

REPORT ON ATTENDANCE

ON TRIAL FOR DAMAGES IN ONEIDA NATION OF NEW YORK ET AL V.
ONEIDA AND MADISON COUNTIES, CIVIL NO. 79-CV-35, UNITED STATES
DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK, AUBURN, N.Y.

September 14-16, 1981

TO: Oneida Business Committee
FROM: Wendell Mc Lester, Howard Cannon and Gordon Mc Lester
Subject: Report on Trial for Damages issue in Judge Port Test Case
Oneida Nation of New York et al v. Oneida & Madison Counties,
Civil No. 70-CV-35, U.S. Court, Northern District of New York
DATE: October 9, 1981

BACKGROUND

Historically the Oneidas were members of the Six Nation Iroquois Confederacy in New York. They, along with the Tuscaroras, fought with the United States during the Revolutionary War. The other nations aligned with the British.

During and after the war the United States entered into treaties and passed laws, including the Nonintercourse Act of 1790 which protected Oneida land rights and prohibited acquisition of lands under Indian ownership by non-Indians without consent of Congress.

New York State, in violation of these treaties and Acts proceeded to coerce and defraud the Oneidas out of some four million acres of their aboriginal homeland by unconscionable treaties in 1785 and 1788, and acquired almost all remaining Oneida lands, some quarter of a million acres, in twenty five additional treaties between 1795 and 1846, all without Congressional consent.

Following the loss of their lands, in the early 1800's, a majority of the Oneidas emigrated in two groups to Wisconsin and Ontario, with a smaller segment remaining in New York. Today more than 10,000 persons comprise the three branches of the Oneida Nation residing in distinct communities in Wisconsin, New York and Ontario. Despite their removal and separation the Oneida people have maintained their language and culture through the centuries and are recognized as Indian Nations by the governments of both Canada and the United States.

Trial on Damages cont'd

From the beginning and continuing for almost 200 years the Oneidas protested the validity of these Oneida-New York land cessions and sought the aid of the state and federal officials to recover the land. However, both the state and federal governments chose to ignore these protests. As a result, in 1970 the Oneidas brought a test case on their own behalf against two counties in New York challenging the validity of one of those cessions --the treaty of 1795-- seeking tresspass damages for a two year period, Oneida Nation of New York et al v. Oneida and Madison Counties, Civil No. 70-CV-35. U.S. District Court , Northern District of New York. This case ultimately went to the Supreme Court of THE United States, which sustained the Oneida's position on procedural grounds and also held, contrary to the contention of the Counties, that the Nonintercourse Act was applicable to the original thirteen states, including the State of New York, Oneida v. Oneida & Madison Counties, 414 U.S. 661 (1974). The Supreme Court remanded the case for trial on its merits, and on July 12, 1977 Judge Edmund Port handed down an opinion holding the 1795 Treaty void for violation of the Nonintercourse Act, Oneida Nation of New York et al v. Oneida & Madison Counties, 434 F. Supp. 527 (1977). Thus the Oneidas retain title to the land in question and are entitled to tresspass damages from the counties.

In early 1979 Madison County sought to have Judge Port reverse his decision by contending that certain actions of the Indian Claims Commission in Oneida v. United States, (Docket 301) constituted federal ratification of the Oneida-New York treaties. Specifically the county maintained that the Commission's ruling that the United States was liable for breach of trust when it failed to protect the Oneidas from New York officials during the Oneida's land cession treaties with the state constituted ratification of such treaties as required by the Nonintercourse Act. Following extensive briefing and argument, on May 16, 1979, Judge Port rejected this motion and over ruled the county's motion from the bench. The county appealed this ruling to the Second Circuit Court of

Trial on Damages cont'd

Appeals, which was argued on February 21, 1980 and was dismissed in May 1, 1980 on the grounds that it was improvidently granted.

HEARING ON DAMAGES ISSUE

The Hearing on Damages Issue before Sr. U.S. Judge Edmund Port commenced September 14, 1981 and ended September 16, 1981. Oneidas attending the hearing included:

From Oneida, Wisconsin, Business Committee members Norbert Hill, Vice Chairman; Wendell Mc Lester, Treasurer; Howard Cannon and Anthony Benson, Committeemen. Attending also was Gordon Mc Lester, Spokesman for the Oneida Litigation Committee.

From the Oneida of the Thames, Southwold, Ontario, Mr. and Mrs Irvin Chrisjohn and son; and Alfred Day, Business Councilman.

From the Traditional Community of Oneida Territory near Oneida, New York, Ray Halbritter, Spokesman; Gloria Halbritter, Secretary; and Maizie Schenandoah.

