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Illegal Alien? The Immigration Case of Mohawk Ironworker Paul K. Diabo

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IN MARCH of 1927 Paul K. Diabo, a thirty-six-year-old Mohawk ironworker from Kahnawake (Mohawk Nation Territory), Quebec, appeared before Judge Oliver B. Dickinson in federal court in Philadelphia to contest his deportation to Canada. According to the Department of Immigration, which had arrested him a year earlier, Diabo had violated the Immigration Act of 1924 and should be considered an illegal alien. As a member of the Rotinonhsionni (Iroquois) Confederacy, Diabo contended that he had a right to cross the international border without interference and restriction—a right, he argued, that had been recognized by the Jay Treaty of 1794. Diabo's trial and subsequent appeal by the Immigration Department in 1928 became an important test of Rotinonhsionni sovereignty and treaty rights. As such, it drew the attention and mobilized the support of Rotinonhsionni people in Canada and the United States and contributed in significant ways to political and cultural revitalization within the Confederacy and his home community of Kahnawake.¹

¹For their support of the research for and preparation of this paper, I thank the Phillips Fund for Native American Research of the American Philosophical Society, the Kanien'kehá:ka Onkwawen:na Raotitiohkwa Cultural Center in Kahnawake, and Claire J. Paolini, dean of the College of Arts and Sciences at Sacred Heart University. In addition, I gratefully acknowledge the following for their assistance with my research: Rosie Beauvais, Gladys Rice Deer, Melvin Diabo, Donna Goodleaf, Ida Goodleaf, Martin Loft, Sarah Philips, Alice Standup, Arlene Standup, and Tammy Standup, all of Kahnawake; Richard Gelbke of the National Archives in New York City; Dan Overfield, Rick Sieber, and Evan Towle of the Urban Archives at Temple University in Philadelphia; and Marian L. Smith of the U.S. Immigration and Naturalization Service History Office and Library. I especially thank Jack Campisi, whose comments on my presentation of Paul Diabo's story at the Iroquois Conference in 2003 were helpful in determining the subsequent direction of my research, and Taiaiake Alfred, Laurence Hauptman, Christine Zachary Deom, and Brian Deer for taking time to review and comment on earlier drafts of this paper.



FIGURE 1. Located on the St. Lawrence River near Montreal, Quebec, the Mohawk community at Kahnawake was established in the mid-seventeenth century. Photo courtesy of the Kanien'kehá:ka Onkwawen:na Raotitiohkwa Cultural Center.

Paul Kanento Diabo was born in 1891 in Kahnawake to James Katsitsiio Diabo and Theresa Kwarasenni Montour.² Kahnawake is located on the St. Lawrence River nine miles (15 km) south of Montreal; in 1890 its population totaled 1,722 (fig. 1). Theresa Montour was James Diabo's second wife, and Paul was the fourth of their five children, who included one sister (Mary) and three brothers (Joseph, Peter, and Michael). Paul also had a half-brother (Dominic) by his father's first marriage.³ In 1912 Paul Diabo married Louise Kawennes Nolan, also of Kahnawake, and in that year they traveled together to the United States,

²The date of Paul Diabo's birth varies with the source. In an application Diabo filed for a Social Security number in the United States in 1937, he listed his birth date as 26 May 1892 (Paul K. Diabo, "Application for Social Security Account Number," Form SS-5, 2 April 1937, Social Security Administration). However, on an Alien Registration Form that he submitted to the Immigration and Naturalization Service in 1945, he listed his birth date as 25 May 1891 (Paul K. Diabo, "Alien Registration Form," Form AR-2, 23 April 1945, Immigration and Naturalization Service). According to one local informant who had worked for many years in the Kahnawake band council office, Paul Diabo was born on 25 May 1891 (Ida Goodleaf, interview by Gerald F. Reid, 22 July 2004).

³Ida Goodleaf, interview.

where Diabo worked in the high-steel construction trade. According to legal documents filed in Diabo's later court case, this was his first trip into the United States; however, documents he filed with the Department of Immigration and Naturalization Service in 1945 indicate that his first visit to American soil was in the summer of 1902.⁴ After 1912, Paul, sometimes with his wife, made frequent trips between Kahnawake and the United States, usually without going through the proper immigration procedures. The only official record of his border-crossing activity during this period is in early January of 1919, when he appeared at the Montreal immigration station and was denied entry into the United States.⁵ He appealed the decision, but his "disbarment" was upheld. Despite this, Diabo continued his movements back and forth across the border. His final crossing before his arrest was in 1924, with his wife, Louise. In 1926 the two were living in Philadelphia, where Paul worked on the Delaware River (Benjamin Franklin) Bridge, which now connects Philadelphia to Camden, New Jersey.⁶

The actual date of Paul Diabo's arrest on immigration charges is unclear. According to information that he filed with the Immigration and Naturalization Service in 1945, the arrest took place in 1924; however, according to a bill of injunction related to his arrest filed in U.S. District Court in Trenton, New Jersey, in June of 1926, the arrest occurred in March of that year.⁷ Documents filed by the Immigration Service in its appeal in the Diabo case in 1927 state that the original arrest warrant was issued in late February 1925.⁸ And Clinton Rickard, in his autobiography, recollected that Diabo's arrest was in 1925, but that court proceedings did not begin until February of 1926.⁹ What is clear is that court proceedings related to the arrest began in March of 1926. If, indeed, the arrest had taken place in 1925 or 1924, there would have been an unusual and inexplicable delay of one or two years in the court actions related to the arrest.

