

Dorlan

AARON, AARON, SCHIMBERG & HESS

CHARLES AARON, Counsel
LEWIS SCHIMBERG
SIDNEY J. HESS, JR.
MARVIN S. CHAPMAN
JEROME MORITZ
NORMAN GEIS
JOEL J. SPRAYREGEN
DONALD S. LOWITZ
JOSEPH L. STONE
RONALD WILDER
NEAL A. MANCOFF
BARRY B. NEKRITZ
LAWRENCE S. GOODMAN
STEPHEN L. SCHAR
CARL R. KLEIN
ROGER L. PRICE
MICHAEL S. KURTZON
MARY K. KRIGBAUM
MARK T. NEIL
WILLIAM J. DUNN
FRED L. LIEB
BENNETT L. EPSTEIN
GEORGE S. ROSIC
PAULA K. JACOBI
MICHAEL K. BRANDWEIN
JAMES E. LACKNER
CLAIRE E. PENSYL
HERBERT L. HART

HENRY J. AARON
1899-1922
ELY M. AARON
1919-1975
—
TELEPHONE
236-8552
AREA CODE 312
—
CABLE ADDRESS
ASHLAW

33RD FLOOR-EAST
ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603

July 2, 1979

Howard Cannon, Litigation Coordinator
Oneida Tribal Land Office
P. O. Box 158
Oneida, Wisconsin 54155

Dear Mr. Cannon:

This morning I received your letter dated June 26, 1979, which was not postmarked until June 28, 1979.

You asked my interpretation of the terms "suspension" and "dismissal" as they apply to Docket 301. By the term "suspension," I take it that you refer to postponement of further proceedings in Docket 301, the first possible course of action outlined in my letter dated May 22, 1979, a copy of which was mailed to you. By the term "dismissal," I assume that you are referring to voluntary dismissal of Docket 301, the fourth possible course of action outlined in my letter of May 22.

The term "postponement" does not have any particular technical meaning. If the case is postponed, it will simply mean that the proceedings in Docket 301 will not go forward at this time. It is hoped that the Court of Claims will agree to a postponement until the litigation now pending in the United States District Court in New York has been completed or until there has been an overall congressional settlement of the Oneida's claim of ownership of the land in the State of New York. Since my letter of May 22, 1979, I have been advised by Mr. Bander that he and Donald Mileur, his immediate superior in the Department of Justice, will vigorously oppose any postponement of Docket 301. I am not at all optimistic that the Court of Claims

Mr. Howard Cannon

July 2, 1979

Page 2

will agree to any postponement at least without the consent of the government.

If Docket 301 is dismissed voluntarily by the Oneidas then in my opinion the effect will be as follows:

1. As stated in my letter of May 22, the Oneidas will have no further claim against the United States, since the time for filing claims under the Indian Claims Commission Act has expired. It would take an act of Congress to permit the Oneidas to reinstitute their claims against the federal government if they agree to a dismissal of Docket 301.
2. Although there has been no final decision in Docket 301, in that there has been no determination of the quantity of land owned by the Oneidas prior to the New York State treaties or as to the value of that land or the amount of damages to which they are entitled against the United States, there has been a determination by the Indian Claims Commission and the Court of Claims that the United States is liable to the Oneidas under the Indian Claims Commission Act for its failure to protect the Oneidas in their dealings with the State of New York.
3. Under the legal doctrine of "collateral estoppel," in my opinion the Oneidas might well be bound by any factual or legal determinations actually made by the Indian Claims Commission and the Court of Claims in the opinions and findings of fact that so far have been handed down in Docket 301, insofar as those determinations were necessary to support the judgment in favor of the Oneidas on the issue of liability.
4. Although, under the doctrine of collateral estoppel, in all likelihood the Oneidas would be bound by the decisions made in Docket 301, I do not believe that the State of New York, the Counties of Oneida and Madison, private land owners or any other persons would be bound by any decisions in Docket 301, because they were not parties to that proceeding. I do not even think that the federal government would necessarily be bound by the decisions that have been made in Docket 301 because by dismissing the case the Oneidas will have made it impossible for the

Mr. Howard Cannon

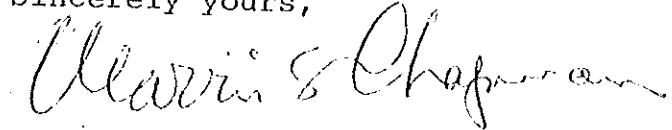
July 2, 1979
Page 3

government to appeal a final decision to the United States Supreme Court.

5. Although the litigation in Docket 301 has not been concluded, the decisions are a matter of public record and may be cited as precedent in other cases, even if Docket 301 is dismissed before there has been a trial on the remaining issues in the case. As you know, in the suit now pending before Judge Port in the United States District Court in Syracuse, the Counties of Oneida and Madison have sought to have that case dismissed on the ground that the decision on liability in Docket 301 confirmed the extinguishment of Indian title. Judge Port did not agree with that contention and ruled in favor of the Oneidas on that issue. I understand that the defendants in that case have appealed Judge Port's decision to the United States Court of Appeals for the Second Circuit. This is an example of how lawyers may cite the decisions in Docket 301, even though the case has not proceeded to final judgment.

These are complicated legal concepts. If you have any questions, I suggest you call me.

