

1 NEW YORK STATE SENATE  
2 STANDING COMMITTEE ON JUDICIARY

3 -----  
4 PUBLIC HEARING IN THE MATTER OF  
5 AN EXAMINATION OF THE JUDICIAL DISCIPLINARY PROCESS  
6 -----

7 Senate Hearing Room  
8 250 Broadway  
9 19th Floor  
10 New York, N.Y.

11 September 24, 2009  
12 Thursday  
13 10 a.m.

14 BEFORE: Senator John Sampson  
15 Chair  
16 Judiciary Committee  
17  
18 Senator Bill Perkins  
19 Chair  
20 Corporations, Authorities & Commissions  
21  
22 Senator George D. Maziarz  
23  
24 Senator Eric Adams  
25  
26 Senator Ruben Diaz

27 OTHER STAFF MEMBERS:

28 Shelly Mayer  
29 Majority Counsel

30 Lisa Lashley  
31 Counsel

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1 and I am reading, so bear with me, I'm a  
2 little nervous.

3 My name is Andrea Wilkinson, I'm a  
4 small minority female developer in the  
5 capitol district region area.

6 SENATOR SAMPSON: What do you  
7 develop?

8 MS. WILKINSON: We develop low  
9 housing, we go into the community and what  
10 we do is revitalize abandoned boarded up  
11 houses to make them become quality housing  
12 for low to moderate income people.

13 And, as you know, in Albany there is a  
14 tremendous amount of dilapidated buildings  
15 within the capitol district region area.

16 I come forth to you today because I'm a  
17 Plaintiff of a civil suit that was pending  
18 in front of Judge Lehner, I don't know if he  
19 is still presiding, my understanding was he  
20 was at the point where he was going to  
21 retire spring of 2009.

22 I had a civil suit pending for four and  
23 a half years in front of Judge Lehner and  
24 after four and a half years of seeking

1 judgment or seeking, you know, due process  
2 within the judiciary system, Judge Lerner on  
3 the eve of my trial date was March 11th, on  
4 March 10th at 4:30 p.m. elected to dismiss,  
5 not one or two or three charges, but all  
6 nine charges of my lawsuit that was pending  
7 in front of him.

8 The charges ranged from discrimination,  
9 breach of contract, violation of federal  
10 lending laws, housing laws, administrative  
11 codes, et cetera, I gave you my documents.

12 The lawsuit was pending against  
13 Community Preservation Corp, which is a not  
14 for profit quasi for profit organization.

15 SENATOR SAMPSON: CPC?

16 MS. WILKINSON: CPC, yes. For Judge  
17 Lerner to have blindfolds on so he could  
18 not see any validity to any of my charges  
19 really baffled me.

20 Now my co-partner in this lawsuit is  
21 the contractor who helped me develop nine  
22 individual townhouses in downtown Albany.

23 As the Plaintiff I can't express my  
24 concern, I feel like the unethical bias and

1           tainted decision rendered by Judge Lerner  
2           coupled with his inappropriate and unethical  
3           behavior leaves me baffled.

4           I want to let you know that Judge  
5           Lerner during the process of the trial when  
6           we would have hearings, he seemed to always  
7           have been favored towards CPC, and I didn't  
8           quite understand why he would make comments  
9           like oh, CPC has done a lot for the State of  
10          New York, Community Preservation has done a  
11          lot in the City of New York, and that he had  
12          also indicated he was once a legislator that  
13          he had done some work in the legislation in  
14          the State of New York.

15          Well, despite his appreciative attitude  
16          towards Community Preservation Corp.,  
17          coupled with his prior political agenda that  
18          he had in the Albany legislation, I still  
19          felt like, you know, I prayed that he would  
20          be fair, that he would be unbiased and that  
21          he would do what he is supposed to do, which  
22          is to look at the color of the law in the  
23          United States Constitution.

24          Well on March 10th, you know, the eve

1 of the trial he goes and dismisses the case.

2 I started doing research on Judge  
3 Lerner and I find that, you know, I was en  
4 route to New York too that eve on the  
5 Thruway, pouring down rain, I ended up like  
6 I had to pull over once I got the call from  
7 my attorney.

8 I had already been so mistreated by CPC  
9 as being an African American female  
10 developer, which is rare, I had to deal with  
11 a comment my -- when I went to place my loan  
12 application into the Community Preservation  
13 Corp. to the loan officer, he looked at my  
14 financial statement and he looked at my  
15 resume and you know what he said to me? I  
16 was an exception to my race.

