

Chapter Nine:
For Regional and Rational Transport

In 1972, the second of the "twin towers" of the World Trade Center neared completion -- the ultimate expression of the inner city as forest of skyscrapers. People in many of America's large cities could not avoid noticing that their physical surround was becoming considerably more elevated. Not every city had 100-story buildings, but in a dozen cities, thirty- and forty-story-high buildings replaced entire blocks of smaller and lower structures that had existed for the previous hundred years. At first such changes seemed positive, because the old buildings had been dilapidated, but there was soon a realization that the old pattern of smaller buildings had sustained residential as well as business uses, while the new taller structures were strictly for business, and that while these new tall buildings brought greater daytime population density to downtown Boston, Baltimore, Chicago, Cleveland, Detroit, New York, Philadelphia and Washington, they accelerated the depopulation of the center cities in the evenings and on weekends, and served to further aggravate the problems of conveying people to and from the city centers. Skyscraping meshed with the final stages of ringing the major cities with interstates, which worsened the effects of both construction binges. Moreover, highway tendrils penetrating from the outer suburbs into midtown centers further enabled suburban residents to distance themselves from the life of the city by allowing commuters to drive to tall-building places of employment, and to return home again, without ever interacting with the rest of the city.

Kheel had long believed that transportation was the key to sustaining a future livable urban environment. Having won the battle of the 1971 bond issue, he was at the height of his public power. With no particular plan in mind but the desire to push for more rational regional transport, he pursued various opportunities that came his way to act in support of mass transit and against further erosion of the city by automobiles and highways. He became chairman of the advisory board of the Highway Action Coalition, which opposed further highway construction and advocated dipping into the federal highway trust fund to assist mass transit, a proposal being considered by Congress in late 1971. He convinced New York City to sue General Motors for monopolizing the bus market and blocking the production of cheap buses in order to sell more automobiles, which impeded progress in mass transit; a similar federal suit against GM, for pushing cities to switch from electrified trolleys to less-efficient buses, had been settled earlier by a consent decree, but this was the first time a municipality was suing to break up a monopoly.¹ At an anti-highways meeting, Kheel prophesized, "I can see it now -- the year 2000 A.D., when New York State will be criss-crossed by a thick web of highways and the Second Avenue subway will still not be completed."²

If his plans for achieving rational regional transport seemed scattershot, nevertheless the critiques of current policies that Kheel

¹ General Motors lobbied to have Kheel stricken from a list of witnesses at a Congressional hearing on the matter, because of his alleged bias against autos, and moved to transfer the trial out of New York, claiming that Kheel's views would have too much influence over prospective jurors and prevent GM from obtaining a fair trial.

² The Second Avenue subway, for which tunnels were dug, has been permanently shelved (interred?) as a city construction project.

had sounded were increasingly echoed by others, especially his warning about the social costs of the World Trade Center.³ Real estate developer Harry Helmsley asserted that the Twin Towers were unfair competition from the Port Authority that was hurting downtown property owners, because while private builders had to charge \$9 per square foot in a new building just to break even, the World Trade Center could charge \$7, because the PA could borrow money at lower rates than commercial developers and pay less in taxes. Adding to commercial developers' woes was that a third of the space in the towers was being filled with state offices moved from quarters they had previously rented from commercial landlords.⁴

Other Kheel ideas Rockefeller had labeled as "crazy" during the 1971 campaign -- mandating that the PA apply its surpluses to mass transit, build rail links to the airports, and restructure its board -- were now embodied in bills moving through the state legislature. As more people came around to Kheel's point of view, there were calls for him to replace Tobin as Port Authority executive director.

William Ronan wanted the job and was more qualified. Kheel counseled Ronan against taking the position because a "heavy cloud put there by Mr. Tobin," namely the covenant, would prevent him from changing the PA's stance on mass transit. Kheel wrote a tongue-in-cheek Help Wanted ad in *New York* for the executive

³ Kheel discovered that the legislature had originally approved only one 72-story tower, and that Tobin had then built two 110-story buildings without legislative approval.

⁴ The opening of the World Trade Center added 10 million square feet of office space to a market that was already saturated, and is considered in retrospect to have contributed substantially to a slump in the construction and real estate industries that lasted for a half-dozen years; by depressing the market, it also resulted in lower-than-anticipated city tax collections, which contributed to the near-default of 1975.

director of “the most powerful state-within-a-state outside of the Vatican,” whose perks included “use of chauffeured helicopter.”

In late March, 1972, the Second Circuit federal appeals court dismissed Kheel’s suit against the Port Authority on a technicality. For this second go-around, the PA’s lawyers had changed the basis on which they attempted to rebuff Kheel: they attacked his standing in court. To sue in a federal court, a plaintiff had to show \$10,000 in potential gains or losses at stake.⁵ Kheel’s advisors had suggested that he argue that because the Port Authority had not built rail links to the airports, he had to take \$12,000 worth of taxis to reach the airports. Kheel recalls that “The appeals court said that ‘Given the age of Mr. Kheel and the amount of time it would take to build Mr. Kheel the kind of transportation system he requires, he won’t live long enough to see it happen,’ so they ruled I didn’t have standing and there was no federal jurisdiction in the case. They said nothing about the real issues.” Kheel mulled an appeal to the Supreme Court. A second chance to challenge the constitutionality of the covenant sprang up in New Jersey, as advertising executive Daniel Gaby took Kheel’s New York complaint, word for word, and brought it as his own suit in state court there. Gaby was delighted to have Kheel and his associates do the legal work on this suit for him. With two suits in hand, Kheel was able to goad Standard and Poor’s to issue a letter warning that the constitutional conflict raised in the suits “must be resolved” before any future PA bond sale.

