

# Hoffa Loses High Appeal, Faces Longer Jail Term; Overton Route Defended

By MORRIS CUNNINGHAM  
From The Commercial Appeal Washington Bureau

WASHINGTON, Jan. 11. — Insisting federal authorities have made the required legal determinations, Solicitor General Erwin N. Griswold Monday urged the Supreme Court to lift a stay and allow construction of Interstate 40 through Overton Park in Memphis.

Griswold spoke for 30 minutes as the high court heard an hour of oral arguments in the Overton Park case. The court took the case under advisement.

He said both Transportation Secretary John Volpe and his predecessor, Alan Boyd, properly had determined — as required by law — that there is “no feasible and prudent alternative” to the park route.

He insisted construction plans, which call for a depressed roadway through the park, also meet another legal requirement — that the project include “all possible planning to minimize harm” to the park.

Griswold contended the court has a “limited role,” picturing the issue as one for the executive branch, not the high court. He said it would not be good government to have matters such as the Overton Park expressway route settled by the courts.

He tried to show with a map that the park always has been divided. He said first a railroad, then a trolley line, then a bus route cut between the major portion of the park and the zoo. The interstate would follow the bus route.

Griswold conceded the administrative record of the determinations by the transportation secretaries is not all that it should be, but he said the existing record shows the law was met.

But responding to a question from Justice Hugo L. Black, the solicitor general said “there is ample information in the record to show there is no prudent and feasible alternative and that there has been all possible planning to minimize harm.”

John W. Vardaman Jr., young Washington attorney representing Citizens to Preserve Overton Park and allied conservationist groups, argued Transportation Department officials did not make an adequate record of their determinations.

Vardaman dismissed as “two pieces of paper” affidavits by Boyd and Volpe which Griswold introduced. He called presentation of the affidavits to the Supreme Court “very unusual.” The place for consideration of such documents, he insisted, is in the trial court.

Vardaman urged that the case be remanded to federal district court in Memphis and from there to Volpe for further proceedings. Justice John M. Harlan wanted to know what Vardaman would propose to show if the high court remanded the case

“I would be able to show that the Department of Transportation left the decision about the route to the Memphis City Council,” Vardaman replied. “They simply delegated the decision to the City Council.

“The statutes require an independent determination. That determination was never made.”

He said Lowell K. Bridwell, former federal highway administrator under Boyd, is prepared to testify the decision as to the I-40 route was delegated to the City Council.

Vardaman has sought to make an issue of the lower courts’ refusal to permit taking of a deposition from Bridwell.

Griswold soft-pedaled the idea of remanding the case to federal district court in Memphis for inclusion of the administrative record, a move he earlier had urged but virtually abandoned in a reply brief filed last week.

J. Alan Hanover, a Memphis attorney representing the State of Tennessee, commended Griswold on his knowledge of the park and the I-40 route.

After the oral arguments were completed and the lawyers were filing out, Burger and Black were overheard discussing the case. They apparently did not realize their microphones were “live” and that they were being heard over loudspeakers in the press gallery.

Burger was heard to say, “It seems to be one of those things Congress passes and years later the administrative machinery is set up.”

In his argument to the court, Griswold said the Department of Transportation was now “upgrading determinative procedures” in respect to highway routes through parks.

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