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 ROBERT E. BIEDER IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

ROBERT E. BIEDER, declares under penalty of perjury as follows:

1. I am a resident of Bloomington, Indiana, and a retired Visiting Professor in the Department of History and in the School of Public and Environmental Affairs at Indiana University. My professional career as historian since 1972 to the present time has been devoted to the teaching the history of American Indian cultures, history of American anthropology, and environmental history. My publications include: *Science Encounters the Indian: A Study of the Early Years of American Ethnology, 1820-1880; A Brief Historical Survey of the Expropriation of American Indian Remains; Contemplating Others: Cultural Contacts in Red and White America;* and *Native American Communities in Wisconsin, 1600-1960.* My many articles have appeared in academic journals both here and abroad. I held five Fulbright Lectureships and two postdoctoral grants. I served two years as resident director of the Center for the History of the

American Indian (now the McNickle Center) at The Newberry Library in Chicago. My curriculum vitae is attached as Exhibit A.

2. I have been engaged, since April 6, 2006, by the Onondaga Nation as a consultant for the purpose of carrying out research and preparing findings and conclusions concerning the historical activities and events relating to the Onondaga Nation and its claims or assertions of rights to its lands during the period 1845 to 1974. I have reviewed much of the relevant materials in the National Archives, in the State Archive in Albany, and in other repositories, as well as much of the secondary works covering this period. My examination of the historical record of this period has thus far been only partial, because there has not been adequate time to complete a full review of the available materials and records. Nevertheless, my research has documented a number of pertinent facts, and the documentary record permits a number of conclusions to be reached.

3. In my research and in the preparation of this Declaration, I have employed the standards of research and scholarship usually applied by professional historians in this field. I have relied on research and documentation of the kind normally relied upon by historians and other professionals in this field.

Six Nations' and Onondaga Nation's continuous concern for land and sovereignty

4. Since before the American Revolution, the Six Nations or Haudenosaunee, and particularly the Onondaga Nation, were concerned with land and sovereignty. These were the subjects of treaties with the Dutch, French, British and Americans. Land and sovereignty continued to be a vital element in their dealings with both the American government and the State of New York. As noted by an eminent historian of the Iroquois, "Much of the Iroquois' focus, as individual nations or as a collective body, since the American Revolution has been to

protect their shrinking land base, especially from New York State." (Hauptman, *Formulating American Indian Policy in New York State, 1970-1986*, 1988, p. 20) According to this same historian, "New York State legislators and representatives in Congress, inspired by assimilationist goals, myopic philanthropy, a need for legal order, or less than noble motives of land and resource acquisition, sought increasing control over Indian affairs in the last quarter of the nineteenth century and the mid twentieth century. In 1888, 1906, 1915, and 1930, the Iroquois successfully fought off efforts seeking this change." (Hauptman, *The Iroquois and the New Deal*, 1981, pp. 7-8.)

5. In 1887, the federal government passed the Severalty Act, or Dawes Act, dividing reservations into family land holdings and bestowing citizenship on allotees. Even before 1887, the State of New York saw allotment of the reservations in the state as an opportunity to solve what it considered its "Indian problem." As early as 1849, New York State introduced a law for "'partition of tribal lands' in order to encourage transition from the reservation stage to full assimilation of the Indians." (Henry S. Manley, "Indian Reservation Ownership in New York, *New York State Bar Bulletin*, 30, April 1960, p. 134) Almost all of the Onondagas rejected both allotment and citizenship, as did others of the Six Nations. Allotment threatened their land base and both threatened their national sovereignty and their ability to conduct their national business.

6. A letter of 1853 illustrates the concern of the Onondaga Nation chiefs about the threat to their land based posed by allotment.

> The undersigned Sachem, Chiefs, headmen & warriors, representing the feelings & interests of a great majority of the Onondaga Indians desire to express their gratitude and acknowledgments to you, for the promptness with which the Assembly Bill, for the survey of the Onondaga Indian lands, was repudiated by yourself & Committee. . . . The survey of our lands is strongly opposed by a great

> majority of the Tribe & the measure is only asked for by a few. We believe that this survey is intended to apportion to each individual Indian his or her share of the lands, thereby destroying that bond of common interest which unites & holds Indian communities together.

(April 3, 1853 - Letter from the Onondaga Chiefs to Hon. Nathan Bristol, New York State Senate, Parker Collection, #2576, American Philosophical Society, Philadelphia). Attached as Exhibit B.

The allotment period, roughly 1849 – 1914, a period of grave threats to Indian lands

7. The allotment period stretched from roughly 1849 to 1914 in New York, and this was a period of almost continuous and grave threats to the lands of all Indian nations in the state. The legislative attempts to allot Indian land and the political climate of the period for all practical purposes prevented the Onondaga Nation from taking any realistic action for the recovery of lands or assertion of its rights to the lands taken by New York State.

8. Considering the dominant political attitudes of the day, some of which are illustrated below, and considering that the courts were closed to land claims by Indian nations, as demonstrated by the 1898 case of *Montauk Tribe of Indians v. Long Island R. Co.*, 28 A.D. 470, 51 N.Y.S. 142, it would have been obviously futile for the Onondaga Nation or any Indian Nation in New York to attempt formal legal action to recover lands previously taken from them. The Nation had no legal or political forum in which it could assert its claims to the lands taken by New York State with any reasonable hope.

9. The major threat to Onondaga land came with an assortment of allotment bills proposed over time in the State legislature. These bills were designed to take the remaining Onondaga Nation land, divide it up, and distribute it to Onondaga families.

