THROUGH THE LEGAL LENS:

INTERVIEWS WITH LAWYERS WHO SHAPED NYC'S LANDMARKS LAW

The Reminiscences of

Leonard Koerner

PREFACE

The following oral history is the result of a recorded interview with Leonard Koerner conducted by Interviewer William Cook on January 3, 2016, and Liz H. Strong on July 13, 2016. This interview is part of the *Through the Legal Lens: Interviews with Lawyers Who Shaped NYC's Landmarks Law* oral history project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose. The views expressed in this oral history interview do not necessarily reflect the views of the New York Preservation Archive Project.

Former lawyer for New York City, Leonard Koerner argued *Penn Central Transportation Co. v. City of New York*. He takes the interviewer through the cases that were cited in the argument, pertaining to land use and government authority over private property. He recalls his time working with Dorothy Miner on both the Penn Central Case and later as part of New York City's legal team. Following Penn Central he worked on various high profile cases including Brooklyn Institute of Arts and Sciences v. City of New York. He currently is a lawyer with the National Trust for Historic Preservation.

Leonard Koerner is the former Chief Assistant Corporation Counsel and chief of the appeals division of the Law Department of the City of New York. Retiring after more than forty-five years of municipal service in 2015, Koerner served the city under seven different mayors, from John Lindsay to Bill DeBlasio. Koerner argued on the city's behalf in 1978's *Penn Central Transportation Co. v. City of New York*, ultimately winning a verdict that upheld New York's landmarks law. Following Penn Central, Koerner was involved in various high-profile cases, including litigation tied to the landmark designation of the Church of St. Paul and St. Andrew on the Upper West Side and St. Bartholomew's Church on Park Avenue. He received the Sloan Public Service Award in 1998 and the New York State Bar Association's Award for Excellence in Public Service in 2004.

Transcriptionist: Jackie Thipthorpe | Session: 1

Interviewee: Leonard Koerner | Location: New York, NY

Interviewer: William Cook | Date: January 3, 2016

Q: This is William Cook here today for the New York Preservation Archive Project oral history interview with Leonard Koerner. The date is Monday, January 4, 2016. This interview is taking place at the Archive Project's offices at the Kress Foundation.

Thank you very much Mr. Koerner for joining us today and for sharing some of your stories about preservation law.

Koerner: I'm happy to do it. So as you know, what precipitated the law, which is now celebrating the fiftieth anniversary, was the destruction of the Penn. Station [Pennsylvania Station]. Then in 1965, they passed the Law. Generally speaking the Law was met favorably by people in historic districts, like Greenwich Village and Brooklyn Heights, because the people recognized that it was in their own self interest to be in a district which is preserved, because then their properties would increase in value and the designation redounded to the benefit of everybody else. The single designations however, were more of a problem because you were singling out properties right next to other properties, which could develop to the highest and best use.

So, as you know, two years after the Landmark Law went into effect we designated Grand Central Terminal. Everybody knew this was going to be a problem because the railroad—you probably don't remember this, you're too young. But railroads at this point were not doing too

well as passenger operations, and Penn Central [Transportation Company] in particular was doing very badly.

Indeed, a year after we designated Grand Central Terminal—

Q: That was ‘75, 1975?

Koerner: Oh, we designated them in ‘67.

Q: Sixty-seven. Thank you.

Koerner: But a year after we designated them they were in bankruptcy reorganization. The individual who was appointed was the former judge of the Court of Appeals, Judge [John] Van Voorhis. I’ll get to that later, but he issued a scathing report about the designation. He indicated that Landmarks should let them build this fifty-five story building on top of Grand Central and knock down the existing building, because Penn Central needed it for its cash flow.

So everybody understood this was going to be the test case. It was a high profile case. And so the question for the lawyers, including Dorothy [M.] Miner—who I know you’ve heard of but who has passed on. She was a fantastic lawyer—was how best to structure the argument. At the time, what we all decided—I wasn’t involved in the Court of Appeals, Nina Gershon was then the lawyer the Appellate Division, and the person who tried it was Jim [James] Nespole—we wanted

to make it analogous to something that everybody could understand. What comes to mind is the police power in applying zoning rules.

Up to the time when Grand Central was designated, there were about five or six cases in the Supreme Court that recognized controlling real property as a proper exercise of the police power. One was *Hadacheck v. Sebastian*, which is an old case dealing with brick kilns in Los Angeles, but was an important one because there they essentially put the brick kiln industry out of business in Los Angeles. The Supreme Court said, even though it reduced the value of the property by ninety percent, it was a worthwhile aim. It was to protect the public and you could do it.

Then a short time later, they had the Pennsylvania Coal Company—and all these cases came up in [*Pennsylvania Coal Company*] *v. Mahon*—where people who owned property who want to preserve their sub-surface rights and then sold the property on top of the surface. Pennsylvania passed a law and said, "You can't extract sub-surface minerals when there are buildings," which essentially made the contracts worth zero. That the Supreme Court said you couldn't do. So you had the reduction value on one hand, and rendering it zero on another. So you couldn't do that.

Q: If I recall correctly, the Penn Coal court held that a regulation was not a taking as long as it did not "go too far."

Koerner: That's right. But the Supreme Court said you can't go any further than zero, because that's essentially what you said you were doing *[laughter]*.

Then came the first case that we were relying on, and this is the Euclid case in the ‘20s, which was the first time that a town outside of Cleveland passed a zoning law where they wanted a planned community. The owner was unhappy, he had a large acreage, and he wanted to do what he pleased, and he said, “You can’t do that. You’re taking my property from me.” The Supreme Court said, “No, you can have a zoning plan for the greater good.” So we’re getting closer to where we want to be.

Then in *Queenside Hills Realty Co. v. Saxel* in the ‘40s—this is another case that we relied on—where a lodging house in New York City complained because they had to put in a sprinkler system and it would have taken off thirty percent of the value. The Supreme Court said, “Sorry, we don’t care. That’s too bad.” Again, you can see you’re not entitled to your highest and best use.

And then in *Berman v. Parker*, which you probably are familiar with in D.C., that was, for us, a significant case because there what they said to the department store owner, “This is a law designed to make Washington more beautiful. It’s an aesthetic law.” The Supreme Court said, “That’s a proper exercise of the police power, and aesthetics can be used under the police power. And Mr. Berman, whoever the owner was, we’re going to give you condemnation money but you have to go away with your department store.”

So you put all these principles together and you end up with a case right before Grand Central Terminal called *Goldblatt v. The Town of Hempstead*. This was a gravel and mining and sand

excavation program in Hempstead, which is a part of Long Island. The town felt that this business was incompatible with what they're trying be, really a suburb. So they essentially put him out of business and said, "You have the land, you have to bring it up the water table and use it for something else." It essentially took away most of their value. They went up to the Supreme Court, and the Supreme Court cited that Hadacheck case, the one involving the brick kilns, and said, "Look, we said you can be reduced in value, you can still earn a reasonable rate of return, go away."

So that was the stage for the Grand Central Terminal case. I did not try it, two other people did. But the judge who tried it was the judge [Irving H.] Saypol. He hated the concept of single designations. He made two comments, that I remember when I read the transcript, which indicated that he clearly was not going to support the designation of Grand Central.

Now this case started about, I'd say '69. One thing he said was that he already thought Grand Central Terminal had been built on. Now if you go to Grand Central Terminal there is a building behind it. It used to be Pan Am and now it's MetLife. So he was being sarcastic, meaning they built to highest and best use so why are you picking on these people. Second, he relied in great part on this Van Voorhis report. I told you about the bankruptcy reorganization. He quoted a line saying, "The golden age of railroading is gone. Why are you making them keep this? They're losing money. Go away." The second thing is we brought in, and our attorneys brought in, a Yale historian, an architect, an old historian, and he testified. I guess this was not good. He said that when he comes into the train in Grand Central his heart palpitates from excitement. And Judge

Saypol's comment is, "I guess you saw the homeless outside the bathroom." So we had a pretty good idea things weren't going to go too well.

Before the decision is rendered two things happened. I'm trying to give you a chronology and then we can talk more. One is a case of Sailor's Snug Harbor [*Sailors' Snug Harbor v. Platt*] and it ended in 1968—you may know something about that—which involved four Greek revival buildings on Staten Island. There was only one other Greek revival example in the country and that was in Philadelphia, so it was very important, and it was designated. But the owner wanted to do away with them and replace them with modern dormitories for the seamen that came off the boats, and also provide them with a new recreational area. So he wanted to knock them down and he sued. Again, there was this hostility to the designation. It was a not-for-profit, and the lower court judge that the court they would not require the non-profit to affirmatively maintain it. It was unfair burden to place on it. Two, they should be able to choose the way they want to build these not-for-profit buildings for the benefit of seamen. The Appellate Division upheld the law—this is a general attack on the law—and said that first of all, the affirmative maintenance burden is inherent in the land legislation. Second, just because you lose your waterfront view you could build the four buildings somewhere else and still maintain the buildings. It's it enough. So they remanded the case to go back and see if they can show additional hardship. They couldn't, so the buildings still stand today. So you had that one case.

But the second case, which affected the lower court decision in Grand Central Terminal, was something called *Lutheran Church* [*v. City of New York*]. Lutheran Church, I think it was the old JP Morgan property. I'm not one hundred percent sure. But they were in that building, I guess

much like the one you are in now, very, very, very nice. But they wanted to make an administrative headquarters for the Lutheran Church of America, so this little building wasn't going to do it and they wanted to build a mega building. We of course designated it a landmark and told them to go away. The Court of Appeals—and the time is important. In 1974, remember it was before the lower court decision in Grand Central—said, "You can't tell a religious organization they can't build something when it interferes with their ability to carry out their religion." So they found it, as applied to Lutheran Church, unconstitutional. That case was then cited, by the lower court judge using Grand Central Terminal, against us.

There was a second case you should know about, Fred [F.] French. Now this was a John Lindsay special. If you don't know Tudor City but it's on Forty-Second Street.

