

The Burger Court Opinion Writing Database

County of Oneida v. Oneida Indian Nation of New York

470 U.S. 226 (1985)

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

CHAMBERS OF
THE CHIEF JUSTICE

October 24, 1984

Re: (83-1065 - Oneida, New York v. Oneida Indian Nation, et al.
(
(83-1240 - New York v. Oneida Indian Nation, et al.

Dear Lewis:

As of now, I am not persuaded to affirm, but like you, I may change when I see the whole story.

In these circumstances, it falls to Bill Brennan to assign and I leave it to him.

Regards,

Justice Powell

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✓

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

CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1985

Re: No. 83-1065 - Oneida, New York v. Oneida Indian
Nation
No. 83-1240 - New York v. Oneida Indian Nation

Dear John,

I join. It is of no great moment, but you may want to take a look at use of both "the Court" and "the majority" language. Like Byron, I prefer the former although it is largely a matter of style and I leave it to you.

Regards,

LSB

Justice Stevens

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

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1985

Re: No. 83-1065) County of Oneida v. Oneida Indian Nation
83-1240) New York v. Oneida Indian Nation

Dear Lewis:

Please show me as joining Part V of your opinion.

Regards,



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 9, 1984

No. 83-1065

County of Oneida, New York
v. Oneida Indian Nation, etc.

No. 83-1240

New York v. Oneida Indian
Nation, etc.

Dear Sandra,

Thurgood, Harry, you and I are in
dissent in the above. Would you be
willing to undertake the dissent?

Sincerely,

Justice O'Connor

Justice Marshall

Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 25, 1984

No. 83-1065) Oneida, New York
) v. Oneida Indian
) Nation, et al.
)
) New York
) v. Oneida Indian
No. 83-1240) Nation, et al.

Dear Lewis,

Confirming our telephone conversation, I am happy to assign to you the opinion for the Court in the above.

Sincerely,



Justice Powell

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 26, 1984

No. 83-1065) County of Oneida,
) New York, et al.
) v. Oneida Indian
) Nation of New
) York State, etc.,
) et al.
)
) New York
) v. Oneida
) Indian Nation
) of New York
) State, etc.,
 No. 83-1240) et al.

Dear Lewis,

I agree.

Sincerely,

Justice Powell

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To: The Chief Justice
Justice White ✓
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK STATE,
ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK STATE,
ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[December —, 1984]

JUSTICE BRENNAN, concurring in part and dissenting in part:

I join the Court's opinion except for Part V. I dissent from Part V because I adhere to my view that the Eleventh Amendment "bars federal court suits against States only by citizens of other States," *Yeomans v. Kentucky*, 423 U. S. 983, 984 (1975) (BRENNAN, J., dissenting). Thus, I would hold that the State of New York is not entitled to invoke the protections of that Amendment in this federal court suit by counties of New York. See *Employees v. Missouri Public Health & Welfare Dept.*, 411 U. S. 279, 298 (1973) (BRENNAN, J., dissenting); *Edelman v. Jordan*, 415 U. S. 651, 697 (1974) (BRENNAN, J., dissenting). In my view, *Hans v. Louisiana*, 134 U. S. 1 (1890), erects a limited constitutional barrier prohibiting suits against States by citizens of another State; the decision, however, "accords to nonconsenting

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 29, 1984

83-1065 - County of Oneida, NY v. Oneida
Indian Nation of New York State

83-1240 - New York v. Oneida Indian
Nation of New York State

Dear Lewis,

I shall await other writing in this
case.

Sincerely yours,



Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 18, 1985

83-1065 - County of Oneida v. Oneida Indian Nation
of New York State
83-1240 - New York v. Oneida Indian Nation of New York State

Dear John,

Join me in your dissenting opinion, please.

Sincerely yours,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 28, 1985

83-1065 and 83-1240 - County of Oneida,
New York v. Oneida Nation of New York State

Dear Lewis,

Please join me in Part V of your opinion
and what I take to be a reversal of the
judgment in 83-1240.

Sincerely yours,

Byron

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1984

Re: Nos. 83-1065 and 1240-Oneida and New York v. Oneida
Indian Nation of New York State

Dear Lewis:

I await the dissent.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 21, 1985

Re: Nos. 83-1065 and 1240-Oneida and New York v.
Oneida Indian Nation of New York State

Dear Bill:

Please join me in your opinion concurring in part
and dissenting in part.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 10, 1984

Re: No. 83-1065) County of Oneida, New York v.
Oneida Indian Nation, Etc.
No. 83-1240) New York v. Oneida Indian Nation, Etc.

