

Chapter Eight: Opposing Authority

To move the largest load, one must use a powerful lever. Public-minded citizens who try to affect the future of the metropolis generally make the necessary leap from working on smaller matters, such as assuring the continued existence of a single manufacturing plant or the breaking of the color barrier in a union local -- Kheel had helped bring about such things -- to mobilizing the most puissant resources that can enable positive change. In this century, aside from governments, the institutions in the United States having the most leverage for change have been the public authorities that provide electrical energy, water, housing and transportation.

The mold for public authority power had been set in the 1930s as the Tennessee Valley Authority flooded entire valleys and brought electricity and economic viability to the rural south. For several decades in New York State, the several bridges and tunnels, parks, parkways and urban renewal authorities run with an iron hand by Robert Moses steadily altered the patterns of residential development and of economic and recreational activities for several million Americans. When Moses' hour had passed, the rapid transit authorities of San Francisco and Washington, D.C., by their decisions on where to build high-speed rail lines, determined the location and shape of development and decay in their regions. New York's Metropolitan Transit Authority, while it operated more lines than any other city, by the 1960s was no longer as powerful as the more recently formed systems; chronically in the red, it lacked the

resources to do more than keep the current system functioning.

Almost by default, then, the premier authority in the New York metropolitan area with the muscle and money to alter the landscape and the economic and social patterns had become the Port Authority of New York and New Jersey, and it was this Authority that in the summer of 1969 became Ted Kheel's target for change. In an era when other targets such as automation and racism were increasingly amorphous and hard to hit, the Port Authority was large, potent, and not in the slightest ephemeral; and because it was so powerful, any alteration of the Port Authority's direction or emphasis could produce positive results for the entire region.

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It was the glaring disparity between the low tolls charged on the PA and TBTA bridges and tunnels, and the bus and subway fare hikes proposed by the Metropolitan Transit Authority in August of 1969 that brought Kheel into head-to-head contention with the Port Authority. The recently-consolidated MTA projected that its 1970 deficit would be \$120 million, and that it would have to raise the subway fare from 20¢ to 25¢ cents. Alarmed that this fare hike would again lead to diminished ridership, Ted Kheel called once more for automobile and truck tolls to be doubled on the bridges and tunnels into the city operated by the Triborough Bridge and Tunnel Authority (now part of the MTA) and by the Port Authority. "Drivers are paying the same fares as ... when the bridges and tunnels were opened thirty and forty years ago," Kheel charged, while mass transit

riders paid a tab four times higher than the original. Since the poor used mass transit much more than the middle class, the threat of a wider disparity between fares and tolls made this "a major civil rights issue." Two days later, Mayor Lindsay appointed Kheel head of a save-the-transit-fare committee; within the week, Kheel was charging that "the major roadblock to any plan to save the 20¢ subway fare is the New York Port Authority."

Saving the fare, and in the process fighting the Port Authority, was a fine election issue embraced by Mayor Lindsay. Earlier that spring of 1969, liberal incumbent mayors in Minneapolis and Los Angeles, as well as Lindsay himself, had been surprised in the primaries, losing to considerably more conservative candidates. Law- and-order sentiment, first summoned by Richard Nixon in 1968, was sweeping the country in the first year of the Nixon presidency, and it had a distinctly anti-minority, pro-suburban bias. Lindsay, able to claim only the Liberal nomination, looked for ways to display his willingness to fight for the common man, and when Kheel suggested that Lindsay appoint him head of a save-the-fare committee that would also take aim at an authority whose reserve millions could assist the city, the mayor leapt at the chance. "This was the sort of fight only a non-politician could afford to take on," Lindsay recalled in 1996. Those who occupy public offices or who have serious chances of winning office, he contends, "can't afford to lose that kind of a battle," while Kheel, who had disavowed political aspirations, was free to carry on such a fight, especially since it was likely to be lost. Also, during an election season when no New York liberal had yet captured the public imagination, attaching the

mediator squarely to the mayor's cause would also prevent Kheel from becoming -- as some had threatened to make of him -- a consensus mayoral candidate. In straw polls, potential voters named Kheel as the candidate having the best chance of defeating Lindsay.

The Port Authority of New York and New Jersey had been established in 1919, the very first such authority in the United States. Its brief was to coordinate water and rail transportation in the New York-New Jersey region; over the years, that brief had expanded to include transportation by other means, so that the PA had also come to control the region's airports, some of its bridges and tunnels, and trucking facilities. That expansion mirrored the rise and reflected the hand of Austin J. Tobin. A stolid bureaucrat almost unknown to the public, Tobin was born in Brooklyn and educated at Catholic facilities from grade school through law school. In 1928 Tobin had joined the PA as a law clerk, and had climbed through the ranks as a real estate attorney and general counsel; in 1942 he became executive director. Unlike his counterpart Robert Moses, whose grand designs championed what he construed as middle-class needs, Tobin had the interests of no particular economic group in mind, and no design but the enlarging of the PA's power and profits.