17 Like he had never met a black woman  
18 before who has a certificate of advanced  
19 study in education administration from SUNY  
20 Albany with a 3.86 GPA or that he had never  
21 met a black woman who had like maybe at that  
22 time I had -- I had about maybe \$350,000 net  
23 income, like just in the stock market, so he  
24 said to me I was an exception to my race and

1           then other comments went on like oh, you  
2           should be like Charles Tewey or Fagenbaum.

3           I was constantly compared to white male  
4           developers within the capitol district  
5           region area.

6           Charles Tewey is a millionaire, so is  
7           Fagenbaum and all the others that he  
8           compared me to, there aren't very many women  
9           in development and there aren't many people  
10          developing minority dilapidated communities,  
11          and as a minority female developer, we have  
12          to empower the people who live within their  
13          communities to be able to go out and get  
14          money to revitalize their community.

15          We can't just wait for the white great  
16          hope to come along and want to invest in our  
17          communities.

18          So in that aspect I feel like Community  
19          Preservation Corp. should be lending more  
20          monies to women and minorities.

21          Under oath and Andy Thompson, whose dad  
22          is Lou Thompson who was Governor's right  
23          hand man for housing and Governor Pataki's  
24          best friend, I just feel like all those

1 elements played into Judge Lerner's  
2 decision.

3 But the other factor that played into  
4 Judge Lehner's decision is I did research at  
5 the Congressional library in Albany and I  
6 found out the following facts about Judge  
7 Lerner, which he never revealed, had he I  
8 would have asked him to recuse himself.

9 Judge Lehner was an Assemblyman for the  
10 Fort Washington District in Manhattan during  
11 1973 through about 1980. The entire time  
12 that he was active in the Assembly, he was  
13 assigned to the Housing Committee.

14 Judge Lerner was the Chairman of the  
15 Housing Committee for over 8 years and he  
16 introduced the first Neighborhood  
17 Preservation Bill in the assembly that  
18 became a law.

19 As he gets ready to retire from being a  
20 judge this spring, he is still very much  
21 entrenched in the housing community and the  
22 politics that lead with housing, community  
23 development and so after I did the research  
24 on him I realized that, you know what, for

1 his decisions that he rendered four and a  
2 half years, eve of a trial date, to dismiss  
3 not one, two or three, something happened.

4 Either Faber was called in or his palm  
5 was greased or he just didn't want to deal  
6 with the issues of discrimination.

7 All along he said he never saw the  
8 discrimination, but he did see breach of  
9 contract possibly --

10 SENATOR SAMPSON: Let me ask you a  
11 question.

12 So you have -- you're basing your  
13 question of maybe judicial misconduct based  
14 upon a decision that he did not render in  
15 your favor; or --

16 MS. WILKINSON: The fact he dismissed  
17 not one, two or three but all nine charges?

18 SENATOR SAMPSON: I understand that,  
19 I'm just telling you from my own personal  
20 experiences I have seen judges on cases  
21 dismiss cases on the eve of trial, motions  
22 for summary judgment has been granted, I  
23 mean if the law is not in your favor, the  
24 law is not in your favor.

1 MS. WILKINSON: That's just it, the  
2 law, according to my law firm that I used,  
3 which is Leeds, Morelli & Brown, they have a  
4 company called DOW, which is Discrimination  
5 on Wall Street, they specialize in  
6 discrimination.

7 Not one or two or three, but nine  
8 charges, breach of fiduciary responsibility,  
9 I mean the charges go on and on and on.

10 SENATOR SAMPSON: I can understand  
11 that.

12 The next question is after he rendered  
13 that decision have you since appealed that  
14 decision?

15 MS. WILKINSON: We have appealed the  
16 decision and in addition to that we have  
17 written Judge Carey, Joan Carey, who has  
18 responded like oh, I have no control over  
19 the decisions that are rendered by, you  
20 know, Judge Lerner, you need to seek due  
21 process on the judiciary on the appellant  
22 level.

23 But I want to say as an African  
24 American female, and they wonder why

1 minorities or women don't have faith in the  
2 judiciary system, and you wonder why we  
3 sometimes when you look at black justice,  
4 white justice and black robes, he didn't see  
5 the discrimination part, yet still he didn't  
6 see the breach of contract, he did not see  
7 anything on my behalf as a minority female  
8 developer, okay?

9 SENATOR SAMPSON: No, no, no, I want  
10 to correct something, a judge is not  
11 supposed to look at you as a minority  
12 developer, a judge is supposed to look at  
13 you as a litigant, he is not supposed to  
14 decipher whether you are white, black, green  
15 or yellow.

16 MS. WILKINSON: Guess what, he did.

17 SENATOR SAMPSON: Let me continue,  
18 he's supposed to look at the facts of the  
19 situation, look at the law and come up with  
20 a decision.

