necessary, however, to analyze the reasons why these twenty-three allotments were useful only as a piece of property to be sold. The reasons for the failure to use them were:

Death of allottee	6
Occupation of allottee elsewhere	7
Incapacity of allottee	1
Female allottees who married other allottees	9
	23

It is thus seen that in seven out of the twenty-three cases the purpose of civilization was already, for one reason or another, carried out. The allottees were self-sustaining away from the reservation. No beneficial purpose would be served by calling them back from a useful life in an occupation which they had mastered, to take up the cultivation of the soil.

Seven other cases of death and incapacity defeated any purpose allotment may have had.

In the case of the nine girls and young women who received allotments which were never farmed by them, it is odd to speculate what idea could lie behind giving each of them twenty-six acres, in any case. It was surely not expected that they would grow up to farm the lands on their own account. Their obvious destiny was fulfilled; they married other allottees, and either lived upon their husbands' lands or went with their spouses to homes elsewhere.

Of all the twenty-three unused allotments, therefore, the reason for failure to use is one which would be reasonable in any case. None of the reasons bear any relation to

Indian life and character, but are such reasons as apply to all races.

VI. Disposition of Land.

Of these forty allotments, there remains in the hands of an original allottee a portion of one allotment. Half of another is held for an heir who is still a minor and unable to sell; his sister, who has attained her majority, has disposed of her half. The rest of the land has all been sold.

Prior to 1910, when an Indian allottee died, his heirs might be determined by the county. After the act of June 25, 1910, they were determined by the Secretary of the Interior. Some of the sales of land of deceased allottees were made under the first arrangement, some later. In the early years a fee patent for the land was frequently issued "to the heirs of John Doe." This was evidently accepted as negotiable and carried a title acceptable to the buyer. At least no record appears of any dispute arising after such a sale.

After the Burke Act of May, 1906, it was permitted to issue patents in fee for land to Indians who were adjudged competent to manage their own affairs. This was done at their request. Many of the Oneidas requested fee patents and received them under this act. The details of the sale are as follows:

Sold for the benefit of heirs	17
Sold under provisions of Burke Act	17
Sold after expiration of trust period in 1918	5
Unsold (widow living on it)	1 (part)
	40

VIII. Living Allottees.

Of the fourteen allottees still living, the youngest is forty-four years of age and the oldest seventy-seven. Not one of these is living on his own allotment, though some have done so in the past. Their present location follows:

Living on own land	0
Living on husband's land	1
Living on reservation (town of Oneida)	2
Living near (Green Bay, Wis.)	1
Employed in Indian Service	5
Living away from reservation (either self-supporting or living with children)	4
In a State Institution	1
	14

This brief summary seems to indicate that the Onneidas have passed through the allotment cycle and have for the most part taken their places in the world along with other people. There are some stories of failure and some of success; the later, however, predominate. In a more complete study I design to take up each case and ascertain as far as possible what benefit was derived from the use of the land, or possibly from its sale. It may prove impossible to learn whether allotment, or schools, or white contact, or development previous to all this, was the means of bringing about

the present status of the Oneidas. At least I shall try to learn as much as possible about the contributing factors, with the hope that some useful information may be brought out.

Mrs Seymour

May 7/34

Mr Collier
Dept of Interior
Indian affairs.
Washington D.C.

Dear Sir—

Since the return of the representatives of the Oneida tribe of Indians of Wisconsin there seems to be derived from your statement that the Oneida Indians are to receive back the lands owned by them on the present site of the old Oneida reservation. Mr Wm Okenadore & other have repeatedly told these Indians not to pay taxes & that the government is going to return all their old lands — I do not believe this to be the truth, and I think it is an injustice to the Oneida Indians for these so called representatives to misrepresent and hopelessly raise these poor Indians hopes on something that is entirely impossible & will never come to pass, Mr Okenadore goes amongst these Indians holding parties & collecting money for his expenses that seems entirely

there has never been any good consideration given these Indians, no doubt the conclusion has been reached that they are not under direct control of the govt and are therefor helplessly left to shift for themselves — I cannot see any help for them under the present bill in congress as they are one of the six Nations of New York which said bill excludes, unless an amendment has been attached — I hope Mr Collier that you will see my point and that you will see that these Indians must not be misled further — I will fight for them any time but it must be along honest truthful lines and I think if they knew the facts they would co-operate with the govt to any good cause that might be to the mutual benifit to all —

Yours Truly
Walker B Watkins
Route 2 Box 62

can understand just what the status of the present site of the old Oneida Reservation is, knowing that you have the interest of all Indians at heart, could you convey to these Indians just exactly - if they can recover their lands here at Oneida or not -

There is a small paper here that reaches most of the Oneidas called the De Pere Jornal Democrat, who I know would be very glad to publish any facts regarding the Oneidas - If you would be so kind as to furnish me with these facts, or the above paper, it would be a blessing to this forlorn community & a great help to the Oneida Indians and stop this idle talk - I do not believe that the true conditions of the Oneidas have ever been conveyed to you - I good to the Indians whatever, when in these times of depression their nickles & dimes should be used for other purposes - I do not believe that Mr Stenabore understands the communications he receives from Washington or if he does, he misquotes them on interpetation as he fully believes or leads these Indians to believe that the present reservation will be returned to them and at the present time the believes it to be a fact -

I am a white man married to an Indian girl and fully believe that the Oneida Indians have been sadly mistreated, not by the Govt but through partly their own folly and the cruel greed of white land sharks, I have been attempting to fight and help them the best I can, but I fully believe that they should not be told things that falsely raise their hopes - I think they should be told in a straight forward manner the real truth in plain words so that all

5413

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE COMMISSIONER OF INDIAN AFFAIRS
WASHINGTON, D. C.

INTERIOR DEPT.
RECEIVED
FEB 26 1934
OFFICE OF
THE SECRETARY.

