

BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK,)	
THE ONEIDA TRIBE OF INDIANS OF)	
WISCONSIN, THE ONEIDA NATION BY)	
JULIUS DANFORTH, OSCAR ARCHIQUETTE,)	
SHERMAN SKENANDORE, MAMIE SMITH and)	
AMANDA PIERCE,)	
Petitioners,)	
)	
v.)	Docket No. 301
)	(Claims 3 - 7)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 22, 1978.

ADDITIONAL FINDINGS OF FACT

This case is before the Commission on remand from the Court of Claims to determine whether the United States had actual or constructive knowledge of 23 treaties between the plaintiffs and the State of New York. United States v. The Oneida Nation of New York, et al., 201 Ct. Cl. 546, 477 F. 2d 939 (1973). Trial on the issue of scienter was held on May 6 and 7, 1974. With its brief filed on April 14, 1975, defendant submitted certain documents which were previously in evidence in Docket 343, The Cayuga Nation of Indians et al., as plaintiffs' exhibits K-8 and 9 and Commission Exhibits 5, 6, 7, 8, 9, 11, 12, 13 and 14. The Commission will treat these documents and any other relevant exhibits in Docket 343, as evidence in this case.

The Commission makes the following findings of fact which are supplemental to the findings of fact, numbered 1 through 28, previously entered herein on August 18, 1971, 26 Ind. Cl. Comm. 138.

29. Historical Background. Beginning in 1789 the United States Government followed a policy of centralizing federal management of Indian affairs . The power of the Federal Government over all matters involving Indians was made specific in the just adopted Constitution and was a conscious departure from the ambiguous situation which had existed under the Articles of Confederation. Under the Indian Trade and Intercourse acts (the first enacted in 1790), the Federal Government established procedures for setting boundaries and removing and punishing white encroachment on Indian territory. Under these acts, all purchases of Indian lands without federal consent were prohibited. Agents were appointed by the Federal Government to reside with the tribes and represent the Government and to carry out its early policy of attempting to bring about the assimilation of the Indians into white society. The agents and sub-agents usually lived with or near the Indians under their supervision and became intimately aware of the daily happenings and activities of the tribes with whom they were associated, including their councils, religious observances, economy and their relations with neighboring whites. As it became apparent that the policy of assimilation was not going to work, the Federal Government adopted a policy of moving the Indians west of white settlement. Federal policy toward the Six Nations, which included the Oneida, paralleled general Indian policy with little variation.

Between 1790 and 1795 the Federal Government went to great lengths to maintain good relations with the Six Nations, fearing that they might join the Indians in Ohio who were at war with the United States. The strategic position of the Six Nations along the principal supply routes

to the old Northwest could present a major threat to the Federal Government if an alliance was formed between the Six Nations and the hostile Ohio Indian tribes. Also, the proximity of the Six Nations to the British-held forts at Niagara and Oswego, and to Canada, made those Indians particularly susceptible to British influence. Pursuant to Article II of the Jay Treaty of November 18, 1794, 8 Stat. 116, the British promised to leave the border posts by June 1, 1796, and did so, but they continued to exert influence on the Indians near the Canadian border until the close of the War of 1812. As a result of these circumstances, the Federal Indian agents were required to maintain a close surveillance over the activities of the Indians in New York State and to report all matters of concern to the Secretary of War who was then in charge of Indian affairs.

30. Federal Indian Agents Resided Near the Six Nations.

Beginning in 1792 and continuing until 1880, Federal Indian agents resided in close proximity to the Six Nations in New York. From 1792 to 1834 the local field office was designated the "Six Nations Agency". From 1834 to 1855 it was called the "New York Sub-Agency". The agents, sub-agents, or superintendants assigned to this agency generally reported to the Secretary of War, or, later, to the Office of Indian Affairs.

31. Appointment of Israel Chapin as Agent for the Five Nations.

On April 23, 1792, Israel Chapin was appointed Deputy Temporary Agent to the Five Nations of Indians. He was advised that it was the firm determination of the President that the Indians be treated with the utmost fairness and kindness. In his formal instructions, Chapin was told that he was to serve under the Superintendent for the Northern District and that

he was to communicate to the Superintendent and to the Secretary of War in Philadelphia, all significant occurrences within his agency.

On March 11, 1793, the New York State Legislature enacted legislation (Sixteenth Session, Chapter L1) appointing Israel Chapin and others to be state agents for the purpose of treating with the Oneidas, Onandagas and Cayugas for the purchase of some of their lands.

32. United States Acknowledges Oneida Treaties with New York.

On November 11, 1794, the United States entered into a treaty with the Six Nations, 7 Stat. 44. In Article II of that treaty the United States acknowledged the land transaction previously entered into between the Oneida Nation and the State of New York.

33. Death of Israel Chapin and Appointment of His Son. In early March, 1795, Israel Chapin died. His son, Israel Chapin, Jr., was appointed to succeed him. In his letter of appointment, Chapin, Jr. was advised that all instructions previously given to his father were to apply to him.

34. Legislative Enactments of New York State. On March 27, 1794, the New York State Legislature enacted legislation (Seventeenth Session, Chapter IX), which appointed trustees for the Indians residing within New York. These trustees were granted full power to make any agreement or arrangement with the Oneida, Onondaga and Cayuga tribes respecting their lands that would produce an annual income for the Indians and would insure their good will and friendship to the people of the United States. The act provided that any conveyance of land obtained by the trustees from the Indians

was to be in fee simple and for the use of the people of New York State.

By an act of March 5, 1795, Eighteenth Session, Chapter XVII, the Legislature authorized the Governor, and such others as he might appoint, to make any agreement with the St. Regis Indians respecting their land claims in New York that would tend to insure their good will and friendship.

By an act of April 9, 1795, Eighteenth Session, Chapter LXX, the Legislature appointed the Governor, Phillip Schuyler, John Cantine, John Richardson, and David Brooks as agents for the people of New York to make such arrangements with the Oneida, Onondaga, and Cayuga tribes relative to their lands as would promote the interest of the Indians and preserve their confidence in the justice of New York State. The agents were authorized to allot the land if the Indians so desired. In return for any residue of land not required for allotments, the agents were to stipulate perpetual annuities to be paid to the Oneida and Cayuga tribes. The act also provided that the lands which were the basis for the annuities should be surveyed and laid out into lots not exceeding 250 acres and offered for sale at public auction.

Also on April 9, 1795, in "An act for the payment of Certain Officers of Government, and other contingent Expenses", the New York Legislature authorized the Governor, or any agents he might appoint, to treat and agree with any Indian tribe or tribes for the purchase of their claims to land in northern New York State, in such form and on whatever terms the Governor or his agents might deem best for New York State.

35. Communications from Israel Chapin, Jr., to the Secretary of War, May, 1795. On May 22, 1795, Israel Chapin, Jr., recently appointed by the Federal Government to succeed his father as United States Agent to the Five Nations, wrote to Secretary of War, Timothy Pickering, informing him

that the Commissioners designated by the State of New York to treat with New York Indians had convened a meeting with the Oneidas, Onondagas and Cayugas for the purpose of negotiating a treaty for the purchase of their lands.

36. Opinion of the Attorney General on Legality of New York State Treaty. On June 16, 1795, in response to an inquiry dated June 13, 1795, from the Secretary of War Pickering, William Bradford, Attorney General of the United States, advised Secretary Pickering that the Act of March 1, 1793 (the version of the Indian Trade and Intercourse Act then in effect), forbade the sale of Indian lands unless effectuated by a treaty or convention entered into by the Federal Government. Although he acknowledged New York's preemption rights to Indian lands within the borders of the state, Bradford stated that, as the Indians still had title to the land, its purchase by New York was not permissible absent the approval of the United States.

37. Communications Between the Secretary of War and the Governor of New York State. On June 23, 1795, Secretary of War Pickering presented to President Washington for his approval, a draft of a letter directed to George Clinton, Governor of New York, relative to the Federal Government's position on the legality of New York State's dealings with the Indians respecting their lands. Pickering informed the President that, if the President approved, the letter would be sent by the next day's post. President Washington approved the draft and the letter was sent to Governor Clinton accompanied by a copy of the June 16 opinion of the Attorney General described above (Finding 36).

In June or July 1795, John Jay replaced Clinton as Governor of New York. On July 3, 1795, Secretary of War Pickering wrote to Governor Jay concerning New York's proposed negotiations with the Onondagas, Cayugas, and Oneidas for the purchase of their lands. He enclosed a copy of the Attorney General's opinion stating that any sale of the said Indian's lands without the participation of the Federal Government would be illegal.

On July 13, 1795, Governor Jay replied to Pickering's July 3rd letter stating that having recently entered into his office he was not yet familiar with New York's Indian policy and thus his reply to Pickering's letter had been delayed. He continued:

Whether the Constitution of the United States warrants the Act of Congress of the 1 March 1793 [Indian Trade and Intercourse Act] and whether the act of this State respecting the business now negotiating with the Onondaga and other Tribes of Indians, is consistent with both or either of them, are Questions which on this occasion I think I should forbear officially to consider and decide.

It appears to me from the 37 article of the New York Constitution that every Convention or Contract with Indian Tribes Mediated by this State, must be directed and provided for by Legislative Acts; and consequently that the Governor can take no measures relative thereto, but such as those acts may indicate or permit.

You will perceive from an act of this State (of which you doubtless have a Copy) passed the 9 April 1795 that the negotiations in question are therein particularly directed and specified and that it commits the management of the business to five agents viz. The Governor for the time being, General Schuyler, John Cantine, David Brooks and John Richardson, or any three of them. As to any intervention or concurrence of the United States the act is silent and I do not observe any thing in it which by implication directs or authorizes the Governor to apply for such intervention or which implies that the Legislature conceived it to be either necessary or expedient. [Letter, John Jay to Timothy Pickering, July 13, 1795, George Washington Papers, Library of Congress, Series 4, Reel 107, Folio 245. Comm. Ex. 51, Docket 343)

On July 16, 1795, Secretary Pickering answered Governor Jay's letter.

He stated that he had been informed by one T. Morris, a member of the New York Legislature, that the act authorizing the purchase of lands from the Onondaga, Oneida and Cayuga Indians required an application to the Federal Government for a treaty to be held. Pickering stated that Governor Jay's letter made it clear (to Pickering) that Morris had been in error. It was on Morris' information, however, Pickering related, that he had informed Israel Chapin, Jr., Federal Indian Agent to the tribes in question, that the New York Indian Commissioners were in violation of the laws of the United States and of New York.

