

In the

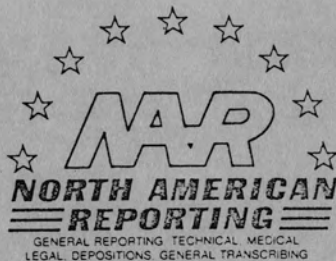
# Supreme Court of the United States

CITY OF MEMPHIS, ET AL., )  
)  
PETITIONERS, )  
)  
V. ) No. 79-1176  
)  
N. T. GREENE, ET AL., )  
)  
RESPONDENTS. )

Washington, D. C.  
December 3, 1980

Pages 1 thru 46

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

----- :  
 :  
 CITY OF MEMPHIS, ET AL., :  
 :  
 Petitioners, :  
 :  
 v. : No. 79-1176  
 :  
 N. T. GREENE, ET AL., :  
 :  
 Respondents. :  
 :  
 ----- :

Washington, D. C.  
 Wednesday, December 3, 1980

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:32 o'clock a.m.

APPEARANCES:

CLIFFORD D. PIERCE, JR., ESQ., City Attorney, City of Memphis, Room 314, City Hall, 125 North Main Street, Memphis, Tennessee 38103; on behalf of the Petitioners.

ALVIN O. CHAMBLISS, JR., ESQ., 3322 South Lamar Blvd., Oxford, Mississippi 38655; on behalf of the Respondents.

C O N T E N T S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
CLIFFORD D. PIERCE, JR., ESQ., on behalf of the Petitioners	3
ALVIN O. CHAMBLISS, JR., ESQ., on behalf of the Respondents	22
CLIFFORD D. PIERCE, JR., ESQ., on behalf of the Petitioners -- Rebuttal	41

- - -

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in City of Memphis v. Greene.

Mr. Pierce, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF CLIFFORD D. PIERCE, JR., ESQ.,  
ON BEHALF OF THE PETITIONERS

MR. PIERCE: Mr. Chief Justice, and may it please the Court:

The City of Memphis petitioned for certiorari in this Court solely because of what we perceive to be a clear and inherent danger in the majority opinion of the 6th Circuit to the ability of this nation's cities to effectively balance all the conflicting interests which come before them and effectively govern.

In short, we saw the danger which we believe Judge Celebrezze saw, in the dissenting opinion, Judge Celebrezze having been mayor of one of the great cities of this country, and also, some of the concerns that were expressed by this Court in Washington v. Davis.

In every democracy, the legislative and administrative parts of that democracy have the burden to weigh conflicting and competing interests. Inevitably, in any such decision, there will be winners and losers. And depending upon whose ox is gored, the party that is not successful will

1 feel either irritated or disappointed or in some respects  
2 angered.

3           This case, may it please the Court, started as a  
4 routine street closing. It started, not with the City itself,  
5 but with residents of a small winding neighborhood street  
6 in a subdivision known as Hein Park. The reason which these  
7 neighbors gave abutting this street was the fact that this  
8 very narrow, less than two-lane street, or approximately  
9 two-lane street, had taken on a tremendous amount of traffic.  
10 They sought to control the traffic going through that small  
11 residential neighborhood. They sought to protect the pedes-  
12 trians, both those living within the neighborhood and without  
13 the neighborhood, particularly the children who were walking  
14 to and from school. They also sought to control litter and  
15 pollution, things that go with traffic, unfortunately, and  
16 things that this Court has recognized as being a legitimate  
17 purpose to control.

18           West Drive itself, as I have indicated, is a very  
19 narrow, winding, almost country-type street. There are no  
20 curbs or gutters or sidewalks. It is, at its entrance into  
21 Jackson Avenue, about 25 feet wide. If cars are parked on  
22 either side, it ceases to be a two-lane street.

23           Hein Park itself is a small in-town, inner city  
24 neighborhood approximately 60 years old. The geographical  
25 borders are such that it is bordered on three sides by major

1 streets, four and six-lane streets, most of which carry heavy  
2 commercial traffic. West Drive, as it comes into Jackson  
3 Avenue, which is one of these major commercial streets and is  
4 on the north side, is, as I have indicated, 25 feet wide.  
5 Jackson Avenue --

6 QUESTION: Is there a good map, Mr. Pierce? There's  
7 a rather poor map on A59.

8 MR. PIERCE: It's an extremely poor map, Mr. Justice  
9 Stewart. There is a slightly better map in the brief submitted  
10 by the Amicus Curiae from the Hein Park Civic Association.  
11 It is at least more legible. I regret sincerely there is not  
12 a better map. I think that that, although it's not drawn to  
13 scale, I believe that you can judge the streets better from --

14 QUESTION: A little bit better.

15 MR. PIERCE: Yes, I believe that's clearer. I apologize  
16 for that.

17 QUESTION: Now, on that one, are the colors signifi-  
18 cant? The yellow --

19 QUESTION: West Drive is in blue, isn't it?

20 MR. PIERCE: Yes, sir.

21 QUESTION: Is that it?

22 MR. PIERCE: Yes. West Drive. And what's  
23 Springdale? Is that the wide street you mentioned?

24 MR. PIERCE: Springdale is the wide street. Yes,  
25 sir, it's in yellow.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

QUESTION: That's the one on the north?

MR. PIERCE: That's the one on the north; yes, sir.

QUESTION: And the other side, that's on the other side of the highway? Of what street?

MR. PIERCE: That is on the other side of Jackson Avenue.

QUESTION: Jackson.

MR. PIERCE: Jackson Avenue is approximately six lanes wide.

QUESTION: And the barrier about which which we're speaking is at the intersection of West Drive and Jackson?

MR. PIERCE: Yes, sir. That's correct.

QUESTION: On the west side of it? Or the left hand side on this map?

MR. PIERCE: Well, it -- across it; yes, sir.

Now, a word about Hein Park, about the subdivision itself. As I've stated, it is a small in-town neighborhood, an inner city neighborhood. The streets are small and winding, The houses vary from rather small homes to rather large homes. One thing I think is particularly significant in view of the arguments that have been made by the plaintiffs in this case, is that there are, in addition to West Drive, there are seven other entrances into this subdivision.

QUESTION: Excuse me, Mr. Pierce. On this map, could you roughly give me the boundaries of Hein Park?

1 MR. PIERCE: The boundaries of Hein Park, Your Honor,  
2 would be --

3 QUESTION: And where are you looking now, Mr. Pierce?

4 MR. PIERCE: I'm sorry, Mr. Justice Blackmun. This  
5 is the map that is attached to the brief submitted by the  
6 Hein Park Civic Association; not very good, but it's the best  
7 we have. Yes, sir.

8 QUESTION: There is a pretty good one on 144 of the  
9 Appendix --

10 MR. PIERCE: But it's virtually illegible.

11 QUESTION: I don't think it is. 144 seems to me to  
12 be very legible.

13 MR. PIERCE: I'm sorry, sir. That's correct. --  
14 You're right. That does not include the whole Hein Park. It  
15 does include just basically West Drive and Center Drive.  
16 That might give some better idea of the location of the bar-  
17 rier and how it fits into West Drive. It does not include all  
18 of Hein Park.

