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2 liability and Jordan would have no recourse.

3 I want to point out that because
4 Jordan's landlord used sloppy work methods, dust in
5 the apartment cause Jordan's blood levels to shoot
6 back up.

7 I want to point out that the
8 Department of Health and HPD cleared the apartment
9 after visual inspections, but the dust clearance
10 tests showed high levels of lead dust. Clearly,
11 eliminating the requirement for the dust clearance
12 test will lead to more poisoned children.

13 I believe that the threat of
14 litigation drives landlords to act. Under the
15 proposed bill, more children will be poisoned and
16 landlords will be protected from liability.

17 ACTING CHAIRPERSON MICHELS: I think
18 you were here when I was having a dialogue with the
19 Corporation Counsel?

20 MS. VIENER: Yes.

21 ACTING CHAIRPERSON MICHELS: And you
22 are an attorney and you brought these cases. Do you
23 think you would be able to bring your case without
24 the presumption of leaded paint?

25 MS. VIENER: I think it would be

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2 virtually impossible to bring a successful lawsuit
3 without that statutory presumption.

4 We tried it outside of the City of
5 New York where we do not have the presumption --

6 ACTING CHAIRPERSON MICHELS: If you
7 don't have the presumption you can't win.

8 MS. VIENER: -- And we can't win.

9 ACTING CHAIRPERSON MICHELS: Unless
10 you can show the landlord had actual notice.

11 MS. VIENER: Well --

12 ACTING CHAIRPERSON MICHELS: That
13 provides you with constructive notice.

14 MS. VIENER: What that really means is
15 that if there was a child who was poisoned in the
16 apartment once before, so you have one poisoned
17 child, the next child who is poisoned will have a
18 lawsuit.

19 ACTING CHAIRPERSON MICHELS: The
20 actual notice. In other words, without the
21 presumption you have no constructive notice, and if
22 you have to depend on constructive notice you can't
23 win.

24 MS. VIENER: Exactly. And a landlord
25 will always deny that he has actual notice when

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2 confronted with this type of situation.

3 ACTING CHAIRPERSON MICHELS: And also
4 he will deny that he knew there was a child under
5 five there. And also deny that he received notice
6 from the tenant that there is a problem in his
7 apartment, and the burden of proof will then be on
8 the tenant. Which means preponderance of evidence
9 will have to be shown by the Plaintiff's attorneys.

10 MS. VIENER: How can they show --

11 ACTING CHAIRPERSON MICHELS: I am not
12 exaggerating when I state that what is built in here
13 is the landlord's protection legislation.

14 MS. VIENER: Absolutely.

15 ACTING CHAIRPERSON MICHELS: All
16 right. Very good. Thank you.

17 I just had to have another attorney
18 verify that I wasn't talking through my hat.

19 That's okay, please, we have a
20 minimum of time.

21 DR. MAUSS: I am Dr. Evelyn Mauss. I
22 am a physiologist. New York University is my
23 academic affiliation and at present I serve as
24 science consultant, senior science consultant, for
25 the Natural Resources Defense Council.

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2 There are a couple of facts that are
3 very basic to our consideration to the material we
4 are considering today. I think that members of this
5 Committee know it and most of this well-informed
6 audience know these as well.

7 The first is that lead is a
8 non-threshold toxicant. This is the scientific and
9 medical consensus at this time, a non-threshold
10 toxicant, by which we mean that there is no
11 threshold, there is no level, no lowest level below
12 which exposure can be considered safe.

13 The second is that of all of the
14 organs in the body, the most vulnerable to this
15 poison is the brain, and this is especially so in
16 children.

17 And I would like if you can consider,
18 I was thinking of this as temporarily a university
19 classroom instead of a Council chamber, in which if
20 I --

21 ACTING CHAIRPERSON MICHELS: If you
22 need 45 minutes, I don't have it.

23 DR. MAUSS: I will do it in four or
24 five at the most.

25 ACTING CHAIRPERSON MICHELS: Because

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2 we have a lot of people still to testify.

