doll Dance practice and other important religious and social activities.<sup>232</sup> For Delawares, childhood provided an especially important training period. Up until the allotment period and less so afterward, Delaware boys were sent into the woods to seek a vision. To achieve a vision, a boy, usually around age twelve, was isolated in the woods to fast and pray for a vision, thereby proving himself to the Delaware people.<sup>233</sup> Visions did not always occur for some boys and sometimes females received visions without purposefully seeking one.<sup>234</sup> Delawares viewed visionaries as exceptionally gifted people. For example, only visionaries had the rite to give Lenape names and recite their visions in the Xingwikáon. Among some of the Delawares who observed these ancient customs were Weoxalingoat

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<sup>230</sup> “Delawares Stage Big Annual ‘Doll Dance,’ Ancient Custom is Observed in full Glory at Grounds Close to Dewey,” *Bartlesville Morning Examiner*, 27 August 1922, DW-DTI-8. The belief was that a family should give strict care to the doll’s upkeep and hold an annual feast to feed the doll. If the family did not hold the dance or at least feed her, then Delawares believed the doll could bring bad medicine at any time the traditions were abandoned. Lucy and Ruth Blalock attended a Doll Dance as children. At the time of her passing, in 2001, Lucy was the last female speaker who had grown up speaking Lenape or to have attended the dance. Leonard Thompson, Nora Thomspson Dean, was the last speaker.

<sup>231</sup> “The Doll Dance,” told by Nora Thompson Dean. Transcript made for Dr. Ted Coe of the Nelson Gallery in Kansas City which now has the Doll, 1. Transcript in author’s possession.

<sup>232</sup> Although revived for sparse episodes at the home of Mini Fouts during WW II to ensure American victory and safe return for the Delaware men serving in the war, most Delawares and historians agree that the date for the last complete Big House Ceremony was in 1924. Miller and Kraft give considerable attention to these rites, how they were performed, and why this ancient religion was no longer practical after 1924.

<sup>233</sup> John Sumpter, personal interview, May 15, 2008.

<sup>234</sup> *Ibid.* Sumpter relays a family story about his Grandpa (referring to Great Grandpa Charlie Elkhair). Charlie and his brother were sent out for their vision as boys. When the family went to go get them after the required time period had elapsed, they found Charlie but his brother had vanished. There was no sign of him anywhere and Charlie explained that he had died. While death was not common during the ceremony, it reflects the depths that a boy would go to receive a vision. According to Sumpter, the ceremony reflected the way that Delawares trained their boys for hunting and war.

(Light Eyes), Captain Falleaf or Panipakuxwe (He Who Walks When Leaves Fall), Delaware Charley or Chahlawees, Joseph Thompson, Colonel Jackson, and Ice Wilson.<sup>235</sup> These old Delawares carried a tradition that was “under constant pressure” and whose practices were “revised and reformulated” to fit their circumstances.<sup>236</sup> For instance, many older Delaware women in the Copan and Dewey areas continued to wear their traditional clothing as their everyday dress well into the 1930s while the younger generations adapted to wearing mainstream American clothing.<sup>237</sup> An oral account from Elizabeth Longbone sums up her feeling of the Xingwikáon she attended in her youth, “The most precious and sweetest memories of my life are of the Delaware Church... To me, the Church was beautiful, and I just couldn’t wait to serve in the Church.” She concluded, “Our people always made the children feel that we were very much a part of the Church.”<sup>238</sup> Longbone was a native Lenape speaker and to her, the Xingwikáon translated to English as a Church, a place of worshipping the Creator and giving thanks through prayer.<sup>239</sup>

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<sup>235</sup> Weslager, *History*, 443-444, Obermeyer, 54-55, Grumet, 8, 157. Others were: Suk-kee-loong-gawn (Blackwing), Bill Swannock or Espikund (One Who Pushed Upward), George Swannock, or Ulikaman (He Steps On It Well), John Jim John, or Kapesino (Twin Man), Ben Hill, George Anderson or Kwăčkipahkíkmən (He Makes The Leaves Move As He Steps), John Anderson or Wítanahkúxwe (He Walks With the Trees), Willie Longbone, Frank Wilson or Pəmataekmə (Things Bloom Where He Steps) and Fred Washington or enxinund (You See a Bit of Him), George Bullet, and William Easy.

<sup>236</sup> Prewitt, 23.

<sup>237</sup> Ibid. 40-41. Traditional dress for women consisted of a long skirt with a full apron (nikanixtákan), a blouse and neckerchief—today; the Delaware refer to this style as a “Day Dress.” Ceremonial clothing consisted of blouse with a Bertha collar and a wrap around skirt with ribbon work, silver jewelry, and moccasins. Men’s traditional dress included a breechcloth and shirt, a beaded belt, beaded bandolier and baf, silver armbands, leggings, and moccasins. The intricacy and beauty of the everyday clothing speaks to the problematic nature of “tradition” in the early twentieth century when federal Indian policy aimed to civilize them.

<sup>238</sup> Grumet, 163.

<sup>239</sup> Nkàmwin refers to the Big House Religion. Xingwikáon refers to the Big House Church.

Prewitt states the Delaware experienced “a series of oscillations or transformations, rather than changes.”<sup>240</sup> Certain practices fell by the wayside although not without opposition. In Senate Select Hearings in 1906, for instance, a group representing the Nkàmwin, requested that the lands that the religion had been practiced on for the last forty years be allotted to a Delaware or that the Delaware Tribe at least be allowed to purchase the land from the allottee.<sup>241</sup> There is no official record of what resulted while there is some oral discussion that ten acres were set aside for it. Yet, the Xingwikáon was held on private property some years later.<sup>242</sup>

All the same, the Delawares after the turn to the twentieth century were less and less able to send their boys out for visions, which, in turn, undermined the foundations of their religion.<sup>243</sup> Boys were no longer able to attain visions because the land had been cleared by non-Indians and there were fewer places where a boy could stay in isolation to fast long enough for a vision to occur. Another problem was getting a child released from school. School officials would certainly not consider allowing an Indian boy to go for two weeks to attend this ceremony. If a parent pulled a child without the knowledge of the teacher, the sheriff would likely pay a visit. Moreover, the Nkàmwin itself strictly required venison. Clearing the land for white farming and excessive hunting by non-Indians depleted the wildlife and consequently deer was scarce.<sup>244</sup> These Delawares were unable to sing their vision songs in the Xingwikáon or feed as custom required and the ceremony thus declined. It is important to understand, however, that the decline of the

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<sup>240</sup> Prewitt, 23.

<sup>241</sup> Report of the Select Committee to Investigate Matters Connected with Affairs in the Indian Territory with Hearings, November 11, 1906-January 9, 1907, (Washington D.C: G.O.P., 1907). Vol. 2, DW-DTI-8.

<sup>242</sup> Modern day Delaware Elders know an approximate location for where the original ceremony was held, but few can or are willing to point to the exact location. When the old ones put it to rest, they did not want the remains vilified so they tended to keep it a secret from the next generation.

<sup>243</sup> Prewitt, 23.

<sup>244</sup> Miller, 125.

ceremony did not necessarily coincide with a decline in the Delawares' belief in those ways. Many Delawares today still have faith in the old Nkàmwin and the Doll Dance but they lack the knowledge or means to perform the ceremonies.

Some Delawares joined the Native American Church which used peyote during prayer, also called Peyotism, in the late nineteenth century.<sup>245</sup> John Wilson, a Delaware/Caddo, actively supported the Ghost Dance and Catholic Church, in addition to peyote use as early as 1880.<sup>246</sup> Wilson established the Big Moon version of the peyote religion among the Delaware people.<sup>247</sup> A small number of Delawares who attended the Xingwikáon were also Peyote people and most did not see any conflict between the two. It may seem ironic, but a number of them also went to Christian churches as well. While many of the other aspects of the Delaware native religion, Nkàmwin, passed into history, the use of peyote has managed to survive and is strong among some Delawares today. It is worth pointing out that Delaware Elders today resist the idea that using peyote was a means to replace the Xingwikáon since the two practices vastly differ.<sup>248</sup> Rather, the Big Moon merely took hold with some Delawares, the same as with Christianity.

Several other major practices of the Delawares grew stronger during the late nineteenth and early to mid twentieth century, including their Stomp and social dances.

Delawares have engaged in Stomp Dancing since before contact with Europeans and

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<sup>245</sup> Dean stated, "He was half brother to my grandfather Billy Wilson or (Indian name) and he brought the peyote here to the people here in this area." Kraft, 523.

<sup>246</sup> For more information on tribal responses to the Ghost Dance movement, see Peggy V. Beck, Anna Lee Walters, and Nia Francisco, *The Sacred Ways of Knowledge, Sources of Life*, (Navajo Community College Press: Tsaile, AZ, 1996), 174-178; and for more information on the Peyote Religion, 225-241.

<sup>247</sup> Miller, 125. Native American Church (NAC) is the more formal and recent name for the religion for which Indian people use peyote to pray. James Rementer pointed out that in those days, the Delawares who practiced it were referred to as Peyote people. Email message to author, May 5, 2008.

<sup>248</sup> Sumpter, Great Grandson of traditional leader Charlie Elkhair, stated that the use of peyote among Delawares "could not replace the Big House because it would be like a Catholic converting to be Jewish." The Xingwikáon declined because the Elders saw the reality and Grandpa Elkhair "had a dream to put the Big House away."

currently hold them regularly. Stomp dancing became the focal point for the traditional Delaware through the decline of the Xingwikáon. Although not as laden with religious connotations for the Delawares as it was for the Creeks, Seminoles, Yuchis, and Cherokees, Stomp Dances were well attended by Delawares and Shawnee, as well as other Indian affiliations.<sup>249</sup> Some of those old time favorite leaders were Jim Thompson, Bill Shawnee, and Grandpa Falleaf.<sup>250</sup> Their social dances included but were not limited to the Woman Dance, Duck Dance, Alligator Dance, Raccoon Dance, Bean Dance and Stirrup Dance.

Just because some Delawares followed Christianity, however, did not mean they abandoned all things Delaware. In the Baptist and Methodist Churches, the preachers were often Delaware (particularly Charles Journeycake), and they spoke primarily in Lenape, or the Delaware language up to the turn of the twentieth century.<sup>251</sup> Because federal civilization policies discouraged the use of native languages, English gradually replaced Lenape. However, there existed a mixture of both the western cultures and the native religious values and customs well into and beyond the next century. Mixing these beliefs was painful at times. A number of Christian Delawares were openly hostile to the

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<sup>249</sup> For more information on Stomp Dancing among the Seminoles, see Beck, 245-264. A rudimentary explanation of the dance is that there is a line of men and women that alternately follow the leader in a circular fashion. The dance can take a reverse turn as well as move in and out of the circle depending on what the leader wants to do; the men answer the leader's calls and the women follow the lead shell shakers rhythmic steps. The more experienced shell shakers are closer to the center and are usually the older women. Originally, a woman followed the song leader with a set of numerous turtle shells tied around her lower legs that rattled to the beat of her steps. The concept would be similar to a baby rattle. When you shake a rattle against your hand, the material inside makes a noise. When a shell shaker's heel hits the ground, the material inside the turtles or cans sound against the container. These turtle shells still exist and are reflected in the idea of whether a woman "shakes shells," but more often women wear cans tied and soldered together with beads or rocks inside to make the rattle sound. These dances were regulated but fun activities. Children were allowed to dance on the ends and there was a stick man to assure order. The old timers used to do what was called "four posting," meaning that there were five leads for which a leader would start the song in each direction (initiating with east, south, north, and west and then the center).

<sup>250</sup> Sumpter.

<sup>251</sup> Roark, 67 and 72.

traditional Delawares. Even so, the Delaware Business Committee meetings had to have an interpreter for the majority, who were Lenape speakers, in the General Council well into the 1930s.<sup>252</sup>

When the First World War began in 1917, it brought more outside pressures for the Delawares to engage with mainstream Americans. Three zinc smelters existed in northeastern Oklahoma. The Lanyon-Starr Smelter was built in 1906 and the Bartlesville and National Zinc smelters were built in 1907. H.V. Foster, who was about to lose his Osage lease, gained 300,000 acres from the federal government for the zinc mines, consolidated these three smelters during the war, and provided significantly to the war efforts. The mines also attracted immigrants from Poland and Germany to the surrounding area of Bartlesville and consequently increased the infiltration of outsiders into Delaware lands.<sup>253</sup> To prove their loyalty to the U.S., Delawares worked for wages alongside the immigrants in the mines.

Concurrently, the Delawares' path towards assimilation also came from exercising their conception of a traditional value, war. The Delawares were part of a significant Native American participation to the World War One effort. Indians joined the military at higher rates than non-Indian Americans. Thomas A. Britten explores Native Americans participation in the war and, in return, how their participation affected Indian Policy.<sup>254</sup> His general analysis of Indians joining the army leading up to World War One seems to explain much about the Delawares' motivations. First, although there are numerous and diverse tribes as well as individuals, Indian men coming from warrior

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<sup>252</sup> Carrigan and Chambers, 25.

<sup>253</sup> History of Bartlesville, 3.

<sup>254</sup> Thomas A Britten, *American Indians in World War I, At War and At Home*, (Albuquerque: University of New Mexico Press, 1997).

societies could achieve valor and prove themselves to their people in military service.<sup>255</sup> This resonates with the Delaware tradition of sending their boys for visions to prove themselves as strong and capable warriors. Second, Britten argues that enlisting gave Indians a “temporary respite against the social and economic confines of the reservations” and “when economic hardship hit Indian peoples possessing strong warrior traditions, conditions were optimum for enlistment.”<sup>256</sup> Although the war years were only a continuation of a long period of poverty for most Delawares, allotment and land loss worsened the Delawares’ economic situation. Delaware poverty contrasted with the comparative non-Indian wealth that had been taken from their land. World War One was an opportunity for Delaware men to gain an income the same as all American men. A drawback for some tribes, Britten noted, was that army life was difficult for those who were particularly attached to their families.<sup>257</sup> Delawares had a long history of scouting and tracking both for the Tribe and for the U.S. This often took them away from their families. It seems likely then, that these issues were minimized for men in the Delaware culture as both men and women were more able to cope with their men being gone for long periods of time. Moreover, for those Indians who had or were receiving a boarding school education which separated them from their families, military service was a relatively fluid transition. After all, boarding schools provided highly militarized discipline throughout every activity. Thus, boarding schools such as Chilocco in Oklahoma and Haskell in Kansas, where a number of ‘incompetent’ Delaware children

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<sup>255</sup> Ibid. 11.

<sup>256</sup> Ibid. 11 and 20.

<sup>257</sup> Ibid. 23.

attended, were unique training grounds for Indian boys to go into the military.<sup>258</sup> In addition, school administrators urged their students and alumni to join the military.<sup>259</sup>

In return, Indian involvement in World War One influenced Indian policy. Indian service changed the American public's perception of Native American peoples as true Americans. Britten states, "Through service in the war, Indian soldiers demonstrated a degree of patriotism and loyalty that surprised many non-Indians."<sup>260</sup> Congressional bills reflecting Indian acceptance came within days of declaring war on Germany.<sup>261</sup> These initiatives would have given Indian men the prerogative to enlist like all other American men and then would have automatically given them American citizenship without negating their tribal status. Applied to Delawares, these initiatives were particularly attractive for men with higher degrees of Indian blood who were uneducated because they were still considered to be incompetent. Citizenship would have enabled them to gain control of their land and some revenue from their minerals. Yet, the final bills and the first calls to register did not automatically give Indian men American citizenship even though all Indian men were required to register for the draft.<sup>262</sup> There were numerous problems with determining exactly who was or was not a citizen though and the final decision rested on the shoulders of the draft board.

Predictably, the particular political situation of the Delawares created yet another dimension of complication. Those enlisting were often labeled Cherokee and so unless someone stood out and declared himself a Delaware, it was difficult to determine the exact number of Delawares who served. Even so, according to conservative estimates,

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<sup>258</sup> Ibid. 65.

<sup>259</sup> Ibid. 65-66.

<sup>260</sup> Ibid. 51.

<sup>261</sup> Ibid. 38.

<sup>262</sup> Ibid. 51.



the total number of Native American who served in World War One was over ten thousand, or twenty percent of the adult male Indian population.<sup>263</sup>

While federal policy was against segregating Native Americans from the whites, the army unintentionally created a few all-Indian units. Oklahoma Indians went to one of four training sites in Texas and from there they were likely sent to the 158<sup>th</sup>, 358<sup>th</sup>, or the 142<sup>nd</sup> Regiments.<sup>264</sup> Delawares most likely went to the 142<sup>nd</sup> along with others from the Five Tribes. These troopers were among the first to reach France in 1917 and from then on were in every major engagement of the war, winning numerous medals of honors and commendations.<sup>265</sup> There was a common perception of Indians as brave and fierce fighters. This often influenced their duties and Indian men therefore suffered higher casualty rates of five percent as a result of their work as “scouts, snipers, and messengers.”<sup>266</sup> Applied to the Delawares, they possibly lost four of their men to World War One.

On the home front, through the war years and for the next century, the Business Committee continued to serve as the Delaware Tribe’s elected leadership.<sup>267</sup> Bullette served until 1921 when he was replaced by John Young for a short time and then Joseph Bartles, grandson of Charles Journeycake, chaired the Business Committee until 1951. Under the direct supervision of the BIA, the Delawares called for annual General Council

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<sup>263</sup> Ibid. 59.

<sup>264</sup> Ibid. 74-75.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid. 82.

<sup>267</sup> “The Delawares Meet,” *Bartlesville Examiner* 11 Feb 1921, DW-DTI-8. “Delawares Met Last Week,” *Bartlesville Examiner*, 27 March 1921, DW-DTI-8. Chas H. Burke, Commissioner of Indian Affairs to Mr. Joe A. Bartles, 21 February 1924, DW-DTI-8. Joe A. Bartles to Hon. S.E. Wallen, 8 February 1924, DW-DTI-8. Joe Bartles, Chairman, Delaware Business Committee to the Delaware Indians, 11 February 1924, DW-DTI-8. Minutes of meeting of Delaware Indians on May 18<sup>th</sup>, 1935, Dewey, OK (Notes taken by A.M. Landman, Supt., Five Civilized Tribes), DW-DTI-8.

meetings, which remained the supreme decision making body.<sup>268</sup> During this period, the Delaware unsuccessfully pursued cases against the United States in the Court of Claims for lands and property losses on their previous reservations.<sup>269</sup> Though unsuccessful, these legal actions set the stage for future cases in the 1950s.

Thanks to Native American participation in World War One, Congress passed legislation acknowledging that all Indian peoples were to be considered American. These laws reflected the Dawes and subsequent assimilation acts. However, American citizenship took nothing away from tribal nation citizenship as the Dawes Act had intended.<sup>270</sup>

A new wave of federal Indian policy reform sought to empower tribal government by restructuring them under constitutions occurred with Commissioner of Indian Affairs, John Collier. As a result of Indian military service and the Meriam Report of 1928, which exposed the alarming conditions on reservations and among Indian communities that had been allotted, Congress passed the Indian Reorganization Act (IRA) of 1934.<sup>271</sup> IRA ended the allotment policy and promoted tribal self-government by presenting a model for constitutional tribal government. Yet, Oklahoma was not included in the

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<sup>268</sup> Joe Bartles, Chairman, Delaware Business Committee to Hon. S. E. Wallen, Ind. Supt., 8 February 1924, DW-DTI-8. H. A. Andrews, Superintendent, Department of the Interior to Mr. A. M. Landman, Supt., Five Civilized Tribes, Muskogee, January 30, 1932, DW-DTI-8.

<sup>269</sup> 43 Stat. 812, 813 "An Act to refer the claims of the Delaware Indians to the Court of Claims with the right of appeal to the Supreme Court of the United States," Approved, February 7, 1925, DW-DTI-8. Commissioner of Indian Affairs to Joe A. Bartles, Chairman, Delaware Business Committee, Dewey, OK, 23 March 1937, DW-DTI-8. Letter to Chief George Fall Leaf and James A. Wilson, Delaware Indians, 15 April 1926, DW-DTI-8. Chas H. Burke, Commissioner of Indian Affairs to Mr. George Bullette, 15 November 1926, DW-DTI-8. Chas H. Burke, Commissioner of Indian Affairs to George Fall Leaf, 1 August 1927, DW-DTI-8. John Collier, Commissioner Indian Affairs to Mr. A.M. Landman, 1 July 1935, DW-DTI-8. William Zimmerman, Assistant Commissioner, Indian Affairs to Joe. A. Bartles, 6 March 1936, DW-DTI-8. William Zimmerman Assistant Commissioner, Indian Affairs to Mr. A.M. Landman, March 1936, DW-DTI-8.

<sup>270</sup> Francis Paul Prucha, *The Great Father The United States Government and the American Indians*, vol. 1 and 2 (Lincoln: University of Nebraska Press, 1984).

<sup>271</sup> AILTP, 10.

provisions of IRA. Instead, in 1936, Congress passed the Oklahoma Indian Welfare Act (OIWA) to extend IRA to Oklahoma tribes.<sup>272</sup>

Collier requested information about the Delaware Tribe's potential to organize under a constitution. The Superintendent, A.M. Landman met with the Delawares General Council on May 18, 1935. The Delaware General Council did not reorganize under a constitution and instead decided to continue their Business Committee for another four years. A letter from John Collier to A.M. Landman attested to the sentiment, "the meeting held May 18 by these Delaware Indians, it was definitely decided that the old business committee organization should be continued."<sup>273</sup> But in 1936 and 1937, support for a constitution grew and the Delaware Tribe inquired about their eligibility to reorganize under the OIWA. The Muskogee Area Office asked for a "Department decision" as to the Delaware's status of eligibility for reorganizing under OIWA.<sup>274</sup>

After carefully considering the Delawares' request for OIWA recognition, the Assistant Commissioner, William Zimmerman, declared that the "Delaware Indians were eligible for organization as a tribe under OIWA" in 1940.<sup>275</sup> First, he observed that the Delawares had treated with the United States throughout the entire time that the United States had treated with Indian Tribes. Second, numerous acts of Congress recognized the Delawares as a Tribe. Third, the Delawares had been considered a Tribe by other Indian Tribes. Fourth, the Delaware held general councils attended by "100 fullbloods and that

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<sup>272</sup> AILTP, 18.

<sup>273</sup> John Collier, Commissioner of Indian Affairs to Mr. A. M. Landman, Supt. Five Civilized Tribes Agency, 1 July 1935, *Wilma Mankiller Collection*, Folder 9-12. Western History, University of Oklahoma.

<sup>274</sup> A.C. Monahan to the Commissioner of Indian Affairs, Washington, D. C., 25 October 1940, *Wilma Mankiller Collection*, Folder 9-12, Western History, University of Oklahoma.

<sup>275</sup> William Zimmerman, Jr., Assistant Commissioner to A.C. Monahan, Regional Coordinator, Oklahoma City, 3 December 1940, DW-DTI-8.

the tribal council is composed of five members, all of whom are fullbloods, except the chairman, who is a half-blood.” His fifth reason was that the Delawares were held together through “social solidarity...cemented by common economic interests.” Zimmerman’s sixth reason was that the Delawares’ history of a confederacy “was most important to the Algonquin stock.” He further insisted that while the Delawares became citizens of the Cherokee Nation, the Delawares’ “national or tribal character...was never lost or completely merged into that of the Cherokees.”<sup>276</sup> In 1941, Assistant Secretary Oscar L. Chapman, approved Zimmerman’s determination that the Delawares were eligible to reorganize under OIWA, but the Delawares did not follow through using OIWA, until 2009. According to Titus Frenchman, Delaware Elder, reorganization was not a priority and many Delawares felt that their traditional governance (Business Committee and General Council) was all that they needed.<sup>277</sup>

Thus, at the opening of World War Two, the Delaware Tribe survived its migration to Indian Territory and Oklahoma statehood with a government, culture and religion well intact. While the toll of the federal policies was great, the Delawares survived as a distinct tribal nation. The maintenance of traditional values and culture were important but the maintenance of their tribal government is the best discernible evidence of Delawares’ independent existence. That there also continued to be congressional and executive recognition, even during the allotment period, is just as significant. Their tribal government, the Delaware Business Committee, was recognized by federal officials from the end of the nineteenth century forward. However, their relationship with the Cherokee Nation was at best strained and at worst violent. Their

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<sup>276</sup> Ibid.

<sup>277</sup> Interview with Titus Frenchman, July 15, 2008.

calls for their own reservation remained unheard and only furthered Delaware friction with the Cherokee that would extend into the future. However, the Delawares' eligibility to reorganize under the OIWA would be important to their future justification of their federal acknowledgement.

### *Chapter Three: A Rise and Decline of Delawares' Independence, 1942 to 1979*

From 1942 through 1979, the Delawares diverged further from the Cherokee Nation, and this developed into the modern conflict between the two Indian nations. The federal government contributed significantly to the Delawares' grievances against the Cherokees. Concurrently, their grievances also encompassed the Delawares' differences with United States government. Several legal victories for the Delawares validated their tribal sovereignty with the U.S. The *Delaware Indian Claims* and the *Weeks* cases were of utmost importance as they became the basis for federal recognition of the Delaware Tribe of Indians.<sup>278</sup> As a result of these legal successes, the Delawares enjoyed a remarkable period of leadership.

Instead of reorganizing under the Oklahoma Indian Welfare Act (OIWA) in 1942, as they had previously planned, the Delawares closed their treasury and addressed the more pressing matters associated with World War Two.<sup>279</sup> As with other Indian Nations, such as the Navajo who postponed all their dances for the duration of the war or the Crow who offered all their resources to President Roosevelt, the Delawares tabled all business.<sup>280</sup>

For the most part, anything limited to Indians was re-designated a shared resource for the country, and Indian people were at the forefront of these efforts. Indian school

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<sup>278</sup> Lewis Ketchum, Chief, Delaware Tribe of Indians to Ada Deer, Assistant Secretary – Indian Affairs, 19 October 1994, Dorsey and Whitney Files, Delaware Tribe of Indians, Box 8 (hereafter cited as DW-DTI-8).

<sup>279</sup> David E. Wilkins, *American Indian Politics and the American Political System* (Rowman & Littlefield Publishers, Inc., 2007), 242.

<sup>280</sup> Alison Bernstein, *American Indians And World War II*, (Norman: University of Oklahoma Press, 1991), 64.

policy was revised to meet the needs of the defense training industry.<sup>281</sup> Indian hospitals offered their facilities to assist in war efforts. Traditional Indian arts and crafts, such as silver-smithing and weaving, gave way to the demands of industry and clerical work. Tribal governments across the country made the war their first priority, offering resources to the federal government and Oklahoma tribes were among those who bought the most war bonds from the government.<sup>282</sup> The Bureau of Indian Affairs (BIA) accommodated Indian cultures by posting material in various languages, reversing a one-hundred and fifty year-old policy of eradicating Indian languages and customs.<sup>283</sup>

The precise number of Delawares who went to war is unknown. Eighty-eight-year old Delaware Elder, Don Wilson, a veteran of World War Two and Korea, estimated that there were possibly two to three hundred tribal members who served in World War Two out of approximately five to six thousand Delawares.<sup>284</sup> Active in tribal matters since returning from the military, Wilson was well aware of Delaware matters. The high proportion of Delaware servicemen may seem unreasonable given their poor treatment in the U.S., but their strong participation can be attributed to a longstanding warrior society. Notorious for their warrior societies, Plains tribal enlistments, for instance were reported

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<sup>281</sup> Ibid. 66.

<sup>282</sup> Ibid. 68. The Eucheas and Creeks bought \$400,000 in war bonds and Quapaws sought to merely donate \$1 million but were persuaded to accept war bonds.

<sup>283</sup> Ibid. 67 and 83-86. All the same, there were negative implications of Indian's unique political status and isolation of reservations in the U.S. and the reservation became the ideal setting for the interment of thousands of Japanese Americans, unbeknown to the tribal governments. The only opposing arguments for Japanese Internment Camps on the Colorado River Tribes and the Pima (Akimal O'odhom) reservations came from the superintendent of the Colorado River Agency, who had been working with tribal governments and planning to develop a guayule, a raw product for rubber. Japanese internment would interfere with the economic development plans.

<sup>284</sup> Personal interview, May 18, 2008, transcript in author's possession. Brice Obermeyer, "Delaware Identity in a Cherokee Nation: Ethnography of Power" (PhD diss., University of Oklahoma, 2003), 154.

two-to-one margin over non-Indians.<sup>285</sup> To this day, the Delawares continue to honor those who have served in the U. S. military.<sup>286</sup>

Delawares, however, were only one tribal people among many to have enlisted during World War Two. Historian Alison R. Bernstein offers a broad perspective on the surge of American Indian enlistments. By 1942, “Nearly ten thousand Indians had registered for the draft and it was clear that thousands would be fighting.”<sup>287</sup> Bernstein reasons that World War Two was a steppingstone toward equality for American Indians in society. The process of American Indian enlistment and volunteerism in the war brought Indians and Whites together like nothing else in history. For instance on April 12, 1941, Lakota people from Pine Ridge Reservation, the site of Wounded Knee Massacre, 1890, were “guests of honor at an all-white Order of Indian Wars. Some of the hosts were themselves veterans of Wounded Knee.”<sup>288</sup> There were many other examples of Indian and White wartime patriotism and cooperation.

Tribal governments initiated support measures to make it easier for their young men to serve.<sup>289</sup> The U.S. Army relaxed military rules to allow Navajo all-Indian training units.<sup>290</sup> In Oklahoma, Chilocco Indian School sent two-hundred recruits to the 180th and

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<sup>285</sup> Bernstein, 42.

<sup>286</sup> Today, there are thirty-one pictures of World War Two out of two-hundred total veterans hanging in the Delaware Indian Community Center. These are a select few who have taken the time to send in information about their rank and service to the Delaware War Mothers who took on the project in 2004. Another indicator of the value that Delawares place on war service is that every Memorial Day weekend, in each parade in of the annual Delaware Pow Wow, the procession is led by five veteran; one who carries an American flag, one who carries the Delaware flag, one who carries the state flag, one who carries the Missing In Action (MIA) flag, and one who carries in an eagle staff (given to the Pow Wow committee from a Lakota). Behind the veterans are the Delaware War Mothers, who have their relatives written on the backs of their shawls who served in a war. When all dancers are in the arena, someone of standing in the community says a prayer (usually an Elder), and the center drum follows with a flag song, a veterans song and then a memorial song. The dancers are then free to do a series of side steps and war dances.

<sup>287</sup> Bernstein, 39.

<sup>288</sup> Ibid. 35.

<sup>289</sup> Ibid. 43

<sup>290</sup> Ibid.



88<sup>th</sup> Infantry divisions in 1941.<sup>291</sup> Boarding school made American patriotism part of the core curriculum as they had during World War One. Their highly structured program strongly emulated the military, which made recruitment of Indians easier.

While the overall number of Indian soldiers is known, specific breakdown of tribal affiliations is harder to ascertain. Commissioner of Indian Affairs John Collier worked vigorously to obtain tribal affiliations of Indian servicemen, but local draft boards, after hearing complaints about the draft processes being discriminatory, were forbidden from releasing information about tribal membership.<sup>292</sup> Therefore, Collier sought public information about tribal affiliations and vigorously queried other agencies for leads. It is almost impossible to distinguish Delawares from Cherokees in the surviving records. By war's end though, over twenty-five thousand Indian men had served, one-third of able bodied Indian men aged eighteen to twenty-five.<sup>293</sup> This does not include the number of misclassified or mixed race Black or White units.<sup>294</sup>

Just as in World War One, Delaware men likely went to the Forty-Fifth division which contained the highest numbers of Indian soldiers.<sup>295</sup> The Forty-Fifth, or Thunderbird, division saw "some of the heaviest fighting in the war."<sup>296</sup> By 1945, perhaps as many as four-hundred Indian men were wounded or lost their lives.<sup>297</sup> Overall, she estimates that over five-hundred and fifty Native Americans were killed in

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<sup>291</sup> Ibid. 44.