⁴For example, see *United States of America, ex rel. Paul Diabo v. John B. McCandless*, "Petition for Writ of Habeas Corpus," 7 January 1927 and Diabo, "Alien Registration Form."

⁵Manifest for Paul Diabo, *Canadian Border Entries through the St. Albans, Vermont, District, 1895–1924*, National Archives Microfilm Publication M1461, Roll 106.

⁶*United States of America, ex rel. Paul Diabo v. John B. McCandless*, "Petition for Writ of Habeas Corpus," 7 January 1927.

⁷Diabo, "Alien Registration Form" and *Paul Diabo and Louis[e] Diabo v. Harry E. Hull and J.B.W. Candless*, "Bill for Injunction," 22 June 1926.

⁸*John B. McCandless v. United States of America, ex rel. Paul Diabo*, "Brief of Appellant," 22 October 1927 and "Brief of Appellee," 20 December 1927. The 1925 date is also recorded in Judge Buffington's decision filed in the appeal (*John B. McCandless v. United States of America, ex rel. Paul Diabo*, 9 March 1928 and published in *Federal Reporter* 25 F.(2d) 71).

⁹Barbara Graymont, ed., *Fighting Tuscarora: The Autobiography of Clinton Rickard* (Syracuse, N.Y.: Syracuse University Press, 1973), 85.

What is also clear, but not noted in any of the published sources that discuss the Diabo case, is that the initial arrest on immigration violations included both Paul and his wife, Louise. Specifically, they were charged with entering the United States without passports, with failing to comply with U.S. immigration laws, and with the likelihood of becoming public charges. They were taken into custody on 8 March 1926, and soon after were released on bail of \$500. In mid-March a hearing in their case was held before the immigration inspector for Philadelphia, a record of which was then sent to the Immigration Service in Washington, D.C., for a decision. Several months later, in mid-June of 1926, the assistant secretary of labor issued a decision to deport Paul and Louise Diabo back to Canada.¹⁰ Following this, the Diabos filed a bill for injunction in U.S. District Court in Trenton to halt the Immigration Service from proceeding with the deportation order. They were represented in this action by William N. Nitzberg, a young Philadelphia attorney. Nitzberg based the Diabos' request for the injunction on Article 3 of the Jay Treaty of 1794, which, he argued, recognized the right of Rotinohsionni people to cross the border between Canada and the United States without interference. In addition, Nitzberg noted that Paul and Louise Diabo were persons of "good moral character" and, given Paul's employment as an iron-worker, disputed the government's contention that they were likely to become public charges.¹¹

On 28 June 1926, District Court Judge J. L. Bodine issued a preliminary injunction restraining the Immigration Service from deporting the Diabos and directed the commissioner general of immigration, Henry Hull, and the commissioner of immigration for Philadelphia, John B. McCandless, to appear before the court on 7 July for a hearing in the case and show cause why the preliminary injunction should not be made final.¹² Following the July hearing, however, Judge Bodine vacated the preliminary injunction and the bill for injunction and the Immigration Service proceeded with the deportation of the Diabos to Canada.¹³

DIABO'S DECISION TO CONTEST HIS DEPORTATION

Of course, the Diabo case did not end with the deportation of Paul and Louise back to Canada, but it appears that there were no further offi-

¹⁰ *Paul Diabo and Louis[e] Diabo v. Harry E. Hull and J.B.W. Candless*, "Bill for Injunction," 22 June 1926.

¹¹ *Ibid.*

¹² *Ibid.*, "Order to Show Cause and Restraining Order," 24 June 1926.

¹³ *Ibid.*, "Order Dismissing Bill," 12 July 1926.

cial legal developments in the case until late December of 1926. At that time Paul Diabo, now without his wife and with a new attorney, appeared before the Immigration Board of Review in Washington, D.C. The Immigration Board of Review was established after the passage of the Immigration Act of 1924 to hear appeals in deportation cases. Thus, it appears that Diabo had returned to the United States to challenge his deportation. Diabo was represented before the board of review by Adrian Bonnelly, an associate of William Nitzberg who was better versed in immigration law. Born in 1890, Bonnelly was the son of Italian immigrants and had studied law at Georgetown University in Washington, D.C., and Temple University in Philadelphia. In 1911, between his time at Georgetown and Temple, he worked for the Immigration Service in New York and, at his request, was assigned to a position at Ellis Island. Around 1914 he was assigned to the immigration station in Philadelphia, where, in addition, he was appointed assistant clerk of the Orphans' Court because of his fluency in several European languages. After completing his studies at Temple and then passing the bar, he had taken a strong interest in immigration cases.¹⁴

There are few documents in Paul Diabo's case covering the late summer and fall of 1926; it is thus unclear what developments took place to bring him before the board of review in late December of that year. One possibility is that he was encouraged to challenge his deportation by fellow ironworkers from Kahnawake. Mohawk men from Kahnawake had become involved in high-steel construction work in the 1880s. During the early decades of the twentieth century it became an increasingly important source of their employment, with many of