In the immediate post-war years, for instance, when the big push in construction of interstate highways had yet to come but railroads were already in decline, Tobin's PA decided to direct its money into facilitating over-the-road truck transport rather than railroads. It began to construct huge truck terminals near Newark and in Manhattan, at which long-haul trucks would have their loads redistributed for local delivery. But in 1949, a Teamsters local

struck the Newark construction site, claiming that the new terminal would violate its agreement with the large trucking companies that prohibited transfer of loads to the trucks of small companies that did not employ Teamsters. If the union's position could not be changed, the new facilities' potential business would be halved. On the recommendation of Jack Turcott of the *Daily News*, Tobin retained Kheel to plead the PA's case to the Teamsters' executive board.

It was a typical assignment for Kheel at the time, and to fulfill it he called on David Kaplan, the Teamsters' research director, who helped bring together "two Tobins," Austin of the PA and Dan of the Teamsters. They made small talk about their shared name; then Kheel and the others persuaded the union that while the new terminals might initially mean fewer jobs, increased truck traffic from them would eventually produce many more Teamster jobs. That understanding sent the Teamsters back to work, and the terminals were soon completed.

Kheel's second brush with the PA was in early 1957, during construction of the third tube of the Lincoln Tunnel. This time he functioned as an arbitrator between the striking sandhogs union and a contractor hired by the PA, recommending a compromise acceptable to both parties. The sandhog matter had been resolved, though the decision had not yet been made public, when Kheel was retained by the Greyhound bus line on the recommendation of Ben Sonnenberg. Greyhound wanted to expand a facility for its buses at 34th Street, and the Port Authority sought to block that expansion on the grounds that a ten-year-old agreement with New York City forbade anyone else's facility from competing with its own bus

terminal being developed at 40th Street. Sonnenberg and Kheel met with Tobin to discuss an accommodation; he was not amenable.

Shortly, according to Kheel, "Tobin sent me a letter of thanks about the tube arbitration, which lulled me into thinking we were still on good terms. Then he waited until I had gone to Africa to call a press conference that slammed me, Sonnenberg and Greyhound."

Tobin released a letter to Wagner charging that Kheel and Sonnenberg had flaunted "their confidence that they would be able to persuade the Mayor ... that the city should break its officially pledged word in regard to the location of midtown bus terminals." Tobin's astute ploy worked, and prevented anyone from prevailing upon the city to permit Greyhound's expansion.

By 1958, then, Kheel had become acutely aware of the Port Authority's power and wealth, and highlighted the latter in his pamphlet "The Self-Sustaining Fare Is Self-Defeating:"

Primarily because of the rise of 115% in car crossings in the last ten years, the Port Authority has increased its net operating revenues from \$20 million in 1948 to over \$45 million in 1957 ... [and] has "ploughed back" into new facilities out of "profits" \$278.3 million during the last ten years, bringing its total "equity" (reinvested "profits") and reserves to over \$400 million with the major portion of its investment in bridges and tunnels.

Kheel characterized as "ironic" that the new facilities into which the Port Authority and the TBTA had invested the "profits" from

automobile crossings “mainly aid and encourage the flow of additional automobiles into the city, thereby further undermining mass transit and clogging up our city streets.” Kheel’s aim in the pamphlet was to demonstrate that mass transit must be subsidized. He did not mention that the PA’s monies were *not* being spent for “the coordination of rail transport,” or that the PA’s expansion was seated in the Consolidated Bond Resolution of 1949, for he had yet to turn his attention to these matters. By 1965 Kheel had made the leap from fretting about rising PA and TBTA auto traffic to calling for the “profits” from bridges and tunnels to be redirected to mass transit -- only to discover that Tobin had anticipated this possibility and had already persuaded New York and New Jersey to enter into covenants designed to make it impossible to redirect those profits.

“Tobin hated mass transit -- he called it a disease that might infect his agency -- because he knew he couldn’t make money from it, and making money was his key to empire building. He had assumed that the politicians would come looking for the surpluses from automobile tolls, and tried to find a project to absorb those monies. He decided on a World Trade Center, and asked David Rockefeller’s group, the Downtown Lower Manhattan Association, to conduct a study to determine whether a Center was needed, who should develop it, and where it should be located.” To no one’s surprise, the study recommended that a center be built, that the Port Authority be the developer, and that it be sited on the East Side of lower Manhattan, near Wall Street. But then Governor Robert Meyner of New Jersey interceded. The under-the-river Hudson and Manhattan tube line was in bankruptcy; Meyner demanded that the

Port Authority take over the H&M tubes as part of his price for permitting the trade center to be built, and to also site the center on the West rather than the East Side, to connect it to New Jersey via the tubes. "Tobin agreed to go along with Meyner's demands, but only if New York and New Jersey both entered into a covenant saying that the Port Authority could never be forced to invest any further money in mass rail transit." Quickly passed by the state legislatures in 1962, the Port Authority's covenant forbidding future support of mass rail transit was thereafter also written into the PA's bonds.

