

Feb. 2, 1978

MEMORANDUM

TO: Oneida General Tribal Council and Oneida Business Committee

FROM: Jerry Hill and John Powless, Jr.

RE: Oneida Land Claims

This memo deals with the activities we've engaged in since leaving Oneida for Washington, D.C. We left Sunday, January 29, 1978 and first stopped in Syracuse. We were met by Lyndon Johns of Marble Hill who took us to meet Mrs. Emily Johnson. There we informed the Marble Hill people of the action taken by the Oneida General Tribal Council Saturday, January 28, 1978 and of the meeting scheduled by Forrest Girard Monday, January 30, 1978 to hear the elected New York Oneidas. The information about the Monday meeting we felt was necessary because of the fact that decisions might be made which could effect our interests and the interests of other people who would not be in attendance.

They informed us that they had in fact been invited but declined to attend because the short notice prevented a thorough discussion with the people and they would not be properly prepared to discuss anything.

We next went to the 32 acre site to meet with Ray Halbritter of the "Warriors" to inform him of the same events. Their response was similar to that of Marble Hill in that they felt their attendance and participation at the meeting hurriedly called by Mr. Girard would be misconstrued as recognizing his authority to decide anything with reference to the New York Oneida's representation problems.

The notice to the New York Oneidas was sent Wednesday, January 24, 1978 and the meeting scheduled the following Monday, January 30, 1978.

It is worth noting that in attempting to arrange the meeting held with Forrest Girard since the last B.C. meeting, January 23, 1978 that we were not informed of the meeting with New York Oneidas scheduled two days prior. In fact, it appears that their intent to meet was formed in an attempt to resolve the New York recognition problems before our people were to meet with Girard. In any case, with the complications in the entire Oneida land claims situation it is obvious that 4 days notice is totally inadequate to properly assess the significance of the details.

We were not able to meet with Robert Burr of the elected New York Oneidas or Mr. George Shattuck as planned while in Syracuse because of the time constraints. However, we had informed Mr. Burr of our February 1 meeting with Girard and it was from him we learned of the Monday meeting prior to our meeting.

Monday, January 30, 1978 we first met with Larry Ashenbrenner to inform him of the decision to fire him. We next met with Dean Edgar Cahn of Antioch Law School to discuss possible cooperative efforts with the Oneida Paralegal Training Program. Additionally, we discussed the creation of an Oneida Tribal Court system, and other means of making or increasing the availability of practical legal knowledge to the Oneida government and individual membership.

In the afternoon, we went to a meeting at the U. S. Department of Justice. Present at that meeting were Don Meliur, Myles Flint, K. Oberly, defending attorneys in Docket 301 from the Justice Department, Larry Ashenbrenner representing the Canadian Oneidas, Bert Hirsch representing the Burr group, Tim Coulter representing the 6 Nations, and Robert Burr

and Jake Thompson.

Mr. Ashenbrenner made the argument he has been making that the Justice Department should join our motion to hold up Docket 301 because there was a serious question pertaining to loss of title to New York Oneida land which could affect both pre- and post- 1790 Oneida claims. This was supported by attorneys Hirsch and Coulter. However, Mr. Meliur and Ms. Oberly indicated no desire to join our motion and had been informed that the Department of Interior Solicitor was "still studying" our pre-1790 claims against New York which, in their judgment, was not sufficient grounds upon which to join the motion.

Upon being informed by us that we had suspended Mr. Chapman, which raised their duty as trustee, we were told that that was of no consequence. Mr. Meliur also openly stated that he wanted to get rid of Docket 301 which "coincidentally" is the same attitude of Marvin Chapman.

We left without further participation as it was apparent that nothing would be accomplished there to achieve our goal of stopping the oral argument of Docket 301, Monday, February 6, 1978.

We then went to Mr. Girard's office to observe the meeting scheduled there with the New York Oneidas. Mr. Burr and Mr. Thompson, with their attorney Mr. Hirsch, asked Girard and Tom Fredericks for a private meeting and we were asked to leave. We did, however, persist in staying and handed Mr. Girard a draft copy of the resolution suspending Mr. Chapman and informing our Trustee that we would recognize no plan of representation of New York Oneidas without the express approval of all the Oneida groups in New York.

Although it is not an issue, we were treated rudely and they attempted to brush us off even though we informed them that we would only observe the meeting and not participate. We immediately thereafter informed Marble Hill and Ray Halbritter that we had been asked to leave the meeting.