⁵ At that time, the Supreme Court had ruled that the claims of all members of a class action suit could not be aggregated to meet the threshold amount; in later years, well after the Kheel suit was settled, the Court reversed its position on aggregation.

Ronan angrily withdrew from contention for the PA executive directorship, charging the commissioners with being more interested in making money from bonds than in mass transit. The governors were also irate, and a few weeks later, when the PA commissioners attempted to elevate the head of the World Trade Center to executive director, Rockefeller exercised his veto, and accompanied it by words that Kheel had been trying to get the governor to utter for years: that the next director must be "a man outside the organization," because the public could not afford "a continuation of the Tobin structure, which as everyone knows was opposed to mass transit." The governor's close associate, Ronan, in his capacity as MTA chief, next threatened to ask the federal government to reject the PA's attempt to obtain \$10 million to modernize two PATH stations from funds earmarked for mass transit.

Even the Port Authority itself seemed to be yielding to Kheel's viewpoint: a commissioner revealed that the authority was going to recommend to its bondholders that its bridge and tunnel tolls be doubled and the surplus applied to mass transit. Of course, the commissioner added, obtaining bondholder approval was going to be very difficult because many of the bonds were "bearer bonds," which meant that the names of the bondholders were not on them, so "it may take two or three years to get the approval." Citing those drawbacks, Kheel called the bondholder approval scheme a "cynical fraud," a "diversion" to impress the public and the governors.

In mid-November, 1972, Cahill and Rockefeller announced "a dramatic and significant breakthrough," to have the PA spend \$650 million on rail links to the airports, a PATH line extension, and other

rail projects. Legislation was to be introduced in both states that would eliminate the restrictive covenant from future bond offerings. Kheel continued to scoff at such plans, pointing out that the laws now on the books prevented any PA money from being used for mass transit until current bondholders were paid off -- in the year 2007.

In late 1972, the Supreme Court refused to hear the appeal on Kheel's New York case. He said he might re-file in New Jersey state court where the \$10,000-per-plaintiff rule did not apply.

A new PA bond offering was to be made. Kheel went to the public session where its prospects were explained, and was booed by the well-heeled crowd. But Standard and Poor's backed Kheel's assertion about the use of the proceeds from these bonds. S&P had had discussions with the Port Authority, and on the basis of those had concluded that the bulk of \$650 million for the new rail projects would have to come from the federal government, because the PA's covenant would allow it only to fund those parts unrelated to mass rail transit and that had the promise of becoming profitable. The bonds were, therefore, free from the possibility that the proceeds might be used to help money-losing mass rail transit. When this became known, the bonds were snapped up by investors, overnight.

Throughout early 1973, Kheel continued to assail Rockefeller and Cahill for inaction against the Port Authority, constantly making charges that were news "pegs" on which reporters could hang stories. He accused Rockefeller of reneging on a promise to have a study done on financing transportation on a regional basis. Then Kheel predicted that the subway fare would shortly rise again, from 35 to 60¢. In a third blast, he asked why the state couldn't back a plan

similar to that recently put into effect in the Atlanta area, in which voters readily agreed to a regional sales tax in order to reduce bus fares from 40 to 15¢. Kheel cobbled together a proposal, to be promulgated under Lindsay's name, to roll back the New York fare to a quarter. The rollback idea went nowhere in Albany, in all probability because of Rockefeller's antipathy to Lindsay, but Kheel saw no other avenue along which to pursue it, and dropped the idea.

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New Orleans, Las Vegas and Chicago, where real estate was less costly and where larger facilities could more easily be built, were luring exhibitions and convention business away from New York's Coliseum. A new exhibition center for New York City was being planned for an old midtown railroad yard at the edge of the Hudson River. The legislature had approved the plan, Rockefeller had endorsed it, and most public officials had signed on to it. But there was strong grass-roots opposition, because, as Kheel charged, the center was "a splendid object lesson in how we are killing the city."

When it seemed likely that Kheel would be in the forefront of those publicly disagreeing with plans for the new center, friends and enemies started calling him -- a testament that his public opposition was viewed as a real threat. Edward Cleary, president of IBEW's Local 3, asked Kheel, "How can you be against it? It means jobs." "Building the gas chambers at Dachau meant jobs, too," Kheel retorted. Developer Donald Trump, who owned the property on which the exhibition center was to be built, also tried to dissuade the

mediator from opposition; Kheel rebuffed him. A third suitor was William Liebwohl, general counsel of the Triboro Bridge and Tunnel Authority, which owned the Coliseum and did not want a competing exhibition center. "Moses wanted to retain me for \$50,000 to speak out against the exhibition center. I told Bill Liebwohl that his money would have put in question the integrity of my position, and that I was going to oppose the thing anyway, so why waste his dollars."

What he did accept from the TBTA was information about a study done by an engineering firm, which had advised the building of connecting east-west lines for the north-south subways before considering construction of a convention center. In public hearings, Kheel asked why this study had been ignored by the very city officials who commissioned it. He charged that the transportation needs attendant on a new center had been completely disregarded, and that the proposed site was both too far away from existing subway lines and "immediately adjacent to a dilapidated expressway already inadequate for its present load." The expected 75,000 visitors per day would only be able to reach the new center by car, taxis, truck or bus, which would increase traffic problems.

