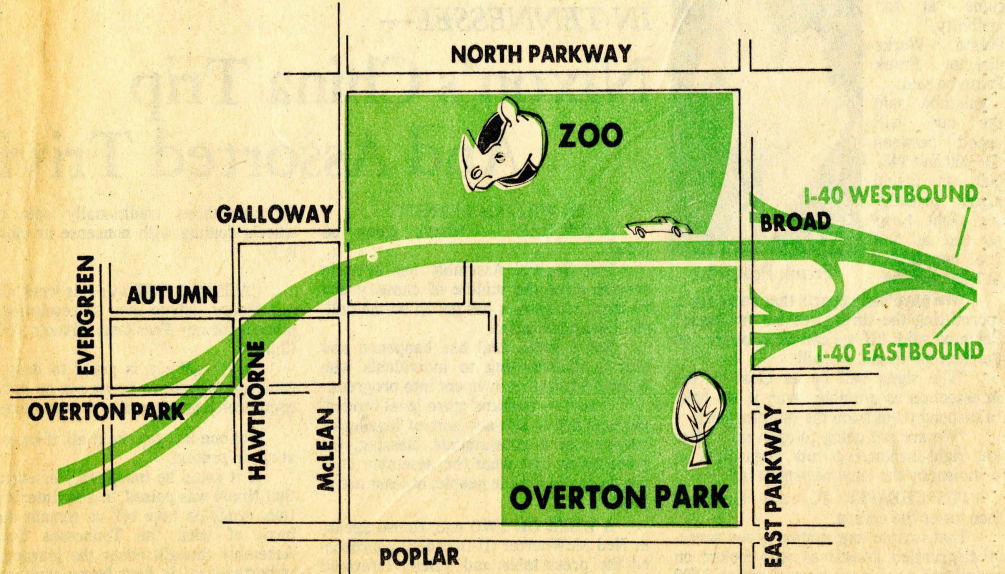
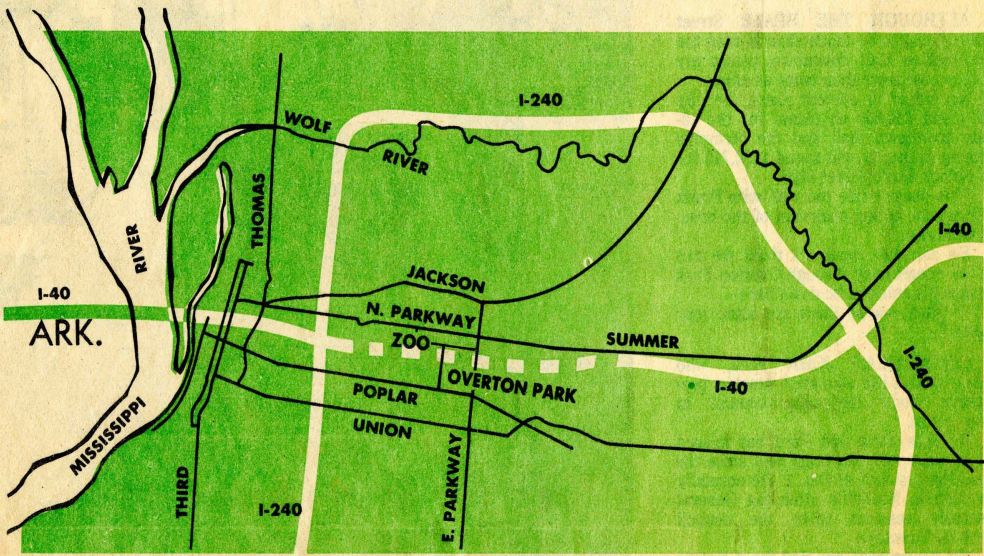


Memphis, Sunday, Feb. 22, 1976

## Arguments Go On — Interstate Doesn't



### Around The Town —

By MRS. SARA N. HINES

The alternative to routing Interstate-40 through Overton Park in Memphis now and always has been to construct and designate the northern perimeter of the Memphis expressway system as I-40.