10. Most Onondagas rejected all the allotment schemes put forth by New York State, because they feared the loss of their Nation's land. Although most of the Iroquois reservations were already allocated among families and individuals through the traditional custom of dividing land, (Manley, "Indian Reservation Ownership," 1960, p. 134) Onondagas, and the Six Nations in general, feared state imposed allotment. Nor did the Iroquois want citizenship, which was promised to them with allotment. They feared that both would subject them to state taxes and might force some Onondagas to sell their land to non-Indians. Bit by bit the reservation would be sold off; the Onondaga people would become landless and possibly without their traditional government, community and identity. As a collapsed community they would no longer be protected by the federal government nor be able to conduct business as a nation.

11. As each allotment or severalty bill came along, the Onondaga Nation leaders were quick to register their resistance.

12. Reacting to a bill proposed by New York State Assemblyman Thomas G. Alvord in 1880 to divide the Onondaga Reservation in severalty, Onondaga representatives protested before the New York Assembly Committee on Indian Affairs, in Albany on March 27, 1880.

> I represent the Onondaga portion of the people opposed to the passage of this bill, should it be reported favorably to the assembly. Since these people are, by their ignorance of your language, unable to say a word on this subject themselves, I stand before you as their spokesman. I understand that the bill is for the purpose of dividing up these lands into severalties among the Onondaga Indians, but, as I learn from the gentleman who introduced it, it is merely to procure a new treaty. . . . According to my reading of the treaties between this state and the Onondaga Indians, I find nowhere any power given to any outside interest to get up such a bill as this. We protest against it. . . .I heard one gentleman remark that these Indians should not be treated as a sovereign people. Who has treated them as a sovereign people heretofore? Your forefathers. That is the reason why treaties have been made with them. If you make treaties[,] you are bound to respect that treaty stipulations. . . .
>
> * * *

> We understand why such a bill as this has been introduced. It is for the purpose of getting our houses and our lands. As I understand it, it is for that purpose; because the lands cannot be got in any other way, a bill must be introduced for their division. What's to be the consequence? You want to destroy their tribal relations in order that you may get hold of their land. That will be the end of it.

(Speech of Parker in *Speeches of Parker, Logan, Tall-Chief and Webster, Indians, before the Assembly Committee on Indian Affairs on the Bill introduced by Mr. Alvord to divide the Onondaga Reservation in several-ties. Interesting protest of Indian chiefs against the project-eloquence of the Red Man-his plea for a memorial of his race,* 1880, pp. 1-2). Exhibit C.

> This proposed act is entirely unconstitutional. The Indians whom I represent have not asked for it from the legislature. . . . As my friend, Mr Parker has stated, the Onondagas are opposed to dividing up their lands.

(Speech of Indian Logan, *Id.*, p. 2.)

> I wish to say a few words by the desire of my friends here, the chiefs of the Onondaga tribe. We understand that there is a bill before this committee. As soon as we had been informed by some of our white friends what this purported to be--immediately after understanding its object--we instituted a canvass of our people of the age of twenty-one years, to ascertain their wishes and feelings in regard to it. The result was seventy-one opposed it and thirty-four were in favor. We do not favor the proposed bill by a majority of seventy-one to thirty-four.

(Speech of Tall Chief, *Id.*, p. 3)

13. Local newspapers generally supported the Onondaga in their resistance to the Alvord bill. The following items are illustrative.

March 2, 1880. *Syracuse Daily Journal,* p. 1, "The Onondaga Reservation."

> Mr. Alvord has introduced a bill in the Assembly, which if it becomes law, will constitute the Governor, Controller and State Engineer and Surveyor a commission to secure the dissolving of the present treaty relation of the State with the Onondaga Indians, to be done by the assent of a majority of the Indians, break up the tribal relations, and apportion the lands of the Onondaga Indians among the members of that nation. . . . The object of this proposed legislation is to destroy the existing Onondaga people, who would share equally in them. This scheme is not a new one. It has been entertained by speculating white men, for many years,

and has in one manner or another been attempted, with some degrees of success in despoiling the Onondagas of their property in years past.

Exhibit D.

March 5, 1880. *Syracuse Daily Journal,* p. 1. "The Onondagas."

Even though the State has had the cause of the Indian wards in its keeping, the lands reserved to them under solemn treaty have gradually been wrested from them by 'legislation,' and in return for their original right to the whole soil of this region of country, all that remains to them is this reserved tract four and a half by two and a half miles in extent, a beggarly money pittance called an 'annuity' and a few bushels of salt. . . . [T]he Onondaga Reservation . . . is a tempting inducement to the instigators of the plan in Mr. Alvord's bill, which he entitled 'An Act to facilitate the spoliation of the Onondaga Indians of their reserved lands, and to hasten their extermination from the face of the earth.'

Exhibit E.

March 16, 1880. *Syracuse Daily Courier*, p. 4. "The Indian Bill."

The Chiefs of the Onondaga Indians, whose interests will go to the wall with the passage of Mr. Alvord's bill, providing for separate ownership of lands in the Reservation and the dissolution of the State's treaty relations, are making all the opposition in their power. . . .

Exhibit F.

14. On March 22, 1882, Onondaga representatives gathered in Albany to protest the Schoonmaker bill, a bill to divide the lands of the Onondaga, Tuscarora, and Seneca Nations into severalty. Jaris Pierce, an Onondaga, presented a letter sent to the Onondaga Chiefs from Benj. G. Casler, U.S. Indian Agent, New York Agency, stating some of the reasons for opposing the bill. The letter was reprinted in the *Syracuse Journal,* March 24, 1882, p. 1.