¹⁴ "Adrian Bonnelly Dies at 80," *Philadelphia Evening Bulletin*, 25 July 1970, and "Sketch of Adrian Bonnelly," n.d. (George D. McDowell Newsclipping Collection, Urban Archives, Temple University, Philadelphia). Adrian Bonnelly continued to be committed to the legal rights of the Rotinonhsionni long after the Diabo case. In 1933 he interceded with the federal government on behalf of Mohawk ironworkers from Canada, whose opportunity to work in the United States was severely restricted by Depression-era policies that reserved steel construction work on public buildings to U.S. citizens. In 1960 he consulted with Paul Diabo, then sixty-nine years old, and representatives of the North American Indian Brotherhood on complaints concerning Rotinonhsionni border-crossing problems. In 1963 he consulted with Andrew Maracle on his son Brant's challenge to induction in the U.S. military and urged the Maracles to test the pending induction in court. In 1965 he consulted with the non-native widows of members of the Kahnawake band on land inheritance issues and agreed to communicate with the deputy superintendent of Indian affairs in Ottawa on behalf of their children. See the following articles from the *Philadelphia Evening Bulletin*: "Paleface Chief Goes on Warpath" (5 June 1933), "'Gray Wolf,' Indians in Powwow" (19 May 1960), "Bonnelly Aids Indian" (22 June 1963), and "Indians Call on Legal 'Chief'" (20 April 1965). All articles from Philadelphia newspapers cited in this paper (the *Philadelphia Evening Bulletin*, the *Philadelphia Evening Ledger*, and the *Philadelphia Inquirer*) were located in the George D. McDowell Newsclipping Collection of the Urban Archives at Temple University.



FIGURE 2. During the early decades of the twentieth century high-steel construction work became an increasingly important source of employment for men from Kahnawake. During the 1920s they were traveling to job sites throughout the Northeastern United States. Photo courtesy of the Kanien'kehá:ka Onkwawen:na Raotitiohkwa Cultural Center.

them traveling to job sites in New York, New Jersey, Pennsylvania, and elsewhere in the Northeastern United States (figs. 2 and 3).¹⁵ Diabo's own border-crossing problems and those of some fellow ironworkers notwithstanding, the entry of Rotinohsionni and other Indian people into the United States from Canada was relatively unproblematic until the passage of the Immigration Act of 1924.¹⁶ The act of 1924 was more restrictive than previous immigration policies and was designed in particular to limit the rising tide of immigration from Asia and

¹⁵ David Blanchard, "High Steel! The Kahnawake Mohawks and the High Construction Trade," *Journal of Ethnic Studies* 11.2 (1983) and Dean R. Snow, *The Iroquois* (Cambridge: Blackwell Publishers, 1994), 193.

¹⁶ Manifests for border crossings from Canada for this time period provide several examples of individuals from Kahnawake being refused entry into the United States. Often these individuals were young men pursuing ironwork in New York City, Philadelphia, and elsewhere. For example, see the manifests for Joseph Albany, Peter Diabo, and Dominic McComber, *Canadian Border Entries through the St. Albans, Vermont, District, 1895-1924*, National Archives Microfilm Publication M1461, rolls 7, 106, and 260.



FIGURE 3. Rotinonhsionni (Iroquois) travel into the United States from Canada became more difficult after the passage of the Immigration Act of 1924, a change that threatened the economic livelihood of Mohawk ironworkers from Kahnawake. Photo courtesy of the Kanien'kehá:ka Onkwawen:na Raotitiohkwa Cultural Center.

southern and eastern Europe.¹⁷ The national origins quota system that was the centerpiece of the 1924 act was not aimed specifically at native people from Canada, but it did have important consequences for them. Added to passport requirements that were instituted in 1918, the commitment of the American government to tighten border controls and

¹⁷Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* (Stanford: Stanford University Press, 1996), 125–32; Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge, Mass.: Harvard University Press, 2000), 199–212; and Marian L. Smith, “Immigration and Naturalization Service,” in *A Historical Guide to the U.S. Government*, ed. George Thomas Kurian (New York: Oxford University Press, 1998), 305–08.

enforce the more restrictive policy meant that border crossing for the Rotinonhsionni and other native people was now even more onerous and more closely monitored. As a result, ironworkers from Kahnawake often experienced long delays at the Montreal immigration station, at which they would normally report before crossing the border into the United States. To avoid delays and possible debarment, many of them crossed the border at Akwesasne and elsewhere without going through the proper immigration procedures, with the result that they did not have the proper documentation and had not passed through the inspection required by American immigration laws. Many of these early ironworkers considered the new immigration policies not only inconvenient, but a violation of their rights as Rotinonhsionni and a threat to their very livelihood.¹⁸ Threatened politically and economically by the immigration controls, they had an obvious concern with Diabo's deportation and a clear interest in challenging it.

