

David and Goliath: Sherrill, New York, and Turning Stone Casino

by Elaine Willman

On March 29, 2005, the U.S. Supreme Court ruled, in what is being called a David-versus-Goliath scenario, on *City of Sherrill vs. Oneida Indian Nation*. Sherrill, the smallest city in the state of New York at two and one-half square miles and 3,000 population, won the ruling handily. The issue was: Are fee-simple (taxable) parcels that have been acquired by an Indian tribe subject to local and state taxation, or are they tax-exempt as "Indian country"?

Located almost in the center of New York State-halfway between Syracuse and Utica-the city of Sherrill drew national attention in 2005 for its energetic efforts to preserve its community integrity. The diminutive town has no fewer than 10 pleasant, manicured parks to serve its people. The cheery and helpful quarterly newsletter issued from Sherrill City Hall reminds residents, "If you are going to be away for a week or more, notify the police department so that a check of your residence can be made."

Skating rinks, athletic fields, football and soccer fields, and tennis and basketball courts are well appointed and scattered throughout this small community. Sherrill's Knot Hole Club, active for more than 25 years, is solely focused on the delivery of excellent athletic and recreational programs for the nearly 1,000 young people who call Sherrill home.

"You know, we have a commitment to our citizens that when they move here, they see what they have, they know that this is a quality community and that there is zoning and we enforce our rules and regulations," said David Barker, Sherrill's city manager since 1994. "Our residents have expectations, and we meet them."

The Facts

The community is not a particularly wealthy place, with a median household income of less than \$50,000, but the 2000 U.S. Census reports that only seven families live below the poverty line. Sherrill is a town that takes good care of

itself. This is immediately observable to any stranger passing within the city's borders. Sherrill was the "David" in this millennium's *David vs. Goliath* litigation.

Not far from Sherrill, about three miles as the crow flies-rising 253 feet into the air, at 19 floors, and offering some 200,000 square feet of space containing more than 2,400 slot machines and 100 game tables-stands the Turning Stone Casino. This millennial castle of Goliath is the manifest dream of the Oneida Indian Nation of New York's (OINNY) Chief Executive Officer Ray Halbritter.

The glistening, glass-and-mirror tower that is the Turning Stone Resort-Casino dwarfs everything around it, with the next tallest building within a radius of 40 miles being the 10-story Oneida County seat.

The position taken by OINNY when acquiring properties on the current tax rolls of Oneida and Madison counties is that, once acquired by OINNY, these former "ancestral" lands become new Indian country and are therefore not subject to tax or regulation by the local, county, or state government.

Annual revenue figures for the Turning Stone Casino have varied from \$70 million to \$167 million in recent years, with rumors of 50 percent profit margins. In its 2004 annual report, the OINNY reported that its customers' "expenditures on consumable goods and services totaled more than \$342 million," or "almost one and a half times more than the amount that New York State budgets annually to run its state legislature, \$200 million." This is an enormous amount of goods purchased annually, upon which little, if any, sales tax is collected or paid.

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Thus, CEO Halbritter has established a veritable kingdom within the two counties that is answerable to no one-not the counties, nor the state of New York, nor the United States. It is a separate, sovereign nation that makes its own rules as it goes along and follows no one else's.

Only two of the OINNY parcels were acquired in Sherrill. The local government believed that if a couple of parcels could be purchased, more could surely follow, and the locality could become seriously disrupted by patches of Indian country that fail to comply with local tax or zoning regulations.

Litigation

In 1997, Sherrill sent a property-tax bill to OINNY, as it would every other property owner within its bounds. OINNY declined to pay the annual property taxes. As this debt to Sherrill continued in delinquency, Sherrill filed tax liens on the parcels. The city commissioners, as well as the rest of the community, stood firmly behind the city manager in all actions respecting this conflict.

