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2 a big deal.

3 MR. RYAN: I would add, the treatments
4 called for at turnover in the Administration bill "I
5 think are focused in the right direction. Turnover
6 is the best opportunity, vacancy is the best
7 opportunity for the property owner to do the work.
8 They don't have to worry about the belongings, the
9 furniture, any of that, clean-up is very good.

10 So, absolutely, turnover is, we want
11 to capture that opportunity fully and we want to
12 have a dust test done taken at the end to make sure
13 when the keys are handed over, that there are not
14 dust hazards as well as peeling paint.

15 CHAIRPERSON SPIGNER: Council Member
16 Ognibene, followed by Council Member Miller, and the
17 Chair has to be excused for five minutes, so I am
18 asking the senior member of the Committee, Council
19 Member Michels, to assume the chair until I return.

20 Thank you.

21 COUNCIL MEMBER OGNIBENE: Thank you.

22 Gentlemen, one of the things, the
23 sense I get from your testimony is that, well, we
24 concentrate on the chipped paint on the wall, or
25 other factors, actually it is the dust that

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2 generated from these processes that represents the
3 greatest hazard.

4 If I am wrong on that, let me know
5 because I don't want to start off with the wrong
6 premise.

7 MR. FARR: Don't let me mislead you,
8 when I suggest lead dust should be put on parity
9 with peeling paint. Peeling paint is the source of
10 the problem. That is where the lead is coming from.
11 The lead contaminated dust is the pathway of
12 exposure, and you can't protect children from lead
13 poisoning without dealing with both of those.

14 COUNCIL MEMBER OGNIBENE: The problem
15 with the statute is somehow that the dust aspect of
16 it isn't at the same level that the treatment for
17 the peeling paint is.

18 MR. RYAN: With respect, sir, the
19 draft bill is, for all intents and purposes, ignores
20 the hazards of lead dust.

21 COUNCIL MEMBER OGNIBENE: What is the
22 best way to get rid of lead dust? Or to abate it. I
23 mean, assuming --

24 MR. RYAN: The thing that is so useful
25 about focusing on lead dust as the pathway is lead

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2 dust is the easiest and the cheapest point of
3 intervention.

4 The answer is specialized cleaning to
5 remove the lead dust.

6 COUNCIL MEMBER OGNIBENE: Now, what is
7 specialized cleaning?

8 MR. RYAN: A HEPA-vacuum to pick up
9 large particles, followed by a wet wash, literally
10 elbow grease. A good detergent and two buckets, one
11 for the soapy water and one for the rinse water.

12 COUNCIL MEMBER OGNIBENE: Would it be
13 helpful, for instance, if once or twice a week the
14 floors in these apartments and the windowsills were
15 washed with wetwash? A detergent, Spic and Span,
16 whatever the hell it is. Mr. Clean. But they would
17 clean twice a week or once a week, would this be
18 helpful in debating lead?

19 MR. FARR: Very few people clean that
20 up. But the answer to that question is yes.

21 COUNCIL MEMBER OGNIBENE: My mom used
22 to clean every day.

23 MR. FARR: She was a special mom. My
24 mom didn't.

25 COUNCIL MEMBER OGNIBENE: I bet you

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2 she cleaned once a week though?

3 MR. FARR: I doubt it. My mom was a
4 lawyer and, you know. No, she was not big on
5 cleaning.

6 No, but if you want to protect kids,
7 first of all what you do is you try to control the
8 source, which is peeling paint for the most part.
9 And the second thing you do, which the statute
10 requires, on turnover is to make the floors and
11 other horizontal surfaces, smooth and clean so mom
12 has a shot at keeping it clean. And then the third
13 thing you do is make sure that it is cleanable
14 because when the owner is finished at turnover and
15 does his work and cleans it up and passes, that
16 proves that this is a cleanable apartment, right?

17 COUNCIL MEMBER OGNIBENE: But that
18 doesn't mean it is not going to subsequently become
19 contaminated from airborne dust and --

20 MR. FARR: Exactly right. Well, there
21 is very little airborne-related dust anymore.

22 COUNCIL MEMBER OGNIBENE: What would
23 it become contaminated from?

24 MR. FARR: If lead-based paint peels
25 subsequently it would be contaminated from that.

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2 COUNCIL MEMBER OGNIBENE: How would
3 the landlord know that?

4 MR. FARR: We are not suggesting that
5 the landlord has a duty to do more than inspect once
6 a year and respond to complaints and work a
7 turnover.

8 I mean, I agree, and also I am a
9 lawyer, forgive me, but I don't think --

10 COUNCIL MEMBER OGNIBENE: That was
11 probably from all of the congestion of lead-based
12 paint.

13 MR. FARR: Yes, that's right. That is
14 why I am such a bad lawyer.

15 But we don't think the property owner
16 should be responsible above and beyond what I have
17 just said. He should be responsible for turning over
18 a clean and cleanable apartment with no peeling
19 lead-based paint.

20 Then he should be responsible for --
21 I mean, I personally would have the requirement to
22 respond be true whether or not there was a child
23 there.

24 COUNCIL MEMBER OGNIBENE: Right.

25 MR. FARR: But I can understand the

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2 efficiency of that. Then he should be responsible
3 for finding out if there is a child there, and if
4 there is one, responding to complaints, and
5 inspecting once a year. So, the issue of notice is
6 not an issue, because at turnover he has got notice,
7 it is empty. When he gets a complaint he has got
8 notice, and if he inspects once a years he's got
9 notice. So, we are not requiring the apartment owner
10 to do anything without notice.

11 COUNCIL MEMBER OGNIBENE: Thank you.

12 ACTING CHAIRPERSON MICHELS: Council
13 Member Miller.

14 COUNCIL MEMBER MILLER: Thank you.

15 Most of my questions actually have been answered by
16 my colleague, but I just want to ask, you say that
17 your concern as national advocates is in the message
18 and the precedent and the model that the City would
19 be adopting; are there any other cities or states
20 that have adopted legislation regarding this issue?
21 Because this is not a new issue, this is an issue
22 that people have known about for a long time. Is
23 there another model that you can recommend to us for
24 us to follow?

