

How to Get the Port Authority Back on the Track

By Theodore W. Kheel

“... A solid and unbreachable wall of law exists between the Port Authority and mass transit. The wall must be smashed...”

In their search for a new executive director of the Port of New York Authority, the Governors of New York and New Jersey might just as well put the advertisement on the facing page in a newspaper. It has the merit of candor, and that would make a refreshing change.

The ad fairly represents the working conditions fashioned for himself by Austin J. Tobin, who abruptly quit as executive director of the Port Authority earlier this year after running it as his personal fiefdom for 30 years. At the moment, Rockefeller appears more sympathetic toward an effort to involve the Port Authority in mass transportation than Cahill is, but neither has taken the only steps that can turn press releases into positive programs.

The hunt for a new executive director has been going on for more than three months now. Politics at least partly explains the delay. The Port Authority is a bi-state agency, created by a compact between New York and New Jersey, and each Governor can veto the other's choice. Since both Rockefeller and Cahill are fully aware of the tremendous resources at the Port Authority's disposal—nothing less than the power to affect the very quality of life in both states—each is understandably concerned about just whose man the new executive director might turn out to be.

But the delay may signal something even less flattering than politics-as-usual, something more ominous for the metropolitan area's future. It might mean that even now, after 30 years of systematic betrayal by the Authority of its mandate to create a balanced transportation system for the port area, the Governors still do not yet fully understand how dangerous the Authority's dereliction has been, how utterly essential it is that the Authority be redirected, and how culpable the Governors themselves will be if they allow the

next executive director simply to pick up where Tobin left off.

Anyone eager for the job had better find out about his mandate before he takes on the assignment. The people whose lives he will affect—the rest of us—are just not going to let the next executive director run the Port Authority the way Tobin did. As far as I'm concerned, the new executive director can have his helicopter. The Authority, after all, does cover a lot of ground. But a solid and, thus far, unbreachable wall of law exists between the Port Authority and serious involvement in mass transit—this, the handiwork of Austin Tobin—and this wall must be smashed if the new executive director is to have any chance of success.

The Port of New York Authority was set up by New York and New Jersey in 1921 to develop and coordinate all forms of transportation in a bi-state area which, the two states perceived, had in fact become a single, large, intricate economic center. With amazing foresight the states recognized 50 years ago that, since the political powers of each ended at its geographical boundaries, neither state alone could do the job. Today, a half century later, there's still no other agency in existence capable of doing the job. And it just isn't being done.

That the Port Authority, this public corporation, was able to disregard the law and get away with it is an especially bitter irony. As the first authority in the United States, it was designed specifically to be free of the ordinary political pressures that voters and public officials bring to bear on their representatives. If it were immune to these pressures, it was thought, the Port Authority could operate for the public good with the efficiency of a private business. As it turned out, the Port Authority did operate with the efficiency of a private business—at

the price of scandalously neglecting its public purposes. Supposedly subject to the policy direction of an unpaid, twelve-man board of commissioners (appointed by the governors) meeting on the average of one or two days a month, the Port Authority's own bureaucrats were able, through control of the Authority's operations and planning, to chart their own course.

The Port Authority's achievements before World War II—the George Washington Bridge, the Holland and Lincoln tunnels, among others—had demonstrated the money to be made in serving the automobile. Tobin foresaw virtually unlimited horizons for ever-more profitable Authority investments when the war ended—serving cars and trucks, serving air and sea transport, serving anything but mass transport, the most essential element in its mandate to coordinate *all* forms of transportation. Mass transportation was undeniably the most efficient way to move people around a metropolis, but it was also doomed to sustain ever-increasing deficits. Tobin's genius was in finding a plausible excuse for avoiding it. Since the Port Authority had no power to levy taxes or to borrow on the credit of the states, he reasoned, it therefore had to be self-supporting. If the Authority got involved in mass transportation, its revenues would be subject to this drain and its ability to sell bonds for more profitable ventures would be impaired. Using the bond market as the fall guy, then, Tobin promulgated the rule that the Port Authority must not become involved in mass transportation.