19 Hein Park, as we look to the map in the amicus brief,  
20 is bounded by Jackson Avenue on the north, Trezevant Street  
21 on the east, North Parkway on the south, and, actually,  
22 Charles Place, which runs into West Drive, on the west. To  
23 the west of that is Southwestern University.

24 QUESTION: It's a small point, but that North  
25 Parkway, I gather, is quite a different street than the North



1 Drive shown on number 144?

2 MR. PIERCE: Yes, sir. Yes, Mr. Justice Stevens.  
3 North Parkway is a major thoroughfare. North Drive is, if any-  
4 thing, smaller than West Drive. It's a very narrow, small --

5 QUESTION: That's within Hein Park?

6 MR. PIERCE: Within Hein Park; yes, sir.

7 QUESTION: And then, Overton Park, which has been  
8 the subject of previous litigation in this Court --

9 MR. PIERCE: Yes, sir? Is to the south.

10 QUESTION: Is a large park, south.

11 MR. PIERCE: Yes, sir, a very large park, and as  
12 seen on this map --

13 QUESTION: The largest one in town, I guess?

14 MR. PIERCE: -- located to the south; yes, sir.

15 As I say, I think the map will show this, there are  
16 seven other entrances into Hein Park, including two from the  
17 north, so that, one of the complaints made by the plaintiffs  
18 in this case was that they wanted to come down Springdale  
19 Street, and that they were being effectively shut out of Hein  
20 Park and would not be permitted to come into Hein Park for  
21 racial or other reasons.

22 Actually, all they would have to do would be to make  
23 a turn either to the east or to the west of about 100 feet.  
24 If they turn to the east 100 feet, they can proceed into  
25 Cypress Drive, which runs into Center Drive, which runs right

1 into North Parkway. If they go to the west, they can go about  
 2 100 feet, they can go into Charles Place, which runs into West  
 3 Drive, and they will be back out again at the Parkway. The  
 4 other entrances into Hein Park are at North Drive and at East  
 5 Drive, on the east, of course; Center Drive on the west, on  
 6 the south; and Charles Place, which runs in, in effect, from  
 7 Southwestern, to the west. That I think would indicate the  
 8 traffic patterns, may it please the Court.

9 As is indicated in the testimony, it has been the  
 10 policy of the City to support inner city neighborhoods. This  
 11 is certainly an inner city neighborhood, and one deemed worthy  
 12 of support, as are all. The neighbors themselves sought what  
 13 we believe were legitimate constitutional reasons to improve  
 14 the quality of life within that neighborhood.

15 The disparate impact, if it exists, I believe was pro-  
 16 perly pointed out by Judge Celebrezze, really exists between  
 17 residents and nonresidents. It is perhaps a little more con-  
 18 venient for those living on West Drive, that they would be  
 19 most likely to proceed to the south and to go onto North  
 20 Parkway, than the others, who may want to come across, but  
 21 that it is certainly not a racial impact, really one of geo-  
 22 graphy.

23 The record reflects, may it please the Court, that  
 24 the proper procedures were followed in this case. The resi-  
 25 dents filed a petition, they went before the Planning

1 Commission. The Planning Commission did as it does in all  
2 other types of street closings and alley closings. It made  
3 an inquiry of all the city divisions and asked for the opinion  
4 of the division officers as to whether or not it should be  
5 closed.

6 QUESTION: What is the racial composition of the  
7 Planning Commission?

8 MR. PIERCE: The Planning Commission, Your Honor?  
9 The Planning Commission, Your Honor, is made up -- I'm not  
10 certain of the racial makeup of the Planning Commission. I'm  
11 confident there are some black members of the Planning Commis-  
12 sion. The City Council has three black councilmen out of 13.

13 The Planning Commission is merely a recommending  
14 body. All land use matters go before the Planning Commission  
15 for its recommendation. The Planning Commission itself is  
16 made up of citizen members, some appointed by the City and some  
17 appointed by the county. The Planning Commission has a staff,  
18 of course, of professionals. And then the board members them-  
19 selves vote and pass their recommendations on along to the  
20 City Council, which must vote it up or down.

21 The record does reflect that proper hearings were  
22 made, that a hearing took place before the Planning Commis-  
23 sion, a hearing took place before the City Council. This was  
24 a contested matter. It certainly was not something that was  
25 breezed or slipped through. There were some very strong

1 opinions about it, one reason being it was the first time it  
2 had really been done. On a number of occasions streets had  
3 been closed. Most of them had not been opened before; they  
4 had been dedicated to the City but had not been opened to  
5 through traffic. On other occasions alleys had been closed  
6 that actually had been opened to through traffic but were  
7 closed on request of property owners that abutted the alleys.

8 This case was handled just like every other case.  
9 There was a very active hearing before the Council, and I  
10 might state to Your Honors that in the hearing before the  
11 Council race was really not an issue. I think one gentleman  
12 made some comments about the racial aspect of it. But really,  
13 virtually none of the complainants at that particular time,  
14 white or black, made any comment about the racial aspect of it.  
15 None of the councilmen, certainly not the black councilmen or  
16 the white councilmen, made any comment whatsoever about this  
17 being a racial matter. It was debated, I think, because it  
18 was unusual. It was because this was perhaps the first time  
19 that this type of planning, too, had been used to present --

20 QUESTION: Mr. Pierce, does the record contain a  
21 transcript of the proceedings before the City Council?

22 MR. PIERCE: Yes, Your Honor, it does. Yes, sir.

23 It was not until after the hearing, Mr. Justice  
24 Stevens, when the City Council had listened to both sides,  
25 had debated among itself, had taken a vote and decided, not

1 unanimously, I might add, on a split vote, had decided that  
2 this was a proper tool, that it was a reasonable --

3 QUESTION: What was the vote, Mr. Pierce?

4 MR. PIERCE: The vote, I think, was 7-5, I believe,  
5 Mr. Justice Blackmun.

6 QUESTION: And the three black members voted against?

7 MR. PIERCE: Yes, sir. It was not until after this  
8 time that the matter of race came up, and it came up on a  
9 petition to rehear, and ultimately a petition to reopen.  
10 Now, one word with respect to the barrier itself. The barrier  
11 is not the Berlin Wall. The way it is established, it con-  
12 sists of two low curbs, one abutting Jackson Avenue, one  
13 abutting West Drive. There is a small planting area between  
14 Jackson Avenue and the sidewalk. There is then a sidewalk  
15 which is a continuation of all the other sidewalks along  
16 Jackson Avenue, which abuts the blacktop. So one point that  
17 was raised by the plaintiffs in their brief that there would be  
18 a problem with pedestrian traffic is simply not true. There is  
19 no way that there would be a trespass, technical or otherwise,  
20 for pedestrians desiring to come off of Jackson Avenue and go  
21 onto West Drive. They can walk down the blacktop, or under  
22 our city ordinances, where there are no sidewalks, they're  
23 permitted to walk within 10 feet off the road, without any  
24 danger of trespassing. So there is no technical trespass or  
25 otherwise.

ERASE  
CONTENT

1           Now, the Court is, I'm certain, familiar with the  
2 fact that the original petition, complaint, filed in this cause  
3 was dismissed and this case went to the 6th Circuit. And the  
4 court remanded that back to the district court, setting out  
5 some rather basic ground rules, primarily a ground rule that  
6 for the plaintiffs to prevail there had to be discriminatory  
7 intent, and intent shown that the City of Memphis had granted  
8 to these residents of this predominantly white, or white resi-  
9 dential area, a right that they had not granted to black citi-  
10 zens within the City of Memphis.

