PERSPECTIVES

on Eminent Domain Abuse

Volume 5

THE TRUTH ABOUT TIMES SQUARE

BY WILLIAM J. STERN

April 2009

Columbia—a wealthy, private university—is using its influence to wipe out an entire West Harlem neighborhood to expand its campus, even making a secret agreement to cover costs of condemnation and acquisition with the Empire State Development Corporation (formerly the UDC).

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membership network and training workshops, the Castle Coalition provides support to communities endangered by eminent domain for private profit.

Perspectives on Eminent Domain Abuse is a series of independently authored reports published by the Institute for Justice


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Eminent Domain
ABUSE
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THE CHANGES
IN TIMES SQUARE
OCCURRED
DESPITE
GOVERNMENT,
NOT BECAUSE
OF IT.

THE TRUTH ABOUT TIMES SQUARE

By popular lore, the revival of Times Square ranks among the most celebrated achievements of New York City in recent years. In the 1960s, 1970s and early 1980s, Times Square was sleazy, crime-ridden and so physically and economically blighted it represented a threat to public safety—but today it is nearly crime free. It is filled with tourists, and world-class corporations dwell and prosper within its borders. It is celebrated as a triumph of "urban planning," "public-private partnership," the wise use of the power of eminent domain, an example of the intelligent intervention of government into private real estate markets.

All of it is a myth.

In 1983, when I went to work for Governor Mario Cuomo as chairman and chief executive of New York State's Urban Development Corporation (UDC), I was convinced I knew how government planning could transform the Times Square I saw at that time to what it is today. The truth is, however, almost none of the grandiose plans my colleagues and I created and aggressively spearheaded ever came to fruition. Our extravagant plans actually retarded development. The changes in Times Square occurred *despite* government, not because of it. Times Square succeeded for reasons that had little to do with our building and condemnation schemes and everything to do with government policy that allowed the market to do its work, the way development occurs every day nationwide. By lowering taxes, enforcing the law, and getting out of the way instead of serving as real estate broker, the government incentivized investment and construction and encouraged the rebirth of Times Square to what it is today.

I would not realize that until later, of course, for in the early 1980s, I headed one of the most influential government redevelopment agencies in the state of New York. Governor Nelson Rockefeller created the UDC in the 1960s to build low-income housing.[1] By statute, it had been given powers that, at the time, were unprecedented for a governmental development agency. It could override local zoning, issue bonds, serve as its own building permit agency, supervise construction and, most importantly, condemn property for reasons of "economic blight," a term the UDC used for areas it felt were underperforming economically. Seeing its enormous power, Governor Carey's administration transformed the agency from its original purpose of building low-income housing (a purpose that the agency had used to drive the state and city into a very serious fiscal crisis in the 1970s[2]) to a full-blown economic development agency that co-opted the functions of the private market, engaging in real estate speculation and procurement (instead of focusing on creating an inviting environment for private development without government assistance or subsidy). For that reason, the UDC played a central role in planning the redevelopment of Times Square, which had reached its absolute nadir in 1981.

☞ THE NOT-SO-GREAT WHITE WAY

It is important to recall accurately what Times Square was like in the early 1980s. Although revisionists argue that it was an area full of harmless, playful establishments, Times Square was anything but.[3] The area began to decay during the late 1950s after the sex industry pushed out the once-lustrous theaters that had been struggling economically since the Great Depression of the 1930s. The decline was rapid and hastened by the police's abandonment of the area. The new establishments could have been limited or controlled through zoning, but the city was unable to do so due to the rulings of judges in the 1960s and 1970s that legalized sex shops. Compounded by Times Square's accessibility and central location—the Port Authority bus terminal at 42nd Street and 8th Avenue and the subway station, which was the center of the entire city's subway system, made the area a heavily trafficked transportation hub—and little enforcement of the law, it is no wonder that a strong criminal element accompanied the thriving adult industry that took root.

Already by 1960, the heart of Times Square—42nd Street between Seventh and Eighth Avenue—was frequently asserted as "the 'worst' [block] in town," as pointed out by *The New York Times*.[4] The article's author

found that the paradox of 42nd Street was that "places that attract deviants and persons looking for trouble are interspersed with places of high standards of food, drink and service. Some of them will not serve an un-escorted woman."[5] The 1969 hit movie *Midnight Cowboy* accurately depicted the Times Square of that decade: gritty, dark and desperate, a zone distinctly apart from its more productive and habitable neighbors.

The situation worsened in the 1970s, and by the 1980s, things were worse still, with an amazing 2,300 crimes on the block in 1984 alone, 20 percent of them serious felonies such as murder and rape.[6] Dispirited police—at the time more concerned with avoiding scandals than fighting crime, especially low-level crime—would investigate the serious felonies but stood by and watched as disorder grew. William Bratton, appointed New York City Police Commissioner in 1994, recognized this trend: "The [NYPD] didn't want high performance; it wanted to stay out of trouble, to avoid corruption scandals and conflicts in the community. For years, therefore, the key to career success in the NYPD, as in many bureaucratic leviathans, was to shun risk and avoid failure. Accordingly, cops became more cautious as they rose in rank, right up to the highest levels."[7] The city government had no idea that tolerating low-level crime created an environment that inevitably led to serious law-breaking. There was no "broken windows" theory[8] in play.

Naturally, high levels and fear of crime deter investment and growth, and the lawless climate had devastating economic consequences for the city. In 1984, the entire 13-acre area identified in our eventual redevelopment plan employed only 3,000 people in legal businesses and paid the city only $6 million in property taxes[9]—less than what a medium-size office building in Manhattan typically produced in tax revenue. As head of the UDC during the mid-1980s, I walked through the area at night and felt nervous revulsion. We would hurry past prostitute-filled, single room occupancy hotels and massage parlors, pornographic bookstores, X-rated movie houses and peep shows, all accompanied by an assortment of junkies and pushers and hoodlums and johns and hookers and pimps—the whole panorama of big-city low life.