Kahnawakehronon ("people of Kahnawake") frequently tell the story that five of Diabo's fellow ironworkers in particular were instrumental in encouraging Diabo to test the application of American immigration laws to the Rotinonhsionni and even in assisting and supporting him in his legal battles. They were Peter Atawakon Rice, Dominic Otseteken McComber, Joe Tehonate Albany, Jim Ross, and John Tionekate Scott. According to Gladys Rice Deer, a daughter of Peter Rice, these five men were living and working in New York City at the time of Diabo's initial arrest with his wife, Louise, and their hearing in federal court in Trenton in July of 1926.¹⁹ She recalls that, at a meeting in her family's New York City apartment, her father, the other men, and Diabo discussed the border-crossing problem, and that Diabo either volunteered or was asked to test Rotinonhsionni border-crossing rights. He was the obvious choice: he (along with his wife) had already been arrested. Another factor, according to Rice, was that Paul, unlike the other men, had no children and thus could best afford to be out of work for the lengthy period of time they anticipated for the legal fight. Once this decision was made, the men became active in organizing financial support for Diabo and the expected legal work, with some of them actually offering their homes as collateral on loans used to contribute to Diabo's legal fund.²⁰ It may also be that these men helped to arrange for legal representation by Nitzberg and Bon-

¹⁸ Gladys Rice Deer, interview by Gerald F. Reid, 21 July 2004, and Alice and Arlene Standup, interview by Gerald F. Reid, 21 July 2004.

¹⁹ Gladys Rice Deer interview.

²⁰ Gladys Rice Deer interview and Alice and Arlene Standup interview.

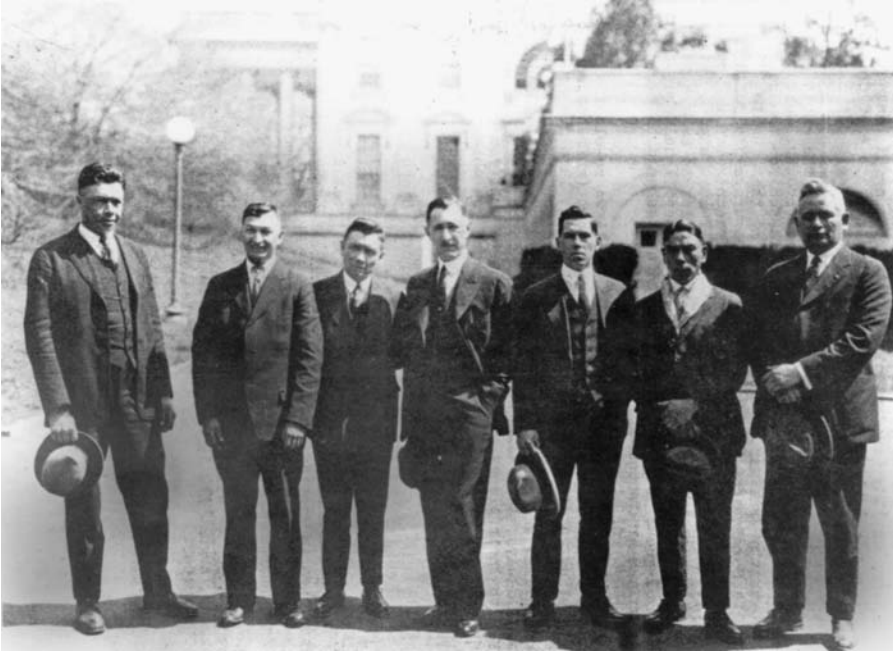


FIGURE 4. Paul K. Diabo's victory in the U.S. District Court in Philadelphia in March of 1927 was a major development in the establishment of Rotinonhsionni treaty and border-crossing rights. Here Diabo is pictured outside the federal courthouse with Adrian Bonnelly, his lawyer, and the five fellow ironworkers who helped to make his test case possible. From left to right: John Tionekate Scott, Peter Atawakon Rice, Jim Ross, Adrian Bonnelly, Joe Tehonate Albany, Paul Kanento Diabo, and Dominic Otseteken McComber. Photo courtesy of the Kanien'kehá:ka Onkwawen:na Raotitiohkwa Cultural Center.

nelly.²¹ Their key role in the Diabo case is highlighted by a photograph of the five men with Diabo and Bonnelly following Judge Oliver Dickinson's decision in the first phase of the court case in March of 1927 (fig. 4). It is the only known photograph relating to the Diabo case.

Another important influence on Diabo's decision to return to the United States and test Rotinonhsionni sovereignty and treaty rights was the Six Nations Confederacy at Grand River, near Brantford,

²¹ According to Gladys Rice Deer, a man by the name of "Clymer" was instrumental in helping to arrange Diabo's legal representation by Adrian Bonnelly. In fact, in the summer of 1927, following Diabo's initial court victory in March of that year, Bonnelly and a man by the name of Edgar C. Clymer were honored in Kahnawake and formally adopted into the band in recognition of their "outstanding services to members of the Iroquois tribe." See "Indians Honor Phila. Men," *Philadelphia Evening Bulletin*, 2 July 1927. Clymer was employed by the Germantown Tool Company and may have been associated with the ironworkers through his work with the company.

Ontario. Grand River people had become accustomed to traveling to the United States, and in particular to Rotinonhsionni communities in western New York State, for business and social purposes. But, as with ironworkers from Kahnawake, their movement across the border became more tightly controlled following the passage of the Immigration Act of 1924.²² Loose interpretation of the provisions of the 1924 act by immigration officers at the ports of entry commonly used by Six Nations people, such as Buffalo and Niagara Falls, sometimes resulted in their outright exclusion on the grounds that they were considered aliens in the same category as Japanese, Chinese, and other races ineligible for U.S. citizenship.²³ At this time, as a result of political commitment and personal experience, Clinton Rickard, a chief at the Tuscarora reservation in New York, became intimately involved in the border-crossing issue, a cause that brought him into close collaboration with David Hill, a Mohawk from Grand River. In late 1926 Rickard, Hill, and others formed the Six Nations Defense League to fight on behalf of the border-crossing rights of native people.²⁴ According to the *New York Times* and two Philadelphia newspapers that later reported on Diabo's trial in March of 1927, the Six Nations Confederacy at Grand River "induced" Diabo to return to the United States in order to test Rotinonhsionni treaty and border-crossing rights.²⁵ According to the *Democrat and Chronicle* of Rochester, New York, the Six Nations Confederacy viewed his deportation as "a breach of faith under the Jay Treaty and encouraged Diabo to come back to the United States to be rearrested as a test case."²⁶

