Sovereignty Testimony
Testimony of Scott Kayla Morrison
Choctaw Attorney; Wilburton, Oklahoma; March 11, 1998

How far does tribal sovereignty extend? That is the question of concern. You know about situations where non-Indian patrons of tribal casinos were prevented from bringing suit against a tribe because of tribal sovereign immunity. You may not know about a situation that is more troubling to me, a situation where tribal sovereign immunity extends to suits on behalf of the United States to enforce a contract. When tribes cannot be sued by anyone, even the federal government that funnels billions of dollars into tribal coffers each year, the tail is wagging the dog.

Sovereign immunity against the United States has been used by tribal leaders and tribes in both the criminal and civil areas. The Eighth Circuit is currently considering Darrell "Chip" Wadena's argument that the federal government cannot criminally charge him with federal crimes involving federal money because of sovereign immunity.

The Seventh Circuit (U.S. ex rel Hall v. Tribal Development Corp., No. 96-1772) issued a ruling in 1996 that said that citizens cannot bring a False Claims Act suit on behalf of the United States against a tribal corporation. The court ruled that the tribe was an indispensable party and could not be sued because of tribal sovereign immunity. If the federal government cannot sue tribes to enforce contracts, we have a problem. Most of the billions in federal aid received by tribes are through Public Law 93-638 contracts or Self-Governance Compacts. With no administrative accountability process, as is currently the case, and no enforcement mechanism through the courts, Congress has no control over federal dollars once it goes to tribes. There will be no accountability to anyone unless sovereign immunity is limited in some fashion.

I would like to share my experience of sovereign immunity as it pertains to a federal contract. The woman standing behind me, Rose Burlison, was arrested in 1995 at the Choctaw Labor Day Festival in Tuskahoma, Oklahoma, for videotaping the arrest of a 64-year old grandmother, Juanita McConnell. Mrs. McConnell was arrested for passing out Choctaws for Democracy pamphlets. Thirty minutes later, Douglas Dry, an attorney, Marine Corps Reserve major and a candidate for Chief, was arrested for passing out literature and he "voluntarily" slammed his face into a tribal police car while handcuffed.

At the time the three were arrested, the tribal attorney said that they violated a law prohibiting passing out political literature on tribal or federal land. When it was discovered that no such law existed, the three were charged with a variety of charges, including disturbing the peace and disrupting a parade. Mrs. Burlison faces almost five years in jail. Mrs. McConnell faces over three years in jail. Major Dry faces almost five years in jail. Free speech can be punished on Choctaw land because of the legal fiction that the U. S. Constitution does not apply to Indian Country.

How could our tribe arrest these Choctaw citizens when we never granted criminal jurisdiction to our tribe under our tribal constitution? The Bureau of Indian Affairs has taken the position that the Choctaw Nation contracted federal criminal jurisdiction through a Public Law 93-638 contract. The mechanism that allowed this is uncertain, and I believe illegal. What is certain is that 1) the U. S. Constitution does not apply to Choctaw land, even though federal criminal jurisdiction is being exercised; and 2) tribal sovereign immunity applies when we sued the tribal officers over the arrests in a civil rights lawsuit in federal court. The tribal officers are represented by the U. S. Attorney's Office in their official capacity but are asserting tribal sovereign immunity in their individual capacity. They are playing both sides of the street.

The three Choctaw citizens arrested have been forced to defend themselves, out of their own pockets, for over two years in a Court of Indian Offenses for the Choctaw Nation, a supposedly-federally-administered court. They were charged for violating laws passed by the Choctaw Council, instead of under the Code of Federal Regulations. They have been unable to obtain evidence necessary for an adequate defense from the Bureau of Indian Affairs and the U.S. Attorney's Office due to the regulations of a CFR Court, even though this is a court exercising federal criminal jurisdiction.

