

The United Keetoowah Band is a federally recognized tribe

Response to Milam, Keeler, Ross and Mankiller

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

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

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

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

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

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

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

8) UKB reorganized under OIWA and IRA, adopting a Charter, Constitution and By-laws in a Federal secretarial election on 3 October 1950, and proceeded to function with virtually no Federal assistance as a federally-acknowledged tribe. The Charter provided for the eventual recognition by sub-charter of any other Cherokee descendant group with whom its own members are allowed to share membership, at the discretion of the UKB Council. During Termination, the BIA refused to cooperate with every development proposal in keeping with the OIWA and IRA that the UKB Tribal Council submitted.

9) After 1960, the BIA and Cherokee Nation or Tribe investigated the possibility of establishing services and programs for Cherokees in the 14 county region, formerly Cherokee Nation, concluding that the only possible solution was to make the UKB the vehicle for providing programs and recognition.

10) Once Cherokee tribal programs were off the ground, the UKB had little success retaining control of the very programs they fostered, and even access to services. Inde-

pendent ventures failed as well, partly due to the (documented) collusion of their own legal counsel, Earl Boyd Pierce, with BIA and CNO officials to stop the UKB.

11) The Act of Oct. 22, 1970, 91st Cong., 2nd Sess., P. L. 91-495, 84 Stat. 1091 (1970), the Bellmon Bill, "Authoriz[ed] Each of the Five Civilized Tribes of Oklahoma to Select Their Principal Officer" Federal court challenges determined that the presidentially - or secretariially - appointed Principal Chiefs of Cherokee Nation since 1906 were bona fide heads of state. Other litigation addressed the question whether the Cherokee government was terminated in 1906. On 2 October 1975, Commissioner Morris Thompson and Principal Chief Ross O. Swimmer approved a draft CNO Constitution determining that the automatic citizenship class shall consist of the Cherokee Dawes Commission enrollees, and that descendants shall be eligible for registration as member-descendants.

12) Commissioner Louis Bruce, in American Indian Tribes and their Federal Relationship, Plus a Partial Listing of other United States Indian Groups (Wash., D. C.: U.S. Dept. of Interior, BIA, March, 1972) declared that the UKB is a fully recognized Class 1 OIWA/IRA tribal entity, while Cherokee Nation remained an unorganized Class 3 service population.

13) On 5 July 1976, Cherokee voters adopted the draft Constitution, purporting to supersede the 1906 constitution, but CNO leaders claim in Federal court that the old Constitution was dead in 1906, or that the present government is the full successor to the 1839 - 1906 government, as circumstances demand. The 1976 Constitution purported to sanction affiliation of any CNO registree with any "clan" or other subordinate entity within CNO. The Harjo case determined that the 1906 and related Acts did not terminate the Five Tribes as such, and that the 1936 Act assured them the enjoyment of their inherent sovereignty, as a general principal. That case did not consider or discuss the 25 October 1937 Land Division determination regarding the eligibility of Cherokee Nation to avail itself of the benefits of OIWA and IRA, or contain any reference to the intent of Congress, the BIA and the UKB regarding the implications of UKB reorganization. No provision at Federal case law, and no Act of Congress, allowed CNO to avail itself of the benefits of OIWA and IRA reorganization free of the duty of actually taking the steps to reorganization.

14) In the Federal Register, Vol. 44, No. 26, Tuesday February 6, 1979, pp. 7235-7236, the Secretary of the Interior listed the UKB as a federally-recognized, service-eligible entity. The Department has since characterized this and similar publications as binding determinations of the Department regarding the recognition of tribes, both in Federal litigation and in congressional hearings.

15) Characterizing the organization of federally-acknowledged tribes listed in the 6 February 1979 Federal Register notice, on 20 November 1979, Ms. Patricia Simmons, Tribal Relations Specialist, submitted to the Chief, Branch of Tribal Relations, a detailed report titled, "Organizational Status of Federally Recognized Indian Entities." Simmons surveyed a category (p. 2) of "Officially Approved Organizations Pursuant to Statutory Authority (Indian Reorganization Act: Oklahoma Indian Welfare Act; and Alaska Native Act), finding (p. 3), UKB had a Council organized under a Federal Corporate Charter. Cherokee Nation (with a Council) was listed in the "Other" category of "Officially Approved Organizations Outside of Specific Statutory Authority," (p.7). Here ends our short list of crucial departmental determinations and actions regarding the organization of the UKB and CNO. Though many questions remain regarding the inherent authority of CNO, no Act of Congress or other determination supports the proposition that the UKB's organization is in any way subordinate or inferior to that of Cherokee Nation of Oklahoma today. One more important historical event ends this history and starts the revisionist history of the UKB according to Ross O. Swimmer:

