

# I-40 Foes Are Warned Alternative Is Unproved

By MICHAEL LOLLAR

United States Dist. Judge Bailey Brown said yesterday plaintiffs in the Overton Park expressway case have not even "come close" to proving that there is a feasible and prudent alternative to routing Interstate 40 through the park.

On the other hand, he again indicated he may remand the case to Secretary of Transportation John Volpe for a new decision.

Attorneys on both sides of the battle took inventory of its 24 days of testimony in their last oral efforts before Judge Brown.

**John W. Vardaman**, attorney for the Citizens to Preserve Overton Park and other plaintiffs, argued the case should be remanded to Mr. Volpe since Mr. Volpe did not apply stringent environmental standards required by law when he approved the route Nov. 5, 1969.

However, Thomas F. Turley Jr., attorney for the federal defendants, claimed Mr. Volpe did apply the existing laws "or their equivalent." "It is no answer to say that we can wash our hands of it by sending it back to the secretary."

J. Alan Hanover, attorney for the state Highway Department, also contended that Mr. Volpe's original decision was sound, arguing Mr. Volpe would simply reaffirm the park route upon reconsideration.

Charles F. Newman, another attorney for the plaintiffs, said later: "We are of the opinion that given a chance to fairly reconsider Mr. Volpe will change his mind."

**Dale Woodall**, attorney for the intervening city defendants, stressed the fact that environmental laws applicable to the park case had not been

clearly spelled out by the courts prior to Mr. Volpe's decision. "He made his decision on the basis of the facts before him, and was not clairvoyant enough to know how those facts would be interpreted in the future."

Mr. Hanover said he would "concede the case if they (the plaintiffs) had shown there was a feasible and prudent alternative route, but . . ."

Judge Brown then interrupted: "I'll tell you, I don't think they've come close to it. It (their proof) doesn't reach the status judicially that I thought it might come up to."

Judge Brown later apparently laid to rest any possibility of housing the six-lane interstate in a tunnel within the park. The plaintiffs conceded early yesterday a bored tunnel would not be feasible, but Mr. Vardaman continued to support a cut-and-cover tunnel.

**Judge Brown said, however:**

"As I look at the whole panorama of proof in front of me I can't tell that the park would be any better off with a tunnel. So, in that light, the secretary (Volpe) could have gone either way on that."

He told the attorneys they will have until Nov. 25 to submit legal briefs in support of their positions, and that he will then rule "as soon as possible."

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