Few people realized in 1962 that these actions directly contravened a principal purpose for which the Authority had been established, the "coordination of rail transport." Back in 1919, when a port authority was first being considered by the state legislatures, another purpose was the recognition that the political boundaries that separated portions of the metropolitan New York region from one another were an impediment to coordination of regional transportation. But even then, New York's corporation counsel (and future mayor) John P. O'Brien on behalf of Mayor John Hylan worried about creating a Port Authority that was likely to become a "hydra-headed monster" grasping to control more and more facilities.

Lawyer Reuben Lazarus had been at O'Brien's side when he testified in 1919, and for the next thirty years had worked with committees and agencies examining city, state and authority finances. In 1949 Lazarus told interviewers that "Insistence ... that the Authority possesses jurisdiction far into Manhattan Island of New York City and to acquire unlimited property for Authority uses may cut deep into the local tax base." He also accused Tobin of acting

as a "tyrant," drunk on the Authority's power and able to abuse it because the appointed, unpaid Port Authority commissioners had no idea what was being done in their name.

For instance, when the George Washington Bridge had been turned over to the Port Authority for operation earlier in the Tobin era, it was with the understanding that once the cost of the bridge was paid off, the toll was to be dropped; this had been the pattern established in New York with the Brooklyn Bridge, whose toll was reduced and then eliminated after its construction expenses had been met. Tobin's Port Authority not only did not eliminate the GWB tolls, but also, instead of constructing a rail line over the bridge as it had promised to do, it built the bridge's lower level for use solely by automobiles and trucks. Such changes were largely due to the Port Authority's discovery that it could borrow money on the cash flow from tolls, and use that money to enter other businesses. The 1949 consolidated bond resolution codified that principle as desirable and legal, and it enabled the Port Authority to borrow hundreds of millions of dollars without having to hold a public referendum.¹

Lazarus noted in 1949 the strength of the Port Authority's public relations machinery, which continually fed the media encomiums about the benevolent agency that took no government money yet operated efficiently in the public interest. In 1969, PA pabulum continued to quiet any tendencies toward questioning

¹There are two types of bonds: revenue bonds, such as the PA offered, and full faith and credit bonds, generally offered by the state at a lower rate than carried by revenue bonds, because they were backed not by some entity's cash flow but by the state itself. Under the state's constitution, full faith and credit bonds with repayment periods of longer than one year could only be offered after the public, by a referendum, had assented to them.

authority that the New York media might have marshaled for scrutinizing the Authority. But Kheel knew how to work with the press, too -- reporter Richard Reeves would shortly write that Kheel had an "almost Machiavellian understanding of the New York media" -- and it was through the New York newspapers and television stations that in the late summer of 1969 Kheel launched his campaign against the Port Authority. It was a grand target, and far better as a focus than applying temporary bandages to the transit system by trying to hold the fare at a dime, at fifteen cents, at twenty. Every few days Kheel would unearth a fact showing the Port Authority's wealth or dastardly practices, or would propose a way for it to help mass transit -- and each announcement made news. His major point: "We have come to realize that these authorities, efficient as they may be, nevertheless have a social cost that dictates making them subject to the same kind of political controls as any other public service." Those social costs were pollution of the environment, excess traffic in the city, the use of police and fire services without paying for them, and avoidance of real estate taxes. And this, while the Port Authority was "one of the most successful profit-making enterprises that ever existed," but one that paid no taxes, did not have to report how much it spent, and had "an immunity from investigation possessed not even by major private corporations."

Kheel's attacks focused press and public attention on the Port Authority, and press focus spurred the Lindsay City Hall to open talks to recover payment from the PA for the \$3-4 million in services the city annually provided, and New York State Controller Arthur Levitt to begin the first audit in the Port Authority's history. Reeling

from unprecedented attention, Tobin contended the PA could not support mass transit because its contracts with bond holders specifically forbade that, and contended raising tolls would require approval by two governors and the Department of Transportation. When the press, the mayor and Kheel suggested these were not insuperable hurdles, Tobin stopped talking to the press.

In a maneuver that the man-in-the-street probably did not understand, the man whom Tobin had long treated as an undesirable rival, Robert Moses, took up the PA's defense. Recently retired from his position at the Triborough Bridge and Tunnel Authority, in a signed article in *Newsday*, the eighty-year-old Moses wrote that Kheel, "normally considered a good guy, [has] gone berserk over bridge and tunnel tolls as the miracle to save the 20-cent subway fare." This was an "election fantasy," Moses wrote, and cited figures (without sources) showing very little extra revenue would be produced by Kheel's suggestions. Moses' ire was also directed at another plan put in place partly at Kheel's urging: the use of TBTA surpluses to subsidize the subways, which, Moses fulminated, "had stopped new Triborough construction, including new housing for displaced tenants on the route of the Lower Manhattan Expressway ... the third tube of the Queens Midtown Tunnel, the expansion of the New York Coliseum and East Side Airlines Terminals."