3 DR. MAUSS: Well, I will try to tell
4 you something, a little bit of basic science, that
5 will in a way inform your thinking about all of
6 this.

7 You don't really need this, do you
8 want me not to do it?

9 ACTING CHAIRPERSON MICHELS:
10 Unfortunately, the people who should be listening to
11 you -- and I have heard you before this issue -- are
12 not here. If you want to give a thumbnail sketch of
13 it and let people know.

14 DR. MAUSS: That is what it would be.
15 This is a neuron.

16 ACTING CHAIRPERSON MICHELS: Existing
17 in the brain.

18 DR. MAUSS: A neuron is a nerve cell
19 in the brain, and the handout that I have given you
20 is a series of pictures, and the first is a newborn,
21 a little bit of a tiny cortex of a newborn, and the
22 baby when he or she is born does have a complete
23 number of the neurons of these cells. The cell
24 itself. But not all of the branches, not all of the
25 processes that interconnect with one another and

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2 upon which brains function basically and completely
3 depends.

4 If you look at this little bit of
5 brain of the newborn, you will see that there are
6 very few connections. There are some cell bodies,
7 and hardly any connections. At three months there
8 are a few more, at six months there are more.

9 When you get to two years it is an
10 actual tangle, an unorganized tangle, rather dense,
11 of all of the neurons and processes and they are
12 connecting with each other in great number.

13 The connections are enormously, are
14 very numerous. The newborn had the cell but not the
15 billions, now that word is billions of connections
16 that occur from one cell to another, the connections
17 are called synapses.

18 Now if you look, and I want to point
19 out that at this stage, these stages up to the
20 toddler age, from newborn to toddler, the branches
21 are developing, the connections are developing and
22 lead in the body of the child, in the brain, blood
23 supply of the child of a little baby and a toddler
24 can seriously affect whether those branches develop
25 at all and what kind of connections are made.

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2 If you now look for a second at four
3 years and six years, you can see that the density is
4 much, much less, because at four years, as the child
5 has grown from two years and older, that unorganized
6 random tangle of connections, it gradually becomes
7 organized so that tracts in the brain can do what
8 they are supposed to do - they connect with the
9 different parts of the brain, they receive
10 information, they send out information.

11 This is the second point in the
12 development of the brain where exposure to lead is
13 really detrimental to the child's brain development,
14 the learning and the knowing. The cognitive and
15 intellectual abilities of the child are compromised
16 seriously by exposure of the brain at either of
17 these stages.

18 That is the first point, and as long
19 as Council Member Michels isn't going to stop me, I
20 just have one more -- yes, now we have Mr. Spigner
21 back -- the second point that I want to make,
22 another finding that is important:

23 You all know about MRIs, probably
24 many people, or some people have been requested to
25 take MRI testing, it stands for Magnetic Resonance

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2 Imaging. There is something else, MRS, which is
3 Magnetic Resonance Spectroscopy. And by this
4 technique, MRS, it is possible to learn not just the
5 anatomical details of the organ of a body, but much
6 about the metabolism, the chemicals, and by this
7 test applied to the brains of children who have been
8 exposed to lead, it is clearly evident that the
9 metabolism of the brain cells is deranged.

10 CHAIRPERSON SPIGNER: I don't think
11 there is any debate on the destructive nature of --

12 DR. MAUSS: I just wanted you to know
13 how it happens, because I think when you know how it
14 happens, it helps you in recognizing the gravity.

15 CHAIRPERSON SPIGNER: I don't think
16 there is any debate on how it happens. But I do
17 appreciate your testimony.

18 DR. MAUSS: I just want to say in
19 concluding, if I may, that when you evaluate --
20 well, I think the conclusion is also obvious that if
21 we don't protect children from lead, it is the
22 future of all of them, including all of those little
23 fellow citizens whose brains may not develop the way
24 we want them to.

25 CHAIRPERSON SPIGNER: You bet. Thank

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2 you.