25 MR. FARR: Several, actually.

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2 The State of Maryland has a law which
3 is fine, except that it doesn't require dust
4 testing. They require a visual inspection after the
5 work is done and, frankly, the Health Department in
6 Baltimore and HUD were worried about that, so they
7 have arranged for us to come in after the visual
8 test and do dust tests, and what we have found is
9 that, with respect to floors, 75 percent of them
10 failed, which is sort of another reason why --

11 COUNCIL MEMBER MILLER: And what were
12 the work safety standards in Maryland? Were they
13 similar?

14 MR. FARR: Very similar.

15 COUNCIL MEMBER MILLER: The ones in
16 this bill are similar to the ones under the current
17 DOH guidelines?

18 MR. FARR: No, they were very similar
19 at turnover, which is what we are talking about, to
20 the requirements in this piece of legislation.
21 Pretty similar to that.

22 COUNCIL MEMBER MILLER: What does the
23 State of Maryland have -- that is only for turnover,
24 it is not for cases --

25 MR. FARR: No, they have to respond to

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2 the complaints. It is similar, it is frankly more
3 comprehensive than this. It has insurance divisions
4 in it and much more -- it has provisions for
5 so-called -- what do they call them -- payment,
6 qualified offers. It is a much more complicated
7 piece of legislation.

8 ACTING CHAIRPERSON MICHELS: Clearance
9 tests?

10 MR. FARR: Pardon?

11 ACTING CHAIRPERSON MICHELS: Clearance
12 tests?

13 MR. FARR: No, it doesn't require
14 clearance tests, and that is the failure. Because,
15 as I said, we went in after, HUD arranged for us to
16 evaluate the effectiveness of this law and what we
17 found is that the failure to require clearance
18 testing is what we consider to be a fatal flaw.

19 MR. RYAN: The Maryland law passed
20 four years ago. Vermont passed legislation three
21 years ago, and the Vermont model focuses on
22 essential maintenance practices, integrating lead
23 safety into --

24 COUNCIL MEMBER MILLER: Yes, but does
25 that include clearance testing?

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2 MR. RYAN: No.

3 COUNCIL MEMBER MILLER: Is there
4 anywhere that they included clearance tests?

5 MR. FARR: Massachusetts requires
6 clearance testing.

7 ACTING CHAIRPERSON MICHELS: New York
8 City in its health rules requires clearance tests.

9 MR. RYAN: We are on the cusp of a new
10 age of understanding sources and pathways of
11 children's exposure to lead. And literally it has
12 been research over the last 18 to 24 months that has
13 emphasized the importance of lead dust, children's
14 sensitivity to lead dust, what a strong predictor
15 lead dust is of the risk to children, and that is
16 why we come with such passion to plea for the
17 inclusion, incorporation in a mainstream way at
18 every opportunity for clearance dust testing.

19 It is the bottom line, the
20 performance test of quality control.

21 COUNCIL MEMBER MILLER: If this
22 legislation included a clearance test, clearance
23 dust test, would you say that it would be
24 legislation that you would be inclined to support?

25 MR. FARR: Well, we have some other

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2 things we would like, but I think that is the most
3 important.

4 COUNCIL MEMBER MILLER: Thank you.

5 MR. FARR: We think common areas, and
6 finding out whether a child is there are two others.

7 ACTING CHAIRPERSON MICHELS:

8 Gentlemen, thank you very much. We really appreciate
9 your time, and everyone appreciates the fact that
10 you came here. You were up previously and working
11 with us.

12 MR. FARR: Thank you. We will come
13 back again any time.

14 MR. RYAN: We welcome the opportunity.

15 ACTING CHAIRPERSON MICHELS: I hope we
16 will be able to see a new draft, and in fact I hope
17 we just do 205, but that is my opinion.

18 Thank you very much. We appreciate
19 it.

20 Next witness is Celia Irvine, from
21 the Manhattan Borough President's Office, C.
22 Virginia Fields. Celia, thank you very much for
23 being here. Thank you for your patience in allowing
24 these wonderful gentlemen from Washington to come up
25 to testify before you.

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2 MS. IRVINE: Thank you.

3 ACTING CHAIRPERSON MICHELS: Please
4 proceed.

5 MS. IRVINE: Good afternoon. My name
6 is Celia Irvine and I am presenting testimony on
7 behalf of Manhattan Borough President, C. Virginia
8 Fields. The Borough President regrets that a
9 scheduling conflict precludes her from testifying in
10 person at such short notice.

11 Also, I would like to inform the
12 Committee at the start of my statement, that I won't
13 be commenting on the substance of the
14 Administration's proposed legislation, due to the
15 short time frame and limitations within our office
16 in terms of analyzing and thoroughly reviewing that
17 legislation.

18 ACTING CHAIRPERSON MICHELS: You don't
19 have staff that works over the weekends and at
20 night?

21 MS. IRVINE: We are not experts on the
22 subject like some of the other people.

23 ACTING CHAIRPERSON MICHELS: Thank
24 you.

25 MS. IRVINE: As many of you know, the

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2 Manhattan Borough President is working to create
3 Manhattan's first lead safe house. The lead safe
4 house will accommodate households while their
5 apartments are undergoing lead paint abatement.

6 It is a testament to our collective
7 failure to prevent lead poisoning that such a
8 project is necessary in 1999. Together with
9 legislation requiring identification and safe
10 correction of lead hazards, the Manhattan Lead Safe
11 House will work to mitigate the damage caused by
12 childhood lead poisoning.

13 Unfortunately, this is not enough. We
14 must to eradicate this entirely preventable disease.

15 Each year between 1,200 and 1,500
16 more children become lead poisoned. Lead poisoning
17 is insidious, it targets low-income children of
18 color who face numerous obstacles to their health
19 and well-being.

20 We all agree that New York City needs
21 a new lead paint law, one that is workable and
22 enforceable. We have learned a lot about lead
23 poisoning prevention since 1982 when the City
24 Council passed Local Law 1.

25 First, we now know that improperly

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2 removing or disturbing lead paint can increase,
3 rather than lessen, the hazard.

4 Any legislation must require safe
5 work practices and properly trained workers whenever
6 the work is done that could affect lead paint.

7 Second, we understand the
8 significance of lead dust. Lead dust is one of the
9 primary sources of lead poisoning, as the gentlemen
10 before me I think very articulately put it,
11 scientific research has proven that children are
12 poisoned by ingesting lead dust through regular
13 hand-to-mouth activity.