Q: I do.

Koerner: You do!

Q: In fact, I used to live in New York. When I first moved to New York I had a studio at Five Tudor City Place *[laughs]*.

Koerner: Then you know there is a park there.

Q: Yes.

Koerner: Well, John Lindsay was one of these mayors, he was a liberal mayor, and Helmsley [Corporation] took over this Tudor City, so you can see what happens. So Helmsley goes walking around Tudor City, and he sees this green area in the middle of Tudor City. So what do you think goes into Helmsley's mind? Build.

Q: Right. And there are two parks, right?

Koerner: Yes, so he just—

Q: On east side of 42nd Street.

Koerner: That's right. So he says, "This is an open area. I own it. It's a prime park." He wants to build, and of course, the community goes crazy because they thought this was the amenity for living in Tudor City. So Lindsay—this was during a fiscal crisis—you'll see this will tie into Penn Central. So this is during fiscal crisis so Lindsay, *[laughs]* he has the Planning Board designate it as a public park and in return gives Helmsley air rights.

Now, because of the Grand Central Terminal litigation, everybody knew that Grand Central Terminal was going to be a test case, so they wanted to give Grand Central Terminal something. So in '68, they created this concept, which now will establish air rights, but it was new then under New York air rights. So they said that if you have contiguous property, you can pass the rights over and develop somewhere else. Then in '69, they passed another amendment to the zoning resolution, just for Grand Central Terminal, that if it was in common ownership you

wouldn't be limited on how much you can transfer. You can transfer everything you want to any site and you can go across the street. They originally had a twenty percent limitation.

Q: Right.

Koerner: So with Helmsley, they had given him these air rights, but the problem is he has no other properties to which he can transfer them. So this was the case we lost in a lower court, we lost in the Appellate Division, we lost in the Court of Appeals. Now in the Court Appeals—in Helmsley's case not only did he want the park back, he wanted damages because we stopped him from developing the property over many years. But the Court of Appeals—and this will become significant—said that they're not going to let Helmsley sue for damages, because he never alleged it in the complaint and they're not going to let him raise it later on, so it's an open issue. There had been an earlier case called *Rottkamp* [*v. Young*] that said if there is an executive decision, that doesn't yield damages. You can't sue under the police power for damages. But it was open question as to whether legislation would do it. This will become important.

So now we go back to the terminal, and the lower court judge issues a very adverse opinion based on the report of the master and the fact that he feels railroading is over the hill, and Grand Central Terminal is now losing money. How can you expect them to keep up a terminal when they're losing money? Let them build a building. So we filed the Notice of Appeal. Now keep in mind there is this exposure to damages or at least it's an unknown issue. It's open.

So the new mayor comes in—and this where Jackie [Jacqueline] Kennedy [Onassis] gets involved. You probably heard about this. There's an issue of whether to pursue the appeal, because Penn Central makes a proposal that they will not seek damages if the city will not pursue the appeal.

Q: I didn't know that.

Koerner: This was during the time that the city was in fiscal extremis. This was when, I guess, Washington was telling the city "Drop dead." I was in the Law Department but I had not had the case. I took it over in the Court of Appeals. This is when Jackie Kennedy got involved and Kent Barwick—who was then at City Planning and later and then became commissioner at Landmarks—and through their pressure and public pressure they decided to take the appeal.

So again, we had to decide how to approach it. Everybody thought the most analogous way was to show that it was now comparable to zoning. We went to the Appellate Division, and it was a sharply divided court—three to two again—with the majority accepting the fact that this was an exercise of police power similar to zoning and saying essentially that Penn Central did not prove that they could not earn a reasonable rate of return because they could manage it better. Plus they said—and this was really important—the air rights had substantial value and that you had to impute rental value for the unit. They had to have a terminal. So you can't say you're losing all that money when you need a terminal anyway. Those are your other expenses not the city's.

The dissent however relied on Lutheran Church, and now French says one, individual designations are not favored by the Court of Appeals. It's like the lower court, "The golden age of railroading is gone, and you can't place a burden on Penn Central when they're in fiscal extremis because of the bankruptcy and you let the guy next door build to the highest." So you have a sharply divided court. But the dissent felt it wasn't a zoning case.

So then, the case goes to the Court of Appeals. We brief it the same way; it's comparable to zoning. This you probably may know about, Judge [Charles D.] Breitel is the presiding judge. Now you have to understand he's a very strong presiding judge. He rules the court with an iron hand. He's very smart. So we argue it, it goes fine, and then he issues his opinion. Now he has a number of grounds for his opinion but this is the one that no one argued. The one ground is the air rights have value. But the second thing he says is, one, the city is in extremis and difficult [unclear], and you have to take that into consideration—which of course shouldn't matter, whether it's a proper designation for zoning or other type of purposes. Then he says it's not a zoning case. So he dispenses with our analogy.

But what he says is, Penn Central as a railroad had a monopoly power. They got the right of eminent domain, they got the right to settle in the middle of the city in the most expensive area of the city, they had the right to have direct access to the subways and the trains, they had the right to have grants of property, they had the right to develop the property around Grand Central Terminal for their own benefit. They had all these rights, and they had all these benefits, and now it's time to give back. This was not our concept. No one argued this.

It was based on someone called Henry George. Henry George was a self-made economist, who lived in New York City and ran for mayor, in the late 1800s. Henry George believed you should have one tax in the entire city, a real estate tax. When government benefits the real property—let's assume you lived here and there's a park next door, and your property increased in value because of a park or because of a street, your property taxes go up and therefore everybody benefits. The trouble is no one had ever accepted this concept. I don't know where he got it from, he obviously was enamored with it, but he wrote pages about this. We were astounded.

So he renders his decision, we're pleased, and then they appeal as a right. At that time you could go up two ways. It was either by certiorari or as a right, and they went up by as a right, a Constitutional statute, and they said there is a substantial issue. We said it was a routine application of zoning principles, and the court of course took the case. But now came the question what do we do with Breitel's theory. We made a decision internally that Washington would never accept this.

Q: Right.

Koerner: So.

Q: Well, it had never been raised or argued by the lawyers.

Koerner: Also it was so far out. The idea that, because you got a benefit it's time for you to give back. So I wrote a letter. The thing is, as head of the office doing the litigation, we did a lot of work in the State of Court of Appeals. He's a very powerful guy.

Q: You're referring to your role as then Corporation Counsel's Office.

Koerner: As a Chief Assistant, and then Chief of Appeals. Then, I was the Deputy Chief of Appeals. I had to write a letter to Breitel explaining that, while we appreciated the decision, we're abandoning his argument. He then went to a conference in Philadelphia. It may have been after the Supreme Court decision in which he criticized us not defending his argument, admitting that it was well argued, but he's saying that this was a theory that should have been advanced. So he was not pleased. But it was a good thing we did, because in the argument in the Supreme Court the other side raised it and the judge said, "Well, they're not raising that argument anymore, go to your next point."

When the decision came down—I don't know if you had a chance to read the decision—but essentially what they said was this was a zoning case. The argument we made for zoning was, although it's not a single district, you can't look at it that way. You have to look at it as a comprehensive plan, and in that way, it is no different than a historic district or the Village of Euclid case for the whole area. We had thirty-one districts, four hundred designations at that time, so you look at the whole plan. The Supreme Court bought it. They also bought the concept of air rights and they felt, based on the record we had shown, they could earn a reasonable rate of

return. The dissent was unhappy. They thought we had discriminated against Grand Central Terminal and that it was very, very unfair.

It was sustained. And it was an important case because up to that time—and I'll now explain why after—there had been really only one other significant Landmark case in the country and that was in the city of New Orleans, in a case called *Maher v. The City of New Orleans*. That was in the mid-'70s. And that was a challenge to the designation of the French Quarter in New Orleans as a historic district. This owner had a single-family residence, and he wanted to build a multiple residence, said, "You can't tell me what to do." The court said, "Yes, we can." It noted that, "You had put your relative in that residence. You weren't even getting a fair rent. You can divide up the residence but you can't change it." Now the important thing about that case is that cert was denied. So it recognized at least the principles of Landmark designation, and okay for a district. But now Grand Central took it to the next step for individual districts.

Now let's get back to New York and then we'll come back. After the Grand Central Terminal case, there were a series of decisions, which showed how the momentum had changed from a number of judges feeling uneasy with the concept of air rights, and uneasy about single designations. The Society of Ethical Culture had a meetinghouse. It was a religious organization and they claimed they wanted to—as everybody, you will understand from these cases, they all claim the same thing. They want to build a high rise in Manhattan. Of course, if you build a high rise it's a cash cow. So they wanted to build a high rise, and they said they can't really do their religion [without this]. And the Appellate Division said, "You can still do your religion. You haven't shown you can't do it. Go away." That's 1980.

Then came this case, this is the Landmark case, [Church of] St. Paul and St. Andrew on the Upper West Side. It's a large church, which had a capacity of fourteen hundred. They went down to about eighty. They wanted to abolish the parish house and one other little building, and of course build the high rise, because they said they can't afford to keep up the church. But what they didn't do is they never went to the Landmarks Commission to ask for a Certificate of Appropriateness to show they had a hardship. They went right away and said, "You can't do this to us." The Court of Appeal said—keep in mind the Lutheran Church—Court of Appeal said, "No, you've got to go back to Landmarks and seek a Certificate of Appropriateness," which they never did. So that was a split decision but that was the high watermark.

Then came a very wealthy church on the Upper East Side. Were you—?

Q: St. Bart's [St. Bartholomew's Church].

Koerner: St. Bartholomew.

Q: Yes.

Koerner: So there they said, "Look, we have a community house that's old. There's a gymnasium and a pool," and they said, "We want to increase our community outreach." But you knew that was a joke, because if you knew who St. Bart's members were one single person in St.

Bart's could increase the community outreach for the homeless *[laughs]*. They went to district court, trial, lost, circuit, affirmed.