The northern route would carry transcontinental traffic swiftly around the city rather than through Overton Park and the heart of Memphis, allowing the flow of heavy local traffic to feed onto the expressway with many off-and-on ramps.

The northern route would carry traffic through Wolf River bottomlands, dispersing its load of air and noise pollution in a less populated and less congested area. It would span the river plains and allow Memphis to expand to the north, just as southern I-240 has brought growth to the south across Nonconah Creek plains. It would go into the same midtown interchange and give the same access to downtown and new I-40 bridge that an Overton Park expressway would.

It would be capable of carrying the I-40 interstate load, and its selection as I-40 would not have caused the destruction of millions of dollars in property along the park route, divided neighborhoods, divided the city and threatened the park.

A REVIEW OF THE past 20 years of the Overton Park Interstate-40 controversy will substantiate the fact that the northern perimeter, now under construction, should be designated I-40 through Memphis, and the "no-build" alternative for Overton Park and the mid-city area should be adopted. A good place to begin the review is in the Memphis Public Library with a 1955 report, the basis for our local interstate system selection.

Mrs. Sara N. 'Sally' Hines, a member of Citizens to Preserve Overton Park, Inc., and a longtime environmentalist, presents the opponents' side of the 20-year battle over constructing an interstate highway through Overton Park.

Memphis Interstate System, and the overflow crowd protesting the park expressway had to be moved to the Auditorium. Although shouts of "Save Overton Park" rang out throughout the hall, State Highway Commissioner D. W. Moulton told the people: "We are not going to be swayed by petitions, nose counts, hysteria..."

It was obvious they were to be swayed by nothing — not even by the members of the Memphis Traffic Advisory Commission, who at that meeting advised: "There is serious question that the East-West is properly located. There is no question that, running through a densely-populated area of expensive homes, its cost will be astronomical, its construction long-delayed, and its direct damage to adjacent property unconscionable... the proposed East-West violates ruthlessly the basic location policy set out in Public Roads Policy and Procedure Manual No. 20-4... 'Where the development of a route to interstate standards through a community would result in such substantial damage to the abutting property or to the community that the development would be unreasonable and not in the public interest, the interstate route should be located around the community...' but the East-West also violates other principles of the Public Roads policy..."

On April 21, 1961, the Memphis Press-Scimitar reported: "State, federal and Memphis officials are going to allow time for the other expressways to be given a chance to show that the east-west expressway may not be necessary, City Engineer Will Fowler said today."



There are red lines drawn across maps of Memphis in Harland Bartholomew & Associates' "A Report Upon Interstate Highway Routes In Memphis and Shelby Co., Tennessee," dated Aug., 1955. These lines are the corridors which were proposed for the interstate system to be constructed in Memphis—only red smears on a piece of paper in the report, but slashing across neighborhoods of people, homes, parks, businesses and churches, searing deeply into the soul of Memphis.

These corridors were planned under pressure in anticipation of the many millions of dollars in construction funds to come annually from the many-billions of tax dollars to be produced by the Federal-Aid Highway Act of 1956 for its Highway Trust Fund. The purpose was to build a 41,000-mile federal interstate system.

One of the red lines on the maps was to become a battle line for one of the most controversial issues the City of Memphis has faced in the past 20 years — whether or not a federal interstate highway should go through Overton Park, a beloved park, greatly used by residents, not only of Memphis and the Mid-South, but by visitors from all over the country, a park of 342 acres purchased for Memphis 75 years ago.

IN THE REPORT, each of the top four preferential routes had a northern circumferential which would connect to the new I-40 bridge to be built over the Mississippi River, but only one of the four, Route "A", had a segment that would go through Overton Park. Route "A" was also the most extensive and expensive and would destroy the greatest amount of property. The Report stated that if all of Route "A" were not adopted, then the other routes should be chosen instead, in order of preference. All of Route "A" was not adopted for the interstate system, but unfortunately it was still selected to be implemented, including the segment through Overton Park and ignoring the report's recommendation.