11           During the hearing of the trial court, that state-  
12 ment from the 6th Circuit, which it later in Greene II stated  
13 was dicta, we urged that upon the court, that that was really  
14 the issue facing him, Judge McRae, in that hearing, on the  
15 whole matter. The judge did not agree with that. Instead he  
16 had a full hearing. He had, in effect, an Arlington Heights  
17 hearing. He let everything in. The plaintiffs were permitted  
18 to produce every bit of evidence they had with respect to  
19 racial impact, and with respect to racial intent.

20           The respondents have argued that the trial judge --  
21 and so did the majority in the 6th Circuit -- argued that the  
22 trial judge had felt himself too constrained by the mandate of  
23 the 6th Circuit in Greene I. And it was because of that con-  
24 straint that he found no intent.

25           It's simply not true. As I indicated, the record

1 will indicate a very full hearing on this matter. All issues  
2 were debated. And at the conclusion, the trial court deter-  
3 mined that certainly no starkness existed on which to place  
4 a badge of slavery.

5 He determined that on the record before him, the  
6 proof adduced in that case did not rise to the level of proving  
7 that there was any discriminatory intent on the part of the  
8 City of Memphis, in placing this barrier at West Drive.

9 QUESTION: Mr. Pierce, does the record tell us why  
10 this happened at the particular time in history it did? In  
11 other words, were there changes in traffic patterns or changes  
12 in the composition of the residential neighborhood, either in  
13 Hein Park or out, or why did this happen when it did?

14 MR. PIERCE: Your Honor, the record reflects that  
15 approximately three years before -- I think, back in 1970,  
16 the neighbors became concerned about the traffic pattern, and  
17 if I may digress one minute to say something about the Hein  
18 Park neighborhood, as I indicated to you, this neighborhood  
19 is about 60 years old, and for a long period of time it was  
20 made up of a lot of original residents, senior citizen, elderly  
21 people. Since that time, and in the past decade or so, younger  
22 people and young middle-aged people have moved into this  
23 neighborhood, have reclaimed these old houses, and have started  
24 to repair them and fix them up and turn them into a better  
25 neighborhood.

1 QUESTION: Largely white?

2 MR. PIERCE: Largely white, but it is now integrated,  
3 Mr. Justice Brennan.

4 I think that the advent of young, small children  
5 was something new in Hein Park. There really had not been  
6 many of them around. All of a sudden, there were a lot of  
7 them around. And I think this created a very real concern  
8 for the citizens in Hein Park, and they started about 1970  
9 feeling a great concern about this. And they talked to people  
10 within the City, they talked to Bob Fosnaugh, who was then the  
11 traffic engineer, and they had suggested trying to close off  
12 the whole park, to see if they couldn't do something about  
13 this. That was obviously rejected as being unreasonable, but  
14 a suggestion was made to them at that time that the real cul-  
15 prit in this area was the traffic that was coming through  
16 West Drive, that if they could somehow shut off that major --  
17 what had become a country lane into a major thoroughfare  
18 through a very small, quiet residential area, if they could  
19 protect that neighborhood they could protect those children.

20 And this suggestion, really, of just stopping traf-  
21 fic at that one point came originally from someone within the  
22 City saying, that's something you might point toward.

23 QUESTION: Was that traffic white or black?

24 MR. PIERCE: Pardon me?

25 QUESTION: Was that traffic getting more and more



1 black?

2 MR. PIERCE: Justice Marshall, I'm not -- I think the  
3 court indicated that it was. The area to the north --

4 QUESTION: Is there anything to contradict that?

5 MR. PIERCE: Probably nothing in the record to indi-  
6 cate it. I would state that the --

7 QUESTION: Then, it's a fact.

8 MR. PIERCE: Yes, sir. The area to the north is  
9 in a sense divided. As you go down Springdale, the area east  
10 of Springdale is predominantly black. The area west of Spring-  
11 dale is predominantly white. So there is a mixture, certainly,  
12 of white and black traffic through there. But the court found  
13 that the impact would be more on black citizens than on white  
14 citizens, so I'm stuck with that.

15 Now, if it please the Court, an absence of intent  
16 was found by the district court. It was found by Judge  
17 Celebrezze, and possibly by the majority of the 6th Circuit.  
18 We have some problems understanding exactly what they've said.  
19 But Judge Celebrezze is certainly of the opinion that the 6th  
20 Circuit decided this case on the basis of 1982.

21 We believe that 1982 does and should require a find-  
22 ing of racial motivation and intent. The decisions of this  
23 Court would indicate that is a path which this Court would  
24 have us follow. Going back to the dicta in Jones v. Alfred  
25 H. Mayer, talking about all racially motivated conduct,

1 and following the line of cases of this Court, in Washington  
2 v. Davis, in Arlington Heights, and in Personnel Administrator  
3 v. Feeney, the path which this Court has indicated to us is  
4 that racially motivated, racial intent should be a requirement  
5 under 1982.

6 QUESTION: Of course, before you can get to that  
7 there's the preliminary question about whether or not Section  
8 1982 even in the presence of racial intent can apply in cir-  
9 cumstances such as these at all.

10 MR. PIERCE: I agree. I agree, Your Honor. That is  
11 a question. I'm very frank to admit we have trouble with  
12 understanding the majority opinion. Judge --

13 QUESTION: Well, did you ever make that claim in the  
14 courts below?

15 MR. PIERCE: That 1982 is not applicable?

16 QUESTION: In this case at all?

17 MR. PIERCE: I don't think it was really raised as  
18 much. It was suggested.

19 QUESTION: Not as much; any?

20 MR. PIERCE: I can't say if it was any at all.  
21 It was mentioned, Your Honor --

22 QUESTION: The Court of Appeals didn't address that  
23 discrete issue, did it?

24 MR. PIERCE: No, I don't think so.

25 QUESTION: It was certainly pleaded in the complaint.

ERASE  
CONTENT

1 MR. PIERCE: It was pleaded in the complaint, yes,  
2 Your Honor. But as I say, as Judge Celebrezze indicated, he  
3 felt that the district judge certainly treated this as a 1983  
4 case, or as a case under the Fourteenth Amendment, an equal  
5 protection case.

6 But the 6th Circuit, the majority opinion, seems to  
7 indicate that they find it a 1982 violation.

8 QUESTION: Mr. Pierce, what do you mean by require-  
9 ment of intent? Supposing one of the residents of Hein Park  
10 was a member of the Ku Klux Klan and openly and notoriously  
11 disliked persons of the black race and said so repeatedly  
12 and said, that's the reason he wanted to close off the Drive.  
13 Would that have made it unconstitutional?

14 MR. PIERCE: No, I don't think so, Mr. Justice  
15 Stevens.

16 QUESTION: Well, what do you mean by intent?

17 MR. PIERCE: The intent, I believe, has to run to  
18 the intent of the decisionmakers, and here it is the decision-  
19 making by the City Council.