Tobin might have been asked, what if the Port Authority merely used *surplus* funds for mass transportation after setting aside as much as was necessary to provide bondholders with triple-A protection? Wouldn't those bonds be salable? And wasn't the Port Authority making enough from the tolls on

its bridges and tunnels, to say nothing of other "profitable" enterprises, to use the excess for mass transportation? The answer to both questions was, and is, an emphatic "Yes." But for years no one—neither the Governors nor their commissioners—ever bothered to ask Tobin these questions.

Freed, at least temporarily, of any obligation to assist mass transportation, Tobin launched a search for, as one of his like-minded staffers put it, a "financial device where the purpose would be unlimited, where the dollars would be unlimited, and only legality and financial practicability would impose the limits." He got it in the form of the consolidated bond resolution of 1952, enabling the Port Authority to borrow funds, not backed by this or that facility, but backed by the assets and revenues of all its facilities. With the vast capacity to borrow this action gave, the Authority became a public authority beyond public control, an agency whose vision of balanced transportation could encompass a World Trade Center, but not the subways and buses needed to bring people to it.

But Tobin didn't feel secure with merely a rationalization for not helping mass transportation. With its reserves and borrowing capacity growing rapidly in the post-war years, the Port Authority became an increasingly obvious target for unsympathetic opponents of Tobin's expansionist policies. He faced such an attack in 1958 when Governor Rockefeller in his first term appointed Robert Purcell, a transit expert, to find ways of helping the commuter railroads. Purcell came up with an ingenious idea. Why not have the Port Authority use its ability to borrow at low-interest rates to buy railroad cars and rent them at reduced rates to the railroads? When bills to that effect were introduced in Albany and in Trenton, Tobin went up a wall. He lost no time staging a counterattack that might have made even Dita Beard envious.

First, he developed some arguments. If the railroads defaulted, he asked, how could the Port Authority recover its investment? But since the amount involved was relatively small, his real concern was: "What next?" Accordingly, he promptly mobilized Wall Street for the battle. Bond brokerage houses were called to meetings and told to bombard Rockefeller with messages. Form letters were prepared by the Port Authority for them to sign. Joseph Martino, a vice president of the Chase Manhattan Bank, and a commissioner of the Port Authority, called Rockefeller from his Palm Beach home. Governor Robert Meyner, persuaded by his transportation aide, Dwight Palmer, that the plan was unfair to New Jersey,

also got into the battle. Governor Rockefeller, no mean campaigner in his own right, threw in the towel. The bill was rewritten to Tobin's specifications. The states had to guarantee the Port Authority against any loss on the leases if they wanted to use the plan. The states, in fact, had to amend their constitutions to make the guarantee legally enforceable. The law even required the states to put up the money for the Port Authority's startup expenses. New Jersey decided not to use the program, for, as one commentator said at the time, if the states covered all the costs, who needed the Port Authority?

But Tobin knew that if Governor Rockefeller could cast a covetous eye

on his accumulating wealth, he needed more protection against mass transportation than his own interpretation of the Port Authority's obligations. His opportunity arose in 1962 when he was seeking permission to build the World Trade Center, Tobin's idea of a good place to bury hundreds of millions of dollars of Port Authority funds. Surprisingly, a sturdy friend and supporter, Governor Meyner of New Jersey, refused to approve the project unless the Port Authority agreed to take over the faltering trans-Hudson "tubes" of the bankrupt Hudson and Manhattan Railroad. In his role as chief of the most powerful state-within-a-state outside of the Vatican, Tobin told Meyner that he would not agree to take over the Hudson and Manhattan Railroad unless the Port Authority got a commitment from the states that they would never again ask it to do anything more for mass transportation. And Tobin insisted on having the commitment sealed by a law the states couldn't repeal.

