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Judge Brown Again Suggests Remanding Park, I-40 Case

By MICHAEL LOLLAR

United States Dist. Judge Bailey Brown yesterday indicated he is still of the opinion that he should remand the Overton Park expressway case for a new decision by current Transportation Secretary Claude Stout Brinegar.

After a brief hearing, he took the issue under advisement and said he will issue a "prompt" written ruling.

The judge said last month he felt he should remand the case since former Transportation Secretary John Volpe's determination of the environmental suit appeared to be "incomplete."

Mr. Volpe rejected the park route for Interstate 40, saying: "I cannot find . . . that there are no feasible and prudent alternatives to the use of parklands."

The wording of his ruling was the basis of yesterday's hearing. James B. Jalenak, special counsel for the state Transportation Department, argued that Mr. Volpe should have chosen a specific alternative. "He must point out a feasible and prudent alternative as his rationale for rejecting the use of parkland."

Attorneys for both sides agreed that Mr. Volpe "suggested" the "possible" use of two alternatives: Using a route within the Louisville & Nashville Rail-

road right-of-way, or relying on future use of the Interstate 240 circumferential expressway with improvements to arterial streets.

John W. Vardaman of Washington and Charles F. Newman of Memphis, attorneys for the Citizens to Preserve Overton Park, argued that Mr. Volpe's suggestion of the alternatives was adequate.

Mr. Vardaman said, "In the first place, the court is faced with the inescapable fact that the secretary refused to approve the route through the park.

"And, I don't think he (Volpe) would say, 'Here are some possible alternatives. I don't think they are feasible and prudent, but I'm suggesting them to you anyway,' Mr. Vardaman argued.

Judge Brown said, however, the National Environmental Protection Act provides that "if the secretary approves a park route, he must find that there is no feasible and prudent alternative. So, it seems to me that if he disapproves a park route he must find that there is a specific feasible and prudent alternative."

The problem, the judge said, is Mr. Volpe's failure to state a route preference in affirmative terms. "The reason we're getting so abstruse is that lawyers (for the plaintiffs) are trying to defend what Secretary Volpe did, when, all the time, it was clear what he was supposed to do."

United States Atty. Thomas F. Turley Jr. said Mr. Volpe was "under no obligation to choose a specific route. He filed a brief in Mr. Brinegar's behalf last month, claiming it would be "entirely inappropriate" for Judge Brown to remand the case.

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