

Park Plaintiffs' Point Has Merit, Judge Says

By MICHAEL LOLLAR

.. United States Dist. Judge Bailey Brown yesterday said he is inclined to agree with plaintiffs' allegations that the Overton Park expressway route should be sent back to the federal secretary of transportation.

However, government attorneys claimed it would be repetitious to remand the decision to Secretary John A. Volpe and said they will be able to further develop their argument as the case continues. The government has been presenting its case for four days after 10 days of testimony from witnesses called by the plaintiffs.

Judge Brown's statement came after John W. Vardaman, attorney for Citizens to Preserve Overton Park and other plaintiffs, argued that Mr. Volpe did not apply the Parklands Statute when he approved the decision routing Interstate 40 through the park.

Mr. Vardaman argued the case should be remanded to Mr. Volpe for a definite ruling.

"I'm inclined to think that Mr. Vardaman is correct," Judge Brown responded.

The Parklands Statute, Section 4f of the 1967 Department of Transportation Act, stipulates that highways must not be routed through park land unless there is "no feasible and prudent alternative."

Mr. Volpe approved the park route Nov. 5, 1969, but the plaintiffs challenged his refusal to issue formal findings in support of the decision.

In fact, Mr. Vardaman claimed yesterday that Mr. Volpe made no "4f determination" as such and that he specifically made no such determination before the right-of-way was acquired for the park route.

Judge Brown asked him: "Now, when you get a new secretary of transportation, under a new administration, is he tied down to the decisions of his predecessors?"

Secretary of Transportation Alan S. Boyd had previously approved the Overton Park

route during the Johnson administration. His approval was affirmed by Mr. Volpe.

"I think it carries over a taint of illegality to the new secretary," Mr. Vardaman replied.

United States Atty. Thomas F. Turley Jr., representing the Department of Transportation and Mr. Volpe, objected: "We haven't put our proof on yet." He indicated the federal government will try to prove that Mr. Volpe did make a 4f determination or its equivalent.

Judge Brown had dismissed the case Feb. 26, 1970, ruling that Mr. Volpe was not required to issue formal findings in support of his decision. He granted a summary judgment to the federal government on the basis of affidavits from federal and state highway offi-

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Route Foes Accused Of Fomenting 'Chaos'

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cial, explaining that alternative routes had been considered and disapproved as too costly in terms of funding and dislocation of local residents and businesses.

Mr. Turley argued that Secretary Volpe applied environmental standards to his decision and indicated he felt it would only be repetitious to repeat the decision-making process.

"If he (Volpe) had applied 4f standards, he would have made the same decision," Mr. Turley said. "He was applying that same test, but with different verbiage."

"But, that's not the same as actually applying 4f itself," Judge Brown said.

"What else can the secretary say today? What can he tell the court now?" Mr. Turley repeated.

Shaking his head, Judge Brown said, "I'm inclined to think that Mr. Vardaman is correct. And, I think it's a difficult question here for the defendants as to whether (Mr. Volpe) was applying the right standards."

Mr. Turley said that affidavits by Mr. Volpe maintain that his decision complied with the Parklands Statute. He said the federal government will present those affidavits as the trial proceeds.

In his decision, Mr. Turley continued, "Secretary Volpe was saying that a route other than the approved route would involve unique problems, with street patterns, problems of unusual magnitude and difficulty. When we speak of feasible . . . we know, and surely Congress and the legislature knows . . . that anything is engineeringly possible. You can gear the planet that revolves around the sun, so to speak, when you talk of engineering feasibility."

"But," he said, "any other route, other than the park route, provides an unusual magnitude of problems."

J. Alan Hanover, special counsel for the state Highway Department, added: "You've got a lot more proof to hear. I know your honor is not going to decide anything until you've heard all the proof."

"You've got to think of it in terms of 'it didn't happen yesterday.' It (the decision) happened over a period of 16 years."

Mr. Hanover said the plaintiffs have created "chaos" during the current hearings by "isolating single instances in a time frame that is impossible . . . There's going to be a dif-

ferent secretary of transportation every few years, and every man will not look at the problem the same way."

Meanwhile, William S. Pollard, the state Highway Department's first witness, was dismissed yesterday after his fourth day of testimony. Formerly the partner in charge of Harland Bartholomew & Associates, he said the firm did not evaluate any possible harm that Interstate 40 might do to Overton Park itself.

Mr. Vardaman asked him: "Basically you did not think this would have much of an impact on the park, did you?"

"That is in error," he replied. "We were very much concerned with the impact on the park . . . We were primarily concerned with the possible disruption . . . in terms of concern."

"It was a fundamental planning no-no," he said, to route a highway through a park. "The symbolic reaction of it had us concerned." But, he said he had not expected the park routing to result in a lengthy court battle.

Judge Brown then interrupted, referring to the proposed Southern Freeway which, as planned, will be routed along both sides of the Southern Railroad right-of-way north of Audubon Park. The freeway will take a strip along Audubon Park's northern edge.

Judge Brown said: "Along that line (concern for parkland), and I don't know to what extent that southern proposed route will go through Audubon Park, but I hope the government will either bring a lawsuit to determine whether that is practical or the ecologists will bring a suit to enjoin that matter early in the game."

Robert Everly, the highway department's second witness, testified only briefly. An engineer with a Winnetka, Ill., firm, he served as a Chicago park administrator from 1930 to 1960.

He testified that he has helped design parks and recreation areas in many parts of the world, including Canada, Peru, Africa and many in the United States.

Under direct examination by Mr. Hanover, he said the breeding facilities for bears in the Overton Park Zoo are "terrible." Mother bears, he said, should be provided with "cubbing dens," which are totally dark and completely quiet. "If there are sudden noises or sudden intrusions of any kind, a mother bear will kill her cubs," he said.

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OCT. 20 1971