Far down in the article was Moses' main purpose, and his real reason for coming to the aid of Tobin's PA: the protection of that Authority's covenant with bond holders, which was very similar to the device used by Moses -- he had practically invented the restrictive bond covenant -- to fend off criticism and potential

change of the TBTA. "The Kheel scheme to further jeopardize the financial integrity and standing of a solvent authority and its ability to meet emergencies and build needed improvements ... is too silly for words," Moses concluded, and for it Kheel "had earned the degree of M.U.B., Master of Unconscionable Bunk."

Austin Tobin agreed to meet with Lindsay and Kheel to discuss the situation, then canceled the meeting. An astonished Lindsay told reporters this was the first time in his public life that a public official had refused to meet with him, and that Tobin had had the effrontery to say to him on the phone, "I am not responsible to you."

Kheel continued his attack. The Port Authority boasted of \$1 billion in unused borrowing capacity. Why not use that capacity, he asked publicly, to borrow money to subsidize bus and subway operations? The PA was planning to erect the world's largest skyscrapers. Why do so when Manhattan was experiencing "the greatest office-building boom in the history of man?" And when the city would lose about \$15 million annually in real estate taxes because the Center was not being developed privately? Government subsidies to the project would approach \$50 million per year.

Controller Levitt's audit, released in October, 1969, strongly criticized the Port Authority for making public only general operation figures that masked the detail of its profits and losses. But Levitt agreed that the PA was only marginally profitable, making \$6.4 million on \$2 billion in assets, and that just five of its facilities -- two bridges, two airports and the bus terminal -- operated at a profit after deducting operating expenses and debt service.

Kheel jumped on the figures, showing that the PA included in its calculations for the George Washington Bridge a deduction of \$12.5 million for debt service -- even though construction of the bridge had been wholly paid off many years earlier. Brush such deliberate distortions aside, Kheel insisted, and the Port Authority's real profit was \$78 million; the PA's own records, he pointed out, showed it had \$680 million in cash and deposits on hand. The PA was guilty of "gross misinformation," which was, unfortunately, "not a violation of law but rather a gross violation of morals."

As the election neared, Lindsay continued to support Kheel's work, while Kheel's positions were opposed by Republican John Marchi and Democrat Mario Procaccino. Lindsay won re-election, but if anything or anyone other than the mayor himself could be said to have tipped the scales in the campaign's final days, it was not Kheel and his high-minded regional transport proposals -- it was the New York Mets' dramatic victory in the World Series.

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Critics had predicted that after the election Kheel would drop his campaign challenging the Port Authority. When he soldiered on despite the fare hike to 30¢ and despite Lindsay's diminished enthusiasm for the fight, he was accused of battling in order to keep his name recognizable for a run for governor or senator. He disavowed such intentions, but people wondered why Kheel would continue such a fight. Was he obsessed by a cause? Trying to test the extent of his own power? Fond of tilting at windmills?

That the Port Authority was no windmill could be discerned from Tobin's smooth efforts immediately after election season, which mirrored his past conduct. In a 1959 battle with a then-freshman governor, Tobin had beaten away Nelson Rockefeller's attempts to have the Port Authority finance the purchase of rail rolling stock that the governor wanted it to buy and then rent to the subways and railroads. Tobin pressured major investment firms to tell the governor that the project would result in lowered PA bond credit ratings. Rockefeller reversed himself, and since then had backed Tobin.² In the aftermath of the 1969 election, Tobin set out similarly to counter attempts by newly-elected New Jersey Governor William T. Cahill to bring him to heel. When campaigning, Cahill had attacked the PA for inactivity on mass transit and for spending millions on an unbuilt jetport. Shortly after the election, though, there was Cahill, at a joint appearance with Governor Rockefeller, agreeing that Port Authority surpluses should not subsidize mass transit other than the PATH system. Tobin had won Cahill over not by threats but by promises that the PA would develop rail transport between Newark Airport and big cities in New Jersey, and extend the PATH lines.

As to whether Kheel had become emotionally caught up in a crusade or was testing what he could accomplish through his personal power, the answer has to do with Kheel's evolving concept of a public citizen. Kheel had attained an age, 55, a degree of celebrity and a level of comfort -- "labor law's most celebrated big-fee artist," a contemporary roast at the Bar Association of the City of

² The idea of using the PA's borrowing power to buy rolling stock was a good one, and was later adopted by succeeding PA managements.

New York called him -- at which many men devote more time and resources to the causes in which they believe. He had given up two pursuits of his thirties and forties, the collecting of early American furniture and the driving of showy sports cars. Arthritis had cut down on his physical activities. He was increasingly going beyond the roles of mediator and arbitrator to speak out and work for causes such as the Civilian Review Board. Further impetus toward devotion to transcendent goals came in the spring of 1968 from the deaths of Martin Luther King, Jr. and Robert F. Kennedy. These two public men, both intimates of his, stood for ideals Kheel held dear, and he recognized that he must now provide some championing of them. He would not try to be, as they had been, knights on white horses leading the charge, but in other ways he would do for the ordinary man and woman what they could not do for themselves.