In the *Village Voice*, Kheel tied together his opposition to the convention center and to the World Trade Center. The previous quarter-century had seen the addition of more highrise space to lower Manhattan than to all the other large cities of the country combined, but, Kheel wrote, to reach the "concentrated forests of steel and concrete" from within the city had become more difficult. As with the Trade Center, the convention center was to be erected first "and the means of reaching [it] to be considered later, if at all."

Would no one see the light on regional understanding of transportation and the need to support mass transit? In Washington, the notion of dipping into the highway trust fund for aid to mass transit, already passed by the Senate, failed in the House by 25 votes, nine of them by metropolitan New York area members; another six area legislators managed to be absent at the time of this critical vote. Later in the year, though, Congress did pass another measure that Kheel and other advocates of mass transit had long sought, a bill that for the first time authorized federal subsidies for local transit operating costs. But Nixon wouldn't sign it.

In June of 1973, when Governor Rockefeller announced a new and larger transportation bond issue, Kheel told reporters he would "strenuously" oppose it if it contained too much money for highways. Shortly, details became available: of the \$3.5 billion, \$183 million would be direct subsidies to subways and rail lines, to hold fares at current levels for two years, and the entire package would include buying a thousand new buses and extension of a subway line to Co-op Cty in the Bronx. Kheel pronounced himself pleased that for the first time the state was agreeing to the need for a continuing subsidy to subways, but decried the bond as a reincarnation of the 1971 issue, as "a highway plan in mass transit clothing."

Nelson Rockefeller now determined that he ought to have Ted Kheel with him instead of against him on this new bond issue. Jerry Finkelstein, publisher of the *New York Law Journal*, was an intimate of the governor, who had recently appointed him as a commissioner of the Port Authority. Rockefeller asked Finkelstein to call Kheel. "Jerry asked if I could go to Pocantico Hills to meet the governor for

breakfast. It was a weekend, and I was in the Hamptons, so I said I couldn't make the long trip by car in time for breakfast. He said Rockefeller would send a helicopter." On a Sunday morning, the chopper landed on the beach at Finkelstein's home in Southampton and took the two men to the governor's family compound. There it settled on the Rockefeller golf course, dotted with Alexander Calder sculptures. "Rocky was standing at the top of the stairs, and greeted us with his signature 'Hiya, fellas. Come on up.' When we sat down to eat -- the largest blueberries I'd ever seen, the size of marbles -- he quickly got to the bond issue, and wanted to know what I wanted in exchange for my support. I suspect that I could have asked for anything -- a judgeship, money, a state position -- but I told him that my price was that he once and for all get rid of the Port Authority's covenant against mass rail transit." The price had several parts, repeal of the covenant, but also a public letter from the governor to Kheel and a second letter in support of Kheel's new suit in state court against the covenant. "After I finished laying all this out, he turned to an aide and said, 'Get Bill Ronan out here' -- Ronan was inside, waiting in the wings -- 'and let's see what we can do.'"

Questioned by reporters about the trip, Kheel said he had been "wooded but not seduced," and as yet could not support the bond issue. Rockefeller was waffling on the language of the two letters; Kheel held firm, and only publicly changed his position after receipt of a "Dear Ted" missive. It contained a Rockefeller acknowledgment that the Port Authority had been set up "exclusively" as a transportation coordination agency, that it ought to "plan and develop" a regional transportation system, that "all legal steps should

be taken to remove” the PA’s covenant against helping mass rail transit. Kheel heralded Rockefeller’s “forthright and comprehensive statement” about the Port Authority as a “first step of utmost importance” in a regional approach to transportation problems.

With his praising of this letter, Kheel had completed a neat trick, for, as he later admitted, he had actually written the ‘Dear Ted’ letter for Rockefeller to send. Revelation of the true authorship of the letter, however did not deter it from accomplishing one significant purpose: coaxing the organs of the establishment to fall in line. The *New York Times* was soon writing, in an editorial:

The Port Authority was created as a transportation planning agency ... designed to serve commuters and others needing transit service. Its record, however, shows flagrant neglect of this duty and a subservience to bond holders at the expense of transit riders. That policy was reflected in the authority’s construction of a World Trade Center, with office space rented to all comers, while it failed to build needed rail links.

These had been Kheel contentions. The Port Authority had resisted them at every turn, and in the past the *Times* had not agreed with them. Once again, Kheel’s notions had ascended from being considered fringe or “crazy” to the status of mainstream opinion.

He had an agenda, but did not pursue it in a single-minded fashion, perhaps because the goal -- rational regional transport -- was too large to be accomplished by a single stroke. Moreover, he

continued to have a press problem. "It was about what tag the papers and TV could attach to me in these fights. The rewrite men and editors would ask their reporters why a labor mediator should be quoted about a bond issue, and if they couldn't give an answer, would drop me from the story. So I incorporated an organization, and the press was then able to tag me as 'president of the Authority for Coordinating Transportation, Inc.' whose acronym was ACT."

As the relatively low-key pro-bond issue campaign wound its way toward a November vote, Bergen County Superior Court Judge George B. Gelman ordered the PA to defend its covenanted refusal to assist mass transit, expressing surprise that the Authority would think it was "above and beyond the legislature" on such an issue. When a lawyer for the PA contended that an adverse ruling would jeopardize the rail links and other mass transit expansions, Gelman labeled the PA's notion "almost like blackmail."

