

OPE 19-10

# Judge Brown May Remand X-Way Case to Volpe

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Federal Chief Judge Bailey Brown today discussed the strong possibility that he might remand the Overton Park expressway case to John A. Volpe, U.S. secretary of transportation, for further consideration.

Such a remand move was urged by attorneys for objectors to the I-40 expressway through the park as final arguments began after 25 days of testimony in the trial.

The plaintiffs, Citizens to Preserve Overton Park and others, went first with final arguments.

John W. Vardaman, the Washington, D.C., attorney for the objectors, argued that the court had "no alternative" but to remand the case to Secretary Volpe.

He said, "There is nothing supportable in the record that Secretary Volpe ever even considered an alternative to the Overton Park route."

Vardaman cited testimony given by J. D. Braman, former assistant secretary of Transportation for environment and urban systems; testimony given by Oscar Gray, one of Braman's assistants in charge of application of parkland preserva-

tion statutes; the testimony of Edgar H. Swick, former chief of the Bureau of Public Roads; and that of F. C. Turner, present Federal Highway Administrator. All of them, Vardaman said, "stated that Secretary Volpe never considered alternative route locations."

Vardaman argued, "In fact, as Braman and the others indicated in their testimony, it is clear that they considered the matter of an alternate route foreclosed by the decision of the previous Secretary of Transportation Alan Boyd."

When court opened this morning, Dale Woodall, the

attorney for the intervening (on the side of the federal and state defendants) City of Memphis, Memphis Area Chamber of Commerce, Future Memphis and Downtown Association, pressed hard to get the recent resolution by City Council, concerning the purchase of 10 new parks with the money obtained from the sale of Overton Park, entered into the record.

Woodall said the fact that this was to be done showed "good faith on the part of the City of Memphis."

"That has no bearing," said Judge Brown, adding, "If the court decides the matter has to be remanded

to the Secretary, then it would be perhaps something you could get before the Secretary at that time. However, the court must apply the Supreme Court decision and the facts that are before it when reaching a decision in this case. That (the new parklands purchases) has no relevance."

Woodall said there had been some "innuendos that the city has taken \$1 million (of the \$2 million sale price for the 26 acres of Overton Park) and bought a golf course . . . and weren't able to get matching open space money from the government because of it.

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## X-Way Trial Nearing End

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"But with this new purchase of park lands we're in fact getting 10 acres for every one acre sold in Overton Park, and are not just swapping woods for treeless land."

"In common sense that argument makes sense," said Brown, "but as far as the Supreme Court decision goes, it makes not one iota of difference. They knew such a thing was planned by the City of Memphis (when the case was before the higher court) and attached no importance to it in their decision."

Brown added, "I know there has been some innuendo here that some of the woody people have been given a bad deal, that you're taking woods to buy a golf course, but the decision before this court is whether or not Secretary Volpe, in 1969, when he made his determination, decided that there was no feasible and prudent alternative and whether or not that is a supportable determination.

"If I determine that the case should be remanded because Secretary Volpe was not clairvoyant enough to realize how stringent the statutes (parklands preservation laws) would be applied by the Supreme Court, then you can get it before him then," said Judge Brown. He allowed Woodall to mark the resolution for identification purposes only and not to be admitted into evidence as anything considered by the court.

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