

Constitution Reform  
Public Hearing No. 6  
Saturday, February 27, 2010  
Held at Crowne Plaza Hotel in Los Angeles, CA  
10:00 am to 12 Noon

The meeting was brought to order by Aaron Carlson (Constitution Reform Project Coordinator). Others attending the meeting were his assistant, Sandy Marckesoni, along with two Constitution Committee Members: Terri Humble, and Sarah Yanez.

We have this volunteer committee who works twice a week, and anyone who is an enrolled member can come. We keep an update on our website which is [www.kawcrp.com](http://www.kawcrp.com) so people can see what's happening.

They started this project back ten or twelve years ago. Terri Humble has been working on it since that time. They got a grant from the Administration of Native Americans and the Department of Health and Human Services. They gave us three years to rewrite the Constitution and to rewrite all tribal policies and procedures.

Some of the requirements of the grant are as follows:

- To consult, educate and update tribal members as to our progress as to how we're going to move forward. We do that by having meetings like this today, and through our newsletters and our website.
- We hired a Facilitator to guide the constitution reform process.
- To complete a draft of the tribal constitution. We are going to draft a Constitution and send it out to everybody so that they can see it.
- To review tribal policies and procedures, bylaws, codes and ordinances. Basically, in the final year of the project, we want to send the new constitution out to the people to be voted on and to be adopted, as well as adopting new policies and procedures throughout the process.

Aaron: This is our sixth public hearing. We started in August at the Powwow in Kaw City. We held one in November in Ponca City, and we went to Kansas and held two. One in Kansas City, and one in Wichita. And we held one three weeks ago in Houston. The reason we picked these locations was because we sent out a postcard late last year. We asked where would they come, and these were the cities that they picked. We have about 180 Kaws in California.

Tribal Member Attendee: Really? Where are they?

Aaron: You go and reach out to the people you can, and then do what you can do.

Removal of Secretary of the Interior

Aaron: Basically, most tribal constitutions were rewritten in the 1930's in a template as issued by the Federal Government. These are called IRA Constitutions. There are different provisions in them that gave the Secretary of the Interior control over what the tribe could do. In 1986, the

Federal Government gave them additional ability to govern themselves and in the process of that self-governance was taken out. And we are a self-governing tribe, and we went into self-governance in 1995. One of the requirements in these was the requirement that the Secretary of Interior had to approve any changes that you made to your Constitution. Based upon the law that passed in the 1990s, we were allowed to take that provision out. So about three years ago, the tribe held an election to remove the Secretarial approval. So the Secretary of Interior is no longer required to approve any future changes that we make.

The committee has looked at a number of different changes over the last year. There are six that they have pushed.

#### General Council Powers

Aaron: One of them dealt with what the General Council can do. Basically, the General Council today only has some limited powers. They elect people, they have the right to remove people, they can remove elected officials, they confirm judges, and they have control over land issues. The population of the tribe doesn't have a whole lot of power. So they wanted to say that the General Council should assist the Executive Council and provide broad policy directives like strategic planning, goals in housing, health care, education, historical preservation and economic developments. They want that better defined as to what the General Council has the authority to do.

#### Designation of "Primary" Legislative Body

Aaron: Then they went to the idea of a primary legislative and this is who is supposed to make the day to day laws with some oversight.

#### Conflict of Interest

Aaron: Being a small tribe we do run into issues where Executive Council Members have to decide on issues that affect them. And they wanted to try to solidify or make it harder for people to vote on things that influence themselves. So they made the following suggested Amendment: "No executive council member shall **participate or** vote on any matter coming before the Executive Council in which the member has a personal interest or in which the member stands to gain financially or otherwise be enriched by the outcome of the vote."

#### Freedom of Information Act

Aaron: Basically, there's been a lot of conflict in the tribe as to what information a tribal member can walk in and get.

Tribal Member Attendee: As far as their own information or information on what the tribe is doing?

Aaron: Information on what the tribe is doing.

Tribal Committee Member Attendee: Right now a tribal member can go in and look at the Executive Council Meeting minutes, but they cannot have copies. They can only view them in the Executive Secretary's office. That is just an example, and some of us think that you should be able to get a copy of a transcript of open meetings.

Tribal Committee Member Attendee: Some tribes have even put their minutes on a website for their members.

Aaron: I come from a governmental background and I say we have to have a balance. There are certain things that have to be out there, but there are certain things that are tribal secrets. If we are having a discussion about business transactions, we have to be careful to protect some of it. As a whole, they're talking about basic information that should be made available, and that's what we're really trying to do.

