

**MOTION TO DISQUALIFY JUSTICE DARELL R. MATLOCK JR.**

October 15 2005 at 10:37 PM

Response to JAT-02-18-L IN THE JUDICIAL APPEALS TRIBUNAL OF THE CHEROKEE NATION OF OKLAHOMA

ROBIN CARTER MAYES, in his ) Official Capacity as the Principal ) Chief of the United Cherokee Nation ) ) Petitioner, ) ) vs. ) CASE NO. JAT\_20-02 M ) RALPH KEEN JR. in his Official ) Capacity as Chair for the Constitution ) Revision Commission and in his ) Individual Capacity, and the CNO ) Constitution Revision Commission ) Respondents

**MOTION TO DISQUALIFY JUSTICE DARELL R. MATLOCK JR.**

COMES NOW Robin Mayes, Petitioner pro se, requesting the withdrawal of Justice Darell R. Matlock, Jr. in accordance with JAT Rule 28.

Title 20 § 59. Disqualification of justices

Any justice of the Cherokee Nation shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit during any proceeding therein.

Petitioner will list the issues that are the basis for his motion to wit:

1. Darell R. Matlock, Jr. did share office space with Chad Smith prior to the 1995 CNO elections.

2. Darell R. Matlock, Jr. did represent one Bobby Leach in a case before the Judicial Appeals Tribunal regarding residency of Chief candidates in CNO elections. This was an obvious front for the support of Chad Smith a candidate and non-resident. In my opinion this action was a fraud against the Judicial Appeals Tribunal where Darell R. Matlock, Jr. now sits as justice appointed by Chad Smith.

3. Justice Darell R. Matlock, Jr. is up for re-appointment in December 2002 and is waiting for confirmation of a promised raise in pay, plus benefits. Petitioner has 4 different lawsuits pending before the Judicial Appeals Tribunal involving Chad Smith and other officials who have control over his re-appointment and raise. Petitioner has strong issues supported by evidence and is being stalled and diverted by the same respondents who have undue leverage on this Justice.

4. Justice Darell R. Matlock, Jr. has raised a new issue in case # JAT 02-20-M, apparently, without input from named Respondents and ordered a show cause hearing to be held on November 15, 2002 at 3:30 PM. This is the same time and date Justice Matlock previously set to hear arguments on Petitioner's motion for default judgement. Petitioner has not been provided any background or basis for the issue raised. This has

been suddenly initiated by Justice Matlock, after more than 75 days from the filing of the original petition and more than 35 days after Petitioner filed the motion for default judgement due to Respondent's failure to respond to a properly filed and served petition.

5. Petitioner currently has the following cases pending before the Judicial Appeals Tribunal: JAT 00-7 JAT 02-10 JAT 02-15 JAT 02-18 JAT 02-20

All of these cases are about the illegal abuse of power by the chief executive officer of the Cherokee Nation of Oklahoma ("CNO"), Chadwick Smith as well as other officials under his control. If case # JAT 02-20 is dismissed on the issue Justice Matlock raised (ORDER TO SHOW CAUSE why this court should not dismiss the proceedings herein for the reason the Petitioner appears to be a non-entity incapable of bringing this cause of action) all these other critical cases would certainly become subject to the same device.

The point has to be made that there is conflict of interest created by the action of Justice Matlock in this case. Especially considering that Petitioner's status as an entity is totally irrelevant in all these cases. Simply styling the heading as ROBIN CARTER MAYES, in his official capacity as the Principal Chief of the United Cherokee Nation does not strip him of his right to access this forum and seek relief. The Constitution of the Cherokee Nation of Oklahoma provides in Article XIV. Clans: (Nothing in this Constitution shall be construed to prohibit the right of any Cherokee to belong to a recognized clan or organization in the Cherokee Nation.) Petitioner has styled other cases in his official capacity. For example; Mayes v. Bearpaw, where Mayes filed in his official capacity as Chairman of the Cherokee National Party.

**CONCLUSION**

Based on the compound effect of the issues raised, Petitioner concludes that the only fair and proper action is the disqualification of Justice Darell R. Matlock, Jr. from this case # JAT 02-20.