16) Principal Chief of Cherokee Nation Ross O. Swimmer denied UKB's historical existence for the first time of record to Oklahoma Senator Henry Bellmon, in a Letter, 27 April 1979. Swimmer claimed the UKB was "created" by the accidental inclusion of their name in the 6 February 1979 Federal Register notice; see also Letter, 30 April 1979, Principal Chief of Cherokee Nation Ross O. Swimmer to Oklahoma Senator David Boren, denying UKB's historical existence. Swimmer's claims that the UKB is a sovereign inferior to CNO, that

the UKB has no rights as a Federal-Indian tribe, regardless of the supposed source or basis of those claims, do not antedate 6 February 1979. Indeed, we have found none earlier than 27 April 1979. Careful archival research has recovered no written record, no oral recollection or any other plausible evidence that before 1979, anyone ever believed in or subscribed to Swimmer's revisionist mythology that first appeared in his lobbying letters of 27 and 30 April 1979. The paper trail shows that no officer of the BIA, no Federal legislator, no member or officer of Cherokee Nation of Oklahoma, and no representative of the old Keetoowah factions ever fostered or endorsed the falsehoods Swimmer announced as facts in those two 1979 letters, until Swimmer fabricated and disseminated them. Lacking any evidence to the contrary, one can only conclude that Swimmer's statements alone supplied the core dogma for CNO's continuing crusade against the UKB, and to all appearances, might continue to do so for the foreseeable future. The completion of the contract for the CNO self-governance pilot project triggered another UKB suit against the Secretary, asking mandatory injunctive relief, including that the Secretary extend trust protection to the Band, as well as all program and funding eligibility as OIWA and IRA required, all unallotted lands and trust assets as the OIWA and UKB Charter prescribed, an accounting from the Secretary for all funds and programs to which the Band should have been beneficiary under IRA, OIWA and the 1946 Act, and \$10,000 million in damages. (The United Keetoowah Band of Cherokee Indians in Oklahoma v. Lujan, Civil Action NO. 90-C-608, 1990; Leeds 1992: 202) The Secretary sought dismissal for lack of subject matter jurisdiction, personal jurisdiction of the Court over the Secretary, for failure of the Band to state a claim for which the Court could grant relief, and time bar. (Answer to Civil Action NO. 90-C-608, 1990; Leeds 1992: 202)

In July 1991, Mankiller's staff prepared a position paper to deliver to the BIA attempting to substantiate CNO's claim to authority over the UKB. William Smith's faction of the Nighthawk Keetoowahs at Stokes Smith's Grounds at Pinhook northeast of Vian, unlike the opposing Redbird Smith Nighthawk faction at Blackgum northwest of Vian, jumped on the bandwagon, supporting Chad Smith, a member of their grounds, who just happened to be legal counsel for CNO and a former development program officer. Swimmer and Mankiller continued to claim the UKB was an upstart organization engendered by Pierce and Keeler, alleging: The United Keetoowah Band has no direct link with any of the various Keetoowah societies. The founding members of the UKB were all citizens of the Cherokee Nation and members of various Keetoowah and other cultural groups. Again, CNO conveniently forgot that the UKB was the result of a coalition including, therefore uniting, the various Keetoowah factions, with the exception of a few holdouts from the other factions, and the Stokes Smith Nighthawks. (Report[31 July 1991, Principal Chief Wilma P. Mankiller] to the Department of the Interior [Assistant Secretary Eddie Frank Brown]) Mankiller cited letters from Gritts to Stigler to prove that, according to Gritts, the Band was to be only a set of voluntary lodges composing a social organization with no preconceived political or governmental agenda, forgetting that in the course of organization, the main body of Keetoowahs had steered precisely in the direction of organizing and OIWA and IRA tribal government, leaving the holdouts in the decimated societies and factions to their own devices. Levi Gritts happened to be one such holdout, heartbroken and bitter because the reorganization movement had left him stranded in his own rhetoric and leadership ambitions.