3 DR. ROSEN: If I could add just one
4 more comment, sir?

5 The Commissioner of Health, when he
6 was here, claimed that there were less than 1,000
7 cases of childhood lead poisoning in New York City.
8 An analysis by the Honorable Mark Green that was
9 published approximately a year ago, indicated that
10 the number was actually 30,000.

11 CHAIRPERSON SPIGNER: The question is
12 who do you believe?

13 DR. ROSEN: Well, to push it further,
14 just let me push this further.

15 He says 1,000 when he is before this
16 Committee, each year for the past five years I have
17 written a letter of recommendation for the DOH for
18 their CBC application, and during the past two years
19 they have quoted 30,000 in their CEC application.

20 I think the conclusion is clear.

21 CHAIRPERSON SPIGNER: Yes, Ma'am.

22 MS. VIENER: I already gave my
23 testimony.

24 CHAIRPERSON SPIGNER: Okay.

25 Council Member Linares.

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2 COUNCIL MEMBER LINARES: I think that
3 your ~~st~~atement in terms of the number of children is
4 accurate and is I think on record, the 1,000 number
5 comes from those who reported a condition that
6 needed their intervention which was 1,000. But that
7 is not the universe of children that are affected.
8 They acknowledged it could even be more than
9 30,000.

10 DR. ROSEN: It well may be more. But
11 they have not been particularly frank in their
12 quoting of numbers.

13 CHAIRPERSON SPIGNER: Thank all of
14 you.

15 Okay, Joseph Corso, I don't see him.
16 Okay.

17 Let's see, Mary Ann Rothman, is she
18 here? Frank Ricci? The two of you can have a seat.

19 If you will identify yourself, Ms.
20 Rothman, you can go first. Ladies first.

21 MS. ROTHMAN: Thank you very much, Mr.
22 Spigner, and members of the Committee.

23 My name is Mary Ann Rothman and I am
24 the Executive Director of the Council of New York
25 Cooperatives and Condominiums. This is a membership

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2 group for people who choose to make their home in
3 housing co-ops and condominiums in our City, and as
4 such, home owners, owners of real estate in our
5 City, I think we are people who take special care of
6 our homes.

7 The Council itself has a membership
8 of 2,038 co-op corporations and condominium
9 associations, and I speak here today also on behalf
10 of two other organizations for co-ops and condos.
11 The federation of New York Housing Cooperatives, and
12 the Coordinating Counsel of Co-ops.

13 Between our three organizations we
14 cover an enormous spectrum of housing co-ops,
15 spanning every economic level and all of the
16 boroughs and beyond.

17 The City Council has had a very, very
18 difficult task, and I congratulate this Committee on
19 working diligently to craft a bill to alleviate an
20 extraordinarily serious problem. The bill before us
21 makes great strides toward preventing lead poisoning
22 of small children.

23 For the first time ever, the
24 maintenance and control safety standards that it
25 will set will mean that no scraping of dry painted

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2 surfaces will disturb paint chips and send dust into
3 the air, and expect for very, very tight timeframes
4 for protecting and implementing these measures, I
5 think that they are doable. And our organization
6 would like very much, the organizations would like
7 to be able to support this bill.

8 However, there are issues to be
9 resolved concerning the obligations of co-op
10 corporations and condominium associations, and the
11 obligations of the owners of the specific units
12 where peeling paint might be found.

13 I am confident that we will be able
14 to resolve these issues until they are resolved. We
15 can't support this bill.

16 We are also always concerned about
17 criminal liability, it is our strong belief that
18 civil penalties are abundant and the certainly the
19 boards of directors of co-ops and condominiums
20 shouldn't face criminal penalties for acts which are
21 not criminal.

22 I thank you.

23 CHAIRPERSON SPIGNER: I share your
24 concern.

25 Council Member Michels, you had a

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2 question?

