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# Native American Rights Fund

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July 9, 1986

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ONEIDA TRIBE OF  
INDIANS OF WISCONSIN

New York Land Committee of the  
Oneida of the Thames Band

Ray George  
Vickey Antone  
Arnold Antone

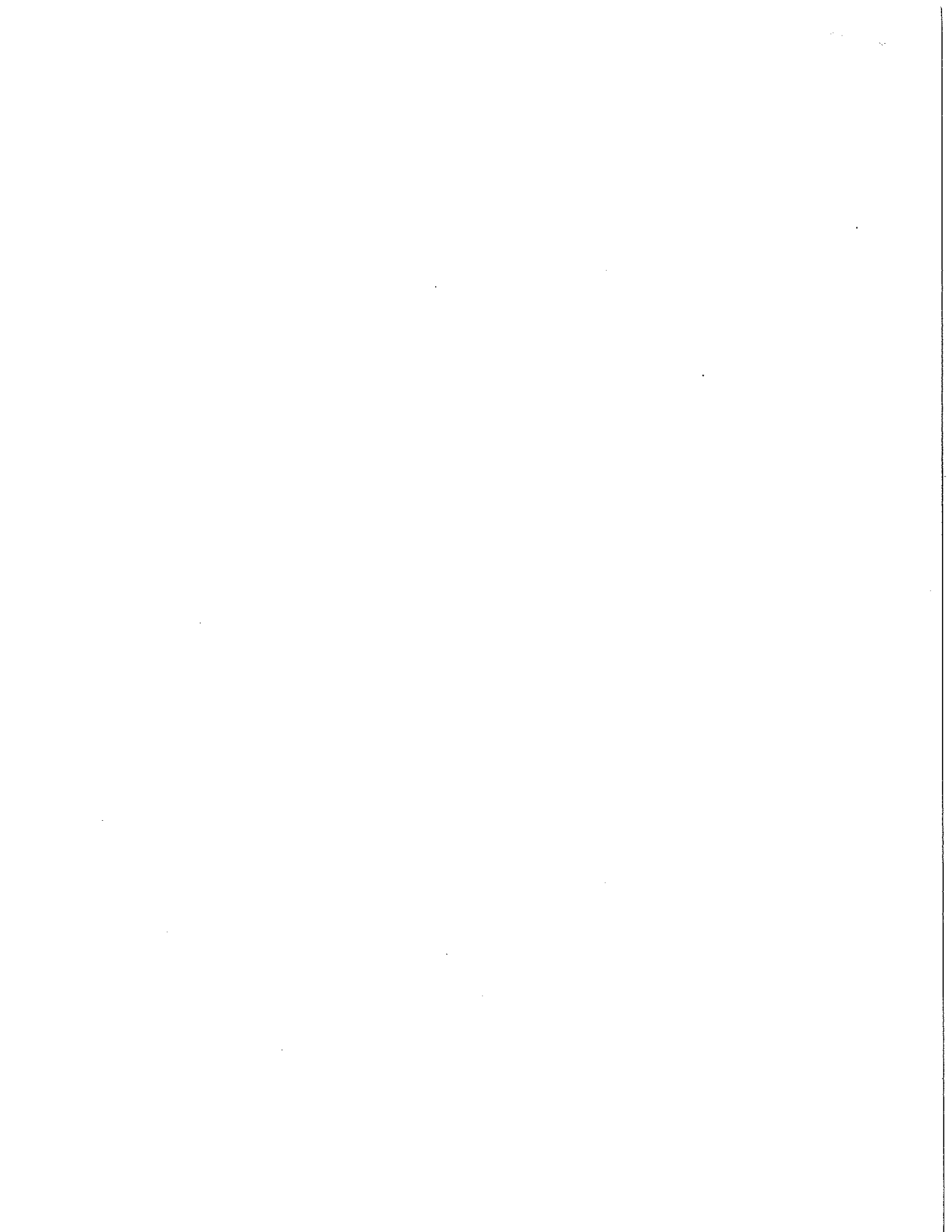
Dear Friends,

Congratulations on your recent election to the council and appointment to the land claims committee. There is a great deal of important work to be done on those claims in the coming months. The purpose of this letter is to advise you of the status of the claims and make my personal recommendation regarding a new attorney for the Band.

There are two active law suits on different parts of the Oneida land claims. The first is known as the test case and challenges the legality of a 1795 transaction between the Oneidas and New York State. In that suit the Oneidas sought two years' trespass damages from Madison and Oneida Counties on the theory that the land those counties occupy belongs to the Oneidas. In March 1985 the Supreme Court ruled in favor of the Oneidas, holding that the Oneidas still hold that land. A copy of that opinion is enclosed for your information. As a result of the Oneidas' victory in that suit, New York State has decided it wishes to negotiate a settlement of all the Oneida claims. The status of negotiations is summarized below.

The second active Oneida suit is known as the aboriginal claim. Based primarily on the 1784 treaty of Fort Stanwix, that suit challenges two transactions concluded between the Oneidas and New York State in 1785 and 1788. In that suit the Oneidas have sued approximately 60,000 landowners who occupy approximately 5 million acres of Oneida land. The defending landowners in that suit have filed a motion to dismiss. Essentially their motion argues that those transactions were legal and cannot be set aside. A trial has been held on the motion and briefs have been written. We expect a decision on that motion by the end of this month. If we lose it we will have to file an appeal.

