

CA Nov 23 1971
Remand Refusal Asked In Park Suit

By MICHAEL LOLLAR

Defendants in the Overton Park expressway case filed post-trial legal briefs in federal court yesterday, asking that United States Dist. Judge Bailey Brown refuse to remand the case to Secretary of Transportation John Volpe.

J. Alan Hanover and James B. Jalenak, attorneys for the state Highway Department, argued in their brief there is "not one relevant factor . . . left (for Mr. Volpe) to study further" on a remand order.

They said that when the Supreme Court returned the park case to Judge Brown for a full hearing it directed him to examine the administrative record, testimony in the hearing and any other relevant proof to decide whether Mr. Volpe's decision was justifiable.

The plaintiffs had submitted their legal briefs on Nov. 15, claiming Mr. Volpe's original decision on Nov. 5, 1969, did not apply the stringent environmental laws in effect at the time.

But, Mr. Hanover and Mr. Jalenak said, "plaintiffs have not shown one relevant factor which is not contained in the administrative record, and have not sought to tell us what conceivably there is left to study further."

Dale Woodall, attorney intervening for the city, also

argued that Mr. Volpe's decision was sound, including his decision that there are no feasible and prudent alternatives to the park route.

United States Atty. Thomas F. Turley Jr., attorney for the federal defendants, said in his brief the plaintiffs have been granted "unbelievable indulgences," allowing them to stall completion of Interstate 40 for two years. He said it is now time for Judge Brown to decide the case himself.

Mr. Hanover and Mr. Jalenak argued that the plaintiffs agreed there is no feasible and prudent route for the highway other than a route utilizing the L&N Railroad right-of-way north of the park.

"All the plaintiffs say they seek or need to prove is that the L&N route might not be so

bad that it couldn't use a little more study, but, in fact, the proof shows the L&N route so burdened with problems that certainly, at the very least, (Mr. Volpe) could have reasonable belief that it was not feasible or that it involved unique problems."

They also argued that the Supreme Court intended Mr. Volpe's decision to be reviewed only in light of the applicable environmental laws, without judging his legal interpretations of the laws.

Mr. Turley said indulgences granted to the plaintiffs "permitted them to probe and interrogate into the records, files, acts, minds, thoughts and opinions of the defendants and their predecessors and subordinates . . . and then to offer in a six-weeks-long hearing every irrelevancy which their fertile imaginations could conjure up, from bears to moose to raccoons. . ."

Mr. Hanover said the plaintiffs appear to admit that they have not proved Mr. Volpe's decision was arbitrary, since "they have abandoned their request for a permanent injunction and now seek only a remand for more study."

The attorneys for both sides are scheduled to submit legal answers to the opposing briefs. Judge Brown has said he will rule as soon as possible afterward receiving the answers.

OPE 19-16

CA.

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