The legal basis for repeal of a covenant without violating the constitutional guarantee against impairment of contracts was laid out by Kheel and his lawyer son Bob in a law journal article. Harking back to one of the foundation cases of American jurisprudence, *Dartmouth College v. Woodward*, argued successfully for the college by Daniel Webster and decided by the Supreme Court in 1819, the Kheels pointed out that in reaction to that decision most states, including New York and New Jersey, passed constitutional provisions declaring that "the rights conferred by a state charter are both revocable and alterable by future legislative acts." That provision had permitted New York to repeal a statute on which Roosevelt Raceway had relied, even though the repeal had caused the harness

track to lose about a million dollars, and it would now, the Kheels argued, permit the repeal of the Port Authority's covenant.

As if to support Kheel's contention that the Port Authority cared nothing about mass transit, the PA next tried to raise the only mass transit fare it controlled, that on the PATH line. Kheel threatened to withdraw support for the new bond issue if the governor did not prevent that hike, and Rockefeller obliged with a public blast that a PATH fare raise was "inconsistent with my plan to stabilize transit fares throughout the region," and an instruction to New York's PA commissioners to vote to rescind the increase. They did so, but the New Jersey commissioners voted to keep it. The Interstate Commerce Commission then swiftly rejected the fare hike.

Campaigning for Rockefeller's transportation bond, Kheel learned, somewhat to his chagrin, that his attacks on the earlier bond issue had returned to haunt the present campaign. Newer critics challenged what this time around was Kheel's assertion that the 1973 bond issue would preserve the fare at 35¢, and reiterated his earlier warning about federal money for highways making the balance far less than 60-40 for mass transit. Kheel could reason against those sort of attacks, but he could not stomach one by Allan Wolper in the *Village Voice*, under the headline "Why Ted Did It." The combination of headline -- not written by Wolper -- and article implied that Kheel's support on the bond issue was the result of a deal that would accrue to his personal gain. "Curious circumstances" surrounded the timing of Kheel's pro-bond stance, Wolper wrote, and he raised the possibility that Kheel had agreed to support Rockefeller in exchange for the state Banking Commission's approval of an acquisition of

another bank by Republic National Bank (Kheel was chairman of Republic's board), even though, Wolper added, "There is no proof that Kheel's turn-around on the bond issue had anything to do with the proposed merger." Kheel wrote to the editor, calling the charge of *quid pro quo* "libelous" and threatening to sue if a clarification was not issued. A modification of sorts, printed in the next *Voice*; assigned blame to the headline.

On the evening of election day Kheel was the host at a black-tie party at Automation House: the guests watched television reports as the 1973 transportation bond issue went down to almost as decisive a defeat as had befallen the 1971 issue. City voters did say yes to the bond issue this time, by a margin of 150,000 ballots, but it lost statewide by 400,000 votes. Kheel called the positive city vote "the ultimate triumph of the battle I've been fighting ... to get people to see subways and buses as our most valuable asset," but this claim sounded hollow. More keenly than anyone else, Kheel realized that the rejection of this bond issue retrospectively threw cold water on any claim that he had caused the defeat of the earlier one.

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President Nixon, in what was labeled as a "major policy reversal ... spurred by the fuel shortage," in his 1974 State of the Union address embraced the notion that many people, including Kheel, had been publicly championing for some time, that mass transit was a reasonable alternative to being held hostage to imported oil. The president proposed federal subsidies for mass

transit operating costs, and asked for an authorization of \$2.5 billion a year for the next six years. Kheel dourly estimated that even if New York City received ten percent of this aid, its mass transit would still be \$150 million short of getting out of the red. As 1974 wore on, bills embodying Nixon's transit aid plan passed Congress but remained in limbo, the differences between House and Senate versions unresolved while Congress tied itself in knots over Watergate's cumulating revelations.

After Nixon's resignation, President Gerald Ford asked Nelson Rockefeller to become his vice-president, and Malcolm Wilson replaced Nelson Rockefeller as governor. Both Wilson and newly elected Governor Brendan Byrne of New Jersey then reiterated earlier pledges to have their respective state legislatures repeal the 1962 covenant -- although privately, Wilson opposed that repeal. The governors also managed to ram through the selection of William Ronan as the PA's new chairman of the board.

In response to the proposed action by the state legislatures, Port Authority bondholders sued New Jersey to keep the covenant intact. The litigation was brought by former PA vice-chairman Hoyt Ammidon on behalf of his employer, the U.S. Trust Company, the trustee for two PA series of bonds and the owner of \$96 million of them, but the suit was the Port Authority's idea, and its funds paid the expenses.

It was all very curious. Here was Kheel, trying to push the Port Authority in the direction of becoming the colossus of transportation in the region -- into enlarging what had been Tobin's empire -- and all that the Port Authority seemed bent on doing was to avoid

impairing its ability to float bonds. In the bondholder suit, U.S. Trust was represented by Robert Meyner, who had been New Jersey governor when the covenant had been proposed. (The PA had a history of employing former governors; Tom Dewey had argued for it, winning it the right to use the doctrine of eminent domain to take property then owned by a delicatessen that was standing in the way of completing the World Trade Center.)

