

by Marilyn Vann (Special to the Observer)

## The Cherokee Freedmen Story as of May 7, 2006

The Cherokee Freedmen people are citizens of the Cherokee nation based on treaties with the US government, and tribal constitutions. Cherokee people with African blood have been members of the Cherokee nation on some basis since the first people with African blood came into the Cherokee areas of the Southeastern United States following the American Revolution, perhaps even earlier. The majority of the people with African blood living in the Cherokee nation prior to the Civil war lived there as slaves of Cherokee citizens or as free black non citizens, usually the descendants of Cherokee men and women with African blood. However, some people with African blood had citizenship rights originating prior to 1866 due to an adoption of themselves or their ancestor by tribal officials or having a Cherokee Indian mother. (Children of Cherokee women historically were tribal citizens regardless of the race of the father – and this continued under the constitution of 1827 and 1839 ). The Henderson Roll of 1835 identifies several Cherokee families - which had at least 1 mixed African Cherokee citizen living in the Cherokee household.

In 1863, the Cherokee government outlawed slavery . In 1866, the Treaty of July 19, 1866 (ratified July 27, 1866; proclaimed Aug. 11, 1866), 14 Stat. L. 799 (the “1866 Treaty”) was signed with the US government in which the Cherokee people agreed to give citizenship to those people with African blood living in the Cherokee nations who were not already citizens. The national council amended the 1839 constitution to comply with the treaty in November 28 1866. The leader of the tribal officials who supported the rights of the freedmen by treaty and the revised constitution was WP Ross, a Princeton educated attorney who became the Chief after the death of his uncle John Ross in 1866. In the 1866 treaty, The Cherokee government also agreed to allow friendly tribes to settle on Cherokee lands and receive Cherokee citizenship based on subsequent agreements. Thus, bands of Delaware and Shawnee immigrated to the Cherokee nation and received Cherokee citizenship in 1867 and 1869 respectively based on separate treaties in conjunction with the 1866 treaty.

Between 1866 and the Oklahoma statehood in 1907, colored Cherokee citizens participated as full citizens of the nation, holding office, voting, running businesses, etc. One leading Freedmen citizen was Zeke Foreman who lived in what is now Sequoyah County. The following African-Cherokees were listed as “Negros” by Emmett Starr in his renowned book, History of the Cherokees Indians, and served on the Cherokee Council: Tahlequah District: 1875 - Joseph Brown, 1893 - Stick Ross, 1895 - Ned Irons; Illinois District: Frank Vann - 1887, Samuel Stidham -1895; Coowescoowee District: Jerry Alberty - 1889. This was during

a time period that Commissioner Henry Dawes stated there were no paupers in the Cherokee nation. Various Supreme court cases dealing with tribal annuities such as *Cherokee nation v. Journeycake*, 155, US 196 (1894) – upheld the right of adopted citizens including the Freedmen, Delaware, ,and Shawnees as full tribal citizens.

This time of tribal peace and harmony began to unravel when the Dawes Commission, under Acts of Congress came to the Cherokee nation and began making lists (rolls) of tribal citizens in order to divide the tribal properties and discontinue the Cherokee government. The Dawes Commission used the 1880 Authenticated Cherokee census as a base roll. That roll was certified by the Cherokee national council as including all people recognized as members of the tribe at that time. It must be emphasized that the 1880 authenticated Cherokee census had no degrees of blood for any citizen because there was no such concept among the Cherokee people or among any tribal nation.

The Cherokee Nation had never kept records of “blood quantum” of its citizens. The blood degrees were imposed upon the Cherokee people by the U.S. government in the ill conceived notion that amount of Indian blood could determine intelligence. Approximately 10% of the tribal citizenship base in 1880 was “adopted colored citizens” or “native colored citizens.”. The Dawes Commission, beginning its work in the late 1890s made a separate roll of the living Delaware who were original immigrants into the Cherokee nation in 1867. They were listed on a separate Delaware roll following a lawsuit which showed they were entitled to an equivalent 160 acres of land based on the Delaware treaty rather than the equivalent of 110 acres of land for all other citizens of the nation. These Delaware Cherokees were listed with degrees of Delaware blood by the Dawes commission.

The majority of Cherokee citizens were listed with a degree of Cherokee blood on either the Cherokee by blood roll or a Minor Cherokee by blood Roll. Blood degrees were not determined by the Dawes Commission, but were taken, in most cases from testimony of the Cherokee citizen him/herself. A search of the Dawes Rolls will find in many cases adult siblings with varying blood degrees even though the records reveal they had the same parents.