Thus, after Paul and Louise Diabo were deported from the United States sometime during the summer of 1926, Paul Diabo returned late in the year to test Rotinonhsionni border-crossing rights by contesting his deportation before the Immigration Board of Review. His decision

²² Graymont, *Fighting Tuscarora*, 69–79.

²³ George P. Decker, "Rights of the Six Nations in Crossing the United States–Canadian Border," manuscript (with author's handwritten corrections), 25 February 1926 (D-Dec-95, Decker Collection, St. John Fisher Library, St. John Fisher College, Rochester N.Y.), 20–22. See also George P. Decker, "Rights of the Six Nations in Crossing the United States–Canadian Border" (National Archives and Records Administration, RG85, Stack 17W3, Box 384, File 55466/182, 25 February 1926) and Marian L. Smith, "The INS and the Singular Status of North American Indians," *American Indian Culture and Research Journal* 21.1 (1997), 135–36.

²⁴ Graymont, *Fighting Tuscarora*, 75–76, and Smith, "The INS and the Singular Status of North American Indians," 136–37.

²⁵ "Fight Indian's Exclusion," *New York Times*, 29 December 1926; "U.S. Held Indians' Country," *Philadelphia Evening Bulletin*, 21 January 1927 and "Point Won by Indians," *Philadelphia Inquirer*, 22 January 1927.

²⁶ "Case of Indian Born in Canada Before Court," *Rochester Democrat and Chronicle*, 22 January 1927 and 19 March 1927.

to do so was influenced by his fellow ironworkers, the council of the Six Nations Confederacy, and others concerned with border-crossing problems in western New York State. In anticipation of an unfavorable decision from the board of review, it is likely that new legal representation by Bonnelly was arranged during this period. In late December of 1926 the board of review determined that Diabo was, indeed, an alien under the provisions of the Immigration Act of 1924 and that his arrest and deportation were legal and warranted.²⁷

Following this, on 6 January 1927 Adrian Bonnelly brought Diabo to the office of the immigration inspector in Philadelphia for deportation and then immediately filed a petition for writ of habeas corpus in U.S. District Court for the Eastern District in Philadelphia. Thus, Diabo was taken out of the hands of the immigration authorities and placed within the jurisdiction of the federal court system. In the petition, Diabo argued that “under the Laws and treaties relating to the Indians of the six nations, he is entitled and privileged to enter the United States at will” and that he had been imprisoned without legal authority.²⁸ The district court judge, Oliver B. Dickinson, granted the writ of habeas corpus, and Diabo was released on \$500 bail.²⁹ At this time the *Evening Ledger* of Philadelphia reported that the Six Nations Confederacy was raising funds to support Diabo’s test of border-crossing rights, and the *Evening Bulletin* reported that a “grand meeting,” probably a Grand Council of the Six Nations Confederacy, was planning to meet a week later to discuss Diabo’s case.³⁰

In his decision handed down on 18 March 1927, Judge Dickinson held that international treaties recognized the freedom of Indian people to cross the border between the United States and Canada and that there was nothing in American immigration laws to deny that freedom. On this basis Dickinson found that Paul Diabo had been unlawfully charged and detained, and released him from custody. The commissioner of immigration indicated that the government planned to appeal. As a result Diabo was discharged only after posting a \$500 bond.³¹

The central issue in the Eastern District Court case and the subsequent appeal was whether or not Diabo was an alien in the United

²⁷ “Status of Indians Up to Phila. Court,” *Philadelphia Evening Ledger*, 6 January 1927.

²⁸ *United States of America, ex rel. Paul Diabo v. John B. McCandless*, “Petition for Writ of Habeas Corpus,” 7 January 1927 and “Transcript of Record,” pp. 3–5.

²⁹ Oliver B. Dickinson, born in 1857, was admitted to the bar in 1878 and was appointed Judge of the Eastern District Court in 1914. See “Judge Dickinson Dies at Age of 81,” *Philadelphia Evening Bulletin*, 16 September 1939.

³⁰ “Release Indian in Bail,” *Philadelphia Evening Bulletin*, 8 January 1927. See also “Status of Indians Up to Phila. Court.”

³¹ “United States ex rel. Diabo v. McCandless,” 18 *Federal Reporter*, 2d Series, 282.

States and, therefore, subject to U.S. immigration laws.³² The answer to that question rested mainly on the interpretation of two treaties, the Jay Treaty of 1794 and the Treaty of Ghent of 1814. The Jay Treaty, also known as the Treaty of Amity, Commerce and Navigation and signed by the United States and Great Britain, fixed the boundary between the two nations in Canada. In his decision, Dickinson stated that both signatories clearly intended that the border created by the treaty would not apply to the Indian people through whose territory it ran and that their long-recognized freedom to move within their territory would persist. Specifically, Article 3 stated that

It is agreed that it shall at all times be free to His Majesty's subjects and to the citizens of the United States, and also the Indians dwelling on either side of the boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, in the continent of America . . . and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with one another.

