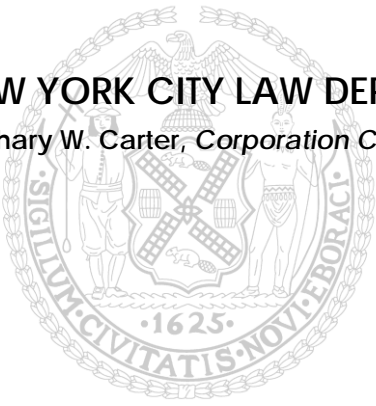


# NEW YORK CITY LAW DEPARTMENT

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## **LEONARD J. KOERNER, 48-YEAR LAW DEPARTMENT VETERAN WHO WON CASE THAT LANDMARKED GRAND CENTRAL TERMINAL AND NUMEROUS OTHER MATTERS THAT HELPED SHAPE NEW YORK CITY, RETIRES**

**KOERNER, A LANDMARK UNTO HIMSELF,  
HAD FOUR TOTAL U.S. SUPREME COURT WINS  
AND COUNTLESS NEW YORK STATE COURT OF APPEALS WINS;  
ALSO POSSESSED UNCANNY ABILITY TO ARGUE CASES  
WITHOUT A SINGLE LEGAL BRIEF OR WRITTEN NOTE**

Leonard (Len) J. Koerner, the attorney who argued the U.S. Supreme Court and New York State Court of Appeals cases that landmarked – and saved – Grand Central Terminal, has announced his retirement from the New York City Law Department after 48 years. Koerner, known for his low-key style, served most recently as Chief Assistant Corporation Counsel on the office's Executive Staff. He eschewed fanfare throughout his career and departed as he arrived – with a quiet, elegant dignity.

"Len's hard work has helped shape the legal landscape of New York City. He has provided wise counsel to generations of Law Department attorneys. His institutional memory is beyond compare -- and he will be missed," noted Corporation Counsel Zachary W. Carter. "We congratulate him on his decades-long contributions to the people of New York."

Carter pointed to several watershed events in New York City's history during Koerner's tenure. In perhaps his most famous case, *Penn Central Transportation Co. v. New York City*, Koerner successfully defended the City in ensuring that Grand Central Railroad Terminal would be designated as a landmark in 1978. The U.S. Supreme Court upheld his arguments 6-3 – saving Grand Central Terminal from demolition and validating the City's landmarks preservation process. Other cities nationwide followed, using the City's framework as a template for landmarks preservation. (Koerner credits fellow attorney Nina Gershon, now a federal judge; former Landmarks Preservation Commission General Counsel Dorothy Miner, who passed away in 2008; and then-Law Department Appeals Chief Kevin Sheridan for their critical input.)

"Len's reputation as a lawyer's lawyer is legendary in the City's legal community and in our State and Federal courts, most notably in the Supreme Court of the United States, where over the course of his career he has argued numerous times," Carter noted. "Len is renowned for his victory, among others, in the *Penn Central* case, which resulted in the preservation of Grand Central Terminal. Len has never shied away from taking on the most difficult of the City's cases, and has done so strategically, with the utmost professionalism."

Koerner's hallmark, in addition to his composed and respectful style, has been his ability to argue all cases, both large and small, literally without a single legal brief, note or written piece of paper. "I knew the points I wanted to make in advance and found notes distracting," Koerner said. In a little-known but profoundly indicative anecdote, Koerner arrived at the U.S. Supreme Court for the *Penn Central* case with no legal briefs or argument points. As the other side spread out binder after binder, piled high in stacks, Koerner's table remained empty.

Then-Corporation Counsel Allen G. Schwartz, becoming rightfully concerned, asked Koerner when his argument notes would arrive and what he planned to say. Koerner merely scrawled on a piece of paper, "Mr. Chief Justice and Members of the Court." Schwartz turned white. (In later years, though, Schwartz loved telling the story.)

After Koerner won the Grand Central case, Corporation Counsel Schwartz wrote a personal letter to Koerner in June 1978, noting: "As you know, the opinion not only adopts the legal theories that you developed and articulated but, more importantly, the Court, in the opinion written by Mr. Justice Brennan for the majority, virtually tracked the brief which you wrote." He called his argument "first rate." He also noted in his letter, "I called the Mayor [Ed Koch] to tell him the news. As I expected, he was delighted."