Gentlemen - The bill introduced into the Assembly at Albany, N.Y., by Mr Schoonmaker, of Cattaraugus, ostensibly to confer citizenship upon the Indians of the six tribes in this State, and to allot their eight reservations in severalty, demands your careful consideration. A bill similar to the above was passed April 18, 1843, for the Oneida Indians. At that time they owned about twelve hundred acres of land, and now they have but 224 acres. In 1793 the Onondaga Indians owned ten square miles, or sixty-four hundred acres of land,

> and now you own but sixty-one hundred acres. I think you ought to do all you can to keep what you have. . . . I think I can safely say if the Shoonmaker bill should become a law that in ten years from that time you would not own more that one-half the land you now own.

Exhibit G.

15. Another story commented on the Onondagas' opposition to allotment on January 23, 1884, in the *Syracuse Standard*, p. 4, "The Indian Treaty".

> Stubborn as the pagan Onondagas are in their resistance to division of their lands into individual properties, they listen more willingly to schemes for the education and moral uplifting of their people.

Exhibit H.

16. The goal of allotment continued to draw support among New York state legislators in 1888 as revealed in *Report of Special Committee to Investigate the Indian Problem of the State of New York, Appointed by the Assembly of 1888,* Albany, 1889, also called the Whipple Report. J. S. Whipple, Chairman of the Special Committee, gathered letters from New Yorkers supporting reservation allotment from New York citizens. Many saw allotment as a lever to lift the Iroquois to "civilization." The following excerpt from one letter is an example.

> Perhaps you will permit me to express my deep conviction that the remedy for these wrongs and immoralities [of the Onondaga] is to be sought in an equitable division of the territory into homesteads, the lifting of the Indians to citizenship and such other changes as would naturally accompany these fundamental measures. . . . About half of the male adults of the nation desire them [division of land and citizenship]. The prejudices of self-interested chiefs and the ignorance of Pagan women, who do not understand the English language, oppose them.

(F.D. Huntington to J.S. Whipple, Chairman, November 20, 1888. *Report of Special Committee to Investigate the Indian Problem of the State of New York, Appointed by the Assembly of 1888,* Albany, 1889, p. 391). Exhibit I.

17. The topic of allotment for New York reservations also proved a popular topic at the annual Mohonk conferences, where many national figures met for several days to discuss Indian affairs. Philip C. Garrett, named by Governor Theodore Roosevelt to investigate the conditions of the Indians of New York, called for an "emancipation proclamation" for the Indian and especially for the New York Indians. The following statement by Dr. Merrill E. Gates, president of the session in which Garrett spoke, echoed the general opinion of conference participants between 1891 and 1910.

> You will find there are many Indians as well qualified to manage their own property as are the members of this Conference. Still they are herded together there as Indians, and paganism is perpetuated in the heart of the Empire State! Let in the law! Establish homesteads and homes! Allot land, and make self-respecting citizens of these people, too long "coddled" by a special system.

(Philip C. Garrett, "The Relations of the New York Indians to the United States," *Proceedings of the Nineteenth Annual Meeting of the Lake Mohonk Conference of Friends of the Indian 1901,* 1902, p. 45.) Exhibit J.

18. The impetus to grab Indian land still prevailed into the twentieth century. In 1914, Congress considered bill H.R. 18735. This bill provided for allotting in severalty Indian land in the State of New York. See "Letter from the Secretary of the Interior Transmitting Reports of the Interior Department and the Department of Justice on a Bill (H.R. 18735) to Settle the Affairs of the Seneca and Other Indians of the Five Nations" in *Report of the Special Committee on the 'Indian Problem' State of New York*, February 12, 1915. Exhibit K.

19. Assistant U.S. Attorney General, Ernest Knaebel saw the bill as a thinly veiled attempt to "get rid of the Indian" rather than serve the Indian. Commenting on the bill in a letter to Hon. John H. Stephens, Chairman, House of Representatives, Committee on Indian Affairs, Knaebel noted:

> Consequently these legislative presumptions of competency [of the Indian] not only fly in the face of well-known facts, but it seems to me (and I make the suggestion with much deference), are indulged in with too much regard for the idea of getting rid of the Indian and developing his property and too little regard for protecting and developing the Indian himself.

(U.S. House of Representatives, *Senecas and Other Indians of the Five Nations of New York.. Letter from the Secretary of the Interior transmitting Reports of the Interior Department and the Department of Justice on Bill (H.R. 18735) to Settle the Affairs of the Seneca and Other Indians of the Five Nations in the State of New York*, 63rd Congress, 3rd Session. 1915, p. 5).

Others letters received by the Interior Department and the Department of Justice, however, were favorable to the allotment of land.

The *Boylan* case creates hope for the Onondaga Nation's land rights

20. As the Onondaga Nation and other nations of the Haudenosaunee were fighting to keep the land they had under the pressure of allotment efforts, the *Boylan* decision in 1919 reinforced the Onondaga Nation's position that the takings of the Nation's lands by New York were invalid because they were in violation of the federal Trade and Intercourse Acts. For the Six Nations and particularly the Onondaga Nation, the *Boylan* decision ushered in a period of renewed protest and fresh efforts to gain back the land lost to New York State. For New York State, the *Boylan* decision created enormous concern and prompted the creation of a legislative commission to investigate Indian land rights in New York.

