

To Be Argued By:  
WHITNEY NORTH SEYMOUR, JR.

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# New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

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In the Matter of a Motion to Quash a Non-Judicial Subpoena

VIRGINIA PARKHOUSE,

*Petitioner-Appellant,*

—against—

SCOTT M. STRINGER, Borough President of Manhattan, ROBERT TIERNEY, Chairman of The New York City Landmarks Preservation Commission, ROSE GILL HEARN, Commissioner of Investigation, KIM A. BERGER, Deputy Commissioner for Investigations, and DEPARTMENT OF INVESTIGATION OF THE CITY OF NEW YORK,

*Respondents-Respondents.*

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## REPLY BRIEF FOR PETITIONER-APPELLANT

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## **REPLY BRIEF FOR PETITIONER-APPELLANT**

This brief is submitted in reply to the Respondent's Brief dated December 31, 2007, submitted by the Corporation Counsel of the City of New York. The City's brief removes any doubt about the improper nature of the investigation; its retaliatory object; or the deliberate deprivation of Petitioner's constitutional civil rights.

In their attempt to argue a factual justification for the DOI subpoena, the City's lawyers have now demonstrated that the DOI's plan was to attack the witness's constitutional rights on two levels:

1. Questioning her about the basis and justification for her own statement at the Landmarks Commission public hearing; and
2. Conducting an inquisition into her association and involvement and with Landmark West!, a non-profit citizens advocacy group.

Both are forbidden territories under our constitutional democracy.

Argument  
POINT I

**THERE WAS NO MATERIAL FALSEHOOD IN PETITIONER'S  
READING OF THE STRINGER LETTER AT THE PUBLIC  
HEARING**

The City's brief skirts around the actual substance of the statement made by Borough President Stringer in his letter of August 14, 2006 (just two months before the public hearing), where he strongly favored the preservation of the two historic stables. No impartial finder of fact would ever accept the City's contention that Virginia Parkhouse (who was unaware of Stringer's change of heart) deliberately falsified that official's position on preserving the buildings.

This is what the Stringer letter said about these buildings:

I am writing regarding two historic stable buildings, the Mason/Dakota Stables at 348-354 Amsterdam Avenue, and the New York Cab Company Stables at 201 W. 75<sup>th</sup> Street. Both are historic fixtures of Manhattan's Upper West Side and should be preserved.

\* \* \*

The Dakota Stables, an automobile garage since 1915, was dubbed a "stylistic gem" by Christopher Gray in the New York Times. Built by Bradford Gilbert, this building has a magnificent façade, made lively by two colors of brick. Built in the style of Romanesque Revival, it recalls several elements of Gilbert's Tower Building. The Tower Building was demolished in 1914, but is considered to be one of the more important buildings in the history of New York City architecture. While also possessing architectural significance, commercial stables are important to the understanding of urban life at the turn of the century. Preserving these stables will ensure that no

demolition or development interferes with the vibrant history alive within them.

(Record, page 48) (Emphasis added.)

Compare these statements to Ms. Parkhouse's conclusion after reading from the letter:

I ask that you immediately protect an important part of the history of the development of the Upper West Side . . . and landmark these buildings.

(Record, page 48)

Does the City seriously contend that it would have been accurate to state at the Landmarks Commission public hearing that Mr. Stringer's position as set forth in his letter of August 14 was that the Commission should not landmark these buildings?

There was no attempt at deception of any sort here. The only real deception was Mr. Stringer's failure to tell Landmark West! before the public hearing that he had changed his position. Ms. Parkhouse stated the only conclusion that could be reached from Mr. Stringer's strong statement in support of preserving these structures. Moreover, she left no doubt that the statement she read was based on a letter written by Mr. Stringer on August 14, 2006, a copy of which she actually filed for the record. That copy of the letter clearly showed the handwritten changes that were made to the original letter – none of which altered the substance of the letter.

There was no intentional deception or falsification of any kind, and the attempts by the Corporation Counsel, the DOI, and the Borough President's counsel to contend otherwise are shameful efforts to harass and threaten this private citizen volunteer and make a mockery of the public hearing process.