Then after that was Shubert Theaters. They argued that it was spot zoning because you're treating them differently than everybody else. They said, "No, this isn't spot zoning. This is a comprehensive plan. You got air rights." They said the air rights weren't valuable. And of course you know what they did, they sold the air rights, and they lost. They tried to go to the Supreme Court and lost that.

Then the interior, we had the Four Seasons in the Seagram building. They said, "You can't tell us what to do with the curtains." They said, "No, the curtains are part of your interior." They lost that. And then *[laughs]* we went—this was the ultimate dessert. There was a building on Broadway. Now Matthew Brady in the 1800s was a photographer. He photographed Abraham Lincoln. But his claim to fame was he started and developed a certain type of photography, I guess, which was famous then. He had a workplace in this non-descript building on Broadway, I think it was 305 or 300, and of course the owner goes crazy. Now we're telling him, he can't do anything with the building because Matthew Brady spent a few years in the building, we sustained that in the Appellate Court. Then the last two cases involved this tenement building on the Upper East Side, between Sixty-Fourth and Sixty-Fifth. So of course, the owner there is going crazy. It's a non-descript building but it's an example of tenement.

Q: This is First Avenue Estates.

Koerner: Yes! So it's an example of tenements. So when it first goes through the court system, they called out two buildings, because the Board of Estimate, which was then—I don't want to go through the policy, but the Board of Estimate was a body, which was later succeeded by the City Council. They had the power to approve Landmark designations. So they called out two buildings as a compromise, a political compromise, and the owner is going crazy. I think there are fourteen buildings here, give him two, sort of a bone. So we win that. He challenges it and we win it because he wants everything.

So then, years later, they take away the two from him and say that's really part of the plan. He challenges that and loses that. Then he goes to the district court and says, "Well, it's now a hardship," he loses that. So you can see since Penn Central they really haven't won a single case *[laughs]*. So that's what happened with momentum.

Q: But yet the same argument keeps being advanced against the Landmarks Law.

Koerner: Well, except lately—at least, I retired a couple of months ago—but lately there have been very few challenges. I mean it really has been so solidified now that the Commission's decisions really carry a lot of weight.

The one thing in the Grand Central Terminal case—which is what we said, and I think it turned out to be very important—we said, because we were asked this, and it became a footnote in the case and was probably the whole reason we won, because we were asked, "What if Penn Central

really was in extremis later on? Could they come back sometime later and show they have a hardship?" We said they could, and that principle is the one we do recognize.

That really is where we stand now. Landmarks Law has really, really been established. I remember, when Dorothy—we went through a whole number of cases with difficult issues. But when I left, the last couple of years, have really been nothing. You have really taken hold, I mean, all because of that case. If it had gone the other way, it would have been the other approach.

Q: Right.

Koerner: But if the present court had been there in 1977, I think it would have been a different result.

Q: Yes, a different outcome. Could I ask you a couple of follow-up questions?

Koerner: Oh, anything you want. I just wanted to give you—

Q: Yes. Thank you very much. There are a couple of things that you mentioned about the Transfer of Development Rights program. I recall, from my study of the Penn Central case, and listening to oral arguments, the argument was made that Penn Central had these available air rights. Yet, one thing that I have never understood is why Penn Central never exercised those rights.

Koerner: They did exercise some.

Q: Okay.

Koerner: There was a building across the street, Philip Morris, it was a cigarette company, and they bought it and they used it. You're right. They did not use a lot of them. In fact, what they then did—it's interesting you raise it—is they sold all those air rights to an individual entrepreneur who is now suing the city because there has been a proposal to build some enormous building on Vanderbilt Avenue right near Penn Central.

Q: Yes.

Koerner: They amended the zoning resolution to allow the developer, instead of using the air rights, to get favorable building to build if he did transit improvements. The owner of the air rights is upset because he now has lost one of his natural resources, and so he's suing. But he's claiming—of course the irony shouldn't be lost to you—he's claiming the air rights are now worth a billion. The very air rights that Penn Central had said were worth nothing he is saying are worth a billion dollars, and he has lost his main customer.

Q: Yes. That is the ultimate irony *[laughter]*.

Koerner: But they did use some of them.

Q: Okay.

Koerner: But there were some left, a couple of million left. Yes.

Q: Okay. Thank you for clarifying that.

Koerner: Yes.

Q: That is not made clear in the literature.

Koerner: Right. But the irony is so amazing.

Q: Yes *[laughs]*.

Koerner: They got significant money for selling them. Of course if you've been to Grand Central they have a lot of retail uses now that are doing pretty well I think.

Q: Right. The arcade space.

Koerner: I have gone to a couple of restaurants there. They certainly charge enough to do well *[laughs]*.

Q: Right. I think there is an Apple store in the space.

Koerner: Is it? Yes. Yes. Yes, there is an Apple store. Michael Jordan's—the basketball player, has a restaurant there. Cipriani has a restaurant, who is another—

Q: The Apartment, the Campbell Apartment Bar.

Koerner: That's exactly.

Q: The Tennis Club *[laughs]*.

Koerner: That's right. They're all doing pretty well and they used every inch of space.

Q: Yes. I was amazed when I learned that there was a Tennis Club on top of the building, or above the sping ceiling.

Koerner: I don't know if you know this, but the original plans called for them to build, I think, about thirteen more stories.

Q: Yes. I think I've seen and image of the drawings. Yes.

Koerner: Yes. Well, then the frame was made so it can support thirteen more stories.

Q: Yes. It looks very similar to the train station that was built in Detroit, which was called Detroit Central Station.

Koerner: Okay. I'm not familiar.

Q: But it's very similar to the plans that I've seen that showed what Grand Central could become.

Koerner: Right. But that wouldn't have generated—they didn't want to do that. It would have been expensive to do with the way it was—they would have to do it consistent with Grand Central Terminal. If you just put up one of these monstrous office buildings it's easy to knock it down, put it up and you make money.

Q: In fact, the Supreme Court stated in its opinion that Penn Central, in fact, had not proposed a smaller design.

Koerner: That's exactly right.

Q: Nor could it show that a smaller, more subtly incorporated design—

Koerner: They had no interest in that, because, in the end, the cost would have not made it worthwhile, because you would have to use the original limestone. There is no money in it. The money is in the height. I mean it would have generated—I think it was a tremendous—I think it

was five million dollars at that time a year. I mean, there's a lot of—of course, now it would probably be fifty million dollars a year, so.

Q: Right *[laughs]*. I read an interesting *New York Times* article that shortly followed your argument before the Supreme Court that referenced a statement made by your opposing counsel. You said, "That nothing is going to satisfy conservationists because they want the air to run free over the terminal."

Koerner: But that's true. I mean that's what Landmarks does. That's why it was so important to make it look—look at Satchmo [Louis] Armstrong's place in Jamaica, you look at this, you look at them all together and then—and the Supreme Court bought the argument. I was surprised. I was very worried about Breitel's position.

Q: The Supreme Court actually adopted your argument.

Koerner: Yes.

Q: So the strategy paid off.

Koerner: It did. It did. Breitel wasn't happy, but it did.

Q: I've also, in preparing for the interview today, read some of your interviews where you spoke about working with Dorothy [M.] Miner, and spending hours over documents.

Koerner: Let me tell you about Dorothy.

Q: Yes.

Koerner: In New York City we have a ton of agencies and every agency has a council, and maybe there are thirty-five. New York is so large it's like a city, thirty-five agencies. Generally speaking the counsels are reserved—they let the Law Department do the litigation and they're not involved. Dorothy came in, and she was the complete opposite. She was directly involved with a lot of litigation in a good way. She was smart, she was interested in Landmarks, knowledgeable. On Penn Central she was with me. Including the fact that, even after our argument in the Court of Appeals, on the way back on the bus she told me all the things I should have raised, for the next two-and-a-half hours.

Q: Well, that was probably helpful, too, because preservation was relatively new as a field of law.

Koerner: But she took an interest—but she was so different, because she was an involved counsel. That was very unusual, because most councils in agencies they just leave it to the lawyers to litigate, and they say, "Go do it." But she reviewed all our briefs. We had many meetings. She was terrific. I'm sorry you didn't get to know her.

Q: Yes, that's a regret of mine.

Koerner: She was terrific.

Q: When I spoke to Virginia Waters last month she mentioned—

Koerner: The same thing.

Q: —a long standing collaboration.

Koerner: Yes.

Q: What drew you to preservation law and eventually—?

Koerner: It was an accident. What happened was I was in Appeals as a young attorney. I had a title but Nina Gershon—who later became a judge in the eastern district, she was a magistrate—was there, and when Penn Central went up to the Appellate Division she was assigned the case and she argued it at the Appellate Division. But then she got another job, and so I was given the Penn Central case. Then at that time, I shortly thereafter became head of all the appeals, so I did all the preservation cases. I was directly involved in every one of them.

Q: There were a couple of interesting artist rights cases, or First Amendment cases. I'm thinking of one was—I believe, one involved the Brooklyn Museum.

Koerner: Yes.

Q: Was that the Andres Serrano case?

Koerner: No. The Brooklyn Museum was under a different mayor, it was under [Rudolph] Giuliani.

Q: Okay.

Koerner: What happened was, the head of the museum learned about an exhibit in London that had Damien Hirst. They had two things; they had these—I don't know how to describe them—transparent animals, where you could see through them, but they also had portraits. One was of the Virgin Mary with elephant dung, and then it had the breasts and vagina of women all over the Virgin Mary. Giuliani was offended by the exhbit.

Q: This is 1999, I think.

Koerner: Exactly right. You know who the judge was there? I'll get back to that. That's a funny story. Giuliani found out about this about a month before the exhibit, and went crazy because we funded the capital funding for the Brooklyn Museum, and we also paid them thirty percent of their operating costs. So he said, "I'm cutting out all their funding." Floyd Abrams was retained by the Brooklyn Museum, so he went into court quickly. We ended up before Judge Gershon, the very same lady who I got the Penn Central case from.