<sup>292</sup> Ibid. 36-37.

<sup>293</sup> Bernstein, 40. Wilkins, 242.

<sup>294</sup> Bernstein, 41-42.

<sup>295</sup> Ibid. 55.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

action and seven hundred were wounded. Approximately five percent of the total Indian fighting force died in World War Two.<sup>298</sup>

Delaware women who were not directly involved in the military participated in the war efforts as well. In 1942, for instance, Lula Mae Gibson Gilliland offered her expertise to the military. At the time, Gilliland was in her late thirties and among the youngest to have been raised in a fluent speaking Lenape home. She was full Delaware and married to an Irish-American.<sup>299</sup> They had two boys, one serving in the Air Corp and the other would finish high school before enlisting.<sup>300</sup> In response to an advertisement in the local newspaper for Indian languages to use in the military, Gilliland offered her Lenape language services and a dictionary to President Roosevelt as a potential ‘code’ for the war.<sup>301</sup> Mrs. Roosevelt replied with a letter of appreciation and redirected Gilliland’s letter to the Smithsonian for the inclusion of Lenape in their collection.

American Indian languages were useful to the military during both World Wars. Aboriginal languages, such as the Sac and Fox (Sauk), and Comanche (N̄am̄n̄n̄n̄), languages were difficult for the Germans and Japanese to decode. The special all-Navajo Marine Corps signal unit was the most famous of the “code talker” outfits.

The war led some of the Delawares at home to return to their native religion. A small number of Delawares revived three final ceremonies in the spring and fall of 1944 and again in the spring of 1945.<sup>302</sup> The Xingwikáon was held at Minnie Fouts farm and although they were unable to perform the full twelve day rite, the Delawares fed, prayed

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<sup>298</sup> Ibid. 61.

<sup>299</sup> “Smithsonian Accepts Work by Wichitan on Delawares” *The Wichita Eagle Evening*, Wichita, Kansas, August 3, 1947.

<sup>300</sup> Lula Mae Gibson Gilliland to Mrs. Franklin D. Roosevelt, 14 August 1942. Letter from the archives of James Rementer.

<sup>301</sup> *Gilliland to Roosevelt*.

<sup>302</sup> William W. Newcomb, Jr. “The Culture and Acculturation of the Delaware Indians,” *Anthropological Papers Museum of Anthropology*, (Ann Arbor: University of Michigan, 1956 reprinted 1970), no. 10: 110.

and sang what remained of their vision songs. Joe Washington led the Xingwikáon while Ben Hill, Jim Thompson, Reuben Wilson, and others assisted.<sup>303</sup> Shortly after the third meeting, the war ended. There were no official records kept of Delawares killed in action but at least one Delaware, Roosevelt Hill, was killed in Italy in 1943. He is buried in the Delaware cemetery.

The average income for American Indians more than doubled from 1940 to 1944 due to military participation and job creation.<sup>304</sup> Even though this number represented twenty-five percent of what White Americans earned, this was a surge unmatched in Indian history. The war also initiated a flow of Indians from the reservations to urban areas where they could find work. Bernstein writes that 40,000 Indians had relocated themselves to cities such as Tulsa, Denver, Los Angeles and Chicago.<sup>305</sup> Aircraft companies in Tulsa recruited Delaware Indians, especially from Chilloco, to work. Some Delawares also moved close to Tinker Air Force Base in Oklahoma City.

Although the war improved economic conditions in Indian country, a United States Senate investigation on Indian lands in 1943 and found the BIA “culpable” for devastating poverty.<sup>306</sup> As a result, Congress instituted a three dimensional program to remedy the situation. Often referred to as Termination and Relocation, this policy addressed what Congress thought was the underlying problem—tribal dependence on the federal government. The first component transferred federal oversight and jurisdiction to state authority; the second relocated Indian people from reservations to urban areas; and

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<sup>303</sup> Newcomb, 110. Attempting to make a correlation between the Delawares’ ceremony and the war, Newcomb claimed that there were no Delaware casualties.

<sup>304</sup> Bernstein, 59 and 76. Bernstein notes that in 1943, the Indian service reported off reservation Indians were earning four times the amount they had earned in 1940 while on the reservation.

<sup>305</sup> Ibid. 68. Bernstein explains that this was one-half the able bodied men who had not joined the military and one-fifth of the women had left to attain war related work.

<sup>306</sup> *Indian Tribes A Continuing Quest for Survival*, A Report of the United States Commission on Civil Rights, (G.P.O, June 1981), 22.

the third terminated the federal relationship that existed between Indian tribal nations and the federal government.<sup>307</sup>

In the midst of this political upheaval, the Delawares returned to business matters. Making up for lost time, in 1946 four General Councils were held (normally this was an annual event), one in February, one in April and two in November.<sup>308</sup> They tackled a number of issues. In February, the Delawares reopened their treasury. In April, the General Council voted to petition for the return of Delaware remains from New Jersey (the original homeland). They also voted to join the National Congress of American Indians (NCAI) a strong advocate for the political and legal rights of Indian Tribes.<sup>309</sup> NCAI was established in 1944 by numerous tribal representatives from across the country banding together to end termination policies of the day. By the time the Delawares officially became a member tribe in 1946, they joined forces with just about all other tribal nations in the U.S.

At the April General Council, the Delawares began to review how their Business Committee had been established and hired two attorneys to seek reparations from the U.S. Court of Claims.<sup>310</sup> Wesley E. Disney and Charles B. Rogers from Tulsa represented the Delawares. The Delawares thus began their participation in the Indian Claims Commission (ICC). To that end, the Delawares held Tribal Councils and Business Committee meetings to prepare.<sup>311</sup> The General Council gave their leaders the

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<sup>307</sup> Ibid. 23.

<sup>308</sup> "General Councils of the Delaware Tribe," list, found in the Delaware Tribal Office storage.

<sup>309</sup> First Delaware Council Held February 23, 1946, Second Delaware Council Held April 20, 1956, Third Delaware Council Held November 22, 1946, Second Delaware Business Committee Meeting Held November 30, 1946, Fourth Delaware Council Held November 30, 1946, Minutes at the Supt. Five Civ. Tribes, DW-DTI-8. Delaware Business Committee Report to the Delaware Tribe, February 2, 1948.

<sup>310</sup> Second Delaware Council Held April 20, 1956.

<sup>311</sup> First Delaware Council Held February 23, 1946; Second Delaware Council Held April 20, 1946; Third Delaware Council Held November 22, 1946; Second Delaware Business Committee Meeting Held

time to research and gather information for the attorneys and the Delaware General Council decided not to formally meet again until January of 1948. They held two meetings in January to present their findings to the tribal members. Yet, at this early stage, the Delawares were only beginning to place their chronicle in context. Twenty years would pass before they recovered the full evidence of their history, and it took five years of research to find and fully support their claims with documentation.

By 1951, the Business Committee called a General Council meeting strongly urging tribal members to attend and noted that “the affairs of the Delawares are in much better condition than at any time since they came to the Cherokee Nation.”<sup>312</sup> This was their final preparation for their claims cases. Also in 1951, after thirty years on the Business Committee, Joe A. Bartles resigned for reasons of his failing health. H.L. McCracken was elected the new chairman and served in that capacity until his death in 1971.<sup>313</sup> The record indicates that the Delawares were confident and readying themselves to assert their sovereignty to recover from past injustices.

The Delawares pursued their claims cases as part of the larger U.S. policy begun in 1946. Due to the numerous congressional special requests from tribes to seek reparations from federal government action, Congress passed the *Indian Claims Commission Act (ICC)*. In their case, *Delaware Indian Claims, 1951-55*, the U.S. compensated the Delawares for their lands that had been sold in Kansas in 1854. The court held that these lands were worth sixty times the amount originally paid to the

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November 30, 1946; Fourth Delaware Council Held November 30, 1946; Minutes at the Supt. Five Civ. Tribes, DW-DTI-8. Delaware Business Committee Report to the Delaware Tribe February 2, 1948.

<sup>312</sup> Delaware Indian Business Committee, Joe A. Bartles, Chairman and Mary L.K. Townsend, Secretary to the Delaware Tribe of Indians, 3 July 1951, DW-DTI-8.

<sup>313</sup> Delaware Tribal Business Committee, *Newsletter*, October 10, 1974. Victoria Nolan, Mary K. Townsend, Dennis Frenchman, and Edward T. Miller were the other members. Mary Townsend (Crow) served on the Business Committee into the 1970s.

Delaware Tribe. Importantly, the U.S. lost the case with the argument that the Delaware Tribe ceased to exist under the 1867 Articles of Agreement. During the ICC hearings, the United States government consistently argued that the Delawares had terminated themselves by merging with the Cherokee Nation. The specific question that the court affirmed was whether the Delawares could establish that they were a “tribe, band, or other identifiable group,” by the definition of the actual *Indian Claims Commission Act*. Their argument for federal recognition closely linked to their conflict with the Cherokees, was based on their triumph during the ICC cases.<sup>314</sup>

The *Delaware Indian Claims* cases examined the 1867 Articles of Agreement, through the protest of Captain Falleaf, the *Journeycake* rulings at the turn of the twentieth century and the existence of a tribal government throughout the twentieth century.<sup>315</sup> For instance, in the deposition of Chairman Joe Bartles, the court investigated the origins of the Delaware Business Committee. Bartles explained that the Delawares did not consult with nor had they received “consent” from the Cherokee Nation to form the Business Committee. Delawares held sole responsibility to form the Business Committee as long as their actions did not violate the law of the land at the time, that is, the Cherokee Nation constitution. Bartles continued to explain that the BIA had instigated and then approved the development of the Delaware Business Committee.<sup>316</sup>

The Delawares won their ICC case in 1952. Upon appeal from the federal government the Delawares succeeded in the federal district court in 1955.<sup>317</sup> The

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<sup>314</sup> 130 Indian Claims Commission 794, No 27-A and 241, 1952. 21 Indian Claims Commission, 344, *Delaware Tribe v. U.S. Court of Claims*, 1955. The Delawares’ legal argument is most often cited from Gina Carrigan, J. D. and Clayton Chambers, “A Lesson in Administrative Termination: An Analysis of the Legal Status of the Delaware Tribe of Indians,” (Bartlesville: The Delaware Tribe of Indians, © 1995).

<sup>315</sup> 130 Indian Claims Commission 794, 1952.

<sup>316</sup> Deposition of Joe Bartles, 130 Indian Claims Commission 794, 1952.

<sup>317</sup> 130 Indian Claims Commission 794, 1952. 130 Indian Claims Commission 794, 1955.

*Findings of Fact* states that the Delaware Tribe of Indians “has at all times maintained identity as a group and constitutes an identifiable group within the meaning of the *Indian Claims Commission Act*.” As a result of the findings, the Delaware Tribe of Indians recovered \$9,168,171.13 plus damages in the amount of \$1,385,617.81.<sup>318</sup> The judges’ decision was based on the Delawares continued observance of their “customs, practices, and their hereditary form of government.”<sup>319</sup> Because the court stated that the U.S. continued to directly administer annuities to the Delaware Tribe of Indians separate from the Cherokee Nation in addition to the existence of a distinct form of Delaware government, the ICC established the legal groundwork for the Delawares’ federal recognition.<sup>320</sup> However, the federal government did not finally release the Claims judgment funds until 1972.<sup>321</sup>

While the claims case was pending, the Delaware Tribe worked with the BIA to establish and adopt a modern Constitution and bylaws. This process began in 1951 and the bylaws were approved by the Commissioner of Indian Affairs in 1962.<sup>322</sup> As a result of the Delaware Indian Claims, the BIA reinitiated their activities to reorganize the Delawares under the Oklahoma Indian Welfare Act (OIWA) criteria in 1952. Because, however, the Business Committee was in good standing and had been established and approved through the BIA, the Delawares did not officially decide to reorganize until

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<sup>318</sup> 21 Indian Claims Commission 344, *Del v. U.S. Ct of Cl.*, 1955.

<sup>319</sup> *Ibid.*

<sup>320</sup> Carrigan and Chambers, 37-38. The authors note that the U.S. government used a similar argument against the Western Delaware merging with the Caddo. Yet, the Western Delawares are federally recognized today despite the similarities in their circumstances.

<sup>321</sup> *To provide for the disposition of funds appropriated to pay a judgment in favor of the Delaware Tribe of Indians in Indian Claims Commission docket numbered 298, and the Absentee Delaware Tribe of Western Oklahoma, and others, in Indian Claims Commission Docket Numbered 72, and for other purposes*, Public Law 92-456 (Oct. 3, 1972), DW-DTI-8.

<sup>322</sup> James E. Officer, Associate Commissioner of Indian Affairs to Mr. Graham E. Holmes, Area Director, Muskogee, Oklahoma, 31 May 1962.

1956.<sup>323</sup> To do so, a committee began to meet with the Commissioner of Indian Affairs to discuss the establishment of a Delaware Tribe Constitution. Among the most notable member of the committee was Bruce Miller Townsend, a Delaware tribal member, veteran, and attorney from Tulsa. Much of the correspondence was directed to Townsend who worked with the local Muskogee Area BIA to organize the referendum election. The BIA mailed out the news releases, announcements, and notices to all tribal members.<sup>324</sup>

The BIA effort to reorganize the Delawares is remarkable considering that in the much of the country, the federal government sought to terminate Indian Nation's federal status.<sup>325</sup> In 1953, Congress passed House Concurrent Resolution 108, an act to end the special relationship between the U.S. and Indian Tribes.<sup>326</sup> Carried out by the former director of the Japanese internment camps, Dillon Myer, termination thus began a ruthless period for which the federal government sought once and for all to end what many Americans perceived as Indian dependence on the BIA.<sup>327</sup> During the termination era, the federal government severed its relationship with over one hundred tribes, bands and rancherias. Essentially, termination ended the protective role of the federal

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<sup>323</sup> Personal interview, 15 March 2009. The Business Committee did not see reorganization as a pressing need, more like a potential undertaking. Titus Frenchman was a child at the time of this possibility. He recalled that the BIA advised the Delawares to retain their representative body, the Business Committee, based on the longstanding history and the tradition that it represented.

<sup>324</sup> Report of Meeting of the Delaware Tribe of Indians Held at Dewey High School Field House, Dewey, Oklahoma on September 7, 1958 at 10:00 a.m. Paul L. Fickinger, Area Director, to Burt. Seigel and Franklin, Attorneys at Law, 10 March 1958. Paul L. Fickinger, Area Director, to Mr. Bruce Townsend, 1 April 1958.

<sup>325</sup> See *Termination of the Menominee Indians*, Public Law 280, June 17, 1954 (68 stat 250; 25 USC 891-902).

<sup>326</sup> American Indian Lawyer Training Program, Inc. (AILTP), *Indian Tribes as Sovereign Governments A Sourcebook on Federal-Tribal History, Law, and Policy*, (Oakland: AIRI Press, 1988), 12.

<sup>327</sup> AILTP, 13. The act profoundly affected the trust relationship between numerous terminated tribes and California tribal rancherias and the federal government by transferring land transactions, trusts, and corporations to state control. Any special federal programs such as health and education were discontinued, state legislative jurisdiction was imposed, ceasing tax exemptions from the state, limiting hunting and fishing rights and ending tribal sovereignty.



government over 12,000 Indian people and 2.5 million acres of land.<sup>328</sup> The Menominee Tribe for instance, was terminated in 1954 and finally restored twenty years later with the Menominee Restoration Act of 1973.<sup>329</sup> Other terminated nations included the Klamath and the Augua Caliente, which held significant natural and economic resources.<sup>330</sup> Effects on Indian people who experienced termination were appalling and left them vulnerable to state laws, oppression, and racism.<sup>331</sup>

While the BIA worked with the Delaware Tribe, the BIA concurrently implemented a relocation program for individuals and families. Like many individual Cherokee and Osage neighbors, approximately one-hundred Delawares were persuaded to accept bus or train fare to an urban location and were expected to live in subsistence housing while working a low wage job. The intent of the federal government to implement relocation was to combat poverty by getting Indian families off the reservation toward urban areas where they would have more access to jobs. Congress reasoned that American Indians should be subject to the same laws and restrictions as all other Americans.<sup>332</sup> Yet, the results were even worse than the poverty of the reservation because the poverty in the urban area left these relocated people without family support found back at home among tribal people.

In theory, relocation made sense in that American Indians achieved equality. If American Indians were able to serve with distinction during war, Native cultures and values showed that American Indians were unequal when placed in urban America.

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<sup>328</sup> Report Commission on Civil Rights, 23.

<sup>329</sup> David R. M. Beck, *The Struggle for Self-Determination: History of the Menominee Indians Since 1854* (Lincoln: University of Nebraska Press, 2005).

<sup>330</sup> Report Commission on Civil Rights, 23.

<sup>331</sup> AILTP, 13.

<sup>332</sup> Angie Debo, *A History of the Indians of the United States* (Norman; University of Oklahoma Press, 1983), 352.

Wilma Mankiller describes this phenomenon among the Cherokees suggesting the program merely relocated the Indian poverty to new urban locations. Because of their political and racial classifications, the Delawares experienced similar circumstances as the Cherokees. Mankiller depicts the relocation program as a progression from the Cherokee Removal of the 1830s to the present. Her family's experience exposed the reality: the long arduous train ride, the reception into a hotel room in a poor district of San Francisco, the difficulties of supporting a family on wages insufficient to support them in the city. She described her new home as a "tough, urban, ghetto."<sup>333</sup> The program ceased giving financial assistance in 1957 even though relocation continued until 1960. From 1953 to 1960, 33,466 Indians were relocated.<sup>334</sup>

Despite these national politics, in September 7, 1958, the Delawares met in General Council. Not only were the BIA Muskogee Area representatives present, they in fact Chaired the meeting.<sup>335</sup> Because the Delawares stubbornly retained their traditional forms of leadership, their legal status was uncertain and had been since the Dawes Act. The Delawares voted to authorize their traditional form of government, the Business Committee and General Council, to govern the Tribe. The Business Committee simply carried out the General Council's wishes which were considered the politically recognized voice of the nation. The Delawares adopted bylaws to designate and recognize the Business Committee as the administrative body of the Tribe. A resolution was therefore passed to define the Business Committee as the tribal members' representative body. A membership ordinance, election committee and grievance

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<sup>333</sup>Wilma Mankiller and Michael Wallis, *A Chief and Her People* (New York: St. Martin's Press), 73.

<sup>334</sup> Prucha, Francis Paul. *The Great Father, The United States Government and the American Indians*, vol. 1 and 2 (Lincoln: University of Nebraska Press, 1984), 2:1082.

<sup>335</sup> Public Notice To All Members of the Delaware Tribe, August 7, 1958, *Wilma Mankiller Collection*, Folder 9-12, Western History (Norman: University of Oklahoma).

committee were also established.<sup>336</sup> H.L. McCracken was voted in as Chairman, Bruce Townsend, Vice-Chairman, Marjorie Wheelock, Secretary-Treasurer, Adam Frenchman, member and Henry Secondine, member.<sup>337</sup> From these documents, McCracken initially appears to have been well liked as a unifying leader.

After several years of processing, on May 31, 1962, the BIA approved the resolution from September 7, 1958 “giving the Delaware Business Committee the authority to speak and act for the tribe” as well as the “procedures...calling General Council meetings and the election of members to the Business Committee.”<sup>338</sup> The Delawares were then on the brink of new territory in the BIA administration which was only beginning to develop procedures for claims of all Indian tribes. The BIA viewed the approval with an eye on the large amount of money that the Delawares were to receive from their claims. After all, the BIA would oversee the money noting, “While the resolution does not require our approval, we feel that it should be given formal recognition from this office.”<sup>339</sup>

The Delawares remained under the direct supervision of the Muskogee Area BIA. The Muskogee Area sent out the notices of General Council meetings from 1962-1970, and published the minutes for the meetings.<sup>340</sup> The Delaware tribal members were fairly

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<sup>336</sup> “Resolution Establishing By-laws Under Which the Delaware Tribal Business Committee Shall Speak and Act In Behalf of the Delaware Tribe of Indians,” September 7, 1958.

<sup>337</sup> “Report of Meeting,” September 7, 1958.

<sup>338</sup> James E. Officer, Associate Commissioner of Indian Affairs to Mr. Graham E. Holmes, Area Director, Muskogee, Oklahoma, 31 May 1962.

<sup>339</sup> H.L. McCracken, Chairman to Mrs. Marie L. Wadley, Tribal Affairs Officer, Muskogee Area Office, 31 May 1962. McCracken states, “I had assumed that the Resolution and all other actions taken at that meeting (September 7, 1958) had been recognized and approved by the Commissioner.”

<sup>340</sup> In each of the following the Muskogee Office or the Delaware Tribe referred to a meeting to which the BIA supplied notification for or were in the minutes for a tribal council meeting: Marie L. Wadley, Tribal Affairs Officer, Bureau of Indian Affairs to Mr. H.L. McCracken, Chairman, 21 May 1962. H. L. McCracken, Chairman Delaware Business Committee to Marie L. Wadley, Tribal Affairs Officer, Muskogee Area Office, 31 May 1962. Mary L. K. Townsend to Mrs. Marie L. Wadley, Tribal Operations Officer, 29 October 1962. Mary L. K. Townsend to Mrs. Marie L. Wadley, Tribal Operations Officer,

active and excited through this period. For instance, for their 1962 General Council meeting Chairman McCracken wrote:

We the Delaware people are proud of our heritage, we are proud of our contributions to the development of our country, we are proud of the fact that since signing the first treaty with the United States on September 17, 1778 and many subsequent ones, not once did we break or violate our treaty obligations. We sincerely trust that the Great White Father will likewise honor the treaty provisions which the Delawares accepted in complete faith. It is my sincere hope that the spirit of cooperation and unity will continue among the Delaware people, that we will stand united in our efforts to see that just and equitable rewards may be realized by our people after these many years.<sup>341</sup>

Another example of member participation was the Special Tribal Council, June 12, 1965, which three-hundred and fifty members attended. Two elders were recognized, both from Tulsa: Mrs. Minshall, who was 92 years old, and Mrs. Lowry, who was 88 years old. At the closing of the meeting, Chairman McCracken was given a standing ovation by the members, an almost unheard of occurrence in today's Delaware politics.<sup>342</sup> This level of exchange between the Delaware Tribe of Indians and the BIA illustrates the federal oversight that existed with the Delaware Tribe of Indians. When the federal

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Muskogee Area Office, 26 November 1962. C. C. Marks, Area Director to Commissioner, BIA, 20 December 1962. H. L. McCracken, Delaware Chairman, Delaware Business Committee to Mrs. Marie L. Wadley, Tribal Operations Officer, Muskogee Area Office, 26 August, 1964. Frank Sokolik, Tribal Operations Officer, Muskogee Area Office to Mr. H. L. McCracken Delaware Business Committee, 28 August 1964. Memorandum to Each Principal Officer of Tribes under jurisdiction of the Muskogee Area Office from Virgil Harrington, Area Director, 15 April 1965. Virgil Harrington, Area Director, Muskogee Area Office To All Members of the Delaware Tribe, 7 Oct. 1968. Frank F. Sokolik, Tribal Operations Officer to Mr. Robert Wilkins, 2 Sept. 1970, All the above citations are in DW-DTI-8.

<sup>341</sup> General Council Meeting of the Delaware Tribe of Indians at Dewey High School Auditorium, Agenda September 1, 1962.

<sup>342</sup> Delaware Tribal Business Committee, *Newsletter*, October 10, 1974.

government allocated their trust fund monies (from the ICC), they specifically directed the Delawares' governing body to utilize the funds for BIA approved purposes.<sup>343</sup>

But in the 1970s, the Delawares were again confronted with their nemesis, a politically driven bureaucracy. To meet the BIA rules, the Delawares began to focus on their membership roll.<sup>344</sup> While the 1958 Bylaws governed the Delawares, the tribal government lacked an enrollment ordinance. The BIA was concerned. Millions of dollars were at stake in programming monies, and the BIA standards of tribal membership would have to be met because each member would receive a per capita share of the judgment funds and the Tribe would provide services to qualified members. However, the simple creation of this ordinance confused the BIA. For some reason, the BIA thought the Delawares were creating an entire governing document.<sup>345</sup> Therefore, in May, 1974, the Muskogee Area office clarified the matter for the Commissioner of Indian Affairs, explaining that the Delawares were a recognized Tribe and only sought to expand the 1958 bylaws to include the enrollment ordinance. The Commissioner then directed the Delaware Tribe to proceed with developing their enrollment ordinance.<sup>346</sup> In the

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<sup>343</sup> Memorandum to Legislative Counsel, through Assistant Secretary, Public Land Management from Commissioner of Indian Affairs, Subject, H.R. 5200 a bill "To provide for the disposition of funds appropriated to pay a judgment in favor of the Absentee Delaware Tribe Oklahoma, et al, in Indian Claims Commission docket No. 72 and the Delaware Tribe of Indians in Indian Claims Commission docket No. 298 and for other purposes," (June 22, 1971), DW-DTI-8. *Finding for the Disposition of Funds Appropriated to Pay Judgment in Favor of the Delaware Nation of Indians in Claims Commission Docket No. 337*, H. R. 1555, June 17, 1968, DW-DTI-8. *Finding for the Disposition of Funds Appropriated to Pay a Judgment in Favor of the Delaware Nation of Indians*, S. R. 1518, September 9, 1968, DW-DTI-8. The judgment funds also include the claims from the St. Mary's Treaty of 1818.

<sup>344</sup> *Finding for the Disposition of Funds Appropriated to Pay Judgment in Favor of the Delaware Nation of Indians in Claims Commission Docket No. 337*, H. R. 1555, June 17, 1968.

<sup>345</sup> Memorandum to Commissioner of Indian Affairs, Attn: Tribal Government Services from Acting Area Director, Muskogee Area Office, Subject The Delaware Tribe of Indians (Cherokee-Delaware), February 5, 1974.

<sup>346</sup> Jose A. Zuni, Commissioner of Indian Affairs to Mr. Bruce M. Townsend, Chairman Delaware Business Committee, 23 July, 1974, DW-DTI-8. Resolution Revising By-laws under which the Delaware Tribal Business Committee Shall speak and Act in Behalf of the Delaware Tribe of Indians, September 30, 1974, DW-DTI-8.

mean time, the Delawares actively pursued programming activities through the federal government to take care of their tribal members.

At this time, the majority of tribal nations, including the Delawares, undertook programming activity comprised of Indian policy seeking to reverse decades of oppression. In 1977, the U.S. Commission on Civil Rights investigated numerous allegations of Indian rights violations, specifically implicating the termination act. A particularly poignant comment in the investigation stated, “if this society through its government does not live up to its promises and commitments to Indian people, then no rights are secure.”<sup>347</sup> The report further proclaimed that the relationship between the federal government and tribal nations is “in fact crucial to the whole fabric of Indian affairs.”<sup>348</sup> Of utmost importance are the unique rights of Indian people; that is, they are governed as a unified body with inherent rights over their land bases. And these rights are protected by the U.S.<sup>349</sup>

The Civil Rights era and Indian Activism eventually brought limited reprieve to Indian people from the effects of termination.<sup>350</sup> President John F. Kennedy was an avid supporter of economic development in Indian country.<sup>351</sup> President Lyndon Johnson’s Great Society addressed poverty and the needy members of society. Johnson rejected termination as early as 1965.<sup>352</sup> President Richard Nixon and President Gerald Ford followed suit and “produced more constructive legislation relating to Indians than any

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<sup>347</sup> Report Commission on Civil Rights, iv.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid. 1. While the trend reignited advancing tribal interests and strengthened the trust relationship in the late 1960s and early 1970s, the report described how in the late seventies, there existed a backlash against American Indians (as individuals and their associated federal rights) that raged through the United States.

<sup>351</sup> Prucha, 1086.

<sup>352</sup> Ibid. 23.

other period.”<sup>353</sup> Indeed, President Nixon initiated the Indian Self-Determination policy that put Indians in charge of their own affairs. As governments, American Indian Tribes became eligible for a variety of programs through grants and later, 638 Contracts of the Indian Self-Determination and Education Assistance Act of 1975. The federal government re-embraced Indian self-determination, which specifically allowed all recognized Tribes “the right to manage the programs and services formerly provided by the BIA. This included such services as housing, education, community development and law enforcement.”<sup>354</sup> In 1976, the Indian Health Care Improvement Act was also enacted.<sup>355</sup> Both acts supplemented and strengthened the trust status of Indian peoples in the U.S. To empower Tribes, the BIA established “tools” to carry out self-development and self-determination through 1.) Grants; 2.) Contracting all or parts of specific programs; 3.) Planning for and redesigning programs from the BIA; and 4.) Tribal access to federal personnel.<sup>356</sup>

From 1970 through 1979, the Delawares contracted programs from the Indian Health Services (IHS), the Bureau of Indian Affairs (BIA), the Department of Health and Human Services (DHHS or HHS), and held formal relations with the Oklahoma Indian Affairs Commission. Among its most successful programs was the Community Health Representatives Program (CHR) through IHS.<sup>357</sup> Directed by Don Wilson, the CHR program serviced not only close to four thousand Delawares, but also two-thousand five

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<sup>353</sup> Report Commission on Civil Rights, 1111.

<sup>354</sup> Sharon O’Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), 264-266.

<sup>355</sup> *Ibid.*

<sup>356</sup> Prucha, 1160.

<sup>357</sup> Bruce Miller Townsend, Chairman, Delaware Business Committee to Fellow Delawares, 29 July 1974, DW-DTI-8. Minutes of Meeting of Delaware Tribal Business Committee, August 12, 1974; Minutes of Meeting of the Delaware Tribal Business Committee, January 6, 1975, DW-DTI-8.

hundred Native Americans in Northeast Oklahoma in the Claremore service area.<sup>358</sup> That the Delaware Tribe provided services to all Native Americans in the area, not just to Delaware members, demonstrated the same capacity as all other federally recognized tribes—a cornerstone to the Indian Self-Determination Act. CHR enabled the Delaware Tribe of Indians to provide and monitor health care in Indian homes. For an Indian population that had little access or was too ill or disabled to travel, the CHR program was a highly valuable resource that would come to their home, bring medicine and equipment, and generally care for the person.

Other programs included Housing and Urban Development (HUD), Home Improvement Program (HIP), Rural Water Program, Comprehensive Employment Training Act, (CETA) as well as others.<sup>359</sup> These provided needy Delaware members with housing, housing maintenance, access to reliable water, and job training. Delaware members, especially Elders who wished to retain their culture, taught Lenape language classes and arts and crafts instruction. The tribal government contracted for a Delaware history book for the purpose of retaining their language and culture.<sup>360</sup> Also, from 1970-1974, the Delaware General Council met to plan for their judgment monies from the claims case. The Delawares proposed to set aside ten percent of the judgment funds to

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<sup>358</sup> “Northeastern Delaware Tribe CHR Narrative Report,” October 1973 submitted by Don Wilson, CHR Director; Northeastern Delaware Tribe CHR Narrative Report, January, 1974, submitted by Don Wilson, CHR Director, January 31, 1974; Program Development and Management Activity and Progress Report, March 1978, Delaware Tribe of Indians, DW-DTI-8.

<sup>359</sup> Minutes of Meeting of the Delaware Tribal Business Committee, July 7, 1975. Minutes of Meeting of the Delaware Tribal Business Committee, August 4, 1975. Minutes of Monthly Meeting, May 11, 1976. Program Development Report, March 1978.

