IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION

HAROLD "JIGGS" PHILLIPS,
COUNCIL MEMBER

Plaintiff,

vs.

J. GARLAND EAGLE,
DEPUTY PRINCIPAL CHIEF,

Defendant.

JAT 98-09-B

J. Viles, concurring specially.

I concur with the result in this case as written by Justice Birdwell, with Chief Justice Keen's concurrence, but the procedure bothers me. I have previously expressed my concern to the other Justices about our Rule 3a (20 C.N.C.A. App. Rule 3a) which permits assignment of a case to a specific Justice only for limited purposes:

"The Chief Justice shall have the power to assign any new cases to one of the Associate Justices for review, simplification conference or such other preliminary proceedings as he shall see fit, provided that all decisions shall be made by the entire Tribunal." (emphasis mine)

What are "preliminary proceedings"? In new cases, we are seeing old cases in which single-Justice dispositive orders were entered, being cited as precedent which the entire Court is urged to follow in the new case. I think single-Justice orders should be quite rare indeed and perhaps our rules need review, both as to the purposes of assignment and the powers of the Justice so assigned.

Can it be said that the decision was "made by the entire Tribunal" where one assigned Justice carries the workload, conducts the hearings, intimately reviews the pleadings, and then writes the opinion, to be agreed with or dissent from by the other Justices? What standard of review should the other two adopt? When should they get involved? How much time should they have to review the pleadings, insert the commas, review the case law, and contribute to
the opinion? Would this case (and others) be better with a one-Justice opinion and the possibility of an appeal en banc?

I found out for the first time the morning of July 24th that the opinion was almost ready. I received all 42 pages by fax, starting after 4:00 p.m. and ending about a quarter till five. I'm told to have my comments in by 7:00 p.m. I cannot adequately do my job without more time and without more notice and without more participation. If I had been out of town or away from a fax machine, it is likely that I would have had no input at all into the opinion. As it is, I am limited to reading it through once, making some notes, and then being given the choice of concurring or dissenting. The opinion indeed reflects two weeks of solid work, but it's much too long and contains much dicta. It would have benefitted from editing.

Being a Justice of the Cherokee Nation is similar to being a Councilperson of the Cherokee Nation in at least one respect—it's a part-time job. It is therefore unlike being Chief or Deputy Chief—those are full-time jobs. As a part-time job, but an important part-time job, being a Justice requires balancing various schedules and various priorities in order to do the job properly. Under the current framework of our operations, there are times when I am not allowed to do that. This is one of those times.