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The Vieux Carre Expressway

Oliver A. Houck*

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I. INTRODUCTION

The most surprising thing about the Vieux Carre Expressway is that it doesn't exist. Designed by America's most celebrated urban planner and supported by the federal Bureau of Roads, the Louisiana Department of Highways, two Mayors, the City Council, City Planning Commission, Dock Board, Army Corps of Engineers, Chamber of Commerce, surrounding parishes, leading banks, law offices, architecture firms, construction companies, trade unions, local media, and virtually every other power point in or near New Orleans, it presented a solid front for a project that would in retrospect (but to very few at the moment) have crippled the city for all time. The only questions were ones of detail,

* © 2016 Oliver A. Houck. Professor of Law, Tulane University. The research assistance of Katherine D. Van Marter (TLS '16) is acknowledged with gratitude, as is a detailed account of the Expressway controversy by Richard O. Baumbach and William E. Borah, *THE SECOND BATTLE OF NEW ORLEANS*.

ground-level or elevated, standard lighting or street lamps reminiscent of nineteenth century brothels. The expressway was going to happen. The historic French Quarter was to be cut off from the river that gave it birth by six lanes of concrete and moving steel. New Orleans would finally catch up with the American Dream.

What happened instead was the birth of a different dream that is still playing out today, but the fact that it has even the chance to play is a testament to Margaret Mead's famous dictum that a small group of committed citizens could change the world; indeed, she went on, it was the only thing that ever had.¹ That small group in this case included two young law graduates from Tulane University, Richard Baumbach and William Borah, who stumbled onto the proposal and could not let it go.

II. BRAVE NEW WORLD

Dick and I meet up for drinks at the Napoleon House in the Quarter. We are both home for Christmas break and the owner drops by our table. We ask him how the Quarter and he suddenly looks serious. "I'm worried about this expressway," he says. I say, "What's an expressway?" It turns out to be a highway going right over Jackson Square, forty feet in the air. Dick says, "That sounds like a really sharp idea."

We decide to go down to the Chamber [of Commerce] and check it out. The Chamber supports the expressway, Dick's father is a member, and we expect some persuasive materials. We scour the documents, every one, cover to cover. They are anything but persuasive. They all take crossing the Square as a given. They say it would be great for the Quarter.

A few days later we meet at the Café du Monde, right under the route for the expressway. Dick is flying back to Columbia for a master's degree in business, I am off to the London School of Economics. Dick says to me, "So what are we going to do?" I say, just thinking out loud, "Is there anything more important we can do with our lives?" Dick says, "I don't think so."

We both take academic leaves, and later withdraw. We have no idea what we are in for. Nobody taught this stuff. Nobody knew anything about it.

—William Borah, July 2015²

1. *Frequently Asked Questions About Mead/Batson*, INST. INTELL. STUD., <http://www.interculturalstudies.org/faq.html> (last visited Nov. 28, 2016). The Institute, founded by Margaret Mead in 1944, explains that the exact source of this now famous quote is unknown, but that its use is permitted freely for non-commercial purposes. *Id.*

2. Interview with William Borah, Attorney, in New Orleans, La., July 14, 2015 [hereinafter Borah interview].

This was 1964 and the federal-aid interstate highway program, the largest construction program in the world, was in high gear, massively funded, overwhelmingly popular, impervious to its impacts, free from the restraints of law, and increasingly aimed at the heart of American cities. It came out of visionaries who saw highways as facilitating a brave new world, and of corporations that saw the opportunity to corner this world as they had the Golden Age of railroads, coal and steel. Rising from different sources, these two streams joined together in the first half of the 1900s and led, among other things, to the development of the Vieux Carre Expressway plan.

To the Swiss-French urban planner Le Corbusier, “the father of modern architecture,” the answer to decaying cities at the turn of the twentieth century was an obvious one: “destroy the streets.”³ His best known work, “The Radiant City,” proposed glittering towers of glass and steel with aerial tunnels for pedestrians,⁴ encircled by expressway rings and arteries that, in turn, connected to remote suburbs. His “Plan Voisin,” sponsored perhaps coincidentally by an automobile manufacturer, advocated bulldozing much of central Paris as a first step.⁵ Though disappointed when France did not embrace his concept with open arms, his impact can be seen today in Paris as well as every major city in the United States. He presaged an urban revolution.

The Museum of Modern Art caught the fever, its International Style Show of 1932 featuring a Le Corbusier skyscraper “girdled by highways.”⁶ The Wanamaker Department Store in New York sponsored an exhibition of its own called the “Titan City,” whose “magnificent urban towers were connected by sleek aerial expressways.”⁷ The ubiquitously-read Saturday Evening Post wrote enthusiastically, “If we are to have full use of automobiles, cities must be remade” (one may note the premise).⁸ It could have cited the Plan Voisin. Highways were not to

3. JANE HOLTZ KAY, *ASPHALT NATION: HOW THE AUTOMOBILE TOOK OVER AMERICA, AND HOW WE CAN TAKE IT BACK* 193 (1997).

4. LE CORBUSIER, *THE RADIANT CITY: ELEMENTS OF A DOCTRINE OF URBANISM TO BE USED AS THE BASIS OF OUR MACHINE-AGE CIVILIZATION* (1967).

5. *Plan Voisin, Paris, France, 1925*, FONDATION LE CORBUSIER, <http://www.fondationlecorbusier.fr/corbuweb/morpheus.aspx?sysId=13&IrisObjectId=6159&sysLanguage=en-en&itemPos=2&itemCount=2&sysParentName=Home&sysParentId=65> (describing plan) (last visited Nov. 28, 2016).

6. KAY, *supra* note 3, at 216.

7. BILL BRYSON, *ONE SUMMER: AMERICA, 1927* (2013) (for fuller description of the Titan City, see LOUISA IAROCCHI, *THE URBAN DEPARTMENT STORE IN AMERICA, 1859-1930, 198-203* (2014)).

8. Paul Hoffman, *America Goes to Town*, SATURDAY EVENING POST, Apr. 29, 1938, at 32.

serve existing cities, they were to upend them for new creations that spread out into the countryside . . . which is what happened.

Le Corbusier's ideas fit like a glove with America's most influential urban planner, builder, and political force in the twentieth century, Robert Moses. The difference with Moses is that, by dint of personality and the ruthless use of power, he made Le Corbusier happen . . . all without holding elected office.⁹ Creating and chairing independent commissions, Moses' career began with parks and greenways in New York City, morphed to urban parkways, and morphed again with the promise of unlimited federal monies towards massive block housing and high-speed expressways, no fewer than six of them gridding the metropolitan area alone.¹⁰ Naturally there were obstacles, namely people who had lived there all their lives, whom he dismissed as nuisances. "There's *nobody, nobody, nobody* opposes this project . . ." he shouted from the audience at a public hearing, "but a bunch of mothers[!]."¹¹

As Moses saw it, "[W]hen you operate in an overbuilt metropolis you have to hack your way with a meat ax."¹² Which he did. Oddly, or perhaps not, Moses never learned to drive a car and was chauffeured around the city with an escort of police clearing the route.¹³ In effect, he was always on a freeway. His philosophy of public works was elegantly simple: "If the end doesn't justify the means, what does?"¹⁴

Moses' arrogance and impacts would finally bring down his most ambitious projects for New York (including a high-speed corridor across midtown Manhattan displacing several thousand families),¹⁵ but his reputation for boots-on-the-ground results brought him offers from many

9. Cleveland Rogers, *Robert Moses: An Atlantic Portrait*, ATLANTIC (Feb. 1938). Indeed, the only political race he entered he lost, badly. *Id.* at 8.

10. Cynthia Chaldeckas, *Wrestling with Moses: How Jane Jacobs Took on New York's Master Builder and Transformed the American City*, N.Y. PUB. LIBR. (Mar. 16, 2010), <http://www.nypl.org/blog/2010/03/16/wrestling-moses-jane-jacobs>.

11. Christopher Turner, *Mother Courage*, GUARDIAN (Sept. 11, 2009), <http://www.theguardian.com/books/2009/sep/12/jane-jacobs-new-york-history>.

12. ROBERT CARO, *THE POWER BROKER* 849 (1974). Dismissing those few laws that constrained his ambitions as well, he joked in reply to critics that "nothing I have ever done has been tinged with legality." Jeffrey Pfeffer, *Power, Capriciousness, and Consequences*, HARVARD BUS. REV., Apr. 2013, at 36.

13. Oliver Burkeman, *The Power Broker: Robert Moses and the Fall of New York by Robert Caro Review—A Landmark Study*, GUARDIAN (Oct. 23, 2015) (book review), <http://www.theguardian.com/books/2015/oct/23/the-power-broker-robert-moses-and-the-fall-of-new-york-robert-caro-review>.

14. Robert Caro, *The Power Broker II—If The End Doesn't Justify the Means, What Does?*, NEW YORKER 52 (July 29, 1974), <http://www.newyorker.com/magazine/1974/07/29/the-power-broker-ii-if-the-end-doesnt-justify-the-means-what-does>.

15. A.Q. MOWBRAY, *ROAD TO RUIN: A CRITICAL VIEW OF THE FEDERAL HIGHWAY PROGRAM* (1968).

cities to, in turn, “modernize” their own transportation systems. His recipes for Portland, Baltimore, and a host of others¹⁶ were cookbook similar: major beltways surrounding urban areas with arterials leading into and cutting through the city, all in the name of reducing congestion, improving the urban landscape, and delivering residents to the suburbs. So would be his recipe for New Orleans. In 1946, still a rising star, Moses designed the Vieux Carre Expressway.

III. HIGHWAYS OF TOMORROW

We start with a group of friends. We’d meet at someone’s house with a stack of flyers and begin saturating New Orleans neighborhoods, the sons and daughters of bankers and lawyers handing out leaflets! We pool money for a full page ad in *The Times-Picayune* showing the elevated across Jackson Square, it is not pretty. The paper follows with a lead editorial, slamming us. We hang banners across the Vieux Carre on Mardi Gras day, STOP THE EXPRESSWAY. National television is there. It is all guerilla action, and then we get our first big break.

A new archbishop is coming to New Orleans, Philip Hannan. We know nothing about him, but the elevated is going to carry six lanes of traffic across the face of the St Louis Cathedral, less than 60 feet away. We want to see him before the proponents get their act in gear, and request a meeting “on a matter of great importance to the church.”

The first thing I notice on Hannan’s desk is a District of Columbia telephone directory. This man is connected. We tell him about the expressway. He muses, “They wouldn’t think of doing this in any other town,” and then turns back to us, “What can be done about it?” Dick is a stone mask, but his eyes are gleaming.

We recommend a consulting firm in Boston, Arthur D Little, which did a deep transportation study for Washington D.C. Hannan picks up the phone and dials a number. It turns out that Arthur D Little is headed by retired General James Gavin, who had led the 82d airborne during the Normandy invasion, which was brutal. Hannan had been the division chaplain. When Gavin comes on the line Hannan says, “Hello, Jim? This is Phil, we need a little help down here.”

—William Borah, July 2015¹⁷

The federal aid highway program was a vision of its own, with a mechanism for perpetuating both the need for highways and the monies to build them. Behind it were the most powerful corporations in America, none more so than General Motors.

16. See RICHARD O. BAUMBACH & WILLIAM E. BORAH, *THE SECOND BATTLE OF NEW ORLEANS* 101 (1981) [hereinafter *SECOND BATTLE*].

17. Borah interview, *supra* note 2.

Federal interest in highway building began back in the 1890s with an Office of Road Inquiry, which bounced around an assortment of agencies,¹⁸ dwarfing them wherever it lodged, until landing on its own as the federal Bureau of Roads. The Bureau did not actually build these roads but it funded states to do so, making it highly popular. Over time the federal cost-share increased to 50%,¹⁹ which in the depression years and then the pressure of World War II was about all that the federal budget could bear. With the end of the war, however, the vaults swung open, led by—of all people—a Republican President sworn to small government and fiscal restraint, Dwight D Eisenhower. He had no idea how far this program would go, nor where.