21. The case of *United States* v. *Boylan*, 265 F. 165 (2d Cir.1920), although concerning Oneida Nation land, had far-reaching ramifications for the Onondaga Nation and the other nations of the Haudenosaunee. In the *Boylan* case, the federal courts ruled for the first time that transfers of Indian nation lands in New York, without compliance with the Trade and Intercourse Acts, were of no legal effect – that the Indian nation continued to own the land.

22. At issue in the *Boylan* case was a small parcel of 32 acres, all that remained of the Oneida Nation reservation in New York State. The land was mortgaged by one Oneida man to secure a loan, and when the mortgage was foreclosed, the land eventually passed into non-Indian hands. The few Oneida residents were ejected from the land and their furniture placed in the road.

22. The United States sued for the return of the land to the Oneida Nation, because the transfer of the land had occurred without federal involvement or approval and in violation of the federal Trade and Intercourse Act. The federal District Court decided in 1919 that the transfer of the land was void and in violation of the federal law and ordered the Oneidas restored to their property. The decision was appealed, and the federal Court of Appeals for the Second Circuit affirmed the District Court decision the following year, 1920. The opinion included the following conclusion:

> We do not think that the state of New York could extinguish the right of occupancy which belongs to the Indians.

United States v. *Boylan*, 265 F. 165 (2d Cir. 1920) p. 174. (The case is discussed in Arlinda F. Locklear, "Oneida Land Claims," *Iroquois Land Claims*, eds. Christopher Vecsey and William A. Starna, 1988.)

24. This decision opened the legal possibility that the lands that New York had purchased illegally from the Six Nations, including the Onondaga Nation lands, were still the property of the Indian nations. The *Boylan* decision also alerted the State of New York once again that the "treaties" it had made, supposedly with various nations, without complying with federal law might be invalid. The State of New York was forced to investigate the status of Indian land rights in New York and relations with the Six Nations in general.

The State's "Everett Commission Investigates Indian Land Rights"

25. The New York State legislature responded immediately to the *Boylan* decision by passing the Act of Legislature of 1919, known as the Machold bill, and later as Chapter 590 of the Laws of New York. The Act created the New York State Indian Commission, the purpose of which was to "examine into the history, the affairs and transactions" that the people of New York had with the state's Indian tribes. ("The Everett Report," p. 2.) The relevant portions of the "Everett Report", including all the of the material quoted below are attached as Exhibit L.

26. There were thirteen members named to the commission, and E. A. Everett served as chair. The commission visited all the New York Indian reservations, holding hearings at each one. A second round of visitations was planned but a lack of funds prevented this.

27. On August 16th and 17th, 1920, members of the commission visited the Onondaga reservation. In the "search for the status of the Iroquois," the committee discovered that the Onondaga leaders still held firmly to the belief that they were under the legal protection of the Federal government and not under the jurisdiction of the State government and that the Treaty of 1794 was still valid. In a signed passage issued by the Chiefs of the Onondaga Nation, George Thomas, Tadadaho, or Head Chief of the Haudenosaunee, emphasized this.

> It is the will of God and the people, we the Chiefs of the Onondaga Nation of New York State and do hereby agree that the Federal Government of Washington, D.C. be the guardian of the Indians of the State of New York and to see that the treaties of 1795 [sic] between the Five Nations of New York State be lived up to by the said government. We firmly believe that the State of New York has no jurisdiction over the Five Nations of New York State.

("The Everett Report," pp. 62-63.)

28. Other Onondagas reiterated this message. Mr. Jarvis Pierce, an Onondaga, said:

> I hope that the state has no jurisdiction and therefore all the lands will have to be thrown up and you will have to clear the city of Syracuse as you said you would

> redeem all lands taken wrongfully. Shall we call for a new treaty or go to the United States and say the State has taken our land wrongfully?

("The Everett Report," p. 64.)

29. A visitor to the conference, Dr. Earl Bates, noted:

> I have that treaty of which Mr. Pierce speaks, between the State and the Onondagas, showing the basis on which the Onondagas sold their interest except the 100 miles square and kept the sixty-one acres they have.

("The Everett Report," pp. 64-65.) Mr. Pierce answered:

> I suggest that my chiefs bring an action to test the legality of the treaty but as long as you are satisfied you [the New York State Commission] have no claim upon it why all right. I think you are right here to place the question up to the Federal Government.

("The Everett Report," p.65.) Later Mr. Pierce added:

> The State has no jurisdiction, whatever, as I understand and they came here for the purpose of solving the problem what the Indians can show and I make a motion that for the present we go away and find a conclusion to give a reasonable answer, then come together again, I am willing to help all we [sic] can, If the United States has the jurisdiction, we want it to be there.

("The Everett Report," p. 94.)

30. On August 17, 1920, the Commission met with the Oneidas who lived on the Onondaga reservation. Many Oneidas lived there, because, except for 32 acres, their reservation had been taken through illegal purchases by New York State. The same issue of state authority versus federal authority that was discussed at Onondaga the day before was put to the Oneidas.

31. Chief Chapman Skenandoah spoke simply: "I cannot say any more than you have heard. But, we do believe in our hearts we are under the protection of the Federal Government." ("The Everett Report," p. 111.)