For some, this interstate system would mean great progress, relieving drivers of stop-and-go urban traffic and saving that precious commodity — time. For others, it would be sheer agony, as there would be total destruction of years of patterns of living, loss of homes along with the familiar household surroundings, and good neighbors would be parted forever. There would be business losses, as years of building up service and good will in a neighborhood would be wiped out because wide stretches of highway right-of-way would remove the community customers — or the business itself, leaving the neighborhood without its services. Church steeples would topple, and parkland would be gouged out and covered with concrete.

AT AN APRIL 18, 1957 hearing, the public was made aware of the contents of the study and by then, the plans were "final." The Commercial Appeal of April 17, 1957, prophetically stated in an editorial: "The public will be heard tomorrow on the subject of Memphis expressway routes. State Highway Department men will be in the Courthouse during the afternoon to listen. We expect their ears will be filled with objections to chosen routes, and we doubt if much that is said will result in alterations."

The people did object by the hundreds, and this meeting alerted Memphis citizenry to the fact that an interstate was proposed through Overton Park. When the next public hearing was held on Sept. 17, there was a mass protest by hundreds of citizens, and petitions presented bearing 10,000 signatures of people opposing expressway through the park.

Among the many persons objecting was Frank Ragsdale, a highly respected engineer and civic leader in Memphis, who said: "The choice is between much good and little damage which would be the result of the complete around-the-city (perimeter) route or much damage and little good which would result from the construction of the proposed east-west (park) route." Another civic leader opposed was C. P. J. Mooney Jr., who said: "It would be like living next to an elevated railroad in Chicago or New York... Expressways are for getting people through Memphis. Let's think of the people living in Memphis... Overton Park is one of the outstanding parks in the nation."

Thus began the battle to keep Interstate 40 out of Overton Park, which still rages.

### Through Overton Park

By J. ALAN HANOVER

"... The Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area... unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area..."

J. Alan Hanover, an attorney, has taken a leading role as counsel for the state and the Department of Transportation in defending suits brought by the Citizens to Preserve Overton Park to prevent the expressway from going through the park.

With these few words, Congress, besieged by lobbyists and without thinking beyond the immediate present, created the legal monstrosity referred to as "Section 4(F)" or the "Parklands Statute" which has effectively stymied the completion of I-40 through Overton Park. Other communities and areas have suffered a similar fate in attempting to complete their much needed projects, but it is doubtful that any have suffered as much from this failure as has this community.

This act, passed at a time when plans were complete and right-of-way acquisition with its attendant community disruption was nearly so, has been given retroactive effect by our courts, so that an entire system has been devastated. Its wording is vague, to say the least, and defies precise definition. Subsequent court decisions, including the opinion of the U.S. Supreme Court involving Overton Park, have done little to help the situation. In fact, that opinion alone has created as much discussion and con-



troversy in the fields of environmental and administrative law as any opinion in recent years.

THE PURPOSE OF THIS discussion, however, is not to debate the necessity or the quality of the law surrounding the Overton Park controversy, although some coverage of the law is necessary to understand the problems and their possible solutions. In addition, no discussion of these problems and solutions, as well as an update on the status of the controversy, would be possible without a review of the facts.

In 1955, before enactment of the legislation financing the National Interstate Defense Highway System with 90 per cent federal funds, the City of Memphis retained the services of a qualified city planner to design an expressway system. This city planner had been involved in major projects with the city for many years and was considered extremely knowledgeable as to the present status of the city and its foreseeable future needs.

The system designed was basically a circumferential route around the outskirts of Memphis with an east-west route and a north-south route, representing spokes of a wheel, following the general traffic desires of the citizens. These traffic desires were determined by scientifically conducted studies over a period of years. We must remember that traffic engineers do not determine where roads are built in the strict sense. People determine where roads are built. No one will use a road or route that does not satisfy his or her desires.

