

**OVERTON PARK IS
YOUR PARK, MEMPHIS!**

by

IRMA O. STERNBERG

*To the Constitution,
The Judicial System,
and the Free Press
of
The United States of America
this book is dedicated
with hope and faith*

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PREFACE

As an epigram for his classic defense of freedom of the press, John Milton quotes Euripides: "This is true liberty when freeborn men, having to advise the public, may speak free." But if expression were truly free, this book would never have been written.

And though impelled "to advise the public," I may not—in several senses—"speak free." Thus the costliness of the present printing is responsible for short-cuts employed. Among them are the method of footnoting, the omission of formal bibliography, and the combining here in the preface, of abbreviations used, permissions acknowledged, courtesies appreciated.

For brevity, the U.S. Supreme Court opinion of March 2, 1971, in *Citizens to Preserve Overton Park, Inc., v. Volpe* (See App. B.) is referred to as *Opinion*.

For permission to quote copyright material, thanks are due the *Memphis Press-Scimitar (PS)*, *American Forests* magazine, Harland Bartholomew and Associates, and J. B. Lippincott Co. Thanks also to the *Commercial Appeal (CA)*.

Two books basic to an understanding of the nationwide controversy of which Memphis' I-40 is only a part are A. Q. Mowbray,

The Road to Ruin, and Helen Leavitt, *Superhighway—Superhoax*, referred to as "Mowbray," "Leavitt."

Indispensable for an overview of the local controversy and for certain documents cited, is the unpublished Master's thesis referred to as "Ginn": Richard Henry Ginn, "Interstate 40 Through Overton Park: A Case Study of Decision-Making" (U.T., 1970), a copy of which is in Memphis Public Library. My thanks to Mr. Ginn for permission.

Thanks also to the many librarians who have given inestimable help.

Permission to cite or quote various letters is also appreciated.

To the park-defenders themselves, for cooperation and assistance, thanks are due: especially to Mrs. Anona Stoner, secretary of Citizens to Preserve Overton Park, Incorporated, and Mrs. Sara Naill Hines (cited as "Stoner," "Hines"). Other interested persons have helped greatly by reading manuscript and correcting facts.

To Mrs. Hines and Mrs. Michael Lackner go thanks of a special sort; their tireless finding and fetching of documents, and their encouragement made the task possible.

Where undocumented opinion is expressed, it is my own.

Irma O. Sternberg

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CHAPTER I: TWO DOCUMENTS

Basic to Memphis' ongoing expressway controversy are two documents: the "Bartholomew Report" of 1955, and the Federal-Aid Highway Act of 1956 establishing the Highway Trust Fund. Both documents are available in local reference libraries.

The Highway Trust Fund by two ingenious expedients practically assured its own perpetuation. Raising to 90% (from 50%) the proportion of interstate highway construction costs to be borne by the federal government, it put a premium on slicing into cities with new construction in many places where upgrading older roads would have been less expensive and less destructive. By collecting taxes on various automobile-connected items—tires, parts, petroleum products, etc.—and restricting to *highway-building only* the funds thus generated, the Trust initiated a gravy-train whose propensity for overwhelming everything in sight rivals the prowess of the Sorcerer's Apprentice.

At least two nationwide problems are outgrowths of this Trust. First, in a time when urban funds are dwindling as urban needs mount, anything which requires a minimum outlay of cash by local governments can easily be made to appear attractive. And no matter how great the need for other forms of transit, the moneys of the Highway Trust cannot be used for such purpose as rapid transit or upgrading rail service or any other means of achieving a balanced transportation system. A second and related result of the Trust is the throttling of other forms of transportation in more subtle ways. As roads become jammed with cars, bus service worsens; higher bus fares send more people into cars, and roads become even more jammed. Meanwhile, worsening urban conditions cause more people to move to the suburbs, requiring more commuter-roads and parking lots, and drastically curtailing the urban tax-base. Objections to "solving" the traffic jam by building more highways are generally stifled, though "traffic expands to fill available highways" so that the building process is infinite, with *no traffic relief* in sight!

As the term "interstate" indicates, the Highway Trust Fund was not intended for roads *inside* cities. And though in the beginning many of the highway programs financed by the Trust were necessary, the rationale for the extent and location of portions of the system is

easily proven specious. National defense is an example: specifications of army equipment were ignored and underpasses designed too low for clearance; alert citizens exposed the folly of making the central city an enemy target by running defense highways through it.

If not civil defense or actual need, what sparked the gargantuan highway program? One view, borne out by subsequent events, is that the automobile industry, smarting from wartime controls, was looking for some means of insuring growth of its own and allied industries—growth financially self-sustaining and indefinitely self-generating.

Numerous industries have a stake in highway building. Obvious are those connected with manufacture and maintenance of automobiles: steel, rubber, glass, parts, petroleum products. The road-builders themselves include planners, engineers, contractors, suppliers of various materials, and the governmental administrators of the highway program. The finished product aids truckers, land-developers, real estate interests, mortgage companies. And banks have a stake in financing all these. Advertisers have a peripheral interest: to assure the public's continuing "need" for highway-generated products. Clearly the "highway lobby" which perpetuates the Trust Fund is an octopus with deadly and often unseen tentacles. Many are the unsuspecting citizens who, protesting the desecration of a park or the fouling of city air, have been dismayed to find they have trodden the hand that feeds them!

Due to run out in 1972, the Highway Trust Fund was in 1970 renewed until 1977—despite citizen clamor from every part of the country for leadership in the fight to preserve the environment.

Aptly dubbed "The Highway Juggernaut" (Tom Wicker, *New York Times*, March 4, 1971), this complex of interests has since 1956 gained such momentum that it now seems almost unstoppable. Though in isolated instances its onslaught has been momentarily slowed—for instance, in Washington, D. C., and San Francisco—the March 1971 U. S. Supreme Court decision in the Overton Park expressway case was for several reasons a landmark. (Case citations are given in Appendix B.) To conservationists, the unanimous opinion favoring the Citizens to Preserve Overton Park gave hope that the Parklands Statutes of 1966 and 1968 will be enforced, thus fulfilling their purpose and rescuing public parks from the bulldozer. To those who for sundry reasons would like to halt the asphalt eruption, the decision gave encouragement. But the long, costly, circuitous route leading to this court victory—and it is by no means a final victory—

makes clear that if ever the powerful juggernaut is to be brought to a screeching halt, it will be not by the power of its own non-existent brakes, but by repeated roadblocks set up by an aroused citizenry.

America must someday realize that breathable air is more necessary than perpetual growth of the automobile industry, that parks and greenbelts are a greater luxury than driving oneself to work. The question is no longer *whether* the lazy giant will waken, but *when*. Meanwhile, how much treasure and time and lives must be squandered? How much avoidable damage will be inflicted on cities, parks, and people? How much weakening of the fabric of democracy will accrue from media abuses of their duty to inform, through Congress' failure to respond to the will of the people? Even the staid *Wall Street Journal* reports that America's love affair with the automobile is growing cold. (March 30, 1971; April 23, 1971.)

Though a small group of Memphians for a brief time managed to slow the onrushing juggernaut, local papers took little note. But the feat was duly recognized by the *New York Times*, both in the Wicker article, "The Highway Juggernaut," and in a comprehensive news story which included a map of the proposed highway through Overton Park. (*N.Y. Times*, March 4, 1971.)

In addition to the legislation of 1956 which birthed the highway juggernaut, the second document relevant to the ongoing Overton Park route controversy is the 1955 highway-planning report describing in some detail six proposals for Memphis' expressway system. Available to the public since 1960 or earlier, this report is often misrepresented or its content ignored, though its author has been the chief spokesman for the Overton Park route. The full title of this work is "A Report upon Interstate Highway Routes in Memphis and Shelby County, Tennessee." It was prepared by Harland Bartholomew and Associates in August 1955 for the Board of Commissioners of Memphis, Shelby County Commissioners, and the Tennessee State Highway Department. Chief engineer was William S. Pollard, Jr.; resident planner was Robert B. Jones.

Six plans are presented, but an examination of only the first two is necessary for a better understanding of the current controversy. Designated as Study Route A and Study Route B, these two plans are *not to be confused with* the much later proposed variations of the Overton Park routing, designated also as A and B. In the 1955 "Bartholomew Report," the *east-west route* through the city *appears in Study Route A*, but *not* in B, C, or D.

The plans are ranked in order of expense, A being most costly, B second most costly; and in decreasing order of desirability, indicating that the most costly is also the most desirable—from the planner's point of view. The planners' recommendations are that if it should not be possible to adopt all of route A, the routes be considered in the following order: B second most desirable, D next, then C, E, F. ("Report," p. 71.) Though A was the plan adopted, it was subsequently followed *only in part*. Thus it would seem that by the planners' own recommendation, B should have been followed. And *no* route through the park—*no east-west in any form*—appears in plans B, C, or D. Nevertheless, B, C, and D—as well as A—specify "a new bridge to the north of the central business district." Thus according to the planners' own recommendations, Memphis was *never* in any danger of *losing the new bridge* through failure to build the east-west expressway, through the park or not!

Though A is the plan which, with modifications, is presently being implemented, B in many respects seems better adapted to Memphis' needs as time goes on. Not only would it not touch Overton Park in any way, but B would not penetrate the central city except in the downtown area. Thus it would add relatively little pollution to already over-polluted inner-city air.

Furthermore, B seems better suited than A to the realities of Memphis traffic patterns in the seventies. Though so-called "desire lines" abound in the Bartholomew diagrams to "prove" need for an east-west artery for local traffic, this statistical method of determining need has been seriously questioned by various planning authorities. Much of the data are highly speculative. Furthermore, changed traffic patterns and radically altered population-distribution patterns made the east-west plan obsolescent long ago, as certain local engineers have pointed out.

Ironically, though no need has been proven for an east-west, it is a predictable fact that the I-40 through Memphis will be overcrowded from the moment it opens. This situation will result from a combination of factors, including the bottleneck design of the highway itself, and the *transcontinental*—not local—traffic which will flow onto it. (Michael Lackner, "Letters to the Editor," *CA*, June 20, 1971.)

The chief points of agreement between Study Routes A, B, and C is that each provides for a circumferential—an excellent point of departure for any urban expressway system, as pointed out by Lewis

Mumford in his classic essay, "The Highway and the City." *Completing* the Memphis circumferential first, and only then deciding whether an east-west was needed, was at first proclaimed by the planners as the proper and practical course. (See Chap. III.)

In addition to the outer circulatory loop (still needed, still incomplete) and the new bridge (with access in no way dependent on an east-west artery), other items in the planners' descriptive report merit attention: especially the discussions relative to "Relationship [of the route] to population distribution and density" and "Areal benefit provided." While claiming that Route B "effectively serves a high percentage of present and future population," the Report states under each heading that "areas not as well served as by route A are those located in the central eastern part of the city and those to the northwest and southwest in both the city and county." (P. 52.) This last point has received increasing criticism from engineers and others, on grounds that in the years since the original report was drawn, Memphis' population growth and traffic patterns have shown less and less need of an east-west artery, and greater need for an increased traffic capacity on routes both northeast and southeast of the proposed east-west.

Especially does the *northeast* segment of the city need traffic relief: completing the northern segment of the circumferential would furnish it—a logical move for several reasons. The *southern* section of the circumferential, the first segment completed, has long proven its merit both in expediting traffic and in spurring growth of communities to the south of the city. The northern segment would do much for the communities of Frayser and Raleigh, while furnishing immediate access to the almost-completed bridge. And it would minimize the *imminent danger of intolerable pollution* to be added to the inner city atmosphere by *any transcontinental* highway. (See esp. Senate Hearings on Clean Air Amendments of 1970: App. A.)

More difficult for the layman to understand than the written analyses are the maps which accompany the "Bartholomew Report." Broad red lines indicate in a general way proposed expressway locations. Though such "study plans," which precede surveying and actual routing, must be vague and flexible, the professional devices used make such maps all but useless to the layman. Few street names are given, and no highway numbers. A few landmarks are labelled. Even if the maps had come to the attention of interested citizens prior to the surveying of the route through the park, there was little to indi-

cate the route now being designed. On Figure 17 (in the "Report"), the map showing the proposed I-40 in embryo, the broad red expressway line seems closely to parallel Summer and North Parkway, a little to the south of each. It touches the park if at all on its northern *edge only!*

But since this report was not available to the public until *after* more detailed mapping had taken place—probably in 1960—the vagueness of the map hardly answers the repeated question, "*Why* did no one protest the park route *sooner?*" The "study" *procedure*, however, is illuminating. Each discussion of a "study route" begins with this limiting clause, numbers and letters changed appropriately for each route: "Plate 17 presents the location of study route A to a degree of accuracy consistent with the scale of the map." Only *after* a route has been surveyed and its location determined, is the public taken into the planners' confidence. Then any protests are met with the assurance that *now* "it is too late"!

Even the first published form of the map, showing in a general way the comprehensive expressway plan, was vague and misleading. (*CA*, Sept. 8, 1955.) Again, the broad expressway line parallels or crosses Summer, chiefly running on the south side. But the line continues westward from Summer along what one presumes is North Parkway, though no *street* is shown, nor does the park appear in any form!

Even more misleading is a later map, showing only a straight line from the White Station interchange (at the perimeter) to the mid-city interchange—labelled "Summer"! But the final paragraph of the accompanying news story is both ominous and enlightening: "The routes to be constructed are not given a fixed location until surveys are completed." (*CA*, Jan. 31, 1957.)

Not until almost three months after this map—or stylized diagram—appeared, was the first map published that actually *showed* an expressway through Overton Park. (*CA*, April 16, 1957.) Protests were immediate, loud, disbelieving. Any failure to protest *before* April of 1957 was not due to citizen disinterest. Rather was it a result of citizen credulity and faith: no one believed that any intelligent person of integrity, any leader worth his following, any politician valuing the health and welfare of his constituency would dream of sacrificing to a concrete ribbon the park which is the birthright of generations of Memphians yet unborn.