Governor Rockefeller at first objected, but finally went along with one of the most incredible and immoral laws on any state's books. It is not a law that regulates malefactors. Rather, it is a law that regulates the law-makers—the law identified in New York State as Section 6606 of the Unconsolidated Laws of 1962. New Jersey has a companion law. Both are in the form of covenants by the states with each other and with everyone to whom the Authority sells its bonds pledging that the states will never again ask the Port Authority to use any of its funds for "any railroad purposes whatsoever" except a self-supporting railroad (which obviously, wouldn't need Port Authority help). At the moment, that means the states can't require the Port Authority to aid mass transportation until the year 2007, when \$150 million of bonds sold last February mature.

With the passage of 6606, Tobin had it made. No longer was he required to plot against such formidable opponents as Governor Rockefeller. Politicians could talk all they wanted to about getting the Port Authority to help mass transportation. They could even go through the motion of passing a law. So what? The law couldn't be enforced.

In fact, the states did pass a law in 1971 empowering and directing the Port Authority to use its funds to build and operate rail links to Kennedy and Newark Airports. The Governors knew Tobin would oppose this, but they mistakenly thought they had found a way around his immutable law. They decided to redefine the term "airports" to include rail access. Perhaps they intended to tell passengers to fasten seat

Help Wanted—Male-Female

CHIEF EXECUTIVE OFFICER SOUGHT FOR MULTI-BILLION- DOLLAR CONGLOMERATE WITH SPECTACULAR POST-WAR GROWTH RECORD

This executive will take command of 26 diversified enterprises, most enjoying market monopolies. Revenues (\$305 million in 1971) and earnings (\$116 million after expenses) at all-time peaks.

Unique financial strengths: Over \$3 billion invested in facilities currently worth over \$10 billion. Makes millions annually on sure-thing arbitrage—borrowing capital at low rates in tax-exempt bond market, reinvesting same in higher-yield U.S. Government securities. Current unused borrowing capacity: more than \$2.5 billion. Annual cash flow under chief executive's direct control exceeds \$1 billion. Pays no income taxes; reduced property taxes.

Unique market strengths: Licensed to charge for use of fully amortized, inexpensive-to-maintain interstate access facilities. Can increase revenues without Price Board approval.

Job security: Last chief executive held post 30 years. No stockholders. Support on all critical policy matters assured from unpaid, part-time board, most of whom have affiliations with banks or bond houses.

Salary: \$70,000, highest for this work in the world. Generous fringe benefits include use of chauffeured helicopter.

Applicants should apply to Governor Nelson Rockefeller of New York and/or Governor William Cahill of New Jersey.

(Note: All applications will be held in strict confidence, but there can be no guarantee against untimely and/or unfriendly leaks to the news media.)

“...Cahill, apparently, has lost interest, or he was never truly concerned. Rockefeller, however, is behaving quite differently...”

belts and no smoking please before takeoffs or arrivals.

No great protest movement emanated from the Port Authority when this law was passed. None was needed. The Port Authority could tell the Governors what it thought of their law when the time was ripe.

The job of getting the Port Authority back to its proper business—planning and effectuating a coordinated and balanced transportation system for the metropolitan area—will have to be done in the courts. Together with others similarly minded, I started a suit in the Federal courts in March of 1971 challenging the constitutionality of Section 6606. I've lost every round thus far and, in the process, I've become more convinced than ever that the law that has inhibited it is clearly unconstitutional. But meantime, a lot has happened in recent months that could speed up the process. First of all, there was Tobin's unexpected resignation. (Although almost 69, Tobin was quite fit.) He said it was to facilitate an orderly transition of power. I suspect that it was because he saw that the Port Authority's ever-increasing wealth meant that a head-on clash could not long be avoided. After all, the states had put two laws on the books that were totally inconsistent with each other. Section 6606, passed in 1962, effectively barred the use of Authority funds for any railroad purpose. The second, passed in 1971, commands the Authority to spend an estimated \$420-million on rail links to New York's major airports.

