

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

MUSCOGEE (CREEK) NATION LEGAL HISTORY:

150 YEARS OF WRITTEN CONSTITUTIONS AND COURTS

GREGORY BIGLER

JUDGE DISTRICT COURT

TRIBAL TOWNS WERE THE ORIGINAL GOVERNMENTAL ENTITIES OF THE MUSCOGEE CONFEDERACY, NOW THE MUSCOGEE (CREEK) NATION. THEIR DIRECT LINEAL DESCENDANTS ARE THE REMAINING 13 OR SO ACTIVE TRIBAL TOWNS, NOW OFTEN REFERRED TO AS CEREMONIAL GROUNDS.

1789 - 1817

- BY TIME OF US CONSTITUTION ADOPTION IN 1789 MUSCOGEE HAD A FAIRLY STRONG NATIONAL GOVERNMENT FOR PURPOSES OF EXTERNAL RELATIONS WITH FOREIGN POWERS.
- LITTLE STUDY ON GOVERNMENTAL STRUCTURES AS OPPOSED TO MERE HISTORY OF MUSCOGEE'S EXTERNAL RELATIONS WITH EUROPEAN NATIONS.
- HAD LAWS AND DISPUTE RESOLUTION, AS DID ANY GOVERNMENT.
- CREEK CIVIL WAR DURING 1812 – 1814. BATTLE OF HORSESHOE BEND GREATLY REDUCED POWER OF CREEK CONFEDERACY.

LAWS OF THE CREEK NATION.

(LAWS OF MARCH 15TH, 1824TH A.D.)

- LAW 1ST: MURDER SHALL BE PUNISHED WITH DEATH THE PERSON WHO COMMITS THE ACT SHALL BE THE ONLY ONE PUNISH AND ONLY UPON GOOD PROOFS (1817)
- ALL TRIBES HAD:
 - OWN LAWS,
 - RULES OF CONDUCT
 - FORMS OF GOVERNANCE
 - CHANGED AND ADAPTED TO THE NEWLY ARRIVED IMMIGRANTS, AS ALL SOCIETIES DEAL WITH ISSUES.

REMOVAL: 1830'S

- FORCEABLY REMOVED WEST OF MISSISSIPPI.
- REBUILT OURSELVES IN INDIAN TERRITORY.
 - BUT, APPARENTLY DID NOT REGROUP IN ACTUAL TOWNS LIKE IN THE EAST.
- HARD TO COMPREHEND HOW TRULY DIFFICULT OR (PERHAPS) SELF-QUESTIONING, DESPAIRING, THOSE EVENTS MUST HAVE BEEN.
- MANAGED TO REBUILD AGAIN AFTER UPHEAVAL.

AMERICAN CIVIL WAR 1861-65

- CREEK NATION FOUGHT ON BOTH SIDES OF THE CIVIL WAR
- AGAIN WIDE SPREAD DESTRUCTION TO CREEK NATION
- UNITED STATES CHOSE TO REMEMBER ONLY THAT SOME FOUGHT FOR THE CONFEDERACY
- US AGAIN EXACTED PUNISHMENT UPON THE NATION.
- IN PARTIAL RESPONSE, THE CREEKS ADOPTED A WRITTEN FORM OF GOVERNANCE IN 1867.

*CONSTITUTION, CIVIL AND CRIMINAL CODE
OF THE MUSKOCHEE NATION.*

ADOPTED AT THE COUNCIL GROUND, MUSKOCHEE NATION,
OCTOBER 12, 1867.

- ARTICLE III

- SEC. 1. THE SUPREME LAW DEFINING POWER OF THIS NATION SHALL BE LOGED [SIC] IN A HIGH COURT, TO BE COMPOSED OF FIVE COMPETENT PERSONS, WHO SHALL BE CHOSEN BY THE NATIONAL COUNCIL FOR THE TERM OF FOUR YEARS.

- SEC. 2. THIS COURT SHALL MEET ON THE FIRST MONDAY IN OCTOBER OF EACH YEAR, AND SHALL HAVE POWER TO TRY ALL CASES WHERE THE ISSUE IS FOR MORE THAN ONE HUNDRED DOLLARS....