<sup>360</sup> Tribal Government Development Program Progress Report, December 31, 1974. Despite previous Congressional appropriated funding to Native American language programs, the Delawares continued to fund this program with their own monies. In a letter from the Bureau of Indian Affairs, William Shipley explained that the “Delaware Tribe is one of the few tribes who received money for language classes in the past,” but that Congress had since “abolished” this funding altogether. William E. Shipley, Area Adult Education Officer, BIA Muskogee Area Office to Chairman Bruce Miller Townsend, Delaware Tribal Business Committee 26 October 1973, DW-DTI-8. Alton Nordwall, Deputy Area Director to Mr. Henry A. Secondine, Vice Chairman, Delaware Tribal Business Committee, 10 February 1978, DW-DTI-8.



initiate an education trust, historic and cultural preservation, investments, and job development and training.<sup>361</sup> The plan for the use of the judgment funds was approved by the BIA on September 27, 1977.<sup>362</sup> The Delawares in 1970 were on friendly terms with the Cherokee Nation. Cherokee Principal Chief Keeler was the special guest at the Delaware and Cherokee Family Picnic on July 18, 1971.<sup>363</sup>

The Delawares appeared to be on the same road, if not ahead of other federally recognized tribes of the day. One of the most important indicators of this is that in February, 1973, the Delaware Tribe was one of only two in the Muskogee Area to be awarded the contract for Tribal Government Development (TGDG).<sup>364</sup> This was a grant awarded to strengthen tribal governments to self-support their membership.<sup>365</sup> The Delawares consequently purchased a center to direct tribal business for which the BIA financed the sanitation facilities.<sup>366</sup> The BIA also paid for the Delaware Pow Wow, an

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<sup>361</sup> Bruce Miller Townsend, Chairman Delaware Business Committee to Fellow Delawares, n.d. © May, 1972. United States Senate Committee on Indian Affairs, Subcommittee on Indian Affairs, (July 21, 1972), DW-DTI-8. Hearing held before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, H.R. 5200 (March 13, 1972), DW-DTI-8. Chairman Townsend gave testimony to both the Senate and House regarding the 10% Plan. Senate Report No. 92-1126, (September 14, 1972), DW-DTI-8. *Delaware Newsletter*, September 21, 1972, DW-DTI-8. Memorandum to Muskogee Area Director from Acting Deputy Commissioner of Indian Affairs, subject: Cherokee-Delaware Proposed Plan for Use of Program Funds, July 1, 1977, DW-DTI-8.

<sup>362</sup> Thomas Ellison, Area Director to Bruce Miller Townsend, Chairman, Delaware Tribal Business Committee, 27 September 1977.

<sup>363</sup> "Delaware and Cherokee Family Picnic," event flyer, Delaware Tribe storage.

<sup>364</sup> "Letter from the Chairman," *Delaware Newsletter*, May 29, 1973, DW-DTI-8. Letter to Fellow Delawares, 29 July 1974, DW-DTI-8. TGDG Progress Report, 31 December 1974, DW-DTI-8. "Delaware Tribe Opens Full-Time Central Office In Bartlesville," *Cherokee Nation News*, July 31, 1973. Minutes of Meeting of Delaware Tribal Business Committee, August 12, 1974, DW-DTI-8. Minutes of Meeting of the Delaware Tribal Business Committee, August 4, 1975, DW-DTI-8. Tribal Government Development Program, Progress Report for May, June 6, 1975 DW-DTI-8. Tribal Government Development Program Progress Report, November, 1975, DW-DTI-8. Tribal Government Development Program Progress Report for June, 1976, DW-DTI-8.

<sup>365</sup> Carrigan and Chambers, 43.

<sup>366</sup> Delaware Tribal Business Committee to Mr. Joe A. Ragsdale, Superintendent, BIA, Tahlequah Agency, Invoice, 4 January 1974, DW-DTI-8. Delaware Tribal Business Committee to Mr. Joe A. Ragsdale, Superintendent, BIA, Tahlequah Agency, Invoice, 6 June 1975, DW-DTI-8. Johnson O'Field, Community Development Officer, Cherokee Nation, to the Delaware Business Committee, 14 September 1973, DW-DTI-8.

annual cultural activity attended largely by Delaware members throughout the country.<sup>367</sup> By 1974, the Delawares had plans to build an Indian Health Center in Nowata to cover the counties of Washington, Craig, Nowata, and Rogers.<sup>368</sup> The Oklahoma Indian Affairs Commission approved two contracts to the Delaware Tribe. The first provided money for food to the disadvantaged.<sup>369</sup> The other contract gave emergency energy assistance to Washington, Nowata, Craig, and Rogers Counties.<sup>370</sup> The Delawares grew into an influential body in eastern Oklahoma quickly. To have attained and provided these services at an early stage of Indian Self Determination in U.S. policy illustrated the Delawares' development as a functional tribal nation, and only after they had made these gains were they challenged about their federal recognition.

Another case that asserted the Delawares' federal acknowledgement which also challenged their federal standing was *Weeks v. United States* (406 f. Sup. 1309). The U.S. Supreme Court determined that the Delawares were a federally recognized Tribe based on the arguments of the Secretary of the Interior from 1973-77.<sup>371</sup> The descendants of Delawares who elected to remain in Kansas and became United States citizens believed that they had a claim to the judgment funds awarded to the Delaware Tribe of Indians in the *Indian Claims Commission* hearings. The Kansas Delawares argued their

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<sup>367</sup> Mary L.K. Townsend Crow to Mr. Joe A. Ragsdale, Superintendent, Tahlequah Agency, BIA, 26 June 1973. Carrigan and Chambers, 44. In 1973, the BIA gave over ninety percent of the labor and material costs for the Delaware annual Pow Wow. The total amount was \$604.17 while the BIA agreed to pay \$550.

<sup>368</sup> "Indian Health Center Proposed," *Oklahoma Journal*, June, 8, 1974.

<sup>369</sup> Program Development Report, March 1978.

<sup>370</sup> Carrigan and Chambers, 45.

<sup>371</sup> *Weeks v. United States*, 406 f. Sup. 1309 (1977). Lewis Ketchum, Chief, Delaware Tribe of Indians to Ada Deer, Assistant Secretary – Indian Affairs from, 19 October, 1994, DW-DTI-8. The letter states, "In response to the allegation that the Delaware Tribe was only recognized to prosecute claims on behalf of all Delaware descendants, Secretary of Interior Kleppe argued before the Supreme Court that the Delaware Tribe of Indians is a federally recognized political tribe" and "Of utmost significance, is that Secretary Morton specifically stated under oath that the Delaware Tribe of Indians had always been a federally recognized tribe, and not just for claims purposes."

ancestors had been members of the tribe during the 1854 treaty violation so they had a right to share the judgment funds. They additionally argued that the Delaware Tribe of Indians who resided in Oklahoma had no claim to the judgment award because they had become Cherokee.<sup>372</sup> In essence, the suit questioned the legitimacy of both parties and the judgment found that the legal heirs to the treaty violations were those who remained directly tied together as an Indian nation stating “they are today, a federally recognized tribe.”<sup>373</sup> The Kansas Delawares also alleged that they had been excluded from the judgment award based on “deprivation of their equal protection.” The Court held that the federal obligation strictly belonged to Indian Tribes, not individuals as a “race.”<sup>374</sup> The Supreme Court did not agree with the Kansas Delawares, siding with the Department of the Interior. The essence of the ruling was that the United States dealt with Tribes, not with individuals. The Kansas Delawares had become individuals, U.S. citizens, by their ancestors’ decision to remain in Kansas when the rest of the Delawares removed to the Cherokee Nation in 1868-1869.<sup>375</sup> In 1977, the Supreme Court determined that the federal government had continuously recognized the Delaware Tribe of Indians that had moved to Oklahoma.<sup>376</sup>

*Weeks* examined the 1867 Articles of Agreement and concluded that in addition to preserving its tribal organization through its government actions and because the United States government had continuously recognized the Delaware Tribe since 1867, the Delaware Tribe of Indians was indeed a federally recognized Indian Tribe. The judgment

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<sup>372</sup> Carrigan and Chambers, 46.

<sup>373</sup> Ibid.

<sup>374</sup> *Weeks. v. U.S.*

<sup>375</sup> *Delaware Tribal Business Comm. v. Weeks*, 430 US 73, 51 Led 2d 173, 97 S. Ct. 911.

<sup>376</sup> *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, No. 75-1301, Feb. 23, 1977. Ketchum to Deer, 19 October 1994.

also flatly denied any “arbitrary” act of calling the Delawares an Indian Tribe. The tribal government had conducted tribal affairs from 1895 to 1968 for more than just the exercise of processing claims against the United States, the court declared.<sup>377</sup> Their tribal operations currently in existence furthered the argument that the Delawares provided services to their membership while their membership participated in tribal functions.<sup>378</sup>

The Delawares’ federal standing became slippery despite the court rulings when the BIA questioned whether the Delawares should receive contracts under P.L. 93-638.<sup>379</sup> Funding under P.L. 93-638 is extremely important to a tribe’s ability to provide services and is one of the most important laws under the Indian Self-Determination Act. The contracts under this program range from fire safety and police to scholarships, and included programs that enabled the federal government to carry out its trust obligation to Indians through their respective tribal affiliation. While the BIA determined that the Delawares were eligible for P.L. 93-638 contracts, the decision caused controversy because the Delawares’ funding would conflict with the Cherokee Nation jurisdiction and service area, meaning that the Delawares’ and Cherokees’ funding overlapped. According to the federal government two tribes could not cover the same service area. Each tribal nation had to take certain responsibilities as approved by the federal government for a specific area.

As far back as the nineteenth century, the Cherokee Nation had a constitutional form of government. While they retained elements of their culture, clans, and traditions, they also, at least governmentally, adopted to more of the United States policies than many other tribal nations. A major disruption to their governance, however, was

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<sup>377</sup> Carrigan and Chambers, 47-49.

<sup>378</sup> Ibid. 49.

<sup>379</sup> Ibid. 51.

President Andrew Jackson and his role in the Trail of Tears in 1831.<sup>380</sup> While the Supreme Court confirmed Cherokee Sovereignty, President Jackson countered the judgment ordering the Removal of the Five Civilized Tribes to westward.<sup>381</sup> The Removal relocated Native Americans (mostly the Five Civilized Tribes) from the east side of the Mississippi River to the west into Indian Country, enabling non-Indians to homestead and pan for gold on those lands formerly owned by Indians.<sup>382</sup> These dispossessed people were forced on a cruel, long and arduous journey to their new homes. Many loved ones died along the way. Out of 17,000 Cherokees the U.S. government set out to remove, 4,000 died from hunger exposure and disease.<sup>383</sup> The Cherokee Nation of Oklahoma was bought and paid for with the blood of their ancestors.—no more or less though, than any other tribal nation. This may explain the Cherokee Nation’s behavior toward protecting their sovereignty and territory, even to the degree of contesting another tribal nation’s sovereignty, as with the Delawares. In other words, what may appear on the surface as a money issue (federal funding), was so much more. Underneath layers of money, there were centuries of tribal nationalism and identity at stake.

The Cherokee Nation of Oklahoma re-established their government and ratified a Constitution on June 26, 1976.<sup>384</sup> Previous to this date, the Cherokees were unrecognized

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<sup>380</sup> *Worcester v. Georgia*. 31 U.S. 515 (SC Sept. 15, 1831). Official Website of the Cherokee Nation of Oklahoma, <http://www.cherokee.org/Culture/CulInfo/TOT/58/>.

<sup>381</sup> *Ibid.*

<sup>382</sup> *Indian Removal Act* Stat I, Chap CXLVIII, An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi (signed by the President, May, 28, 1830). Library of Congress, “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875. <http://memory.loc.gov/cgi-bin/ampage>

<sup>383</sup> Official Website, Cherokee Nation of Oklahoma.

<sup>384</sup> *Constitution of the Cherokee Nation of Oklahoma*, ratified June 26, 1976. Deborah J. Maddox, Acting Director, to Mr. John Ross, United Keetoowah Band of Cherokee Indians Office of Tribal Services, December 20 and December 27, 1993, DW-DTI-8. The letters state, “No OIWA or IRA constitution was

as a Tribe; instead they were recognized as a “corporate entity.”<sup>385</sup> A Convention of duly authorized Cherokees met on July 30, 1948, and they adopted “certain motions and Resolutions.”<sup>386</sup> They met to organize their leadership and to formalize a contract for representation for the *Indian Claims Commission*.<sup>387</sup> The Cherokee Nation of Oklahoma petitioned the Commissioner of Indian Affairs to draft a new Cherokee constitution much like their original from the previous century of September 6, 1839. To enable their ability to do so, the federal government enacted P.L. 91-495, authorizing the Five Civilized Tribes to choose their chief, consequently abrogating the 1906 Five Civilized Tribes Act that only allowed for the U.S. President to appoint a chief in any of the Five Tribes.<sup>388</sup> The Delawares and the Cherokees initial interaction to create a new Cherokee Constitution seemed harmonious under the Cherokee leadership, Chief William Keeler, who had been in office since 1949 and served until 1975 when Ross Swimmer was elected.<sup>389</sup> Keeler’s support of Delaware self-determination was important simply because of his stature.<sup>390</sup> Keeler was the Great Grandson of George Keeler, who headed the first commercial oil well in Oklahoma, the Nellie Johnstone No. 1, located in Bartlesville. Beginning in 1926, William Keeler was an employee for Phillips Petroleum until he was appointed chief executive officer in 1967. He retired in 1974. William

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adopted. The constitution of the Cherokee Nation was adopted June 26, 1976 and approved by the Commissioner of Indian Affairs on September 5, 1975.” “Delaware Tribe Instrumental In Development of Oklahoma,” *Bartlesville Examiner, N.D.* Carrigan and Chambers 51. Delaware Chairman, Bruce Townsend, assisted the Cherokee Nation by sitting on the drafting committee for the Cherokee Constitution in 1972.

<sup>385</sup> Virgil H. Harington, Area Director to Chief, Tribal Operations, Memorandum, 12 November 1964, DW-DTI-8.

<sup>386</sup> Harington to Tribal Operations. “Forming of New Cherokee Government is Recalled,” *Cherokee Nation News*, 29 October 1968.

<sup>387</sup> Harington to Tribal Operations. “Cherokee Government is Recalled.”

<sup>388</sup> Carrigan and Chambers, 51.

<sup>389</sup> “Leadership and Contributions of Chiefs Noted,” *Cherokee Nation News*, November 5, 1968, DW-DTI-8. The article stated “W.W. Keeler, now President of Phillips Petroleum Company was appointed to serve four years. Chief Keeler was reappointed Jan. 1, 1954... to serve indefinitely.”

<sup>390</sup> “Delaware Tribe Instrumental.”

Keeler was appointed Chief of the Cherokee Nation in 1949 and given awards such as the Outstanding American Indian in 1957 and again in 1961. Keeler was the first elected Chief of the Cherokee Nation in 1971.<sup>391</sup> When Ross Swimmer was elected to the position, the relationship with the Delawares “quickly eroded,” as Delaware Chief Lewis Ketchum remarked to Secretary of Interior, Ada Deer in 1994.<sup>392</sup>

The Cherokee Nation’s formal reorganization caused a stir in the BIA that cast doubt on the Delawares as a “separate” entity.<sup>393</sup> The Cherokee Nation cultivated their political organization through adherence to tribal law steeped in a deep nationalism. This framework might account for their questioning of the tribal nations that were driven to their lands in the 1860s. Within six months of the Cherokees’ federal approval, the Cherokee Nation began questioning the BIA about the Delawares’ legal status. The Director of the Bureau of Indian Affairs noted that with “the recent formal organization of the Cherokee Nation, a question has been raised as to the nature of our relationship,” with the “Cherokee-Delaware.”<sup>394</sup> The BIA actions began to oppose both *Delaware Indian Claims* and the *Weeks* ruling for which three previous Secretaries of the Interior had already defended the Delawares as a federally recognized Indian tribe.<sup>395</sup>

In regard to the Cherokee conflict with the Delaware Tribe of Indians, the narrow and strict interpretation of 1867 Articles of Agreement led the Cherokee Nation to

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<sup>391</sup> History of Bartlesville and Washington County, Oklahoma, BARTLESVILLEHISTORY.ORG, <http://myweb.cableone.net/gmeador/bvhisgra.htm>, 4, accessed July 28, 2008.

<sup>392</sup> Lewis Ketchum, Chief, Delaware Tribe of Indians, to Ada Deer, Secretary of Interior, 19 October 1994, DW-DTI-8. The Nomination of Ross O. Swimmer to be assistant secretary of the Interior for Indian Affairs, Hearing Before the Select Committee on Indian Affairs, United States Senate, 99<sup>th</sup> Congress (October 16, 1985), DW-DTI-8. Swimmer was an attorney and President of First National Bank in Tahlequah.

<sup>393</sup> Harington Memo, 12 November 1964.

<sup>394</sup> Director, Office of Indian Services to Associate Solicitor, Indian Services, Memorandum, 1 February 1977, DW-DTI-8.

<sup>395</sup> Ketchum to Deer, 19 October 1994.

believe that their sovereignty would be jeopardized by Delaware federal recognition because the Delawares and Cherokee service area would overlap—basically the Delawares were like a stamp on an envelope. The Delawares were the stamp and the Cherokee Nation territory the envelope. There had been no forethought about how to filter funds through one funding source, the BIA, because Indian policy had been inconsistent at best. The Cherokee perception that the Delawares held no legal claim to federal recognition and the Delawares' attempts to claim this status ignited the conflict which justified Cherokee Nation attacks on Delaware sovereignty for the next thirty-two years. The Cherokee Nation furthermore believed that the Delawares were subordinate as a tribe within a tribe. Thus, the Cherokee Nation sought oversight of the Delaware Tribe's activities, much like the Bureau of Indian Affairs oversight of federally recognized Indian tribes.

In 1977, the friction solidified into court action between the Delawares and the Cherokees. When the Delawares decided in 1977 to create a Housing Authority for Washington, Nowata, Craig, North Rogers and North Tulsa Counties, the Cherokee Nation of Oklahoma Chief Ross Swimmer asked for a moratorium on its construction.<sup>396</sup> The Department of Housing and Urban Development (HUD) approved the Delaware Tribe's application in June 1978.<sup>397</sup> When HUD denied his request, Chief Swimmer filed

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<sup>396</sup> Emil L. Huber Jr., Area Manager, Region VI, HUD to Mr. Ross O. Swimmer, Principal Chief of the Cherokee Nation, 6 November 1978, DW-DTI-8.

<sup>397</sup> Minutes of the Meeting of the Delaware Tribal Business Committee Held on the 8<sup>th</sup> Day of September, 1977, DW-DTI-8. "A Resolution Finding and Declaring that there Exists a Need for the Housing Authority of the Delaware Tribe of Indians to Function in the Counties of Washington, Nowata, Craig, Rogers, and North Tulsa, State of Oklahoma," Resolution No. 77-21, 16 December 1977, DW-DTI-8. Program Development Report, March 1978.



suit with DHHS in 1980 on the grounds that the Delaware Tribe was not federally recognized. Chief Swimmer lost his suit in federal court.<sup>398</sup>

Also in 1977, the BIA began to assert that the Delawares were “considered members of the Cherokee Nation” in addition to the Delaware Tribe.<sup>399</sup> Due to this reasoning, the BIA concluded that the monies for Delaware members would be allocated to the Cherokee Nation and that the Delawares should work with Cherokee Nation Principal Chief Swimmer. The Indian Health Service (IHS) followed suit with the BIA stating IHS would “assist in discussions with the Cherokee Nation.”<sup>400</sup> Principal Chief Swimmer had in no uncertain terms expressed his objection to the Delawares being a federally recognized Tribe.<sup>401</sup> Chief Swimmer, an attorney and President of the First National Bank in Tahlequah, consistently expressed that “legally, the Delawares do not exist except as Cherokees” and that because of the 1867 Articles of Agreement, the Delawares had become Cherokees.

Swimmer exploited the federal prohibition of Delaware members’ dual enrollment with the Cherokee Nation. Therefore, by denying the Delaware Tribe’s recognition, the Cherokee maintained a larger headcount and constituency. An individual Indian could not, officially that is, be a member of more than one federally recognized tribe because this keeps a person from drawing services from two or more tribes. Since

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<sup>398</sup> *Cherokee Nation of Oklahoma and the Housing Authority of the Cherokee Nation of Oklahoma v. The Delaware Tribe of Indians and Emil L. Huber, Area Manager of the Department of Housing and Urban Development*, 19 August 1983, DW-DTI-8.

<sup>399</sup> Raymond V. Butler, Acting Deputy Commissioner of Indian Affairs to Mr. Bruce M. Townsend, 11 August 1977, DW-DTI-8.

<sup>400</sup> Emery A. Johnson, M. D., Assistant Surgeon General, Director of Indian Health Services to Mr. Bruce Townsend, Chairman Delaware Business Committee, 1 September 1977, DW-DTI-8.

<sup>401</sup> Ketchum to Deer, October 19, 1994. The letter states, “Although Swimmer’s assertions were firmly rejected by both Congress and the Solicitor’s office as late as October, 1978, extensive political contacts allowed Swimmer to eventually triumph by February, 1979. Needless to say by May, 1979, an Acting Deputy Commissioner declared that the Delaware Tribe of Indians had not existed since 1867, and the Department would recognize Delaware “descendants” as citizens of the Cherokee Nation only – despite the fact that few, if any Delaware tribal members were even enrolled at all in the Cherokee Nation in 1979.”

federal funding is distributed to tribes on a per capita basis, if the Delawares head count was taken out of the Cherokee Nation's 638 Contracts (and other federal programs), then the amount of money to the Cherokee Nation of Oklahoma would be reduced. Of course, this was something that in 1866, neither party to the December 9 Agreement or the 1867 Articles of Agreement would have been able to foresee.

The conditions that defined tribal sovereignty in 1866 were circumscribed by treaties with the federal government and land ownership. A tribe could more or less carry on with their own social and government functions as long as they were on their own reservation. A century later tribal sovereignty had morphed into an entirely new set of conditions that were grounded in federal programs and subject to the federal appropriations of the BIA. The BIA then dictated how money could be allocated to Indian people, albeit through their respective tribal government. Hence, the BIA was ultimately responsible for each eligible Indian person that could prove either enrollment to a tribe or could prove that they were at least a quarter Indian blood regardless of enrollment.

A case in point, the Cherokee Nation Constitution did not prohibit dual enrollment nor did it have a blood quantum requirement at this time. What the Cherokee Nation did have was a 1906 Act which tied property rights to Dawes enrollees, and consequently property rights went to heirs regardless of tribal affiliation and blood quantum. Tribal sovereignty, more or less up through 1900, was land based and as such membership descended through ties to tribal land; alternately, tribal sovereignty in the 1970s changed and has been tied to members' services (and no less from a budget). Federal distribution (or 638 contracting) was at odds with the Cherokee Nation

constitution, which conflicted with the 1867 Articles Agreement. A literal interpretation states that regardless of an individual's tribal affiliation, if she descended from an original allottee that existed within the former boundaries of the Cherokee Nation, she could be a Cherokee member and still hold membership in another tribe (including the Delawares). This was a tribal sovereignty issue that the Self-Determination Act was supposed to resolve; that tribes should be vested with the authority and legal consideration to provide their own services through a recognized form of government. This not only created a difficult situation for the federal government, but for the Delawares as well. They were in danger of becoming subordinate to the Cherokees. BIA methods were not concrete; consequently, neither were the tribal governments involved. No side wanted to admit wrongdoing and thus invite accountability. Each sorted through subjects they were ill-equipped to handle and the Delawares sank into a deep crevice not of their making but severely affecting their people.

Swimmer had raised many eyebrows and there were significant BIA objections to the Delawares' eligibility as P.L. 93-638 contractors. BIA Tribal Operations Officer Bob Farring wrote a series of memos that issued the opinion that the Delawares were recognized strictly for claims purposes. He also claimed that the 1958 bylaws were adopted only for the pursuit of the Indian Claims cases, contrary to the BIA arguments in the *Weeks* case that the Delawares were recognized for all purposes.<sup>402</sup> Farring further argued that in 1977, the BIA considered the Delawares a separate tribe only because of the Supreme Court Decision in the *Weeks* case. Lastly, Farring stated that Chief

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<sup>402</sup> Bob Farring Memo, "For the Record, Subject: Cherokee Delaware," 20 December 1977. Bob Farring Memo, "For the Record, Subject: Cherokee Delaware Delegation," 23 February 1978, *Wilma Mankiller Collection*, Folder 9-12, Western History (Norman: University of Oklahoma).

Swimmer's opinions would be taken into consideration.<sup>403</sup> Adding to the objections, Delaware tribal member Chris White, who was employed by Chief Swimmer at the Cherokee Nation, appealed to the BIA about the Delaware Tribe of Indians governance. White's appeal questioned the Delawares' ten percent plan from the Delaware Claims judgment monies. This further damaged the Delawares' credibility.<sup>404</sup> Outside the actual legal issues, under advisement from other BIA officials, Farring wrote there was "no need to be in a hurry about responding to either the appeal or the Townsend letters in that there would be an election next November."<sup>405</sup>

In 1978, the federal political atmosphere still seemed favorable to the Delawares. Although the BIA and IHS had received many demands from Chief Swimmer, the BIA prepared to reorganize the Delawares under the Oklahoma Indian Welfare Act (OIWA). Chief Swimmer still insisted that the 1867 Articles of Agreement nullified the Delaware Tribe of Indians existence as a legal entity. In February, 1978, Swimmer claimed that the Delawares' court cases had been from activities previous to becoming part of the Cherokee Nation.<sup>406</sup> His arguments were persuasive enough that Assistant Solicitor Scott Keep postponed his decision on the Delawares until Chief Swimmer had had the opportunity to submit his opinions in writing.<sup>407</sup>

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<sup>403</sup> "For the Record," 20 December 1977.

<sup>404</sup> Scott Keep, Acting Assistant Solicitor, Division of Indian Affairs to Mr. Baca, Office of Indian Rights, Civil Rights Division, 27 July 1977, DW-DTI-8. Chris White to Mr. Thomas J. Ellison, Area Director, 4 October 1977, DW-DTI-8. Bob Farring Memo, "For the Record, Subject, Cherokee Delaware," 20 December 1977, *Wilma. Mankiller Collection*, Folder 9-12, Western History (Norman: University of Oklahoma). "Delaware Tribe of Oklahoma," BIA Position Paper, December 18, 1977, DW-DTI-8.

<sup>405</sup> "For the Record," 20 December 1977.

<sup>406</sup> Ross Swimmer, Principal Chief Cherokee Nation of Oklahoma to Forrest Gerard, Assistant Secretary of the Interior, 27 February 1978.

<sup>407</sup> Bob Farring Memo, "For the Record, Subject: Cherokee Delaware Delegation," 23 February 1978.

Chief Swimmer's letters clearly pointed out that in his opinion, not only should the Cherokee Nation have supervision over the Delawares' judgment funds but that the judgment monies belonged to the Cherokee stating, "Since 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."<sup>408</sup> Even so, Scott Keep returned Farring's memo referencing *Weeks*, "which I believe make it impossible for the Department to take the position now that the Delawares are not a tribe."<sup>409</sup>

The Cherokee Nation objected to such a degree that support for Delawares' federal recognition quickly eroded. The other major source of federal funding, Indian Health Services (IHS), became involved in the controversy when the Director notified Assistant Secretary Forrest Gerard that the Delawares should legally receive direct funding if they were indeed recognized under the Indian Self-Determination Act.<sup>410</sup> In February, 1978, Ross Swimmer and the Area Director of the Muskogee Office, Jack Ellison issued press releases that the Delaware Tribe had "denied access" of their "books and records" to the Cherokee Nation.<sup>411</sup> A full year after the Cherokees developed an MOA with the city of Bartlesville, the Delawares sought an MOA from the city for a Housing Authority. Chief Swimmer objected but the city rebuffed the Cherokees because up until this time in February, the Cherokees made no effort whatsoever to

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<sup>408</sup> Swimmer to Gerard , 27 February 1978.

<sup>409</sup> Scott Keep, Solicitor, Division of Indian Affairs to Bob Farring, BIA Code 440, 20 March 1978, *Wilma Mankiller Collection*, Folder 9-12, Western History (Norman: University of Oklahoma).

<sup>410</sup> Ross Swimmer, Chief Cherokee Nation of Oklahoma to Dr. Emory Johnson, Director, 28 November 1977, DW-DTI-8. Ross O. Swimmer, Principal Chief, Cherokee Nation to Luke McIntosh, Asst. Area Director for Tribal Development & Operations, Oklahoma City Area Indian Health Service, 24 August 1978, DW-DTI-8. Swimmer states, "The Cherokee-Delawares...do not have contracting authority anyway. It is time to stop this nonsense and get on with the task of administering the program and seeing to the needs of our Indian people."

<sup>411</sup> Henry A. Secondine, Vice Chairman and Business Manager, Delaware Tribe of Indians to Jack Ellison, Area Director, Mailgram, 25 February 1978, DWI-DT-8.

develop any housing. Chief Swimmer nonetheless persisted against the Delawares. In March, 1978, the Cherokee Nation objected to the Delawares' representation on the advisory board of the Claremore Service Unit (hospital) in March. Also that month, the Cherokee Nation wrote to Nowata Industrial Foundation, Inc., in response to a "certain proposed transfer of land to a group known as the Delawares," stating that the "Delaware group is unable to hold land in trust." He furthermore relayed that the Cherokees were interested in the property for a medical clinic and other industry.<sup>412</sup> On March 23, 1978, Chief Swimmer wrote a letter to the Indian Health Service in Oklahoma. He said that the Cherokee Nation would be serving the Delawares from this point forward. In another move to vindicate his position, Chief Swimmer took his opinion to Congress during testimony to amend the Delawares' distribution statute April 3, 1978. He asserted that the Delawares had been integrated into the Cherokee Nation and the "Cherokee Nation has served as the tribal government for these people since 1867."<sup>413</sup> He reiterated that the Delawares did not exist as a Tribe and therefore programming monies should be administered by the Cherokee Nation. Even so, the Tahlequah Agency BIA responded to Chris White that the Delawares, under Article 15 of the Cherokee Treaty of 1866, had retained their sovereignty and federal recognition.<sup>414</sup> In August of 1978, Swimmer then stated that because the Delawares had "no contracting authority," the Cherokee contract should not be deferred any further.<sup>415</sup>

In October, 1978, the Cherokee Nation of Oklahoma Council passed a resolution "calling for the federal government to determine the status of the Delawares Tribal

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<sup>412</sup> Ross Swimmer, Principal Chief Cherokee Nation, to Nowata Industrial Foundation, Inc. 29 March 1978.

<sup>413</sup> Carrigan and Chambers, 60.

<sup>414</sup> Ibid. 61.

<sup>415</sup> Ibid. 59.

Business Council.” The Cherokee Tribal Council declared that the Delawares were entering into contracts with the federal government as if they were another nation.<sup>416</sup>

Chris White yet again wrote to the Delaware grievance committee charging them with incompliance in October, 1978, although there is no clear record of the merit of his accusation or result of the letter.<sup>417</sup> Despite this, the Delawares continued to fight an uphill battle defending their nation’s independence.

Responding to Principal Chief Swimmer’s actions, the Delaware Tribal Business Committee called for an ousting of Ross Swimmer in October, 1978. In a resolution with six members voting yes, one voting no, and one abstaining, the Delaware Business Committee listed their reasons:

1. By attempting but failing to have his Council pass a resolution to have the BIA unlawfully grab “control of the books, accounts and records” of the Delaware Tribe of Indians and “permit no further payments to be made of any kind to any person or any group...”
2. By attempting to influence the U.S. Congress to amend its prior Act of 1972 and overrule the 1977 decision of the U.S. Supreme court by giving \$1 1/2 million in Delaware Tribal monies to outsiders calling themselves “Kansas Delawares.” Swimmer submitted written testimony to the U.S. Congress claiming (a) the Delaware Tribe of Indians does not exist, (b) that Congress did not intend to program monies to the Delawares, (c) inferring that the Delaware Tribe is incompetent to manage its own affairs and that (d) Swimmer should be given that power by Congress. (Swimmer said “when a small group of Indians get control of large sums of money for tribal programs... There is no representation from the people which would decide the best use of the money... we (Swimmer’s organization ) have a representative government for the Delawares which they do not have.”).
3. By intruding into the relations between the Delaware Tribe of Indians and the U.S. Government and demanding that all Delaware contracts be given to Swimmer’s organization and taken away from the Delaware Tribe, thereby seeking to usurp, grab and otherwise expand his empire. Swimmer attempts to take over, among other things, the Community Health Representative Program operated by the Delaware Tribe for eight years and the Delaware Housing Authority.