From the Traditional Community of Marble Hill near Oneida, New York, Lyman John and Frances Waterman

From the elective faction of Oneidas residing in the Syracuse area
Jake Thompson and wife, Gerald.

We apologise if there were others present whom we didn't meet or recognise.

Counsel for Plaintiff included Lawrence Ashenbrenner, Esq., Native American Rights Fund, Washington D.C., Counsel for Oneida of the Thames. Francis Skenadore, Esq. and Arlinda Locklear, Esq., Counsel for Oneidas of Wisconsin Bertram Hirsch, Esq., Counsel for elective faction of New York Oneidas.

Counsel for Defense included Allan Van Gestel and an assistant of the firm of Goodwin, Proctor and Hoar, Boston, Mass.

Trial on Damages cont'd

Proceedings during the four days of hearings included testimony relative to the boundaries and acreage of the claims area; bank appraisals relative to returns on investments; federal policy on Indian lands; cost and upkeep of highways in the claims area. Prime testimony was that of the real estate appraisers. Testifying for Plaintiff were G. Richard Kelly and Donald Fisher of the firm of Pomeroy & Associates, Appraisers of Syracuse. Those for the Defense were Russell Lane of Northeast Appraisals testifying for Madison County and Joseph Surace testifying for Oneida County. All appraisers were in concert in their definition of "fair market value", being the highest price, in terms of money that a property will bring on the open market, to a willing seller, allowing reasonable time to find a willing buyer, knowledgeable of all the uses to which a property can be adapted, neither being under abnormal pressure to act. From there the end results differed drastically.

The subject properties included a radio fire tower occupying a two acre tract; Champlain Battleground Park occupying forty seven acres of land; and approximately 63 miles of County Highway three rods in width. Witness for Defense, in addition to taking an unrealistic view of the land comprising Champlain Battleground Park as being nothing but wilderness back in 1795, witness placed absolutely no value on the historical significance of the Park. The two appraisals gave the following two year rental values for the three properties in question:

	Two Ac. Tower site	47 Ac. Park	Highways
Plaintiff	\$500.00	\$1,300.00	\$88,500.00
Defense	\$ 12.00	\$ 284.00	\$ 2.156.00

Final argument was set for October 5, 1981 at which time Defense is expected to motion for dismissal.

Trial on Damages cont'd

A report on the final judgement which took place October 5, 1981 from Attorney Francis Skenandore has informed that defense motion to dismiss was ruled against by Judge Port. Judge further ordered that the Oneida Nation retains title to the subject lands, could evict defendants and that the counties were liable for two years fair rental in the following amounts:

Madison County - \$9,600 @ 6% interest from January, 1968

Oneida County - \$7,634 @ 6% interest from January, 1968

It was also reported that defense motion to dismiss was based on the following: 1. Ratification of the 1795 treaty by federal approval of the 1798 and 1802 treaties

2. Lost Grant Presumption

3. Treaty of Canadaiqua - Protective approval

4. Article III, Treaty of Canadaiqua - Exclusive Remedy

5. Political Doctrine Question

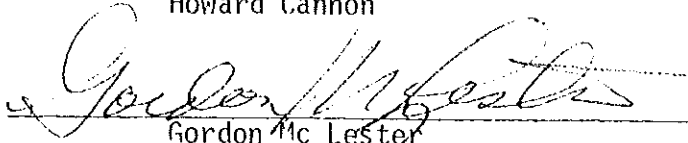
6. Plaintiff's Standing

Judge Port did not rule from the bench but will draft the order and mail to the parties.

Respectfully submitted:


Mendell Mc Lester


Howard Cannon


Gordon Mc Lester

Oneida Tribal Law Office

P. O. BOX 129 • ONEIDA, WISCONSIN 54155

PHONE 414 / 869-2724

August 25, 1986

Dan Braveman
Attorney at Law
Syracuse University
School of Law
Ernest White Hall
Syracuse, New York 13210

Arlinda Locklear
Attorney at Law
NARF
1712 N St., N.W.
Washington, D.C. 20036

Bertram Hirsch
Attorney at Law
81-33 258th Street
Floral Park, New York 11004

Arnold Antone
New York Land Claims Committee
Oneida of Thames Band
R.R. 1
Southwold, Ontario
Canada, NOL 2G0

Rick Hill
Wisconsin Oneida Negotiating Team
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, Wisconsin 54155

Robert (Chip) Burr
Oneida Nation of New York
P.O. Box 60
Nedrow, New York 13120

Re: Oneida Land Claims

Dear Sirs/Madam:

At the August 15-16, Oneida meeting in Buffalo, New York, it was requested I provide certain information and documents to representatives of the Oneida Tribe of Indians of Wisconsin, Oneida of the Thames Band and Oneida Nation of New York prior to the September 8th Oneida meeting in Washington, D.C. Please find enclosed the following:

1. Memorandum summarizing August 15-16 Oneida meeting.
2. Oneida resolution for September 23rd meeting.
3. Norman Dorsen Letter of Agreement to co-chair negotiating sessions.
4. Letter to Attorney Arlinda Locklear dated 8-18-86.