- ARTICLE V

- SEC. 1. THERE SHALL BE ONE JUDGE CHOSEN BY THE NATIONAL COUNCIL FOR THE TERM OF TWO YEARS IN EACH DISTRICT, WHO SHALL TRY ALL CASES IN HIS DISTRICT, CIVIL AND CRIMINAL, WHEN THE ISSUE DOES NOT EXCEED ONE HUNDRED DOLLARS.

1867 CONSTITUTION

- USED AS ILLUSTRATION OF ANGLICIZATION OF THE CREEK NATION, I.E., “FIVE CIVILIZED TRIBES”
- HOUSE OF KINGS & WARRIORS
 - DIVISION OF DUTIES
 - JUDICIARY – DISPUTE RESOLUTION
 - ALL CONCEPTS CONTAINED WITH MUSCOGEE TRADITIONAL TOWN STRUCTURES.
- THE NEW CONSTITUTION DID SET UP *A SEPARATE JUDICIARY.*

1867-1890

- AMERICAN THIRST FOR LAND DID NOT CEASE
- THE DRIVE TO GAIN THE NATION'S LAND WAS QUICKLY ON.
- THE GOAL WAS TO CUT UP THE NATION'S LAND BASE THROUGH ALLOTMENT PROCESS
- THEN SELL THE MASSIVE AMOUNTS OF REMAINING TO SETTLERS
- JUSTIFIED THROUGH "TEACHING INDIANS TO FARM" AND "INDIVIDUALISM"

A TRIAL AND EXECUTION AMONG THE CREEKS

ON THE NIGHT OF JAN. 1, 1896, AT A DANCE, TIMMIE JACK WHILST DRUNK KILLED JAMES BROWN (BOTH EUCHEES) WITH A KNIFE. BEING APPREHENDED HE WAS CHARGED AND TRIED AT ISPARHECHER COURT GROUND 4 MILES WEST OF BEGGS, FOR MURDER, IN THE OKMULGEE DISTRICT COURT THE FOLLOWING PROCEEDING BEING SHOWN BY THE RECORDS OF SAID COURT:

MUSKOGEE NATION

VS. } MURDER

TIMMIE JACK

CHARGED WITH KILLING ONE JAS. BROWN. THIS CRIME WAS COMMITTED ON THE NIGHT OF JANUARY 1ST, 1896 AGAINST THE PEACE AND DIGNITY OF THE SAID NATION.

CHRONICLES OF OKLAHOMA, VOL. 12, NO. 2. JUNE, 1934, P. 142

TRIAL OF TIMMIE JACK

THE JURY IN THIS CASE FAILED TO AGREE ON A VERDICT AND TURNED THE CASE BACK TO THE COURT FEBRY. 25TH, 1896. ON A SECOND TRIAL THE FOLLOWING PROCEEDINGS ARE SHOWN BY THE RECORD:

Pros. Witnesses:

James Brown
George Long
Daniel Bigpond
Karthlona
Thomas Brown
Stanwaitie Bighead
John Stilla

Pros. Atty and Assistants:

Thomas Grayson
Ben McIntosh
Sam J. Haynes
Jeffry Smith
R. R. Bruner
Jim Haynes

Dft. Witnesses

Sandy
Ello
Candy Squire
Kittie
Wm. Littlehead

Dft. Attys:

C. B. Perryman
Lewis McGilbra
George W. Tiger
Alex Davis
O. A. Morton

VERDICT

WE THE JURY SELECTED TO DECIDE THE ABOVE CASE AFTER A CAREFUL INVESTIGATION OF ALL THE EVIDENCE IN THE CASE FIND THE DEFENDANT **GUILTY** OF MURDER AS CHARGED IN THE INDICTMENT.

LINCOLN POSTOAK

FOREMAN

APPROVED

J. F. MARSHALL

JUDGE, OKMULGEE DIST.

SENTENCED TO BE SHOT BETWEEN THE HOURS OF 9 A. M.
AND 4 P. M. APRIL 28TH, 1896. REPRIEVED 3 DAYS BY
ISPARHECHER. EXECUTED IN ACCORDANCE WITH LAW.