On July 18, 1795, Governor Jay again wrote to Secretary of War Pickering stating that a tribe called the St. Regis Indians had a claim to lands in northern New York State; that in previous negotiations the State had agreed to treat with these Indians and that legislation had been passed authorizing the Governor to do so. Governor Jay then requested, through Secretary Pickering, that the President of the United States appoint one or more commissioners to hold a treaty with the St. Regis Indians so that the extinguishment of their claims to the land might be conducted in compliance with the Act of Congress of March 1, 1793. Governor Jay suggested several candidates to be commissioners on behalf of the United States.

38. Communications from the Secretary of War to Israel Chapin, Jr. June and July 1795. On June 29, 1795, Secretary Pickering wrote to Federal Indian Agent Israel Chapin, Jr., acknowledging receipt of letters sent by Chapin on May 6, May 22 and June 4, 1795. Pickering stated:

I have now the time only to answer that of May 22d respecting the proposed treaty called for by the Commissioners of New York,

to purchase the lands of the Oneidas, Onondagas & Cayugas: and I have now to instruct you, that you will give no aid or countenance to the measure; as it is repugnant to the law of the United States made to regulate trade and intercourse with the Indian tribes. The Attorney General of the United States has given his opinion that the reservations of those tribes within the State of New York form no exception to the General Law; but whenever purchased, the bargains must be made at a treaty held under the authority of the United States. Besides giving no countenance to this unlawful design of the New York Commissioner * * * you are to tell those tribes of Indians that any bargains they make at such a treaty as that proposed to be held at Scipio, will be void; and as the guardian of their rights you will advise them not to listen to the invitation of any Commissioners unless they have authority from the United States to call a treaty. [Letter Timothy Pickering to Israel Chapin, June 29 1795. Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 29. Comm. Ex. 13, Docket 343]

On July 3, 1795, Secretary Pickering again wrote to Agent Chapin expressing his displeasure that Jasper Parrish, a Federal employee, had assisted the New York State Indian Commissioners in inviting the Cayugas and Onondagas to a treaty without Secretary Pickering's authorization. He reiterated his instruction "that unless a commissioner of the United States holds the treaty neither you nor Mr. Parrish are to give any countenance to it; but on the contrary to tell the Indians that it will be improper and unsafe." [Comm. Ex. 14, Docket 343]

39. Communications Between the Secretary of War and the President of the United States, July 1795. On July 21, 1795, Secretary Pickering wrote to President Washington, then in Mount Vernon, concerning his communications with New York Governor John Jay. He pointed out to the President the differentiation that New York State made between its negotiations with the St. Regis Indians and its negotiations with the Onondagas, Cayugas and Oneidas. He enclosed with his letter copies of all the communications he had received from Governor Jay.

On July 27, 1795, President Washington replied to Secretary Pickering's letter which he had received July 25. He stated that if the treaties with the Onondagas, Cayugas and Oneidas had taken place at Albany on July 15, as the communications from Governor Jay indicated, then "any further sentiment now on the unconstitutionality of the measure would be recd. too late." [P. Ex. K-9, Docket 343] The President continued to state that if the treaties had not in fact yet taken place, Pickering should "obtain the best advice you can on the case and do what prudence, with a due regard to the Constitution and laws, shall dictate."

40. Communications between Indian Agent Israel Chapin, Jr., and Secretary of War Pickering. On July 31, 1795, Israel Chapin, Jr., wrote to Secretary Pickering informing him that commissioners for the State of New York had purchased the lands of the Cayuga Indians. Chapin stated that unfortunately he had not received Pickering's letters of June 29 and July 3 until after he had returned from the treaty, and therefore he had been unable to comply with the instructions contained in the letters. Chapin informed Secretary Pickering that he would travel to the Oneidas and try to prevent them from treating with New York.

On August 19, 1795, Chapin again wrote to Secretary Pickering stating that he had gone to the Oneidas and informed them of the illegality of their treating with New York. Chapin reported that the New York commissioners had offered to purchase Oneida land and that the Oneidas were divided on the matter of selling, some wishing to do so and other not. Eventually the Oneidas and the State commissioners reached an impasse over the amount of land to be purchased and the price to be paid and the treaty negotiations were discontinued.

On August 26, 1795, Secretary Pickering replied to Chapin's July 31st letter, stating in part:

I received your letter informing of the treaty held at Scipio where the Commissioners of New York purchased the land of the Onondagas and Cayugas; and that you proposed to go to Oneida where you supposed that tribe might be influenced to avoid a sale. Seeing the Commissioners were acting in defiance of the law of the United States, it was entirely proper not to give them any countenance; and as that law declares such purchases of the Indians as those commissioners were attempting to make, invalid, it was also right to inform the Indians of the law and of the illegality of such purchase. But having done this much, the business might there be left. The negotiation is probably finished ere now: if not, you may content yourself with giving the Oneida the information above proposed, & there to leave the matter. [Comm. Ex. 11, Docket 343] (Emphasis added.)

On October 9, 1795, Israel Chapin, Jr., advised Secretary Pickering that he had been informed that at a treaty held in Albany, the Oneida had ceded 100,000 acres of their lands to New York State.

41. Dual and conflicting roles of Federal Indian Agents - 1793-1797.

Pursuant to the Act of March 11, 1793, of the New York State Legislature (Chap. 51 Laws of New York, Sixteenth Session), entitled "An Act relative to the lands appropriated by this State to the use of the Oneida Onondaga and Cayuga Indians", Israel Chapin, who was the Federal Agent to those Indians, was appointed (along with two others) agent "on the part of the people of the State [of New York]" to convene the Oneida, Onondaga and Cayuga Indians and to persuade them to quit-claim to the people of New York State as much as possible of their reservation lands.

John Taylor, an employee in the office of the Comptroller of the State of New York, certified that on June 2, 1797, \$2,300 was delivered to Israel Chapin, being annuities due to the Cayuga Indians. Chapin, Jr., was then the Federal Indian agent to the Oneida, Cayuga and Onondagua Indians

as well as the agent of the State of New York for the distribution of New York State annuities to the same Indians.

42. Responsible officials of the Federal Government were well aware of the intention of New York State to purchase from the Oneida Indians a large segment of their reservation. Those officials included two Federal Indian Agents, Israel Chapin, Sr. and Israel Chapin, Jr., Secretary of War Pickering, President George Washington, William Bradford, Attorney General of the United States, and Jasper Parrish, a Federal employee in the War Department Indian service. While all of those officials agreed that the Federal laws prohibited the cession of Indian land to New York State unless such transaction was authorized and approved by the United States Government, no real effort was made to prevent the execution of the September 15, 1795, Treaty between the Oneidas and New York. No attempt was made upon the part of Federal officials to protect the Oneida Indians in their dealings with New York.

43. Communications Between the Secretary of War, the Oneida Indians, and Federal Indian Agents. On September 27, 1802, Secretary of War, Henry Dearborn (1801-1809) wrote to Callander Irvine who had been appointed an agent to the Six Nations. In addition to outlining Mr. Irvine's duties, the Secretary stated that he was enclosing a copy of the last instructions to Agent Chapin and a copy of "the law now in force relative to Indian intercourse".

On February 4, 1803, Secretary of War Dearborn addressed a letter to the Chiefs and Head Men of the Seneca, Onondagua and Oneida Nations, responding to their request that another agent be assigned to them, and advising them that in addition to Captain Callander Irvine, Jasper Parrish

was being appointed their agent and interpreter and that he would reside with them in the principal Oneida and Onondagua towns for three months out of each year. He warned the Indians to beware of persons who might attempt to stir up trouble between them and between the Indians and the United States and urged them to fully advise their Agent Callander Irvine and their Sub-Agent Jasper Parrish of any such attempts.

On February 15, 1803, Secretary Dearborn wrote to Jasper Parrish advising him that he was being appointed Sub-Agent of the United States to the Six Nations which were under the general superintendence of Callander Irvine. He was told that he would be expected to spend three months of each year living with the Oneidas, Cayugas, Stockbridge and Onondagus and that he should keep a careful journal of all events taking place which "are important to the United States", forwarding copies of such journal to the Secretary and to Mr. Irvine.

On January 30, 1804, Secretary Dearborn wrote to Erastus Granger, advising him of his appointment as agent for the United States to the Six Nations. He was told that he would receive the usual instructions regarding his duties and responsibilities and, presumably those instructions were similar to those tendered to Chapin, Parrish and Irvine, and were accompanied by a copy of the Indian Trade and Intercourse Act.

44. Communications between Seneca Chief, Handsome Lake, and President Jefferson. In 1802 Handsome Lake, a leader of the Seneca Nation, authored a petition directed to President Jefferson complaining, among other things, of recent sales of lands to New York State by the Six Nations and by the Oneida Nation. In response, President Jefferson pointed out that such sales, even to a state, were forbidden by Federal law unless "an agent from the

United States should attend the sale, see that your consent is freely given, a satisfactory price paid, and report to us what has been done, for our approbation." He then stated that "this was done in the late case of which you complain", having reference to the treaties of June 1, 1798 and January 4, 1802, when, with United States agents present, the Oneida Nation ceded portions of their reservation to the State of New York and the sale was sanctioned and approved by the representatives of the United States. That the sales were of Indian lands to New York State is made quite clear in the letter which states that in the instances referred to, the Indians were willing to sell to New York certain parcels of land; the state of New York was desirous to buy; the President sent an agent in whom the Federal Government had confidence "to see that your consent was free, and the sale fair. All was reported to be free and fair." He continued by saying that the right to sell was one of the Indians' property rights and that in his opinion, under all the circumstances, the sale was not injurious to the Indians; that while they had depended on hunting in the past, turning to agriculture on smaller parcels of land would be better for them in the long run. The President was quite plainly encouraging the Six Nations to sell their "surplus" lands to New York State and to take up the ways of the white man which would require far less land for their sustenance. The Government representatives who were present at the two Oneida treaties were Joseph Hopkinson, Commissioner for the United States in the Treaty of June 1, 1798, and John Taylor "Agent appointed under the authority of the United States" for the Treaty of June 4, 1802.

