

The Burger Court Opinion Writing Database

Middlesex County Sewerage Authority v. National Sea Clammers Association

453 U.S. 1 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543
June 3, 1981

CHAMBERS OF
THE CHIEF JUSTICE

79-1711, etc., Middlesex County Sewerage Authority
v. National Sea Clammers Ass'n, etc.

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 23, 1981

RE: No. 79-1711, etc., Middlesex County Sewer Authority v. Sea
Clammers

Dear Lewis:

I was very much surprised that your opinion addressed the question whether these statutes can be said to create "rights, privileges and immunities" on which section 1983 suits can be premised. That is an important question, the decision of which is certainly not necessary to resolve this case. If I may say so, it ought not be addressed without full briefing and oral argument by the parties. You'll remember that we have granted cert in the second Kassel case to consider the question whether violations of the Commerce Clause, which result in injury to persons, constitute deprivation of rights, privileges and immunities within the meaning of 1983. Bill Rehnquist's dissent from denial of cert in Kassel, which finally led to four votes to grant, states "This Court has never held, and it would require a careful scrutiny of the statute books to hold with any degree of confidence, that Sec. 1983 applies to every provision of the federal Constitution and all federal laws."

Not only is there no briefing of this question in any of the many briefs filed in this case, (you yourself said "it was not suggested by the parties") but no one at conference that I recall even mentioned this issue.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 11, 1981

79-1711 Sea Clammers

Dear Lewis:

I appreciate your willingness to "consider limiting the Section 1983 discussion to the effect of the comprehensiveness of the statutory remedies under both Acts." Although I prefer not to decide the Section 1983 issue at all, I could go along with the limited discussion you now propose. But should not the word be "preclude" rather than "pre-empt" on page 12? As in City of Milwaukee v. Illinois, "pre-empt" seems inappropriate here.

And is not your discussion in Part II B somewhat inconsistent with the Court's recent treatment of Cort v. Ash in the opinions in California v. Sierra Club and Universities Research Ass'n v. Coutu? In particular, your discussion of the Cort factors both omits the first of the four factors and, in addition, treats the first, third, and fourth factors equally, as "less important indicia of legislative intent." But Sierra Club stated that "the initial consideration is whether the plaintiff is a member of a class for 'whose especial benefit the statute was enacted.'" (Emphasis in original). Accordingly, I hope you will see fit to include a short analysis of the first Cort factor and re-write the carryover sentence on page 20 so that I will be able to join your opinion.

Sincerely,



Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1981

RE: Nos. 79-1711, 1754, 1760 & 80-12 Sea Clammers

Dear Lewis:

Please join me. Thanks again for your consideration of our suggestions.

Sincerely,



Justice POWELL

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 23, 1981

Re: No. 79-1711, etc., Middlesex
Cty. Sewer Auth. v. Sea Clammers

Dear Lewis,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1981

Re: No. 79-1711, Sea Clammers

Dear Lewis,

I think the basic thrust of your proposed letter to Bill Brennan is fine, but I would not go so far in the fourth and sixth paragraphs. In the fourth paragraph, I would be inclined to say something like the following:

If it would meet the concerns of you or other Justices, I might be willing to consider limiting the § 1983 discussion ...

The second clause of the final sentence of that paragraph would then read:

we would thus leave

The final paragraph would begin "In sum, I would consider limiting the § 1983 discussion"

Sincerely yours,

Justice Powell

Copy to Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1981

Re: No. 79-1711, etc., Middlesex City
Sewer . Auth. v. Sea Clammers

Dear Lewis,

I continue to agree.

Sincerely yours,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1981

Re: Nos 79-1711, etc.,
Middlesex County
v. Sea Clammers

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1981

Re: Nos. 79-1711, 1754, 1760, and 80-12 -
Middlesex County v. Sea Clammers

Dear Lewis:

Please join me.

Sincerely,

JM.
T.M.

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1981

Re: No. 79-1711) Middlesex County Sewerage Authority
v. National Sea Clammers Association
No. 79-1754) Joint Meeting of Essex and Union Counties
v. National Sea Clammers Association
No. 79-1760) New York v. National Sea Clammers Ass'n
No. 80-12) EPA v. National Sea Clammers Association

Dear Lewis:

I am waiting to see what John has to say.

