

Preservation

Sea Change

Elegy for a fleet
and a way of life



Saving Grand Central

Santa Fe Fakery

Nantucket's Little Secret

L.A.'s Storybook Houses

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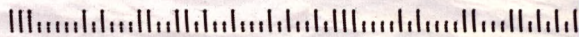
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Preservation



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The recently restored
African Meeting House in
Nantucket, Mass.

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ON THE COVER: The skipjack *Nellie L. Byrd* works the Chesapeake. Photograph by William K. Geiger

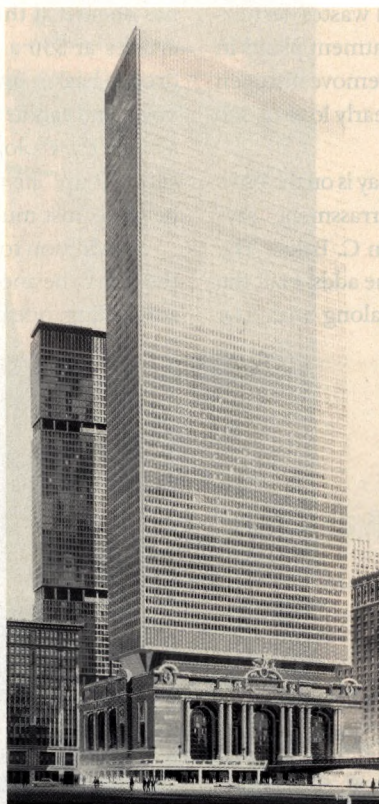
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That Fabulous Concourse

On the 25th anniversary of its salvation, Grand Central stands tallest. *By Jerold S. Kayden*

I GREW UP WITH GRAND CENTRAL Terminal. As a young boy living in Irvington-on-Hudson, some 20 miles upriver, I would board the Hudson Line train and head for New York City to visit my grandparents. Emerging from the labyrinth of tracks into the terminal's fabulously outsized main concourse, I would momentarily pause to get my bearings—the huge clock and Kodak sign helped—before being swept into the fast-moving, crosscutting currents of humanity. Then I would dart my way east to Lexington Avenue and walk the several blocks to my grandparents' apartment. At that time, in the mid-1960s, the owners of Grand Central—the Penn Central railroad—could have deprived me and my fellow passengers of that epiphany of emergence if they had chosen to demolish the station, just as they had Pennsylvania Station across town when they took the wrecking ball to that architectural masterwork in 1963.

Largely in response to that loss, New York City enacted in 1965 its pioneering landmarks preservation law, which authorized an appointed commission to designate buildings and neighborhoods as historic city fabric that could not be altered without commission approval. For the private owner of a newly designated landmark, as Supreme Court Justice William Rehnquist would wryly opine, this would be a mixed blessing: "The owner of a building might initially be pleased that his property has been chosen by a distinguished committee of architects, historians, and city planners for such a singular distinction. But he may well discover . . . that the landmark designation imposes upon him a substantial cost, with little or no offsetting benefit except for the honor of the designation." Where, predesignation, an owner's property rights included the ability to replace old windows with new, cover clapboard siding with vinyl, or more germanely, demolish a train station to make way for new devel-



A rendering, above, of the modern tower designed by architect Marcel Breuer to sit squarely on top of Grand Central Terminal, opposite

opment, those rights would be significantly diminished under landmark status.

Penn Central Transportation Co. owned Grand Central when the terminal was designated a landmark by the city in 1967. One year later, Penn Central and a development partner proposed to build an office skyscraper above the terminal. In one Marcel Breuer-designed scheme, the tower would sit on top of the terminal; in another it would also destroy part of the terminal's main facade on 42nd Street. When the commission ultimately refused to grant permission for either scheme, Penn Central and partner filed a lawsuit in state court alleging that the city action took their property for public use without paying just compensation, violating the federal constitution. The city defended itself with the help of the National Trust and others. A victory for the owner would have meant not just the end of a free-standing Grand Central Terminal, but would also have sounded the death knell nationwide for local historic preservation law.

By agreeing to take the case on appeal, the U.S. Supreme Court raised everyone's blood pressure. Since the 1930s, the Court had been silent about the extent to which government regulations could cut into property rights. What would it do now, especially

when Penn Central would incontrovertibly lose millions of dollars annually in office lease revenue because of the city's denials?

The Court's 1978 opinion upheld the constitutionality of the city's landmarks law in general and, more specifically, as applied to Grand Central Terminal, by a vote of six to three. Justice William J. Brennan Jr. wrote the 35-page magnum opus announcing the analytical framework that still governs "takings" analysis today for historic preservation cases, as well as for all other land-use and environmental cases where property rights have been infringed upon to some degree by government regulation. He would candidly admit that there was no set formula for resolving these disputes, that decisions would be ad hoc, case by case, depending on the specifics. To the extent that broad principles would emerge, they would be these: Property owners are not constitutionally entitled to the

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most profitable use of their property, and they may lose significant value when the public interest so demands. At the same time, they may not be financially wiped out by government action. Because Penn Central had admitted that its existing terminal tenants provided a reasonable economic return, it was constitutionally out of luck.

Two years after the Penn Central decision, I served as law clerk to Justice Brennan. During my year with him, we never had an in-depth discussion of the case, although I know he was protective of its health and vitality, as he was with all his legal offspring. I do know that he liked the opinion, not so much because it preserved Grand Central Terminal but because it became the most noteworthy constitutional ruling about the balance between government regulation and private property in the 20th century. Far beyond the confines of the terminal itself, Penn Central put property owners on notice that the public interest could intrude on their ownership rights, while putting government on notice that there was such a thing as a regulatory taking. Indeed, Brennan would remind government regulators in another of his land-use opinions, "After all, if a policeman

must know the Constitution, then why not a planner?"

Commencing in 1987, the Supreme Court announced a number of opinions that standing alone didn't amount to much, but linked together suggested a constitutional shift in the direction of property rights. But Penn Central was never seriously challenged, and it stands as tall as ever in the constitutional forest, still king of the hill, still there to be mined. I remain amazed at the power of the opinion, which surely has earned its own landmark status. As Justice David Souter observed at Justice Brennan's funeral service, one of the outstanding Brennan legacies has been his contribution to the evolution of takings law.

As for Grand Central Terminal itself, the vast interior was refurbished several years ago to its original brilliance, the burnished constellation of stars now twinkling on the ceiling. I still walk through the terminal before taking the train from the city to my parents' house in White Plains. When I return and once more emerge into that marvelous concourse, I think of my varied connections to this remarkable building, and of the power of place—what historic preservation is all about. □