20 QUESTION: Well, aren't all the property owners part  
21 of the decisional process? Don't they all have to consent?

22 QUESTION: Well, they are to an extent, but only in  
23 the fact that they are a competing interest, the same that  
24 the opponents are part of the policymaking. The decisionmakers,  
25 the true decisionmakers which in this instance was the

E Z E R A S E  
C O N T E N T

1 Council, they've got to weigh these interests, they've got to  
2 determine, make political decisions.

3 QUESTION: Mr. Pierce, is it your position that the  
4 only way this case can be upheld would be for the Council to  
5 have adopted a resolution that we are doing this for the  
6 sole purpose of denying these people their constitutional  
7 rights?

8 MR. PIERCE: No, Mr. Justice Marshall, that's not so.

9 QUESTION: Well, what's short of that?

10 MR. PIERCE: That is not my statement.

11 QUESTION: What's short of that?

12 MR. PIERCE: What's short of that?

13 QUESTION: Yes.

14 MR. PIERCE: This court in Arlington Heights,  
15 Mr. Justice Marshall, has set a standard, has set a basis.  
16 It has softened, in effect, the requirements that it might  
17 have found in Washington v. Davis, by saying that the court  
18 should make a sensitive inquiry into the background, and the  
19 question was asked of me whether or not, solely because some --  
20 some -- we had a bigot in Hein Park who was a member of the  
21 Klan, that solely because of his reasoning that it should be  
22 considered constitutionally improper? I don't think that  
23 just solely because of that it should be. But that is some-  
24 thing to look at, that is something that is a factor that can  
25 be considered in all of the relevant circumstances as

1 indicated in the Arlington Heights case, and I think that was  
2 done in this case.

3 QUESTION: And then you do a little psychoanalyzing  
4 of the minds of the Council. Is that right?

5 MR. PIERCE: Well, I'm not prepared to say that,  
6 Mr. Justice Marshall, but I think that the Court can look at  
7 the record, it can look at what was said, it can look at whe-  
8 ther it's a totally different concept, it can look at whether  
9 the procedure was followed, it can look if the substantive  
10 things were true. All the tests set out in Arlington, I  
11 think, are the kinds of tests that should be used to determine,  
12 because obviously --

13 QUESTION: Now, Arlington Heights was a Fourteenth  
14 Amendment Equal Protection Clause case, wasn't it?

15 MR. PIERCE: Yes, Mr. Justice Stewart.

16 QUESTION: And this -- at least, one aspect of this  
17 case is it's a statutory case under 1982.

18 MR. PIERCE: Yes, sir, it is, and -- but there's  
19 at stake --

20 QUESTION: Although there is also reliance on the  
21 Equal Protection Clause, as I read it.

22 MR. PIERCE: There is a distinction between this and  
23 what this Court did in Griggs, because Griggs was approaching  
24 a Title VII question. 1982, of course, is under the old  
25 civil rights statutes.

1 QUESTION: That's right.

2 MR. PIERCE: Very broad, with no restrictions. And  
3 as I think Judge Celebrezze saw, that to permit it without any  
4 kind of restrictions would put this Court and all courts in a  
5 situation where they would be weighing these policy decisions  
6 that the Congress had never weighed, purely under the guise of  
7 construing the statute. I'd like to reserve whatever time I  
8 have, Mr. Chief Justice.

9 QUESTION: Mr. Pierce, before you sit down --

10 MR. PIERCE: Yes, Justice Powell?

11 QUESTION: The district judge in his opinion that  
12 appears on page A-34 set forth the five factors that the  
13 court had identified in Arlington Heights that should be con-  
14 sidered in a case of this kind arising under 1983.

15 MR. PIERCE: Yes, sir.

16 QUESTION: And the district court in this case said,  
17 as I understood it, that he considered those five factors in  
18 weighing the evidence?

19 MR. PIERCE: Yes, sir.

20 QUESTION: Is that correct?

21 MR. PIERCE: That is correct. I think this case was  
22 tried as an Arlington Heights case. I think it was tried on  
23 the basis of that test that this Court established in Arlington  
24 Heights.

25 MR. CHIEF JUSTICE BURGER: Mr. Chambliss, there's

1 only about a minute and a half remaining. We won't ask you  
2 to split your argument. So you can plan on beginning at  
3 1 o'clock when we resume.

4 MR. CHAMBLISS: Thank you, Your Honor.

5 (Recess)

6 MR. CHIEF JUSTICE BURGER: Mr. Chambliss, you may  
7 proceed whenever you are ready.

8 ORAL ARGUMENT OF ALVIN O. CHAMBLISS, JR., ESQ.,

9 ON BEHALF OF RESPONDENT N. T. GREENE

10 MR. CHAMBLISS: Mr. Chief Justice, and may it please  
11 the Court:

12 I'll start off by attempting to explain to you the  
13 situation here as it relates to the community-factor situation.  
14 Now, the judge found in effect that Hein Park is bounded by Jack-  
15 son Ave. on the north, University Street to the west; to the  
16 east, Trezevant Avenue, and to the south --

17 QUESTION: What was that one?

18 MR. CHAMBLISS: Trezevant.

19 QUESTION: Trezevant.

20 MR. CHAMBLISS: Yes. And to the south, North Parkway.  
21 The court found as a fact, and we contended, that the lower  
22 court's findings of fact was correct but the conclusions of  
23 law, was incorrect. They found, first of all, that Hein Park  
24 was a community that was developed in 1940 for exclusively  
25 white and the character of that community remained.

1           They found, the district court also found that the  
2 area to the north, the Vollintine and Evergreen area, was pre-  
3 dominantly black. The district court found that the following  
4 facts and sequence of events.

5           On or around 1970 the residents in Hein Park filed  
6 application with the city to get the street closed. That  
7 application was summarily denied. Another application was  
8 filed in '72; that was rejected. And I think the City planner  
9 did tell them that instead of trying to close all of the  
10 street, they should close the street here, and pursue it at  
11 Jackson Avenue. And I must add that Springdale is the logical  
12 extension of West Drive. So they closed -- there was a Plan-  
13 ning Commission hearing.

14           Now, let me explain to the Court here, that at the  
15 Planning Commission hearing no one received notice other than  
16 the residents of Hein Park. The plan -- as a matter of fact,  
17 the record does not disclose in the district court just when  
18 that Planning Commission hearing was held. We do also know that the  
19 application for the closure was filed in July, I think July 9  
20 1973, and the Planning Commission decided on November 3, 1973,  
21 to recommend closure.

22           QUESTION: Mr. Chambliss, are you through with your  
23 map for the moment?

24           MR. CHAMBLISS: Yes, sir.

25           QUESTION: Is that in the record?



1 MR. CHAMBLISS: Yes. It's a replica. The Clerk  
2 has another copy that was loaned.

3 QUESTION: The reason I asked, there's quite a dif-  
4 ference between that map and the map your adversary showed us  
5 and I don't know who's right. But he shows, the map that's  
6 at the back of the Hein Park brief, does not show the entrance  
7 to the Zoo where yours does. It shows the entrance to the  
8 Zoo at the end of University Avenue.

9 MR. CHAMBLISS: Well, it's incorrect, Your Honor, if  
10 that's what it shows.

11 QUESTION: In other words, this, what's in the  
12 record here is wrong, and the entrance is right at the end of  
13 West Drive. Because I had the impression, very candidly,  
14 that looking at their map, that one who went to the Zoo would  
15 go down University Avenue. But looking at your map, I would  
16 assume they'd go right straight down West Park. And the  
17 judge didn't say anything about the entrance to the Zoo.

