

Traffic Regulation or Racial Segregation?

The Closing of West Drive and *Memphis v. Greene* (1981)

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*It [was] a barrier built at a time when we should
[have been] tearing down barriers...it [was] a
symbolic thing as well as a real thing.¹*

-AC Wharton,
Memphis Area Legal Services

For much of its history, Memphis, Tennessee has been divided along racial lines. In the north-central part of the city especially, a variety of neighborhoods distinguish themselves from one another along the lines of race and class. The wealthy, white neighborhood of Hein Park, for instance, sits oddly juxtaposed to poor and predominantly black communities both to the north and the southeast. Each of these areas possesses its own distinctive character and personality. Hein Park, for example, is somnolent and picturesque. Walking through the neighborhood, one cannot help but notice the characteristically European architecture, expansive green lawns, and towering trees that typify its finest estates. Upon arriving at Jackson Avenue, however, the pastoral serenity of Hein Park abruptly transitions into a quagmire of honking horns and deteriorating homes that mark the Hollywood-Chelsea community to the North. In stark contrast to Hein Park, this area is heavily-trafficked, economically underprivileged, and, most importantly, it is overwhelmingly black.

West Drive runs through the center of Hein Park, but a sidewalk prevents the street from intersecting with Jackson Avenue and continuing north as Springdale Street. If not for this sidewalk, cars would be easily able to travel down Springdale, across Jackson, and onto West Drive into Hein Park. While there are other streets within Hein Park that connect to Jackson

¹ Michael Lollar, *The Commercial Appeal*, November 2, 1979.

Avenue, none extend directly from Jackson to North Parkway, a major thoroughfare to the south of Hein Park. The closing of West Drive therefore effectively separated two racially homogenous communities by preventing the African-American motorists from the Hollywood-Chelsea area from accessing a public street in a white neighborhood. This separation is precisely why the existence of the awkwardly placed sidewalk can be viewed as being so significant.

The United States Supreme Court case of *Memphis v. Greene* (1981) involved this very sidewalk. In the case, the residents of Hein Park claimed that traffic on West Drive posed a legitimate safety hazard, and they sought to close the street to help mitigate this problem. However, because many of the African-American residents from Hollywood-Chelsea believed the closure to be racially motivated, two North Memphis civic groups and three concerned citizens initiated a legal suit against the city of Memphis, Memphis Mayor Wyeth Chandler, and the Memphis City Council. These African-American civic activists alleged that the closing constituted a “badge of slavery” under the Thirteenth Amendment to the Constitution and violated their property rights under federal civil rights law. After the case passed through the lower federal courts, the Supreme Court, in a 6-3 decision, upheld the constitutionality of the street closing, thus effectively legitimizing the separation of the two neighborhoods along racial lines.

The Civil Rights Movement in Memphis

The origins of the case lay in the city's often tumultuous history of race relations. Following World War II, African Americans in Memphis experienced modest gains. In 1948, for example, the city hired nine blacks into what had previously been an all-white police force, and in 1955 the Memphis fire department hired an all-black squad to be stationed in the "black section of town."⁴ Empowered by the registration of sixty percent of black voters after the elimination of the poll tax in 1954, several African Americans obtained positions of political power during the 1960s. For instance, A. W. Willis Jr. won election to a seat in the Tennessee House of Representatives, Russell Sugarmon, Jr. ran successfully for a Senate seat, and local attorney Benjamin Hooks received an appointment as judge on the criminal court. In addition, the city implemented a new charter, under which a thirteen person council drew some of its membership from specific districts (rather than from an at-large vote). As a result, blacks gained a foothold in the city government by filling the seats from predominantly African-American districts.⁵

Still, white resistance remained strong. After the *Brown v. Board of Education* decision of 1954, white Memphians fought federal attempts to desegregate public schools. Clifford H. Davis, a Memphis member of the U.S. House of Representatives, joined the overwhelming majority of the other southern members of Congress in signing the "Southern Manifesto," which challenged the Supreme Court's constitutional authority to issue the *Brown* ruling. Memphis segregationists formed the "Citizens for Progress" in response to Russell Sugarmon's 1959 bid for a seat on the city commission and declared their desire to "Keep Memphis Down in Dixie."

⁴ Beverly Bond and Janann Sherman, *Memphis in Black and White*, (Charleston, SC: Arcadia Publishing, 2003), pg. 121-123. In 1966, the fire department was still not officially integrated, and as of 1969 the police force was still only 7.7 percent black.

⁵ Bond, *Memphis in Black and White*, 133.

In a further attempt physically to separate blacks from whites, the Memphis City School Board built Lester High School in 1955 for blacks to attend instead of the all-white East High.⁶

Nevertheless, due to the efforts of groups such as the NAACP and the Memphis Committee on Community Relations (MCCR), Memphis avoided many of the problems that typified integration efforts in other major southern cities. Following a series of legal suits in the early 1960s, the city opened the public library, public restrooms and drinking fountains, city buses, downtown lunch counters, movie theatres, Overton Park, the Memphis Zoo, the Brooks Art Museum, and the Pink Palace Museum to African Americans on a non-segregated basis. In fact, the black historian Harry Holloway estimated that Memphis had more boycotts, sit-ins and other attempts to integrate public and private accommodations than any other city in the nation.⁷ Early efforts to integrate area schools also proved successful. As evident in *Commercial Appeal* and *Press Scimitar* newspaper articles that urged readers to honor the Court's ruling, there were some whites who accepted the *Brown* decision regardless of the fact that many others energetically opposed it.⁸ Moreover, support for *Brown* ensured that there would be some measure of integration within Memphis schools. Although Memphis State College denied admission to two black students to its graduate program in 1955, eight black students were admitted to the undergraduate college in 1959. In the fall of 1961, thirteen African-American first graders were also admitted to four local all-white schools with little resistance from the white community,⁹ and by 1963, 258 black fourth graders enrolled in majority white schools.¹⁰ These efforts at desegregation in Memphis were so successful that President Kennedy even

⁶ Bond, *Memphis in Black and White*, 134-135.

⁷ Marcus Pohlmann and Michael Kirby, *Racial Politics at the Crossroads*, (Knoxville: University of Tennessee Press, 1996), 57.

⁸ Roger Biles, "A Bittersweet Victory: Public School Desegregation in Memphis," *The Journal of Negro Education*, Volume 55, No. 4 (Fall 1986), 472.

⁹ Bond, *Memphis in Black and White*, 135-136.

¹⁰ Biles, "A Bittersweet Victory: Public School Desegregation in Memphis," 475.

lauded the city by saying it “reflected a credit on the United States throughout the world.”¹¹ Indeed, the city that *Time* magazine characterized as a “Southern backwater” and “decaying Mississippi River town” after the assassination of Dr. Martin Luther King was actually substantially desegregated well before the passage of the 1964 *Civil Rights Act*.¹²

However, after many early victories in the desegregation of Memphis area schools, the pace slowed. Following the city school board’s adoption of a “comprehensive desegregation plan” that integrated the first three grades immediately and one additional grade every year for the following nine years, the Memphis NAACP initiated litigation to accelerate what they perceived to be a relatively lackluster effort at integrating city schools. Despite their efforts, the school board’s policy that allowed white students to easily transfer from “undesirable” schools prevented substantial integration from taking place. To combat subtle efforts by whites to deny bi-racial schools and in protest of the fact that over eighty percent of black students still attended racially segregated schools, in November of 1969, hundreds of African Americans organized a march to demand complete integration. They also wanted some degree of direct representation on the city Board of Education. Even though the protestors intended the demonstration to be peaceful, it eventually erupted in violence, as police arrested fifty-three individuals and used tear gas to disperse the remaining crowd.

The process of integration did not quicken until the United States Supreme Court held in *Northcross v. Memphis Board of Education* (1970) that the Sixth Circuit’s sanction of Memphis’s desegregation policy did too little to aid the struggle for integration.¹³ After this ruling and Judge Robert McRae’s subsequent decision to prescribe busing in the Memphis area,

¹¹ President John F. Kennedy, as quoted in Biles, “A Bittersweet Victory: Public School Desegregation in Memphis,” 471.

¹² *Time Magazine*, as quoted in: Bond, *Memphis in Black and White*, 139.

¹³ Biles, “A Bittersweet Victory: Public School Desegregation in Memphis,” 476. The passage referenced *Northcross v. Board of Education*, 397 U.S. 232 (1970).

white segregationists continued to resist change. A group of parents formed the Citizens Against Busing (CAB) to “fight busing for racial balance by any means at [their] disposal,” Mayor Wyeth Chandler attempted to prohibit busing by amending the city charter to deny the use of tax revenues for that purpose, and white children increasingly attended private or parochial schools. Although some individuals adhered to the Court’s ruling, as evidenced by the formation of the Involved Memphis Parents Assisting Children and Teachers (IMPACT) to promote compliance with the law, the Memphis school system became essentially re-segregated in response to efforts undertaken to promote integration, as approximately 30,000 whites fled Memphis public schools.¹⁴

Considerable progress in the elimination of economic discrimination also proved to be an obstacle to civil rights. In 1959, for example, almost a quarter of a predominantly black inner-city work force earned just under two dollars an hour, and only a decade later, seventy percent of Memphis blacks lived below the federal poverty level. Even as late as 1969, blacks made up seventy-one percent of the Memphis families who earned less than \$1,000 a year.¹⁵ Moreover, by the mid to late 1960s, progress in race relations slowed. Whites believed that they had been relatively cooperative in the extension of black civil rights, while blacks felt that too little had been done to alleviate the basic and persisting problems of “poverty and prejudice” that often enhanced the racial divide.¹⁶ It was this economic environment that precipitated most of the defining moments of the Civil Rights Movement in Memphis, including the 1968 sanitation workers’ strike and the assassination of Dr. Martin Luther King, Jr. The strike marked the culmination of a variety of factors that had been at work in Memphis since the 1950s. During

¹⁴ Biles, “A Bittersweet Victory: Public School Desegregation in Memphis,” 477-480. Wyeth Chandler was Memphis city mayor at the time that the closing of West Drive was at issue, and Judge Robert McRae presided over the case in the District Court.

¹⁵ Pohlmann and Kirby, *Racial Politics at the Crossroads*, 56.