Meanwhile the auto industry was growing as well, led by General Motors, which took a keen interest in both liquidating its competition and getting the public to pay for roads for its vehicles. The company faced two challenges: the sad state of rural highways and the healthy state of urban transit systems that dominated the major cities and were found in virtually every American town of size.²⁰ In 1921 GM indeed lost money, some \$65 million (approximately \$867 million today),²¹ prompting the company to launch a project to destroy its principal urban rival, electric rail. Over the next ten years, a special unit of the company helped to pressure, buy out and terminate rail lines in New York, Minneapolis-St Paul and other cities (including Wisconsin's North Shore line providing high-speed access to downtown Chicago),²² but the process was slow, calling for a more comprehensive approach: GM would take them all down. Under the corporation's leadership and with buy-in from Firestone Tire, Mack Truck, Greyhound Bus, Phillips Petroleum and

18. HELEN LEAVITT, *SUPERHIGHWAY—SUPERHOAX* 22-23 (1970). The Bureau of Public Roads, a federal department now known as the Federal Highway Administration, was born of the Office of Road Inquiry, a group established in 1893 when the first automobile was introduced. *Id.* In 1919, three years after the first federally funded highway projects began, the Office of Public Roads (which had, since 1983, also been known as the Office of Public Roads and the Office of Public Roads and Rural Engineering), became the Bureau of Public Roads. *Id.* The Bureau of Public Roads was removed from the Department of Agriculture, placed under the New Deal Federal Works Agency, and renamed the Public Roads Administration in 1939. *Id.* at 25. In 1949, the Public Roads Administration was renamed the Bureau of Public Roads and its authority was relegated to the Department of Commerce until finally landing under the Department of Transportation as the Federal Highway Administration in 1967. *Id.* at 26.

19. *Id.* at 25-26.

20. Bradford C. Snell, *The StreetCar Conspiracy: How General Motors Deliberately Destroyed Public Transit*, *NEW ELECTRIC RAILWAY J.* (1995); *American Ground Transport Hearing Before the S. Subcomm. on Antitrust & Monopoly*, 93rd Cong. A-2 (1974) (statement of Bradford C. Snell) [hereinafter Statement of Bradford C. Snell].

21. *Id.*

22. *Id.*

Standard Oil of Indiana, GM financed holding companies to purchase trolley lines in more than eighty urban areas, put them in bankruptcy and junk their rolling stock, in return for which the bus systems that replaced them would purchase exclusively from the consortium.²³

At the end of the day, GM and its co-defendants would be convicted by a federal jury of conspiracy to monopolize interstate commerce,²⁴ for which they were fined \$5000.²⁵ Key participants such as GM's treasurer were fined all of \$1.²⁶ As criminal conspiracies go, it was easily the most successful in American history. As urban history goes, there is no word for it other than transformative. One of the last systems to go was in Los Angeles, served into the 1930s by nearly 400 miles of electric railroads and the world's largest network of trolleys branching out another 75 miles.²⁷ Lest they return, the trolleys were burned. From here on urban America was committed to the bus, and when the buses failed, to the automobile. GM sold both.²⁸

GM products still needed roads to run on however, and unlike railroad and trolley companies that had to buy and maintain their own rights-of-way, it wanted the government to take over the job. For this purpose the company formed the National Highways Users Conference, headed for decades by GM officials, to lobby for federal gasoline taxes, to be used exclusively to build more roads.²⁹ All of this came to fruition in 1956 with the enactment of a new federal highway program that trumped anything that had come before: an interstate system backed by a

23. United States v. Nat'l City Lines, 186 F.2d 562, 564-65 (7th Cir. 1951); See also Statement of Bradford C. Snell, *supra* note 20; Guy Span, *The Streetcar Conspiracy: How General Motors Deliberately Destroyed Public Transit*, NEW ELECTRIC RAILWAY J. 3 (2003) [hereinafter Span, *The Streetcar Conspiracy*]. Snell's account has been both confirmed and contested by subsequent historians. See Guy Span, *Paving the Way for Buses—The Great GM Streetcar Conspiracy, Part I*, BAYCROSSINGS 4 (2003), dismissing Snell as a conspiracy theorist but then concluding: "Clearly, GM waged a war on electric traction. It was indeed an all out assault, but by no means the single reason for the failure of rapid transit." *Id.* As for the existence of the conspiracy that Snell alleged, it was found to be quite real, and criminal, by both a trial jury and a federal appellate court on review. *National City Lines*, 186 F.2d 562 (1948).

24. Span, *The Streetcar Conspiracy*, *supra* note 23.

25. Bradford C. Snell, *American Ground Transport: A Proposal for Restructuring the Automobile, Truck, Bus & Rail Industries*, U.S. GOVT. PRINT. OFF. (1974) [hereinafter Snell, *American Ground Transport*]. The slight fine doubtless reflected the personal views of the trial court, who informed counsel that, had the case been tried without a jury, he would have had serious doubts about convicting.

26. Snell, *American Ground Transport*, *supra* note 25.

27. *Id.*

28. Indeed, by 1974 GM was producing 75% of city buses in the United States. DAVID G. BURWELL & MARY ANN WILNER, *THE END OF THE ROAD: A CITIZEN'S GUIDE TO TRANSPORTATION PROBLEM SOLVING* (1977).

29. KAY, *supra* note 3, at 205.

whopping 90% in federal funding,³⁰ monies that would mesmerize every state and city they touched. Behind the program was GM's CEO, Charles Wilson.

GM's close relationship with the White House dated back to early days. Franklin Roosevelt marveled in the corporation's automobile-city extravaganza at the 1939 World's Fair, describing its leadership as "a private office with a public trust."³¹ The relationship solidified after war with the election of General Dwight Eisenhower and Wilson's appointment as his Secretary of Defense. Wilson had figured prominently in war production, and now worked closely with Eisenhower on an interstate system promoted (unsuccessfully) since the 1920s as essential to national defense.³² Wilson made the same sell ("relentlessly," in the words of one historian),³³ this time in the context of the cold war, a "National System of Interstate and Defense Highways."³⁴ He saw no conflict with his former position (to which he would later return), explaining that "for years I thought what was good for the country was good for General Motors, and vice versa."³⁵ He apparently continued to think so.

It had been a shock to all when Eisenhower, soon after his election, announced his support for the new \$50 billion program, a breathtaking amount for the time.³⁶ The capital was soon "flooded with lobbyists representing contractors, oil, auto, real estate, trucking, and concrete interests, all bent on establishing the biggest pork barrel legislation in the history of the United States."³⁷ Under pressure, the President appointed a

30. Federal-Aid Highway Act of 1956, ch. 462 I, 70 Stat. 374 *repealed by* 23 U.S.C.A. §§ 101, 103, 104, 107, 108, 109, 113, 115, 118, 120, 123, 128, 129, 304 to 306.

31. KAY, *supra* note 3, at 207-218. GM's "Futurama" exhibitions reportedly the most popular attraction at the Fair, "[a] notarized heaven linked by vast highways driving to GM's 'Town of Tomorrow. . .'" *Id.* at 218.

32. By the 1960s, the age of nuclear warheads and long range missiles, the National Defense rationale reached ludicrous proportions. See *The Highway Transportation Story in Facts*, published by the GM-sponsored National Highways Users Conference, stating that the nation's security was "vitally dependent" on expressways, explaining that in attack the automobile will become a "rolling home . . . Persons can eat and sleep in it, keep warm and dry, receive vital instructions by radio, drive out of danger areas, and even be afforded some protection against nuclear fallout." BEN KELLEY, *THE PAVERS AND THE PAVED: THE REAL COST OF AMERICA'S HIGHWAY Program 9-10* (1971).

33. Mike Ferner, *Taken for a Ride on the Interstate Highway System*, COUNTERPUNCH (June 26, 2006), <http://counterpunch.org/2006/06/28/taken-for-a-ride-on-the-interstate-highway-system>.

34. LEAVITT, *supra* note 18, at 22.

35. The American Automobile Manufacturers Association had a yet more pithy slogan: "What America drives, drives America." *Id.* in preamble.

36. *Id.* at 27-28.

37. *Id.* at 29.

commission headed by wartime colleague General Lucius Clay to work out the details.³⁸ The second witness before the commission was Robert Moses, who by coincidence had just won a \$25,000 General Motors award for an essay on highway needs.³⁹ Moses got right to the point. Whatever program emerged and whatever its rationale, it should go directly *through* cities, not around them, because that is where the most traffic was and the maximum benefits lay.⁴⁰ These benefits, he explained, included “slum clearance” in order to achieve the modern city.⁴¹ Striking out at critics who were rising in his own city, Moses complained that although urban expressways were “vital,” they were also “the hardest to locate, the most difficult to clear,” and “the most controversial from the point of view of selfish and short-sighted opposition.”⁴² Over these obstacles, Moses summoned the interstate program to American cities.

Urban interstates were a new notion to General Clay, however, who came to the point with an American Automobile Association witness later in the day. “When you talk of these urban facilities,” he asked, “are you talking of those providing egress and exit, or are you talking about within the city itself?”⁴³ “Both,” he was told, because “some 70 percent of all the traffic that is on the main highways has for its object egress, ingress into the urban areas.”⁴⁴ Taken aback, Clay asked, “Would you have the federal government undertake to improve Elm Street?”⁴⁵ Ultimately, however, the commission bought it, waxing in its final report that, as cities had spread into the countryside, “the automobile has restored a way of life in which the individual may live in a friendly neighborhood, it has brought city and country closer together, it has made us one country and a united people.”⁴⁶ It occurred to no witness or commission member that the opposite might happen instead.

Urban interstates were now in, and with a cornucopia of funding. During a congressional hearing on the monies required, Federal Bureau of Roads chief Francis DuPont was asked: “[B]ut is it not true that the highway system needs of the United States of America are almost without limit, and will they not be almost without limit on and on?”⁴⁷

38. *See id.* at 29-30.

39. *Id.* at 31.

40. *Id.* at 31.

41. *Id.* Moses relished the phrase “urban blight,” which made demolition for his projects more palatable. CARO, *supra* note 12.

42. LEAVITT, *supra* note 18, at 36.

43. *Id.* at 27-28.

44. *Id.*

45. *Id.*

46. *Id.* at 36.

47. *Id.* at 45.

DuPont replied, more candidly perhaps than he should have, “I hope so.”⁴⁸ He not only stood to administer the largest program in the domestic budget, his family also owned some 63 million shares in General Motors, nearly a quarter of its total stock.⁴⁹ With Wilson and DuPont in charge, as GM went so went the nation indeed.

One is left to wonder what Eisenhower thought of it all. Early in his tenure he described transcontinental highways based on existing corridors that would connect cities, but not careen through them.⁵⁰ A few years later, on his way back into Washington from Camp David, the President was said to be shocked to see a deep, freeway gash leading into the capitol.⁵¹ Angered, he ordered a study of urban highways but discovered that “his lobbyists had sold the interstate program to Congress in part by promising roads and construction dollars to big-city mayors.”⁵² Even though, the account continues, he “thought it extraordinarily wasteful to run interstates through cities, there was no way he could stop it now.”⁵³

The President had been taken for a ride. More brutally taken, though, and barely accounted for at this point, were people who looked at cities in a different way. For one thing, they lived there.

IV. THE CITY AND THE EXPRESSWAY

Second big break. I get a call from the Stern Foundation, known for its philanthropy and involvement in civil rights. I am invited to Stern’s offices in the Quarter, opposite the Royal Orleans Hotel. As I walk in two secretaries are cooking up fish filets for lunch, and I am thinking “this is not an ordinary workplace,” nor will it be for us. After a brief discussion Stern and his fund’s director, David Hunter, ask me straight out, “how would you like to work for us?” They have two agendas, he says, stopping the expressway and changing transportation planning. I say I have a

48. *Id.* When asked whether some of the highway funding might better serve schools and public education, Dupont objected, “I do not think you can measure the proficiency of those who would be educated . . . We have no immediate revenue from the schools that we build.” *Id.*

49. *Id.* Dupont’s interest in GM took a tumble a few years later when the Supreme Court ruled that its ownership of 23% of GM stock made the auto manufacturer in effect a captive customer for Dupont products. *See id.* *See also* United States v. Nat’l City Lines, 334 U.S. 573, 575 (1948). The Dupont family also owned a “sizeable” interest in U.S. Rubber. LEAVITT, *supra* note 18, at 45.