45. Federal Indian Agent Granger letter to Secretary of War Dearborn.

On December 21, 1808, Federal Indian Agent Erastus Granger wrote to Secretary of War Dearborn concerning problems he was encountering. He wrote of white citizens who were constantly stealing from and generally harrassing the Indians of the Six Nations and who frequently evaded arrest and punishment by escaping to Canada. He stated; "* * * there exists in the minds of many white people a strong prejudice against Indians - they want to root them out of the Country, as they own the best of the land. Those people are often on juries." He also reported that "people" were secretly trying to alienate the affections of the Indians from their agents and to destroy their confidence in the management by the agents of the Indians' affairs. He indicated that holding a Federal office in New York State afforded no protection from acts of malevolence and envy. He then spoke of the fact that he had learned that the Federal Government had purchased from certain Indian tribes a large tract of country lying west of the Mississippi River. He stated that if the Federal Government would allocate some of that land to the Six Nations, he might be able to persuade them to move to such western land where they would be free of the prejudice of the citizens of New York and "beyond the influence of British agents & factors." He expressed the opinion that the Six Nations would form a good barrier against the unfriendly and hostile Indians in the west and that the western country would be more favorable to the work of civilizing the Six Nations.

46. Seneca Chief Red Jacket's communication to the President of the United States. On February 19, 1810, Red Jacket, a leader of the Senecas, on behalf of himself and other leaders of the Six Nations, dictated a message to the President of the United States, translated by Agent Jasper Parrish in the presence of Agent Erastus Granger. In it he complained of the numerous depredations committed against the Indians by the whites in New York State and the failure of the Federal Government to live up to its 1794 Treaty commitment to protect and indemnify the Six Nations. He reminded the President that at the time of the 1794 Treaty the Federal treaty commissioners had warned the Six Nations that the time might come when enemies of the United States would endeavor to alienate the friendship of the Indians from the United States and he stated that that time had indeed come. He said that he was aware of the current disputes between the United States and the British agents in Canada and of the British efforts to turn the Western Indians against the United States. He said that such British agents had actually sent a War Belt among the warriors of the Six Nations to make them break faith with the United States but that the belt had been exhibited to the Federal agents in Council and then sent back to Canada "never more to be seen amongst us." He also said that a general council of the Six Nations had been called at which it had been resolved to "let our voice be heard among our Western brethern and destroy the effects of the poison scattered amongst them." and that large deputations of Six Nations Indians had been sent to the council fires in the west to persuade those Indians to remain loyal to the United States.

47. Dual and Conflicting Roles of Federal Indian Agents - 1797-1817.

On October 15, 1804, Federal Indian Agent Parrish wrote Secretary of War

Dearborn asking whether he should undertake responsibility for distributing New York annuities to the Six Nations. In a letter dated January 15, 1808, Federal Agent Erastus Granger, informed New York Governor Tompkins that he was aware of the fact that it was costing New York State "upward of five hundred dollars" annually to transport and pay over the annuities from the State of New York to the Oneida, Onondagua and Cayuga Indians. His letter continued:

Having the agency of the United States to the Six Nations, and being assisted by Jasper Parrish, Esq. of Canandiagua who has been appointed an assistant agent, we have concluded to make a proposal to you for doing the business & we will receive the money in Albany - transport and pay it over to the Indians - taking their receipts according to Law, for \$350. - If required we will give security for performance.

The law seems to require that an agent be appointed on the part of the state who shall pay over the money to the agent of the United States - If our proposal is accepted Mr. Parrish can be the agent of the State. - having often to visit the different tribes of Indians & our attention in some measure from having annually to transport dollars from Albany taken up with their affairs, are reasons why we can do the business cheaper than any other person. - If the proposal is accepted we shall be solicitous in rendering satisfactory services.

From 1808 at least through 1823, Federal Indian Sub-Agent Jasper Parrish headquartered for the purposes of his Federal duties at Canandaigua, New York, acted as agent for the State of New York in distributing New York State annuities to the Cayuga and Onondaga tribes of Indians and to the posterity of Fish Carrier, pursuant to treaties with those tribes of the Six Nations under which they ceded their lands to the State. Prior to that time, the New York State Comptroller's office used Israel Chapin, Jr., Federal Agent to the Six Nations, in the same capacity. For these services, the Federal agents were usually paid approximately \$20.00.

On March 27, 1807, the New York State Legislature enacted a law (Chap. LXXII, 30th Session) relative to the purchase of the Cayuga Indian reservation and part of the reservation belonging to the Christian Party of the Oneida Nation (Treaty of March 13, 1807). Among other provisions in this law, the State Treasurer was authorized to pay to Jasper Parrish \$100 for his services in attending the negotiation sessions leading up to the making of the contract to purchase the Cayuga lands and acting as interpreter in the proceedings.

Federal Sub-Agent Parrish involved himself deeply in negotiations between the Seneca Nation and New York State, the latter being desirous of purchasing Seneca land. On April 20, 1811, Parrish wrote to New York Governor Daniel Tompkins acknowledging the Governor's letter of April 11th and stating that he was to meet with the chiefs of the Seneca, Cayuga and Onondagua Indians on May 20th at Buffalo for the purpose of paying their annuities and that he would then have an opportunity of seeing the Chief of the Seneca Nation on "the subject of your letter". From the remainder of the letter it is obvious that "the subject" of the Governor's letter was the State's desire to purchase Seneca land since Parrish stated that he would let Tompkins know by the end of May whether the Senecas were inclined to sell their Islands to New York.

On July 10, 1815, Governor Tompkins wrote to Federal Sub-Agent Parrish stating that General Porter had informed him that Parrish felt the present time favorable to effect a purchase from the Seneca Indians of the Islands in the Niagara River, the New York Legislature having authorized

such a purchase. The Governor stated that he was willing to pay \$12,000 for the Islands, a portion of which sum he proposed should be invested in the stock of some public institution in the United States to produce the Senecas an annuity of \$500, with the residue to be paid to the Indians in cash after defraying incidental expenses of negotiating the sale. The effect of the letter was to authorize Parrish to be the agent for New York State in negotiating the purchase and he was told that as soon as he notified the Governor that the terms were agreed upon, the money would be sent to Parrish and a deed for the signature of the principal chiefs.

On September 13, 1815, Jasper Parrish signed a New York Comptroller's receipt indicating that he had received of Governor Tompkins \$3,000. \$1,000 was for presents for certain Seneca Chiefs for agreeing to the Treaty for the sale of their Islands in the Niagara River, \$900 for Parrish's expenses in maintaining the Indians at Buffalo during the treaty and other expenses, all of which Parrish would account for with vouchers, and \$1,000 for the Seneca tribe.

Erastus Granger served as a Federal Indian Agent to the Six Nations from 1804 through 1818 with headquarters in Buffalo. He was also a Judge of the Court of Common Pleas for Niagara County from 1808 through 1818. At other times during this period he served as surveyor of the Port of Buffalo, Collector of the Port, and U. S. Postmaster of Buffalo. According to his biographer and documents in the possession of the Buffalo and Erie County Historical Society, he performed the duties of all of his offices through a deputy except for his positions as Federal Indian Agent and New York State Judge. As the Federal Indian Agent to whom Sub-Agent Jasper Parrish reported and who was headquartered at Canandaigua not far from Buffalo, Judge Granger

must have been fully informed concerning the sales of Six Nations' lands to New York and the services of the Federal Indian sub-agents acting as agents for the State of New York in the payment of annuities to the Indians.

During Granger's terms as Indian Agent and Judge of the New York Court, the New York State Legislature passed laws relative to cessions of Oneida lands to the State of New York: March 13, 1807, February 16, 1809, February 21, 1809, March 3, 1810, February 27, 1811, March 3, 1815, and March 27, 1817. Except for the 1815 treaty where the consideration was cash, the other treaties involved cash and annuities, the latter undoubtedly distributed by Federal Indian sub-agents acting on behalf of the Comptroller of New York. These laws were published, along with all other New York State laws, in volumes entitled "Laws of New York", and copies would have been sent to all New York State judges including Judge Granger.

48. Federal Government Knowledge of Treaties between Oneidas and New York from 1795 through 1817. On the basis of the above findings and the record as a whole, responsible representatives of the United States charged with the conduct of the Federal Government's dealings with the Indians and with carrying out the mandates of the Indian Trade and Intercourse acts were fully informed concerning the treaties between New York and the Oneidas under which the Oneidas (except in one instance)^{1/} ceded portions of their reservation to the State of New York. In the Treaties of June 1, 1798, and June 4, 1802, Federal Government representatives were officially in attendance at treaty negotiations (See United States v. Oneida Nation, et al.

^{1/}The Treaty of March 21, 1805 between two factions in the Oneida Nation, i.e., the Pagan Party and the Christian Party, did not involve New York State as a treaty participant although it was made with the knowledge and approval of State Indian officials. The two Oneida factions agreed to a division of their lands and thereafter New York State cession treaties with the Oneidas were with one or the other factions by name.

201 Ct. Cl. 546, 549). The official nature of the presence of the Federal Indian agents at those treaties is apparent on the face of the treaties and is further confirmed by the communication of President Jefferson to Seneca leader, Handsome Lake, in 1802 when he mentioned with approval the treaties under which the Oneida had ceded portions of their land to New York with the sanction of Federal representatives, and, in effect, advised the Indians to cede more of their lands to New York State, adopt white men's mode of living on small tracts of land which could be intensively and profitably cultivated. The primary concerns of the Federal Government in relation to its Indian wards, particularly those living in proximity to the Canadian border and therefore subject to possible British influence, were to keep the Indians firmly on the side of the Americans in a growing struggle with England which would culminate in the War of 1812, and to keep the Indians from fighting among themselves. Since the Federal Government could field only a few Indian agents in New York State, it is obvious from the record that it was depending on New York State and its Indian agents to assist in accomplishing the Federal purposes. The War Department, charged with managing Indian affairs, was cognizant of the dual role being played by its Indian agents, i.e., that they were acting as agents for the State of New York in the payment of New York annuities to the Indians for Indian cessions of land to New York, and as interpreters in Indian-New York State treaty negotiations. Every Indian treaty in New York was the subject of legislation enacted by the State Legislature and those laws were published in the same publications containing all other State laws of the same time period. In some instances a law relative to an Indian land cession would appear on the same page as a law affecting the Common Pleas Court

on which Common Pleas Court Judge Granger, who was also Federal Indian Agent to the Six Nations, served. While serving as a State Judge and Federal Indian Agent, Granger suggested to the Secretary of War that it would be a good idea to consider removing the New York Indians to lands west of the Mississippi River which the Government had purchased from Indians living in that area (Finding 45) and indicated that he thought he could be instrumental in persuading the Indians to make such a move. Since the Federal Government had no plans to buy land from the New York Indians and since they would expect to sell their lands before moving west, Granger must have contemplated sales of Indian lands to New York State. Granger also made the arrangements with New York Governor Tompkins under which the Federal Indian agents acted for the State in the distribution of State annuities to the Indians. (Finding 47).