Do not hesitate to call this office on any question or comment prior to the September 8th Oneida meeting. Thank you.

Sincerely,

Francis R. Skenandore
Francis R. Skenandore

Enclosures

- New York Oneidas suggest State of New York pay all Oneida negotiators, at rate of \$200 per day, plus expenses, because most of Oneida negotiators working on other jobs and should be compensated for lost time. That amount paid, if agreed to by New York State, be deducted from settlement. Thames Band agreed to proposed idea for payment from New York, but Wisconsin Oneidas view it as a potential conflict of interest and not acceptable by Oneida community in Wisconsin. Idea will be proposed at September 23rd meeting with New York State. Each Oneida community draft a negotiating budget for cost and expense of travel for September 8th meeting. Thames Band suggested meetings be held on Friday, Saturday and Sunday, irregardless of whether payment from New York.

- New York Oneidas discussed and explained proposal presented to B.I.A. for recognition of Oneida government. Election process put out to all New York Oneidas for registration, nomination. Hope to start September 1, 1986. If election goes through, Oneidas will call another meeting, possible change in New York Oneidas negotiating team. Until that time New York Oneidas present feel they have legal right to be at meetings as they are parties to lawsuit. New York Oneidas not agree with Ray Halbritter proposal for representative from three factions be negotiators. Traditionals have same opportunity to present a proposal for recognition to B.I.A. Thames Band requested names of Oneidas on New York rolls to check for dual membership on Thames Band rolls.

- Oneidas to be represented at September 23rd meeting, by three from Wisconsin Oneidas, three from Thames Band and three from New York Oneidas with alternates. Only the nine Oneidas will speak with one person from each group designated as main spokesperson. One Oneida make opening statement as to Oneida position and policy. That each Oneida team is to come up with policy/position statement for September 8th meeting.

- Discussion on how Oneidas vote on issues during negotiations. Two proposals; (1) one vote from each Oneida community, simple majority rule or unanimous (2) all nine negotiators vote, simple majority rule, 6-3 majority rule or 7-2 majority rule. After caucus, Wisconsin Oneidas position, one vote, majority rule, Thames Band position, one vote, majority rule, New York Oneidas, one vote, unanimous consent. Matter not resolved, but continue discussion at September 8th meeting. Oneidas agreed some issue must be taken back to community before vote.

- Rick Hill suggested all agendas, documents and issues to be discussed be exchanged prior to any Oneida meeting or negotiating meeting.

- Draft resolution presented by Wisconsin Oneidas be used as position paper for September 23rd meeting with New York and other parties. Resolution amended to reflect changes as to treaties

being honored, return of aboriginal Oneida land, state hard Oneida jurisdictional position, land be assessed at current market values, no B.I.A. approval of settlement agreement. The New York Oneidas at some point want to deal only with United States Secretary of State, not B.I.A. Oneidas requested that Francis Skenandore redraft resolution for September 8th meeting.

- New York Oneidas stated three areas they view as having to be negotiated (1) land (2) money (3) rights. Thames Band indicated Oneidas should have right of first refusal on any land not returned to Oneidas in claim area.

- Discussion by Oneidas on attorney fees. Agreement reached that attorney fees be 4% of the first 100 million dollars and 1% of anything over 100 million dollars and that all attorney fees and expenses come from that amount. That the attorneys decide among themselves how much they are to be paid. Thames Band wants reimbursement of expenses paid to attorney prior to settlement. This matter to be discussed by each Oneida community and brought back.

- On press coverage, Oneidas prefer joint press release with New York and other parties after negotiating meeting. If not agreed to by New York, Oneidas do their own press release immediately after negotiating meeting by person designated by Oneidas. Thames Band prefers Oneidas press release only, but willing to try joint press release. Oneidas discussed possibility of retaining press relations firm/person, but undecided at this point. Oneidas requested Francis Skenandore contact Arlinda Locklear and request she contact New York and other parties representatives prior to September 8th meeting on possibility of joint press release.