18 MR. CHAMBLISS: Well, Your Honor, I submit that  
19 that's the issue in this particular case, that's one of the  
20 main issues. Most of the residents from the Vollintine area  
21 used this passage for the Snowden Elementary School --

22 QUESTION: The same.

23 MR. CHAMBLISS: That they used this entrance right  
24 there -- Snowden, many walked to Snowden Elementary School.  
25 Many used this entrance at Jackson Avenue and Springdale to

ERASE  
POLITICAL CONTENT

1 go to the Park and Zoo, and as you can see, there are many,  
2 many amenities in that Park and Zoo, and of course this Court  
3 Court is well aware of Overton Park v. Volpe,  
4 where you set out what's in that Park. But I submit on  
5 the procedure issue -- and I think we need to get the facts  
6 straight on procedure --

7 QUESTION: Well, I do think the map submitted by  
8 the Hein Park group is quite deceptive, if that's a correct  
9 presentation. But anyway, go ahead.

10 MR. CHAMBLISS: Yes. The fact of the matter is that  
11 that public hearing was scheduled and then from the record,  
12 and abruptly not scheduled. They decided to close the street  
13 one month ahead of the public -- well, they decided to close,  
14 not have the public hearing, but rather to have a closed  
15 Planning Commission hearing.

16 Now, at this Planning Commission hearing, the only  
17 persons who were invited to that hearing was the people in  
18 this area. There was two families, white families, that ob-  
19 jected to the closing. Ms. Sarah Terry, and the Thomas family  
20 objected to this closing. At the time they were told that  
21 everybody that abutted the affected area would have to sign  
22 the petition. Once Ms. Sarah Terry and Ms. Thomas decided not  
23 to participate, then they changed their procedure and they  
24 basically decided that if these two homeowners would --

25 QUESTION: Hard to see that. We can't get it any

1 higher?

2 MR. CHAMBLISS: If the two northernmost homeowners  
3 would consent to add their names to the petition, the City in  
4 effect would deed the land, a 25-foot slip of land in the  
5 middle, here, and half would go here and half would go here.  
6 They put up barricades, extensions of the sidewalks, with  
7 little holes and with dirt, and of course they extended this  
8 sidewalk across it. That was the plan that was submitted for  
9 the closing, after modification.

10 There was a public hearing without notice held in  
11 January, I think January 29. And at that hearing there were ap-  
12 proximately 40 or 50 people against the closing, and of course  
13 there was numerous other people, Hein Park residents, who were  
14 in favor of the closing.

15 QUESTION: Mr. Chambliss, on the map point, is  
16 everything south of North Parkway a part of Overton Park,  
17 in this area, including the Zoo?

18 MR. CHAMBLISS: That's correct. That's correct.

19 QUESTION: So the Zoo is just one of the features of  
20 Overton Park?

21 MR. CHAMBLISS: That's correct, Your Honor. There are  
22 are many, many features of Overton Park here, and I think,  
23 I submit that in the brief they talk about there's not far  
24 to go, and what's been cut off from the distance, but most of  
25 these people rely on this area, not only to go to the Park and

ERASE  
COTTON CONTENT

1 the Zoo, there's an Academy of Arts, the shell where children  
2 play, there's a swimming pool out in this area, and there's a  
3 golf course, there's Brooks Memorial Art Gallery, and various  
4 other things not shown here. But that's, as I see it, Your  
5 Honor, that's one of the reasons why you have traffic.

6 Now, there's been no showing in the record that  
7 there was heavy commercial traffic. All the traffic that was  
8 offensive and it's in the record, and the court found as a  
9 fact that they wanted to keep the "undesirable" traffic out,  
10 and we submit that those are catch-all phrases.

11 QUESTION: Mr. Chambliss, on all of these things  
12 you're telling us, certainly relate to the wisdom of the decisions  
13 made by these various bodies, but are there very many street  
14 closings in which there are not disputes, arguments over whe-  
15 ther it should or should not be closed?

16 MR. CHAMBLISS: Well, Your Honor, I think that bring-  
17 ing our attention, I think that's correct. I think the unique  
18 fact here justifies the relief. I start off by saying that  
19 in your decision, Richards, Arlington County v. Richards,  
20 if we could start off on that particular case.

21 Now, that was a case in Arlington where they were  
22 talking about off-street parking by I guess residents here,  
23 commuters. But in that particular case, it was significantly  
24 different. First of all, there was the elaborate hearing  
25 procedure. There was a statutory scheme that was applied

MILLERS FALLS  
EZEASE  
CITY MANAGER

1 equally to the whole County; pursuant to that claim, that  
2 scheme, they came up with a formula, not just one particular  
3 area, but they came up with a general formula whereby if a  
4 certain amount of cars was in a neighborhood, the city manager  
5 would take a survey. Then those people, in effect would apply.  
6 And of course we submit in this particular case, we think  
7 that's a municipal land use case. Again, I think it's a dis-  
8 puted matter, that this is not a traditional land use case,  
9 for several reasons.

10 First of all, there's testimony in the record from  
11 the City Planner, Mr. Miller, that the reason why the City  
12 didn't use -- well, usually land-use matter zoning, they use  
13 an ordinance, and of course that takes public hearings, notice,  
14 an elaborate scheme. What happened in this particular case  
15 was basically, somebody decided to accomplish indirectly what  
16 they couldn't accomplish directly. They had a hearing before  
17 the public, the Planning Commission. Thereafter they had a  
18 City Council hearing when no notice was given out. Well, the  
19 record indicates that Ms. Terry, who was a white landowner here  
20 that objected, was given written notice of the hearing. People  
21 showed up at the hearing, the allotted 15 minutes to the pros  
22 and cons, and then voted on it, on the closing.

23 Now, after they voted on the closing, there was  
24 another hearing that was held to reconsider. There was --  
25 it is a part of the record, in that particular hearing there

E Z E R A S E

1 was some question as to whether or not there was a serious  
2 procedural due process problem. So they decided to vote, not  
3 rule on it, on the reconsideration then; they took it over to  
4 another, to the 26th, that's in the record. On the 26th of  
5 February, 1974, the record clearly indicates that the council-  
6 men thought that they had violated the law. They basically  
7 said, we have some serious problems with notice. They then  
8 decided that they would have a public hearing, which they had  
9 on March 5, which was 2-1/2, three months after they closed  
10 the street.

11 And once they had the public hearing, they decided  
12 not to reopen it. The public hearing was more or less on  
13 whether or not it should be reopened. And I submit the record  
14 will indicate that there was a serious procedural violation  
15 of due process and then was substantive proceeding that was  
16 also applicable in this case.

17 For an example, initially, and the record would in-  
18 dicate, that all of the property owners were told that they  
19 had to sign the petition. They signed the petition; everything  
20 was in order. But --

21 QUESTION: But your claim here really isn't one of  
22 denial of procedural due process. You would say, if you'd had  
23 all the procedure in the world, at least, the majority of the  
24 Court of Appeals would have said it would still be a violation  
25 of 1982, wouldn't it?