The truth is, most Keetoowahs did not see Gritts as a key figure in the organization movement after 1939, and refused to hand him authority in the elections that year. In petitioning for authority to reorganize with or without including the mass of Keetoowahs who did not belong to his faction, Gritts had taken the position that he would organize a recognized tribe of his own narrow band of adherents and leave the rest of the Keetoowahs to shift for themselves unless they were willing to submit to him. It is Mankiller chose to rely entirely upon letters Gritts wrote in his last few years, when he had long since lost all political or moral authority among the Keetoowah Indians. (Letter, 21 September 1945, Levi Gritts to Congressman Stigler; Letter, 3 December 1945, Levi Gritts to

Congressman Stigler) These letters had virtually no influence or effect on the reorganization process for the UKB, and certainly had no effect on the UKB in the long run. It is safe to say that most UKB members never dreamed these letters existed, for they represented the pipe dreams of a wistful, aging man, and not the official will of the people. Nothing in these letters suggested Gritts had any authorization from Chief Jim Pickup's Council to write these letters at all. Mankiller also blithely ignored the political identity of the Keetoowah Society, Inc., itself, and the role it had played in the claims and recovery of damages for the Cherokees. The problem of the Keetoowah Society, Inc. was that alone it could not represent all the Keetoowah Indians. Even the Nighthawks had voted for Gritts in the 1920 election of the National Convention of the Cherokees by blood. Knowing no better, Mankiller's writers blurred the distinctions among the Keetoowah factions, confusing the Keetoowah Society, Inc., with the UKB as it existed just prior to the 1946 Act. Although BIA personnel sometimes were confused over the issue, Congress did not intend that the broken remnants of the Keetoowah Society, Inc., would gain the authority to organize under OIWA and IRA. Gritts's dying society and the UKB were entirely separate by 1939, and most of "his" followers had abandoned his group to affiliate with the Band. It is important to recall that Gritts was not even the Chief or President of "his" own group at any time between 1937 and 1950. Mankiller's paper contended that the UKB and CNO had worked harmoniously at all times, except when the Band called for Keeler's resignation. Mankiller's paper also cited Glory's ultra vires act of encouraging Keeler to create what came to be known as the Jelano Trust as proof of the UKB's voluntary abandonment of tribal relations in favor of merging with CNO. Glory's acts in that vein led to ten years of rebellion against him. While Mankiller gleefully cited Cohen's statement (relying entirely on the Kirgis Opinion) that the Society, as such, was "neither historically nor actually a governing unit of the Cherokee Nation but a society of citizens within the Nation with common beliefs and aspirations," she utterly ignored D'Arcy McNickle's later finding that the Kirgis Solicitor's Opinion of 1937 had been fatally flawed on many factual counts, because Kirgis had based his findings on the superficial and cursory investigation and musings of Dr. Charles Wisdom. (Position Paper on the UKB, 24 April 1944, D'Arcy McNickle) McNickle found that the Band always had acted as a Nation. It is very doubtful that Mankiller ever has seen McNickle's determination for the Department. The BIA in the 1940s and 1950s had difficulty in recalling that the UKB and the Society had retained different legal counsel, as they later forgot the professional responsibilities of Earl Boyd Pierce when he acted in conflict of the UKB's interests in conveying their confidences freely to CNO and the BIA. (Leeds 1992: 200). There is little doubt that Mankiller saw herself as an agent of the BIA, as had her predecessor Principal Chiefs, in stating: the information should be beneficial to the Department in the pending litigation against the Secretary. . . . If any of your staff would care to comment or supplement our report, please have them do so. (Report[31 July 1991, Principal Chief Wilma P. Mankiller] to the Department of the Interior [Assistant Secretary Eddie Frank Brown]) This parcel of lies was a product of the BIA, because the BIA authorized CNO's actions in constructing and publishing it. Recall, all business decisions and political activities of CNO require the Secretary's approval. Hence, Mankiller's closing statement carries an inherent contradiction: the issue of rights to govern is between the UKB and the Cherokee Nation. The members of one organization are essentially the same as the members of the other. It is an intratribal matter which should be addressed in the first instance by the Cherokee Nation and the UKB. Principal Chief Mankiller has pledged to make honorable resolution of this . . . matter both an official and personal priority. (Report[31 July 1991, Principal Chief Wilma P. Mankiller] to the Department of the Interior [Assistant Secretary Eddie Frank Brown]) This was no intratribal matter, no civil war; it was a scorched earth policy, and Brown was a knowing party to it.