Approximately 200 “intermarried whites” who had been married to Cherokee citizens prior to 1875, and were either still married to their Cherokee by blood spouse or were widows/widowers of a Cherokee by blood spouse and were as yet not remarried, were listed by the Dawes Commission on a separate roll due to another lawsuit. Almost all of the Cherokee citizens

with African blood were listed on a separate roll as Cherokee Freedmen or Minor Cherokee Freedmen without a degree of blood quantum recorded by their names, even though the individual may have possessed some degree of Cherokee blood. A mixed African Cherokee tribal citizen could request to be identified with a degree of blood on the Cherokee by blood roll, however almost all such requests, even when litigation was instituted, were unsuccessful.

How a citizen of African descent was listed, whether as “freedmen” or as “Cherokee by blood” was solely the prerogative of the Dawes commission. Thus, Cherokees by blood, such as mixed African/Cherokees Abbie Brown and Perry Ross, both listed on the 1852 Drennan payment roll as tribal members having citizenship rights based on the 1827 and 1839 constitutions because of their mother, a full blood Cherokee Indian named Rachel Brown, were listed as “freedmen” in spite of their efforts to be classified as citizens by blood. At the same time, their brother, George Hammer Brown, who was also a son of Rachel Brown and listed on the 1852 Drennan Roll, was able to keep his status as a ½ Cherokee by blood. These 2 individuals – Perry and Abbie - received the Guion Miller payment due to their Cherokee blood although they retained Freedmen status on the Dawes rolls. It must be emphasized that the story of this family is by far, not an isolated case. Perry Ross informed Commissioner Miller that he was listed as Freedmen instead of Cherokee by blood because he was “afraid” to complain.

You may ask, why were blood degrees listed as all? Why was a separate Freedmen roll made if the Freedmen land allotments were the same size as everyone else’s and were issued for the same reason – dividing the tribal property among the Cherokee nation citizens. Was there an ulterior motive to list as many citizens as possible as “Freedmen” even though they could show they had citizenship rights prior to 1866 and indeed had “Cherokee Indian blood” ? YES! Tribal officials, who had opposed the allotment of the tribal lands, had requested that at least some of the tribal citizens have some protection by the US government from white settlers they feared would trick them out of their allotments.

At the time the Dawes Commission began its work, a congressional bill was being considered that would make all Freedmen allotments and adopted whites unrestricted; ie no oversight would need from the Department of the Interior to mortgage, sell or lease the allotment. It suited the purposes of the United States to classify as many Cherokees as possible as freedmen to get the land into the hands of land speculators and whites quicker and easier. The Cherokee freedmen roll

was simply one section of the Dawes Rolls. Eventually the bill to unrestricted Freedmen allotments was passed as 33 Stat L 189. The Final Roll of Citizens and Freedmen of the Cherokee Nation, commonly called the Dawes Roll was closed and made final on March 7, 1907 pursuant to the Act of April 26, 1906. Later, Congress passed another law - the Act of May 27, 1908, 35 Stat 312 indicating tribal members with allotments who had lower blood degrees (less than ½ ) listed on the Dawes “final rolls” were completely unrestricted as well as the allotments for the intermarried whites, adopted whites and Freedmen.

The Cherokee government was, for all intents and purposes, extinguished by the 1898 Curtis Act, except for the power of the US President to appoint a Principal Chief to conduct business transactions with the US government. Between 1907 and 1975, the Cherokee Freedmen citizens received the same per capita payments as other Cherokee citizens and intermittently accessed benefits as tribal members, including the per capita payment made in the 1960s to all tribal members authorized under US Code Title 25 section 991. Right up to the 1963 Cherokee Per Capita Payment, the Freedmen continued to represent only 10-12 percent of the tribal population.

In 1970, the Federal government authorized the Cherokee people to once again elect a Principal Chief under the Principal Chiefs Act. The Cherokee nation under Chief WW Keeler began issuing “blue cards to Cherokee citizens, including freedmen that year. Cherokee Freedmen Dawes Enrollees and their descendants voted in elections in 1971, 1975, and 1979. Some of the Cherokee freedmen citizens who received tribal membership/voting cards during the 1970s include Curtis Vann of Tahlequah (husband of recently deceased Ada Ross Vann), Evelyn Ross of Tahlequah , Reverend Roger Nero of Ft Gibson, Marion Gunter Wooten of Bartlesville, Robert Adair of Bartlesville, and Bernice Rogers Riggs of Tahlequah, . A constitution was voted on by the Cherokee people, including freedmen in 1975 which indicated in article III that all Dawes enrollees and their descendants were citizens of the Cherokee nation. The constitution made the tribe subject to all of the laws of the United States and required that the tribe receive the permission of the President or his designee before adopting new constitutions or constitutional amendments. However, the Cherokee Freedmen were blocked at the polls, beginning in 1983 under the orders of Chief Swimmer (now special trustee appointed by President George W. Bush) because they supported a rival candidate for Chief. The freedmen tribal members received letters from the tribal Registrar, Dora Mae Watie, herself a Freedmen descendant, saying that their tribal memberships were being

cancelled because the Registration department was requiring a tribal member to also have a Certificate of Indian blood card; and telling them that they did not have Cherokee blood.