He had little interest in acting as a Ralph Nader, just then becoming well known as an anti-establishmentarian public citizen, for Kheel was a solid member of the establishment, one who believed that large or old institutions need not be atomized or humbled for progress to be made. Because these institutions had size and power, Kheel believed, redirection of their resources would help society more rapidly realize social goals. As a lawyer who had relatively ample financial resources, as a public figure who commanded the attention of the press and of government officials, he felt the obligation and presumed he had the capabilities to bring about meaningful change. "The fight for the right causes must go on, regardless of its chances for success, or for our own peace of mind," he wrote just then. "It is a form of therapy. And occasionally we

need results, and if there is a simple, equitable way of making some progress -- what is wrong with going that route even if it does not bring us quite to the promised land?"

Over the next half-dozen years, Kheel would spend his time, money, political capital and prestige in a battle against the Port Authority that never brought him to the promised land. "It was a good fight while it lasted," he reminisces; "I'm in the business of public education, and I was able to do a lot of that while the battle was on." Kheel never conceptualized his tasks in terms of social change, which would have been anti-establishmentarian, and his willingness to fight to redirect the Port Authority was partially fueled by personal outrage at the refusal of public servant Tobin to have the PA fulfill its mandated function in mass transit, and by Tobin's diverting of the PA's profits into real estate projects -- but it was ignited by the surpassing importance of the issues. To what extent should governments try to control congestion and pollution by keeping automobiles out of cities? Should mass transit be subsidized by automobile tolls? How far was it permissible for a public authority to go in the setting of social policy? To what degree should surpluses realized by a public authority because of its tax-exempt status be directed toward the benefit of all the people, rather than only for the security of the authority's bondholders? In another article, Kheel excoriated the PA's fundamental subversion of the public interest: it had "substituted for the will of the people, as expressed in the bi-state compact that created it, the will of the bond market as expressed by the price moneylenders charge for their loans." Tobin had said that people expected from public officials

“prudent and conservative management of public funds;” Kheel vehemently disagreed: voters expected public servants to manage public funds “as prudently and conservatively as their essential purpose permits.” Coordinating mass rail transit, he wrote, might not be profitable but it was essential and of immense social benefit.

Kheel accompanied this rhetoric by proposing that the PA sell the World Trade Center and give the profits to mass transit -- a pattern it had followed years ago, when it donated millions to New Jersey for construction of roads leading to the George Washington Bridge. Kheel also called upon the governors to add public members to the PA board, bar directors’ conflicts of interest, and “limit the bureaucratic tyranny.” Rockefeller’s reaction was to call Kheel’s notions “crazy.” Tobin’s reaction was unprintable.

Pursuing regional transportation goals in another venue, Kheel put together a plan for Lindsay to shift more of the burden of paying for mass transit to automobiles, through higher tolls on bridges and tunnels, an increase in the auto registration fee, a one-cent rise in the gasoline tax, and a new tax on parking in lots within congested areas. The plan also called for the establishment of a tri-state agency with power over all forms of transportation. “I became convinced,” Kheel recalls, “that the mix of transportation use could be altered if you changed the relative price structure of the components. The the same number of people were moving through the city as in the 1940s, but most were no longer using the subways and buses. Autos and mass transit were in competition, and I felt that the prices for commuting in a car and by subway ought to be regulated together.” He advocated a single agency to decide these prices, perhaps

decreeing a tab of \$5 for an automobile commute in rush hour, and using the resulting income to underwrite free rides on subways during low-use hours. Since most of the taxes required action by the governor and the state legislature, who did not like them, these proposals too were rejected as "absurd" and "impractical."³

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In May of 1970, a crack appeared in the granite surface of a public agency's covenanted refusal to assist mass transit: the required two-thirds of the bond-holders of the Triborough Bridge and Tunnel Authority rather readily gave their assent to using \$74 million in surplus funds for subsidizing the subway system, in return for receiving an added 1/4 percent on their annual yield. Austin Tobin claimed that the PA's bond holders would never agree to such a thing -- and refused to consider asking them. Kheel could obtain no details on the TBTA bondholder transaction because it was part of an out-of-court settlement of a suit whose record had been sealed, and so could not use it to push the PA. But he was cheered by others' successful attacks on Port Authority. City Controller Abe Beame, claiming that for sixteen previous years the PA had

³ To put the Kheel proposals of the era into perspective, it is important to note that over the following quarter-century, nearly all have been put into practice: the Port Authority has raised its tolls to the level of those on other bridges and tunnels, which are now more than twice the mass transit fare; the PA has become more responsive to the linked needs to subsidize mass transit and hold down automobile traffic; car registration fees and gasoline taxes have risen sharply, and the proceeds have been directed toward transportation needs; New York City charges a 14 percent tax for parking in lots in congested areas; and there is now a "commuter tax" on suburbanites who work in New York City but who reside and pay property taxes elsewhere.

wrongfully insisted that the airports had been unprofitable and had paid the city only \$45,000 per year each as "rent" for LaGuardia and JFK, pushed the PA into paying \$30 million for the leases in the 1965-69 period. The *Staten Island Advance* uncovered a secret moneychanging deal between the PA and thirteen banks that provided \$21 million in tax avoidance benefits to them. Dr. William T. Ronan, head of the MTA and also on the PA board, said that "creative financing" of the sort he had helped work out for state universities and housing could be legally used by the PA to raise money for rail links and other mass transit purposes.