What made it worse was that in the early 1950s, Times Square had been a childhood delight for me. On Saturdays, my father and I would bus down from Harlem to see a movie, often a Roy Rogers or Gene Autry cowboy picture. Then we'd eat at Nedick's and afterward just stroll around, gazing up at the giant signs that adorned Times Square buildings. My father remembered first hand the Times Square heyday of the 1920s when 13 theaters studded 42nd Street between

the EARLY YEARS *of* TIMES SQUARE

In the 1890s, theaters flourished in Longacre Square, largely lured to the area by Oscar Hammerstein's new Olympia Theater; by 1925, there were approximately 80 theaters. Because the city had not yet installed street lighting in this burgeoning district, the fronts of the new theaters became giant advertisements for their plays and actors. This was followed by similar signs for products, ultimately lighting up Broadway and earning Longacre Square the nickname, "The Great White Way."

In 1904, Longacre Square was renamed "Times Square," after *The New York Times* moved its headquarters to the neighborhood on 42nd Street. Nine years later, the media giant moved to a different building, but the area maintained its name and iconic status. As subway and bus stations opened en masse, Times Square became a heavily trafficked transportation hub, finding itself at the "Crossroads of the World." Times Square represented the archetypal American city: culture, bright lights, and bustling streets.

Following the Great Depression and World War II, Times Square slid towards the same fate as many other popular inner-city districts. As families preferred the safe suburbs to the chaotic, unpredictable city streets and stayed home to watch television instead of spending an evening at the theater, Times Square began catering to a new customer that didn't retreat. Theaters began showing pornography, drugs were dealt on the streets, and adult stores flourished.

"Times Square," St. James Encyclopedia of Popular Cultures, St. James Press, 2000. Reproduced in History Resource Center, Farmington Hills, MI: Gale.

Times Square in 1908.

©Brown Brothers, Sterling, PA

©Thorney Lieberman

Above: Times Square in 1919. Right: Johnson and Burgee's controversial design for the four towers.

Seventh and Eighth Avenues and lit up in neon "The Great White Way." Theatergoers crowded into the latest creations of impresario George M. Cohan or musicians such as George and Ira Gershwin.

Many involved with the redevelopment plan held similar memories, and the regret we felt over the passing of this glamorous world gave the project a powerful emotional boost. Our conclusion was unanimous and unequivocal: Something had to be done.

☞THE 42ND STREET DEVELOPMENT PLAN

Under my watch, the UDC gained approval to put in place one of the largest urban renewal projects nationwide, in the heart of midtown Manhattan no less. Mayor Koch—who assumed office on the tail of a traumatic fiscal crisis—and Governor Cuomo enthusiastically supported it. Although fierce, bitter rivals, both "saw political opportunity in the ragged morality of the notorious boulevard. Each sensed the chance to create a higher national profile for himself as the moral savior of 'the Deuce.'"[10] And so the tumultuous collaboration began.

The 42nd Street Development Project would have made the emperors of Rome green with envy. Its biggest component was to be Times Square Center: four giant office towers, containing 4.1 million square feet of floor space in all, looming over Times Square's southern border. Offered a $240 million tax abatement, relatively unknown George Klein's Park Tower Realty would develop the site. Upon being chosen, Klein had just completed only his third major building in New York City, raising many eyebrows as to why this newcomer would get this potentially (and enormously!) lucrative nod.

Perennial modernist Philip Johnson, together with fellow architect John Burgee, would design the buildings. In Johnson's controversial design, four-story red granite bases would support glass towers topped with iron crested glass mansard roofs. Each tower would light up at night to dispel the shadow world below; at street level, a pedestrian thoroughfare would connect the four towers and establish a new hub for subway travel.

Johnson's gargantuan buildings were not the only part of the redevelopment project conceived on a grand scale. We also called for a 2.4-million-square-foot computer and garment wholesale mart between 40th and 42nd Streets on the east side of Eighth Avenue and a 550-room luxury hotel with additional office and retail space on West 42nd Street at Eighth Avenue. Nine historic theaters, including the legendary New Victory and the New Amsterdam, would receive a $9 million spruce up and reopen as nonprofit cultural centers. The final component was a major $100 million makeover of the 42nd Street subway station, which would be outfitted with a computerized information center, scores of shops and six new entrances, among other improvements. As part of the overall deal, Park Tower Realty would pick up most of the tab for the nonprofit theaters and the subway.[11]

☞PAVING WITH GOOD INTENTIONS

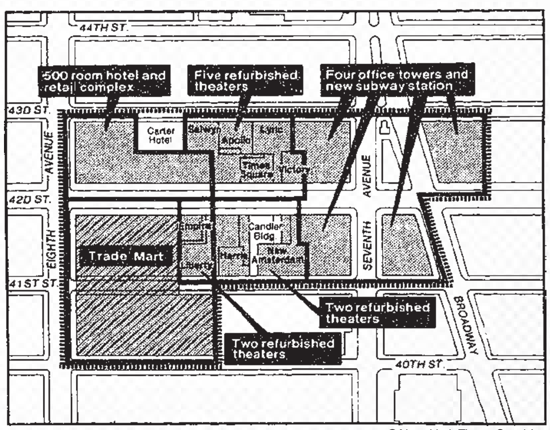
We wanted to remove the barriers in Times Square that seemed to keep private investment at arm's length, while also shifting development from the congested East Side of Manhattan to the West Side. What we didn't realize at the time, of course, was that our efforts would push that investment even farther out of reach.

The city passed the Midtown Zoning Resolution in 1982 to encourage the goal of shifting development, which reduced development opportunities on the East Side and loosened zoning restrictions on the West Side between 6th and 8th Avenues and 40th and 60th Streets for six years.[12] The rezoning was originally conceived by Mayor Lindsay, who thought that the century-old zoning regulations kept Times Square in an undeveloped black hole that sank further and further towards economic decline in the 1960s. When the promise of upzoning began to take shape, property owners—with the anticipation of being bought out by mega-developers in the immediate future—began renting on short term bases to those more than willing to work in the lewd environment: sex shops.[13]

The first goal—restoring "The Great White Way" to its previous glory—relied on the wholesale condemnation of the 13-acre target area. We felt that everything had to go forward at the same time, since the sheer momentum of the development would change the area for good.

☞ONWARD!