E Z E R A S E

1 MR. CHAMBLISS: Yes, sir, that's right, Justice  
2 Rehnquist. What I'm saying, and I have a -- what I'm trying  
3 to say here is that the trial court made the correct finding.  
4 There were little if any additional findings made by the 6th  
5 Circuit. I'm basically saying there were a lot of other  
6 findings that could have been made that weren't made either by  
7 the district court or the Court of Appeals. For an example,  
8 and I'm just -- one, and I could go on, but I was saying, of  
9 the serious due process problem that was not found inade-  
10 quate by the lower court and it's not in the 6th Circuit.

11 QUESTION: Did you argue that in the Court of Appeals?

12 MR. CHAMBLISS: Well, Your Honor, it was raised but  
13 I don't think it was pressed that hard, but it was raised.  
14 It's in the brief; that's correct.

15 QUESTION: Well, are you suggesting, Mr. Chambliss,  
16 that irrespective of the answer to the question whether racial  
17 motivation or intent has to be proved under 1982, irrespective  
18 of that, that for procedural due process reasons you're enti-  
19 tled to an affirmance of the Court of Appeals?

20 MR. CHAMBLISS: That's correct. Your Honor, I think  
21 that there are several things. I think that --

22 QUESTION: Well, you are going to get to the ques-  
23 tion whether 1982 was --

24 MR. CHAMBLISS: Yes, sir. I'll start now, Your Honor.

25 QUESTION: All right.

E Z E R A S E

1 MR. CHAMBLISS: There are two decisions that --  
2 this decision, of course, by the Court of Appeals, and a  
3 5th Circuit decision, Jennings v. Patterson; I think it's a  
4 1974, Judge Roman. In that particular decision, I think it  
5 was Gates v. Georgia for an almost identical thing occurred.  
6 Basically there was a street closure. The city took no steps  
7 but the street closure was at the point where the black com-  
8 munity and the white community met. And there was one white  
9 person, a white family that lived on the other side of the  
10 barricade, and of course they had free access to and from.  
11 Of course, the 5th Circuit had no problem under both 1982 and  
12 1983 and the Fourteenth Amendment in saying that that was a  
13 violation of the law.

14 Now, in our particular case here, we take two posi-  
15 tions. We take, first of all, we are not sure and we think  
16 that the 6th Circuit had an adequate basis for either ruling  
17 under 1982 or 1983, first of all. And the Fourteenth or the  
18 Fifteenth Amendments. I take a firm position, however --

19 QUESTION: You mean the Thirteenth, do you?

20 MR. CHAMBLISS: Yes, Thirteenth and Fourteenth  
21 Amendments. We take a firm position though, Your Honor,  
22 that the 1982 statutory claim and that we take the position  
23 that the question of whether intent of public discrimination  
24 is really not before this Court, but if it were I think that  
25 we could prevail on that, by the mere fact that --



E R A S E

1 QUESTION: Why isn't it before the Court?

2 MR. CHAMBLISS: Well, I think that a correct  
3 reading of the 6th Circuit opinion shows clearly that they  
4 basically said that we leave open the question of whether or  
5 not 1982 will be, leave open for the intent, to show a viola-  
6 tion of 1982. They left that question open. It's in the  
7 opinion.

8 QUESTION: I take it we should read their opinion as  
9 saying that even if intent is necessary, it is present in this  
10 case?

11 MR. CHAMBLISS: In this particular case.

12 QUESTION: Is that what you mean?

13 MR. CHAMBLISS: That's correct.

14 QUESTION: And without ruling on whether intent is an  
15 essential element, if it is, it's here?

16 MR. CHAMBLISS: That's correct, Your Honor. That's  
17 the correct. And I submit that everything I have said is  
18 in addition to --

19 QUESTION: Intent, Mr. Chambliss -- intent to be  
20 inferred from impact or express, or proof of express impact?

21 MR. CHAMBLISS: I think Your Honor, you have impact  
22 plus in this particular case. I think that, first of all,  
23 under the Arlington Heights, the first that they were talking  
24 about, and taking the admonition of this particular Court,  
25 the district court found that they had a disproportionate

1 impact on the black community. They made three findings on  
2 impact, so impact is there.

3 As to the second point, I think that the record is  
4 clear that the historical development of the decision shows  
5 clearly that not only were there irregularities in terms of  
6 the procedure but I think the record clearly indicates that  
7 the official actions of the decisionmakers were less than  
8 good faith because even the people, the white people who  
9 appeared -- let's take for an example Ms. Terry, she --

10 QUESTION: Mr. Chambliss, let me try what my brother  
11 Brennan was talking about. If this Court decides that the  
12 Court of Appeals was correct and we don't go any further,  
13 would you be satisfied?

14 MR. CHAMBLISS: That's correct.

15 QUESTION: You're getting me worried as to whether  
16 that's true or not.

17 MR. CHAMBLISS: Well, I think there are several fac-  
18 tors here, and the 6th Circuit did not rule specifically on  
19 the question of intent. They had 1982 and 1983 and it basi-  
20 cally says, we find that there was action on both, and I think  
21 that --

22 QUESTION: They said it was a badge of servitude.  
23 As I read their opinion, they didn't conclude one way or the  
24 other on the question of specific intent.

25 MR. CHAMBLISS: Well, I think that if you go back

E Z E R A S E

1 to Arlington Heights and the necessity of inquiring, and you go  
2 to the five admonitions of the court, I think they found  
3 each one. I think there was a substantial departure from the  
4 substantive area of the law; i.e., they first said everybody  
5 had to sign the petition, then they changed in the minutes and  
6 the record. I think that if you look at the procedural  
7 problems, you'll find that the whole notice and the whole  
8 nature of what was going on was stark. The court made a  
9 finding, this was the first time that there had ever been a  
10 major street closing, a thoroughfare. Now, when the case orig-  
11 inally went to the 6th Circuit and was remanded back, the  
12 6th Circuit basically said that to show 1982 or 1983 you must  
13 show number one, that grieved -- that whites were given or conferred  
14 benefits that blacks were denied, and you must show that the  
15 officials acted with racial angles. Now --

16 QUESTION: Mr. Chambliss, the Court of Appeals said  
17 that there was a "badge of slavery" in this condition and  
18 therefore a violation of 1982. What does badge of slavery  
19 mean?

20 MR. CHAMBLISS: Well, the badge of slavery comes in  
21 in terms of the barricade. There was evidence in the record  
22 that this property here --

23 QUESTION: Well, let me put it more directly. Is  
24 "badge of slavery" a code word for intent?

25 MR. CHAMBLISS: I would say, yes, it has to be. Yes.

1 And under the limited 1982 and Thirteenth Amendment cases.  
2 I wouldn't apply this to employment, I wouldn't apply this  
3 to public --

4 QUESTION: In other words, for violation of the  
5 Thirteenth Amendment, if there is a "badge of slavery," that's  
6 a violation of the Thirteenth Amendment without regard to whe-  
7 ther it's done intentionally or otherwise. Is that it?