14 Lead dust has very little to do with
15 peeling paint. It is created primarily from friction
16 when two painted surfaces, such as windows and
17 window frames rub against one another and by
18 disturbing lead paint.

19 Any legislative framework must
20 adequately define the problem of lead poisoning by
21 including lead dust in the definition of lead
22 hazard.

23 Finally, we better understand the
24 weaknesses of the City's discretionary code
25 enforcement system. Any legislation must strengthen

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2 rather than weaken the current system by continuing
3 to require owners to inspect apartments for peeling
4 paint and the presence of preschoolers, and by
5 imposing enforceable time frames for owners and the
6 City to correct hazardous conditions where they
7 exist.

8 Intro. 205, the Childhood Lead
9 Poisoning Prevention Act, represents a reasonable
10 middle ground. It recognizes that tenants, landlords
11 and City agencies all must play a role in the fight
12 against childhood lead poisoning.

13 Intro. 205 reflects what we know
14 about lead poisoning prevention, and takes into
15 account the legitimate interest of property owners
16 and the City. However, at no point does Intro. 205
17 compromise the safety of New York City's children.

18 New York City needs lead paint
19 legislation that is based upon science, not
20 politics. We cannot forget that while lead paint
21 presents a legislative and economic dilemma, it is
22 more importantly the cause of a debilitating and
23 preventable disease.

24 Along with public health
25 professionals, children's advocates and two-thirds

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2 of the City Council and Manhattan Borough President
3 supports Intro. 205 and urges the members of this
4 Committee to demand that that legislation move
5 forward.

6 Thank you.

7 ACTING CHAIRPERSON MICHELS: I think
8 whoever helped prepare the statement should be told
9 that there is a blatant mistake in your statement,
10 especially from the testimony that has been heard,
11 and that is the sentence that lead dust has nothing
12 to do with peeling paint. All experts say that that
13 is not so.

14 So, I appreciate your statement, but
15 that is an inaccuracy in it.

16 I thank you very much.

17 MS. IRVINE: Thank you for that
18 correction.

19 ACTING CHAIRPERSON MICHELS: I think
20 you are convinced that I am right, too.

21 MS. IRVINE: I am convinced that you
22 are right. I didn't read nothing to do, I was
23 emphasizing that it is a separate issue.

24 ACTING CHAIRPERSON MICHELS: Yes,
25 okay. Thank you very much.

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2 MS. IRVINE: Thank you.

3 ACTING CHAIRPERSON MICHELS: Okay, we
4 are going to do panels now, I am told by my counsel.

5 Carol Lamberg, Richard Tanenbaum,
6 Michael Lappin and John McCarthy. Are any of them
7 here? Michael is here, good. We may need an extra
8 chair. Please take your seats. Any one of you who
9 would rather sit up there separately, you are
10 welcome to. We will hear all of you.

11 Welcome. I appreciate the fact that
12 you have waited all of this time.

13 MS. LAMBERG: Well, thanks for the
14 opportunity. I guess I will start and I will be very
15 brief.

16 ACTING CHAIRPERSON MICHELS: You will
17 have to identify yourself.

18 MS. LAMBERG: Carol Lamberg.

19 ACTING CHAIRPERSON MICHELS: I know
20 who you are but we have a machine that doesn't.

21 MS. LAMBERG: I know. Thank you. And I
22 am Executive Director of Settlement Housing Fund, a
23 Citywide non-profit development and services
24 organization.

25 We have developed over 7,500

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2 affordable apartments, we own 22 buildings with
3 1,300 plus apartments in Bronx, Brooklyn, Manhattan.
4 Our buildings are pristine, beautifully maintained
5 and we have community programs, including a program
6 called Bronx Helpers, where we actually train
7 teenagers to assist and mediate in buildings where
8 there is peeling paint and inform people about the
9 problems. So we are aware of the issues and we have
10 been in the housing business for 30 years.

11 My problems are, I wish every time
12 there was a seismic law or a fire prevention law and
13 building codes and other changes, that somebody
14 would do an affordable housing impact statement,
15 because these have tremendous impacts on housing all
16 together, and housing certainly is a health issue
17 too.

18 But whereas there are 900,000
19 incidences of lead poisoning, there are 5 million
20 households who pay over 50 percent of their income
21 for rent or live in deteriorated, disgraceful
22 housing.

23 So, with this dilemma there is always
24 a conflict of goals on many of these issues, but I
25 would like to request that gut rehabilitated units,

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2 the units that we own mostly are the result of the
3 excellent City programs that were part of the
4 ten-year program, that where the walls were
5 completely replaced, the ceiling --

6 ACTING CHAIRPERSON MICHELS: That
7 makes abundant sense. I am sure that Mike will also
8 agree with that.

9 MS. LAMBERG: Yes, that you focus the
10 resources where they are needed.

11 ACTING CHAIRPERSON MICHELS: Well,
12 because what you have done in a sense is you got rid
13 of the lead paint.

14 MS. LAMBERG: Yes, there are no walls,
15 so that should be --

16 ACTING CHAIRPERSON MICHELS: Gut
17 rehab.

18 MS. LAMBERG: Yes, gut rehab.

19 ACTING CHAIRPERSON MICHELS: All
20 right, that makes sense. There is no chance of being
21 leaded paint, and we agree leaded paint is what
22 makes the dust, why should you be covered.

23 MS. LAMBERG: Then I worry about these
24 notice provisions, and only because you get cynical
25 after doing this for a long time, the child guard

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2 provisions work, we send out a letter to every
3 family, they send back something certifying whether
4 they are children under ten. And we have to do
5 annual inspections of our buildings because we care
6 about who lives there and the condition and we have
7 social workers on staff who intervene where
8 necessary for many, many kinds of reasons. But I
9 can't tell you how surprised we are sometimes. There
10 are ten children one day, oh, no, they don't live
11 there, they are just visiting -- it is very tricky
12 and I worry about liability issues for landlords if
13 the notification provisions become too onerous.