Among the candidates for Tobin's job, William Ronan seemed one of the most plausible. As head of the M.T.A., he had gained unique experience serving mass transit riders and, through the Triborough Bridge and Tunnel subsidiary, automobile drivers, too. He unquestionably had Rockefeller's support and, it was thought, Cahill's as well. But Bill Ronan's candidacy drew no support from his fellow commissioners, including all but one of Rockefeller's appointees. On the contrary, they violently opposed him, and a premature leak to *The Daily News*, probably by New Jersey Port Authority Commissioner Andrew Axtell, sank Ronan's candidacy almost before it was launched. That undoubtedly was the purpose of the leak.

Axtell's role in all of this seems very strange. He was appointed by Cahill to “get” Tobin and reverse the Port Authority's hostility to mass transporta-

tion. Cahill, it must be remembered, had won election three years ago on a platform calling for active Port Authority participation in mass transportation. He appeared to be the leader of the fight to accomplish this. Cahill, apparently, has lost interest in the issue, or he was never really concerned.

Rockefeller's plans for the Port Authority are harder to understand. His brother David was one of the original sponsors of the World Trade Center, if not its very creator. Rockefeller had in fact arranged for the state to rent more than 25 per cent of the Center to get Tobin off the hook for having produced space far in excess of world trade needs. (No one has explained what the State Commission for the Visually Handicapped, for example, or the State Liquor Authority have to do with world trade. But both are tenants in the new World Trade Center.) And except for Ronan, a man sincerely committed to mass transportation, the commissioners Rockefeller has named to the Port Authority have come primarily from the banking and brokering fraternity.

Within the Authority's own bureaucracy, the favorite candidate to succeed Tobin was Guy Tozzoli, the skillful head of the World Trade Center project. He was eager for the job and seemingly had won the backing of almost everyone, including Cahill. He was vetoed, however, by Rockefeller. When news of Tozzoli's possible selection hit Albany—through a premature leak—Rockefeller made it known he would veto any insider on the ground that such a man was sure to be tainted by Tobin's bias against mass transit.

All of us who believe the Port Authority *must* get involved in mass transportation will be able to tell with unusual ease just how deeply the Governors of New York and New Jersey care about this issue. We have only to see whom they finally name as Austin Tobin's successor and how he feels about the road block that must be cleared if he is to have any chance of success.

No matter who it turns out to be, there is another, even more important test, one that should be made even before a new executive director is appointed. It is a test that can only be made in a court of law. My suit—to have Section 6606 declared unconstitutional—would have turned the trick over a year ago, but the Port Authority has thus far successfully prevented me from raising the issue in the Federal

courts. I intend nonetheless to seek Supreme Court review. (The Port Authority itself can raise the issue in the courts, of course, and, since they are faced with conflicting instructions from the states, I plan to call on the commissioners to take this step.)

There is still another way, and the commissioners almost found it earlier this month, on the same day Rockefeller signed the bill quietly passed by his legislature repealing Section 6606. He claimed, in his accompanying message, that New York's repeal could not become effective unless New Jersey took reciprocal action. An interesting legal argument can be made against his view. But in any event, Bill Ronan used the occasion to move that the Port Authority proceed with the rail links in accordance with the 1971 rail link legislation both states passed. All the New York commissioners voted yes, but all the New Jersey commissioners abstained. As a result, the resolution failed. If it had passed, then the shoe could have been put on the bondholders' foot instead of on the public's neck. It would then have been up to them to sue to stop the Port Authority from proceeding with the rail links. One can be sure they would have. But as long as no action is taken, time runs against the people of this area and in favor of the bondholders. The latter can exact a high price for the delay their suit would entail. By refusing to seek a court test, the Port Authority not only forestalls the day when it can be made to return to its original mandate, but it adds to the money the bondholders will ultimately be able to get—possibly as much as \$100 million over the life of the bonds outstanding—should they be asked to accept a new deal on their bonds.