3 COUNCIL MEMBER MICHELS: No, I will
4 ask later.

5 CHAIRPERSON SPIGNER: Mr. Ricci.

6 MR. RICCI: Yes, my name is Frank
7 Ricci. I am the Director of Government Affairs for
8 the Rent Stabilization Association. We represent
9 about 25,000 property owners in New York City, who
10 collectively have about 1 million units of housing
11 in their inventory.

12 Many of those are owned in the co-op
13 or condo basis, but most of them are rental
14 apartments. Regulated rentals.

15 I have prepared testimony, which I am
16 going to hand in which you can read. I don't think
17 at this later hour of the day it is really helpful
18 to read the entire testimony.

19 I wanted to reiterate a few points
20 that were made today by the prior speakers.

21 COUNCIL MEMBER MICHELS: I don't see
22 your testimony up here.

23 MR. RICCI: Sorry. I gave it to the
24 Sergeant-At-Arms, I don't know if he gave it to you.

25 CHAIRPERSON SPIGNER: Yes, I have it.

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2 Right here.

3 MR. RICCI: I just wanted to emphasize
4 a couple of things in this legislation.

5 And the one thing that seems to have
6 gotten lost and a lot of what we were talking about
7 today is that this legislation which in its current
8 form we are supporting, in light of the fact the
9 alternative right now, as of June 30th, will be
10 Local Law 1, is that we are still talking about a
11 presumption of lead violation. Nobody is going out
12 there, actually testing the conditions to see if it
13 is really lead-based paint, they are not using an
14 XRF machine, it is based on a presumption, and all
15 of these new protocols that owners are going to have
16 to follow, which is much more stringent than the way
17 Local Law 1 has been enforced since 1982, are based
18 on a presumptive lead violation.

19 We know, our members know from their
20 experience over the years, that usually about
21 somewhere between 85 and 90 percent of those, if
22 they decide to challenge these violations get
23 knocked out because they never rise to the level of
24 lead in the paint that would require the protocols
25 that were espoused by EPA and HUD and others for

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2 full abatement work. These are presumptive lead
3 violations that don't meet that criteria.

4 Nonetheless, we support this
5 legislation, even with its new protocols because it
6 does represent a way for owners to go in and correct
7 that condition quickly. And that gets me to my other
8 point which seems to have been lost on a number of
9 people here today, a lot of people have referred to
10 the task force report that was done by HUD several
11 years ago with the participation of EPA and numerous
12 experts around the country, and one of the overall
13 themes of that report had to do with the fact that
14 if you pass a law, the locality, a city, state
15 passes any law, it has got to be doable. It has got
16 to be workable. It has got to be something that
17 owners aren't going to run away from. It has got to
18 shield owners in some respects from liability. If it
19 doesn't do any of those things, then owners are
20 going to ignore it and nothing will ever happen and
21 ultimately children lose.

22 I think this bill at this point right
23 now is very close to crossing that line, being
24 something where owners aren't going to do anything,
25 is to be just as easy for them to go out, hire a

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2 testing company to come in, test the paint and have
3 it dismissed all together and then it is just a
4 peeling paint violation and not a lead-based paint
5 violation, presumptive lead based paint violation.
6 So I think that is something that you have to keep
7 in mind if you make any changes to this bill from
8 here on in.

9 I think that really summarized most
10 of the things that we wanted to say. As I said, we
11 have about 13 pages of prepared testimony, much of
12 it has already been talked about today, and if I can
13 answer any questions I would be happy to.

14 CHAIRPERSON SPIGNER: Thank you, Ms.
15 Rothman. Thank you, Mr. Ricci.

16 Stanley has a question.

17 COUNCIL MEMBER MICHELS: With respect
18 to Ms. Rothman, who I greatly respect, and who has
19 done a splendid job in representing co-ops, I do
20 support the exemption from this bill of
21 owner/occupied co-ops and condominiums, because they
22 are the ones responsible for keeping their own
23 apartments in repair, it is not the obligation of
24 the landlords. So, I don't think they should be in
25 this legislation in the first place.