The fact is, the Overton Park route has been consistently and

loudly protested from the moment the map was revealed. But promptly and persistently the public was told that hearings were not for the purpose of protesting route location! That is to say, citizens must protest before a route is determined; but they are not informed of routes under consideration until the determination is an accomplished fact.

Study plans for Memphis' expressway system were well under way by August of 1955. Memphis highway-planners were therefore on-the-mark for a jack-rabbit start. When in 1956 the Highway Trust Fund upped the percentage paid for highways by the federal government to a whopping 90%, Memphis seemed ready to grab its share.

CHAPTER II:

THE PLANNERS AND THE PARK-PRESERVERS

Like the Highway Trust Fund itself, its avid beneficiaries soon gathered a momentum of their own, self-perpetuating, self-aggrandizing, and unaccountable to any force, law, or agency other than those controlled by or allied with themselves. Like interlocking directorates of many large corporations, the interconnections between highway interests and local business and industry, between federal administrators and state and local officials, are incredible to the unsophisticated observer. Sometimes the implications become sinister—as when the unsuspecting citizen tries to find an uncorrupted or disinterested businessman or politician to complain to. Then suddenly a frightening pattern appears: those who should care most about the future welfare of the city are themselves, knowingly or not, among the perpetrators of the hoax!

In some cities, the mayor has pled for sanity; in others, the media have challenged the highwaymen; in still others, congressmen have brought local facts to national attention and thereby helped the home-folks. But in Memphis, with *lonely* exceptions among state and local figures, all forces have been solidly aligned against ecological, sociological, and fiscal sanity. Goliath himself has managed to paint brave little David as a pitch-forked monster with horns!

In Memphis and elsewhere, one of the most disheartening aspects of the highway-planning system has been the handling of public hearings. But however loudly the planners proclaim their own omniscience about the people's welfare, the road-builders generally are not interested in knowing the people's desires, or even their needs.

Regardless of the presumed purpose of highway hearings, interpretation of hearing provisions have been high-handed and literal. (See Justices Black and Brennan, *Opinion.*) Section 116 (c) of the Federal-Aid Highway Act of 1956 reads:

PUBLIC HEARINGS.—Any State highway department which submits plans for a Federal-aid highway project involving the

bypassing of, or going through, any city, town, or village, . . . shall certify to the Commissioner of Public Roads that it has had public hearings, and has considered the economic effects of such a location:

Provided, That, if such hearings have been held, a copy of the transcript of said hearings shall be submitted to the Commissioner of Public Roads, together with the certification.

Not every protest meeting, no matter how vocal, is a legal public hearing. Hearings must be conducted by an official of the State Highway Department, must be recorded, and the transcript with certification submitted to the Commissioner of Public Roads. [N.B. These requirements have been somewhat clarified and strengthened by subsequent enactments: to be discussed in later chapters.]

By early 1957, Memphians had their first taste of the sort of handling meted out to those who in any way protested local highway planning. In Memphis and elsewhere, meetings held to discuss highways are generally so arranged that protestors may be listened to as little as possible, while road engineers and local pro-highway officials are given preferential treatment. (Mowbray; Leavitt.) But even in those early days, such meetings were too well attended, too full of human interest for the media to ignore them. Nor had it yet become locally fashionable to downgrade citizens who protest the highway-builders' definition of "progress."

On April 16, 1957, expressway maps exploded across the pages of the *Commercial Appeal*. Maps ran the width of page one of the second section and straight down the center, headlined "PUBLIC GETS CHANCE THURSDAY TO SPEAK OUT ON EXPRESSWAYS." A front-page article almost page-length discussed estimated expressway costs.

The two-map spread merits close attention. The center map, running vertically almost the length of the page, is captioned simply "North-South Leg," but across the width of the top of the page runs a map of the east-west leg with this caption: "HUNDREDS OF HOMES AND COMMERCIAL BUILDINGS IN PATH OF PROPOSED EXPRESSWAYS." *This* map shows clearly the proposed route through Overton Park—for the first time publicly. But in the uproar over anticipated property condemnation and altered property values, relatively little attention was at first given to the proposed invasion of the park.

Self-fulfilling prophecy characterized next day's editorial in the *Commercial*, entitled "Managing Expressways." It begins:

The public will be heard tomorrow on the subject of Memphis expressway routes. State Highway Department men will be in the Courthouse during the afternoon to listen.

We expect their ears will be filled with objections to chosen routes, and we doubt if much that is said will result in alterations.
(April 17, 1957)

Thus forewarned that they were wasting their breath, residents of Memphis next day attended a hearing, duly reported the following day. Headlines announced that 300 had come to protest (*CA*, April 19), but eyewitnesses of those early meetings suggest that estimates of participants are generally understated by several hundred.

Confusion characterized the meeting, and the media made the most of that fact. Complaints about conduct of the meeting overshadowed complaints about the expressways themselves. Chief focus of complaints was the maps presented, which were too small to be any help to the audience and had not been available for inspection before the meeting. Those in charge had apparently been unable or unwilling to explain the maps to audience satisfaction. Various questions were unanswered; others remained unasked for lack of proper conduct of the meeting. (*CA*, April 19, 1957.)

Public ignorance of the highway-builders' goal was blamed for the "fiasco." The purpose of the hearings, said State Highway Commissioner Leech, was "not to hear complaints from property owners . . . but to determine whether the proposed route is for the best general welfare of the community." Questioned later by City Engineer Will Fowler, "Commissioner Leech said the hearings are conducted in compliance with a provision of the Federal Highway Act, which does not specify the exact purpose." (*Ibid.*)

With the wording of that act before him (see above), the reader can begin to understand the implications of Leech's admission. The hearings as originally provided are little more than a safety valve to permit an aroused populace to vent their steam! Nowhere is there any indication that what the people *say* is to be hearkened to.

Criticism of the hearings came promptly from many public figures. Mayor Edmund Orgill "criticized the Thursday hearing for failure to have maps properly displayed, and no previous opportunity

given citizens to examine any maps." Three city commissioners registered objections: John T. Dwyer, Stanley Dillard, and Claude Armour. Commissioner Armour pointed out that when certain objections raised by himself and two other commissioners had been overruled by the engineers, they felt they "had to accept their recommendations" because "it seems that if we object to the decisions of the engineers, we won't get any [expressways]." (*CA*, April 20, 1957.)

Objections from another public figure rated a separate article. Ex-Mayor Watkins Overton, descendant of one of Memphis' three founders, John Overton, for whom the park was named, warned against using the park for an expressway. He spoke of Overton Park as "a priceless possession of the people of this city. . . . our heritage to our children," and urged Memphians "to carefully consider the effects of this expressway on Overton Park, which belongs to them, before it . . . is destroyed." Concerned also about the hearings, where he "soon discovered that no intelligent discussion was possible or wanted," he concluded: "Entrenched bureaucracy disdains the voice of the people but eventually the people will be heard." (*Ibid.*)

Several days later appeared a news item headed "COMMISSIONERS HOPE PARK WILL BE UNHURT." (*CA*, April 27, 1957.) There has always been general concurrence in this vague and undefined hope, but the definition of "irreparable damage" varies from speaker to speaker. Those who would bisect the park, yet insist it will remain unharmed, remind us of the story of Solomon and the babe claimed by two mothers. Even now—1971—few seem able to visualize the effect on the zoo and the park of the proposed interstate through its very center.

Soon after the protest meeting a front-page article appeared entitled "Expressway Beauty Will Be Shown: Artists to Aid in Selling Job." The forthcoming drawings would presumably forestall further objections by showing "the grassy landscaping between expressway lanes, the graceful interchange curves, and the whole perspective." (*PS*, May 2, 1957.)

Yet to appear (as of September 1971), is an artist's concept of the park after the holocaust, including a scale model of the zoo and the playgrounds, showing the football-field width excised between the two—as different from the present street-railway limited access road 25 feet wide as a private driveway is from a six-lane transcontinental expressway. For realism, the scale-model should include children's figures crossing the causeway high above the whizzing traffic

and mothers carrying infants up the steep stairs on one side and down the other.

But even a three-dimensional portrayal would fall short of the realism required by the present status of knowledge about expressways. Sensory accompaniments—noises, vibrations, smells, and particulate-laden smog—should be supplied, wafting upward to the causeway and borne northward on our prevailing southerly breezes into the zoo itself. And finally the chemical analysis of the atmosphere of the air-trench above and around the highway should be posted in letters at least as large as those now used to advertise the work of the highway department. Yet even such realism would fail to show what should *now* be the most important consideration involved in planning any inner city expressway: the correlation between air levels of such pollutants as carbon monoxide, unburned hydrocarbons, sulfur oxides, and particulates, and the incidence of certain diseases, including especially emphysema and bronchial asthma. (Appendix A.)

Zoo animals also suffer from pollution: "Deaths from cancer among outdoor animals in the Philadelphia Zoo shot up suddenly after completion of the Schuylkill Expressway, which runs past the zoo."*

But even in 1957, before health hazards of highway-generated pollution were commonly known, the Memphis public was not as easy to sell on the beauties of expressways as highway proponents had hoped. By September, opposition to the park route had become better organized, more vocal. Persons in the immediate park area coalesced into a Committee for the Preservation of Overton Park, precursor of what was to become in 1964 the Citizens to Preserve Overton Park. On September 17, a mass protest meeting was held at the County Courtroom to let elected officials know how their constituency felt about the highway plan.

But no notion of compromise was entertained by those acting as spokesman for the road-planners. Not a legal hearing, the meeting ran 95 minutes, was given at least 42 column-inches in the *Commercial*, which opened its article with this sentence: "Satanical horns were fashioned yesterday for that portion of the expressway system planned to cross Overton Park." (*CA*, September 18, 1957.)

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Mayor Orgill opened the meeting by asking the route designer to explain the park segment. Voices responded "no, no," as tension mounted. The more the engineer explained, the more strained became the atmosphere. (*Ibid.*)

At length, the attorney representing the Committee for the Preservation of Overton Park reminded the mayor that the group was familiar with the plans, and said, "We would like to go ahead and present our case." He announced that the Committee already had signatures of 10,000 citizens opposed to an expressway through the park and expected 50,000 before the public hearing was held. Arguments against the expressway, to be supported by several speakers, he said, included preservation of the park and economic unsoundness of the proposed east-west route. (*Ibid.*)

A number of persons registered specific objections. Then finally the most important pro-park speaker offered professional, well-reasoned arguments against the plan. Mr. Frank Ragsdale, traffic engineer and longtime chief of the Traffic Advisory Council, suggested restricting the system to a loop around the city, giving up altogether the east-west expressway and possibly also the north-south.

What came to be known as the Ragsdale Plan is basically the same as Study Route C of the 1955 "Bartholomew Report." It is far less costly than Route A, which, with certain changes decided upon in 1956, was the plan being followed. (*CA*, July 6, 1956; *PS*, Sept. 11, 1958.) Routes A, B, and C all provided for "a new bridge to the north of the central business district." ("Report," p. 48, p. 52, p. 56.)

Arguments put forth that day against the Overton Park route are noteworthy for at least two related reasons. First, the arguments *were* and *are* eminently relevant, farsighted, and cogent. Secondly, they belie the image, created over the years by accretion and innuendo, of these protestors and their later recruits as uninformed "obstructionists." A few examples will illustrate the perceptiveness of the protestors:

Noting that the federal government was to pay 90% of the cost of interstate expressways and the state only 10%, one person asked rhetorically, "Who is the government? It is us." (*CA*, Sept. 18, 1957.)

Refuting one argument of the times, that highways were needed as a defense measure, one objector asked, "Why does it go through town and thus [make the city] become a target for enemy bombers?" (*Ibid.*)

More urgent now in the seventies than it was in the fifties is the query of one foreighted observer: "Has anyone made a study on the amount of exhaust fumes along an expressway?" (*Ibid.* See above and Appendix A.)

Another commented that "Expressways are for getting people *through* Memphis. Let's think of the people living *in* Memphis."

This same speaker voiced another objection which sociological studies have validated as a contributory cause of race riots in at least two cities, Detroit and Los Angeles: cutting the city in half. (*CA*, Sept. 18, 1957. See Leavitt, Mowbray.)

But despite repeated attempts to communicate to elected officials the sources of their dismay over the route, the assembled citizens were clearly frustrated. The Mayor kept reassuring the audience that the beauty of the park would not be harmed. He stymied discussion of possible alternate routes by stating "all possible routes have been studied . . . [starting] back in 1953. We have had the best engineers . . ." (*CA*, Sept. 18, 1957.)

The article concludes with the observation that the Committee for Preservation of Overton Park would surely be heard from again. (*Ibid.*)

The Ragsdale Plan, first presented at this 1957 meeting, was given a push late in 1958. The *Press-Scimitar* printed two maps, one showing the "Official Expressways" endorsed by Mayor Orgill, the other showing the "Ragsdale Expressways." The accompanying article was headlined "MAJOR X-WAY CHANGES PROPOSED: In-Town Routes Would Be Out: TAC Chief Ragsdale Wants Roadways on Perimeter." Besides (1) eliminating the in-town east-west and north-south expressways, the plan would (2) "make a full circle of the perimeter route by building the river expressway," (3) "have 51-N skirt behind International Harvester and by-pass Frayser as an expressway," and (4) "realign U.S. 70 from Nashville, connecting with the north perimeter expressway north of Summer Avenue so the traffic for the bridge would flow along the north side." The plan, its proponent claimed, "would save millions in right-of-way purchases through expensive residential property . . . [by thus running] the road through low-grade and commercial property." (*PS*, Sept. 11, 1958.)