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As I noted above, New York State now wishes to negotiate a settlement of the Oneida land claims. In discussions with the Wisconsin Oneidas the state representative agreed that the first formal meeting would take place some time during the week of September 22, 1986. In the meantime lawyers for the various parties were to meet to discuss the ground rules for negotiations. The meeting among the lawyers for that purpose took place yesterday, July 8 at the Narf office. At that meeting the lawyers agreed upon the following:

- that the first negotiating meeting is scheduled for Tuesday, September 23 at 10:00 a.m. in a conference room at the Department of Interior, Washington, D.C.;
- the negotiations will take place in face-to-face meetings among representatives of the interested parties, that is the three Oneida communities, New York State, Department of Interior, Office of Management and Budget and the defending landowners;
- there will be two alternate chairs who will take turns chairing the meetings. The duties of the two chairs will be limited to keeping the discussions at meetings tied to the agenda, preparation of the agendas for meetings, and preparation of minutes of the meetings. Detailed minutes of meetings will be kept by a staff person from the congressional delegation;
- certain details were also agreed upon such as limitations on communications with the press, exchange of papers in advance of meetings and giving advance notice of any experts who will be brought to the meetings.

The parties also discussed the need for getting down to brass tacks at the September meeting. Each party agreed to come prepared to identify issues that need to be resolved in the negotiations and also its goals on each issue in a broad sense.

Obviously there is much work to do between now and September. In the litigation, there may very soon be an appeal

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in the large case. In the negotiations, the Oneida communities should work on a common strategy for the September meeting and also consider what their separate needs are in a settlement. For these reasons I recommend that the Thames Band retain a new lawyer to represent it in the litigation and negotiations as soon as possible.

In my opinion your best choice for new counsel would be Daan Braveman and Gary Kelder who represented you during the period of time that Tim Coulter was disqualified. There are two reasons that I make this recommendation. First, Daan and Gary are good lawyers. I worked with them when I represented the Thames Band two years ago and was impressed with their integrity and ability. Because I knew they were recommended to you originally by the Indian Law Resource Center, I initially had some reservations about their independence from the Center but they protected the Band's interests vigorously and well during that period as against all parties, including the clients of the Indian Law Resource Center. I am confident that they would be completely loyal to the Thames Band now. The second reason I recommend Daan and Gary is that they are knowledgeable about your case. The Oneida cases are complex; it would be very difficult for a new lawyer to come into them cold and be able to handle an appeal right away. For these reasons I recommend Daan and Gary for your consideration.

Good luck in the work ahead of you. I look forward to working with your new counsel whoever that person may be.

Sincerely,

*Arlinda Locklear*  
(mb)

Arlinda Locklear

AL/mb  
Enclosure  
cc: Chief Al Day  
Wisconsin Oneida ✓  
Negotiating Committee

MEMORANDUM

To: Wisconsin Oneida negotiating committee,  
Norman Dorsen, Jack Campisi

From: Arlinda Locklear *AL*.

Re: Attorneys meeting of July 8, 1986

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ONEIDA TRIBE OF  
INDIANS OF WISCONSIN

On July 8, representatives of the principal parties in Oneida attended a meeting at my invitation to discuss format of and groundrules for Oneida negotiations. The meeting was attended by Francis Skenandore, Norman Dorsen and myself on behalf of the Wisconsin Oneidas, Birt Hirsch for the New York Oneidas, Bob Batson for New York State, Allan van Gestel for the defendant landowners, and David Etheridge for the Department of the Interior. The Canadian Oneidas have not yet retained new counsel and were unrepresented at the meeting. However, I advised people at the meeting that the Thames' Band has established a land claim committee consisting of Ray George, Vicki Antone, and Arnold Antone. Those people will very shortly select a new attorney with whom we can meet on these issues.

The meeting was a productive one. We were able to essentially obtain agreement on the format for negotiations that we had discussed earlier. The specific points of agreement include:

- the negotiations will take place in face to face meetings among the principal parties. The first meeting will take place at 10:00 a.m., Tuesday, Sept. 23, at the Department of the Interior.
- there will be two alternating chairs for the meetings. The Oneida parties will designate one chair and the remaining parties will designate the second. The state and other parties indicated that Howard Rowley would be their designated chair. We advised that we cannot designate our chair until all three Oneida communities have an opportunity to discuss it.
- the duties of the two chairs would be limited. They would include keeping the discussions on track with the agenda, preparation of agendas in consultation with the parties, and preparation of summaries of minutes from the meetings.
- certain items will appear as fixed issues on every agenda. They include approving the summarized minutes of the last meeting, setting the date for the next meeting, and agreeing

on information concerning the meeting that can be released to the public.

- detailed minutes of each meeting will be kept by a congressional staff person. Bob Batson agreed to locate a person for that purpose. The two chairs will review the raw minutes, summarize them, and present them for approval at each meeting.

- any papers to be discussed at a meeting will be exchanged two business days in advance of the meeting. A party must also notify other parties in advance if he/she plans to have an expert accompany them to the meeting.

- the parties who will participate in the meetings include the three Oneida communities, Bob Batson from the Governor's office, a representative of New York State Attorney General's office, representatives of the New York State Assembly and Senate, representative of the private landowners, representatives from the Department of the Interior and O.M.B. All lawyers agreed, except Allan van Gestel, that the Confederacy will not be included in the talks. Van Gestel stated that he will participate in any event, but considers it unwise to exclude the Confederacy.

During the discussion, other unrelated points of interest were expressed and should be noted by us. These include:

- Batson will be looking to the congressional delegation (i.e. Howard Rowley) to take the lead in arriving at terms.
- Interior views its role in these negotiations more as protectorate of the federal budget and less as the tribes' trustee.
- Van Gestel stated his clients' position as opposed to involuntary takings of private land, must obtain clear title from all Indian claimants in area, any land must be sensitively selected (i.e. with a view toward the political repercussions), must be resolution of issues of governance over that land, the money settlement can't be too large (large was not defined).
- all parties agreed that at the first meeting we should not only identify all the issues that need resolution in these negotiations but also begin discussing our expectations on how the issues should be resolved.