So I'm defending the closing of the—one of the things we were going to do is evict the museum, the second largest museum in the country. So I'm defending the closing of the museum. So we lost the move before Nina, Judge Gershon. Then I went up to the circuit and we had an argument. The judge asked me if I was going to take out libraries next, but there was no decision. They settled the case.

Q: Then the other case I had come across was called *Ward v. Rock Against Racism*.

Koerner. Yes. That was with William [M.] Kunstler. He was a famous Civil Rights lawyer. What happened was, there is a place in Central Park—I don't know if you know the band shell area?

Q: Yes.

Koerner: Oh, you do. Okay.

Q: Yes.

Koerner: But that's where they used to have concerts. Each year there was a group called The Police. I'm not a fan. I don't know who The Police are. But apparently, the one thing The Police are, they're loud. If you know where the band shell is, there are a whole bunch of apartments over looking this area, and I guess they were not thrilled with—each year these people would come and they wouldn't limit the volume. So we told them, "You can go there, we're going to

give you the permit, but we're going to monitor the volume." And of course, Kunstler gets so excited. They say their rights are being trampled on. It wasn't clear what rights were in peril, except we lost in the circuit.

So we went to the Supreme Court. It became a very big case because it was essentially limiting time, place and manner. That's what we won on. We could limit the time, place and manner, and it was an important case to that end. The only thing I remember is Kunstler kissing the clerk and then trying to make eye contact with Marshall, that friendly—you know, as if they go back, and Marshall telling him, "Not here."

Q: *[Laughter]* When you were describing your argument or referencing your argument before the Supreme Court in the Penn Central case there is this wonderful anecdote about you appearing without any notes and Corporation Counsel, Allen Schwartz—

Koerner: He did.

Q: —asked you if he could review your notes. Could you tell us a little bit about that?

Koerner: Sure. Allen [G.] Schwartz came in with Ed [Edward I.] Koch who—I don't know if you remember Ed Koch.

Q: Yes.

Koerner: So he came in—

Q: He was mayor.

Koerner: Right. He came in—and the timing is important—he came in in January of ‘78. The decision in Penn Central was in ‘77. So cert was granted at the beginning of ‘78. What happened was lawyers from the Wall Street came to Allen Schwartz, who didn’t know me, because he had just come into office. They asked to take over the case—it was a little insulting—saying essentially that it’s time now for the Wall Street to take over the case because it’s a big deal, Landmarks, Jackie Kennedy is involved.

So Allen Schwartz called me in and he talked to me, and then he told them that I was going to do the case. Everything was okay. I wrote the brief, he liked it, everything was fine, he didn’t change anything. We get to the Supreme Court, and Allen had never been to the Supreme Court so he asked if he could sit at the table. You have to picture this, so there is Allen and me at the table, just Allen and me. I don’t know if you know how big firms operate, but there were two firms involved. One was Dewey Ballantine, which is now defunct, and then there was a Washington firm.

Q: Was it Covington and Burling?

Koerner: Yes, Covington and Burling. So you can imagine—the Supreme Court there is this big table. Let’s assume this table [*refers to table in the room*] is twice the size and there’s a split. So

on their side of the table you've got all these books and, you know, leaf—and the pages, and cases and—

Q: Binders.

Koerner: —and these binders. And they've got partners in the back, and everybody is sitting there. So there is Allen and I and it's ten to ten and he asks, "Where's your briefing notes." And I wrote on a pad, "Mr. Chief Justice and members of the court," and he turned colors.

Q: *[Laughs]*

Koerner: He wrote me letter; he said, "I thought it was over." But he wrote me a very nice note after.

Q: Right. What people listening to the interview might not know is that that is the way an attorney introduces himself or herself to the Supreme Court. As a law student, you learn that very famous introduction. In fact, lawyers in law school are actually taught not to use notes whenever possible. And I know—

Koerner: Right. But that's unusual. People don't feel—that just was the way I always did it.

Q: Right. Well, having been an appellate law clerk, I always noticed when judges or justices were impressed. They were always the most impressed by attorneys who didn't come up with a single piece of paper.

Koerner: Right.

Q: It definitely makes an impression.

Koerner: But I've thought afterwards I should have told Allen in advance. It was a mistake.

Q: *[Laughs]* Well, when you finished the argument, did you have a sense of what the outcome would be?

Koerner: No. I knew that Judges [William H.] Rehnquist and [Warren E.] Burger—I wasn't sure about [John P.] Stevens, but the other two were really, really unhappy. And I knew that [Thurgood] Marshall and some of the others were—[William J.] Brennan [Jr.] in particular—were supportive, but I really couldn't tell. You know what it was, it was a new concept and there were a lot of questions about a church. There is a church near the Supreme Court. They keep referring to some historic church. I know what they were talking about, but they kept saying, "Would you let them go out of business? What would you do?" They asked me and I said, "If they can't carry on as a church, yes, they can go out of business and they try to reuse." I think they liked the answer, but there was no question that the single designation bothered all of them somewhat.

I mean, when you think about it, it is a heavy—now it's established. But you have a railroad in reorganization and bankruptcy and you're telling them they can't—I mean, I knew about—in some ways Grand Central was the best fact pattern in that everybody knew what Grand Central was. But it was also a bad fact pattern economically. They were in reorganization, so it was hard to say that they could do better. It's true, but you have a bankruptcy judge saying, "They're in trouble."

Q: Yes.

Koerner: When you think about it that was a pretty heavy lift. So when we got the decision we were pleased.

Q: Yes. When the decision came out, did you have an idea of what the Penn Central test would be?

Koerner: You mean how they framed it?

Q: Yes.

Koerner: To be honest with you, it just sounded like another way of earning a reasonable rate.

Q: Yes.

Koerner: I mean to be truthfully, I didn't know what they were talking about. It all was very confusing, because the only way Landmarks can operate, as I made clear, is by restricting buildings. There is no other thing they can do; otherwise, it's not preserving landmarks. Second, if they can earn a reasonable rate of return, what's left? I didn't understand what they were talking about. What is investment backed expectation? If you are designating a landmark you're going to undermine their investment. Of course, but that's true in zoning. What if down zone the Upper East Side, which we did years ago. Everybody's investment expectations are going to go down. What's the purpose?

Q: Any land use regulation would do that.

Koerner: Yes! Yes. I didn't know what they were talking about. The only thing that made sense was the economic impact, meaning can they operate viably that's all.

Q: Right. Right.

Koerner: I mean I didn't understand what they were talking about.

Q: Yes. I'm glad to hear you say that because I've read the briefs before, many times before, as well as the opinion and the three-part test that lawyers know so well today did seem to kind of be a creature of the court's own invention.

Koerner: Absolutely. I mean they cited Consby to explain what they were doing. But in Consby, you rendered the property unfit for the purpose of which it was intended. The guy had a farm, he had cattle, and when you got planes zooming in the cattle couldn't function. That's not what we were talking about. Landmarks by definition means limitation.

Q: Right.

Koerner: It made absolutely no sense. They must have written it to get a—I don't know why. You know they write things so everybody will sign off. It made no sense to me. Almost as much sense as Breitel adapting an unusual theory.

Q: Yes. I think, too, the Penn Central test is a good one to change the fact pattern and think about what different outcomes might be. I mean, say that there had been a successor in interest to the Penn Central company that had the specific intent to develop the site.

Koerner: Exactly.

Q: Not as a railroad station or transportation terminal, but specifically as an office building.

Koerner: That's exactly right.

Q: Even if that were the case, there is no guidance in the opinion about how that fact would be balanced.

Koerner: But it shouldn't make any difference.

Q: Right.

Koerner: Because the whole argument is the only way this is okay is by designating it as a landmark and considering all of it as one comprehensive plan.

Q: Right. Yes.

Koerner: What investment-backed limitation is there for this building if we down zone? That's life.

Q: Yes *[laughs]*.

Koerner: They argued that in the Upper East Side and we won that case in the Court of Appeals.

Q: Yes. Glad to hear you say that, that clarifies a lot for me. Back to the decision point you mentioned—I just think this is fascinating, and I didn't notice that there was a debate about whether the city would appeal.

Koerner: A very serious debate because of the damage issue.

Q: The damage issue. I wasn't aware of that deal that had been proposed.

Koerner: Yes, I'll go into a little more detail.

Q: Yes.

Koerner: There had been two cases involving the—you don't remember this; it was before your time, but the Metropolitan Opera was in a historic building. It outgrew its place and now it's at Lincoln Center, as you know. The building was outdated, and so of course they wanted to knock it down. There was all sorts of legislation telling them you can't knock it down. The Court of Appeals, Keystone One, Keystone Two, said, "Are you out of your mind. They have to be able to knock these buildings down. You can't just tell them what to do with the real property. This thing is outmoded."

So essentially, what they said was you have to give them something. It's called condemnation if you wanted to knock it down. But what they left open was the issue—and this is what I talked about this *Rottkamp* case—can someone sue for damages for the wrongful exercise of the police power. Now *Rottkamp* involved a Long Island commissioner trusting a property owner, undeservedly, because he didn't want to develop, which he should have been able to develop.

But the Court of Appeals said essentially, "It's a decision of a commissioner. We're not going to yield damages." But in Fred F. French they left open the issue of damages. So that is what drove, in this period, in the Appellate Division—which was about 1976, I think, because '75 ended the

lower court. So the Appellate Division was about end of ‘75, ‘76. The city—you won’t remember this—but the city was in desperate fiscal—they couldn’t pay their bills and they had to get bailed out. They had to set up some mechanism so they could borrow money. They wanted federal aid and they couldn’t get federal aid.

Q: Right.

Koerner: I argued a case, actually, in the Court of Appeals called *Flushing National Bank* [*v. Municipal Assistance Corporation*] where we stopped paying our bonds and Breitel said, “No, you can’t do that.” It was a billion dollars worth of bonds at the time. There was a large amount of money. So this was a serious concern and Jackie Kennedy got involved and Kent [L.] Barwick who was with the city and other people and they put a tremendous amount of pressure on the city, but yes, it was very touch and go.