## **POINT II**

### **THE DEPARTMENT OF INVESTIGATION'S SUBPOENA HAD NO LEGITIMATE PURPOSE UNDER NYC CHARTER § 803**

The City's brief shows that Respondent's real target in the DOI's investigation is her relationship to Landmark West! [a private non-profit citizens advocacy organization] and a plain violation of Petitioner's right of association under the First and Fourteenth Amendments (as argued by the Amicus).

The very first sentence at the outset of the City's brief (page 1) states:

Petitioner, Virginia Parkhouse, moved to quash a testimonial subpoena issued by the New York City Department of Investigation (DOI), which is investigating whether Ms. Parkhouse and a colleague intentionally or unintentionally misrepresented at a public hearing of the Landmarks Preservation Commission that they were speaking on behalf of two public officials, Manhattan Borough President Scott Stringer and Assembly Member Linda Rosenthal.

(Emphasis added.)

Note the City's use of the word "colleague." What made these witnesses "colleagues"? [Ms. Parkhouse was a private citizen who had

volunteered to testify; Ms. Miller was a graduate student studying historic preservation at Columbia University.] The answer appears one sentence later (page 1):

When Parkhouse and a colleague from Landmark West! spoke at a Landmarks Preservation Commission hearing, they caused confusion about whether they were appearing as representatives of certain elected officials.

(Emphasis added.)

The use of the word “colleague” is a telling admission of what is in the minds of the Respondents as the real purpose behind the issuance of the Parkhouse subpoena.

The involvement of Petitioner with Landmark West! is repeated again on the following page (page 2):

Petitioner Virginia Parkhouse is a representative of Landmark West!, Inc., and she appeared at an October 17, 2006, hearing of the New York City Landmarks Preservation Commission to speak in support of designating two stables on the Upper West Side as landmarks (44).

(Emphasis added.)

Twelve pages later the City squarely admits that it is investigating Petitioner’s involvement in Landmark West! (page 14):

However, DOI is not interested in the accuracy of the facts underlying Parkhouse’s arguments nor in how she forms her opinions or defends them at home or in community group meetings. But DOI does have a legitimate interest in finding out how it came to pass that two Landmark West! representatives left the misimpression that they were speaking at a public hearing on behalf of two elected officials.

(Emphasis added.)

So, at last, the truth is out – Stringer, Tierney and the DOI are using the excuse of protecting the “integrity of the public hearing process” (City brief, page 18) to investigate Landmark West!, its volunteers, staff and supporters [who have achieved outstanding results in preserving hundreds of landmark structures on Manhattan’s West Side, often bruising the feelings of politicians in the process.]<sup>1</sup>

The U.S. Supreme Court has declared that the Fourteenth Amendment prohibits official state action discouraging individuals from joining and working together to advance their beliefs and ideas through voluntary associations, including their right to speak on “cultural” matters [such as historic preservation]:

It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech....Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

NAACP v. Alabama ex rel. Patterson,  
357 U.S. 449, 460-461 (1958)

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<sup>1</sup> Discussion of the personal and political motives for this misuse of the DOI’s official agency procedures is not appropriate at this stage of the proceedings, but can be aired through an evidentiary hearing if and when necessary.

### **POINT III**

#### **RESPONDENTS STRINGER AND TIERNEY WERE DIRECTLY RESPONSIBLE FOR INITIATING THE DOI'S IMPROPER INVESTIGATION AND THE ISSUANCE OF THE PARKHOUSE SUBPOENA**

The City vainly attempts to exculpate Stringer and Tierney from responsibility for their abuse of office in using the DOI's investigative and subpoena power to threaten and harass Ms. Parkhouse (pages 15-16):

Furthermore, Parkhouse has not provided any basis for her allegations that the subpoena was "generated by rancor on the part of a public official" in order to "frighten and chastise the entire group of preservation advocates – specifically those associated with Landmark West!" (App. Br. At 13). Parkhouse has not produced any evidence linking Stringer or the Commission's chair to the subpoena. In fact, neither official had anything to do with its issuance (39).