There is still another step that can be taken. Section 6606 and the companion law in New Jersey were primarily covenants or agreements between the states. Section 3 of Article I of the Constitution specifically states that “no State shall, *without the consent of Congress* . . . enter into any agreement or compact with another State.” [Emphasis added.] Since Congress did not give its consent, New York and New Jersey clearly violated this restriction back in 1962. If all else fails, I intend to bring their default to the attention of the appropriate Senate and House Committees. But with the changed temper evident on this side of the Hudson, perhaps such a drastic step will not be necessary. ■

public was fully informed—which is why it rejected a further proliferation of polluting highways.

I have been conducting a battle on another front in the cause of a balanced and coordinated transportation system, but the results so far have been negative. Nor have I been able to get across to the public the importance of the issue. In fact, I have not even been able to make the courts understand what is involved. I refer, of course, to my fight to get the Port of New York Authority to do the job it was first mandated to do back in 1921 by the states of New York and New Jersey. It was instructed at that time to develop and coordinate *all forms of transportation* in what the framers of this compact between these two states called the "port district." Such a compact or treaty between states has to be approved by the United States Congress—and it was. The port district is the area within a radius of 25 miles of the Statue of Liberty which, the initiators of the pact said, had become commercially one center or district. Obviously, it was not possible for either New York or New Jersey separately to deal with transportation in a bi-state area. A new form of government was called for and the Port Authority was created as the first special body of its type with jurisdiction beyond the geographical limits of the states that brought it into existence. An authority is a non-elective governmental unit that can make decisions supposedly in the interest of greater efficiency, without voter approval.

But the Port Authority's bureaucracy, relieved of effective review and accountability, found that there was no money in mass transit and abandoned the mandate it was originally given to develop and coordinate *all forms of transportation*. It decided instead to invest its ever-increasing financial resources in facilities that were, as they called them, "self-supporting." In other words, profitable. (This led it into sponsoring the largest office building complex in the world, the World Trade Center, in competition with private enterprise which has erected more office space in the lower one-third of Manhattan than there exists in practically every other major city in the United States put together. And private enterprise did this without any government subsidies. But the Port Authority gets what amounts to special subsidization because it can borrow money at low rates since the interest it pays is tax exempt. As a result, the U.S. Government loses that amount in taxes. This in essence is a subsidy to an agency for a purpose not designated by Congress. The Port Authority, in effect, decides what Congressional funds should be used for.)

Not only has the agency disregarded mass transit and simultaneously encouraged automobile usage by building bridges and tunnels—including an underdecking for the George Washington Bridge (which was originally intended for a commuter railroad)—but it also induced the legislatures of New York and New Jersey in 1962 to pass laws that make it impossible to require the agency to use any of its money for any railroad purpose whatsoever! Thus the states handcuffed themselves. What's more, the authority claims that New York and New Jersey cannot repeal this self-imposed restriction.

You might wonder how it is possible to prevent the two states from repealing their own laws. The device is an ingenious one thought up by the Port Authority's general solicitor, Daniel Goldberg. It makes use of a famous U.S. Supreme Court decision, the so-called Dartmouth College case. By getting New York and New Jersey to pass laws in the form of covenants or agreements with future holders of Port Authority bonds, these covenants become in effect contracts that, it is claimed, cannot be abrogated by the states that entered

into them. Since the agency continuously sells bonds for terms of 35 years (the most recent ones were sold in February 1972), it now claims that New York and New Jersey cannot repeal these covenants until all the bonds are paid off. That means that the earliest possible date for any Port Authority aid to mass transit is 2007 when the last bonds bought up to now can be redeemed. If the agency sells more bonds with later maturity dates, it can put off repeal indefinitely. I believe these covenants are illegal because 1) they amend the original compact without Congressional approval and 2) they improperly delegate the powers of the legislatures of the two states to a non-elective body.