14 ACTING CHAIRPERSON MICHELS: Are you
15 satisfied with the window guard provision?

16 MS. LAMBERG: Yes.

17 ACTING CHAIRPERSON MICHELS: Well,
18 that is incorporated in 205, so I think you should
19 be satisfied with that.

20 MS. LAMBERG: Well, if it is a letter
21 and it is written and it is clear --

22 ACTING CHAIRPERSON MICHELS: 205
23 mirrors the window guard law. Unfortunately the
24 proposed legislation --

25 MS. LAMBERG: It has been told both

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2 ways. I have read the law, I can't say I am as
3 familiar as I am with every housing law that I read,
4 but --

5 ACTING CHAIRPERSON MICHELS: I am sure
6 you are not familiar with the proposed legislation
7 in front of us, because very few people have seen
8 it.

9 MS. LAMBERG: No. I have read it, but
10 I haven't memorized it.

11 Okay, gut rehab, the notification,
12 and then the cost. If you have buildings where there
13 is a rent regulatory agreement or a program or you
14 have only low and moderate income families and you
15 have to absorb the cost. I am here because I
16 panicked when I heard that possibly the inspection
17 requirements alone could cost several hundred
18 dollars a unit.

19 I know the swipe is \$10, but just to
20 hire somebody with the right certifications --

21 ACTING CHAIRPERSON MICHELS: There is
22 no certification in the state.

23 MS. LAMBERG: A professional to come
24 in and send whatever you do.

25 ACTING CHAIRPERSON MICHELS: That is

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2 in the future, possibly.

3 MS. LAMBERG: Okay, well, future
4 possibly, I am worried enough about it to say it now
5 that I have the opportunity loud and clear because I
6 added up the cost and it was some \$800,000 just for
7 the buildings I own and that would certainly put us
8 out of business.

9 ACTING CHAIRPERSON MICHELS: I would
10 be very interested to see those statistics, but I
11 doubt very much if it is going to be that much of a
12 cost to you.

13 MS. LAMBERG: So, just to raise the
14 consciousness of the impact on affordable housing,
15 if we had to spend a few hundred dollars.

16 Last, I heard about the sprinklers,
17 the most that could cost is \$20 to \$30 a month, the
18 seismic regulations add \$6, \$7 per square foot to
19 the cost. It mounts, it mounts, it mounts and there
20 are --

21 ACTING CHAIRPERSON MICHELS: The only
22 time you have to do any testing is when you clean
23 up. When you do the actual work.

24 MS. LAMBERG: Whatever the cost is --

25 ACTING CHAIRPERSON MICHELS: Somebody

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2 is trying to scare you unnecessarily.

3 MS. LAMBERG: Okay. But in case the
4 fears are correct and --

5 ACTING CHAIRPERSON MICHELS: They are
6 not.

7 MS. LAMBERG: Assuming they are not,
8 that's great. Even if there is a chance that they
9 are, I would urge that there is money in the budget,
10 just like the low-flow toilets, to pay for the cost
11 of remediation and that it doesn't become an
12 unfunded mandate and that non-profits or the Housing
13 Authority or even the good for-profit owners, and
14 there are many, many of those, shouldn't be forced
15 to --

16 ACTING CHAIRPERSON MICHELS: Some of
17 us believe we should incorporate J-51 --

18 MS. LAMBERG: J-51 or new
19 construction, like your elderly housing at
20 Washington Heights Y, all those buildings can't
21 afford the impact.

22 ACTING CHAIRPERSON MICHELS: Wien
23 House.

24 MS. LAMBERG: Wien House. Which a lot
25 of my blood is in.

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2 ACTING CHAIRPERSON MICHELS: Right.

3 Thank you. I was there at the ground-breaking and
4 the opening.

5 MS. LAMBERG: I shook hands with you
6 there and enjoyed it.

7 ACTING CHAIRPERSON MICHELS: My
8 pleasure.

9 Who is next, Mike?

10 MR. LAPPIN: Yes.

11 ACTING CHAIRPERSON MICHELS: State
12 your name for the record, even though I know you 20
13 some years.

14 MR. LAPPIN: I am Michael Lappin, I am
15 President of the Community Preservation Corporation,
16 we are an organization that has been involved in the
17 renovation and upkeep of over 65,000 apartments in
18 New York City in low and moderate income areas. We
19 are a non-profit organization, organized by the
20 major banking institutions in the City.

21 I, like some of your previous panel
22 members, was honored to be part of the National Lead
23 Paint Task Advisory Committee, so we have had quite
24 a bit of experience, at least in examining this
25 issue.

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2 I would just second what Carol
3 Lamberg said. I think it is important, and any of
4 these same kinds of legislations, some of the same
5 points we made regarding the sprinkler legislation,
6 that there be some kind of affordable housing impact
7 statement on it so that people are aware that there
8 are many dimensions which are affected by the
9 various requirements. The thing that we don't want
10 to have happen, which has happened in other places,
11 in our zest to write the problem down to the last
12 iota, we create a greater problem by not being able
13 to afford it, we can do nothing at all.

14 The previous speaker mentioned, which
15 was a very severe lead abatement standard for the
16 State of Massachusetts, which the result of that has
17 virtually brought all renovation in low and moderate
18 income areas to a halt, that is something I am sure
19 that the Councilman, and we have done I think
20 probably over 10,000 units in your district --

21 ACTING CHAIRPERSON MICHELS: I always
22 remember the number eight.

23 MR. LAPPIN: It has gone up a little
24 bit. Either that or maybe your district has
25 expanded.

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2 I am going to ask -- so one of the
3 things we are very concerned of is that some of the
4 cost that have been spoken about, particularly some
5 of the cost for testing, may not be necessary, and
6 if it is not necessary, it just may in fact burden
7 some of the low and moderate-income housing, and in
8 fact when we look at the pattern of where there are
9 some real lead belts in the City and we would hope
10 that the legislation could put some extra resources
11 in those particular areas where there seems to be a
12 disproportionate number of lead poisoned cases.

13 I am going to ask my colleague, John
14 McCarthy, who was my assistant on the National Lead
15 Paint Task Force. And who is well known in this
16 area, and has followed this research for many, many
17 years, to provide a little more detailed commentary
18 which would both reflect some of the things that we
19 think should be in the bill and some of, what we
20 think are some of the areas that have been put out
21 and some of the misunderstandings that might have
22 already been floating around.

23 ACTING CHAIRPERSON MICHELS: Mr.
24 McCarthy, welcome.

25 MR. MCCARTHY: Thank you. John

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2 McCarthy from CPC. I will just take one of these
3 microphones.