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2 I am glad that you are against the
3 legislation, but I hope you were against the
4 legislation for other reasons, one that it doesn't
5 properly protect the children, and two, is that it
6 could probably and very well, under the parts of the
7 bill, cause more lead poisoning than before because
8 it does away with the incentive of landlords to
9 clean up their apartment, because they are now being
10 pretty much insulated from liability.

11 That is my statement to you, Ms.
12 Rothman.

13 With Mr. Ricci, I would just like to
14 ask Mr. Ricci, can you tell us what your problem
15 with Intro. 205 is?

16 MR. RICCI: I think that the
17 requirements and burdens placed on the owner from
18 Intro. 205 do exactly what I just said in my
19 testimony.

20 COUNCIL MEMBER MICHELS: Which burdens
21 are you talking about?

22 MR. RICCI: Well --

23 COUNCIL MEMBER MICHELS: The Health
24 Code of the City of New York?

25 MR. RICCI: The Health Code is one

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2 part of it. The notification requirements.

3 COUNCIL MEMBER MICHELS: You have
4 trouble with the notification, even though it is
5 just like the currently existing window guard law
6 which your members --

7 MR. RICCI: I think that in total,
8 Intro. 205 places so many burdens on an owner --

9 COUNCIL MEMBER MICHELS: What are the
10 burdens? So far you named two of them, which are
11 really not burdens that don't exist already (sic).

12 MR. RICCI: Well, I think they are.
13 The fact that you have to use a certified worker,
14 which doesn't exist in New York State.

15 The way the Health Code has been
16 applied --

17 COUNCIL MEMBER MICHELS: The bill
18 doesn't require a certified worker.

19 ACTING CHAIRPERSON SPIGNER: Stanley.

20 COUNCIL MEMBER MICHELS: 205 doesn't
21 require a certified worker.

22 MR. RICCI: If he uses the Health Code
23 as a protocol it does.

24 CHAIRPERSON SPIGNER: Council Member.

25 COUNCIL MEMBER MICHELS: The Health

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2 Code doesn't require a certified worker.

3 MR. RICCI: Yes, it does.

4 CHAIRPERSON SPIGNER: Mr. Ricci.

5 COUNCIL MEMBER MICHELS: There is no
6 certified worker.

7 MR. RICCI: I believe if you read the
8 Health Code it says a certified worker.

9 CHAIRPERSON SPIGNER: Mr. Ricci.

10 MR. RICCI: Yes, sir.

11 CHAIRPERSON SPIGNER: In case Stanley
12 hasn't noticed, this is not a hearing on 205. He
13 wants to have a hearing on 205, so that is all he
14 can say.

15 COUNCIL MEMBER MICHELS: Tomorrow we
16 will have a hearing on 205?

17 CHAIRPERSON SPIGNER: We may very
18 well, but today is not a hearing on 205, and while
19 you persist in trying to make this a hearing on 205,
20 I understand. But this is not a hearing on 205.

21 COUNCIL MEMBER MICHELS: Of course you
22 understand.

23 CHAIRPERSON SPIGNER: Thank you, Mr.
24 Ricci. Thank you, Ms. Rothman.

25 COUNCIL MEMBER MICHELS: Mr. Ricci, do

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2 you think that by allowing landlords not to have
3 litigation against them it is going to motivate them
4 even further to clean up their apartments?

5 MR. RICCI: I think that in total you
6 need a piece of legislation that is doable and
7 workable, and I think that is what the draft bill we
8 are having a hearing on today represents.

9 In terms of the way Local Law 1 has
10 been applied since 1982. I think for many lawyers it
11 has been a lottery and I think because -- I mean, if
12 you think about it, they have made money, they have
13 brought lawsuits where no one really knows if there
14 is really lead in those violations or not. Because
15 it is based on a presumption.

16 COUNCIL MEMBER MICHELS: But a
17 rebuttable presumption. They can prove it. There are
18 tests to prove it. It is in the bill that you are
19 supporting, there is a test to prove it, whether it
20 is lead or not, right? You are supporting a bill
21 that does that, right?