In Dickinson's words, for Indians "the border did not exist" and they had a right to cross it without interference or limitation. Significantly, Dickinson's decision did not state that the Jay Treaty *created* a border-crossing right for the Rotinonhsionni. Rather, his ruling held that the treaty *recognized* a long-standing freedom that would persist with the creation of the international border.

The Immigration Service had acknowledged these points in its own arguments before Dickinson, but contended that the border-crossing right of Indian people was abrogated by the War of 1812 and that the Treaty of Ghent, which ended the war between the United States and Great Britain and was ratified in 1815, did not specifically re-establish this right. The Immigration Service also argued that according to the immigration laws in force at the time, the final decision to deport individuals was purely an administrative matter under the authority of the secretary of labor and not subject to review or interference by the federal court. Dickinson rejected both of these arguments, holding that the Treaty of Ghent explicitly restored the rights that Indian people enjoyed prior to the War of 1812 and that there was nothing explicit in the immigration laws to deny Indian people this long-recognized right.

³² The following discussion is based on several documents that were introduced as part of Diabo's trial before the Eastern District Court and the federal government's appeal in the case before the Court of Appeals for the Third Circuit. See *John B. McCandless v. United States of America, ex rel. Paul Diabo*, "Transcript of Record," 31 August 1927; "Brief of Appellant," 22 October 1927; and "Brief of Appellee," 20 December 1927.

The Immigration Service successfully petitioned for an appeal of Dickinson's decision in June of 1927, and briefs in the case were filed with the Third Circuit Court of Appeals in Philadelphia during the fall of 1927.³³ In its brief the Immigration Service argued that even if the Jay Treaty were to be considered in force, as Dickinson held, there was nothing in the language of the treaty that was intended to give Indians coming from Canada a special right to immigrate permanently to the United States without regard to its immigration laws. Article 3, its attorneys contended, established only a right of temporary entrance into the country for commercial purposes. They also argued that treaties do not automatically supersede acts of Congress (such as the Immigration Act of 1924) and that the history of immigration legislation clearly demonstrated the intent of the Congress to restrict the number and types of immigrants who were allowed to enter the country and apply for American citizenship. Writing for the Third Circuit Court on 9 March 1928, Judge Joseph Buffington held that in the Jay Treaty the United States had recognized the right of Six Nations people to freely cross the international border, that this was not a temporary right, and that this right had not been abrogated by the War of 1812. Further, he stated that because Indians were wards of the nation occupying a legal status different from that of native-born citizens, acts of Congress did not apply to them unless clearly so stated, which was not the case with the Immigration Act of 1924. In short, Judge Dickinson's decision was upheld and the appeal of the Immigration Service was denied.³⁴

THE IMPACT OF THE DIABO CASE

Support for Paul Diabo in his home community of Kahnawake went beyond the handful of fellow ironworkers who had encouraged and supported him prior to and during his trial before the Eastern District Court in 1927. Other ironworkers contributed a portion of their wages. Raffles and bake sales were held within the community, and local entertainers helped organize and perform a traveling dramatization of Longfellow's poem *The Song of Hiawatha*, all to help support Diabo's fight

³³ Ibid., "Petition for Appeal," 31 August 1927; "Brief of Appellant," 22 October 1927; and "Brief of Appellee," 20 December 1927.

³⁴ Following the decision in the government's appeal of the Diabo case, in early April of 1928 Congress passed legislation providing that the Immigration Act of 1924 was not to be construed to limit the right of Canadian-born Indians to cross the border, but with the proviso that the right does not extend to individuals who were members of Indian tribes by adoption (Act of April 2, 1928, 45 Statutes-at-Large 401). For a discussion of this and other developments in U.S. immigration policy as it related to Indians born in Canada, see Smith, "The INS and the Singular Status of North American Indians."

in the courts.³⁵ A headdress and beaded buckskin outfit of shirt, leggings, and moccasins was made by women in Kahnawake to honor him.³⁶ Further, the Kahnawake community was affected in important ways as Diabo's legal case proceeded during 1927 and early 1928.

One important consequence of the Diabo case for Kahnawake was its energizing effect on a nascent Longhouse movement within the community. The central figure in the Longhouse movement at Kahnawake during this period was Dominic Two-Axe, a former ironworker. In the early 1920s Two-Axe was traveling to other Rotinohsionni communities to learn about traditional medicines and ceremonies. By the mid-1920s he and a small group of other activists had organized themselves into a Longhouse group and were gathering in their homes on a regular basis for meetings and ceremonies. A frequent meeting place was the home of Teres Kwarasenni in the main village on the reserve. Kwarasenni, also known as Theresa (Montour) Diabo, was the Turtle clan mother within this Longhouse and was the mother of Paul K. Diabo. Though already well organized by the time of Diabo's trial in Philadelphia in 1927, this Longhouse group was still quite small.³⁷