¹⁶ Bond, *Memphis in Black and White*, 137.

that time, racial divisions in the Memphis Public Works Department began to materialize, as an overwhelmingly black workforce faced discrimination from their white supervisors. This discrimination manifested itself in the payment of wages so abysmally low that forty percent of sanitation workers qualified for federal welfare even though they worked two jobs. Additionally, the department's equipment was never modernized, causing many workers to endure injuries for which they were not compensated. Employees also earned less on days when rain prevented a full day's work.¹⁷

After failed attempts to protest these conditions in 1963 and 1966, the 1968 death of two African-American sanitation employees provided the necessary impetus for a more energized local movement. This brutal incident resulted from a garbage truck malfunction, but aside from one additional month's salary and five hundred dollars to cover funeral expenses, the victims' families received no real compensation. Rallying behind union representative P.J. Ciampa and Jerry Wurf, the national president of the American Federation of State, County, and Municipal Employees (AFSCME), the sanitation workers' union decided to strike against the city on February 12, 1968. The union demands were relatively simple. Adopting the "I am a Man" slogan to signify their desire to be identified by their manhood instead of their occupation, the sanitation employees sought union recognition, a grievance procedure, a fair system for promotions, a ten percent increase in wages, sick leave, pension programs, and health insurance.¹⁸

After their demands were rejected by the City Council and the paternalistic Mayor Henry Loeb, the workers became more adamant. With this newfound sense of purpose, the strikers

¹⁷ Steve Estes, *I am a Man*, (Chapel Hill, NC: University of North Carolina Press, 2005), 131-133.

¹⁸ Estes, *I am a Man*, 133-136. In a panel discussion at the National Civil Rights Museum on July 15, 2005, Reverend Billy Kyles, a close friend of Martin Luther King and a leader in the strike, reflected that "the sanitation workers were seen as garbage men until they said 'look at me, I am a father, I am a husband, I am a deacon in your church, I am a member of your community, and I am a man!'"

organized their first march on February 23, 1968 to protest the refusal of the city government to acknowledge their plight. However, the march did not unfold as planned, and after a group of African Americans began rocking a police cruiser, policemen maced the crowd and ended the demonstration. Nevertheless, the strike did not end there. In fact, in order to provide the strikers with enough support to continue their protests, a group of concerned black ministers formed the Community on the Move for Equality (COME). COME also initiated a boycott of downtown businesses that were owned by whites in an effort to make Memphis's generally unsympathetic white population more accepting of the sanitation workers' demands.¹⁹

Because it reflected the national civil rights movement's focus on the expansion of economic justice to compliment the social and political rights guaranteed by the passage of the 1964 *Civil Rights Act*, the strike had by this time enraptured many prominent civil rights leaders. In March of 1968, for example, NAACP President Roy Wilkins, national labor leader Bayard Rustin, and renowned civil rights activist Martin Luther King came to Memphis to both speak on behalf of the strikers and to focus national media attention on the stubbornness of Mayor Loeb and the City Council. King was especially supportive of the strike, and returned to Memphis on two separate occasions to lend his assistance to the sanitation workers. On March 28, 1968, he directed a march down Beale Street that included thousands of African-American protesters. However, because a young Memphis-based militant group named the "Invaders" ignored King's calls for a peaceful demonstration and turned to violence, police disbanded the second march in much the same manner as they had the first. King felt compelled to lead another demonstration, and stayed in Memphis until his second scheduled march on April 5. However, just one day before this demonstration, and one day after he gave his famous Mountaintop speech to a crowd

¹⁹ Estes, *I am a Man*, 137.

of three to four thousand people in the Masonic Temple, King was assassinated by James Earl Ray at the Lorraine Motel in downtown Memphis.²⁰

The Neighborhood

Just two years after the 1968 Sanitation Strike, the residents of Hein Park applied to close four of the five streets leading into the residential subdivision, a proposition that would have effectively bifurcated Hein Park from the predominantly black communities to the north and east. For safety reasons, the Memphis fire, police and sanitation departments objected to the request, and consequently, the city promptly denied the petition.²¹ By the time Hein Park proposed this closing, the percentage of Hollywood-Chelsea residents who were African-American had grown increasingly significant. In 1950, for instance, the area was only about 57.8 percent black.²² In 1960, the black population had grown to nearly 68 percent, and by 1970²³, it had again increased to almost 86 percent.²⁴

Hein Park neighborhood had always been a bastion of white elitism. Built upon property originally owned by W. A. Hein, founder of the Memphis Steam Laundry,²⁵ it was opened up to prospective buyers in 1923.²⁶ Hein's home was the first to be constructed, and the neighborhood became known as Hein Park in 1925.²⁷ Created to be a luxurious community, the *Commercial*

²⁰ Estes, *I am a Man*, 138-146.

²¹ *Memphis v. Greene* (1981), 451 U.S. 100, 103.

²² U.S. Bureau of the Census, *Characteristics of the Population, by Census Tracts: 1950: Table 1 : Memphis, TN*, Washington: The Bureau.

²³ U.S. Bureau of the Census, *Characteristics of the Population, by Census Tracts: 1960: Table P-1 : Memphis, TN*, Washington: The Bureau.

²⁴ U.S. Bureau of the Census, *General Characteristics of the Population: 1970: Table P-1: Memphis, TN & Arkansas*, Washington: The Bureau.

²⁵ Connie Schneider, "Two Areas Celebrate Their Historic Status," *The Commercial Appeal*, May 11, 1989.

²⁶ "Hein Park is Open to Prospective Owners," *The Commercial Appeal*, September 16, 1923.

²⁷ "A Collection of Classics: Hein Park Home Tour," *Hein Park Garden Club* brochure, 1985.

Appeal wrote that “every effort [had] been made to give the property an artistic appearance.”²⁸ From its “numerous fine trees” to the “natural features which [adapted] it to successful landscaping,” the 115 acre park was advertised with an aura of selectivity and elegance.²⁹ When Hein Park celebrated its sixtieth anniversary in 1985, a brochure sponsored in part by the Hein Park Garden Club characterized the community as “a jewel of a residential area in historic Midtown,” and claimed that “spring time burst into full brilliance in this lovely setting of older homes and gorgeous trees graced by magnificent azaleas and dogwoods.”³⁰ As part of the celebration, Hein Park residents set aside three days for open tours of the most historic homes, including a “Georgian revival-style manor,” “an elegant French period mansion,” “an old English Tudor styled home,” “an English country estate,” and “a stately Georgian home.”³¹ On November 16, 1988, the Tennessee Historical Commission received the official word that Hein Park had been added to the National Register of Historic Places. At that time, the neighborhood included 82 of the original 115 acres, and consisted of “278 houses, churches and other structures built between 1924 and 1941, plus another 54 houses built later but which blend architecturally with the rest of the area.”³² As the evidence suggests, Hein Park was undoubtedly a historic, wealthy, and elite residential subdivision.

The Hollywood-Chelsea neighborhood to the north was quite the opposite. Although a rural community after its founding in the early twentieth century, beginning in the 1930’s, the

²⁸ “Hein Park is Open to Prospective Owners,” *The Commercial Appeal*, September 16, 1923.

²⁹ “Hein Park is Open to Prospective Owners,” *The Commercial Appeal*, September 16, 1923.

³⁰ “A Collection of Classics: Hein Park Home Tour,” *Hein Park Garden Club* brochure, 1985. The brochure was sponsored by the Hein Park Garden Club, WREC AM60 Radio and the Commercial and Industrial Bank.

³¹ “A Collection of Classics: Hein Park Home Tour,” *Hein Park Garden Club* brochure, 1985.

³² Richard Locker, “State Panel Gets Official Word that Hein Park is on Register,” *The Commercial Appeal*, January 19, 1989.

neighborhood became more densely populated.³³ As the population grew, so too did the problems most closely associated with urban life. A year before Hein Park first proposed to close West Drive, for instance, the economic outlook of the Hollywood area was especially bleak. At that time, over eight percent of families earned less than \$1,000 per year, while only about five percent earned more than \$15,000. No family earned more than \$25,000 annually, and the median yearly income for families in the area was an abysmal \$6,041.³⁴ Furthermore, about 7.2 percent of the civilian labor force was unemployed³⁵, and 30.1 percent of families, 33.5 percent of persons and 35.3 percent of households lived below the federal poverty level. Over ten percent of homes even lacked basic plumbing facilities.³⁶

In addition to its problems with poverty, heavy traffic and recurrent crime, the Hollywood area had faced numerous other concerns, including the fact that its community dump has often been used as a depository for industrial wastes. In 1982, for instance, Firestone Tire & Rubber Co. and Kimberly Clark Corporation admitted that they had dumped industrial wastes, Velsicol Chemical Corporation publicly acknowledged disposing of toxic pesticide wastes in the area, and state and local government suspected “many [other] companies” of such conduct.³⁷ As a result of possible contamination from the Hollywood Dump, the city government eventually erected a sign at the community’s North Memphis Pond that read, “Fish from this pond contain

³³ Mildred Saulsberry, “Community Ride-Around Overview & History of Agency,” *North Region Community Analysis Project*, 1999. Analysis conducted by the Hollywood Branch Library of the Memphis/Shelby County Public Library chain.

³⁴ U.S. Bureau of the Census, *General Characteristics of the Population: 1970: Table P-4: Memphis, TN & Arkansas*.

³⁵ U.S. Bureau of the Census, *General Characteristics of the Population: 1970: Table P-3: Memphis, TN & Arkansas*.

³⁶ U.S. Bureau of the Census, *General Characteristics of the Population: 1970: Table P-3: Memphis, TN & Arkansas*.

³⁷ William Dawson, “2 Firms Admit Using Hollywood Dump,” *The Commercial Appeal*, January 7, 1982.

chemicals that may be harmful to eat, especially for pregnant women and children.”³⁸ Such scars illustrate the substantial difference between the Hollywood-Chelsea and Hein Park neighborhoods, and demonstrate the dramatic sense of socioeconomic and racial division that an overt physical barrier between the two neighborhoods might produce.