More evidence for the critical issue being the PA's ability to raise money by bonds came from a chance meeting in the steam room of a private club. There PA commissioner Gustave Levy, former head of the New York Stock Exchange, Levy boasted to Kheel that the covenants would never be repealed or broken. But Kheel, as a *New York* report put it, had "an ace under his towel," a Moody's bond-rating service opinion that overturning of the covenant would "not diminish bondholder protection." If the bondholders were secure, why would the PA fight to maintain the covenant? Kheel sensed an insider's secret knowledge in Levy's boast, and tried to discover its basis. He learned that Malcolm Wilson, under pressure from the financial community -- in particular, Kheel would later charge, from people such as Levy, who regularly supported Republican candidates -- was about to renege on Rockefeller's commitment to repeal the covenant, despite the repeal's unanimous passage by the New York legislature.

By contrast, Byrne shortly announced that he was not only going to sign the repeal of the covenant but would ask his attorney general to join Kheel's case to declare the covenant null and void. And once Byrne had signed the repeal, Ronan, in what *Barron's*

described as a “stunning reversal of policy,” signalled the Port Authority’s willingness to go along. The repeal, Ronan said, would “unshackle the Authority from an unnecessary restriction against mass transit.” These actions, and Kheel’s pressure, forced Wilson in mid-June of 1974 to sign the New York State repeal. The New York governor acted with “great reluctance,” he said, because the “plain and simple fact” was that the PA had “virtually no excess funds” to subsidize mass transit.

If the PA had no excess funds now, Kheel charged, it was only because it had refused to double the tolls on its bridges and tunnels. “The battle to get the Port Authority into mass transportation has just begun,” Kheel glumly predicted, saying that “sabotage” by Port Authority bureaucrats would frustrate efforts to put its money into mass transit subsidies. The internal bureaucracy tried to promote A. Gerdes Kuhbach, one of its own, to be executive director; in a newspaper interview, Kuhbach painted himself as a man in the mold of Tobin, and said that when he was growing up, “I always wanted to be a bond salesman.” The governors approved his appointment.

“In this city, if we cannot transport our people rapidly and inexpensively, the entire economy of the city will crumble,” Beame warned when setting up a group to lobby Congress for more transit funds, a group for which Kheel served as a co-chairman. The lobbying had little immediate effect, but Kheel continued to push in other directions for mass transit. As part of a coalition of several dozen community and environmental groups, he testified before a state hearing that the proposed, federally-funded “superhighway” to replace the West Side Highway was a mistake that would accelerate

the loss of manufacturing jobs from the center city beyond the 316,500 lost in the previous five years. Efficient mass transit had held manufacturing jobs in place, Kheel maintained, which was one more reason why federal highway trust funds should be redirected from Westways and toward mass transit.

An unexpected boost to Kheel's cause came out of the hearings held in Congress in October, 1974, about the fitness of Nelson Rockefeller to become vice-president under Gerald Ford. Testimony revealed that Rockefeller had long ago given a half-million dollars to Ronan, and details were unearthed about a transaction in which Ronan had a hand. This was the deal in which the Triborough Bridge and Tunnel Authority obtained bondholder agreement to give some of its surpluses to the subways and buses in return for awarding bondholders an extra quarter percent interest -- an agreement that Ronan had brokered between Nelson as governor and his brother David Rockefeller as chairman of the bondholders' trustee, Chase Manhattan. Years earlier, the participants said that the proceedings had been sealed; now the judge who had been in charge of the matter admitted there had been no formal seal, and so the *Times* and other newspapers were at last able to look at the court papers. Those brought to light a most important stipulation, that the TBTA bondholders had given up the right to challenge the MTA on its use of TBTA surpluses for subsidizing mass transit. Had this stipulation been made public earlier, Kheel said, he would have used it in his suit against the PA, because its meaning was that the extra quarter percent given to the TBTA bond holders had not been necessary in order for the MTA to use the surpluses; rather, the quarter percent

had been a bribe to keep bond holders quiet. The court papers also showed what Kheel had suspected but had been unable to prove: that Tobin had been deeply involved in this TBTA transaction. Kheel charged that the reason the court documents had been held away from him, from Robert Moses' biographer Robert Caro, and from the *Times* for six years was that they would have had an effect on the PA "that the bond community simply did not want to face in public."

The newly-revealed court papers and the story of the half-million dollar gift to Ronan engendered inquiries on several fronts. Byrne called for full financial disclosure by all PA commissioners. An inquiry into the Port Authority's finances was pledged by Representative Hugh Carey, then the front-runner to become New York's next governor. Lewis Kaden, who had left Kheel's office to become general counsel to Byrne, pledged New Jersey's cooperation with Carey's inquiry, should Carey be elected; Carey's opponent, Malcolm Wilson, had refused to convene an inquiry. Kheel used the new revelations, as well, to obtain a foundation grant to study the entire range of the Port Authority's finances and operations.

Details about the Port Authority continued to surface. For instance, in its accounting the Authority made no listings under depreciation of facilities, though all bridges, tunnels, buildings and rolling stock were subject to natural oxidation and decay. For instance, the PA was overcharging New York State for office space in the World Trade Center; the state had refused to pay \$3 million and was on a rent strike against a 45 percent hike demanded by the PA. For instance, the World Trade Center had cost \$300 million over its initial \$600 million price, and it still was not complete; construction

on the upper floors continued while the trade center was losing between \$10-25 million a year; it had become, a commissioner told the *Times*, "a vast white elephant." After investigating, the *Times* declared that "The Port Authority of New York and New Jersey, long one of the wealthiest, most powerful and fastest growing public agencies in the world, has come to a financial standstill. According to one of its 12 commissioners, it is 'dead in the water.'"