4 Is it on?

5 ACTING CHAIRPERSON MICHELS: It is on.
6 Just keep it close to you and you will be fine.

7 MR. MCCARTHY: Okay.

8 We wanted to comment on the lead safe
9 standards in the proposed bill, with the annual
10 inspections, the verifications of the presence of a
11 child, the safe work methods and the reinspection
12 and repair on a vacancy turn-over, all of which
13 would embody the lead safe standard that was in the
14 HUD task force recommendation, and also in the most
15 recent local consideration of this, which is a 1993
16 City task force, that made the same recommendations
17 and concluded that implementation of these would
18 produce an immediate reduction in potential lead
19 paint hazards.

20 One of the things we would like to
21 comment on especially is the dust wipe issue, that
22 has been so controversial here today.

23 I would like to just state clearly
24 what a dust wipe is. It is a damp cloth, like a baby
25 wipe, that thoroughly wipes up a measured area,

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2 usually one square foot. It is analyzed by a lab
3 which can take a few days to measure the micrograms
4 of lead particles per square foot. HUD prescribes
5 clearance standards and EPA has done this as well.

6 A wipe test in a single apartment
7 would cost several hundred dollars, mainly for the
8 technician's hourly costs to come to the apartment,
9 travel back, prepare the --

10 ACTING CHAIRPERSON MICHELS: You
11 realize you use discrepancy on those costs. People
12 are saying, you have heard testimony, and this is
13 the first time I have ever heard such enormous
14 numbers.

15 MR. MCCARTHY: Well, one of the things
16 that I think was a big omission in the Health
17 Commissioner's testimony is he implied he had no
18 idea what these costs were and that he would get
19 back to you with a schedule.

20 ACTING CHAIRPERSON MICHELS: He said
21 they were cheap, inexpensive. That is not
22 inexpensive.

23 MR. MCCARTHY: Well, I think one thing
24 everybody agrees is that not anybody can perform
25 this. It requires some technical competence, and Don

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2 Ryan --

3 ACTING CHAIRPERSON MICHELS: We had
4 one of our staff go over to the Health Department,
5 somebody was very much against the wipe test, she
6 came back convinced that there is nothing to it.
7 Somebody can be trained relatively easily to do it.

8 MR. McCARTHY: Well, I think the
9 counter to that is what the -- you know, Don Ryan
10 from the Alliance and Nick Farr from the National
11 Center for Lead Safe Housing, they have pressed EPA
12 to come up with a one-day training program just for
13 this purpose --

14 ACTING CHAIRPERSON MICHELS: And they
15 say it is relatively inexpensive.

16 MR. McCARTHY: It also doesn't exist.

17 ACTING CHAIRPERSON MICHELS: I know.

18 MR. McCARTHY: And as you know, in New
19 York City we have no training and certification.

20 ACTING CHAIRPERSON MICHELS: But it is
21 part of the health rules of this City to wipe that.

22 MR. McCARTHY: The point here really
23 is the practicality of a wide spread requirement for
24 dust wipe tests. At present we don't have the people
25 who can do it, and it is unlikely to be a trivial

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2 cost.

3 ACTING CHAIRPERSON MICHELS: Well, you
4 have heard them say that without that test you have
5 a bill which isn't worth the paper it is written on.

6 MR. McCARTHY: Yes, but one of the
7 points you made is that you tried to, in your Intro.
8 205, use the term interim control as the way of
9 attempting to address the concern that any
10 requirement would force certified workers to be
11 employed, and you didn't want to have that resolved.

12 ACTING CHAIRPERSON MICHELS: I am very
13 much in favor of wipe tests. I favor the health
14 rules which provide for it, I favor the EPA rules
15 and the HUD rules that provide for it. But you are
16 entitled to your opinion. I am listening to you.

17 MR. McCARTHY: Right. The point only
18 is that some technical competence is needed. You
19 know, the EPA people believe it is a day-long
20 training program. It is unlikely to be a very cheap
21 test.

22 Another point, though --

23 ACTING CHAIRPERSON MICHELS: You don't
24 have to train them, though, every time you do the
25 wipe test. You get one person trained and they can

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2 do it for awhile.

3 MR. McCARTHY: That's right. I mean,
4 the travel time and the hourly costs for whoever
5 does it are the issue. If it gets down to nothing,
6 well then it is a very small cost. Right now --

7 ACTING CHAIRPERSON MICHELS: All
8 right.

9 MR. McCARTHY: The lab cost may be
10 \$8.00 but the person's time to do it and report it
11 is something else.

12 But I think another point that is
13 worth making, and it merits serious attention, is
14 that the wipe tests can falsely measure, they can
15 give a false assurance of lead safety, if lead dust
16 contamination from soil from outside the apartment
17 can cause levels to reaccumulate within the unit.

18 A few facts on lead dust. Lead dust
19 in soil is chiefly traceable to past deposits of
20 microscopic lead particles from leaded gasoline
21 exhaust.

22 Leaded gas was phased out in America
23 during the 1980s, and EPA and medical researchers
24 who studied nationally the health of the US
25 population credit this phase-out of leaded gas for

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2 the drop of 78 percent in American's average blood
3 levels, between the late 1970s and early '90s when
4 the researchers studied the population.

5 This nationwide decline in blood
6 levels, which is seen in all populations, all age
7 groups, all income levels, was called the public
8 health success of the decade by EPA's commissioner.

9 The phase-out of leaded gas, in the
10 eighties stopped new contamination from that source,
11 but lead deposited from earlier years doesn't
12 biodegrade. It can only be washed away, covered by
13 clean soil, or blown someplace else by the wind.

14 Research correlates soil lead
15 concentrations with proximity to highways, bridges,
16 and tunnel approaches.

17 New Orleans, for example, has
18 documented extremely high hazardous levels of lead
19 in playgrounds and open yards. Similar findings have
20 been recorded in Baltimore and other towns. St.
21 Paul, Minnesota, surprisingly the same thing.

22 Homes are protected from
23 contamination by leaded soil and dust, by regular
24 detergent cleaning of the floors and the windowsills
25 and that is the reason that HUD recommends these

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2 measures in the pamphlet that since June of 1998 is
3 required by federal law now to be handed out to
4 tenants upon any new tenancy.