"The only reason for the [park] route," Ragsdale said, "is politics and it is ridiculous. Top planners say never cut through parks and playgrounds." He predicted that the proposed north-south leg would

be the "ruination" of the downtown district: "It would be absolutely disastrous In fifteen years . . . the present downtown would be just a bunch of old stagnant buildings on the river front." (*Ibid.*)

Critical of the expressway hearings, Ragsdale commented: "What good is a public hearing after everything is decided?" Accepting just any expressway plans in order to get the economic stimulation of the construction work, he said, was like advocating a tornado for Memphis just to create jobs. (*Ibid.*)

The article closed by quoting Mayor Orgill's hope that the official routes would be approved "at the public hearing next month" (*Ibid.*)

Both plans—the Ragsdale and the official one—agree on the need to complete the circumferential. Nevertheless, the north leg of I-240—that is, the segment from just east of North Watkins, on east through Raleigh and toward Bartlett Road—had not been placed on the highway construction schedule as of June 1971. A July announcement stated that 240 N is still AT LEAST four years away. (*CA*, July 1971.)

Why our long-needed circumferential expressway has still not been built is a topic germane to Memphis' continuing expressway impasse and worsening traffic jams.

A public hearing held October 15, 1958, on segments of the interstate system other than that through Overton Park would later be cited by the Tennessee Highway Department as the required public hearing on route location. The park segment was discussed, it is true; but no transcript was recorded. (Ginn, p. 36, n. 26, citing personal interview of September 8, 1970, with Henry K. Buckner, Attorney for Tennessee State Highway Dept.) Nevertheless, from the date of that hearing—at the latest—if there was to be any east-west interstate, the "corridor location" would go through Overton Park.

Why the original plan to complete the circumferential first, was discarded will be considered in the next chapter.

CHAPTER III: THE SIMPLE STRATEGY OF 1960

Until 1960 there was in Memphis a widespread impression that the circumferential expressway would be completed before the east-west was begun, or even studied by the planners. Therefore, interested Memphians continued to hope that the road-planners would come to their senses in time to save the park. The media were to exploit this vain hope, allaying fears while far-reaching changes were taking place.

An editorial entitled "East-West Next" appeared in the *Commercial Appeal* of February 13, 1960, stating that the Downtown Association had taken on the project of having changes made in the expressway construction schedule.

This move by the Downtown Association was the foot in the door. The news media held the crack ajar while new officers of the Downtown Association, creature of the Chamber of Commerce, jammed in their permanent wedge. Their president had announced when elected that his administration's chief target would be the east-west expressway. (*CA*, Dec. 5, 1959.) Now the newspapers endorsed the decision and urged full cooperation of all citizens and organizations in the undertaking, the first step of which would be to convince city officials of its wisdom. (*CA*, Feb. 13, 1960.)

Never once was mentioned the *will of the people*. That both the *desire* and the long-range *welfare* of the citizenry are determining and overriding considerations in expressway location is a relatively new concept.

The naive idea that the will of public officials is *per se* the will of the people is a myth that deserves closer scrutiny. Yet along with the belief in the democratic system goes the idea that in major decisions city officials are to be hearkened to, because presumably they represent the best interests of the people.

The Jeffersonian tenet, that the workability of the democratic system requires an informed public, is itself dependent upon the First Amendment: the right of the press to publish the facts, and the right of the people to *know*. Yet in the matter of expressway location, Memphis media managed to foist on most of the public their own limited and ill-informed, if not biased, viewpoint. Nor has time alone brought enlightenment.

For one example, the argument encouraging downtown merchants to push for completion of the east-west highway is based on a number of false premises. First is the long disproven notion that pouring more automobiles into the downtown business area means more business for downtown merchants. (Leavitt; Mowbray; Brecher and Brecher, *Consumer Reports*, 1965.) Then there is the myth that an interstate highway will expedite *local* traffic, even though it is a section of *transcontinental* throughway, jammed with out-of-state traffic that would much prefer bypassing the city altogether. Other cities have found that local drivers stay off supercrowded interstates; but Memphis' news media ignore other cities' highway mistakes, however costly such a course. (Leavitt, Mowbray.)

The opening gambit of the I-40 promoters was perfect. The Downtown Association president, not himself a retail merchant, nonetheless evidenced concern for the welfare of downtown business. Road-planners and newspapers cooperated fully to sell his idea to local merchants and public officials—no real problem, in the context of the times.

In the early sixties, downtown merchants in many cities were ripe for any long-shot chance of bringing in more trade. The first outlying shopping centers with their apparently unlimited free parking facilities had been built in the mid-fifties. Suburban stores had eaten into downtown profits.

Few stopped to think about the source of the exodus to suburbia: *highways!* Highways made flight to the suburbs easy; thus families with cars could escape the high congestion, high pollution created by highways. Yet those families could still send the breadwinner downtown to work—on those same highways. Few downtown businessmen stopped to think how much easier it was for their own suburban-based wives to shop at the big new shopping centers near home than to drive miles to downtown—on congested, smelly highways or crowded city streets. Building highways *through* town to “alleviate” the problems of downtown business is “hair of the dog that bit you”: a superstition with doubtful validity.

Merchants who had not actually “bought” the I-40 on grounds that the east-west would help them personally, were told that it was “good for Memphis.” And no one wants to stand in the way of “progress.” Thus it proved easy to convince otherwise intelligent and informed people that Memphis needed an east-west highway.

Certain misconceptions helped matters along. The two most

important and most persistent are (1) that Memphis would lose the new bridge without an east-west expressway (See Chap. I.); and (2) that there were no alternatives to the Overton Park route. (See Supreme Court decision March 2, 1971. Furthermore, in highway designations, the "2" of "240" indicates "alternate for 40.")

But whatever the arguments, the entire membership of the Downtown Association was persuaded to go along with its leaders, asking "immediate priority for the east-west expressway." (*CA*, Feb. 13, 1960.) Till now, the question had been "whether the next work will be the northern link for circumferential traffic, the north-south route near Bellevue, or the east-west line." This important editorial concludes:

[The east-west] will be the most expensive portion of the Memphis expressways. The interstate money requirements are tremendous and any complications of getting funds in the final years of the program should be avoided for this route serving the heart of Memphis along the flow of our heaviest traffic. (*CA*, Feb. 13, 1960.)

Even as the east-west was being put upon the road-builders' design schedule and the northern leg of the circumferential was being relegated to the foot of the list, items appeared which seemed to allay fears for the park. "East-West Leg Is Years Away . . .," the *Commercial* had proclaimed on January 28, 1960. But a year later, the I-40 section from Front to Claybrook was under final design, though the specific right-of-way of the long stretch from Claybrook east to the circumferential—the section through or near the park—was "still under study." (*CA*, Jan. 10, 1961.) Memphians could still hope for a route which would skirt the park or avoid it altogether.

CHAPTER IV: THE PROTEST OF 1961

To those who ask why pro-park people did not speak out sooner, one must reply, "Sooner than *when?*" Before the map was first published in April 1957? Or before the planners planned the route, presumably between 1953 and 1955?

EVER SINCE THE PLAN TO CUT INTO OVERTON PARK BECAME KNOWN, OBJECTIONS HAVE BEEN LOUD AND CONSISTENT. But in more recent years, the news media generally have played down or derogated these protests and those who voiced them. Even the fairly full news accounts of the earliest protest meeting (1957) and the first hearing (1961) do not overstate the emotionality of the situation, according to eyewitnesses.

Not until March 14, 1961, was there a legal public hearing on the location ("corridor") of I-40, despite citizen protests and the provisions of the Federal-Aid Highway Act. (See above, Chap. I.) And the theme of that session proclaimed by next day's headline was "How Can We Stop You?" (*CA*, March 15, 1961.)

The extent of public interest was clear from the overflow crowd, which had to be moved from the county courtroom to the auditorium. Once there, the designer of the routes, Engineer William S. Pollard, Jr., "began a long review of how the expressway routes were located. He was interrupted frequently by objectors to the . . . route through Overton Park." (*Ibid.*)

Though homemade signs and placards saying "Save Overton Park" made clear the singleminded purpose of the assembled citizens, speeches continued for some time with no mention of the park. Finally the crowd had its fill of statistical jargon about Memphis' supposed traffic patterns and highway needs. One woman in the rear called out: "Will this [expressway] go through Overton Park?" The answer was "Yes" and the storm broke. (*CA*, March 15, 1961.)

Frank Ragsdale, himself a respected traffic engineer, at length quieted the crowd. The detailed explanation of the entire east-west route resumed. It continued until the impatient crowd shouted, "When are we going to discuss Overton Park?" (*Ibid.*)

This time the chairman took the microphone from the speaker

and lectured the crowd as a teacher might speak to unruly first-graders.

Even now, the sense of frustration and hopelessness combined with anger comes through to a reader who was not present, not even involved with results of the expressway.

Contributing to the citizens' frustration was the method of calling on speakers. Eyewitnesses remember that audience prodding was necessary before the source of the list of preferential speakers was divulged. (Ginn, pp. 109-110.) The list furnished by the Downtown Association, of speakers supporting the route, included Palmer Brown, William Farris, Sam Bates, George Houston, Roy Marr. (CA, March 15, 1961.) This list included the same influential members of the Association responsible for the 1960 change in highway priorities. Interestingly enough, these concerned speakers represented building, mortgage, and real estate interests, rather than Main Street merchants.

Chief spokesmen against the proposed route were Frank Ragsdale and G. B. "Pat" Joyner, chairman and vice-chairman of the Traffic Advisory Council: "Both advocated eliminating the east-west leg and, instead, building a full circumferential route around the city." (CA, March 15, 1961.)

Mr. Joyner pointed to taxpayer damage inflicted on a community by destroying much of its high-tax property. (*Ibid.*)

Mr. Ragsdale cited Nashville, Little Rock, and San Francisco as cities where "the people wouldn't let them run expressways through parks, but in Memphis nearly two and a half miles of right-of-way is in Memphis parks." (*Ibid.*)

Other defenders of the park included Mrs. Watkins Overton, widow of the late mayor; C. P. J. Mooney; Mrs. William Deupree; and Mrs. Duncan Williams. Pleading with the highway-planners, Mrs. Williams said: "Do not take our park. It is not a land bank put there for [you to draw on as you choose]." (*Ibid.* Corrected by Mrs. Williams.)

Hopeless as the protests appeared to be against forces as obdurate as hardened concrete, the afternoon paper nevertheless implied that complaints would be heard. The *Press-Scimitar* headlined the fact that the arguments had been recorded. (PS, March 15, 1961.) Hindsight leads the observer to construe this fact, however, not as a hopeful sign, but as a public proclamation that *now* the formality of a "legal hearing" on corridor had been fulfilled.

The *Press* reported additional arguments on both sides:

Favoring the proposed route was W. D. Galbreath, realtor, speaking on behalf of the Mortgage Bankers Association.

Shortly after he spoke, Mrs. Henry Lake said: "I understand real estate people have bought up large tracts of property along the east-west right-of-way . . ." (*PS*, March 15, 1961.)

Mrs. Watkins Overton, pointing out the fallacies in the statistics on which the choice of route was based, said: "The origin-destination studies made by Harland Bartholomew and Associates show the *flow of traffic goes northeast and southeast from downtown*. Overton Park is between those routes. It serves neither route . . ."

Walter Simmons, director of Memphis Housing Authority, asked reconsideration of the proposed east-west on grounds that "the figures used to determine the location *were now outdated*. He urged planners to wait until the 1960 census figures were released in June before making final recommendations."

John B. Vesey, former Park Commission superintendent, noted that over the years portions of Overton Park had been taken for streets. "Now they want to take more for the expressway," he said. "Why not widen other streets?" (*Ibid.*)

To the latter suggestion Pollard replied that "It would take 24 new lanes (in existing streets) to replace the [proposed] expressway. Then we would indeed have chaotic destruction of property." (*Ibid.*)

Pollard's argument disregards a number of factors: (1) the effect of the circumferential, which if completed—as his own Study Routes A, B, and C *all* provided—would relieve both central city and north-of-center congestion; (2) need for constantly updated traffic controls; (3) more efficient use of existing streets through lane control, tow-ins, driver education.

Furthermore, inner city air pollution is likely to make mass transit mandatory in the seventies. Meanwhile, short-sighted city officials who should be *subsidizing* mass transit in order to cut down simultaneously on traffic congestion, air pollution, attendant health hazards, and the terrific cost of maintenance and narrowed tax-base generated by *inner city* highways, are instead putting our transit system into a financial bind by threatening to refuse tax benefits—a minimum survival measure, for transit and for people, now in the seventies. (App. A.)

Back then, at the 1961 hearing, the reiterated cry of "What can we do to stop you?" brought from Highway Engineer Pollard this ad-

vice: "Follow the procedures of democracy . . ." (PS, March 15, 1961.)

Ironic advice to protestors who believed from the first that the meeting had been rigged to wear down the opposition!

Ironic, too, since the park protectors were destined never to get a fair hearing until they had gone to court, almost ten years later!

But most ironic is the fact that *this* hearing—this travesty of citizen participation in important decision-making—was in the years ahead to be considered by the Tennessee Highway Department the *only* required hearing on *route location*!

Many opponents of the Overton Park route had since 1957 been banded together as the Committee for the Preservation of Overton Park. Active at the 1961 hearing in a loosely organized way, this group was to become the nucleus for Citizens to Preserve Overton Park. Not until November 28, 1969, just prior to entering into litigation, would the Citizens be incorporated.

And not until May 19, 1969, would there be another public hearing on the I-40 through Overton Park.