Sincerely yours,



MSC:md

GSA SWITCHING-CTR
P O BOX 430
ROMNEY, WV 26757

MAIL MAILgram AIRMAIL

1-063275U173004 06/22/79 ICS WA12139
00998 MLTN VA 06/22/79

MILA

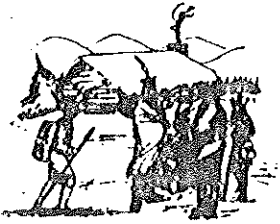
PURCELL POWLESS, CHAIRMAN
ONE TRIBE OF INDIANS OF WIS. INC
ROUTE 4
DEPERE WI 54115

I AM SENDING THE FOLLOWING BRIEF LETTER TO THE ADULT MEMBERS OF THE ONEIDA NATION OF NEW YORK. QUOTE THE POLL INITIATED BY MY LETTER OF MARCH 30, 1979, TO YOU HAS BEEN COMPLETED. OF THE MORE THAN 400 HUNDRED NAMES ON THE LIST OF RECOGNIZED ADULT ONEIDA INDIANS OF NEW YORK, ONLY 92 PROPERLY RETURNED THEIR POLLING INSTRUMENTS IN A TIMELY FASHION. A FEW ADDITIONAL POLLING INSTRUMENT ENVELOPES WERE RETURNED WITHOUT BEING SIGNED ON THE REVERSE SIDE AS REQUIRED. ELEVEN ADDITIONAL RETURNED ENVELOPES WERE RECEIVED AFTER THE MAY 1 DEADLINE. BY ANY CALCULATION THERE WAS LESS THEN THE 30 PERCENT PARTICIPATION WHICH I CONSIDERED NECESSARY IF THE POLL WAS TO BE CONSIDERED MEANINGFUL. ACCORDINGLY, I HAVE INSTRUCTED THE INDEPENDENT CONTRACTOR TO WHOM THE POLLING INSTRUMENTS WERE RETURNED TO DESTROY ALL RETURNED ENVELOPES AND THEIR CONTENTS WITHOUT OPENING THEM. I HAVE RECEIVED SEVERAL INQUIRIES CONCERNING THE POSSIBILITY OF A SECOND POLL. WE HAVE NO EVIDENCE OF ANY SUBSTANTIAL MISUNDERSTANDING AMONG THE ONEIDA PEOPLE ABOUT THE POLL, OR THE PROCEDURES OR THE TIME REQUIREMENTS FOR PARTICIPATING IN THE POLL. ACCORDINGLY, I BELIEVE THERE IS INSUFFICIENT JUSTIFICATION FOR CONDUCTING A SECOND POLL. I HASTEN TO ADD THAT THE DEPARTMENT REMAINS GRAVELY CONCERNED WITH TH E

ABSENCE OF A RECOGNIZED AND ACCEPTED TRIBAL GOVERNMENT FOR THE ONEIDA PEOPLE OF NEW YORK. WE REMAIN WILLING AND ABLE TO ASSIST REESTABLISH A TRIBAL GOVERNMENT WHICH WOULD BE GENERALLY ACCEPTED AS SOON AS THE ONEIDA PEOPLE DEMONSTRATE THEY TRUELY DESIRE OUR ASSISTANCE. UNTIL SUCH TIME AS THE ONEIDA PEOPLE AGREE AMONG THEMSELVES ON A TRIBAL GOVERNMENT, THE DEPARTMENT WILL CONTINUE TO PROVIDE SERVICES TO INDIVIDUALS PURSUANT TO THOSE PROGRAMS WHICH DO NOT REQUIRE THE INVOLVEMENT OF A TRIBAL GOVERNMENT. WITH THIS IN MIND, IT MAY BECOME NECESSARY FOR ME, IN ORDER TO PROPERLY DISCHARGE MY TRUST RESPONSIBILITIES, TO SPEAK FOR T HE

ONEIDA NATION OF NEW YORK ON CERTAIN NECESSARY MATTERS WHICH WOULD NORMALLY REQUIRE TRIBAL GOVERNMENT ACTION. FURTHER, AS TO ONEIDA LAND CLAIM THE SOLICITOR FOR THE DEPARTMENT PROPOSED A LAND CLAIM NEGOTIATING COMMITTEE ON MAY 1, 1979. ALTHOUGH HE HAS RECEIVED ONE FAVORABLE ACKNOWLEDGEMENT, HE HAS YET TO RECEIVE ANY POSITIVE ACCEPTANCE OF HIS PROPOSAL. IN THE ABSENCE OF POSITIVE ACCEPTANCE WE ARE EXPLORING WITH HIM OTHER POSSIBLE ALTERNATIVES.

END QUOTE.



Onedas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin, Inc.

Howard



UGWA DEKOLUH YATENE

Because of the help of this Onedda Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

DE PERE
ROUTE 4



WISCONSIN
54115

M E M O

TO: Land Committee
Litigation Committee

FROM: Pat Misikin, Tribal Secretary

DATE: July 5, 1979

SUBJECT: Special Meeting

The Business Committee minutes of 6/18/79 state that the Tribal Secretary will coordinate a special meeting of the Land Committee, the Litigation Committee and the Business Committee to review the Land Claims Council Procedural Outline that was tabled at that meeting.

Since members of the Land and Litigation Committees find it difficult to meet during the day, I am tentatively setting this special meeting for July 23, 1979, at 6:30 p.m. at the Tribal Building.

I am asking Chris Doxtator and Howard Cannon to firm this meeting with their respective committees and get back to me. If this date and time are not convenient for the majority, I would appreciate an alternative.

pm