Kheel's criticism widened. When in early February of 1971, Cahill and Rockefeller announced that they had reached an agreement to "force" the PA to build rail links between New York's Pennsylvania Station and Newark and Kennedy Airports, Kheel insisted these "well-intentioned efforts [were] doomed to failure" by the PA's 1962 covenant, and opined that the only way to assure that the covenant would be removed was to himself institute legal action.

"There had been a series of recent Supreme Court decisions to the effect that a state couldn't give away its right to protect the interests of all the people -- and that was just what New York and New Jersey had done when they passed the PA's covenant against further involvement in mass transit." He brought in his son Bob, now a lawyer, his associates Lewis Kaden and Raymond Gregory, and two New York State assemblymen, to file in the federal court of New York class-action litigation "on behalf of the straphanger and the commuter" to invalidate the covenant. The suit contended that the covenant was invalid because the consent of Congress was required

for anything having to do with interstate transport. Kheel's focus was Section 6606 of the New York state regulations.

"Tamper with 6606," Tobin warned a bi-state legislative hearing, "and we've sold our last bond." Legislation forcing the PA to build the rail links, Tobin insisted, was "unconstitutional." Kheel, equally dramatic, crowed that Tobin "confirmed everything we have suspected" about the Port Authority. "Scurrilous, irresponsible, misleading and utterly baseless," Tobin fumed about Kheel's attacks, which he said were brought only to "obtain extensive publicity." Kheel retorted that Tobin's refusal to act contrary to the covenant even if the state legislatures directed him to do so "limits the power of the legislatures to govern, and *that's* unconstitutional."

Governor Cahill vetoed Tobin's attempt to use \$38 million to erect a hotel adjacent to the World Trade Center, refused to reappoint the six PA board members from New Jersey unless they supported more PA involvement in mass transit, and called for both states to repeal the laws concerning the covenants. The *New York Times* admonished Rockefeller for his "astonishing" refusal "to lay down any similar clear declaration of purpose." Within days, *Business Week* featured on its cover an embattled Austin J. Tobin, accompanied by a headline that Kheel could have written: "At New York's Port Authority, bondholders count more than the public."

During an interview for *Forbes* magazine, a reporter stated as though it were a fact that Kheel had borrowed \$170,000 from the Automation foundation. "I didn't borrow \$170,000 from the foundation," Kheel told him, "I *loaned* that amount to the foundation." After the interview, Kheel wrote a letter to the reporter, with a copy

to his editor, saying that the reporter must have been fed false information by someone out to discredit him, and that he assumed it was the Port Authority. The interview never ran in the magazine.

In July of 1971, Federal District Judge Harold R. Tyler granted a defense motion to dismiss Kheel's suit. Tyler's wrote that Kheel *et al*, "have failed to raise a substantial question of infringement of the commerce clause of the Constitution," and that the suit did not present a "substantial federal question." Kheel filed an appeal.

With the suit unresolved, Kheel found a substitute focal point for his struggle: a transportation bond issue that Rockefeller said must be approved to construct highways, maintain commuter railroads and mass transit. Kheel saw the period leading up to the bond issue vote as a crunch time for mass transit. In an opinion that made headlines, he told the press that the Nixon Administration's recent extension of wage and price controls mooted the question of a fare hike, because under the controls no prices could be raised.

But Rockefeller and his associates did not want to debate support for mass transit versus building highways, so Ronan immediately said that a fare hike would be inevitable if the next transit negotiations awarded the TWU any further wage increases. The issue at hand threatened to be reduced to whether or not the fare would rise. Kheel tried to regain the initiative by denouncing the bond issue as "deceptive" and "inadequate." Only ten percent of the \$2.5 billion total would go to the subway system, while the bulk of the money would pour into highways and be matched by federal funds, though no matching funds would go into railroads and mass

transit. "It's Kheel vs. Rocky on Bonds," the *Post* trumpeted, and for the next six weeks that battle played out in daily headlines.

Rockefeller's "edifice complex" (or, as some called it, his "erection complex") was then being expressed in the architecturally impressive structures of the Albany mall being built to house state agency headquarters. The governor also liked to build highways, and wanted them for a variety of reasons, some merely political -- they provided jobs for unions that backed him. And he was not the sort of man to stand idly by when attacked. As Rockefeller stumped the state for passage of the bond issue he lambasted Kheel for using opposition it as a springboard for a run for mayor. Queens County Republican Leader Sidney S. Hein, chimed in, contending that Kheel's "inept mediation" in transit contract negotiations had "resulted in wage settlements that forced the fare increases in recent years." Hein, also a PA commissioner, charged that Kheel's opposition to the bond issue was tied to his attempts to "destroy" that Authority.