Dear Lewis:

Please join me.

I, for one, appreciate your taking on this complicated case.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 5, 1984

83-1065 Oneida

Dear Chief:

I am surprised that you should have assigned this case to me. I am not at all sure that I can write it in accord with my understanding of the majority vote.

I had not considered the question of laches or whether a statute of limitations could be borrowed. My view was that no state statute of limitations was applicable, as I agreed with the SG on this issue. Not is there any applicable federal statute. I did say that I would not imply a private cause of action, but agreed that Oneida I can be read as assuming a federal common-law right to sue.

You may have had in mind my statement that I thought Judge Meskill was right as a matter of policy when he said this issue should be left to Congress. My bottom line was that I would like to see how the laches argument is written out before committing myself to reverse.

I would hope that the case is reassigned. If anyone else is interested in writing this case, I will, of course, take any other case or cases.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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10/24

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 24, 1984

82-1065 Oneida

Dear Chief:

In my letter of October 5 expressing surprise that this case had been assigned to me, I stated that I had not considered the question of laches or whether a statute of limitations could be borrowed. I further said that until I could see how the laches argument would "write", I could not commit myself to reverse.

I have now studied the laches question, and am not persuaded that it is a sound defense to this suit. The issue was not addressed by CA2, and was not discussed in the briefs with the exception of a few pages near the end of the SG's brief. Nor is there any statute of limitations to borrow.

I therefore conclude that CA2 should be affirmed, and unless the case is to be reassigned I will write an opinion for affirmance. The basic resolution of this controversy will have to be made by Congress.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

11/20

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK STATE,
ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK STATE
ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[November —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether three tribes of the Oneida Indians may bring a suit for damages for the occupation and use of tribal land allegedly conveyed unlawfully in 1795.

I

The Oneida Indian Nation of New York, the Oneida Indian Nation of Wisconsin, and the Oneida of the Thames Band Council ("the Oneidas") instituted this suit in 1970 against the counties of Oneida and Madison, New York. The Oneidas alleged that their ancestors conveyed 100,000 acres to the State of New York under a 1795 agreement that violated the Trade and Intercourse Act of 1793, 1 Stat. 329, and thus that the transaction was void. The Oneidas' complaint sought damages representing the fair rental value of that part of the land presently owned and occupied by the counties of Oneida

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02/08

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor



~~Stylistic Changes~~

See pp 16-17

From: **Justice Powell**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK STATE,
ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK STATE,
ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[February —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether three tribes of the Oneida Indians may bring a suit for damages for the occupation and use of tribal land allegedly conveyed unlawfully in 1795.

I

The Oneida Indian Nation of New York, the Oneida Indian Nation of Wisconsin, and the Oneida of the Thames Band Council ("the Oneidas") instituted this suit in 1970 against the counties of Oneida and Madison, New York. The Oneidas alleged that their ancestors conveyed 100,000 acres to the State of New York under a 1795 agreement that violated the Trade and Intercourse Act of 1793, 1 Stat. 329, and thus that the transaction was void. The Oneidas' complaint sought damages representing the fair rental value of that part of the land presently owned and occupied by the counties of Oneida

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 23, 1985

Re: No. 83-1065) County of Oneida v. Oneida Indian Nation
83-1240) New York v. Oneida Indian Nation

Dear Chief,

I hope you would consider joining Part V of my opinion in this case, as Bill Rehnquist has done. The question whether the Eleventh Amendment bars the Counties from bringing their claim for indemnity against the State in federal court is entirely separate from the prior question of liability. Therefore, I think you could join the section of the opinion dealing with the Eleventh Amendment even though you will dissent from the decision on liability. Your vote is necessary to make a Court on this issue.

Sincerely,

Lewis
/Amc

cc: Justice Rehnquist

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 17, 1985

Re: No. 83-1065) County of Oneida v. Oneida Indian Nation
) of New York
 83-1240) New York v. Oneida Indian Nation of New York

Dear John,

Please join me in your dissent.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

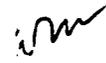
February 22, 1985

Re: No. 83-1065) County of Oneida v. Oneida Indian Nation
83-1240) New York v. Oneida Indian Nation

Dear Lewis,

Please join me in Part V of your opinion in this case.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 28, 1984

Re: 83-1065 - County of Oneida v. Oneida
Indian Nation of New York State
83-1240 - New York v. Oneida Indian
Nation

Dear Lewis:

As presently advised, I am still of the opinion that the Oneida's claims had already been barred in 1952 and that they were not revived by any federal statute enacted thereafter. Accordingly, I shall try my hand at a dissent.