32. An Onondaga resolution was read that day as follows:

> [T]he Onondagas of the Six Nations of New York do hereby agree that the Federal Government of Washington, D. C., to deal with the Indians of the State of New York and see that the treaties of 1795 [sic] between the Six Nations of New York State be lived up to by the Federal government. We firmly believe the State of New York has no jurisdiction over the Indians of the State of New York.

("The Everett Report," p. 114.)

33. On July 27, 1920, the New York State Indian Commission held a conference with a Federal Indian Commission in Saratoga, New York. After discussing, without reaching agreement, the issues of state authority and federal authority with respect to the Indians in New York, two of the participants noted the central question before them.

34. Hon. George E. Vaux, Chairman of the Federal Indian Commission, said, "The fundamental of this question is to get back to whether the whole of the state of New York belongs to these Indians and if they should have compensation for what they have lost." ("The Everett Report," p. 39.)

35. Senator Loring M. Black, a member of the Everett Commission, commented, "We cannot at this time, admit that we should return the State of New York to the Indians because we bought the land at a low price." ("The Everett Report," p. 45.)

36. It was apparent, that both the New York and the federal commissioners were very aware that the Nations of the Haudenosaunee had serious claims for the lands taken by New York State in violation of federal law.

37. The Commission's report that Everett submitted to the New York legislature, after months of research and collecting oral testimony on the Haudenosaunee reservations, contained his summary, stating his conclusion that the Indian nations still owned much of New York State.

> I maintain that you [the Iroquois] are the owners of all the territory that was ceded to you at the close of the Revolutionary War and unless you disposed of that property by an instrument as legal and binding and necessary as the conditions of that treaty was to place the property in your possession, you are still the owners of it.

("The Everett Report," pp. 319-20.)

38. Newspapers were quick to announce Everett's findings. For example, on February 10, 1922, the *Syracuse Journal* ran a story on page 7, "Says City Land is Owned by Indians - Everett Would Give Them 6,000,000 Acres - Decision Will Be Resisted - all Members of Commission Will Not Sign Report Which Gives Six Nations title to Lands, Part of Which Lies in Syracuse and Buffalo," reporting, in part:

> Findings by Assemblyman Edward A. Everett of St. Lawrence, chairman of the New York State Indian Commission, which holds that the Six Nations of Indians residing within New York state have title to lands estimated at 6,000,000 acres and valued at approximately $2,500,000,000 are being mailed to tribal chiefs throughout the state.

Exhibit M.

39. The Commission's investigations and hearings had provided the Onondaga Nation Chiefs and other leaders of the Six Nations a forum in which to re-state their claims to their homelands, particularly the lands taken by New York. They made their case plainly, and they demonstrated that even after 100 years they had not acquiesced in the takings nor in New York's assertions of power over them.

40. The Report of the Commission was not acted upon by the New York legislature, but the Report was soon followed by a concerted effort by the Onondaga Nation and the entire Six Nations to take legal action on their land rights in the federal court.

The Six Nations, including the Onondaga Nation, File a Test Case in Federal Court

41. The Six Nations, meeting at Onondaga, in the mid-1920's, sought to formulate a unified strategy for the Confederacy for taking their claims to their lands into the federal courts on the strength of the *Boylan* precedent. The Onondaga Chiefs and the Chiefs of the other nations consulted with various attorneys and advisors in order to fashion a strategy. Edward A. Everett was one of those attorneys.

42. Some of the deliberations of the Six Nations leaders were reported in the press. An excerpt from one such story follows:

43. January 30, 1924. *Syracuse Journal*, p. 15, "Opponents of Indian Claims voted traitors - Resolution Passed Condemning Enemies Spreading Propaganda - Differences Settled - Six Nations Make Progress in Creating Closer Relations of Tribes"

> George Thomas has issued a statement in which he said the object of the council was not so much to determine upon action regarding the claim for millions of dollars worth of land which the tribes believe is rightfully theirs under ancient treaties, as to establish closer relations between the tribes which have been somewhat disrupted in late years, and to reaffirm their allegiance to their ancient forms of government, which they claim was used as a foundation for the Constitution of the United states. This, he declared had been attained. E. F. [sic] Everett, former assemblyman, Potsdam, and now attorney for the Six Nations, made a statement regarding the land claims of the Six Nations. Approximately one-half of New York State is their legal property, he said, including all land east [sic] of Utica. Syracuse is really located on land belong to Onondaga reservation, he said.

Exhibit N.

44. For a time, some Onondaga Chiefs resisted the push to press claims against New York State. On July 7, 1924, the *Post-Standard*, p. 7, reported, "Indians Battle today on Suing Government - Paleface legal Talent Will Oppose Redskin Arguments in Council at Long House."

> Onondaga chiefs and tribesmen with the exception of former Head Chief George Thomas and chief Livingston Crouse, are against starting a legal battle against the government, their opposition stimulated because the proposed suit would make a heavy demand upon the financial resources of the tribe.

Exhibit O.

45. The Six Nations Council ultimately decided to press the legal case. The *Syracuse Journal* reported on July 8, 1924, p. 6, "Indians Engage Counsel in Great Suit for Lands."

> Contracts with lawyers to start suit against the State of New York for approximately $500,000,000 were signed Tuesday morning by the chiefs representing the Six Nations of the Iroquois at the Onondaga Reservation and the contract sent to the Department of Indian affairs [sic] at Washington for ratification. . . . The action of the Iroquois was made unanimous Tuesday morning by Sachem Chief Andrew Gibson, of the Onondaga, giving it his approval.

Exhibit P.