The Issue

Although the city refused to authorize Hein Park’s 1970 application for the closure of four subdivision streets, the Traffic Engineering Department did acknowledge in its report that the closure of West Drive could potentially eliminate many of the residents’ traffic concerns. The issue resurfaced about three years later when, on July 9, 1973, Hein Park filed a formal application with the City Planning Commission to close the northern end of West Drive.³⁹ From August 16 until October 4, the Planning Commission held the closing “under advisement,” after which time the CPC rejected the closure because of an “unfavorable departmental recommendation.” However, the issue resurfaced on October 18, when CPC reconsidered its previous decision and moved to hold it under advisement until November 1, 1973. On this date the Commission approved the closure on the conditions that there be no other obstructions but a “rolled curb” and that the applicants “either pay relocation costs for existing Memphis Light, Gas & Water Facilities or provide easements for existing and future facilities.”⁴⁰

On October 22, 1973, Assistant Traffic Engineer Edward L. Boyd wrote to City Engineer Frank Palumbo Jr. and detailed his observations concerning the traffic on West Drive. He described West Drive as a “collector street,” on the northern portion of which the two-way

³⁸ Tom Charlier, “Fence Finally May Unhook Anglers from Poisoned Pond,” *The Commercial Appeal*, April 2, 2003.

³⁹ 451 U.S. 100, 104.

⁴⁰ *Memphis City Planning Commission minutes*, August 6, 1973-November 1, 1973.

twelve hour traffic volume was 1,187 vehicles. He went on to state that “less than 15 percent of the traffic southbound on Springdale Street [crossed Jackson and entered] Hein Park,” that eighty-two percent of the vehicles that entered West Drive from the south continued north to Springdale, and that “very little traffic entered Hein Park from Jackson Avenue. Furthermore, he observed that in the block between North Drive and Jackson Avenue “the traffic averaged less than one vehicle per minute for each direction, namely 0.87 vehicles southbound and 0.77 vehicles northbound.” Based on this data, Boyd concluded that in areas such as Hein Park, modern concepts of traffic planning dictated that at least one “collector street” is needed to provide connection “between opposite sides of the square.” In addition, Boyd argued that the twelve hour weekday traffic volumes on West Drive was not unexpected given that of other “collector streets” in both newer and older sections of that urban area, that the “closing of West Drive to nonlocal traffic is not needed,” and that “any request for a physical barrier at Jackson Avenue and West Drive should be denied.”⁴¹

In a memorandum sent to Clay Huddleston (the city’s Chief Administrative Officer), George Supensky (Memphis Director of Budget & Finance) reiterated that “the Fire, Police, and Traffic Departments [did] not recommend the closure of West Drive.”⁴² Similarly in a January 7, 1974 memorandum to Supensky, Palumbo was adamant in his insistence that West Drive not be closed. “This is an old closing which has come up time and time again and please note that the City Engineer recommendation is not on this check-off sheet,” Palumbo wrote. He went on to say that he felt the closing would “create a serious and dangerous precedent in areas of the community which may have individual whims concerning the traffic through a particular area...I

⁴¹ *Inter-office memorandum from Edward L. Boyd to Frank P. Palumbo, Jr.*, October 22, 1973.

⁴² *Inter-office memorandum from George E. Supensky to Clay Huddleston*, January 21, 1974.

urge you to reconsider this particular recommendation in view of the future community effects which may be generated by this approval.”⁴³

On January 29, 1974, Bob Miller gave the report and recommendations of the Memphis City Planning Commission to the City Council. Miller said that although the police department had some reservations about the closing, the fire department had not objected as long as Hein Park residents agreed to pay for the relocation of a fire hydrant. He also stated that the Division of Public Works had raised issues about the closing in a letter to the Director of Budget and Finance. However, he claimed that the DPW’s letter had not arrived until after the matter had already cleared the Planning Commission, and that the DWP had not responded after he had repeatedly contacted them to verify their stance on the issue.⁴⁴ At the Council meeting, several individuals also voiced their opinions on the closing. Included among those who spoke in its favor were David Parker (President of the Hein Park Civic Association) and Joseph Haas (the consulting engineer), while those who opposed it included the bi-racial coalition of Mrs. David Vincent (spokesperson for the Vollintine-Evergreen Community Action Association), Sara Ratner, Emanuel Goldberger, and N. T. Greene.⁴⁵ After the hearing the Council ultimately voted 9-3 in favor of the closure.⁴⁶

However, at the City Council’s February 5, 1974 meeting, Councilman A.D. Allissandratos moved to reconsider the Council’s previous vote. After the other Council members voted 11-1 to support this motion, Allissandratos spoke. “While I certainly feel for the

⁴³ *Inter-office memorandum from Frank Palumbo, Jr. to George Supensky*, January 7, 1974.

⁴⁴ Initial Hearing on West Drive, *City Council Minutes*, January 29, 1974.

⁴⁵ Agenda Item #18, *City Council Minutes*, January 29, 1974.

⁴⁶ *City Council Minutes*, January 29, 1974. David Parker, Dr. Bill Weber, Betsy Robbins, and Joseph Haas (the consulting engineer) spoke in favor of the closing. Mrs. David Vincent (spokesperson for the Vollintine-Evergreen Community Action Association), Sara Ratner, Calvin Woods, Emanuel Goldberger, Henry Jackson, Reverend Cummings, and N. T. Greene were opposed.⁴⁶ Of those who spoke in opposition to the closing, Ratner and Woods both resided in Hein Park. Council members A. D. Allisandratos, Mrs. Wells Awsumb, Billy Hyman, Robert Love, Jack McNeil, Philip Perel, Glenn Raines, Thomas Todd and Council Chairman Ed McBrayer voted for the closing, and Councilmen Fred Davis, John Ford, and Bob James voted against it.

particular neighborhood and can appreciate the fact that they want to maintain the high standard of the neighborhood,” he said, “we’re still involved with a street operated and maintained by taxpayers’ money and I think it would be an injustice to close it, in addition to the fact that it would be establishing a very dangerous precedent in the rest of the city.” Councilman Bob James echoed the feelings of Allisandratos. “You can’t [close city streets] just because somebody wants [them] closed,” he stated. “We are on very dangerous grounds.”⁴⁷

By contrast, Councilman Jack McNeil spoke in favor of the closing. He claimed it served as a means to preserve an inner-city community and argued the essentiality of taking legal means to ensure the perpetuation of such communities in the future. “There are coves all over this city where people have some degree of protection from traffic,” McNeil said. “Virtually every week we have subdivisions where coves are located; this is nothing more than a cove.” McNeil argued that if the street was not closed, the property value of Hein Park homes would depreciate. Furthermore, he reminded the Council of its past actions to close areas similar to Hein Park, such as “the area north of the Expressway,” Morningside, and Chickasaw Gardens. After James chastised McNeil for “preserving a neighborhood” by condoning the wishes of “a few people [who were] a bit more vociferous in their wishes than the other people,” Councilman John Ford called for a vote. However, just as Council Chairman Ed McBrayer ordered a roll call, a member of the audience questioned the absence of a public hearing. McBrayer explained that the Council had already heard the matter, and was merely reconsidering the issue. The audience member was obstinate in his criticism, but McBrayer assured him that unless the Council moved to

⁴⁷ *City Council Minutes*, February 5, 1974.

overrule his decision, there would be no further testimony. After calling the roll a second time, the Council again ruled in favor of the closing, but this time by only a 7-5 vote.⁴⁸

After an attempt by Councilman John Ford to have the issue heard for a third time on March 5, 1974, Mrs. Wells Awsumb introduced a resolution that allowed “any matter which [had] appeared on the agenda and been acted upon by either a majority vote of approval or rejection” to be reconsidered only if the person making the motion had voted on the prevailing side of the initial vote and if the motion was made “prior to approval of the minutes in which the first vote was case.” Furthermore, the Council decided that if a matter had been voted upon once and reconsidered at the following meeting, then it could not be reconsidered for at least six months.⁴⁹ Given the passage of this resolution, the efforts to prevent the closing of West Drive through a City Council mandate were essentially eliminated.

The issue arose for the final time before the City Council almost four years later on January 31, 1978 due to the discovery of a legal technicality. As they were preparing the case for trial in the District Court, Assistant City Attorneys Michael Speros and Charles Holmes ascertained that the original resolution upholding the closure of West Drive had “incorrectly stated the portion to be closed and the property to be deeded to abutting property owners.” The Council therefore amended the resolution by substituting the correct legal description in place of that in the original resolution. The new resolution passed by a 6-2 vote, and the four Councilmen who had not been elected at the time of the original vote recused themselves.⁵⁰

⁴⁸ *City Council Minutes*, February 5, 1974. Council members Awsumb, Hyman, Love, McNeil, Raines, Todd and McBrayer voted in favor of the closing, and Councilmen Alissandratos, Ford, James, Patterson, and Perel opposed it.

⁴⁹ *City Council Minutes*, March 5, 1974.

⁵⁰ *City Council Minutes*, January 31, 1978. Allisandratos, Hyman, James, McBrayer, Todd and Raines voted for the modified resolution. Councilmen Davis and Patterson voted against it. Councilman Oscar Edmonds, Jr., Pat Halloran, Jeff Sanford, and Peter Vander Schaaf recused themselves.

Differing Perspectives

The street closing provoked a variety of responses. Sara Ratner was a relatively new resident of the Hein Park community at the time when the issue of the street closing initially arose. In April of 1973, she had moved to Hein Park from Germantown (a traditionally white Memphis suburb) in order to afford her children the opportunity to grow up in an integrated neighborhood. Although Hein Park was still an all-white neighborhood at the time of her arrival, Ratner had previously spoken with a representative of the Vollintine-Evergreen Community Association (VECA), who had informed her that the community of Hein Park was very much a part of the larger Vollintine-Evergreen community, which also included the neighborhoods of Hollywood-Chelsea to the north and Overton Park to the southwest. Furthermore, she was told that despite the lack of social interaction between the overwhelmingly white neighborhoods to the south and the predominantly black neighborhoods to the north, VECA was attempting to promote some degree of interaction between the relatively homogenous Hein Park and Hollywood-Chelsea communities.⁵¹

Assured that community relations would improve with the gradual assimilation of new residents into the Hein Park neighborhood and the continuation of VECA's community-building pursuits, Ratner purchased a home at 732 West Drive for \$39,500.⁵² However, almost immediately after Ratner moved in, neighbors asked her to sign a petition requesting the closure of West Drive in order to prevent any "undesirable traffic" from entering Hein Park. Because Ratner viewed the petition as a veiled attempt to prevent African Americans from using West Drive as a thoroughfare to North Parkway, she refused to sign. However, since those circulating

⁵¹ *Interview with Sara Ratner*, June 29, 2005. Sara's later husband, Marvin Ratner, helped to establish the first integrated law firm in the Memphis area with Russell Sugarmon.