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<sup>416</sup> “Cherokee Council Donates Money,” *Tulsa World*, Sunday October 15, 1978, DW-DTI-8.

<sup>417</sup> Chris C. White to Howard Barnes, 11 October 1978, DW-DTI-8.

4. By interfering with the approval process of the BIA regarding the Delaware Tribal Program under the 1972 Act. Such action prevents the operation of an educational scholarship that would give 98 Delawares \$500.00 annual scholarships perpetually causing the necessity of a recent lawsuit to force a decision by the BIA.<sup>418</sup>

The BIA still held out through 1978 when the Cherokee issued a brief with the opinion that the Delawares were ineligible for federal funding. Associate Solicitor Scott Keep rejected the Cherokee's brief responding that the *Weeks* case had "verified the Delaware as a tribe."<sup>419</sup> The opinion of the Solicitor should have ended the controversy right then and there, but it did not.

Soon, the BIA reversed this stance. One contributing factor may have been that Delaware Chairman Townsend was not reelected. Consequently, the Delaware Tribe lost their attorney. Townsend had been active since the 1950s, from the inception of the Bylaws through the *Weeks* case. Moreover, he had worked with the three different Secretaries of Interior who had defended the Delawares' recognition.<sup>420</sup> With such an influential figure removed from office, the questioning of the Delawares status became even more tenuous than anyone believed possible.

Through the Indian Self-Determination Act, the federal government began to devise new, supposedly more effective systems to administer programming monies to definable Indian tribes. Accordingly, the BIA formulated criteria by which they would

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<sup>418</sup> "For Immediate Release: The ouster of Ross O. Swimmer was called for by the Delaware Tribal Business Committee at special meeting," Delaware Tribal Business Committee, Delaware Indian Center, (October 27, 1978), DW-DTI-8.

<sup>419</sup> Scott Keep, Memo, 17 March 1977, "answers #4, 6, 9." (Referring to the *Weeks* depositions). Scott Keep to Bob Farring, Memo, 20 March 1978. Keeps stated, "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."

<sup>420</sup> Carrigan and Chambers, 62.



recognize a tribe.<sup>421</sup> A tribe must meet these criteria before being added to a running inventory of federally recognized tribes eligible to receive funding. The BIA published its first official list of Indian entities recognized and eligible to receive services from the BIA in 1978. The Delaware Tribe of Indians was included in 1978 and then excluded from the list in 1979 without any explanation.<sup>422</sup> The Delawares were caught in a tangled web of legal and congressional disputes about their status. The question of distribution of services was woven into the fabric of the legal definition of federal recognition.

Martin Seneca, acting Deputy Commissioner of Indian Affairs, took the exclusion to a final degree by terminating the federal relationship with the Delaware Tribe of Indians. Seneca notified the “Cherokee-Delaware Business Committee,” that in his determination, the Delawares as governed under their Bylaws, was no longer sufficient to meet BIA standards. That “until such an 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 monies.”<sup>423</sup> Even though the Delawares had met the criteria from the 1972 issuance of tribal enrollment of 1973 and the monies were distributed to tribal members and the tribal government, the Delaware Bylaws and the tribal roll that had been supervised by the federal government were declared invalid. Seneca explained that questions from Chris White, who had appealed the Delawares’ use of their programming monies, instigated the federal government’s reexamination of the relationship between

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<sup>421</sup> Mark Edwin Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgement Process* (Lincoln: University of Nebraska, 2004). Jennifer P. Hughes, Esq., Morrisset, Schlosser, Jozwiak & McGaw, “Primer on Federal Recognition and Current Issues Affecting the Process,” (Prepared for *NCAI Winter Session*, February 22, 2001). <http://www.msaj.com/papers/FedRecPrimer.html>. Barbara N. Coen, “Tribal Status Decision Making: A Federal Perspective on Acknowledgment,” *New England Law Review* 37, (April 24, 2003), 3.

<sup>422</sup> *Governing Bodies of Federally Recognized Indian Groups (Excluding Alaska)*, Department of Interior, (GPO, 1978) and (25 CFR 1979).

<sup>423</sup> Carrigan and Chambers, 62.

the Delawares and the Cherokee. Seneca furthermore stated that this was the “first time we have been faced with the question of whether there exists an entity that meets the statutory requirements as it related to the use of program funds,”<sup>424</sup> meaning that the ten percent plan was inadequate to protect the interests of the Delaware Indians.

Seneca proceeded to direct the Delaware Tribe of Indians to become subordinate to the Cherokee Nation. To do so, they would need to develop representation within the Cherokee Nation by way of a “new Delaware organizational document” subject to the approval of the Cherokee Nation Chief. The Delawares’ assignment was to elect two members from the Business Committee to a five person organizational committee, and the BIA would appoint the third. From the three members on the committee, they could choose the remaining two. The Delawares attempted to meet the “mandate,” albeit “under protest”.<sup>425</sup>

The re-organization committee was formed and the first three members consisted of Donald M. Weaver (chosen by the BIA), Lewis B. Ketchum and Bob Armstrong (appointed by the Delaware Business Committee).<sup>426</sup> Nathan Young, Sr., was unanimously chosen by the first three members. The choice of Leo Johnstone, however, caused the Delawares grief from the Commissioner as he had directed that the fifth

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<sup>424</sup> Ibid.

<sup>425</sup> Henry A. Secondine, Chairman Delaware Business Committee to Joe Parker, Superintendent, Tahlequah Agency, March 12, 1979, DW-DTI-8. Acting Director to Muskogee Area Director, Memorandum, Subject Cherokee-Delaware Reorganization, 26 February 1979, DW-DTI-8. M.E. Seneca, Acting Deputy Commissioner to Mr. Donald M. Weaver, 26 February 1979, DW-DTI-8. L.B. Ketchum to Acting Deputy M.E. Seneca, Commissioner, 29 March 1979, DW-DTI-8. Acting Deputy Commissioner to Henry Secondine, Chairman, Cherokee Delaware Business Committee, 25 April 1979, DW-DTI-8. Martin E. Seneca, Jr., Acting Deputy Commissioner of Indian Affairs to Henry Secondine, Chairman, Cherokee Delaware Business Committee, Telegraphic message, 10 May 1979, DW-DTI-8.

<sup>426</sup> Seneca to Weaver, 26 February 1979. Secondine to Parker, 12 March 1979.

member be a unanimous decision and one member had objected to his appointment.<sup>427</sup>

Writing from the Cherokee Nation, Chris White questioned why the Secretary had allowed the Business Committee to remain even though they had not complied. He argued that this only enabled the Delaware Business Committee to keep going.<sup>428</sup>

Because the re-organization committee failed to meet the May 15 deadline, the Commissioner of Indian Affairs notified Chairman Secondine that the BIA would present matters to the Delaware adult members and prohibited the Delaware Business Committee from any further action.<sup>429</sup>

By 1979, the federal government's official stance towards the Delawares completely reversed course and the BIA asserted that the Delawares were not a federally recognized Tribe. This policy turnabout directly related to the Delaware-Cherokee conflict and to the way that P.L. 93-638 funding was distributed.<sup>430</sup> The judgment funds even played a significant role. Because P.L. 638 Contracts carry out specific programming monies from the Department of the Interior, the formula for distribution among Indian Tribes was and still is directly related to the number of tribal members. The Delaware Tribe could only receive these judgment and federal monies by justifying their independence.

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<sup>427</sup> Ketchum to Seneca, 29 March 1979, DW-DTI-8. Jose A. Zuni, Acting Deputy Commissioner to Lewis B. Ketchum, 25 April 1979, DW-DTI-8. L. B. Ketchum to Jose A. Zuni, 2 May 1979. Ketchum stated that "prior to the selection of Mr. Johnstone and Mr. Young, I personally received a consistent opinion that a unanimous vote by the three members would not be necessary to name the additional two." Ketchum furthermore identified that Steve Feraca was responsible for the statement while other employees at the BIA in "unofficial positions" did confirm Feraca. In conclusion, Ketchum stated that had "we not received your letter, the committee as selected, functioning within the guidelines, could have prepared a document that would represent the best interest of the Delaware people.

<sup>428</sup> Chris White Recruitment Coordinator, Cherokee Nation, to Commissioner of Indian Affairs, 7 May 1979.

<sup>429</sup> Mailgram to Henry Secondine, Chairman, Cherokee Delaware Bus. Com. From Lafollette Butler, Acting Deputy Comnr of Indian Affairs Dept of Interior, 22 May 1979.

<sup>430</sup> Luke McIntosh, Assistant Area Director for Tribal Development and Operations to Mr. Bruce Townsend, Chairman, Delaware Tribe of Indians, 30 June 1978.

Acting Deputy Commissioner La Follette Butler wrote a letter on May, 24, 1979 to the “Cherokee Delaware Business Committee,” stating that the Delawares had only organized under its 1958 By-Laws to pursue claims. Going against the Supreme Court and the 1977 Opinion of the Solicitor, Butler then effectively “terminated” the Delawares Tribe of Indians by withdrawing the BIA’s approval of the 1958 Bylaws, as amended. He continued the termination by “withdrawing recognition of those officials elected or appointed pursuant to those By-laws.”<sup>431</sup> Carrigan and Chambers note that this is the first time that the Delawares were officially proclaimed the “Cherokee Delaware Tribe.” Throughout their previous interaction with the United States, the Delawares were called the Delaware Tribe of Indians.<sup>432</sup> Even more disturbing is that Acting Deputy Commissioner Butler issued a letter to Delaware Tribal members attempting to redefine their membership criteria outlined by their own statute.<sup>433</sup> This added insult to injury for the Delawares because Butler had undermined the definition of self-determination in that Indian Tribes have the right to determine their own membership.

As a result of their termination, the Delawares were forced to discontinue programs to help their most vulnerable, elders, children and those in need. Their Community Health Representative (CHR), Tribal Government Development Program, and Health Planning Program, and any BIA and DHS funding was effectively cut off.<sup>434</sup> The Delaware Tribe’s millions of dollars in distribution of programming funds were also

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<sup>431</sup> LaFollette Butler, Acting Deputy Commissioner to Henry Secondine, Chairman Cherokee Delaware Business Committee, 24 May 1979.

<sup>432</sup> Carrigan and Chambers, 64.

<sup>433</sup> M.E. Seneca, Acting Deputy Commissioner, “Message to Members of the Cherokee Delaware Tribe,” 7 June 1979. *Wilma Mankiller Collection*, Folder 9-12, Western History (Norman: University of Oklahoma).

<sup>434</sup> Carolyn J. Well, Contracting Officer, IHS to Delaware Tribe of Oklahoma, Oklahoma City, 18 July 1979.

stopped. The newsletter to tribal members exemplifies the distress that the tribal leaders felt from the termination:

We realize that a newsletter should have been mailed out soon after the November 1978 election, however, this was impossible as we did not have funds. We still do not have access to the 10% that was to have been used for Tribal programs, but have managed to accumulate enough now for a newsletter. One newsletter will be mailed out to a family.<sup>435</sup>

The Delawares were shocked, and only at this time did they fully grasp the implications. They had lost this battle for their standing as a federally recognized Indian tribe.

The Delawares' experience often defied the normal pattern of Indian political history. When other tribal nations folded their tribal governments from the allotment era and reorganized under the Indian Reorganization Act, the Delawares retained their traditional form of government, the Business Committee and General Council. When the federal government terminated tribal relationships, from 1952 up through 1977, the federal government sided with and defended the Delawares as an Indian nation. Although the Cherokee and the Kansas Delawares challenged the Delawares' judgment funds and federal recognition of their sovereignty in the mid 1970s, the Delawares made strong progress during the initial years of the Indian self-determination era. The Delawares were enterprising and provided services that ranged from home health care to culture and language programs. Less than a few years after the U.S. had defended the Delawares in *Weeks*, when the U.S. completely reversed itself and sided against the Delawares' recognition in 1979, just as it sought to empower and reverse the decades of oppression under the termination era. Of little doubt is that the Cherokee Nation of

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<sup>435</sup> Delaware Tribe of Indians, *Newsletter*, August 31, 1979.

Oklahoma reorganization and their leadership's reliance on the 1867 Articles of Agreement significantly affected the federal government's actions in the matter. Consequently, the Delawares and Cherokees began to engage in a bitter territorial dispute.

For the BIA to write off the Delawares was distressing. The effects of termination had been clearly identified in the Commission who studied the effects of the Indian civil rights violations of termination. Yet the BIA unlawfully took administrative steps that voided the Delawares' official recognition in 1979, under the strong influence and legal justifications of the Cherokee Nation, hence renewing those same oppressive policies from the previous decades. While not the same intent of the 1950s termination, the result was that the BIA's actions stripped the Delawares of the essential federal trust responsibility. Numerous Indian people within the Delawares' service were not recognized under the Cherokee Nation. These Indian people lost essential programs that aided their health, physical abilities, and economic stability. The Delaware members were left open and vulnerable to the local politics. Taken together, the case was reminiscent of the same Indian civil rights violations as any other tribal nation that had been terminated in the 1950s. Even though this was a unique case, this was only one chapter in a long journey that oscillated between federal recognition and administrative termination of the Delawares.

#### **Chapter Four: Delawares' Sovereignty Restored, 1979-1996**

In 1979, the Delaware Tribe of Indians had become tangled in a complicated web between the Cherokee Nation, the Bureau of Indian Affairs (BIA) and numerous bureaucratic processes of federal funding. The Delawares' conflict with the Cherokees directly related to the way that the Cherokee Nation contested the Delawares' federal recognition, which stalled the distribution of Delaware judgment monies from the Indian Claims Commission Hearings (ICC). The federal programs already distributed to the Delawares were immobilized due to the BIA's revised argument that the Delawares were a tribe within the Cherokee Nation. Nevertheless, the BIA was responsible for protecting the interests of the very tribal nation members that they did not acknowledge.<sup>436</sup> The BIA recognized an unknown number of Delawares as Native American if they were enrolled AD (Adopted Delaware) of the Cherokee Nation.<sup>437</sup> Because the federal government had terminated recognition of the Delaware Business Committee in 1979, the BIA would have to deal directly with Delaware tribal members identified on the Delaware roll to distribute the Delaware Indian Claims judgment monies.

In 1979, the BIA withheld the Indian Claims judgment, close to four million dollars, that Congress had appropriated for the Delaware Tribe. They would continue to withhold the money until the Delawares created a governing document that would

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<sup>436</sup> On several levels, the Bureau of Indian Affairs (BIA) actions disregarded the ruling from the *Weeks* case. Aside from the validation of the Delawares' federal recognition in *Weeks*, the reason that the court ruled against the Kansas-Delaware was because the federal responsibility lay with tribal nations, not racial classification—or descendants as in what the BIA was doing with the Delaware descendants.

<sup>437</sup> For a full discussion on the enrollment issues, see Brice Obermeyer, "Delaware Identity In a Cherokee Nation: An Ethnography of Power" (PhD diss., University of Oklahoma, 2003). Obermeyer explains how many Delawares have had to enroll with the Cherokee Nation to receive services as a result of financial pressures. Often these Delawares have been listed as AD but sometimes merely listed as Cherokee on the Certificate Degree of Indian Blood (CDIB) or enrollment cards.

“explicitly deny” their sovereignty.<sup>438</sup> Yet, the Delawares did not comply. Instead, they developed their governing methods and created a trust document that they hoped would enable the BIA to release their money. The Delawares also attempted to re-establish their federal acknowledgement by appealing to the BIA and seeking political support from the Cherokee Nation.

The BIA’s actions throughout this time period often correlated with the Cherokee Nation’s objections to giving the Delawares direct control over their judgment monies. The Cherokee Nation alleged that in 1867 the Delawares abandoned their sovereignty and as a result the Cherokee Nation asserted the responsibility for overseeing the Delawares’ Indian Claim’s funds. The Delawares contended that only Delawares were responsible for maintaining their trust funds because a direct government to government relationship between the U.S. and the Delawares existed. In 1980, Congress was puzzled as to why the BIA would consider the Delawares part of the Cherokee Nation when the Supreme Court had judged the Delawares to be federally recognized.<sup>439</sup> This mattered little to the BIA which maintained its position that the Delawares were a tribe within a tribe until 1996.

When the BIA held a meeting in Tulsa for the Delawares in September 1979, the Delawares present at the meeting voted to retain ten percent of the Delaware Indian Claims judgment monies to be held in trust. The interest from the trust money would be utilized for tribal programs that included scholarships, elderly, and tribal government administration (hereafter referred to as the ten percent plan). The other ninety percent of

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<sup>438</sup> Gina Carrigan, J. D. and Clayton Chambers, “A Lesson in Administrative Termination: An Analysis of the Legal Status of the Delaware Tribe of Indians” (Bartlesville: The Delaware Tribe of Indians, © 1995), 65.

<sup>439</sup> Ibid.



the judgment money would be sent out to each eligible Delaware member (referred to as per capita distribution). The Delawares also made it clear to the BIA that the Delawares sought to regain their federal recognition without subordinating themselves to the Cherokee Nation.<sup>440</sup> The BIA disagreed with the Delawares at this meeting. Those in attendance generally came from the local areas of Bartlesville, Dewey, Nowata, and Tulsa. To counteract the meeting vote, the BIA sent out a referendum to all of the Delaware members throughout the U.S. or who resided in other countries listing only two options: one, to distribute the monies per capita, or two, to accept a proposed “Articles of Agreement with the Cherokee Nation,” which would give the Cherokee Nation administrative powers over the Delaware funds. The Delaware voters rejected both proposals by returning their ballots with neither option marked; and then the Delaware Business Committee petitioned President Carter.<sup>441</sup>

The Delaware Tribe was diverted from their federal appeals to President Carter though when the Cherokee Nation took the Delaware Housing Authority to court, 1980-1983.<sup>442</sup> In September, 1980, the Cherokee Nation filed suit in district court to have the Delaware Housing Authority declared unlawful.<sup>443</sup> The Department of Housing and Urban Development (HUD) was a defendant in the case because HUD maintained that

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<sup>440</sup> Delaware Tribe of Indians, Newsletter in form of letter to Delaware Member, August 31, 1979. The Newsletter also states that the tribal leaders made several requests that the BIA hold the meeting in Dewey as the rest of the Delaware meetings had been.

<sup>441</sup> Carrigan and Chambers, 67-68.

<sup>442</sup> Newsletter, August 31, 1979. Emil L. Huber Jr., Area Manager, Region VI, HUD to Mr. Ross O. Swimmer, Principal Chief of the Cherokee Nation, 6 November 1978, DW-DTI-8. Minutes of the Meeting of the Delaware Tribal Business Committee Held on the 8<sup>th</sup> Day of September, 1977, DW-DTI-8. Resolution 77-21, A Resolution finding and declaring that there exists a need for the Housing Authority of the Delaware Tribe of Indians to function in the counties of Washington, Nowata Craig, Rogers and North Tulsa, state of Oklahoma, (December 16, 1977), DW-DTI-8.

<sup>443</sup> *Cherokee Nation of Oklahoma and the Housing Authority of the Cherokee Nation of Oklahoma v. The Housing Authority of the Delaware Tribe of Indians, Emil L. Huber, Jr. Area Manager of the Department of Housing and Urban Development and the Delaware Tribe of Indians*, Civil Action No. 80-C-540-B, August 19, 1983.

the Delaware Tribe was federally recognized. The BIA, however, insisted that the Delawares were not recognized. HUD acceded to the BIA's position. Yet, the series of events that justified aligning HUD with the BIA was questionable. The BIA sent a solicitor's memorandum to HUD that stated "the 1867 Articles of Agreement had been ratified by Congress in 1888."<sup>444</sup> Although this was false, the memorandum damaged the Delaware Housing Authority's standing with HUD. In actuality, the 1888 Statute was for appropriations to reimburse the Delawares, Shawnees, and freedmen for a distribution that had been paid out to members with actual Cherokees blood only. In the statute, Congress inferred that the Delawares were Cherokees as a result of the receipt of this distribution. Yet, Congress did not specifically ratify the 1867 Articles of Agreement in 1888.<sup>445</sup> Yet from 1980 on, this 1888 statute was the basis of the BIA's claim that Congress had ratified the 1867 Articles of Agreement. The Cherokees asserted other peculiar arguments during the HUD case as well. Yet, the Federal Court decided that the legal recognition of the Delawares was not even applicable because the Delaware Tribe of Indians fit the Housing Authority guidelines of a tribe, which were defined by Oklahoma Housing Authority Statute.<sup>446</sup> The Delaware Tribe of Indians therefore signed a Memorandum of Agreement (MOA) with the U.S. and the Delaware Housing Authority, retained their program.<sup>447</sup>

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<sup>444</sup> Carrigan and Chambers, 68. The authors explain that Congress uses exact language when referring to the intent of an act so that there should be no confusion as to the meaning of the statute.

<sup>445</sup> *Appropriation for freedmen and others in Cherokee Nation*, 50th Cong. 1<sup>st</sup> sess (October 19, 1888).

<sup>446</sup> *Oklahoma Housing Authority Statute*, 63 Okla. Stat. Ann, DW-DTI-8. *Cherokee Nation of Oklahoma and the Housing Authority of the Cherokee Nation of Oklahoma v. The Housing Authority of the Delaware Tribe and the Department of the Interior*, Civil Action No. 80-C-540—B., August 19, 1983.

<sup>447</sup> "H.U.D. Awards Presented At NAIHC Convention," in the *Delaware Indian News* (Bartlesville, OK), July, 1987. "General Council Minutes November 12, 1988," in the *Delaware Indian News* (Bartlesville, OK), January, 1989. The Housing Authority of the Delaware Tribe existed until 2007, winning the HUD Award for significant improvements in 1986 and again in 1988 with an additional award for sustained excellence.

In 1980, the Delaware Tribe began to appeal the BIA's position that the Delawares were a tribe within a tribe. In February, James A. Lewis submitted a Freedom of Information Act (FOIA) request inquiring whether the BIA approval of the 1958 Bylaws had ever specifically stated that their approval was for claims purposes only as the BIA had recently asserted. While no documents were found, John Geary, Acting Director, Office of Indian Services of the BIA wrote:

Long-time staff member attests 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.<sup>448</sup>

Meanwhile, the Delawares pressed forward and worked towards strengthening their tribal nation. In an unprecedented political move, the Delaware General Council met in November, 1980 and voted to reestablish a traditional form of governance with a Chief and Tribal Council. They also began plans to adopt a constitution and revised Bylaws. In November, 1982, the plans were realized and the Delaware Tribe met in a General Council. Following the Oklahoma Indian Welfare Act (OIWA) formula, the Delawares adopted a constitution and revised bylaws.<sup>449</sup> The General Council was to hold the "supreme authority" for the Delawares and the Tribal Council powers were distinguished. The membership criteria, rights of members, election requirements and terms of office were also determined. By 1983, the General Council created a tribal court. Also in 1983, the Delawares passed a resolution withdrawing all legal and

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<sup>448</sup> John Geary, Acting Director, Office of Indian Services, Tribal Government Services, Bureau of Indian Affairs. to Mr. James A. Lewis, 13 March 1980, DW-DTI-8.

<sup>449</sup> Title 1, *Constitution and Bylaws Approved at General Council* (November 1982), DW-DTI-8.

property ties with the Cherokee Nation, thus formalizing their position to separate completely from the Cherokees.<sup>450</sup>

From 1984 through 1986, the Delawares implemented their new constitutional government. Their Tribal Council met monthly and they discussed issues that ranged from federal recognition, taxation and smoke shops, to burial assistance.<sup>451</sup> The Tribal Council wrote letters to Congress about their recognition efforts with an attached resolution that sought to abrogate the 1867 Delaware-Cherokee Agreement.<sup>452</sup> In response to their letters, however, the Delawares found that they had already been trumped by the BIA's justification of their 1979 termination.<sup>453</sup> The BIA wrote to Congressional members and Senators:

At various times since entering the Cherokee Nation, the Delawares have taken action to deal with issues of particular concern to them, including the handling of Delaware claims and the preservation of customs. This did not, however, change the legal basis for their being made a part of the Cherokee Nation.<sup>454</sup>

In July of 1984, the Delaware Council formally began their first of several inquiries to tribal members about separating from the Cherokees. In an opinion poll of the tribal members, ninety-three percent of those returned stated that their preference was

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<sup>450</sup> Delaware General Council, November 5, 1983 and Resolution No 84-001 of the Delaware Tribal Council, DW-DWI-8. Both documents refer to the resolution to "sever ties" with the Cherokee Nation.

<sup>451</sup> Delaware Tribal Council, February 14, 1984; Delaware Tribal Council, April 4, 1984; Delaware Tribal Council, April 19, 1984; Delaware Tribal Council, July 18, 1984; Delaware Tribal Council, January 2, 1986; Delaware Tribal Council, February 13, 1986; Delaware Tribal Council, March 6, 1986; Delaware Tribal Council, September 18, 1986, DW-DTI-8.

<sup>452</sup> *Abrogation of the 1867 Delaware-Cherokee Agreement*, Delaware Tribal Council Resolution, Delaware Tribe storage.

<sup>453</sup> Mike Synar, 2d District OK to Verna Crawford, 24 September 1984, DW-DTI-8. Bureau of Indian Affairs to the Honorable James R. Jones, Member, United States House of Representatives, 26 September 1984, DW-DTI-8. David Boren to Verna Crawford, United States Senate, 28 September 1984, DW-DTI-8. Don Nickles to Verna Crawford, United States Senate, 8 October 1984, DW-DTI-8. Mickey Edwards, Fifth District, OK, to Mrs. Verna Crawford 25 October 1984, DW-DTI-8.

<sup>454</sup> BIA to Jones. Nickles to Crawford.

to maintain only their tribal membership as Delawares; they did not wish to be recognized as Cherokees.<sup>455</sup>

All the same, in 1984 and 1985, some Delawares attempted another strategy to untangle themselves from termination. Several Tribal Council members believed that an agreement with the Cherokees accepting a “tribe within a tribe” status would facilitate the release of their judgment monies.<sup>456</sup> Consequently, the Cherokee Nation passed a resolution authorizing the Delawares to “present a governing document” for the judgment funds to the BIA. Cherokee Nation Principal Chief Swimmer prepared the document. Yet, the BIA did not approve of this proposal either, even though it was from the Cherokees.<sup>457</sup> Possibly, this was because on August 17, the Delaware Tribal Council passed a resolution stating “numerous self-proclaimed ‘business committees’ represent themselves as having authority to conduct the affairs of the Delaware Tribe of Indians which authority they have not.”<sup>458</sup> The Cherokees were, moreover, attempting to pay out the total Delawares’ judgment funds on a per capita basis, and thus to nullify the ten percent plan, according to this same resolution.

1985 was a particularly important year of networking and public relations for the Delawares. Chief Ketchum set up a meeting to solicit President Ronald Reagan’s support.<sup>459</sup> In their June 27 Tribal Council, tribal leaders spoke of their numerous contacts and activities with government leaders such as Americans for Indian Opportunities (AIO) Chairwoman Ladonna Harris, Congress Members, and officials

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<sup>455</sup> Resolution No 84-001 of the Delaware Tribal Council, (August 17, 1984), DW-DTI-8. Delaware Tribe of Indians, An Open Letter to the Delaware Voting Membership, n.d. (must be returned by July 31, 1984), Delaware Tribe storage.

<sup>456</sup> Delaware Tribal Council Minutes, February 14, 1984, DW-DTI-8.

<sup>457</sup> Carrigan and Chambers, 73.

<sup>458</sup> Resolution No. 84-002 of the Delaware Tribal Council (August 17, 1984), Delaware Tribe storage.

<sup>459</sup> Lewis B. Ketchum, Chief to Frederick J. Ryan, Director of Appointments and Scheduling, 14 February 1985, Delaware Tribe storage.

from the Bureau of Indian Affairs.<sup>460</sup> They also considered and then formally asked the BIA for a review of the “legal justification” for how they had come to their decision in 1979.<sup>461</sup>

In 1986, the positions had changed but the key personalities were the same. Ross Swimmer resigned as Chief of the Cherokee Nation and accepted an appointment to head the BIA with both Senators from Oklahoma testifying on his behalf.<sup>462</sup> Even though the cards were stacked against the Delawares with Swimmer’s appointment to head the BIA, the Delawares managed to gain an important ally within the Cherokee Nation. Deputy Chief Wilma P. Mankiller replaced Swimmer as Principal Chief. The Delawares elected Chief Lewis B. Ketchum to his second term soon after. Ketchum was a successful business owner in Tulsa, founding a multimillion dollar company, Redman Pipe and Supply.<sup>463</sup> When Ketchum was re-elected Chief Mankiller wrote him a congratulatory letter to his office, stating, “I am also pleased to have you in that position as we work so well together.”<sup>464</sup>

Although the BIA refused to recognize the Delaware Tribe of Indians Constitution, the BIA oversaw the Delaware members. In 1986, the BIA finally began to review and consider approval of the Delaware Tribe of Indians government. Even so, they would approve of a Delaware Constitution for “claims purposes only.”<sup>465</sup> Their

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<sup>460</sup> Delaware Tribal Council, June 27, 1985.

<sup>461</sup> Ibid.

<sup>462</sup> “The Nomination of Ross O. Swimmer to be assistant secretary of the Interior for Indian Affairs,” Hearing Before the Select Committee on Indian Affairs, United States Senate, 99<sup>th</sup> Cong. (October 16, 1985), DW-DTI-8. Swimmer was an attorney and President of First National Bank in Tahlequah.

<sup>463</sup> Delaware (Lenape) Tribe of Indians: homepage. “Frequently Asked Questions,” <http://www.delawaretribeofindians.nsn.us/faq.html>

<sup>464</sup> Wilma P. Mankiller to Lew Ketchum, Redman Pipe and Supply, 11 March 1987, DW-DTI-8.

<sup>465</sup> Wilma Mankiller, Principal Chief, Cherokee Nation to Lew B. Ketchum, Chief, Delaware Tribe of Indians, 7 October 1986, DW-DTI-8. Acting Area Director to Mr. Lewis B. Ketchum, Delaware Tribe of Indians, 12 December 1986, DW-DTI-8.

willingness to negotiate was sufficient to eventually release the Delawares' judgment funds.

In early 1987, there was little movement in the direction of a BIA review of the 1979 decision that terminated the Delawares' recognition, although there appeared to be some leeway with the Cherokee Nation.<sup>466</sup> Principal Chief Mankiller requested the Delawares attend the Cherokee Nation February 14 Tribal Council meeting. Chief Lewis Ketchum attended and explained the Delawares' position to the Cherokees' Council. He announced that the Delawares sought to finalize a tribal constitution in attempting to release their judgment funds with "a document that would satisfy the Act of 1972."<sup>467</sup> The Cherokees placed a motion on the table to pass a resolution in favor of the Delawares' Constitution. In waiting for a second motion to pass though, Cherokee Councilman Dave Whitekiller interrupted stating his concerns.<sup>468</sup> He wanted to get it in writing from the Bureau that the constitution would "in no way be construed as a submission by the Delaware people" to the Cherokees and "that this would have no bearing on the Delaware tribe exercising their privilege."<sup>469</sup> This meeting seems to indicate that there had been some concessions on both the Delawares' part in their willingness to work with the Cherokees and the Cherokee Nation's concern for the Delawares' judgment funds. Some Cherokee Tribal Council members supported the Delawares' autonomy. In the end, the Cherokees passed a resolution for the approval and adoption of the Constitution of the Delaware Tribe.<sup>470</sup>

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<sup>466</sup> Delaware Tribal Council, January 8, 1987; Delaware Tribal Council, July 16, 1987, DW-DTI-8.

<sup>467</sup> Cherokee Nation Tribal Council, transcribed verbatim, February 14, 1987, DW-DTI-8.

<sup>468</sup> "Delaware Tribal Council Minutes," March 19, 1987, in *Delaware Indian News* (Bartlesville, OK), July, 1987.