Subsequently, the tribal council, under the direction of chief Wilma Mankiller, passed an Act requiring that all tribal members be able to provide a Certificate of Indian blood Card (CDIB), based on the degree of blood listed on the Dawes Rolls for themselves or their ancestor. Since that roll did not list a degree of blood for Freedmen tribal members, this removed all Freedmen and their descendants from tribal membership, whether or not they could prove a degree of Indian blood from their Dawes testimony, Guion Miller payment roll testimony, Henderson payment Roll, death and heirship documents of the US government , etc. This action of blocking the freedmen from tribal membership was not done under the direction of the Bureau of Indian Affairs (BIA), for BIA Muskogee officials Dennis Springwater and Joe Parker had met with tribal officials in 1983, and emphasized that the Cherokee constitution as well as the treaty of 1866 granted citizenship to the Cherokee Freedmen and their Descendants. The tribe was told the Freedmen should be allowed to vote.

The press took note of these matters, especially when a Reverend Nero and several other Freedmen filed a lawsuit against the Cherokee nation and the BIA in 1984. Then Chief Swimmer stated in the Oklahoma Eagle newspaper on July 12 1984 that it was “easier for the registration department to process tribal memberships of people with CDIB cards (at that time, the tribe did not have a contract with the BIA to process CDIB cards), which raises the question of why Cherokee citizens must be deprived of their rights in order to make the job of registration easier for a tribal employees on salary.

Chief Wilma Mankiller, on July 29, 1984 told the Baltimore Sun newspaper that Cherokee Freedmen should not have tribal membership since such membership should be for “people with Cherokee blood”- which must clearly be seen as an effort to prejudice the Cherokee people as well as the general American populations that Cherokees with African blood cannot document Cherokee blood and perpetrating those old “one drop of blood” standards that people with African blood have no other blood and must be kept as a people completely apart unlike any other people. Cherokee nation attorney Jim Wilcoxon, during the Nero case, appears to have clearly attempted to prejudice the judge against the Cherokee freedmen plaintiffs by wrongly proclaiming that the “Freedmen did not have Cherokee blood,” and that the 1975 constitution only allowed “Cherokees, Delaware, and Shawnee” to be tribal members, although the Constitution does not say that.

The Nero lawsuit was dismissed by the judge in 1989 due to jurisdictional issues. For example the case should have been tried in the court of claims due to the amount of dollars the plaintiffs were requesting or remanded to tribal court because the matter was internal to the tribe.

In 1998, the Cherokee nation justices heard a citizenship case by a descendant of Cherokee Freedmen, Bernice Riggs. In 2001, the tribal justices determined from the testimony and records provided that Mrs Riggs indeed had Cherokee blood. However, they held that this Cherokee ancestor, a man named Joseph Rogers was deceased at the time of the Dawes enrollment, and had he been alive at the time of the Dawes enrollment, she would have been able to become a Cherokee citizen based on his degree of Cherokee blood. The tribal justices stated that the Cherokee Nation is a sovereign nation and could deny or grant tribal membership to whomever they wished.

In 1999, the Cherokee nation prepared a new constitution to submit for BIA approval. The BIA, then headed by Kevin Gover, rejected the new constitution, partially under the grounds that the Cherokee nation had not allowed Cherokee Freedmen to vote on it. According to the official Cherokee Phoenix tribal newspaper (Spring 2001), the CNO attempted to take the new constitution directly to president Clinton, but he would not sign it either. According to the tribal newspaper, tribal officials determined to request instead that the BIA agree to remove requirements of federal government approval of constitutional amendments and new constitutions. A decision was made to wait for a “friendlier administration,” in the words of the tribal newspaper.

In 2002, BIA head Neal McCaleb was approached with a request to allow a referendum by Cherokee voters on a constitutional amendment removing federal approval. Neal McCaleb wrote a letter in March 2002, stating that the Freedmen must be allowed to vote on the amendment and that no amendment of the Constitution could eliminate the Freedmen from tribal membership. In April 2002, another letter, with Neal McCaleb's signature said he did not write the first letter; the second letter did not say anything about the Freedmen being required to vote on the constitutional amendment! Note that this second letter was completely opposite of all written BIA policy since the 1940s. The Cherokee nation government, under Chief Smith, held various meetings around the Cherokee nation, encouraging people to approve the referendum and also the proposed constitution, which has no provision for federal approval of constitutional amendments and did not make the Cherokee nation