UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONONDAGA NATION,

Plaintiff,

v. Civil Action No. 05-CV-314 (LEK/DRH)

THE STATE OF NEW YORK, *et al.*,

Defendants.

DECLARATION OF ANTHONY F.C. WALLACE IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

ANTHONY F.C. WALLACE, declares under penalty of perjury as follows:

1. I, Anthony F. C. Wallace, am a resident of Parkesburg, Pennsylvania, and am a University Professor of Anthropology, Emeritus, at the University of Pennsylvania. My professional career as anthropologist and historian since the 1940's to the present time has been in considerable part devoted to research and publication on the Indians of the northeastern United States, particularly the Delaware and Iroquois in Pennsylvania and New York. Since 2005 I have served as research consultant to the Indian Law Resource Center in connection with their representation of the Onondaga Nation in its land rights lawsuit against the State of New York. A resume is attached as Exhibit A.

Methodology

2. In preparing this declaration, I have read as an historian several thousand pages of printed documents and transcripts of manuscript sources (much of the latter supplied by previous researchers employed by plaintiffs). I have also as an anthropologist made use of personal

knowledge of Six Nations government and rules of land rights, gained by approximately a year in residence (accumulated over a number of visits) on Six Nations reservations in New York, chiefly at Tuscarora and Allegany, plus brief visits to Grand River in Canada and to Onondaga. I have also published several books and articles in professional journals dealing with Native American subjects (see resume for bibliography) relevant to this period and area.

3. These sources have had to be evaluated for relevance to the issue of laches and further evaluated in accordance with accepted scholarly principles. Principal reliance must be placed on *primary sources*, i.e. documents left by eye-witnesses and participants describing events and customary behavior relevant to the issues. *Secondary works*, i.e. writings by later scholars, may also offer guides to bibliography, the historical context of the primary events, and their interpretation. Primary documents must also be examined for their authenticity, the bias of their authors, the opportunity of the writer to actually observe what he writes about, accuracy of memory, the quality of transcription, and the excellence of the repository. Evidence that does not seem to fit the analyst's own picture of events must also be taken into account. The task ultimately is one of synthesizing information from many sources into a coherent pattern.

Summary of Main Points

4. The Onondaga Nation was actively discouraged from resorting to federal and state courts for settlement of major land issues by actions of the federal and state governments. The right of an Indian nation, apart from the rights of individuals, to bring suit over land issues in federal courts, was uncertain. Actions of both state and federal governments bred a lack of confidence in federal or state legal systems. The State of New York failed to respect native customary law in its several land treaties. And the United States failed to enforce promises it

made in relation to the 1790 Trade and Intercourse Act to ensure fair treatment in land transactions.

5. Ingrained cultural norms among the Onondagas and the Six Nations required, for sale of national territory, the unanimous consent of members of the nation's council of chiefs and the concurrence of clan mothers and warriors. The Iroquois Confederacy (the Six Nations), of which the Onondaga nation was a member, acted as a whole to protect the welfare of each of its member nations, as in disputes over land.

6. The Onondaga Nation has maintained over centuries an acute awareness of the importance of maintaining historical records in a national archive containing the traditional wampum belts representing past agreements and in more recent times written documents.

7. Temporary geographical dispersal caused by the destruction of the Onondaga settlements during the American Revolution made physical assembly and thereby the achievement of consensus more difficult than in normal times.

8. The State of New York, eager to buy land during this dispersal of the Onondagas, failed to secure the agreement of the chiefs' council of the whole nation in its treaties with the Onondagas, and the Onondaga chiefs promptly protested such violations of their customary law. Representatives of the Grand Council of the Confederacy joined in these protests.

9. The traditional means for resolving issues between Indian nations and the English colonies, and later the states and the United States, was by negotiation between sovereign political entities rather than litigation; a system of independent judiciary was not part of native culture and recognizing the authority of federal or state courts would have raised as-yet unresolved issues of sovereignty.

10. The State of New York and the federal government encouraged the continuation of this traditional practice, rather than resort to the unfamiliar system of federal courts (despite occasional federal assertions that the courts were open to Indian plaintiffs).

Onondaga Customary Law Concerning Land Rights and Transfers

11. Onondaga objections to land transactions with New York State from 1788 to 1842 were based on the charge that the State was dealing with persons who had no right to represent the Nation. In order to understand these objections, it is necessary to know something about the Onondagas' customary beliefs and practices regarding land tenure in their own community, and also to grasp the nature of their concepts of national sovereignty, internal governance, and participation in the League of the Iroquois (a confederacy of Indian nations also known as the Haudenosaunee and "Six Nations").

12. From the early years of the colonial period to the present time, the Six Nations of the Iroquois Confederacy resident in what is now New York State -- Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora -- have been recognized as nations exercising a degree of independent sovereignty within their own territories and maintaining law and order according to their own custom by a council of chiefs, whose offices were either hereditary within clans or more recently in some places elected by popular vote. The State still recognizes the council of chiefs of the Onondaga Nation as the authority with whom to do business.

13. The Onondaga Nation's council was then, and still is, composed of chiefs whose titles were hereditary within clans and who were nominated by senior women commonly referred to as "clan mothers." Council decisions and recommendations required unanimity among the chiefs.