<sup>469</sup> Cherokee Council, February 14, 1987, DW-DTI-8. "Delaware Tribal Council Minutes," March 19, 1987, in *Delaware Indian News* (Bartlesville, OK), July, 1987.

<sup>470</sup> Resolution No. 21-87, Cherokee Nation of Oklahoma, (February 14, 1987), DW-DTI-8.

In July, 1987 the Cherokee Tribe and the BIA attended the July 16 Delaware Tribal Council meeting. Chief Lewis Ketchum asked if the Delawares' constitution was adequate to protect the interests of the Delaware people. The BIA responded that it would not recognize a governing document for a separate tribe of Delawares. Chief Ketchum's brother, Dee Ketchum, Delaware Tribal Council responded, "Then you are looking for a document, so why do we have to change our constitution if we could put in place a document that would satisfy you?" The BIA agreed that the Delawares could do what they wanted with their constitution and that "all they were looking for" was a judgment document for all Delawares to agree upon. Although Councilman Dee Ketchum conceded, he also made his position clear, that what the BIA seemed to want strongly insinuated Delaware sovereignty.<sup>471</sup> His questioning continued, "Do we have to satisfy the Cherokee as well as the BIA?" The answer was yes, due to the 1867 Articles of Agreement.

Curtis Zunigha, Tribal Manager and tribal member, expressed that this was the problem with recognition; that the interpretation of the wording in the 1867 Articles of Agreement did not reflect the actions of the Delaware Tribe of Indians. Dennis Springwater, BIA Assistant Area Director for Programs Services, responded that the BIA and "every bureaucrat hides behind law and every regulation." The BIA, however, would "not deny the Delaware their continuing exercise of their heritage."<sup>472</sup> Zunigha responded that there existed nothing in the 1867 Articles of Agreement that took away the Delaware tribal membership and "a bureaucratic interpretation" was wrong. Basically Zunigha's reading of the issue was that the Delawares were to be given

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<sup>471</sup> Delaware Tribal Council, July 16, 1987.

<sup>472</sup> Ibid.



additional rights as Cherokees, not lose their identity as Delawares.<sup>473</sup> Springwater defended the BIA actions but also repeated that they did not and had not attempted to take away the Delawares' heritage and the Delawares could maintain their "organization." The Bureau as representatives of the U.S. government, however, had the "right" to deny Delawares' federal recognition. Zunigha rebutted, "You recognize our constitution and tribal council as being a Lion's Club, or anything we want to call it, but to the BIA, it doesn't mean anything because you interpret us as being Cherokees."<sup>474</sup>

Principal Chief Mankiller then addressed the issues. She separated the two points of entanglement; the first was to get the judgment funds distributed and the second point was the Delawares' relationship with both the Cherokees and the BIA. She stated:

I thought all we were trying to do when we started out, was put together an organization to meet the requirements of the Bureau so we could shake loose the judgment funds and get that resolved. That's been going on for ten years...I'm presently the Chief of the Tribe, the spokesperson of the tribe, and our position is, whatever the Delawares want to do, whatever referendum they have is fine with us. We're not going to mess with the Delaware's business.

Zunigha consequently suggested that the Delawares develop a Committee and document specifically formulated to release the judgment funds. The final consensus resolved the matter; that the Delawares could leave the constitution in place while drawing up an entirely different document that would release the judgment funds, albeit without need of either Cherokee Nation approval or conceding to any lack of federal recognition.<sup>475</sup>

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<sup>473</sup> Ibid.

<sup>474</sup> Ibid.

<sup>475</sup> Ibid.

To create such a document, the Delawares formed an Executive Committee, headed by Curtis Zunigha in November, 1987. The committee would serve to relate with the BIA and the Cherokee Nation in satisfying PL 92-465.<sup>476</sup> In 1989, the Delawares received an Administration for Native Americans (ANA) grant through the Department of Health and Human Services (DHHS) to establish a “full-time effort to develop a ‘Legal Entity’ for the administration of judgment funds.”<sup>477</sup> This then created a mechanism for the Delawares to create the Delaware Trust Authority with a full time staff.<sup>478</sup>

In 1990, following the Oklahoma Indian Welfare Act (OIWA) procedure, the Delaware Tribe devised a *Trust Document of the Delaware Tribe of Indians*. The purpose was to satisfy the BIA’s requirement for a document that protected the interests of the tribal members.<sup>479</sup> At the same time, the Delawares were careful that the Trust Document would not confirm non-recognition and the constitution remained effective. Instead the referendum for adoption stated that the trust document was solely for the purposes of distributing the trust funds and the constitution was maintained as the Delawares’ governance. Rather than a council, the Trust Board strictly managed the trust monies from the *ten percent plan* to benefit the tribal members. The BIA oversaw the referendum vote of the Delawares that passed the *Trust Document* in 1990 and then the

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<sup>476</sup> “General Council Minutes,” November 14, 1987, in *Delaware Indian News* (Bartlesville, OK), January 1988.

<sup>477</sup> “Delaware Trust Authority Established,” *Delaware Indian News* (Bartlesville, OK), July 1989. “Special Council Meeting Minutes,” June 6, 1989, in *Delaware Indian News* (Bartlesville, OK), July 1989.

<sup>478</sup> “Delaware Trust Authority Update,” *Delaware Indian News* (Bartlesville, OK), October, 1989. The issue published the Proposed Trust Document of the Delaware Tribe of Indians, declaring that there would be a series of meetings in the state of Oklahoma and possibly California because of the high populations of Delawares in those states.

<sup>479</sup> Carrigan and Chambers, 74.

BIA gave their final stamp of approval.<sup>480</sup> The BIA would retain the principal balance of four point one million dollars in trust while the Delawares received the interest for tribal programs and administration. The Delaware Tribe elected its first Trust Board in January 1991 and then approved the *Delaware Master Distribution Plan* by Absentee Ballot Election on July 26, 1991.<sup>481</sup> In November, 1991, the Delawares “overwhelmingly approved” the Annual Budget for the Trust Funds.<sup>482</sup> The United Indian Nations in Oklahoma and the National Congress of American Indians also passed resolutions supporting the Delaware Trust Document.<sup>483</sup>

With both a Trust Document and Constitution, the Delaware Tribe of Indians operated a tribal headquarters and administered Community Service Programs. The Trust Board has remained in effect until the present day as well as the committees that administer the programs. These consist of Economic Development, Education, Community Services, Cultural Preservation, Tribal Operations, Reinvestment and Land

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<sup>480</sup> Ronald Eden, Deputy to the Assistant Secretary Indian Affairs (Tribal Services) to Dennis Wickliffe, Superintendent, Tahlequah Agency, 6 June 1990, authorized the Tahlequah Agency to supervise the Delawares’ referendum election regarding the trust funds (Dockets 72 & 298). Delaware Tribe of Indians Resolution 90—3, May 21, 1990 called for the election. Delaware Tribe of Indians Resolution 90-4, June 18, 1990, appointed the election committee. “Delaware Trust Document Passes by a Landslide,” *Delaware Indian News* (Bartlesville, OK), October, 1990. Over 90% of the 2,018 votes favored the Trust Document. Dennis Springwater, Acting Area Director to Lewis Ketchum, 9 November 1990, private archives of James Rementer. “Delaware Master Plan Approved,” *Delaware Indian News* (Bartlesville, OK), October, 1991. “The Judgement Funds that made these program funds available were appropriated on December 26, 1969, through Public Law 92-456...the Delaware Tribe had to create a Legal Entity to administer the judgement fund monies. The Legal Entity was established September 21, 1990 through the adoption of the Delaware Trust Document” [Sic].

<sup>481</sup> “Delaware Trust Board Elected and Assumes Duties,” *Delaware Indian News* (Bartlesville, OK), April, 1990. Lewis B. Ketchum was elected Chairman, while Betty Sarcoxie Barnes, Sally R. Farley, Rosetta Coffey, Paulette L. Tallchief, B.T. “Andy” Davis and Jack L. Tatum were voted to the board membership. “Delaware Master Plan Approved,” *Delaware Indian News* (Bartlesville, OK), October, 1991. Fifty-two percent of the Delaware who voted favored the Master Distribution Plan.

<sup>482</sup> “1992 Annual Judgment Fund Budget Approved by the Delaware General Council,” *Delaware Indian News* (Bartlesville, OK), January, 1992. The vote was eighty-nine percent in favor of passing the Trust Fund budget.

<sup>483</sup> United Indian Nations in Oklahoma Resolution No. #083189R01, August 31, 1989. “Resolution In Support of the Delaware Tribe of Oklahoma Regarding Judgement Funds Provided for In P.L. 92-456,”[sic], National Congress of American Indians (March 2, 1991).

Management.<sup>484</sup> Each of the program committees was headed by a Trust Board member.<sup>485</sup>

However, the Delawares faced evolving political and legal definitions even while they asserted their independence. Federally funded tribal programs were becoming tied to the legal qualification that individual recipients were “Indian.” To qualify for services such as Indian Health Services (IHS) or any other of a vast array of federal programs administered under the federal trust responsibility, Delaware members had to apply with the Cherokee Nation for a Certificate Degree of Indian Blood (CDIB) that would establish them as Cherokees. Federal laws were tied to federal recognition, such as the Indian Child Welfare Act (ICWA) which placed Indian children with families of their respective tribe. By 1990, while many Delawares needed these same services that other Indians were eligible for and received, up to sixty percent of their membership would not apply with the Cherokee Nation for their CDIB.<sup>486</sup> Anthropologist, Brice Obermeyer discusses this topic at length in his dissertation. Delaware members that did apply with the Cherokee Nation for their CDIB were often merely attempting to access needed financial services that they could not obtain otherwise. This placed the Delawares at a disadvantage in gaining access to services. By applying for a CDIB, they appeared to be participating in their own dissolution. Delawares who applied for a CDIB acceded to the system that only recognized their Indian status through the Cherokee Nation and labeled them Cherokees on the cards.<sup>487</sup>

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<sup>484</sup> “Master Plan for Judgment Funds Needs Tribal Input,” *Delaware Indian News* (Bartlesville, OK), April 1991. “1992 Annual Judgement Fund Budget.” Every issue since has a report from the Trust Board and its committees.

<sup>485</sup> “1992 Annual Judgement Fund Budget.”

<sup>486</sup> Carrigan and Chambers, 76.

<sup>487</sup> Obermeyer’s research was conducted from 2000-2003. During his time with the Delawares, there were an increasing number of Delawares who acquiesced to applying to the Cherokee Nation to get their CDIB.

By all appearances though, the Delawares were growing and progressing as a separate tribal nation despite their lack of legal recognition. Chief Mankiller even visited the Delaware Tribal Council meeting on December 16, 1991. She advised the Delaware Tribe about subjects such as economic development, tribal employees, and a possible “agreement” that could be worked out with the Delawares for their recognition.<sup>488</sup>

Yet, the Cherokees’ political actions were inconsistent with Mankiller’s verbal pledges of support for the Delawares. The Cherokee Nation steadfastly argued that their jurisdiction area included the Delawares. Congress passed Amendment 86 (HR 26860), which stated:

That until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee Territory in Oklahoma without the consent of the Cherokee Nation.<sup>489</sup>

In 1992, the Delawares applied for another Administration for Native Americans (ANA) grant to fund the Delawares’ re-recognition process. The Delawares also passed a

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However, in my experiences up to 2009, there were still an undocumented number of Delawares who intently refused to get their CDIB from the Cherokee Nation or access federal services through them.

<sup>488</sup> Lewis B. Ketchum, Chief, to the Honorable Wilma P. Mankiller, Principal Chief – Cherokee Nation, 18 November 1991, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma. “Tribal Council Minutes, Delaware Tribal Council,” December 16, 1991, in *Delaware Indian News* (Bartlesville, OK), April 1992.

<sup>489</sup> *Delaware Indian News* (Bartlesville, OK), October 1992. The act continues to state, “The managers have agreed to delete funding for the United Keetoowah Band of Cherokee in Oklahoma and have included language providing that until such time as Congress enacts contrary legislation, Federal funds should not be provided to any group other than the Cherokee Nation, within the jurisdictional area of the Cherokee Nation.”

resolution to reaffirm the federal recognition of the Delawares.<sup>490</sup> Resolution 92-12, set these goals:

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.<sup>491</sup>

The Delawares received the ANA award letter in late September of 1992 to pursue their federal recognition and they received \$65,000 in October.<sup>492</sup> Consequently, the Delaware Tribe of Indians petitioned the Branch of Acknowledgement and Recognition (BAR) in the BIA on December 7, 1992.<sup>493</sup>

Also in December, the Delawares formally requested the Cherokee Nation's support for their legal standing as a separate tribal nation.<sup>494</sup> The Cherokees responded with an invitation to their next Cherokee Nation Tribal Council in January, 1993.<sup>495</sup> Chief Mankiller replied that the Cherokee Nation would "neither support nor hinder" the Delawares' efforts.<sup>496</sup> The Cherokee Nation researched and discussed the possible implications of the Delawares' separate recognition. The Cherokees' major concerns

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<sup>490</sup> "Delaware Tribal Council Special Meeting," February 6, 1992 in *Delaware Indian News* (Bartlesville, OK), April 1992.

<sup>491</sup> "Delaware Special Meeting," February, 6, 1992. "Report on the Federal Recognition Project," *Delaware Indian News* (Bartlesville, OK), January 1993. "Notice of Initiate Vote," *Delaware Indian News* (Bartlesville, OK), October 1993. "Delawares Vote Overwhelmingly in Support of a Cherokee Separation," *Delaware Indian News* (Bartlesville, OK), January 1994.

<sup>492</sup> "Trust Board Minutes," October 5, 1992, in *Delaware Indian News* (Bartlesville, OK), January 1993.

<sup>493</sup> Lewis B. Ketchum, Chief, Delaware Tribe of Indians to Mr. Eddie F. Brown, Assistant Secretary-Indian Affairs, 7 December 1992. Resolution 92-20, Delaware Tribe of Indians, minutes, November 16, 1992. Resolution 92-21, Delaware Trust Board Delaware Tribe of Indians minutes, December 7, 1992. 25 C.F.R. Prt. 83.

<sup>494</sup> Lewis B. Ketchum, to the Honorable Wilma P. Mankiller, Principal Chief, 15 September 1992, DW-DTI-8.

<sup>495</sup> Wilma P. Mankiller to Lewis B. Ketchum, Chief of the Delaware Tribe, 22 December 1992 DW-DTI-8.

<sup>496</sup> Carrigan and Chambers, 72.

were that the Delawares' separation would be "detrimental to the Cherokee Nation" and that the proposal would have to undergo a nationwide referendum, not just a Delaware vote.<sup>497</sup> The Delawares accepted the invitation with a firm pledge that the Delaware Tribe "would not in any way structure separation issues" that would "be detrimental to Cherokee sovereignty."<sup>498</sup> The Delawares therefore passed Resolution 93-01 to request a resolution from the Cherokee Nation for "Acquiescence in the efforts of the Delaware Tribe of Indians to Obtain Separate Federal Recognition."<sup>499</sup>

Neither the Cherokees under Mankiller's administration or the Delawares under Chief Ketchum seemed to hold the mutual animosity of the previous administrations of Swimmer and Townsend. The two tribal councils worked in a conciliatory manner for some time. In a letter responding to the Delawares' inquiries about the Cherokee Nation's support, February 16, 1993, Mankiller stated, "As always I appreciate your studied, rational way of approaching this potentially explosive issue."<sup>500</sup> Suffice to say, Chief Mankiller submitted that she would support the effort if the Delaware people voted to "separate."<sup>501</sup>

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<sup>497</sup> Mankiller to Ketchum, 22 December 1992. Pat Ragsdale, Memorandum to Chief Mankiller, Deputy Chief Ketcher, subject Delaware Proposal to Separate, ND © December, 1992-January, 1993, DW-DTI-8. Cherokee Nation Tribal Council Rules Committee Meeting (December 17, 1992), DW-DTI-8. Under new business, Pat Ragsdale presented Article 3, Section 1 of the Cherokee Constitution which stated, "All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware agreement made the 8<sup>th</sup> of May, 1867." This along with the other statutes in the Cherokee Nation Constitution, one from 1985 that stated "The Delaware Tribe shall not attempt efforts that would nor shall it seek Federal funding for programs separate from the Cherokee Nation." With these issues in mind, the Rules Committee recommended that the Delaware attend the January 14<sup>th</sup>, 1993 meeting.

<sup>498</sup> Lewis B. Ketchum, Chief, Delaware Tribe of Indians to the Honorable Wilma P. Mankiller, Principal Chief, Cherokee Nation, 14 January 1993, DW-DTI-8.

<sup>499</sup> Resolution 93-01, "A Joint Resolution of the Delaware Tribal Council and Delaware Trust Board Requesting A Resolution from the Cherokee National Council Indicating an Acquiescence in the Efforts of the Delaware Tribe of Indians to Obtain Separate Federal Recognition," Delaware Tribe of Indians (January 7, 1993), DW-DTI-8.

<sup>500</sup> Wilma Mankiller, Principal Chief Cherokee Nation to Lewis Ketchum, Chief, Delaware Tribe of Indians, 16 February 1993, DW-DTI-8.

<sup>501</sup> Carrigan and Chambers, 78.

After Resolution 93-01, the Delawares took several bold moves that struck some nerves among the Cherokees and caused the rifts that undermined the conciliatory relationship. In early 1993, the Delawares formally asked for the Cherokee Nation's support for their separation.<sup>502</sup> In July the Delawares notified the Cherokee Nation of their intent to solicit land to take into trust for class II gaming and a smoke shop.<sup>503</sup> Additionally, the Delawares' leaders stepped up their efforts to educate their membership. Tribal Council members wrote numerous articles in the *Delaware Indian News* to inform the Delawares about the probabilities, implications, perceptions, and misperceptions of federal recognition separate from the Cherokee Nation.<sup>504</sup> Tribal leaders held four highly publicized meetings to explain the "intentions and legal implications of a separate federal recognition."<sup>505</sup> There was such a strong response that the Tribal Council called for three additional meetings.<sup>506</sup> To follow up Delaware Chief Ketchum met with Chief Mankiller in March.<sup>507</sup> Because the Cherokees had expressed their willingness to work with the Delawares but needed time to study the issues, the Delawares postponed their referendum on whether to attain separate federal recognition from March to July and then again to November.

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<sup>502</sup> "Chief Ketchum & Chief Mankiller Meet to Negotiate Cherokee Support of Delaware Sovereignty," *Delaware Indian News* (Bartlesville, OK), April 1993.

<sup>503</sup> James R. Dailey, Jr. Delaware Tribal Manager, to George W Bearpaw, Executive Director Tribal Operations, Cherokee Nation, 13 July 1993, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>504</sup> *Delaware Indian News* (Bartlesville, OK), January 1993. *Delaware Indian News* (Bartlesville, OK), April 1993.

<sup>505</sup> "Delawares Vote Overwhelmingly." "Trust Board Minutes," August 3, 1992, in *Delaware Indian News* (Bartlesville, OK), January 1993. "Referendum and Town Meeting Agenda," *Delaware Indian News* (Bartlesville, OK), April 1993.

<sup>506</sup> "Three Town Meeting To Discuss Cherokee Separation," *Delaware Indian News* (Bartlesville, OK), October 1993.

<sup>507</sup> "Chief Ketchum & Chief Mankiller Meet to Negotiate Cherokee Support of Delaware Sovereignty," *Delaware Indian News* (Bartlesville, OK), April 1993.



On August 16, Chief Mankiller sent a letter to Chief Ketchum. Mankiller stressed the necessity of an impact study to the Cherokee Nation, the need of a referendum vote to all Cherokees and Delawares, Congressional legislation granting separate federal recognition to the Delaware Tribe of Indians, and citizenship choices for Delawares who wished to remain Cherokee citizens (so as not to violate the Indian Civil Rights Act).<sup>508</sup> Mankiller also asked “a favor.”<sup>509</sup> She said that the Cherokee Nation was receiving “sometimes contradictory information” and Freedom of Information requests.<sup>510</sup> Mankiller therefore wished for Chief Ketchum to sign off on all requests or assign one representative to handle the cases. Essentially, she seemed to be telling Chief Ketchum to slow down, limit FOIA requests, and be patient with the Delawares’ recognition efforts.

The relationship between the Delawares and the Cherokees noticeably deteriorated from this point on. After the Delawares’ community meetings were concluded, Chief Ketchum sent another letter to Chief Mankiller in September. There was no reply. The Delaware Tribal Council then sent a draft Memorandum of Agreement (MOA) to the Cherokee Nation in October, 1993.<sup>511</sup> The Cherokees appeared to be taken aback by this MOA, which proposed that: 1) The Delawares would be recognized as distinct from the Cherokee Nation; 2) The Delaware members could choose their membership with either the Cherokee Nation or the Delaware Tribe and; 3) The

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<sup>508</sup> Wilma P. Mankiller to The Honorable Lewis Ketchum, 16 August 1993. *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>509</sup> Ibid.

<sup>510</sup> Ibid.

<sup>511</sup> Lewis Ketchum, Chief Delaware Tribe of Indians to Mr. Pat Ragsdale Cherokee Nation of Oklahoma Rules Committee, 26 October 1993; (attached proposal) Memorandum of an Agreement Between the Cherokee Nation of Oklahoma and the Delaware Tribe of Indians of Eastern Oklahoma, 26 October 1993, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma. “Tribal Council Minutes,” August 16, 1993, in *Delaware Indian News* (Bartlesville, OK), January 1994. “Tribal Council Minutes,” © Sept. 18, 1993, in *Delaware Indian News* (Bartlesville, OK), January 1994.

Delaware Tribe would have minimal jurisdiction over lands owned by tribal members with trust land who wish to remain under the Delaware Tribe.<sup>512</sup> In addition, Delaware attorney Gina Carrigan had “requested a ‘voter list be posted at an appropriate place at the Cherokee Nation.’”<sup>513</sup> In reply, Mankiller stated, “Since we have never negotiated or even discussed such an MOA nor agreed upon an election date, I was a little surprised when these two letters arrived.”<sup>514</sup> She then outlined again what both tribes would need to research:<sup>515</sup>

- 1.) A careful study of the impacts of separation—impacts on tribal economy, the delivery of services, etc.—the results of which would have to be widely disseminated among Cherokees and Delawares in order to inform voters of what separation would mean.
- 2.) A referendum of all Cherokees would have to be held on the question of separation and the attendant issues.
- 3.) A referendum on the same question and issues among the Delawares would have to be held.
- 4.) Congressional legislation granting the Delawares federal recognition would have to be sought, because administrative recognition is an extremely difficult and lengthy process.
- 5.) Agreement would have to be reached on the issue of how to handle Delaware members who did not wish to leave the Cherokee Nation, even if the majority of Delawares were to vote in favor of separation.
- 6.) Resolution of the question of whether separation would require an act of Congress, in that the merger itself was formally authorized by Congress some 125 years ago.<sup>516</sup>

Mankiller furthermore stated that separation would take an act of Congress and that the Cherokees could not just automatically sign an agreement and “cede or grant aboriginal or any other sort of jurisdiction over land.” Finally, she suggested that Chief Ketchum immediately schedule a meeting with her staff to “work out a realistic plan to accomplish

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<sup>512</sup> “Delawares seek freedom”

<sup>513</sup> Wilma Mankiller, Principal Chief, Cherokee Nation to the Honorable Lewis Ketchum, Chief, Delaware Tribe of Indians, 28 October 1993, DW-DTI-8.

<sup>514</sup> Ibid.

<sup>515</sup> Ibid. Mankiller stated, “In my letter to you dated August 16, 1993 (to which you never responded), I identified at least 6 steps which our research indicated must be undertaken before separation is possible.”

<sup>516</sup> Ibid.

your goals.”<sup>517</sup> Assuming that the Cherokees would support the Delawares, the Delawares submitted a resolution to the National Congress of American Indians (NCAI).<sup>518</sup> The Cherokees, however, protested that the resolution was an intertribal dispute and the Delawares’ leadership rescinded their proposal.<sup>519</sup>

As to their referendum on separation, in a newspaper report Mankiller was critical, announcing it as nothing more than an “‘informal poll’ because the impacts of separation have never been fully explained to the Delaware voters.”<sup>520</sup> Nonetheless, the ballots for this referendum were finally cast November 19 and the support was overwhelming. The Delaware membership returned a vote of eighty-eight percent in favor of separate recognition.<sup>521</sup>

The Cherokee Nation observed the Delawares’ processes closely and their reactions reveal much about the Cherokees point of view. In particular, Principal Chief Mankiller seemed defensive after receiving numerous accusatory letters. Those who sympathized with the Delawares wrote to protest the Cherokees’ opposition to Delawares’ independence. On the surface, some of her responses were surprising. For

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<sup>517</sup> Ibid.

<sup>518</sup> Clayton Chambers, Data Coordinator, Federal Recognition Project to Wilma Mankiller, 14 August 1994. “A Resolution of the Delaware Tribe of Indians Providing Authorization to the Delaware NCAI Delegates to Submit a Model NCAI Resolution Expressing Support for a Reaffirmation of Delaware Tribal Sovereignty,” Resolution 93-53, DW-DTI-8.

<sup>519</sup> Wilma P. Mankiller, Principal Chief to gaiashkobos, President NCAI, 30 November, 1983, *Wilma Mankiller Collection*, Western History, University of Oklahoma. Resolution 93-53, “Tribal Council Minutes,” October 18, 1993 and November 15, 1993, and “Trust Board Minutes,” November 1, 1993, in *Delaware Indian News* (Bartlesville, OK), January, 1994. “Separation Efforts Continue” *Delaware Indian News* (Bartlesville, OK), April, 1994.

<sup>520</sup> Rob Martindale, “Separating Tribes Is Difficult, Chief Says,” *Tulsa World*, 29 October 1993, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>521</sup> Out of a total of 1,292 ballots cast, 1,141 favored and 151 were against separation from the Cherokee Nation of Oklahoma, “Delawares Seek Freedom,” *Nowata Star*, December 8, 1993. Jill Nickerson, “Tribe Votes for secession,” *Bartlesville Examiner Enterprise*, 23 November 1993. “Delawares Vote Overwhelmingly in Support of a Cherokee Separation,” *Delaware Indian News* (Bartlesville, OK), January 1994. *Cherokee Nation, Delaware Tribe of Indians and Bureau of Indian Affairs Meeting minutes*, January 10, 1994, DW-DTI-8.

instance, Mankiller questioned why a non-Indian (Delaware attorney Gina Carrigan) was leading the charge so to speak, representing the Delawares in opposition to the Cherokee Nation. Other responses seemed more pointed such as those listing the actions she had personally taken to assist Chief Ketchum with the BIA and to access legal assistance. Mankiller also recognized several services that the Cherokee Nation provided Native Americans in Washington County to illustrate that the Delawares were receiving Cherokees' programs. The Nowata Indian clinic, a drive of forty minutes, was relatively close to the Delawares' area, as well as a social service and job training field office in Washington County. Moreover, Mankiller stated that she had personally sought to encourage Delaware leaders to run for seats on the Cherokee Council as well as the Cherokee gaming commission. No less important, she negotiated for a 100% tax revenue rebate—taxes generated on Delaware lands would be returned in rebate to them—but the Delawares did not sign the agreement. Mankiller stressed that these issues would not be resolved overnight and would take an extraordinary amount of research and teamwork to get the Delawares separate federal recognition, to which she was not fundamentally opposed.

David Mullon, Director of Law & Justice for the Cherokee Nation, presented several memorandums to Chief Mankiller regarding the referendum vote that shed much light on why the Cherokee Nation was so quick to dismiss this election and Delawares governance in general. In the first memo, Mullon picked apart and discredited nearly every aspect of the Delawares' November 19 vote for separation. He stated that there were ambiguities in the announcement for the referendum stating that "the Notice of Initiative Vote and the content of the Initiative Ballots are extremely confusing and, when

read together with some of the other materials reveal that the people putting this election together either are confused themselves or are deliberately confusing the issues.”<sup>522</sup> First, he explained that the semantics were unclear between the words mandate, referendum and initiative, were loosely defined in the Delawares’ constitution and trust documents. Second, Mullon explained that there were distinct differences in the notice that was sent out for voters and the actual Resolution 92-12. A very concise yes or no question was on the ballot, “Do you as a registered voting member of the Delaware Tribe of Indians support obtaining Federal Recognition for the Delaware Tribe wholly separated from that of the Cherokee Nation?”—this was a question that Mullon stressed had no discernable link to Resolution 92-12. In a later memo, Mullon warned the November 19 referendum ballots were sent out four days later than the thirty day requirement.<sup>523</sup>

Mullon wrote about other related issues. The Delawares possibly intended to claim one-seventh of the Cherokee National Reserve. Although neither the Delaware Business Committee nor the Tribal Council had ever seriously considered pursuing this issue, some Delawares sought to recover the original \$122,000 that the Delawares paid into the Cherokee Nation for their proportion of the total Cherokee Nation’s membership.<sup>524</sup> In a later memo, January 12, 1994, Mullon sent an attachment regarding the legal implication for the Cherokee Nation if the Delawares were to separate. He saw that the result would be that the United Keetoowah Band (UKB) would also seek federal

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<sup>522</sup> “Delaware Separation,” David A. Mullon Jr. to Wilma P. Mankiller, Principal Chief, 13 November 1993, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>523</sup> “Delaware Separation,” David A. Mullon Jr. to Wilma P. Mankiller, Principal Chief, 27 December 1993, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>524</sup> *Ibid.*

recognition thus “exposing” the Cherokees’ exclusive jurisdiction over the fourteen counties.<sup>525</sup>

In preparation for taking over their federal programming, the Delawares performed a Needs Assessment of their tribal membership in 1993.<sup>526</sup> The respondents were mostly from Washington County and the majority of returns were female. The responses explained the dynamics of the household. In summary, the highest needs areas included: fifty-five percent having a “chronic illness in the household,” forty-eight percent of those under retirement age were unemployed, nearly one-fourth having an estimated household income of less than \$5,000, and eighty-seven percent having never received any aid or employment from the Cherokee Nation.<sup>527</sup> These numbers were alarming and suggested an urgent need among the Delawares to find a working solution for services. Essentially, the needs assessment was indicative of the programs that a federally recognized tribe could address with the use of federal programs or other means of financial gain, such as gaming.<sup>528</sup>

By January 1994, however, the Cherokee Nation called for a meeting of the BIA, the Cherokee Nation of Oklahoma, and the Delaware Tribe of Indians.<sup>529</sup> In a historic meeting at a Luby’s Cafeteria in Muskogee, Oklahoma, representatives from each group discussed the Delawares’ situation.<sup>530</sup> Chief Mankiller strongly urged that the meeting

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<sup>525</sup> Jim Wilcoxon’s Memo “re: Delaware separation issue,” David A. Mullan to Wilma P. Mankiller, Principal Chief, 12 January 1994, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma).

<sup>526</sup> Delaware Tribal Needs Assessment Analysis of the survey data, ©December, 1993, DW-DTI-8.

<sup>527</sup> *Ibid.*

<sup>528</sup> “Delaware Separation,” David A. Mullan Jr., Director of Law & Justice to Wilma P. Mankiller, Principal Chief, 6 January, 1994, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>529</sup> *Delaware Indian News* (Bartlesville, OK), April 1994.