49. Federal Knowledge of and Participation in Removal Policy. On December 21, 1808, federal Indian Agent Granger wrote to Secretary of War Dearborn first suggesting that it would be in the Indians' best interests to remove west of the Mississippi River. Granger expressed confidence in his ability to persuade the Indians to move. In a letter dated April 20, 1811, Parrish wrote to New York Governor Tompkins that he would solicit the Senecas to sell some of their lands to New York.

In 1815, leaders of the Six Nations addressed a memorial to President James Madison asking if the federal Government would approve their removal to the West, acknowledge Indian title to any western lands to which they might move and continue annuity payments and other benefits.

On August 5, 1815, Secretary of War, Crawford, wrote to New York State Governor Daniel Tompkins (who would become Vice President of the United States in 1817 and serve in that position until 1825), explaining to the

Governor the difficulties that might be involved in moving and resettling the Six Nations in the West. His letter was in answer to Governor Tompkins' letter of June 28 to the President. Secretary Crawford stated that the President wished to accommodate Governor Tompkins' wishes and the interest of the State of New York in relation to the purposed removal of the Senecas from the territory which they were then inhabiting, to land on the western frontier of the United States. The Secretary stated, however, that certain national policies had to be taken into account in connection with his desire to accommodate New York State. He stated that all transactions with Indians relative to their lands were "more or less delicate" and that a removal of the Indians from one region of the country to another was especially delicate considering the effect on the Indians themselves and on their white neighbors in their new abode. The Secretary noted that Governor Tompkins had not designated any particular part of the western country to which "it is intended by you or desired by the Indians that they should be transferred; nor can it be ascertained from the general expression of a transfer to lands within the territory of the United States on the western frontier, you mean lands where the Indian title has been extinguished, as well as lands which are still in Indian occupancy. If the latter only be meant, the arrangement will essentially be between the Senecas and the State of New York on the one side and the Indian occupants on the other; but if it be contemplated to transfer the Senecas to lands which have been purchased from other Indians, the Government seems bound to take into view the effect of such an arrangement." The Secretary

noted that when it had been purposed to transfer Indians on the northern frontier of Ohio to a new home on the Illinois border, the neighboring territories of Illinois and Missouri protested against that measure. He asked that the Governor provide him with more information and assured him that if a removal of the Indians should take place it would not effect the annuities which had been granted to them, provided the Indians conformed in all other respects to the terms of the grant.

On January 22, 1816, Secretary of War Crawford again wrote to Governor Tompkins acknowledging a letter from the Governor and a memorial from the Sachems of the Six Nations in which they had expressed their desire to sell some of the land on which they were residing in the State of New York and to remove and settle upon lands in the west, in or west of the State of Ohio. The Secretary stated that both Governor Tompkins letter and the memorial of the Six Nations had been submitted for the consideration of the President. He stated that the greatest problem was the uncertainty regarding the area that might be selected for the future residence of the Six Nations after they had disposed of their present possessions in New York State. He said that it was an object of first importance to the United States in the event of any future war with the British Empire that the settlements in the State of Ohio should be connected with those in the Michigan Territory with the least possible delay, and that it was also important that the United States settlement be extended to the southern margin of Lake Michigan. He noted that this could be done by obtaining cessions of lands from the Indians living in Illinois and on the south western margin of the lake, and that the settlement of the Six Nations

in those districts would certainly protract the time of obtaining this land for the United States. He also noted that settling the Six Nations on land in Ohio and other parts of the western frontier which the United States would later wish to acquire, presented certain problems since the Six Nations had become highly civilized and attached much higher value to land than the more primitive tribes and that cessions could only be obtained from them with much more difficulty and at much greater expense than from the Indians who were already in the Northwest. The Secretary then expressed the belief that the settlement of a friendly tribe of Indians such as the Six Nations in that part of the country in the west would certainly have a beneficial influence on the conduct of the less civilized Indians in the event of another war with England. He then stated:

The interest which the State of New York takes in this transaction, and the influence which the cession may have upon its happiness and prosperity, had induced the President to determine that a treaty shall be held, with a view to accomplish the wishes of your excellency, and to gratify the desires of the Indian tribes in question. If your excellency is informed of the particular district in which the settlement is contemplated, and the extent of the grant which is intended to be made, a prompt communication of it may facilitate the conclusion of this business.

On February 12, 1816, Secretary Crawford wrote the Six Nations expressing approval of the western removal, guaranteeing title to any new lands acquired by the Six Nations and promising continuation of their annuities and other benefits.

On June 10, 1816, David Ogden, a partner in the Ogden Land Company which had been formed in 1810 and which owned the preemption right to much

of the Six Nations land, wrote to Indian Subagent Jasper Parrish expressing his delight that Parrish had had a meeting and council with the Six Nations on the subject of the communication received by them from the Secretary of War approving the removal of those Indians west and assuring them of their continued annuities. Ogden stated that he had perfect confidence in Jasper Parrish and was satisfied with what he was doing, "although it might not be prudent to exhibit too strongly our desire to obtain the object we have in view [getting the Six Nation land], still I think we ought not to leave any exertions untried." Ogden asked Parrish to keep in close touch with him and offered to go to Canandaigua to help out if that seemed beneficial.

On June 29, 1816, a missionary to the Six Nations, Jacob Taylor wrote to Thomas Wistar noting that Horacio Jones and Jasper Parrish had been acting in the interest of the Ogden Land Company in connection with that company's desire to acquire Six Nations land. He condemned the motives of both men and also what he called the whole system of land acquisition from Indians as being corrupt. He noted that most of the Oneidas were very much opposed to selling any of their lands but that there were a few chiefs and some young Indians who were intriguing with the white men and were unfaithful to their own people. He suggested that a division of the Indian lands into individual Indian parcels under suitable restrictions might make the Indians more aware of the true value of their lands.

On January 23, 1817, Governor Daniel Tompkins of New York wrote to the President of the United States, James Madison, introducing Indian agent Jasper Parrish to the President and stating that Parrish was coming to Washington on business for the Six Nations; that he, the Governor, could

vouch for Parrish as a respectable and intelligent gentleman, who was well acquainted with the presents wants of the Six Nations and with the reasons why their removal west would be desirable.

On February 8, 1817, Timothy Pickering who had been Secretary of War in 1795, wrote to Thomas Witstar and Thomas Stewardson in Washington, D. C., discussing the greed of the whites in New York State for Indian land and stating that the Federal Government had the power to defeat any such purpose. He specifically mentioned the Indian Trade and Intercourse Act of 1790 and 1802 as making illegal sales to the states without Government approval and participation. He expressed his feeling that a Committee of the Society of Friends, who were living with the Indians, should work to keep such illegal deals from taking place.

On May 30, 1817, Lewis Cass, who was Governor of the Michigan Territory, wrote to the Chiefs and Headmen of the Six Nations stating that their "friend" Mr. Ogden (of the Ogden Land Company) had communicated to Cass the Indians' wish to remove from their New York lands and take up residence in the country under Cass' jurisdiction and Mr. Ogden had kindly consented to be the go-between with respect to any communications between the New York Indians and Governor Cass. Cass reminded the Indians that any moves they intended to make must have the approval of the United States, the western Indians and white settlers in the vicinity. He pointed out that there were only a few places left in the territory under his jurisdiction where the Six Nations could be properly accommodated.

On February 17, 1818, David Ogden (a prominent New Yorker whose Ogden Land Company was constantly encouraging Indian removal and white settlement in New York) outlined to President James Monroe, at the latter's request, the history of removal efforts to that time. In that report Ogden informed the President that the Six Nations were receiving approximately \$16,000 per year in annuities from New York State and unidentified individuals. In August of 1818, Secretary of War Calhoun wrote to Ogden regretting that the Six Nations were hesitating to remove from New York. He stated in that letter that the policy of the United States was "... to induce as many of the tribes of Indians as may be disposed to change their residence, to emigrate to the west of the Mississippi."

In the summer of 1818 David Ogden in addition to being a partner in the Ogden Land Company was also a Representative from New York State in Congress in Washington. In a letter of April 26, 1818, to Jasper Parrish, he indicated that he was attempting to have Parrish appointed Chief Agent for the Six Nations in place of Granger. His letter strongly indicated that the two of them were deeply engaged in "the business" of getting the Six Nations out of New York and if possible west of the Mississippi. On May 14, 1818, Secretary of War Calhoun wrote to David Ogden stating that George Graham (who became Acting Secretary of War in 1817) had transmitted to Secretary Calhoun Ogden's letter to Graham of May 8, involving the negotiations with Governor Cass for land in his territory to be sold to the New York Indians. Calhoun stated that if land in Ohio, Indiana or Illinois should be selected for the Six Nations there would be great complaints and discontent and that he felt that lands just west of the

Mississippi River and north of Louisiana would be a better place for the Six Nations if they could be induced to go there. He said that if the Six Nations would go there every facility in the War Department would be at Ogden's disposal.

On July 28, 1818, David Ogden wrote to Peter Porter who was his partner in the Ogden Land Company and who was to become Secretary of War in 1828. Ogden expressed dismay over a communication to Parrish by the Secretary of War regarding the removal of "our Indians" and stated that Agent Parrish had written on July 12 that a new project was developing to move the Oneida and Onondagua Indians to the Tonnewanda and Buffalo Reservations, which move, if carried out, would delay the acquisition of that land by the Ogden Land Company. He mentioned that the Ogden Land Company held the preemptive right to that land. Ogden asked Porter to talk to the Chiefs of the Oneidas and the Onondaga Nations to try to persuade them to sell parts of their reservations and to remove to the Arkansas River area suggested by the Secretary of War, since the Federal Government appeared to oppose any move to Indiana, Ohio or Illinois. He noted that there were one or two men in the Buffalo area who spoke the Indian language who had been urging the Indians not to sell their land. He suggested to Porter that if those people really had any influence on the Indians it might be advisable to find some means "to quiet them."

