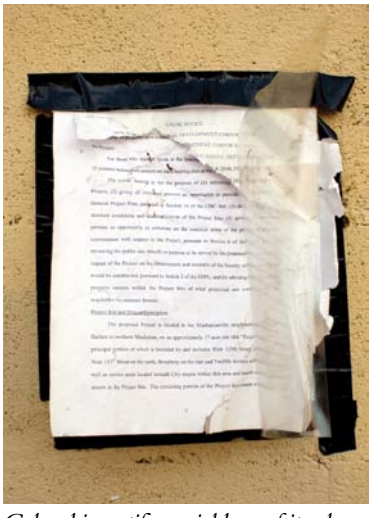
Columbia University, Slumlord

Working hand-in-hand with New York City and state, the Ivy League university bullies its neighbors with eminent domain law.

By Jonathan V. Last

Manhattanville, New York

Nick Sprayregen stands on the corner of 130th and Broadway pointing out the disarray. What was once a neighborhood gas station is now abandoned, its yard closed off by a chain-link fence topped with a spiral of razor wire. Inside the fence, debris is casually strewn about. Outside, the sidewalk is littered with broken glass. A derelict shopping cart is propped against the building, which itself is marked with stray graffiti. An electrical box on the side of the building has been pried open. Some of the wiring has been ripped out; what remains is exposed to the elements. This rundown property is owned by Columbia University. In fact, the Ivy League school owns 70 percent of the surrounding area—known as Manhattanville—much of which is in similarly dilapidated condition.



Columbia notifies neighbors of its plans.

It wasn't always this way. Manhattanville was never trendy, but it was once an active neighborhood full of light industry—auto shops, warehouses, and the like. But as Columbia began buying up the neighborhood, businesses left. Eighteen buildings in Manhattanville are now at least 50 percent vacant; Columbia owns 17 of them and they were nearly all fully occupied before Columbia acquired them. As a study put together by Sprayregen's lawyer explains, "Each became vacant only after, or immediately prior to Columbia's acquisition or assumption of control." And the university's actions seem designed to keep them vacant.

The building at 3251 Broadway, for example, was home to six auto repair businesses, an auto parts store, a woodwork restoration business, and a travel agency before Columbia acquired it. In 2005, Columbia refused to renew leases on the upper floors, citing a dangerous elevator. The university then erected sidewalk sheds in front of the building, hiding the ground-floor storefronts, claiming that there was a problem with the building's façade. But they have never initiated any repairs. The businesses emptied out of 3251 Broadway, and today the building stands vacant except for a small auto parts store on the ground floor. The unsightly sidewalk sheds still hulk over the front doors. Many of the buildings Columbia owns in Manhattanville have "For Rent" signs. Yet as Sprayregen's lawyer notes, "Calls to numbers listed on signs on Columbia-owned buildings advertising space for rent could never reach a live person and messages were never returned."

Sprayregen is one of Columbia's neighbors. He owns Tuck-It-Away Storage, a thriving self-storage business, which has five buildings in Manhattanville. He leases out the ground floors of some of his properties, but recently has had a hard time getting businesses to fill the space. As his leasing agent explains, "We have had literally hundreds of offers, most from reputable, well-financed concerns willing to lease on a long-term basis. . . . At some point along the line, with all of these concerns, the knowledge that Columbia University can or will invoke eminent domain has caused them to seek out alternative space arrangements." Even when the university isn't taking direct action, its very presence drives away businesses.

Each of Sprayregen's buildings is kept in pristine condition. But Columbia wants his land. So the university has