<sup>530</sup> Cherokee Nation, Delaware Tribe of Indians, and Bureau of Indian Affairs Meeting, minutes (January 10, 1994), DW-DTI-8.

stay “positive.” After a brief history of the Delawares was shared by all participants, Chief Mankiller then asked the Delaware Chief, “What do you really want?” Chief Ketchum explained that the Delawares had voted several times for separation from the Cherokee Nation. Chief Ketchum explained that he believed this meeting should address how to do it, along with all of the legal and bureaucratic entanglements. He further urged that the BIA had made their decision in 1979 with strong influence from Ross Swimmer and that this decision was to the benefit of the Cherokees.<sup>531</sup> Furthermore, many Delawares held strong emotions about their identity: that Delaware elders “have to prove” that they are Delaware. He believed that an agreement with the Cherokee Nation could be constructed to keep the dual enrollment from interfering and those who wanted to remain on the Cherokee rolls could do so.<sup>532</sup> After Chief Mankiller asked the BIA about the Delawares before 1979, Field Solicitor M. Sharon Blackwell explained that the BIA’s 1979 decision was “an administrative action only,” as opposed to one based on the federal trust responsibility determined by treaties and statutes. She added, “There are now ways present to gain federal recognition.”<sup>533</sup>

Yet the meeting took a confrontational turn when Chief Mankiller repeated the question to the BIA of whether they had recognized the Delawares before 1979 and Blackwell stated no. Dee Ketchum (Chief Lewis Ketchum’s brother) wanted the BIA to show the Delawares where Congress had withdrawn federal recognition. Ketchum insisted the Delawares had paid to “preserve the culture of the Delawares.” Dennis Springwater’s response was that the Osages and others who had settled on Cherokee Nation had specifically reserved a tract of land and that any recognition through funding

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<sup>531</sup> Ibid.

<sup>532</sup> Ibid.

<sup>533</sup> Ibid.

to the Delawares had been mistaken.<sup>534</sup> Chief Mankiller said that this was a problem that needed to go to Congress, albeit there would be numerous questions to think about, such as could the Delawares seek lands in Kansas. Land as an issue of both history and the future would be a difficult point of contention. Original Delaware allotments could lose their restricted status, and land acquired in trust after 1988 in Oklahoma could not be used for gaming purposes. The BIA, moreover, urged that “jurisdiction” could not be decided through a “mutual agreement.”<sup>535</sup>

While there was no consensus as to whether the Delawares had been recognized from 1867 to 1979, the group did understand that the Delawares at this time, in fact, aspired to regain their relationship with the federal government.<sup>536</sup> They agreed to form a work group. Cherokee Councilman Harold DeMoss asked if this then meant that the Cherokee Nation was no longer an obstacle for the Delaware Tribe and Chief Ketchum responded “no, with Wilma’s support.”<sup>537</sup>

In follow up to the meeting, the BIA sent the minutes of the meeting to both tribes along with a list of “issues” to address for the Delawares’ federal recognition.<sup>538</sup> The list of BIA issues to separate the Delawares from the Cherokee Nation included: jurisdiction over Delaware restricted allotments, lack of a tribal land base, provision of trust services to the Delawares, questioning of the Five Tribes Act application to restricted lands of the

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<sup>534</sup> Ibid.

<sup>535</sup> Ibid.

<sup>536</sup> M. Sharon Blackwell, Field Solicitor, Department of Interior to Principal Chief Wilma Mankiller, 8 February 1994, *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.

<sup>537</sup> Minutes, January 10, 1994.

<sup>538</sup> Dennis Springwater, Area Director, to Mr. Lewis Ketchum, 8 February 1994, DW-DTI-8. In a series of letters, however, from Gina Carrigan, Tribal Government Specialist to the Dennis Springwater, Program Services BIA, and David Mullon, Jr., Director of Law and Justice, Cherokee Nation of Oklahoma, Carrigan requested on behalf of the Delaware representatives, that the meeting minutes not be used for any “official or unofficial briefing purposes due to the numerous omissions and errors”; Carrigan to Springwater, 14 February 1994, Carrigan to Mullon, 16 February 1994, Carrigan to Mullon, 7 March 1994. She also warned the Cherokee Nation that the sources used in Duane King’s paper were questionable. *Wilma Mankiller Collection*, Folder 9-11, Western History, University of Oklahoma.



Delawares, sorting funding to the Delawares included in the Cherokee Nation Compact, and amending both the Cherokees' constitution and the 1867 Articles of Agreement.<sup>539</sup> After researching alternatives for the legal implications, the Delawares proposed their responses to each of the concerns from the BIA. In summary, the Cherokee Nation would reserve their jurisdiction while the Delawares became a separate tribe within the CNO jurisdiction<sup>540</sup>—much like the Delawares' interpretation of the December 9, 1866 Agreement.

In April, 1994, the Muskogee Area office of the BIA seemed to sway towards support of the Delawares' recognition efforts. They communicated with the Delawares for their proposed “educational process” of their membership and the Cherokee Nation's legal advisors. They also noted that attorney Gina Carrigan would work for the Delawares as the Tribal Government Specialist researching and determining the alternatives for the Delawares' federal recognition.<sup>541</sup>

The federal BIA, however, refused support for the Delawares' request of the Federal Acknowledgement Procedure (FAP). On April 20, 1994, Walter Mills, Acting Deputy Commissioner of Indian Affairs wrote to the Delawares that their 1992 petition for federal acknowledgement from 1992 was denied. The denial was due to the Delawares and Cherokees' relationship having been “created through congressional action,” and therefore Congress was responsible for “redefining” that relationship, not the

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<sup>539</sup> Springwater to Ketchum, 8 February 1994; attachment Delaware-Cherokee Separation Issues, DW-DTI-8.

<sup>540</sup> Issues Related to Reaffirming Federal Recognition of the Delaware Tribe of Indians, ND, DRAFT, DW-DTI-8. “Trust Board Minutes,” ND in *Delaware Indian News* (Bartlesville, OK), October 1994. The Delaware Tribe of Indians would also hold concurrent jurisdiction over Delaware restricted lands. The final Brief was completed and submitted by July, 1994.

<sup>541</sup> Acting Area Director, Muskogee Area Office to Director, Office of Tribal Services, Memorandum, 20 April 1993, DW-DTI-8.

BIA.<sup>542</sup> The Delawares responded, “This petitioning process should be reserved for tribes that the federal government has never otherwise recognized by the U.S. Congress and Executive branches.”<sup>543</sup> They furthermore stated that if the Delawares were to go through Congressional channels that the Department was insinuating that the Delawares were “terminated.”<sup>544</sup> If this were true, there would be “Congressional language,” stating this as fact. The Delawares requested that the BIA provide all this information as well as demonstrate how the Delaware Tribe was “ineligible under 25 C.F.R. Prt. 83.3(e).”<sup>545</sup> The Delawares further requested a meeting with the new Assistant Secretary Ada Deer to “reverse the Department of Interior’s position on the status of the Delaware.”<sup>546</sup>

On July 19, 1994 however, the relationship between the Delawares and the Cherokees disintegrated. The “official position of the administration of the Cherokee Nation” was that the Delaware Tribe “terminated itself in 1867.”<sup>547</sup> Chief Mankiller then asserted that the Cherokees would no longer support Delawares’ jurisdiction over Delaware trust lands or restricted allotments, or federal funding to the Delaware Tribe.<sup>548</sup> This was devastating and the Delawares were left wondering why. At the time, the official correspondence between the two leaders revealed little new information to gain this understanding.

On that same day, July 19, the Cherokee Nation submitted to the BIA their “position on the Delaware separation issues,” which explained the reasons for the

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<sup>542</sup> Walter R. Mills, Acting Deputy Commissioner of Indian Affairs, to Mr. Lewis B. Ketchum, 20 April 1994, DW-DTI-8.

<sup>543</sup> Lewis B. Ketchum, Chief, Delaware Tribe of Indians to Walter R. Mills, Acting Deputy Commissioner of Indian Affairs, 12 May 1994, DW-DTI-8.

<sup>544</sup> Ibid.

<sup>545</sup> Ibid.

<sup>546</sup> Lewis B. Ketchum, Chief, Delaware Tribe of Indians to Ada Deer, Assistant Secretary – Indian Affairs, 15 July 1994, DW-DTI-8.

<sup>547</sup> “Update on the Federal Recognition Project” *Delaware Indian News* (Bartlesville, OK), October 1994.

<sup>548</sup> *Delaware Indian News* (Bartlesville, OK), October 1994.

Cherokees' withdrawal of support for a separate Delaware Tribe.<sup>549</sup> Moreover, the Cherokees supported the "1982 Solicitor's opinion as well as the April 20, 1994 decision by the Acting Deputy Commissioner of the BIA that the BIA will not consider a petition for acknowledgment of the Delaware Tribe."<sup>550</sup> The Cherokees said that based on their study of the issues, a new agreement should be reached while the 1867 Articles of Agreement would either have to be "amended" or "rescinded" and that action would then have to be affirmed by Congress.<sup>551</sup> The more confusing and difficult issues to tackle were the status of restricted allotments, civil and criminal jurisdiction, and federal service jurisdiction. Tribal trust lands and restricted allotments would have to be addressed specifically as each had numerous legislative acts to contend. Suffice to say, the Cherokees would in no way relinquish any jurisdiction or enable the Delawares to take land into trust within the former Cherokee Nation boundaries (but this did not infer that the Delawares could not go outside the former Cherokee Nation boundaries).<sup>552</sup> As to the federal services, each program has their own sets of rules and regulations, as well as service provisions. The Cherokees would therefore have to agree upon each program before the Delawares could apply, contract, or compact for the service.<sup>553</sup>

In response to the Delawares' acknowledgement letter, the BIA FAP backtracked and wrote in August of 1994, "We view that letter not as a final agency decision, but as an advisory letter explaining to you what difficulties you will encounter if the Delaware Tribe of Indians files a documented petition under the Federal Acknowledgment

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<sup>549</sup> Wilma Mankiller, Principal Chief, Cherokee Nation, to Lewis B. Ketchum, Redman Pipe Supply Co., 19 July 1994, DW-DTI-8.

<sup>550</sup> Ibid.

<sup>551</sup> Ibid.

<sup>552</sup> Ibid.

<sup>553</sup> Ibid.

regulations.”<sup>554</sup> If the Delawares were to file a documented petition, “full consideration of the petition under all seven of the mandatory criteria will not be undertaken.”<sup>555</sup> Even then, if the Delawares met the regulations the “Department may be precluded as a legal matter by these Congressional acts from dealing with you separately.”<sup>556</sup> Their final recommendation was to work with the Cherokee Nation to have Congress redefine the relationship.<sup>557</sup> The Delawares’ response flatly denied the BIA’s determination charging that “the two Bureau letters lack candor.”<sup>558</sup>

As to the Cherokee position paper, Chief Ketchum returned a very lengthy letter expounding upon the Delawares’ interpretation of how the Delawares should proceed with separation from the Cherokee Nation. Most important, however, was that Ketchum firmly rejected the Cherokees’ view of the Delawares’ history stating “this disparity inevitably has created some differences between our conclusions on the practical and legal issues that must be confronted in assessing how to secure formal acknowledgement of the sovereignty of my tribe.”<sup>559</sup> The “disparities” did in fact run throughout Ketchum’s letter. The Delawares disagreed with the idea that the Cherokees could not “cede” land to the Delawares because “jurisdiction actually belongs to the federal government.”<sup>560</sup> The Delawares would furthermore agree to the Cherokees delivery of federal services for a limited time, but they would not agree to anything that would “limit

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<sup>554</sup> Patrick A. Hayes, Acting Deputy Commissioner of Indian Affairs, to Lewis Ketchum, Chief, Delaware Tribe of Indians, 5 August 1994, DW-DTI-8.

<sup>555</sup> Ibid.

<sup>556</sup> Ibid.

<sup>557</sup> Ibid.

<sup>558</sup> Lewis Ketchum, Chief, Delaware Tribe of Indians to Mr. Patrick Hayes, Acting Deputy Commissioner, BIA, 19 October 1994, DW-DTI-8. The letter further states, “If under federal law the Department cannot recognize the Delaware Tribe, then the tribe most certainly is not eligible to petition for recognition under the Department’s regulations. Your contention that the Department is precluded by law from recognizing the Delawares – even if the tribe meets all the department’s criteria – just doesn’t make sense.”

<sup>559</sup> Ketchum to Mankiller, 22 August 1994.

<sup>560</sup> Ibid.

our inherent right to administer to our people.” In essence, the Delawares rejected the Cherokees’ position on the Delawares. The Delawares also outlined the points where the two tribal nations did agree. For instance, Ketchum stated that “we are not adverse to drafting a new agreement, providing that no language therein would serve to imply that the Delaware has not continuously existed.” [Sic]<sup>561</sup> Although the Delawares did not believe Congressional action was necessary, they would submit to this method if necessary wrote Ketchum.<sup>562</sup> He also asked that the Cherokees consider the previous proposed MOA and decipher the points that the two tribes could work together.<sup>563</sup>

In September, 1994, the Cherokee Nation wrote to the BIA stressing their concerns about the actions that the Delawares were taking to separate from the Cherokee Nation.<sup>564</sup> Referring to the Delawares’ letter that argued the Delawares were “administratively terminated,” Mankiller relayed that there were two “distinct but connected issues.” The first issue she argued, was that the Delawares were incorporated into the Cherokee Nation and that the “advocates of separation place undue reliance on the Supreme Court’s decision,” referring to *Weeks*. She dismissed *Weeks*’ relevance in that it took place far previous to the Department’s more scrutinizing “standard” for federal recognition. Related to the issue of a separated Delaware Tribe was how to deal with the “jurisdictional and political issues.”<sup>565</sup> Mankiller stressed that the Cherokees were willing to meet with the Delawares to disentangle these subjects.<sup>566</sup>

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<sup>561</sup> Ibid.

<sup>562</sup> Ibid.

<sup>563</sup> Ibid.

<sup>564</sup> Wilma Mankiller, Principal Chief, Cherokee Nation of Oklahoma to the Honorable Ada Deer, Assistant Secretary- Indian Affairs, 6 September 1994, DW-DTI-8.

<sup>565</sup> Ibid.

<sup>566</sup> Ibid.

As a result of the Cherokees' and Delawares' inability to budge from either point of view, the Delawares repeatedly and formally requested a meeting with Ada Deer, Assistant Secretary of Indian Affairs.<sup>567</sup> They sent the Delawares' historic and legal argument in "A Lesson in Administrative Termination" on July 15, 1994 and asked for a meeting with Deer.<sup>568</sup>

In the finale, the Delawares wrote to the BIA bypassing the Cherokee Nation. Chief Ketchum argued that the Delawares had retained their "tribal organization...exercised its own laws and customs' in addition to enjoying the rights of native Cherokees."<sup>569</sup> The letter reiterated the case law and that the Delawares had been recognized numerous times as an "independent, sovereign, Indian tribe by Congress, the Department of Interior, the U.S. Supreme Court, the Oklahoma Tribes, the state," and "tribes across the nation."<sup>570</sup> Chief Mankiller's letters appeared to "unfairly protect the Cherokee interests to the detriment of the Delaware sovereignty."<sup>571</sup> The Delawares resolved to overturn the Department of Interior's 1979 administrative action. He noted that even though Chief Mankiller had offered her support to the Delawares' efforts of federal recognition that she and the Delawares disagreed on the "basic facts and law supporting Delaware sovereignty."<sup>572</sup> He furthermore explained that the Delawares were not a "splinter' group" of the Cherokee Nation, and that "sadly, some of the leaders of

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<sup>567</sup> For Action Meeting Request Assistant Secretary – Indian Affairs, 15 August 1994. Topic for Discussion: Review of Legal Status of Delaware Tribe of Indians and the 1979 Administrative Termination, as soon as possible, DW-DTI-8. For Action Meeting Request Assistant Secretary – Indian Affairs, 12 October 1994, Topics for Discussion: Review of Legal status of Delaware Tribe of Indians and the 1979 Administrative Termination, prefer to meet prior to November 4, 1994, DW-DTI-8.

<sup>568</sup> "Update on the Federal Recognition Project," *Delaware Indian News* (Bartlesville, OK), October 1994.

<sup>569</sup> Lewis Ketchum, Chief, Delaware Tribe of Indians, to Ada Deer, Assistant Secretary – Indian Affairs, 19 October 1994, DW-DTI-8.

<sup>570</sup> Ketchum to Deer, 19 October 1994.

<sup>571</sup> Ibid.

<sup>572</sup> Ibid.

the Cherokee Nation, including Wilma, continue to cling to tenuous and ambiguous language contained in the Agreement of 1867.” Chief Ketchum next outlined the legal arguments from the Delawares’ perspective including the *Journeycake*, *Delaware v. Cherokee*, and *Weeks* cases.<sup>573</sup> While the Cherokees argued that *Journeycake* and *Delaware v. Cherokee* first supported the ““incorporation”” of the Delawares (vis a vis termination of the tribe) to hold rights in the Cherokee Nation, the Delawares believed instead that these cases clarified the rights of the Delawares to “partake in the property of the Cherokee Nation.” Neither case addressed the “retained sovereignty of the Delaware Tribe.”<sup>574</sup> Chief Ketchum quoted *Weeks* to justify the Delawares’ federal acknowledgement stating, “Wilma incorrectly states in her letter that this case did not deal with federal recognition but with whether the Delaware descendents could receive judgment funds.”<sup>575</sup> Importantly, Secretary of Interior Kleppe “argued before the Supreme Court that the Delaware Tribe of Indians is a federally recognized political tribe.”<sup>576</sup>

The Delawares’ overriding conflict at that time was then expressed by Chief Ketchum, who pointed out that Cherokee Chief Ross Swimmer used a “select sliver of history” regarding the Delawares. Ketchum continued, and in sum, Swimmer used this sliver of history to justify the Delawares termination. He furthered the case by alleging that Swimmer had “extensive political contacts” giving way to the final administrative termination of the Delawares in 1979. And while the Delawares were working with the

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<sup>573</sup> *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, No. 75-1301 (February 23, 1977).

<sup>574</sup> Ketchum to Deer, 19 October 1994.

<sup>575</sup> *Ibid.*

<sup>576</sup> *Ibid.*

Cherokees for “political support,” the “legal basis is wholly separate.”<sup>577</sup> The Delawares were also miffed that Chief Mankiller’s pledge of support had been revoked. For instance, Ketchum wrote in the letter that “Although Chief Mankiller has given her solemn word to me that she would support the Delaware Tribe in our efforts to reaffirm our sovereignty, we unfortunately disagree on the basic facts and law supporting Delaware sovereignty.”<sup>578</sup> After her staff had studied the issues, Mankiller was unwilling to support the Delawares’ aspirations for a separate tribe by means that the Delawares were taking. The Cherokees therefore “refused” to put the Delawares’ separation to a referendum vote.<sup>579</sup>

Finally, the Delawares received their requested meeting with Ada Deer.<sup>580</sup> On December 1, 1994, newly elected Chief Curtis Zunigha and Trust Board Chairman Lewis Ketchum went to Washington D.C.<sup>581</sup> Representatives from the Delaware Tribe also included attorneys Pete Taylor and Gina Carrigan. For the BIA, Assistant Secretary Ada Deer, Associate Solicitor Michael Anderson, Joann Sebastian Morris, Office of Tribal Services, and Scott Keep and Barbara Coen were the attorneys for the Office of Solicitor.<sup>582</sup> According to the Delawares’ representation, while Secretary Deer “had little comment on the Bureau’s actions or position,” Scott Keep promised the requested “legal

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<sup>577</sup> Ibid.

<sup>578</sup> Ibid.

<sup>579</sup> Ketchum to Deer, October, 19, 1994. “Cherokees Refuse to Put Delaware Issue to a Vote of the People,” *Delaware Indian News* (Bartlesville, OK), April 1995.

<sup>580</sup> Curtis Zunigha, Chief, Delaware Tribe of Indians, to Ms. Ada Deer Ass’t Secretary – Indian Affairs, 8 December 1994, DW-DTI-8. Gina Carrigan, Counsel for the Delaware Tribe to Barbara Coen, Office of the Solicitor – Indian Affairs, December 27, 1994, DW-DTI-8. “Tribe Reviews Termination with Deer,” *Delaware Indian News* (Bartlesville, OK), January 1995.

<sup>581</sup> “Tribal Council and Trust Board Minutes,” ND, *Delaware Indian News* (Bartlesville, OK), April 1995. “Sovereignty Issue Ready for Federal Court,” *Delaware Indian News* (Bartlesville, OK), July 1995.

<sup>582</sup> “Tribe Reviews Termination with Deer,” *Delaware Indian News* (Bartlesville, OK), January 1995.



review of the Bureau's position concerning the sovereignty of the Delaware Tribe in light of the new evidence submitted by the tribe."<sup>583</sup>

The review was scheduled for completion by March 1, 1995.<sup>584</sup> However, all relevant information was not in BIA hands until April 3. The Delawares submitted a "box containing numerous files," as their attachment to "A Lesson in Administrative Termination: An Analysis of the Legal Status of the Delaware Tribe of Indians," prepared by Gina J. Carrigan and Clayton Chambers.<sup>585</sup> In a letter dated April, 1995 Robert Anderson, Acting Associate Solicitor wrote to the Cherokee Nation that the Division of Indian Affairs within the Solicitor's Office had been evaluating the information regarding the Delawares' case. They offered the Cherokees an opportunity to respond, in addition to the materials from the March 17, 1978 eleven page memorandum and a recent paper written by Duane King, "Delaware Membership in the Cherokee Nation."<sup>586</sup>

The BIA then informed the Cherokee Nation of their assurances to the Delaware Tribe for the review of the 1979 administrative actions. Anderson wrote that the Division of Indian Affairs within the Solicitor's Office had been evaluating the information presented by the Delawares.<sup>587</sup> The Division of Indian Affairs stated that the "arguments presented by the Delaware merit further consideration by this office."<sup>588</sup>

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<sup>583</sup> Carrigan to Coen, 27 December 1994. "Sovereignty Issue."

<sup>584</sup> "Tribe Reviews Termination with Deer."

<sup>585</sup> Carrigan to Coen, 27 December 1994. "Tribal Council Minutes," July 18, 1994, in *Delaware Indian News* (Bartlesville, OK), October 1994.

<sup>586</sup> Robert T. Anderson, Acting Associate Solicitor, Division of Indian Affairs, to Principal Chief Wilma Mankiller, Cherokee Nation of Oklahoma, 20 April 1995, DW-DTI-8. Duane King, "Delaware Membership in the Cherokee Nation," January 10, 1994, unpublished manuscript, DW-DTI-8.

<sup>587</sup> Anderson to Mankiller, 20 April 1995. "Sovereignty Issue."

<sup>588</sup> Anderson to Mankiller, 20 April 1995.

Secretary Deer was giving the Delaware serious consideration. The National Congress of American Indians (NCAI) also publicly supported the Delawares' federal recognition.<sup>589</sup>

At this point, the Cherokee Nation and the Delaware Tribe's leadership transitioned from Mankiller to Cherokee Chief Joe Byrd and Ketchum to Delaware Chief Curtis Zunigha. The *Delaware Indian News* reported that the "New Cherokee Chief Supports Delaware Sovereignty," in late 1995. On November 15, Chief Curtis Zunigha, Assistant Chief Mike Pace and Trust Board Chairman Chet Brooks met with Principal Chief Joe Byrd and Assistant Chief Garlan Eagle. Both sides had their legal representation present. Chief Byrd said that he would look into the history of the case.<sup>590</sup> In review, Chief Byrd drew upon the David Mullan briefs that the Cherokees had submitted to the BIA regarding the Delawares and then requested a meeting with the BIA.<sup>591</sup> This left the issue between the tribal leaders at another standstill.

In March, 1995 the BIA had had ninety days to do their review of the Delawares' evidence of the bureau's administrative termination and sought a final answer from the BIA.<sup>592</sup> Delaware tribal leaders met with the Secretary of Interior, Bruce Babbitt and

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<sup>589</sup> "A Resolution Recognizing the Sovereign Existence of the Delaware Tribe of Indians," Resolution 94-DEN-LG/JTG-025, National Congress of American Indians, n.d. from private archive of James Rementer. "NCAI Calls for Recognition," *Delaware Indian News* (Bartlesville, OK), January 1995. The report explains how the Oklahoma tribes, led by Sac and Fox Chief Elmer Manatowa and Comanche Chairman, Wallace Coffey proved to be extremely supportive and influenced the final decision to recognize the Delaware's sovereignty. The only opposing vote was the Cherokee delegate, Diane Kelley and an abstention from Lieutenant Governor for the Chickasaw Nation. Additionally, numerous Oklahoma Tribes then passed their own individual resolutions recognizing the Delaware Tribe of Indians.

<sup>590</sup> "New Cherokee Chief Supports Delaware Sovereignty," *Delaware Indian News* (Bartlesville, OK), January 1996.

<sup>591</sup> "Trust Board and Tribal Council Minutes," September, 11, 1995 and November 20, 1995, in *Delaware Indian News* (Bartlesville, OK), January, 1996.

<sup>592</sup> "Sovereignty Issue at Critical Juncture," *Delaware Indian News* (Bartlesville, OK), April 1995. "Update On Delaware Federal Recognition Project," *Delaware Indian News* (Bartlesville, OK), October 1995.

again met with Assistant Secretary, Ada Deer, in February.<sup>593</sup> By March, Chief Curtis Zunigha indicated that the tribal members were anxious for a final determination and stressed the need for speed in coming to a conclusion.<sup>594</sup> The *Delaware Indian News* reported that the Tribe would seek a lawsuit against the Department of Interior if they dragged the case further.<sup>595</sup> In the meantime, the Delaware applied for a Job Training and Professional Assistance (JTPA) and JTPA Youth program, Title VI, Elders Nutrition program, and an ANA Language Preservation Grant.<sup>596</sup>

On September 20, 1995, Chairman Lewis Ketchum passed away. After all his years as Chief and Chairman of the Trust Board, Chief Ketchum tragically did not see the federal recognition restored to the Delaware Tribe of Indians.<sup>597</sup>

The *Delaware Indian News* announced to the tribal membership that the BIA was planning to restore the Delawares' federal recognition, June 21, 1996.<sup>598</sup> The letter restoring official federal recognition was addressed to both the Delaware Tribe of Indians and the Cherokee Nation of Oklahoma.<sup>599</sup> The decision was not final and the restoration was subject to public comment and further review. After a thirty day waiting period, the

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<sup>593</sup> Curtis Zunigha, Chief Delaware Tribe of Indians, to Ada Deer, Assistant Secretary – Indian Affairs, 6 March 1995. “Critical Juncture.”

<sup>594</sup> “Critical Juncture”

<sup>595</sup> Zunigha to Deer, 6 March 1995. “Sovereignty Issue and A Message from Chief Curtis Zunigha,” *Delaware Indian News* (Bartlesville, OK), July 1995. “BIA Announces Intent to Restore Federal Recognition to the Delaware Tribe,” *Delaware Indian News* (Bartlesville, OK), July 1996. *Delaware Indian News* (Bartlesville, OK), “Tribal Council Minutes,” April 1, 1996, in *Delaware Indian News* (Bartlesville, OK) July 1996.

<sup>596</sup> “Tribal Council and Trust Board Minutes,” November 21, 1994, in *Delaware Indian News* (Bartlesville, OK), April 1995. “Tribal Council and Trust Board Minutes,” December 29, 1994, in *Delaware Indian News* (Bartlesville, OK), April 1995. “Tribal Council & Trust Board Minutes,” January 16, 1995, in *Delaware Indian News* (Bartlesville, OK), April 1995. “Tribal Council & Trust Board Minutes,” February 20, 1995, in *Delaware Indian News* (Bartlesville, OK), July 1995. “JTPA Summer Youth Program Starts,” *Delaware Indian News* (Bartlesville, OK), July 1997. The article states, “The U.S. Department Labor for program year 1997 has granted to the Delaware Tribe funds in the amount of \$15,693 for the Summer Youth and \$21,941 for the Adult Training.”

<sup>597</sup> *Delaware Indian News* (Bartlesville, OK), October 1995.

<sup>598</sup> “BIA Announces Intent to Restore Federal Recognition to the Delaware Tribe,” *Delaware Indian News* (Bartlesville, OK), July 1996. A copy of the letter was published in the newspaper.

<sup>599</sup> *Ibid.*

Delaware Tribe decision would be published in the Federal Register on “approximately June 28, 1996.”<sup>600</sup>

BIA staff attorney, Barbara Coen, spent a year and a half performing the comprehensive review for her final determination. From her report, the Associate Solicitor of Indian Affairs, Bob Anderson “advised the Assistant Secretary to rescind the 1979 BIA letter which effectively terminated the Delaware Tribe.”<sup>601</sup> The BIA faulted themselves for “misconstruing” the 1866 Treaty and the 1867 Agreement between the Delawares and the Cherokees.<sup>602</sup> The *Delaware Indian News* reported on the numerous “privileges, benefits and responsibilities that have not been fully exercised by the Delaware Tribe since the turn of the century” having roots in their loss of recognition during critical years of the Indian Self-Determination era.<sup>603</sup>

After seventeen years of termination, “Federal Recognition [is] Restored.”<sup>604</sup> On June 19, 1996, the BIA retracted the 1979 letter that alleged the Delaware Tribe was a tribe within a tribe. The BIA would henceforth conduct business with the Delaware Tribe of Indians as a separate entity.<sup>605</sup> The notice was published in the Federal Register on June 27, 1996. After a comprehensive review, the BIA determined that the 1979 letter was “not consistent with federal law.” The restoration seemed complete with the final

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<sup>600</sup> Ibid.

<sup>601</sup> Ibid.

<sup>602</sup> Ibid.

<sup>603</sup> Ibid.

<sup>604</sup> “Federal Recognition Restored,” *Delaware Indian News* (Bartlesville, OK), October 1996. Lewis B. Ketchum, Chief from 1983-1994 and Chairman of the Trust Board, 1990-1995 died on September 20, 1995. He did not live to see the restoration given to the Delaware Tribe of Indians.

<sup>605</sup> “Federally Recognized Status of The Delaware Tribe of Indians, Oklahoma,” DW-DTI-8. Restored. 61 FR 33534.

news release in September, 1996, “Delaware Tribe of Eastern Oklahoma Independent Status Re-Instated.”<sup>606</sup>

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<sup>606</sup> “Delaware Tribe of Eastern Oklahoma Independent Tribal Status Re-Instated,” News release, U.S. Department of the Interior, 23 September 1996.

## **Chapter Five: From Federal Acknowledgment in 1996 to Re-termination in 2004**

From 1996 to 2004, the Delawares functioned with federal acknowledgement even though there were many peaks and valleys in their ability to govern tribal membership. During these years, the Delawares' leadership antagonized the Cherokee Nation and their relationship became so fractured that the estrangement affected their ability to manage effectively federal acknowledgement. In addition to developing a strong base of programming for the membership, the Delawares became an important local employer and an economic player in the cities of Bartlesville and Dewey. As a result of their conflict with the Cherokees, however, the Delawares lost their recognition again in 2004. Although this loss took many tribal members by complete surprise, the conflict had been brewing in the courts, and this time the judicial system slammed the gavel that rendered the Delawares with one alternative—to negotiate with the very nation that they opposed.

When the BIA restored the Delawares' federal recognition in 1996, they had to sort through numerous and unforeseen problems in federal funding and jurisdiction. Ironically, even though the federal bureaucracy created the entanglement, the BIA handed over the issues to the Delawares. In essence, the Delawares had to untangle their connection to the Cherokee Nation. To do this, the Delawares faced federal government scrutiny via the Cherokee Nation. For example, the Cherokee Nation functioned under a BIA Self-Governance Compact and already had their budget established for the next several years to come. Any Indian Self-Determination 638 Contracts that the Delawares should wish to apply for would have to be taken out of either the Cherokee Nation Self-

Governance Compact or Congress would have to increase funding from federal appropriations. Increased federal funding was highly unlikely considering there is only one BIA budget for all legally qualified Indians. Even at a conceptual level, carving their funding out of the Cherokees' Compact only intensified the friction between the tribes. The Cherokee Nation utilized their political influence in Washington D.C. to influence these decisions while the Delawares, for all intensive purposes, were amateurs in the capital.