Declaring that he must now "out-Sherman Sherman," Kheel next day told a packed press conference that "I am not and will not and cannot be persuaded to be a candidate for mayor, senator, governor or any other elective office" in the next few years. Rockefeller knew, Kheel said, that he could have run against him in 1970, and had chosen not to. Now, he said, "I'm throwing my hat out of the ring," to decisively clear the air for full public consideration of the bond issue, "a referendum of national importance" on a question critical to "the survival of our cities." The battle spilled over the airwaves, billboards and newspapers. Arrayed against Kheel were Senators Javits and Buckley, Mayor Lindsay and former mayor Wagner, who

headed a \$2.7 million campaign for the Association for a Better New York.⁴ Wagner aimed at in-city voters, who in 1967 had provided the margin of approval, saying that should the 1971 issue fail, "it will be a long, long time before the Legislature, controlled by upstate Republicans, will ever again provide New York City with such a golden opportunity." Yes for Transportation in New York State, Inc., and the Good Roads Committee were spending another \$3 million to air television commercials; but because Yes for Transportation was a corporation, not a committee, it was not subject to election laws that would have forced it to reveal the names of its backers, whom Kheel and others charged would benefit from passage of the bond issue.

In an innovative move, Kheel wrote to FCC chairman Dean Burch to request that television stations be required to provide him time to answer the Yes ad campaign, basing his position on a ruling that allowed anti-smoking activists to receive airtime to answer televised cigarette ads. The FCC told him to take up the matter directly with individual stations. A few agreed to give him air time. With the assistance of David Garth, Kheel posed at a subway entrance to make a pithy spiel against the bond. The spot ad was soon aired.

In an appearance before a city commission, Kheel linked his targets, calling for defeat of the bond issue because it did not adequately plan for mass transit, and insisting that no transportation plan for the region could succeed unless it was coordinated and financed by the Port Authority.

⁴ ABNY's principal figures were David Rockefeller, head of the Chase Bank, and real estate magnate Lewis Rudin.

Previously, Rockefeller and Ronan had insisted that the fare would go up regardless of the fate of the bond issue. But when polls showed that such honesty was resulting in defections from the ranks of potential Yes voters, Ronan reversed field and warned that if the bond issue was defeated, "there is no alternative ... but to raise the transit fare to 45 or 50 cents." The governor invited 250 New York State newspaper editors and their wives for a luncheon, and further scared them by saying that if the bond issue did not pass, the state would face a \$770 million deficit, which would force drastic cuts in outlays for schools and shut down highway construction. Soon teachers' union leader Albert Shanker, usually a Rockefeller foe, was pleading for passage of the bond issue lest schoolchildren suffer. Rockefeller's aides worked out a compromise with city officials to use some of the bond issue's funds to preserve the fare. That promise in hand, Lindsay directed his own campaign organization to drum up the Yes vote. The city's Democratic clubs and Liberal Party also switched from hesitancy to advocacy. Congressmen Charles Rangel and Edward Koch reluctantly gave their support. Kheel seemed more than ever the lone voice in opposition, echoed only by a coalition of far right and far left whose varied fears were amalgamated in an article in the *Village Voice*, which contended that a Yes vote would

greatly enrich Chase Manhattan Bank, several dozen cement and construction entrepreneurs, and a few racist labor unions; hack up a few hundred miles of lovely countryside to build roads nobody needs; provide minimal improvements for mass transit ... at maximum

cost ... and, not the least, spare Governor Rockefeller the embarrassment of having to tax his friends to pay for last year's \$300 million overexpenditure on highways.

Almost lost in this litany of complaints was Kheel's quite sensible opposition to the bond plan because it outlined no regional strategy, overweighted highways and shortchanged mass transit.

"A number of city officials have acknowledged privately the strength of Mr. Kheel's arguments," especially on the point that the fare did not necessarily have to rise if the bond issue was defeated, the *Times* reported. And in an editorial it conceded that "the highway lobby will continue to benefit at the expense of neglected mass transit needs," but urged a Yes vote because of "both a fiscal and a transit emergency which the state and city now confront."

In the last days before the vote, State Senator Marchi contended on a television program that the bond ought to be approved because the state could afford it, since it had the lowest per capita indebtedness in the country. "Arthur Levitt then called me to say that his accounting showed that New York had the *highest* per capita debt in the country; Rockefeller's figures, which Marchi relied on, excluded the indebtedness from the 'moral commitment' bonds, and the tab for the construction of the Albany mall, which was hidden in a complicated leasing arrangement so Rockefeller wouldn't have to put a referendum on it before the public."

This information came to Kheel as he was in the midst of an argument with the newspapers over his request for free ad space to counter an ad in support of the bond issue. "Their answers were all

typical," Kheel chortles. "Dorothy Schiff of the *Post* laughed at my letter and threw it away. Harding Bancroft thanked me for my request, but said the *Times* couldn't give me a free ad because then they'd have to do the same for all other groups on future issues. And Jack Flynn of the *Daily News* said a free ad would be Communistic. Then I told Flynn about Levitt's indebtedness information. That was real news, and Flynn got editor Mike O'Neill to call me about the details, which went into their next edition." The gist of the story: by Levitt's computation, the state's debt was \$438 per person, and it would zoom to \$559 if the bond issue was passed. Rockefeller excoriated Kheel as a "political exhibitionist" out for his "own aggrandizement." Lindsay more mildly said that Kheel was "a good man and a grand citizen but on this issue he happens to be wrong."