5 No extensive analysis has ever been
6 done in New York City of ambient dust levels. High
7 levels do exist in some parks. This was done in a
8 Throggsneck Park examination under a highway
9 approach, and another example it was well known was
10 the Williamsburg Bridge.

11 ACTING CHAIRPERSON MICHELS: The
12 Williamsburg Bridge, and just recently they were
13 cleaning off the George Washington Bridge, they
14 encapsulated the bridge for the fear of lead.

15 MR. MCCARTHY: Oh, that's right.

16 On the plus side, you know, on the
17 past leaded dust accumulations issue, though the
18 extensive paving in many City neighborhoods means
19 that most past deposits of leaded gas exhaust
20 probably have long ago been washed away by rainfall
21 and snow melt.

22 This may account for the fact that
23 under the City Department of Health data, many New
24 York City neighborhoods show an incidence of
25 elevated blood levels, it's one-third or even less,

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2 of the US average.

3 Under the federal study of national
4 health that I referred to, 1.1 percent of American
5 kids had blood leads of over 20. New York City's
6 average incidence is one-third of one percent, under
7 the Department of Health figures and this has been
8 pretty steady from the early '90s to 1997, which is
9 the most recent year for which I have seen data.

10 The federal study documented a 78
11 percent drop in blood leads between the late '70s
12 and the early '90s had a counterpart here in the
13 City, or the similar results in 1980 when the action
14 level for lead poisoning was 40 micrograms per
15 deciliter, the City Department of Health reported
16 976 kids at that level.

17 In the mid-nineties, that level,
18 there were 192 kids at that level, which was a drop
19 of 80 percent, similar to the nationwide drop.

20 These City results, in comparison
21 with US averages, bear out the consensus that it is
22 not the age of housing by itself that is a lead
23 hazard, but a condition of housing.

24 In most of the City's 30 health
25 districts, we show incidence of kids with blood

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2 levels above the action level of 20 now. For
3 instance, one-half of a percent in 1997, in
4 Bushwick, a tenth of a percent in Mott Haven, a
5 tenth of a percent in East Harlem. But some pretty
6 wide disparity among the health districts. There is
7 an adverse disparity that exists year after year in
8 a small number of them, that the showings are so
9 consistent that the term lead belt is applied to
10 these. It is kids in Bushwick, Bedford Stuyvesant,
11 Flatbush and Ft. Greene that consistently make up 30
12 to 35 percent of the City's lead poisoning cases,
13 and those four districts, plus North Bronx, Tremont,
14 Washington Heights, and Jamaica, produce over 50
15 percent of the City's cases.

16 What this argues is that when there
17 is data like this year after year showing where lead
18 risks obviously are concentrated, it makes sense to
19 concentrate resources in those areas, you know,
20 inspection, clean-up, including soil clean-up.

21 ACTING CHAIRPERSON MICHELS: This is
22 the furtherance of Mr. Lappin's statement.

23 MR. MCCARTHY: Yes. And it is here
24 where resources, public resources would be most
25 effective.

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2 ACTING CHAIRPERSON MICHELS: What type
3 of cleaning is suggested?

4 MR. McCARTHY: I think soil clean-up
5 would be extremely important. Certainly
6 deterioration in housing, you know, is a contributor
7 to childhood lead poisoning.

8 ACTING CHAIRPERSON MICHELS: You are
9 not denying that dust comes from lead-based paint?
10 Deteriorated lead-based paint peeling are you?

11 MR. McCARTHY: No. That is a
12 contributor, but what I am asserting, which is not,
13 you know, hasn't been discussed today, is the
14 research that shows contributions from non-paint
15 sources.

16 ACTING CHAIRPERSON MICHELS: But the
17 fact of the matter is, when you get lead dust, it is
18 very difficult to determine where it is from; isn't
19 that right? Isn't that the testimony of the two
20 gentlemen you spoke so favorably about said?

21 That is what I heard them say. They
22 said they can't tell where it is without doing
23 extensive work. Have you done the extensive work to
24 determine where the lead comes from in housing?

25 MR. McCARTHY: I don't pretend to be a

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2 scientific expert, but I have read quite a few of
3 the articles that actually distinguish between the
4 appearance and the size of the microscopic particles
5 and that they are able to distinguish between leaded
6 gas as the initial source and other sources.

7 The point on this, though,
8 Councilman, is that a wipe test might give a false
9 assurance of lead safety, if track-in from outside
10 is simply going to reaccumulate within --

11 ACTING CHAIRPERSON MICHELS: That is
12 why they say the test is done immediately after the
13 finishing of the repairs, before anybody can get a
14 chance to track it in.

15 MR. McCARTHY: The difficulties for an
16 owner in the wipe test, aside from the cost, are
17 several:

18 One is the fear of, you know,
19 creating a liability risk, in that any competent
20 owner with an initial fail would continue to clean
21 up until they get a pass.

22 ACTING CHAIRPERSON MICHELS: That is
23 what they should do.

24 MR. McCARTHY: It is what they should
25 do, but that initial fail is presumed lead hazard

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2 which under the HUD notification rule since June of
3 '98 --

4 ACTING CHAIRPERSON MICHELS: No
5 accountability, you don't know if you have got it
6 until you do the work. In fact, if you are not a
7 good landlord, like you guys are, there is no
8 testing to see if they have even done the work at
9 all.

10 MR. MCCARTHY: But the assurance of
11 lead safety that the test seems to give, may not be
12 true, if there are external sources of lead from the
13 soil.

14 I think the point really from a
15 universal requirement of wipe tests, that shouldn't
16 be implemented without some knowledge of the
17 Throggsneck Park situation, some knowledge of the
18 amount of contribution of lead into units from
19 outside from soil or dust.

20 ACTING CHAIRPERSON MICHELS: Sir, with
21 all due respect, you are doing it in an apartment
22 where children are five years of age or under, no
23 matter where they get the dust from, and I am not
24 agreeing or disagreeing with you, that child unless
25 that dust is removed is going to get lead poisoning;

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2 isn't that correct?