Bill Rice, counsel for the UKB, appraised the ongoing trust violation litigation of the UKB against the Secretary, and declared that the BIA would settle out of court. He suggested that the UKB Council pass a resolution allowing the case to be dismissed with prejudice. He opined the BIA would

not agree to settle unless the UKB restricted membership to UKB members who were unaffiliated with the CNO. The Council promptly enacted an ordinance requiring UKB members to relinquish their CNO registration or other tribal affiliation or membership. (UKB Council Meeting Minutes, 1 September 1990; UKB Membership Ordinance 90 UKB 9-4 16 September 1990; Leeds 1992: 202) This most detailed of the UKB Membership Ordinances provides that any descendant of 1/4 Cherokee Indian blood of any enrollee on the 1949 UKB Base Roll, or on any other historical Cherokee Roll, shall be eligible for enrollment in the UKB. Final determinations of Cherokee Indian blood quantum rest with the UKB Tribal Council.

However, unable to use any other source than the Dawes Roll for registration, and unwilling to impose any blood quantum criteria at all, CNO already had been doing everything possible to stop the wave of UKB relinquishments, including lying about the significance of dual affiliation, even to Council members! (Letter, 8 November 1988, Lela Ummerteske, Office Manager, Cherokee Nation of Oklahoma Registration Office, to John Ross, Jr., Treasurer, UKB) Upon notification of his intent to relinquish, the Cherokee Nation registration told Tribal Treasurer John Ross, Jr.: [P]lease be aware that you do not have to relinquish your membership with us, simply to register with the Keetoowah Band. You may be members of both. (Leeds 1992: 203) The Council chose a process of piecemeal divorce from CNO, undertaken at the individual level and involving every tribal member, as the only lasting solution.

In October 1990, Chief John Hair and Bill Rice visited Secretary Lujan in Washington, D. C. Lujan plausibly denied he never had heard the Band was suing him. Lujan claimed that he knew nothing of their troubles, and that genuinely hoped for a resolution in the Band's favor. (UKB Special Council Meeting Minutes, 21 October 1990) Flabbergasted, the UKB Council didn't know whether to laugh or cry. In United Keetoowah Band - Cherokee Nation, 30 October 1990, Dr. Eddie Frank Brown wrote to the Solicitor of the Department of the Interior, regarding a position paper he had prepared at the Secretary's request on the UKB issue after the UKB delegation's visit. In requesting the Solicitor's concurrence, Brown concluded, "the United Keetoowah Band has been recognized as a tribe since 1950, and we do not want to withdraw that recognition. Absent Congressional action, we do not have the authority to do so." He feared that litigation might "result in a decision which has far reaching consequences not only for the Department of the Interior but for the Cherokee Nation as well." Brown said the Band was right about the P. L. 93-638 claim, and the BIA urged a compromise of some sort, with reservations:

The United Keetoowah Band is a federally recognized tribe. An administrative decision should be issued conceding the Band's right to direct ISDA funding but declining to change our administrative decision on the trust land issue.

NOTE

The UKB only want what every federally recognized Tribe receives.. rights to govern themselves and to protect & serve their tribal members. To receive federal funds to service their tribal members.

Are they Cherokee - Yes
many of our own family members are enrolled in the UKB.
Does that mean we need to attack them - NO
Does that mean we need to spend or waste any more tribal dollars attacking the UKB - NO
Is Chad Smith enrolled in the UKB? Last we heard - YES he is.

Has the Cherokee Nation of Oklahoma refused to service UKB tribal members - YES they have & still are refusing services to them.

That along shows the Cherokee Nation of Oklahoma views the UKB a separate Tribe. They say you have to be a member of the CNO or they can't service them.

Let the UKB a federally recognized Tribe. rights to govern themselves and to protect & serve their tribal members. To receive federal funds to service their tribal members. To put land that they own in Trust, which they have a right to do.