AFTER SENTENCE HE WAS BROUGHT TO OKMULGEE AND CONFINED UNDER GUARD IN THE COUNCIL HOUSE. AT HIS REQUEST HE WAS PERMITTED TO GO HOME IN CHARGE OF A LIGHTHORSEMAN, RETURNING TO OKMULGEE A DAY BEFORE HE WAS TO BE EXECUTED. THE LIGHTHORSEMAN WHO WAS TO EXECUTE HIM NOT HAVING BEEN ALIGNED WITH HIM AS A FRIEND, AND DESIRING A FRIEND TO SHOOT HIM HE REQUESTED THE TRIAL JUDGE TO DESIGNATE HIS FRIEND PLEASANT (DUKE) BERRYHILL, THE SHERIFF OF OKMULGEE COUNTY, TO EXECUTE HIM, WHICH REQUEST THE JUDGE GRANTED.

WHILST A CARPENTER AND ANOTHER PARTY WERE MAKING HIS COFFIN IN A BLACKSMITH SHOP IN OKMULGEE, TIMMIE JACK CAME BY, HIS WIFE WITH HIM, LOOKING AT IT AND BUTTONING UP HIS COAT HE LAID DOWN IN IT AS IF TO SEE WHETHER HIS BODY WOULD FIT INTO IT, AFTER WHICH HE ACCOMPANIED HIS GUARD TO THE COUNCIL HOUSE.

THE NEXT DAY HE WAS EXECUTED BY BERRYHILL WHO CONSIDERED IT HIS DUTY TO DO SO ON THE REQUEST OF HIS FRIEND, THEREBY PREVENTING AN ENEMY FROM CARRYING THE EXECUTION INTO EFFECT. BERRYHILL FASTENING A SMALL PIECE OF WHITE PAPER OVER HIS HEART, SHOT AND KILLED HIM WITH ONLY ONE FIRE.

CHRONICLES, ID., AT P.142

CREEK RESISTANCE TO ALLOTMENT

- MECHANISMS WITH WHICH THE U.S. LEVERAGED THE NATION INTO ALLOTMENT WERE:
- PROHIBITING THE ENFORCEMENT OF ANY LAWS OF THE NATION
- CONTROL OVER CREEKS TRUST MONIES
- DESTRUCTION OF THE CREEK (AND OTHER FIVE TRIBE'S) COURTS.

***CURTIS ACT, ACT OF JUNE 28, 1898
CH. 517, 30 STAT. 495:***

SEC. 28. THAT ON THE FIRST DAY OF JULY, EIGHTEEN HUNDRED AND NINETY-EIGHT, *ALL TRIBAL COURTS IN INDIAN TERRITORY SHALL BE ABOLISHED*, AND NO OFFICER OF SAID COURTS SHALL THEREAFTER HAVE ANY AUTHORITY WHATEVER TO DO OR PERFORM ANY ACT THERETOFORE AUTHORIZED BY ANY LAW IN CONNECTION WITH SAID COURTS, OR TO RECEIVE ANY PAY FOR SAME ...

PROVIDED, THAT THIS SECTION SHALL NOT BE IN FORCE AS TO THE CHICKASAW, CHOCTAW, AND CREEK TRIBES OR NATIONS UNTIL THE FIRST DAY OF OCTOBER, EIGHTEEN HUNDRED AND NINETY-EIGHT.

RESISTANCE CONTINUES INTO 1900'S

- CREEK NATION & ITS MEMBERS WERE STUBBORN, CLING FIERCELY TO THEIR INDEPENDENCE AND RIGHT TO SELF-GOVERNANCE.
- HARSHER AND HARSHER PENALTIES IMPOSED TO FORCE THE NATION TO ACCEPT DESTRUCTION OF THEIR WAY OF LIFE.

ACT OF MARCH 1, 1901, CH. 676, 31 STAT. 861
“AGREEMENT OF DAWES COMMISSION WITH MUSCOGEE
OR CREEK TRIBE OF INDIANS RATIFIED.”

46. THE TRIBAL GOVERNMENT OF THE CREEK NATION SHALL NOT CONTINUE LONGER THAN MARCH FOURTH, NINETEEN HUNDRED AND SIX, SUBJECT TO SUCH FURTHER LEGISLATION AS CONGRESS MAY DEEM PROPER.

47. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED TO REVIVE OR REESTABLISH THE CREEK COURTS WHICH HAVE BEEN ABOLISHED BY FORMER ACTS OF CONGRESS.

ACT OF APR. 26, 1906, CH. 1876,
34 STAT. 137 (1906).
SECTION 28:

- THAT ***THE TRIBAL EXISTENCE AND PRESENT TRIBAL GOVERNMENTS*** OF THE CHOCTAW, CHICKASAW, CHEROKEE, CREEK, AND SEMINOLE TRIBES OR NATIONS ***ARE HEREBY CONTINUED IN FULL FORCE AND EFFECT*** FOR ALL PURPOSES AUTHORIZED BY LAW, UNTIL OTHERWISE PROVIDED BY LAW, BUT THE TRIBAL COUNCIL OR LEGISLATURE IN ANY OF SAID TRIBES OR NATIONS SHALL NOT BE IN SESSION FOR A LONGER PERIOD THAN THIRTY DAYS IN ANY ONE YEAR: ***PROVIDED***, THAT ***NO ACT, ORDINANCE, OR RESOLUTION*** (EXCEPT RESOLUTIONS OF ADJOURNMENT) OF THE TRIBAL COUNCIL OR LEGISLATURE OF ANY OF SAID TRIBES OR NATIONS ***SHALL BE OF ANY VALIDITY UNTIL APPROVED BY THE PRESIDENT OF THE UNITED STATES***: ***PROVIDED***, FURTHER, THAT ***NO CONTRACT INVOLVING THE PAYMENT OR EXPENDITURE OF ANY MONEY OR AFFECTING ANY PROPERTY*** BELONGING TO ANY OF SAID TRIBES OR NATIONS MADE BY THEM OR BY ANY OFFICER THEREOF, SHALL BE OF ***ANY VALIDITY UNTIL APPROVED BY THE PRESIDENT*** OF THE UNITED STATES.

ACT OF APRIL 26, 1906, "AN ACT TO PROVIDE FOR THE FINAL DISPOSITION OF THE AFFAIRS OF THE FIVE CIVILIZED TRIBES IN THE INDIAN TERRITORY ...".

- "WAS PURPORTEDLY DESIGNED TO LIQUIDATE THE INTERESTS OF THE FIVE CIVILIZED TRIBES, BUT SECTION 28 OF THE ACT SEEMINGLY INDICATES THAT THE RESULT OF ALL THE PREVIOUSLY DISCUSSED ENACTMENTS SERVE NOT TO EXTINGUISH TRIBAL GOVERNMENTS BUT ONLY TO RENDER UNENFORCEABLE THE EXISTING LAWS OF THOSE TRIBES OR NATIONS AND TO VACATE CERTAIN TRIBAL GOVERNMENTAL OFFICES."
- G. WILLIAM RICE, 6 AM. INDIAN L. REV. 298 (1978)

CHITTO HARJO, A.K.A. CRAZY SNAKE

- THE EUCHEE AND MUSCOGEE CHIEFS AND WARRIORS UNDERSTOOD:
- THE THREAT ALLOTMENT POSED TO THEIR WAY OF LIFE,
- WHAT THE NATURE OF THE RELATIONSHIP TO THE US SHOULD BE AND
- WERE WILLING TO:
 - ARTICULATE THE PROBLEM, AND
 - FIGHT FOR THEIR BELIEFS.

CHRONICLES OF OKLAHOMA, VOLUME 13, NO. 2,
AT P.142. JUNE, 1935. CHITTO HARJO.
[HTTP://DIGITAL.LIBRARY.OKSTATE.EDU/CHRONICLES/V013/
V013P139.HTML](http://digital.library.okstate.edu/chronicles/v013/v013p139.html)