8 MR. CHAMBLISS: That's correct. The Thirteenth  
9 Amendment, that's the position we take, Your Honor.

10 QUESTION: That's what the language of the Thirteenth  
11 Amendment says.

12 MR. CHAMBLISS: That's self-executing it and pro-  
13 claimingg universal freedom. We take the position, Your Honor,  
14 that if and when you look at this particular case, if you  
15 look at the aggregate, and if you take the Arlington Heights  
16 prerequisites, you'll find each and every one of those elements  
17 there. The court made findings that these people up here  
18 didn't want the black people in the neighborhood; the court made  
19 finding that the property here would be appreciated while this  
20 property here would be depreciated. They made excellent  
21 findings, they just ruled the other way. They just -- the  
22 threshold on the intent question was just, we think, too high.

23 QUESTION: When you say that the Court made findings,  
24 you're speaking of the Court of Appeals or the district court?

25 MR. CHAMBLISS: The district court. The Court of

ERASE

1 Appeals, Your Honor, made very little change to it. The case  
2 that you have in this particular Court is pretty much the same  
3 case you had in the district court. -- The only thing is, the  
4 court, it basically, we will see the impact, but we don't think  
5 there was intent and purpose. That's what the district court  
6 said.

7 The Court of Appeals, basically, expanded on that  
8 and he said, looking at this thing from an Arlington Heights  
9 perspective, we find that there was indeed a badge of slavery  
10 by the mere fact that the aggregate of the situation coupled  
11 with the impact, coupled with the statements that they didn't  
12 want these people here, coupled with the fact that they said  
13 this was the first time the City had ever used a street  
14 enclosure -- unused street. Let me say that again. The pro-  
15 cedure that was used was unused streets and alleys closed.  
16 There had never been any challenge to an unused street and  
17 alley procedure.

18 QUESTION: Wasn't Arlington Heights a Fourteenth  
19 Amendment case?

20 MR. CHAMBLISS: That's correct, that's correct.  
21 But I think, Your Honor, that when we are dealing with the  
22 inferred intent, we're dealing with circumstantial evidence.  
23 When we're trying to find out what the decisionmakers meant,  
24 I think that process that this Court announced is very helpful  
25 and the district court, I think, went through that process,

ERASE

1 like able counsel here stated. But I just think that the  
2 threshold of the 1982 and the whole intent element was just  
3 a little too high.

4 QUESTION: Well, is it your position, then, that the  
5 Court of Appeals found intent, or that it simply found intent  
6 was unnecessary to find a violation of 1982?

7 MR. CHAMBLISS: Well, I think it's two things.  
8 I have to answer that way. One, that intent was unneces-  
9 sary, but intent, it was found in this particular case.  
10 I think that, and I started off by saying, I think this is a  
11 very bad case to deal with the question of intent because the  
12 record clearly shows all kinds of irregularities, violations,  
13 and departure from normal procedure, and I think on the evi-  
14 dence credited to the district court, that we prevail on the  
15 issue of intent. He made findings of that. He made findings  
16 about the disparate treatment, he made findings about the  
17 first time this procedure was being used, he made findings the  
18 whites here didn't want the blacks in the neighborhood.  
19 There was also additional evidence to show that they wanted to  
20 cut out the undesirable element, there were alternative routes.  
21 For an example, why, if you want to stop the  
22 traffic, why not close the street at the southern end? Or  
23 why not put speed breakers? Or -- and this is also, he found  
24 this, that historically this neighborhood is the only area  
25 that is without sidewalks, so if you're talking about safety

ERASE

E Z E R A S E

1 of the children, and there is a law in the City that basically  
2 says, sidewalks are a prerogative; that you consider a  
3 sidewalk. Schools, public playgrounds, and parks. Now, all  
4 of these areas, all the black area is sidewalked, but West  
5 Hein Park historically has never had sidewalks. So if you're  
6 thinking about, if you're talking about safety of the chil-  
7 dren, why not erect sidewalks? They didn't consider that.  
8 We talked about putting speed breakers. They  
9 wouldn't consider that. One Council member said that,  
10 when the compromise was being worked out, she said, in essence,  
11 anything other than a complete closure, we were not going to  
12 settle for. So I think if the Court will look at all of the  
13 facts in the circumstances, using the sensitive inquiry, that  
14 the Court will in fact affirm the 6th Circuit opinion of the  
15 other court.

16 QUESTION: Mr. Chambliss, would the argument be  
17 different if Hein Park were an integrated neighborhood?

18 MR. CHAMBLISS: On these facts --

19 QUESTION: Because your opponent said -- I don't  
20 find anything in the record, but your opponent said it's now  
21 an integrated neighborhood.

22 MR. CHAMBLISS: Well, the judge made findings and  
23 the findings are on page -- of the Joint --

24 QUESTION: See, the legal issue in some ways would  
25 remain the same, because the impact would still be on excluding

REPRODUCED

1 traffic that was primarily black. And I'm wondering if you  
2 would have the same theory if an integrated neighborhood  
3 interested in reducing the amount of traffic to which --  
4 when children play in the streets and that sort of thing,  
5 were to cut off the traffic flow that was primarily black,  
6 but the neighborhood itself was mixed?

7 MR. CHAMBLISS: Well, I think it would be a different  
8 question, sir. I think that you have several things going  
9 here. You have action to perpetuate the past effect of  
10 discrimination. But over and above anything, that you  
11 have here a departure from everything that the City followed  
12 as it relates to the --

13 QUESTION: Well, let me change it. Supposing all  
14 the facts were exactly the same in this case, except for the  
15 fact that the residents of Hein Park were half black and half  
16 white. Would you make the same case?

17 MR. CHAMBLISS: Well, Your Honor, I really -- I don't  
18 quite understand; if you could --

19 QUESTION: well, the reason for it is, the impact  
20 of the interference with traffic would still be primarily  
21 against blacks.

22 MR. CHAMBLISS: I don't think but, see, I'm not --  
23 I'm not, this is a racial discrimination case, not -- I don't  
24 doubt the wisdom of a city to use its police power for legiti-  
25 mate objectives.



1 QUESTION: Can it ever be legitimate to block a  
2 street that is primarily used by blacks?

3 MR. CHAMBLISS: Oh, I think in some cases --

4 QUESTION: When some of the people who benefit from  
5 the blocking are white?

6 MR. CHAMBLISS: Well, I would say, in some circum-  
7 stances, Your Honor. I'm not going to go that far and say,  
8 ever. I would say, in some circumstances. I think if you --  
9 if a city had the authority to close a street and they  
10 had public hearings and it was shown, as it was shown in the  
11 Arlington v. Richards case, I think that it doesn't matter  
12 whether the neighborhood is black or white if in fact it is  
13 done pursuant to an overall scheme.

14 Now, some other things. The City Council had before  
15 it at this hearing some other areas in the City who had applied  
16 to have, like here, to have their street closed. I think it's  
17 a dangerous precedent, and I think that for that reason alone  
18 that the Court should look at this very, very closely.

19 QUESTION: Mr. Chambliss, before you sit down, do  
20 you have any comment at all on Palmer v. Thompson, the swimming  
21 pool case?