Unveiling the plan early in 1984, we felt enormous pride. After all, how many people have the opportunity



©New York Times Graphics

The 42nd Street Development Project plan as conceived in 1983. The trade mart would take up 2.4 million square feet.

to leave such a deep and positive mark on the history and landscape of a premier world city? I did wonder at the time, could we really pull this off? After all we were not Caesar, but just a group of New York City kids. But I suppressed my doubt.

By this time, I had also grown revolted with New York's pervasive political corruption. New York government is a perennial scandal, but the climate of the 1970s and 1980s seemed particularly crooked with numerous prominent public officials being indicted and evidence of many others on the take. The situation grew bad enough to draw national attention in the famous book *City for Sale*[14] and propel Rudolph Giuliani to fame as the crime-busting U.S. Attorney in New York. Disgusted by the perfidy of supposed "public servants," I informed Governor Cuomo that I would soon step down as head of the UDC. I left public service in 1985 with plans to never return to New York politics or government, plans I have since stood by. But before I left, I wanted to feel as if I had accomplished something worthwhile in government. This project would be it.

Because the UDC was the lead state agency for this project, I represented one of the key players in implementing the redevelopment of Times Square. Working closely with Governor Cuomo, the UDC board and representatives from the city, I approved or opposed developers for the project, directed the various UDC departments and subsidiaries involved in the work (such as the legal and engineering divisions) and approved all property condemnations contained in the plan. The latter made my agency a particularly powerful player, since the city had to rely on the UDC's exclusive condemnation authority. Indeed, this role was one of the key reasons the city wanted to make this a joint effort with the state —we could fast-track the development process and condemnations and offer tax abatements. This city-state partnership was a unique alliance that other large-scale development projects throughout the country did not have.

On November 8, 1984, the now-defunct New York City Board of Estimate—a body composed of city-elected officials that approved land use projects—approved the 42nd Street Development Project, removing the last political hurdle to its implementation. The UDC did not technically need city approval, but a 1982 agreement established that the redevelopment would be a joint city-state effort.

We all exhaled in relief, since reaching that point hadn't been easy.

From the moment state and city officials first announced the redevelopment scheme in 1981, it faced opposition from activists, who worried that it would displace lower-income people from their homes in the neighboring Clinton area of Manhattan by causing rents to rise. Meanwhile, those on the cultural left, who had always defended Times Square's sex businesses as protected speech, attacked the project for its plan to kick these businesses out. They believed the real motive of removing this activity was driven by moral beliefs; as a party to the planning, however, I can attest that the true desire was to protect the area's economic potential from the deleterious effects of the lawless environment. My colleagues and I promoted this project as the only solution; we were sure that massive government intervention was the only way to save Times Square, and the only way to start was with a fresh slate: wholesale condemnation.

An internal disagreement broke out in 1983 over who would receive the potentially lucrative nod to develop the 2.4-million-square-foot wholesale mart. The city and *The New York Times* favored a team of Trammel Crow (a Texas-based developer) and George Klein, the developer chosen to build Times Square Center. The state, wanting more diversity in the project, believed George Klein had enough on his plate with Times Square Center's four giant office towers. We preferred Paul Milstein, an experienced and major New York developer. Milstein had, in fact, developed a hotel just north of the project area. He saw the Square's potential, and his hotel was actually the beginning of its revival a decade later.

the NEW YORK TIMES & EMINENT DOMAIN ABUSE

In 2001, *The New York Times* was able to use its connections once again to influence the state to condemn an entire city block in Times Square for its third and latest headquarters move, just three blocks from its second home.

The Wallace family had owned the property at 620 Eighth Avenue since the turn of the 20th Century, and had recently spent more than $3 million refurbishing the six-story building, attracting two major tenants in the late 1990s—a feat that proved out of reach for the UDC and city government in previous years. The Orbachs owned a 16-story building at 265 West 40th Street with 30 tenants, and the neighboring Sussex House dormitory housed 140 students.

Ten properties and a parking lot—all of which had been struggling to survive and thrive under the threat of eminent domain for the merchandise mart since 1981—were razed for the family newspaper's new home.

David W. Dunlap, "Blight to some is home to others; concern over displacement by a New Times building," *New York Times*, Oct. 25, 2001, at D1.

THE NEW YORK TIMES' WHOLESALE INFLUENCE PEDDLING

It was then that I began to see the negative implications of government-directed projects like this—the influence peddling, cronyism and corruption, especially when eminent domain is involved. Using eminent domain for private development gives the private sector the opportunity to wield public power—which is more or less for sale—in order to benefit privately. One of the more prominent yet untold players was *The New York Times*, a private company that was deeply involved in this public project. As the newspaper of record in New York, they would naturally cover the project closely—but their involvement transcended journalistic scrutiny.

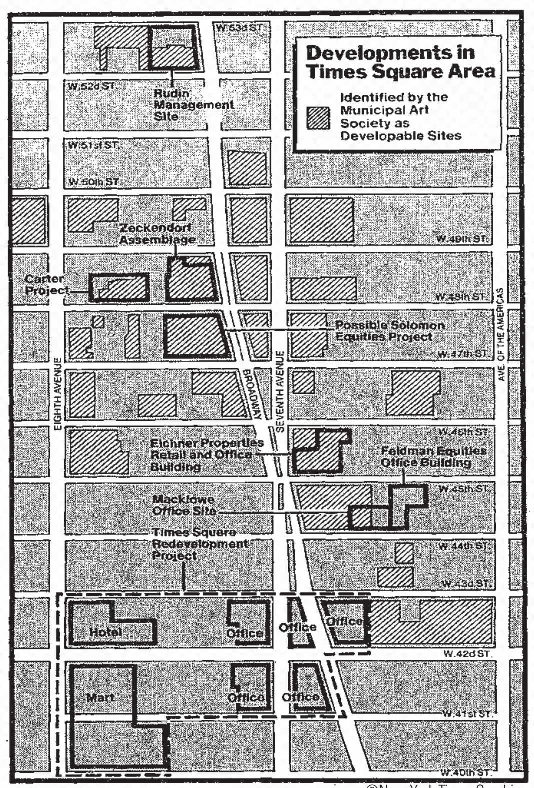
For example, Jack Rosenthal, then deputy editorial page editor of the paper, was the *Times'* point man in representing their interests about the redevelopment. He acted not as a journalist covering a story but as a decision maker, dictating public policy. Rosenthal was speaking for the paper, and the paper was part of the New York Times Corporation. The Times Corp. had decided it should have as much decision power as city or state government with regard to 42nd Street.