Sincerely,



Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1981

- Re: No. 79-1711) Middlesex County Sewerage Authority
 v. National Sea Clammers Association
- No. 79-1754) Joint Meeting of Essex and Union Counties
 v. National Sea Clammers Association
- No. 79-1760) New York v. National Sea Clammers Ass'n
- No. 80-12) EPA v. National Sea Clammers Association

Dear John:

For me, your opinion concurring in the judgment in part and dissenting in part is most persuasive. Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

✓

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

4-22-81

From: Mr. Justice Powell

Circulated: APR 22 1981

1st CIRCULATED DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Au-
 thority et al., Petitioners,
 79-1711 v.
 National Sea Clammers Association
 et al.

Joint Meeting of Essex and Union
 Counties, Petitioner,
 79-1754 v.
 National Sea Clammers Association
 et al.

City of New York et al.,
 Petitioners,
 79-1760 v.
 National Sea Clammers Association
 et al.

Environmental Protection Agency
 et al., Petitioners,
 80-12 v.
 National Sea Clammers Association
 et al.

On Writs of Certiorari to
 the United States Court
 of Appeals for the Third
 Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

In this case, involving alleged damage to fishing grounds caused by discharges and ocean dumping of sewage and other waste, we are faced with questions concerning the availability of a damages remedy, based either on federal common law

pgs 13-19

Stylistic Changes Throughout.

- to: The Chief Justice
- Mr. Justice Brennan
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall ✓
- Mr. Justice Blackmun
- Mr. Justice Rehnquist
- Mr. Justice Stevens

4-24-81

From: Mr. Justice Powell

Circulated _____
 APR 24 1981
 Recirculated _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Authority et al., Petitioners,
 79-1711 v.
 National Sea Clammers Association et al.

Joint Meeting of Essex and Union Counties, Petitioner,
 79-1754 v.
 National Sea Clammers Association et al.

City of New York et al., Petitioners,
 79-1760 v.
 National Sea Clammers Association et al.

Environmental Protection Agency et al., Petitioners,
 80-12 v.
 National Sea Clammers Association et al.

On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

In this case, involving alleged damage to fishing grounds caused by discharges and ocean dumping of sewage and other waste, we are faced with questions concerning the availability of a damages remedy, based either on federal common law

Supreme Court of the United States
Washington, D. C. 20543

Felt

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

*This draft
was revised*

May 7, 1981

to make

79-1711 Sea Clammers

*changes
suggested
by Potter*

Dear Bill:

This refers to your letter expressing reservations as to the appropriateness of addressing the §1983 issue in this case.

It seems appropriate to me for several reasons. The Court of Appeals did not have the benefit of Thiboutot at the time it decided this case. The central question before us is whether a private right of action exists independently of the rights explicitly created by the statutes in question. If we believed that such a right now exists under §1983, I would not have thought we would decide this case against respondents. They prevailed below on a different theory, and even though they have not advanced the §1983 argument, the question is implicit in the case.

Moreover, in light of Thiboutot, I expect that federal courts are now facing with increased frequency the question of Thiboutot's scope.

If it would be helpful to you or other Justices, I would be glad to limit the §1983 discussion to the effect of the comprehensiveness of the statutory remedies available under both Acts. Although I think there are two reasons for the inapplicability of §1983 here, I would be content to leave the "rights, privileges, and immunities" question for another day.

We have here two Acts that provide unusually detailed provisions with respect to remedies, particularly those available for "citizens". Where this degree of statutory specificity exists, it would not be reasonable - as I view it - to think that the extremely general provisions of §1983 nevertheless apply. Nor do I think that

any briefing or reargument of this issue would be enlightening.

In sum, I would be happy to limit the §1983 discussion to the statutory effect of the existing remedies issue if four other Justices prefer this. I feel rather strongly, however, that we should not ignore §1983 in a case where the crucial issue is whether a private right of action exists.

Sincerely,

Mr. Justice Brennan

lfp/ss

May 7, 1981

79-1711 Sea Clammers

Dear Potter and Bill:

As this case seems to be on "dead center", I am inclined to respond to Bill Brennan's letter of April 23 along the lines of the enclosed draft.