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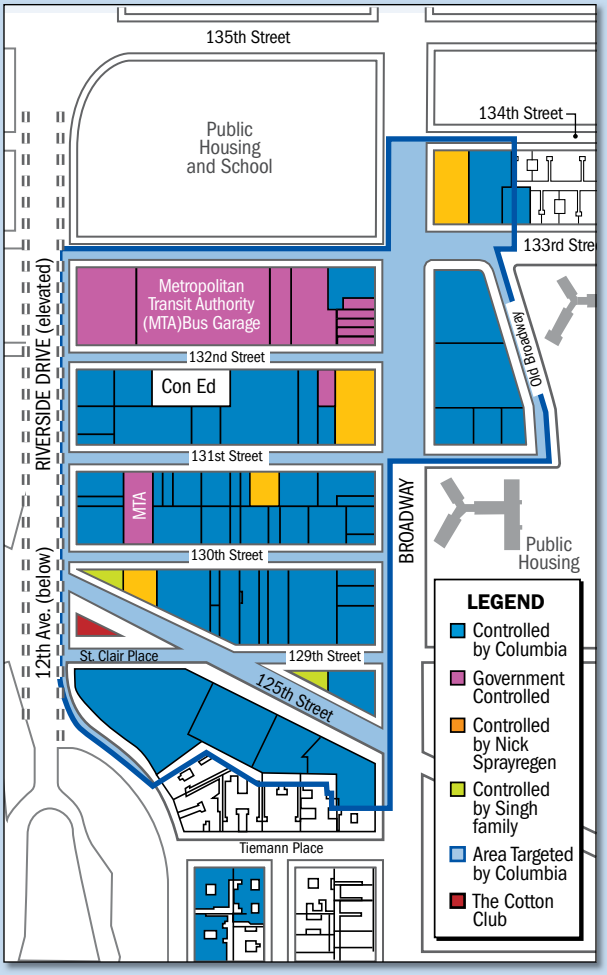
Manhattanville landowner and Columbia nemesis Nick Sprayregen

PHOTOGRAPHS BY KONRAD FIEDLER

THERE GOES THE NEIGHBORHOOD!



Situated just north of Columbia's main campus in Morningside Heights, Manhattanville has been targeted by the university for acquisition since at least the 1960s. The current plan is ambitious, to say the least: Columbia wants to take 17 acres in Manhattanville and dig down seven stories to create a contiguous 2 million square foot sub-basement connecting all eight blocks of the new Manhattanville campus.

If it gets its way, the university eventually will have 6.8 million square feet of usable indoor space to devote to its business school, school for the arts, Jerome L. Greene Science Center, and more. The project is budgeted at nearly $7 billion and is not scheduled to be completed until 2030.

SOURCES: COLUMBIA UNIVERSITY, NICK SPRAYREGEN

been working with the state of New York to have the neighborhood declared "blighted." If that designation is made, the government will be able to take Sprayregen's well-kept property and hand it over to the university, which owns the run-down buildings. And only then, when they have their neighbor's land, does Columbia promise to clean up its act and make Manhattanville nice again.

It's a curious situation—the government punishing a landowner who takes care of his property and rewarding an owner who does not. But this is the through-the-looking-glass world of New York eminent domain law.

Columbia University's main campus sits in Morningside Heights, just south of Manhattanville—running from 114th to 120th Streets, bounded to the west by Broadway and the east by Amsterdam Avenue. Columbia built here in the 1890s, and over the decades the university has prospered. Today it has 14,000 people on its faculty and staff, 24,400 full- and part-time students, and an annual payroll of $1.25 billion. The school believes that in order to sustain its financial health, it needs more physical space. Columbia decided that the Manhattanville neighborhood a few blocks north was a good place for expansion.

It's not clear exactly when Columbia first set its eye on Manhattanville. The university publicly announced its plan in 2002 and hired architect Renzo Piano in 2003 to conceptualize the new campus. (Sprayregen contends that Columbia began quietly buying Manhattanville property in 2000.) The neighborhood has certainly been on the institution's radar for a long while. In 1968, the *New York Times* reported on Columbia's $150 million plan to redevelop Manhattanville from 125th to 135th Street. The plan never came to fruition, but the university was never particularly forthcoming about its redevelopment effort. As the *Times* reported, "Courtney C. Brown, dean of the Columbia School of Business, reluctantly disclosed the project in outline last night after *The New Republic* magazine had made public an article in its May 18 issue on Columbia's real-estate ventures." (The incident became infamous for the neighborhood's opposition to the building of a Columbia gym.)