3 The lead dust^u is what causes
4 childhood lead poisoning.

5 MR. McCARTHY: It may be a hazard but
6 we are trying to point out, Councilman --

7 ACTING CHAIRPERSON MICHELS: Where it
8 comes from is null, it is if the child is going to
9 ingest it and be poisoned.

10 MR. McCARTHY: But one of the problems
11 of the Local Law 1, you know regime of the statute
12 and the regulations, was that it was an unworkable
13 system.

14 ACTING CHAIRPERSON MICHELS: It was
15 the state-of-the-art at that particular time, that
16 is what we were told, that it comes from the paint
17 chips, children consume them. That is what we were
18 told, I was told by all of the experts, but we have
19 now learned differently so that is why we are
20 changing the law. That is why 205 does not contain,
21 doesn't require you to remove all of the lead, only
22 the lead which is in deteriorated paint or comes
23 from friction surfaces.

24 MR. McCARTHY: Right, I understand
25 that. But --

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2 ACTING CHAIRPERSON MICHELS: We are
3 trying to keep up the state-of-the-art and be
4 reasonable.

5 MR. McCARTHY: But the point in
6 pursuing these facts about non-housing sources is,
7 you know, in the absence of trained technicians who
8 had actually performed these, to avoid creating
9 another set of regulations that look good, that are
10 based on some incomplete knowledge of the current
11 state-of-the-art really aren't.

12 I mean, it is striking that the
13 National Housing, you know, Nick Farr and Don Ryan
14 point out that it is only within the last 18 to 24
15 months that there really has been much research on
16 the contribution of dust.

17 ACTING CHAIRPERSON MICHELS: That is
18 what they are telling us. You know, this is snapshot
19 in time, we can only do what they are telling us and
20 that is what they are telling us it comes from.

21 It seems to me and I think maybe you
22 are someone who agrees with me, what we should be
23 doing is including playgrounds and other places
24 where the dust may come from and be tracked into the
25 apartment, so we should clean them up since it is a

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2 cumulative thing with children.

3 It is our objective, and I am sure
4 you feel the same way, our main objective here is to
5 prevent children from being lead poisoned.

6 MR. MCCARTHY: Yes, it is. And we have
7 acquired a lot of knowledge on that, studying in
8 these various task forces over the years.

9 But one of the things that is true --

10 ACTING CHAIRPERSON MICHELS: I better
11 not engage in this dialogue, as interesting as I
12 find it, maybe we will continue some other time. Can
13 you sort of wrap up your testimony?

14 MR. LAPPIN: Just one of the things
15 that might be appropriate.

16 ACTING CHAIRPERSON MICHELS: Sure,
17 Mike.

18 MR. LAPPIN: One of the things we
19 think there is a real possibility of is a continual
20 failure to be able to pass a wipe test because of
21 ambient levels of dust in the area of that
22 particular building and such.

23 And one of the things we think that
24 is appropriate, that has not, to my knowledge, and I
25 think my knowledge is complete in this regard, there

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2 has not been in this City, as with all the concern
3 about childhood lead poisoning, there has not been
4 any study as to what is the ambient level of dust
5 that comes from the streets or comes from the soil,
6 or whatever else. We believe that there is, it does
7 appear to us that there is real ambient dust in the
8 streets that does come into the house, and it would
9 seem to me as an appropriate measure, as part of
10 this bill, that there be sufficient funds that such
11 a study be done so that we can see how severe a
12 problem this really is.

13 If we are going to shoot at
14 something, let's not aim at the wrong thing here.

15 ACTING CHAIRPERSON MICHELS: Well, I
16 think that is not a bad idea. But unfortunately, it
17 is not something that we are considering in this
18 Committee. We are considering a piece of legislation
19 in this Committee, and I think maybe if this
20 legislation is given some more time to be developed,
21 that is something we should look into.

22 I thank you gentlemen very much for
23 being here, but I am afraid I have to call some
24 other witnesses.

25 MR. LAPPIN: Thank you.

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2 MR. McCARTHY: Thank you.

3 ACTING CHAIRPERSON MICHELS: Mr.

4 Tannenbaum was not here.

5 Next is Meryl Viener, John F. Rosen,
6 and Dr. Evelyn A. Mauss. Are they here?

7 Please join us. Thank you, again, for
8 waiting all of this time. I hope it has not been
9 without merit.

10 You can choose among you, between
11 you, I should say.

12 DR. ROSEN: Mr. Chairman, I am going
13 to lead off. My name is Dr. John Rosen, I am
14 Professor of Pediatrics at the Albert Einstein
15 College of Medicine and Montefiore Medical Center.

16 ACTING CHAIRPERSON MICHELS: And I
17 would like to say myself, sir, knowing you for many
18 years, and knowing of your work, that I consider you
19 the leading expert, maybe nationally on the issue of
20 childhood lead poisoning, and I applaud you for the
21 work you have done and I appreciate you coming here.

22 DR. ROSEN: Thank you very much.

23 Our group is currently the only New
24 York State funded resource center for lead poisoning
25 prevention in all of the five boroughs in New York

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2 City and treat the majority of lead poisoned
3 children across the City.

4 In 1985 and 1991, I was Chairperson
5 of CEC's Advisory Committee on Childhood Lead
6 Poisoning, which set the standard for the treatment
7 and management of childhood lead poisoning, as well
8 as abatement, which is a word that should be in a
9 bill but is not.

10 ACTING CHAIRPERSON MICHELS: For good
11 reason. Bad reason, though, but good reason.

12 DR. ROSEN: I have also in my
13 experiences to date or in three decades' worth of
14 work in this field treated directly or indirectly
15 over 15,000 children with childhood lead poisoning.

16 Several experts in the field, both
17 clinicians, scientists, and lead toxicologists have
18 expressed their dismay in writing concerning the
19 Vallone bill.

20 These experts include Dr. Maury
21 Markowitz, Dr. Herbert Needleman, Dr. Sergio
22 Piomelli, Dr. Paul Mushak, and Dr. Joseph Graziano.

23 The specifics of this bill have been
24 framed without sufficient input by medical experts,
25 public health experts and affected communities

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2 throughout New York City.

3 Instead the bill has been framed by
4 the Speaker with support from the Mayor and these
5 individuals do not qualify as pediatricians,
6 doctors, public health advocates, nor members of
7 affected communities. In this regard, it is my
8 understanding that the Department of Health set the
9 public health policy in this City together with lead
10 experts nationally and, again, effect local
11 communities.