THIS ACT, [THE CURTIS ACT] PASSED IN 1898, ABOLISHED TRIBAL LAWS AND COURTS, THUS FULFILLING THE FEARS OF CRAZY SNAKE. MATTERS CAME QUICKLY TO A HEAD. IN 1900 THE CREEK NATION AGREED TO ALLOT ITS LANDS, THEREBY CONSENTING TO THE CURTIS ACT." . . . "... IN 1901 THEY [THE FULL BLOOD FACTION] PROCLAIMED HIM [CRAZY SNAKE] THEIR HEREDITARY CHIEF. HARJO AT ONCE CALLED A NATIONAL COUNCIL OF THE HOUSE OF KINGS AND THE HOUSE OF WARRIORS AT HICKORY GROUND, SIX MILES FROM HENRYETTA. THE COUNCIL PROCLAIMED THE REESTABLISHMENT OF THE ANCIENT LAWS AND COURTS ACKNOWLEDGED BY THE UNITED STATES IN THE TREATY OF 1825. IN SO DOING THEY CHALLENGED THE AUTHORITY OF THE UNITED STATES TO DISSOLVE THE GOVERNMENT OF ANOTHER NATION, AND APPEALED TO THE SANCTITY OF TREATIES.

CHRONICLES OF OKLAHOMA,
VOL. 11, #3, P. 900, 902-903. SEPTEMBER, 1933.

THE PLEA OF CRAZY SNAKE (CHITTO HARJO).
BY JOHN BARTLETT

"LATE IN THE FALL OF 1906, A SPECIAL SENATE INVESTIGATING COMMITTEE CAME TO THE OLD INDIAN TERRITORY TO INVESTIGATE AND REPORT UPON GENERAL CONDITIONS. SECRETARY OF THE INTERIOR GARFIELD ACCOMPANIED THE COMMITTEE WHICH WAS COMPOSED OF SENATORS TELLER OF COLORADO, CLARKE OF MONTANA, BRANDAGEE OF CONNECTICUT AND LONG OF KANSAS."

AT A PUBLIC HEARING IN TULSA CRAZY SNAKE MADE THE FOLLOWING SPEECH TO THE SENATE COMMITTEE:

“I HAVE ALWAYS BEEN ASKING FOR JUSTICE. I HAVE NEVER ASKED FOR ANYTHING ELSE BUT JUSTICE. I NEVER HAD JUSTICE. FIRST, IT WAS THIS AND THEN IT WAS SOMETHING ELSE THAT WAS TAKEN AWAY FROM ME AND MY PEOPLE, SO WE COULDN'T STAY THERE ANY MORE. IT WAS NOT BECAUSE A MAN HAD TO STAND ON THE OUTSIDE OF (PAGE 904) WHAT WAS RIGHT THAT BROUGHT THE TROUBLES. WHAT WAS TO BE DONE WAS ALL SET OUT YONDER IN THE LIGHT AND ALL MEN KNEW WHAT THE LAW AND THE AGREEMENT WAS. IT WAS A TREATY-A SOLEMN TREATY-BUT WHAT DIFFERENCE DID THAT MAKE? I WANT TO SAY THIS TO YOU TODAY, BECAUSE I DON'T WANT THESE ANCIENT AGREEMENTS BETWEEN THE INDIAN AND THE WHITE MAN VIOLATED AND I WENT AS FAR AS WASHINGTON AND HAD THEM SUSTAINED AND MADE TREATIES ABOUT IT. WE MADE TERMS OF PEACE, FOR IT HAD BEEN WAR, BUT WE MADE NEW TERMS OF PEACE AND MADE NEW TREATIES.” - CHITTO HARJO.

OKLAHOMA INDIAN WELFARE ACT (JUNE 26, 1936, C. 831, 49 STAT. 1967.)

§ 5203. ORGANIZATION OF TRIBES OR BANDS; CONSTITUTION; CHARTER; RIGHT TO PARTICIPATE IN REVOLVING CREDIT FUND

ANY RECOGNIZED TRIBE OR BAND OF INDIANS RESIDING IN OKLAHOMA SHALL HAVE THE RIGHT TO ORGANIZE FOR ITS COMMON WELFARE AND TO ADOPT A CONSTITUTION AND BYLAWS, UNDER SUCH RULES AND REGULATIONS AS THE SECRETARY OF THE INTERIOR MAY PRESCRIBE. THE SECRETARY OF THE INTERIOR MAY ISSUE TO ANY SUCH ORGANIZED GROUP A CHARTER OF INCORPORATION ... SUCH CHARTER MAY CONVEY TO THE INCORPORATED GROUP, IN ADDITION TO ANY POWERS WHICH MAY PROPERLY BE VESTED IN A BODY CORPORATE UNDER THE LAWS OF THE STATE OF OKLAHOMA, THE RIGHT TO PARTICIPATE IN THE REVOLVING CREDIT FUND AND TO ENJOY ANY OTHER RIGHTS OR PRIVILEGES SECURED TO AN ORGANIZED INDIAN TRIBE UNDER THE ACT OF JUNE 18, 1934 (48 STAT. 984) ...

