

Discrimination Preserves Strife, Not Neighborhoods

Our nation's high court has erred gravely in its determination that a city (Memphis, Tennessee) can rightfully close a street causing residents to pass around, rather than directly through, an all-white neighborhood to reach one that is predominantly black.

In *Memphis v. Green*, the 6-3 Supreme Court majority upheld the city's action finding no illegality without proof of Memphis' "intent" to discriminate. In his opinion announced Monday, April 20, 1981, Justice John Paul Stevens, writing for the majority, conceded that the action benefited whites, while causing "inconvenience" to blacks who are forced to drive around the white "enclave." He alluded to a city's legitimate interest in "protecting the safety and tranquility of a residential neighborhood." Dissenting, Justice Thurgood Marshall stated that neither "the Constitution (n)or Federal law permits a city to carve out racial enclaves." The Sixth Circuit Court of Appeals had earlier ruled Memphis' act in violation of the 13th Amendment and the Civil Rights Act of 1866 (now 42 USC §1982).

Too often, public officials and others concerned about preserving neighborhoods act in a manner calculated to avoid discrimination. Nevertheless, discrimination results. Possibly in an effort to avoid reaching the question of intent, the Supreme Court held the record below insufficient to constitute discrimination. The Appeals court had found no need to determine this question because the pattern of discrimination in *Green* was "stark" and constituted a "badge of

slavery" violative of the plaintiff's rights under the 13th Amendment and a proper subject for 1982 relief. "The erection of a physical barrier between an historically all-white neighborhood and a predominantly black neighborhood" served as "an unmistakable warning to black people to stay out." The community that has benefited from the street closing is white; the community burdened black. A barrier erected at the point of separation of these two neighborhoods limits contact between them. Rather than a response to any uniform planning effort directed to preserve the residential character of neighborhoods throughout the city, the Appeals court found this street closing "a unique step to protect one neighborhood from outside influences which the residents considered to be 'undesirable.' " In addition, the District Court had determined that while property values in the all-white community would appreciate, property values in the black neighborhoods would depreciate. The high court, discounting any impact on the lives and economic interests of the blacks, found that the street closing had not risen to the level of a statutory or Constitutional violation. (Whether discriminatory intent is necessary in an 1982 action has not yet been determined.)

Concern for one's neighborhood is laudable. To blockade the environs abutting the community, to live separate and apart, leads to distrust and strife. Would Memphis have blocked the street if the adjacent neighborhood was white?

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