They did so in many ways. One of the primary methods was to use their close relationship with important city officials, such as city planning commissioner Herb Sturz (the city's point man on the project and my equivalent for the city), who later went to work for the *Times* after he left city government. An incident that demonstrates Sturz's relationship with the *Times* occurred at a city-state meeting to discuss the project. At the meeting, Sturz announced, "Punch [Arthur Sulzberger, former publisher of the *Times*] wants 1 Times Square down." At other times it was unvarnished attempts at pressure. In a private meeting, Rosenthal made it very clear to me that the *Times* wanted Klein to develop the garment wholesale mart and grew increasingly upset at my opposition to the idea.

What surprised me most was that nobody at the *Times* seemed to care that they were compromising their journalistic integrity by assuming the dual roles of political reporting and pure politicking when it came to 42nd Street. Yes, the Square was named after the paper and the *Times* was the largest property owner in the project area, so it is understandable they were very interested in the government's decisions. Yet being interested and covering the story closely is different than assuming a decision-making role and assigning an editorial page executive to tell government officials what to do.

After the city threatened to pull out of the joint project, we settled on a new team to head the development: Trammel Crow would operate the $400 million trade mart, Tishman Speyer Properties would build it, and Equitable would provide much of the financing.

It was agreed that Sturz and I would meet on a regular basis to avoid future misunderstandings like the one that arose around the choice of developers. This temporary détente did not, however, prevent the powerfully connected from asserting control over their particular spheres of interest. One episode soon



©New York Times Graphics.

According to the New York Times, nearly a dozen projects were underway in 1986 north of the 42nd Street Development Project area.

after our agreement illustrated this quite clearly: We took turns hosting the meetings, and on one occasion Sturz hosted the meeting not in a city office, but in a conference room of the *Times'* headquarters. It was completely inappropriate to hold such a meeting in a conference room of one of the redevelopment area's most prominent private property owners, but it gave Sturz and the city the opportunity to play politics and send a message to the state and me that they were tight with the *Times*—a message we clearly received.

Although a well-known and influential newspaper, the *Times* is, at its core, a family business. Why should this corporation have the power to decide who will own and lose property on 42nd Street? In fact, why was the government picking developers in the first place? Mega-developers Paul Milstein (the UDC's preferred developer) and Douglas Durst also owned property in the area and wanted to develop Times Square. These were men confident of their ability to develop without the government's help or interference. They expressed to me their resentment at the *Times'* involvement.

But this wasn't the only example of questionable dealings by players involved in the redevelopment project. At that time, a tiny New York law firm, Blutrich, Falcone & Miller, was retained by many mega-developers. A firm of its size would not ordinarily have enjoyed such lucrative business, except that the firm was closely connected to Governor Cuomo and his son Andrew (now New York State attorney general). The law firm had among its partners a former assistant to Governor Cuomo from Cuomo's days as lieutenant governor, and another former assistant who worked for Governor Cuomo when he was in private law practice. Andrew joined the law firm as a partner. The *Times*, which ran an exposé on all of this,[15] showed that the Cuomos had, in fact, embraced the "me and my friends" culture of Albany state government. I do not know if the *Times* exposed the Cuomo law firm as part of their journalistic activities or if they were sending a message to the governor that there could be only one major power broker on 42nd Street—*The New York Times*. Unsurprisingly, the *Times* never ran a story on their own involvement with the Times Square project.

☞THE GRAND SCHEME WITHERS

Despite all of the posturing and scheming, planning and skullduggery, the plan withered. Klein never started work on the four office towers, which never went up; the garment wholesale mart never opened, the hotel never appeared, the subway renovations never happened and the nonprofit theaters never materialized.

In 1986, the city and state cancelled an agreement it had with developer Michael Lazar—who was the city's transportation administrator in the 1970s—to renovate four of Times Square's theaters, citing corruption allegations.[16] Lazar was also found to own the Candler Building, which he bought right before being hand-picked by Koch to renovate the theaters. The Candler Building was one of two properties conspicuously left off of the property acquisition list.

In August, the Dewey Ballantine law firm, which was to have been a major tenant in Times Square Center, withdrew because it couldn't wait six years for the office space it needed. In 1989, the number of lawsuits brought against the project reached 40 and Chemical Bank (now part of Chase), another anchor tenant, dropped out. That same year, Johnson and Burgee redesigned the massive office towers in an attempt to assuage New Yorkers' fears that Times Square was being changed forever, but to no avail. In 1991, George Klein and his new partner, Prudential Insurance (Equitable had dropped out), formally sought a delay in their development obligations, but officials continued unfettered in their efforts to condemn the properties in the 42nd Street Development Project area.

By 1992, Governor Cuomo was letting the developers off the hook. "It doesn't make sense to go forward immediately with the building of the office towers—there's no market for them,"[17] the governor observed, acknowledging that, in the end, it was the market and not a government development plan that would decide the fate of Times Square. "To hold these people to the contract is to ask them to commit an act of economic self-mutilation," the governor added for emphasis. Six years earlier, Douglas Durst made this same observation. The Durst Organization owned parcels in the block bounded by 42nd and 43rd Streets and Broadway and 6th Avenue, but in 1986, Durst asserted that there were no immediate plans for development "because we don't think that the demand for new office space will support the cost of its construction."[18] In August, the 42nd Street Development Project collapsed. The construction of the four office towers was officially put off indefinitely. It was clear to Durst "a long time ago that the office towers would not be built."[19]

The following year, an "interim" plan was created to include two new low-rise structures, the refurbishing of 11 existing businesses, and the construction of new lighting and signage. Shifting away from the focus on office development, of which there was a severe oversupply in New York City, my successors focused on what the public—and the market—demanded: to recreate the Times Square that was so beloved during its heyday.

Later, after more than a decade on the project, George Klein, the developer anointed by *The New York Times*, left, having built or renovated nothing. It seems *The New York Times* was no more adept at choosing developers than were elected officials.

☞MEANWHILE...

While the original building project first conceived in the early 1980s stalled, something surprising happened: Times Square started to revive.