The tribal prosecutor is also the tribal attorney who represents the executive and legislative branches of the Choctaw government. This violates the separation of powers doctrine of the U. S. and Choctaw Constitutions. The chief appoints the judge for this court, even though the federal regulations state that the BIA is supposed to appoint the judge. The chief can also fire the judge at will under the Choctaw Constitution. The chief also can fire the tribal police for not doing as he orders. The chief intentionally hires a tribal prosecutor he can control. Prior to hiring the son and law partner of the tribal attorney, the former Chief, Hollis Roberts, offered the tribal prosecutor job to Micah Knight, a Choctaw attorney he thought he could control. She turned down the job.

The chief and the council can manipulate the court to their advantage. Our former Chief Hollis Roberts was convicted of sexually abusing tribal employees who were tribal members in federal court in June 1997. Prior to the indictment, a victim, whose attorney was Douglas Dry, sued the Chief in federal court but the case was dismissed due to sovereign immunity. She was told by the federal court to sue in Choctaw court. Ten days later, the council changed the statute of limitations from three years to six months so the victim could not sue the Chief. The Speaker of the council said this was the specific reason for the change as shown in the council minutes.

Dry, Burlison and McConnell have filed a writ of habeas corpus, I have here, in federal court in January 1998. It sets out 17 reasons why they should be released from these charges, and documents the abuses of the Choctaw court. Judge Frank Seay dismissed the writ February 2, 1998, in a one-line order because they were not "in custody." This order has been appealed to the 10th Circuit.

This is a system ripe for abuse because of no accountability — from the federal government or tribal citizens. Under the current state of the law, we cannot sue our tribal government because of sovereign immunity and the holding of Santa Clara Pueblo. Without federal court jurisdiction, we are at the mercy of a tribal government that has proven itself capable and willing to harass and intimidate tribal citizens. Sovereign immunity was intended to be a shield for tribes to become responsible and financially solvent governments. However, it has become a sword used against tribal citizens.

You will be told that more money to tribes will solve any problem discussed here today. Let's look at how money has created, not solved, problems in the Choctaw Nation. From 1991 to 1995, the tribe received over $1 million dollars to prosecute only three people for free speech. Since these arrests in 1995, the tribe has received a second $1 million and it has prosecuted a total of 15 people in five years, our tribal population is 107,000, with 25,000 living within our boundaries. Of those 15, six were Choctaws for Democracy members. These six were charged with 22 crimes while the nine non-CFD members were charged with only 10 crimes, mainly public intoxication. It appears from the figures that the tribal leaders are targeting a certain group for harassment and intimidation, using federal funds and federal criminal jurisdiction to accomplish this.

At the 1996 Labor Day Festival, there were more arrests for possessing Choctaws for Democracy pamphlets. The Choctaw Nation hired off-duty police officers from state law enforcement agencies as security during the Festival. Non-Indian officers wearing City of Durant police uniforms and badges assaulted Douglas Dry for possessing literature. Durant is 100 miles from the place of the arrests in Tuskahoma.

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We sued the officers in federal court. The Choctaw tribal attorney represents these officers and asserted tribal sovereign immunity on their behalf. His argument is that since they are tribal officers, we can't sue in federal court; since they are non-Indians we can't sue in Choctaw court; and since it happened on tribal land, we can't sue in state court. According to his argument, non-Indians can be hired by the tribe to assault tribal citizens without recourse. Without federal court review, we are at the mercy of a tribal government out of control.

We hear "vote the bums out" as a solution, instead of limiting sovereign immunity. We cannot do this because the war chest to re-elect our chief and council comes from federal funds. This is how it works: The tribe is given federal funds under PL-93-638 to maintain the Choctaw voter registration list. This list is only available to the administration and candidates of its choice, not to all candidates. The reason for such secrecy is the federal Privacy Act, according to the tribal attorney. The Office of the Solicitor and a federal court have both ruled that the Privacy Act does not apply to the Choctaw voter registration list. But the tribal attorney continues to assert the Privacy Act prevents release of the list. The tribal attorney is paid by federal funds for this advice that is clearly against the law. But when tribal candidates can't sue the tribe in federal court because of sovereign immunity and can't win if they sue the tribe in tribal court, the tribal attorney can give any advice the administration wants to hear.