The latest scheme is much more ambitious than the aborted 1968 plan, and just as secretive. The new plan seeks to take 17 acres in Manhattanville (from just below 129th to 134th, and between Broadway and Riverside Drive, which is elevated at that point) and dig down seven stories into the ground. Columbia wants to create a contiguous 2 million square foot sub-basement connecting all eight blocks of the new Manhattanville campus. The idea, as the university explains in the project FAQ,

A view of Manhattanville looking north: The George Washington Bridge can be seen in the distance.

is to place parking, loading docks, and utilities for the entire enterprise underground, allowing "the majority of deliveries, mail, maintenance vehicles, equipment service trucks, and sanitation to be handled underground—as it is, for example, at Rockefeller Center."

Above ground, Columbia plans to build a series of glittering glass high-rises, as well as 94,000 square feet of open space in the form of parks and a square. In total, the university hopes to create 6.8 million square feet of usable indoor space for itself. It plans to move its business school and school for the arts to Manhattanville and to make the Jerome L. Greene Science Center the centerpiece of the new campus. This whole ambitious project is budgeted at nearly $7 billion and is not scheduled to be completed until 2030. The university has left blanks in the Manhattanville campus plan because it "is based on the understanding that it is impossible to know today all the new areas of learning and discovery that might arise decades into the future."

Columbia owns 70 percent of the land they seek to use in Manhattanville. Public agencies control 26 percent. And 4 percent of it is owned by two private parties—the Singh family, which owns two small gas stations, and Sprayregen. Initially, there were seven commercial property owners who banded together to oppose Columbia, but one by one, they were bought out. Now only Sprayregen and the Singhs remain.

Sprayregen's father, Gerald, founded Tuck-It-Away Storage in 1980. Nick graduated from NYU's business school in 1986 and took the reins in 1990. The business has grown considerably over the years; Sprayregen now owns 14 storage properties in New York and New Jersey totaling 1 million square feet of space. His business serves 7,000 customers. In the summer of 2004, representatives from Columbia took Sprayregen to lunch. "They were very nice to me and asked if my property was for sale," Sprayregen says. "I said no, and they called every week for the next few months to ask if I was sure and whether or not I had changed my mind."

At the time, Columbia had already begun coordinating with the Empire State Development Corporation (ESDC), the state office that rides herd over redevelopment projects and wields the power of eminent domain. Columbia had also hired a development consulting firm,

Alee King Ross & Fleming (AKRF), to help it clear the hurdles to approval of its Manhattanville plan. AKRF was to help produce things like the Environmental Impact Statement and the City Map Override Proposal—which would help Columbia acquire the land underneath city streets to be used as part of the university's 17-acre subterranean bathtub.

Columbia also needed the city to rezone Manhattanville. The area was zoned for light industrial use, which is why the neighborhood consisted largely of auto shops and storage houses. Columbia would need the city to mark Manhattanville for mixed use in order to build its proposed campus. And finally, just in case some of the property owners in Manhattanville were not inclined to sell out to Columbia, the university had to make sure the state would be willing and able to invoke eminent domain on the school's behalf.

In order for New York State to seize land from one owner and hand it over to another, the government must prove the area is blighted. State law gives no concrete tests for what constitutes "blight." Different statutes mention different conditions that may constitute blight—"dilapidated structures," "under-utilization"—but none of them is quantified or defined so as to give it real legal meaning. In New York, blight is essentially whatever the government says it is. Which makes it nearly impossible for property owners to have the designation overturned.

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But New York makes challenging eminent domain even more difficult. State law does not allow property owners to challenge eminent domain claims in a trial court. In every other state in the Union, owners have the right to challenge the government's assertion of eminent domain before a trial judge—meaning that they get the chance for discovery, to call witnesses on their behalf, to introduce evidence, and to challenge the government's assertions. New York routes challenges to eminent domain takings directly to an appellate court, where property owners are given 10 minutes to argue their case before a judge and cannot embark on any findings of fact—let alone challenge the facts asserted by the government. As Robert McNamara, a staff attorney for the Institute of Justice, wryly notes, "New York doesn't just stack the deck against property owners. They don't even let the property owners play."

To have any legitimate shot at opposing eminent domain, a property owner needs to undertake an ad hoc defense *before* the state makes an eminent domain claim. This is done by filing FOIL requests (Freedom of Information Law—the New York State version of the federal government's FOIA) in lieu of discovery and by compiling legal briefs challenging whichever of the government's findings are made public. These materials must then be submitted as part of the Public Record—an open file maintained by the state during the course of redevelopment proceedings, which includes such materials as neighborhood conditions studies and notes from public hearings.