⁵² Her home is now worth around \$275,000.

the petition had already obtained the signatures of her home's previous residents, her signature ultimately proved unnecessary.⁵³

Ratner had always been appreciative of community diversity, as evident in her past participation in the Panel of American Women, which was a Memphis-based group formed in the aftermath of the 1968 Sanitation Strike to promote tolerance and understanding. In this spirit she objected not only to the proposed sidewalk, but also to the suggestions of some Hein Park residents further to isolate themselves from the surrounding neighborhoods. For instance, Ratner had heard that the residents wanted eventually to block off all but one of the streets leading into the subdivision, and that the closure of Hein Park to northbound traffic constituted the first step toward this objective. Additionally, she opposed the idea of one neighborhood resident to grow bamboo across the back of the sidewalk—a move that would still allow fire and police vehicles access to the area from the north (in that they could drive through the bamboo), but would more visibly separate Hein Park from the Hollywood-Springdale community.⁵⁴

Similarly, long-time Hollywood resident Dorothy Cox says that she was “shocked” at the closing. “It was a slap in the face to the community,” Cox claims. “It basically said to us that the white people who had money could do whatever they wanted, and that the government was going to support them at our expense. We knew Hein Park didn’t want us there. It really didn’t matter if they had put up a brick wall or a sidewalk...nobody was going to walk through that neighborhood after that.”⁵⁵ Mabale Chandler, another African American Hollywood community resident since 1973, reflected comparable sentiments. “We were confused,” she says. “I didn’t think it was a huge inconvenience, but a lot of people were uncomfortable with it.”⁵⁶ “I didn’t

⁵³ *Interview with Sara Ratner*, June 29, 2005.

⁵⁴ *Interview with Sara Ratner*, June 29, 2005

⁵⁵ *Interview with Dorothy Cox*, July 12, 2005.

⁵⁶ *Interview with Mabale Chandler*, July 12, 2005.

like it,” echoed Gloria Seymour. “It was a traffic inconvenience that shouldn’t ever have happened. We had just as much right to use that street as anyone else.”⁵⁷ Marshall McMahon, a Professor of Economics at Rhodes College and a Hein Park resident since 1975, held similar views. “Don’t get me wrong, there was a traffic problem,” McMahon explains, “but I think it was a little overblown.” McMahon claims to have observed some indications that racism motivated the closing, but believed that the traffic was the chief concern of other residents. “Either way,” he continues, “even though the actual damage done from the closing was minimal, because of the psychological impact it had on Hollywood residents, I didn’t believe the street should have been closed.”⁵⁸

By contrast, many others maintained that safety was the paramount concern of the majority of Hein Park residents and the primary motivation for the closing. Hollywood resident Herman Seymour, for example, holds a strikingly different opinion regarding the closing than his wife. “It didn’t bother me at all,” he remembers. “It was more about traffic than anything else, and I would have done the same thing if I were them.”⁵⁹ In a 1974 letter to the City Council, Snowden Elementary PTA President Jane Richardson claimed to be “embarrassed and ashamed” to be associated with “the unwarranted claims about the majority of people living in Hein Park.” She went on to say that she had personally “come extremely close to being hit by cars” who refused to slow down on West Drive, and that a child had recently been hit.⁶⁰ The street closing, she believed, would prevent such incidents in the future. The Central Garden Area Association also sent a letter to the City Council in which they advocated the closing. Writing for the CGAA, Albert Harvey applauded the actions of the Hein Park residents and stated that the

⁵⁷ *Interview with Herman and Gloria Seymour*, July 12, 2005. The Seymours are African American.

⁵⁸ *Interview with Marshall McMahon*, July 13, 2005. McMahon is Caucasian.

⁵⁹ *Interview with Herman and Gloria Seymour*, July 12, 2005.

⁶⁰ *Letter from Jane Richardson to the Memphis City Council*, January 28, 1974.

construction of the sidewalk was merely “a logical and effective aid to an inner-city neighborhood working to improve the conditions of its residents.” “This petition seeks only a declaration that the safety and tranquility of individual residents are more important than the acts of motorists taking a shortcut or making an effort to avoid traffic lights,” Harvey wrote.⁶¹

The Players

As a result of the sense of divisiveness entailed in a closing that separated two communities along socioeconomic and racial lines, it became evident that the issue would ultimately be settled by the courts. However, in order to understand the legal struggle over the sidewalk that culminated in *Memphis v. Greene*, it is first necessary to understand the major players in the case.

Perhaps the most significant individual involved in the case was none other than the respondent himself. N. T. Greene or “Brother” Greene (as he was more commonly called) was born in Memphis, TN in 1925.⁶² After dropping out of the fourth grade and working as a window washer, he moved from Memphis to New York City in 1942. While in New York he received employment as a dockworker, a hotel porter, and a factory worker. However, the “pull of home” drew him back to Memphis in 1972, and he raised his family in the very house in which he was born.⁶³ On a personal level, Greene exuded a distinctive facade. “He always wore khaki pants that looked like they had never been washed, a shirt that was never tucked in, and some old wire rim glasses,” says former City Attorney Charles Holmes, “but he still always

⁶¹ *Letter from the Central Garden Area Association to the Memphis City Council*, January 29, 1974.

⁶² Chris Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002.

⁶³ Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002. Greene lived in Memphis until he passed away on Christmas Eve, 2002 at the age of seventy seven.

looked like an appealing guy. Despite our disagreements, I liked him.”⁶⁴ According to current Shelby County Mayor AC Wharton—who represented the three intervener-plaintiffs in the case on behalf of Memphis Area Legal Services, there was never much known about Brother Greene’s background. “He was highly intelligent and possessed a unique personality,” claims Wharton, “but he was always an independent.”⁶⁵

This fiercely independent spirit was apparent throughout the course of his life, as Greene fought for his convictions and accepted the negative repercussions of his actions in order to further the greater good. “Nobody seemed to come to the aid of the poor and working people,” Greene once said. Consequently, he saw it as his own duty to succeed where the “do-nothing politicians” had failed.⁶⁶ However, he was unconventional in the ways in which he attempted to bring about this success. For instance, in order to prevent the dumping of chemical contaminants in the Hollywood-Springdale neighborhood, Greene chained himself to the community dump. He and three other Memphis residents were subsequently arrested, charged with disorderly conduct, and fined \$50 apiece in addition to their court costs.⁶⁷ In regard to the *Memphis v. Greene* case specifically, Greene vowed to “lie [his] body in the middle of the street” to prevent the city from closing West Drive to the residents of the Hollywood-Chelsea community.⁶⁸

The outspoken Greene rarely censored his opinions. As the Chair of the Cypress Health and Safety Committee, Greene adamantly opposed the West Drive closing. Calling the Hein Park Civic Association’s request to close the street “vile, repugnant and racist,” he stated that any action by the Memphis City Council to support the closing would be “reprehensible and

⁶⁴ Interview with Charles Holmes, July 8, 2005.

⁶⁵ Interview with Mayor Wharton, June 23, 2005.

⁶⁶ Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002.

⁶⁷ “‘Chain’ Convictions Upheld by Judge,” *The Commercial Appeal*, June 29, 1981.

⁶⁸ Otis L. Sanford, “Foe Pledges Bodily Bar to West Drive Closing,” *The Commercial Appeal*, June 22, 1978.

downright offensive.”⁶⁹ He also testified that the closing was “racially motivated” and claimed that that it would cause his neighborhood extreme “psychological and emotional damage.”⁷⁰

Brother Greene’s criticisms were not limited to the Memphis City Council, although his critical appraisals of others involved with the case had a mixed effect. For instance, after the Sixth Circuit Court of Appeals remanded the case back to the District Court for trial, Greene openly criticized Judge Harry Wellford, accusing him of racism and openly calling for his resignation. Even after Judge Wellford recused himself from the case, Greene still refused to back down.⁷¹ “The judge’s resignation from the West Drive case [was] primarily to get us to shut up,” Greene said, “[but] there is only one way the judge can get the Cypress Health and Safety Commission to shut up...Judge Harry W. Wellford must resign from the bench now.” Following his recusal, Judge Wellford assigned the case to Judge Robert McRae for trial, and cynically joked that he had done so because McRae was “the only one in our court who [had] not had a case involving Mr. Greene.”⁷²

Greene also verbally attacked several others on the case, including the very attorneys responsible for his representation. After filing a complaint *pro se* in the District Court for the Western District of Tennessee, he “wanted to run the show,” remembers Wharton. “He always had to have things run his way.”⁷³ Perhaps it was this controlling nature that led Greene to harshly criticize one particular attorney. Frank Byrd, who had advised Greene when he first attempted to bring the lawsuit to the District Court, claimed shortly thereafter that he wished to continue in his representation of Greene as long as he would “quit telling me how to practice

⁶⁹ Clark Porteous, “West Drive Closing Approved Again,” *The Press Scimitar*, February 1, 1978.

⁷⁰ “Closing of West Drive Called ‘Racial Move,’” *The Press Scimitar*, February 2, 1978.

⁷¹ Judge Wellford was a former resident of West Drive, and claimed to have recused himself so that the plaintiffs would not feel that the trial was biased.

⁷² “Judge Drops from Lawsuit,” *The Commercial Appeal*, June 1, 1976.