CITY-STATE ALLIANCE *as a* PROTOTYPE for BIG DEVELOPMENT

Unfortunately, the most atrocious aspects of the Times Square redevelopment have been embraced as a grand tradition in New York City development, as the unique city-state alliance forged through our efforts in the 1980s paved the way for future massive intervention at both levels of government. Influence peddling is still as prevalent as ever, as billionaire developer Bruce Ratner's buddies in office have helped him seize private homes and businesses for his Atlantic Yards project in Brooklyn—despite massive public outrage.

Columbia—a wealthy, private university—is using its influence to wipe out an entire West Harlem neighborhood to expand its campus, even making a secret agreement to cover costs of condemnation and acquisition with the Empire State Development Corporation (formerly the UDC).

In Willets Point, Mayor Bloomberg is threatening to seize hundreds of tax-paying, thriving businesses that the government has long neglected—for decades denying them such basic services as garbage collection, plumbing and electricity—for a half-baked, pie-in-the-sky development plan, using the blight the city itself created as justification. Clearly, both the state and city governments did not learn from the dismal failure of the Times Square redevelopment, continuing to make the same mistakes over again at the expense of property owners and those living and working in the targeted areas.

Indeed, *every* large-scale project making the front pages of New York papers today involves the use of eminent domain for politically connected developers' gain.

Theresa Agovino, "Atlantic Yards still just an artist's rendering; Project stalls amid lawsuits, recession and credit crunch," *Crain's New York Business*, Jan. 19, 2009, at 3; Robert Kolker, "Because sometimes immense, gratuitous, noncontextual acts of real-estate ego don't pan out," *New York Magazine*, Dec. 22, 2008; Erin Durkin, "Columbia U. letter on expansion incites protest," *Columbia Daily Spectator*, April 21, 2005; Frank Lombardi and John Lauinger, "Willets Point project now a done deal," *Daily News (New York)*, Nov. 14, 2008, at 4.

First it was a trickle of activity. In 1989, Viacom, the huge entertainment firm that owned Nickelodeon and MTV, signed a lease at 1515 Broadway.[20] In 1992, the German publishing giant Bertelsmann AG bought 1540 Broadway from Citicorp.[21] Even recent setbacks were reversed, as when Morgan Stanley decided to "go long" on Times Square and purchased 1585 Broadway, the former Solomon Equities building that had been largely empty since a 1991 bankruptcy.[22] Then the trickle became a flood. As the Dinkins administration transitioned to the Giuliani administration, the Walt Disney Company announced it would refurbish and reopen the New Amsterdam Theater.[23] In 1995, AMC, the entertainment conglomerate, agreed to move to the neighborhood;[24] Madame Tussaud's Wax Museum decided to open a Times Square branch to join its famous London counterpart;[25] the Tishman Urban Development Company contracted to build a big hotel,[26] and the Durst organization announced it would erect a 1.5-million-square-foot office building,[27] taking over one-quarter of the site originally intended for the Times Square Center.

The ever-accelerating development brought back the whole neighborhood. Disney followed through on its promise to refurbish the New Amsterdam Theater, and soon after reopening enjoyed a wildly successful run of *The Lion King*.[28] The 100-year-old New Victory Theater reopened—beautifully restored to its original glory—as a venue for children's theater.[29] New restaurants have thrived from the moment they opened. By 1997, Broadway was having its best year in nearly two decades, as 10.6 million theater lovers flocked to numerous different shows.[30]

The failure of heavy-handed government strategies to cure the economic downfall experienced in Times Square is even more pronounced when taking into account the east side of Manhattan during the same time, which, without the plagues of Times Square and the government's intervention competing to condemn the area to perpetual economic decline, enjoyed a remarkable period of building and development from 1981 until 1988. Between 1981 and 1983, three new towers were completed and two more began, with construction beginning on yet another the following year.[31] In 1985, 77 projects were under construction south of 96th Street—70 percent of which were on the East Side.[32]

Indeed, office buildings and luxury apartments sprang up all across the East Side to meet demand—all of it without the government's intervention, all of it through the free market and some of it with the same developers involved in Times Square.[33]

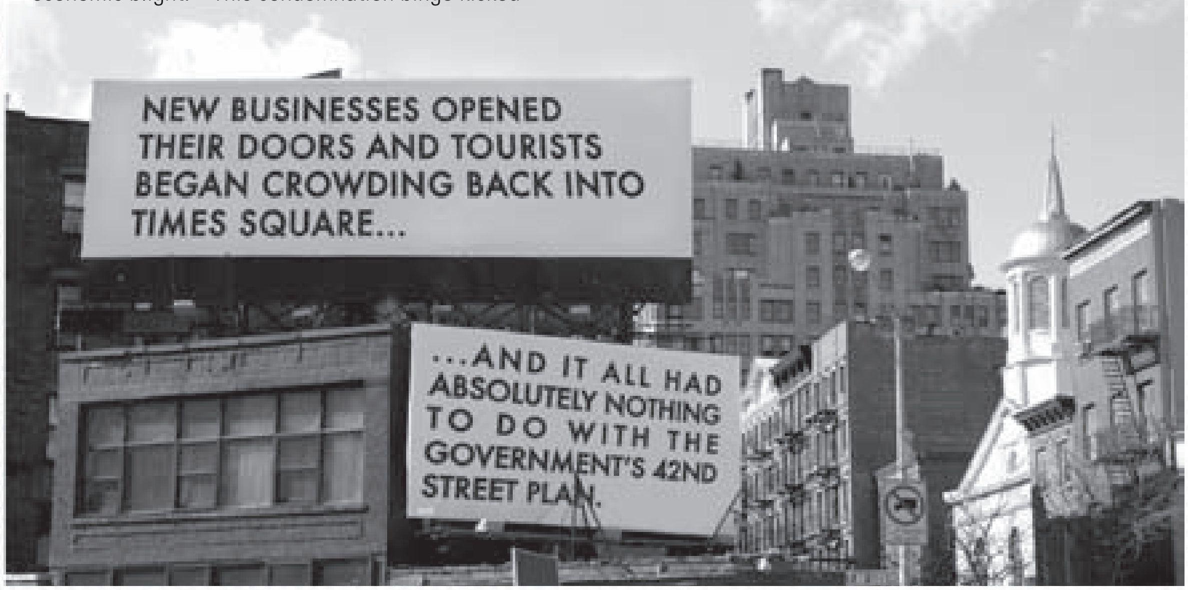
Even the area just north of the 42nd Street Development Project—in Times Square!—saw an incredible influx of private investment. In the six years after the project was commenced, close to a dozen projects had been announced or completed in the 10 blocks north of 42nd Street—nearly all above 45th Street—including the Marriott Marquis and Crown Plaza hotels on Broadway.[34]

