

# Given Wide Legal Path

By MICHAEL LOLLAR

United States Dist. Judge Bailey Brown yesterday granted wide leeway to plaintiffs seeking to block construction of Interstate 40 through Overton Park in shaping the course of a full hearing set for Sept. 27.

During a pre-trial conference, Judge Brown denied pleas by United States Atty. Thomas F. Turley Jr. that the hearing be limited strictly to facts upon which Secretary of Transportation John Volpe based his 1969 approval of building Interstate 40 through the park.

"The court has gone your route once, and here we are a year and a half later," Judge Brown told Mr. Turley. Mr. Turley had argued in 1969 that the dispute should be left entirely to the discretion of Mr. Volpe.

"If ever there was a wrong

view of what was the law, that was it," Judge Brown said. "When in doubt, allow fuller investigation." The Supreme Court remanded the case to Judge Brown on March 2, ruling that he must hold a full investigative hearing before reaching a final decision.

He had granted a summary judgment against expressway opponents on the basis of legal documents in the case on Feb. 26, 1970, without access to the full administrative record.

The Sept. 27 review of the case will be preceded by another pre-trial conference at 9:30 a.m. Sept. 10.

The dispute also was expanded yesterday to include one new plaintiff and four new defendants. Memphis attorney Dale Woodall and his law partner, Jack Petree, were allowed to intervene in behalf of the City of Memphis, the Downtown Association, the Memphis Area Chamber of Commerce and Future Memphis, Inc., in order to promote approval of the park route. And Washington attorney John W. Vardaman Jr. was granted his request to intervene in behalf of the National Wildlife Federation as a conservationist group opposing the park route.

Mr. Vardaman already represents the National Audubon Society, the Sierra Club and a Memphis group, Citizens to Preserve Overton Park, Inc., among others.

Mr. Vardaman had at first opposed intervention of any new parties in the suit, claiming it would "just complicate matters." Mr. Turley also objected: "It would just simply clutter up our records."

Mr. Woodall said he was asked to present his intervention motion by City Atty. James Manire and Mayor Henry Loeb.

The Sept. 10 conference will help the court determine what evidence will be allowable on Sept. 27, Judge Brown said.

Judge Brown said he feels the full hearing should consider:

A determination of the statutory limits governing Secretary Volpe's decision to route the highway through the park.

Whether Mr. Volpe's decision was actually based on what was "feasible and prudent."

Whether the decision, based on what was feasible and prudent, could have been "arbitrary and capricious."

Whether the decision might have been different if Mr. Volpe had considered facts which were "easily available" but were not included in the record before him.

O.A.  
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