Koerner argued or handled seven cases before the U.S. Supreme Court, winning, in addition to the *Penn Central* case, three others. In *Guardians Association v. Civil Service Commission* in 1983, he successfully defended the City before the U.S. Supreme Court in a case about the standard of review in discrimination cases under Title VII. In *Ward v. Rock Against Racism* in 1989, Koerner successfully defended the City's right to regulate sound levels in City parks and found that it did not violate the free speech rights of performers. In *Smith v. Organization of Foster Families* (1977), the Court found 9-0 that New York State's and City's established process for removing children from foster homes comports with due process.

Although tied votes are rare for U.S. Supreme Court decisions, Koerner has the unusual distinction of having obtained tied votes in two cases. One case, *Marino v. Ortiz* (1988), reverted back to the Second Circuit Court of Appeals' decision in the City's favor after a 4-4 ruling (due to a vacancy); the matter involved a New York City personnel issue. The other, *New York City Board of Education v. Tom F.* (2007), also was 4-4, with one recusal. This case reverted to the Second Circuit's decision holding against the Department of Education; the matter involved the procedures for special education student approvals for private schools.

Koerner lost one case in the Supreme Court, *Hemi Group LLC v. City of New York*. The 5-3 decision occurred in 2010, with a justice recusing. The Court held that New York City had not stated a cause of action under the Racketeer Influenced and Corrupt Organizations (RICO) Act based on the failure of an internet cigarette seller to comply with the Jenkins Act. However, federal legislation later remedied the issue.

Koerner also argued and prevailed in countless cases in the Court of Appeals, New York State's highest court.

The City often called upon Koerner to handle difficult matters. In 2006, he argued and won a personally conflicting decision, *Hernandez v. Robles v. Hernandez*, involving same-sex marriage. While Koerner personally supported same-sex marriage, he knew legally that this was an issue for the State Legislature. The Court of Appeals agreed 4-2 (with one judge not taking part), and the Legislature later changed the law in 2011. Interestingly, the *Gay City News* said in 2006 that Koerner "revealed why he is considered the ace appellate attorney for New York City" and that he presented "a hard-hitting argument without excessive indulgence in the more offensively heterosexist justifications usually advanced in these cases." The reporter continued, "It would have been much more gratifying to have Koerner arguing on the appellants' side, and I'd bet he would have done a terrific job."

In 1999, Koerner handled litigation relating to First Amendment issues involving an exhibit at the Brooklyn Museum. Again, Koerner found the issue personally challenging, as he was – and continues to be – a strong believer in the First Amendment. The City lost in the district court. The Second Circuit heard oral argument, but the case settled before the Court reached a decision.

Koerner joined the Law Department in 1967 as an Assistant Corporation Counsel in the Appeals Division. He was made Deputy Chief of Appeals in 1976. Two years later, he was appointed Chief of Commercial Litigation. He held that position until 1980, when he was appointed Chief of Appeals. In 1985, Koerner also took on the office of Chief Assistant Corporation Counsel. He focused on that role exclusively after leaving the Appeals Division in 2014.

Corporation Counsel Carter said Koerner was a legal scholar to whom the City turned under several

administrations to solve practical problems. "Len has been legendary in helping the city," Carter said.

In his day-to-day work, Koerner advised lawyers regarding legal strategies, reviewed appellate briefs, managed attorneys, and supervised cases moving through the court system. Koerner has won numerous awards, including the New York State Bar Association Award for Excellence in Public Service (New York State's highest such honor) in 2004, the National Institute Law Award for Outstanding Attorney in 1981 and the Sloan Public Service Award in 1998. He graduated from Wilkes College in 1964 and received his law degree from New York University in 1967. He lives in New Jersey with his wife, Suzanne. They have two daughters, Carolyn and Leslie. When asked to expand on his career, Koerner simply said: "'I liked working with the people here, and it was a lot of fun.'" When asked about his historic Grand Central role, he said: "I was pleased to take part in saving such a beautiful building."

Tracing its roots back to the 1600s, the New York City Law Department is one of the oldest and most dynamic legal offices in the world, ranking among New York City's largest law offices and the country's largest public law offices. Led by the Corporation Counsel, the Department's 730-plus attorneys represent the City on a vast array of civil litigation, legislative and legal issues, and in the criminal prosecution of juveniles, encompassing a caseload of 70,000 active or ongoing legal matters each year in 16 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City, and all its agencies. For more information, visit the Law Department's website at [www.nyc.gov/law](http://www.nyc.gov/law).

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