

Fundamentals of Judicial Review

Administrative Law

Penn State Dickinson Law

March 19, 2026

Scope of Review: APA §706

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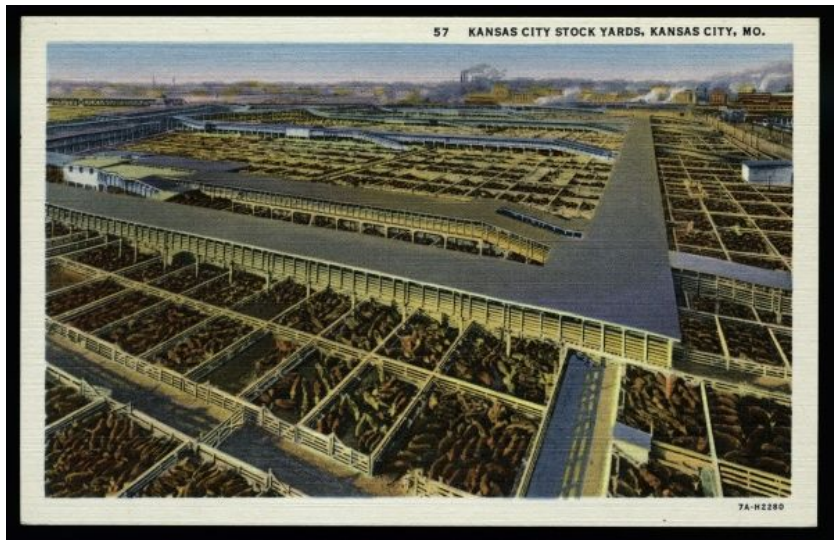
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Morgan v. United States: Kansas City Stockyards



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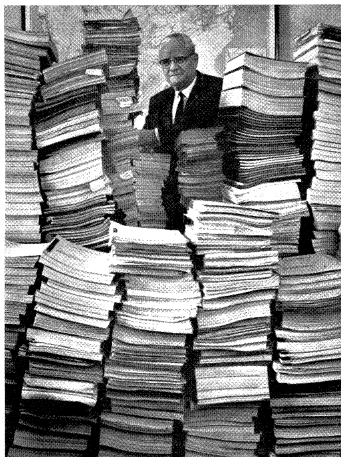
The Morgan Rule: Take 1

Morgan v. United States, 298 U.S. 468, 481 (1936)

[T]he weight ascribed by the law to the findings – their conclusiveness when made within the sphere of the authority conferred – rests upon the assumption that the officer who makes the findings has addressed himself to the evidence, and, upon that evidence, has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. **The one who decides must hear.**

-Chief Justice Charles Evans Hughes

A problem with Morgan I



In complex agency matters, no one can hear it all.

A problem with Morgan I



The Morgan Rule: Take 2

Morgan v. United States, 304 U.S. 1, 18 (1938)

[W]e agree with the Government's contention that it was **not the function of the court to probe the mental processes** of the Secretary in reaching his conclusions if he gave the hearing which the law required.

-Chief Justice Charles Evans Hughes

SEC v. Chenery Corp.

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- 2 Agency action.
- 3 Judicial review in Supreme Court (Chenery I).

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The Chenery Rule

[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis. To do so would propel the court into the domain which Congress has set aside exclusively for the administrative agency.

Corollary to the Chenery Rule

If the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive. In other words, "We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