TODAY THE MAJORITY of this system is completed and in use, and the balance is under construction, with the exception of the 3.7-mile section in the center of the east-west route known as the Overton Park link. Actually, just slightly over 4,000 feet of this route goes through Overton Park. The original system, designed and developed many years ago, has always called for the route through the park. This same general system was later adopted as the plan for Memphis by the Federal Highway Administration when federal aid for interstate construction was approved by Congress in 1956.

There have been, however, some significant changes in the section through the park, developed in cooperation with the Memphis Park Commission, which is responsible for the park and Overton Park Zoo, various interested groups and governmental bodies, as well as the group which is known today as Citizens to Preserve Overton Park, Inc. This organization has been the driving force in the opposition to the route through the park which resulted in the present litigation which began in the latter part of 1969.

These changes narrowed the right-of-way, lowered the depressed portion considerably, and moved the majority of the East Parkway interchange out of the park so that less parkland would be taken or affected. This particular interchange is a vital link in the system, and the suggestions of moving it farther east or eliminating it from the route entirely have been studied at great length without finding a solution which, at the same time, will preserve the integrity of the system.

OVERTON PARK IS about 350 acres in size and is a very desirable urban park. It is rectangular in shape and lies completely between two vital east-west arteries, North Parkway-Summer and Poplar. Another major thoroughfare, East Parkway, forms its eastern border and is to be interchanged with I-40 at the park.

North Parkway-Summer and Poplar carry the vast majority of traffic which moves in an east-west direction through the city. These are the two streets which I-40 was originally designed to relieve and service. The ideal situation is for I-40 to run parallel between them. There is no geographical way to accomplish this purpose except to go through Overton Park.

The park contains the zoo, a golf course, playing fields, picnic areas, a wooded area of approximately 150-175 acres, Memphis Academy of Arts, and Brooks Memorial Art Gallery. In addition, the city constructed a fire station on the east side several years ago and also maintains some out-buildings for

shops and horticultural purposes. The city has recently completed a substantial building program at the zoo, but this was done under the assumption that I-40 would be built according to the state's original route and design.

Since the beginning of the park, it has been traversed along the same line as planned for I-40, first by a railroad-streetcar line and now by a city bus route. Of course, the right-of-way for the expressway, which uses a total of about 23 acres, will be much wider than the existing busway, and will absorb this present bus road and lie generally in the same area.

THE LATEST DESIGN, proposed by the state and approved by former Transportation Secretary John A. Volpe, narrowed the right-of-way to a bare minimum by using a combination of sloping, planted shoulders to absorb noise and partial concrete retaining walls in the depressed areas. Construction details provided for the complete protection of all trees that did not have to be removed from the roadway itself. Earthen berms or noise abatement structures could be added to the level portion of the road at comparatively little cost.

However, many experts have felt that this would be of very little value since the uses of the park in this area are for playing fields and parking. Because of the extensive planting and wide shoulders, the traffic noise and pollution reaching these areas have been classified by these experts as having very little, if any, effect on the park or its use.

None of the facilities now in the park will be absorbed by the right-of-way other than some parking area and forest area. There will be ample parking areas to relieve those which will be taken, and only about 10 per cent of the forested area will be used for the expressway. Although the zoo, golf course and other facilities are very heavily used by the public, it is questionable whether many people use the forest area to any great extent, and all but a small portion will, of course, still be available.

The state of Tennessee and the federal government paid the city of Memphis \$2 million for this land, which the city was required by law to reinvest in land for additional parks. Over 400 acres of parkland was added to the city's already large park system of some 5,000 acres by this money and other connected federal grants. In addition, several hundred thousand dollars was paid to the City for the purpose of relocating certain utility lines and to pave and provide for the additional parking.

THERE IS NO INTENT to review all of the factual data which has been amassed about Overton Park and possible effects of the expressway on its facilities. The plans of the state provide ample, attractive access over the expressway to keep the two sections of the park connected. Basically, the zoo and rest of the park will be joined in almost the same way they are now. There are now only two places where pedestrians cross the busway, and this will remain unchanged, if not made considerably safer because of the grade separations.