☞ EMINENT DOMAIN

In fact, about the only thing the plan accomplished was something it never needed to do in the first place—use eminent domain to take the property of private parties and give it to other private parties for the latter's use. From 1984 on, drawing on the UDC's special condemnation powers, the redevelopment project began taking businesses in a purported attempt to cure "economic blight." This condemnation binge kicked out businesses of all types and sizes. To implement the project, the plan called for the demolition of 20 buildings and the displacement of 400 existing businesses, only a little more than 40 of which were adult bookstores or peep shows.[35] In other words, although the sex businesses represented an economic drag on the area, our goal was to remove not only these establishments but *all* businesses that did not fit into the government's master plan.

By 1990, after a hugely expensive six-year condemnation process and with no anchor tenants, the UDC had taken title to nine acres of the 13-acre project area.[36] The cost reached nearly $300 million, a sum advanced by the developers, who would be reimbursed through tax abatements.[37]

In hindsight, eminent domain was not merely unnecessary; eminent domain was destructive and counterproductive to the aim of achieving redevelopment. The properties surely could have all been bought out by the mega-developers. After all, that is how mega-development traditionally has taken place in the United States. It used to be called an "assemblage," and good developers know how to do it without eminent domain. That kind of process would have been fairer and less costly. It also would have



helped assure from the start that the buildings ultimately constructed on the site had the best chance of meeting the market's demand—rather than government officials' caprice. It was the way, after all, that Times Square had been developed in the first place. During my time at the UDC, developers approached me privately and said eminent domain was not needed. They had previously implemented large-scale development without eminent domain and were confident they could do so in Times Square. But in our condemnation bender, we brushed their comments aside and pursued a process that was not only costly and needless, but also further contributed to the unseemly circumstances that swirl around development projects like the one we tried to create in Times Square—both in the board room and on the ground.

While eminent domain may have made it easier two decades later to build (since the property was already condemned), the city lost far more than what it could ever gain from the lands' new uses. It destroyed legitimate local businesses that create the patchwork of unique attractions that bring tourists from across the country to any major city. It delayed any resurgence of Times Square, as property owners and government officials remained in limbo and tax dollars were lost. Our efforts ignored the root causes of the problems in Times Square, blinding us to any true cures and setting a dangerous precedent for future projects in New York City. Property owners who were anticipating massive buy-outs as a result of the West Side's upzoning were shocked when they learned this simply ushered in a plan that effectively wiped them out, with "fair" market value in place of negotiation. This unfair, unjust and unconstitutional treatment led to ten years of legal challenges. What's worse, none of the developers we condemned property for ever realized our collective vision.

For example, in 1991, Rosenthal & Rosenthal moved from its Time Square building at 1451 Broadway to 1370 Broadway after being condemned by the UDC. Seven years later, Leonard Weiss—owner of a parking lot that *The New York Times* wanted condemned for its new (third) headquarters in Times Square—told the *New York Observer*, "See that building over there, that empty limestone building, that used to be owned by an outfit called Rosenthal Factors…[Imre Rosenthal] loved that building. And he fought this like hell with us. He didn't want to get out of here, but ultimately they took it away from him."[38]

When government is given the power to take property from one private owner and give it to another, an inevitable and very ugly political process begins. Instead of competing in a marketplace where outcomes are determined by who has the best innovative ideas, strong financing, creative marketing and capable management, developers compete for political influence. In order to be anointed by government or protect their property from being taken, they hire anyone who has political influence or is remotely perceived to have influence: law firms, public relations firms, lobbyists, political consultants, etc. They attempt to cultivate the media, knowing that the media influences politicians. The use of condemnation on 42nd Street provided a commercial opportunity of enormous proportions for political insiders.

Times Square was bursting with investment and renewal, but it was not because of the 42nd Street Development Plan, since it had built nothing, nor even because the nation had entered into an economic boom. Forty-Second Street kept rotting away through the economic booms of the 1960s and 1980s. Instead, the market began to work because government took actions that all governments can and should to incentivize development in troubled areas—take public safety seriously and lower taxes to draw businesses into the area.