14. With respect to the land within the boundaries of the nation, from the colonial period until now, these Indians recognized among themselves two levels of title to the land itself: an underlying title to the entire territory vested in the nation as a whole, and a usufruct title to small portions of land enjoyed by members of the nation and by such others as the council of chiefs might recognize as legitimate residents. Individual families among the Onondagas, for instance, might appropriate to their private use such spaces as a summer fishing camp, like the one visited by General Amherst in July of 1760, where he found an Onondaga family domiciled on the western shore of Oneida Lake. He meticulously counted a man and wife, two children, a dog, a canoe, a gun, and a fishing rod (!), and the resident fisherman was able to indicate the extent of his domain. [A map by a census taker, General Henry B. Carrington, of the land holdings within the Onondaga Reservation as of 1890 is shown facing p. 24 of *The Six Nations of New York: The 1892 United States Extra Census Bulletin*, ed by Robert W. Venables (Ithaca: Cornell University Press, 1995).]

15. Lands unappropriated for agriculture (especially the growing of corn, squash, beans, and tobacco), and for dwellings, orchards, summer fishing camps, and other use by individuals or families were communal or nation lands, such as hunting grounds, streams, and lakes (such as Onondaga Lake). Nation lands could be allocated to individuals or groups as the council saw fit, temporarily or permanently; and abandoned dwelling and farming spaces could revert to the nation. Areas "privately" owned by individuals or family groups could also be transferred to other members of the nation by sharing, sale, lease, or inheritance. [The principle of communal ownership of the nation's territory is attested in William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998) pp. 7, 113-114. The usufruct ownership of garden plots, houses, and

other property is discussed in Lewis Henry Morgan's classic 1851 ethnography, *The League of the Hodenosaunee or Iroquois* (New York: Dodd, Mead, 1901), Vol. 1, pp. 317-318. My own studies over the course of years at Tuscarora has revealed plainly the principles of underlying ownership by the nation of the entire territory, the existence of "nation land" for public or common use, and the prevalence of private ownership, sale, rental, and inheritance, subject to the underlying national title.]

16. The council fire of the Six Nations Confederacy was, and still is, in the care of the Onondagas. The Confederacy promoted an ethic of mutual inter-tribal peace and tolerance among the member nations that permitted ready travel, marriage, and trade within a wide area.

17. Although each nation claimed a traditional territory as its own, its boundaries were not "lines drawn in the woods" by surveyors but were marked by readily recognizable features such as major rivers, watersheds, and mountain ridges. The combined territory was likened to a Longhouse, the traditional dwelling which housed separate families in separate apartments under one roof. Individual nations could and did appeal to the Grand Council of the Confederacy, composed of 50 chiefs from the several nations, for support when they were threatened or had been injured by another Indian nation or by members of a European colony.

18. By conquest, or by inducing submission from compliant neighboring tribes, the Confederacy established a claim of sovereignty to much of central and western Pennsylvania, western New York, the Ohio Valley as far west as the Mississippi and north to the Great Lakes, and the Virginia Piedmont east of the Appalachians. These conquered nations could not transfer their territory to Europeans without the consent of the League's council at Onondaga and the League could and did transfer its sovereignty over these conquered territories to European or American governments, as at the Treaty of Fort Stanwix in 1784. [Fenton, *The Great Law*, p.

538. There exists a voluminous literature on Iroquois colonial politics. Much of this research has been summarized in Fenton's *Great Law.* Much of my own work has dealt with these issues: see Anthony F. C. Wallace, *King of the Delawares: Teedyuscung, 1700-1763* (Philadelphia: University of Pennsylvania Press, 1949) and *The Death and Rebirth of the Seneca* (New York: Knopf, 1970) See also Paul A. W. Wallace, *Conrad Weiser, 1696-1760: Friend of Colonist and Mohawk* (Philadelphia: University of Pennsylvania Press, 1945) describes the efforts of Pennsylvania's interpreter to mediate among the Six Nations, the refugee communities, conquered tribes, and the province of Pennsylvania.]

19. From post-Revolutionary times, up to the present, one basic rule has governed and still governs the acquisition, use, and transfer of land: the Nation holds an underlying title to all the lands within its boundaries. This title, to all or part, can only be transferred (for instance, to another nation, or to New York State, or to the federal government) by a unanimous decision of the duly appointed Council of Chiefs. If groups within the nation object, however, the chiefs must consult with and gain the agreement of their constituents, the Warriors, the Women, the Clan Mothers (who as we noted earlier, among the Onondagas nominated the chiefs and had the power to impeach them for misconduct), and the clans themselves meeting as independent bodies. In effect, the general populace had to be informed and had to ratify the recommendation of the chiefs in such an important matter as the sale of national land.

Onondaga Historical Consciousness

20. The Iroquois themselves, who in pre-contact times had no written language, were very much concerned with the completeness and accuracy of memory of such historic events as the transfer of nation land. The mnemonic device that was most relied upon to provide cues to important transactions was wampum. Strings and belts of wampum were regularly exchanged by the parties to any formal communication, as a confirmation of the official nature of the statement, and were preserved in a kind of archive, in the care of a formally designated custodian. Some of the belts, six or seven inches wide and up to four feet long, were elaborately woven with figures presenting the different groups and the nature of the agreement that had been reached. [See detailed discussion in Tehanetorens, *Wampum Belts* (Onchiota, N.Y.: Six Nations Indian Museum, 1993).]

21. Lafitau, a French Catholic missionary writing of the Mohawks in his *Moeurs des sauvages Ameriquains*, published in Paris in 1724, concerning belts and strings of wampum, wrote,

> The bank or public treasury consists principally of belts ... which take the place, as I have said, of contracts, public acts, and, in some wise, of records, annals and registers. For, since the Indians have not the use of writing and letters, and are thus given to forgetting the things which take place among them, so to speak, from one minute to the next, they supply this lack by making themselves a local record by the words which they give these belts, each of which stands for a particular affair or the appurtenances of an affair which it represents throughout its existence.... The Agoianders [nobles] and Elders have, besides, the custom of reviewing them often together and dividing among themselves the responsibility of noticing certain ones assigned to them individually so that, in this manner, they forget nothing.