22 MR. CHAMBLISS: Yes, I do. I think this case is  
23 much different from Palmer because in Palmer blacks and whites  
24 were denied the swimming, you know, swimming -- they just  
25 closed. Jackson, Mississippi, just closed the swimming pool

E Z E R A S E

1 altogether. And I think that this particular Court  
2 basically took the position that there was nothing wrong.  
3 I think there was an additional factor that the city was  
4 losing money, and that basically the Court said, we're not  
5 going to look into the motives of why people vote for certain  
6 things, because this is a political give and take. I think  
7 that's correct in an appropriate setting, but I submit to you  
8 that this is a very different case, because everything in  
9 this case was done that was contrary to the way the City nor-  
10 mally did things. And I think that given the fact that this  
11 was a black community, given the fact that there was a substan-  
12 tial departure, I think it's just -- thank you.

13 MR. CHIEF JUSTICE BURGER: Do you have anything fur-  
14 ther, Mr. Pierce?

15 ORAL ARGUMENT OF CLIFFORD D. PIERCE, JR., ESQ.,  
16 ON BEHALF OF THE PETITIONER -- REBUTTAL

17 MR. PIERCE: Mr. Chief Justice, and may it please  
18 the Court:

19 Just that I have, I'm sure, a very short period of  
20 time to cover a lot of ground.

21 Number one, due process is not an issue, if the Court  
22 please. This is -- the whole argument Mr. Chambliss has been  
23 making about procedures were not followed, this was brought up  
24 and discussed ad nauseam in the lower court and in the Circuit  
25 Court of Appeals. Both of those decisions, both the trial

M T T T D S W A T T S

1 court and the circuit court found no due process violations.  
2 They found that the procedures were proper and it was not  
3 appealed from, and I believe it's been foreclosed in this  
4 Court.

5 Mr. Chambliss keeps mentioning about sidewalks.  
6 There are sidewalks, and there is proof in the record that  
7 there are areas all over Memphis, in black neighborhoods and  
8 white neighborhoods, mixed neighborhoods, where there are no  
9 sidewalks, where there are no curbs and gutters. There are  
10 reasons for that. And I don't think that's an issue here.  
11 It was brought up originally in the original complaint that  
12 was filed by Mr. Greene in his official, first complaint;  
13 which I think there were four complaints filed before the case  
14 ever got up. That was one of his original complaints.

15 The question of speed breakers. Under the common law  
16 of Tennessee, cities may not have speed breakers on through  
17 streets, on open streets. So that was foreclosed. That ques-  
18 tion was asked by a member of the City Council and he was ad-  
19 vised of that fact at that particular time.

20 Finally, with respect to the map situation,  
21 Mr. Justice Stevens made some statements about that. I don't  
22 believe, Your Honor, that there was any attempt to deceive  
23 on anyone's part. If I may see Mr. --

24 QUESTION: It is correct that the map in the  
25 Hein Park amicus brief leaves out --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. PIERCE: Yes, sir.

QUESTION: The Zoo entrance that Mr. Chambliss' map shows, and that's a rather material fact.

MR. PIERCE: I think the reason that it does --

QUESTION: And of course the shortest --  
You do agree his map is correct?

MR. PIERCE: I don't agree it's correct. I believe it is closer. University, as shown in the brief attached to the Appendix, and actually in the brief attached to the brief submitted by the Hein Park Civic Club, is shown as being opened, and opened into the Park. Actually, that has now been closed. This entrance is farther down, and it is in between University and West. Traffic coming down University would turn this way; traffic coming down West or coming down Trezevant, or coming down Center Drive would turn that way.

QUESTION: So, at least it's a lot closer to the south end of West Drive than the map in the Hein Park brief would suggest?

MR. PIERCE: Yes, sir; yes. That's correct.

QUESTION: But no map was introduced in the record?

MR. PIERCE: Mr. Justice Marshall, I can't speak to that, other than the maps that were put in as part of the Planning Commission procedure at that time.

QUESTION: It worried me as to what we're dealing with.

1 QUESTION: Well, there are official city maps of  
2 Memphis, aren't there?

3 MR. PIERCE: Yes, sir. Certainly, Mr. Justice  
4 Powell.

5 QUESTION: You can find them from any Chamber of  
6 Commerce, I suppose, or travel agency.

7 MR. PIERCE: Yes, sir.

8 QUESTION: Well, couldn't somebody give us one?

9 MR. PIERCE: Yes, sir. We'll be happy --

10 QUESTION: Or could we buy one?

11 MR. PIERCE: We'll be happy to supply those.

12 QUESTION: I don't think the --

13 MR. PIERCE: We'll be happy to supply those, Mr.  
14 Justice Marshall.

15 QUESTION: Well, there's a Trial Exhibit 13.  
16 I don't know how far it goes, but at page 132 of the Appendix,  
17 and then at 144 and 145 in the Appendix you come up with the  
18 map that Mr. Justice Blackmun, I think, earlier referred to.  
19 Now, was that map ever introduced in evidence?

20 MR. PIERCE: Well, I didn't try the case originally  
21 before the district court. I do not recall if it was or not.  
22 It is part of the record, I believe.

23 QUESTION: And I just would ask one other point of  
24 information. When was the entrance to the Zoo changed from  
25 near University Avenue to where it presently is?

1 MR. PIERCE: Your Honor, I'm --

2 QUESTION: Was it before the trial?

3 MR. PIERCE: No, not before the trial. No, sir.

4 QUESTION: I see. So that change took place after  
5 the Council's decision?

6 MR. PIERCE: No, excuse me. You mean, before the  
7 actual hearing in 1978? Yes, sir, it was closed long before  
8 that. I'm not certain when, but it's been closed a good bit  
9 of time. I doubt if it was closed in 1973 or earlier than  
10 that.

11 QUESTION: So the Hein Park people got us a pretty old  
12 map, is what happened.

13 MR. PIERCE: I'm afraid they did, Your Honor.

14 QUESTION: If you would submit another map, you and  
15 your counsel, you friend and you will agree on the map?

16 MR. PIERCE: Certainly, Mr. Chief Justice.

17 QUESTION: It may be relevant to know where the  
18 entrance was when all these proceedings began. When was the  
19 first request to close the street?

20 MR. PIERCE: The first request? That really goes  
21 back, I believe, to 1970.

22 QUESTION: Then the entrance wasn't closed then?

23 MR. PIERCE: I don't think so, Your Honor.

24 QUESTION: But you don't really know?

25 MR. PIERCE: No, sir, I'm sorry.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

QUESTION: Well, can you find out?

MR. PIERCE: Yes, sir.

QUESTION: And if you can get agreement from Mr. Chambliss on the date?

MR. PIERCE: Mr. Chambliss and I will get together on that, and advise the Court.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 1:37 o'clock p.m., the case in the above-entitled matter was submitted.)

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: James C. [Signature]

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1176

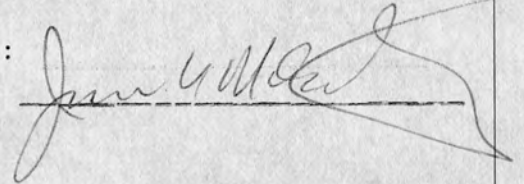
CITY OF MEMPHIS, ET AL.

V.

N. T. GREENE, ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY:

A handwritten signature in cursive script, appearing to read "James W. Moore", is written over a solid horizontal line. The signature is positioned to the right of the word "BY:".



1980 DEC 10 PM 3 22

RECEIVED  
SUPREME COURT, U.S.  
MARSHAL'S OFFICE