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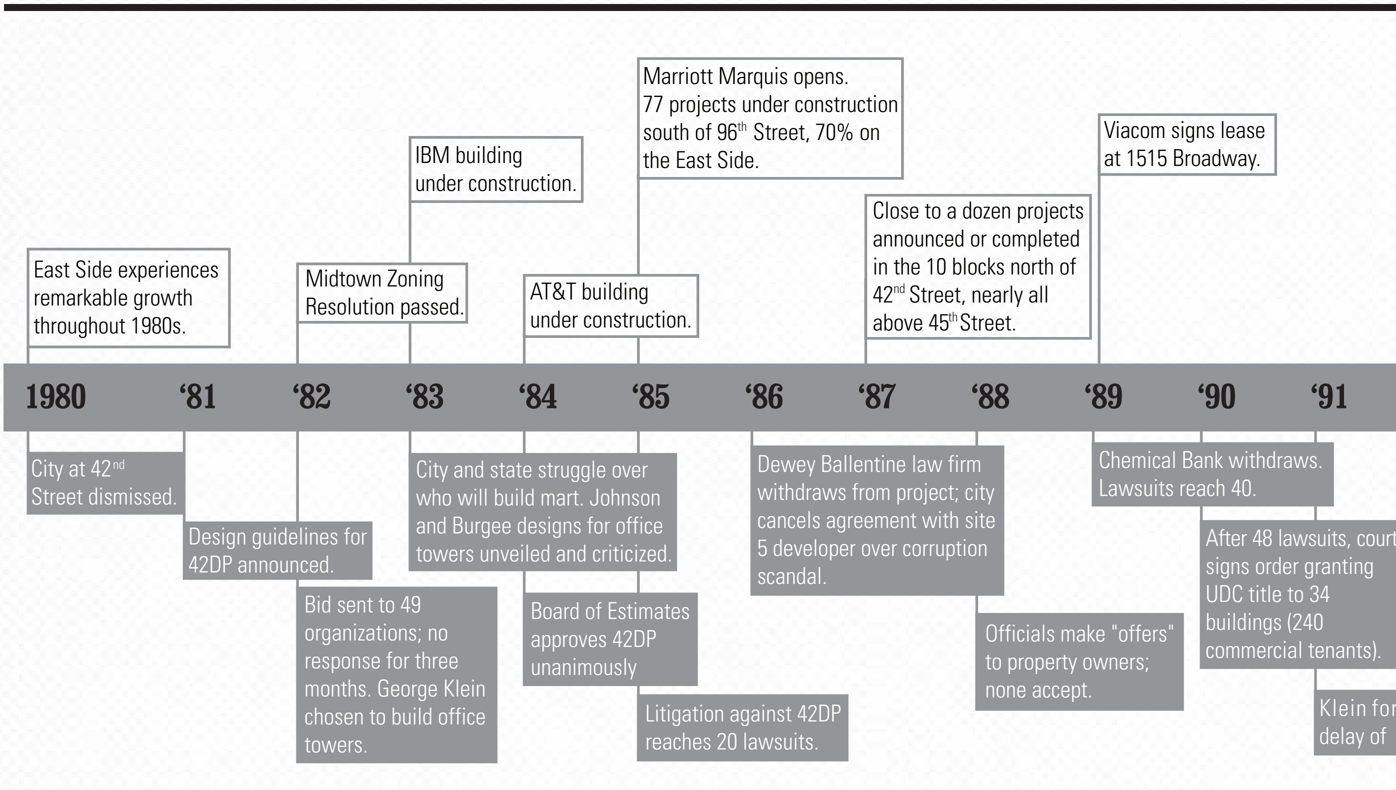
Times Square in 1989. By this time, the number of lawsuits brought against the 42nd Street Project reached 40, and two anchor tenants dropped out.

Times Square in 2007, flourishing after decades of failed projects and unfulfilled promises.



☞TAKING PUBLIC SAFETY SERIOUSLY

Residents and business owners in Times Square were dumbfounded that so much money was going into clearing and rebuilding the area for our massive redevelopment plan, when officials hadn't even been doing their jobs: policing the streets. Mark Finkelstein, owner of the New Amsterdam Theater, told *The New York Times*, "The city is not giving us law enforcement . . . . It should be cleaning up the area so there's no dope peddling. Which comes first? The chicken or the egg?"[39]

Mayor Abe Beame took the first small steps to control Times Square disorder in 1977 when he enforced nuisance laws to shut down some of the neighborhood's massage parlors that were in violation of the city's health and safety code. Enforcing and strengthening these laws, as well as using zoning laws to break up the concentration of sex businesses, might have prevented some of the decay on 42nd Street. Unfortunately, the government did not do any of this as the area slipped into chaos. But the really effective measures came from deputy police inspector Richard Mayronne, assigned during the mid-1980s to the Midtown South police precinct, which includes Times Square. As former NYPD deputy chief John Timoney (now police chief of Miami) described him to me, Mayronne was a "big tough guy, a cop's cop and easily the most imposing police commander I've ever met." According to Timoney, he was something more—an innovator in police tactics. Timoney (a young police captain in the Times Square precinct at the time) remembers Mayronne covering his office with neighborhood maps and using pins to chart crime patterns, in order to employ his forces efficiently. Mayronne had created a crude pre-computer version of Compstat, the crime tracking system that was brought

Bertelsmann buys 1540 Broadway; Gap moves to SE corner of Broadway and 42nd Street.

Morgan Stanley buys 1585 Broadway.

Formal agreement reached on interim plan. Disney announces plans to restore the New Amsterdam Theater.

Morgan Stanley buys 750 7th Avenue

AMC and Madame Tussaud's announce plans to move to Times Square; Tishman will develop hotel/entertainment complex.

Virgin megastore opens.

Douglas Durst purchases first office tower site from Prudential/Klein; Conde Nast to anchor building.

Klein and Prudential part ways. Prudential announces plans to sell remaining 42DP office sites; Rudin real estate family and Reuters buy second site.

Boston Properties purchases last two 42DP office sites.

NYTimes announces it will build new tower on the merchandise mart site; although area has turned around significantly, Times still receives lucrative special treatment.

‘92 ‘93 ‘94 ‘95 ‘96 ‘97 ‘98 ‘99

42DP COLLAPSES; office towers delayed indefinitely. Condemnations continue.

rmally seeks developer obligations.

Timeline of the 42nd Street Development Plan and beyond.
The boxes above the bar provide examples of private development occurring in Times Square and the vicinity outside of the 42DP. The darker boxes detail key events in the commencement and ultimate failure of 42DP. Herbert Muschamp notes in *The New York Times* in 1992, "Indeed, almost the only undeveloped sites in the area today are the ones that were vacated and boarded up to make room for this project." (Source: Herbert Muschamp, "For Times Square, A Reprieve and Hope of a Livelier Day," August 6, 1992, at C-15.)

to policing by Mayor Rudy Giuliani and his first police commissioner, Bill Bratton (now police chief of Los Angeles).

Even more important, Timoney recounts Mayronne instructing his men to make arrests for low level crimes that, when left unpunished, create a climate of lawlessness that encourages criminals and leads to ever more serious crime. This is called "quality of life policing."[40] Many now agree it is a major reason for New York's sharply lower crime rates and its absence significantly contributed to Times Squares' decay.[41] The new technique paid off: As Mayronne's Midtown South successors continued to monitor crime patterns and kept up the pressure on quality of life infractions, crime dropped.