Although the fault obviously lay in its own procedures and historic arrogance, the Port Authority now maintained that one major reason for its financial standstill was that the bond holders' suit and Kheel's New Jersey suit were still in the courts, and until these were resolved, the PA could raise no more money through sale of bonds. This contention was dismissed by a bond sales expert, who said that new PA bonds could be sold, but "It might cost them more than they would like." Moreover, the PA's books showed that at the end of 1974, a disastrous year, it was still \$18-20 million in the black, and with massive reserves. Shortly, the PA raised tolls on its six Hudson River crossings by fifty percent -- something Kheel had pleaded with the PA to do for nearly ten years.

On May 14th, 1975, in the Kheel-backed Gaby suit, Judge Gelman upheld New Jersey's constitutional right to repeal the covenant, writing in his opinion that "The claim that the bondholders security has been materially impaired or destroyed by the repeal is simply not supported by the record." Shortly, the New Jersey Supreme Court unanimously affirmed Gelman's verdict. In New York, the bondholders' suit was decided to have no merit -- a victory, also, for Kheel. Both cases appeared headed for the U. S.

Supreme Court. The Port Authority financed the U. S. Trust Company appeal. The cost of the earlier litigation, which the Port Authority had also underwritten, was estimated at \$1 million -- "a strange use of public funds," Kheel charged. In the appeal to the Supreme Court, both sides agreed that the case to be decided was the bondholders', which challenged the legality of the repeal of the covenant; only after the constitutionality of repeal was judged could the constitutionality of the covenant itself be assessed.

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It was 1975, and New York City was in dire financial straits. Failure to maintain a public transit system, the linked job loss from manufacturers and corporate headquarters leaving the city, which diminished city tax receipts and made the city over-reliant on short-term borrowing, and a downturn in the fortunes of commercial landlords -- interrelated matters that Kheel had been warning about for years -- combined to head the city toward the brink of default.

When the Municipal Assistance Corporation was set up by the state to take control of the city's finances and rescue prevent bankruptcy, Kheel was believed to be a candidate for its board. Not only was he the city's leading public citizen, but he had recently been working at Governor Carey's request as chief of a unit (the Task Force on Authorities) set up to overhaul the state's Urban Development Corporation, which had run into financial difficulties. However, Kheel made what was considered the error of saying publicly that there existed a possibility that Carey could refuse to

continue to bail out the one billion dollars of "moral commitment" bonds that Rockefeller had used to fund the UDC's work; the danger signs raised by this statement may have allowed powers in the financial community, citing also Kheel's steadfast opposition to the Port Authority, and especially to the covenant concerning its bonds, as reason to oppose his presence on the MAC board. If Kheel could question moral commitment bonds and covenanted bonds, how could he be trusted to go along with the financial rearrangements necessary to restoring the city to stability?

The argument against Kheel was somewhat specious, as he was obviously a responsible man, but the pressure on those appointing the board to yield to the wishes of the "financial community" -- really, the Port Authority -- was strong, because the city's ability to sell its new bonds to the financial community would be the key to its recovery.⁶ The pressure could perhaps have been overcome by a marshalling of public support of Kheel's appointment to the board, but Kheel did not actively seek to become a member, and did not call his friends in the press to help lobby the public for him. His reasons for not fighting for a place on the "Big MAC" board perhaps stemmed from a feeling that he would not be able to work effectively in its structure, or even to use it as a podium from which to promote his views on mass transit, highways and unneeded skyscrapers. Perhaps he even felt that he had become too radical ever to again operate from within a governing agency. In an article printed shortly after

⁶ The Municipal Assistance Corporation and the Emergency Financial Control Board, according to Stephen David and Paul Kantor, were run by the "financial and business elites who virtually set up and then came to dominate the emergency boards."

the Big MAC board had gone to work, Kheel wrote that New York City as a governmental entity was "obsolete," and ought to be demolished and replaced, at least in planning terms, by some form of government that took into account New York as the center of a region consisting of parts of three states. He nominated the Port Authority as the sort of entity that could do the planning job well, and back it up with money from its fares, tolls and rents, which were really taxes on the public. "Our future depends on reallocating the costs of necessary public programs [and] on inventing ways to tap regional tax resources to pay for regional problems," Kheel wrote. Such a radical restructuring was far beyond anything Big MAC was even likely to consider, much less attempt.

Being blackballed from the Big MAC board was a significant blow struck against Kheel, though because it took place out of sight of the general public, its effects remained hidden. The board would essentially run the city's finances for the foreseeable future, and the city's most prominent the public citizen would not be a member of it.