⁷³ *Interview with Mayor Wharton*, June 23, 2005.

law.” In response, Greene chastised the way that Byrd had represented his cause and stated that he had asked the Civil Rights Division of the United States Department of Justice to initiate a “full criminal investigation of Mr. Byrd’s actions regarding this case.”⁷⁴ “He might have even had a complaint against me,” Wharton jokes, “Greene was a good guy, but he was tough to work with.”⁷⁵

As a result of his actions, many local politicians characterized Greene as “media hungry.”⁷⁶ Because he was pursuing a seat on the Shelby County Court around the time that his case was first heard at the district level (however unrealistic his pursuit), this label could potentially be viewed with some accuracy.⁷⁷ However, those closest to Greene never doubted his sincerity. “He raised the bar,” said City Councilman Rickey Peete. “He was not afraid to take on causes when others would turn their heads.”⁷⁸ Similar rhetoric was echoed by Maxine Smith, the former executive secretary of the local chapter of the NAACP.⁷⁹ Furthermore, the limited record of Greene’s actions supports claims made by those who championed his sincere motivations. “His fighting empowered the people,” claimed daughter Tanya Greene. “He could never get the support of lawyers and politicians, but he never stopped caring.”⁸⁰

Another individual who played an influential role in the case was attorney AC Wharton.⁸¹ At the time, Wharton headed Memphis Area Legal Services program, and was thus responsible for providing representation to individuals whose indigence prevented them from affording their own legal counsel. According to Wharton, it was never clear whether Brother Greene was

⁷⁴ Kay Pittman Black, “Jurisdiction of Federal Courts In Street Closing Questioned,” *The Press Scimitar*, August 3, 1974.

⁷⁵ *Interview with Mayor Wharton*, June 23, 2005.

⁷⁶ Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002.

⁷⁷ Porteous, “West Drive Closing Approved Again,” *The Press Scimitar*, February 1, 1978.

⁷⁸ Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002.

⁷⁹ *Discussion with Maxine Smith*, June 17, 2005.

⁸⁰ Conley, “N. T. ‘Brother Greene Stood Up for Downtrodden,’” *The Commercial Appeal*, December 28, 2002.

⁸¹ Wharton was a former University of Mississippi Law Professor and is the current mayor of Shelby County, TN.

indigent, and as a result, Legal Services could not technically provide him with representation. However, the three other “interveners” who signed onto the case after it was remanded back to the District Court were proven to be indigent, and were therefore eligible to receive Legal Services’ support. These individuals—Elnora Priest Cross, Edwin Owens, and Carolyn Burse—therefore joined N. T. Greene in the suit, but they were represented by Wharton instead of Greene’s own attorney. Although Wharton argued the case before the District Court and the 6th Circuit Court of Appeals, Alvin Chambliss argued before the U.S. Supreme Court. Chambliss, a practicing lawyer and current law professor at the Thurgood Marshall School of Law at Texas Southern University, represented Greene on behalf of the National Conference of Black Lawyers.⁸²

City Attorney Clifford Pierce and Assistant City Attorneys Charles Holmes and Michael Speros also figured prominently in the case, as the latter individuals represented the city at both the district and appellant levels, and the former did so before the Supreme Court. “The case wasn’t a big deal when it was originally in the District Court,” Holmes comments, “and it was assigned to Speros and myself. I guess they figured that two lower level city attorneys like us would handle it just fine,” he jokes. Although originally dismissed by Judge Wellford, the suit was remanded back to the District Court for Western Tennessee for trial, and later assigned to Judge McRae after Wellford’s resignation. “McRae was bad news for us,” reflects Holmes. “Since he had ruled against the city of Memphis on virtually every civil rights case that he had heard prior to that time, I really didn’t know what was going to happen. It was a pretty crazy trial, but even with McRae presiding, I think we managed to make our point,” Holmes

⁸² According to Clifford Pierce, when Chambliss argued the case before the Supreme Court, he proceeded to introduce new evidence in the form of a hand-made demonstrative. “Basically,” Pierce recalls, “he took a gubernatorial sign that you would ordinarily see on someone’s front lawn, turned it over, and drew a map of the effected neighborhood on the back of it.” “Greene really should have allowed Wharton to argue the case before the Supreme Court,” Pierce continued. “He was a much better attorney.”

remembers.⁸³ Pierce became involved after he was approached by Mayor Wyeth Chandler prior to the Supreme Court hearing. “[Mayor Chandler] was very upset about the Court of Appeals’ ruling,” Pierce notes. “He especially disliked the language that the Appeals Court used when they described the closing as a ‘badge of slavery.’”⁸⁴ As a Hein Park resident, Pierce remembers the sidewalk as a “very minor inconvenience resulting from the decision of a citizen legislative body to preserve the safety of an inner-city community.” “I wouldn’t have lived on West Drive before it was closed,” Pierce says. “It was a racetrack.”⁸⁵

Both Pierce and Holmes firmly believed that the closure was a “reasonable means” to promote safety, but disagreed in the extent to which they sympathized with the Hollywood-Springdale residents. “I can see how they might be offended,” says Holmes, although he echoed that the closing was a “reasonable solution.”⁸⁶ By contrast, Pierce was explicit in his disagreement. “Wharton is a great lawyer and a great man,” he says, “but I just don’t agree that the sidewalk resembled slavery in the least bit...to say otherwise would be to trivialize the Constitution.”⁸⁷

Dismissal and Remand

When the case initially came before the District Court in late 1974, Wharton had not yet accepted the suit on behalf of Memphis Area Legal Services, and attorney Frank Byrd provided

⁸³ *Interview with Charles Holmes*, July 8, 2005.

⁸⁴ *Interview with Clifford Pierce*, July 7, 2005. While Pierce indicates that Mayor Chandler was upset by the racial implications that the Sixth Circuit Court of Appeals assigned to the closing, Judge McRae viewed Chandler in a different light, writing of the “obstructionist tactics of Mayor Chandler and the City Council members” concerning the integration of Memphis city schools in Robert M. McRae, *Oral History of the Desegregation of Memphis City Schools, 1954-1974*, Memphis: University of Memphis Press, 1997.

⁸⁵ *Interview with Clifford Pierce*, July 7, 2005.

⁸⁶ *Interview with Charles Holmes*, July 8, 2005.

⁸⁷ *Interview with Clifford Pierce*, July 7, 2005.

representation for Greene and the other plaintiffs.⁸⁸ Claiming that the closure had adversely affected blacks living north of Hein Park, the plaintiffs argued for the reopening of West Drive, and the construction of a \$750,000 community center in the Hollywood area. However, Judge Harry Wellford dismissed the suit, stating both that the street closing had the same effect on whites as it did on African Americans and that the plaintiffs had failed to state a claim.⁸⁹ The Sixth Circuit Court of Appeals then remanded the case back to the District Court, ruling that Greene had legitimate grounds to pursue a suit under 42 U.S.C. 1982 and 1983 of the 1866 *Civil Rights Act*. “To establish a section 1982 or 1983 claim on remand,” they decided, “Greene must prove his allegations that city officials conferred the closed street on West Drive residents because of their color; he must prove racial motivation, protection or, alternatively, to command an inference of racial motivation.”⁹⁰

Wharton’s Legal Strategy

Before the case came before the District Court a second time, Elnora Priest Cross, Edwin Owens, and Carolyn Burse had signed on as intervener-plaintiffs, and because these individuals were legally indigent, Wharton became involved with their representation. Greene and the intervener-plaintiffs sued the city on the basis that the construction of the sidewalk violated the Civil Rights Act of 1866 and constituted a “badge of slavery” under the Thirteenth Amendment. They thus heeded the dictum of the Sixth Circuit, and creatively resurrected legal terminology that had been largely dormant since the *Civil Rights Cases* of 1883. “In regard to the Thirteenth Amendment, it was my opinion that the sidewalk was a badge of slavery,” Wharton remembers.

⁸⁸ At this point in the case, the plaintiffs included N. T. Greene, Emanuel Goldberger, Bettie Taylor, the Wilshire Park Civic Club, and the Shankman Hill Civic Club.

⁸⁹ “West Drive Suit is Dismissed by U.S. Judge,” *The Press Scimitar*, October 5, 1974.

⁹⁰ *Greene v. Memphis*, 535 F.2d 976 (1976), 979.

“In times of slavery, there were certain places that blacks weren’t allowed to go solely because of their race, and the sidewalk represented exactly that.” To Wharton, anytime that a barrier was erected in such a way that it directly inhibited the right of a particular group to access a public accommodation that was readily available to other groups, it was a vestige of institutionalized subordination. Furthermore, the sidewalk served a symbolic division between neighborhoods characterized by differing ethnic backgrounds. “If there were traffic concerns, they could have just as easily built a sidewalk on the ‘white end’ of West Drive...but they built it on the ‘black end,’” says Wharton. “They didn’t separate the ‘white’ neighborhood from Overton Park, they separated it from the ‘black’ neighborhood to the north.” Although blacks could technically access West Drive, Wharton claimed that any sort of barrier, whether “a sidewalk or a piece of kite string,” had the psychological impact of legitimizing a mark of white exclusivity at the expense of black convenience. In other words, the psychological impact of being symbolically “kept out” was representative of prior incidents of discrimination akin to slavery in that it echoed the superiority of whites at the expense of blacks by allowing the former to prevent contact between their wealthy neighborhood and a latter’s impoverished one.

Additionally, Wharton claimed that the actual impact of the closing was such that it had an adverse and discriminatory effect on blacks. In other words, the construction of the sidewalk violated African-American property rights because blacks were unable to access their property from a public street. White residents of Hein Park, in contrast, could access their own property from that same street. Wharton viewed this as a distinct disadvantage. Moreover, it was a government sanctioned disadvantage that inhibited blacks from holding their property on terms equal to those of white citizens by extending the distance blacks had to travel in order to reach their property while it did not do so for whites. Consequently, it violated Section 42 U.S.C. 1982

of the 1866 *Civil Rights Act*. Section 42 U.S.C. 1982 was premised on the Thirteenth Amendment and concerned the property rights of freed slaves. It therefore provided a concrete basis for the suit to compliment the traditionally abstract ideological principles enveloped in most Thirteenth Amendment jurisprudence.