As you are my only constituents, I would welcome your views as to whether this is desirable, and has your approval.

Sincerely,

Mr. Justice Stewart
Mr. Justice Rehnquist

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1981

79-1711 Sea Clammers

Dear Bill:

This refers to your letter expressing reservations as to the appropriateness of addressing the §1983 issue in this case.

It seems appropriate to me for several reasons. The Court of Appeals did not have the benefit of Thiboutot at the time it decided this case. The central question before us is whether a private right of action exists independently of the rights explicitly created by the statutes in question. If we believed that such a right now exists under §1983, I would not have thought we would decide this case against respondents. They prevailed below on a different theory, and even though they have not advanced the §1983 argument, the question is implicit in the case.

Moreover, in light of Thiboutot, I expect that federal courts are now facing with increased frequency the question of Thiboutot's scope.

If it would meet your concerns or those of other Justices, I might be willing to consider limiting the §1983 discussion to the effect of the comprehensiveness of the statutory remedies available under both Acts. Although I think there are two reasons for the inapplicability of §1983 here, we would thus leave the "rights, privileges, and immunities" question for another day.

We have here two Acts that provide unusually detailed provisions with respect to remedies, particularly those available for "citizens". Where this degree of statutory specificity exists, it would not be reasonable - as I view it - to think that the extremely general

provisions of §1983 nevertheless apply. Nor do I think that any briefing or reargument of this issue would be enlightening.

In sum, I would consider limiting the §1983 discussion to the statutory effect of the existing remedies issue if four other Justices prefer this. I feel rather strongly, however, that we should not ignore §1983 in a case where the crucial issue is whether a private right of action exists.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 19, 1981

79-1711 Sea Clammers

MEMORANDUM TO THE CONFERENCE:

The changes in this circulation were prompted primarily by my exchange of letters with Bill Brennan (my letter to him of May 8 and his reply of May 11).

I have limited the §1983 discussion to the effect of the comprehensiveness of the statutory remedies available under both Acts. In view of this change, it seemed more appropriate to place the truncated §1983 discussion after the section on implied rights of action under the Acts themselves.

L. F. P.

L.F.P., Jr.

10, 11, 15, 16,
17, 18, 19

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

5-18-81

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT Circulated MAY 19 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Au-
thority et al., Petitioners,
79-1711 v.
National Sea Clammers Association
et al.

Joint Meeting of Essex and Union
Counties, Petitioner,
79-1754 v.
National Sea Clammers Association
et al.

City of New York et al.,
Petitioners,
79-1760 v.
National Sea Clammers Association
et al.

Environmental Protection Agency
et al., Petitioners,
80-12 v.
National Sea Clammers Association
et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Third
Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

In this case, involving alleged damage to fishing grounds caused by discharges and ocean dumping of sewage and other waste, we are faced with questions concerning the availability of a damages remedy, based either on federal common law

15, 16, 18

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

5-21-81

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAY 21 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Au-
thority et al., Petitioners,
79-1711 v.
National Sea Clammers Association
et al.

Joint Meeting of Essex and Union
Counties, Petitioner,
79-1754 v.
National Sea Clammers Association
et al.

City of New York et al.,
Petitioners,
79-1760 v.
National Sea Clammers Association
et al.

Environmental Protection Agency
et al., Petitioners,
80-12 v.
National Sea Clammers Association
et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Third
Circuit.

5/21/81
WJH
11
1/2

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

In this case, involving alleged damage to fishing grounds caused by discharges and ocean dumping of sewage and other waste, we are faced with questions concerning the availability of a damages remedy, based either on federal common law

18, 19 ✓
L
T
A

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

5-26-81

Chief Justice Powell

Circulated

5th DRAFT ~~Electronic~~ MAY 26 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Au-
thority et al., Petitioners,
79-1711 v.
National Sea Clammers Association
et al.

Joint Meeting of Essex and Union
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79-1754 v.
National Sea Clammers Association
et al.

City of New York et al.,
Petitioners,
79-1760 v.
National Sea Clammers Association
et al.