Q: Mayor Koch was mayor at the time that decision—

Koerner: No.

Q: Or, no.

Koerner: Koch came in after the Court of Appeals, before the Supreme Court was arguing it. [Abraham D.] Beame was in at the time. Beame was an accountant by trade and was concerned. I mean, they were holding up payrolls. It was bad. I must have argued five to six cases where we

were being very creative with the budget. I think we were merging capital and expense. You're not allowed to do that, and I was arguing you can do these things. I mean it was a terrible, terrible series of cases.

Then there was another one involving the Hyatt trying to get—I mean, the whole thing was a mess. That's why there was serious consideration not to appeal the Grand Central decision. The corporation counsel at the time was considering it.

Q: That was Allen Schwartz?

Koerner: No, [W.] Bernard Richland.

Q: Okay.

Koerner: Richland was corporation counsel. But public figures including Jackie Kenney and Kent Barwick met with elected officials and presented the case as to why he should appeal.

Q: Yes. I love the famous photograph of Jackie Kennedy Onassis marching with—I think Philip Johnson is in the picture, Mayor Koch.

Koerner: Oh, Yes.

Q: It's a black and white photo in front of Grand Central.

Koerner: That was after. She took a trip for the argument. She rented a train to go down to Washington.

Q: I didn't know that. So she attended the oral argument.

Koerner: I guess, I mean, I didn't pay attention to her but I guess.

Q: *[Laughs]* Yes, you would have been facing the other way.

Koerner: I was facing the other way.

Q: Yes, you would have been facing the other way. *[Laughter]* That's a good point.

Koerner: She did take a train, the Kennedy train. They had money, as you know. But it's a good thing she got involved or we may not have been talking about this building.

Q: Yes.

Q: Yes. Thanks for sharing that. I was never aware that there was this decision point that could have gone either way.

Koerner: Kent Barwick was involved, too. He was with City Planning. There are people in City Planning who knew about this.

Q: Yes.

Koerner: This was also before Dorothy came, I believe. I think she came just about this time.

Q: Yes. Had you ever worked on a preservation law case prior to the Grand Central litigation?

Koerner: No. We didn't, to tell you the truth, except for Sailor's Snug Harbor. I helped with Lutheran Church. [Alfred] Weinstein argued. I helped him but only indirectly. That's what I'm saying, we had very few cases because they were mostly districts and the district people were happy campers. You know, Greenwich Village, "Oh, you want to designate my tenants, go right ahead." Have you been to Brooklyn Heights?

Q: Yes.

Koerner: Same thing. If you went there, "That's great!" *[Laughs]* They're all happy. Or where my brother lives in Forest Hills, "Yes, sure," because I benefit, he benefits, you benefit. It's a planned community of Tudors and everybody benefits.

Q: Right.

Koerner: It's the single ones that really, really—there were a bunch of people who also got very upset, where they were told they had to maintain them and they didn't have any money.

Q: Yes. That's a big part of a good preservation scheme—

Koerner: Exactly.

Q: —is that you have to have some sort of affirmative maintenance requirement.

Koerner: When you are the one in the house doing it, it's a little more of a burden *[laughs]*.

Q: Yes. No, that's a—

Koerner: Remember the farmhouse on Staten Island? I remember Dorothy got—there was a farmhouse on Staten Island where this issue came up. I think they eventually worked something out. But, I mean, they were very upset because it's a very old, decrepit farmhouse, and we said it was one of a kind on Staten Island *[laughs]*.

Q: Yes. Virginia Waters mentioned that house.

Koerner: Yes.

Q: I think it may even be 17th Century.

Koerner: Yes. It needed all sorts of work, and we're saying put in the work, and of course it's not my money *[laughs]*. You know, it's not coming out of my bank account. I don't think it was a wealthy—I think they tried to find people and find if they could get some money, but I think there was a problem.

Q: I think that issue is still live.

Koerner: I bet it is.

Q: I'm sorry I can't remember the name of the house.

Koerner: No, I know what you're talking about. I know. It was an issue when I was there and I had to appeal. But I remember, it's a constant recurring problem because unless you get a not-for-profit to give them money the owner has two choices. If the owner doesn't have the funds, they can't fix it up, and they have to sell it. But I'm not sure a new person wants to own a farm on Staten *[laughs]*—

Q: There's not a lot of farming on Staten Island these days.

Koerner: No. I mean if you've seen the development there, it's rather unseemly. It's anti-landmark if I may use that term *[laughter]*.

Q: One of the great things about this interview today is that you're not just someone who would describe themselves as a preservation lawyer. You've handled so many different types of cases, of which preservation is a small part. But in your experience, and in the preservation work that you have done, what do you think the biggest barrier is, that you've encountered, to understanding preservation law?

Koerner: For me?

Q: Yes. Well, just generally. I often—when I tell someone what I do, "I'm a lawyer at the National Trust for historic preservation," even when I say that to maybe a lawyer or a judge they'll say, "What is that?" I'm often surprised even in those circles there's not—

Koerner: People don't understand the process. They also don't understand that you can ameliorate the hardship if you can show it. They think the Commission just acts arbitrarily. They don't understand the whole process. To me, that's the biggest problem. The public doesn't really understand what goes on. They think we just pick these places out because it doesn't cost us anything and it makes us feel good.

Q: Yes.

Koerner: They don't realize you can apply for a Certificate of Appropriateness where there are hardships and the Commission will grant them.

Q: Yes.

Koerner: I mean, it was Beacon Theater—do you remember the Beacon Theater on the Upper West Side?

Q: Yes.

Koerner: There was a classic example where they want to pull out the seats and change some of the interior to make it more amenable so they can have bigger groups there. In fact, I think Jerry Seinfeld is coming there for about six weeks. The whole idea was to make it more amenable to get more acts in there, so they can pay the way, and they granted it. Of course sued to challenge that, but it was held to be premature. To me that's the biggest—it's explaining to the public, you're not just a bunch of rich people trying to preserve that because that's what you do. I'm not sure everybody understands it *[laughs]*.

Q: Yes. Yes. Well, I think that's the problem for the movement.

Koerner: Because it's always associated with Jackie Kennedy types, who can go to East Hampton and they don't have to worry. They don't care what it costs because they can just move wherever they want. They're not stuck in some place with an affirmative obligation of repair.

Q: Yes. Well—

Koerner: I remember there was also one in Fort Greene, where the guy had some building and the windows came up, and he *[laughs]* had to fix the windows according to the same whatever it was. I think it was some monstrous cost. I understand it but I'm not sure people like him really understand what we're doing.

Q: If you were to kind of trace the level of support for preservation under the different mayors under whom you served, could you identify a mayor—

Koerner: Koch.

Q: —as being the most preservation friendly? Koch.

Koerner: I think so.

Q: Okay.

Koerner: I think some of the others. I mean I think Giuliani—you know, Giuliani fired Dorothy Miner, so I would have to say he's hostile.

Q: Okay.

Koerner: He wanted development. I think [Michael R.] Bloomberg was indifferent. But Koch was a terrific supporter—and actually was a very good mayor—just a terrific supporter. Put in

very good people, Kent Barwick, Gene Norman, very, very good people in the position. They felt their mission was to support Landmarks, and of course they had Dorothy who was equal to a commissioner.

Q: Yes *[laughs]*.

Koerner: I think the others were supportive but not to the extent. Let me just say this; you should be very glad in your current position that Ed Koch was mayor for twelve years. If Giuliani was there, a lot of the stories I've told you today, St. Bart's, the others, I think would be very different.

Q: Yes. I agree with you. In your opinion, why would that be so? How would that point of view be exercised?

Koerner: Because some of the mayors, Bloomberg and Giuliani, felt that development was more important. If St. Bart's wants to put up a residential or an office building in New York, seventy-five stories up, or St. Paul's wants to put it up it will add housing to the city and in return you knock down a parish house. Who cares? Now, I think it's important, so do you, but I'm not sure, if St. Bart's or St. Paul's or any of these others, or The Society of Ethical Culture wants to build a high rise and bring in tenants, they wouldn't care. They were pro development, as you could figure out.

Q: Yes.

Koerner: I mean Bloomberg is a very wealthy businessman and that's the way he sees everything, the cost of doing business. Business people are inherently different, they are really different. As I said, be glad that Koch had twelve years because those were the twelve years that we made all the laws for the most part.

Q: Yes. That's important to know. Could we take a short break in case—I'd like some water?

Koerner: Yes, sure, whatever you want.

[INTERRUPTION]

Q: Leonard, we've been referencing the Landmarks Law a lot during our interview today. If there were any changes that you would make to the Landmarks Law what would they be?

Koerner: I think the Landmarks Law is fair right now. But I know there have been complaints about the amount of time that the Commission takes to hold hearings and render its decisions. There ought to be a way they can get more money so they could staff it properly so people can get quick decisions on their applications.

Q: So, in other words, no specific changes to the way the law operates, but perhaps change the way that it's administered.

Koerner: No, I don't want to change the law or the way the law operates too much because it's now be sustained and the Certificate of Appropriateness has been found to be a due process procedure. And so when you start changing things you often will start off with more litigation, and New York is a litigious society.

Q: Yes. But it's also one of the reasons why New York has the best-developed body of preservation case law in the country, probably the world *[laughter]*.

Koerner: Good point *[laughs]*. That's one thing I've learned being a litigator in New York through my career is that you can't do anything New York without there being a lawsuit.

Q: Yes.

Koerner: You can't place a shelter. You can't do anything.

Q: Yes. During our break you mentioned different paths you could have taken in your career, different jumping off points, but what has kept you interested in the work that you've done for the city? I know that you had an interest in public policy when you chose not to pursue an accounting career after college and went to law school.

Koerner: I like policy, but most of all I like working with the people who are dedicated to public service and the responsibility you are given is total responsibility and there are some big issues. I found it all fascinating.