The expressway itself, under the state's proposed design, will be depressed for the majority of its route through the park, and for about half that distance vehicles will not be visible unless the person is right on the edge of the right-of-way.

It is sufficient to say that a trial lasting approximately six weeks and producing thousands of pages of testimony and hundreds of exhibits, did not establish to the satisfaction of the U.S. District Court that any serious harm would come to the park or its usefulness to the public by the completion of I-40. As a matter of fact, the district judge approved the design of the state, and found that the route through the Park could meet the test laid down by the U.S. Supreme Court.

This decision was not appealed by the plaintiffs and stands as substantial evidence that the environmental "scars" which have been raised are not nearly as substantial as claimed. Had Secretary Volpe stood firm on the "design" and made a proper route determination as ordered by the court, the matter would have been ended and the road completed by now.

AT THE TIME THE lawsuit was originally filed by Citizens to Preserve Overton Park in late 1969, the state of Tennessee, under authority from the Department of Transportation, had already acquired all the right-of-way necessary for the construction of the entire 3.7-mile segment, including the parkland. With the exception of one or two parcels out of hundreds, the state had cleared all of the land of residences and other buildings and moved all of the people and businesses affected, and had let a contract for construction of about half of the segment at a cost of slightly over \$5-million. The U.S. district court originally approved the construction, and this decision was affirmed by the U.S. Court of Appeals. A petition to the Supreme Court was granted and after several hearings Supreme Court reversed the Court of Appeals.

A plenary hearing was held and the District Court found that former Secretary Volpe had not used the criteria laid down



ON MARCH 14, 1961, another public hearing was held on the

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# Through Overton Park — Legislative Act Seen As Answer

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by the Supreme Court in arriving at his decision to build the road along the route through the park. Although Citizens to Preserve Overton Park had complained about irregularities in state procedures, no court has found them to be correct, and they apparently abandoned these contentions when they reached the Supreme Court. The District Court did rule, however, that the state's route could meet the test laid down by the Supreme Court, and that the design did meet the test. The court also held that another route, far to the north of the park and proposed at that time by the plaintiffs, could also meet the test.

THIS LATTER ROUTE has now apparently been abandoned by the plaintiffs, who at this time, if their public pronouncements have any weight, seem to claim that completion of the segment along any route is unnecessary, and that the balance of the system will serve the city's purposes just as well. It was fairly obvious at the time of the hearing that this northern route was only put forward by the plaintiffs to confuse the issue, since no one could seriously contend that moving several thousand more people and destroying hundreds of structures to build a road that is circuitous and cannot be properly interchanged is "feasible and prudent." The state has, over the years, studied numerous other alternate routes, as well as the so-called "no build" alternative. Volumes have been amassed, with the only valid conclusion being that the road must be completed along the route as proposed by the state of Tennessee. There exists no "feasible or prudent" alternative.

At the conclusion of the hearing, which lasted six weeks, the district judge ordered Secretary Volpe to make a "route determination" only. One year later, after requiring additional public hearings and the preparation of an Environmental Impact Statement in excess of 450 pages, Volpe made no decision whatsoever, but simply rehashed all the claims raised by the plaintiffs and suggested more study. The avenues suggested by him included widening city streets and mass transit.

THE STATE OF TENNESSEE, in its great frustration at this time, felt that Volpe had not followed the remand order of the district court and sought relief through the courts with the new secretary, C. S. Brinegar. The district court agreed with the contention of the state that the secretary must find that a "feasible and prudent" alternative exists or approve the state's route, but the Court of Appeals did not. No petition for another hearing was filed and the state waited for Secretary Brinegar to make a decision on its new submission. More than a year later, Secretary Brinegar, immediately before leaving office, made practically the same sort of "decision" that Volpe had made. He reached no conclusion and left the matter in the hands of the new secretary, William T. Coleman.