On August 4, 1818, David Ogden wrote to Secretary of War Calhoun acknowledging the Secretary's letter of May 14, 1818, regarding the availability of lands for the Six Nations in the vicinity of the Arkansas River. He said that in talking with the Oneida Chiefs at Washington, he had learned that certain missionaries and other "officious individuals" had been using all sorts of influence to dissuade the Oneidas from giving up their present possessions, and as a consequence the Oneidas were not much inclined to listen to any suggestions about removing to the west. He claimed to have overcome some of the Oneidas resistance to removing to the west but not their repugnance to the Arkansas River area as a future residence. He then mentioned one Reverend Williams, an Indian with an English education, who was then residing with the Oneidas and who had visited Ogden on his way to the St. Regis village and professed himself to be favorable to a removal of the Indians west, but not to the Arkansas River area, which he felt was too far south. Williams suggested lands in the vicinity of the Fox River in what is now Wisconsin and which ran through Winnebago and Menominee country on the west side of Lake Michigan. Ogden said that if this or any other country in that area, occupied by tribes with whom the United States was about to hold a treaty would be suitable for the Six Nations, Ogden would appreciate it if Calhoun would let Governor Cass know about it and invite the Six Nations to participate in any negotiations. Ogden then stated that he knew several white people had already made settlements under contract with the Senecas on some of their reservation land, and that the Indians were in the habit of selling to whites, timber and wood for charcoal and for fuel,

dealings which Ogden was quick to point out were in direct violation of the 1802 Trade and Intercourse Act. He suggested that the Federal Government do something about these "officious" individuals.

On August 19, 1818, Secretary of War Calhoun responded to David Ogden, commiserating with him over the fact that officious and designing men had been inducing the Six Nations to hesitate about removing west. He again recommended the Arkansas River area as a good place for the Indians to remove to and said that such a move would certainly be in the best interest of the United States. He said the the reputation of the Arkansas River area as unhealthy was erroneous. for, in fact, no place could be more healthy. He stated, however, that if the Six Nations persisted in their refusal to remove to that area, then he would see to it that Governor Cass consulted with the Indians regarding the Fox River location, and would see whether or not land could be sold to the Six Nations by the Menominees and the Winnebagos.

On August 24, 1818, Robert Troup, another partner in the Ogden Land Company, wrote to Federal Agent Jasper Parrish stating that Thomas Ogden, a brother of David Ogden, had written to Troup to tell him that a general meeting of the Indians at Geneva had been abandoned. He urged Parrish that it was necessary to be extremely discrete concerning the plans of the Ogden Land Company and other New York gentlemen for the acquisition of the Six Nations land until the Six Nations had actually agreed to go west and had accepted a western grant of land. He reminded Parrish that the Federal Government did not want to settle the Indians in Ohio, Illinois, or Indiana and therefore, if the Indians continued to reject the Arkansas River area, it would be prudent to persuade them to accept some tract that would not be contrary to the wishes of the Federal Government, as expressed by Secretary

of War, Calhoun. He then suggested an area in the Michigan Territory in the neighborhood of Green Bay, Wisconsin, as one that might be agreeable to all parties. He mentioned that a general council of the Indians was planned for September, at which he assumed that Parrish would be present.

In September of 1818, a general council of the Six Nations decided to remain for the present on their reservations, as Jasper Parrish informed Secretary Calhoun on September 23, 1818. In November of the same year, the Oneidas wrote a memorial to President Monroe explaining their position, in pertinent part, as follows:

. . . after the peace your petitioners settled in tranquility under the government & protection of the United States - on the lands reserved by them in the State of New York - where your petitioners have contentedly resided until withing a few years past - during which latter time much pains has [sic] been taken by sundry individuals to poison the minds of your children, and to make them discontented with their present residence and desirous of removal to the lands of their brethren [sic] in the west - that under the influence of their insinuations this nation in conjunction with the other nations of the confederacy did sign a memorial to you our great father praying the sanction of government to any donation of land our brethren [sic] of the west might make to us - but your petitioners assented to the said memorial, not intending or understanding that they had in any way committed themselves as to the time they might elect to remove to the west - for your pretitioners considered the western lands more as a retreat for their children than as a present residence for themselves.

. . . Your petitioners have sold to the State of New York a great portion of their reservation

. . . We are given to understand (we believe untruly) that the government of the United States has determined on our removal from our present abodes whether we are willing or not -

Now therefore great & much respected father we your humble & dependent children intreat that you will not permit any steps to be taken for our immediate removal without our full and explicit assent to that effect. And also that no person be importuning us on that subject -

50. New York State Concern over Removal of the Six Nations. In a report on Indian Affairs in the New York assembly, dated March 4, 1819, there is contained the number of Indian tribes in New York State, the tenure by which they hold their land, the state of cultivation of the land and the manner in which the Indians support themselves. It was noted that the Oneida Indians were reported to be about 1,031 persons holding some 20,000 acres of land worth on the average at least \$6.00 an acre exempt from taxes. The report stated that it was the belief of the writer that land at Onondaga, Oneida, Stockbridge, and St. Regis, "are vested in this state" and that the other lands are vested in the United States, all subject to the right of possession by those Indians during their residence on the land. The report recommends the desirability of having these Indians removed from the state.

In a memorandum dated March 17, 1819, by David Ogden regarding the New York Indians, he expresses his opinion that the fee or preemptive rights of the four tribes mentioned above is vested in the State of New York, and that several tracts on which the Senecas lived derived their title from Massachusetts. He referred to a report on Indian Affairs made to the United States Congress regarding Indians living near white settlements, and those who lived far from white settlements and stated that New York Indians fell within the first class. He said that the Secretary of War had recommended that the New York Indians be removed to the west. Ogden admitted that securing the lands legally would probably mean dealing with the United States Government, and he mentioned in particular the Senecas and the

Oneidas who "have treaties with the United States," and that they, "in common with other independent tribes are subject in all matters of trade and intercourse to their [United States] regulations". He stated that the negotiation of any treaty or arrangement in connection with the state's securing the Indians' land was within the power of the President of the United States, but as a matter of public concern connected with the interest of New York State, "it cannot be doubted that he will be at all times inclined to give due effect to its [New York State's] views and wishes."

51. Renewed Efforts at Removal, Government Knowledge and Participation

Morris Miller was appointed a United States agent to attend treaty negotiations between the Seneca Nation and the Ogden Land Company. On July 25, 1819, Morris wrote the Secretary of War Calhoun mentioning his commission from the President, dated March 6, 1819, to attend the treaty negotiations. He mentioned that the Indians had gathered on July 5 some five miles from Buffalo and that Federal sub-agent Parrish had acted as an interpreter. Nathaniel Gorham from Massachusetts (of Phelps-Gorham purchase fame) attended along with David Ogden of the Ogden Land Company and both addressed the Indians. The Indians were urged to sell part of their land and to concentrate in a smaller place or to be moved entirely to the west. Chief Red Jacket on behalf of the Seneca Nation rejected both propositions and the tribe refused to sell any of its lands.

In December 1819, Secretary of War Calhoun was informed by David A. Ogden that Jedidiah Morse, a well-known minister and geographer, was advocating a policy of improving the civilization of the Six Nations by removing them to the west. Ogden wrote Calhoun that:

It is his [Morse's] intention to be at the Meeting of [the New York State] Legislature early the next month to obtain a Law authorizing the Executive of this State, to co-operate with that of the United States, in adopting such measures as may promote his Benevolent views; he then proposes visiting Washington to develope [sic] his plan and to solicit the aid & patronage of the General Government.

Morse did go to Washington in February in 1820 and discussed his plans with both Calhoun and President James Monroe. He was subsequently commissioned by the Secretary of War to visit various tribes in the Michigan Territory, to report on conditions among them and to recommend measures for their civilization and improvement. Among the purposes for which Morse made this trip was to explore the possibility of securing lands in the Michigan Territory to which the Six Nations might remove.

In January of 1820, Eleazer Williams, a St. Regis religious teacher of mixed ancestry who lived with the Oneidas and Stockbridges, went to Washington as representative of the Six Nations council to discuss removal with representatives of the War Department. Williams was authorized and was provided with funds by the War Department to assemble a delegation of

Six Nations Indians.

. . . to explore certain parts of the North Western territory, and to make arrangements with the Indians residing there, for a portion of their Country to be hereafter inhabited by such of the Six Nations as may choose to emigrate thither.

This trip, which Secretary of War Calhoun informed Governor Lewis Cass of the Michigan Territory was made with the approbation of President Monroe, also took place during the summer of 1820. Williams' party, however, went only as far as Detroit on their way to Green Bay, Wisconsin. At Detroit they learned that the lands near Green Bay which they desired to inspect had recently been ceded to the United States by the Menominee Indians. This treaty, however, was never sent to the Senate for ratification because, according to Secretary Calhoun, it was made by the United States Agent at Green Bay without proper authority.

In April of 1821, Calhoun wrote to the Six Nations explaining to them that the treaty was a nullity and expressing his pleasure that the Six Nations' representatives intended to revisit the area of Green Bay during the summer of 1821. He indicated that they would be given ". . . the civilities of the officers of Government and the necessary supplies on your journey . . ." but that the Government could not grant them any funds.

Shortly before he communicated with the Six Nations, Secretary Calhoun had written as follows to Governor Cass:

The President did not think it necessary to lay the treaty made by Col. Bowyer with the Menomeenee Indians before the Senate, which leaves the country ceded by the treaty precisely in the same situation it was before it was made. It is proper that this should be early communicated to the Indians concerned, as the Stockbridge Indians, who now reside in New York, contemplate emigrating to the neighborhood of Green Bay, and with that view intend to send, in the course of the Spring or Summer, a deputation to explore the country and make such arrangements with the Indians claiming it as may be necessary.

On May 14, 1821, General Peter B. Porter, a partner in the Ogden Land Company and later to become Secretary of War of the United States, wrote to Robert L. Troup, another partner in the Ogden Land Company, stating that a Mr. Grieg of Canandaigua, New York, passed through Geneva a few days before on his way to New York City, and stated that Jasper Parrish had asked him to inform General Porter that the Indians expected to meet in council in Buffalo from the 28th of May to the 5th of June, and that Parrish thought the council would present the Ogden Land Company with a good opportunity to apply to the Indians to give their consent "to our proposed survey". Porter said that he was sure the "trustees" would cheerfully consent to pay Mr. Parrish a "douceur" for his good offices in case the Indians consent should be obtained. A "douceur" means money given as a tip, gratuity, or a bribe, and it is quite clear that Troup was being told that he should attempt to bribe Parrish if that should be necessary.