50. LEAVITT, *supra* note 18, at 28.

51. Harold Henderson, *Up Against the Sprawl*, CHI. READER, Sept. 6, 1996, at 25.

52. *Id.*

53. *Id.* *See also* KAY, *supra* note 3, at 233 (“Eisenhower himself began to worry about the interstate’s urban repercussions, noting that ‘it was very wasteful to have an average of just over one man per \$3,000 car driving into the central area and taking all the space required to park the car.’”).

partner I'm working with, Dick Baumbach. "Then we want him too," Hunter says. They give us travel cards, credit cards, just "go to it!" The support was unbelievable.

The following week Arthur D Little Comes to town. Stern hosts a "golden reception" for them at his private home, and to a strategy meeting the next day. Hannon also hosts a meeting at the Archdiocese. Standing at one end of a long mahogany table, the Archbishop welcomes us all and says that he is here "to give support." He must now leave, he explains, smiling, "separation of church and state." But please keep him advised.

Dick and I emerge with a first order of business. We know that there's no way to win this in Louisiana. We will need DC lawyers, the best available. And so, one year out of law school with no practice experience, the two of us will be going to interview the top legal practitioners in a city full of lawyers who, to us, are total strangers.

—William Borah, July 2015⁵⁴

There have always been two cities in New Orleans, two cultures, for a long time two languages, and the expressway would reopen this schism like a wound. At issue was a unique-to-America combination of people and architecture known to the Americans as the French Quarter, and to its residents as the Vieux Carre.

New Orleans began here, indeed all of Louisiana began here, and the most remarkable thing about it was that it had managed to retain its character over the centuries despite catastrophic fires, chronic floods and unrelenting development pressures. The scene was not always pretty: its opera houses straddled open sewers, the slave trade flourished on every corner, and its murder rates led the nation,⁵⁵ but there was a magic about its architecture and the Mississippi at its doorstep that lifted the soul.

The beating heart of the Vieux Carre was the Place d'Armes (now, Jackson Square), open to the full sweep of the river, the towering St Louis Cathedral on the opposite side flanked by the Cabildo and the Presbytere, while the two Pontalba buildings completed the quadrangle, every structure a story of its own.⁵⁶ Neighboring streets housed twelve buildings now registered as national landmarks, five more on the national list of historic places, and nearly two hundred of "recognized . . . of major architectural and historical significance."⁵⁷ The streets themselves were also history, narrow, cobblestoned, overhung with iron-grilled

54. Borah interview, *supra* note 2.

55. For particularly vivid descriptions of New Orleans in earlier days see HERBERT ASBURY, *THE FRENCH QUARTER: AN INFORMAL HISTORY OF THE NEW ORLEANS UNDERWORLD* (2003); HODDING CARTER, *LOWER MISSISSIPPI* (1942).

56. See, e.g., CHRISTINA VELLA, *INTIMATE ENEMIES: THE TWO WORLDS OF THE BARONESS DE PONTALBA* (1997).

57. *SECOND BATTLE*, *supra* note 16, at 11.

balconies stretching two and three stories into the air. This was lived-in architecture, a community of busboys, teachers, dock workers, office workers, writers, bookstores, juke joints and small hotels. All of the pieces fit. Locals would call it the “tout ensemble.”

By the turn of the twentieth century, however, the Quarter was in peril. Its lock on river transportation had been weakened by the railroads and the first stirrings of the automobile culture to come.⁵⁸ Its connection to the Mississippi had been severed as well, first by massive sheds and warehouses, then by rail tracks that made even walking to the river a dangerous proposition, and yet again by twelve-foot levees to keep spring floods at bay.⁵⁹ In effect, there was no riverfront; the river was no longer in view. The Place d’Armes could as well be in Nevada. Local businesses closed, wealthy residents moved away, houses deteriorated, a city inspector reported finding a cow in an upper room of the Pontalba building and the French Opera House on Bourbon Street burned down.⁶⁰ By the early 1900s the Vieux Carre was considered by many a “virtual slum,” for which the best remedy would be another, cleansing fire.⁶¹ It seemed ripe for Le Corbusier’s condemnation, the vehicular prescriptions of Robert Moses, and the largesse of the federal-aid highway program.

But not quite. As with the Soho district of London, the Left Bank of Paris and New York’s Greenwich Village, artists attracted to the low rents and free-wheeling ambiance moved in, Tennessee Williams, William Faulkner and Sherwood Anderson joined them, musicians flourished and something began happening from the ground up.⁶² From the top down, meanwhile, philanthropists and entrepreneurs began restoring endangered buildings, some to old uses (e.g. St Louis Cathedral) and some to new (e.g. Brennan’s Restaurant).⁶³ The Quarter had been damaged, but it was coming back. Famed Louisiana historian Sam Wilson would later observe, “[t]he very poverty and neglect which had left the Vieux Carre largely untouched through the years was to prove its salvation.”⁶⁴

That, and a new kind of activism led by the irrepressible Elizabeth Werlein (licensed pilot, opera singer, and first President of the League of

58. *Id.* at 26-29.

59. ARI KELMAN, A RIVER AND ITS CITY: THE NATURE OF LANDSCAPE IN NEW ORLEANS 200 (2003).

60. SECOND BATTLE, *supra* note 16, at 21.

61. *Id.*

62. *See id.* at 22.

63. *Id.*

64. *Id.*

Women Voters, *inter alia*), a Quarter resident who in 1925 persuaded the mayor of New Orleans to establish a Vieux Carre Commission to advise on municipal decisions.⁶⁵ When advice alone proved insufficient, in 1937 she secured an amendment to the state constitution converting the Commission into a regulatory body with the mission to protect the Quarter from incompatible development, the first such authority in the country.⁶⁶ It was now official. The Vieux Carre was rising like the Phoenix from ashes to icon. Ten years later the expressway plan appeared.

In 1946 the Louisiana Department of Highways contracted with Robert Moses for a vision for New Orleans featuring, not surprisingly, highway transportation.⁶⁷ He did not disappoint. His report in December of that year declared the problem to be access to the city from the east and west, for which he recommended major bridges⁶⁸ tied into a six-lane riverfront expressway that would service the docks and eliminate ground-level congestion.⁶⁹ It would also, ramping up the rhetoric, improve the Quarter by “nurturing its kinship to the growing city.”⁷⁰ It was necessary “to give sufficient attention to progress,” Moses cautioned, “lest the Vieux Carre become a sterile museum without vital associations with the stream of life around it,”⁷¹ a healthy stream as he saw it, as he always saw it, of high-speed traffic. No mention was made of the effect of severing the Quarter from its river; that process had already occurred. No mention was made of alternative routes. This was the logical one, and if there was anything in the world Moses did not believe in, it was alternatives to his plans.

One look at the map confirmed that the primary beneficiary of this traffic would be the Central Business District (CBD),⁷² which was another world, the second city of New Orleans.

The CBD rose across Canal Street in the American sector, driven by commerce and set apart from the Vieux Carre at an early date by a “neutral ground,” a demilitarized zone intended to keep the peace.⁷³

65. Anthony Stanonis, “A Woman of Boundless Energy”: *Elizbeth Werlein and Her Times*, 46 *LA. HIST.: J. LA. HIST. ASS’N.* 5, 7-22 (2005).

66. *Id.*

67. *See generally* ROBERT MOSES, *ARTERIAL PLAN FOR NEW ORLEANS* (1946).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Indeed, the acquisition of New Orleans by the Americans had led to a nascent Creole rebellion and bloodshed. *See* GEORGE WASHINGTON CABLE, *THE CREOLES OF LOUISIANA* 64-67 (1884).

Crossing Canal into this new and burgeoning society, remarked one English visitor, was to go “from one century into another,” crossing “the boundary line between two coterminous nations.”⁷⁴ Nothing would more evidence this divide than their skylines, the low-rise Quarter dwarfed by the tall, rectangular towers of the CBD whose occupants abandoned them by night to residences uptown, across the river, and across the lake: Plan le Corbusier. These skylines, in turn, reflected differences all the way down to the human mind.

One divide concerned the nature of public things, which first came to a head in a fight over the city’s major asset, the Mississippi River. French Creoles, following the Napoleonic Code, claimed traditional use of the riverbanks for harvesting sand and simple relief from the odors of the day.⁷⁵ Robert Livingston, a newly-arrived Yankee, undertook to represent an American developer claiming the banks as his own, leading to acts of violence and perhaps the most famous lawsuit in Louisiana history.⁷⁶ Despite a brief from President Jefferson (an avowed francophile) favoring public space, the American position won and the rest is river history.⁷⁷ Which, too, resurfaced in the expressway controversy. Opponents wanted to re-open the Place d’Armes, the Quarter’s public square, to the Mississippi.⁷⁸

A second divide lay in the nature of public planning. To the Chamber of Commerce, it involved “a ‘unity of purpose’ with business leaders exercising a guiding hand on elected local officials.”⁷⁹ The Vieux Carre Expressway bore testimony to this guiding hand in action. To John Lawrence, Dean of the Tulane School of Architecture, the Chamber had democracy backwards. It, a private entity, had become “in fact the planning agency” for the City of New Orleans, eliminating “impartial” decisions.⁸⁰ Business was important, but it was not government.

The riverfront plan lay dormant for several years while the state moved forward on its access features, bridges across the Mississippi and

74. NEW ORLEANS ARCHITECTURE: THE AMERICAN SECTOR 50-51 (Mary Louise Christovich et al. eds., 1972).

75. For a detailed description of this conflict see KELMAN, *supra* note 59, at 19-49.

76. *Morgan v. Livingston*, 6 Mart. 19 (La. 1819); see also KELMAN, *supra* note 59, at 44-49.

77. KELMAN, *supra* note 59, at 34-35. The result was something of a compromise, private ownership suffused with a public servitude.

78. *Id.* at 203-04.

79. SECOND BATTLE, *supra* note 16, at 154.

80. *Id.* at 69. In effect, Lawrence was challenging an interlocking web of corporate, social, institutional, and media interests that had controlled the city since the demise of reconstruction. See generally ROSARY O’NEILL, NEW ORLEANS CARNIVAL KREWES: THE HISTORY, SPIRIT AND SECRETS OF MARDI GRAS (2014).

Lake Pontchartrain. Soon, however, the Chamber, concerned by an exodus of investment to the suburbs, declared the expressway to be “the greatest single factor in bringing back our Central Business District.”⁸¹ Once again, the possibility that such a facility might hasten the exodus instead did not, apparently, cross their minds. The ball was now rolling and would be driven forward by the perceived interests of the CBD, as the opposition would be by those of the French Quarter. There was no neutral ground in between.

V. THE BATTLE BEGINS

We visit with several well-known attorneys in D.C. but Louis Oberdorfer, wins hands down, best in show, no comparison. A former Deputy Attorney General during the Civil Rights wars, an ally and good friend of [Attorney General] Bobby Kennedy, Oberdorfer had been a tank division commander in World War II, taught law part time at Yale, and was now a senior partner at Wilmer, Cutler [and Pickering], a premiere corporate law firm in a field of dozens.

We almost don’t get him. He is incredulous that two neophytes have been sent to recruit him. Can’t quite believe it. He all but says, “Are you hiring *me*?” The interview lasts two hours. He was thorough, very thorough, beat the stuffing out of us, but at least he didn’t throw us out of his office. Back at the hotel that night, going over the Oberdorfer experience, I tell Dick, “He’s tough as nails.” Dick says, “That’s what we need.”

Stern agrees. Oberdorfer puts two assistants on the case, Jack Vardaman and David Chambers, both out of Harvard law. The legal issues are new. Few have been tried before; none are known stoppers.