Part of New York City's financial difficulties stemmed from a reliance in the past decade on help from the federal government, help that in 1975 was rather quickly being removed. Evidence that the tide had swung away from assisting the cities: when former New York State Governor Nelson Rockefeller, now vice-president of the United States, sat in on a meeting at the White House at which New York City Mayor Beame pleaded with President Gerald Ford to help bail out the city from its financial troubles, Rockefeller forcefully denounced aid to New York City, which added to Ford's determination to refuse Beame's request. This was the meeting that,

next day, produced the *Daily News*' classic headline, "Ford To City: Drop Dead."⁷

Kheel cited such federal intransigence as one more reason for urgency in moving the Port Authority into mass transit. He was still calling for the World Trade Center to be sold, but now added another note to that song: he suggested that if it could not be sold it should be torn down. Governor Carey and Controller Levitt were refusing to move their state offices into it, and Treasury Secretary William Simon was criticizing its airtight window construction as the wrong notion in an energy-conscious era, because it necessitated extra dollars spent for continual air-conditioning. Lewis Mumford agreed that "the Trade Center's fate is to be ripped down as nonsensical."

In mid-1976, the spectacular Windows on the World restaurant opened on the 107th story of the North Tower of the World Trade Center, initially as a private lunch club, and *New York* magazine dining critic Gael Greene asked Kheel to accompany her there -- as it were, into the lion's den. Seated in the spanking new restaurant five days after it opened, Kheel ordered a glass of wine and toasted the memory of the delicatessen owner whose property had been taken by the PA to erect this building. He opined that the ghost of Austin Tobin (who was retired but still alive) must be stalking these halls. He also told Greene that he found the restaurant "terrific," with its grand cuisine and magnificent views, and even arranged to purchase

⁷ By mid-November, 1975, however, President Ford had come to his senses, realized what a terrible impact would be produced if New York were to default on its obligations, and agreed to recommend to Congress legislation to permit the federal government to loan New York City enough money to cover its day-to-day operating expenses in the immediate future. Those loans afforded time for the city's debt obligations to be restructured.

and stock the first of its numbered wine cellars. During the lunch, proprietor Joe Baum, an old acquaintance, hovered about the table, worried that Kheel's well-known antipathy to the Port Authority and the Trade Center would influence Greene's opinion of his restaurant. "I'm revising my position on the Trade Center," Kheel told Greene. "Now I say, tear it down but leave the 107th floor." The quip became the basis of a *New York* cover illustration, in an issue that carried Greene's rave review of *Windows on the World*.

It was a last, vainglorious moment for Kheel in his long fight to move the Port Authority in a socially responsive direction.

The knockout blow in that fight came at the end of April, 1977, when the Supreme Court of the United States finally issued its ruling on the bond holders' suit. With justices Potter Stewart and Lewis Powell not participating, the court by a 4-3 vote overturned the unanimous opinions of the lower courts and struck down New Jersey's repeal of the 1962 covenant. Chief Justice Warren Burger and Justices Harry Blackmun, William Rehnquist and John Paul Stevens -- all Republican appointees -- made up the majority. Blackmun's majority opinion was based on what Daniel Webster had successfully argued in the *Dartmouth College* case, a constitutional prohibition against "impairing the obligation of contracts." Justice Brennan, writing for the minority of Byron White, Thurgood Marshall and himself -- all Democratic appointees -- noted that the justification for the majority position "remains a mystery to me." Brennan cited the later cases that restricted the *Dartmouth* ruling and set precedent, over the last hundred years, and wrote that this was the first time in forty years that the court had invalidated

“purely economic and social legislation on the strength of the contract clause.” Brennan stressed that the Constitution, in many of its provisions, upheld the primacy of public needs over private rights, and argued that in the current instance, the need of the public for better mass transportation ought to outweigh the minimal problems for bond holders that repeal presented.

When the full history of American cities in the twentieth century is written, this decision will be viewed as an important turning point. Groups trying to save the inner cities, to promote environmentally-aware usages of natural resources and reverse the inroads of pollution, as well groups advocating greater use of mass transit, had anticipated a Supreme Court ruling that would ratify the lower courts' decisions and forcefully reaffirm that more government and public authority resources should and could be directed toward socially-conscious goals. This was a realistic hope, and had it been confirmed, it might well have forced a redirection of public authority resources across the country into such modes as Kheel was trying to accomplish with the Port Authority. Had the Port Authority's profits been poured into mass transit, even as late as 1977 -- during a time of still-severe financial crisis in New York City -- the results could have been salutary for the health of the center city and the region. Elsewhere, public authorities such as the TVA and other electric-power generators might have been mandated to redirect their resources in ways that would have resulted in clearer air and cleaner water, etc. But by a vote in the Supreme Court of four to three, such hopes were dashed.

“The worst blow for New York since President Ford told us to drop dead,” Kheel said of the Supreme Court ruling; he interpreted the decision as meaning that “the Port Authority is worthless as an agency of mass rail transportation.” The decision specifically said that the Port Authority must stop its plans for rail links to the airports, PATH line extensions, and even the electrification that had been scheduled for a commuter railroad along the New Jersey coast.

“After the Supreme Court ruling, I became disheartened,” Kheel remembers, “because it seemed there was nothing anybody could do that would make the Port Authority take on the job for which it had been created.” For instance, Governor Byrne called immediately for the toll hikes on the PA river crossings to be rescinded, wanting automobile commuters to be spared that expense because the added revenues could not be redirected to mass transit. It was a resurgence of the old practice of pitting New Jersey commuters (and voters) against New Yorkers.⁸ In Kheel’s view, Byrne’s effort was misguided, because only by raising tolls could autos be kept out of the center city, and that city assisted. But he didn’t fight on this.

Austin Tobin died in 1978, burned to death by a fire in his bed that was lit by his own cigarette.