Following Diabo's initial court victory in March of 1927, Kahnawake hosted a Grand Council of the Confederacy organized to discuss a wide range of concerns related to Rotinohsionni sovereignty and treaty rights, including the border-crossing issue, and to demonstrate the Confederacy's support for Diabo. Kahnawake's Longhouse activists, Dominic Two-Axe in particular, played an important role in organizing and preparing for the Grand Council, which was scheduled to run over a four-day period from 28 June to 1 July and was expected to include more than fifty delegates from Rotinohsionni communities in Quebec, Ontario, and New York. Unfortunately, because of severe weather, some delegates were unable to make the long trip to Kahnawake, and the Grand Council ended after just one day, but not before Two-Axe had delivered a welcoming address and not before Chief Lyons of Onondaga spoke to the many who had gathered about the experience of his community, the Longhouse religion, the importance of Rotinohsionni sovereignty, and the roots of Rotinohsionni spiritual and political institutions and practices in the Great Law of Peace.³⁸ Following the

³⁵ David Blanchard, *Seven Generations: A History of the Kanienkehaka* (Kahnawake, Quebec: Kahnawake Survival School, 1980), 410–11.

³⁶ Tammy Standup, interview by Gerald F. Reid, 21 July 2004; Alice and Arlene Standup interview.

³⁷ Gerald F. Reid, *Kahnawake: Factionalism, Traditionalism, and Nationalism in a Mohawk Community* (Lincoln: University of Nebraska Press, 2004), 134–49.

³⁸ "Iroquois Pow Wow Off Until Autumn after One Parley," *Montreal Gazette*, 29 June 1927.

weather-shortened Grand Council, delegates who had arrived from Akwesasne, Kanehsatake, and Onondaga remained and met with Kahnawakehronon to discuss the border-crossing issue and Paul Diabo's case in particular. Adrian Bonnelly, who had traveled to Kahnawake from Philadelphia, addressed the gathering on 2 July and spoke about the Dickinson decision and the government's pending appeal. In addition, in a special ceremony, Bonnelly was formally adopted into the tribe, declared an honorary chief, and given the name "Grey Wolf."³⁹

These developments in Kahnawake around the Diabo case appear to have emboldened the community's small group of Longhouse activists. Throughout the summer of 1927 their leaders fired off a series of angry protest letters to Canadian government officials about a variety of local concerns, including the incompetence of the nuns teaching in the Roman Catholic schools on the reserve, the nuns' divisive influence within the community, and efforts by the Department of Indian Affairs to buy reserve land for building a new school. In the last of this series of letters, in August of 1927, Dominic Two-Axe asserted that he and the other clan chiefs in the Kahnawake Longhouse, not the elected councilors in the government's band council system, were the legitimate political authority on the reserve, and that the members of the Longhouse would not be controlled by "any religion or out-law."⁴⁰ Several months later, in November of 1927, the Longhouse group held an extraordinary three-day meeting, or "religious service" as one newspaper account described it, at which they conducted traditional ceremonies and publicly announced their intention to "abandon the cross" and return to the "old religion of their forefathers."⁴¹

There are no precise numbers on the size of the Kahnawake Longhouse at the time of Paul Diabo's trial, but it was almost certainly very small. By the early 1930s, however, Longhouse membership exceeded one hundred or more. This represented only about 10 percent of the population of the community, but it was a much larger number than the handful of Longhouse activists who had initiated the movement in the early 1920s.⁴² It appears, then, that the developments in Kahna-

³⁹ "Mohawk Tribe to Hold Pow Wow Tomorrow," *Montreal Herald*, 30 June 1927; "Mohawks Combat 45th Parallel," *Montreal Gazette*, 4 July 1927; "Adrian Bonnelly Dies at 80" and "Sketch of Adrian Bonnelly." It was at this gathering on 2 July that Edgar C. Clymer was also honored and formally adopted into the band. Clymer was honored with the title "Faithful" (see n. 21).

⁴⁰ National Archives of Canada, Volume 6083, File 305-9 Pt. 1, Grand Chief Dominic Tekarihoken to Governor General, 30 April, 27 July, 3 August, and 17 August, 1927.

⁴¹ "Changing Religion," *Montreal Daily Star*, 11 November 1927.

⁴² Reid, *Kahnawake*, 156-67.

wake around the Diabo case in 1926–27 had a positive effect on the Kahnawake Longhouse movement. Through its participation in the activities of the Grand Council and other meetings related to the Diabo case in the summer of 1927, it gained a level of support and legitimacy that contributed to its more aggressive, oppositional stance and declaration of goals, to the more open practice of its activities, and to increased local interest and participation.

The Diabo case also helped to solidify Kahnawake's ties to the Rotinonhsionni Confederacy. As I have argued elsewhere, Kahnawake's long political isolation from the Confederacy was changing in significant ways during the last decade of the nineteenth century and the first quarter of the twentieth century.⁴³ During this period important segments of the Kahnawake community engaged in close and sustained political interaction and collaboration with other Rotinonhsionni communities around a variety of issues relating to land, assimilative federal Indian policies, federal encroachments on local political autonomy, the Longhouse movement, and military registration and service. Within Kahnawake this resulted in increasingly close ties to and identification with the Confederacy and its claims for sovereignty. Important as it was politically to Kahnawake and the Confederacy as a whole, and supported as it was by Kahnawake and the Confederacy, the immigration case of Paul Diabo strengthened these ties and deepened this identification. As Alfred has argued, “[t]he significance and power of Iroquois unity in support of a common cause was not lost upon the Kahnawake Mohawks or the people of other Iroquois communities.”⁴⁴ With the Grand Council in the summer of 1927 held to show support for Diabo and Kahnawake and to discuss other common political and cultural issues, “a pervasive sense of re-emerging unity had come over the people [of Kahnawake].”