52. Communications between the Stockbridges and the United States.

On June 9, 1821, the Stockbridge Chief, Solomon Hendricks, wrote to Secretary Calhoun, in pertinent part, as follows:

I have been requested by my Chiefs and Headmen to write a few lines unto you, and to inform you that my Nation have agreed to send at least four of our men to go to Green Bay before this month will be expired with a view (if possible) to procure or obtain another fine place in that country for our nation,

We were informed at Albany that the Legislature of this State had passed a law, granting our Nation One Thousand dollars of the principal of the money remaining there belonging to us by reason of lands sold to the State a few years ago. As we had petitioned to the Legislature for this money to defray the expenses of our said delegates to Green Bay. . . .

I have lately recd. the copy of the act passed by the Legislature last Spring relative to the \$1,000 [sic], wherein we were extremely disappointed to find it had passed in such a manner that we cannot obtain any part of it for this expedition unless our whole tribe were actually to remove.

It would be ridiculous in the highest degree for our Nation to emigrate to other country before we obtained a place to remove to, which is not the case at present.

53. Acquisition by Six Nations of Wisconsin Lands. On October 22, 1821, Governor Cass wrote Secretary of War Calhoun advising him that the Wisconsin tribes at Green Bay and the Williams mission had agreed upon a cession of lands to the Six Nations and that the Six Nations would gradually remove to Green Bay. Calhoun wrote Cass on November 22, 1821, that this treaty between the Wisconsin tribes and the Six Nations had been approved by the President. On the same date, Calhoun wrote to Stockbridge Chief Solomon Hendricks congratulating Hendricks on his services in concluding a treaty with the Wisconsin tribes and informing Hendricks that the President had ratified the treaty.

Dissatisfaction arose among the Six Nations regarding the size of the cession, necessitating a third expedition to Green Bay in December, 1822,

led by Williams. A new treaty was negotiated but the extent of lands ceded thereunder was not resolved until late in 1823 when President Monroe agreed to ratify the treaty.

54. The Oneida Protest Efforts to Make Them Move From New York. In August of 1821, the Oneida Chiefs and Headmen wrote to President Monroe stating that they had met in council and appointed delegates to go and see the President, choosing this means because their recent letters had been unanswered. They said that, "there is business going on without our consent." They then told the President about the Reverend Eleazer Williams, their missionary, and his party who had gone to Green Bay Wisconsin to obtain land from the western Indians for the Oneidas to move on to. They expressed outrage and confusion that their minister should plan to "get us from our land" and to have "us settle among the wild Indians of the west." They said they would not go west. "Our reservation is already diminished to a very small place; but we calculate to keep what we have got, and we think much of it, and intend that it should go down to generations after us." They begged the President to pay no heed to Mr. Williams and his party's representations. "He has seduced away some of our young men, but he is not authorized by our chiefs or warriors." The Chief said he felt Williams was actuated by selfish motives, i.e., that he was getting something out of this transaction for himself. Mentioning how small their reservations in New York had now become, the Oneidas recalled their close and friendly relations with the President and the United States Government from very early times, including the Revolutionary War, when they fought on the side of the colonies. They said they would submit these proceedings

"to our good friend Captain Parrish, Indian Agent, for his approbation." The Oneidas were obviously unaware that Parrish was in the pay of the Ogden Land Company.

On September 27, 1821, Secretary of War Calhoun wrote to the Reverend Brown, a missionary to the Oneidas, stating that he was sorry that neither he nor the President were in Washington when the Oneida delegation had come to see them, and he noted that he had received the memorial sent to them by Parrish in August. Also, Calhoun said he would have advised them not to come to Washington and save themselves the expense as they could have communicated through their agent, Parrish. He assured them that the Government would never permit the Oneidas to be deprived of their land without their consent, but that he felt that it would be to their advantage to remove beyond the white settlements and that this was the reason the deputation of the Six Nations with the Reverend Williams had been allowed to visit the western Indians at Green Bay, Wisconsin. The Secretary assured the Oneidas that the Six Nations would not be forced to go west unless they wished to do so.

On January 22, 1822, the Oneida Chief wrote to President Monroe complaining about the manipulations being indulged in by the Reverend Williams and the Ogden Land Company to try to persuade the Oneidas to emigrate to Wisconsin. The Chief called particular attention to Reverend Williams' "fraudulent designs" and said that they had dismissed him from their midst. They advised the President that Williams was not descended from the Oneidas, but from the St. Regis tribe and that he did not represent the Oneida Nation. They warned the President that Williams and another

Indian from the Oneidas might visit the President in a few days, but told him the two men were not authorized to do business in the name of the Oneida Nation. They then said that there were a few individuals in the Oneida tribe who had been bribed by Williams and who were united with him, but that the whole scheme was conceived by a combination of speculators under the name of the Ogden Company "whose sole object is to get the Indians away from their land." They said that Mr. Williams was a tool of that company. The Oneida Chief further said that the Stockbridge Indians were apparently willing to go west, but that they had no authority over or connection with the Oneida Nation. They reminded the President that at the urging of the United States the Oneidas had for a long time been engaged in the art of cultivating their land and had established a religious community to instruct their young men in the useful mechanical arts and also had founded a school for their education. They stated, "if we leave this place all this will be expended for the privilege of hunting and fishing." They then said that they had found out that Captain Parrish was deep in the plans to remove the Oneidas from their lands, and had advised the Indians at a council held in Buffalo the previous fall to go west and to send a thousand dollars of the property they had received in clothing from the United States as annuities to the western Indians to pay for land they did not wish to go to.

55. Further Statement of Federal Policy on Removal of New York Indians.

Not all of the New York Indians were willing to remove to Wisconsin. This was particularly true in the case of the Oneida Indians. Thomas Ogden of the Ogden Land Company wrote to the Secretary of War in August of 1823,

telling him of the dissatisfaction of the Indians with the size of the tract of land which had been purchased from the Menominees and the Winnebagos in Wisconsin and stating that one of the two main factions of the Oneida Nation were adverse to moving from their New York Reservation. He reminded the Secretary that the Ogden Land Company had the preemptive right in much of the Six Nations' reservation land and that company had always been active in promoting the negotiations in the Michigan Territory and in persuading the New York Indians to remove thence. He noted that the Christian Party in the Oneida Nation had a strong disposition to accommodate themselves to the views and wishes of the Federal Government but they were confronted by the numerical superiority of their opponents in the tribe who were acting under the influence of "an unprincipled and contumacious leader openly opposing every effort to civilize and instruct his countrymen."

On April 20, 1824, Commissioner of Indian Affairs, Thomas McKenney wrote to the chiefs of the Oneidas, Onondagas and Senecas encouraging them to go west but assuring them that they would not be forced out of New York State by the Federal Government. In reply to the complaint made the previous year by the Oneidas about Sub-agent Parrish and the Reverend Williams, the Commissioner said that he had referred the complaint to General Porter who had found that the charges were not well founded (Porter was a partner in the Ogden Land Company and became Secretary of War in 1828). McKenney assured the Indians that the Federal Government felt they would be far better off in Wisconsin but that no force would be applied to get them to leave their New York lands.

On January 24, 1825, Secretary of War Calhoun wrote to President Monroe enclosing a report of Commissioner of Indian Affairs McKenny, containing information regarding the Indians who now remained within the different states and territories, the number of Indians, the quantity of land claimed by them, the appropriation of money necessary to commence the work of moving the Indians west of the Mississippi and the fact that the United States faced considerable amount of trouble in removing those Indians unless they had the help of sober and intelligent members of the Indian tribes in the eastern states and some firm policy of dealing fairly with them. On January 27, 1825 the President sent a message to Congress regarding the removal of the Indians from their reservations in the several states and territories to areas lying west and north thereof. He said that such removal should be done in a way to promote the interest and happiness of the Indians, and he recommended that the Congress consider establishing a central government for all of the Indians and a suitable place to collect them all together where they could have the protection and help of the Federal Government.

On February 11, 1825, Soloman Hendricks wrote to the Secretary of War regarding the removal of the Indians to Green Bay, Wisconsin. He advised Calhoun that he had been appointed by the Indians to present a petition to the New York State Legislature asking that the Indians be paid the full value of the lands they owned in New York whenever they were ready to move to Green Bay. He stated that the State had only given them \$2.00 an acre for their land. He said that a bill to buy the land was presently before the New York State Assembly and that he was sure it would pass. Hendricks also advised Calhoun that the Stockbridge Indians were making plans

to move to Green Bay and that they were selling their remaining lands in New York to the State of New York.

On November 21, 1825, the Stockbridge Indians advised Governor Cass that they were dissolving their tribal authority in New York and reestablishing it in Green Bay.

On January 15, 1827, Federal Sub-agent Parrish wrote to Commissioner McKenney giving him the required information regarding the Nations of Indians still in New York State and telling him that the Oneida Nation had sold a part of their lands to New York State in the preceding year. He reported that the Indian reservations were now surrounded by whites on all sides and that many depredations, thefts, and trespasses were being committed by both parties but more frequently by the whites against the Indians. He reported on the general progress being made by the Indians in education, agriculture, etc. He also reported on the decrease in the numbers living on the reservations, mentioning particularly the Oneidas, some of them already having gone west to Green Bay, Wisconsin. Parrish also reported that the Seneca Nation had sold 5 small reservations on the Genesee River and part of three other reservations to the owners of the preemptive rights in that land. This took place in September of 1826 and the total acreage sold was reported to be 87,526 acres. Parrish's reference to the Oneida's sales to the State of New York had to do with the Treaty of February 1, 1826 between the Second Christian Party and the State of New York.

On February 7, 1827, Indian Agent Barbour wrote to Governor DeWitt Clinton of New York stating that he would inquire into the alleged inequities in the distribution of New York State annuities by Federal Sub-agent Jasper

Parrish, to the Stockbridge Indians in Michigan. Federal Indian agents were still distributing annuities under New York State treaties with the New York Indians.