- Seating arrangement at September 23rd meeting for Oneidas discussed. Agreed that nine Oneida negotiators sit at the table, attorneys and technical advisors sitting behind negotiators. Tables be set so that at all times Oneidas see each others eyes. Each person wear a name tag for identification purposes.

- Oneidas agreed meetings be held in Washington, D.C. That meetings be closed to public, only Oneida negotiators, attorneys and technical advisors be allowed to attend. That Arlinda Locklear schedule dates for exchanging of agendas for September 23rd meeting and that Francis Skenandore contact Arlinda on agenda dates. On future meetings, Arlinda contact New York and other parties on meeting weekly or 2-3 days at a time once a month and discuss at September 8th meeting.

- New York Oneidas indicated that if final negotiated settlement is agreed upon by the Oneidas and New York and there is no recognized Oneida government in New York, the Executive Committee would bring a lawsuit to prevent payment of any funds. When asked if this meant payment to New York Oneidas only or all Oneidas, no clarification was given. The Oneidas requested

Francis Skenandore contact Attorney Bert Hirsh, prior to the September 8th meeting, for clarification of the threatened lawsuit.

- New York Oneidas, suggested Oneidas rent a house/apartment in Washington D.C. if all negotiation meetings are to be held in Washington D.C. That consideration also be given to renting equipment and machines.

- New York Oneidas and Thames Band Oneidas inquired whether they can use the expertise of Norman Dorsen and Jack Campisi. Wisconsin Oneidas indicated it may not be a problem, but it should be discussed at September 8th meeting.

- Discussion on jurisdiction by Oneidas. Agreement to make strong jurisdictional statement, no specifics at this time with respect to each Oneida community.

Oneida Tribe of Indians of Wisconsin



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

Post Office Box 365,

Phone: 869-1260

Oneida, WI 54155



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

RESOLUTION NO. _____

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian Government and a Treaty Tribe recognized by the laws of the United States, and

WHEREAS, the Oneida General Tribal Council is the governmental body of the Oneida Tribe of Indians of Wisconsin, and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council, and

WHEREAS, the Oneida Business Committee has established a Negotiating Team to negotiate a settlement of the New York Land Claims on behalf of the Oneida Tribe of Indians of Wisconsin, and

WHEREAS, the Negotiating Team needs to be provided with direction during the negotiating process, and

WHEREAS, the following is the policy to guide the Negotiating Team, and

WHEREAS, as the Creator gave the responsibility to the Oneida people to protect its aboriginal homeland and that this sacred aboriginal land of the Oneida shall continue to be protected by the Oneida people wholeheartedly and together, and

WHEREAS, the basis of any discussion or negotiating shall be founded on the principle that the government of the United States honor all federal treaties and agreements made between itself and the Oneida Nation in a manner which is reflective of continuing good faith and a desire to maintain a mutually beneficial relationship between two sovereigns, without regard to their relative strengths and that such intentions can best be evident by the establishment of a negotiating mechanism which does not grant a superior position to either party, and

WHEREAS, the Oneida Nation states that it will submit to no method of discussion or negotiation which does not recognize it as an equal party and will not subvert the dignity of our equitable title and sovereignty, and

WHEREAS, any negotiated settlement will be resolved in a government to government relationship, and

WHEREAS, the land claim is strictly an Oneida land claim, limited to Oneida governments in New York, Canada and Wisconsin, recognizing each other's autonomy, and

WHEREAS, the return of all Oneida aboriginal land shall be of primary importance to the disposition of any final settlement, and *no final disposition of the land*

WHEREAS, the Oneida Nation will not consent to state jurisdiction over any lands that are returned as a result of negotiations, and

WHEREAS, Oneida jurisdictional rights shall be honored, maintained and enforced, and

WHEREAS, all trespass damages will be fully and professionally assessed at current full market value, and

WHEREAS, the establishment of any trust lands, trust funds or other negotiated settlement agreements shall not require the approval of the Secretary of the Department of the Interior, and

WHEREAS, the Oneidas shall administer its responsibilities and the United States shall honor its original responsibilities to protect Oneida homelands pursuant to federal law and treaties with the Oneidas.