Through the late 1970s and 1980s, Kheel continued to make his voice heard on matters concerning regional thinking about transportation, pointing out in occasional interviews and letters-to-the-editor such things as that improvement of the West Side Highway would benefit 60,000 people a day while improving the

⁸ During the Giuliani Administration in New York City, the mayor continued this old practice, arguing that New York was getting less out of the PA than New Jersey.

subways would benefit three million. He urged that Westway be put to a vote in a public referendum, rather than having the highway's existence settled by mayors and governors in closed-door meetings. He offered to lead a campaign to put the issue to a vote, but conceded that he needed the help of many others to obtain the 45,000 signatures necessary to place the issue on the ballot; that help never materialized, and he did not do much to summon it into being. Legal maneuvering and environmental concerns kept Westway from being built, but while the plans languished there was in its stead only a modest upgrading of mass transit, through new equipment and some modernization done in the 1980s.

In the opinion of other thoughtful observers of the city's progress, the moment when Kheel stopped being a thorn in the side of the Port Authority was precisely the time when the Authority, under new executive director Peter Goldmark, could have been more readily used by New York and New Jersey to help the city and metropolitan region. Bonds based on the PA's revenue stream, Goldmark assured Roger Starr in 1985, "could provide the money for major capital reinvestment on both sides of the harbor;" Starr concluded that "Put to work by the municipalities on the harbor, the Authority could produce substitute uses for the geographical assets [the port and its piers] whose value was repealed by the invention of new transportation technologies." Perhaps Kheel, as a former leading critic of the Port Authority, could have been useful in the 1970s and 1980s in championing such salutary other uses for its resources and borrowing power, but he did not add his voice to the calls for reform.

Today Kheel says, "I shouldn't have stopped fighting the Port

Authority after the Supreme Court ruling, Byrne's about-face and Tobin's death. I should have kept hammering away -- because the PA's own studies now recommend such things as selling the World Trade Center⁹ and using surplus toll money to subsidize mass transit, and building a rail link to JFK."

That "light rail" link to Kennedy Airport, proposed by the Port Authority in May of 1996, was to cost one billion dollars, to be financed by an already extant \$3 per person surcharge on departing passengers, plus the Authority's own funds. Kheel remains skeptical about the financing, since the surcharge will not come close to paying the cost of the proposed link, and also because he maintains that the 1962 covenant, never truly overturned, continues to forbid use of Port Authority funds for "mass rail transportation." However, he is delighted by the Authority's willingness, stated in its 75th anniversary brochure, to respond to a "mandate" from Governors George Pataki of New York and Christine Todd Whitman of New Jersey for the PA to "refocus" on its "core ... mission of transportation and port economic development," and to move out of real estate and other enterprises "no longer relevant to our core focus and [return] those resources to the mission for which we were created."

In its supporting materials touting its new airport link, the Port Authority also echoed contentions that Kheel had made for years but which the Authority itself had long brushed aside as irrelevant, for example, that the problem of no adequate rail links to the New York

⁹ The World Trade Center's vacancy rate in the mid-1990s hovered around 12 percent, nearly twice what it was in the 1980s, and it is considered by private industry a drag on the market, because vacancy rates in the privately-owned buildings in the same area have remained, high, at around 20 percent.

airports had been eroding New York's competitiveness. The report cites studies which found that executives of business firms that had left New York for other locations acknowledged poor access to the airports as a major reason for their exodus. Another detraction from competitiveness cited by the Port Authority has been the city and region's continuing and even worsening traffic problem; the PA boasts that the new rail link will take cars off the road.

Kheel also points with hope -- and perhaps, with a smidgen of 'I told you so' -- to a study by the Federal Transit Agency showing that the public reaps \$5 worth of benefit for every \$1 spent on mass transit -- in Chicago, Washington and Philadelphia as well as in New York, and to the new MTA free transfers between subway and bus lines. City and state officials know that the free transfer plan will result in some loss of revenue, but are trying it in the hope that it will encourage the return of more passengers to the transit system and reduce automobile traffic congestion. "Maybe if I'd kept on hammering away," Kheel says, "those sort of understandings of the worth of mass transit would have been reached sooner."

Chapter Ten:**FIRE-Storms**

Beginning with a national recession in 1969, and continuing through the early 1970s, New York's loss of manufacturing companies and their associated jobs accelerated. The reasons cited by Mark A. Willis in a recent study are two: "New York [had] a cost-and-wage structure significantly higher than that of the rest of the nation ... [And] The cumulative impact of technological change and shifting national and international trading patterns caught up with the city." In the interim before 1977, however, an important transition occurred. While 600,000 jobs disappeared as such former stalwarts of the region's economy as breweries, furniture makers and garment manufacturers left in droves, at the same time -- and almost unremarked -- there began a resurgence of the economic sector known as FIRE (finance, insurance and real estate). This service sector emerged as the foremost engine of growth after the near-default of 1974-75. Based in part on computer-enhanced efficiency, the FIRE sector provided 400,000 new office jobs in New York through the remainder of the 1970s, slowing the haemorrhage of educated whites to the far suburbs and the Sunbelt.

The loss of manufacturing jobs was one cause of the near-default. It combined with erosion of the tax base, and a municipal addiction to borrowing from Peter to pay Paul -- short-term borrowing increased from \$526 million in 1965 to \$4.54 billion in 1975. Other generally accepted "causes" of the near-default include the influx of more than a million poor blacks and Puerto Ricans who