Commr J C

February 24, 1934

MEMORANDUM FOR SECRETARY ICKES

The attached became mislaid and has just reached me. The answer to it is that the Oneidas were allotted, and through fee patenting and other allotment procedures they lost all of their land. And they are living practically unprotected and not in any real way under Federal jurisdiction. They are one of the groups that ought to be brought into new land as an organized community.

Commissioner

Attached:
Letter of January 31, 1934
from Walker B. Watkins,
West De Pere, Wis.

MAR 3 - 1934
10580

SPECIAL

2/3

From the Secretary

To: Commissioner Collier

What is the answer to this.

Oneida Nation of Wisconsin
Division of Land Management
P.O. Box 365 • Oneida, Wisconsin 54155
• Office Locations •

Administration
470 Airport Drive
Oneida, WI 54155
(920) 869-1690
(920) 869-1689 Fax
(800) 684-1697 Toll Free

Loan Department
2555 S. Packerland Drive
Green Bay, WI 54313
(920) 490-2090
(920) 497-5854 Fax
(800) 236-2214 Toll Free

Register of Deeds
703 Packerland Drive
Green Bay, WI 54303
(920) 490-2440
(920) 490-2444 Fax
(800) 684-1697 Toll Free

August 13, 2001

Mr. Robert Jaeger, Superintendent
Great Lakes Agency
Bureau of Indian Affairs
PO Box 273
Ashland, Wisconsin 54806-0273

Certified # 7000 1670 0006 04191806

RE: Request for Title Opinion on Fox Valley Western (FVW) Railroad Right-of-way

Dear Superintendent Jaeger:

The Land Management staff attorney, as well as other tribal departments, have been working on the abandonment of the railroad right-of-way through the Oneida Reservation. On March 1, 2001 the Surface Transportation Board issued an order (Attachment 1) which requires that FVW work with the Oneida Cultural Heritage Department to clear up concerns expressed about artifacts and cultural sites along the tracks. We are also in the middle of a 180 day period when FVW may negotiate with a local government or group for trail use/rail banking under the federal Rails-To-Trails Act. The Wisconsin DNR has requested to negotiate, but recent communication with FVW indicates they may ask for an extension on this 180 day period. The Oneida Nation indicated to the Surface Transportation Board that they did not want to negotiate for an interim trails use agreement, but supported the abandonment, and wanted the right-of-way to return to the owners.

The question of who owns the right-of-way has been a frequent question throughout this whole process. This question of ownership was presented to the Great Lakes Agency Superintendent in 1972, and was probably considered premature at that time (Attachment 2). Since the railroad abandonment issue is well upon us now, I am requesting that your office provide us with a Field Solicitor's opinion as to whether the right-of-way continues to be held by the United States, with Indian Title held by the Oneida Tribe. The following information has led our office to believe that a patent has never been issued for the railroad right-of-way.

1. In 1870 the Oneida chiefs signed an agreement to allow the railroad to run through the Oneida Reservation. In 1871 Congress authorized the same thing "in accordance with and subject to the conditions of an agreement made by the chiefs and headmen of the Oneida Tribe of Indians." Attorney Lokensgard, a member of the Oneida Law Office at the time, wrote an opinion on these documents dated March 17, 1998, and determined that they were probably easements that were granted to the railroad and did not include the fee title to the land. Attachment 3. At the time these right-of-way easements were approved, the land would have been held in "fee" by the

United States, with Indian title of possession and use held by the Oneida tribal government.

2. The impending allotment of the Oneida Reservation was the impetus for a survey of the entire reservation. The legal descriptions for each allotment were not changed until after fee patents were issued, and allottees could transfer all or part of their property. The fee patents from the U.S. government did not have the metes and bounds legal description on it, but used a general notation such as "Claim 177" as shown on the copy made of the patent, attachment 4. Our title searchers have hand copied many of the patents which they have found at the county Register of Deeds in the form being sent to you. In order to get a metes and bounds description of Claim 177, for example, we have to go to the survey notes, which for Claim 177 is attachment 5. In the metes and bounds description it says "This claim contained 52 acres of land exclusive of the Right-of-Way of the G.B., W. & St P. Ry."

3. The words "exclusive of" seems to separate the right-of-way from the allotment, so one conclusion is that it was not passed with the patent. Land Management staff attorney checked with the Brown County Surveyor who works extensively with the Oneida Reservation allotment field notes, about his interpretation of this wording. He took a further step and measured the entire boundary of allotments he was working on where the railroad right-of-way went through them. His response was that it appeared the railroad right-of-way was deducted from the final acreage of the allotment. The Brown County Surveyor further commented that the terminology in the description would indicate the right-of-way was excluded.. The Land Management Attorney has checked the survey notes of all the Indian Claims of the Oneida Reservation and found that each Indian Claim contains this exclusionary language of the railroad right-of-way, whenever it runs through the allotment.

Here is a summary of tribal concerns, as they relate to the title. If the railroad right-of-way land through the Oneida Reservation was never patented to anyone, does the title remain with the United States and the Oneida Tribe? If the title is still with the United States and the Oneida Tribe, how is later federal law regarding railroad right-of-ways interpreted to apply to this situation? In particular, does the Rails-to-Trails Act apply at all.

We look forward to hearing from you on this matter.