Although Wharton notes that “even though 1982 had not been used in the civil rights context,” he says that “at that time, there were a couple of cases in which the Court appeared willing to extend the reach of 42 U.S.C. 1982 to encompass more than simply commercial and contractual matters, especially in light of the Sixth Circuit’s remand.” “And I thought, ‘if it covers the actual process of entering into and enforcing a contract, it ought to cover anything that would bring about the diminution in value of a contractual relationship, such as the right to buy a house, and to hold that real estate on a basis similar to that of a white person,’” Wharton explains. In regard to federal civil rights law, Wharton’s argument thus focused on the fact that the closing had an adverse and disproportionate impact against black individuals living to the north of Hein Park regardless of whether it was driven by a racial motivation. Moreover, such an impact should be legally prevented by extending the reach of 1982 to cover situations similar to that which occurred in Hein Park.⁹¹

The Case

⁹¹ *Interview with Mayor Wharton, June 23, 2005.*

After the suit was remanded back to the District Court for trial, Judge Wellford recused himself from the case, and Judge Robert McRae took his place on the bench.⁹² However, on June 21, 1978 McRae ruled in favor of the Memphis, holding that although “the closure of West Drive in the manner adopted by the City Council [would] have [a] disproportionate impact on certain black citizens,” “the disparate impact was not so stark that a discriminatory motive could be inferred therefrom.” McRae also held that even though “this [was] the only time that the street and alley closing procedure has been used to close a street which serves as a thoroughfare for the residents and the public,” the city had closed several minor streets at the request of black neighborhoods. “Excessive traffic in any residential neighborhood has public welfare factors such as safety, noise, and litter, regardless of the race of the traffic and the neighborhood,” he ruled.⁹³ However, his reservations concerning the closing’s significant impact on African-American motorists did not go unnoticed.

Greene v. Memphis was argued before the Sixth Circuit Court of Appeals on June 5, 1979 and on November 1, 1979, the Court delivered its verdict. Writing for the majority, Judge Albert Joseph Engel claimed that even though “as a general proposition, street closings are a matter of purely local concern,” “the pattern of discrimination [in the case] was indeed ‘stark’ and was in a very real sense a badge of slavery violative of plaintiffs’ rights under the Thirteenth Amendment and subject to relief under 42 U.S.C. Section 1982.”⁹⁴ Defining “slavery” in ambiguous terms, Engel alleged that despite the elimination of formalized slavery in the United States, persistent cases of institutionalized subordination demonstrated that the “spectacle of slavery [was]

⁹² At the district level, Wharton also argued that the sidewalk had violated 42 U.S.C. 1983 and the Fourteenth Amendment. By the time the case reached the Supreme Court, however, his case was narrowed to include relief under only 1982 and the Thirteenth Amendment.

⁹³ *Greene v. Memphis*, 610 F.2d 395 (1979), 398.

Peggy Burch, “Judge Allows Closing Off Controversial West Drive,” *The Press Scimitar*, June 21, 1978.

⁹⁴ 610 F.2d 395 (1979), 402. Judge Frank Celebrezze signed on to Judge Engel’s opinion.

unwilling to die.” Because the closing West Drive divided two neighborhoods in such a way that the interests of one community were placed above those of another, it harkened back to the days of slavery, and was therefore “precisely the type of ‘badge’ which was the target of the Thirteenth Amendment.”⁹⁵

Moreover, Engel wrote that in the District Court’s decision to allow the closing of West Drive, “[Judge McRae] obviously deemed himself confined to the rationale expressed in the dicta of our earlier opinion of reversal.”⁹⁶ Although Engel acknowledged that the Sixth Circuit had previously stated that Greene must prove a racial motivation or discriminatory intent, he also claimed that it was never the purpose of the Sixth Circuit’s earlier decision to narrow the basis by which the plaintiffs could be afforded relief.⁹⁷

In his powerful dissent, Judge Frank Celebrezze argued that although “the scope of Section 1982 [was] exceptionally broad, reaching all public and private discrimination in activity affecting real and personal property,” it “[did] not preclude the legitimate exercise of a municipality’s police powers” as long as “[the city exercised] those powers in a rational manner to achieve permissible goals.” Celebrezze also took issue with Court’s holding that the African Americans’ right to “hold” their property was somehow disrupted by the street closing. That right, he claimed, “[did] not include an inviolate license of universal street access.”⁹⁸ Furthermore, Celebrezze felt that while “distinctions based on race [were] inherently suspect, distinctions between residents and non-residents of a local neighborhood [were] not invidious.”⁹⁹ The Court was mistaken, he asserted, when it both lowered the burden of proof and overstated the reach of 1982 and the Thirteenth Amendment for the simple reason that the two

⁹⁵ 610 F.2d 395 (1979), 403.

⁹⁶ 610 F.2d 395 (1979), 398.

⁹⁷ 610 F.2d 395 (1979), 401.

⁹⁸ 610 F.2d 395 (1979), 407.

⁹⁹ 610 F.2d 395 (1979), 408.

neighborhoods consisted of differing ethnic populations. “The record [contained] not even a scintilla of evidence,” Celebrezze wrote, “indicating that the Memphis City Council approved the proposal to close West Drive ‘because of’ the adverse effects the black citizens north of Hein Park might experience.” Absent this evident, he believed the Sixth Circuit lacked the grounds to reverse the District Court’s ruling.¹⁰⁰

The History of Thirteenth Amendment Jurisprudence

Following the decision of the Sixth Circuit, the city of Memphis appealed the case to the Supreme Court. However, in order to fully understand its ruling, it is necessary to review the Court’s record on Thirteenth Amendment and 1982 cases. Ratified on December 6, 1865, the Thirteenth Amendment specified that “neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” As early as 1866, the Supreme Court began to further define the extent of the amendment’s power. In *Blyew v. United States* (1872), for example, the Court refused to allow the removal of a case in which two white men brutally murdered a black family from a Kentucky court to a federal court even though a Kentucky law prevented blacks from testifying at trial. Although the justices’ narrow interpretation of the 1866 *Civil Rights Act* would have allowed the testimony in a federal court, the Court argued that the only individuals with standing to request the case’s removal were those who were killed in the incident. A year later, the Court’s ruling in the *Slaughterhouse Cases* (1873) limited the applicability of the Thirteenth Amendment in cases of economic exploitation. The *Civil Rights Cases* (1883) specified that the Thirteenth Amendment and Fourteenth Amendments had no affirmative power, but could only be used to remedially respond to discrimination that already

¹⁰⁰ 610 F.2d 395 (1979), 410.

existed.¹⁰¹ Additionally, in *Plessy v. Ferguson* (1896), the Court interpreted slavery literally as the control of one man over another, and ruled that racial separation neither resembled the servile character of slavery that the Thirteenth Amendment outlined nor violated the Equal Protection Clause of the Fourteenth Amendment.

Even after the turn of the century, the Court's narrow view of the Thirteenth Amendment persisted. In *Hodges v. United States* (1903), for instance, the Court overturned laws based on the Thirteenth Amendment because they felt that those laws infringed too strongly upon state police powers. Finally, *Corrigan v. Buckley* (1922) held that the Supreme Court did not have jurisdiction to hear a case in which a group of white land owners refused to sell property to African Americans because the Thirteenth Amendment applied only to conditions of "forced compulsory service."¹⁰²

In 1968, however, the Warren Court resurrected the Thirteenth Amendment as a tool to combat racial injustice. *Jones v. Alfred H. Mayer* (1968), for example, empowered the Thirteenth Amendment to protect against any infringement on a broad range of civil liberties. In the case, a white real estate developer refused to sell a home to a black family for purely racial reasons. Justice Potter Stewart's majority opinion resurrected terminology from John Marshall Harlan's dissents in the *Civil Rights Cases* and *Plessy*. Expanding the amendment to cover private action, Stewart claimed that a segregated society deprived African Americans of constitutional equality, and thus resembled a "slave system." Congress, Stewart wrote, thus had the power to pass legislation aimed at eliminating "badges or incidents" of servitude.¹⁰³

However, the extent of the Thirteenth Amendment's power was in many respects still unclear.

¹⁰¹ In his dissent, Justice John Marshall Harlan noted that Thirteenth Amendment should be interpreted in a broad sense, so that it could be used to eradicate "badges of slavery."

¹⁰² Alexander Tsesis, *The Thirteenth Amendment and American Freedom: A Legal History*, (New York: New York University Press, 2004), 64-81.

¹⁰³ Alexander Tsesis, *The Thirteenth Amendment and American Freedom*, 64-81.

This ambiguity was evident in *Palmer v. Thompson* (1971), in which the Court allowed the city of Jackson, MS to close four swimming pools rather than open them on a desegregated basis, and failed to define the degree to which “badges or incidents of servitude” were present in social situations.¹⁰⁴

The Resurgence of 42 U.S.C. 1982 Jurisprudence

Once the case of *Jones v. Mayer* transformed the Thirteenth Amendment into a vehicle for the expansion of civil rights, the application of post-Civil War statutes based upon that amendment to combat instances of private racial discrimination became increasingly significant. The *Civil Rights Act* of 1866 was the most notable of these statutes, of which Section 42 U.S.C. 1982 dealt with the freed slaves’ ability to hold property on terms equal to white citizens. 1982 specified that “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” In *Jones*, the Court asserted that 1982 prohibited all intentional racial discrimination, and extended the “economic equality” construction of 1982 by stressing the connection between Sections 1 and 2 of the *1866 Civil Rights Act*. Section 1 dealt with civil remedies to ensure civil rights and Section 2 criminalized their denial. By making both sections applicable to 1982 while ensuring that 1982 prevented private economic discrimination, the justices effectively criminalized such discrimination, and thus provided additional leverage for 1982 to be used as a tool to expand economic justice.¹⁰⁵

One year after *Jones*, the Court’s ruling in *Sullivan v. Little Hunting Park, Inc.* (1969) broadened the civil liberties construction of 1982 yet again. Amending *Jones*, the Court claimed

¹⁰⁴ Alexander Tsesis, *The Thirteenth Amendment and American Freedom*, 81-90.