In February 2000, the OINNY took Sherrill into federal court, seeking to prevent the city from collecting delinquent or future property taxes on OINNY properties. The litigation proceeded through the federal judicial system, with the city losing in the U.S. District Court in June 2001. Sherrill also was defeated in the 2nd Circuit Court of Appeals in July 2003. With some courage, the little city had pursued appeals on every decision, including its last hope-an appeal to the U.S. Supreme Court that was filed in 2004.

The Supreme Court asked a former U.S. Solicitor General, Ted Olson, for an opinion on whether the case should be heard by the Highest Court. In early June 2004, Olson advised the Supreme Court not to hear the case. On June 28, 2004, the Supreme Court decided against this advice and accepted the case for review. Sherrill would become "the little city that could."

The Standoff

This unlikely standoff between a tiny town and a politically overwhelming tribal power was flying under the radar screen of U.S. media, except for those journalists and academic specialists who closely watch federal Indian policy. The issues involved in the case held substantial consequences for both the victor and the vanquished.

City Manager David Barker said, "I have no problem, as long as the tribal businesses play by the same rules as every other corporate citizen. If they want a longhouse, if they want a museum, I have no problem with that being tax-

exempt. But when they have a commercial enterprise, that is a whole different ballgame."

The lawsuit stemmed from Sherrill's determination to treat a tribal business and property in the same manner as other businesses within the city. When asked about what kind of support the city of Sherrill had been receiving regarding the litigation, Barker replied: "We were asked at various stages of the legal road to back off, by state and county officials, when we first got into this lawsuit. We were involved in a meeting in Syracuse where they asked us not to proceed, and this was . . . very early on. We were told that the county and state [were] already involved in this tax dispute.

"So I said, 'Well, we will be putting that much more pressure on it,'" Barker continued with an impish grin. "We all recognized the fact that if we lost, that would strengthen the Oneida position, and when we did lose in district court, it certainly did strengthen their position, and they became much more aggressive. But we took the case to the next step, and we lost there, too."

On the subject of the fiscal impacts of the tribe's parcels, according to Barker, "We lost about \$60,000 the first year in sales-tax money. So, to cover this amount would mean a 10 percent tax increase-I mean, that's 10 percent each year! Then, the Oneidas opened other facilities, a smoke shop and a tee-shirt factory. They have a retail outlet out front. Normally, when something like that goes in, we would see our sales-tax revenues go up, and they absolutely didn't. We really can't put a handle on that because we don't know what the Oneidas' revenue is."

Barker went on, "We had only one convenience gas station here, and that is gone. We lost a little bit of property tax by [the Oneidas'] refusal to pay. The bigger picture for us is our sales-tax issue. And our state leaders will not collect the sales tax as they are required.

"The Oneidas just went through a \$300 million expansion, according to what I read in the papers, and I see the evidence of a lot of it. That is supposedly going to create another 1,000 jobs. It is going to add another \$15 million to the payroll in central New York. If you take \$15 million and divide it by a thousand, that's \$15,000 a job. You know, that is poverty-level. . . . [I]n that 1,000 jobs, there will be some good-paying jobs, but I am talking about an average pay. You cannot raise a family on the majority of jobs that the Oneidas are providing.

"We have talked about taxation, but we have another extremely serious concern, and that is zoning. Our zoning ensures that adjacent uses will be compatible and that property values will be stable. OINNY ignores our zoning. Our people move here, buy homes and businesses, and they have a right to feel secure. What happens if an entity moves in next door to them and you don't know what's going to happen?"

When Barker was asked about any improvements in tourism after the Turning Stone Casino opened, he responded, "The Oneidas tout the fact that they bring in 3 to 4 million visitors a year to central New York, and they do. Their idea is- you come in, you spend your money, we will have 19 restaurants or whatever it is; we will have eight golf courses; we'll have all the things so that you can spend your money right here [at OINNY enterprises]. Then, you get back on the throughway, and we don't want to see you. Or we'll bus you to Syracuse to catch a plane. Our restaurants in Sherrill see little business from the casino. In fact, they are seeing competition from the casino and losing business."