Sincerely,

Christine M. Doxtator

Christine M. Doxtator, Land Management Director

enclosures

cc: Rory Dilweg, Chief Counsel
Bill Gollnick, General Manager
Gerald Danforth, Tribal Chairman
Loretta R. Webster, Land Management Attorney

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

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE

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

P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040

July 19, 2005

Terrence Virden, Regional Director
BIA - Midwest Regional Office
One Federal Drive, Room 550
Minneapolis, MN 55111-4007

Return Receipt Requested
7003 1010 0005 4916 6380

Dear Mr. Terrence Virden,

The Oneida Tribe of Indians of Wisconsin (hereinafter "Oneida Tribe") submits this letter to inform the Bureau of Indian Affairs (hereinafter "BIA") of the existence of treaty-reserved trust land on the Oneida Reservation. This treaty-reserved trust land was subject to a railroad right-of-way. It is one hundred (100) feet wide and approximately twelve (12) miles long, and runs from the western boundary of the Oneida Reservation to the northeastern boundary (hereinafter "right-of-way land").

Introduction

The Oneida Reservation was established pursuant to the 1838 Treaty with the Oneida (hereinafter "Treaty") which reserved approximately 64,000 acres for the use and occupancy of the Oneida Tribe. In 1870, the Oneida Tribe and the Green Bay and Lake Pepin Railway Company (hereinafter "GB & LP") entered into an agreement granting GB & LP a right-of-way through the Oneida Reservation. In 1871, Congress approved the agreement between the Oneida Tribe and GB & LP. The right-of-way land was not allotted pursuant to the General Allotment Act, and pursuant to the Treaty, title to the right-of-way land remains with the Oneida Tribe. This letter outlines the history of the right-

of-way and serves to inform the BIA that the westernmost eleven miles of the right-of-way land no longer is subject to the railroad right-of-way. The BIA may want to consider updating its records to reflect the extinguishment of this right-of-way.

The Tribe hired Professor James W. Oberly to research these historical events and the tax rolls for the lands adjacent to the right-of-way land. Professor Oberly is a historian from the University of Wisconsin-Eau Claire History Department. He has extensive experience concerning Oneida history and congressional land policy, and has published numerous articles dealing with these topics. Professor Oberly produced two reports for the Oneida Tribe. In July, 2002, Professor Oberly delivered his first report entitled "Report on the History of Green Bay & Lake Pepin Railway Company's Right of Way Across the Oneida Indian Reservation, 1866-1876" (hereinafter "Oberly Report I," attached hereto as Attachment I). In January, 2003, Professor Oberly delivered his second report entitled "The Green Bay & Western Railroad's Right-of-way Across the Oneida Indian Reservation; Part Two: the Allotment Era and After, 1887-2002" (hereinafter "Oberly Report II," attached hereto as Attachment II). Professor Oberly's research confirmed that GB & LP and its successors held an easement over the right-of-way land and did not obtain a fee simple interest in the right-of-way land.

The Tribe also hired First American Corporation, Evans Title Division, to research the chain of title for the lands adjacent to the right-of-way land. First American Corporation is a commercial title insurance company with offices located in Green Bay, Wisconsin. In February, 2005, First American Corporation produced title reports for all parcels adjacent to the right-of-way land which are not owned by the Oneida Tribe (hereinafter "First American Title Reports," attached hereto as Attachment III). Included in the title reports are the original patent, the first recorded deed that contains a legal description, and a copy of the last recorded deed for each parcel. First American Corporation's findings demonstrate that the right-of-way land does not belong to the adjacent landowners and remains tribal trust land.

In 2003, the Oneida Tribe and Fox Valley & Western Ltd. (hereinafter "FVW"), a successor to GB

& LP, executed an Agreement and Mutual Release whereby FVW acknowledged that its interest in the right-of-way land was in the nature of an easement. FVW also compensated the Oneida Tribe for its past use of the right-of-way land.

History

The Oneida Reservation was established pursuant to the Treaty which stated, in part, "... there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual; and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay." (Treaty With the Oneida, 7 Stat. 566, February 3, 1838, attached hereto as Attachment IV). In the years immediately following ratification of the Treaty, approximately 64,000 acres located north and west of Green Bay, Wisconsin, were set aside for the use and occupancy of the Oneida Tribe.

In 1866, GB & LP began efforts to construct a railway from Green Bay through the Oneida Reservation and westward. (Oberly Report I, p.11, Attachment I). In 1869, GB & LP sought permission to construct the railway through the Oneida Reservation. Also in 1869, Indian Agent J.A. Manley wrote to Commissioner of Indian Affairs Ely S. Parker "in behalf" of GB & LP to offer support for the railroad construction in securing a right-of-way. Agent Manley's letter also informed Commissioner Parker that GB & LP already started construction of the railroad and entered the Oneida Reservation to survey the land. (Oberly Report I, pp. 14-15, Attachment I). In 1870, GB & LP lobbied Congress to pass legislation granting the company a right-of-way. Later that year, the Oneida Chiefs and GB & LP entered into an agreement which granted use of treaty-reserved trust lands to the railway company for the construction of a railroad across the Oneida Reservation (hereinafter "Right-of-Way Agreement," attached hereto as Attachment V). The following is the language of the Right-of-Way Agreement, in its entirety:

> Whereas the Green Bay & Lake Pepin Railway Company desire to run their proposed Railway across the Oneida Reservation in the State of Wisconsin:
>
> The undersigned the Chiefs of the Oneida Nation of Indians do hereby consent subject to the approval of the proper Indian Agent & of the Indian Commissioner or

other proper authorities of the Untied States, that the said Company may, by such route as its Directors may determine, and subject to the laws of the State of Wisconsin, the same as if the lands were owned by white persons, construct and operate their said Railway across said Reservation appropriating further uses thereof a strip of land one hundred feet wide and extending the whole length of such part of said Railway as will be within the limits of said Reservation.

Provided however, that damages to the property of said Indians, consequent when the introduction of said railway shall be appraised determined and recovered under and by virtue of the laws of the State of Wisconsin, as if the land belonged to White persons.

And provided also, that this consent shall not be construed to include lands for Depots or for other purposes than the road bed and tracks and usual rights of way of such railway.

