

M E M O R A N D U M

TO: Lawrence A. Aschenbrenner
FROM: Jack Campisi
SUBJECT: Oneida Land Claims
DATE: June 8, 1978

Basically the State of New York has argued that it possessed the sole right to extinguish Indian title within its present boundaries east of the line drawn with Massachusetts in 1786. The state's claim is based upon agreements made in 1701 and 1726 by the Royal Governor with the Five Nations. This treaty, called a "Deed from the Five Nations to the King, of their Beaver Hunting Ground" refers to land claimed by conquest by the Seneca, Oneida, Onondaga and Mohawks (signers of the agreement) and Cayugas in the Ohio Valley. They surrendered a tract of land "beginning on the northside of Cadarachqui Lake (Ontario) and includes all that vast tract of land lying between the great lake of Ottawawa (Lake Huron) and the lake called called by the natives Cahiguage and by the Christians the lake of Swege (Lake Erie) and runs till it butts upon the twichtwichts (Miamis) and is bounded on the westward by the twitchtwichts by a place called Quadoge (Chicago) containing in length about eight hundred miles and in breath four hundred miles including the Country where the Beavers and all sorts of wild game keeps and the place called Tjerethsaghrondie alias Fort de tret or Wawyachtenock and so run as around the lake of Swege till you come to a place called Oniadarundaguat which is about twenty miles from the Sennekes . . ."

The five tribes reserved hunting and fishing rights but relinquished other claims to the land. It can be seen that the deed was made with the King, not the colony of New York, and that the land cession did not include the territory of the Oneidas, or any of the New York tribes for that matter. In 1726 the deed was re-confirmed with additional provisions which only affected the Seneca, Cayuga, and Onondaga. The Oneidas were not party to this agreement.

These treaties were concessions made in order to place the tribes under the protection of the Crown and were not cessions of land per se. However, some of the New York Governors acted as

though they had been granted a fee over the colony's or king's land and, as a result, relations between the Crown and the five tribes were disrupted with some of the Iroquois joining the French. Consequently, the Crown, through its agent and Superintendent of Indian Affairs, Sir William Johnson, renegotiated the boundary which separated White from Indian, drawing a line which began in the south and ran up the Ohio

. . . and running from thence upwards along the South side of said River to Kittaning which is above Fort Pitt from thence by a direct line to the nearest Fork of the west branch of Susquehanna thence through the Alleghany Mountains along the South side of the said West Branch until it comes opposite to the mouth of the Creek Callek (sic) Fiadaghton thence across the West Branch and along the South side of that Creek and along the North side of Burnetts Hills to a Creek called Awandie thence down the same to the East Branch of Susquehanna and across the same and up the East side of that River to Oswegy from thence East to Delawar River and up that River to opposite where Tianaderha falls into Susquehanna thence to Tianaderha (Unadilla R.) and up the West side of its West Branch to the head thereof and thence by a direct line to Canada Creek where it empties into the wood Creek at the West of the carrying Place beyond Fort Stanwix . . .

There was to be no white settlement west of this line, a part of which formed the eastern boundary of the Oneida territory. Therefore, whatever claims the Colony of New York had to Oneida land, either by royal charter or royal treaty, was nullified by this treaty. The Oneida land was clearly outside the limits of New York.

Of course, it is possible for the state to argue that the Revolution voided this agreement and restored whatever claim the state alleged it had to this land putting the territory within the area claimed by New York. This argument seems to me to be specious. The state, in its abortive attempt to negotiate with the Oneidas in 1784, acknowledged the property line as the eastern boundary of the Oneida lands and therefore, as the state's western boundary.

Governor Clinton made no objection to the delineation given by the Oneidas. Within a few weeks of the state's meetings with the Oneidas, the federal government confirmed the Oneidas in the possession of their lands (Treaty of 1784 - Fort Stanwix). There can be no confusion as to the boundaries of that land or that it lay outside the lands of the state. Given this, the state was in violation of Article 6 of the Articles of Confederation prohibiting treaty making when it negotiated purchases and leases of Oneida land and, since the land of the Oneida does not appear to be within the boundaries of the state, it cannot avail itself of the limitation on managing Indian affairs embodied in Article 9.

An additional point deserves mentioning. By the 1701 and 1726 treaties, Great Britain secured some sort of claim to the Ohio Valley. Had matters rested there the United States might have been able to assert that the Iroquois had surrendered their jurisdiction to Great Britain and the United States, by virtue of the Revolution, now possessed that jurisdiction. But, by the Treaty of 1768, Johnson nullified or surrendered any British claim. Therefore, for the United States to gain title to the Ohio Valley it had to extinguish Iroquois as well as Ohio Valley Indian claims. The Treaty of 1701 clearly sets forth the basis of this Iroquois claim.