#### Judicial Terms of Office

Aaron: Currently, we have six (6) year terms of office for judges on the Kaw Supreme Court, and they want to reduce those to a four (4) year term.

Tribal Member Attendee: That's an elected position?

Aaron: No they are appointed by the Chairman and approved by the General Council. The tribal members who show up for the quarterly meetings, get to make the decision.

Tribal Member Attendee: Is two years good? If you get a good judge, you don't want to lose them do you?

Aaron: There's nothing that says they can't be reappointed. Is six years too long is what they're looking at. It might be interesting and you bring up a good point. Maybe we need to look at how long the average person has served in the past. Because if they resign at any point, then the four years or the six years don't make sense. But I know we can go back and track that down.

#### Tribal Adoption

Aaron: Lastly, we have a provision in the Constitution that allows for honorary tribal adoption which basically says: "The procedures and requirements for the adoption of other persons as members of the Kaw Nation. Persons adopted into the Kaw Nation shall be recognized as honorary members and shall not have the right to vote, hold office or otherwise exercise the rights, benefits or privileges of members enrolled under Section 1 of this article."

This has been in the Constitution since 1990, and thus far they have found no one who has ever done it, so basically what they want to do is take that provision out.

So those are the changes that the Committee came up with before I got here.

Tribal Member Attendee: I think that's good. Even when Obama was running for election and he went to some tribe and they made him an honorary tribal member. That just annoys me to no end. It's just like giving someone a Rhodes Scholar when they go to talk at a graduation. It just bothers me.

#### Blood Degree of Elected Officials

Aaron: One of our biggest debates moving forward is the blood requirement for elected officials.

Currently the Constitution says that you have to be a quarter-blood to run for Executive Council. There are approximately 3100 enrolled members, and 253 meet the blood requirement.

Tribal Member Attendee: That's going to be an issue. That's real quick going to be an issue.

Aaron: Basically it is going to be an issue and that's one of the things that we're looking at. The pool of 253 is nationwide. The debate has been how do we fix that? Do we lower it to another number like an 1/8<sup>th</sup>, a 1/16<sup>th</sup>, or doing away with it. If you're a tribal member you should be able to run for office. One of the things we discussed was to move it to zero, one of them was to provide some type of sliding scale to say that we would create a number, whether it's 500 or 1000, and say whoever is at the top 500 people are allowed to run for office in an election year.

Tribal Committee Member Attendee: This is very controversial. There are a lot of people who have different opinions on it.

Tribal Member Attendee: The blood line is just getting weaker and it's getting watered down. Every generation is getting a little less Kaw.

Tribal Committee Member Attendee: Right now we have the same families running, and nothing against anybody on the council right now, but I think it's time to get some new blood in there.

Tribal Member Attendee: Our last full blooded Kaw died almost a decade ago, and when he died, I saw this as being an issue. And if the same families are keeping hold of the reins, I think we should lower the blood quantum requirement. Because it's just going to continue to be an issue if we don't.

Tribal Committee Member Attendee: I want to open it up and that's my opinion. I don't think we should have to visit this again in a year or five years. If we want to put stipulations to be on the Executive Council like you have to have a college education, then that's fine, but we need to give everybody a chance.

Tribal Committee Member Attendee: In my opinion, an opposing argument to that is, people who are members of the tribe who are local, don't want somebody from Los Angeles that have never had anything to do with the tribe come in and run the tribe. And put a four year term on their resume and then move off and be gone again. I think that is the concern of the local people who live in Kaw City. I'm all for opening it up to everybody, but I think if you made a stipulation to run for Chairman or Executive Council member, you need to have worked on a committee like the Cultural Committee to show your involvement with the tribe.

Tribal Member Attendee: I think that's fair. You can't run for President without being in office prior to running. I am completely for that. I personally think we should open it up. But like I said, we're going to have cross this bridge again when the 1/16<sup>th</sup> get's watered down. Instead of rehashing it again, just open it up.

Tribal Committee Member Attendee: Your opinion will be heard, and you will have the opportunity to vote on it.

Tribal Member Attendee: As far as getting fresh blood in, sometimes when you live there and you are there, and you can only see those four walls, you really get boxed in. You can't look outside the box. And if you get fresh blood, let's say from California, and that does do a Chairman role for four years, you can have someone that sees outside the box that can see a bigger picture. Or someone that's in Oklahoma, but not in Kaw City or the immediate area, it's not like they want to take over, they just want the opportunity to see the whole picture.