The phrase "as if the lands were owned by white persons" demonstrates the Oneida Tribe retained ownership of the right-of-way land and did not transfer ownership of the right-of-way land to the railway company. Likewise, the grant of "further uses" of the right-of-way land demonstrates that the Oneida Tribe did not grant a fee simple interest to the railway company, only the right to use the land for railway purposes. After the Right-of-Way Agreement was signed, construction of the railroad proceeded rapidly. (Oberly Report I, p. 24, Attachment I).

In 1871, the United States Congress approved the use of the reservation land for a railroad right-of-way "in accordance with and subject to the conditions of" the Right-of-Way Agreement (hereinafter "1871 Congressional Act," March 3, 1871, attached hereto as Attachment VI). The 1871 Congressional Act provided, in its entirety:

March 3, 1871
Right of way across the Oneida reservation granted to the Green Bay and Lake Pepin Railroad Company.

CHAP. CXLII. - An Act granting the Right of Way to the Green Bay and Lake Pepin Railway Company for its Road across the Oneida Reservation, in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Green Bay and Lake Pepin Railway Company be, and is hereby authorized to build and maintain its railway across the Oneida

> Reservation, in the State of Wisconsin and to take sufficient land, not more than a strip one hundred feet in width, for the purposes of said railway, in accordance with and subject to the conditions of an agreement made by the chiefs and headmen of the Oneida Tribe of Indians, on the twenty-third day of May, eighteen hundred and seventy, approved by and on file with the Secretary of the Interior.
>
> APPROVED, March 3, 1871.

By 1871, construction of the railroad through the Oneida Reservation was complete. (Oberly Report I, p. 25, Attachment I).

Congress passed the (Dawes) General Allotment Act (hereinafter "Allotment Act") in 1887. The Allotment Act provided "for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes." The Allotment Act further provided, "the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or re-surveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon."

The Oneida Reservation was allotted in the 1890s pursuant to the Allotment Act. The original land surveys conducted pursuant to the Allotment Act typically excluded the right-of-way land. (*See* Oberly Report II, pp. 14-24, Attachment II). Indian Agents Dana Lamb and Charles Kelsey were among the surveyors responsible for surveying the Oneida Reservation. Their original survey book shows the Agents excluded the right-of-way land from some of the allotments, and failed to mention the right-of-way land with respect to others. The federal government also hired an additional Indian Agent, N.S. Boardman, to survey the Oneida Reservation and instructed Mr. Boardman to work with Agents Lamb and Kesely. In all surveys Boardman completed, he excluded the right-of-way land from the surveyed parcels. (*See* Oberly Report II, p. 24, Attachment II). Based upon the historical record, Professor Oberly concluded, "It is my opinion that Agents Lamb & Kesely meant to exclude

the Green Bay & Minnesota's right-of-way from parcels they allotted." (Oberly Report II, p. 20, Attachment II). Considering the right-of-way land was not included in the allotments, and no separate allotments were made for the land, the right-of-way land remained tribal trust land.

FVW continued to actively use the railway into the 1990s. In 2000, FVW notified the Tribe it was petitioning the Federal Surface Transportation Board for authority to abandon the railroad right-of-way. In 2003, the Oneida Tribe entered into an Agreement and Mutual Release with FVW (hereinafter "Agreement and Mutual Release," attached hereto as Attachment VII). Pursuant to the Agreement and Mutual Release, FVW acknowledged the Oneida Tribe granted FVW's predecessor a right-of-way through the reservation for construction and maintenance of a railroad. (Agreement and Mutual Release, Second Whereas Clause, Attachment VII). FVW also acknowledged that the "United States holds title to such land in trust for the Oneida Tribe's beneficial use and occupancy pursuant to the 1838 Treaty with the Oneida." (Agreement and Mutual Release, Fifth Whereas Clause, Attachment VII). Through the Agreement and Mutual Release, FVW agreed to consummate abandonment of the estimated eleven (11) westernmost miles of the railroad while preserving the right-of-way for the estimated one (1) easternmost mile. (Agreement and Mutual Release, ¶ 1, Attachment VII). FVW paid the Oneida Tribe $93,000 for the railway's past use of the right-of-way land. (Agreement and Mutual Release, ¶¶ 6,7, Attachment VII).

Title History

There are 97 parcels adjacent to the right-of-way land; of those, 29 are owned by the Oneida Tribe. Current legal descriptions for the adjacent parcels of land do not include the right-of-way land. All deeds referencing the right-of-way exclude the right-of-way land from the title. All those that do not reference the right-of-way provide simple legal descriptions referencing only the lot number, i.e. allotment parcel number, and one parcel merely identifies the quarter quarter section. (*See* First American Title Reports, Attachment III).

An additional source of the property's legal descriptions can be found on the tax rolls of the local municipalities. Professor Oberly researched historical tax assessments for the two municipalities

in which the right-of-way land is located, the Village of Hobart, located in Brown County, and the Town of Oneida, located in Outagamie County. (*See* Oberly Report II, pp. 28-37, Attachment II). (*See also* Municipal Boundaries Map, attached hereto as Attachment VIII; *and* Map of Former Right-of-Way, attached hereto as Attachment IX). According to the tax assessment rolls, the Village of Hobart did not and does not include the right-of-way land as taxable property of the adjacent land owners. Historically, the Town of Oneida did not explicitly exclude the right-of-way land from the tax roll legal descriptions. However, tax parcel maps prepared by Outagamie County for the tax year 2004 demonstrate that no parcels adjacent to the right-of-way land include the right-of-way land, even those parcels that have tax roll legal descriptions that do not explicitly exclude the right-of-way land. (Town of Oneida Tax Roll Legal Descriptions, attached hereto as Attachment X; Town of Oneida Tax Parcel Maps, attached hereto as Attachment XI). No current landowners in the Town of Oneida or the Village of Hobart are paying property taxes on the right-of-way land, and the Oneida Tribe does not pay property taxes on the right-of-way land.