¹⁰⁵ G. Sidney Buchanan, *A Quest for Freedom: A Legal History of the Thirteenth Amendment*, published serially in the *Houston Law Review*, Volume 12, 130-132.

that 1982 protected against racial discrimination in the sale or rental of a residence. They also enabled individuals affected by discrimination to sue for damages, and gave third-party standing to persons who attempted to vindicate minority rights. In *Tillman v. Wheaton-Haven Recreational Assn.* (1973), the Court ruled that 1982 prohibitions against racist sale and rental practices prevented a neighborhood recreational association from denying membership or guest privileges to black individuals. Such an action, it argued, would devalue the real estate value of those individuals' property. As it had done in *Sullivan*, in *Tillman* the Court linked economic discrimination, not to the Equal Protection Clause or the right to access public accommodations, but instead to the contractual obligations entailed in 1866 *Civil Rights Act*.¹⁰⁶

The Justices

To more completely contextualize *Memphis v. Greene*, it is also prudent to examine the justices who authored the opinions in the case. Writing for the majority, John Paul Stevens had been nominated to Court by President Gerald Ford in 1975, and subsequently confirmed by a 98-0 Senate vote. A Chicago native, Stevens graduated Phi Beta Kappa from the University of Chicago and after a brief stint in the navy, first in his class from Northwestern Law School. He also served five years on the Seventh Circuit Court of Appeals. Once on the Court, Stevens maintained his own identity, filing seventeen concurring opinions and twenty-seven dissents in his first term alone. This independence could be attributed to the fact that Stevens did not readily prescribe to any particular judicial ideology. Rather, in many instances he decided cases based upon the circumstances entailed in each, and failed to associate himself with one specific doctrinal approach to deciding constitutional disputes. Throughout his tenure, Stevens was also a fairly strong supporter of civil rights, although he became significantly more liberal in the years

¹⁰⁶ G. Sidney Buchanan, *A Quest for Freedom: A Legal History of the Thirteenth Amendment*, 139-144.

after *Greene* was decided. In instances of racial equity, Stevens was relatively moderate.¹⁰⁷

Approaching cases of racial classifications with neither tolerance nor suspicion, Stevens balanced individual rights against the interests of society. For instance, Stevens considered the presence of overt and explicit discrimination, the impact of that discrimination, and the justification for its existence. In cases where a neutral justification proved that there was no intent to discriminate, Stevens usually hesitated to impose a judicial remedy. If discrimination was not the byproduct of neutral actions, however, Stevens typically ruled in favor of the affected individuals.¹⁰⁸

Author of the concurring opinion in *Greene*, Byron White joined the Court in 1962 after President John F. Kennedy elevated him from the position of deputy attorney general to replace the retired Charles Whittaker. A former Rhodes Scholar and honors graduate at Yale Law School, White had played a prominent role in many of the civil rights cases that resulted from the attacks on the 1961 freedom riders.¹⁰⁹ However, though generally liberal in discrimination and equal protection cases, White's judicial record became one of moderate conservatism. As a former New Deal Democrat, White demonstrated a respect for governmental institutions by frequently deferring to their policy decisions. Disinclined to read non-enumerated liberties into the Constitution, White also advocated a strict construction of the individual freedoms contained therein.¹¹⁰

¹⁰⁷ Tinsley Yarbrough, *The Burger Court: Justices, Rulings, Legacy*, (Santa Barbara, CA: ABC-CLIO Supreme Court Handbooks, 2000), 100-103.

¹⁰⁸ Robert Judd Sickels, *John Paul Stevens and the Constitution: The Search for Balance*, (London: The Pennsylvania State University Press, 1988), 99-115.

¹⁰⁹ Incidentally, White excelled in athletics as well as academics. He was an All-American running back for the University of Colorado, played a year of professional football with the Pittsburgh Steelers, and was offered a contract by the Pittsburgh Pirates baseball team. He also served as a naval intelligence officer in the Solomon Islands during World War II, for which he was awarded two Bronze Stars and a presidential citation. From 1946 to 1947 he clerked for Supreme Court Justice Fred Vinson.

¹¹⁰ Tinsley Yarbrough, *The Burger Court: Justices, Rulings, Legacy*, 100-103. In regard to the extension non-enumerated rights, White voted with the majority in *Griswold v. Connecticut* (1965) to establish a right of privacy.

Justice Thurgood Marshall authored the dissenting opinion in the case. Appointed to the bench in 1967 by President Lyndon Johnson, Marshall quickly became a staunch advocate for the expansion of civil rights and liberties. However, his defenses of equality and freedom began long before his ascendancy to the nation's highest Court. The great-grandson of a former slave, Marshall had personal experience with many of the problems facing black Americans in the twentieth century. To help initiate social change, Marshall volunteered with the NAACP following his graduation from Howard Law School, and for eleven years directed the NAACP's Legal Defense and Educational Fund. During that time, he argued thirty-two cases before the Supreme Court, in twenty-nine of which he won favorable verdicts. Perhaps his greatest victory came in *Brown v. Board of Education* (1954), when the Warren Court ruled that the separate but equal policies of racial segregation that had plagued the nation since the late nineteenth century were "inherently unequal," and therefore unconstitutional.¹¹¹ As a justice, Marshall did not stop defending civic equality and African American rights. However, on the Burger Court, he increasingly found himself in the minority, and often relied on the dissents of Justice William Brennan to shape his own arguments against the doctrinal philosophies of the conservative majority.¹¹²

The Supreme Court's Ruling

However, he dissented in *Roe v. Wade* (1973) and authored the majority opinion in *Bowers v. Hardwick* (1986)—in each instance he made clear that a right of privacy is far from absolute.

¹¹¹ Marshall also served as United States Solicitor General from 1965-1967. During this time, he argued nineteen cases before the Supreme Court, winning fourteen. Among the five cases he lost was *Miranda v. Arizona* (1966), which had dramatic implications for the right of the accused under the Fourth Amendment.

¹¹² Tinsley Yarbrough, *The Burger Court: Justices, Rulings, Legacy*, 71-75. For additional information on Justice Marshall see the following selections:

Roger Goldman and David Gallen, *Thurgood Marshall: Justice for All*, (New York: Carroll and Graf Publishers, 1992).

Michael Davis and Hunter Clark, *Thurgood Marshall: Warrior at the Bar, Rebel on the Bench*, (New York: Birch Lane Press, 1992).

Following the city's appeal of the Sixth Circuit's ruling, the case of *Memphis v. Greene* was heard before the U.S. Supreme Court on December 3, 1980, and on April 20, 1981, Associate Justice John Paul Stevens delivered the Court's majority opinion.¹¹³ Noting that "the closing will not make the entire route any longer" with respect to local traffic, Stevens first challenged each of the "factual predicates" entailed in the Sixth Circuit's ruling.¹¹⁴ He noted, for example, that although black motorists would be disproportionately affected by the closing, "the extent of the inconvenience [was] not great." He went on to conclude that the Sixth Circuit "attached a greater significance to the closing as a 'barrier' between two neighborhoods than seems warranted by the record" since West Drive is one of three streets that enters Hein Park from the north, and that its closing would not have any dramatic effect upon the "social and commercial" interactions of residents in the two communities.¹¹⁵ In regard to the "undesirable character" of West Drive traffic, Stevens wrote that "excessive traffic in any residential neighborhood has public welfare factors such as safety, noise, and litter, regardless of the race of the traffic and the neighborhood."¹¹⁶ Furthermore, he reiterated that the plaintiff had failed to prove discriminatory intent on the part of Hein Park residents, and the Sixth Circuit's inference that the closing would cause "an economic depreciation in the property values in the predominantly black residential area" was disproved by the plaintiff's own expert witness testimony in the District Court that "there would not be a decrease in value experienced by property owners to the north of West Drive because of the closure."¹¹⁷

¹¹³ Justice Stevens was joined by Chief Justice Warren Burger, and Justices Potter Stewart, Lewis Powell, and William Rehnquist.

¹¹⁴ 451 U.S. 100, 104.

¹¹⁵ 451 U.S. 100, 112.

¹¹⁶ 451 U.S. 100, 114.

¹¹⁷ 451 U.S. 100, 116-117.

Stevens then evaluated the applicability of 1982 and the Thirteenth Amendment to the closure. Noting that 1982 included “the right of blacks not to have property interests impaired because of their race,” he acknowledged that “the statute would support a challenge to municipal action benefiting white property owners that would be refused to similarly situated black property owners” because it “would prevent blacks from exercising the same property rights as whites.”¹¹⁸ However, Stevens refused to effectuate 1982 in this case because the respondents did not demonstrate that the closure either depreciated the property values of Hollywood homes or severely restricted the residents’ access to those homes. Instead, Stevens wrote, the only “injury to respondents established by the record is the requirement that one public street rather than another must be used for certain trips within the city,” and that this “impairment” was not considerable enough to evoke 1982.¹¹⁹

In regard to the Thirteenth Amendment, Stevens recognized that the extent of the Thirteenth’s Amendment’s power was unclear. In other words, while he acknowledged that it “abolished slavery” and “established universal freedom,” he viewed previous precedent as ambiguous when it came to the question of whether the Thirteenth Amendment had a “self-executing force.” “Pursuant to the authority created by [Section] 2 of the Thirteenth Amendment,” Stevens wrote, “Congress has enacted legislation to abolish both the conditions of involuntary servitude and the ‘badges and incidents of slavery.’”¹²⁰ However, Section 2 affords only Congress the power to enforce the amendment’s anti-slavery clause through “appropriate legislation,” and this particular case did not involve a remedial measure passed by Congress to correct a vestige of slavery. But rather than more concretely determine the extent of the Thirteenth Amendment in all cases, Stevens claimed that it was appropriate to leave that issue

¹¹⁸ 451 U.S. 100, 122-123.

¹¹⁹ 451 U.S. 100, 123-124.

¹²⁰ 451 U.S. 100, 124-125.

unsettled “because a review of the justification for the official action challenged in this case demonstrates that its disparate impact on black citizens could not, in any event, be fairly characterized as a badge or incident of slavery.”¹²¹

Stevens further explained that a racially discriminatory motive was never proven, that the traffic interests that motivated the City Council were legitimate, and that local governments should be able to exercise a great deal of discretion on issues relating to “a variety of conflicting interests.” “As a matter of constitutional law,” he wrote, “the city’s power to adopt rules that will avoid anticipated traffic safety problems is the same as its power to correct those hazards that have been revealed by actual events.”¹²² In other words, the Court ruled that local governments should be given autonomy over such issues as street closings, and that since there was no basis that “the interests favored by the city in its decision were contrived or pretextual,” the District Court correctly concluded that the city’s policy decision should be upheld. Stevens added that the closing “cannot be equated to an actual restraint on the liberty of black citizens that is in any sense comparable to the odious practice the Thirteenth Amendment was designed to eradicate.” Furthermore, he wrote that urban neighborhoods are often generally characterized by a “common ethnic or racial heritage,” and that as a consequence, a decision that adversely affects a particular neighborhood might also adversely affect a particular racial or ethnic group. However, he concluded that “to regard an inevitable consequence of that kind as a form of stigma so severe as to violate the Thirteenth Amendment would be to trivialize the great purpose of that charter of freedom.”¹²³

In his brief concurrence, Justice Byron White disagreed with the basis for both the majority and dissenting opinions, in that each ignored the constitutional “question for which [the

¹²¹ 451 U.S. 100, 126.