In 1987, a candidate challenged withholding the voter registration list in federal court. The district court ruled that the BIA must release the list. However, ten days after the filing of the complaint and prior to enforcement of this ruling, the BIA amended the voter registration contract with the tribe to only include names but no addresses. With a tribal population of 107,000 scattered across the country, candidates cannot inform the membership of their platform without addresses. The BIA continues to funnel federal funds into a tribe that diligently denies us basic input into our own tribal affairs: election of tribal leaders. This is not self-determination, this is a dictatorship.

In addition to withholding the voter registration list, the Choctaw Nation does not allow candidates a platform in the tribal newsletter, the Bishinik, which is funded by federal funds, by the way. According to the Bishinik, the only candidate is the incumbent, and there is no free exchange of ideas in the paper. Federal funds are used to violate candidates and tribal members free speech and free association. This can be done because there is no mechanism to allow accountability. We can't sue and you, the federal government, can't sue.

Another way the administration controls the election is mailing campaign literature of the incumbent, using federal funds. The chief sends out campaign letters, birthday and Christmas cards, using the tribal postage meter and the voter registration list, both funded by federal funds. But the abuse of federal funds in campaigning does not stop there. Federal funds are used to send out campaign letters for the state governor, a U.S. Senator, state representatives, state judges, county commissioners, and county sheriffs. Rep. Wes Watkins can provide first-hand experience with use of federal funds in campaigns. With political favors owed the tribe, tribal members are further at the mercy of tribal leadership in forums outside of tribal government. And federal funds allow the consolidation of such political power.

The tribe controls the press in southeast Oklahoma, directly or indirectly. The former Chief, Hollis Roberts, and the tribal attorney, own newspapers outright; the tribe owns shares in newspapers; and the tribe has contracts with newspapers for tribal printing. Small newspapers have a vested interest in not printing fair and accurate tribal news. Tribal citizens cannot participate in tribal affairs if they are uninformed, and the tribal administration can maintain ignorance with federal funds at their fingertips.

Tribal members cannot "vote the bums out" in such a system. There is no mechanism to bring justice and democracy into our tribal government as long as this allowed. We are asking for relief from this tyranny. We want federal court jurisdiction or review. Without it, we will continue to be treated as second class citizens, not federal citizens.

We are not whiners. We have actively sought redress in tribal court, in CFR courts, in state courts, in federal court and now in the 10th Circuit. I have a list summarizing 9 cases we have filed, in addition to administrative complaints within the BIA and letters to Congress. We have nowhere else to go. We are smart, intelligent people who participate in tribal affairs to return a government of the people, by the people, and for the people. This is not an unreasonable request. Congress set up the system we currently live under. Congress can change it. We want to get back to our lives instead of investing thousands of dollars in fighting a corrupt system funded by federal funds.

The Choctaw Nation is a microcosm of what is going on across Indian Country. The lack of accountability creates an atmosphere ripe for corruption and abuse. The Mississippi Choctaw Tribal Court has problems similar to ours.

Chokwe Lumumba, an African American attorney in Mississippi, represents a Mississippi Choctaw in an action in tribal court to stop the casino, Silver Star. During a court hearing, Mr. Lumumba was fined $300 for contempt of court. His contempt was 1) folding his arms; 2) saying "uh-huh"; and 3) for an undisclosed incident that happened in chambers. He has not paid this unfair fine and has been told that he would be arrested if he came on the reservation again. The problem is that a tribe does not have criminal jurisdiction over non-Indians and cannot arrest him. Regardless, due to this threat, the tribal member has been denied an attorney of choice to represent him in tribal court.

Another tribal member, Harrison Ben, is a councilman on the Mississippi Choctaw tribal council. He was arrested in January 1996 for violating a law outlawing possession of tribal documents without permission of Chief Philip Martin. I was contacted by tribal members when this law was passed and asked for a copy of it from another councilman. He said that he could not get a copy of the ordinance because possessing it would be illegal. There is a serious problem with notice to tribal members of what action will result in criminal prosecution by withholding this ordinance from the tribal public.