Summary

The boundaries of the Oneida Reservation were created pursuant to the Treaty. In 1870, the Oneida Tribe entered into an agreement with a railway company for a right-of-way through the Oneida Reservation. In 1871, Congress ratified that agreement. In 1887 Congress passed the Allotment Act. Pursuant to the Allotment Act, the entire Oneida Reservation was allotted with the exception of the right-of-way land. In 2003, the railway company abandoned the railroad and entered into an agreement with the Tribe governing the terms of the abandonment. That agreement acknowledged the railway company's interest in the land was limited to a right-of-way and further acknowledged that title to the right-of-way land remained in trust for the Oneida Tribe pursuant to the Treaty. The original allotment surveys, the fee patents, and all the deeds in the chain of title for the adjacent land owners demonstrate that the right-of-way land was not allotted and remains treaty-reserved trust land. The BIA may want to consider updating its records to reflect the extinguishment of the right-of-way over this land.

Sincerely,

Cristina Danforth, Chairwoman
Oneida Tribe of Indians of Wisconsin

Attachments:

I. "Report on the History of Green Bay & Lake Pepin Railway Company's Right of Way Across the Oneida Indian Reservation, 1866-1876" by Professor James W. Oberly
II. "The Green Bay & Western Railroad's Right-of-way Across the Oneida Indian Reservation; Part Two: the Allotment Era and After, 1887-2002" by Professor James W. Oberly
III. Title Reports prepared by First American Corp. on parcels adjacent to railroad right-of-way land
IV. Treaty With the Oneida, 7 Stat. 566, February 3, 1838
V. 1870 Agreement between Oneida Chiefs and Lake Pepin Railway Co.
VI. Oneida Railroad Act of Congress - March 3, 1871
VII. Agreement and Mutual Release between Fox Valley & Western Ltd. and the Oneida Tribe
VIII. Map of Oneida Reservation Municipal Boundaries
IX. Map of Oneida Reservation with former railroad right-of-way
X. Town of Oneida Tax Roll Legal Descriptions, excluding Oneida Tribal Property
XI. Town of Oneida Tax Parcel Maps, excluding Oneida Tribal Property

cc: Oneida Business Committee (one copy of attachments submitted to Tribal Secretary)
Carl Artman, Chief Counsel
James R. Bittorf, Deputy Chief Counsel
Eleanora Smith, Interim Land Management Director

JO ANNE HOUSE
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL

ONEIDA LAW OFFICE

N7210 SEMINARY ROAD
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ONEIDA, WISCONSIN 54155

(920) 869-4327 FAX (920) 869-4065

ANDREW J. PYATSKOWIT
REBECCA M. WEBSTER
FRANCINE R. SKENANDORE
ROBERT W. ORCUTT

May 29, 2008

Angela Kelsey
US DOI - Solicitor's Office - DIA
Mail Stop 6513 - MIB
1849 C Street NW
Washington, DC 20240

Re: Tax Parcel and Allottee Maps and Chart

Dear Ms. Kelsey:

On Thursday April 24, 2008, we met at the Department of Interior offices in Washington, D.C., to discuss the trust status of a former railroad right-of-way traversing the Oneida Reservation. At that meeting, you requested several additional pieces of information pertaining to the tax parcels and their relation to the former allottees for property adjoining the former railroad right-of-way. In an effort to provide you with information pertaining to this issue, I am providing you with a chart and two wall-sized maps depicting parcels along the former railroad right-of-way. The enclosed chart and maps include the following information as it pertains to each parcel: 1) the tax parcel number; 2) the current owner; 3) the Section, Township and Range; 4) the allottee(s); and the allottee number(s). There is one map for the parcels located in Outagamie County and another map for the parcels located in Brown County.

I compiled this information from a variety of sources including: 1) Outagamie County on-line tax maps; 2) Outagamie County on-line tax rolls; 3) Outagamie County plat books; 4) Brown County on-line tax maps; 5) Brown County on-line tax rolls; 6) Brown County plat books; 7) Evans Title Company title searches; 8) historical wall-sized allotment map prepared by the Tribe's Geographic Land Information Department in 1995; 9) historical wall-sized allotment map of unknown origin or date; and 10) hand-drawn section maps stored at the Tribe's Division of Land Management.

Sincerely,

Rebecca M. Webster

Rebecca M. Webster
Staff Attorney

cc: Jennifer Spencer, Land Law Examiner, Bureau of Land Management
Gerald Danforth, Chairman, Oneida Tribe of Indians of Wisconsin
Kathy Hughes, Vice-Chairwoman, Oneida Tribe of Indians of Wisconsin
Bill Gollnick, Chief of Staff, Oneida Tribe of Indians of Wisconsin

UNITED STATES: DISTRICT COURT: EASTERN DISTRICT OF WISCONSIN.

- - - - - - - - - - - - - - - - - - - -

SAMSON STEVENS and others, acting for themselves as well as for and on behalf of the members of the Oneida Tribe of Indians in the State of Wisconsin,

Complainants,

-vs-

(Opinion filed November 3, 1933)

The COUNTY OF BROWN, the COUNTY OF OUTAGAMIE, the township of HOBART in the County of Brown and the township of ONEIDA in the County of Outagamie,

Defendants.

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It is believed that a brief statement of the grounds recognized upon the motion to dismiss will suffice.

The complainants commenced this action as a class, or rather as members and representatives of the Oneida Tribe of Indians in the State of Wisconsin, against the defendants, for the purpose of recovering taxes which had been levied and assessed on their lands and on the lands of other Oneida Indians since the organization of the Towns of Hobart and Oneida in the respective counties of Brown and Outagamie. The theory of the complaint is that when the original Oneida Reservation was granted to the Indians by the Government, the latter, by treaty, guaranteed to them the right of maintaining their own government, and that the Reservation was not to be made a part of any state - consequently the lands located on the Reservation were tax exempt. The plaintiffs also pray for an injunction against any further assessment, levy, or collection of taxes upon the lands.