Over the years the Port Authority had been able to avoid its full responsibilities to mass transit by means of slick public relations and effective lobbying. But as the subway, bus and rail crisis worsened, politicians began to come to the view that the agency should do something for mass transit, although to the present day they still do not thoroughly understand the necessity of having the rich and talent-filled Port Authority coordinate *all forms of transportation* in the port district. It is the only existing agency that can do this. Without a regional approach through a single agency with firm jurisdiction, the metropolitan area's transportation system is going to continue to become even more unbalanced.

Newspapers and public officials have begun to see a glimmer of light. THE NEW YORK TIMES, which had been one of the Port Authority's main supporters, started to talk about its "historic neglect" of mass transit. Governor William T. Cahill of New Jersey campaigned and won against former Governor Robert B. Meyner in 1969 on a platform calling for the Port Authority to do something more for mass transit. Gov. Rockefeller joined the bandwagon and together the two governors put out a statement early in 1971 outlining a variety of projects they wanted the agency to undertake.

The principal project was to construct rail links from Manhattan to Kennedy and Newark airports—with intermediate stops in between—at an estimated cost of some \$420 million. Austin J. Tobin, who was the agency's executive director but has since resigned after holding the job for almost 30 years, said in no uncertain terms that it would be unconstitutional for the Port Authority to use any of its funds for these rail links because of the 1962 covenants.

In 1958 he had beaten down a similar effort by Gov. Rockefeller to help mass transit. At that time the Governor proposed that the agency use its funds to buy rail cars and lease them to the commuter railroads. It could have done this at a considerable saving because of the tax-exempt funds it was able to borrow. But Tobin opposed Rockefeller unless New York and New Jersey guaranteed that the agency would be reimbursed by the states for the loss of any of its funds, which led one person to ask, "Who needs the Port Authority?" Nevertheless, New York's Constitution was amended to make the procedure possible. The whole affair taught Rockefeller to be careful in taking on this formidable opponent of mass transit.

In 1971, beyond saying that building rail links would be "unconstitutional," Tobin was noticeably silent about his opposition to the project, reflecting undoubtedly the fact that public opinion was demanding that some Port Authority funds be allocated to mass transit. But his silence did not mean consent.

The governors of New York and New Jersey were apparently advised that they might get around the ban on the use of Port Authority funds for any railroad purpose by redefining the term airport to include the rail links. But the Port Authority countered this strategy in defending a suit that I—

and other representatives of people in the port district dependent on mass transit—initiated to have the original covenants between the authority and states declared unconstitutional. The agency openly admitted that the links to the airports were railroads and not extensions of the airports. On this point I agree with the Port Authority. Even if there were signs in the railway cars reading, "Fasten seat belt, no smoking, please," a railroad is still a railroad—and the fact that it leads to an airport, with intermediate stops along the way, cannot change it into an airport.

Our suit to have the restrictions declared unconstitutional was really designed to help the governors carry out their program. It was begun in the Federal Courts in March of 1971—along with a companion suit in New Jersey that has been held in abeyance pending the outcome of the New York suit. You might think that the officials advocating Port Authority help for mass transit would have welcomed this litigation. If successful, it would have enabled the governors to avoid the subterfuge of trying to call a railroad an airport, when obviously this strategy was not going to work. Not only were we unaided in this suit, but practically all public officials have silently stood by while the Port Authority has fought to prevent the courts from deciding whether or not the covenants are unconstitutional. To this end, the agency moved to prevent us from having our case heard. It made four arguments. Firstly, it said we were merely asking for an advisory opinion and not a declaratory judgment. Legally that meant we had no case because there was no real problem. It also said that our claim did not raise a substantial Federal question for two reasons: 1) that we were merely attacking a defense the Port Authority might urge if called upon to help mass transit and 2) that there was under \$10,000 involved in the claim we made, the requisite minimum amount necessary for Federal jurisdiction. Lastly, it claimed that under Federal law we had no standing to sue.