The attached press release by Mr. Girard was quoted to us by the New York people and apparently was made after the meeting we were asked to leave. The assertion of Girard speaks for itself in its arrogant stand. In the practical aspects it appears Mr. Girard made a serious tactical error by issuing such a release which we should exploit.

Tuesday, January 31, 1978, was spent meeting with Chuck Trimble, Executive Director of NCAI, seeking their support which he was eager to give in any way he could. He agreed to and did attend the meeting February 1, and sent a letter afterward to Mr. Girard supporting the Oneida position.

We also met with Tim Coulter of the Institute for Indian Law to discuss our meetings and explore ways in which we might join in some cooperative efforts. The Institute has held seminars on Tribal government and sovereignty which have been useful to many other tribes. They are willing to assist us in any way possible.

The remainder of the day was spent in preparing to meet with Girard on Wednesday.

Wednesday, February 1, 1978 we met with six of the B.C. to update them and to focus our attention so that we would have a unified front at the meeting scheduled for 2 p.m.

At the meeting were a number of government officials. Chuck Trimble of

NCAI attended and Allen Parker of the Senate Select Committee on Indian Affairs also attended on behalf of Senator Abourezk.

Although the result was a promise to ask Krulitz to recommend to Justice a 60 day postponement the attitude, at least toward John and myself, was contemptuous.

Thursday, February 2, 1978

We filed a Pro Se Motion, a copy of which has been mailed to the chairman, with the Court of Claims informing them of our situation, i.e. we were without counsel to proceed and raising New York Oneida representation problem. We plan to begin compiling a list of potential attorneys to replace Mr. Ashenbrenner and contact them as much as possible to ask that they submit resumes for our consideration as directed by the Oneida General Tribal Council.

If we have assurance that the February 6, 1978 oral argument on Docket 301 is cancelled we will return to report at the February 6, 1978 regular B.C. meeting. If not, we will stay to observe what happens at the Court of Claims.

Friday, February 3, 1978

Today we spoke to Alan Parker who was informed by the interior Solicitor's Office that they had recommended postponement of the Oral Argument in Docket 301 for 90 days. The new recommendation was based upon Krulitz reconsideration of our pre-1790 petition. Whether or not Justice would honor or follow the commendation was not known then. However, Mr. Parker felt that Justice would not be sympathetic and was in fact hostile to any delays.

The remainder of the day was spent in making written reports of the week's activities. By 5 p.m. we accepted the fact that there would be no delay of Docket 301 and so we prepared to be present at that meeting.

Saturday, February 4, 1978

John flew to Onandaga to observe the Grand Council of the Six Nations and seek their opinions on the action the Wisconsin Oneidas have taken. John also met the leaders of the other Oneida communities to inform them of the recent developments.

Sunday, February 5, 1978

We both sat in as observers in the Grand Council and asked to meet with their Land Committee, informally, to discuss their understanding of our land claims and to determine whether they are complementary or not.

They were very receptive to us and very approving of the action taken by our G.T.C. In the discussions it is apparent that the Six Nations is very respectful of the direction we have taken. They are also cautious in regard to proceeding on any course which would weaken their position.

It would seem at this point that tensions are raising and we can expect artificial pressure to be added to our land claims situation. Communications are under extreme pressure in New York because of the representation problem there. Not only has the U.S. interfered but both Marvin Chapman (by signing a contract with the elected group) and Larry Ashenbrenner (by attempting to reconcile the N.Y. Oneidas while representing us and the Can-

adian Oneidas) have complicated an already complicated problem.

At the root of the problem is lack of understanding by a large majority of the Onieda people in all the Oneida communities of the true nature of the claims (which prevents a united front), non-communication (whether intentional or negligent) of critical information, and a determined effort by some Oneida leaders to exclude other Oneida people in other places from their rightful participation.

The Wisconsin Oneidas have taken the position of non-interference with the N.Y. Oneida representation problem. We have further decided not to recognize any plan for resolving the dispute or confusion of the N.Y. Oneidas which excludes any Oneida group. Because of the developments this week we feel that it is not possible to proceed in any litigation or negotiation until the matter of inter-relationships of each of the Oneida governments and communities to the others and the Six Nations. This is not a sentimental idea but rather is of extreme importance that the practical aspects of a unified Oneida front be analyzed and discussed.

Monday, February 6, 1978

We returned and prepared to attend the oral arguments. We intended, if our Pro Se Motion was not acknowledged, to ask the court for permission to speak, and secondarily if necessary to interrupt the proceedings, but not to persist further as we intended to obey if asked to leave or shut-up.