The developments and decisions in the case of Paul K. Diabo had wider consequences, as well. Though Paul Diabo's case and the work of the Six Nations Confederacy and Clinton Rickard on border-crossing problems in western New York State were not closely intertwined, it does appear that they did influence each other. At the beginning of Diabo's legal battle in 1926, Rickard corresponded with Diabo's supporter and fellow ironworker, Jim Ross. Later, Rickard offered Diabo's lawyers support in the form of documents he had collected in his own work on the border-crossing issue and planned (albeit unsuccessfully)

⁴³ *Ibid.*, 75–145.

⁴⁴ Gerald R. Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto: Oxford University Press, 1995), 59.

to travel to Washington, D.C., to lobby in support of Diabo.⁴⁵ As has been noted above, the Six Nations Confederacy at Grand River had encouraged Diabo to return to the United States to challenge immigration laws after he had been deported in the summer of 1926. At the same time, Diabo's case, in particular his decision during the fall or early winter of 1926 to return to the United States to challenge his deportation, may have been a catalyst of sorts for Rickard's political activities. Rickard, David Hill, and others from the Tuscarora and Grand River reserves organized the Six Nations Defense League (SNDL) in early December 1926 and held its first meeting just days after Diabo's unsuccessful hearing before the Immigration Board of Review later that month.⁴⁶ In late January of 1927, after Diabo's case had been brought to the Eastern District Court, but before Dickinson had issued his decision, the SNDL (soon to be re-named the Indian Defense League of America) worked with Congressman S. Wallace Dempsey of Lockport, New York, to introduce a bill into the U.S. Congress to establish Indian border-crossing rights.⁴⁷ Finally, it is clear that Clinton Rickard himself saw the decisions in the Diabo case as significant for the cause of Indian border-crossing rights and to the work of the Indian Defense League of America. As he stated in his autobiography, Dickinson's decision "represented an important turning point in our fight. For the first time, our viewpoint was reinforced by a high United States Judge. This decision therefore could not be ignored."⁴⁸

Finally, the immigration case of Paul Diabo helped to lay the basis of the modern Rotinohsionni sovereignty movement. During the early decades of the twentieth century Rotinohsionni people in Canada and the United States faced a number of threats to their political existence and cultural survival. These threats included assimilative federal Indian policies, compulsory citizenship, abolishment of hereditary councils, and the establishment of elective systems of government, land seizures, and state encroachments on federal Indian authority. The Rotinohsionni responded to these threats in a variety of ways, often collectively through the Confederacy councils at Onondaga and Grand River. This included efforts to gain recognition of fishing and hunting rights on their lands in New York State and to fight New York's attempts to expand and exercise authority over Indian affairs within the state. It included the Confederacy's separate declaration of war against Germany

⁴⁵ Graymont, *Fighting Tuscarora*, 83–84.

⁴⁶ "Six Nations Defense League Demands Border Privileges," *Syracuse Post-Standard*, 31 December 1926, 5; Graymont, *Fighting Tuscarora*, 76–77.

⁴⁷ "Indian Border Rights Asked From Congress," *New York Times*, 23 January 1927, 18.

⁴⁸ Graymont, *Fighting Tuscarora*, 85.

during World War I and its efforts during the 1920s to reclaim lands in New York State of which it had been dispossessed after the American Revolution. In the United States, in the early 1920s, Rotinonhsionni faced with forced enfranchisement asserted the citizenship of their nations within the Confederacy, widely rejected the Indian Citizenship Act of 1924, and widely refused to participate in off-reservation elections.⁴⁹ In Canada, too, the specter of forced enfranchisement met widespread Rotinonhsionni opposition, with many threatening to emigrate to the United States.⁵⁰ In 1920 and 1923 Deskaheh traveled to Europe (under a Confederacy-issued passport) to take the concerns and interests of the Rotinonhsionni in Canada before the League of Nations in Geneva and colonial authorities and King George V in London. Common to all of these actions was the Rotinonhsionni claim to sovereignty. As Hauptman has suggested, these assertions of sovereignty rested mainly on the Rotinonhsionni interpretation of two treaties concluded after the American Revolution, the Treaty of Canandaigua (1794) and the Jay Treaty (1794). In the Rotinonhsionni view, these treaties recognized the collective sovereign status and territorial integrity of the Confederacy and affirmed peace and friendship between it and the United States.⁵¹ Paul K. Diabo's battles in Philadelphia courts were also an expression of Rotinonhsionni claims to sovereignty. In winning his immigration case, he and his supporters not only established Rotinonhsionni border-crossing and treaty rights, but helped to solidify the legal basis on which those claims have been made in the decades since.

⁴⁹ Laurence M. Hauptman, *The Iroquois and the New Deal* (Syracuse, N.Y.: Syracuse University Press, 1981), 5–15.

⁵⁰ "Iroquois Ask Asylum Here," *New York Times*, 12 March 1921 and "Indians May Settle Here," *New York Times*, 23 March 1921; and "Iroquois Going to King," *New York Times*, 30 May 1921.

⁵¹ Hauptman, *The Iroquois and the New Deal*, 1–15.