Q: Yes.

Koerner: I mean the biggest disappointed was my attorneys, it was difficult sometimes to get them raises during fiscal problems, but that's true with every organization, not-for-profit or public organizations. That's the downside.

Q: Yes. Can you foresee a new type of preservation battle in New York?

Koerner: Not in New York, but if the Supreme Court keeps the current membership I don't think anybody can be certain that there will not be some changes if the right fact pattern came along. The balancing test leaves everything open to whoever is going to use it. Right now, it's a conservative court depending on how [Anthony M.] Kennedy the votes. I mean we're hopeful that all the principles have been established, but.

Q: In Penn Central, yes.

Koerner: In Penn Central, but you never know what comes along.

Q: Right. Right. If you were giving advice to a young preservationist or a lawyer who is interested in pursuing a preservation career—it's obviously a fairly narrow niche in terms of legal work—but what advice might you give to that person to help start that career?

Koerner: You mean in law?

Q: Yes.

Koerner: To try to do internships for not-for-profits, like yourself, where they do preservation work, because once you show you are interested in a particular specialty and you've stuck to it you are more inclined to be considered for a position. I mean we have positions, housing, preservation, development. Landmarks is a very small agency; they don't hire many people. But the Zoning Commission, the Planning Board, they all hire people. So if you can get internships at any of these parts that would be an advantage.

Q: There was a law professor, at NYU—correct?—who pushed you gently towards working for the city.

Koerner: Well, the law professor is the one I had, Norman Redlich.

Q: Okay.

Koerner: He was a Professor of Constitution Law, and then he came to the Law Department as the first assistant under the Corporation Counsel. I was thinking at the time of taking a fellowship to set up a law firm on a Native American reservation. At the time my new wife wasn't crazy about going to a reservation, so I told Mr. Redlich and he said, "Why don't you

apply to the Law Department?" He had known me. I had done very well in Constitutional Law and some of his other courses.

Q: Yes. It's nice to have that kind of mentor in school.

Koerner: He wasn't exactly a mentor except he knew me to the extent I took his courses, and I guess when you get the highest grades you sort of stand out.

Q: Yes *[laughs]*. We've discussed the theme today in talking about the Penn Central case about how analogous preservation regulation is to zoning regulation. That being said, why do you think preservation law continues to be singled out as being different?

Koerner: Because people have a hard time with single designations. If you talk to people, just in general conversations, the idea that you can stop someone from developing and let the neighbor go and get the highest and best use just troubles people. They also have a hard time with the affirmative obligation of keeping something in good repair and not letting them develop to the highest and best use. As I indicated to you, districts are more understandable but that's because their self-interest is furthered by a district because they benefit by having a general [designation], whereas the individual doesn't benefit. That's the big difference. None of these people are happy.

Q: Have you ever been involved in preservation issues outside of your government work on a pro bono basis?

Koerner: In my town in Chatham, they were setting up a Commission and I advised them how to do it.

Q: Chatham, New York?

Koerner: No, this is Chatham, New Jersey.

Q: New Jersey. Have there ever been preservation issues in your town that have gotten your attention *[laughs]?*

Koerner: No.

Q: Well, Mr. Koerner, I think we are finished. I just have a couple of follow-up questions. Have you ever archived your Penn Central or other preservation law cases?

Koerner: We archive all of the—they're called Cases in Points.

Q: Okay.

Koerner: But the one thing I would alert you to is the fact that someone took out the Case in Point for Penn Central and did not return it. But we have the Case in Points for all the other cases.

Q: That's held by the Office of Corporation Counsel?

Koerner: Public library. But they're also available in the New York Law Institute, the City Bar Association, the New York County Lawyers all have all of our landmark cases on microfiche that I guess are available. So all of the papers submitted are in briefs and the record filed. The motions may not be filed.

Q: Well, I appreciate your time today.

Koerner: Well, it was nice meeting you.

Q: And thank you for sharing your recollections.

Koerner: Nice meeting you.

Q: Thank you.

[END OF SESSION]

Transcriptionist: Jackie Thipthorpe | Session: 2

Interviewee: Leonard Koerner | Location: New York, NY

Interviewer: Liz H. Strong (Q1), Anthony Bellow (Q2) | Date: July 13, 2016

Q1: Today is July 13, 2016. I'm here with Leonard Koerner. My name is Liz [H.] Strong, and this is for the Through the Legal Lens Oral History Project, for the New York Preservation Archive Project.

Q2: And I am Anthony Bellov and I'm capturing it on video.

Q1: Great.

Q2: Ready? [Claps]

Q1: Let's start by talking about the *Penn Central Transportation Company v. New York City*. You took this case when it was in the Court of Appeals. You gave us a detailed background on it when you were talking with Will [Cook]. So for the video, I would just like to focus on what made this case a turning point for Landmarks Law and for the Landmarks Preservation Commission.

Koerner: The reason the case was important is because it involved a single designation. Before this case went to court, the Supreme Court had issued about six decisions dealing with the exercise of the police power as it relates to real property. In those decisions, essentially, what

they said was they would recognize the exercise of the police power, which would restrict an individual's ability to develop the property from the highest and best use to reasonable rate of return.

So they put a nuisance—a brick kiln out of business in Los Angeles. They made a boarding house in the Bowery put in a sprinkler system. They upheld a zoning map in Euclid, Ohio, for the first time, essentially saying that aesthetics are a proper exercise of the police power. Then finally, *Goldblatt*, they put a sand and gravel extraction company out of business in the Town of Hempstead, saying you can do other things with the property.

Each of those cases involved large areas of property. The problem with the single designation is it only involves one single property, in this case the owner of Grand Central Terminal. Everybody, for example, can see the value of historic districts. If you go to Greenwich Village or to Brooklyn Heights, the property owners there want designations because it benefits them as well as burdens them. But with a single designation it only burdens the owner of Penn Central. Indeed, when the lower court judge had the case in '69, I did not handle it, but it was Irving Saypol—and this is just parenthetical, he was the one that worked on the case that sent the Rosenbergs to the chair. But Irving Saypol was extremely, extremely hostile to the city's position, but it goes to the problem with a single designation.

His first comment during the case was, "I don't understand what the fuss is about. I thought they already built on top of Grand Central Terminal." He was referring to the building right in back. If you face the terminal going north, there is a building directly in back. It used to be PanAm,

before your time, now it's MetLife. The second comment is—we put an expert on from Yale University, and he testified as a historian how important Grand Central was. He also said when he took the train into Grand Central Terminal, his heart went pitter-patter. The judge commented, and interrupted him, saying, "You must have gone to the bathroom where all the homeless hung out in the station." So it was clear he was hostile, and when the case was over his opinion reflected that.

Now what made the Terminal case so difficult was that Penn Central was in bankruptcy. Passenger service was waning, people were starting to use planes, and Penn Central losing money. The concessions were not doing well, and the master, Van Voorhis, who was a former judge of the Court of Appeals, in his report on the bankruptcy reorganization supported allowing Penn Central to demolish Grand Central Terminal and build the office building, because he determined that it was necessary for the cash flow. So that was the biggest problem.

What we wanted the court to do, when we went to the Court of Appeals, we wanted them to understand that this was no different than a zoning case. You couldn't look at a single designation. You had to look at, then, four hundred single designations and thirty-one historic districts as a comprehensive plan. Then it's no different than the zoning case, as you have in Greenwich Village. The problem was that Judge Breitel in his opinion said it's not a zoning case because you're singling out a particular building. Breitel had to find a different theory upon which we would prevail.

He understood the air rights concept, and he found they had some value. But his biggest argument, and one I will never be able to explain, was that he treated Penn Central differently than other private owners because he said, "As a monopoly, they got benefits from the city." Essentially, they were allowed to use eminent domain. They got to locate in the center city, where the subways and trains were. They got to develop all the property around Grand Central Terminal, which if you go there, there are a whole bunch of hotels. Then they were called different names, but they were all magnificent hotels. And they benefited from that. They got rights of way, they got easements, and therefore essentially he said, "It's time to give back."

This was a concept we didn't argue. It was a concept based on a late nineteenth Century economist, Henry George. The problem is, while there was a Henry George Society, he had no followers. His theory was that there should be only one tax in the city of New York and that should be the real estate tax, so that if the city builds a park near your property, and your property benefits, your taxes go up and it redounds to the benefit of everybody in the city. As I said, the problem with that theory is no one followed it. It was the primary basis for Judge Breitel's opinion.

He also made another statement, that later on was difficult to follow, and he said, you have to consider the fact that the city was in fiscal distress during that period. But we felt that the city's hardship shouldn't be a basis for determining whether someone can use their property. That's what he said. So when the Supreme Court took the case, we wrote a letter to Judge Breitel. I asked my boss to write it. He asked me to write it, and since he was my boss, I wrote it. Essentially, what we said was we thanked him for his decision, but said we're not using that to

defend the case. We did not mention his theory at all in the brief to the Supreme Court of the United States. We went back to the zoning analogy, and the Supreme Court really adopted our analogy.

Q1: The zoning analogy, as linked to a designation for aesthetics, and that being a reasonable burden to put on them, could you elaborate on that just a little bit how those are all connected?

Koerner: Yes. There was a case, Berman against Parker, in the ‘50s, and it was the first case after zoning to really review aesthetics. They wanted to develop an area of Washington, D.C., which at that time was undeveloped and they had uses they were not happy with, and so they did an urban development plan. The issue which went to the Supreme Court was can an urban development plan, which just emphasizes aesthetics, be a proper exercise of the police power. They said it could. That was the basis, along with the zoning case, for us to argue about the comprehensive plan, and this was no different than zoning.

Indeed, when the Supreme Court reviewed the case involving Grand Central, they mentioned the individual designations, the four hundred and thirty-one districts, and the majority said that that made an analogous to zoning. They did a three-pronged test, which I don’t understand but I’ll tell you what it is. They essentially said you had to look at the character the governmental act, and you had to look at the economic impact, and you had to look at the investment based expectations. But once you say something is the proper exercise of the police power, it means the property owner can’t do with it what he or she wants to do. The investment-backed expectations are gone. [Laughs] I really don’t understand the test, but I’m happy they did it.