[Fr. Francois F. Lafitau, *Customs of the American Indians...*, 2 vols., trans. W. N. Fenton and Elizabeth Moore (Toronto: The Champlain Society, 1974, 1977), vol. 1 pp.310-311.]

22. Half a century later, the Moravian missionary David Zeisberger in the 1750's was officially made the custodian of the Onondaga archives. He later also described a similar historical repository among the Delawares, who were neighbors and tributaries of the Iroquois: "The chief has the council bag in his possession, as also the treaties that have been made with the governors of the provinces and other documents, although they are not able to read. These constitute the archives, where all messages and reports are kept. With each message or speech there are one or more strings or belts of wampum." [David Zeisberger, *History of the Northern American Indians*, ed. by Archer B. Hubert and William N. Schwarze (Lewisburg, Pa.: Wennawoods Publishing, 1999), pp.3, 93-94.]

23. The Onondaga wampum archive, or at least a major part of it, has been preserved up to the present time. For many years, beginning in the 1890's, it was in the custody of the New York State Museum at Albany; in 1989 the belts were ceremoniously returned to the Onondaga Nation, by whom they are still regarded as a record of past treaty negotiations and agreements. [See Dean R. Snow, *The Iroquois* (Cambridge: Blackwell, 1994), pp. 216-217.] This Onondaga respect for maintaining an accurate history has helped to keep alive their complaints over the loss of their lands.

Temporary Dispersal of the Onondaga Nation

24. During the period from 1779 to about 1850, the Onondaga Nation experienced a series of traumatic events of war, migration, pressure to sell lands, and threats of forced removal from New York to unfamiliar territories in the west. These conditions resulted in the temporary physical dispersal of most of the nation's members from their original settlements near present-day Syracuse. [The general history of the Onondagas is summarized in the two Smithsonian handbooks: J. N. B. Hewitt, "Onondaga," pp.129-135 in Vol.2 of *Handbook of American Indians*

North of Mexico, ed. F. W. Hodge (Washington: Government Printing Office, 1910) and Harold Blau, Jack Campisi, and Elisabeth Tooker, "Onondaga," pp. 491-499 in Vol. 15 of *Handbook of North American Indians: Northeast*, ed. William C. Sturtevant and Bruce Trigger (Washington: Smithsonian Institution, 1978). For the Onondagas' part in the events of the Revolution, see Barbara Graymont, *The Iroquois in the American Revolution* (Syracuse: Syracuse University Press, 1972.]

25. During the American Revolution, in 1779 their main town near Onondaga Lake (present Syracuse, N.Y.) was destroyed by troops operating as part of the famous Sullivan-Clinton campaign to end attacks by pro-British Indians, including individual Onondagas, on the colonial frontier. After the destruction of their main town, along with their gardens and orchards, the majority of the Onondagas fled westward to establish refugee settlements among the Senecas at Buffalo Creek (present Buffalo, N.Y.) and among the Mohawks led by Joseph Brant on the Grand River in Ontario. The Onondaga Chiefs' Council, with the nation's wampum and historical records, was established in a new town with a new council house at Buffalo Creek.

26. After the peace treaty between the Six Nations (including the Onondagas) at Fort Stanwix (Rome, N.Y.) in 1784, a smaller group of Onondagas, presumably including a minority who had remained neutral or favored the Americans in the war, promptly returned to Old Onondaga (near Syracuse). Thus by 1788, when the first of the Onondaga land treaties with New York State was held, the 750 or so Onondagas were divided into four groups, with the council fire of the nation remaining at Buffalo Creek. In 1789 the Reverend Samuel Kirkland, formerly the resident missionary among the Oneidas (whose aboriginal territory adjoined the Onondagas') took a census of the Six Nations in New York and found 301 Onondagas living at Buffalo Creek, 67 at Old Onondaga, and 34 along the Genesee River. ["Kirkland's Census of Iroquois 1789,"

copied from original in Samuel Kirkland Papers, Hamilton College, Clinton, N.Y. A copy is attached as Exhibit B.] A 1785 census at Grand River found 245 Onondagas there. [Cited in Isabel Thompson Kelsay, *Joseph Brant 1743-1807* (Syracuse: Syracuse University Press, 1984), p. 370.]

The Onondaga Land Treaties

27. During the period of dispersal, in the short space of seven years, from 1788 to 1795, the State of New York took control of 99% of the land of the Onondaga Nation. Their land holdings in the center of the state amounted to about 4,000 square miles (about 2,500,000 acres) in a long swath 40 miles wide from the shores of Lake Ontario to the border of Pennsylvania. By four treaties in 1788, 1790, 1793, and 1795, this territory of hunting grounds and villages was reduced to a tiny reservation of about 11 square miles, or about 7100 acres, just south of Onondaga Lake and the site of the present city of Syracuse. Further reductions in the area of their reservation to its present 6,900 acres was accomplished by two later treaties, in 1817 and 1822. At the same time, the State was acquiring the lands of the Onondagas' neighbors on either side, the Oneidas to the east and the Cayugas to the west.

28. Onondaga and other Iroquois land holdings in New York State were further threatened in the infamous treaty of Buffalo Creek in 1838, but a subsequent treaty in 1842 left the Onondaga reservation intact. [Since they were not held under federal authority, the six Onondaga treaties with New York from 1788 to 1822 are not listed in standard compendiums of Indian treaties. They were published however by the New York State Assembly. The treaties of 1788 and 1790 were also printed, along with copious supporting documents, in Franklin B. Hough, ed., *Proceedings of the Commissioners of Indian Affairs, Appointed by Law for the Extinguishment of Indian Titles in the State of New York* (Albany: J. Munsell, 1861), Vol. I pp.