### Separating the Chairman and CEO

Aaron: One of the other big discussions that we've had deals with separating the Chairman from the CEO. What it comes down to is there are no educational requirements to run the tribe. All it says is you have to be 25 years of age.

Tribal Member Attendee: Isn't that a little young? It's just that when I was 25, I didn't know a whole lot. At 35, I have a much clearer idea as to where my head is.

Tribal Committee Member Attendee: The reason that they're older is because they are a quarter- blood. That's the reason we haven't had anybody younger.

Aaron: Are we potentially thinking maybe we open it up to raise the age? What I'm saying is that a good negotiation point may be to say let's move the blood quantum and to move the age up. It is something that we should look at. Nobody has ever brought that up, so we will take it back to the Committee to discuss.

The other problems that we've had is, if we bring in a professional in addition to the Chairman, who would does the professional report to and how do we deal with the cost issues related to it? What do we pay the Chairman and what do we pay the CEO? Obviously there are limits to the amount of money that the tribe can spend.

Tribal Committee Member Attendee: What he's talking about now because we don't have any educational requirements for our Chairman, there has been an opinion to bring in a CEO or CGO, and pay them to run and operate the tribe, and then you would have the elected Chairman, who may or may not have any education, to be the baby kisser.

Tribal Member Attendee: That has the potential to be a major power struggle.

Aaron: I agree that it does. And one of the discussions coming out of that comes down to who does the CEO report to? Does he report to the Chairman who you've authorized to be the baby kisser or does he report to the Council? If he reports to the Council, then you get the power struggle. So how do we fix or correct for these things?

### Three Branch System of Government

Aaron: One of the things that we've talked about is maybe we leave them together but set up a better system of checks and balances and branches of government that are better defined. Today

we have a Parliamentary type system where the Chairman runs the Council, and the talk is if we separate him off of the Council, we would have a better three defined branches. More like the U.S. governmental system as opposed to like the British System where in Britain the Prime Minister runs their legislature. And if we pull him out that would better define there are questions that occur as to where if the Chairman does something, is he doing it as the Chairman or as a member of the Council. So that merger has created a little bit of a problem and it's hard for direction to be given. If the Council gives direction to the Chairman, there's nothing saying he has to do it. If we separate him out and try to build in a process of checks and balances, and this goes back to the triangle page as I refer to it, and talks about some of the things where the Legislature would have control over the Chairman, and the Chairman would have control over the Legislature. Today the tribe does not give the Chairman the authority to veto a decision of the Council.

Tribal Member Attendee: That's pretty unbalanced.

Aaron: What typically happens is the Chairman says "no" or does not implement it the way they like. He's almost stealing that authority as opposed to having that authority. And that's one of the things we've tried to do is balance out the interaction between the Council and the Chairman.

Tribal Member Attendee: You have to. It seems very unbalanced right now.

Aaron: One of the things that I think that the tribe has dealt with over the past in the last 10 or 12 years, sometimes the Council gets all the authority and rules as a dictator, and sometimes the Chairman takes all the authority and rules as a dictator. We have to find a way where there is balance between the two. Ten years ago we dealt with the issue with four members of the Council that did whatever they wanted. It was a complete mess and ended up in Federal Court. They abolished the Court System because they didn't like the decision of the Court. We refer to them as the EC4. We don't want to go back to that day, but at the same time we've got to be careful not to go to a day where the Chairman has all the authority and the Council can't do anything. And that's why we've got to find that balance between the two.

Tribal Member Attendee: There has to be a balance. I can't believe it's like that honestly. I can't believe it's running efficiently, if it is running efficiently like that. That was my guess.

Tribal Committee Member Attendee: It's not running efficiently and that's sad. It's not being healthy for the tribe and it is not working. And that's why we're trying to make changes, and we have to be careful of what changes that we do make.

Aaron: We have to be careful of the ramifications of any changes that we make, but we are in some ways better than other tribes. While we adopted one of the boiler plate constitutions based upon the 1934 Act, there are certain other ones where there is no court, and the Legislature becomes the court, and those are a complete mess. The problems that we're dealing with are not different than any other Indian tribe who has not gone through this process. So I feel good that we're moving in the right direction, but there is a lot of fear of change obviously, and nobody knows what's really going to happen because there are no good models.