The defendants have moved to dismiss on four grounds:

FIRST: That the complainants have not pursued the remedy outlined by Section 74.73 of the Statutes of Wisconsin.

SECOND:- That more than twenty years have elapsed since the creation of the towns of Oneida and Hobart without questioning the same by writ of certiorari, or by other appropriate proceedings as prescribed in the state statute.

THIRD:- That the Oneida Reservation was lawfully discontinued, the allotments made thereunder superseding the Indian treaty.

FOURTH:- That complainants are barred by laches from questioning the legality of the organization of the towns and the assumption of authority over the Oneida reservation.

If the third ground above is well assigned, it is believed there can be no doubt respecting the first and second grounds. Even if it be assumed that in a treaty with the Oneida Indians many years ago, language was used which supports the contention that there was a purpose to assure the Indians perpetual immunity against the incorporation of the lands into any state or governmental subdivision of a state, the uniform judicial recognition of the efficacy of the Dawes Act since its passage is entirely repugnant to the right of the Indians, after congressional action, to insist upon the treaty provision; and likewise against the existence of judicial power to enforce the treaty stipulation. The language in Lone Wolf against Hitchcock, 187 U.S., 553, dispenses with the necessity of any fur-

ther discussion. That is to say, the congressional power is recognized as "plenary", and not subject to review or control by the judicial department of the Government. While Indian tribes may have been parties to treaties, the plenary authority of Congress over the tribal relations of the Indians is deemed political, and its exercise, notwithstanding treaties, must be recognized by the courts for the reasons indicated in the Hitchcock case. Therefore, there is no escape from the proposition that the Government, in passing and applying the Dawes Act, b[illegible] conceived itself in duty bound to carry out its provisions in the interest of the tribe and its members. Plainly, this resulted in a discontinuance of the reservation, and a recognition of the power of the state to incorporate the lands in the towns in question. If that be true, then the state of Wisconsin, or its governmental subdivisions, could properly authorize and be authorized to proceed, and receive the protection of the state laws with respect to the kind and character of proceedings that might be instituted to question the organization of towns or other subdivisions; and to be bound by appropriate limitation acts with respect to the time within which such questions could be raised; and to provide with respect to the new, as well as of other towns and counties in the state, appropriate and exclusive remedies for recovery of taxes. Likewise all such acts must be deemed binding both on the National Government and on tribal members.

Therefore, when the Hitchcock and other cases referred to are accepted as definitely supporting the third ground assign-

ed, it seems to me to follow that the plaintiffs, in seeking to recover taxes, are bound by the state statute governing procedure and also limitation. Indeed, I feel that, with respect to the second ground either with or without the state statute respecting the manner in which legality of organization of a town may be tested, it can never be tested other than by a direct proceeding, and in no event by a mere action to recover taxes paid.

I have not considered the fourth ground assigned. The conclusion is that the motion to dismiss must be granted, and an order may be entered accordingly, with leave on the part of the plaintiffs to amend within twenty days, failing which, judgment may be entered dismissing the complaint.

District Judge

UNITED STATES DISTRICT COURT:

EASTERN DISTRICT OF WISCONSIN.

- oo - oo -- oo -- oo --oo

Samson Stevens et al,

Complainants,

-vs-

The County of Brown et al,

Defendants

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MEMORANDUM

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C

District Court, E.D. Wisconsin.
UNITED STATES
v.
HALL et al.
July 1, 1909.

On Demurrer to Indictment.

West Headnotes

Guardian and Ward 196 ⚿1

196 Guardian and Ward
196I Guardianship in General
196k1 k. The Relation in General. Most Cited Cases
"Guardianship" is a trust which is dual in its nature involving two distinct and separate functions, viz., the control of the person of the ward and the management of his estate.

Indians 209 ⚿321

209 Indians
209VIII Intoxicating Liquors
209k321 k. Introduction Into, or Possession In, Indian Country. Most Cited Cases
(Formerly 209k35)

Indians 209 ⚿323

209 Indians
209VIII Intoxicating Liquors
209k323 k. State or Tribal Regulation. Most Cited Cases
(Formerly 209k35)
Act Feb. 8, 1887, c. 119, § 6, 24Stat. 390, 25 U.S.C.A. § 349, provides that any Indian who adopts the habits of civilized life may become a citizen, and 24 Stat. 388, 25 U.S.C.A. § 331 et seq., declares that every allottee shall be subject to the laws of the state or territory. Held that, where an Indian reservation had been broken up and a large part of it was owned in trust by allottees, such allottees became citizens of the state, and were not subject to prosecution in the federal courts for carrying ardent spirits into the reservation in violation of Act Cong. Jan. 30, 1897, c. 109, 29 Stat. 506, 25 U.S.C.A. § 241; the regulation of the liquor traffic being within the exclusive jurisdiction of the state.

The defendants, who are Oneida Indians, are indicted under the law of 1897 (Act Jan. 30, 1897, c. 109, 29 Stat. 506), for carrying ardent spirits into the Indian Reservation. A demurrer has been interposed to the indictment. The defendants are themselves allottees, to each of whom a tract of land has been allotted, and to whom has been given by the government what is known as a trust patent, whose terms and legal effect are discussed in several of the cases cited in the opinion. It is conceded in argument that a large fraction of the Oneida Reservation is now owned and occupied by white men who have obtained title through the heirs at law of deceased allottees pursuant to an act of Congress. Act May 27, 1902, c. 888, 32 Stat. 245. It further appears by the statutes of the state that the former Oneida Reservation has been organized and divided into two townships- with provisions for local government.
***215** H. K. Butterfield, U.S. Dist. Atty., and E. J. Henning, for the United states.