198-203, Vol. II pp. 400-402, and have been made available online by the University of Oklahoma Law Library. Copies are attached as Exhibit C. The treaties of 1838 and 1842 are printed in Charles J. Kappler, *Indian Affairs: Laws and Treaties, Vol. II* (Washington: Government Printing Office, 1904).]

29. After the Revolution, which ended in 1783, the State was eager to obtain the Onondaga Nation lands, in part for a "military tract" for allocation to veterans of the war, and the remainder for sale to speculators and settlers seeking to establish themselves in towns and farms throughout central New York. West of the Cayugas lay the lands of the Senecas, the pre-emption right to buy whose lands had been assigned to Massachusetts, whose colonial charter overlapped New York's. Part of the Seneca lands was acquired by the Massachusetts firm of Phelps and Gorham, also in 1788, and most of the remainder was acquired by their successor, the Holland Land Company, in 1797. In 1788, a rapacious partnership of New York speculators had obtained from the Six Nations a 999-year "lease" to virtually all of their land in New York State, the so-called Livingston Lease," which was disallowed however by a state law that prohibited private purchases of Indian land within the State's pre-emption zone. [Hough, Vol. I, pp. 119-128, attached as Exhibit D.]

30. Thus, in less than ten years, from 1788 to 1797, virtually all of the lands of the Six Nations in the State of New York west of the Line of Property established at the treaty of Fort Stanwix in 1768 and confirmed by New York statute in 1788 had been acquired by the State and by one vast land company, the Holland Land Company, eventually to be known as the Ogden Land Company. The State still asserts the pre-emption right to purchase the Onondaga Reservation and such holdings as the Oneidas still possess, and Ogden still holds the pre-emption right to purchase the remaining Seneca lands. [The text of the treaty of Ft. Stanwix

1784 does not mention the 1768 Line of Property but the Iroquois negotiators demanded that this be retained as the eastern line of Six Nations land holdings. The text of the New York statute of 1788 is published in *Eighteenth Annual Report of the Bureau of American Ethnology* Part 2 (Washington: Government Printing Office, 1899), pp. 585-586. An official map of the line is reproduced in Fenton, *The Great Law*, p. 538.]

Onondaga Protests Against the Land Treaties

31. The Onondaga chiefs' council immediately protested these land treaties. The principal objection was based on the insistence of the State of New York on negotiating almost exclusively with the small band at Old Onondaga, who the census data show constituted only 12% of the Nation's population. The majority resided at Buffalo Creek, where the new chiefs' council house was built, the official council fire was lit, and the Nation's archives were preserved.

32. The 1788 Onondaga treaty was held at Fort Stanwix (now Rome, N.Y.) between Governor Clinton and commissioners of the State of New York and representatives of the small band of pro-American Onondagas still occupying Old Onondaga. Fort Stanwix was a convenient location for the Governor, being only a third of the distance from Albany to Buffalo Creek, and connected to the city of Albany by a wagon road. Also it was closer to Old Onondaga than Buffalo Creek. The chiefs from Buffalo Creek would have to travel, on foot, some 200 miles.

33. In the written text of this treaty, these Onondagas ceded to New York all the Nation's territory, the State retroceding to the Nation a reservation of 100 square miles embracing Onondaga Lake and the Onondaga village. The minutes of the treaty negotiations, however, suggest that the New York commissioners deliberately deceived the Indian representatives into thinking that they were agreeing to a lease, more favorable than the discredited Livingston Lease,

rather than an outright sale. [New York State Archives, A-1823, Legislative Assembly Papers, "Proceedings of the Negotiation between the Onondaga Nation and Commissioners of the State of New York," Vol. 40, folios 140-149. The Legislative Assembly Papers are temporarily unavailable. See attached letter of James D. Folts, New York State Archives, Exhibit E.]

34. When the chiefs at Buffalo Creek learned of this transaction, they at once protested that the treaty was invalid because the Onondaga chiefs' council had not been a party to the negotiations, had not signed the treaty document, and had not received any of the compensation. Those who had "sold" the lands to New York were "young men" or "children" not authorised to sell the Nation's lands. Furthermore, the Confederacy council, which had sovereignty over all of the Six Nations' lands, had not been consulted or given their consent to such a major transfer of land rights by either the Onondagas or the Cayugas and Oneidas. [Hough, *Proceedings*, Vol. I, pp. 331-332. Exhibit F.]

35. By way of contrast, the Confederate council had agreed to the Phelps and Gorham purchase. Death threats were made against the two major figures in the faction at old Onondaga, Black Cap and Kahiktoton. In the following year, the Council of the Six Nations addressed the issue in a formal complaint to President Washington, objecting to the Onondaga sale as invalid and pointing out that they had formally approved the Phelps and Gorham transaction. [State Historical Society of Wisconsin, Draper Collection, Series U, Vol.23, pp. 164-169, copy attached as Exhibit G.]

36. On the same day, July 2, the Six Nations Council addressed a similar complaint to Governor Clinton of New York, denying the 1788 sales by not only the Onondagas but also the Cayugas and Oneidas, and endorsing the Livingston Lease. The New York commissioners had

introduced their proposal as a substitute for the Genesee Company's lease of 999 years, promising better treatment by the state. [Hough, *Proceedings*, Vol. I, pp. 331-332, attached as Exhibit H.]