This ordinance is not available through the Bureau of Indian Affairs either. Under 25 CFR Part 11.100(e), the BIA must approve it before it becomes effective law. BIA employees are concerned that release of this ordinance will result in their arrest. There are several problems with this. First, the tribal or CFR court does not have jurisdiction over federal employees. Second, withholding this information violates due process of tribal citizens under the U.S. Constitution or the Indian Civil Rights Act. Third, this determination violates the Freedom of Information Act which would allow release of this ordinance. Fourth, even if the tribe had authority over federal employees, the BIA headquarters is off-reservation and the tribe does not have extra-territorial criminal jurisdiction. The tail is wagging the dog when this can happen.

At the January 1996 council meeting, Harrison Ben was asked to approve the casino budget without an opportunity to study it or talk to his constituents. He refused to vote on it and left the council hall with the budget in his possession. He was arrested the next day. Mr. Ben's attorney, Harvey Freelon, is an associate of Mr. Lumumba since Mr. Lumumba cannot return to tribal court. Mr. Freelon filed a motion to dismiss that was denied on April 25, 1996. The decision was published in 23 Indian Law Reporter 6119 (July 1996). Mr. Ben filed an appeal within 30 days of the decision and to date, this appeal is still pending. Mr. Ben is still facing a criminal charge over a year later.

I worked on the Miss. Choctaw reservation as staff attorney for East Mississippi Legal Services in 1990-91. I had many problems litigating in tribal court. I had a bad feeling about going to my regular civil docket on December 6, 1991. When I did not show up, the court clerk (a non-Indian) asked the county sheriff to go by my apartment off-reservation to bring me to court. She sent the Choctaw police to pick up my friends and staff on the reservation to question as to my whereabouts. The Mississippi Narcotics Bureau was sent to find me at friend's in Jackson, Miss., and broadcast my tag and a description of my truck. All of this was done without a warrant to bring me back to tribal court. I have documentation of this because the tribe filed a bar complaint against me. During the bar complaint hearing, I was provided documentation and two days of testimony. It was pretty scary. Now, they refused even to acknowledge my application to practice in Miss. Choctaw tribal court.

Editor's Note:

Scott Kayla Morrison, (1951 – 2000)

Scott Kayla Morrison, Attorney and Author, grew up on her grandmother's allotment in the old Choctaw Nation, OK, where her family has been living since the Trail of Tears in the 1830s.

In early August, 2000, Scott purchased a rifle. On August 8th her body was found by local authorities.

A month earlier, Morrison was in New York explaining to an audience that there is no guarantee of freedom of press, speech, or assembly on reservations…but that there is retribution against the families of those that speak out against tribal governments. She said she feared for her life and the Choctaw knew she was here "telling on them." 30 days later back in Oklahoma she was found shot dead. The local sheriff ruled the death a suicide with a rifle.

Morrison, a member of the Oklahoma Choctaw tribe, was the recipient of numerous awards, including the 1990 Phillip Hubbard Human Rights Award.

Morrison graduated from the University of Oklahoma in 1987 with a Bachelor's degree in English and a minor in writing. Morrison then attended the University of Iowa Law School where she was President of the American Indian Law Student Association. While at UI, she was a research assistant to Professor Robert Clinton, a leading Indian law scholar.

For more information, click here: https://books.google.com/books?id=sP8AqLEAbDMC&pg=PA420&lpg=PA420&dq=scott+kayla+morrison+death&source=bl&ots=UKYveMajz0&sig=ACfU3U3SH1snMZYU7Q7ErbHRVXQa0pkcwg&hl=en&sa=X&ved=2ahUKEwjq-ZHQ3qDiAhUJQK0KHTv_Ce0Q6AEwCXoECAgQAQ#v=onepage&q=scott%20kayla%20morrison%20death&f=false