On July 7, 1827, Federal Sub-Agent Parrish wrote to the Secretary of War Barbour stating that he had received Barbour's letter of June 26, enclosing a memorial from Red Jacket on the subject of the treaty concluded in the summer of 1826 between the Seneca Nation of Indians and "the owners of the preemptive right". Parrish had apparently been accused by Red Jacket of having told the Indians that if they did not sell their land to the "owners of the preemptive right" who were the people involved in the Ogden Land Company, that they would be in serious trouble. Parrish denied these acquisitions and said that he merely acted as an interpreter at the treaty proceedings between New York and the Seneca Indians. He stated that he had only been there to distribute United States annuity good to the Indians and had been asked by the owners of the preemptive right to act as an interpreter. He expressed the opinion that Red Jacket and other Senecas were opposed to the sale of their lands because of the interference of certain white people who were residing in the neighborhood and who had reasons of their own to set the Indians against agent Parrish and have him discharged from his position with the Federal Government.

On October 16, 1827, Mr. Troup of the Ogden Land Company wrote to the Secretary of War, Barbour, mentioning the fact that his company held the preemptive title to the Seneca lands under a convention with the State of Massachusetts; that the Oneidas and other Indians had sold a large portion of their lands to New York State during the past year and were intending to

go west to the Fox River country recently purchased from the Menominee and Winnebago Indians. He stated that he had discovered that the United States had purchased some of that same land from the Menominees and thus were thwarting all plans for the removal of the New York Indians, and that the New York Indians wished to see the President about this matter. The letter was signed by Troup, Ogden, and Rogers, all partners in the Ogden Land Company.

On December 14, 1827, Commissioner McKenney wrote to Mr. Troup expressing the Federal Government's support for the removal of the Six Nations to a new home in the Green Bay area, and reiterating his belief that such a move would enure to their benefit. Apparently the Menominee and Winnebago Indians had not understood exactly how much land they had ceded to the New York Indians and wished to call the whole deal off and throw the Six Nations out of their country. McKenney assured the Ogden Land Company that it was aware of the great interest that company had in assuring that the Six Nations got clear title to the land in Wisconsin so that those who moved there might safely stay in Wisconsin and that others might be persuaded to follow them. McKenney wrote similar letters to Thomas Ogden on January 2, 1828, and also on January 15, 1828, assuring Mr. Ogden that it was the intention of the United States Government to rid New York of its Indians and move them to the Green Bay area as soon as possible.

On February 26, 1829, Peter B. Porter, who was now Secretary of War and still a partner in the Ogden Land Company appointed Nathan Sargeant as sub-agent at Green Bay with responsibility for the New York Indians living in that area.

On June 4, 1829, Secretary of War John Eaton wrote to Sub-Agent Jasper

Parrish in answer to Parrish's letter of April 13, 1829. He told Parrish that while the United States Government felt it to be in the best interest of the New York Indians to leave the state and settle in Green Bay, there were no means at the disposal of the Department to aid them, and that they should be told that when they got to Green Bay they could then place themselves under the protection of the United States and under laws made for the government of Indian affairs. He stated: "it is presumed since New York is a State, is believed to be particularly interested in the reversion title to all the Indian lands within it, except those owned by the Senecas [whose land preemption rights New York State had contracted away to Massachusetts under a 1786 treaty or convention between the two states] it might promote the object of emigration were you to submit the intention of the Munsees and Stockbridge Indians, and their want of means to enable them to move, to the Executive of the State [New York State]". In this letter the Federal Government practically abdicated its duty to the New York State Indians to the State of New York.

On December 23, 1829, Thomas Ogden of the Ogden Land Company wrote to Commissioner of Indian Affairs, McKenney, advising him that the Oneida Nation had sold a portion of their land to the State of New York in the expectation of moving to Green Bay. This letter refers to the treaty of October 8, 1829, between the First Christian Party and New York State. He urged that the Government pledge regarding the establishment of a reservation for the Oneidas at Green Bay should be redeemed because the

Indians who were going there constituted a considerable portion of the Oneida Indians remaining in the State of New York, and that the recent sale to the State was made with an express reference to their removal to Green Bay. Ogden then went on to expound his views on the right of the states to extend the operation of their laws over the Indian tribes within their borders, notwithstanding the views of William Penn to the contrary. The Society of Friends had taken a strong position on the illegality on the sales to the states by the Indian tribes of Indian lands without the sanction of the Federal Government. Ogden stated that since no new state could be created within the jurisdiction of an old state then the Federal Government under its treaty making power could not create or guarantee the existence of an Indian sovereignty within the limits of a state without the consent of that state. He was clearly urging the legality of the New York Treaties with the Six Nations. He spoke disparagingly of the "Georgia business" and the fact that people with more zeal than knowledge seemed to imagine that nothing more was necessary to reclaim savages from their state of ignorance and barbarism than to preach to them the doctrines of Christianity.

On February 13, 1830, Secretary of War Eaton wrote to John Bell, Chairman of the House Committee on Indian Affairs, defending the removal policy of the Federal Government and the resettling of the eastern Indians in the west.

Secretary Eaton referred to the conflicting opinions concerning federal and state control over Indians residing within the borders of particular states and stated that in his opinion denying the states the right to deal with the Indians within their border was in effect a denial of that particular state's sovereignty. He described how the numerous tribes of Rhode Island and Connecticut had become civilized, had schools and villages and churches but were becoming reduced to a pitifully few number and that the same was true in New York State. He stated that the time for action had arrived when the Indians should be made to understand that their true interest lay in removing to the west and that their compacts "called treaties and upon which they rely, are of no sufficiency against the sovereignty and power of a state." He stated that he felt the Indians must be persuaded to leave the state and go where the federal government could truly and legally care for them. On March 8, 1830, Commissioner McKenney wrote to Chairman Bell stating that about five thousand Indians in New York would be moving to Green Bay, Wisconsin.

On March 25, 1830, Superintendent Ingersoll wrote to Commissioner McKenney reporting that the Orchard party of the Oneida Nation was planning to sell its land and if McKenney could offer sufficient inducements Ingersoll believed all the Oneidas would ultimately sell their lands and go to Wisconsin.

On October 18, 1831 Messrs. Ogden and Troupe of the Ogden Land Company wrote to Commissioner of Indian Affairs McKenney concerning the still unsettled claims of the New York Indians growing out of their purchases of land at Green Bay, Wisconsin. The writers were very annoyed to have learned from the

newspapers that the subagent from the Green Bay area was going to Washington with the Menominee Indians and the New York Indians to adjust their conflicting claims to the Green Bay lands and then when Mr. Ogden went to Washington to help out he was thoroughly snubbed. Ogden expressed his displeasure that the United States and the Menominee Indians had entered into a treaty leaving the Six Nations out of it. He recalled all the correspondence from Ogden and his partners to the Secretary of War in the past and the assurances he had received from the federal government that it would confirm the larger cession of land around Green Bay for the New York Indians. He said that the people of Buffalo and the Ogden Land Company which had preemption rights to much of the land being occupied by the New York Indians in New York State, were at a loss as to what to do. He reminded the Commissioner of the fact that New York State had often purchased land from the Six Nations and would wish to purchase more in the future but could not do so unless the government saw to it that the Six Nations had land on which they could settle in Wisconsin. Mr. Ogden said that if there was any hope of salvaging the Menominee-Six Nations land treaties he would be willing to go to Washington, D. C. and help out. On May 15, 1832 Secretary of War Louis Cass had regulations drawn up for the removal of the eastern tribes to the west.

On November 29, 1832 Secretary of War Lewis Cass wrote to Sub-Agent James Stryker in Buffalo stating that it had been suggested to the President of the United States that the New York Indians would be willing, upon reasonable terms, to remove to the Green Bay area and that such a move would be in the best interests to New York state and the Indians. He asked Stryker to

communicate this matter to the Indians and to learn upon what terms they could be persuaded to emigrate. He then stated as follows:

...as the right of reversion in their land is not vested in the United States, but in individuals holding under the State of New York, the government has no pecuniary interest in the accomplishment of this measure. Its only object is to improve the condition of the Indians.

He then stated that all the Indians could expect from the United States would be to receive the expense of removal and some arrangement for their temporary subsistence in the country where they would settle.

On May 6, 1833 Commissioner of Indian Affairs Herring wrote to Indian Sub-Agent Stryker in Buffalo ordering him to organize and conduct a party of Indians to Green Bay to survey the land and put them in the proper mood to resettle in Wisconsin.

On October 11, 1833, Commissioner Herring wrote to Indian agent Stryker stating that he regretted the Seneca Indians at their late council had declined to send any delegates to examine the land in the Menominee country. He assumed that they had been persuaded by "evil persons" to defy the wishes of the Federal Government. He said that if New York State "cannot be relieved of the entire Indian population" and if some of the tribes refused to be benefited by such removal the federal government should remove all that could be removed because such removal would benefit the state and the welfare of the Indians. He warned that if a delegation of New York Indians came to Washington the Federal Government would not pay their expenses unless they were prepared to negotiate a new treaty for their removal from New York. This latter warning was repeated in a letter of November 26, 1833 from Herring to Stryker.

Pursuant to the May 6, 1833, instructions from the Commissioner of Indian Affairs to Stryker, a council of the Indians was called in June to appoint a delegation to go to Green Bay but the council broke up in utter disagreement. Another council was called in September with Senecas, Tuscaroras and Oneidas, and Onondagas present. The Tuscaroras and the Christian Party of the Oneidas were ready to go to Green Bay but the Onondagas were not willing to go and the Senecas were still divided on the question. Nothing was accomplished at the council but Stryker reported that he still had hope.

In a letter of March 13, 1834, Sub-Agent Stryker advised Secretary Cass of the number of Oneidas and other Six Nation Indians in New York state and in the Green Bay area and in some cases he listed their land holdings. The list indicated that the Six Nations had been disposing of more of their land in New York state.

On July 17, 1834 Commissioner Herring wrote to Sub-Agent Stryker stating that the government had finally decided to finance a delegation of Seneca Indians to look at land west of the Mississippi River and that five chiefs and an interpreter and an agent would be going.

On January 10, 1837, federal Indian agent Schermerhorn wrote to Commissioner Harris stating that there were about 1200 Oneidas, 1/2 living in Green Bay and the remainder in New York state. In his report regarding the land still owned by the Oneidas in New York he stated "I am unable to give you the precise quantity of land title claimed by these tribes in New York respectively,"

On February 8, 1837 the New York state legislature passed a law enabling the First Christian Party to buy as much of the land belonging to the Second Christian party as was necessary to equalize their holdings. An Act of February 23, 1837, passed by the New York state legislature authorized

payment by the state to three chiefs of the Orchard Party of the Oneida Nation of approximately \$1,000 for the use of the Orchard Party. This was said to be the balance due them on account of the 1,000 acres of land sold to the State of New York by the Treaty of February 26, 1834. The law also authorized the governor of the State to enter into an agreement with the Orchard chiefs to obtain the release of one acre of their reservation which had been set aside in the 1834 Treaty for the building of a church or a school house and providing that the Oneidas might be paid any amount left over after the state sold the land and building.