In April, 1975, the new secretary suggested that the route through the Park be followed, but that its design include a full cut-and-cover tunnel built with a new engineering method, the purpose of which is to require less excavation than a conventional cut-and-cover design, even though the park will be put back in the same condition as before. The method he referred to is commonly known as the "slurry wall" method. Basically, this procedure provides a way to build the outer walls of the structure without having to make an excavation considerably wider to allow room for construction and then backfilling. Its only purpose is to eliminate some temporary disruption of the park during the construction period. The secretary directed that an independent study be conducted to determine if this method is feasible and some estimate of its cost.

This study was recently completed by a qualified engineering firm, which concluded that the method was feasible and that the cost of the entire segment with the tunnel would be \$119 million. The state's share would be 10 per cent of this amount. The state would, however, have to bear the entire costs of maintenance and operation, which was estimated to be \$450,000 annually at present-day prices. Needless to say, there has been some disagreement about the validity of these figures, as well as the determination of "feasibility," itself.

Throughout the many years of this controversy the state's proposed route and design has been steadfastly supported by the City of Memphis, the Park Commission, the Shelby County government and such organizations as the Chamber of

Commerce, both Memphis newspapers, Future Memphis, Inc., the NAACP, various labor organizations, the Downtown Association and most other civic organizations which have taken a stand.

SINCE THE SECRETARIAL decision of April, 1975, and its implementation by the study to determine the feasibility of the "slurry wall" method of construction, the secretary has met with several interested parties, groups, U.S. senators, U.S. representatives and a representative of the Tennessee Department of Transportation. According to newspaper accounts of this meeting, it appears that the secretary wants to complete the required Environmental Impact Statement, holding a public hearing and then reaching a point where a firm decision could be made.

If Secretary Coleman should reach a decision to complete I-40 through the park regardless of design, it would be at least three years before construction could begin. This is based upon the assumption that all legal problems could be resolved in favor of those in favor of the route.

MANY PERSONS HAVE come to the conclusion that the only possible way to have an expeditious completion of this segment of the expressway is by a special act of Congress. Such a procedure is not unknown, and has been used by Congress in many previous instances, including the expressway through Breckenridge Park in San Antonio, Texas, and construction of the Alaska pipeline.

The citizens of Texas were stymied in their desire to build a connector link to their expressway system in San Antonio in much the same way as the citizens of Tennessee have been affected by opponents to the Overton Park plan. Numerous maneuvers were tried, and the final result was much the same as here. Congress, by adding a provision to the Federal-Aid Highway Act of 1973, permitted San Antonio to withdraw from the Federal-Aid partnership to construct the connector with its own funds. It is now under construction.

The Alaska Pipeline Act swept away all statutory impediments to the construction of this much-needed project because of the energy crisis. The San Antonio approach has some merit, but would require a heavy outlay of funds by the state of Tennessee. It has been estimated that the state would have to return about \$40 million to the federal treasury. Of course, Congress could exempt Tennessee from doing this and simply permit it to construct the road on the land now in its name, with no help from the federal government. It is estimated that this would cost about \$20 million. It should also be noted that the San Antonio link was not truly an interstate such as I-40, and this could have some bearing on the thinking of members of Congress.

THE APPROACH USED BY Congress in the Alaska Pipeline situation is much more desirable. Congress can simply exempt this section from the application of any of the various laws which now affect it adversely, and can provide that the secretary of Transportation advance the funds in the same way as the state would receive them under the Federal-Aid Highway Act. The act can also be drafted to provide for any design that Congress prefers, ranging from the state's original open cut design to the presently proposed tunnel.

The question of whether such an act could be passed is, of course, a political one; but it would not require a great deal of time to determine. The question of the constitutionality of such an act would likewise not involve the time periods now faced by the proponents. The expense of such a procedure is minimal when compared to the other course of action open to the proponents. Finally, the approach of the use of special legislation has the advantage of complete finality, once passed by Congress and tested by the courts.

