"All the News That's Fit to Print"

The

New York Times, March 3, 1971 (page 1)

VOL. CXX .... No. 41,311

© 1971 The New York Times Company.

# COURT BIDS STATES HELP THE POOR PAY COSTS OF DIVORCE

## Tribunal Rules That Inability to Meet Court Expenses Must Not Be Obstacle

## BLACK ONLY DISSENTER

## Another Ruling Bars Prison if Fine Can't Be Paid—Installments Suggested

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, March 2—The Supreme Court ruled 8 to 1 today that persons who wanted divorces but were too poor to pay filing fees and court costs must have those costs borne by the state.

On a related poverty question, the Court declared unanimously that poor persons could not be sent to jail solely because they could not pay fines. The Justices suggested that some other method of collecting the fines—such as installment payments—must be tried before an indigent person could be jailed for non-payment.

In another decision, the Court ordered a Federal District Court in Tennessee to review the decision of two Transportation Department officials who approved Federal funds for a road through a city park in Memphis.

**Black Dissents**

Justice Hugo L. Black, the lone dissenter in the divorce case, denounced the decision as one that would use taxpayers' funds to encourage divorce. He also charged in a heated ... from the bench that

AMERICANS IN LAOS: Members of a helicopter r... kicked up by large helicopter as it lifts an obse...

# Uruguayan Leftists F... U.S. Adviser Seized i...

By United Press International

MONTEVIDEO, Uruguay, Wednesday, M... Tupamaro guerrillas last night released Dr. Cla... United States agricultural specialist who w... last August.

Dr. Fly, 65 ... Fort Collins, C... a stretcher a... British Hospi...

# BUILDERS, UNIONS

New York Times, Wednesday March 3, 1971



# Court Orders Review of a Plan For Road to Cut Through Park

## Questions Approval of U.S. Funds by Boyd and Volpe for Project in Memphis

By E. W. KENWORTHY
Special to The New York Times

WASHINGTON, March 2—The Supreme Court ordered a Federal District Court in Tennessee today to review the decision by two Secretaries of Transportation to approve Federal funds for a road cutting through Overton Park in Memphis.

In an opinion written by Associate Justice Thurgood Marshall and concurred in by six other Justices, the Court ordered the lower court to determine whether the two Secretaries—Alan S. Boyd in the Johnson Administration and John A. Volpe in the Nixon Administration — had acted within the scope of their authority under the law, or whether their decision had been "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The high court's action, which reversed decisions by the Federal District Court in Memphis and the United States Court of Appeals for the Sixth Circuit, marked at least a temporary victory for conservation groups that have been fighting the construction of the road.

Overton Park is a 342-acre city park containing a zoo, a nine-hole golf course, an outdoor theatre, nature trails, a bridle path, an art academy, picnic spots and 170 acres of forest.

### Route Is Approved

The six-lane state highway No. 1-40 would cut through the park below ground level except for a creek crossing. Twenty-six acres of the park would be destroyed.

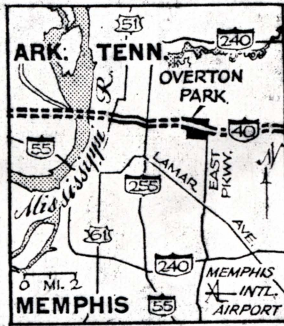
The route through the park was approved by the Bureau of Public Roads in 1956 and by the Federal Highway Administrator in 1966.

But the provision of Federal funds was prevented by a section of the 1966 Department of Transportation Act prohibiting the Secretary of Transportation from authorizing such funds for roads through public parks if a "feasible and prudent" alternate route existed.

If no such route was available, the Secretary could approve the construction if there had been "all possible planning to minimize harm" to the park. These provisions were repeated in the Federal Aid to Highways Act of 1968.

It was under these provisions that a Memphis citizens' committee, the Sierra Club and the National Audubon Society challenged in court the approval of the route—first in 1968 by Mr. Boyd and finally in 1969 by Mr. Volpe.

The environmental groups argued that Secretary Volpe's approval had been based on the judgment of the Memphis City Council and was invalid because he had not made a "formal finding" of why he believed there were no feasible and prudent alternative routes.




The New York Times March 3, 1971
**Planned route of highway through park in Memphis.**

The District Court and the Court of Appeals ruled that formal findings by the Secretary were not necessary. On the basis of affidavits submitted by both sides, they held that the Secretary had not exceeded his authority. Last Dec. 7 the Supreme Court stayed construction pending the issuance of a ruling, and on Jan. 11 heard arguments on the dispute.

Today the high court agreed that formal findings were not required, but added: "But we do not believe that in this case judicial review based solely on litigation affidavits was adequate."

The language of the transportation act, the Court said, was plain, namely that the use of Federal funds for highways through parks was to be approved in "only the most unusual situations."

The very existence of the statute, the Court said, indicates that, barring such unusual factors, "the few green havens that are public parks were not to be lost."