Such a defense requires deep pockets and a commitment to fighting the government for years. All before you even know for sure whether or not your land is on the block. Because if you wait to retain counsel and challenge the government until after they've declared your property blighted and invoked eminent domain, it is too late; you are no longer entitled to any findings of fact. Once you get before the appellate court for your 10 minutes of due process, the only facts the judge will rely on are the ones the government and the developer have laid out for themselves. As you might imagine, when it comes to eminent domain takings, the Empire State bats just about 1.000.

The lawmakers in New York seem to like this system. After the Supreme Court's *Kelo* decision in 2005, states rushed to reform their eminent domain laws; some even amended their state constitutions to protect property owners. All told, 43 states undertook some type of reform designed to combat eminent domain abuse. The only stab at reform undertaken in New York was the legislature's attempt to form a commission to study the issue—and even that failed.

None of which was lost on Nick Sprayregen when he decided to challenge Columbia and the ESDC. Sprayregen isn't a Bloombergian Master of the Universe, but he's done well for himself and has the resources to mount a full-fledged defense of his properties. Outraged by the system, he retained civil rights attorney Norman Siegel in late 2004 and decided that he would fight Columbia to the end, as a matter of principle. It's a commitment to spend somewhere in the neighborhood of $3 million on legal fees for a case Sprayregen fully expects to lose. "I'm

pessimistic that we will be successful," he told the *New York Observer* in his typically understated way.

Sprayregen is pessimistic because he isn't just up against a legal system heavily weighted in favor of the developer. In his case, the system has actually been rigged.

In 2004, when the Manhattanville plan was in embryonic form, the state began laying out its case for blight. The New York Economic Development Corporation (EDC), a city entity working on a redevelopment plan for West Harlem, hired a consulting firm called Urbitran to conduct a blight study of the neighborhood. Urbitran did the work and prepared a draft of the results for the EDC that August. The EDC was unhappy with what Urbitran found, and the study was left in draft form.

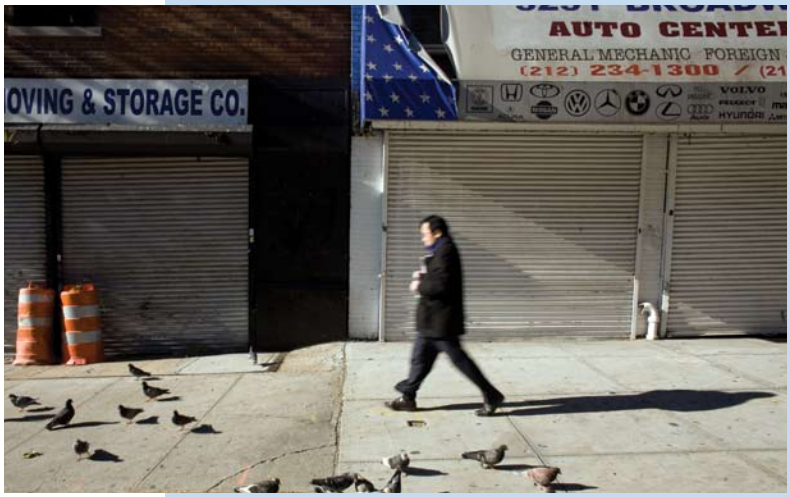
The redevelopment plan then shifted from the domain of the EDC over to the ESDC. According to the Manhattan Institute's Julia Vitullo-Martin, this was a logical move. "The ESDC offers substantial advantages to controversial projects," Vitullo-Martin explains. "First, it has a stripped-down, centrally controlled community review process in place of ULURP [New York City's byzantine development review process], and second, it can directly exercise eminent domain." The ESDC had the power to substantially move Columbia's plan forward.