The argument was scheduled at 11 a.m.. At the court we met Chapman who advised us to interrupt before the proceedings as that would be our best shot and further that we were on our own. He was not hostile but wanted to know what our next move would be. We promised to inform him as soon as a decision was made by the General Tribal Council. Mr. Ashenbrenner was also present.

The proceedings began at 11 a.m, and the court acknowledged our Motion Pro Se but would not hear argument. The judge stated that he would accept our legal memoranda confined to three points;

1. Statement of why we delayed stopping Docket 301 so long,
2. Why the Court of Claims should not decide the appeal, and
3. To what extent should the issues to be decided be limited or restricted.

We were given 15 days (until February 21, 1978) to file such memoranda to the court and both Chapman and Justice will have an additional 15 days to answer our memorandum after which time the court will decide whether or not to hear oral argument on the issue of postponement. Prior to argument Chapman informed the court that he had been suspended by the Oneidas but was not relieved by the court and was ordered to continue. The argument proceeded with Meliur as the U.S. counsel stating his case against U.S. liability found in the I.C.C. below. He saved 10 minutes for rebuttal against Chapman. Each side had 30 minutes. The basis of the U.S. position is that neither the Treaty of 1784 (Stanwix) nor the articles of confederation imposed a fiduciary duty on the U.S. to care for Oneida land interests prior to 1790.

Mr. Chapman argued that there was a clear duty that was understood by the Oneidas but ignored by both New York and the federal government. He also argued that any finding or decision in Docket 301 should expressly not include any statements which could be interpreted or construed as extinguishment of Oneida Title to anything. The argument of Chapman was excellent and did not give away any points or issues we had wanted to limit. The three judges seemed favorably disposed with our case, however, our next move will be to file the memorandum on time to gain more time to consider our next legal step.

Decisions will have to be made soon on,

1. Whether Chapman be continued as counsel in Docket 301? In other words, we will have to follow-up on the action taken by the General Tribal Council.
2. Whether to withdraw Docket 301 altogether? We have a representation problem in New York and the Canadian Oneidas are totally excluded.
3. What role if any to take in establishing relationships with the other Oneida communities and the Six Nations?
4. How to establish communications channels so that we are not distracted by lack of information to the detriment of our legal strategy?
In other words, by quibbling over administrative and personnel matters we never get to take on the real issues such as whether we have a real claim and if so what it means.

We will present the legal memorandum at the next Business Committee meeting before filing it in Washington at the U.C. Court of Claims on February 21, 1978.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Jan. 30, 1978

STATEMENT - NEW YORK ONEIDA

by

Assistant Secretary--Indian Affairs

In a letter addressed to the three factional leaders of the New York Oneida Nation, dated December 7, 1977, I indicated that we had neither the authority nor the desire to become directly involved in the internal affairs of the tribe. With regard to the internal choice of Oneida government representation, our position of non-involvement must stand. In the same letter I reaffirmed the position of the Area Director taken in a letter dated June 27, 1977, which suggested a number of possible ways of establishing a government to represent the tribe. In an attempt to bring the factional leaders together to discuss the possible procedures that might be employed to establish an Oneida land Claims negotiating Committee, I invited, at government expense, the various leaders to meet here in Washington. The "Traditional" group and Marble Hill group formally declined to meet, while the group represented by Mr. Robert Burr, Jr. did agree to meet. On January 24, I sent telegrams to Mr. Lymon Johns representing the Marble Hill Group, Mr. Ray Halbritter of the "Traditional" group confirming the meeting with Mr. Burr at 3 P.M. January 30. I indicated, in a further attempt to gain their participation, that should they have a change of mind and decide to join us, travel and per diem would be authorized in their names.



Failure of the New York Oneidas to present a unified position with regard to negotiation of their land claims could result in adverse legislative action with respect to the entire claim. For whatever reasons, the New York Oneidas have demonstrated very little desire to present a united position in this matter.

As trustee, I would be derelict if I allowed the current internal difficulties to destroy what might benefit present and future Oneida generations. While I appreciate Mr. Burr's show of faith and interest in resolving the land claims issues, I cannot allow one group of Oneidas to represent officially the entire Nation in the negotiations. I have, therefore, decided that I must proceed unilaterally on behalf of New York Oneidas in what we perceive to be their best interests until it may be demonstrated that they have duly selected a negotiating committee that could commit the New York Oneidas. I shall, however, take into consideration those sentiments expressed by Mr. Burr as representing the wishes of a number of Oneida people in conjunction with any decisions I must make, as we proceed.

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