¹²² 451 U.S. 100, 126.

¹²³ 451 U.S. 100, 128.

Court] took the case.” According to White, that question did not entail “the Court [assuming] the role of factfinder, [perusing] the cold record, [rehashing] the evidence, and *sua sponte* [purporting] to resolve questions that the parties have neither briefed nor argued.” The Court’s responsibility was instead to determine whether “a violation of 1982 could be established without proof of discriminatory intent.”¹²⁴ As far as he was concerned, “purposeful racial discrimination [was] quite clearly the focus of [1982],” and this interpretation was “supported by the legislative history of the *Civil Rights Act* of 1866, the enactment from which 1982 [was] derived.”¹²⁵ White therefore argued that because no intentional discrimination had been proven on the part of either the City Council or the residents of Hein Park, 1982 was inapplicable in the closure of West Drive.

Furthermore, he stated that the 1866 *Civil Rights Act* was only responsible for giving the Thirteenth Amendment a “practical effect,” in that it prevented the slaves’ continued subjugation to the “direct, intentional abuses at the hands of their former masters.” Section 1982 thus provided a remedial means to combat the “basic denial of civil rights to former slaves,” but did not apply to cases where such intentional abuses were not clearly evident.¹²⁶ Because Greene failed to prove “some showing of racial animus or an intent to discriminate on the basis of race,” White concluded that 1982 had no bearing on his case.

In a spirited dissent, Associate Justice Thurgood Marshall took issue with the Court’s transient analysis of a closure that he viewed as a subtle attempt to segregate along racial lines.¹²⁷ Claiming that the guise of safety was often used to veil discriminatory intent, Marshall chastised the majority for allowing racial “but apparently not, after [the Court’s ruling], forbidden

¹²⁴ 451 U.S. 100, 130.

¹²⁵ 451 U.S. 100, 131.

¹²⁶ 451 U.S. 100, 134-135.

¹²⁷ Justice Marshall was joined by Justices William Brennan and Harry Blackmun.

discrimination.” According to Marshall, there was more at stake in *Memphis v. Greene* than “a simple street closing.”¹²⁸ He claimed, for example, that the Court underestimated the “plain and powerful symbolic message of the ‘inconvenience,’” in that the closing sent a message to the black community that their convenience must be sacrificed because they did not live in a “protected” white neighborhood.¹²⁹ Furthermore, he highlighted the Court’s acknowledgement that the closing would create a barrier at the point of contact between the two neighborhoods, but argued that it had failed to appreciate the significant psychological effect of the barrier.¹³⁰ “I cannot subscribe to the majority’s apparent view that the city’s erection of this ‘monument to racial hostility’ amounts to nothing more than a ‘slight inconvenience,’” Marshall wrote. “Thus, unlike the majority, I do not minimize the significance of the barrier itself in determining the harm respondents will suffer from its erection.”¹³¹

Marshall claimed that a common sense interpretation of the “undesirable traffic” Hein Park attempted to exclude from its neighborhood would describe only the predominantly African-American traffic that would be eliminated by closing West Drive. According to Marshall, this understanding, coupled with the testimony of city official Paul Goldstein that West Drive represented the only instance in which the city had “ever closed a street for traffic control purposes” constituted enough probative evidence of intentional discrimination to satisfy the burden established in *Arlington Heights v. Metropolitan Housing Dev. Corp* (1977). Moreover, Marshall asserted that Memphis’s “very real history of racial segregation” only supported the

¹²⁸ 451 U.S. 100, 136.

¹²⁹ 451 U.S. 100, 138. Marshall’s conclusions were based on the testimony of Eleanora Cross, who said she felt that the closure told the black community that they “must take the long way around because you don’t live in this ‘protected’ white neighborhood.

¹³⁰ 451 U.S. 100, 139. Marshall supported this argument with the testimony of Dr. Marvin Feit, a professor of psychiatry at the University of Tennessee. Feit claimed that the closing would illustrate the city’s “favoritism for whites, and “serve as a monument to racial hostility.

¹³¹ 451 U.S. 100, 140.

probability that discrimination was prevalent factor in the closing.¹³² “The problem is less the closing of West Drive in particular,” he noted, “than the establishment of racially determined districts which the closing effects.”¹³³

Marshall also stated that the framers of the 1866 *Civil Rights Act* never intended for its provisions to be narrowly constructed. Rather, he cited the Court’s previous interpretation of the “broad and sweeping nature” of the *Civil Rights Act*, and argued that “because of [the] Nation’s sad legacy of discrimination and the broad remedial purpose of 1982,” “government [should] carry a heavy burden in order to justify its action.”¹³⁴ In light of this broad interpretation of 1982, the disproportionate effect of the closing on the Hollywood-Chelsea area, and the City Council’s inability to provide a viable justification for “an action that so obviously [damaged] and [stigmatized] a racially identifiable group of citizens” that met even the “most minimal scrutiny,” Marshall felt that the closing was constitutionally illegitimate.¹³⁵

Conclusion

On its face the Supreme Court’s majority ruling in *Memphis v. Greene* was a seemingly logical endorsement of a mundane city ordinance allowing for the closure of a congested neighborhood street. However, the very fact that the case made it to the Supreme Court demonstrates that such apparent trivialities occasionally entail a much deeper significance. In a bi-racial city, civil rights must be understood in light of place, class, and perception. The

¹³² 451 U.S. 100, 143. Marshall referenced *Arlington Heights v. Metropolitan Housing Dev. Corp.* 429 U.S. 252 (1977).

¹³³ 451 U.S. 100, 147.

¹³⁴ 451 U.S. 100, 148 & 151-152.

¹³⁵ 451 U.S. 100, 148 & 152-153.

concept of “having” civil rights thus includes, not only the reality of equal treatment, but both the perception and understanding that everyone is genuinely equal. In *Memphis v. Greene*, what may have began as a sincere desire to alleviate the traffic problems of a residential neighborhood ended with the construction of a symbolic barrier between an all-white Hein Park and the overwhelmingly black Hollywood-Springdale community to the north. While this barrier did not physically prevent *contact* between the two areas, its erection at the outermost boundary of West Drive reinforced the notion that Hein Park was a separate and exclusive community. But beyond that, it reminded residents outside of Hein Park of their “blackness” by legitimizing the exclusivity of a *rich white* neighborhood at the expense of a *poor black* one.

In a larger sense, *Memphis v. Greene* demonstrated that the Civil Rights Movement continued beyond the heyday of the 1960s. However, it also illustrated the Movement’s adaptation to changing sets of circumstances. In other words, while many of the more obvious obstacles to the achievement of full social and political equality had been overcome, the remaining barriers were comparatively subtle. Even though Jim Crow laws had been eliminated, there remained other means by which individuals could be racially segregated. In the case of West Drive, the City Council authorized a closure that they perceived to be in the interest of traffic regulation. However, though the mitigation of dangerous traffic posed a significant concern to Hein Park residents, the closing also had psychological consequences for a people who only a few years earlier had suffered overt discrimination at the hands of city government. In this sense, the closing must be understood for what it was. It cannot be analyzed in a vacuum without consideration of the racial division that has characterized Memphis’s history. It also cannot be dismissed by a people whose race and class prevent them from fully appreciating the psychological impact that the closing caused. The physical inconvenience done to Hollywood-

Chelsea residents may have been minimal, but the sense of separation they experienced during a time when Memphis area schools resisted integration and when economic inequality heightened the racial divide was nevertheless very significant.

In the words of Brother M.A. Hull of the Springdale Church of Christ, the closing represented “[another] thing that blacks [had] to live with.” “I have to learn to live with these things,” said Hull. “What else can you do?”¹³⁶ Dorothy Cox shares Hull’s sentiments. “When you get used to slaps in the face,” she says, “you don’t really see it as a big deal.” “The community felt that there was no one they could go to,” she continues. “After all, if the City Council wouldn’t listen to us, then who would?”¹³⁷ These statements reflect the problems inherent to racial separation, in that whether such a separation is intentionally motivated or the unintentional byproduct of racially neutral actions, one group often benefits more so than others. This benefit has obvious implications for the perception of all groups, as in instances where races are separated, each race associates the effects of the separation with their own racial identity. In a city that routinely denied equality to blacks by separating them from the “benefits” enjoyed by whites, African Americans associated this racial identity with the political and social inferiority that it appeared to entail. From their perspective, the closing thus demonstrated yet another effort by a “white government” to benefit whites, and yet another repercussion that they would be forced to suffer because they were black.

Under existing precedent, the Supreme Court might have had a constitutional obligation to defer to city police powers in instances where intentional discrimination could not be proven, but the fact remains that the City Council’s actions bifurcated a community along purely socioeconomic and racial lines. It might not have intended to discriminate. Some Hein Park

¹³⁶ Linda S. Wallace, “Residents React to Judge’s Ruling on West Drive,” *The Commercial Appeal*, June 22, 1978.

¹³⁷ *Interview with Dorothy Cox*, July 12, 2005.

residents possessed legitimate traffic safety concerns. But by closing a public street, the Council applied the most extreme means of traffic reduction. Considering Memphis's bi-racial character and past experience with racism, a less severe method of traffic regulation would have imposed a lesser degree of perceived racial segregation. However, the persistence of subtle racial distinctions illustrated that the Civil Rights Movement in Memphis continued into the 1980s. Because the Movement did not combat instances of racial discrimination that were as blatantly identifiable as those in the 1960s, it was easy for the Court to deal a blow to the Movement's progress in *Memphis v. Greene*. Nevertheless, the racial separation of two Memphis neighborhoods was very real, and it is in this light that the case can be characterized within the broader context of the continuing Civil Rights Movement.