With the election of Rudy Giuliani as mayor in 1993, the war on crime intensified. He and commissioner Bill Bratton transformed New York City's approach to policing. Compstat allowed the NYPD to deploy personnel and resources efficiently, and quality of life policing became the norm throughout the city. Compstat was a quantum improvement on Mayronne's early innovations. Times Square crime rates dropped to an infinitesimal level. Felonies committed on 42nd Street between Seventh and Eighth Avenues (the *Times's* "worst block in the city") fell from 2,300 in 1984 to a mere 60 in 1995.[42] In the entire Manhattan South precinct, felony complaints fell more than 80 percent, from 22,843 in 1990 to 3,978 in 1997.[43]

Encouraged by dwindling crime, new businesses opened their doors and tourists began crowding back into Times Square—always potentially New York's biggest draw. And it all had absolutely *nothing* to do with the government's grandiose 42nd Street plan my colleagues and I produced. In fact, the Times Square of today bears little resemblance to the plan created back in the early 1980s. Mayor Giuliani once told me about how, during the 1970s, he watched Scorsese's *Taxi Driver*, with its depiction of Times Square's hellish nightmare, and wondered how it might affect tourism. Giuliani's theory was right; there is a relationship between cutting crime and economic revival. Anyone who draws a timeline of development in Times Square will see it correlates not to the government's giant redevelopment plan but to the drop in crime and improved tax policies. This should be a clear message to all city leaders looking to jump-start their local economies.

☞ LOWERING TAXES

Although the vast majority of our original redevelopment plan was a failure, at least we got something (partly) right: The plan called for reduced taxes for businesses willing to relocate to the area. The government did this, however, not by providing everyone in the city with an overall tax cut, but instead by awarding special tax abatements, low-interest loans and other subsidies to well-connected firms. From the original $240 million tax abatement given to George Klein, to the $40 million abatement given to Morgan Stanley in 1992, to the $25 million low-interest loan given to Disney in 1994, to the $20 million incentive package offered to Ernst & Young—everybody, it seems, in the new Times Square got a deal. A sensible person might say, "Why not just cut taxes citywide?" Two developers suggested exactly that, pointedly asking me, since everybody in Times Square seemed to get some sort of deal, why not just lower taxes? The truth is an unfortunate reality in my city: Across-the-board tax cuts would minimize the ability of political insiders to sell influence.

There are an enormous number of people in New York—lawyers, public relations professionals, consultants, lobbyists—who make a lot of money selling influence, and government policy here seems always to be arranged to further their influence peddling opportunities. The firms that benefit most in such a system are the older, well-established companies, not the newcomers. Lowering taxes selectively instead of across the board inevitably is counterproductive since it is the new up-and-coming businesses that represent the true engines of growth. The favoring of the old and the well-connected over the new and as-yet-unknown is really a form of state capitalism, where government substitutes its bureaucratic, politicized and sometimes corrupted thinking for the market's invisible hand. New York squanders its economic possibilities with this approach.

Imagine if a 20-something college dropout named Bill Gates had come to us in 1984 and asked for a tax abatement to build a 42nd Street office for his new software company. "What's an operating system and what's a Gates?" my colleagues would have sneered. Yet, during the past few decades, it has been newcomers like Gates—bringing undreamed-of services and technologies to the market—who have fueled economic growth and created most of the new jobs. As great as the new Times Square is, one has to wonder what it would look like if New York taxes weren't so anti-competitive. Tax cuts were important to 42nd Street—why weren't they used earlier and why not for the whole city?

☞ WHAT I LEARNED FROM TIMES SQUARE

As *Newsday* reported as early as 1988:

> "The idea, arguably valid at that time, was that to induce a developer to take on such a massive project in an unattractive area where profit was not guaranteed, unusual tax abatements and other subsidies would be needed as a lure.
>
> This supposition is no longer as valid. The area has now become a magnet for private

developers, who are putting up large buildings right on the edges of the Times Square development area, without extraordinary subsidies."[44]

The government-driven Times Square project stalled and our original efforts failed for the reason any undergraduate studying economics could identify—there was no market. The overwhelming critical mass of sex businesses in Times Square made the area unattractive to other types of businesses, and the pervasive crime acted as a giant "not welcome" sign to tourists. There was no demand whatsoever for more office space in midtown Manhattan or for transforming the entertainment-oriented Times Square into an office district, but we pursued our 42nd Street Development Plan against all these palpable odds—and lost. Derailed by years of litigation, a lack of demand and challenges to the aesthetics of the office towers, not a single one of the developers we originally designated for the different sites built what they originally set out to build. In fact, many credit the rezoning of the West Side in 1982—*not* the 42nd Street Development plan—with spurring development in Times Square.

The lessons I learned from the 42nd Street Development Project in New York are true for cities and small towns across the nation. First, public safety is essential if there is to be civil society. Without civil society there is no economic stability and growth. Crime poisons economic activity, and this is true not just in Times Square but in neighborhoods all over the country and the world. Times Square became "The Great White Way" without a government development plan and became a sewer because government failed to meet its core responsibilities.

Second, states and cities should rethink using condemnation power to take property from one private owner and give it to another private owner. To use that power is to open a Pandora's Box filled with influence peddling and power brokering, which is always sleazy and often corrupt. This process compromises government officials, the media and all who have anything to do with it. Eminent domain was not needed in Times Square. In fact, it delayed the development, added tremendous cost, and was unfair and inefficient. There was no shortage of developers willing to acquire property the old-fashioned way—through the private market. They just needed government to do its core job: Ensure public safety so commerce could thrive.

Third, tax policy is important, and to have development, local governments must have a competitive tax structure. If they do not, the fairest and most economically efficient way of addressing the problem is to lower taxes across the board and not try to select individuals and corporations who are more "worthy" of paying lower taxes, for the latter also breeds a sordid "me and my friends" political process. For example, can anyone honestly identify a logical, empirical, non-political reason why the new headquarters of *The New York Times*, which is located in the project area, required every tax break and government subsidy imaginable, while the myriad restaurants, shops and small businesses required no tax relief?

Looking back now at this giant redevelopment, I am glad the area has come back and that children can enjoy Times Squares as I did in my childhood. But we do these children a disservice if we perpetuate the myth—the lie—that the Times Square of today resulted from the massive government failure my colleagues, the *New York Times* and I foisted upon the citizens of my city. The lesson they should learn, indeed the lesson all of our civic leaders should learn, is that the right way for governments to pursue economic development is to fulfill their core responsibilities of protecting safety and freedom and allow the market to work as it did in creating the world's most famous square in the world's premier city.

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