46. The *New York Times,* on December 7, 1924, carried a story, "Indians Claim Half of New York":

> The chiefs who compose the Iroquois Congress have met in the Long House, in due form, to discuss the suit which their people have contemplated since 1790 [?], and they have hired the firm of Wise, Whitney & Parker of New York as counsel. The matter is in the hands of Carl E. Whitney and Walter Clark of this firm, and Edward A. Everett of Potsdam is acting as co-counsel.
>
> The Indians contend that they are the rightful owners of lands whose boundary was established first in 1768, in a treaty made between them and Sir William Johnson, representative of the British Government. They contend that possession of their lands was later confirmed to them, as a federation of nations, by the United States: that the United States Government stipulated the Iroquois might sell no land except by treaty, and that any such treaty would need Federal sanction.
>
> No such treaties have been made, yet the Indians do not now hold the land. They believe that all that has happened in the years of frittering away their holdings is without validity. No sale, they say, has met the requirements laid down by the Federal Government. They hold that statutes of limitation have nothing to do with the issue, nor have squatter rights nor any similar qualification of tenure.

ProQuest Historical Newspapers, The New York Times, 1851-2003, pXX4. Exhibit Q.

47. There can be little doubt, because of the rather extensive news reporting about the Six Nations' land claim, that the New York State government and the public at large was familiar with the land rights claims of the Six Nations and the Onondaga Nation.

The Courthouse Door is Closed: The *Deere* test case

48. On October 10, 1927, James Deere, a St. Regis Mohawk, brought on behalf of himself and the Mohawk Nation, an ejectment suit before the Northern District Court of New York. This was to be a test case for the larger Six Nations' land-claim case. At issue was a square mile of land occupied by the St. Lawrence River Power Company and others. This land, according to the Mohawks, was part of the land base retained by them and the Six Nation Iroquois Confederacy under the Treaty of 1784 between the Confederacy and the United States. A subsequent treaty in 1796 further confirmed the land to the Iroquois. Although part of the Mohawk Nation continued to reside on their treaty- designated lands, New York State and the St. Lawrence River Power Company took possession of the one mile square.

49. New York State's dubious claim to the land came about in a treaty negotiated in March of 1824 with some Indians claiming to represent the Mohawk Nation. The treaty was illegal under the Federal Government's Trade and Intercourse Acts of 1790 and later and the Canandaigua Treaty of 1794 between the United States and the Six Nations of Iroquois. Under the illegal 1824 treaty, the one mile square of land was conveyed to New York State. The State then sold the land to the predecessors of the St. Lawrence River Power Company.

50. The court ruled against Deere and the Mohawks on a technicality, declaring that the federal courts have no jurisdiction to hear Indian land cases of this sort. On appeal, the higher court accepted the lower court's decision, thus shutting down future cases of this type.

51. In 1927, the *Herald Sunday Magazine* mentioned that the Iroquois had mounted a test case in pursuit of their land claims.

> A New Six Nations: Laura Cornelius Kellogg Sees the Old Iroquois Confederacy, Re-established On a Modern Business Basis as the First Fulfillment of a Girlhood Vow Pledging Herself to the Welfare of Her Race. A test case has already been filed in the Federal district court at Utica, a suit brought by James Deere, a Mohawk chief of the St. Regis tribe, against the St. Lawrence Power Company and 17 other occupants of a piece of land once the property of the St. Regis tribe.

(*Herald Sunday Magazine,* November 6, 1927, p. 11).

The Onondaga Nation and the Haudenosaunee persist in their land claims

52. Despite the fact that the federal courts were now decidedly closed to the land rights claims of the Onondaga Nation and the Haudenosaunee, the Chiefs of the Haudenosaunee, lead by Tadadaho George Thomas, continued to press their rights to their illegally taken lands. Some of these efforts are documented in congressional hearings in which the Onondaga Nation and the Haudenosaunee sought to bring their land rights issues to the attention of Congress.

53. In these continuing land claim efforts, the Onondaga Chiefs and the Haudenosaunee had the assistance of Laura Kellogg and her lawyer husband, O.J. Kellogg.

54. Laura "Minnie" Cornelius Kellogg, an Oneida from Wisconsin, asserted that the Iroquois had been cheated out of their lands in New York State through fraudulent treaties pushed by the State on the Six Nations. From 1919, she and her lawyer husband worked to empower the Iroquois and improve conditions on reservations. Her plan of setting up industrial states on the reservations was premised on money that the Six Nations would receive from compensation for lost lands. Her plan entailed raising money from the Iroquois in New York, Wisconsin, Oklahoma, and Canada to hire lawyers and to bring the land claims to court. Over time, many Iroquois became suspicious of her, and her plan eventually collapsed. Regardless of

her motives, her speeches and appeals did draw attention to the land claim issue and supported the findings of E. A. Everett. (Laurence M. Hauptman, "Designing Woman: Minnie Kellogg, Iroquois Leader," *Indian Lives: essays on Nineteenth- and Twentieth-Century Native American Leaders*, eds. L.G. Moses and Raymond Wilson, 1985, pp.159-188)

55. In testimony before the Senate Subcommittee of The Committee on Indians Affairs in 1929, Mrs. Kellogg argued, "[T]here is only one relation which we do recognize, and that is that relation between us and the Government of the United States of 1784." (U.S. Congress. Senate. Subcommittee of the Committee on Indian Affairs. Hearings on S. Res. 79: *A Resolution Directing the Committee on Indian Affairs of the United States Senate to Make a General Survey of the Condition of the Indians of the United States,* 79th Congress. 2nd Session; S. Res. 308, 70th Congress. 2nd Session;: S. Res 263, 71st Congress. Washington, D.C., March 1, November 25-26, 1929, January 3, 1930 p. 4860. Hereafter *S. Res 79.*) Exhibit R.