On the evening before the vote, Kheel and Arthur Gelb, metropolitan editor of the *Times*, were having dinner at 21. Gelb was defending the independence of the paper on the bond issue when Rockefeller walked in with Punch Sulzberger. While the *Times'* publisher stopped to chat to Kheel and Gelb, the governor couldn't bring himself to acknowledge Kheel's presence.

Kheel waited for the election returns at Automation House, joined by a small crowd, and sipping white wine and leaning on a cane to support his arthritic hip. Television stations broke into regular programs to air bulletins about the results: the transportation bond was being resoundly defeated. Latecomers to the party greeted Kheel as "the next governor," "the next mayor." In the final tally, the bond issue passed by a narrow margin in Manhattan and the Bronx, but lost by a substantial vote in the city as a whole, more decisively

upstate, and overall by more than 900,000 of the four million ballots cast. This was an emphatic 'no.' Exit polls revealed that the Rockefeller-Lindsay promise to save the fare only if the bond issue was passed, and the Yes ad campaign, had both backfired, promoting skepticism among city voters and resentment among upstate voters who thought the city might obtain too much aid from the bond issue. "I don't feel any sense of elation," Kheel told visitors; all that had happened, he said, was that "The people have stopped Governor Rockefeller and Mayor Lindsay from making a horrible mistake."

A victory nonetheless, *The Nation* applauded, one "to hearten those who still have faith in democracy and the good sense of the people." Acting as a committee of one, Kheel, the magazine wrote, had done "a splendid public relations job in the best sense. He used none of the devices of the cheap politician, but made himself unflinchingly available to media requests, and knocked down the arguments of the bond proponents with good-tempered logic." "It isn't easy figuring out such a man," grumbled Fred Powledge in *New York*, who wondered if the reason for the difficulty might have to do with Kheel being "one of the very few powerful people around who use their power uncynically and unselfishly."

The morning after the vote, Kheel outlined to reporters ways the defeat of the bond issue could force the state to confront the crisis and to raise funds for mass transit from the federal Highway Trust Fund and from the Port Authority. For the television cameras, he also raised his right hand and swore a "covenant with the people of this city and state" never to run for public office.

That afternoon, a young associate of Kheel's in a venture in the Dominican Republic flew into the city for a pre-arranged meeting about the project, and thrilled to the headlines in the New York papers about Kheel having trounced Rockefeller and Lindsay. In 1996, Frank Rainieri remembered vividly that moment a quarter-century ago: "We went to the Four Seasons and had a long dinner and two bottles of wine and discussed Punta Cana [the fledgling resort they were developing]. Then we walked toward his hotel in midtown. I was being considered for Minister of Tourism in the Dominican government, and I asked Ted why he never ran for public office. The newspapers were saying he could beat anyone for mayor or governor. 'If I was elected,' he said to me, 'I wouldn't be able to have a couple of bottles of wine with my friend over a long dinner in a public place. The most I'd be able to give you would be a twenty-minute appointment at my office, or maybe a dinner at home, but not in a public place and not with a considerable amount of alcohol.' Then he told me, 'It's better to have a life of your own, and still have access to politicians and be able to influence things, than to hold public office.'" As though in ratification of that notion, next day Kheel and Lindsay appeared together, united to save the fare despite having been on opposite sides in the fight over the bond issue.

The governor froze state hiring, halted construction projects and decreed funding cuts for everything from mental health facilities to fish hatcheries. Then he reluctantly agreed to support a combination of small taxes and toll hikes that would keep the fare at 35¢ for two years. "The Governor's proposals," *New York* magazine

crowded, "confirmed that Kheel had been right all along about the lack of a need for a bond issue" to hold the fare down.

Perhaps the most important consequence of Kheel's role in the defeat of the transportation bond was the December, 1971 announcement of the retirement, effective at the end of March of 1972, of Austin J. Tobin as executive director of the Port Authority.

According to Kheel, the timing of Tobin's retirement or resignation showed its link to the larger issues. Initial briefs on the appeal of Kheel's suit had been due in the Second Circuit Appeals Court on December 10th, 1971, but at the last minute the Port Authority asked for an extra week -- an extension that had become necessary, Kheel came to believe, because Tobin had found the language of the proposed PA brief anathema. The particular point galling Tobin was a paragraph contending that passage by the state legislatures of bills requiring the PA to build rail links to the airport "partially removed the 1962 statutory ban" on backing mass transit. Argument over this contention had resulted in Tobin's resignation being announced on December 12th, in a resolution passed by the PA's board of governors on December 13th reaffirming the agency's "financial integrity," and in the filing of the brief -- with the paragraph intact -- on December 17th.

Tobin's resignation was a victory of sorts, but Kheel knew that the war was not over, and that he had not yet accomplished very much in moving the Port Authority in the direction that reflected the true needs of the metropolitan region.

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.