Charging that there was no economic impact study and that the DOI had acted without due diligence, the Cherokee Nation appealed to federal district court within a week of the Delawares restoration in 1996. Judge Charles Richey upheld the DOI decision.<sup>607</sup> Chief Joe Byrd then filed suit for the Cherokees in federal court in Washington, D.C., October 2 against Ada Deer and the Secretary of Interior Bruce Babbitt.<sup>608</sup> In a legal twist, the Cherokee did not identify the Delaware Tribe of Indians in the suit; instead the Delawares were considered "amicus."<sup>609</sup> The Department of Justice filed a motion to dismiss the case along with a supporting brief "for the Cherokee's failure to name the Delaware Tribe as a party to the litigation."<sup>610</sup> On October 30, 1996, the court initially dismissed the Cherokees' suit because the Delaware Tribe was an "indispensable party." Furthermore, the judge ruled that the Delawares were immune from lawsuit as a federally recognized tribe, retaining sovereign

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<sup>607</sup> "Cherokees Challenge Delaware Independence," *Bartlesville Examiner-Enterprise*, October 3, 1996. "Cherokees Eye Delaware Ruling," *Bartlesville Examiner-Enterprise*, October 6, 1996. Shaun Schafer, "Cherokees Fight Delaware Split," *Tulsa World*, November 5, 1996.

<sup>608</sup> *Cherokee Nation of Oklahoma v. Babbitt*, 944 F. Supp. 974 (D.D. 1996). "Federal Court Upholds Delaware Federal Recognition," *Delaware Indian News* (Bartlesville, OK), January, 1997. "Court of Appeals Reviews Delaware Federal Recognition," *Delaware Indian News* (Bartlesville, OK), April 1997.

<sup>609</sup> *Ibid.*

<sup>610</sup> *Ibid.*

immunity.<sup>611</sup> In turn, on November 15, Cherokee Chief Joe Byrd filed his notice of appeal.<sup>612</sup>

Domestically, the Delawares' leadership recognized the obligations that their restored status brought and took steps toward that end. They began reform efforts immediately.<sup>613</sup> Calling upon tribal members' expertise, the Tribal Council sought volunteers for tribal enrollment, federal Indian law, computer programming, grant writing and tribal administration.<sup>614</sup> The Tribe began to revise the constitution, enrollment rules, and administrative procedures.<sup>615</sup> In March, 1997, Curtis Wilson from the Muskogee Area Bureau of Indian Affairs (BIA) made the first of several visits with the Tribal Council to discuss programming, New Tribes funding, service area, and jurisdiction.<sup>616</sup>

Domestic developments within the Tribe meant that the Delawares had to justify and defend their programs to the federal government. One example was a small grant initiated by Councilman Terry Parks and Tribal Manager Russell Ellis who conceived of a Job Training and Professional Assistance Act (JTPA) program through the Department of Labor (DOL).<sup>617</sup> Parks was a JTPA Director at the Osage Nation and Ellis was a tribal member with years of experience working for tribes in Oklahoma. After meeting with JTPA officials explaining that the Cherokees did not have a job training program in the Delawares' service area, the Delawares were awarded a small JTPA program grant for \$37,000 which would be cycled into the annual budget. The Cherokee Nation filed suit

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<sup>611</sup> Ibid.

<sup>612</sup> Ibid.

<sup>613</sup> "Tribe Begins Reform Efforts-Volunteers Needed," *Delaware Indian News* (Bartlesville, OK), January 1997.

<sup>614</sup> "Reform Efforts," *Delaware Indian News* (Bartlesville, OK), January 1997.

<sup>615</sup> "Special General Council Meeting Held, Saturday March 1, 1997," in *Delaware Indian News* (Bartlesville, OK), April 1997.

<sup>616</sup> "Trust Board and Tribal Council Minutes," March 17, 1997 in *Delaware Indian News* (Bartlesville, OK), July 1997.

<sup>617</sup> "JTPA Summer Youth Program Starts," *Delaware Indian News* (Bartlesville, OK), July 1997.



in district court against DOL for awarding funding to the Delawares.<sup>618</sup> In 1999, a judgment dismissed the case and the Delawares kept their existing and future JTPA funding through 2004.<sup>619</sup>

In “A Message from Chief Curtis Zunigha” in early 1998, Zunigha reported that while the Cherokee Nation was “formally” against the Delawares’ recognition, Chief Joe Byrd had proposed the “possibility of a negotiated settlement to this dispute.”<sup>620</sup> To this end the Delaware Tribal Council met with several Cherokee Nation tribal members on February 17, 1998. Cherokee Councilman Nick Lay represented the Delawares’ area. Lay visited the Delaware Tribal Council at their February 12, 1998 meeting. At the very least, the two tribal nations were communicating. Unfortunately, a settlement never unfolded.

In 1998, the Cherokee Nation became the Delawares’ “old nemesis,” and the “BIA and the Clinton Administration” became the Delawares’ “ally.”<sup>621</sup> Political connections, presence in Washington D.C., and access to influence became very important for both the Delawares and Cherokees. The Cherokee Nation of Oklahoma and the Delaware Tribe therefore both gave priority to lobbying and paid numerous and high

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<sup>618</sup> “Trust Board and Tribal Council Minutes,” December 16, 1996 in *Delaware Indian News* (Bartlesville, OK), April 1997. “Trust Board and Tribal Council,” April 21, 1997 in *Delaware Indian News* (Bartlesville, OK), July 1997. The first basis for the Cherokee Nation of Oklahoma complaint with the Department Of Labor was that the Delaware approval for JTPA violated Amendment 86. Gina Carrigan, Delaware attorney stated that Amendment 86, however, was only applicable that year. “Trust Board and Tribal Council Minutes,” December 1, 1997 in *Delaware Indian News* (Bartlesville, OK), April 1998.

<sup>619</sup> *Cherokee Nation of Oklahoma v. U.S. DOL and the Delaware Tribe of Indians*, 97-JTP-12, (ARB Case No. 98-153, February 12, 1999).

<sup>620</sup> “Message Chief Curtis Zunigha,” *Delaware Indian News* (Bartlesville, OK), April 1998.

<sup>621</sup> “Delaware Tribe of Indians-State of the Tribe,” *Delaware Indian News* (Bartlesville, OK), January 1998.

expenses to attorneys.<sup>622</sup> At this point the Delawares seemed to believe that they would remain legally recognized.

By April 1998, the Delaware Tribe had hired a new Tribal Manager, Titus Frenchman, a Delaware member who had worked in California for years as a financial aid director at the University of California, Davis. They also hired a Director for the Child Development Program, Sherry Rackliff (non-Delaware married to a Cherokee), who had assisted in writing the child development grants. Next, the Delawares tackled enrollment, hiring Nichole Bryant (non-Delaware with Cherokee heritage), who was fresh out of law school. Last in this series of personnel changes was hiring a Comptroller, Gary Frye (non-Delaware with Cherokee heritage), and a local Certified Public Accountant. The longstanding Lenape Language Project took on a new life under the direction of James Rementer (non-tribal member), who had studied Lenape since 1962.<sup>623</sup> In Delaware tradition, James Thompson adopted Rementer into his family. James was father to Nora Thompson Dean, a full blood Delaware and native Lenape speaker, who gave presentations about the Lenape throughout the country. The Delawares' Trust Board continued community services programs such as assistance for medical debt, dental care, eye care, and energy and gas bills.<sup>624</sup>

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<sup>622</sup> "Trust Board and Tribal Council Minutes," October 20, 1997, in *Delaware Indian News* (Bartlesville, OK), January 1998. "State of the Tribe," "Cherokees to End Battle Against Delaware Tribe," *Delaware Indian News* (Bartlesville, OK), October, 1999. Tim Hudson, "Delaware Tribe loses funding," *Bartlesville Examiner-Enterprise*, N.d. 2005. "Cherokees Make Offer to Delawares," *Bartlesville Examiner-Enterprise*, June 23, 2005.

<sup>623</sup> "Meet the New Tribal Employees" *Delaware Indian News* (Bartlesville, OK), June 1998. Rementer had previously served as a grant writer. Awards were made to a 1995 Delaware Symposium, 1997 Administration for Native Americans Language Grant, and 2002 National Science Foundation.

<sup>624</sup> *Delaware Indian News* (Bartlesville, OK), January 1994. *Delaware Indian News* (Bartlesville, OK), April 1994. Virtually every issue of the *Delaware Indian News* after January and April, 1996 carried reports for the community service program.

Along with federal recognition, the Delawares had to generate a public persona. Toward the Cherokee, the Delawares sought to project “professionalism” and a “businesslike” attitude rather than “confrontation.”<sup>625</sup> In light of the litigation, the Tribal Council attempted to project this professionalism for events such as the political National Congress of American Indians (NCAI) meetings and at frequent local cultural programs and public appearances. Relationships with other tribal nations were one component of their strategy. Even more politically important was that Indian tribes were becoming a federal government priority. Not long after the restoration of Delaware recognition, both sets of tribal leaders attended President Clinton’s inauguration.<sup>626</sup> The strategy of treating the Cherokees’ leaders with professionalism seemed to work because all the tribal leaders returned without report of incident. Nonetheless, Attorney and Government Specialist, Gina Carrigan, emphasized to the Delaware Tribal Council that they should lobby Congress and garner state and tribal support to maintain federal recognition.<sup>627</sup> The lawsuit with the Cherokees was still pending.<sup>628</sup>

The local BIA, Muskogee Office helped the Delaware Tribe’s efforts to apply, access, and then manage their federal programs. First, the Delawares’ hired a Grants and Compliance Officer, Nicky Michael, a Delaware member with a BA from Stanford, who pulled the BIA into the Tribal Council to educate them regarding the implications and definitions of the Indian Self-Determination, Self-Governance, and 638 Contracting for

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<sup>625</sup> “Trust Board and Tribal Council Minutes,” October 14, 1996 in *Delaware Indian News* (Bartlesville, OK), January 1997.

<sup>626</sup> “Trust Board and Tribal Council Minutes,” February 3, 1997 in *Delaware Indian News* (Bartlesville, OK), April 1997.

<sup>627</sup> “Tribal Council Minutes,” October 14, 1996, in *Delaware Indian News* (Bartlesville, OK), January 1997.

<sup>628</sup> “A Message from Chief Curtis Zunigha” and “Trust Board & Tribal Council Minutes,” February 17, 1997 in *Delaware Indian News* (Bartlesville, OK), July 1997. Oral arguments were set for May 6 in federal court for the initial case that Cherokee Chief Byrd appealed (*Babbitt*).

federal programs. For six years Michael had worked for the Iowa Tribe, which included directing a Self-Governance Planning Grant, and she had spent a short time in Washington D.C. in Senator Ben Nighthorse Campbell's office. Next, Area Director, James Fields and Contracting Officer Curtis Wilson worked out three alternatives to resolve the funding issues between the Delawares and the Cherokees. The first alternative was that the Delawares win in court and federal recognition would be solidified. The second alternative was to sign a Memorandum of Agreement (MOA) with the Cherokee Nation. The third alternative was that the Bureau would step in and develop "a program method of allowing us to handle our own programs."<sup>629</sup> The Delawares took their chances in court because they could not reach an agreement with the Cherokees and the Bureau did not develop another program method. Yet, the Delawares did manage to assume federal funding under the Indian Self-Determination Act, 638 Contracting, and several other important sources of federal grants.

The growth of the Delawares within the first two years of the restoration created momentum. The Tribe received an Indian Self-Determination 638 Contract called "New Tribes" for \$160,000.<sup>630</sup> 638 Contracts identify the types of programs that the BIA administers to federally recognized Indian Tribes. The Delawares secured these funds on April 14, 1998 enabling the Tribe to develop its administration and plan its programs. The Grants and Compliance Officer then applied in 1998 for Aid to Tribal Government (ATG) and the BIA quickly approved. One of the most pivotal programs for the

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<sup>629</sup> "From the Tribal Manager," *Delaware Indian News* (Bartlesville, OK), July 1998.

<sup>630</sup> "Trust Board and Tribal Council Minutes," March 16 and April 20, 1998 in *Delaware Indian News* (Bartlesville, OK), July 1998.

Delawares began in 1998 from a different branch of the federal government.<sup>631</sup> What emerged from this effort was a grant from the Administration for Children and Families (ACF) for \$604,000. The Delaware Tribe purchased eighty acres to build its first child care facility in addition to constructing a cultural and community center.<sup>632</sup> The Delawares applied for an Indian Community Development Block Grant (ICDBG) from Housing and Urban Development (HUD) to build a community center, housing the Elders Nutrition Program, Child Care, and meeting place for the tribal members to hold cultural activities.<sup>633</sup> The undertaking through ACF grew by the turn of the century into a multimillion dollar program that provided services throughout northeastern Oklahoma and Caney, Kansas.<sup>634</sup>

The Delawares next planned to secure the title to a large building on the west side of Bartlesville.<sup>635</sup> The legislation for the transfer of the NIPER (National Institute of Petroleum Energy Research) building to the Delaware Tribe was the cooperative effort of Senator Nickles, Congressman Istook, Bartlesville Mayor Don Nickkel, Department of Energy Manager David Alleman, Bartlesville Development Corporation President Jim

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<sup>631</sup> "Trust Board and Tribal Council Minutes," June 29, 1998 in *Delaware Indian News* (Bartlesville, OK), October 1998.

<sup>632</sup> "Trust Board and Tribal Council Minutes," March 16, 1998, in *Delaware Indian News* (Bartlesville, OK), July 1998. "Trust Board and Tribal Council Minutes," June 29, 1998, in *Delaware Indian News* (Bartlesville OK), October 1998. "New Delaware Child Care Center Opens Doors," *Delaware Indian News* (Bartlesville, OK), April 1999. "Ground Broken for Tribal Complex and Child Care Center," *Delaware Indian News* (Bartlesville, OK), January 2000.

<sup>633</sup> Curtis Zunigha, Chief Delaware Tribe of Indians, to Southern Plains Office Native American Programs, 21 August 1998, attached Indian CDBG Program FY 1998 Grant Application, private collection. Wayne Sims, Administrator Southern Plains Office of Native American Programs, HUD, to Curtis Zunigha, Chief Delaware Tribe of Indians, 30 October 1998, private collection. "Building Plans Finalized for Delaware Tribal Complex and Cultural Center" *Delaware Indian News* (Bartlesville, OK), April 1999.

<sup>634</sup> "Delaware Tribe Child Development Program Grows and New Assistance in Childcare Business Startup Available" *Delaware Indian News* (Bartlesville, OK), January 2000. "Delaware Tribe Child Development Program Captures a New Project" and "New Funding Benefits No-Weta Child Care Center" *Delaware Indian News* (Bartlesville, OK), April 2000. "Delawares Break Ground on New Chelsea Childcare Center" *Delaware Indian News*, April 2002. "Delaware Tribe Receives \$750,000 Grant for Kansas Childhood Development Center" *Delaware Indian News* (Bartlesville, OK), January 2003.

<sup>635</sup> "Tribal Council," June 29, 1998, in *Delaware Indian News* (Bartlesville, OK), October 1998.

Fram, and Bartlesville Area Chamber of Commerce President, Pam Dunlap.<sup>636</sup> This building became their new tribal headquarters on January 8, 1999.<sup>637</sup> The Delawares were quickly rising as an economic player and employer in the local community.

In November, 1998, Chief Dee Ketchum was elected into office. As with most tribes, a major staff turnover accompanied this change.<sup>638</sup> Yet, the growth momentum was strong and the Delawares were in visible positions, so much so that with the releasing of the Sacagawea coin in 1999, the Delawares honored first lady Hillary Rodham Clinton with a Pendleton friendship blanket. Chief Ketchum presented the blanket to Clinton in Washington D.C. The Delawares moved forward with their programs as well, submitting a group of 638 Contract proposals to the BIA, placing high priority on Direct Employment and Adult Vocational Training.<sup>639</sup>

With federal funding working out, at least in the short term, the next task of untangling themselves from the Cherokee Nation concerned land. These land issues included jurisdiction, service area, and placing land in trust. Jurisdiction meant control over the land itself; service area meant control of the grants and 638 services throughout a particular area; trust meant a legal ownership of land controlled by federal guidelines

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<sup>636</sup> “Dedicate Tribal Headquarters,” *Delaware Indian News* (Bartlesville, OK), April 2000. The U.S. Bureau of Mines founded the Petroleum Experiment Station in Bartlesville in 1918. This building was then converted into the Bartlesville Petroleum Research Center in the mid-1960s from which emerged the Bartlesville Energy Research Center in 1975 and finally the National Institute of Petroleum and Energy Research from 1983 to 1993, *History of Bartlesville and Washington County, Oklahoma*, BARTLESVILLEHISTORY.ORG, <http://myweb.cableone.net/gmeador/bvhisgra.htm>, 4, accessed July 28, 2008.

<sup>637</sup> “New Tribal Headquarters – Building for the Future,” *Delaware Indian News* (Bartlesville, OK), April 1999. “Legislators Help Dedicate New Tribal Headquarters,” *Delaware Indian News* (Bartlesville, OK), April 2000.

<sup>638</sup> Chief Dee Ketchum is brother to the late Chief Lewis Ketchum. “Trust Board and Tribal Council,” (January 18, 1999). *Delaware Indian News* (Bartlesville, OK), April 1999. Gary Frye, Comptroller and Sherri Rackliff, Director of Child Care Development, remained on staff along with a recently hired Delaware member, JTPA Director, Pam Bennett.

<sup>639</sup> “Minutes of Special Tribal Council Meeting,” March 10, 1999, in *Delaware Indian News* (Bartlesville, OK), July 1999.

(supplanting state jurisdiction). The Delawares wanted jurisdiction over their D (Delaware) restricted allotments, a desire that was hotly contested by the Cherokees. Allotment jurisdiction was at the core of the dispute between the two tribes. To the Cherokees, granting the Delaware jurisdiction took land away from the Cherokees. Another related issue frustrating to both parties concerned the service area. Whoever legally controlled the service area received the funding to carry out the specific service, whether that was health care or fire safety. The BIA directed the Delawares to work out its service area with the Cherokee Nation for contracts and grants.<sup>640</sup> However, the Delawares were only able to provide services to Delaware members in Washington County, whereas most other federally recognized tribes provided services to *all* Native Americans within their service area. The Cherokees provided all the other services to eligible Native Americans in Washington County. Lastly, to put land in trust, the Delawares would have to purchase land outside of the Cherokee Nation's former boundaries. Loosely translated, this meant that the Delawares would have to go back to former reservations, possibly in Kansas, Indiana or back east, to place land into trust.

Another friction point in the Delawares' conflict with the Cherokees occurred because of an election. Delaware Chief Dee Ketchum met with Cherokee Nation Chief Chad Smith who stated that after he was elected, he would dismiss the case.<sup>641</sup> The Cherokee Nation was considering dropping the suit against the BIA and the Delawares without prejudice, meaning that they could reopen the case. Of course, the Delawares

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<sup>640</sup> Ibid.

<sup>641</sup> "Trust Board and Tribal Council Minutes," August 16, 1999, in *Delaware Indian News* (Bartlesville, OK), January, 2000.

filed for the case to be dropped with prejudice.<sup>642</sup> Newly elected Chief Smith and Delaware Chief Ketchum met again on August 9, 1999. According to the *Delaware Indian News*, Chief Smith “appeared before the Federal Magistrate Claire Eagan in the District Court in Tulsa to negotiate dismissal of the Cherokees’ law suit.”<sup>643</sup> Yet, later in the report, Delaware attorney Gina Carrigan noted that Chief Smith had “not yet formally filed the motion to dismiss the suit.”<sup>644</sup> Ultimately, the case was not dropped.

On December 20, 1999, the Delawares broke ground for constructing their Community Center and Child Care center on the eighty acres.<sup>645</sup> This building was completed and dedicated in November, 2001.<sup>646</sup> As the Tribal Health Clinic Pilot Project came to a close, the success of the program justified an entire wellness center.<sup>647</sup> Registered nurse, Bonnie Elkhair, married to a Delaware member, started the program in the basement of the tribal headquarters and it was highly utilized by the Delawares, especially the elders. So, too, with an emerging Education Department: Director Pam Bennett combined the job training programs with general education, school supplies, higher education scholarships, and outstanding achievements programs.<sup>648</sup>

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<sup>642</sup> “Delaware Tribe Holds Election,” “General Council” and “Trust Board and Tribal Council Minutes,” August 16, 1999, in *Delaware Indian News* (Bartlesville, OK), January 2000.

<sup>643</sup> “Cherokees To End Battle Against Delaware Tribe,” *Delaware Indian News* (Bartlesville, OK), October 1999.

<sup>644</sup> Ibid.

<sup>645</sup> “Ground Broken for Tribal Complex and Child Care Center,” *Delaware Indian News* (Bartlesville, OK), January 2000. “New Tribal Complex and Child Care Center Construction Shows Progress,” *Delaware Indian News* (Bartlesville, OK), July 2000.

<sup>646</sup> “Delaware Tribe To Dedicate New Community Center November 2,” *Bartlesville Examiner-Enterprise*, October 28, 2001. Chris Rush, “Delaware Open New Community, Child Development Center,” *Bartlesville Examiner-Enterprise*, November 4, 2001. “New Lenape Community and Child Development Center Dedicated,” *Delaware Indian News* (Bartlesville, OK), January 2002.

<sup>647</sup> “Tribal Health Clinic Pilot Project Nears End,” *Delaware Indian News* (Bartlesville, OK), April 1999.

<sup>648</sup> “New Job Training and Education ‘One-Stop-Shop’ Now Open to Tribal Members,” *Delaware Indian News* (Bartlesville, OK), April 2000. “Job and Education ‘One-Stop-Shop’ Ready to Help Tribal Members,” *Delaware Indian News* (Bartlesville, OK), July 2000.



In 2000 the Delawares' momentum slowed as they encountered political difficulties. Because of their inability to reach an agreement with the Cherokees, Congress initiated restrictions on the Delawares' funding agreements so that they could not negotiate their 638 Contracts.<sup>649</sup> The promise of an agreement with the Cherokees had again fallen by the wayside. Cherokee Nation funding was also in jeopardy as the Office of Self-Governance insisted that the Cherokees sign their Annual Funding Agreement (AFA) with a footnote attached that the Delawares and the Keetoowah federal funding would come out of the Cherokee Nation Self-Governance Compact.<sup>650</sup> The Delawares had much in common with the Keetoowah. Both Native American tribes had been declared eligible to organize under the Oklahoma Indian Welfare Act (OIWA) in the 1940s separate and independent from the Cherokee Nation. At the time, the federal government also regarded both as tribes within the Cherokee Nation who were seeking separate federal recognition. Yet the Keetoowah were culturally Cherokees, and Keetoowahs often argued that they were the most traditional among all Cherokee people. Delawares had little cultural commonalities with Cherokees.

At the January 17, 2000 Tribal Council meeting, the Delaware Tribal Council discussed the denial of several 638 Contract requests that the tribe had submitted on October 6, 1999. The BIA explained that the reason for the denial was that the Delaware Tribal Council had withheld a list of their members who had signed a letter expressing that they did not receive services from the Cherokee Nation.<sup>651</sup> The Delawares would not

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<sup>649</sup> "Trust Board and Tribal Council Minutes," August 16, 1999 and "Tribal Council Minutes," October 18, 1999, in *Delaware Indian News* (Bartlesville, OK), January 2000.

<sup>650</sup> "Trust Board and Tribal Council," August 16, 1999.

<sup>651</sup> "Delaware Tribal Members Must Respond Today," *Delaware Indian News* (Bartlesville, OK), October 1999. In an effort to ascertain a service number for tribal members, the Delaware printed this article to induce tribal members to send in their letters. The article promised that their health services "will not be in jeopardy" nor would the tribal member have to un-enroll with either the Delaware or the Cherokee Nation.

provide any names because the BIA could not guarantee that the information would remain confidential.<sup>652</sup> Delaware members apparently felt fearful of Cherokee reprisal for having signed the letter if it were to become public. The BIA then asked the Delawares to provide the roll numbers, rather than names, of those to be serviced, specifically identifying any of those who were dually enrolled as Cherokees. At the General Council meeting, the Delawares decided to appeal the BIA's denial rather than provide the Delawares' roll numbers to the BIA.<sup>653</sup> The BIA therefore had ninety days to perform a review of the denial.<sup>654</sup> The BIA also agreed to assist in ascertaining a Delaware total service number. Tribal attorney Gina Carrigan contacted and then met with Secretary of Indian Affairs Kevin Gover to work out funding for this service number.<sup>655</sup> A disturbing side note to the Delawares, was a complaint that Delaware members were personally denied services at the Cherokee run Indian Health Services (IHS) in Claremore, as well as for other services that required a person to be a member of a federally recognized tribe. Leaders discussed several complaints at the Tribal Council meeting in January.<sup>656</sup>

In 2001 the Delaware position was declining fast. Their eligibility under New Tribes had run its three year course and the question of where continued funding would be found overwhelmed the Delawares. The BIA placed great pressure on the Delawares to address the dual enrollment problem and they threatened to discontinue services without assurance that Delawares being funded with the Delaware Tribe were not also

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"Trust Board and Tribal Council Minutes," January 17, 2000, in *Delaware Indian News* (Bartlesville, OK), April 2000.

<sup>652</sup> "Tribal Council," January 17, 2000.

<sup>653</sup> Ibid.

<sup>654</sup> Ibid.

<sup>655</sup> "Tribal Council," January 17, 2000. "Trust Board and Tribal Council Minutes," April 24, 2000, in *Delaware Indian News* (Bartlesville, OK), July 2000.

<sup>656</sup> "Tribal Council," January 17, 2000.

being serviced by the Cherokee Nation. The denial of the 638 Contracts had turned into a moratorium on the Delawares' funding.<sup>657</sup>

The *Bartlesville Examiner Enterprise* gave a lengthy report on the issue explaining that after the two tribes failed to reach a compromise on their own, the D.C. Court of Appeals would hear the case. Eventually, the D.C. circuit disclaimed jurisdiction, sending the case back to Tulsa.<sup>658</sup> According to the report, from the Cherokees' perspective, the case was mainly about protecting the Cherokees' jurisdiction and land base. To Delaware Chief Ketchum, however, the case was about federal recognition, stating: "What we really have here is the leadership of one tribe attempting, with the help of the courts, to annihilate an entire race."<sup>659</sup> His statement evoked comparison to a holocaust, and alluded to the history of the Delawares and their long, tangled, and unhappy relationship to the Cherokee Nation. The issue boiled down to basic human rights and Indian civil liberties. The termination of the numerous Indian tribes in the 1950s resulted in Senate Select Hearings in the 1970s. The findings from the termination hearings indicated that by abandoning their unique involvement with the native peoples, the U.S. had violated the civil rights of the Indian peoples, and Ketchum knew his rights were being violated. In this light, Chief Ketchum's statement seems more understandable.

The Delawares faced a disabling problem when they placed the dual enrollment issue to a referendum vote on November 10, 2001 enabling the Tribe to provide non-duplicated services. The resultant vote fell way below the two-thirds majority needed to

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<sup>657</sup> Kelli Williams, "Tribe Tangle Lingers In Courts" *Bartlesville Examiner-Enterprise*, June 7, 2001.

<sup>658</sup> Ibid.

<sup>659</sup> Ibid.

pass.<sup>660</sup> Tribal leaders Chief Ketchum and Councilwoman Sally Farley both blamed the lack of support to misinformation that the Cherokee Nation had provided Delaware members.<sup>661</sup> Anthropologist Brice Obermeyer explained that the Cherokees had distributed flyers claiming that if Delawares were to un-enroll with the Cherokee Nation, they would not be allowed to re-enroll with the Cherokees should the Delawares eventually lose their federal recognition.<sup>662</sup> This was too much to bear for the impoverished areas of Nowata and Chelsea in particular who heavily depended on services, and they voted not to pass the referendum out of fear of losing their safety net.

All the while, the Cherokee Nation litigation continued. On January 25, 2002, the Delawares' "oral report" was scheduled for *Cherokee Nation of Oklahoma v. Norton*.<sup>663</sup> In July, Northern District Judge Sven Holmes gave a "partial order in favor of the Department of Interior Assistant Secretary Ada Deer's decision in 1996 to restore federal recognition to the Delaware Tribe" but further briefings were necessary.<sup>664</sup> Oral arguments had to be rescheduled to November and the Cherokees' brief on the issue was, according to the newly married Delaware attorney Gina Carrigan-St. Clair, a serious setback.<sup>665</sup> Oral arguments were again pushed back for an unknown period of wait. Finally, in December, Judge Holmes upheld the Department of Interior, BIA decision to

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<sup>660</sup> "Delaware Referendum Leaves Tribe Undecided On Roll," *Native American Times*, November 15, 2001.

<sup>661</sup> Ibid.

<sup>662</sup> Brice Obermeyer, "Delaware Identity in a Cherokee Nation: An Ethnography of Power" (PhD diss., University of Oklahoma, 2003), 293.

<sup>663</sup> "Tribal Council and Trust Board Minutes," January 21, 2002, in *Delaware Indian News* (Bartlesville, OK), April 2002.

<sup>664</sup> "Judge Supports 1996 Decision In Favor of Delaware Tribe," *Bartlesville Examiner-Enterprise*, July 29, 2002.

<sup>665</sup> "Tribal Council and Trust Board Minutes," September 15, 2003, in *Delaware Indian News* (Bartlesville, OK), January 2004.

“restore federal recognition to the Delaware Tribe.”<sup>666</sup> Moreover, he ruled that the BIA had erred in the first place by revoking the Delawares’ recognition in 1979.<sup>667</sup> In response the Cherokee Nation filed for appeal, stating to the *Bartlesville Examiner Enterprise*:

The Cherokee Nation is involved in this legal battle to protect our land and our sovereignty... We will resist anyone who tries to take away the rights of Cherokee people and the Cherokee Nation, whether it is an individual, a state, the federal government or any other group of people.<sup>668</sup>

In November 2002, the Delawares elected as Chief, Joe Brooks, a Viet Nam veteran and local smoke shop owner. Brooks was well known throughout Oklahoma tribes as a 1970s activist for the tribal tobacco tax.<sup>669</sup> In his message to the Delawares, he addressed the BIA’s denial of the Delawares’ request for the 638 Contracts in 2002. The BIA had reviewed the Area Director’s decision on the denial of 638 Contracts and upheld the decision. However, in 2003, the Delaware Tribe had found a way to “sufficiently protect against double dipping by prohibiting dual enrollment” and the BIA finally approved all of the 638 Contract proposals.<sup>670</sup> The Delaware Tribe by this time had developed a number of major services that included an Elder Nutrition, Environmental

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<sup>666</sup> “Delaware Tribal Recognition Upheld,” *Bartlesville Examiner-Enterprise*, December 29, 2002.

<sup>667</sup> *Ibid.*

<sup>668</sup> *Ibid.*

<sup>669</sup> “Brooks Defeats Ketchum for Delaware Chief,” *Bartlesville Examiner-Enterprise*, November 5, 2002. “New Chief, Tribal Council Members and Judges Elected,” *Delaware Indian News* (Bartlesville, OK), January 2003.

<sup>670</sup> “A Tribal Update from Chief Joe Brooks” and “Tribal Council and Trust Board,” August 19, 2002, in *Delaware Indian News* (Bartlesville, OK), January 2003.

Program and a fully designed Wellness Center along with an IHS 638 Contract for \$780,196. They even developed an unprecedented Lenape Legal Aid department.<sup>671</sup>

In May the Delawares dedicated their Elder Housing edition of three duplex units from the Native American Housing Assistance Self-Determination Act (NAHASDA) funding among several other smaller programs.<sup>672</sup> At the heart of tribal priorities, the Delawares aspired to provide for their Elders and children. These duplex units were a milestone in the Tribe's capacity to alleviate poverty among Delaware Elders. Located within a short walking distance to the Community Center, Delaware Elders had easy access to the Title VI meals, and the weekly community activities. Immediately next door, the Health and Wellness Center provided easy access to fitness equipment and more importantly, a health clinic. In 2004, the Delaware Tribe received funding for its last building as a federally recognized tribe, a Resource and Education Center.<sup>673</sup> The Resource and Education Center housed the child care resources, children's developmental tools, family resources, and job training.