THE ACT OF OCTOBER 22, 1970, 84 STAT. 1091

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, THAT, NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, THE PRINCIPAL CHIEFS OF THE CHEROKEE, CHOCTAW, CREEK, AND SEMINOLE TRIBES OF OKLAHOMA AND THE GOVERNOR OF THE CHICKASAW TRIBE OF OKLAHOMA SHALL BE POPULARLY SELECTED BY THE RESPECTIVE TRIBES IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE OFFICIALLY RECOGNIZED TRIBAL SPOKESMAN AND OR GOVERNING ENTITY. SUCH ESTABLISHED PROCEDURES SHALL BE SUBJECT TO APPROVAL BY THE SECRETARY OF THE INTERIOR.

HARJO V. KLEPPE
420 F. SUPP. 1110 (D.C. CIR. 1976)

FROM HEADNOTES: “THE DISTRICT COURT, ... HELD THAT ... DESPITE THE GENERAL INTENTIONS OF THE CONGRESS OF THE LATE 19TH AND EARLY 20TH CENTURIES TO ULTIMATELY TERMINATE THE TRIBAL GOVERNMENT OF THE CREEKS, AND DESPITE AN ELABORATE STATUTORY SCHEME IMPLEMENTING NUMEROUS INTERMEDIATE STEPS TOWARD THAT END, THE FINAL DISSOLUTION OF THE CREEK TRIBAL GOVERNMENT CREATED BY THE CREEK CONSTITUTION OF 1867 WAS NEVER STATUTORILY ACCOMPLISHED, AND THAT GOVERNMENT WAS INSTEAD EXPLICITLY PERPETUATED; AND FEDERAL GOVERNMENT DID NOT ACT LEGALLY IN RECOGNIZING THE PRINCIPAL CHIEF AS THE SOLE EMBODIMENT OF THAT GOVERNMENT.

UNTIL 1970, THEREFORE, THE AFFAIRS OF THE CREEKS WERE ADMINISTERED WITHOUT EVEN A TOKEN OF DEMOCRACY, AND THE PRINCIPAL CHIEF WAS TREATED BY THE BUREAU AS BEING THE SOLE EMBODIMENT OF THE CREEK GOVERNMENTAL AUTHORITY. 110 AS IS EVIDENT FROM THE FOREGOING, THE INFLUENCE AND CONTROL OF THE BUREAU OVER THE VARIOUS INCARNATIONS OF THE CREEK NATIONAL GOVERNMENT BETWEEN 1920 AND 1970 WAS EXERCISED WHOLLY WITHOUT THE BENEFIT OF ANY SPECIFIC CONGRESSIONAL MANDATE. AS SUCH, IT CONSTITUTES NO SUPPORT WHATEVER FOR THE DEFENDANTS' POSITION IN THIS SUIT, AND INDEED THE HISTORY OF THE PERIOD DEMONSTRATES THE CONTINUED VITALITY AND RESILIENCE OF CREEK POLITICAL LIFE AND INSTITUTIONS...

HARJO V. KLEPPE, AT P. 1139.

STATE V LITTLECHIEF
573 P2D 263 (OK CRM. APP, 1978)

- FEDERAL DISTRICT COURT FOR WESTERN OKLAHOMA IN A MURDER FOUND:
- AN ORIGINAL KIOWA ALLOTMENT WAS
- WITHIN THE DEFINITION OF INDIAN COUNTRY UNDER 18 U.S.C. 1151.
- THE DEFENDANT WAS AN INDIAN, AND
- THE STATE OF OKLAHOMA NEVER ASSUMED JURISDICTION PURSUANT TO P.L. 280 NOR PROPERLY AMENDED ITS CONSTITUTION TO ALLOW SUCH ASSUMPTION THUS THE STATE WAS WITHOUT JURISDICTION