Due to serious nature of this motion to disqualify, Petitioner urges the Judicial Appeals Tribunal to take this matter up in advance of any other proceeding in case JAT 20-02.

Respectfully submitted,

Robin Mayes  
406 E. Keetoowah  
Tahlequah, Ok. 74464  
(918)456-5761

Dated this 15th day of November 2002,

CERTIFICATE OF SERVICE  
I, Robin Mayes, do hereby certify that on the 15th day of November 2002, I mailed a copy of the foregoing motion, with proper postage thereon fully prepaid to:

Todd Hembree for  
CNO Constitutional Revision Commission  
PO Box 1353  
Stilwell, Oklahoma 74960  
Robin Mayes

Cherokee Phoenix And Indian Advocate - (918) 456-0671, Ext. 2269 FAX (918) 458-6136 - phoenix@cherokee.org  
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**Former councilors plead no contest to fraud**

By Travis Snell  
Staff Writer

TAHLEQUAH, Okla. - Two former Tribal Councilors pleaded no contest last month in District Court to criminal charges for use of Cherokee Nation funds to pay for personal attorney expenses in 2003.

Former Dist. 1 (Cherokee County) Councilor Don Crittenden and former Dist. 6 (Mayes County) Councilor Stephanie Wickliffe-Shepherd pleaded no contest Sept. 16 to the charges of making a fraudulent claim against CN and conspiracy to make a fraudulent claim against CN.

The case against former Dist. 3 (Sequoyah County) Councilor Mary Flute-Cooksey, who was also charged, was reset for Oct. 21 because her attorney did not notify her of the Sept. 16 court date, court officials said.

According to court documents, the former councilors paid Tulsa attorney Richard Toon \$10,447 with CN funds to represent them when they challenged the tribe's 2003 general election results.

The three lost their council seats in that election.

Documents show that in June 2003 Crittenden, Flute-Cooksey and Wickliffe-Shepherd signed a contract with Toon and agreed to reimburse him for "expenses incurred." The following month the Toon Law Firm was paid using CN funds.

Title 26, Section 102(A) of the tribe's codes prohibits the use of public funds to pay an individual's attorney fees to contest a tribal election.

Accounting documents show that each of the three councilors expended \$3,482.37 of their own Tribal Council legal expense fund and that they

filed the election appeal petition as "a current council representative."

The three councilors lost the appeal after the tribe's Judicial Appeal Tribunal ruled 2-1 against them.

Court documents also show that in August 2003 the three also attempted to use tribal funds to pay a private law firm in a suit by Cherokee Freedmen descendants in their lawsuit against the United States.

According to court documents, Crittenden and Shepherd do not admit guilt to the charges by pleading no contest, and they are to be placed under unsupervised probation for six months.

Upon completion of six months without probation violation, the no contest pleas shall be expunged from their records and the charges shall be dismissed, court records state. A court date of March 17, 2006, has been set for those proceedings.

Wickliffe-Shepherd's attorney Nathan Young III said as part of a plea bargain, both he and his client, Crittenden and his attorney Holly Chennault and the CN Justice Department agreed not to comment on the case.

Sammy Rusco, CN communications officer, said the tribe had no comment on the Sept. 16 decision.

In a civil case ruling concerning the \$10,447, District Court Judge John Cripps wrote in April that the ex-councilors had to pay back the money used to pay for Toon's services. On Aug. 8, Cripps signed the order for Crittenden and Wickliffe-Shepherd to pay back the money, but excluded Flute-Cooksey because she had filed for bankruptcy and was including her tribal debt as part of it.

Court officials said Crittenden paid \$3,482.37 - one-third of the money used to pay Toon - along with court costs the day of his no contest plea.

Wickliffe-Shepherd paid her \$60 court costs the same day, and has 30 days from Sept. 16 to pay her share of the \$10,447, court officials said.

Travis Snell, (918) 456-0671, ext. 2358  
tsnell@cherokee.org

Editors note: this is another travesty in our Cherokee History, since the 3 councilors had a good case & the support of the many Cherokee people.