Kittell & Burke, for defendants.

QUARLES, District Judge (after stating the facts as above).

The demurrer questions the jurisdiction of the government in the premises to enforce Act Jan. 30, 1897, c. 109, 29 Stat. 506. This is a serious and important question, which, for many reasons, ought to be speedily and finally settled.

The relation between the United States government and the Indians was settled by a learned and elaborate opinion by Mr. Justice Marshall in Cherokee

Nation v. Georgia, 5 Pet. 1, 8 L.Ed. 25, which opinion has been followed in many later cases. The United States, as in duty bound, assumed guardianship over the United States, as in duty inferior race, and as such has exercised all the functions of guardianship over them. It assumed personal control, and directed tribes to move west of the Mississippi river when their hunting grounds were obstacles in the way of advancing civilization. It corralled them upon reservations. Congress legislated to protect the Indian against the wiles of the white man as well as against his own appetite. Stringent laws were passed prohibiting the introduction of ardent spirits into the Indian country. For many years the tribes were recognized as possessing certain qualified sovereignty and capable of making treaties. But as time progressed experience demonstrated that the tribal relation was an insuperable obstacle to civilization. In 1871 Congress passed an act, now found in the Revised Statutes as section 2079, whereby no Indian nation or tribe as such should thereafter be recognized by treaty or otherwise. But finally the great truth was made manifest to the Indian Bureau that in civilization, as in education or religion, the individual is the unit, and that it is hopeless to undertake to civilize a tribe as such; that public sentiment is as strong a factor among a band of Indians isolated on a reservation as in a white community; that the influence of the tepee was neutralizing the training of the school. Experience showed that a graduate of Carlyle or Hampton who returned to his tribe was compelled to go back to the blanket with all that this implies. Education and culture were not popular, and were treated with ridicule and contempt. The reservation impaired the strength and vigor of the race, but did not weaken its instincts and prejudices. Finally Congress came to the wise conclusion that, if the red men were to be civilized, they must be dealt with like other foreign elements, and assume the duties and responsibilities of citizenship. Whereupon it was provided that any Indian who adopts the habits of civilized life may become a full citizen. Act Feb. 8, 1887, c. 119, Sec. 6, 24Stat. 390. Thereupon Congress adopted the policy of breaking up reservations and allotting the territory to the individual members of the respective bands or tribes. In the enforcement of this policy Congress declared (24 Stat. 388) that each and every member of the respective bands or tribes to whom allotments have been made ***216** shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside. This statute was construed by the Supreme Court in Re Heff, 197 U. S. 488, 499, 25 Sup.Ct. 506, 508, 49 L.Ed. 848. This case involved the supposed crime of selling liquor to an allottee outside the reservation. The Solicitor General argued that:

'The continuance of the relation as wards relates both to property and personal protection. The personal protection is at least as important, and the time of all others when Indians need this protection is when they are taking their first tentative steps as citizens.'

The court held that the government was under no constitutional obligation to perpetually continue the relationship of guardian and ward; that it might at any time abandon its guardianship, and leave the ward to assume and be subject to all the privileges and burdens of one sui juris. At page 505 of 197 U.S., at page 510 of 25 Sup. Ct. (49 L.Ed. 848), the court say:

'The general police power is reserved to the states, subject, however, to the limitation that in its exercise the state may not trespass upon the rights and powers vested in the general government. The regulation of the sale of intoxicating liquors is one of the most common and significant exercises of the police power. And so far as it is an exercise of the police power it is within the domain of state jurisdiction.'

At page 508 of 197 U.S., at page 512 of 25 Sup.Ct. (49 L.Ed. 848), the act of 1897 is designated as a mere statute of police regulation. At page 509 of 197 U.S., at page 512 of 25 Sup. Ct. (49 L.Ed. 848), the court further say:

'When the United States grants the privileges of citizenship to an Indian, it gives him the benefit of and requires him to be subject to the laws, both civil and criminal, of the state. It places him outside the reach of police regulations on the part of Congress. That the emancipation from federal control thus created cannot be set aside at the instance of the government without the consent of the individual Indian and the state,' etc.

It is further held that two sovereignties cannot at the same time exercise the police power over a given territory.

The attention of the court was again called to the same subject in Dick v. United States, 208 U.S. 352, 28 Sup.Ct. 402, 52 L.Ed. 520, where the indictment was for introducing liquor into the Indian country. The court say:

'If this case depended alone upon the federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country, we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant; for that statute, when enacted, did not intend by the words 'Indian country' to embrace any body of territory in which at the time the Indian title had been extinguished, and over which, and over the inhabitants of which, the jurisdiction of the state for all purposes of government was full and complete.'

The Dick Case was differentiated by the provision in a treaty which stipulated for the continuance of the jurisdiction and laws of the United States over the allotted territory. It would seem, therefore, that both features of the liquor law of 1897 have been considered as inapplicable to Indians who are allottees under the act of 1887. These cases would seem to rule the instant case.

***217** To get a comprehensive view of the legal situation we must read United States v. McBratney, 104 U.S. 621, 26 L.Ed. 869, and Draper v. United States, 164 U.S. 240, 17 Sup.Ct. 107, 41 L.Ed. 419. These cases clearly recognize the exclusive jurisdiction of any state that is admitted upon an equal footing with other states to try and punish its own citizens for offenses committed upon a reservation, in the absence of any modifying clause in statute or treaty. This doctrine as to white citizens was clearly asserted by the Supreme Court of Wisconsin in State v. Doxtater, 47 Wis. 278, 2 N.W. 439, holding that, as there was no reservation of jurisdiction in the Wisconsin enabling act (Act Aug. 6, 1846, c. 89, 9 Stat. 56), the state jurisdiction over all its citizens whereever found is complete. In United States v. Kagama, 118 U.S. 381, 6 Sup.Ct. 1109, 30 L.Ed. 228, the court sustained the federal jurisdiction over an Indian who had committed the crime of murder upon a reservation located within a state pursuant to Act March 3, 1885, c. 341, Sec. 9, 23 Stat. 362. On page 383 of 118 U.S. on page 114 of 6 Sup. Ct. (30 L.Ed. 228), the court say:

'These Indian tribes are the wards of the United States. They are communities dependent upon the United States. * * * They owe no allegiance to the states, and receive from them no protection.'