Environmental Protection Agency
et al., Petitioners,
80-12 v.
National Sea Clammers Association
et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Third
Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.
In this case, involving alleged damage to fishing grounds
caused by discharges and ocean dumping of sewage and other
waste, we are faced with questions concerning the availabil-
ity of a damages remedy, based either on federal common law

Supreme Court of the United States
 Washington, D. C. 20543

CHAMBERS OF
 JUSTICE LEWIS F. POWELL, JR.

June 17, 1981

No. 79-1711, Middlesex County v. Sea Clammers

MEMORANDUM TO THE CONFERENCE:

I propose adding a new footnote to my opinion for the Court in this case, in response to some of the arguments raised by John's dissent. This footnote would appear on page 18, attached to the second full sentence on that page:

31 JUSTICE STEVENS in dissent finds contrary indications of congressional intent in the savings clauses--§ 505(e) of the FWPCA, 33 U.S.C. § 1365(e) and § 105(g)(5) of the MPRSA, 33 U.S.C. § 1415(g)(5). The language of these clauses, see nn. 10, 11, supra, does not, however, support the view that Congress expressly preserved § 1983 remedies for violations of these statutes. As noted, supra, at 13, there is little reason to believe that Congress intended to do this when it made reference in § 505(e) to "any right which any person ... may have under any statute or common law or to seek any other relief." The legislative history makes clear Congress' intent to allow further enforcement of anti-pollution standards arising under other statutes or state common law. See n. 26, supra. A suit for damages asserting a substantive violation of the FWPCA or the MPRSA is far different, even if the remedy asserted is based on the separate right-of-action created in § 1983. We are convinced that the savings clauses do not refer at all to a suit for redress of a violation of these statutes--regardless of the source of the right-of-action asserted.

Even if this were not the correct interpretation of the savings clauses, we recently held that the savings clause in the FWPCA relates only to the effect of the

accompanying citizen-suit provision. Milwaukee v. Illinois, ___ U.S. ___, ___ (1981) (the section "means only that the provision of [a citizen] suit does not revoke other remedies"). The parallel provision of the MPRSA is equally limited. 33 U.S.C. § 1415(g) (5) ("The injunctive relief provided by this subsection shall not restrict any right which any person ... may have under any statute or common law") (emphasis added). We therefore are not persuaded that the savings clauses limit the effect of the overall remedial schemes provided expressly in the Acts. In sum, we think it clear that those express remedies preclude suits for damages under § 1983, and that the savings clauses do not require a contrary conclusion.

In so holding, we also note that, contrary to JUSTICE STEVENS' argument, post, at ___, n. 11, we do not suggest that the burden is on a plaintiff to demonstrate congressional intent to preserve § 1983 remedies.

L.F.P.
L.F.P., Jr.

ps

— 18, 19

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

6-18-81

From: Mr. Justice Powell

Circulated: _____

6th DRAFT

Recirculated: JUN 18 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Au-
thority et al., Petitioners,
79-1711 v.

National Sea Clammers Association
et al.

Joint Meeting of Essex and Union
Counties, Petitioner,
79-1754 v.

National Sea Clammers Association
et al.

City of New York et al.,
Petitioners,

79-1760 v.
National Sea Clammers Association
et al.

Environmental Protection Agency
et al., Petitioners,
80-12 v.

National Sea Clammers Association
et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Third
Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

In this case, involving alleged damage to fishing grounds caused by discharges and ocean dumping of sewage and other waste, we are faced with questions concerning the availability of a damages remedy, based either on federal common law

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 22, 1981

MEMORANDUM TO THE CONFERENCE

Heretofore Held for No. 79-1711, Middlesex Co. Sewerage
Auth. v. National Sea Clammers

No. 80-126, Outboard Marine Corp. v. Illinois.
This case was held for No. 79-403, Milwaukee v. Illinois, as
well as for Sea Clammers. It involves the efforts of
Illinois to take legal action against a polluter of a river
tributary of Lake Michigan. An initial suit under federal
common law and the Federal Water Pollution Control Act was
dismissed by the District Court. The State then sought to
intervene in a similar suit that had been brought by the
federal government, but leave to intervene was denied. The
CA7 reversed both rulings, holding that the federal common
law of nuisance was not preempted by the FWPCA and that it
applied to this intrastate navigable waterway. The court
also held that the state had a right to intervene in the
federal suit under § 1365(b)(1)(B).