Sandy Marckesoni: So far the only ones who have gone through Constitution Reform are the larger tribes, and we're the first small tribe that is going through it.

Aaron: The tribes who typically have gone through it have been very progressive and have lots of money.

Tribal Committee Member Attendee: I can add though too as a tribal member, all the tribes in our area look up to the Kaw Nation, because for a small tribe we have done a lot of positive things. So that's something that you can be proud of, even though we do have our politics and everything, we do have a lot of positive things like our Clinic, and the Wellness Center.

Tribal Member Attendee: My Dad goes to the Kanza Clinic and they've taken excellent care of him. Whenever I go visit, I take him there because I want to talk to his doctors and find out about his diabetes.

Tribal Committee Member Attendee: We have really good classes too.

Tribal Member Attendee: He's done the diabetes classes too. I'm very proud to be Kaw. How we take care of our tribal members, especially the elderly, you don't see that in other tribes. I'm part Osage too. And I've got a meeting in three weeks for them. I am proud to call myself Kaw, where I'm not proud to call myself Osage because there is so much conflict.

Aaron: The Osages revised their Constitution about five years, and what they created was a mess. They tried to in some ways put policy decisions in their Constitution. Something that we've been cognizant about is making sure we don't put anything in the Constitution that doesn't belong.

Sandy Marckesoni: The Osages Constitution is an example of how we don't want to write a Constitution.

Tribal Member Attendee: That's actually one of the reasons I wanted to come today, but also to meet other Kaws who live in California. The Osage Constitution is such a mess and everyone is fighting.

#### Legislative Districts

Aaron: We have the political fights too, but my vision is that a political fight is fine as long as you have a document that outlines what you can or cannot do. One of the things that has happened and we have started to see some other tribes do is create legislative districts, where we split up the tribal members throughout the country, especially in Oklahoma and say this is a district. And the people of the Western United States (which would be like half of the country), and they would be able to select one legislator and that person would represent them on the Council. At this point, while that sounds like a good idea, we would have to pay that person to travel back and forth, our Council is not good at holding quick meetings, they'll start on Saturday and then they'll continue to a Thursday, and that makes it nearly impossible to have districts unless we went to some type of telecommunications allowing them to conduct the meetings by telecommunications. The Potawatomi's have done this, and the issue that they've had is that you

can't control what the person's doing on the TV screen. Literally the Chairman of the Potawatomi's said that someone put up of a derogatory remark that was put up on the screen that was made against another member of the Council. We had to deal with some of the growing pain issues like that. The Cherokees have gone to a method where they've got two members that are elected from outside their 14 county service area. So that's one of the things that we've looked at.

Tribal Member Attendee: I just can't see a need for different districts because we are a small tribe.

Aaron: I think that's where we're going to end up with that. It sounds like a good idea and everything, but when you look at the details and actually making it work, it would resolve one of the problems associated with the same families running the whole show because you could separate districts out and bring in new blood. Currently, the Chairman lives in the Wichita area, the Vice Chairman lives in Broken Arrow, the Secretary lives in Ponca City, two EC members live in Newkirk, another EC member lives in Stillwater, and the last EC member lives in Kaw City.

Tribal Committee Member Attendee: With saying that, the very sad thing is like we'll have a regular General Council, and we'll only have about 35 people show up. The only time they'll show up is if we have an election or something controversial.

Aaron: We had an election in November because the former Secretary of the Executive Council resigned, and there was an election. And the reason everybody showed up, the people running called anybody who had a right to vote, and they walked in with 40 family members. These are people we never see or don't want to be involved with the tribe, but they will be for elections. On Election Day, they came out which we only see or hear from about once every four years for an election. We typically have about 40 people come out to a General Council Meeting.

#### Powers of General Council

Aaron: Currently, the General Council has the ability to confirm the decisions of the Executive Council when it comes to land, pay for elected officials, confirming judges, and elections. Discussion continues about allowing the General Council more power and the ability to have influence over the decisions of the General Council.

We talked about a veto system and putting that in and one of the things that the Committee has discussed, if we let the Chairman veto a decision of the General Council, is it possible to let the General Council override the veto? I think we'd like to have the General Council involved but we also have to protect against chaos. If we give them too much authority, nothing gets done. It's that balance that we're still looking for. Currently, the only thing that they ever do is they get a land issue to deal with. And another thing they get is pay raises for the Council. Other than that the General Council doesn't have a whole lot of authority. And there's a balance of people who say yes we want the General Council to have more authority, but on the flip side, the General Council elects the Executive Council and the Chairman, and they do away with their power.