Meanwhile, two important pieces of highway legislation had been passed by Congress, each aimed specifically at preserving parklands from the onslaught of highway-builders.

And for a time early in 1968, it appeared that the park had at last gained powerful defenders in the local political arena.

CHAPTER V:

MEMPHIS' CRITICAL YEAR: 1968

The same series of events that helped make Martin Luther King, Jr., a sitting duck for an assassin's bullet also placed Overton Park once more in the direct path of the bulldozer. Or so anyone who reads carefully the Memphis newspapers of March and early April 1968 is likely to conclude.

The 1968 sanitation workers' strike, leading indirectly to the April 4 assassination of King, was probably historically Memphis' most important event of the sixties. Though repercussions of that strike have been well-researched, its far-reaching effect on expressway decisions has been overlooked. The fact is, a newly-elected city council which on March 5 had voted *unanimously against* allowing I-40 to go through the park, on April 4 *reversed* its decision.

News items of the time suggest that the council's reversal was brought about under duress, partly caused by strike-related events, partly a result of pressures deliberately applied.

There is reason to believe also that the reversal was made possible, if not inevitable, by long-continued misrepresentation of facts relevant to the expressway system in general, a process clearly in abridgement of the *right of the people to know*. (N.Y. *Times* v. U.S. See Appendix B.) Neither the people nor their elected representatives can make wise and correct decisions when relevant material is withheld or distorted. To withhold or "manage" information becomes clearly an attempt to pre-determine the outcome of a controversy, especially when the presumed decision-makers lack the time or resources to make their own exhaustive investigation of facts.

From the first publication of expressway maps, the news media have presented the Overton Park route as an irreversible decision. Nevertheless, the city council in good conscience and common sense dared go on record as opposing the route. Fearlessly the new council stood for the right of the *people* to be heard. But briefly.

A few facts about our then-and-present (1971) city council help clarify events of March 1968. Elected in October 1967, these twelve men and one woman—ten whites, three blacks—were the first group

to come in under the council form of government. Within a few weeks of taking office on January 1, 1968, they had faced at least one major crisis: the strike of the sanitation workers.

Since in the South most sanitation workers are traditionally Negroes, the fact that there were three elected black men in city government for the first time, cut two ways. Their presence at deliberations could be counted upon to bring to the council a more realistic assessment of the black worker's viewpoint than previously present at City Hall. But the city's governing body were themselves in process of learning long overdue lessons in biracial accommodation. Even without a race-infused problem to deal with, the council those first few weeks of working together would inevitably face moments of soul-wracking abrasiveness.

An outsider might occasionally guess at sparks flying behind the scenes when WKNO-TV presented its weekly "Metro Meeting." Sometimes when a black and a white councilman were teamed, the undercurrent signalled a well-reined hostility (on the one hand) and unbelievably patient magnanimity (on the other), generated by an understandable diversion of viewpoints. But occasional topics almost blew fuses: the white councilman might comment, for example, that blacks were so much better off, now that they were represented in city government. His black colleague would remind him, however, that with blacks making up 40% of the population, a three-to-ten ratio is hardly proportional. Though these men would grow in mutual understanding and personal stature in the months and years of working together, in March 1968 they were still raw: raw in the job and raw from unintentional mutual abrasion. Nevertheless, they were about to enter one of the most trying crises ever to confront any city government.

Though apparently peripheral to the expressway controversy, these facts contributed to the political and emotional climate of Memphis in spring 1968. Considering the gravity of some of the city's problems, the council's ability to continue functioning takes on heroic stature. And whenever crisis after crisis burdens human beings or human institutions, nothing short of a strict ordering of priorities can prevent breakdown of the organism. For a time in March 1968 the "garbage strike" shared with the expressway controversy both public interest and council attention. But as racial tensions mounted, the expressway became irrelevant. A city torn by unresolved problems that threaten its political, social, and economic foundations, a city

just pulling itself together after its first race riot, does not have time to think of parklands.

In the background of the council's expressway decisions of spring 1968 surged and simmered the series of events that was setting the stage for riot and murder.

By mid-March, the strike had reached such an impasse that Memphis sanitation workers had called for support from civil rights leaders—first local, then national. At first the invitation to Dr. Martin Luther King, Jr., to lead a protest march in Memphis seemed to many Memphians little more than a gesture of defiance, a dramatic threat. King too seemed uninterested in coming, since he was busy preparing for the Poor People's March on Washington. But when he accepted the invitation, the attitude in some circles changed from annoyance or incredulity, to fear, disgust, or undisguised hate. The atmosphere in Memphis was explosive.

Sunday, March 17, the *Commercial Appeal* announced "King to Lend Vocal Support in Strike Rally." Next day's paper amplified with, "King May Join Afternoon Trek," stating that Dr. King would arrive that morning and "downtown marches [were] to resume" that same day. Subsequent events are briefly summarized by headlines (CA):

Friday, March 22: "Mediator Is Requested in Bid by City Council to Solve Strike Crisis"

Sunday, March 24: "City Seeks Court OK to Erase Legal Block at Negotiating Table; Talks Stymied"

Monday, March 25: "City Will Seek Decision Today on Strike Talks"

Thursday, March 28: "Mediation Talks Stall as Union Walks Out, Puts Blame on Loeb"

That same day, an editorial appeared entitled "End Political Roadblock." But this time the roadblock concerned, not the stalled mediation talks, but the stalled expressway:

For reasons best known to themselves—and we wouldn't be surprised if they were political—Representative Dan Kuykendall and some members of the City Council have managed to place the much-needed east-west expressway in serious jeopardy. (CA, March 28, 1968.)

Kuykendall's later public reversal makes relevant political history, but does not directly concern the present discussion. But the newspaper's badgering of a conscientious and overburdened council bears scrutiny in the light of the total news coverage of the expressway controversy.

That same day also brought the first tragic climax of events when the strikers' protest march, led by King, disintegrated into confusion. Looters wrecked stores; many persons were injured; one Negro youth was shot and killed. Events and their causes were complex and remain controversial. By nightfall portions of the city looked like an armed camp, with teams of police and National Guardsmen on patrol and army tanks rumbling through the streets. There had been more than 200 arrests in Memphis' first race riot. (CA, March 29, 1968.)

Already the gravity of local affairs was causing national concern. But even as President Lyndon Johnson offered riot assistance and tanks rumbled through town, two ominous notes sounded: city government confessed itself at a loss for explanation of events; Dr. King promised to march again next week. (CA, March 30, 1968.)

Then suddenly national news diverted attention from local events: LBJ made world-shaking headlines with his announcement March 31 that he would "not seek or accept renomination." Simultaneously, he scaled down the war in Vietnam: bombing was decreased, peace feelers put out. (CA, April 1, 1968.)

But another climax was building in Memphis: another mass march led by King was planned for Friday, April 5. The city sought a federal injunction to keep King from marching. (CA, April 3, 1968.)

Though April 4 began with hopeful news from the White House, it was to prove as much a Day of Infamy as Pearl Harbor. A federal Highway Administrator had reportedly urged the council to approve the park route; and Martin Luther King had vowed to march, injunction or no. (CA April 4, 1968.)

King's determination was stopped by stronger forces than a federal injunction. And at almost the same hour as the assassination, city council signed the death warrant for Overton Park.

WHY?

Why in little more than a month did city council recant? *Why* had the former unanimous resolution *against* the park route been reversed?

The answer is suggested by a chronology of news items related to the expressway controversy. This chronology, covering only the weeks between council's unanimous opposition and its recantation—March 5 to April 4—*parallels the crescendo of disaster* in city management and race relations. This fact alone suggests one obvious answer: the insupportable burden of responsibility and decision-making borne by an overworked and conscientious city council.

But the facts of the expressway chronology suggest a less simplistic answer.

The March 5 resolution endorsed by city council says, in part, that the council

prefers that the expressway through Overton Park be not routed in its present proposed location but that the said proper authorities select another feasible route, with the provision that if no better route can be obtained, the route using the north perimeter of Overton Park and the south part of North Parkway Boulevard be chosen.

Publication of the resolution signalled the media to apply the screws. Editorials condemning the council's position appeared promptly (*PS*, March 6, 1968; *CA*, March 7, 1968.)

Simultaneously, Representative Kuykendall was blasted for "re-opening the controversy" by inviting Federal Highway Administrator Lowell K. Bridwell to visit Memphis to inspect the proposed route and speak with interested persons. (*Ibid.*)

Within the week, the crack in the council's unanimity became visible, when Councilman Jerred Blanchard introduced a motion to rescind the resolution opposing the park route. With difficulty Blanchard found a second for his motion, but it was defeated. (*PS*, March 12, 1968.)

By March 26, the media sensed or had been advised that it was time for a full-scale offensive. The *Press-Scimitar* on that date wielded a literary bludgeon upon the council. No less than four separate expressway items appeared: (1) a front-page first-column news item running over onto page 4; (2) two separate but related editorials; and (3) on page 1 of section 2, a full-page spread headlined "Federal Highway Commissioner Says CITY COUNCIL MUST ACT ON OVERTON X-WAY." (*PS*, March 26, 1968.)

The lead article, featuring the face and words of Lowell K. Brid-

well, Federal Highway Administrator who presumably had "final authority to approve the route," is noteworthy for at least two reasons: (1) It is by-lined "Ed Ray, Managing Editor." (2) Purportedly a news item, it is a first-person-singular account of a personal interview with Bridwell, employing the bullying tone of an editorial philippic.

The opening paragraph sets the tone of the piece:

If City Council does not change positively its "iffy" Overton Park route position, there will NOT be in the foreseeable future a Memphis east-west expressway link to the Interstate Highway 40 bridge under construction across the Mississippi.

(The capitalized "NOT" is repeated several times in the article.) Editor Ray's statement is interesting, since *there is NOT and never has been* any valid reason for NOT completing the I-240 circumferential, thereby routing traffic around the city *to the new bridge*. (But Memphians have not been conditioned to think of I-240 as a link to the bridge, and perhaps read into the statement meanings *implied*, not *stated*.) The clear implication is that the council is the only stumbling-block to Memphis' acquisition of the new route to the west!

This interpretation in the minds of Memphis readers derives from the long-repeated myth that Memphis would lose the new bridge unless the east-west expressway were completed. An interestingly ambiguous statement attributed to David Pack, then State Highway commissioner, a suggestion that "there would be no excuse for a new bridge, because the east-west route is the only entrance to the proposed bridge at the foot of Winchester just north of downtown." (*PS*, Sept. 24, 1964.)

Assuming that the reader is now alert to tactics used in Mr. Ray's article—a bullying tone, dogmatic assertion of ambiguous "facts", denigration of the council—consider further the March 26 *Press-Scimitar* material. Its apparent intent may be thus summarized: Since the Department of Transportation through its representative Lowell K. Bridwell has refused to approve the route through the park until the city council either (1) endorses the route or (2) comes up with a "feasible" alternative, the newspaper seeks to show why the route through the park is the only possible route—thus anticipat-

ing and rejecting in advance any alternatives to be proposed by council. (*PS*, March 26, 1968.)

How much the article reflects the attitude of Bridwell, and how radically Bridwell's statements have been transmuted into a high-handed ultimatum by the editorial pen remains problematical. Bridwell, however, is *said* to have "said [that] the general direction of the long-debated route can NOT be changed" Furthermore, a map purports to show the "only two" remaining alternative routes of a reputed 29: routes which are not and never were officially considered as alternatives. They do not appear in the 1955 "Bartholomew Report," but were straw men subsequently set up to be knocked down—threats to valuable properties on the south ("Line A") or to Southwestern campus and Snowden School on the north ("Line B").

Of *these* three routes, there is little doubt that the one through the park remains most "feasible and prudent." These two adjectives have assumed great importance in the I-40 controversy because of the 1966 amendment to the Federal-Aid Highway Act, setting up the Department of Transportation—language repeated in the 1968 statute. The 1966 law admittedly influenced Bridwell's attitude toward the Memphis expressway. He had been advised, he said, "that national conservation interests . . . would file a suit in a test case to stop the expressway from going through Overton Park." (*PS*, March 26, 1968.) The case would test in the courts the following section of Public Law 89670, printed in the newspaper in heavy black type for all of Memphis to see:

After the effective date of this act (Oct. 15, 1966), the secretary (of transportation) shall NOT approve any program or project which requires the use of any land from a public park, recreation area, wild life and water fowl refuge or historic sites unless 1) there is no FEASIBLE and PRUDENT alternative to the use of such land, and 2) such programs include all possible planning to minimize harm to such park, recreational area, wild life and water fowl refuge or historic site resulting from such use. [Capital letters are Editor Ray's.]

The Ray article states that Bridwell's "department's studies have shown that the Overton Park route is the most feasible and prudent . . .," though (Is this Bridwell or Ray speaking?) "defense of any suit must include a positive position by City Council." Further-

more, the 1966 law has invalidated the endorsement of the Overton Park route by the old city commission. (*PS*, March 26, 1968.)

In sum, Bridwell's position as here reported was this: "We [the federal Transportation Department] can defend the Overton Park route in court [against a suit by conservation interests and possibly even the U.S. Department of the Interior] with the support of City Council *representing the people of Memphis*," but "our position would be endangered without it." [*PS*, March 26, 1968. Emphasis added.]

There is evidence to suggest that, in order to be sure that council was aware of its key role and specifically of the contents of the Ray article, galley proofs of the article were taken to council chambers in City Hall before the newspaper itself hit the stands. (Hines.) Night letters were sent to each member of the council, signed by the presidents of the Downtown Association, the Chamber of Commerce, and Future Memphis, Inc. (See Ginn, pp. 126-130.)

The transportation law here referred to, avers the article, "was passed without discussion by Congress in October 1966, through national conservation interests' lobbying."

A 1971 footnote to the Bridwell comments merits consideration here. An article headed "Bridwell Denies City Decided on I-40 Route," reports that Bridwell was asked "Was the determination to go through Overton Park delegated to the City Council?" Bridwell is said to have replied, "No, of course not." (*CA*, Jan. 16, 1971.)

On March 27, 1968, the *Commercial Appeal* announced that city council had "yesterday afternoon rebuffed Councilman Jerred Blanchard and refused to suspend its rules to consider a new resolution approving the presently planned route of the east-west expressway through Overton Park." Thus despite pressures from the newspapers and from the city's three most powerful business-civic organizations, the council stood firm—so far.

But in the background always is the build-up of racial tension and political turmoil, now only *one day short* of its first tragic climax.

Suggestions of the nature of the relationship between the council, on the one hand, and the actual decision-makers, on the other, are interesting and perplexing. Two council members are described as expressing "anger that Mr. Bridwell made public statements about the [expressway route] issue without contacting them first or making a decision." Council members had attempted unsuccessfully to contact Bridwell by telephone; and two of them remarked, in effect, that they

themselves had to read the daily papers in order "to get all the facts." (CA, March 27, 1968.)

That same afternoon, the *Press* ran a story purporting to show that any alternate routes the council might propose had already been explored and proven "unfeasible in comparison to the original Overton Park route." (PS, March 27, 1968.)

Next morning's paper headlines the failure of strike mediation. The lead article reveals plans for a march that morning to be led by Dr. King. Just below strike news is expressway news: "Blanchard Calls for Session to 'Get On' With Park Route." By now, at least two other councilmen, W. T. McAdams and Robert James, were ready to endorse the park route. (CA, March 28, 1968.)

Before that day was over, the race riot had taken place. Memphis had more urgent problems than expressway routing. It is not difficult to understand the council's capitulation which was to follow.

Bridwell was to arrive in Memphis late on April 3 "for a meeting with council members in the airport's conference room." (CA, April 3, 1968.) Citizens to Preserve Overton Park had asked permission to send representatives to the meeting. The request was denied. (Hines.) According to the newspaper, however, the meeting was "closed to the public, but open to the press." (CA, April 3, 1968.) Nevertheless, William S. Pollard, Jr., attended the meeting. (PS, April 4, 1968.) Bridwell claimed he had not known in advance that it was to be a "closed" meeting, but advised that a transcript of proceedings would be made. Presumably because of a faulty recorder, none was made. (Hines.)

According to the newspaper account of April 3, "the council [had] recessed its meeting yesterday until 4 P.M. tomorrow [Thursday] when it is scheduled to reconsider its March 5 resolution which asked state and federal officials to reroute the highway around the park or at least along the park's north border." Its threatening tone thinly veiled, the article continues: "The council has thrown a cloud over the expressway project. National conservation interests reportedly are studying a possible lawsuit to keep the highway out of the park." (CA, April 3, 1968.)

Bridwell is quoted as saying, even before he met with council, "What we have in Memphis is a question of conflicting values It is preferable for the City of Memphis, through the mayor and the council, to decide what values are to be applied." (CA, April 3, 1968.) This enunciation of a sound democratic principle is based on the

premise that the mayor and council are acting as *elected representatives of the people*.

But on April 3, strike tensions were mounting again. King had declared his determination to lead the march on April 5, regardless of objections of city officials. The city sought a federal injunction to prevent him. Thus matters of urgency were again on the minds of councilmen when they met with Bridwell to consider the expressway.

Reasons cited for the injunction sought against King were not only fear for the hard-won calm of the community, but fear for King's life. (CA, April 4, 1968.) The latter fear proved well-founded.

Simultaneously appeared headlines of King's murder and Overton Park's death warrant: "Overton Parkway Route Cleared by City Council." (CA, April 5, 1968.) It is to their credit that "most of the eight council members who voted to adopt the resolution which will in effect open the way for the building of the expressway through the park said they were doing so regretfully." Less than pleased with the course the council now felt duty-bound to follow were Lewis R. Donelson III and Downing Pryor, who voted against the resolution, and Fred Davis, Jr., who abstained. (CA, April 5, 1968.) Out of the city were Jerred Blanchard and J. O. Patterson, Jr., chairman of the council's Committee on Parks. (Hines.)

From an unpublished record of personal reactions of councilmen at that meeting come these comments of Downing Pryor:

He thought it would be better to have [the expressway] along the northern edge of the park. He had talked to zoo director Robert Mattlin and he felt there would be more difficulty for the children getting over the expressway to the zoo. [Pryor] was concerned about damage to the park. He said: "I saw this plan 13 years ago . . . There has been no change . . . I DON'T THINK THE OPPONENTS WERE EVER GIVEN A REAL FAIR SHAKE." (Hines.)

(N.B.: First public disclosure of the *high, steep steps* required for crossing the expressway on foot, was on July 27, 1971: CA.)

On April 19, 1968, two weeks after city council had recanted, the expressway route through Overton Park "was *incorporated into the interstate system*." (Department of Transportation News Release, Nov. 5, 1969.)

Also at that memorable April 4 meeting, council passed a second

resolution to give assurance that the City Council will close streets "as needed for the building of the expressway." (CA, April 5, 1968.) By Tennessee law, no streets may be closed without express permission of the local governing body. (Tenn. Code Ann. 54-2002.) Could it be that *this* fact, rather than the presumptive power of decision-making, is responsible for the assiduous brainwashing given the council in March 1968? A better-informed and less vulnerable council could yet preserve the park—even without further defense in the courts.

That the Chamber of Commerce—or some small nucleus of interested members—is dedicated to pursuit of a course which increasingly appears inimical to health and safety, as well as to long-range progress of the city in general and the downtown area in particular, grows more ironic every day. Whatever their blind spots, these gentlemen appear to be, for the most part, dedicated to helping Memphis realize its full business and cultural potential.

The Chamber's ability to take over and solve several community problems arising since the disasters of 1968 has earned for these men the highest commendation. Apparently as a result of the sanitation workers' strike, the Chamber has developed a technique of working behind the scenes to forestall another such costly and tragic disruption of the city's commerce. Notably effective was the handling of the school boycotts in the fall of 1969.

Surely the probity and common sense characterizing this group of business leaders would extend also to the preservation of precious natural resources—of which parkland and air are only two—and to a long-term solution of traffic and transportation problems, if only the Chamber's information concerning these vital public matters were both adequate and unbiased. The media *can* serve as one important source of both general and specific information. Other cities, where newspapers have taken the lead, are far ahead of Memphis in solving various problems: sewage disposal, solid waste recycling, rapid transit—to name only a few. Whether the media mislead the Chamber, or the Chamber dictates to the media, the result for the *people* can be disastrous.

The real tragedy of our ingrown and biased news coverage lies not merely in the fact that the *people* do not know the whole truth about their city's expressway planning, but that the decision-makers themselves listen only to their own echoes. They deny themselves the benefits of constructive criticism and the indispensable course-corrective of negative feedback.

Or like the emperor with his "new clothes," do a few civic leaders really believe that *saying* will make it so? Is the self-hypnotizing hope of self-fulfilling prophecy their reason for trying to stamp out dissent, with aid and comfort from the media?

The most important civil rights story of Memphis in the year 1968 may prove to be, not the needs of the sanitation workers, but the violation of the *right of the people to know*. (See Appendix B.)

CHAPTER VI:

THE MEDIA AND THE PARK-PRESERVERS

In the history of the interstate highway system, it is not uncommon for "hearings" to present a travesty of democratic procedures. Those who represent highway interests conduct and generally control such hearings. Citizen participation is often treated cavalierly—a legal requirement to be tolerated. And citizen comments, however professional or pertinent, are generally ignored. (Leavitt, Mowbray.)

The sequence of public meetings held in Memphis concerning routing and design of I-40 was a travesty *par excellence*. If Overton Park dies—and vivisection is hard on any organism—its death will mark also the demise of democracy in Memphis. The people have spoken consistently and reasonably against an expressway through their park. But the voice of the people cannot be heard by an entrenched plutocracy, aided by power-swayed bureaucracy and toadied to by a local newspaper monopoly.

Nationally-known author and columnist Mike Frome, writing in *American Forests*, discusses at length "the media's coverage of the natural resources crisis." In this connection, he warns that "the country should be concerned about the continuing conglomeration of the mass media," citing Southern cities especially as examples of the dangers present when morning and afternoon papers are owned by the same publisher:

In Memphis . . . Scripps-Howard holds the monopoly over the printed news, and a radio-television station besides. The chain, as a whole, prides itself on its conservation interest and activity. It goes so far as to present an annual award for conservation writing as a memorial tribute to Edward Meeman, the late editor-emeritus of the Memphis *Press-Scimitar* and conservation editor of the chain.

One might have expected, therefore, to find Scripps-Howard in the thick of the fight to protect Overton Park, a marvelous blessing bestowed by Nature upon the people of Memphis, one of the finest urban forests in the world

To the contrary, however, Scripps-Howard in Memphis plac-

ed all its bets on the downtown commercial interests It suppressed news, slanted and distorted news, and treated developments on Overton Park with the bias of a Russian blackout. Disregarding the traditions of its own chain, Scripps-Howard management in Memphis ridiculed park defenders, belittled any politician who dared to support them, and sought time and again to create an impression that the issue had been settled irrevocably beyond salvation through public interest

(Mike Frome, *American Forests*, January 1970, pp. 61-62.)

This pervasive climate of derogation surrounds anyone who dares defend or present the commonsense, long-range view of the conservationists, against that view held by the supposed "majority" for whom the Memphis media presume to speak.

So severe has Memphis brainwashing been that local businessmen, engineers, other professional men in various areas, speak *at their peril* against desecration of the park and distortion of expressway facts. Much the same accusation as that made by Frome was printed as an editorial in a local professional journal. Highly respected locally and nationally, the editor nevertheless received from several members of the highway-promoting establishment scathing letters of rebuke—as might be expected. But worse: he was severely censured by many of his own associates, who apparently value the continued patronage of the local establishment above the preservation of the democratic tradition and free speech in Memphis. In deference to this editor's past discomfort, I will not name him nor quote his courageous, forthright statement. His profession is one responsible for civic planning of a high order.

Pity our community, where truth has become a villain and an outlaw, and the only socially and economically acceptable "facts" are those approved by the media! This is *not* the benign dictatorship of a Crump regime.

But the dictatorial and monopolistic press, monster though it appear, may be but the useful tool of another more powerful, more fearful frankenstein, aptly dubbed by Tom Wicker "The Highway Juggernaut." (*N.Y. Times*, March 4, 1971.) The average honest, trustful, and politically naive citizen, confronted by it, seeks first to pooh-pooh the existence of this juggernaut—a complex of industries and interests related to highway construction and dedicated to self-perpetuation through the Highway Trust Fund. (See "Can We Bust

the Highway Trust?", *Saturday Review*, June 5, 1971.) But as this citizen observes the proliferation of concrete the juggernaut has achieved, his growing awareness generally causes one of two reactions about the juggernaut's activities in his own community. He may close his eyes resolutely to everything going on about him lest he become "involved" and thus sacrifice his own precious "security." Or, he may begin to look about with a questioning eye, a skeptical mind; to re-examine established institutions; to look again with new vision at respected community leaders, long-time friends, even close business associates and family. And as the initial shock gives way to deep disappointment, he may try to rationalize that these fine people really thought they were doing what was best for the community.

The obvious fact that justifying the *means used* by the *end desired* is a characteristic of all authoritarian societies, has never occurred to these well-meaning but misguided leaders. Nor has their education taught that one important difference between greatness and mediocrity is the ability to recognize and profit by errors. Further: they would do well to consider the opprobrium heaped at first on such foresighted thinkers as Winston Churchill, who previsioned Germany rearming under Hitler; Billy Mitchell, who forecast the importance of air power; and Copernicus, whose foolish notion that the earth revolves about the sun forms the basis of modern astronomy.

Alongside these prophets belong the ecologists and environmentalists of our own time: firm in knowledge, fearless of ridicule, accepting persecution.

In many large cities, conservationists and preservationists have already begun to take their rightful place as the seers of the seventies. Not so in Memphis, for we are still dragged backward by our own regressive leadership. In the area of highway building and transportation planning, our leaders' notion of progress meets standards of the fifties, not the eighties. And the media are largely to blame: for they have chosen to echo, not to educate or inform. Thus our leaders hear only their own voices repeating tired and disproven clichés: "Highways mean progress," "More asphalt means more downtown business," and worst of all, "The expressway won't harm the park; it will make it more accessible"! All this in the name of altruism and "progress"!

It is not only our *leaders* who remain ignorant of or indifferent to true issues and imminent environmental hazards. Because of the dereliction of the media, most of our *citizenry* likewise have been misled, deceived, bamboozled into signing away the deed to 26 acres or more

of priceless urban parkland, thinking to receive in return a pleasant drive to and from work each day! What blind faith in the proven fallacy of traffic relief through *more* highways! Highways breed more of the very traffic congestion they are supposedly meant to correct. (Leavitt, Mowbray.)

Yet even *if* we accept the unproven hypothesis that Memphis must have an east-west highway in order to solve its traffic ills, and *if* we concede—which I do not—that I-40 in some form must be built, WHY build it through the park? Or if *near* the park, why through its very *center*?

The argument that “the bus lane was already there” is the first reply of the uninformed. But the bus lane is *only 25 feet* from curb to curb. (Affidavit available.) The highway is planned for a minimum of 200 feet at its narrowest point; and even that would constitute a substandard design according to Memphis Urban Area Transportation Study standards. With the rest of the right-of-way running to 450 feet and more, the stretch through the park would form an “uncorrectable bottleneck.” (Michael Lackner, “Letters to the Editor,” *CA*, June 20, 1971.) The present two-lane bus road, with *no access permitted to automobiles and trucks*, is no more comparable to a six-lane transcontinental highway with median strip, than the original Indian cowpath through Manhattan Island resembles the Broadway which follows the same route. Nor is it reasonable to say that since the bus lane hasn’t hurt the park, a highway “will not hurt” it. Is cutting a fingernail the same as cutting off a hand?

But if the I-40 is needed *near* the park, why was the Plough plan to route the expressway along the north perimeter refused? No one has yet come up with the real answer to why the Chamber of Commerce flouted the known wishes and advice of one of the city’s and the nation’s most astute business minds—and an officer of the Chamber. This arbitrary action by the Chamber cost the *people* of Memphis \$1 million, the amount of the promised gift to the zoo withdrawn by philanthropist Abe Plough when he learned *what the I-40 plan would do to the park*. Why did the Chamber flout his wishes and forfeit \$1 million? These are questions the people of Memphis *have a right* to hear answered.

Public hearings are held presumably to answer such questions, and to give the people and their leaders an opportunity to air and resolve their differences. But the question of *why destroy the park*

has never been faced, let alone answered! It is tantalizing to speculate *why not*.

Perhaps the key to the answer is speculation?

As a result of the machinations accompanying the hearings and the kind of pressures applied to various public figures who sought to protest the expressway, overt criticism has been all but stifled in most quarters.

The unhappy experience of Representative Dan Kuykendall served as clear warning to other would-be park defenders. In December of 1967, he pushed fearlessly—the media implied “foolishly”—for a reopening of the route study. He arranged for the first visit to Memphis of Federal Highway Administrator Lowell K. Bridwell, who was to meet with the pro-park people. For his trouble, Kuykendall was publicly reprimanded:

. . . Rep. Kuykendall is trying to get all this work thrown out and start the argument all over again

Kuykendall should take a lesson from another office-holder, State Rep. D. J. “Jack” Smith . . . [who] backed away and did not introduce his bill [forbidding use of state money for any highway through a public park], although he was under strong political pressure.

Instead of rising at this late hour as the advocate of die-hard opposition to the project, Kuykendall should be exerting his efforts toward speeding completion of the expressway
(PS, Dec. 7, 1967.)

Several months later, along with general condemnation of the new city council who had dared to vote the dictates of conscience and common sense *against* the park route, Kuykendall was again scolded. In Memphis, the council had just voted against the route:

Meanwhile, back in Washington, Rep. Kuykendall was defending his part in reopening the issue of the Overton Park route. “*I can’t understand why this project cannot stand the light of day,*” he said. “Any time someone tells me that the taxpayers don’t have a right to ask that a multi-million dollar project be re-justified . . . well, that’s against my philosophy of government.” (PS, March 7, 1968. Emphasis added.)

In heavy black print, the editorial concludes:

The light of day, Congressman, has been shining on this question for the past ten years. Isn't that long enough? (*Ibid.*)

On March 28 came the scathing innuendo cited already in connection with media pressures put upon city council to recant:

For reasons best known to themselves—and we wouldn't be surprised if they were political—Representative Dan Kuykendall and some members of the City Council have managed to place the much-needed east-west expressway in serious jeopardy. (*CA*, March 28, 1968.)

What gives our media this sinister power to browbeat the people's elected representatives?

Kuykendall's original pronouncement still makes good sense: If an expressway through the park *is* the best course of action, *why can't it stand the light of day?* The highway defenders seem to begin always with the argument that the route was decided *back in the fifties*. If so, that very fact is the best argument *for reexamining* the route! First mapped in a general way in the 1955 Bartholomew Report—so far as the public knows—the route through the park was at that time supposedly determined chiefly by economic factors: park land was *then* considered cheap. But in the interim, vital changes have taken place.

First is the important fact which local leaders refuse to face and which the planner of the Memphis highway system repeatedly ignored: *urban* parkland is not only irreplaceable, but *grows more valuable every day*. The 1969 deal to sell part of the park to the state for right-of-way should be reexamined "in the light of day" and with reference to the doctrine of public trust. (See App. B.) At a minimum, lands dedicated to public parks are to be exchanged only for lands of comparable value to the *same* "public." The pretense that the Fox Meadows golf course—*not* parkland in the sense honored by HUD—and a few other outlying pieces of land are fair exchange for the oak-hickory climax forest thus prostituted to "progress" seems questionable, to say the least. Places other than Memphis have realized the value of their parks in time to halt the highway juggernaut—San Francisco, for example, threw out the plan to desecrate Golden Gate Park with a freeway. But San Francisco wasn't sold out by its newspapers, its power structure, and its politicians.

Furthermore, the relative value of urban parkland and other possible land for right-of-way must now be seen in a different light from fifteen years ago. Interrelated environmental, sociological, and medical factors now take high priority, as shown by such recent legislation as the Parklands Statutes (1966, 1968: see below.), NEPA, and the Clean Air Amendments of 1970. (See App. A, App. B.)

Population distribution and traffic patterns, supposedly requiring in the fifties an east-west artery, have changed radically in the intervening years. Indeed, there are now so many more factors *against* the current highway plan than *for* it, that the true motives behind the ruthless promotion of an outmoded and environmentally dangerous highway plan grow more and more suspect as the frantic rush accelerates to complete as much highway either side of the park as possible—though the Court recently warned the Highway Department that it proceeds at its own risk. (U.S. District Court, W. Tenn., June 24, 1971.)

The philosophy of “build first, get approval later” may sometimes be inadvertently encouraged by the Courts. For example, Judge William B. Jones (D.C. District Court) ruling that the suit brought by Citizens to Preserve Overton Park, Inc., *et al.*, v. Volpe be transferred to Tennessee for trial, said “he had little information about work already done on the project or how much trouble a route change would cause.” (Ginn, pp. 84-85.) Though the judge at the same time “granted a verbal injunction on construction till March 1,” the highway-builders seemed from that time forth to be toying the mark for a quick sprint.

Judge Jones surely never intended that actual violation of statutes be condoned because an illegal road had already been built. Of such a reading of the law are born anarchy, dictatorship, and revolt. The Overton Park route has never been properly authorized. (*Opinion*, March 2, 1971: See App. B.) If *law* is the way of our nation, and not legalized graft which exploits the natural resources and the common people of our land, it *never will be*. The fact that now, August of 1971, right-of-way has been purchased right up to the edge of the park on either side and construction continues to inch closer, does *not in itself* legalize one square inch of concrete. (*San Antonio v. Texas H'way. Dept.*, Aug. 5, 1971, 2 ERC 1872.) The corollary of what the highway builders have read as “law” would allow every murderer in the land to go free because punishment could not bring the murdered back to life.

Federal statutes have taken note of the change in valuation of public parklands, though Memphis leaders and Memphis public opinion have not kept pace. Before the purchase of one mile of right-of-way for I-40 in Memphis, before the rubber-stamp design-approval by Secretary of Transportation Volpe, the Congress of the United States had in several separate acts expressed its will that parklands be protected for the use of the *public to whom they belong*. (*Opinion*, March 2, 1971.) Because the content and intent of those statutes should be kept in mind when the events of the 1969 hearing are reviewed, relevant sections will be given here in their entirety.

The two so-called Parklands Statutes are identical except for a phrase stating the effective date:

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968 [1966 version reads: "August 23, 1968"], the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. (23 U.S.C., Sect. 138 (Supp. V).)

Those who in 1969 sought to re-examine the planned route of I-40 through Overton Park sought to exercise their democratic prerogative. But since *public parkland* was involved, this democratic right became an *imperative*. Overton Park is the property of all the people of Memphis, future as well as present. It is not on a par with

other "city" property, to be disposed of at will or whim of transient officials, by sale for questionable purposes: for Overton Park is land belonging to the *public trust*. Thus the local government is accountable just as any fiduciary is accountable—in this instance, to *all the people of Memphis*. (App. B: see "The Doctrine of Public Trust.")

Furthermore, the National Environmental Policy Act of 1969, which is both a declaration of *national environmental policy* and a mandate to all governmental agencies, reinforces the Congressional mandate previously articulated in the Parklands Statutes. NEPA refers explicitly to "the responsibilities of each generation as *trustee* of the environment for succeeding generations." (NEPA, Title I, Sec. 101 (b) (1): See App. B.)

Thus the Memphis park preservers are in no sense "obstructionists," as local media would have us believe. They are rather the *vanguard of progress* toward preserving the environment and enhancing the quality of life for *all* citizens. Perhaps the affluent highway promoters do not use and will not miss those acres of precious parkland. They may have their own ample lawns and gardens, as well as country clubs. But for the thousands of people from all over this country and foreign countries, and for the tens of thousands from our own Memphis and mid-South who throng to the park for exercise or relaxation, the park is already *too small*. The pro-park people in Memphis, speaking out against despoilation of *public* parkland and wanton exploitation of *public* resources, are speaking for *all* the people.

CHAPTER VII: THE UNHEARD HEARING OF 1969

Federal statutes require hearings when interstate highways are routed through cities. Yet hearings do not guarantee that the people will be listened to, or heard.

Hearings on I-40 in Memphis show consistent and overwhelming disregard of citizen protest. But however frustrating to pro-park citizens the previous hearings might have been, the final hearing of 1969 was to prove unique—as frustration is always greatest when hopes have been highest.

Between 1961 and 1969, the requirements for hearings and the federal-aid highway laws themselves had been revised. The original, loosely-worded 1956 provisions gave no more than lip service to the citizen's right to be heard. (See Chap. I.) The amended law is more specific. It includes in hearing requirements the phrase "impact on the environment." Section 128 (Title 23, U.S. Code) reads:

(a) Any State highway department which submits plans for a Federal-Aid Highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary [of Transportation] that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway.

(b) When hearings have been held under subsection (a), the State highway department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification.

Also important is Policy and Procedure Memorandum 20-8 from the Department of Transportation, dated January 14, 1969. Known as "PPM 20-8," this instrument implements Section 128 of Title 23. Paragraph 8.c reads:

(1) The State highway department shall provide for the making of a *verbatim written transcript* of the oral proceedings at each public hearing. It shall submit a copy of the transcript to the division engineer within a reasonable period (usually less than 2 months) after the public hearing, together with:

(a) Copies of, or reference to, or photographs of each statement of exhibit used or filed in connection with a public hearing.

(b) Copies of, or reference to, all information made available to the public before the public hearing.

(2) Provision shall be made for submission of written statements and other exhibits in place of, or in addition to, oral statements at a public hearing. *The procedure for the submissions shall be described in the notice of public hearing and at the public hearing.* The final date for receipt of such statements or exhibits shall be at least 10 days after the public hearing. [Emphasis added.]

Paragraph 8.b (4) requires that:

The State highway department shall make suitable arrangements for responsible highway officials to be present at public hearings as necessary to conduct the hearings and to be responsive to questions which may arise.

At least two of the directives of PPM 20-8 would be violated at the 1969 hearing. Note especially the italicized passages above.

The Parklands Statutes (1966, 1968) gave clear notice of national policy. Since their enactment, other statutes have emphasized the growing impact of environmental factors on the health and well-being of all citizens, but of urban dwellers in particular. (NEPA; Environmental Education Act; Air Quality Act of 1967; Env. Qual. Imp. Act of 1970: App. B.) Air quality standards announced on April 30, 1971, by EPA Administrator William D. Ruckelshaus make all but inevitable, drastic changes in commuter patterns in many urban areas. (N.Y. *Times*, May 1, 1971.) The effects of automobile

exhausts on inner city air in Memphis have been documented, though the results are not generally known. (App. A, App. C.)

Local proponents of I-40 act as if unaware of the content and intent of these various statutes and edicts. Their altruistic pose—"Memphis *needs* the east-west expressway"—breaks down completely in the light of general knowledge about the connection between automobile emissions and particulates, and the incidence of disease, especially emphysema and bronchial asthma. (See App. A.) In addition, local highwaymen are so arrogant as to publicly threaten, if court action withholds federal funds, to build the Overton Park stretch of highway at *state* expense! (But see App. B: San Antonio v. Tex. H'way, August 5, 1971.) Memphis needs the I-40 in any form or location in the way an emphysema patient needs a dose of carbon monoxide.

This same singlemindedness, to ram the highway through the park at any cost, was behind the scenes of the 1969 hearing. That hearing was never intended to change *anything*. Ginn states: "A source who refused to be quoted or named indicated that the main reason the state decided to proceed with this hearing was to give the citizens' group one last chance to blow off steam." (Ginn, p. 75, n. 48.) Even the legal notice of public hearing, published twice, omitted all reference to the procedure for "submission of written statements and other exhibits . . .," required by PPM 20-8 to be "described in the notice of public hearing . . ."

This is in relevant part the notice which appeared on April 15 and again on May 12, 1969, in the *Commercial Appeal*:

NOTICE OF PUBLIC HEARING

The DEPARTMENT OF HIGHWAYS of the State of Tennessee hereby advises the public of its intention to conduct a PUBLIC HEARING on the 19th day of May, 1969

Project plans developed by the Tennessee Department of Highways will be available for public viewing and copying at the offices of the Department

The objective of the hearing will be to provide the local officials and other citizens with complete factual information with respect to the tentative schedules for right-of-way acquisition and construction, and the location, the design features, and the economic, social, and environmental effects which the project

will have on the community and to acquaint the public with the relocation assistance offered by the State to those persons whose homes or businesses may be affected

Following the presentation the local officials and citizens will be afforded the opportunity to be heard relative to the project to provide the Department with factual information which is pertinent to the specific location and major design features, including the social, economic, environmental and other effects thereof, which will best serve the public interest.

The notice was signed by Henry K. Buckner, Jr., Attorney for the Tennessee Department of Highways, who was to conduct the hearing.

The day after the legal notice appeared the first time, the *Press-Scimitar* ran a news item stating that Tennessee Highway Commissioner Charles Speight "said the hearing is on the *design* of the expressway *only*, and has *nothing to do with the location*, which has already been fixed."

Nevertheless, pro-park people were determined to go on record once more as opposed to the destruction of the park, which this route "location" would entail. Both design and location would enter into their well-articulated pleas for preservation of Overton Park; and they would be supported in their cause by professionals in park management and conservation, and by two representatives from a bureau of the Department of the Interior. Confident that now the statutes required both the certification of the complete transcript and its consideration by the Secretary of Transportation before a final design approval, they hoped to have the logic of their arguments at last presented to the one federal official who could effectively implement the statutes intended so clearly to protect parkland from highways: Secretary of Transportation John Volpe.

To this new Department of Transportation on April 1, 1967, the Bureau of Public Roads had been transferred from the Department of Commerce. In addition, after the Nixon administration came to office, a new Office of Environment and Urban Systems had been set up within the Department of Transportation under former Seattle Mayor James D. Braman. (*Business Week*, July 19, 1969, p. 37.)

The day before the hearing, the *Commercial Appeal* ran a small item repeating the general phrasing of the official notice. According to the media, the sole purpose of the hearing was to provide informa-

tion. (*CA*, May 18, 1969.) The other lane of the two-way street of democratic communication, that portion of the legal notice which said "Citizens will be afforded the opportunity to be heard," was ignored. Nor was another basic requirement mentioned: that a transcript of the hearing be sent to the Highway Department (PPM 20-8, Par. 8.c(1)), who in turn "shall submit a copy" to the Secretary of Transportation. (23 U.S. Code, Sect. 128.) It is pertinent to note that this notice was not, as in other similar cases, designated as a "*Design Public Hearing*." (Stoner.)

Some aspects of the 1969 hearing are sinister in their implications, long-range in their effects.

The very fact that despite growing national awareness of ecological and environmental problems, the values inherent in park preservation are a matter of unconcern to Memphis political and business leaders, speaks loudly of the power of the media. From the beginning the media sought to silence all opposition to the park route. Many Memphians lose sight of certain obvious business connections: media people have, as a matter of course, been on the board of directors of the Downtown Association, creature of the Chamber of Commerce, whom they assisted in ramming through the original east-west plan back in the sixties. (See Chap. III. See also Downtown Association brochures: "Downtown Memphis," 1962; "Progress in the Sixties," 1967.)

More recently, in syndicated columns and feature articles, and in an occasional editorial, even as the media gave lip-service to the ecology movement, they generally ignored any item which might too clearly bear upon highway-generated pollution or urban park preservation. Nor did they generally make any connection editorially between ecological principles and the local need for *urban* parkland preservation. And many Memphians, long dependent on the daily paper for the staples of their limited news diet, remained unaware of the sociological and environmental importance of Overton Park in ways transcending its purely recreational and aesthetic values.

Media exploitation of public opinion had gone on for years prior to the 1969 hearing. Its effect on the city council was evident in the 1968 recantation. (See Chap. V.) But news coverage of the 1969 hearing is in some ways more alarming.

Absent entirely in 1969 is the sort of reportage that in 1957 and again in 1961 showed the sincere emotion and far-seeing aims of the protestors. If future historians have only newspaper accounts to

on for data, prospects for the historical treatment of the 1969 g are chilling. The newspaper stories barely skim the surface. real story comes from private files of those working behind the

If newspapers alone are consulted, the story of the 1969 g is merely a routine matter. City leaders and state highway s intended it *should* be routine.

ews items were generally characterized by a "ho-hum, not " tone. Headed "Still Another Hearing on Park X-Way", an April item begins:

The Tennessee Highway Department, which has already eld several public hearings on the controversial Overton Park ppressway, *must* hold another one, it was learned today. It opens e door for opponents to make it a stormy session—as they have past hearings. (*PS*, April 7, 1969.)

o insidious is this brainwashing that even the pro-park rfer finds himself growing weary of the repetition.

anted that the newspapers made the upcoming hearing *appear* routine—which to them it was. Granted that the 1969 hearing *tended* to be routine—a sop to the protestors to still their clamor. lity, the hearing would in several ways prove far from routine. ore or less routine, however, was the "Legal Notice of Hear- f April 15 and May 12. (See above.) But its statement of pur- was to cause misunderstanding and disappointment. The Ten- Highway Department, claiming that the 1961 hearing had on *corridor*—that is, general location—saw the 1969 hearing as ned only with *design*. (See PPM 20-8, esp. par. 1 and 4.) But who felt that no protests against the route through the park ver been listened to, saw in the single word "location" a glimmer e—especially because of the Parkland Statutes.

nlike previous occasions (1957, 1961) on which park preser- ists had tried to inform the public of the real issues and the alues at stake, the 1969 hearing seemed from the beginning a ously handled affair, giving the advantage, if any, to pro- peakers. Programmed according to the format of its own legal the hearing allowed state *officials* to speak first, then other s, then the public. Mr. Buckner handled proceedings with pa- fairness, and courtesy. (Hines.)

s the hearing progressed, hopes for the park grew. After the

officials, first recognized speaker was an officer of Citizens to Preserve Overton Park. Other pro-park speakers, including Citizens' chairman, biology professor Dr. Arlo I. Smith, followed in a block for almost two hours. At length a Chamber of Commerce member complained that "the other side" was being slighted. (Hines.) During the last hour of the 4½-hour hearing, pro-park speakers again dominated the floor. In this group were some of the park's most important defenders, including two members of a bureau of the Department of the Interior. (Hines, *et al.*)

The following material will give some idea of the newspaper coverage of pro-park presentations, as well as an overview of the content of those presentations.

Not mentioned by either paper was one of the two representatives of the Department of the Interior, Mr. Harry W. Rice, Assistant Director of the Washington Bureau of Outdoor Recreation.

The evening paper devoted about 13 column-inches to the hearing. The entire four lines given to the conservationists concerned Ernest M. "Dickersman" (Dickerman) of Knoxville, representing the Wilderness Society, who recommended a tunnel beneath the park. (*PS*, May 19, 1969.)

With more lead time, the *Commercial* gave better coverage. Of a total of some 17 column-inches, roughly half was devoted to the park preservers. Dr. Smith merited most space, a full 20 lines:

Engineers, Dr. Smith said, have been able to build highways through stone mountains, for miles over the ocean and under rivers. [See surely little old Lick Creek could be conquered. The paper failed to complete the thought!]

Dr. Smith also charged that the Department of Highways had failed to solicit advice from ecologists, demographers and sociologists on the social and environmental effects of the project. [As *required by law*: Title 23, Section 128; PPM 20-8.]

Seventeen lines went to Forrest V. Durand, assistant regional director of the Bureau of Outdoor Recreation of the Department of the Interior, who also recommended a tunnel. But one reason Durand merited such ample coverage was that he brought up the question of mandatory consultation with the Department of Interior when highways are routed through parkland. (See above: 23 U.S. Code, Sect. 138 (Supp. V.)) Tennessee Highway Commissioner Charles Speight

responded that the Secretary of Transportation had already consulted the Secretary of Interior. (CA, May 20, 1969.)

Ben H. Thompson, executive secretary of the National Conference of State Parks, a branch of the National Recreation and Park Association, was covered in 7 lines.

And that was it! No other pro-park speakers were quoted or even mentioned by name, though among those speaking was Mrs. Watkins Overton, widow of a former mayor for whose ancestor the park was named.

Testimony recorded in the papers suggested that the design as presented was not of a nature to prevent or minimize damage to the park; that if the route must go through the park, a tunnel or a depressed roadway would be the very minimum requirement if anything resembling the present wooded park was to survive.

The full import of Durand's testimony and the gravity of the situation is revealed by a follow-up letter from Durand's immediate superior, Roy K. Wood, Regional Director in Atlanta:

As Mr. Durand indicated during the hearing, the clearing of a sufficient strip through Overton Park to accommodate the freeway plus the unavoidable damage to adjacent areas during the construction process will leave very little in the way of a wooded park as Overton Park is at the present. This is the reason Mr. Durand urged that every consideration be given to a tunneling design.

I noted a statement in one of the editorials . . . which read as follows: "It is entirely possible that in another 12 years Memphians will have forgotten that there ever was a controversy about the I-40 route."

I question the accuracy of this prediction and am sure that others will also after they witness the clearing which will take place incident to any type of surface I-40 design through this park. (Letter of June 6, 1969, to Mrs. Anona Stoner, secretary of Citizens to Preserve Overton Park.)

But despite the customary halfhearted or misleading news coverage, the park defenders must have felt secure in the knowledge that the transcript of the entire proceedings—or so the law appeared to read—must find its way to Volpe's office before the design could be approved. After all, the federal statute which established the Depart-

ment of Transportation spelled out clearly the *duties* of the newly-created office of Secretary of Transportation: "The Secretary *shall* cooperate and consult . . . in developing . . . plans and programs . . . to maintain or enhance the natural beauty of the lands traversed." (See above: 23 U.S. Code, Sect. 138.) There was hope now that at least the tunnelling design would be approved, to "minimize harm" to the park. Or that with the *facts* clearly before him for the first time, Volpe would put a stop to the whole stupid plan. (Cf. below: Celebrezze's dissenting opinion of Sept. 29, 1970, in Sixth Circuit Court: 432 F. 2d 1307 (1970).)

A letter from the Department of Transportation dated May 27 encouraged hope for a design improvement. From Oscar S. Gray, Acting Director of the Office of Environmental Impact, came this reassurance:

We have requested a copy of the transcript of the May 19 hearing on the proposed expressway through Overton Park.

This will be reviewed with care before any approval is given to the design which is proposed. As you may know, the route itself was approved last year, and I do not believe that the route location is being reconsidered. Certain *conditions* as to the design of the road were indicated last year, however, *in connection with the route location approval, but have not been included* in the proposal which was presented at the May 19 hearing. Questions concerning the omission of these design features will probably be prominently involved in the review of the hearing transcript and the consideration of whether the proposed design can be approved.

We sincerely hope, as a result of this review, it will be possible to minimize harm to the park and preserve at least a substantial measure of the existing park value. [Emphasis added.]

(Letter to Hines.)

Dated June 4, however, is Mr. Buckner's letter certifying the transcript of the May 19 hearing. (Hines, Stoner.)

And June 18 is the date on the Tennessee Highway Department's "Design Study Report on Project No. I-40-1(90)3" filed in Nashville: (Ginn, p. 76.)

The next official public announcement would be on July 2, the legal notice advising the public that the Tennessee Highway Depart-

ment had requested *design approval* from the U. S. Bureau of Public Roads (now part of D.o.T.) for "the section of I-40 between McLean Boulevard and Maris Street, including a section through Overton Park, which is designed so as to depress the roadway through Overton Park except in the vicinity of Lick Creek, where it will be at grade . . ." (CA, July 2, 1969.)

But several days before that *official* notice was posted, an *unofficial* notice had caused consternation among pro-park and pro-highway people alike:

Oh, no! Not again!

That was the reaction of some state officials this week on learning the possibility of another public hearing on the expressway through Overton Park.

If another hearing is required, the blame can be laid to a faulty tape recorder . . .

State Highway Commissioner Charles W. Speight said the tape recorder stopped working during the last part of the hearing but that nobody realized it. He said a letter of explanation has been sent to the U.S. Bureau of Public Roads, stating that nothing controversial occurred during the portion that was not recorded.

The commissioner (along with a lot of other people who are sick of the subject) is hoping the BPR will accept that explanation. However, if the bureau insists on a full recording, Speight said, there will just have to be another public hearing . . . public hearing . . . public hearing . . . pub— (PS, June 28, 1969.)

In response to urgent inquiries, officers of Citizens to Preserve Overton Park received letters dated July 15 and 16 from the Tennessee Highway Department and the Federal Highway Administration, respectively, ostensibly giving the park defenders an opportunity to make good through written testimony those portions omitted from the recording. (Stoner, Hines.)

Another letter, dated July 31, confirmed fears that some of the most important witnesses for preservation of the park and alteration of the design presented by the state, had been omitted, since the machine failed to function properly when the second record was placed on the recorder about one hour before the end of the hearing. (Letter from Tenn. H'way Dept. to Hines.) And when almost three

months later, after repeated requests, the transcript of the hearing was sent to the Citizens group, it proved to be complete only up to the point where the last tape had been put on the machine. (Eye-witnesses: Hines; Mrs. William Deupree, Sr., who was speaking when the new tape was placed on the machine.)

Copies of the June 4 certification of the transcript contain a noteworthy alteration of the original typed words, "full, true, and complete transcript . . ." The letter shows a line drawn in ink through the words "full" and "complete", with the word "partial" penned above. An available photocopy of this letter barely shows the line through "complete." (Hines.)

Speakers whose oral testimony was omitted from the recording included Mrs. Overton; Mr. Rice and Mr. Durand, the Department of Interior representatives; and Mr. Thompson. But Mr. Thompson's pre-typed presentation had been given to the official in charge at the hearing.

Whether later supplementary testimony was ever sent to Secretary Volpe is perhaps irrelevant. The available evidence is admittedly inconclusive: that is, search through voluminous materials brought to Memphis as the administrative record for review in the upcoming (Sept. 27, 1971) trial in District Court did not reveal—as of July 31, 1971—either (1) additional material in the transcript of the 1969 hearing beyond the point in Mrs. Deupree's presentation where the recorder presumably failed, or (2) a certification letter bearing a date later than the June 4 letter cited above. (Hines.) Such inconclusive evidence does not, of course, preclude the existence of these documents.

There is ample evidence that the Department of Transportation had been advised of the inadequacy of the design presented May 19 by the Tennessee Highway Department. A letter of two pages single-spaced, concerned entirely with the design, had been sent to Assistant Secretary Braman on May 22 by Sal J. Prezioso, president of the National Recreation and Park Association, enclosing a copy of Mr. Thompson's statement at the May 19 hearing. The letter says, in part:

. . . We agree [with those who urged a tunnel] that that would be the best possible way to design the freeway, if it must cross Overton Park.

We are still greatly concerned about the inadequacy of the

highway design which was presented by the State at the Monday hearing.

.
 . . . In brief, the plan presented . . . will obliterate an enormous swath of superb oak-hickory forest through much of the Park.

I write to you to urge the Department of Transportation to require more serious exploration of the alternative possibilities of (a) depressing the freeway sufficiently throughout its entire crossing of the Park and (b) that the right-of-way be narrowed to the minimum required for highway safety.

Later correspondence from Mr. Braman to members of C-POPS showed that the mass of evidence *against* the design proposed by THD—apparently already approved by early summer (see above)—had gained consideration by *at least* the Environment and Urban Systems Office of D.o.T. (Oct. 3, 1969, letter to Hines.)

Nevertheless, a D.o.T. news release of November 5 announced Volpe's *approval of the design as originally presented.*

Not until the matter reached the courts did anyone in authority seem to be listening to anything being said in defense of Overton Park, in defense of the people's right to be heard, in defense of *due process!* (A Constitutional guarantee of the Fifth and Fourteenth Amendments.)

The long, painful, costly route through the courts is not yet over. But the minority opinion of Judge Anthony J. Celebrezze of the Appeals Court was a good omen for the park protectors. Along with its incisive interpretation of the Parklands Statutes, it voices again the *rights* of the people:

Public parklands are the only remaining weekend sanctuaries for vast numbers of city dwellers from the polluted urban sprawl. A threat to a neighborhood parkland is a threat to the health, happiness, and peace of mind of all the neighborhood people. Congress recognized this fact. The Highway Act therefore requires that the public, and their experts, be consulted, and that their testimony be weighed in the manner of courtroom evidence by the federal officials responsible for funding highway

projects. The Secretary [of Transportation] has not fulfilled his duty under Title 23 simply by seeing that the requisite hearings are conducted and the necessary advice solicited. He must weigh all the evidence carefully and deliberately, and his decision must be reviewed with great scrutiny. It cannot be if it is not accompanied by findings of facts and conclusions. At the very least, *procedural due process means that the people of this country be listened to, and heard, on matters affecting their daily lives as directly as the environment in which they live*

(C-POPs v. Volpe, Sept. 29, 1970.)

As eloquent as the opinion itself are Celebrezze's footnotes:

The provisions of Title 23 provide the only avenue for direct citizen participation in decisions concerning the planning and construction of massive federal highway projects, decisions that may well have greater direct impact on the lives of citizens and the physical environment in which they live than any other governmental action. [Citations omitted.]

"The Supreme Court has made it clear in a series of cases that the right of effective participation in the political process 'is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.' These rights, according to the Court, are 'individual and personal,' they touch a 'sensitive and important area of human rights,' and they involve the 'basic civil and political rights of citizens.' [Citations omitted.]" [*Ibid.*]

Though a majority of the three Appeals Court Justices held out against remanding the case to the lower court, Judge Celebrezze's dissent prefigured the later action of the highest court in the land. In a landmark decision on March 2, 1971, the U. S. Supreme Court unanimously reversed both lower courts and remanded the case. The separate opinion of Justice Hugo L. Black, joined by Justice William Brennan, stresses the importance of hearings, and clearly reprimands the Secretary of Transportation for dereliction of duty:

I agree with the Court that the judgment of the Court of Appeals is wrong and that its action should be reversed. I do not agree that the whole matter should be remanded to the District Court. I think the case should be sent back to the Secre-

tary of Transportation. It is apparent from the Court's opinion today that the Secretary of Transportation completely failed to comply with the duty imposed upon him by Congress not to permit a federally-financed public highway to run through a public park "unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park . . ." 23 U.S.C. Section 138; 49 U.S.C. Section 1653 (f). That Congressional command should not be taken lightly by the Secretary or by this Court. It represents a solemn determination of the highest law-making body of this Nation that the beauty and health-giving facilities of our parks are not to be given away for public roads without hearings, fact-findings and policy determinations under the supervision of a Cabinet officer—the Secretary of Transportation. The Act of Congress in connection with other Federal Highway Aid legislation [citations omitted], it seems to me, calls for hearings, hearings that a court can review, hearings that demonstrate more than mere arbitrary defiance by the Secretary. Whether the findings growing out of such hearings are labeled "formal" or "informal" appears to me to be no more than an exercise in semantics. Whatever the hearing requirements might be, the Department of Transportation failed to meet them in this case. I regret that I am compelled to conclude for myself that, except for some too late formulations, apparently coming from the Solicitor General's office, this record contains not one word to indicate that the Secretary raised even a finger to comply with the command of Congress. That Act was obviously passed to *protect our public parks from forays by road builders* except in the most extraordinary and imperative circumstances. This record does not demonstrate the existence of such circumstances. I dissent from the Court's failure to send the case back to the Secretary, whose duty has not yet been performed.

The Court in its majority opinion remanded the case to the District Court in Memphis "for a plenary [full] review of the Secretary's decision." (*Opinion*: See App. B.)

That hearing in the West Tennessee District Court at Memphis was set for September 27, 1971. In a pre-trial conference July 30, Judge Bailey Brown indicated that *this* time he will permit a full investigation of facts bearing upon Secretary Volpe's decision.

But if in spite of the physiological and sociological hazards now known to be inherent in such planning, in spite of Congressional mandate in the Parklands Statutes and the National Environmental Policy Act of 1969, a federally-funded highway is permitted to penetrate this irreplaceable public urban park, future generations will sit in harsh judgment upon the democratic system.

POSTSCRIPT: OCTOBER 1971

Under cross-questioning by counsel for the plaintiffs, testimony in court October 26, 1971, by Dr. Donald Adrian revealed that carbon monoxide concentrations generated by the proposed I-40 segment at Overton Park would not exceed national air quality standards and might even be expected to decrease from the concentration presently resulting from stop-and-go traffic in the area.

The testimony ignores the fact that increased speed means *more* vehicles generating CO, and probably more *total* CO, even though less per vehicle.

Testimony concerning two other pollutants was ignored by next morning's newspaper account. Dr. Adrian's calculations indicate that "the concentration of *hydrocarbons* at the edge of the right-of-way *would exceed federal standards.*"

Cross-questioning concerning nitrogen oxides revealed that at the present time, 1971, background concentration is already *above* national air quality standards, and will be three times the *present* level if the proposed I-40 goes through.

Nevertheless, next day's paper read "Expert Says Park Route Pollution Won't Top Federal Safety Limits." (*CA*, Oct. 27, 1971.) The accompanying story did not name specific pollutants discussed in court testimony.

APPENDIX A

SELECTED REFERENCES:

HEALTH EFFECTS OF AIR POLLUTION

(based on materials in *Air Pollution Workbook*, pub. by
Scientists' Institute for Public Information,
30 East 68th Street, New York, N.Y. 10021.

Workbook available @ \$1 per copy; .75 for 10-100.)

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- (The following three studies "suggest a higher incidence of lung cancer in urban than in rural areas among smokers." See also Eastcott, below.)
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- Poisoning of Dogs." *American Journal of Medical Science*, Vol. 208 (1944), 502-511.
- Martin, A. E. "Mortality and Morbidity Statistics and Air Pollution." Symposium No. 6, from "Medical and Epidemiological Aspects of Air Pollution." *Proceedings of the Royal Society of Medicine*, Vol. 57 (October, 1964), 966. (Correlation of bronchitis mortality with amount of fuel burned.)
- McFarland, R. A., *et al.* "Effects of Carbon Monoxide and Altitude on Visual Threshold." *Journal of Aviation Medicine*, Vol. 15 (1944), 381-394.
- Megonnell, William H. "The Automobile and the Atmosphere." *Proceedings of the Second Annual Air Pollution Conference*, "The Automobile," College of Engineering Extension Division of the University of Missouri, Columbia, November 18, 1969.
- "Mortality," Part A.-From *Vital Statistics of the United States, 1965*, (Vol. 2), U. S. Department of Health, Education, and Welfare, Public Health Service, National Vital Statistics Division, Washington, D.C. (Emphysema "doubled in incidence and mortality every five years for the past two decades" in the United States.)
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SPECIAL REFERENCE

For a true appraisal of the emergency state of the nation's concern with air pollution, see *Senate Hearings on the Clean Air Amendments of 1970*: (full citation) Hearings on S. [Senate Bill No.] 3229, S. 3466, and S. 3546 Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works, 91st Cong., 2d Sess. 465 (1970). An extensive discussion of relevant passages from the Hearings appears in *Boston College Industrial and Commercial Law Review*, Vol. XII (March, 1971), 571-636.

APPENDIX B: LEGAL MATERIALS

(Arranged Chronologically Within Subtopics)

LAWS AND MEMORANDA:

"Parklands Statutes." 49 U.S.C.A. § 1653 (f) and 23 U.S.C.A. §138.
Policy and Procedural Memorandum 20-8, Dept. of Trans., Jan. 14, 1969.
National Environmental Policy Act of 1969. 42 U.S.C. § 4321 (Supp. V.,
1970).
Interim Guidelines (for NEPA). 35 Fed. Reg. 7390 (1970) or 1 ELR
46001.

CASES AND ARTICLES CITING CASES:

- I. Citizens to Preserve Overton Park, Inc., v. Volpe (Title varies):
U.S. Ct. of Appeals, Sept. 29, 1970. 432 F. 2d 1307 (1970).
U.S. Sup. Ct., March 2, 1971. 401 U.S. 402 (or) 91 S. Ct. 814 (or)
2 ERC 1250 (1971).
- II. Fairness Doctrine and First Amendment Rights:
Griswold v. Connecticut. 381 U.S. 479 (1965).
Red Lion Broadcasting Co. v. FCC and USA. 381 F. 2d 908 (1967).
New York Times Co. v. U.S., June 30, 1971. Sup. Ct. of U. S., No.
1873, October Term, 1970.
Time, Aug. 30, 1971, p. 19. (Fairness Doctrine and the environment.)
- III. The Doctrine of Public Trust: A Complex and Developing Principle:
For laymen: Joseph Sax, "The Public Trust: A New Charter of Environmental Rights." Chap. 7 in *Defending the Environment*, N.Y.: Knopf, 1971.
For professionals: Joseph Sax, "The Public Trust Doctrine in Natural Resource Law. . . ." *Michigan Law Review*, Vol. 68. (Jan. 1970), 471-566.
- IV. Retroactivity of NEPA:
Zabel v. Tabb. 430 F. 2d 199 (1970).
EDF v. Corps of Engineers, of U. S. Army (Cross-Fla. Barge Canal).
Injunction: D.C. District, Jan. 27, 1971. 1 ELR 20079.
EDF v. Corps of Eng. (Cosatot R., Ark.) Feb. 19, 1971. 2 ERC 1260.
San Antonio Cons. Soc. v. Tex. H'way Dept. Aug. 5, 1971. 2 ERC
1872.

APPENDIX C: UNPUBLISHED "LETTER"

MRS. IRMA O. STERNBERG
5469 FIESTA DRIVE
MEMPHIS, TENNESSEE 38117
JANUARY 26, 1971

To The Editor: *The Commercial Appeal*

Sir:

In his ecology classic *Malabar Farm*, Louis Bromfield tells of the time when . . . barnyard manure was commonly used as a "binder" on muddy country roads. Though many of the worn-out farms were badly in need of fertilizer the manure would have provided, "a man who wasted time spreading manure on his fields was regarded as crazy or at least eccentric." He would throw his barnyard manures onto roads or into a stream, then drive off to purchase chemical fertilizers!

Memphians needn't scoff at that farmer's ignorance and improvidence. We who throw out money for more highways and eventually tax money for their maintenance are in a worse predicament. We are blindly permitting our local, state, and federal governments to push through a project which, according to recent studies *already available* to our own Health Department and Environmental Control officials, will almost certainly upon completion increase the incidence of disease among those living near the source of automobile-generated pollutants. (I use the plural advisedly: engine emissions are not the only pollutants. There are also asbestos from brake linings and carcinogenic particulate rubber from tires.) The man-hour cost to industry in absenteeism and the added burden on the already overburdened medical facilities of our area should surely be the concern of the taxpayer who will foot part of the bill, even if he remains callous to the health problems of his fellow citizens.

Let us hope that the few councilmen who were present at the recent WORKSHOP FOR AIR QUALITY CONTROL FOR THE MEMPHIS-SHELBY COUNTY FEDERAL AIR QUALITY CONTROL REGION carried back to their fellows on the City Council this message: The problem, sirs, is *not* how to explain to citizens whose homes have been razed for the ill-advised I-40 cloaca into the central city, why they were needlessly evicted from their cherished homes and gardens; but rather to explain to those innocents condemned to live alongside this poisonous monstrosity, why the responsible officials need not indemnify *them* for predictable damages to health and property — not to mention peace of mind.

Environmental law is a specialty still in its infancy. Yet already the Overton Park Expressway Case has attracted notice of attorneys from coast to coast. If our I-40 as presently projected is completed, it is likely that the legal consequences of Memphis' stupidity will be the focus of interest for generations of lawyers yet unborn.

As taxpayers Memphians simply cannot afford to foot the bills for "waste management"—sewage disposal, "services," as well as air pollution control—while permitting additional tons of *airborne garbage* to pour into our central city from hundreds of thousands of automobiles being funnelled through from South Carolina to California. Fighting fire with gasoline makes as much sense.

IOS