These conversations with David Barker occurred in October 2004. The U.S. Supreme Court had docketed the Sherrill case for oral argument on January 11, 2005. On the city of Sherrill's Web site is its Winter 2005 newsletter issue, which features a lovely photograph of city officials standing in front of the U.S. Supreme Court on January 11, 2005.

No one anticipated a ruling to come down from the Court before May or June 2005. On March 29, however, the news came. The first sentences in the first relevant article published in the *Indian Country Today* newspaper, owned by 4-Directions-an enterprise of the Oneida Indian Nation and its CEO, Halbritter-stated: "Invoking the Doctrine of Discovery, the Supreme Court said repurchased Indian land does not unilaterally revert to tribal sovereign status. In an 8-to-1 ruling, the Court determined that the Oneida Indian Nation of New York cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders."

Score One for David, as Reported by Goliath

The ruling, by Justice Ruth Bader Ginsburg with a sole dissent from Justice John Paul Stevens, will need months, perhaps years, before its breadth and scope

can be fully understood. Several prominent legal counsel and law firms provided extensive pro-bono services to Sherrill, resulting in out-of-pocket cost to the city of only about \$100,000 for pursuing the case all the way to the Highest Court.

Several important findings should be noted, as provided in the Court's ruling for *City of Sherrill vs. Oneida Indian Nation*:

- "Fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign-first the discovering European nation and later the original States and the United States." [Doctrine of Discovery]
- "The distance from 1805 to the present day, the Oneidas' long delay in seeking equitable relief against New York or its local units, and developments in Sherrill spanning several generations evoke the doctrines of laches, acquiescence, and impossibility, and render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate. . . . [T]he doctrine of laches focuses on one side's inaction and the other's legitimate reliance to bar long-dormant claims for equitable relief." [Doctrine of Laches]
- "The longstanding assumption of jurisdiction by the State over an area that is predominantly non-Indian in population and land use creates 'justifiable expectations'. . . [A] contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area." [Acquiescence, Impossibility, Justifiable Expectations]
- "Congress has provided, in 25 U.S.C. §465, a mechanism for the acquisition of lands for tribal communities that takes account of the interest of others with stakes in the area's governance and well-being. Section 465 provides the proper avenue for OINNY to reestablish sovereign authority over territory held by the Oneidas 200 years ago." [Transferring Indian-owned lands from fee into federal "trust" status]

Had Sherrill lost the ruling, some 18,000 acres of parcels, mostly noncontiguous in Madison and Oneida counties of New York State, would have been characterized as "Indian country," and removed from the taxable land base. Likewise, the ruling has national implications for tribes that acquire lands outside Indian reservations, an increasing practice since the Indian Gaming Regulatory Act of 1988.

This was a big win for a little town. Credit is well deserved for the leadership of City Manager David Barker, fully supported by the city commission and the entire community.

Reverberations of the Sherrill case have caused the withdrawal of Governor George Pataki's legislation proposing five tribal casinos for Sullivan County, New York. It has called into question the many major Indian land claims encompassing most of upstate and central New York. The ruling may also be an effective tool for communities whose "justifiable expectations" do not include a desire for an encroaching Class III tribal casino.

The Sherrill ruling is a true, much-deserved, and necessary victory for New York's smallest city, especially if, as Barker promises, "our people have expectations and we meet them." They are, for now, less at risk of being parceled into tribal, sovereign "patches" (Justice Ginsburg's word) within an existing local government system. The case will undoubtedly have a substantial impact upon other jurisdictional conflicts arising from federal Indian policy in New York, as well as across the country.

Elaine Willman is an author, as well as a former assistant to the city manager in Ojai, California. She has served as community development director for Toppenish, Washington. This article is adapted from the book *Going to Pieces . . . The Dismantling of the United States*, written by Willman and Kamie Christensen Biehl. The authors have also produced a documentary film of the same name. For information regarding the book or the film, send an e-mail to www.equilocus.com or to Willman at toppin@aol.com.

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