On May 5, 1834 the New York State Legislature passed an act authorizing the treasurer of the state to pay annually to the First Christian Party of the Oneida Indians residing in New York an additional annuity for their removal expenses to Green Bay, Wisconsin.

56. The Treaty of Buffalo Creek. On January 15, 1838, the New York Indians entered into a treaty with the United States, (7 Stat. 550), ceding to the United States most of the lands which had been secured to them at Green Bay by the Treaty of February 8, 1831. In a report dated December 27, 1837, federal Indian agent Gillet advised the Commissioner of Indian Affairs G. A. Harris that the negotiation of the Treaty of Buffalo Creek had been fraught with many difficulties. He reported that the individual tribes comprising the Six Nations were autonomous and that there was little community of interest or any feeling that they needed to negotiate as a group. He reported certain data he had concerning each of the nations: the number of persons, the number of reservations and the size owned by each. He said that the Ogden Land Company owned preemption rights to the Tonawanda Reservation and part of the Seneca Reservation with the Indians having only

possessory rights. He stated that the political jurisdiction over the tribes was in the State of New York not in the federal government. He stated that in his opinion any treaty providing for the relinquishment of the Six Nation lands and their removal west would have to be sanctioned by the State of Massachusetts as well as by the United States government. He suggested that the Secretary of War act as a trustee for the Ogden Land Company and the Seneca Indians. With respect to the Oneida Indians who were partly in Madison County and partly in Oneida County, he stated that seven hundred Indians occupied five thousand acres and that the fee title to the land was in the State of New York so that they would have to make a treaty with the Governor of New York in order to relinquish their interests in those lands. He stated that the Oneidas should have another home before they sold their land to the Governor of New York State. He stated that some of the Oneidas were already in the Green Bay area and held their lands under the Menominee Treaty. He then mentioned the fact that missionaries to the Indians were advising them against ceding any of their lands and moving west.

A year earlier than the above mentioned report of Commissioner Gillet, Federal Agent Schermerhorn wrote to the Commissioner of Indian Affairs on December 28, 1836, regarding negotiations leading up to the Treaty of Duck Creek and his efforts to have the Six Nations exchange their Wisconsin lands at Green Bay for other lands in the west. He reviewed the history of the removal of the New York Indians to the Green Bay area and the apparent lack of good faith on the part of the United States when it purchased from the Menominees and Winnebagos part of the land which had been sold by those tribes to the New York Indians. He stated that in his

opinion the New York Indians were not being treated as well as other immigrant tribes: that the Delawares with only 850 members had been given 2,200,000 acres; that the Shawnees with 1,250 members had been given 1,600,000 acres; that the Senecas of Ohio with 450 members had received 100,000 acres, while the 5,000 New York Indians were only to receive 650,000 acres "notwithstanding they had ceded at different times to the several states and the United States a territory of greater extent than any other tribe ever possessed." He noted that the New York Indians had purchased with their own money the Green Bay area lands. He recommended that a larger tract be given to them in the Missouri Territory and noted that the 450,000 acres which they were ceding on the Fox River in Wisconsin was extremely valuable land to the United States. Ultimately under the Treaty of Buffalo Creek the Six Nations received 1,824,000 acres in Missouri. The treaty was not proclaimed until April 4, 1840, and in general provided for the sale of lands which the Six Nations had purchased in the Michigan Territory at an earlier date. The Treaty provided that those of the Six Nations who did not go to live on the lands in Missouri would forfeit any rights they might have had in the Michigan lands as well as any rights they might otherwise have had in the lands west of the Missouri River. In

Article 5 a special tract was set aside for the Oneida Indians. Article 13 of the Treaty provided that the United States would pay \$4,000.00 to Baptista Powlis, Chief of the First Christian Party residing at Oneida, New York, and a sum of \$2,000.00 to William Day, Chief of the Orchard Party, residing at Oneida, New York, for the expenses they had incurred and the services they had rendered in securing the Green Bay country for the Oneidas. That Article also provided that the two parties of Oneida Indians would remove to their new homes in Indian Territory as soon as they could make satisfactory arrangements with the Governor of New York state for the sale of their lands to the state.

57. Memorial to the President of the United States from the Religious Society of Friends. In 1795 the Religious Society of Friends formed a committee to assist in the gradual civilization and improvement of the Indians living in New York State. On March 12, 1838, that committee directed a memorial to the President of the United States and the Senate and House of Representatives in Washington. The memorial noted the history of the committee and stated that its purpose had been to persuade the Indian in New York state to settle down on farms and engage in agriculture instead of the hunt. The memorial noted that the civilizing purposes of the committee had received the full endorsement of President Washington and later of President Monroe who had suggested that the committee encourage the Indians to take their land in severalty rather than hold it in common because by holding it in severalty they might be better able to protect their improvement. The

committee noted that the Indians had been inspired by the guarantees given to them in the treaties they had negotiated with the United States and that they had complete confidence that the United States would adhere to the guarantees protecting them in their lands. The memorial then stated that in the midst of security created by the Indians' reliance on the fidelity of the government, the Treaty of Buffalo Creek had been negotiated with the sale of their land and that the Treaty was secured by the signatures of a small minority of the Indians involved and that many of those had been bribed. The committee advised the President and Congress that they were convinced that most of the Indians were united in their determination not abandoned their lands and remove from them and that they had no wish to live with the uncivilized Indians west of the Mississippi River. The committee also stated that the Indians had been told that their annuities would only be paid to those who moved west. The balance of the memorial begged the President and Congress to remember its obligations to the Six Nations and not to attempt to carry out the provisions of the Treaty which the Society of Friends considered to be improper and illegal.

On April 17, 1840, federal Indian agent Schermerhorn wrote to Secretary of War Poinsett describing the internal divisions of the Oneida Nation regarding migration west and advising him of the state of negotiations between the Oneida Nation and New York State over their lands. Schermerhorn identified the bearer of the letter as Baptista Powlis, an Oneida chief. He said that Powlis had been uniformly in favor of having the Oneida Indians move to the west and was on his way to Washington to discuss the non-payment of the Oneida annuities owed by the federal government. Schermerhorn advised the Secretary of War that the Oneidas had not received any of the \$4500.00

in annuities which they should have received during the previous year and an additional amount of money which was being carried to them by one of their chiefs had been lost when he was robbed on a steamboat called "The Swallow", a few nights previously. Schermerhorn reported that the Oneida chiefs were presently negotiating with the State of New York for the sale of their lands to the state and that they had been told by New York authorities that the necessary papers for them to sign would be ready when they went to Albany in the near future. Schermerhorn stated that it would take about three years to move the Oneidas from New York to Missouri and that none would be able to go in the current year, so that it would not be necessary for the federal government to make an appropriation for their removal in 1840. He reported that some of the Oneidas were thoroughly disgusted with the United States Government and were threatening to go to Canada to live. He stated that the Oneidas who were not going to Canada felt that those who did go should forfeit any annuities they might otherwise be entitled to under their treaty with the New York State or with the Federal Government.

Between 1840 and 1846 eight treaties were executed by the Oneida Nation and the State of New York. John F. Horner, former Secretary of the Michigan Territory, was advised by Solomon Davis in a letter dated July 12, 1844, that all of the Oneida Indians of the First Christian Party had ceded their lands to and had left the state of New York. The largest number of them resided in the Michigan Territory and some had gone to Canada. Horner noted that others of the Oneida Nation had gone to different places in the United States.

Conclusions of Law

Based upon the foregoing findings of fact and all the evidence of record the Commission concludes as a matter of law that:

1. The United States had actual knowledge of the Treaty of September 15, 1795.

2. The United States had actual knowledge of the treaties of June 1, 1798, and June 4, 1802, between New York State and the Oneida Nation of Indians, there having been representatives of the Federal Government present at both treaties.

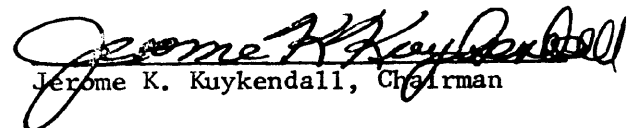
3. The United States is chargeable with constructive knowledge of each of the following treaties entered into between the Oneida Nation or parties of that nation, and the State of New York:

<u>Date of Treaty</u>	<u>Treaty Party</u>
March 21, 1805	Pagan Party and Christian Party dividing land; state not involved.
March 13, 1807	Christian Party
February 16, 1809	Christian Party
February 21, 1809	Pagan Party
March 3, 1810	Christian Party
February 27, 1811	Christian Party
March 3, 1815	Christian Party
March 27, 1817	Second Christian Party
August 26, 1824	First Christian Party
February 1, 1826	Second Christian Party
February 13, 1829	First Christian Party
October 8, 1829	First Christian Party
April 3, 1830	Orchard Party
February 26, 1834	Orchard Party
February 24, 1837	Orchard Party

4. In Article 13 of the Treaty of Buffalo Creek, January 15, 1838, 7 Stat. 550, the United States authorized future purchases of Oneida land by the State of New York and therefore the United States became chargeable with knowledge of the subsequent treaties between the Oneidas and the State of New York as follows:

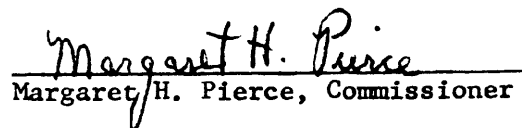
<u>Date of Treaty</u>	<u>Treaty Party</u>
June 19, 1840	First and Second Christian Parties
March 8, 1841	First and Second Christian Parties
March 13, 1841	Orchard Party
May 23, 1842	First and Second Christian Parties
May 23, 1842	Orchard Party
May 23, 1842	Orchard Party
June 25, 1842	Orchard Party
February 25, 1846	Oneida Nation

5. The defendant will be liable under the Indian Claims Commission Act and the Trade and Intercourse Act if the Oneida Indians did not receive conscionable consideration under any of the aforementioned treaties.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner