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Get from Mrs. Stover
the details of the other side.

X-Way Debate In High Court

By LEE STILLWELL
The Press-Scimitar Bureau

WASHINGTON. — All facets of the 15-year battle over building Interstate 40 through Overton Park were discussed during a one-hour hearing before the full U.S. Supreme Court today, and court officials expect a decision this week on whether a stay order against construction should be continued. PS 12/17/70

Alan Hanover of Memphis, special counsel for Tennessee, told the justices during questioning that Tennessee feels the "state is the master of its own destiny" in finally determining whether the park route should be built, no matter what the justices decide.

Under questioning by Associate Justice Hugo L. Black, Hanover said the federal highway act in question in the case applies only to the secretary of transportation and not the state of Tennessee. He said the act does not affect the state's right to build a route through a park without federal aid.

Hanover described the building of freeways with federal aid as a unilateral contract with a state determining how a road should be built and the federal government determining after completion whether it will pay 90 per cent of the cost.

Associate Justice Thurgood Marshall asked Hanover if it is true that all the route approaching the park has already been cleared. Hanover said it was so.

"Then all we can do now is un-ring the bell," said Marshall.

The justice was referring to what significance a stay order against Overton construction would have.

Tennessee also told the court that objectors to the park route should be made to put up proper security against any further delays.

"What kind of security?" asked Associate Justice John M. Harlan.

"A bond estimated at between \$250,000 and \$500,000," Hanover replied.

Hanover told the court that the delay in building the Overton segment during the past year had cost the state \$613,000. He also said actual damage to the park grounds would be infinitesimal. Han-

would be over produced a big map of the Overton route and other routes discussed in building the mid-city section of I-40. He went into great detail to outline all the routes to the justices, who asked numerous questions about alternate routings.

Both Hanover and William B. Reynolds, from the Department of Justice, argued that the costs of the alternate routes were too high. Reynolds, who was presenting the Department of Transportation side of the case, was asked if he would allow the court to rule "on the merits of the case from the briefs now before the court."

Reynolds said the attorney general's office would want

to file additional briefs if a stay was granted but added that the papers could be completed quickly.

"You mean you want to get your licks in before the court grants certiorari?" asked Associate Justice Byron White. Reynolds agreed with the statement.

Jack Vardaman, representing Citizens to Preserve Overton Park and other conservation organizations opposing the park route, called the transportation secretary's approval of the Overton route "a blatant effort to circumvent the statute (parklands division of the Federal Highway Act)."

He argued that Secretary John Volpe should be forced to keep and produce detailed records of decisions made in the case.

Chief Justice Warren E. Burger asked Vardaman if "Congress could have easily provided this requirement (for detailed records)" in the statute, adding that the legislators hadn't done so.

Vardaman replied that Congress' not doing so did not mean the lawmakers considered it unnecessary.

Both sides explained the sequence of events which led to the final decision to build the Overton route.

Vardaman also argued that the petitioners should not have to pay damages for the state's actions in awarding bids and buying land.

Hanover told the court that Overton Park is already divided by the bus route which runs between the zoo and other facilities and that a pedestrian walkway over the freeway would be provided.

Vardaman told the court that alternative routes could be explored within 60 to 90 days.

Tennessee maintained that a large number of families would be displaced if an alternative route were chosen.

The justices, especially Chief Justice Burger, seemed extremely interested in the cost of putting the highway farther below ground level than planned.

The state and federal lawyers argued that the cost would be exorbitant.

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