### A Law to Apply

Consequently, the Court said, there is "law to apply," and the decision is not simply to be left to "agency discretion." It directed the district court to inquire into "the full administrative record that was before the Secretary when he made his decision."

A separate opinion by Associate Justice Hugo L. Black, joined in by Associate Justice William J. Brennan Jr., agreed that the decision of the lower court was "wrong," but said the matter should be remanded not to the district court but to the Secretary who had "failed" to comply with the law by not holding hearings.

Justice Black said that the record "contains not one word to indicate the Secretary raised even a finger to comply with the command of Congress."

Associate Justice William O. Douglas, who has spoken out on environmental issues, did not participate in the consideration or decision of the case.

# Supreme Court Bids the States Help Poor Pay Costs of Divorce

# A RELIGIOUS ISSUE RAISED ON U.S. AID

## High Court Asked to Halt Sectarian College Funds

Special to The New York Times

WASHINGTON, March 2—The Supreme Court was asked today to stop the Federal Government from financing the construction of academic buildings and dormitories on the campuses of sectarian colleges and universities.

Leo Pfeffer, counsel for the American Jewish Congress, asserted in court arguments that the Department of Education was violating the Constitution and the 1963 aid-to-education act by financing construction on the campuses of colleges that exist largely to propagate religious denominations.

"The United States will have to police these institutions for 20 years," he charged, to see that they do not violate their agreements not to use the buildings for religious services or teaching.

### First Test of Act

His statements came in arguments of the first Supreme Court test of the Higher Education Facilities Act, under which $1.5-billion in Federal money has been paid for construction on college campuses. About 15 per cent of the money has gone to religious institutions, another 15 per cent has gone to nonsectarian private colleges and the rest has gone to state universities.

The law excludes financing for buildings that are to be used for religious instruction or worship, or for divinity school buildings. If these conditions are observed for 20 years, the buildings become the property of the institutions, which can then use them as they wish.

The A.J.C. and the American Civil Liberties Union sponsored a suit by 15 taxpayers in Connecticut who challenged grants to four Roman Catholic colleges there. In his argument today, Mr. Pfeffer stressed that grants to institutions that are merely "church-related" are not illegal. He said they become illegal when they go to "sectarian" institutions, which exist largely for the "propagation and teaching of the practice of religions."

The lower court held that so long as the buildings were used for purely secular purposes, the payments would be legal, even if the colleges admitted only members of one religion and required all students to take religious instruction.

### Government Argument

Daniel M. Friedman of the Solicitor General's office urged the Justices to uphold that ruling, on the ground that the grants do not violate the Supreme Court's prior rulings on church-state relations. He argued that the Federal money was needed "desperately" to expand college facilities.

Of the 1,600 buildings that have been completed with the aid of these payments, he said, three have been found to have been used for religious pur-

# Senators Told Johnso

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 2—A senior Pentagon official asserted today that the "highest" officials of the Johnson Administration initiated Army surveillance of legitimate civilian political activity in 1967 and 1968 and were aware of many details of that operation as it expanded.

Assistant Secretary of Defense Robert F. Froehlke told a Senate subcommittee that Cabinet officers, sub-Cabinet officials and White House personnel took part in planning and executing all phases of monitoring and quelling the civil disturbances of those times.

Although he mentioned no names, Mr. Froehlke's testimony clearly referred to Attorney General Ramsey Clark, Secretaries of Defense Robert S. McNamara and Clark Clifford, Secretary of the Army Stanley R. Resor, Deputy Attorney General Warren Christopher, Under Secretary of the Army David E. McGiffert and a special assistant to the President, Stephen Pollak.

Mr. Froehlke, asked by a newsman to define the extent of President Johnson's involvement, said: "I don't know. I didn't think it proper to carry my inquiries that far."

His testimony before the Subcommittee on Constitutional Rights, headed by Senator Sam J. Ervin Jr., Democrat of North Carolina, was the first full-scale public disclosure by the Pentagon of the scope and intensity of the Army's domestic intelligence operation that was most active between mid-1967 and mid-1970.

Earlier revelations by former military intelligence agents focused mainly on their own information-gathering activities. Other news reports ered the operation a senior military offic Pentagon. Today's went the next step the level of political

Mr. Froehlke said was a crisis-oriente with respect to civil from 1965 to 1968 particularly in 1967 "heavy emphasis wa civilian and military the highest levels ment on improvin paredness of the F ernment" to respon ances.

"White House pe ticipated in the g ning and direction disturbances planni "They were also in establishment of for and the tasking tary services to civil disturbance needed."

### Directed Fron

Mr. Froehlke, heading a Pentag tion of the intell tion, said: "The demonstrate that General was rec as the chief law official of the Fe ment. The Depa tice similarly part planning and di civil disturbance cluding civil d formation collect tary services."

"Nonetheless," 'the records rev if any, direction was provided services from th or the Departm written form."

He said that tailed planning the civil distur headed by the