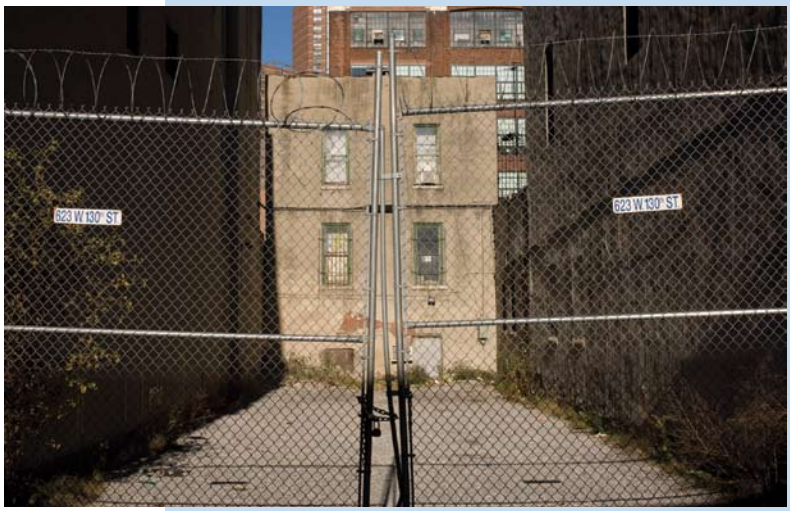
That December, an ESDC staffer said publicly that there had been problems with the Urbitran study, but declined to elaborate. The ESDC also refused to release copies of the study. Sprayregen eventually obtained a copy after filing a dozen FOIL requests. In the copy they released, however, the state had redacted all of Urbitran's conclusions. The Urbitran study included a larger area than the neighborhood Columbia wants. Still, within the bounds of the area Columbia had its eyes on, Urbitran noted properties that were deficient in upkeep, zoning, or occupancy—that were blighted. Nearly all of these buildings were owned by the university.

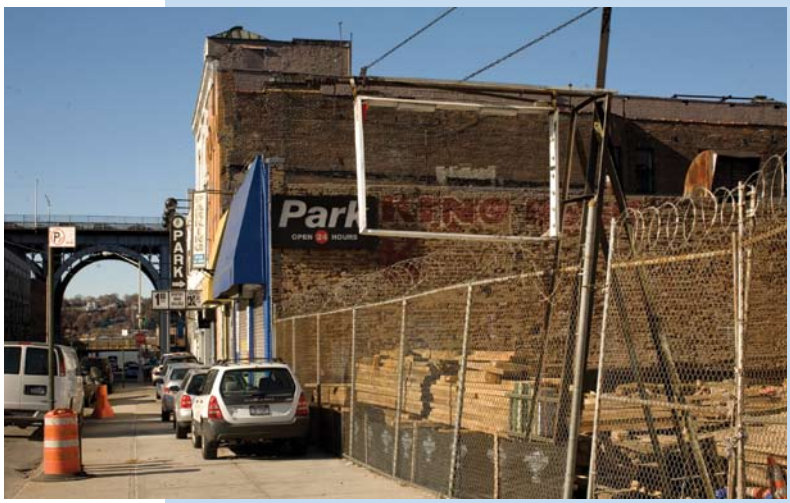
In March 2006, the ESDC decided to take another crack at finding blight in Manhattanville. This time, they approached Columbia's own consulting firm, AKRF, and asked them to perform the study. The state of New York

THE SOURCE OF BLIGHT

Studies of the area have found that nearly all of the properties that are deficient in upkeep belong to . . . Columbia University.







A spiral of razor wire: the emblem of Columbia-owned property in Manhattanville

was charging a firm being paid significant amounts by Columbia University to make a determination of potentially great benefit to Columbia University. But, the ESDC was also more careful than the EDC had been. Before awarding the contract to perform the study, the ESDC asked AKRF to submit "preliminary" findings on blight in Manhattanville. This they did on August 23, 2006. The ESDC was pleased with what AKRF was suggesting it would find and, on September 11, 2006, signed a contract with AKRF to carry out the study.

As part of his fight to collect material from Columbia and the ESDC, Sprayregen went to court requesting documents pertaining to the ESDC's relationship with AKRF. In March 2007, Dennis Mincieli, an AKRF vice president, insisted in a court filing (arguing against one of Sprayregen's FOIL requests) that there was nothing improper in the relationship because a "Chinese wall" had been erected between the teams working for Columbia and the ESDC. This was a dubious claim—after all, the same company benefited, even if the staffs were segregated—but it turned out not even to be true. Fifteen months later, after another court forced the ESDC to disclose billing records pertaining to the blight study, AKRF admitted that many employees were working simultaneously for both Columbia and the ESDC.