22 MR. RICCI: In reality the way Local
23 Law 1 has been applied, since there is always a
24 simple direct way to test, to find out, to correct
25 that violation, no one was rebutting it then. They

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2 are just correcting it, which was better for the
3 children of the City, which is why the average blood
4 lead level in children's blood --

5 COUNCIL MEMBER MICHELS: So you
6 support Local Law 1?

7 MR. RICCI: -- And the number of lead
8 poisoned children has dropped dramatically since
9 1982.

10 COUNCIL MEMBER MICHELS: So you
11 believe Local Law 1 is better than what we have now?

12 MR. RICCI: Local Law 1, as
13 interpreted by the Judge, which is what I said at
14 the beginning, is a disaster for everyone,
15 especially the children, and needs to be changed.

16 COUNCIL MEMBER MICHELS: And we agree
17 to the changes.

18 MR. RICCI: Right.

19 COUNCIL MEMBER MICHELS: But the fact
20 of the matter is -- this is my last question, Mr.
21 Chairman.

22 What do you think is more important
23 in this legislation, to protect children from being
24 poisoned, lead poisoned, or to protect landlords
25 from being sued? Which is your highest priority?

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2 MR. RICCI: I think that protecting
3 children is always the highest priority, and it
4 happens to be the highest priority for owners and
5 should be the highest priority for tenants also.

6 COUNCIL MEMBER MICHELS: Thank you
7 very much. I appreciate it.

8 CHAIRPERSON SPIGNER: Council Member
9 Linares has a question.

10 COUNCIL MEMBER LINARES: Yes, one of
11 the things that perhaps, this is quite a complex
12 issue, and of course the vast majority of owners
13 would want to respond in an affirmative way to this;
14 what type of incentive do you feel can help owners
15 respond to their -- be responsible in terms of the
16 frame of the law, so that they would have
17 appropriate incentives to do the best that they
18 could, number one?

19 And number two, are you not concerned
20 with those owners that undermine the good work that
21 many owners do in trying to do their best to really
22 protect children, when they actually violate, you
23 know, the interests of children by not repairing and
24 by being neglectful.

25 MR. RICCI: I think you heard the two

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2 gentlemen from Baltimore who came up here earlier
3 pointed out, one of them pointed out that this work "
4 is not rocket science, you don't need trained "
5 certified workers to do it. It is mostly elbow
6 grease. So, to answer the first part of your
7 question, as an incentive for owners, if you give
8 them a simple, safe, effective way of dealing with a
9 violation, because at the end of the day, every
10 owner, when they get a violation from HPD in the
11 mail, they have got to deal with it. And what has
12 been happening since the Department of Health
13 regulations went into effect in 1994, it was that
14 they also got 20 pages of rules and regulations that
15 they had to follow to correct this one simple tiny
16 area of peeling paint or chipping paint, and it may
17 not have even been their fault. Maybe a tenant
18 chipped the paint by moving furniture around, or
19 bringing in a new appliance, it could have been
20 something like that. If you give them 20 pages of
21 rules and regulations, that is not the incentive for
22 an owner. A simple direct clearcut way to take care
23 of it in safe manner is where there is an incentive.

24 COUNCIL MEMBER LINARES: And --

25 MR. RICCI: I am sorry, I forgot the

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2 second part of your question. Oh, and owners who
3 don't. I think there is provisions in this draft
4 bill, as in every bill that everyone has seen, that
5 allows HPD to come in when an owner doesn't correct,
6 and they would do it and then it shows up as a lien
7 on the building.

8 There was testimony given by the HPD
9 Commissioner on that this morning. And that is
10 appropriate for those owners because we are very
11 concerned about those owners. They give us all a bad
12 name and we are not in favor of that, obviously.