Respectfully,



Justice Powell

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens
JAN 10 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[January —, 1985]

JUSTICE STEVENS, dissenting.

In 1790, the President of the United States notified Cornplanter, the Chief of the Senecas, that federal law would securely protect Seneca lands from acquisition by any State or person:

“If . . . you have any just cause of complaint against [a purchaser] and can make satisfactory proof thereof, the federal courts will be open to you for redress, as to all other persons.” 1 American State Papers (Indian Affairs) 142 (1832).¹

¹ Before 1875 when “Congress conferred upon the lower federal courts, for but the second time in its nearly century-old history, general federal-question jurisdiction,” *Steffel v. Thompson*, 415 U. S. 452, 464 (1974); Judiciary Act of March 3, 1875, 18 Stat. 470, an Indian tribe could only raise its federal land claims in this Court by appealing a state court judgment, Judiciary Act of 1789, ch. 20, § 25, 1 Stat. 85. Until Congress made Indians U. S. citizens in the Act of June 2, 1924, 43 Stat. 253, they were not gener-

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 4, 3

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[January —, 1985]

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE REHNQUIST join, dissenting.

In 1790, the President of the United States notified Cornplanter, the Chief of the Senecas, that federal law would securely protect Seneca lands from acquisition by any State or person:

"If . . . you have any just cause of complaint against [a purchaser] and can make satisfactory proof thereof, the federal courts will be open to you for redress, as to all other persons." 1 American State Papers, Indian Affairs, Vol. 4, p. 142 (1832).¹

¹ Before 1875 when "Congress conferred upon the lower federal courts, for but the second time in their nearly century-old history, general federal-question jurisdiction," *Steffel v. Thompson*, 415 U. S. 452, 464 (1974); Judiciary Act of March 3, 1875, 18 Stat. 470, an Indian tribe could only raise its federal land claims in this Court by appealing a state-court judgment, Judiciary Act of 1789, ch. 20, § 25, 1 Stat. 85. Until Congress made Indians

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STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 1, 3, 4, 6, 7, 8, 11, 12, 15, 16

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1065 AND 83-1240

COUNTY OF ONEIDA, NEW YORK, ET AL.,
PETITIONERS

83-1065

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

NEW YORK, PETITIONER

83-1240

v.

ONEIDA INDIAN NATION OF NEW YORK
STATE, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1985]

JUSTICE STEVENS, with whom THE CHIEF JUSTICE,
JUSTICE WHITE and JUSTICE REHNQUIST join, dissenting in
No. 83-1065.

In 1790, the President of the United States notified Corn-
planter, the Chief of the Senecas, that federal law would se-
curely protect Seneca lands from acquisition by any State or
person:

"If . . . you have any just cause of complaint against [a
purchaser] and can make satisfactory proof thereof, the
federal courts will be open to you for redress, as to all
other persons." 1 American State Papers, Indian Af-
fairs, Vol. 4, p. 142 (1832).¹

¹ Before 1875 when "Congress conferred upon the lower federal courts,
for but the second time in their nearly century-old history, general federal-
question jurisdiction," *Steffel v. Thompson*, 415 U. S. 452, 464 (1974); Judi-
ciary Act of March 3, 1875, 18 Stat. 470, an Indian tribe could only raise its
federal land claims in this Court by appealing a state-court judgment, Judi-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1985

Re: 83-1065 - County of Oneida v. Oneida
Indian Nation of New York State
83-1240 - New York v. Oneida Indian
Nation

Dear Lewis:

At an appropriate location in your opinion, would you simply note: "JUSTICE STEVENS concurs in the judgment in No. 83-1240."

I should perhaps explain that I am a little reluctant to join what you have written on the Eleventh Amendment and do not feel any explanation of my vote is necessary because it necessarily follows from my view of laches.

Respectfully,



Justice Powell

Copies to the Conference

MA

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 9, 1984

No. 83-1065 County of Oneida, N.Y. v. Oneida
Indian Nation
No. 83-1240 New York v. Oneida Indian Nation

Dear Bill,

I will plan to tackle a dissent in this case, although the majority resolution of it appears to be unclear at present.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Blackmun

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(12)

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 21, 1984

No. 83-1065 County of Oneida, N.Y. v. Oneida
Indian Nation of New York State
No. 83-1240 New York v. Oneida Indian Nation
of New York State

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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