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**CNO member claims discrimination**

alleges that there is no boundary mentioned in the constitution and to create one "out of thin air" is a violation of his rights to equal protection of the law.

The Cherokee Nation Tax Commission has hired an attorney to represent them who is employed by the Cherokee Nation Office of Justice. Sarah Hill filed an entry of appearance on behalf of the commission and filed a motion to dismiss.

Carrico is represented by JAT Lay Advocate David Cornsilk. Cornsilk said, "They have filed a motion to dismiss claiming the Tax Commission cannot be sued because of sovereign immunity. We welcome that argument and have the

documentation to defeat it."

Cornsilk added, "This is not the first time the Council has imposed an extra-constitutional requirement in violation of the constitution. They tried to do it to stop tribal members from running for chief who live outside of Oklahoma and that was struck down by the court. They did it to the Black Cherokees when they passed a law preventing them from enrolling. The JAT must now decide that issue, as it will this one."

The motion to dismiss filed by Hill did not address the specific allegations in the suit, but instead has tried to get the suit dismissed on a technicality.

More to come on this issue too!

Continued from August Issue

**Chapter Two -The Birth and Growth of the Keetoowah Society**

[168] While some of the members of the Society were pro-slavery in their sentiments, yet they loved their country more than slavery -- while the majority of its members were positive and strong anti-slavery men. Many were Christians and were opposed to slavery, not only from patriotic motives, but from religious conviction also. [169]

The Keetoowah Society, itself, never stated explicitly in its Constitution that it was opposed to slavery, for to do so would have violated the "neutrality" contained within the articles of the Constitution. However, it made quite clear its position on the issue: On April 15, 1868, a small number of the leading members of the Keetoowahs got together and discussed the affairs of the Cherokees, the purpose and objectives for which they had always stood. They discussed what the final result probably would be caused by the existing state of affairs in the United States. The people of the United States were divided and it was clear they were about to fight. The Cherokees were situated too far in the South and the men were becoming reckless and seemed to be taking sides with the South, but the leading cause was those who owned Negro slaves. It was plain to be seen that Cherokee people without a full understanding were taking sides with the South. It was plain that the teachers for the North were being objected to and were being forced out of the Cherokee Nation. They believed that if the Missionaries were gone all of the Cherokee people would go to the side of the South, but they were mistaken. These matters were already understood by the Keetoowahs, and the Keetoowahs felt what the final result would be. [170]

The Constitution of the Keetoowah Society also articulated that a nation based upon the institution of slavery was inimical to the interests of the "Kituwah Spirit." As lovers of the government of the Cherokees, loyal members of Keetoowah Society, in the name of the mass of the people, we began to study and investigate the way our nation was going on, so much different from the long past history of our Keetoowah forefathers who loved and lived as free people and had never surrendered to anybody: They loved one another for they were just like one family, just as if they had been raised from one family. [171]

In expressing that the Keetoowah forefathers "loved and lived as free people who never surrendered to anybody. They loved one another for they were just like one family..." the Constitution was dedicating itself to the notion of liberty and egalitarianism in the Cherokee Nation. Any notion of slavery or inequality was contrary to the "Kituwah Spirit." [172] Though many people give credit to the Baptist missionaries for espousing abolition among the Cherokee, the notions of liberty and egalitarianism extended far back into Cherokee history. Prior to contact with whites, there was no evidence to support any racial identity based prejudice or mistreatment within the Cherokee Nation. [173] Many of the fullbloods having been slaves themselves in the colonial period and having seen the destructive influences of the slave trade among their own people, it is likely that opposition to slavery existed prior to contact with abolitionist ministers. Finally, the deep historical relationship between fullbloods and Africans that existed with both the temple mound based cultures and the Protestant churches of the Southeastern United States would have even further supported a society based upon freedom and liberty. [174] Finally, the Keetoowah Society believed that the more the Cherokee Nation disestablished its ties with the institution of slavery, the better it could sustain its own national identity and control its own sovereignty. [175]

The Keetoowah Society was ostensibly a secret society dedicated to preserving the interests of fullbloods within Cherokee society. However, at its very heart it was a religious response to the modernist impulses found in the developing racialist ideology, emerging capitalist economy, and universal nationalist identity of the nineteenth century. The conservatives that made up the Keetoowah Society sought to promote traditional beliefs regarding a monogenetic theory of human origins, communal

ownership of property, collective responsibility, and cultural integrity among the Cherokee. In the face of the tremendous changes that swept through the country in the nineteenth century, the Keetoowah believed that in tradition lay the power to overcome assimilation and accommodation to the forces of modernity.