21 If you have a problem with his  
22 decision, that's why we then go appeal it,  
23 because there have been plenty of cases  
24 where I thought I was correct on the law,

1 but the judge ruled against me but such then  
2 I appealed.

3 A perfect example is Governor Patterson  
4 on the issue of the appointment of  
5 Lieutenant Governor, he lost at the trial  
6 level, he lost at the Supreme Court level,  
7 he lost at the Appellate Division level, but  
8 he won at the Court of Appeals level.

9 So I just want you to understand that,  
10 when you are saying that, you don't want the  
11 judge to give anyone preference, you don't  
12 want the judge to give anyone preference,  
13 you want the judge to look at the facts and  
14 look at the law and make a determination.

15 MS. WILKINSON: And if Judge Lehner  
16 had done that he would not have been  
17 dismissing all nine charges.

18 SENATOR SAMPSON: And you will be --  
19 your opinion will be rectified if you won at  
20 the Appellate Division level.

21 MS. WILKINSON: Well, you know, how  
22 do you have faith in the judiciary system  
23 when you look and see there is favoritism,  
24 how do you have faith in the judiciary

1 system?

2 SENATOR SAMPSON: That's why --

3 MS. WILKINSON: When you have judges  
4 who are like just blindfolders on, just  
5 really want to see what they want to see, or  
6 as a matter for me, I'm a small minority  
7 female developer, I'm up against CPC, Lou  
8 Thompson, Governor Pataki's right hand man,  
9 his best friend, how am I to, you know,  
10 where do I get funds to go to the appellant  
11 level to the Supreme Court?

12 It should be that we as citizen  
13 taxpayer people we should be able to come to  
14 our judiciary system and get a due process  
15 right on the first circuit, not that we have  
16 to go all the way up to the Supreme Court to  
17 win.

18 And I called the NAACP legal defense  
19 fund and you know what they told me?

20 All major civil suits, discrimination,  
21 sex, gender usually have to go to the level  
22 of appellant; why?

23 We have already been devastated as  
24 women or minorities and then while we have

1 to dig up funds to get on the first circuit,  
2 then find money to get to the second and  
3 third and fourth circuit.

4 SENATOR SAMPSON: You know what, we  
5 agree with you, but that's why mistakes are  
6 made that's why you go to the Appellate  
7 Division and you have the Supreme Court in  
8 some states and you have the Court of  
9 Appeals and best case scenario you have the  
10 United States Supreme Court.

11 It happens, we are not perfect, people  
12 interpret the laws differently, at that  
13 point in time, but you just don't give up on  
14 the system.

15 That's why we have hearings like this,  
16 because what we are trying to do is make  
17 sure the faith, the trust and the  
18 confidence.

19 MS. WILKINSON: The system is broken.

20 SENATOR SAMPSON: We are doing our  
21 best to try to fix it.

22 MS. WILKINSON: It is broken.

23 SENATOR PERKINS: Two quick  
24 questions, I appreciate what the Chairman is

1           trying to say, but now this judge, how do  
2           you spell his name?

3           MS. WILKINSON:       Lehner is  
4           L-e-h-n-e-r.

5           SENATOR PERKINS:     That's Lehner.

6           MS. WILKINSON:       Lehner. They say  
7           Lehner.

8           SENATOR PERKINS:     I may be wrong, I  
9           think I know the judge, that's why I asked.

10          MS. WILKINSON:      He's old, he  
11          exhibited -- not that I'm age discrimination  
12          -- but he exhibited no patience, no  
13          tolerance, he had no tolerance for me as a  
14          Plaintiff, he just really.

15          SENATOR PERKINS:     I just asked you  
16          the question about his name.

17          MS. WILKINSON:      Let me tell you what  
18          else he did --

19          SENATOR SAMPSON:     But you have to  
20          listen.

21          SENATOR PERKINS:     Listen to me, I'm  
22          asking the questions. Now you have to focus  
23          on me and my questions.

24                 If you go beyond that, I might ask you

1 to hold up because it might not -- because I  
2 want to get clear what you're trying to  
3 accomplish, which I think is important,  
4 which is to make sure that when you present  
5 yourself before a judge you get fair  
6 treatment.

7 MS. WILKINSON: Right.

8 SENATOR PERKINS: It's clear from  
9 your experience, at least, that that's not  
10 happening, you don't think that's happening.

11 MS. WILKINSON: And I wonder what's  
12 going to happen on the appellate level.

13 SENATOR PERKINS: Let me finish. So  
14 let me just be clear that you understand why  
15 we are here, because we suspect that some of  
16 the concerns that you raise, not necessarily  
17 in this instance, but we hear these problems  
18 and we therefore recognize that there is  
19 some repairing that needs to be done in the  
20 process.