56. Mrs. Kellogg informed the Hearing that the litigation she was pursuing was to recover 18,000,000 acres of land in the States of New York and Pennsylvania. She explained the need for the United States to take legal action in support of the Six Nations' claims, in part to overcome the legal bar imposed by the *Deere* case.

> . . . In going about to do that, the Six Nations started litigation for the recovery of these 18,000,000 acres of land. All trouble immediately started. Just the moment that a telegram was sent by the Assistant Attorney General of the United States to the United States attorney at Syracuse for the northern district of New York, to intervene in behalf of the Six Nations, the assistant attorney general of the State of New York came down here [to Washington] and stopped the Department of Justice from acknowledging that intervention [by the Federal Government] was our due. In one of the letters, of which there are several, written by the Attorney General to attorneys and to friends of ours who had pressed him for his opinion on this matter, he expressed several different opinions. On one occasion it is laches. Now, laches was definitely disposed of by the Boylan case in the appellate court. It was decided the question of laches did not operate against the United States as the guardian of the Six Nations.

(*S. Res. 79,* pp. 4863-64.) Exhibit S.

57. Also testifying before the Senate subcommittee was Mr. O. J. Kellogg, representing the Onondagas at this Hearing. Mr. O. J. Kellogg presented Onondaga Nation and Haudenosaunee grievances going back to the eighteenth-century meetings with Governor Clinton.

58. On behalf of the Onondaga Nation and the Haudenosaunee, Mr. Kellogg submitted an historic Petition from the Haudenosaunee that very clearly states the claims against New York for the taking of Mohawk, Oneida, Onondaga and Cayuga Nation lands in violation of federal laws, the Constitution and United States treaties. That Petition is printed in the published record of the Hearing. (S. Res. 79., pp. 4869 - 4875) Exhibit T.

59. Some of the charges included in the Petition were:

> 1. That Governor Clinton and the delegation from New York did all in their power to keep the [U.S.] Senate from ratifying the treaty of 1784.
>
> 2. That the officials of the State of New York from 1784 through the years willfully defied President Washington and his successors; defied the Congress of the United States, the Supreme Court, and the United States Constitution. . . .
>
> 4. That every foot of the land bought from the Mohawks, Oneidas, Cayugas, and Onondagas was illegally obtained in absolute contravention to the laws of Congress, to the United Constitution and to the treaties.
>
> 5. That President Washington vigorously protested to Governor Clinton that these so-called State treaties were made and the land taken away in utter contempt of Federal authority. . . .
>
> 8. That the State of New York has taken these lands illegally procured from nations of the Six Nations and has issued State patents to its citizens for same.
>
> 9. That the United States Government has issued no patents for any of this land and that the patents issued by the State are null and void and have no force or effect.

10. That a great deal of this land, especially city real estate, has no title but is strictly on lease.

11. That the title of the land along the rivers and streams now controlled by the Power Trust and its connections is vested in the Six Nations and that the Six Nations claim to riparian rights are as well founded as any other peoples'.

12. That the Six Nations Confederacy vigorously protested to the Federal Government through the years so that no statute of limitations can run against them; that the law of laches does not apply to people who have no power to sue.

(*S. Res. 79*, p. 4871) Exhibit T.

60. Mr. Kellogg testified that the decision in the *Boylan* case was proof that the Six Nations' land was protected by the Federal Government and not the State of New York. Several findings in this case shed light on the question of jurisdiction between the Federal and State governments over the Six Nations. The Petition of the Six Nations summarized the principal points of the *Boylan* case, once again plainly asserting the Six Nations' claims of ownership of the lands:

1. The Six Nations Indians consummated a treaty with the United States Government through its regular channels, the same being approved and ratified by Gen. George Washington, at Fort Stanwix in the State of New York in 1784, by which they were ceded certain territory within the State of New York.

2. That the ceding and setting over to the Indians of this territory was in accordance with and at the conclusion of a treaty consummated by the Indians as a nation and by the United States as a nation.

3. That the said Indians of the State of New York as a nation are still the owners of the fee-simple title to the territory ceded to them by the treaty of 1784.

(*S. Res. 79*, pp. 4871-72). Exhibit T.

61. The attempt to construct dams on the Onondaga reservation in 1929 brought forth, in the Hearings of the Senate "Survey of Conditions of the Indians in the United States," more statements by Onondagas claiming that they lived under the protection of the Federal

Government and were not subject to the State of New York. The core legal issue in the Onondaga Nation's claims for the lands that had been taken was the issue of the supremacy of federal law and treaties over state law and state assertions of power over Indian lands.

62. For this reason, the recurring fights over state jurisdiction regarding Indians were in fact fights about the land rights of the Six Nations and the claims of the Six Nations to their lands that had been illegally taken.

63. In a series of hearings conducted in Syracuse, the Senate Subcommittee of The Committee on Indian Affairs took up the issue of the attempt by the City of Syracuse to construct two flood control dams on the Onondaga reservation to prevent flooding in Syracuse. The Onondagas and Oneidas living on the reservation opposed the dams since they would destroy 15 houses in the village and make some of their best farm land useless. As the Onondagas saw the situation, because of treaty rights, neither Syracuse nor the State of New York could take the land if the Onondaga Nation refused. (*S. Res. 79*, pp. 5009-5023. Exhibit U.) (See also, "Both Indian Faction to Fight Dams," *Syracuse Post-Dispatch,* November 16, 1929. pp. 6, 13.)