THEREFORE, BE IT RESOLVED, that any negotiated settlement will be pursued wholeheartedly in the areas of:

1. Treaty Rights
2. Jurisdictional Rights
3. Land Acquisition
4. General Welfare
 - a. Education
 - b. Health
 - c. Economic Development
5. Mineral Rights
6. Trespassing Damages
7. Hunting and Fishing Rights
8. Air Rights
9. Water Rights
10. Free Access Rights to Waterways
11. Tax Exemption
12. Waste
13. Tribal Rights
14. Environmental Rights

But not limited to the following

BE IT FURTHER RESOLVED, that the Oneida Nation recognize the sacred obligations of acting in the best interest of present and future generation of Oneida People and seek a settlement to the pending land claims which will strengthen the people and promote the continued sovereignty of Oneida Governments pursuant to the treaty relationship that exists between the Oneidas and the United States Government.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of nine (9) members of whom _____ members, constituting a quorum, were present at a meeting duly called, noticed, and held on the _____ day of _____, 1986; that the foregoing resolution was duly adopted at such meeting abstaining: And that said resolution has not been rescinded or amended in any way.

L. Gordon McLester, Tribal Secretary
Oneida Business Committee

August 25, 1986

Norman Dorsen
NYU Law School
Room 410 Washington Square South
New York, New York 10012

Dear Norman:

On August 15 and 16, the undersigned representatives of the Oneida Indian Tribe of Wisconsin, the Oneidas of the Thames Band, and the Oneida Nation of New York met to work out a common strategy, if possible, for handling the upcoming Oneida land claims negotiations. As you know, those negotiations are scheduled to commence formally on September 23, the other parties of interest in the Oneida cases having agreed to the framework for negotiations proposed by the Oneidas. Among other things, that framework calls for the appointment of two alternating chairs for the negotiations meeting, one to be appointed by the Oneida parties and a second to be appointed by the non-Oneida parties in the negotiations. The non-Oneida parties have designated Howard Rowley as its co-chair, but the Oneidas have not yet designated a co-chair.

The designation of an Oneida co-chair was discussed by us at our recent meeting. It was our unanimous view that it would be in our best separate and joint interests to designate you as the Oneida co-chair. We write to advise you of our view and request that you agree to serve in that capacity.

The duties of the co-chairs in the negotiations will be limited. Those duties would be to chair every other negotiation meeting and at those meetings to keep discussions on track with the agenda, to propose agendas for meetings in consultation with the Oneida parties and in consultation with the other co-chair prepare minutes of the negotiating sessions. In addition, we would like to reserve the option to request other specific duties of you should the need arise. Of course, we would expect that you would chair meetings in an evenhanded, neutral manner even though you would be serving as the Oneida chair. In fact, we intend to propose that you chair the first meeting on September 23, in the expectation that you would establish a high standard of fairness in the conduct of the meetings that the other co-chair will then feel obliged to meet.

Norman Dorsen
August 25, 2986
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This proposed designation of you as the Oneida chair is naturally by mutual assent. The Oneida nations are free to terminate the arrangment by a vote of seven of the Oneida representatives and thirty days notice to you. Likewise, you would be free to terminate the arrangement with thirty days notice to us.

Please advise us of your willingness to accept the appointment as the Oneida chair of the negotiations. We look forward to a fruitful, working relationship.

By: _____
Rick Hill
Wisconsin Oneida Negotiating Team
Oneida Tribe of Indians of Wisconsin

By: _____
Arnold Antone
New York Land Claims Committee
Oneida of the Thames Band

By: _____
Robert (Chip) Burr
Oneida Nation of New York

FRANCIS R. SKENANDORE

Attorney At Law

P. O. BOX 129

ONEIDA, WISCONSIN 54155

PHONE 414/869-2724

August 18, 1986

Arlinda Locklear
Attorney at Law
Native American Rights Fund
1712 N. Street N.W.
Washington, D.C. 20036

Re: Oneida Land Claims

Dear Arlinda:

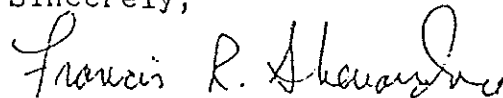
At the Oneida Nations meeting held in Buffalo, New York, August 15-16, 1986, the Oneidas requested, prior to the September 8th Oneida meeting, you make the following inquiries:

- (1) Whether the State of New York, Federal Government and Landowners will agree to a joint press release with the Oneidas after any and/or all negotiating meetings on the Oneida land claims.
- (2) Whether the State of New York, Federal Government and Landowners would be willing to hold negotiating sessions weekly or two or three days at a time once a month.
- (3) Scheduling dates for the exchanging of agendas and finalizing an agenda for the September 23rd meeting on the Oneida land claims.
- (4) Retaining or providing a reporter to take minutes at all meetings, for the Oneidas, starting with the September 8th Oneida meeting.

We assume you will contact the representatives of the principal parties who were in attendance at the July 8th meeting and Howard Rowley in regard to the above.

Please do not hesitate to call this office on any question. Thank you.

Sincerely,



Francis R. Skenandore