37. As we noted above, it is by no means certain that the Onondagas present at the treaty of 1788 understood that they were being asked to sell, rather than lease, their lands. Whether based on native memory or on reading of the printed accounts of the treaty, an oral tradition still persists at present-day Onondaga that their forebears had intended to lease not sell their land.

38. These objections were so substantial that the Governor concluded that it would be prudent to take them seriously, and so in 1790 he and the commissioners met again at Fort Stanwix with Onondaga chiefs and warriors, including both signers of and dissenters to the previous treaty and a few chiefs representing others of the Six Nations, including Oneidas and Senecas. As we noted above, the 1790 treaty purported to ratify the 1788 agreement and to provide the Onondagas with additional compensation. It cannot be determined from the list of names whether the any of the signers represented the Onondaga chiefs from Buffalo Creek and the Grand Council of the Confederacy.

39. In 1792 it was rumored in Albany that the Onondagas, Oneidas, and Cayugas at Buffalo Creek were proposing to lease or sell more of their lands; this rumor was attributed to the same Kahiktoton who had taken the lead as a Confederacy sachem in the Old Onondaga band in promoting the 1788 cession. Accordingly, in response to this story, in the spring of 1793 the state legislature passed an act authorizing a purchase of more lands from the three tribes.

40. A meeting was held at Fort Stanwix in November of that year, by which the Onondagas there present (not including others of the Six Nations) quit-claimed about three

quarters of the lands "appropriated by the People of the State of New York to the use of the Onondagoes." The treaty also gave the state the right to lay out and open roads through any part of the remaining reserve and put in trust for the use of Ephraim Webster, the interpreter, a square mile of land, half of which lay in the northern part of the remaining reservation. The Onondagas retained the right to share with the people of New York a strip of land around the lake and along the west bank of Onondaga Creek, which ran northward from the village into the lake. [New York State Archives, Legislative Assembly Papers, Vol. 40, pp. 120-149.]

41. This treaty, by which the state acquired the site of the future city of Syracuse, aroused a storm of protest. What had actually happened was that in the fall of 1792, commissioners had visited Buffalo Creek and attempted to persuade the chiefs there to sell part of the reservation at Old Onondaga. The chiefs put the commissioners off, saying that they were scheduled to begin their winter hunt, but invited the commissioners to return in the spring to discuss the matter. In the spring, the Governor invited the chiefs to meet with him in Albany to treat for lands. The chiefs in response sent a delegation, inviting the Governor to come to the council fire at Buffalo Creek, which was the proper place for the Onondaga Nation to do business, and explaining their system of land rights. Before this delegation could make contact with the New York commissioners, however, these commissioners had held a separate treaty with the faction at Old Onondaga, the treaty of 1793 described above. [NY Archives, Leg. Ass. Pp., A-1823, Vol. 40, pp. 297-298.]

42. Protests against the 1793 treaty were repeated again in the spring of 1794. A delegation of Onondaga Chiefs from Buffalo Creek marched east toward Albany in the spring, meeting with the federal agent Israel Chapin at Onondaga. There on March 4th, the Onondaga

spokesman Clear Sky delivered a blunt message, which was forwarded to the Governor at Albany. The most cogent passage is worth quoting in full:

> ... we wish to see the Governor and reveal our minds to him, as he has not before paid that attention to the principal chiefs which he ought, as he has been trading with but few of the Indians living at Cayuga and Onondago, which we consider as it were but children, with whom he has traded, which was not properly intitled to dispose of the lands, without our consent But has Generally Confirmed his bargains with these few and Neglected the principal Chiefs who are the proper owners of the Land. Brother, You recollect last fall we understood the Governor wished to purchase our Lands, but we declined meeting on account of the Winter Season being so near approaching and would not so well accomodate the business & desired it might be postponed until Spring. And we conceive the Governor has wished to trade with a few who reside on the Lands at Cayuga & Onondago, without consulting the principal Chiefs, or proper owners, and we consider him as one who wishes to defraud us of our Land.

[NY State Archives, Leg. Ass. Pp., vol. 40; original in New York Historical Society, O'Reilly Papers. A copy is attached as Exhibit I.] In the meantime, however, the Governor had been meeting at Albany with the Old Onondaga faction, who reaffirmed their 1793 actions.

43. This practice of treating solely with the eastern faction was followed again in 1795 at the Treaty of Cayuga Ferry where the remaining rights around the lake and along Onondaga Creek were handed over.

44. Some years later, in 1817 and 1822, the state again treated with the local Onondagas for smaller grants of land, including the allotment to Kahiktoton and two other leaders of a mile-square tract [a tract of a square mile] on the remaining reserve, now shrunken to 6100 acres, its present (2006) size. It would appear from his conduct that the Governor was taking the position that he would treat with whomever he was pleased to consider the owners of the reservation.

The Tradition of Resolving Disputes by Negotiation Between Sovereigns Rather than by Litigation

45. It is clear that the responsible Onondaga chiefs were outraged by the failure of the State of New York to recognize that the Six Nations had a well-established system of land rights, and procedures for transfer of land, that had been exercised for more than a hundred years in relations with Dutch and British colonial authorities. The traditional means for resolving such issues between Indian nations and the English colonies, and later the states and the United States, was by negotiation between sovereign political entities rather than litigation; a system of independent courts and resolution of disputes by courts were not part of native culture and recognizing the authority of federal or state courts would have raised as-yet unresolved issues of sovereignty.