(Emphasis added.)

This statement is directly contradicted in the City's own brief at page 4:

Two days after the hearing, Landmark West!'s executive director wrote a letter responding to a phone call from Stringer's office (70-71). The executive director reiterated Landmark West!'s position regarding the stables and offered to correct the record at the Commission if Stringer's position had changed since August (71).

In late November, Jimmy Yan, Stringer's general counsel, complained to the Commission that Parkhouse had submitted Stringer's letter with "handwritten edits with the appearance that such submission was authorized" by Stringer (50). Mr. Yan said it was "highly inappropriate" and perhaps criminal (citing Penal Law § 190.25) for

someone to “giv[e] the appearance” that she was Stringer’s authorized spokesperson at the hearing (50).

(Emphasis added.)

Mr. Stringer apparently did not believe that Ms. Parkhouse’s statement was sufficiently misleading to the Landmark Preservation Commission to require an immediate correction. [He never did take Landmark West! up on its offer to correct the record.] What he and his staff obviously saw was an opportunity to go after Landmark West! and its volunteers with hints of criminal prosecution. Significantly, they waited more than two months to do it.

This is the heart of what Mr. Yan’s ominous letter of November 27 said:

Please be advised that this individual was not authorized or approved by the Borough President or any member of the MBPO to appear, testify or represent the Borough President or to submit written testimony on behalf of the Borough President. Indeed, this individual and any organization which she may have been representing have no affiliation or relationship with the Borough President or MBPO. Hence, the statements, testimony and actions of this individual at the hearing and any other time do not represent the views or authority of the Borough President.

We are concerned that any person and/or organization may have falsely induced reliance from a public agency based on representations appearing to derive from the authority of an elected official or public servant. Such conduct is highly inappropriate and, if pursued with the intent to mislead, a potential violation of New York Penal Law Section 190.25 proscribing criminal impersonation, an offense that includes acting with intent to cause another to rely upon pretended official authority.

(Record, page 50) (Emphasis added.)

Mr. Tierney then used the opportunity to file a formal “Complaint” another three months later with the DOI [the contents of which have not been disclosed]. (brief, page 4):

In February 2007, the Commission sent a complaint to DOI, citing Parkhouse’s and Miller’s “misrepresentations” at the Commission’s hearing (35).

(Emphasis added.)

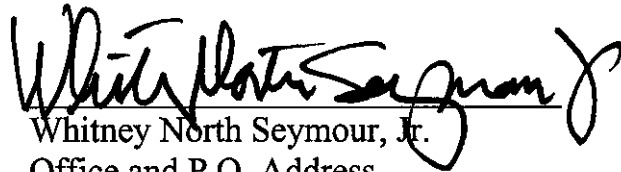
It was the Landmarks Preservation Commission complaint based on Stringer’s letter that triggered the issuance of the Parkhouse subpoena. The City cannot now pretend that these things never took place. The DOI’s subpoena was not initiated independently by the DOI, but was the direct result of Stringer’s and Tierney’s communications.

### **CONCLUSION**

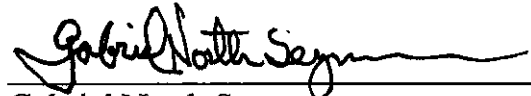
The Respondents’ brief does not alter the Petitioner’s position in her original brief (now supported by the Amicus brief of the NYCLU) that the DOI subpoena served on Virginia Parkhouse constituted an abuse of power and official harassment of a private citizen who appeared and openly testified before the Landmarks Preservation Commission in support of an issue she believed in. It was a plain and flagrant deprivation of her Constitutional civil rights.

The Order and Judgment below should be vacated, the subpoena should be quashed, and the public officials involved should be enjoined against future misuse of the City Department of Investigation subpoena power for such a purpose, along with the granting of such other relief as the Court deems appropriate, including the award of attorneys fees to Petitioner's Counsel.

Respectfully submitted,



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