The research for AKRF's blight study was performed between September 2006 and April 2007, with the final study scheduled for delivery on May 1, 2007. On April 13, Mincieli sent an email to Maria Cassidy, the ESDC's general counsel. He told Cassidy that AKRF was on schedule to deliver the study on May 1, but there was a potential hitch: AKRF was waiting for Columbia to review their work. "Pauline Meehan of Columbia University has been escorting TT [Thornton Tomasetti, an engineering consultant] and AKRF on the site inspections, and reviewing TT's site assessment reports," Mincieli wrote. He was concerned that the need to have Columbia review the blight study might cause delay in delivery. He wanted the ESDC to understand that if there were a delay, it would be Columbia's fault, and not AKRF's. Mincieli continued:

> Columbia University's review would not be completed until April 30th, at the earliest. Certainly the Neighborhood Conditions Study would be much stronger if we had the benefit of [Columbia's] input to confirm certain facts

about the properties that only representatives of Columbia University might know. However, I would like to reiterate that AKRF is prepared to submit the Manhattanville Neighborhood Conditions Report to ESDC May 1st, based on our own review of the TT site assessments, and without Columbia University's input.

Once Columbia's Review is complete, it will take several days for TT to revise its reports based on Columbia's comments and for AKRF to review its Lot Profiles, followed by production of the document.

But Mincieli was certain that the ESDC would not want AKRF to move forward without Columbia's input. His email concluded,

> Based on our discussion earlier today, I assume that you want AKRF and TT to proceed with the preparation of the site assessments and lot profiles, but that we will wait until [Columbia] has had an opportunity to review of [sic] TT's reports, prior to completing our own work and producing the Neighborhood Conditions Study.

So to recap: The state of New York hired a firm that works for Columbia to carry out the blight study. The firm used personnel who were working for Columbia on the project, and Columbia reviewed this work as it progressed. You will perhaps not be surprised to learn that AKRF's report declared the Manhattanville neighborhood was blighted—the precise result Columbia desired.

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What's even more damning is that Columbia actually paid for the blight study. AKRF sent an invoice on May 31, 2007, for the "Manhattanville Neighborhood Conditions Study" in the amount of $182,490.66. The comments section of the invoice explains that the project was done under contract with the law firm of Carter Ledyard & Milburn—the firm which serves as outside counsel for the ESDC. (The ESDC subcontracted AKRF through their legal counsel, a strange bureaucratic and accounting move that served no obvious purpose except as an attempt to cloak their communications in privilege.) The invoice lists Columbia University, not the ESDC, as the funding source for the study.

As Sprayregen kept amassing incriminating documents through his FOIL requests, the ESDC became concerned that the AKRF study might be legally tainted. So in January of this year, they set aside the AKRF study and hired yet another contractor, Earthtech, to produce yet another blight study. Earthtech's mandate, though, was relatively narrow. The contractor, who had no experience in conducting blight studies, was instructed to "replicate"—the ESDC general counsel Maria Cassidy's word—the AKRF study, using the same terms, methodology, and criteria. Not surprisingly, Earthtech's study, completed quite quickly, also concluded that Manhattanville was blighted.

Having found documentation asserting blight, the ESDC declared the redevelopment zone legally blighted this past July. Since the city had generously rezoned the area for mixed use in December 2007, the ESDC was able to adopt Columbia's general project plan on July 17. The Public Record for the matter was set to close on October 10—but was briefly held open. In another of Sprayregen's court victories, both the ESDC and one of its partners, the city Department of Planning were ordered to release documents related to the case. They refused and appealed the decision. Another court granted Sprayregen a temporary restraining order preventing the Public Record from being closed until the appeal was resolved.

In its brief arguing against the temporary restraining order, the ESDC's lawyers claimed that a delay in closing the Public Record might cost human lives:

> By 2011, this country will have a virtual tsunami of Alzheimer's patients as baby boomers age. . . . Here, the first building to be constructed, the Jerome L. Greene Science Center, would be devoted to curing diseases, such as autism, dementia, Alzheimer's and schizophrenia. The money is already available for the construction of that Center. How does one place a price tag in human suffering on delaying a possible cure of any such diseases by 18 months, 12 months, or 6 months?

In the annals of eminent domain litigation, it's hard to find a more brazen contention. But it's all too typical of the endless legal maneuvering that Sprayregen has been forced to endure as he attempts to build a body of evidence to actually contest the forthcoming seizure of his property.

In the end, the ESDC prevailed. After granting Sprayregen the temporary restraining order holding the

Public Record open, the judge decided that he did not have the authority to hold it open indefinitely. So on October 30, the Public Record on Columbia's Manhattanville redevelopment plan closed. Though their appeal had yet to be heard, on November 7, the city's Department of Planning delivered two boxes of the documents it had been withholding.

With the Public Record closed, the ESDC has up to 90 days to study all of the evidence therein and render a decision on whether or not to move forward with redevelopment and invoke eminent domain. There seems to be little doubt from any of the parties as to what conclusions the ESDC will reach after its period of careful and considered study. Assuming the government decides to push onward, Sprayregen will then have 30 days from their decision to put his case before the appellate division court. From there he will appeal to the New York State Court of Appeals and finally, if it will hear him, the U.S. Supreme Court.

The Supreme Court has long been willing to classify nonblighted property as blighted if the surrounding area is in disrepair. But the Court has not been confronted with a case in which the neighborhood blight was directly caused by the party seeking the benefit of eminent domain.

Sprayregen has little chance against Columbia, but he has as much as anyone could have. He and Siegel have already entered three major briefs into the Public Record supported by nearly 8,000 pages of documents.

With the evidence he unearthed, Sprayregen seems to have mounted at least a reasonable case that the ESDC was engaged in "impermissible favoritism" toward Columbia, which the Supreme Court views as potentially fatal to eminent domain takings. The "impermissible favoritism" designation, however, is usually rendered by a trial court. With no trial court available to Sprayregen, it seems just as likely that an appeals court will simply follow Justice Anthony Kennedy's *Kelo* concurrence positing that when favoritism is alleged, courts should cleave to a "presumption that the government's actions were reasonable and intended to serve a public purpose."

Thus Sprayregen's best hopes lie with two other arguments. First, he can argue that Columbia's plan violates a key provision of the *Kelo* decision (and Kennedy's concurrence). In *Kelo*, the Supreme Court found in favor of the City of New London's use of eminent domain in part because the Court deemed the redevelopment plan "comprehensive" and the product of "thorough deliberation." Columbia's redevelopment plan is, by their own admission, not comprehensive because "it is impossible to know today all the new areas of learning and discovery that might arise decades into the future" when the redevelopment is completed. All Columbia knows for certain at this point is that it wants the land; someone will figure out exactly what to do with it later. Which could be problematic if the Court decides to try to clarify what Kennedy meant with his comprehensive and deliberate gloss.

Sprayregen might also find comfort in the question of how Manhattanville's blight was created. The Supreme Court has long been willing to classify nonblighted property as blighted if the surrounding area is in disrepair. This was the heart of the 1954 case *Berman* v. *Parker*, where the Supreme Court declared that a well-kept and functioning department store in Washington, D.C., could be declared blighted and taken via eminent domain because a substantial part of the surrounding area was in poor condition. But the Court has not been confronted with a case in which the neighborhood blight was directly caused by the party seeking the benefit of eminent domain.

And, in its attempt to demonstrate blight, the AKRF study unwittingly notes that Columbia is responsible for nearly all of the decrepitude in the Manhattanville neighborhood. For instance, of the 67 lots in the proposed redevelopment zone, AKRF pointed out that 2 show hazardous conditions. Both are owned by Columbia. AKRF also reported that 4 of the lots are being used contrary to their certificates of purpose. Columbia owns 3 of these offenders. And then there's the eyeball test: Walking around Manhattanville with a guide to ownership of the parcels, it is immediately clear which buildings belong to Columbia: They're the ones that are vacant and shuttered. From all appearances, the university wants it that way.

As Norman Siegel notes in one of his briefs, "Of the properties in the study area that show evidence of being inadequately maintained, only one is not owned by, or under contract for sale to Columbia, and it is owned by the City and used by the Department of Transportation. The remedy for making Columbia take care of its property should not be to take the property of others and give it to Columbia." ♦