46. To cite one example, protests against improper land transfers had been made by the Mohawks since the beginning of the 18th century, and the Onondaga chiefs, as central figures in the Grand Council of the Confederacy, had undoubtedly been aware of these complaints. One case of fraud, the so-called "Kayaderoseras Patent," involving up to hundreds of thousands of acres of prime Mohawk hunting grounds, had so soured relations between the British Government and the Iroquois that there were fears the Six Nations would join the French in war against the Crown colony of New York. The matter was in dispute and subject to negotiations from 1702 until 1768, when the Line of Property was drawn separating Iroquois and British lands in the colonies. [The affair of the Kayaderoseras Patent is discussed at length in Georgiana C. Nammack, *Fraud, Politics, and the Dispossession of the Indians: The Iroquois Land Frontier in the Colonial Period* (Norman: University of Oklahoma Press, 1969.]

47. Iroquois land claims were thus not minor matters to be settled in some lesser civil court but were issues of major political importance, to be settled by negotiation between the legitimate representatives of sovereign nations. Conferences over major issues, such as war and

peace, trade agreements, alliances, and major cessions of land, were properly conducted according to Iroquois custom, and this is clearly revealed in the records of numerous Iroquois treaties throughout the 17th and 18th centuries. They were official events, held in public and not "in the bushes," solemnized by strict native protocol, with formal addresses by skilled speakers instructed by the council, exchanges of wampum, and, at times, the signing of a treaty document, which served as evidence of the agreement just did the wampum belts retained by both sides.

48. With the failure of negotiations with New York State, the Iroquois leaders turned to the United States government for support, trusting in the promises implicitly made in the 1790 Trade and Intercourse Act, which were explained to them repeatedly, that the United States alone had the authority to call and supervise all treaties involving the sale of land, and would ensure fair treatment for the Indians. Yet the Iroquois also counted on the tradition of the Chain of Friendship that had bound them securely to the British interest centered in the authorities at Albany. But this faith in the State and the Federal Government was soon to be replaced by suspicion and distrust. Fair words were not followed by fair actions.

Continuance of the Negotiation Format by New York

49. Despite recommendations by hard-liners that New York discontinue recognizing the Six Nations and its constituent members as sovereign nations, Governor George Clinton and the Committee on Indian Affairs chose to continue, at least in treaty ceremony, the policy of accomodation that had guided their British forerunners in Albany. Specifically, they recognized, as had the Dutch and British before them, the Indian right of soil, and the legal necessity of purchasing the land from the Indians in order to obtain a clear title. (Whatever inflated assertions might be made in the name of the "Right of Discovery," as a practical matter the Indians owned and occupied the land and were prepared to defend what they considered to be their own.)

50. Clinton, who was intent upon maintaining peace on the frontiers while acquiring Iroquois lands to satisfy the demands of prospective settlers from Massachusetts and of the state's own war veterans for their promised reward for military service, saw no advantage in antagonizing the Indian people whose good will was needed to persuade them to sell their aboriginal estates. In opening up communications with the Onondagas and the other nations at Fort Stanwix in the fall of 1784, he and his deputies explicitly declared their intent to treat the Hodenosaunee as "Brethren," addressed the whole body as the "Six Nations," and proposed to polish the old Chain of Friendship binding Albany to Onondaga and to light again the old "Council Fire" at which as of old the State and the Hodenosaunee could resolve any differences between them over such matters as land rights, property lines, and trade. He proposed to follow "the ancient Custom in which Treaties have been conducted between You and Us and our Ancestors." [Hough, *Proceedings*, Vol. I, p. 50, attached as Exhibit J.] They pointedly treated the conference as a meeting between equally sovereign nations.

51. Again, in 1790, during preparations for the treaty of 1790, the Governor explicitly recommended to the Onondagas and Cayugas that any Indian complaints about land or other matters should be settled by negotiation:

> Brothers: It has always been the Custom between your Ancestors and ours, whenever there was any Uneasiness between them, to meet together at a Council Fire, and smoke their Pipes together, and to open their Minds to each other, and so they were always in Peace and Friendship.... This was a good Custom and we hope it will be forever observed, and therefore we wish to meet a convenient Number of you, and who may be authorized to represent and transact Business for the whole of you, at the Council Fire which we propose to kindle at Fort Schuyler on the first Day of June next.

[*Ibid.*, Vol.II, p. 370, attached as Exhibit K.]

52. This, indeed, was the form in which the six treaties of land cession between the State of New York and the Onondaga Nation were conducted in 1788, 1790, 1793, 1795, 1817, and 1822.

What is relevant to the issue of delay in filing a claim in federal court is the fact that New York actively encouraged the Onondagas (as it did other Iroquois nations) to *negotiate* any grievances over land transactions in meetings held in accordance with the traditional forms of treaty protocol.

The Federal Policy of Distancing Itself from New York Indian Affairs

53. The Articles of Confederation, which governed Indian relations until1789, reserved to the federal government the right to treat with Indians "not members of any State." The State of New York considered that the Six Nations in New York *were* members of that State and, as we have seen, promptly proceeded with their plans to acquire Indian lands for their military veterans, for general speculation and settlement, and to satisfy the pre-emption right claimed by Massachusetts.

54. After adoption of the new Constitution and the passage of the Trade and Intercourse Act of 1790, which required federal supervision and sanction, the Senate's approval, and presidential signing, of Indian treaties, including land purchases, the State of New York nevertheless continued a policy of unilateral negotiation with the separate nations of the Hodenosaunee. In 1791, Henry Knox, then Secretary of War, advised Governor Clinton that two grants of land had been made to individual whites by the Cayugas and Senecas contrary to the provisions of the Trade and Intercourse Act. But he explicitly made it clear that he would not object to the transactions if the State of New York "should judge that it would derive any benefit" from them [*American State Papers, Indian Affairs*, Vol. 1, p. 169.] Although the federal

government used military force against individual white residents of Pennsylvania during the Whiskey Rebellion in 1794, it would have been disruptive of the Union to use force against a state in order to enforce the Trade and Intercourse Act.