21 Such that someone who feels and may be  
22 justifiable, have been mistreated has a way  
23 to be treated properly.

24 So that's what we are really trying to

1           be clear about, that there is -- that we  
2           obviously are having hearings to sort of  
3           understand where the system is falling short  
4           and where we can fix it, so I'm going to ask  
5           you a question from that point of view.

6           MS. WILKINSON:        Okay.

7           SENATOR PERKINS:       Because now the  
8           fact that you are a minority contractor is a  
9           little bit irrelevant right now.

10          MS. WILKINSON:        Okay.

11          SENATOR PERKINS:       Let's just say  
12          racism is the reason why the judge did that  
13          and then we have to -- that's one thing.

14                 If you say it's about racism and  
15          sexism, there is a fix for that.

16                 If you are saying it's about something  
17          else, then we have to figure out what that  
18          something else is and figure out what the  
19          fix is for that.

20                 One of the things that you said that  
21          I'm going to just probe a little bit is  
22          this.

23                 You are so disheartened, discouraged  
24          that you feel that the system if you go, if

1           you appeal, you won't even find any help in  
2           the appeal.

3                       Now is that because you can't afford to  
4           do the appeal, or you don't have on the  
5           time?

6                       MS. WILKINSON:       No, I'm doing the  
7           appeal, it's also been amended to include  
8           the New York State Comptroller's office,  
9           DiNapoli's office because my mortgage was  
10          originally funded through the State Common  
11          Retirement Fund and even though I reached  
12          out to Mr. DiNapoli's office saying please  
13          don't get in bed with CPC, they have  
14          discriminated against me, DiNapoli's office  
15          elected to do anything, SNMA stepped in,  
16          paid off DiNapoli's office and it's like you  
17          deal with CPC on your own.

18                      My concern was he was a former  
19          Assemblyman for years and they become  
20          judges, and as they go out into the arena,  
21          the law, the judiciary system and they were  
22          Chairperson on these housing committees, it  
23          should not be that they are even to preside  
24          over any cases that they once were the

1 Chairman of the committee for so many years.

2 SENATOR PERKINS: Let me just  
3 interrupt again, forgive me, I don't mean  
4 to, but I just want to get the meat, the  
5 juice, the nuggets that you are offering, so  
6 the problem you see is a conflict of  
7 interest.

8 MS. WILKINSON: Absolutely.

9 SENATOR PERKINS: That we need to  
10 look at, there is a conflict of interest  
11 between when somebody presides as a judge  
12 and what their formal career may have been,  
13 particularly as a legislator that they might  
14 be prejudiced towards the industry.

15 So what's the second thought?

16 MS. WILKINSON: The second thought is  
17 I reached out to Senator Vigo Lipos,  
18 Barnasat, these Senators and Assemblymen,  
19 they won't even when you mention Judge  
20 Lehner, CPC, Community Preservation, they  
21 don't even want to touch it, they don't want  
22 to provide the information that's needed and  
23 so it's to me like --

24 SENATOR PERKINS: Lerner or Lehner,

1           that's a big deal? Are you sure because you  
2           mentioned the upper Manhattan area,  
3           Washington Heights.

4           MS. WILKINSON:       He was the  
5           Assemblyman for Fort Washington for about 8  
6           to 9 years.

7           SENATOR PERKINS:     That sounds like  
8           Lehner to me, that's why I'm the pooper  
9           scooper.

10          SENATOR SAMPSON:     Is there a Lehner  
11          on the Supreme Court?

12          SENATOR PERKINS:     Ed Lehner.

13          MS. WILKINSON:       It's Edward.

14          SENATOR PERKINS:     I know Edward he's  
15          a State Supreme Court Judge, who was also --

16          MS. WILKINSON:       It's Lehner.

17          SENATOR PERKINS:     There is a Judge  
18          Lerner, I don't think he would want to know  
19          that there is a person sitting at that table  
20          with so much concern about his integrity,  
21          that's why, so you're talking about Lehner,  
22          Judge Lehner --

23          MS. WILKINSON:       L-e-h-n-e-r.

24          SENATOR PERKINS:     For the record,

1 L-e-h-n-e-r.

2 MS. WILKINSON: For the Washington  
3 Assemblyman, my concern is as I speak to  
4 you, Senator Sampson or Senator Perkins, you  
5 guys may become judges in the future.