### Lack of Rules for Executive Council

Aaron: Another problem we have is there are no rules for the Executive Council. There are no rules of procedure, and the current Constitution says that they are to regulate their own procedures. They have never adopted any.

The Kaw Nation has had a number of fights over the numbering of bills in the legislature because there are no policies. What has to be submitted in the form of a written Resolution as opposed to a consensus by the council doesn't exist. One of the things that I dealt with earlier on we had hired a Contractor for this grant, and they didn't want it in writing. They literally said well the contract has to be in writing, but the Council says we agree with that and you don't have to fill out a document saying you want to hire this Contractor.

Tribal Member Attendee: You need a paper trail. Even with a contract with the Contractor, you still need the paper trail.

Tribal Committee Member Attendee: You could just have something in the minutes to where you'd have your paper trail. I know I deal with a lot of contracts with the Clinic, and we don't have resolutions, but we do have the Executive Council vote on it for those contracts.

Aaron: Personally I'm going to disagree, but we do this all the time. If it's in resolution form, it has to be posted on the wall five days in advance. If we solely do it in the minutes, there is no posting on it and who gets to look at it becomes another issue.

Tribal Committee Member Attendee: Let me back up. Now our attorney contracts we do them annually by resolution. I may have our doctor, we've had her for years, and we just amend her contract, if she doesn't ask for any more money and we're just amending her term, then the Chairman can amend it, so it doesn't have to go before the Executive Council. So you're saying it should every year, and it should go by resolution?

Aaron: Maybe not a continuation. If somebody is under contract, and the terms of their contract does not change, should we be able to extend it, then probably so. The question would be any new ones and even if you do one, then do a group of them at once. A resolution to extend the contracts of the attorney, the doctor, the pharmacist, group them all at once and bam they slide right through because there's no change.

Tribal Constitution Member Attendee: But what if they have an issue with one of them, then none of them go through.

Aaron: But what you do there, you pull the one off.

Tribal Constitution Member Attendee: But we're going back to where there is nothing in place right now.

Aaron: The problem with the paper trail is, if you don't go back and dig through the minutes, you'll never find things. And that's my biggest concern is that if I want to know what the contract what the doctor says today. How am I going to find that because I don't know when they did it. What I'm looking at is a better paper trail and you've got to make sure that the paper trail is not excessive. There's got to be a balance between the two.

Tribal Constitution Member Attendee: Any new contracts do go through the Executive Council, and depending on what they are, they may have a resolution. But there needs to be something in writing.

Aaron: When I came onboard a year ago being a new employee of the tribe, I didn't know if I was supposed to put it on paper or just go in and say can we do this? There needs to be clarity.

Tribal Constitution Member Attendee: It's like appointing committees too. There are resolutions on some of the committees, and some of them there are not. That's another thing that needs to be clarified.

Aaron: We need to clarify what the policies of the Executive Council should be. That's in general some of the major discussions that we've had, and the things that we're looking at. We came out to see and to get input from tribal members throughout the country. You obviously made at least one suggestion that we will take to the committee about dealing with the age of the Chairman and the Council, and so that's what we've looked at so far. I'm opening this up for any comments that you may have.

Tribal Member Attendee: It's going to be very interesting to see how this all plays out.

Aaron: As we move forward from here, the Committee is going to try and put out a draft in the next couple of weeks. We plan to have the draft at the Powwow. I envision sending it out to all tribal members like we've been doing with our newsletter, and say this is what the committee has come up with, and it is time for you to truly make comments. We will evaluate all of those comments and move forward again. We've had a number of different discussions about how we will put the final constitution in place. Do we send out individual provisions, or do we write the whole document and say this is it, up or down? Is it a winner-take-all or is there some ability to change certain provisions as we move forward? For example, like the blood quantum, because that's probably one of the most controversial. Do we send it out and ask what do you want the blood quantum to be, and then do we take that exact number and put it in the Constitution, or does the Committee make the decision that this is what we're going to offer, and then take it up or down? One train of thinking is that if the blood quantum isn't opened enough, people are going to vote "no" just for that simple reason, and does one provision like that submarine the whole project? And that's the balance that the Committee has dealt with and any input that you have on that would be good information for us. You can send your comments to us either through our website, or my number is listed on the attached handout.