Arising from the boiling cauldron of religious, social, and political forces which shaped the Cherokee Nation in the late 1850's, the Keetoowah Society quickly became a potent force in the Cherokee Nation. Arising from just a few members within the Peavine Church, its membership spread rapidly and by the end of the decade as many as 1500 men belonged to the Keetoowah Society. [176] With the formal establishment of the Keetoowah Society in the Spring of 1858, that which had been a critical factor in Cherokee mythology and religion moved from a secret society shrouded in mystery to the forefront of Cherokee civilization. In the coming years, that which had been a secret was to be even further revealed. The End of Secrecy and the Birth of the "Pins" The militancy of the Baptist missions on the issue of slavery and the fact that these missions were moving from preaching to organization within the oppressed community became an increasing threat to the political officials responsible for the Indian Territory. Federal Agent George Butler, a member of Fort Gibson Lodge #35, lamented in late 1858: "there are a few Black Republicans, who are the particular fondlings of the abolition missionaries that have been, and still are making themselves officious upon the subject of slavery." [177] Who these "Black Republicans" were and the role that they played in the upcoming struggle is an issue for conjecture, but one is left to ponder the positions of Joseph Island, Old Billy, Brother Jesse, Monday Durant, Uncle Reuben and the numerous blacks who must have made up the Joneses congregations. The Fort Smith Times on February 3, 1859 began to take notice not of the "Black Republicans," but of the Baptist missionaries who were allowing such to operate with freedom and dignity within their churches. Evan Jones was particularly cited as being "an abolitionist, and a very dangerous man, meddling with the affairs of the Cherokees, and teaching them abolition principles." [178] In late 1859, William Penn Adair (Flint Lodge #74), a member of the Cherokee National Council, declared that they would have the Joneses out of the Cherokee Nation if they had to resort to a mob to accomplish their purpose. Adair, after an earlier struggle with Evan Jones over a "runaway slave," had stated that Jones's "abolition principles and doctrines...may 'gull' a few of the ignorant class...but I think the more enlightened parties would rejoice at his removal." [179] On October 16, 1859, John Brown and his cadre of abolitionists raided Harper's Ferry with the expectation of instigating a slave revolt which would spread throughout the South and turn the tide of the struggle against slavery. Though the incident was in Virginia, its implications were felt throughout the land. Abolitionists moved from being a threat to the institution of slavery to a threat to the internal security of the country. Rhetorical abolitionism was a problem for the political authorities; militant abolitionism became an issue for the military ones.

In October 1859, Federal Agent and Freemason George Butler had seen enough and Evan Jones noted that Butler had ordered him "to take my person and effects and remove them out of the Nation." [180] Butler ordered the sheriff of Goingsnake District to arrest John Jones by force if necessary and remove the abolitionist minister from the Cherokee Nation. When the sheriff set about to arrest Jones, a word was sent out among the faithful, and the fullbloods in the vicinity surrounded the mission. The sheriff was "deterred from executing the order by fear of the common people." If the government was acting against the will of the Cherokee Nation, then "the beloved community" must themselves become the will of the government. The Keetoowah Society had taken a profound step towards the building of a new Nation; it had acted in its own

Continued in next month issue

"We are reluctant to admit that we owe our liberties to men of a type that today we hate and fear — unruly men, disturbers of the peace, men who resent and denounce what Whitman called 'the insolence of elected persons' — in a word, free men."

— Gerald W. Johnson (1890-1980)

Source: American Freedom and the Press, 1958

editors@cherokeobserver.org