This is the basic proposition upon which the decision rests. It is obvious that the later legislation of Congress providing for allotments and consequent citizenship has changed the attitude of the parties. The defendants, being allottees, are citizens of the state of Wisconsin to all intents and purposes, receiving protection from the laws of the state, and being amenable thereto. Here the color line fades out. While conceding that this prosecution cannot rest on the police power, it is, however, strenuously urged that another line of decisions of the Supreme Court give countenance to the present contention of the government. United States v. Rickert, 188 U.S. 437, 23 Sup.Ct. 478, 47 L.Ed. 532, is cited in this connection. The Ricker Case involved the protection of the lands of allottee Indians against the taxing power of the state. The fee title of such lands being in the government, they were held to be an instrumentality of the government to carry out the purposes of Congress, and were therefore beyond the taxing power of the state. It was a case of the

guardian interposing to protect the property of his ward. Jourdan v. Barrett, 4 How. 168, 177, 11 L.Ed. 924, is also relied upon, which merely holds that the federal government has power to punish a trespass on government lands. See, also, United States v. Gardner, 133 Fed. 285, 66 C.C.A. 663. McKay v. Kalyton, 204 U.S. 458, 27 Sup.Ct. 346, 51 L.Ed. 566, emphasizes the supervisory control of the government over these allotted lands, and the court in that case expressly held that it was not in conflict with the doctrine of the Heff Case, supra. Camfield v. United States, 167 U.S. 518, 17 Sup.Ct. 864, 42 L.Ed. 260, merely elaborates the doctrine of the earlier cases, vindicating the power of Congress to pass regulations to control the conservation and management of these lands which the government holds for the benefit of its wards; and that such regulations may even savor of the police power, but the opinion expressly limits its scope and meaning by the clause 'so long as such power is directed solely to its own protection.' The argument of the ***218** government ignores a fundamental distinction.

Guardianship is a trust which is dual in its nature, involving two distinct and separable functions. One is the control of the person of the ward, the other the management of his estate. We have seen that it has been settled that the government may at any time terminate this relation of guardianship. It follows, therefore, it may at its pleasure emancipate the Indian from personal control, and still retain the other function of managing and conserving his property. That the emancipation of the Indian from further federal control was the purpose of Congress is so plain from the language employed in the act of 1887 that no argument could make it plainer. The purpose of the government to protect the title of allotted land has been declared with equal distinctness. To control the habits and restrain the passions of a people is the peculiar province of the police power. This jurisdiction has been distinctly renounced by the United States, and is now clearly vested in the states. To say that temperate habits and correct living by the inhabitants will enhance the value of government land, and that, therefore, federal jurisdiction may find in this fact a substantial basis within the territory formerly occupied as a reservation is far-fetched and illogical. It is contended that it is competent for the government to determine what shall constitute a trespass upon its lands. To say that an allottee when entering upon his own land becomes a trespasser thereon if he carries a pint bottle of whisky in his pocket is a confusion of ideas. A trespass upon lands is something so familiar and well-defined that it cannot be distorted to cover the misconduct charged against these defendants.

Furthermore, it is conceded in argument that a large fraction of the territory formerly known as the Oneida Reservation is owned and occupied by white men. It is conceded that the state has complete and exclusive jurisdiction over such white men. If the theory of the government here presented were to be adopted, we should have this anomalous situation: a quarter section occupied by a white man would be under the jurisdiction of the state, while the next quarter section, occupied by an allottee, would fall under the federal jurisdiction. There would be two rules of conduct, which might be entirely different, operating at the same time upon the same township, according to the complexion of the inhabitants. This amounts to a reductio ad absurdum. When understandingly read, there is no conflict in the federal decisions. The Indian allottees are citizens of the state of Wisconsin upon an even footing with all other citizens. It is the exclusive prerogative of the state to pass and enforce laws relating to the liquor traffic which is wholly separate and apart from the jurisdiction which the federal government retains to protect and regulate the alloted lands. This jurisdiction of the state extends to all its citizens without regard to color, race, or former condition. Under the legislation of Congress, the allottee has certain vested rights. The state has assumed a vested jurisdiction. In the Heff Case it is distinctly held that these vested rights 'cannot be set aside at the instance of the government without the consent of the individual Indian and the states.'

For these reasons, I feel constrained to hold that the demurrer should be sustained, and that the defendants should be discharged.

D.C.Wis. 1909.
U.S. v. Hall
171 F. 214

END OF DOCUMENT

Kelsey, Angela

Subject:	Meeting w/Onieda
Location:	Asia Conference Room - Video TeleConferencing Unit
Start:	Wed 7/21/2010 3:00 PM
End:	Wed 7/21/2010 4:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Laverdure, Del
Required Attendees:	Newland, Bryan; Warrington, Burton; Thomas, Pilar; Lindquist, Karen; Kelsey, Angela; tom@carlyleconsult.com

When: Wednesday, July 21, 2010 3:00 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Asia Conference Room - Video TeleConferencing Unit

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Dajuana, the meeting request involves the Oneida Nation of Wisconsin's request for a final decision on the railroad right-of-way land issue.

We have previously met on this issue almost seven weeks ago and Pilar requested additional time to do some additional research.

Oneida Chairman Rick Hill and Councilman Brandon Stevens will be in attendance.

Best,

Tom