Essentially, what they found was that that air rights had value, and that Penn Central had not managed the concessions properly, which was a finding fact made by the Court of Appeals affirming the Appellate Division. The Supreme Court was not going to alter that. So once you say with better management they could do better with the concessions, they couldn't touch that in the Supreme Court. Essentially, what they argued in the Supreme Court is that they were being singled out and the dissent agreed. The dissent's problem was exactly how I characterized it. How can you take one building and they tell them they have to undertake a burden for the entire city? Why not just take it by eminent domain, raise the taxes a dollar and a dollar-and-a-half for each person, and that is a better way to do it, and that's what Rehnquist wrote, and that was the big problem.

The irony, of course, is that if you look at it now, as you know Penn Central was able to use some of its air rights. More importantly, Penn Central sold the rest of its air rights, as you are probably aware, to another company. That company now owns a lot of air rights. The zoning resolution was amended to give the developer, S.L. Green, the right to build this enormous building right near Penn Central. And if he did improvements to the transit system, he didn't have to use the air rights. So now the owner of the air rights is suing him and the city, claiming that they're very valuable air rights, which they originally said was worth nothing is now extremely valuable.

The other irony, as you may not know, the concessions in Grand Central Terminal are the most valuable concessions in the United States. The amount of revenue they generate per square foot

is more than any other place. Apple is there, Michael Jordan has a restaurant there, and if you eaten there and paid the bills that they have, you know that they are doing quite well. So everything we represented came true.

Q1: That must be very satisfying. I'd like to look at that case, and your experience of the appeal, from a different perspective, less the academic side and more the personal side. I'm wondering if you can take us into the court room with you and just share a memorable moment from those discussions and that time.

Koerner: Well, I'll give you some of the history. When I took over the case after the Court of Appeals, I had the case in the Court of Appeals, a new mayor came in, and that was Edward Koch, who you may have heard about. He brought in a new Corporation Counsel. So the Corporation Counsel came in January, and we were getting ready to file a brief in the Supreme Court, and it was January '78, in response to the brief of the petition. A number of law firms approached Allen Schwartz—remember he was a new corporation counsel—and asked to take the case over—I was a rather young attorney—and they were saying it's time now essentially for the big firms to do the job. Allen Schwartz pulled me in, and interviewed me, discussed the case, and essentially he told them no. That took a lot of guts, because I worked on that case with one other person, Dorothy Miner, and Kevin Sheridan supervised us. We didn't have the staff a big firm would have, and he had faith in our ability to do the work.

I have one funny story [laughs]. So Allen read the brief and liked it, and he wanted to sit with me in the Supreme Court of the United States. Now the Supreme Court of the United States has a

table just about the size of the table in this room, which is enormous. Half the table is for the petitioner, half the table is for the respondent. The petitioner was represented then by a major firm in Washington, which I think was Covington and Burling.

If you've ever seen a big firm work, they're very detailed oriented, so they fill up the side of table. That half side is filled up with every piece of paper, there's notes, there's briefing books, there's everything you could imagine. So Allen is watching this, and I guess he didn't know how I do cases. I don't use notes. I didn't bring the brief, I didn't have the record, and so at ten to ten he said, "Are you going to take something out?" They gave you a pad, and on the pad I wrote, "Mr. Chief Justice, may it please the court," and he turned ashen. he told me afterwards he thought his career had ended. Fortunately, it all went okay, and we all became good friends and we worked together for many years.

Now you asked about the oral argument. The one funny thing during the oral argument was, as the petitioner's attorney is speaking, he's having a discussion with I think Justice Stevens, and there was some sympathy for his position there. All of a sudden, Justice Marshall says to him, "How did Penn Central get all this land right in the center of Manhattan?" Then he pauses, and then Justice Marshall said, "Did you steal it fair and square?" Right there I knew at least we had one of the nine votes.

Q1: That's awesome. Can you tell me from your perspective how the Landmarks Preservation Commission changed the way it operated after that point?

Koerner: Before Penn Central, there had been two cases. One was Lutheran Church, where the Lutheran Church wanted to create the administrative headquarters in New York City for the entire Lutheran Church operation in the United States, and they had a historic property, an estate, and they wanted to knock it down. The Court of Appeals said, "Since you're interfering with religion, charitable use, you have to let them do it."

The other case was Fred F. French, in which Helmsley wanted to develop a park in the middle of Tudor City, because once he took over the place to him everything was concrete, and of course, there was a protest. The mayor was then John Lindsey, and he created a special parks district, which cost the city nothing, and Helmsley was upset. We gave them air rights, but you couldn't attach those air rights to anything so Helmsley prevailed in the New York State Court of appeals. So you had two cases, both with air rights and with religion, raising questions.

After Penn Central, the momentum all went in favor of the Landmarks Commission. You had the Society of Ethical Culture, which had a meetinghouse on the upper west side. They wanted to knock it down and build an office building. The Appellate Division said, "You can still do your function without knocking down the meeting house." Now compare that to the Lutheran Church where the Court of Appeals they said, "You can do whatever you want with it." I think it was JP Morgan estate.

The next case was St. Paul and St. Andrew. On the upper west side there is a church, which had a diminishing congregation. They were in a real financial bind. They never went to the Landmarks Commission to seek what's called a Certificate of Appropriateness, meaning they have a

hardship but they want to alter the property. They never went there. They said, “We can’t finance this.” So they wanted to remove the parsonage and the parish house and build a high rise. The Court of Appeals said, “You’re like everybody else, you’ve got to go to the Landmarks Commission, maybe they’ll give you some relief.” They lost.

Then came the best one of all, St. Bartholomew’s on the upper east side. They had a community house. Now if you know St. Bartholomew’s, they’re a well-endowed congregation. So they argued that if we can knock down the community house and build a high rise, we will further our outreach to the homeless. Okay. The community house was used for a variety of purposes. They had a squash court, they had a gymnasium, they had meetings rooms. And they said, “What we want to build a high rise building, and on the ground floor will replicate the community house.” They went to trial in federal court, and the federal court said, “You can do everything you want to do without knocking down the community house,” again compare it to Lutheran Church. And the Second Circuit affirmed.

So clearly the momentum was changing. Then Schubert came along [laughs]. They designated all the theaters, a lot of interiors, and they were appalled. They called it spot zoning, because all the buildings around the theaters were able to develop to the highest and best use. They went to the Appellate Division and the Appellate Division said, “No, it’s not spot zoning, it’s rational.” They petitioned the Supreme Court. It was denied. They were given air rights, and some of them used the air rights. They went away.

Then came along the Four Seasons. They were upset because they were in the Seagram's Building [laughs]. They weren't challenging the exterior but they were upset because among the things designated was the curtains. The Court of Appeals said the designation it fine. You can see how the momentum shifted [laughs].

Then came the Russo case. There is a building on Broadway. I can't remember, somewhere in the three hundreds. It's a non-descript building. Unfortunately for the owner of the building, housed Mathew Brady. Who is Mathew Brady? He was the portrait photographer of Lincoln, and he was the first one to use what's called wet photography, where you develop your own pictures in your place, and he had two floors of this building. So the owner was crazed, he can't do anything with this building. Well, he went to court and he lost.

Then came the last one, and this was on the upper east side, Stahl Associates. They owned about seventeen buildings. They were the first low-income development made strictly for low-income people to show that you can do low income developments and give them benefits. Nice building. Well, this started in 1990, and the Landmarks Commission designated all the buildings, as representative of good tenements. They went to, then, what was called the Board of Estimate. That was the predecessor to the City Counsel. The Board of Estimate trying to appease the owners said, "You can develop two buildings to the highest and best use, but the rest of them you had to leave as is." They challenged that, they lost. That went through the court system, the Court of Appeals.

Then later, City Council took over the function of the Board of Estimate and they said, "You know what, those two buildings shouldn't be excluded. We're going to include them as part of the overall designation, so now you can't develop those two." They challenged that. They lost.

Then most recently in 2015, they applied for a Certificate of Appropriateness claiming hardship saying these restrictions on the two buildings prevent us from earning a reasonable rate of return. And the Landmarks Commission did an analysis and said, "Yes, you can. And moreover you warehoused those apartments; it's a self-created hardship." So they again went to court. They lost that, and the Circuit affirmed.

So yes, I think Penn Central was a game changer [laughing].

Q1: That's amazing. You have an incredible memory for these things, totally encyclopedic. I'm wondering if we can focus on just one of the things you mentioned, which is something that both Gabriel and Virginia talked about, which was the theater district. Would you be willing to go into a little more detail about that situation, how that was tried, maybe how the place was different before than it is now. Very open-ended, but let's just crack that one open and go a little more in-depth.

Koerner: Okay. The theater district was a problem because it took a whole bunch of buildings that were not necessarily contiguous to each other, and these buildings had functioned only as a theater. If anyone wanted them developed, they had to knock it down. But there had been the destruction—some of you may remember, of the Helen Hayes Theater. That had been knocked

down and that's what created the concern. So you either preserved it or did not preserve it, that was the choice. But what they tried to do, they tried to show through the air rights that these theaters could sell the air rights to other places in the area and develop. Indeed, a lot of the theaters did.

When they went to court, the law was so well settled that really it—now, had those cases gone before Penn Central, it may have been a more difficult case. But in fact, it was so well settled that when the Appellate Division ruled in the city's favor, the theater people sought to go to the State Court of Appeals. You could only go to the State Court of Appeals by permission, either of the Appellate Division or of the State Court of Appeals, and they were denied permission. So when they went to the U.S. Supreme Court, it was after the Court of Appeals refused to take the case. That's how much the law had been settled in favor of the Commission.