—William Borah, July 2015⁸²

The 1956 Federal Highway Act unleashed the money, and the riverfront expressway rose up from the shelf like an urban Phoenix of its own. In 1958, the city added the project to its street plan; in 1962, it approved buying the first rights of way, and the following year voters approved a bond issue to fund them.⁸³ In 1964, Mayor Schiro enthused:

[T]he Riverfront Expressway and its already built and building tributaries will supplement and nourish the giant skyscrapers we are constructing in New Orleans. We are entering the age of economic dynamics. The old

81. *Public Hearing Concerned with Placing the Riverfront Expressway on the Major Street Plan of New Orleans*, City Planning Comm. 2-11 (Nov. 19, 1958).

82. Borah interview, *supra* note 2.

83. SECOND BATTLE, *supra* note 16, at 36, 45.

ways in New Orleans are finished and done with. Indeed, New Orleans is on the March.⁸⁴

The Le Corbusier-Moses vision had found yet another home.

State and federal agencies followed suit. The year of Shiro's declaration, the state highway department concluded that the expressway was "justified," indeed "indispensable by 1980," and placed it on its priority list.⁸⁵ The following year it began construction with a tunnel under the Rivergate complex.⁸⁶ (Robert Moses: "Once you sink that first stake they will never make you tear it out.")⁸⁷ In short order the federal government accepted the expressway into the interstate system, enabling 90% funding, and approved the riverfront route.⁸⁸ It could seem overwhelming. At one point Borah recalls sitting with Baumbach at a café, both of them lost in private thoughts. "You know, Bill," Baumbach said quietly, "there are times I think this city *deserves* the Vieux Carre Expressway."⁸⁹

Paradoxically, though, the momentum was beginning to shift, prompted by leading professionals in the Quarter and the coincidence that, for safety reasons, the massive sheds and warehouses that had blocked the river for a century had recently been torn down.⁹⁰ One could see the Mississippi again, and one could feel it as it was without six lanes of traffic pounding by. In January 1965 opponents called a meeting in the Quarter's Gallier Hall that set records for the venue.⁹¹ More than 700 people streamed into what turned out to be, among other things, a protest against the CBD which, per local architect Mark Lowery, "believed sincerely (however erroneously)" that the expressway would be good for business.⁹² On the contrary, he continued, the French Quarter as-is was responsible for the city's booming convention and tourist business; its existence "prevented the whole central area from becoming a business graveyard."⁹³ "While many expressway boosters," he concluded, "had old

84. *Council Calls for Public Hearing on Expressway*, TIMES-PICAYUNE, Jan. 15, 1965, at 12.

85. Billy G. James, *French Quarter Fights New Orleans Expressway*, CHI. TRIB. Aug. 19, 1967, at 1A.

86. Letter from Edmond L. Faust to William Borah (July 16, 1971); Borah interview, *supra* note 2.

87. ANTHONY FLINT, *WRESTLING WITH MOSES: HOW JANE JACOBS TOOK ON NEW YORK'S MASTER BUILDER AND TRANSFORMED THE AMERICAN CITY* 44 (2009).

88. SECOND BATTLE, *supra* note 16, at 45.

89. Borah interview, *supra* note 2.

90. KELMAN, *supra* note 59, at 20.

91. SECOND BATTLE, *supra* note 16, at 51-52.

92. *Id.*

93. *Id.* at 51.

New Orleans names, they also had Kansas City minds.”⁹⁴ Touché, that was the cultural divide talking and it would not be the last time.

Following the meeting, the Vieux Carre Commission, which had been on the sidelines, told Mayor Shiro and the City Council that, as to an elevated expressway, it was strongly opposed.⁹⁵ This was a start, because the elevated expressway was the only project on the table. In a meeting two weeks later, Governor McKeithen, shown an image of the expressway across Jackson Square, said, “No, this won’t do. They’ve got to come up with something better than this.”⁹⁶

Another hearing followed in city hall, run by the Louisiana Department of Highways, whose views on the matter were of course fixed in stone. The session nonetheless produced several surprises, none the least of which was that it ran uninterrupted for seven hours.⁹⁷ Its tenor was reflected in the comments of Dean Lawrence, which began: “Gentlemen, we aren’t talking about an expressway, we are talking about an act of urban barbarism.”⁹⁸ Mayor Shiro, obviously impressed by the size of the crowd, now recommended, “in view of the heat that has been generated by this controversy,” that “further study be given to the entire project to examine what alternatives might be available and feasible.”⁹⁹

And so, the hunt for alternatives was on. The difficulty of course was that there really weren’t any. Running six lanes along the river was going to impact the Vieux Carre no matter how it was done, up in the air, ground level, trenches, tunnels, half-and-half, adorned or not with iron grillwork and pseudo-nineteenth century lighting (The *Times-Picayune* editorial: *Looks Like Good ‘Ornamenting’*;¹⁰⁰ Lawrence response: “another Mardi Gras float”)¹⁰¹ . . . and subsequent studies looked at them all. While they mounted in number, however, each investigation sprang from the same premise: the expressway was necessary, and necessary

94. *Id.*

95. *Id.* at 52.

96. *Id.* at 51-52

97. *Id.* at 53-54.

98. *Interstate Highway System Hearing*, New Orleans City Council (Mar. 24, 1965). When *The Times-Picayune*, part and parcel of the city power structure at the time (*inter alia*, it retained a CBD law firm to counsel the legislature on ways to stave off integration), savaged Lawrence’s testimony the next day, including the presence at the hearing of his architecture students, the Dean replied that the students had not acted at his instance but rather “because they are sick and tired of seeing their elders botch up this city, one of only half a dozen real cities in the United States.” *Id.*; see also *Together Apart: The Myth of Race, New Orleans’ Newspapers Give White View of the City*, TIMES-PICAYUNE (1993). The cultural divide continued.

99. *Interstate Highway System Hearing*, *supra* note 100.

100. Editorial, *Looks like Good ‘Ornamenting,’* TIMES-PICAYUNE, Mar. 21, 1967, § 1, at 10.

101. SECOND BATTLE, *supra* note 16, at 148.

along the face of Jackson Square. When the Chamber of Commerce protested that thirteen studies had already been performed, Lawrence replied, “We really haven’t had thirteen studies . . . we’ve had one study thirteen times.”¹⁰²

Also frustrated by delays, *The Times-Picayune* editorialized that “there ain’t going to be any rabbit,” and that more study “could be mischievous or fatal for the expressway.”¹⁰³ Which, for at least some opponents, was of course the point. They were buying the same time and momentum that the project was losing. In June 1966 a proposal before the City Council to put the expressway on hold lost, after long and contentious debate, by the narrowing margin of 4-3.¹⁰⁴ Times were changing.

Yet more time was bought in a different forum and one with more potential consequence than any study. In April 1967, the Pontalba family and leading preservationists brought a federal lawsuit with an unprecedented set of claims.¹⁰⁵ State highway department approval of the project, it said, violated the Louisiana Constitution and other laws protecting the Quarter’s distinctive character, the legacy of Elizabeth Werlein. According to studies cited in their complaint, the highway would impact a surface area of seventy-four acres, more than one-quarter of the Vieux Carre.¹⁰⁶

The department moved to dismiss the case, arguing that highway decisions were matters within its discretion, and that the laws protecting the Vieux Carre regulated its private and semi-public buildings and not this expressway, which was neither public nor, indeed, a building at all.¹⁰⁷ The Chamber of Commerce moved to intervene on the state’s side, claiming as injury that it had spent \$270,000 promoting the project.¹⁰⁸ After two months the trial court denied the motion. The case would proceed, placing the future of the project under a cloud.¹⁰⁹

Meanwhile, however, a larger storm had been brewing and, as it broke, it would sweep the Vieux Carre Expressway and others like it onto a different stage.

102. Planer, *supra* note 100.

103. SECOND BATTLE, *supra* note 16, at 83.

104. *Id.* 98-99.

105. Baron H. de Pontalba v. City of New Orleans, No. 67-287 (D. La., filed 1967); SECOND BATTLE, *supra* note 16, at 130-37.

106. *Id.* at 131-32. They also claimed (with some stretch) that allowing the expressway to destroy this character, while at the same time requiring local property owners to protect it with scrupulous attention, violated equal protection under the U.S. Constitution as well. *Id.*

107. *Id.* at 143.

108. *Id.* at 143-44.

109. *Id.*

VI. WASHINGTON WAKES UP

Oberdorfer's game plan is simple. Court is a last resort, the law is unproven, put everything we've got into the administrative process and win it there if we can.

Dick and I shuttle up to assist. We are staying at the Mayflower Hotel, a watering hole for the power of the country. One afternoon J. Edgar Hoover is at the next table. It is also expensive, and we are running up a bill. Worried about the cost I check us out of the Mayflower for a more modest hotel, and make a call from the room to the Federal Highway Administration, asking for an appointment. The receptionist is cool at first, but then says "Aren't you the ones staying at the Mayflower?" and puts us straight through. The hotel's name is magic. I shout over my shoulder to Dick, "Don't unpack . . . we're going back to the Mayflower!"

Meanwhile, Arthur D. Little is working on its own report. Dick gets a draft and he calls me immediately. When Dick was excited he shouted like a quarterback barking signals. "Bill," he says, "It's TERRIBLE!" I ask him what's wrong with it. He says, "It's got no TEETH!"

Dick and Jack [Vardaman] fly to Boston to negotiate some edits, and the final version lambasts the project. It becomes the best ammunition we have back in New Orleans, where the rest is coming in on us like mortar fire. And it will support our brief to the Federal Highway Administration, Oberdorfer's chosen forum.

There is no precedent for what we are going to do. We will go to the top with our best witnesses, the whole nine yards. Oberdorfer doesn't want to simply talk with the Administrator about our case. He wants to put it on.

We have no way of knowing this, but we are coming to a troubled agency. For the first time in its existence the highway program was catching hell.

—William Borah, 2015¹¹⁰

New Orleans was not alone. It was one of the first, but similar fights were rising all over, in San Francisco over the Embarcadero (another waterfront freeway),¹¹¹ in Boston over an inner beltway (through a series of towns and low-income neighborhoods),¹¹² and the last freeway flourishes of Robert Moses in New York City (including the Cross Bronx Expressway),¹¹³ which proved to be the last straw for two writers who would cast a shadow over the Moses mystique, and more importantly his view of urban America.

110. Borah interview, *supra* note 2.

111. *See* KAY, *supra* note 3, at 250.

112. ALAN LUPO, FRANK COLCORD & EDMUND FOWLER, RITES OF WAY: THE POLITICS OF TRANSPORTATION IN BOSTON AND THE U.S. CITY 12-21 (1971).

113. Burkeman, *supra* note 13.

Robert Caro was a New York reporter, engaged in a series of articles about a Moses bridge across Long Island Sound that would have serious impacts on tidal flows and fisheries.¹¹⁴ Despite these issues, strong popular opposition and the objections of Governor Rockefeller, the New York Assembly followed Moses like sheep, leading to, Caro later wrote, “one of the most transformational moments in my life.”¹¹⁵ Here he was believing that democracy meant decisions made by elected officials, but “here’s a guy who has never been elected to anything, and he has more power than anyone who was elected, and he has more power than the mayor and any governor or any mayor of governor put together. . . .”¹¹⁶ Caro spent years researching the phenomenon, and authored a book entitled *The Power Broker*, the definitive work on Moses, warts and all.¹¹⁷

At the same time, a senior editor at *Forbes* magazine, Jane Jacobs, found herself in the crosshairs of a Moses freeway through Greenwich Village. She lived there, and is said to have “shocked her colleagues” by bicycling to work.¹¹⁸ Shocked herself by the project, she began writing a book that described cities as a living fabric of neighbors, “eyes on the street” she called them, that interacted with each other like parts of the body, regulating a vibrant flow of life.¹¹⁹ She attacked Le Corbusier’s concept directly, writing that his “tower in the park” had become the “tower in the parking lot.”¹²⁰ Jacobs’ first book, *The Death and Life of Great American Cities*, became an instant classic, an urban version of Rachel Carson’s *Silent Spring*.¹²¹ As if just waiting for someone to say the word, many others followed her lead.¹²²

During this same period, the early 1960s, Ralph Nader was publishing his own first book, *Unsafe at Any Speed*,¹²³ whose revelations based on the auto industry’s own documents cast the first harsh light on General Motors. The corporation retaliated with a secret investigation of Nader that continued for years and, when it became known, further

114. Charles McGrath, *Robert Caro’s Big Dig*, N.Y. TIMES MAG. (Apr. 12, 2012), http://www.nytimes.com/2012/04/15/magazine/robert-caros-big-dig.html?_r=0.