13 COUNCIL MEMBER LINARES: One last
14 question. In terms of the wipe test, what is your
15 position in terms of the test, given the experts'
16 testimony in terms of how important and significant
17 it is in really determining whether there is
18 contamination or not.

19 MR. RICCI: There is a couple aspects
20 of the wipe test that really trouble us. And the
21 first and foremost is that often times the lead dust
22 level in the apartment has no relationship to the
23 work that was just performed. Yes, in some cases it
24 does, but in many cases it doesn't. And I think one
25 of the gentlemen from Baltimore even alluded to the

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2 fact that in areas where they have done total gut
3 rehab done on apartments that have never had any
4 lead paint whatsoever in them, there is an ambient
5 level of lead in the air, it infiltrates that
6 apartment in one form or another, either tracked in
7 or blown in and that can prevent an owner from
8 passing the wipe test.

9 There is a lot of research out there
10 that talks about the unreliability of wipe tests in
11 many cases, that's a problem.

12 The way it has been applied by the
13 Department of Health over the years is another
14 problem because it prevents reoccupancy in certain
15 instances, which is an imposition on tenants if they
16 can't reoccupy an apartment until they pass, the
17 owners pass the wipe test.

18 And it is also a problem with the
19 logistics in that you often need an independent
20 third party to come in and do it, and in many cases,
21 in many buildings, to coordinate the workers who do
22 the wet scraping, the painting and the clean up, and
23 then the independent third party to come in, in a
24 reasonable time frame so that it is relevant to
25 really check the work that had been done is

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2 impossible to do.

3 Many of the people who do this work
4 do not go to certain parts of the City, and there is
5 far fewer people who do this work than there were
6 three years ago.

7 So, all of our problems are really
8 logistical, as well as theoretical.

9 COUNCIL MEMBER LINARES: So what you
10 are saying is that the wipe test, even though my
11 understanding is that this is the most reliable
12 tool, a mean of getting a measurement as to whether
13 there is contamination or not, that this is not
14 necessarily the only mean to really determine
15 whether there is contamination or not in a
16 particular unit.

17 MR. RICCI: Well, I guess we are
18 looking at it from slightly different points of
19 view. You are looking at the contamination of the
20 unit, yet often times we find that the contamination
21 in the unit may not be a result of the unit, and so
22 since you are not testing at the beginning, this is
23 based on a presumption, you are not testing at the
24 beginning to see if the lead paint on the wall is a
25 problem, but you want to test at the end, it is a

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2 problem for owners. I think it is a legitimate
3 problem.

4 If there are more reliable simple
5 tests that could be done, it might make sense, but
6 currently the way it has been applied --

7 COUNCIL MEMBER LINARES: Maybe we
8 should test at the beginning as well, to see whether
9 the source of the contamination is beyond the
10 repairs that are being made.

11 MR. RICCI: That might make more
12 sense.

13 COUNCIL MEMBER LINARES: Maybe that is
14 something we have to look at.

15 COUNCIL MEMBER MICHELS: Mr. Ricci, do
16 you and the RSA favor exempting co-ops and
17 condominiums from the purview of this law?

18 MR. RICCI: Do we favor exempting the
19 co-ops and the condominiums?

20 COUNCIL MEMBER MICHELS: The
21 owner/occupied condominiums and --

22 MR. RICCI: Well, I think in light of
23 your prior question about do we favor protecting
24 children, that wouldn't make much sense to now take
25 three or 400,000 units out of the universe --

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2 COUNCIL MEMBER MICHELS: So you would
3 not favor, even though they are owner/occupied and
4 --

5 MR. RICCI: Well, they are not always
6 owner occupied.

7 COUNCIL MEMBER MICHELS: I am just
8 talking about the owner occupied.

9 MR. RICCI: Well --

10 COUNCIL MEMBER MICHELS: I wouldn't
11 accept anyone except the owner/occupied.

12 MR. RICCI: I think that would be very
13 inconsistent with what you said all along about your
14 interest in protecting children.

15 COUNCIL MEMBER MICHELS: Why? There is
16 no landlord. The owner is the one responsible for
17 themselves in an owner/occupied.