This case was argued before District Court Judge Harold R. Tyler in early June of 1971. In late July he handed down a decision saying that it was not necessary for him to pass on the four reasons the Port Authority gave why we should be thrown out of court because in his judgment there was still a *fifth* reason why he had no right to sue. Our contention that the covenants amended the compact and therefore required Congressional approval before becoming effective was, he ruled, incorrect. Congressional approval was not needed, he maintained, because the covenants merely reduced the number of duties the Port Authority was assigned. Congressional approval was necessary only if the agency were given new duties, he reasoned.

We immediately made a motion to reargue, contending that the judge had missed the essential point of our case. It was that the Port Authority was required to coordinate all forms of transportation in the port district. If it could not use any of its funds for mass transit, it was incapable of performing the essential job of coordinating—and that was a fundamental amendment of the compact. How could it stop the imbalance in transportation resulting from the overabundance of automobiles it had so helped to encourage if it could do nothing for mass transit?

The Port Authority opposed our motion to reargue, contending that Judge Tyler was correct—and Judge Tyler agreed that he was correct.

We then took our case to the Second Circuit Court of Appeals, arguing that Judge Tyler failed to understand why the Port Authority was created. This time in its answer to our brief, to our great surprise, the agency abandoned Judge Tyler's argument, contending that he should never have decided the

case on the basis on which he did, but rather should have held that we had no right to be in court for the four reasons originally stipulated. We pointed out to the Second Circuit that the Port Authority's revised position meant that the Appeals Court had before it both our claim that Judge Tyler was wrong and the Port Authority's contention that he should not have made the decision he did but should have thrown us out of court for the four reasons he did not pass on. Needless to say, it was far from simple to join issue with the Port Authority in the appellate court.

Two months later, the Court of Appeals handed down a decision saying that Judge Tyler should never have considered the issue he based his decision on. It claimed instead that we were not entitled to test the constitutionality of the covenants because there was not \$10,000 involved in our suit. It based its conclusion primarily on an affidavit I had submitted to satisfy this requirement, pointing out that because of the deterioration in mass transportation I was required to use taxis at a personal cost of at least \$1,350 a year. Multiplied by the number of years until I would reach the retirement age of 65, the extra cost to me exceeded \$10,000. I felt awkward about making this petty argument in a suit involving the future of transportation in the port district, but prior decisions of the court indicated that it would think along these lines.

In a unanimous opinion, the court said that the test of jurisdiction is not the damages that the people of the port district suffered because the Port Authority violated its mandate, but whether I personally stand to gain, if the suit were successful, the kind of a transportation system I required for my own needs. The court inferred that this called for building me a new subway and concluded that it would take too long to do this to do me any good. Consequently, the court reasoned, I could not show that there would be \$10,000 worth of advantage to me in having declared unconstitutional the absolute ban on the Port Authority's use of its funds for mass transportation.

That may be the law but we do not think it is. The purpose of the \$10,000 limitation is to keep minor matters out of the Federal courts—and that makes sense. The issue here is whether the Port Authority, the only agency that can perform a bi-state function, should carry out its original mandate to develop and coordinate transportation in the port district. More immediately, it is whether the Port Authority should build the rail links to airports at a cost of \$420 million of its money. It is also a question of whether the agency should follow the example of the Triborough Bridge and Tunnel Authority and double the tolls of the bridges and tunnels it owns and use those funds—an additional \$70 million a year—for mass transit. It is also a question of whether the Port Authority should use its vast borrowing capacity—and its huge rental income from the World Trade Center—to obtain the \$2.5 billion I estimate it could and should borrow for mass transit.

In a motion to have the court reconsider its decision, we are now arguing that the rail links can be built in time to be of use to me. Regardless of the outcome, the essential question remains: what can a private citizen do—beyond voting "no"—when his government is doing something wrong. I am still trying to find out. ■