

Mr. AVERY. I do not oppose that concept. I think witnesses from D.C. Transit are appearing and they may oppose that concept.

We took this position repeatedly throughout the *Mall shuttle* case in court: We are not asserting here that any particular person should have the right to do this. All we are asserting is that whoever has that right, whether it be somebody separate—and I think a lot of reasons have been stated here this morning why it should be somebody separate—whatever it is should be subject to our jurisdiction so that a major segment of the total transportation in this city is not completely outside of the jurisdiction of the Commission.

This is the problem we got into in the *Mall shuttle* case. We were regarded and many of the papers wrote it up as though we were opposing the proposal of the Secretary. We have never opposed the proposal of the Secretary; we have said it has got to be subject to our jurisdiction.

Mr. SCHWENGEL. But net effect is it has been held up 60 days?

Mr. AVERY. It has been held up longer than 60 days. They wanted to start it around the first of June and it has never gone in. That was not because of any proceeding before the Commission; it was because of the Secretary's refusal to have his concessionaire come to the Commission and the necessity therefor of going into court.

I might say that we—my general counsel, Mr. Cunningham, who is accompanying me today—repeatedly told the court and told all the other parties in that proceeding that we would expedite that case to the maximum extent possible and we wrote and filed our brief in the shortest possible time and we scheduled the oral arguments in the shortest possible times, in an effort to expedite that court case because I felt very keenly the sentiments that you have expressed, that here was the Commission charged with upholding the public interest and seeing to it that transportation is adequate, holding up a service that certainly appears to be very desirable.

Mr. SCHWENGEL. I think it would have been better to let them go ahead and then work out the difficulty later.

Mr. GROVER. Will the gentleman yield?

My question, do you have a procedure for a temporary certification pending final certification?

Mr. AVERY. Yes, sir.

Mr. GROVER. Did the Secretary apply for temporary certification?

Mr. AVERY. He did not come to us at all. It could have been done under temporary authority probably; I never looked into that, because he never applied. But we do have authority under our compact to issue a temporary certificate immediately, and then look into the matter more fully within a specified number of days and issue a permanent certificate.

We never had the opportunity to do it.

Mr. GRAY. Since the Secretary is not here. I think he feels that Congress had given him the authority in the National Park Act and that if he did allow this concessionaire to come to the Commission, he would be setting a precedent that could be used in court in all national parks throughout the country, so I think this was more than just this particular case per se.

Mr. AVERY. I think that is exactly right, Mr. Chairman. The Park Service saw more in it than this particular problem.