1978 - RESURRECTION OF TRIBAL JURISDICTION

LITTLECHIEF MEANT:

- SUDDENLY THERE WAS AN ENTIRE CLASS OF LAND AGAIN RECOGNIZED AS SUBJECT TO EXCLUSIVE FEDERAL AND TRIBAL JURISDICTION.
- AS SUCH, THE NEED FOR TRIBAL COURT JURISDICTION WAS IMMEDIATELY RECOGNIZED.
- AT LEAST IN THE WESTERN DISTRICTS OF OKLAHOMA (FORMER OKLAHOMA TERRITORY).

MCN CONSTITUTION 1979 *(AS AMENDED)*

ARTICLE I - [NAME, ORGANIZATION AND JURISDICTION]

- SECTION 1. THE NAME OF THIS TRIBE OF MUSCOGEE (CREEK) PEOPLE SHALL BE THE “MUSCOGEE (CREEK) NATION”, AND IS HEREBY ORGANIZED UNDER SECTION 3 OF THE ACT OF JUNE 26, 1936 (48 STAT. 1967).

ARTICLE VII - [JUDICIAL BRANCH]

- SECTION 1. THE JUDICIAL POWER OF THE MUSCOGEE (CREEK) NATION SHALL BE VESTED IN ONE SUPREME COURT LIMITED TO MATTERS OF THE MUSCOGEE (CREEK) NATION’S JURISDICTION AND IN SUCH INFERIOR COURTS AS THE NATIONAL COUNCIL MAY FROM TIME TO TIME ORDAIN.
- SECTION 6. ALL LITIGATION BETWEEN TRIBAL OFFICERS SHALL ORIGINATE IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION, WITH THE RIGHT OF APPEAL TO THE SUPREME COURT. ALL QUESTIONS OF FACT SHALL BE DETERMINED BY JURY TRIAL.

MUSCOGEE CREEK NATION V HODEL
851 F.2D 1439; 271 U.S.APP.D.C. 212.
(D.C. CIRC., 1988)

“IN 1979, THE TRIBE, PURSUANT TO THE OIWA, ADOPTED A CONSTITUTION PROVIDING FOR THREE SEPARATE BRANCHES OF GOVERNMENT, INCLUDING A JUDICIARY. IN 1982, THE TRIBE PASSED AN ORDINANCE ALLOWING TRIBAL COURTS TO ENFORCE CRIMINAL AND CIVIL JURISDICTION OVER TRIBAL MEMBERS AND SUBSEQUENTLY SOUGHT FUNDING FROM THE BIA FOR THE TRIBAL COURTS AND A LAW ENFORCEMENT PROGRAM. THE BIA AND INTERIOR DENIED THE REQUEST BASED ON THE CURTIS ACT'S PURPORTED ABOLITION OF TRIBAL COURTS TOGETHER WITH THE FAILURE OF THE SUBSEQUENT CREEK AGREEMENT OR THE OIWA TO REVIVE THEM. THAT DENIAL PRECIPITATED THIS ACTION.”

MCN V. HODEL, AT 1442.

FEDERAL RECOGNITION OF MUSCOGEE (CREEK) COURTS

“THE LEGISLATIVE HISTORY IS NOT CLEAR AND THE LANGUAGE OF § 503 CAN EASILY BE CONSTRUED AS PERMITTING THE ESTABLISHMENT OF TRIBAL COURTS. FOR THIS VERY REASON, THIS COURT MUST CONSTRUE THE OIWA TO BENEFIT THE TRIBE. *BLACKFEET*, 471 U.S. AT 766, 105 S.CT. AT 2403. ACCORDINGLY, WE HOLD THAT THE CURTIS ACT WAS REPEALED BY THE OIWA AND THAT THEREFORE THE MUSCOGEE (CREEK) NATION HAS THE POWER TO ESTABLISH TRIBAL COURTS WITH CIVIL AND CRIMINAL JURISDICTION, SUBJECT, OF COURSE, TO THE LIMITATIONS IMPOSED BY STATUTES GENERALLY APPLICABLE TO ALL TRIBES.”

MCN V. HODEL, AT 1446-1447.