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THE ELLIS ISLAND VERDICT: THE RULING

THE ELLIS ISLAND VERDICT: THE RULING; High Court Gives New Jersey Most of Ellis Island

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By Linda Greenhouse

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New Jersey won the battle of Ellis Island today.

Five years after New Jersey sued New York in the Supreme Court to establish sovereignty over the largely artificial mixture of rock and landfill in New York Harbor, the Justices swept aside New York's appeal to history and sentiment and ruled by a vote of 6 to 3 that the entire landfill part, nearly 90 percent of the island, is New Jersey territory.

New Jersey even won a piece of the historic main immigration building, now a museum run by the National Park Service, through which the ancestors of 40 percent of the country's current population passed on their immigrant journey to a new world.

The fact that many of these immigrants thought -- indeed, were told -- that they were arriving in New York carried no weight with the Court's majority today. The Court based its decision on an 1834 compact between the two states, negotiated at a time when Ellis Island was a three-acre Army fort, some six decades before it became the Federal Government's main processing center for immigrants.

The 1834 compact provided that "New York shall retain its present jurisdiction" over the island while New Jersey got the surrounding waters and submerged lands.

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That meant, according to Justice David H. Souter's majority opinion, that the subsequent more than 24 acres of landfill, added in stages from the 1890's until 1934, became part of New Jersey -- every inch of that landfill, the Court emphasized in a part of the opinion that probably inflicted the most bitter blow to New York's pride as well as to its hope of salvaging something from a case that had gone badly from the start.

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Because the Federal Government actually holds title to Ellis Island, as distinct from the question of state jurisdiction, visitors are unlikely to notice any difference. At issue is the allocation of a relatively small amount of sales tax revenue and, farther down the road, possible development plans.

Gov. Christine Todd Whitman, who was in Washington to attend an unrelated meeting, appeared on the Supreme Court steps several hours after the ruling to declare victory. The decision showed that "New Jersey's place in history shouldn't be questioned by anybody," she said. The Court ruled that Paul R. Verkuil, a law professor whom the Justices had appointed as a special master to conduct a hearing and make a recommendation in the case, had been too generous to New York, even though his 168-page report last year favored New Jersey in most major respects and left New York with a relative crumb.

Mr. Verkuil had concluded that while New Jersey was entitled to the landfill part of the island, the resulting boundary line that ran through three of the historic buildings should be adjusted in the interests of arriving at "the most practical, convenient, just and fair" solution.

He proposed that New York be permitted to retain the entire main building as well as a strip of landfill between the building and the ferry slip at which tourists arrive on boats from the Battery in lower Manhattan.

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That proposal, to which New Jersey had strenuously objected, was in error, Justice Souter said. Once the Court decided that the 1834 compact dictated the result, he explained, the Court had no jurisdiction to make further adjustments.

"We appreciate the difficulties of a boundary line that divides not just an island but some of the buildings on it," Justice Souter said, "but these drawbacks are the price of New Jersey's success in litigating under a compact whose fair construction calls for a line so definite."

While Ellis Island has been a source of tension between the two states since time immemorial -- New Jersey first sued New York in 1831 in a Supreme Court case that was made moot by the 1834 compact -- New Jersey was prompted to file the latest suit by a seemingly mundane Federal appeals court ruling in 1992.

The United States Court of Appeals for the Second Circuit, in Manhattan, ruled that New York's law, and not New Jersey's, should apply to calculate an award for damages sustained on the landfill part of the island.

The appeals court rejected the Federal Government's argument that New Jersey law should apply because, the Government said, New Jersey had jurisdiction over the landfill.

The next year, New Jersey revived the old dispute by suing New York directly in the Supreme Court, as the Constitution provides for boundary disputes and other cases between states.

Asked at a news conference today whether New Jersey might now relinquish jurisdiction over the portions of the buildings that are in both states, Governor Whitman said: "Of course we're not going to give them back to New York. We've been 160 years in this battle and the Supreme Court has spoken pretty clearly."

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On the New York side, Gov. George E. Pataki and Attorney General Dennis C. Vacco reached for poetry where legal arguments had failed them.

"Ellis Island will always mean more than boundaries drawn by men or by courts," the Attorney General said, adding, "Her future belongs to all Americans."

Governor Pataki said: "Ellis Island will always be part of New York in the hearts and minds of the millions of immigrants who came to America seeking freedom and liberty. This decision can never change that fact."

In fact, in a dissenting opinion, Justice John Paul Stevens emphasized the belief not only of the 12 million immigrants who passed through the island from 1892 to 1954 but of the thousands of people who worked there that Ellis Island was part of New York. His opinion included a facsimile of an identity card, given to each immigrant and referring in eight languages to "landing at New York."

Justice Stevens said that leaving New York's part as "an enclave within New Jersey's share of the island" was a bizarre decision that was not only unfair to New York but that failed to draw the "common-sense inference" that the entire island should be considered part of New York. Justices Antonin Scalia and Clarence Thomas also dissented.

Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy, Ruth Bader Ginsburg and Stephen G. Breyer joined Justice Souter's opinion, *New Jersey v. New York*, No. 120 Original.

In a concurring opinion, Justices Breyer and Ginsburg, noting that "many of us have parents or grandparents who landed as immigrants at 'Ellis Island, New York,' " said they had assumed when this case was argued that the island would prove to be "part and parcel" of New York. But the record proved otherwise, they wrote with evident regret.

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In his opinion, Justice Souter deprecated the historical evidence put forward by New York and endorsed by Justice Stevens as "closer to famine than feast" and "simply a grab bag of opinions shifting back and forth."

While the museum part of the main immigration building is on the original three acres and is thus in New York, the building's kitchen and laundry are in the New Jersey portion. The boathouse and a structure used for the baggage and dormitory will also be split between the two states.

Governor Whitman said today that she would appoint a commission to make recommendations for preservation, renovation and development. There would be no New Yorkers on the panel, she said.

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