12 Unfortunately, it has fallen to the
13 uninformed staffs of the Speaker and Mayor to frame
14 a bill which is untenable because it fails, totally
15 fails to protect children from childhood lead
16 poisoning.

17 One area that has been covered
18 somewhat superficially before but yields lead dust
19 which has not been mentioned enough, and those are
20 friction surfaces of old doors, wooden doors and
21 wooden windows, the bulk of which are
22 characteristically found in pre-1960 housing.

23 Those friction surfaces must be
24 mediated and abated to control the whole lead dust
25 problem, which I will skip over because it has been

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2 mentioned so many times, to tell you specifically
3 about one child who was transferred to our center
4 last week.

5 This was a three-year-old child who
6 was treated at an outlying hospital in Brooklyn, was
7 sent home with a blood lead of 21, and went home to
8 an apartment that was loaded with dust. There was
9 lead debris, there were paint chips all over the
10 apartment.

11 Within one week that child was
12 referred to our center with a blood lead of 52, and
13 this further points out the importance of cleaning
14 up of clearance testing, of debris, of training
15 programs, of certified abatement programs throughout
16 the City and meeting finally US HUD and EPA
17 guidelines in terms of clearance standards.

18 In summary, as the largest treatment
19 center in the City where I could hospitalize a
20 child, treat with a chelating agent and sent that
21 child home under the provisions of the bill that
22 have been discussed today it would be medical
23 malpractice.

24 What I urge is that Intro. 205
25 receive as much, if not more attention, by this

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2 committee to open up a democratic process so that
3 all of the issues can be on the table and a
4 preventive bill, such as your own, can achieve full,
5 full disclosure, full discussion and support by
6 public health advocates.

7 ACTING CHAIRPERSON MICHELS: And
8 hopefully passage as well. And implementation as
9 well.

10 DR. ROSEN: That I assume.

11 ACTING CHAIRPERSON MICHELS: Thank
12 you, Dr. Rosen. I appreciate it.

13 Next.

14 MS. VIENER: Hi. My name is Meryl
15 Viener --

16 ACTING CHAIRPERSON MICHELS: Put the
17 microphone closer.

18 MS. VIENER: Okay.

19 I am an attorney and I specialize in
20 lead litigation. I represent well over 100 children
21 who were poisoned from lead, who suffer from brain
22 damage, learning disorders, attention disorders, and
23 at serious risk for future health problems.

24 My clients are concerned and angry
25 about this bill. They have written letters and made

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2 phone calls and they would have been here today but
3 for the extremely ridiculously short notice of this
4 hearing.

5 I would like to tell you one of their
6 stories.

7 Jordon was born in a pre-1960
8 multiple dwelling apartment in Manhattan in
9 September 1992. Eleven days after his birth, a fire
10 in the building made his apartment temporarily
11 uninhabitable. But when his mother and he returned
12 they found the repairs had not been completed and
13 she commenced an action in Housing Court.

14 In response to a court order, the
15 Department of Housing Preservation and Development
16 inspected the apartment and found deteriorated paint
17 conditions. Even though the agency knew that the
18 dwelling was old and he was a young child, they
19 failed to cite the presumption and cite the landlord
20 for a lead paint violation. Instead, it has merely
21 cited the landlord for peeling paint violations.

22 At that time Jordon's blood was
23 tested for lead and registered at six micrograms per
24 deciliter, indicating that he was not lead poisoned.

25 Then the landlord began conducting

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2 repair work. Because HPD had not issued a citation
3 for a lead paint violation, the work was performed
4 without any safety precautions to protect against
5 lead dust in the apartment.

6 Five years later, in January, 1995,
7 Jordan was tested again for lead, his blood lead
8 levels had shot up to 42 micrograms per deciliter.
9 He had become highly lead poisoned.

10 The Department of Health inspected
11 the apartment and tested the paint and found 60
12 samples tested positive for lead. All of these areas
13 cited by the Department of Health were previously
14 cited by HPD for peeling paint violations, but not
15 lead violations.

16 DOH did not issue a notice of
17 violation until three weeks after this inspection,
18 and a month after Jordan had been diagnosed. Between
19 that inspection and the notice of violation, the
20 landlord had his building superintendent begin work
21 on the lead paint surfaces. Again taking no safety
22 precautions to prevent the spread of hazardous lead
23 dust.

24 A Department of Health reinspection
25 found that violations were still present, and

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2 instead of having HPD do the repairs, DOH simply
3 issued another order to abate, with no penalties or
4 other enforcement action.

5 The landlord's employees did more
6 work in the apartment, again not following safety
7 precautions. While Jordan's blood lead level had
8 dipped down to a still high level of 25 micrograms
9 per deciliter, a month after this work was conducted
10 his blood lead level had risen again, this time to
11 36 micrograms per deciliter.

12 At one point in July 1995, the City
13 Department of Environmental Protection stepped in
14 and halted all lead abatement work in the apartment
15 because of the continued non-compliance with the
16 safety regulations.

17 The cycle of promises to correct the
18 problem, sloppy work and lack of dust clearance
19 testing, delayed inspections and more orders
20 continued for months longer, and Jordan's blood lead
21 level continued to remain elevated at 26 micrograms
22 per deciliter or higher.

23 Between November 1995 and January
24 1996, new water leaks in the ceilings and walls of
25 the apartment caused other paint to peel and the

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2 plaster to break releasing more lead paint chips and
3 more lead paint dust. More orders, sloppy work and
4 delayed action followed.

5 Finally, in frustration and
6 desperation, Jordan's mother sought shelter at the
7 Montefiore Medical Center's Lead Safe House in the
8 Bronx, in May 1996. Within about a month Jordan's
9 blood lead level dropped to 19 micrograms per
10 deciliter and it continued to drop thereafter. His
11 mother continued to press for proper clean-up of the
12 apartment.

13 It took a long time, and they were
14 not able to return to their apartment until
15 September 1997.

16 Jordan suffers behavioral and
17 learning problems from the affect of his lead
18 poisoning and we will never know what his full
19 potential could have been. I am confident that
20 Jordan will prevail in his lawsuit against his
21 landlord and the City. No one can give him back his
22 abilities or health, but he has the right to
23 monetary compensation.

24 Under this proposed bill, both the
25 landlord and the City would be shielded from