115. *Id.*

116. Christopher Robbins, *Robert Caro Wonders What New York Is Going To Become*, N.Y. TIMES MAG. (Feb. 17, 2016), http://gothamist.com/2016/02/17/robert_caro_author_interview.php.

117. *See* CARO, *supra* note 12.

118. KAY, *supra* note 3, at 249.

119. *Id.*

120. *Id.*

121. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 35 (1961); RACHEL CARSON, *SILENT SPRING* (1962).

122. *See* LEWIS MUMFORD, *THE HIGHWAY AND THE CITY* (1962).

123. RALPH NADER, *UNSAFE AT ANY SPEED* (1965).

tarnished the corporate brand.¹²⁴ Across the board, old icons were coming under harsh scrutiny and new ones were rising.

The most compelling critiques, however, came from those involved in the fights themselves and their book titles alone—*Superhighway-Superhoax*,¹²⁵ *Road to Ruin*,¹²⁶ *Divided Highways*,¹²⁷ *Autokind v. Mankind*,¹²⁸ *Rites of Way*,¹²⁹ *The Pavers and the Paved*³⁰ (written by the first public relations director of the Federal Highway Administration; he had seen enough)—speak of the frustration they felt over confronting a machine that, in the Moses vein, dismissed their concerns with the back of its hand. As in New Orleans they fought back with little but their wits, street protests, public meetings . . . and, astonishingly, began winning. Expressways were canceled from San Francisco to New York and a dozen cities in between. The website Wikipedia contains a thirty-one-page description of “Highway Revolts in the United States,” with nine of them in California alone.¹³¹ The first environmental litigation in America did not rise from majestic landscapes nor pits of toxic pollution, but rather, nearly a decade earlier, from the streets of the city against federal-aid highways.

The real world consequences of urban interstates became, save to the most committed, increasingly plain. One was their tendency to suck the economic life from cities to distant malls, taking the tax base with them. Downtowns began to die. The rationale of relieving congestion also fell flat; the book *Exploding Metropolis*, a *Forbes* magazine publication, asked: “How can dumping more cars into downtown . . . relieve downtown traffic?,”¹³² to which there was no sane answer. Indeed Atlanta, with more highway miles per person than any other city but Dallas, led the nation in time lost in transit.¹³³ Meanwhile, urban air quality turned lethal with lead levels in city children reaching epidemic proportions¹³⁴ and ozone levels that, in Atlanta alone, put over a million

124. James Ridgeway, *The Dick*, NEW REPUBLIC, Mar. 12, 1966, at 11-13.

125. LEAVITT, *supra* note 18.

126. MOWBRAY, *supra* note 15.

127. TOM LEWIS, *DIVIDED HIGHWAYS* (1997).

128. KENNETH SCHNEIDER, *AUTOKIND VS. MANKIND: AN ANALYSIS OF TYRANNY, A PROPOSAL FOR REBELLION, A PLAN FOR RECONSTRUCTION* (1971).

129. LUPO ET AL., *supra* note 112.

130. KELLEY, *supra* note 32.

131. *Highway Revolts in the United States*, WIKIPEDIA (2016), https://en.wikipedia.org/wiki/Highway_revolts_in_the_United_States.

132. WILLIAM HOLLINGSWORTH WHYTE, *THE EXPLODING METROPOLIS* 55 (1993).

133. Oliver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 *FORDHAM URB. L.J.* 1529, 1555 (2002).

134. See *Ethyl Corp. v. Env't Prot. Agency*, 541 F.2d 1, 8 (D.C. Cir. 1976). Noted criminologist James Q. Wilson has identified urban air lead poisoning as a significant contributor

residents on medicines or indoors, or both.¹³⁵ Urban housing fared no better. Between 1956 and 1965, the first decade of the federal interstate program, new freeways destroyed more housing units (330,000) than were built by the entire federal housing program (240,000).¹³⁶

Racial impacts were particularly stark, whites fleeing to suburban enclaves and commuting back through neighborhoods least able to resist them.¹³⁷ “White men’s highways through black men’s bedrooms,” went the phrase.¹³⁸ To be sure, urban freeways did not cause white flight all by themselves—green space and white schools were the magnets—but the freeways were the facilitators, the means of getting it done. On all of these fronts American cities, despite their embrace of a program fueled by so much money, were net losers in a game driven by considerations that did not feature cities at all.

Major media caught on. *Life* magazine, the premier photo journal of its day, referred to the interstates as “streams of lava on legs.”¹³⁹ The *Reader’s Digest*, which avoided controversy as a rule, published an article entitled *Let’s Put the Brakes on the Highway Lobby*, describing it as a “pressure packed alliance of all who promote highways—from truckers and construction unions to billboard firms . . . riding roughshod over development of a sane transportation system.”¹⁴⁰ In an editorial entitled *Highways vs People*, *The New York Times* concluded: “As neighborhoods are sliced in two and cemeteries are relocated, neither the quick nor the dead are safe.”¹⁴¹ Prominent business publications, *U.S. News and World Report* and *Business Week*, weighed in as well.¹⁴² The interstate program was back on the front burner, and this time not to a chorus of applause. As a *Washington Post* article, *Battle of New*

to rising urban crime rates during those same decades. George Will, *Sentencing Reform Alone Won’t Fix Crime and Punishment in America*, WASH. POST (Mar. 16, 2016), https://www.washingtonpost.com/opinions/sentencing-reform-alone-wont-fix-crime-and-punishment-in-america/2016/03/16/22778ef2-ead1-11e5-b0fd-073d5930a7b7_story.html. (“For decades, doctors have known that children with lots of lead in their blood are much more likely to be aggressive, violent and delinquent.”).

135. Brief for Petitioner at 10-14, *So. Org. Comm. for Economic and Soc. Justice v. EPA*, 333 F.3d 1288 (11th Cir. 2003) (No. 02-13705-A).

136. BURWELL & WILNER, *supra* note 28, at 23.

137. KAY, *supra* note 3, at 45. Moses advised suburbanites, one hopes in jest, to avoid black neighbors by cooling the water in their swimming pools. Burkeman, *supra* note 13.

138. KAY, *supra* note 3, at 45.

139. SECOND BATTLE, *supra* note 16, at xv.

140. George Denison & Kenneth Tomlinson, *Let’s Put Brakes on the Highway Lobby*, READER’S DIG., May 1968, at 97-102.

141. *Highways v. People*, N.Y. TIMES, Nov. 20, 1966.

142. *How to Cure Traffic Jams*, U.S. NEWS & WORLD REP., June 9, 1967; *Halting the Highway Men*, BUS. WK., July 19, 1969.

Orleans: Turning Point in the Freeway War, noted, “the Revolt is beginning to reach Capitol Hill—the most important place of all.”¹⁴³

Indeed, Capitol Hill had been getting an earful. Senator Henry Reuss of Wisconsin saw a landscape “turned into asphalt highways and acres of shopping centers”;¹⁴⁴ Joseph Tydings of Maryland stated that roads had been built with “a remarkable forgetfulness that we are dealing with human beings”;¹⁴⁵ Ralph Yarborough of Texas added, “[f]reeways have cut great swaths through urban communities, whole neighborhoods have been sliced in half, pools, parks have been segmented, waterfronts have been cut off from the body of the city.”¹⁴⁶ Joseph Clark of Pennsylvania called for action:

It is time that Congress took a look at the highway program, because it is presently being operated by barbarians, and we ought to have some civilized understanding of just what we do to spots of historic interest and great beauty by the building of eight-lane highways through the middle of our cities.¹⁴⁷

He might as well have said New Orleans.

Responding to the urban highway boom was of course more easily said than done, and still is. Throughout the 1960s a series of congressional hearings was met by a phalanx of witnesses from every dependency: contractors, auto makers, real estate developers, oil companies, cement and steel manufacturers, state planners and congressmen, representing all of these interests . . . a full-court press to keep the federal monies flowing.¹⁴⁸ Local opponents were vilified as “unco-operative [sic], obstructionists or sensation and publicity seekers. . .”¹⁴⁹ (Moses redux), with no acknowledgement that it was the quality of their lives at stake. Some speakers however, particularly those from larger cities, joined the call for reform,¹⁵⁰ including the mayor of Seattle, James “Dorm” Braman, who described the exodus phenomenon

143. SECOND BATTLE, *supra* note 16, at 102.

144. *Bills to Authorize the Secretary of the Interior To Conduct Investigations, Studies, Surveys, and Research Relating to the Nation’s Ecological Systems, Natural Resources, and Environmental Quality, and To Establish a Council on Environmental Quality: Hearing on S. 1075, S. 237, and S. 1752 Before the Comm. on Interior and Insular Affairs*, 91st Cong., 68 (1969) (statement of Rep. Charles E. Bennett).

145. *Id.* at 137 (statement of Sen. Joe Tydings).

146. SECOND BATTLE, *supra* note 16, at 106.

147. Statement of Rep. Joseph Clark on October 19, 1966, U.S. Sen., 89th Cong., 2nd Sess. (1966).

148. LEAVITT, *supra* note 18, at 111-32, 200-27 (describing several hearings).

149. *Id.* at 204.

150. These included New York’s Senator Jacob Javits and State Assemblyman Charles Rangel. *Id.* at 207-08.

that, in turn, stimulated yet more freeways to feed it. “All this traffic makes the highway planner secure in the belief that his highway is a success,” he testified, “and he starts construction on another, while planning yet another,”¹⁵¹ a perfect feed-back loop. Within a year of this statement, by extraordinary coincidence, Braman would play a pivotal role in the fate of the Vieux Carre Expressway some 2000 miles away.

In the end Congress responded four times, each time with increasing vigor. The first came in 1962 with an overhaul of the highway planning process, a black box for outsiders, which now would require urban areas (where the most heat was coming from) to create “a continuing” and “comprehensive” planning process carried on “cooperatively by state and local communities.”¹⁵² These well-intentioned phrases would lead to cosmetic changes, to wit the seven-hour hearing in New Orleans, but highway building remained solidly in the hands of the builders.

The second was the Highway Beautification Act of 1965,¹⁵³ the product of a White House conference on natural beauty at which, not surprisingly, several panels dealt with federal-aid highways. Signing the bill, President Johnson declared that we had “placed a wall of civilization between us and the beauty of our land. . . .”¹⁵⁴ Although focused on aesthetics (e.g. billboards, green space), the Act set a new tone for federal policy that would animate stronger measures to come.¹⁵⁵ They were not long in arriving.

One year later came the National Historic Preservation Act,¹⁵⁶ obligating federal agencies (with particular attention to highways) to “take into account” their effects on historic properties¹⁵⁷ and to consult with a new Advisory Council on Historic Preservation on structures of particular significance.¹⁵⁸ Here too, however, the statutory language, “take into account,” gave highway officials considerable play. The

151. *Id.* at 203.

152. Federal-Aid Highway Act of 1962, Pub. L. No. 87-866, § 9(a), 76 Stat. 1148 *as amended* 23 U.S.C. § 134 (1962).

153. Highway Beautification Act of 1965, Pub. L. No. 89-285, 79 Stat. 1028 (1965).

154. Presidential Statement on Signing the Highway Beautification Act of 1965, 2 PUB. PAPERS 1073 (Oct. 22, 1965).

155. The President’s statement indeed promised them. The bill did not represent “everything that we wanted,” he observed, nor “what the national interest requires,” but “we must crawl before we walk, and we are going to walk.” *Id.* at 1047.

156. National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915 (1966). The Act responded to an “ever-increasing expansion of urban centers, highways, and commercial, industrial and residential development” that overwhelmed existing programs to preserve cultural heritage.