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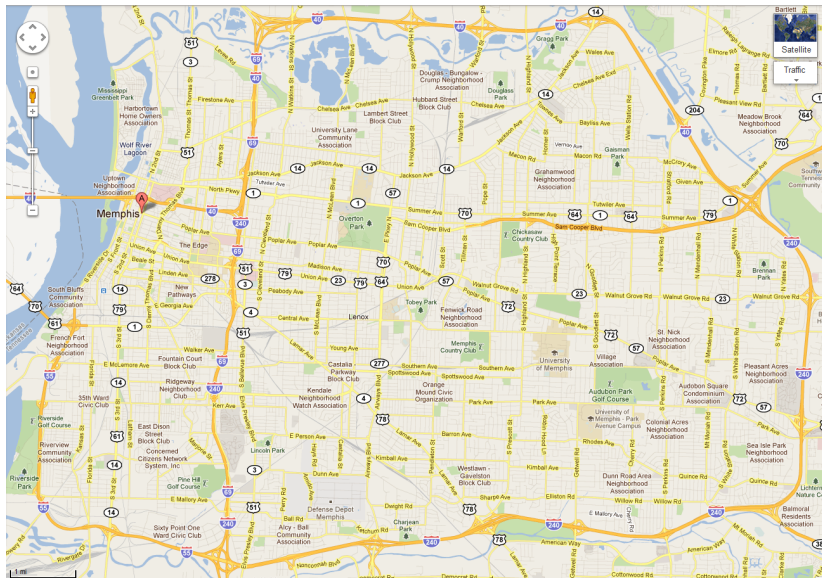
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The man behind the Chenery Rule (and Secretariat)

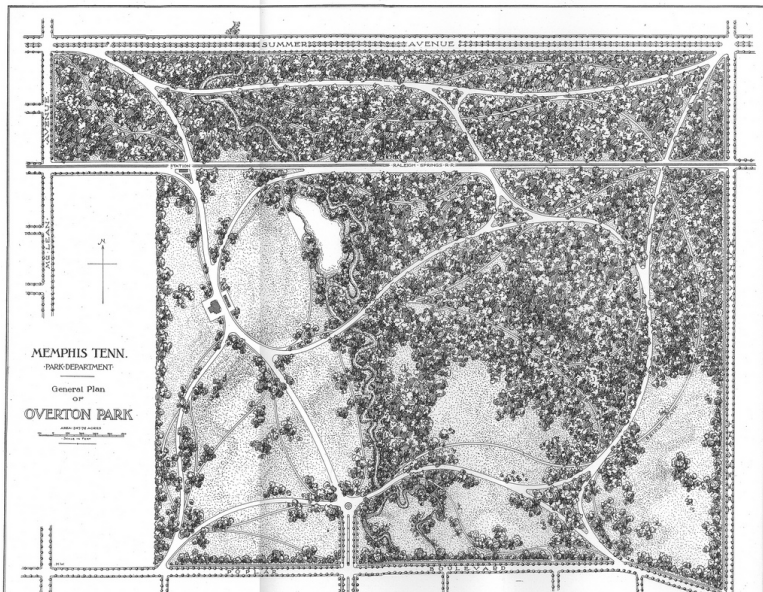


Figure 1: Christopher T. Chenery

Overton Park and Memphis



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Overton Park: The DOT's statutory duty

§4(f) of the DOT Act and §138 of the Federal-Aid Highway Act, as amended in 1968, permit the Secretary of Transportation to approve the use of public parkland for highway construction only if:

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park or site resulting from the use.

Overton Park: pre-litigation timeline

- 1957** Surveys for I-40 begin; Citizens to Preserve Overton Park is formed; public hearings are held re: route.
- 1965** City Commission votes (9-1) to approve east-west route for I-40 through Overton Park.
- 1966** Congress enacts Federal-Aid Highway Act and also Department of Transportation Act. Both statutes require Secretary to protect parkland.
- 1967** Governor, highway commissioner favor Overton Park route; City Commission again votes 1-1 in favor.
- Feb. 1968** Federal Highway Administrator Bridwell visits Memphis
- Mar. 1968** New City Council adopts resolution stating preference that I-40 be routed elsewhere.
- Apr. 1968** After meeting with FHA head Bridwell, City Council votes 8-2 to approve Overton Park route.
- Nov. 1969** DOT Sec. Volpe approves design for highway through park in deepened trench, but not tunnel.

The savior of Overton Park?



Figure 2: First Lady Lady Bird Johnson was a prominent proponent of conservation and “beautification” measures. The 1965 Highway Beautification Act was commonly called “Lady Bird’s Bill.”

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A Citizens to Preserve Overton Park Q & A

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 - ▶ as opposed to “post hoc rationalizations” in litigation affidavits.
 - ▶ In a pinch, majority says, court can require testimony from officials – but this should be avoided (and almost always is).