When you go back—and I don't want to divert—but when you go back to the first case, the first landmark case involved Sailors Snug Harbor. Sailors Snug Harbor was a not-for-profit that gave sailors rest and recreation when those big boats stayed out in the harbor and they would come off. There were four buildings plus a recreation building, a church, and those were famous Greek Revival buildings. But when they were designated, and they were challenged on its face, the Lower Court ruled against the city, because essentially it found, one, the burden of maintaining was unfair, and two, how can you tell a not-for-profit what to do with their property. Now the Appellate Division reversed. But you see the whole instinct was these single designations were suspect, but you can see how it's gone full circle now.

Indeed, when I left the law department, really there were very few, if any, challenges to Landmarks. The deference to the Landmarks Commission has been developed and accepted, whereas you can see it wasn't always true.

The single designations, even in the Appellate Division in Penn Central, the dissent had a lot of trouble with the single designation. When you think about it, when you step back, it does place all of the burden on the property owner.

Q1: Let's switch gears a little bit. First of all, thank you for that. That was incredible information. But another thing you bought up that I do want to get on video is working with Dorothy Miner. Tell me a little bit about who Dorothy was and what it was like to work with her.

Koerner: I met Dorothy Miner when I took over the case in the Court of Appeals, and she was counsel then to the Landmarks Commission. Generally counsel in agencies, some are more active than others, but at that time, most of the counsel did not get involved in litigation. Dorothy Miner was the complete opposite. She wanted to know whether every "I" was dotted and every "T" was crossed. She was extremely knowledgeable, and she was great to work with. But when you worked with her you were essentially joined at the hip. Indeed, when we argued in the Court of Appeals, she was there, and she was pleased. After argument we took a bus from Albany back to New York City and sat next to me, and for next two-and-a-half hours she explained everything we could have argued had they given us more time.

Then in the Supreme Court, there was some mention of a provision of the Administrative Code. The Landmarks Commission actions are controlled by the Administrative Code of the City of New York. There was some discussion of some esoteric provision. Dorothy happened to have the code with her, so she stood up. They have tight security in the Supreme Court, which is the understatement of the year, and one of these beefy gentleman went over to her, sat her down, and told her if she did it again she'd be thrown out of the courtroom.

When we prepared the brief to the Supreme Court, we used printers. One was on Canal Street. Dorothy and I spent eight hours at the printer arguing over every sentence. Every case after that, all the ones I mentioned, Society of Ethical Culture, St. Bart's, St. Paul, and St. Andrew, Dorothy was directly involved. People loved to work with her because she was so involved and she loved Landmarks. She was the perfect person for that job at that time. I know Gene Norman, who was mentioned, and I know Kent Barwick loved working with her because she was so knowledgeable, and she made sure that the Law Department covered exactly what she wanted to cover.

Q1: I'm curious, what were some of the things that you would argue about? Like what were stances you held pretty regularly that were counter to hers?

Koerner: One thing—we had a discussion about how much detail to provide in the brief. I mean Dorothy wanted to do it—in a brief you have to assume they know something. Dorothy would want to put a tremendous amount—because she knew all the detail. She wanted to make sure the

findings in the Landmarks Commission were okay in each of these cases, and she would consult with us in advance. She was just terrific.

One thing in the Supreme Court, which turned out to be important—and we had discussed this—is that the Supreme Court justice asked me what would happen if Penn Central later on got into fiscal difficulty so that they really couldn't operate the railroad and still get a reasonable rate of return, I said you could go back to the Landmarks Commission, and they actually adopted that and put it in the opinion. I guess some justices were worried about that because they wanted to make sure everybody understood this was ongoing and that it was not permanent, and if Penn Central really couldn't do it then they could change it.

The other thing they asked me is what if Grand Central Terminal closed down. Well, I said it would be a different case and maybe they could do something else. Now having won Grand Central Terminal we would say no. If they wanted to leave, maybe we can turn it into Union Station or a disco tech [laughs]. We wouldn't be so facile. But the problem is we knew this was a difficult case.

Q1: Following that line, what do you think people in neighborhood preservation advocacy maybe don't understand about the legal perspective, or vice versa, that you'd want to share across the line?

Koerner: I don't think they understand how close a case this was, and how the Landmarks Preservation could have been stopped in its tracks, because the only case before that was a case

called Maher out of New Orleans, the Fifth Circuit, and that was a historic district case. In that case where the property owner sought review by the Supreme Court, which was denied, what they commented on in that case was the nature of the historic district and how analogous it was to zoning.

I don't think people appreciated how different a single designation was. If that case was argued—not necessarily today because there's a split court—but when Scalia was still alive, I don't know what would have happened. You put this bench back to when Penn Central was decided and it might have been a different result. And then of course Landmarks Preservation would have looked very differently. It probably would have been just districts.

Another important issue was, did the fact that it was Grand Central help us or hurt us? I think it helped us because it was so renowned. But if this was not a significant case, and it was a single designation—St. Paul and St. Andrew where, you know, it goes up there [laughs] and they're a flock of small numbers, and they're claiming—I don't know. Sometimes good facts help you. It was clear, some of the justices, even the ones who voted for us like Justice [Lewis Franklin] Powell [Jr.], they had a lot of doubt. I wasn't sure how it was going to come out after the argument. The owners of Grand Central had all the burdens of a single designation, plus they were in bankruptcy. You put it all together, I don't think the preservationists understood how close it was. Dorothy thought it was just part of the zoning plan looking at all the buildings. But I wasn't always as clear. She used to joke with me and say I'm not pro preservationist, and I was just being realistic. It was a very difficult case.

Q1: Gabriel said that Dorothy had a sit down with him and asked him if he was pro-preservation, or if he was on the right side, and he protected his neutrality as something that was valuable. So I wanted to ask you, as somebody who isn't necessarily focused on preservation, but rather just law in general, what your relationship was to landmarking, or how you thought your more neutral stance was beneficial.

Koerner: I think it was good. Gene Norman used to consult with me often, and Kent Barwick would consult with me, and Dorothy would consult with me all the time, even when there wasn't a case, about making a record. So they understood that I had their interests at heart. On the other hand, if there was a problem with the case I'm going to be candid with them. That was my job. I think she understood that. She had one view. That's the difference between counsel from an agency and being the lawyer for the entire City of New York. You have to step back, you have to tell her if it's a particularly weak case, and proceed from there. She understood that.

But as I would say, she was the perfect person. She passed on, as you probably know, and I spoke, I gave a eulogy at Columbia. I couldn't say enough positive things. She really was the right person at the right time for that job.

Q1: Do you have a proudest moment from all the work you did with regards to landmarks?

Koerner: I think Penn Central. But also that I was directly involved with all the big cases after Penn Central. I didn't argue them but I helped supervise them and make sure that the principles

were properly applied. I had worked with Dorothy [laughs] of course. It was over a long period of time and I understood the importance of landmarking.

Q1: Just to go over that one more time, you know, I phrased the question and you started with, "It was." So if you could start in a full sentence, "The proudest moment was," or, "I'm happy with these memories because." However you want to phrase it. But just anything other than it was, because again, my question is going to be taken out. So just one more time.

Koerner: Well, the proudest moment was working on Penn Central, working with Dorothy, and Kevin Sheridan, and Judge Gershon, who later had to leave, but I kept in touch with her about the case. I know of its importance. But I also continued work on landmark issues for the next fifteen to twenty years. We really developed the Landmark Law to the point where the Commission can feel confident if they act appropriately it will be defended and it will be sustained.

Q1: Do you have any moments walking around the city where you see something that you know wouldn't have been there had it not been for your work?

Koerner: Well, one is Grand Central Terminal. I believe probably the community house at St. Bart's, and the parish at St. Paul's, and the meetinghouse at the Society of Ethical Culture would have been gone and there would have been high rises in each of the properties' place. I think the single designations would have been at risk, because if you accept Rehnquist's position that the single designation is an impermissible burden on the property owner, it does leave you with only

one avenue for these buildings, and that's called eminent domain, and no city wants to pay for this.

Q1: So Grand Central, do you go through it as a commuter? Do you spend much time there?

Koerner: I've gone through it. I had a tour of it. I had a tour earlier, but I had a tour of it recently with Judge Gershon, who handled Grand Central matters in the Appellate Division. Some of the interns at the Law Department who were given a tour, and we were shown the whole thing. It was quite interesting.

Q1: I'm trying to get a sense of a personal connection to these places, if you have any. If I'm inventing just tell me so. But what is your personal experience of going into a place like Grand Central? What does it look like to you, feel like to you, what does it make you think or feel?

Koerner: The building is magnificent. It's been improved, compared to when I litigated the case, it's been improved beyond whatever I thought. Hundreds of millions of dollars were spent in the concessions, and redoing it. They spent $100 million on the roof. The roof is spectacular. And I feel good, because these buildings should be preserved as part of our heritage. In Europe, they do as a matter of course. But here we're a little more private oriented and it's a little more difficult to preserve. But now we have a mechanism to do so and I think the city is better for it.

Q1: When you say the city is better off for it, what do you think the impact on the quality of life, or the value of the city is, having a space like that?

Koerner: Citizens of New York City believe that one of the things that makes the city unique is the historical and unique buildings in the city. They designated Louis Armstrong's house in Queens. People go there, and they go there because they connect with Louis Armstrong. They go to Grand Central Terminal—I think people understand what a loss it would have been to the city if Grand Central Terminal was destroyed.

Q1: One of my last questions is talk to me about what the future of preservation in New York City will be as you see it.

Koerner. I think it's going to be very rosy. The cases, both in the Supreme Court, the Second Circuit and the New York Court of Appeals have given a roadmap to landmark preservation in maintaining the buildings which are worthy. I think if they're designated, they're going to be sustained. I feel very confident you're going to have these buildings forever.

Q1: Thank you. Anything else you want to share for the video record?

Koerner: No. Thank you for giving me this opportunity.

Q1: Thank you so much for coming all the way in to do this. I had a great time talking with you and I learned a lot. So thank you.

Koerner: Thank you.

[END OF INTERVIEW]