In early 2003, the Cherokees sent a letter proposing to settle with the Delawares. The Delawares flatly rejected it as tribal leaders asserted that the offer barely recognized the Delawares' sovereignty. Chief Brooks stated the Cherokees proposition was "no more than a restatement of its original complaint which was completely rejected by the

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<sup>671</sup> "2002-Delaware Building For Tomorrow," *Delaware Indian News* (Bartlesville, OK) January 2002. "Delaware Title VI Elder Nutrition Program Opens," *Delaware Indian News* (Bartlesville, OK), April 2002. "Environment Programs Report," *Delaware Indian News* (Bartlesville, OK), January 2003. "Tribal Council and Trust Board" (August 19, 2002), *Delaware Indian News* (Bartlesville, OK), January 2003. "Delaware Health Care Services Announced and Delaware Tribe Environmental Program Highlights," *Delaware Indian News* (Bartlesville, OK), July 2003. "Delaware Health Center Celebrates Opening," *Delaware Indian News* (Bartlesville, OK), October 2003. "Tribal Council and Trust Board Minutes," September 17, 2001, in *Delaware Indian News* (Bartlesville, OK), January 2002. "Delaware To Break Ground On Health and Wellness Center," *Bartlesville Examiner-Enterprise*, April 24, 2002.

<sup>672</sup> "Delaware Elder Housing Complex Dedicated," *Delaware Indian News* (Bartlesville, OK), July 2003.

<sup>673</sup> "Tribe Receives Funding for a Resource and Education Center," *Delaware Indian News* (Bartlesville, OK), April 2004.

District Court at trial.”<sup>674</sup> The Cherokees, however, placed great pressure on the BIA, lobbying Congress against 638 funding for the Delawares.<sup>675</sup>

What the Delaware tribal members and the Tribal Council failed to notice in 2004, was that the Cherokee Nation’s appeal had reached the Tenth Circuit.<sup>676</sup> The question before the court was whether the DOI had erred in their “extension” of federal recognition to the Delaware Tribe, not necessarily whether the Delawares were in actuality a separate federally recognized tribe.<sup>677</sup> However, this ruling precluded any further court action about their standing. The hearing questioned whether the DOI “violated” the *Administrative Procedures Act (APA)* that “requires an agency to articulate a satisfactory explanation for its action”<sup>678</sup> In 1996, the DOI justified their conclusion that the Delawares had elected the “preservation” option of its tribal organization through Article 15 and thus made two payments into the Cherokee Nation (“incorporation” into the Cherokee Nation required only one payment). The DOI therefore issued the opinion that the Delawares had “preserved their tribal identity” in 1867 and thereafter. To the contrary, even though the Tenth Circuit judges admitted that they took a very narrow interpretation, using only the Cherokee Treaty and the 1867 Articles of Agreement, the judges concluded, while “not unsympathetic to the Delawares’ cause” the DOI had used “procedures heretofore unknown to the law,” such as “retract and declare or purportedly to re-recognize the Delaware.”<sup>679</sup> In other words, neither the BIA nor the DOI had legal procedures for the actions it had taken regarding the Delawares. This case was not the

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<sup>674</sup> “A Tribal Update From Chief Joe Brooks,” *Delaware Indian News* (Bartlesville, OK), July 2003. “Trust Board and Tribal Council Minutes,” June 16, 2006, in *Delaware Indian News* (Bartlesville, OK), October 2003.

<sup>675</sup> “Trust Board and Tribal Council,” June 16, 2006.

<sup>676</sup> “A Tribal Update from Chief Joe Brooks,” *Delaware Indian News* (Bartlesville, OK), July 2004.

<sup>677</sup> *Cherokee v. Norton*.

<sup>678</sup> *Administrative Procedure Act*, 5 U.S.C. 701-706. *Babbitt. Cherokee v. Norton*.

<sup>679</sup> *Ibid*.

means to justify Delawares' separate legal recognition, according to the judges, but this ended the BIA's separate recognition of the Delawares.<sup>680</sup> This ruling about the APA only applied to the latter decision in 1996, however, and no one since has charged the BIA with utilizing an unknown procedure in 1979 to declare that the Delawares were not a separate tribe. Therefore, the BIA had no real system to terminate its relationship with the Delawares to begin with nor did it have procedures to deal with a tribe within a tribe; yet the Delawares did not appear to press this issue in the hearings and it may be a question left unanswered.

The Cherokee Nation won their appeal on November 16, 2004, and the Delawares lost their federal recognition.<sup>681</sup> Each of the legal decisions beg the question: what about the Delaware people? They have been tossed about in a highly bureaucratic process that only recently has even begun to implement a procedure that "recognizes" or "acknowledges" a tribal nation. The tribal membership was shocked by the ruling that rescinded their federal status. The Delawares' successes in eight years overshadowed the conflict with the Cherokee Nation and as a result many Delawares were secure in their federal recognition. However, even more distressing, Delawares depended upon federal funding for their tribal operations and member services. The tribal members consequently lost everything but their trust monies.

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<sup>680</sup> Ibid.

<sup>681</sup> *Cherokee Nation of Oklahoma v. Norton and Delaware Tribe of Indians*, (Tenth Cir. February 16, 2005). Appeal from the United States District Court for the Northern District of Oklahoma, (D.D. No. 98-CV-903-H) 241 F. Supp. 2d 1368, (November, 16 2004). "Delaware Tribe Recognition Rejected," *Bartlesville Examiner-Enterprise*, November 17, 2004.



The Delawares decided to appeal to the U.S. Supreme Court.<sup>682</sup> In retrospect, although their arguments sounded more like emotional outbursts than legal briefs, it also seems likely that any argument would have been dismissed. The Delawares argued that the decision to “void the direct relations between the Executive branch and the chosen tribal government of over 7,000 Native Americans” necessitated a review of the decision.<sup>683</sup> The Delawares further argued that contrary to acts within the last one hundred years and the recent decision in *Weeks*, the reliance on cases one-hundred years ago was erroneous. The full administrative record should have been admissible considering that it was “contrary to the Tenth Circuit’s holding.”<sup>684</sup> As a point of reference, the Delawares also made the argument that for the Delawares simply to seek membership in the Cherokee Nation for their services was “painfully similar to the tactic which the record reflects was employed against the Delawares in 1867, when the local Indian agent simply withheld annuity payments until tribal members agreed to relocate to Cherokees’ territory.”<sup>685</sup>

The Cherokee Nation argued that only the documents should be considered and the record clearly reflected that the Delawares’ incorporated into the Cherokee Nation.<sup>686</sup> The Cherokee Nation also stated:

Requiring those people to remain Cherokee citizens if they wish to retain their tribal affiliation and associated services and protections hardly constitutes a “disastrous consequence” [] (Pet.21) warranting review in this Court.<sup>687</sup>

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<sup>682</sup> “Recognition Rejected.” *Delaware Tribe of Indians v. Cherokee Nation of Oklahoma*, No. 04-1368, On Petition for a Writ of Certiorari to the United States Supreme Court of Appeals for the Tenth Circuit. “Tribal Council Minutes,” June 20, 2005, in *Delaware Indian News* (Bartlesville, OK), October 2005.

<sup>683</sup> *Delaware Tribe v. Cherokee Nation*.

<sup>684</sup> *Ibid.*

<sup>685</sup> *Ibid.*

<sup>686</sup> *Delaware Tribe v. Cherokee Nation*, “Brief for the Respondent Cherokee Nation in Opposition,” Supreme Court of the United States, No. 04-1368.

In other words, the fault lay with the Department of the Interior for having granted contractual services to the Delawares in the first place; moreover, the “petitioner... was on full notice as of the D.C. Circuit’s July 1997 published decision that its newly-minted ‘recognition’ was on thin ice,” meaning that the Delawares should have been prepared for the ruling should their services be terminated.

In the meantime the Cherokees sent the Delawares an offer to settle the dispute that the Delawares again flatly declined.<sup>688</sup> On February 16, 2005, the Delawares’ petition for rehearing was denied, albeit modified in that the court’s conclusion “gave no convincing alternative explanation for the second payment,” and that even if the Delawares had relinquished their federal recognition in the 1867 Articles of Agreement, that “later administrative and congressional actions” may indeed indicate a “restoration theory.”<sup>689</sup>

The ruling caused significant ramifications for the Delawares. First, Chief Joe Brooks was recalled in late November, 2005.<sup>690</sup> Next, even though the Cherokee Nation sent another offer to settle with the Delawares in June, 2005, ninety-one percent (from eighty-six in total to seven) of the Delawares’ employees were laid off due to the loss of programming.<sup>691</sup> The Cherokee Nation assisted the Delawares in delaying their funding

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<sup>687</sup> Ibid.

<sup>688</sup> “Tribal Council,” June 20, 2005.

<sup>689</sup> *Delaware Tribe v. Cherokee Nation of Oklahoma*, “Brief for the Federal Respondent in Opposition” Solicitor General, Department of Justice, (July 18, 2005).

<sup>690</sup> “Recall Election Call for Delaware Chief,” *Bartlesville Examiner-Enterprise*, August 5, 2005. Sam Lewis “A Lot to Deal With Already Coping With the Loss of Recognition, Delaware Tribe of Indians Must Now Find A New Leader,” *Oklahoma Indian Times*, November 15, 2005.

<sup>691</sup> “A Lot to Deal With.” “Delaware Tribe Loses Funding,” *Bartlesville Examiner-Enterprise*, March 25, 2005. “Cherokee Make Offer to Delaware,” *Bartlesville Examiner-Enterprise*, June 23, 2005.

cutoff deadlines and effectively helped to extend BIA services for thirty days.<sup>692</sup> The Cherokees also pointed the blame on the federal government in defending their actions:

This all could have been avoided if the BIA and the federal government would have followed their own laws by not moving forward with legal recognition while there was a legal cloud surrounding the recognition...[T]he federal government has put the Delaware in the situation they are in now. It's not the Delaware's fault, it's not the Cherokee's fault, but the fault of the federal government.<sup>693</sup>

In October, the U.S. Supreme Court “declined to hear an appeal by the Delaware Tribe of Indians.” This was not the finale though. The judges “left open the possibility that the Department could determine that the Delaware” were restored either by Congress or administratively to federal acknowledgement.<sup>694</sup>

While not all of the consequences left Delawares homeless, the human rights impact to tribal members was profound, especially in the central areas surrounding the headquarters. Tribal members depended upon the Delaware Tribe, not the Cherokee Nation, to provide needed services such as child care, health care, and elders’ nutrition. The ruling translated into a poverty comprised of job loss, lack of child care, lack of accessible healthcare, and lack of care for elders.

The initial step toward impoverishment took place with the transfer of the Delaware Child Care to the Washington County Child Care Foundation under the guidelines of the Cherokee Nation.<sup>695</sup> The problem with this change was that under the Delawares, the Child Care program had invoked their sovereign status allowing them to

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<sup>692</sup> “Loses Funding.”

<sup>693</sup> Ibid.

<sup>694</sup> Chris Casteel, “Court Refuses to Hear Tribe’s Appeal,” *The Oklahoman*, October 4, 2005.

<sup>695</sup> “Tribal Council Minutes,” May 18 and August 15, 2005, in *Delaware Indian News* (Bartlesville, OK), October 2005.

assist all tribal members in need of this service, especially those members pursuing graduate degrees and specialized training. The Cherokee Nation, however, simply adopted state guidelines with its childcare system which did not allow for graduate students to access child care services. Thus, Delawares as Indians could not necessarily access the same Indian services under the Cherokee Nation, as the child care issue exemplifies.

The first of the Delawares' major cut offs was the Wellness Center, for which funding ended on December 31, 2005.<sup>696</sup> Another highly visible program that was terminated was the Elders Nutrition. Notwithstanding the odds against them, the cooks and the Elders refused to give up the program. Stubbornly, the Delaware Elders returned every week day to a midday meal. The cooks donated their time for close to a year and a half before the Tribal Council secured another source of funding to pay them.<sup>697</sup> Since then, the local community, especially Wal-Mart, donated food and money to the Delaware Elders.<sup>698</sup>

Other funding ran out, such as their Native American Graves and Repatriation Act (NAGPRA) grant. The Delawares' funding was not renewed. Each program was thus painfully withdrawn until the Delawares could not maintain their offices any further. The

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<sup>696</sup> "Cherokee Makes Offer." "Tribal Council Minutes," August 15, 2005, in *Delaware Indian News* (Bartlesville, OK), October 2005. "Delaware Tribe Health Center to Close Saturday," *Bartlesville Examiner-Enterprise*, December 30, 2005. Judy Gibbs Robinson, "Delaware Tribe Closes Its Offices After Loss In Court," *The Oklahoman*, December 11, 2005.

<sup>697</sup> "Closes Its Offices." "Donation Keeps Delaware Nutrition Program Alive For the Time Being," *Bartlesville Examiner-Enterprise*, March 30, 2005.

<sup>698</sup> "Closes Its Offices." Unfortunately, the stress has weighed heavily on the two beloved Delaware Elders who served as cooks. In September 2007, Kay Anderson suffered two heart attacks in one week. Her son, Johnney Tucker, stated that his mother did not have easy access to the medicines that she needed to prevent the second heart attack; "medicine" he added, "that the Delaware Wellness Center could have gotten for her." Personal communication, September 20, 2007. The other cook, Elgia Bryant suffered an aneurism and stroke in November, 2007. She was disabled for several years and died in 2009. Local community members, such as James and Helen Rementer donated money to the program.

Delawares thus auctioned the NIPER building in 2006, moving to what was left of their administration and community service functions into the Wellness Center building on the eighty acres. Almost seven million dollars in federal funding was lost and Bartlesville's fourth largest employer disintegrated.<sup>699</sup> Finally, with the auction of the tribal headquarters the most visible remnant of the revitalized tribe slipped from Delaware hands.

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<sup>699</sup> "Closes Its Offices." *Bartlesville Area History: Bartlesville Indian Tribes*, <http://myweb.cableone.net/gmeador/bvhisgra.htm>, 2, accessed July 28, 2008.

## *Conclusion*

This study explores the conflict between the Delaware and the Cherokee nations that resulted in the Delaware Tribe's loss of federal recognition twice in the last forty years. This conflict arose because one-hundred and fifty years ago the U.S. placed the Delawares on Cherokee lands without clear understanding of the relationship and responsibilities of the two tribes. Consequently, the Delawares and Cherokees were pitted against each other giving rise to a long term divisive relationship. From the time the Delawares first reached the Cherokee Nation, each tribal government and individual members fought over land, oil and mineral rights. They continue to struggle for tribal resources and services today because of conflicting interpretations of the agreements and treaties removing the Delawares to the Cherokee Nation. Moreover, the divisive Cherokee-Delaware relationship resulted in U.S. violations of the Indian civil rights of the Delaware tribal members each time the BIA terminated its relationship with the Delawares.

In exploring this difficult relationship, particularly in the post Indian Self-Determination Era, the study reveals that the Cherokee Nation repeatedly used the 1867 Articles of Agreement to argue that the Delawares should not be federally recognized. As a result, the Delawares lost their federal acknowledgement when the BIA refused to place them on the official list of Indian Tribes eligible to receive services in 1979. The Delawares fought to prove a direct government to government relationship and that the BIA had made a mistake. The Delawares prevailed in 1996 when they were placed on

the list with all the other recognized tribes. However, the Cherokees continued to pursue their claims and the Delawares were again terminated in 2004.

Each of the documents that prepared the Delawares for removal to the Cherokee Nation (the Delaware Treaty with the U.S., the Cherokee Treaty with the U.S., the December 9 Agreement and the 1867 Articles of Agreement between the two nations), contain central legal points that U.S. government employed and U.S. attorneys argued at the highest levels of the U.S. government and at the Supreme Court, either justifying or denying Delawares federal acknowledgement. The U.S. has a “trust doctrine” with the Indian Tribes established through centuries of law. Yet, even if the Delawares were a tribe within a tribe, the Cherokee Nation did not establish a “trust” for or of the Delawares. Perhaps this is what the 1867 Articles of Agreement were supposed to be, the trust doctrine between the Cherokees and the Delawares. But if that had been the case, then there were not any provisions outlining just how this relationship was to work. After a century and a half in dispute, the 1867 Articles of Agreement were insufficient to define how the Delawares were a tribe within the Cherokee Nation.

As the limits of the Delawares’ federal recognition were tested, Delawares experienced the loss and gain of their tribal nation’s capacity to provide for them—their nation’s ability, in other words, to exercise its sovereignty. Cherokee sovereignty was also on trial, not just the Delawares’ federal recognition, as the two tribal nations’ battles played out in the federal bureaucracy and in the court room. What occurred with the Delawares in their attempts to regain their recognition after the 2004 federal court ruling is a fitting conclusion to this study and explains the main reasons why the Delawares would not compromise and why the Cherokees steadfastly defended their jurisdiction.

There were several consequences for the Delawares' 2004 loss of independent recognition and altering the member's federal identity was at the forefront. The BIA instructed the Delawares to work with the Cherokee Nation to arrange formal procedures to work out their differences. Individual Delawares not yet enrolled with the Cherokee Nation who wished to receive services as a Native American would have to enroll as Cherokee. The Cherokee Nation's budget increased with the number of Delawares added to their tribal rolls. Delawares could run for Cherokee office (as Cherokee citizens) even though the possibility of winning a majority vote against a Cherokee candidate was highly unlikely. Delawares also applied for services as independent Cherokee citizens (albeit with no voice in their government as a tribe within a tribe). As independent Cherokee citizens, then, the portion of services that Delawares would receive was stacked against the full head count of all the Cherokee Nation.

As in 1867, in 2005 approximately ten percent of tribal members publicly objected to negotiating a new agreement with the Cherokee Nation to regain their federal acknowledgement. However, as a result of the federal court ruling and the Supreme Court's denial of the Delawares' petition for certiorari, October 3, 2005, this is exactly what the BIA and Congress pushed the Delawares to do— pursue an agreement with the Cherokee Nation. The first hints of negotiations were seen in the October 2005 issue of the *Delaware Indian News* (Bartlesville, OK).<sup>700</sup> In the June 2005 Tribal Council minutes, Melanie Knight, Self-Governance Director, Cherokee Nation faxed a proposed agreement with the Delawares outlining how the Cherokees perceived the Delawares in the Cherokee Nation. The Delaware Tribal Council tabled discussing the proposal.

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<sup>700</sup> "Tribal Council Minutes" in *Delaware Indian News* (Bartlesville OK), October 2005.



A year later, Delaware-Cherokee negotiations were fully in process. In 2002, the Delaware Tribe had filed for \$1.8 million in damages for mismanaged and undistributed trust funds resulting from the Congressional acts of 1968, 1972 and 1980.<sup>701</sup> Tom Peckham from Nordhaus, Taradash & Bladh law firm was hired to handle the case, which depended upon whether the Delawares could receive compensation as federally acknowledged tribal members. Peckham wrote an article for the Delaware Indian News, “Sovereignty Now or Sovereignty Later—Federal Recognition Legislation Proposed.”<sup>702</sup> In his article, he set forth options for regaining federal recognition: Option 1, seek legislation from Congress; Option 2, Litigation; and Option 3, Utilizing the Department of Interior’s Federal Acknowledgement Process (FAP).<sup>703</sup> The article explained that in a recent meeting with the Cherokees, he and Chief Douglas rejected the Cherokees’ first offer. Peckham then drafted his own proposal and both parties engaged in “intensive negotiations.”<sup>704</sup> The article provided some detail about the proposed bill, i.e. there would supposedly be no limit on the Delawares’ separate recognition, but the tribal exercise of its recognition would be limited within the Cherokees’ fourteen counties.<sup>705</sup>

Immediately following Peckham’s article in the same newspaper, former Chief Dee Ketchum expressed his discontent with Delaware-Cherokee negotiations. He said that the “present plan is to sell out.”<sup>706</sup> He thought that if the current negotiation effort succeeded:

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<sup>701</sup> “A Tribal Update from Chief Joe Brooks,” *Delaware Indian News* (Bartlesville, OK), January 2004.

<sup>702</sup> “Sovereignty Now or Sovereignty Later—Federal Recognition Legislation Proposed,” *Delaware Indian News* (Bartlesville, OK), September 2006.

<sup>703</sup> Ibid.

<sup>704</sup> Ibid.

<sup>705</sup> Ibid.

<sup>706</sup> “Opinion, Section,” *Delaware Indian News* (Bartlesville, OK), September 2006, 25.

In the future the Delaware identity will go the way of many tribes that are now extinct. Our future generations will forget how proud and respected the Delaware were and are. Right now, the Delaware Tribe could be writing grants, doing economic development and be creative about rising up from the bad, wrongful hand we have been dealt. Our greatest need is to find common ground that we can all agree.<sup>707</sup>

Many Delawares agreed with Ketchum but the Cherokee Nation unanimously supported the Delawares' separate federal recognition based on Peckham's MOA.<sup>708</sup>

Generally though, the opinions within the Delaware Tribe about how to re-attain recognition and the weight from the last thirty years of appeals to the DOI and court cases fractured the Delawares' local base and non-resident tribal members. The most apparent divisions were between the tribal leadership combined with absentee voters versus many of the local Delaware. The *Delaware Indian News* is sent out to all 11,000 members across the nation and in any other countries. For some of them, the *Delaware Indian News* is their only connection to the ancestral heritage. Regardless of the ways non-residents relate to their heritage, each of them holds the power of one vote and combined they usually determine the elections. On the other hand, many of the local Delawares attend the General Council. General Council is an annual meeting composed of the general membership of the tribe. Members can pass resolutions from the floor, which direct the leadership of the tribe to pursue. General Council holds significant power in the governing structure and its support was vital to the way that federal recognition would be re-attained.

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<sup>707</sup> Ibid.

<sup>708</sup> "Delaware Chief Retained," *Delaware Indian News* (Bartlesville, OK), January 2007, 7.

After the Delawares' loss in 2004, some Delawares attempted to stay in the middle asking both sides of the issue to yield to a voice of reason. In the October, 2006 issue of the Delaware Indian News, author Deborah Nichols summarized what occurred in 1866 and 1867 to forge the 1867 Articles of Agreement. Her article connects the past pressure to sign an agreement with the Cherokees and the present circumstances also pressing for the Delawares to sign an agreement.<sup>709</sup> Furthering her parallel, she recommended that all points of concern be addressed in the negotiations. She urged that each Delaware member weigh the consequences of the negotiations and a bill that might limit Delaware sovereignty, but that would also allow Delawares independence from the Cherokee Nation.<sup>710</sup> Her opinion was undisclosed, although her point was clear that the same as in 1867, the federal government was pushing for the Delawares to yet again make an agreement with the Cherokee Nation.

When a tribal nation is terminated the internal politics can become almost as disabling as the termination. At a General Council meeting in 2006 a blow up occurred that illustrates this point. Chief Jerry Douglas subsequently wrote that the November 4, 2006 General Council was "taken over" by "a local group of Delawares attempting to make a mockery of the government."<sup>711</sup> He continued, "years of inter-tribal confusion created by this same group of people climaxed by this year's General Council meeting

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<sup>709</sup> "The Rest of the Story," *Delaware Indian News* (Bartlesville, OK), October 2006. The Commissioner of Indian Affairs and the Kansas government wanted the Kansas Indians to relocate to the Cherokee Nation. She uncovered that Thomas Ewing, a railroad speculator and promoter, was the Cherokee Nation attorney who had stood by the Cherokee during the 1867 Articles of Agreement. She states, "The Cherokee had one of the most ambitious and ruthless men in the country as their attorney and he wanted the Delaware out of Kansas." Thus, the motivation in 1867 to sign with the Cherokees was due to money.

<sup>710</sup> Ibid.

<sup>711</sup> "Chief Jerry Douglas Shares His Concerns and Tribal Vision With The Delaware People," *Delaware Indian News* (Bartlesville, OK), January 2007.

take over, reveals the need for major governmental reform.”<sup>712</sup> Douglas’ solution was to stifle the local group, stating “it was time, once and for all, to stop the disruptive sideshows.”<sup>713</sup> Vicki Sousa a Delaware Tribal Attorney, followed up Chief Douglas’ article by calling for an emergency injunction against any of those who took over the meeting.<sup>714</sup> The posted letters to the editor were even more contemptuous of the “Washington County Delawares.”<sup>715</sup> Outside members accused the local Delawares of acting as if they were the real Delawares (as opposed to the absentee members).

While some letter writers felt that the local Delawares were against the non-resident tribal members, they failed to recognize that the local tribal members were the ones most affected when they lost tribal services. For some of the Elders, services were wiped out twice in one lifetime. The kinds of services they lost were a matter of life and death—meals on a daily basis, access to healthcare, and emergency housing. This became particularly poignant when the Delaware Elders Committee passed a resolution rejecting the proposed MOA in January, 2007.<sup>716</sup> The Elders were suspicious of another agreement that would make them any more vulnerable to the Cherokee Nation than they already were.

Actions of the former Chiefs were called into question. Chief Douglas indicted former Chiefs Ketchum and Zunigha for their lack of action during their terms in office, stating “they could have and should have taken care of our Federal Recognition but chose not to. Now they are sabotaging our current Chief and administration for working to

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<sup>712</sup> Ibid.

<sup>713</sup> Ibid.

<sup>714</sup> Ibid.

<sup>715</sup> Ibid.

<sup>716</sup> “Federal Recognition Now..... Much Later or Never!” *Delaware Indian News* (Bartlesville, OK), October 2007.

complete the job they should have completed.”<sup>717</sup> His statement reflected the thought of many Delawares regardless of their support of the MOA. They wondered, could the Delawares’ have prevented the 2004 Tenth Circuit ruling by solidifying the BIA’s 1996 restoration through congressional legislation?

Eventually, Peckham’s proposed memorandum of agreement (MOA) made its way to Congress for approval. The Oklahoma congressional delegation asked the Delawares and the Cherokees to agree on draft legislation (essentially the MOA). Representative John Sullivan worked with both tribal nations to that end.<sup>718</sup> In explaining this to the tribal members, Peckham emphasized that from the onset, getting any concessions for the Delawares was difficult because the Delawares’ “negotiating power was not equal.”<sup>719</sup> The bill did not make it through the 109<sup>th</sup> Congress. In the mean time, the BIA Solicitor’s Office became suspicious of the bill. Peckham vaguely hinted at a few of these concerns in an article. Jurisdictional issues were one BIA worry. The bureau also wondered if Congress had the “constitutional authority to control how state Indian programs spend their money.”<sup>720</sup> Lastly, Peckham warned that the MOA continued to change as it worked towards passage.<sup>721</sup> In October 2007, Sullivan was still expecting to introduce the MOA.

While the bill was stalled, Peckham elaborated on another possibility to re-attain federal recognition, the Department of Interior and the Oklahoma Indian Welfare Act (OIWA), 1936. Although this was still conceptual and ran the risk of another Cherokee

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<sup>717</sup> Ibid.

<sup>718</sup> “Recognition Sought for Delaware Tribe,” *Delaware Indian News* (Bartlesville, OK), January 2007.

<sup>719</sup> “Federal Recognition; Update on Legislation, Congress, Department of Interior, Memorandum of Agreement, Rumors,” *Delaware Indian News* (Bartlesville, OK), January 2007.

<sup>720</sup> Ibid.

<sup>721</sup> Ibid.

law suit, the plan was for the Delawares, who had been approved in 1940-1941, to apply for recognition under OIWA provisions.<sup>722</sup> This idea grew in the BIA and Peckham began to pursue this possibility. He reported in August, 2008, that the Department of Interior had a “renewed interest” in using this method to recognize the Delawares. The last tribal nation to be recognized under OIWA, according to Peckham’s report, was the Creek Nation in 1978. All other tribal nations who could have pursued recognition through OIWA, with the exception of the Cherokee Nation, had already done so. With a straightforward process, Delaware members would be able to register to vote in a special Secretarial election to ratify the reorganization and constitution. There was still a “but.” The BIA was sorting through the legal and political implications given the 1979 BIA actions and the proposed congressional legislation. Peckham urged that legislation was still imperative notwithstanding this slight possibility of OIWA recognition.<sup>723</sup> This solution had been available for years yet somehow was not pursued. Perhaps the issue boils down to the BIA administrators’ determination to finally repair the damage that haphazard policies had caused the Delawares.

In the meantime the MOA legislation moved forward. On August 1, 2008, Congressman John Sullivan introduced the bill. In the *Delaware Indian News*, Sullivan stated that the legislation also “incorporates mechanisms for the Delaware Tribe and the Cherokee Nation to resolve their economic and jurisdictional issues.”<sup>724</sup> Sullivan especially thanked Chief Chad Smith and the Cherokee Nation Tribal Council for

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<sup>722</sup> “Federal Recognition Update,” *Delaware Indian News* (Bartlesville, OK), October 2007.”

<sup>723</sup> Ibid.

<sup>724</sup> “Sullivan Introduces Legislation to Address Delaware Tribe’s Federal Status,” *Delaware Indian News* (Bartlesville, OK), August 2008.

assisting in drafting the legislation. The bill died in committee for lack of support, which is not unusual for tribal organizations seeking federal recognition.

The Delawares' recognition finally came by way of OIWA. On Tuesday, August 11, 2009 the Delaware Tribe of Indians was identified in the List of Indian Entities Eligible to Receive Services from the United States. This was part of two official steps of the OIWA; the first was that the BIA Regional Director certified the results of the Special Election approving the Delawares 1982 Constitution and separate federal recognition. Peckham assured the Delawares that the ordeal was finally over and that the BIA could not repeat what it did in 1979 due to laws passed in the 1990s.<sup>725</sup> Known as "The List Act," from 1994, only an act of Congress can terminate an Indian nation that is on the list of federally recognized tribes.<sup>726</sup> After years of anger and frustration, to many Delawares the win was bittersweet.

Once again the Delaware nation has the legal right to determine its own future. This victory came only after decades of struggle with the BIA, the more powerful Cherokee Nation, a host of court battles, and legislative initiatives. Without determination of the Delaware people, self-determination for their tribe could not have been established. For the time-being the Delawares hold the future in their own hands. But history shows that they will likely have to defend their rights again, whether the threat comes from the courts, the BIA, or another Indian tribe. The Delaware experience illustrates the legal and administrative difficulties of maintaining the rights of small tribal nations. Thus, their history is one example of Indians' continuing battle for sovereignty, self-determination, and identity.

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<sup>725</sup> "From the Desk of Thomas J. Peckham, Attorney," *Delaware Indian News* (Bartlesville, OK), October, 2009.

<sup>726</sup> "The List Act," short for Federally Recognized Indian List Act of 1994, P.L. 103-454.

List of Acronyms:

- (ACF) Administration for Children and Families
- (AFA) Annual Funding Agreement
- (AIO) Americans for Indian Opportunity
- (ANA) Administration for Native Americans
- (AD) Adopted Delaware
- (BAR) Branch of Acknowledgement and Recognition in the Bureau of Indian Affairs
- (BIA) Bureau of Indian Affairs
- (CDIB) Certificate Degree of Indian Blood
- (CETA) Comprehensive Employment Training Act
- (CFR) Code of Federal Regulations
- (CHR) Community Health Representative
- (CNO) Cherokee Nation of Oklahoma
- (Ct. Cl.) Court of Claims
- (DHHS) Department of Health and Human Services
- (DOI) Department of Interior
- (DOL) Department of Labor
- (DW-DTI-8) Dorsey and Whitney Files, Delaware Tribe of Indians, Box 8
- (FAP) Federal Acknowledgement Procedure
- (FOIA) Freedom of Information Act
- (HIP) Home Improvement Program
- (HUD) Housing and Urban Development
- (ICC) Indian Claims Commission
- (ICDBG) Indian Community Development Block Grant
- (IHS) Indian Health Services



(JTPA) Job Training and Professional Assistance Act

(MOA) Memorandum of Agreement

(NAHASDA) Native American Housing Assistance Self-Determination Act

(NCAI) National Congress of American Indians

(NIPER) National Institute of Petroleum Energy Research

(OIWA) Oklahoma Indian Welfare Act

(PL) Public Law

(TGDG) Tribal Government Development

(UKB) United Keetoowah Band

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