I will vote to GVR on Milwaukee v. Illinois. In
light of our holding that the FWPCA preempted the federal
common law of nuisance in the area of water pollution, the
decision below must be reconsidered. Sea Clammers seems to
have little bearing on this case, and the intervention issue
is not independently certworthy.


L.F.P., Jr.

ps

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1981

Re: Nos. 79-1711, 79-1754, 79-1760 & 80-12 Middlesex
County Sewerage Authority v. National Sea Clammers
Association

Dear Lewis:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1981

Re: Nos. 79-1711, etc. Middlesex County v. Sea Clammers

Dear Lewis:

I am still with you.

Sincerely,
WHR

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

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oik

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 9, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-1711; 79-1754; 79-1760; 80-12 - Middlesex
Co., et al. v. Nat'l Sea Clammers Assn.

After receiving a very helpful summary from the Legal Officer, I propose that we grant certiorari in these cases to consider the following questions:

1. Whether the Federal Water Pollution Control Act, 33 U.S.C. (& Supp. I) §§ 1251 et seq., and the Marine Protection, Research & Sanctuaries Act of 1972, 33 U.S.C. (& Supp. I) §§ 1401 et seq., imply a private right of action independent of the rights explicitly created by the citizens suit provisions of those Acts, 33 U.S.C. § 1415(g).
2. Whether a private citizen has standing to maintain a federal common law nuisance action for alleged damages sustained resulting from ocean pollution as a general federal question under 28 U.S.C. § 1331.
3. Whether any federal common law nuisance action for alleged damages sustained resulting from ocean pollution, if available to a private citizen, is not preempted by the present regulatory scheme governing ocean pollution established by the Federal Water Pollution Control Act and the Marine Protection, Research & Sanctuaries Act.

Respectfully,

John Paul Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 28, 1981

Re: 79-1711, 1754, 1760, and 80-12 -
Middlesex County v. Sea Clammers

Dear Lewis:

As I should have indicated in writing some time ago, I am working on a brief opinion concurring in part and dissenting in part.

Respectfully,



Justice Powell

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
~~Mr. Justice Marshall~~
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JUN 17 '81

Recirculated: _____

79-1711 - Middlesex County Sewerage Authority

v. National Sea Clammers Assn.

JUSTICE STEVENS, concurring in the judgment in part and dissenting in part.

When should a person injured by a violation of federal law be allowed to recover his damages in a federal court? This seemingly simple question has recently presented the Court with more difficulty than most substantive questions that come before us.¹ During most of our history, however, a simple presumption usually provided the answer. Although criminal laws and legislation enacted for the benefit of the public at large were expected to be enforced by public officials, a statute enacted for the benefit of a special class presumptively afforded a

¹ Indeed, in recent Terms a significant portion of our docket has been occupied by cases presenting this question with respect to a variety of federal statutes. See, e.g., California v. Sierra Club, ___ U.S. ___; Universities Research Association v. Coutu, ___ U.S. ___; Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11; Touche Ross & Co. v. Redington, 442 U.S. 560; Cannon v. University of Chicago, 441 U.S. 677. Cf. Texas Industries, Inc. v. Radcliff Materials, Inc., ___ U.S. ___; Northwest Airlines, Inc. v. Transport Workers Union, ___ U.S. ___.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

77. 19

From: Mr. Justice Stevens

Circulated: _____

1st PRINTED DRAFT

Recirculated: JUN 22 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1711, 79-1754, 79-1760, AND 80-12

Middlesex County Sewerage Authority et al., Petitioners,
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Joint Meeting of Essex and Union Counties, Petitioner,
79-1754 v.
National Sea Clammers Association et al.

City of New York et al.,
Petitioners,
79-1760 v.
National Sea Clammers Association et al.

Environmental Protection Agency et al., Petitioners,
80-12 v.
National Sea Clammers Association et al.

On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1981]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, concurring in the judgment in part and dissenting in part.

When should a person injured by a violation of federal law be allowed to recover his damages in a federal court? This seemingly simple question has recently presented the Court with more difficulty than most substantive questions that