55. At the beginning, there were efforts by the Six Nations to enlist the federal government in support of its grievances against the State of New York. In December of 1790, Cornplanter led a Seneca delegation to Philadelphia to meet with President Washington, to complain about improper attempts to buy or lease Seneca lands. The President roundly condemned the transactions that occurred before the Trade and Intercourse Acts and assured the Senecas that the federal government would henceforth protect them from unauthorized seizures of their land. Although he denied that the Phelps and Gorham Purchase had defrauded the Indians, his only suggestion for a redress of this and other grievances over land was to file a lawsuit. "If however you should have any just cause of complaint against him [Phelps], and can make satisfactory proof thereof, the Federal Courts will be open to you for redress, as to all other persons." [[2] John C. Fitzpatrick, ed., *The Writings of George Washington* (Washington: Government Printing Office, 1931-44), Dec. 29, 1790.]

56. In the negotiations leading to the Treaty of Canandaigua in 1794, the U. S. Commissioner Timothy Pickering reiterated that under U. S. Law, the 1790 Trade and Intercourse Act, the rights of the Indians to their land would be protected and that the law required that any treaty be approved by the President and the Senate. [Massachusetts Historical Society, Pickering Papers, Vol. 62, folios 217-230. A copy is attached as Exhibit L.]

57. Again in the winter of 1801-1802, a delegation of Senecas and Onondagas visited the seat of government, now in Washington, D.C., to complain about land matters. This party

was led by the Seneca prophet Handsome Lake and his half-brother Cornplanter. The delegation did not negotiate with President Jefferson in person but conducted their business with Secretary of War Henry Dearborn, in whose office Indian affairs were placed. Handsome Lake's complaints dealt primarily with the Treaty of Big Tree in 1797, in which the Senecas sold most of their remaining lands, preserving for the use of themselves and their Indians guests certain reservations, including one of ten miles square for the personal use of Handsome Lake. They condemned their "White Brothers ... who are lost for taking all our Land from us." He wanted copies of deeds or other evidences of their title to "the little land we have left" and Dearborn ordered that such copies be made. [National Archives, Record Group 75, Sec. War Lrs. Sent, Indian Affairs, Vol. A, March 17, 1802. A copy is attached as Exhibit M.]

58. The duplicity behind the fair words of the President and the Secretary of War is also revealed in Dearborn's correspondence. On the 17th of March, 1802, as the Seneca and Onondaga delegations were preparing to leave Washington, Dearborn wrote them a warm letter of assurance that their right to their lands would be guaranteed by the United States "unless they voluntarily relinquish or dispose of the same." [Haverford College Library, Philadelphia Yearly Meeting, Indian Committee, Box 1 (reel 44). A copy of the original in the National Archives is attached as Exhibit N.] On the same date, Dearborn wrote to one John Taylor commissioning him to convene a meeting between the State of New York and the Six Nations for the purpose of arranging New York's purchase of Indian lands. [National Archives, RG 75. Exhibit O.]

59. In due course in June, the state's commissioners proceeded to Buffalo Creek. On the way, they stopped at Onondaga to see if they could pick up some land. But the Indians there "in peremptory terms objected to the sale of any part of their reservation."

60. No sooner had the delegates to Washington returned home than they were greeted by Commissioners from New York asking to purchase more land from the Senecas, Cayugas, and Onondagas. But on this occasion, Handsome Lake was in command. He angrily rejected the proposal to sell more land and his brother Cornplanter covered the fire, ending the proceedings. [New York State Archives, Legislative Assembly Papers, Vol.40, pp. 373-380.]

61. Handsome Lake then wrote a letter to Jefferson, protesting the pressure to sell lands. Jefferson in reply defended the legality of the purchase of the lands which, he said, had been voluntarily sold under federal supervision. Selling land in exchange for the tools of modern husbandry might even be a good thing. He went on to praise the prophet's work in combating the use of alcoholic beverages and his encouragement of white agricultural methods, and endorsed the prophet's leadership of the revitalization movement among the Six Nations. "Go on, then, brother in the great reformation you have undertaken.... You are our brethren in the same land; we wish your prosperity as brethren should do. Farewell!" [Anthony Wallace, *Death and Rebirth of the Seneca,* pp. 271-72.] Jefferson did not reveal in these exchanges that his basic policy was to acquire as much Indian land as possible and even have all eastern Indians re-located west of the Mississippi into the newly acquired Louisiana Purchase. [Anthony Wallace, *Jefferson and the Indians.*]

62. The federal administration in Washington at this time had a general Indian policy that began with the assumption that Indian land had to be acquired to provide for the military security of the country, from threats posed by Spanish, French, and British colonies on her borders and from Indian nations defending their territories and possibly allied with the foreign powers, and to open up land for occupancy and economic development by a population

expanding from natural increase, from European immigration, and from the importation of slaves from Africa. In this large scenario, the Indians of New York and Pennsylvania had to be kept peaceable and discouraged from joining the more militant nations to the west, and at the same time persuaded to part with as much of their own lands as possible as quickly as possible.

63. On the one hand, Washington and his successors in the presidency were quick to assure the Hodenosaunee that the United States guaranteed their right to remain on their land forever, if they so wished; but at the same time, they urged them to sell their land to whites who were willing to buy. In the case of New York, the federal establishment seems to have tacitly accepted the state's claim of the right of pre-emption (i.e., an exclusive option to purchase) derived from its colonial charter. When the state of New York moved to purchase, the federal authorities even under the Trade and Intercourse Act of 1790 seem to have mostly stood aside and turned a blind eye to the infraction of the law.