157. *Id.*

158. *Id.*

Council's review could delay a project, make it defend itself and nudge it towards a different outcome, but if it went forward anyway there was no stopper.

Within yet another year came the Transportation Act of 1966, a very different creature.¹⁵⁹ For the first time the Federal Highway Administration was subordinated to a newly created Department of Transportation,¹⁶⁰ although whether this change was semantic or substantive remained to be seen. More immediate to the Vieux Carre was the Act's section 4(f), which forbade the Transportation Secretary from funding any project affecting a public park, wildlife area, or "historic site of national, State or local significance," unless there was "no feasible and prudent alternative."¹⁶¹ These words sounded like real law—you were to *avoid* these areas unless you absolutely couldn't—but no one could predict that the courts would agree.

Whatever courts might say in the future, though, for the moment these newly inked statutes gave the Oberdorfer team in Washington real ammunition. The Vieux Carre Expressway seemed squarely in their sights, and from them the legal case would rise.

VII. THE MEETING

Dick and I fly up to work on the hearing. help on witnesses. All of Oberdorfer's people are on a war-time footing, he's saying constantly "You sure? Go back and check it," every statement made, even the clients, "That group still in? Be sure." He wants no surprises. As it turns out I nearly give him a heart attack.

Of the four witnesses we present, mine is Lawrence Halprin, a visionary in the world of transportation and a world renowned architectural planner. Never met him, but his reputation is huge. I go to the airport to pick him up and out he comes with wild-man hair, pink shirt, and necklaces, California all the way. First thing he says to me, the very first thing, is "How about a Bloody Mary?" Well hell, I grew up in New Orleans and I say "Why not?" It is ten in the morning.

It is Halprin's first visit to the city. We take the ferry over and back, seeing Jackson Square unobstructed. He looks closely at one building and asks me "Who did that one?" and names a famous architect. I say yes, and he says, "Yeah, I worked with him in Argentina. Did really good work

159. Department of Transportation Act of 1966, Pub. L. No. 89-670, 80 Stat. 931 (1966).

160. *Id.*

161. "After [August 23, 1968], the Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, or wildlife and waterfowl refuge or historic site 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, wildlife and waterfowl refuge, or historic site resulting from such use." *Id.*

when he was drunk, but hideous stuff when he was sober.” We spend the day together, more Bloody Mary’s, he doing his recon, we debrief, and he flies home.

The evening of the hearing we are gathering at Oberdorfer’s house for five o’clock, intended to unwind us a little. All the attorneys and the three other experts are there, talking in low voices, stalling. Halprin has not arrived. Oberdorfer is looking over at me, dangerous looks. More time passes. “Where’s your boy?” he asks me. I do not know. At 7:30 we are walking into the dining room to eat when a big white limo pulls up the drive. Oberdorfer and I rush to the door and out of the rear seat tumbles Halprin, holding a bottle of champagne. Oberdorfer looks aghast, while Halprin staggers up to hug me and recount the grand time we had in the City.

I have an anxious night. The next morning Halprin shows up at Oberdorfer’s office at seven o’clock, dark suit, narrow tie, hair neatly arranged. Oberdorfer saves him for last, maybe not trusting him, maybe wants him to hit cleanup, and he hits a home run. “I’ve been to New Orleans,” Halprin says, “I’ve touched the buildings and done coffee at the Café du Monde.” He talks about highway problems in Atlanta, D.C., San Francisco, “seen them first hand too, stuck in traffic, you can’t build your way out of it, you bring untenable social costs, New Orleans is the pivotal decision, the chance for a new transportation day.” He hits it out of the park.

In the end, though, Bridwell splits the baby. We had talked him out of the elevated highway, but not a raised-surface route, which was almost as bad. We’ve made a damn fine record, though, and it’ll be there when Nixon comes in.

—William Borah, 2015¹⁶²

Vardaman thought they had won. The meeting with Federal Highway Administrator Bridwell was calendared for less than an hour; it went on instead for nearly three, capped by the presentation of Halprin whom Vardaman later said, “stole the day.”¹⁶³ Dropping his prepared notes on the table as if they were irrelevant, Halprin spoke directly to Bridwell as to a friend, “This is why you should not do this thing.”¹⁶⁴ The Administrator had a legacy issue here, Halprin continued, the opportunity “to make a great forward stride instead of a backward one,” a “demonstration to the whole country that there is a new wind blowing—a new purpose is afoot in freeway design, traffic plus amenity, freeway integrated with its environment.”¹⁶⁵ If “we succeed here in New Orleans,”

162. Borah interview, *supra* note 2.

163. Interview with Jack Vardaman, via telephone (Nov. 12, 2015).

164. *Id.*

165. SECOND BATTLE, *supra* note 16, at 142.

he concluded, dealing in Bridwell as a partner, “we may in fact turn the whole course of urban freeway design in the United States.”¹⁶⁶ You could have heard a pin drop.

The team also presented a brief to the Administrator that read like a lawsuit: the planning process had been neither “comprehensive” nor “cooperative,” no consultation had taken place with the historic preservation council, and no decision on “feasible and prudent alternatives” could possibly be made because none had been considered.¹⁶⁷ Truth be told, back in 1967 it was far from clear that Oberdorfer’s clients—local residents offended by the impacts of the expressway on the character of the Quarter—had legal standing to bring such a claim in court,¹⁶⁸ but the brief was an unambiguous warning. It attached the Arthur D. Little report (as tweaked by Baumbach and Vardaman), which challenged everything about the project from its focus (“to enhance the interests of the Central Business District”) to the assumption that it would stimulate the city’s economy.¹⁶⁹

Bridwell was apparently impressed, at least enough to come to New Orleans himself for meetings with both sides, looking for alternatives, for some acceptable solution. As it turned out, this may not have been a good thing for the preservationists. The Administrator was distinctly unimpressed, he told a reporter, by the city’s care for the Vieux Carre: “If they permit sleazy strip joints on Bourbon Street and put up giant hotels in the heart of the Quarter,” he said, “I can’t understand why they’re so worried about highway aesthetics.”¹⁷⁰ He was not God, he continued, and “if a city wants a patently bad highway that makes a mockery of urban planning, that’s probably what they are going to get.”¹⁷¹

In January 1968, Bridwell approved an extension of the tunnel under the Rivergate, and two months later construction of the expressway from the Mississippi River Bridge down to Canal street, an arrow at the heart of the Vieux Carre. Opponents reacted with dismay, calling it “yet another element in the rickety, piecemeal political shenanigans that had characterized this project for 20 years.”¹⁷² Bridwell remained skeptical of

166. *Id.*

167. *Id.* at 14, at 140; Vardaman interview, *supra* note 163.

168. Legal standing for parties with environmental and aesthetic interests was not confirmed by the Supreme Court until five years later. *See* *Sierra Club v. Morton*, 405 U.S. 727 (1972).

169. SECOND BATTLE, *supra* note 16, at 137.

170. Priscilla Dunhill, *The Freeway Versus the City*, ARCHITECTURAL F., Jan.-Feb. 1968, at 75 (1968).

171. *Id.* at 75.

172. SECOND BATTLE, *supra* note 16, at 165.

an elevated road however, and in January 1969, three days before leaving office, he approved an alternative, a surface-level highway with a rise over the levee facing the Place d'Armes (Borah: "which meant that the eighteen-wheelers would be changing gears next to the Café du Monde").¹⁷³ This would have ended the matter, but for a new administration coming in and a new Secretary of Transportation, John Volpe. Unfortunately, he was not a good bet at all.

VIII. THE SURPRISE

The decision is in federal hands. [John] Volpe, the new Secretary of Transportation is a construction man, a highway man, but his oncoming deputy, Braman, is the former mayor of Seattle and had a big tiff against an expressway out there. We are still holding our breath.

Volpe sends Braman to New Orleans, go figure it out for me. Big meetings with the boosters that morning, they fill his ears. The afternoon is ours, and we meet at the Presbytere right there on Jackson Square. Vardaman flies in for Oberdorfer and makes his pitch too. Later he says to me, joking, "Never forget that I was the attorney of record." I am thinking, this case could go on forever.

[LONG PAUSE]

It was *Unbelievable*. Some days later I am in New Orleans and a friend calls me from D.C. Expecting little, I ask, "What's the news?" He says, "This morning Volpe announced he was cancelling the Vieux Carre Expressway." Dick is with me at the time and I shout him the news. We look at each other. Then we both say into the phone, like we were the Andrews Sisters, "We'll believe it when we see it in *The Times-Picayune*."

Next day it was there.

—William Borah, July 2015¹⁷⁴

Nothing about Volpe foreshadowed the decision he would make on the Vieux Carre Expressway. What Moses dreamed, Volpe did. Volpe Construction was the largest city-builder in Massachusetts, and one of the largest in the country.¹⁷⁵ As president of the prestigious National Association of Contractors, Volpe went on to direct the Massachusetts Department of Public Works (principal work: highways),¹⁷⁶ and then served as Federal Highway Administrator under President Eisenhower (principal work: interstates),¹⁷⁷ the heady, start-up years of the new mega-program. These "credentials converged" with his election as Governor of

173. Borah interview, *supra* note 2.

174. *Id.*

175. LEAVITT, *supra* note 18, at 54.

176. KELLEY, *supra* note 32, at 80.

177. *Id.*

Massachusetts,¹⁷⁸ where he compiled, in the words of a former federal highway official, an unblemished “record of rabidly profreeway positions and actions. . . .”¹⁷⁹ Throughout his terms, the apple of Volpe’s eye was an arterial belt eight lanes wide, (displacing 1300 households, one third of them below the poverty line), leading into Boston, but strongly opposed and frustratingly delayed by citizen opposition (including, inter alia, local universities).¹⁸⁰ His was an impressive resume, and one would look in vain for any trace of sympathy with the complaints of highway critics such as the Vieux Carre residents, which to him must have sounded drearily familiar.

Volpe wanted the Transportation post “badly” it is said,¹⁸¹ pursuing Presidential candidate Richard Nixon throughout the 1968 campaign. He had a strong ally in the American Association of State Highway Officials (ASHPO),¹⁸² who were first in line for the bounty the Department would provide. They saw their man in Volpe, and in a meeting with Nixon recommended him highly; by the end of a session with the candidate an understanding was apparently reached.¹⁸³

Volpe did not disappoint. Characterized as a “compulsive highway builder” during his confirmation hearings by Harvard economist J. Kenneth Galbraith, he parried that he was “a compulsive everything” . . . which in context may have meant the same thing. Asked about the highway lobby, he professed rather disingenuously “I don’t know who the ‘highway lobby’ could be,” except for millions of Americans who drove cars.¹⁸⁴ Several months later he would testify before Congress on the virtues of urban arterials (rebutting the notion that they would bring yet more traffic into the city) and oppose the use of highway trust funds for park-and-ride alternatives. Once in office he picked two “hard-line, road building officials” to lead the federal highway program, one the

178. *Id.*

179. *Id.* Volpe burnished his record with Congress as well, referring to highway construction funding as a “sacred” trust. *Id.* at 71.

180. See LEAVITT, *supra* note 18, at 54-58; see also LUPO ET AL., *supra* note 112 (a full account of the controversy); KELLEY, *supra* note 32, at 79. (“John Volpe, incumbent governor of Massachusetts, was understood to be bent on holding a top administrative post in any Nixon administration. Having been passed over for the Vice Presidential nomination, he would be a natural for transportation secretary.”)

181. Bradford C. Snell, *American Ground Transport: A Proposal for Restructuring the Automobile, Truck, Bus & Rail Industries*, U.S. GOVT. PRINT. OFF. (1974); see also KELLEY, *supra* note 32, at 79.

182. KELLEY, *supra* note 32, at 81.

183. *Id.* at 82-83.

184. LEAVITT, *supra* note 18, at 283-84. For ample descriptions of the Highway lobby, see KELLEY, *supra* note 32, at 39-63 and LEAVITT, *supra* note 18, at 111-55 (complete with diagram; *id.* at 154).

long-term director of the former Bureau of Roads, the other a past president of ASHPO.¹⁸⁵ It was a way of saying thanks, perhaps. Everything was going by the playbook.