64. Again in 1930, the Haudenosaunee reiterated their claims to the lands illegally taken by New York State. The Haudenosaunee Petition was again submitted to the Senate Subcommittee on S. Res. 79 by Mr. O.J. Kellogg as attorney for the Six Nations. (*S. Res. 79*, pp. 13620 - 13625) Exhibit V. These repeated assertions of these claims continued to bring the claims to public attention and demonstrated that the Onondaga Nation and the Haudenosaunee had by no means given up.

The Onondaga Nation proclaims its land rights again in 1948

65. The Onondaga Nation yet again declared its rights to the lands illegally taken by New York in the setting of Senate hearings on bills to grant New York State civil and criminal jurisdiction over Indian lands. In these 1948 hearings, the question of state or federal jurisdiction erupted again, and as always the underlying issue was the question of the Six Nations' rights to the lands illegally taken by New York. (U.S. Congress. Senate. Subcommittee of the Committee on Interior and Insular Affairs. Hearings on S. 1683: *A Bill to Confer Jurisdiction on the Courts of the State of New York with Respect to Offences Committed on Indians Reservations Within Such State;* S. 1686: *A Bill to Provide for the Settlement of Certain Obligations of the United States to the Indians of New York;* S. 1687: *A Bill to Confer Jurisdiction on the Courts of the State of New York with Respect to Civil Actions Between Indians or to Which Indians are Parties.* 80th Congress, 2nd Session. Washington, D.C. Hereafter cited as *S. 1683*). Exhibit W.

66. Onondaga Nation Chief, George Thomas, Tadadaho of the Six Nations, testified about the Nation's claims at the hearing. With him at this hearing before the Subcommittee and before a representative of New York State were other chiefs of the Onondaga Nation, David Green and Livingston Crouse. The Onondaga Chiefs believed that the bills being considered would impede them in pursuing a land claim against New York State. Chief Thomas said:

> ... [W]e have unanimously passed this resolution protesting against all these three bills which are now before you, and we feel by this legislation it has no weight whatever, no matter what way you look at it, to solve these Indian problems which are now before us. . . .they [New York] have been reluctant to come to any kind of terms which might, to a certain extent, impair the terms of our treaties. . . . The whole thing in a nutshell is this, and that is what we have been trying to ascertain. *The claims that we have against the State of New York are enormous, probably one of the biggest cases in the whole history Indian relations, and we*

have been beating around the bushes so much, I notice, and we all point to this fact that we have this tremendous claim.

(*S. 1683*, p.163, emphasis added.) Exhibit W.

67. When asked by Senator Ecton how long they had known about these claims, Thomas answered:

> We have a fellow by the name of E. A. Everett in Potsdam, N.Y., who was a member of the assembly at Albany at the time, and he was chairman of the conservation committee at the time. He was appointed to make the investigation to find the legal status of these Indians, the Iroquois Confederacy. . . . That was in the early 1920s. . . . That must have been over 26 years ago. I have been studying these claims all that time, and we have gone so far that we think we have established this claim.

When questioned if the Onondagas had tried to collect on these claims, Thomas answered,

> No we haven't. That is the reason why I say that we would be working backward by trying to pass this legislation, and by doing so the result would be that it would hamper the transactions of the negotiations for a settlement of these claims if we transfer jurisdiction. That would be the most dangerous weapon that they could use against us, and we are not going to allow that to happen if we can help it.

(*S.1683*, p.166.) Exhibit W.

68. When Chief Livingston Crouse testified, he was even more adamant in his statement of rejection and the relation to the Nation's land claims.

> In other words, once the State takes over, that means we are diminished, absolutely ruined. There is no confederacy any longer. ... That is the way to break up the Indians so they won't have to pay any of these tremendous claims that the Indians have.

(*S.1683*, p.168.) Exhibit W.

69. The testimony of Ernest Benedict, a Mohawk from The St. Regis reservation, argued along the same line as Chief Crouse in rejection of the three bills. Like Chief Crouse, he couches the rejection in terms of the Six Nations' claim for land. What is also implied in his statement is that it would more difficult to negotiate with New York State over land claims if they were under

New York State jurisdiction rather than out side of that jurisdiction. Noting that the Indians are "law-abiding" people, he asks,

> why this [S.]1683 has come up at this time when, as you have heard, the Six Nations are just coming alive to their claims, and also have come aware that there has been a United States bill passed whereby they could make some of those claims. Now if New York State gets jurisdiction, of course, the State laws can apply to the reservations. The Indians would be hampered by the state laws in presenting their case.

(*S. 1683*, p.170.) Exhibit W.

70. Other nations also brought attention to the continuing land claims regarding lands taken in illegal treaties with New York. The Oneida Nation submitted a memorandum asserting claims and so also did a speaker from the Seneca Nation. (*S.1683*, pp. 144-145, 164.) Exhibit W.

71. The concluding speaker at the Hearings was Leighton T. Wade, counsel and a member of the Joint Legislative Committee on Indian Affairs for New York State. He sat through the whole Hearing. New York State was clearly and completely aware of the continued vitality of the Onondaga Nation claims and the claims of the other nations of the Haudenosaunee.

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

November 13, 2006

Date

Robert E. Bieder