64. As the years rolled by, the United States assumed an even more aggressive role in promoting the purchase of Indian lands. With the consummation of the Louisiana Purchase in 1803, President Jefferson saw an opportunity to resolve the Indian question by one dramatic stroke. He proposed, without success to be sure, an amendment to the Constitution that would have provided for a major exchange of populations, the Indians of the east being moved west of the Mississippi, and the French and Spanish residents of Louisiana being transported to the east of that river, where they could be assimilated and educated into an Anglo-Saxon cultural milieu. [Anthony Wallace, *Jefferson and the Indians.*]

65. In 1810, the then Secretary of War under President Madison and officers of the Ogden Land Company (successor to the Holland Land Company) engaged in a secret scheme

with U.S. Indian agent Jasper Parrish to persuade the New York Iroquois to sell their reservations in New York to the Ogden company and move west to new land to be provided for them by the U.S. Government west of the Mississippi, in Arkansas. The land company planned to leave the actual negotiation with the Indians "entirely in the hands of the Agents of the General Government," who would "do everything in their power, according to their Instructions from the Government, to induce the Indians to accept of a grant of land in the west." [Huntington Library, HM 8900, Troup to Parrish, Aug. 24, 1810.October 20, 2006; a transcript of the letter, provided by the Huntington Library, is attached as Exhibit P.]

66. The idea of getting rid of the eastern Indians surfaced again in the "colonization" policy of President Monroe, recommended by John Calhoun, and introduced to Congress in 1825. The bill was passed by the Senate but died in the House. Monroe proposed to move the Iroquois to the neighborhood of Green Bay, in Wisconsin, where some of the Oneidas already had a settlement. Other, more numerous tribes might be relocated west of the Mississippi. [Henry R. Schoolcraft, *History of the Indian Tribes of the United States* (Philadelphia: Lippincott, 1857), pp. 406-415, 431.]

67. The Rev. Jedidiah Morse had earlier been dispatched to make a survey of the tribes to be affected; his published report to the Secretary of War, however, suggested that if the goal were to "civilize" the natives, it might be better to effect this program by leaving many of the nations, like the Iroquois, where they were, inasmuch as they had already made much progress. Of the Onondagas, he wrote, "This tribe are unanimously opposed to removal. They must be educated where they are." [Jedidiah Morse, *A Report to the Secretary of War of the United States, on Indian Affairs* (New-Haven: Converse, 1822), pp. 323-324.] The colonization

plan, however, was widely discussed and aroused storms of debate among the Senecas, Onondagas, and others at Buffalo Creek in 1826.

68. Andrew Jackson's own plan for Indian Removal did become law, however, and the 1830's were the decade of the Trail of Tears. The infamous Treaty of Buffalo Creek of 1838, carried out by the aid of bribes and liquor provided under the eyes of the U.S. Commissioners, was intended to accomplish the sale of all of the remaining Hodenosaunee territory in exchange for a new reservation in Kansas. The driving interest in this effort to remove the Six Nations from their land would seem to have been the desire of the land company to profit from the newly completed Erie Canal, whose terminus at Buffalo had made the Buffalo Creek reservation a prime target for land speculators.

69. Although a party of Onondagas and others made an exploratory trip to Kansas, their destined home in the west, there was such a storm of protest from the Iroquois and their white friends, particularly the Quakers, that the discredited treaty was replaced in 1842 by a new document, which preserved the Onondaga Reservation, the Tuscarora Reserve, part of the Tonawanda Seneca Reservation, and the two reserves at Cattaraugus and Allegany. Buffalo Creek, however, was lost, including the Onondaga village there. [Anthony F. C. Wallace, *The Long, Bitter Trail: Andrew Jackson and the Indians* New York: Hill & Wang, 1993).]

70. Given this history of federal failure to enforce the Trade and Intercourse Acts against New York, of conspiring with the Ogden Land Company's schemes to induce the Senecas to sell their reservations, and of the persistent federal efforts to remove the eastern Indians to enclaves in the west, it is not surprising that the Onondagas did not at once turn to the federal court system to gain satisfaction in their efforts to preserve, let alone reclaim, their land base.

(Indeed, it is not certain that the federal courts would have accepted a plea from an Indian tribe wishing to sue a state for satisfaction of a land claim.) The Federal Government could not have been perceived as favoring the giving back of land to the Onondagas.

Looking Ahead to the Years after 1850

71. In the years after 1850, the Onondaga chiefs' council and the council fire remained at Old Onondaga. Given the history of the years before 1850, confidence in the federal court system as a source of support in seeking remedies for long-standing complaints was no doubt lacking, even if Indian nations had standing in the courts, which seems to have been doubtful.

72. Furthermore, circumstances of life on the small reservation at Onondaga, surrounded by white people, exposed to contemptuous attitudes toward their perceived poverty and their limited education in the English language and arithmetic, treated to pejorative evaluations of Indian morality and aptitude by teachers and missionaries, would have made it difficult for Onondagas (like other indigenous peoples, for that matter) to feel confident in bringing their land claims to court. The national political environment might properly have been considered by them to be hostile, in view of the constant pressure to sell whatever lands they had left and move out of the way of "progress," or else be civilized out of existence as Indians, to fulfill the Anglo-Saxon dream of America's "manifest destiny."

73. Only in recent years have more friendly conditions of access to the legal system encouraged Onondaga and other Indian representatives to turn to the courts for a hearing on their long-standing complaints.

I declare under penalty of perjury that the foregoing declaration is true.

Nov. 10, 2006

Date

Anthony F.C. Wallace

Anthony F.C. Wallace