AS CAN BE SEEN, there is no easy or quick solution to this most perplexing and frustrating problem. Legislation passed in haste, politics, economics, environmental considerations and bureaucratic ineptness have created a set of circumstances which have stymied this project beyond belief. Nothing has really been accomplished in several years, and this situation is not likely to change unless some dramatic, unforeseen occurrence develops. Memphis will continue to suffer and the public will continue to wonder. Special legislation appears to be the only hope on the horizon.

# Around The Town — Need For Three Routes Questioned

(Continued from Page 1)

—as shown in the 1955 report and in the Traffic Advisory Commission report in 1961, and it had been scheduled to be built first to see if an east-west was necessary before pressure was brought to reverse the priorities.

After Transportation Secretary John A. Volpe approved the park route on Nov. 4, 1969, (with significant qualifications as to design) a group called Citizens To Preserve Overton Park, Inc., Mrs. Sunshine Snyder and William W. Deupree, who had steadfastly fought through the years for the park's preservation, brought suit against Volpe under the Parkland Statutes in the District of Columbia. Attesting to the national significance of this park, the National Audubon Society, the Sierra Club, and later the National Wildlife Federation joined the suit with the citizens.

As Dr. Irma Sternberg observed in her book "Overton Park is YOUR Park, Memphis!" — "not until the matter reached the courts did anyone in authority seem to be listening to anything being said in defense of Overton Park, in defense of the people's right to be heard, in defense of due process. (A constitutional guarantee of the 5th and 14th Amendments.)" The 1969 National Environmental Policy Act, signed in January, 1970, strengthened the citizens' case.

MIKE FROMME, A conservationist and national columnist, writing in the January, 1970 magazine "American Forests," observed that Scripps-Howard, because of its pride in conservation interest and activity might have been expected to be "in the thick of the fight to protect Overton Park, a marvelous blessing bestowed by Nature upon the people of Memphis, one of the finest urban forests in the world . . . To the contrary, however, Scripps-Howard in Memphis placed all its bets on the downtown commercial interests, possibly because they are its principal source of advertising . . ."

When the case reached the U.S. Supreme Court, it was brought out that Volpe had not "raised even a finger to comply with the command of Congress," and that the Parkland Statutes were "obviously passed to protect our public parks from forays by road builders except in the most extraordinary and imperative circumstances."

During the lawsuit, Hal Lewis, then Park Commission director, testified that the Park Commission did everything it could to prevent the expressway from going through Overton Park; that they had asked that the north circumferential I-240 be completed first.

But during the years in court, the State of Tennessee continued to demolish property along the park expressway route, and in 1971-72 paved a 3.7-mile section of I-40,

even though warned by a federal judge that if they did so, it would be at their own risk, knowing they could lose the lawsuit, and they took that risk.

ON JANUARY 19, 1973, on his final day in office before leaving to become U.S. ambassador in Rome, Volpe issued his Department of Transportation news release, stating: "On the basis of the record before me and in light of guidance provided by the Supreme Court, I find that an Interstate highway as proposed by the State through Overton Park cannot be approved."

He added: "Among the possible alternatives which the State of Tennessee may wish to consider are the use of the I-240 circumferential combined with improvements to arterial streets . . ."

On February 3, 1975, Volpe wrote from Rome: "As I look back on my years as secretary of Transportation, I honestly believe that our decision concerning the park (Overton) was one of our best decisions."

Thus, we come to the same conclusion, obvious in the

1955 report and voiced over the years by Ragsdale, the T.A.C., Mayor Ingram, Secretary Volpe, the Justice Department, and many individuals: The northern I-240 is the alternative to the park route.

OVERTON PARK IS one of the greatest attractions Memphis has had for the past 75 years, and this 20-year battle for its preservation is a testimonial to the esteem in which it is held by Memphians and the nation.

The northern I-240 is under construction and under contract to be ready for paving next year. It is now and always has been the alternative to the park expressway.

The Overton Park expressway was planned 20 years ago. Let's admit that planning an interstate through Overton Park was just a bad planning mistake and not make it a permanent monument to bad judgment. It's no crime to admit a mistake. It's a crime to commit a mistake because one is afraid to admit it is one.