Then, less than twelve months later, Volpe would reject the Riverfront Expressway. How in the world did that happen?

One may accept the reasons he gave at the time, starting with the prospect of delay. The project was already involved in one lawsuit and yet another was likely, well-armed, dragging the process out, as he saw it, another five to eight years.¹⁸⁶ In the meantime there were other needs for federal highway money in Louisiana, he explained, and his decision would free funds for jobs ready to go.¹⁸⁷

Then there was review by the Council on Historic Preservation. The Federal Highway Administration had held up funding as this process went forward,¹⁸⁸ and its outcome was both uncertain and not likely to be favorable. Although only an advisory body, the Council had powerful members, including Volpe himself and five other agency heads, plus several well-known preservationists,¹⁸⁹ influences a planet apart from ASHPO and the highway lobby. After a five-hour hearing in Washington during which the Oberdorfer team again made its pitch, Council members visited New Orleans and saw not the degradation of the Quarter that had impressed Bridwell but, rather, its past and its future potential.¹⁹⁰ The highway would have “serious adverse effect” on the Quarter, the Council reported, cutting the historic district from its river.¹⁹¹ Now an attempt to reconcile the road with the report would begin, which might well be a search for the imaginary. And it would take another undeterminable amount of time.

Beyond these pragmatic reasons, the Secretary went on to add another which, itself, broke new ground. “The public benefits from the proposed highway,” he declared, “would not be enough to warrant damaging the treasured French Quarter.”¹⁹² The word “treasured” pops out, as does a seldom-seen consideration of non-highway values. Since when did impacted neighborhoods figure into highway planning?

185. KELLEY, *supra* note 32, at 83-84.

186. Richard F. Weingroff, *The Battles of New Orleans—Vieux Carre Expressway (I-310)*, FED. HWY. ADMIN. (Nov. 18, 2015), <https://www.fhwa.dot.gov/infrastructure/neworleans.cfm>.

187. *Id.*

188. SECOND BATTLE, *supra* note 16, at 174.

189. *Id.* at 177.

190. *Id.* at 175-76.

191. *Id.* at 176.

192. *Id.*, at 202; KELMAN, *supra* note 59, at 210-11.

One explanation may simply be that the Vieux Carre was a very special neighborhood, and New Orleans had lobbied him hard. The President himself was reportedly “‘deluged’ with letters” urging him to cancel the expressway,¹⁹³ many from an unexpected quarter of the city. The state highway department also planned to extend the expressway upstream to yet another new bridge at Napoleon Avenue, an iconic, oak-lined boulevard of Uptown New Orleans.¹⁹⁴ Affluent, rock-ribbed conservative, this area was by no means activist in nature but the possibility of commuter traffic down Napoleon, perhaps even an elevated, struck it where it lived. When a highway official mentioned resurrecting this proposal,¹⁹⁵ what one journalist called the “Magnolia Curtain” rose up against it.¹⁹⁶ Vieux Carre preservationists quickly joined them in fighting their “common enemies,” the bridge authority and the Louisiana Department of Highways.¹⁹⁷ They had kicked the wrong hornet’s nest.

Uptown New Orleans had connections. The de-facto head of the Republican party in Louisiana was one of its best-known citizens, federal Judge John Minor Wisdom.¹⁹⁸ Wisdom had been the state delegate to the Republican Central Committee for many years, as had John Volpe for Massachusetts, and they became allies and friends.¹⁹⁹ The Judge’s wife, Bonnie Wisdom, was a force in her own right and threw that energy into the expressway fight.²⁰⁰ At some late point in the controversy, the decision pending before Volpe, Bonnie Wisdom led a delegation of women (said to be Republicans) to Washington for a visit with the Secretary about the highway.²⁰¹ The meeting, she recalled years later, “went very well.”²⁰² Exactly what impact this meeting had is now, all of its participants since deceased, hard to determine, but at the least it sent a signal that Louisiana Republicans would be very much in Volpe’s corner,

193. William M. Blair, *Politics Is Hinted in a Highway Ban*, N.Y. TIMES, July 13, 1969, at 64.

194. KELMAN, *supra* note 59, at 210-211.

195. *Id.* at 211.

196. *Id.*

197. TIMES-PICAYUNE, July 7, 1967 (Interview of Mrs. Luscious M. Lamar, President of the Uptown Civic Association).

198. *See generally* JOEL W. FRIEDMAN, CHAMPION OF CIVIL RIGHTS: JUDGE JOHN MINOR WISDOM (2009).

199. Telephone Interview of Andrew Wisdom, Grand-Nephew of John Minor & Bonnie Wisdom (Aug. 11, 2015) (notes on file with author).

200. *Id.*

201. Conversation with Bonnie Wisdom at the Annual Tulane Black Law Students Ass’n Banquet in New Orleans, La. (Apr. 1987).

202. *Id.*

and the President's corner, should he turn the project down. Politically speaking, the local coast was clear. And it contained good friends.

The national coast, meanwhile, was changing rapidly. In the late 1960s America was waking up to environmental problems of all kinds, and within months of Volpe's decision the National Environmental Policy Act would impose new duties of protection on the entire federal establishment.²⁰³ Atop the Senate's list of grievances prompting this law were "faltering and poorly designed transportation systems" and "haphazard urban and suburban growth"²⁰⁴ . . . Le Corbusier and Moses gone wild. That same year Massachusetts Governor Francis Sargent, who had previously served under Volpe, canceled the Secretary's favored arterial into Boston with a blunt admission: "Four years ago, I was the Commissioner of the Department of Public Works—our road building agency. Then, nearly everybody was sure highways were the only answer to transportation problems for years to come. We were wrong."²⁰⁵

President Nixon read the same tea leaves and had an expressway mess at his doorstep pitting the District of Columbia Council against powerful members of Congress.²⁰⁶ He took his new Secretary of Transportation up in a helicopter for an aerial view, which was apparently sobering.²⁰⁷ Nixon is said to have commented, "I'm glad that we don't have to drive to work," and then, looking down again, "[W]here are they going to park the cars?"²⁰⁸ Good question, and it was the President asking it.

Then there was Dorm Braman, last seen as mayor of Seattle testifying against interstates in favor of mass transit, now Volpe's Assistant Secretary for Urban Transportation and the Environment.²⁰⁹ Volpe had created this office to respond to his most immediate headache, an everywhere-you-look uprising against urban freeways that was breaking onto Washington like a neap tide.²¹⁰ When Braman testified before Congress that his agency "ha[d] created perhaps as much controversy and concern as any other area of State and Federal

203. National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. § 4321-4347 (2012).

204. S. REP. NO. 91-296, at 4 (1969).

205. DAVID G. BURNELL & MARY ANN WILNER, *THE END OF THE ROAD* 11 (1977).

206. KATHLEEN KILGORE, JOHN VOLPE: *THE LIFE OF AN IMMIGRANT'S SON* 184 (1987).

One of two pieces of advice Volpe received from his predecessor was to stay away from the D.C. highway controversy. *Id.* at 180. He ended up doing the opposite.

207. KELLEY, *supra* note 32, at 48-49.

208. *Id.* at 49.

209. Jim Braman, *Braman, James D'Orma (Dorm) (1901-1980)*, HISTORYLINK.ORG, (Sept. 10, 2002), http://historylink.org/index.cfm?DisplayPage=output.cfm&file_id=3919.

210. KILGORE, *supra* note 206, at 182.

operations,”²¹¹ he not only knew this concern, he agreed with it. He had come to Volpe through the President’s top aide, John Ehrlichman, who himself had represented freeway opponents as a practicing attorney in Seattle,²¹² which may have given Braman a little extra clout in the game. For his own part, Braman was said to be straightforward, even blunt, and popular (“the best mayor in Seattle history”),²¹³ traits that may have impressed the Secretary on their own. That he reportedly threatened to resign and go home, twice, over disagreements in transportation policy may have raised his credibility as well.²¹⁴ All of which likely played into his report to the Secretary on the New Orleans imbroglio. Volpe had sent him down for a final look.

The scene in the French Quarter was no different from before, dueling choruses, proponents and opponents as far apart as they had ever been.²¹⁵ Vardaman, making yet another appearance, emphasized new information on noise impacts, which were impressive. According to a Bureau of Governmental Research study, the Café du Monde, an iconic Quarter venue for residents and tourists alike, would experience a “five-fold increase in the frequency of occurrence of high peak noise.”²¹⁶ As a result, Vardaman continued, “patrons would have to shout to be heard,” and “about one-tenth of the time . . . their conversation would be obliterated.”²¹⁷ Images like that tend to stick in the mind.

Braman’s farewell lines to his New Orleans hosts all but tipped his hand. The President had placed urban problems second on his list of national priorities, he said, and environmental matters came in third.²¹⁸ That the Vieux Carre Expressway was both escaped no one. A compromise satisfactory to both sides, he continued, was not in sight.²¹⁹

211. *Bills To Authorize the Secretary of the Interior To Conduct Investigations, Studies, Surveys and Research Relating to the Nation’s Ecological Systems, Natural Resources, and Environmental Quality, and To Establish a Council on Environmental Quality: Hearing on S. 1075, S. 237 and S. 1752 Before the Comm. on the Interior & Insular Affairs*, 91st Cong. 76 (1969).

212. KILGORE, *supra* note 206, at 177; Ehrlichman, better known for his role in the infamous Watergate scandal that brought both his career and that of the President to an end, was also a “green voice” in the White House, at a time such voices were rare. See Patricia Nelson Limerick, *John Ehrlichman, Environmentalist*, COUNTERPUNCH, (Jan. 29, 2004), <http://www.counterpunch.org/2004/01/29/john-ehrllichman-environmentalist/>; see also JOHN EHRLICHMAN, WITNESS TO POWER, 69-70 (1982).

213. Braman, *supra* note 209.

214. *Id.*

215. KELMAN, *supra* note 59, at 212.

216. SECOND BATTLE, *supra* note 16, at 191.

217. *Id.*

218. *Id.* at 193.

219. Weingroff, *supra* note 186.

This said, he and the Secretary were “greatly concerned with values which are not reflected by the slide rule.”²²⁰ It would be, he concluded, “an awesome decision.”²²¹ In retrospect, there could be little doubt what his recommendation would be. The Secretary himself, of course, was a different matter.

Three weeks after Braman’s visit, the Secretary canceled the highway and shocked the watching world. Given Volpe’s background (in the words of a *Washington Post* columnist, “a freeway bulldozer with shoes on”),²²² even positing the unique values of the Vieux Carre, the decision was astonishing. No federal highway had been ever canceled for an environmental reason before.²²³ It is probable that every influence just described fed into Volpe’s decision like tributaries to a river. It is also possible that the Secretary experienced something of an epiphany here, a Road to Damascus moment not only about the Vieux Carre but, in that process, about transportation writ larger. Six months following this decision he was urging an audience of businessmen in Kansas City to support mass transit, (shades of Dorm Braman), in the following terms:

You *could* very well develop the greatest network of freeways and interchanges in the world; you *could* pour concrete from one end of the metropolitan area to the other; you *could* condemn property, demolish neighborhoods, wipe out business blocks, and build parking lots on every corner—but you would face the very real and very dangerous possibility that you might not have much of a city left in which to do business.²²⁴

Something had happened here. This is what people on the receiving end of the federal interstate highway program had been saying to him for years.

IX. THE END OF THE ROAD

One of the expressway’s leading champions on the City Council had been Moon Landrieu, who was already shooting for Mayor. He had a framed drawing of it on the wall. When it is finally killed the business community makes one last try in Washington, flying up to meet with Volpe and HUD Secretary Romney. Dick and I join the group on behalf of the preservation community, though we are not entirely welcome. The hearing

220. SECOND BATTLE, *supra* note 16, at 193.

221. KELMAN, *supra* note 59, at 212.

222. Wolf Von Eckardt, *Victory in New Orleans*, WASH. POST, July 19, 1969, at C1.

223. “According to *Business Week*, the Department of Transportation admitted that cancellation of the riverfront expressway marked the first time any segment of the 42,500 mile Interstate System had been rejected for purely environmental reasons.” KELMAN, *supra* note 59, at 213.