6 SENATOR PERKINS: Not me.

7 MS. WILKINSON: I'm just saying that,  
8 part of the reason the system is broken also  
9 is that you have legislators who were --  
10 they are lawyers, a lot of you have a law  
11 background, you become judges and then there  
12 is that conflict there and I just feel like  
13 something needs to be ethically -- there  
14 needs to be a Bill or there need to be when  
15 you all are sworn in that you promise when  
16 you -- if you ever go out and become a judge  
17 after sitting on a committee for 8, 9, 10  
18 years because you know as the Chairman of  
19 the Committee, Housing Committee that's a  
20 lot of money and bills that you are in  
21 control of, you know people are going to  
22 come and try to take you out to lunch and  
23 woo you and take you over, favors will be  
24 asked and called in later on if you become a

1 judge.

2 And it is just so unethical and in my  
3 case this is what has happened to me and  
4 something needs to be done, you guys, I  
5 almost want to say don't let them become  
6 judges if they were that they were or they  
7 should not hear cases that they were  
8 Chairman of those committees.

9 SENATOR SAMPSON: Senator Diaz?

10 SENATOR DIAZ: No.

11 SENATOR SAMPSON: Ms. Wilkinson,  
12 thank you very much for your comments.

13 MS. WILKINSON: I have one request, I  
14 don't know what the power to be for you  
15 guys, I have not filed a Complaint, I'm in  
16 the process of filing one, I was told to  
17 send my paperwork up to Judge Fern Fisher,  
18 Fern Fisher and I'm concerned, I mean I  
19 don't know if you guys can help govern the  
20 process or watch over me as an angel, who do  
21 I speak to to see that my appeal is given a  
22 true due process?

23 SENATOR DIAZ: Let me ask you a  
24 question, watch over -- you said somebody

1 will watch over me to you.

2 MS. WILKINSON: Watch over the case.

3 SENATOR DIAZ: You are a minority  
4 enterprise woman, what is your -- how many  
5 buildings, how is your enterprise doing now?  
6 Good or bad?

7 MS. WILKINSON: I'm in the -- I'm  
8 currently presently in the Court of  
9 Bankruptcy reorganizing and restructuring  
10 because I had to -- CPC accelerated my  
11 mortgage, placing total payment, SNMA  
12 stepped in and paid off the Comptroller's  
13 office, forcing me to go into bankruptcy.

14 So I mean I still have my asset, but I  
15 have no faith in the judiciary system, and  
16 this is why it's like how do we restore that  
17 within taxpayer U.S. Citizens who have  
18 Constitutional rights?

19 It's like how do you begin to fix the  
20 broken wheel?

21 And it's not -- something has to be  
22 done, it can't be that you file a complaint  
23 and it takes 50 years for that to be  
24 processed.

1                   SENATOR SAMPSON:       Ms. Wilkinson, we  
2                   will definitely do that and follow it up.

3                   MS. WILKINSON:       You will follow it  
4                   out?

5                   SENATOR SAMPSON:       We will follow it  
6                   up. You live in the capitol region, you  
7                   need to reach out to your State Senator.

8                   MS. WILKINSON:       It's Malcolm Smith at  
9                   this moment.

10                  SENATOR SAMPSON:       You live in Queens  
11                  or --

12                  MS. WILKINSON:       Both, I live upstate  
13                  and Queens.

14                  SENATOR SAMPSON:       Where do you vote?

15                  MS. WILKINSON:       Last voting I voted  
16                  upstate, I have just recently changed my  
17                  voting registration to New York City.

18                  SENATOR SAMPSON:       What you need to do  
19                  is contact Senator Smith's office.

20                  MS. WILKINSON:       I have done that  
21                  already.

22                  SENATOR SAMPSON:       We will follow up  
23                  with you, Lisa, could you make sure you  
24                  follow up with Ms. Wilkinson.

1 MS. WILKINSON: Thank you.

2 SENATOR SAMPSON: Thank you. At this  
3 point in time Mr. Victor Kovner who was  
4 second to speak, he is here now and I will  
5 take him.

6 MR. KOVNER: Mr. Chairman,  
7 distinguished members of the Senate, thank  
8 you for giving me the opportunity to present  
9 testimony.

10 Before I do that, let me say I want to  
11 thank the Senate for its leadership and its  
12 progress on so many issues, the passing of  
13 the Bill for the new family courts, bravo.

14 But I am here today to say on behalf of  
15 the Committee for Modern Courts I want to  
16 thank you for providing us with the  
17 opportunity to give this testimony.

18 As you know Modern Courts is an  
19 independent nonpartisan state-wide court  
20 reform organization, committed to improving  
21 the court system for all New Yorkers.

22 Modern Courts supports a judiciary that  
23 is -- that provides for the fair  
24 administration of justice, equal access to