224. KELLEY, *supra* note 32, at 8.

turns testy for a while, but we paper it over with a joint statement at the end. Landrieu's highway, however, is dead.

When Moon was elected mayor, mutual friends thought I ought to be part of his administration but I say that I doubt he'd do any such thing. One fellow sounded him out apparently, and tells me later, "Bill, he really doesn't *like* you." I say, "I know."

Fifteen years later, maybe more, we are having lunch at a German Restaurant on the corner of St. Charles and Jackson Avenue, my mother, her sister and I . . . perhaps a couple of others. In the next room there is a large gathering, a lot of noise and laughter. When it breaks up we are still at the table, drinking coffee, and I feel a hand on my shoulder. I look around and it is Moon Landrieu. He says straight out, "You were right about that highway." A pause, and then, "It should never have been built." Then he adds, "Getting soft in my old age."

—William Borah, November 2015²²⁵

The Vieux Carre Expressway did not go away easily. While national press hailed its demise (*The Wall Street Journal*: "It's past time that some intangibles, in this case historic preservation, were cranked into the stark economic equations that have usually dictated highway location."),²²⁶ local proponents kept on, lobbying Congressman Hale Boggs for funding.²²⁷ Tempers flared at a post-mortem meeting in Washington, Boggs and Borah even had an altercation at the podium,²²⁸ but in the end the road was taken off the map and the monies were allocated to yet another Moses dream-work, Interstate 410, launching a circumferential around the city.²²⁹ Not for long, however. An environmental lawsuit checked this project as well (which would take hundreds of acres of wetlands and open thousands more to development),²³⁰ leading to yet another diversion of the funds to yet another interstate in central Louisiana.²³¹ Free federal money, which had become its own rationale, found a home at last.

Meanwhile, New Orleans itself had been bisected by two expressways that provided the fast commuter access the CBD had been seeking. Interstate 10 now ran east to west through the city, indeed through City Park, where its mitigation consisted of placing small

225. Telephone Interview with William Borah, Attorney & Author (Nov. 19, 2015).

226. *An Encouraging Sign*, WALL STREET J., July 14, 1969, at 12.

227. SECOND BATTLE, *supra* note 16, at 215-16.

228. *Id.* at 216.

229. Weingroff, *supra* note 186.

230. Ecology Ctr. of La., Inc. v. Coleman, 515 F.2d 860, 863 (5th Cir. 1975).

231. Weingroff, *supra* note 186, at 188. Funds were re-allocated to I-20 from Opelousas to Shreveport, La. *Id.*

concrete tables directly below an overpass, the traffic roaring overhead.²³² (The tables, seldom used, disintegrated over time and were since removed). The second was a six-lane elevated freeway over Claiborne Avenue that barreled through the historic black community of Treme.²³³ Two lines of ancient oak trees shading the boulevard, the longest such stand in America, were leveled and trucked away.²³⁴ The neutral ground between them, scene of innumerable local gatherings and Mardi Gras celebrations, became pavement below a ceiling of concrete and moving vehicles, for which the mitigation was several concrete water fountains.²³⁵ (The fountains rarely functioned and lie abandoned). Storefronts and residences around Claiborne went to ruin.²³⁶ Highways of the future lived on.

The Secretary of Transportation, meanwhile, continued his remarkable transformation triggered by the Riverfront Expressway. Per his speech in Kansas City, he became a vigorous advocate for mass transit and went on to father the federal Urban Mass Transit Authority, forerunner to Amtrak.²³⁷ He took a closer look at controversial highway projects as well and discovered some to be “disasters in the field.”²³⁸ According to a close aide, he had the credibility to gainsay the road builders and the appetite to dig beyond their version of the facts.²³⁹ One occasion found the Secretary on his office floor, crawling around an enlarged map of Charleston, West Virginia, looking for a way to avoid a minority community.²⁴⁰ Within months Volpe canceled a mega-jetport in

232. Personal observation of author.

233. KELMAN, *supra* note 59, at 219. The Claiborne Expressway was planned and under construction before the Riverfront Expressway fight began, and justified as companion piece of the new highway complex. *See* SECOND BATTLE, *supra* note 16, at 163. Contrary to popular belief the Vieux Carre opposition had nothing to do with the Claiborne project that proved so damaging to the Treme area of the city.

234. Rick Raber, *Ruin's Road: 1-10 Killed N. Claiborne*, TIMES-PICAYUNE, Feb. 19, 1984, at 29.

235. *Id.*

236. *Id.*

237. KILGORE, *supra* note 206, at 191. According to his aide, Jeffrey Shane, Volpe also unlocked funding for the Washington D.C. Metro system, then blocked by the House Appropriations Committee, through a legally-risky “line of credit” (in essence guaranteeing future funding), which allowed construction to go forward. Interview with Jeffrey Shane, via telephone.

238. *Id.* at 180.

239. Interview with Jeffrey Shane, via telephone.

240. *Id.* Volpe had a penchant for civil rights (another bond with John Minor Wisdom), and advanced the integration of his Department. KILGORE, *supra* note 206, at 180.

the Everglades.²⁴¹ He went on to deny funding for interstates through St Louis, San Antonio, the District of Columbia (three separate projects), New Hampshire and Georgia (the latter two for destroying wilderness values).²⁴²

Most notoriously, Volpe found himself in the middle of yet another highway battle over the heart of Memphis, Overton Park, steeped in its own history and greatly loved.²⁴³ A few weeks into his term the Secretary, routinely one suspects, had approved an interstate through it that was challenged in court under Section 4(f)'s rigorous "no feasible and prudent alternative" standard, last seen in the Vieux Carre controversy.²⁴⁴ The issue went to the Supreme Court, which faulted Volpe's approval in an opinion that began, "The growing public concern about the quality of our environment has prompted the Congress in recent years to enact legislation designed to curb the accelerating destruction of our country's natural beauty."²⁴⁵ Strong words, these, and quite similar to Volpe's about the Vieux Carre. Volpe then canceled the project. By coincidence, the attorney for Overton Park was Jack Vardaman.

The federal highway program as a whole, however, soldiered on without missing a beat.²⁴⁶ Its free-for-all through urban America has somewhat abated, in part because it succeeded in building so many of them already, but also because the excruciating fights of earlier decades served as at least a blinking-orange: slow down, look both ways.²⁴⁷ An increasing number of cities, meanwhile, have begun to look towards mass transit, although these public systems remain pathologically opposed by highway enthusiasts, including politicians who hold the purse strings. If federal highways have a worry today, it is the state of that

241. KILGORE, *supra* note 206, at 182; *see also*, U.S. DEP'T OF TRANS., FED. AVIATION ADMIN. & U.S. DEP'T OF THE INTERIOR, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE REPLACEMENT AIRPORT FOR THE EVERGLADES JETPORT, DADE COUNTY, FLORIDA (1981).

242. KILGORE, *supra* note 206, at 182-83.

243. *See* Oliver Houck, *Unfinished Stories*, 73 U. COLO. L. REV. 867, 893-909 (2002) (history of Overton Park case).

244. *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 418 (1971).

245. *Id.* at 404.

246. One recent example is the controversial 52-mile, six-lane Northern Beltline that will complete the commuter loop around Birmingham, Alabama. Sean Reilly, *Federal Cash Sustains Dream of Freeway Through Ala. Woods*, E&E NEWS (Dec. 23, 2015), <http://eenews.net/greenwire/stories/1060029944/print>.

247. *But see* the recent push to run I-49 through the historic downtown of Lafayette, Louisiana. Richard Burgess, *Officials Promise the Proposed Elevated I-49 Connector Through Lafayette Will Do More Good Than Harm*, ADVOCATE (Oct. 6, 2015), <http://theadvocate.com/news/13631800-123/officials-promise-the-proposed-elevated>.

purse, originally premised on gasoline taxes and the highway trust.²⁴⁸ More fuel-efficient automobiles and the attractiveness of alternative transport (including bicycles) have seriously reduced these revenues, and the driving public, long spoiled on the cheap, balks at higher taxes at the pump.²⁴⁹ Which has left all American taxpayers booting the highway bill instead, including urban residents who may drive very seldom, including those who own no car at all.²⁵⁰ When it comes to impacts, nothing about this program has been exactly fair.

The Vieux Carre, meanwhile, was spared the expressway but continues to be challenged daily. T-shirt shops abound, new hotels crowd in on its periphery like a wall,²⁵¹ proposals to limit truck and bus traffic meet howls of protest from the very businesses that profit most from its ambiance. Internally, it remains in many ways the scene that Bridwell saw and gave up on, but for one single way. The expressway controversy exposed the city's dysfunctional planning process and provoked a (long) dialogue toward a master plan. In 2008, the Home Rule Charter was amended to require a blueprint for future development that would have the force of law; remarkably, it was supported both by the Downtown Development District and urban preservationists.²⁵² Bill Borah, involved throughout, later commented, "In the end, the lions lay down with the lamb."²⁵³

It is on the riverfront itself, however, that the expressway fight leaves its strongest mark. The Place d'Armes is now open to the river, with a walkway topping the levee to view the Mississippi as in centuries past. Both upstream and down have come a string of riverfront parks and enterprises, highly popular and continuing to grow.²⁵⁴ Directly across the river, the town of Gretna is rediscovering its own history, and starting

248. Sean Reilly, *Broke Highway Trust Fund Should Prompt Spending Revamp—Study*, E&E NEWS, Sept. 23, 2014.

249. *Id.*

250. Ariel Wittenberg, *Lawmakers Agree on Fully Funded, 5-Year Highway Bill*, E&E NEWS (Dec. 1, 2015), <http://eenews.net/eenewspm/stories/1060028773/print>. The funding would rely on other federal reserves, prompting the House Transportation and Infrastructure Committee's ranking member to comment, "[s]ome of these pay-fors are total B.S. . . . but it doesn't matter to me . . . It's mandatory spending." *Id.*

251. *See, e.g.*, Katherine Sayre, *Royal Street 26-story Hotel Proposal Faces City Planning Commission*, TIMES-PICAYUNE (Aug. 25, 2015), http://www.nola.com/business/index.ssf/2015/08/royal_street_26-story_hotel_pr.html.

252. New Orleans, La., Ordinance no. 23141 (Jun. 5, 2008); Interview with William Borah, Attorney & Author, via telephone (Nov. 21, 2015).

253. *Id.*

254. *See* Woldenberg Park, established in 1984 in the Central Business District.

projects of restoration and tourism.²⁵⁵ A new dream and an old one, together rising.

X. REQUIEM

Let me tell you about Richard [Baumbach]. He was the hardest working guy I ever met. I mean, to a fault, to a fault.

We met at Newman [School], he was a new kid in a class that had been together since first grade, but he threw a football better than anyone else so he was in. We played on the same team. He broke all the school quarterback records, and when the Mannings came along they broke all the Baumbach records. He went off to Stanford where he started for the freshman team; his backup later went on to the pro's. He was also the starting point guard in basketball, and straight A's in academics. Competitive? Oh my.

Dick came back to New Orleans his second year, to Tulane, after a knee injury. He was told, you get hurt once more and you'll never walk again. So he took up handball instead, never played it before, didn't lose a game for the next three years. We were in constant competition over grades too and he always won, always won. In one history course the professor announced, opening day, that anyone there who could name all the Presidents and their terms of office would get an A. Then he looks over and sees Dick in the class. He had taught him at Newman. "Bets are off," he says, "Baumbach's in the room."

Richard brought everything he had to the expressway fight. It was like having an army alongside. When Dick died it broke my heart.

—William Borah, July 2015²⁵⁶

255. Diana Samuels, *Gretna, Tulane Work To Revive Historic Downtown BI*, TIMES-PICAYUNE, Nov. 13, 2015 (historic preservation effort to "revitalize Gretna's downtown").

256. Interview with William Borah, Attorney & Author, via telephone, Nov. 19, 2015.