18 MR. RICCI: I still think it is
19 inconsistent.

20 COUNCIL MEMBER MICHELS: You wouldn't
21 favor exempting them?

22 MR. RICCI: It would be inconsistent
23 with your goal of protecting children.

24 COUNCIL MEMBER MICHELS: Sure, but
25 they are protecting their own children.

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2 MR. RICCI: I said to you a few
3 minutes ago, our goal is to protect the children as
4 you did. That concept --

5 COUNCIL MEMBER MICHELS: Who is
6 responsible for coming and doing the clean-up in an
7 owner/occupied apartment?

8 MR. RICCI: I haven't seen any
9 legislation on that.

10 COUNCIL MEMBER MICHELS: The owner is.
11 The same person who lives there is.

12 MR. RICCI: I don't understand why --

13 COUNCIL MEMBER MICHELS: I don't
14 understand why you wouldn't be in favor of exempting
15 them.

16 MR. RICCI: I don't know why in a
17 co-op or a condo you are saying it is okay for a
18 parent to be responsible, but in a rental you are
19 not.

20 COUNCIL MEMBER MICHELS: There is no
21 landlord in a condominium. You know that and I know
22 that. You just want to keep them in it; is that
23 right? Okay, I would have hoped that you would have
24 been supportive of that, an owner/occupied unit.

25 Thank you.

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2 CHAIRPERSON SPIGNER: Thank you, Mr.
3 Ricci, and Ms. Rothman.

4 Matthew Chachere. Maureen Silverman
5 and Suzanne Mattei.

6 Jeff Lichtman, is he with Suzanne
7 Mattei, or is that one in the same?

8 MR. CHACHERE: Should I proceed?

9 CHAIRPERSON SPIGNER: Identify
10 yourself, sir.

11 MR. CHACHERE: Thank you. I am Matthew
12 Chachere. I am staff attorney with the Northern
13 Manhattan Improvement Corporation. We are the
14 Counsel to the New York City Coalition to End Lead
15 Poisoning, NYCCELP, and its 14-year-old class action
16 against the City for its failure to adequately
17 enforce the laws designed to prevent childhood lead
18 poisoning.

19 The process by which today's hearing
20 has come about appears to be quite frankly a
21 perversion of any kinds of fair play and due process
22 for the children of this City.

23 Despite requests from leading experts
24 in the field of lead poisoning prevention from
25 throughout the City and the nation, including

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2 experts in pediatrics, environmental toxicology and
3 public health, for a sufficient time to review this
4 bill in advance and prepare comments on it, the
5 Council leadership ignored those requests and
6 instead calls today's hearing on less than two full
7 business days notice and waited until the afternoon
8 of the business day before the hearing to release
9 the bill.

10 As a result, few of these experts
11 could be here today to prepare testimony.

12 Nor could many of the parents,
13 environmental, public health, tenant, racial
14 justice, labor, religious and other concerned groups
15 and leaders, all of whom have sought a hearing for
16 over several years on Intro. 205.

17 If the leadership was at all
18 interested in a full and fair hearing airing of the
19 issues surrounding childhood lead poisoning, an
20 issue of tremendous importance in this City, it
21 would have released a bill well in advance of this
22 hearing and schedule such a hearing with sufficient
23 advanced notice that such interested parties could
24 participate.

25 I see no other reason for the hurried

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2 manner in which this hearing has been called on a
3 bill that surely no one, including probably members
4 of this Committee, has had any real opportunity to
5 read and consider, other than to prevent such
6 participation.

7 As the attorney for the plaintiff in
8 the NYCCELP litigation, I wish to dispel here for
9 the record once and for all an apparently widespread
10 myth that there is a recent court order that is
11 compelling a resolution of these long-standing
12 issues before the end of June.

13 To the contrary, there have been a
14 long series of court orders which became final and
15 no longer appealable as long ago as 1991, imposing
16 obligations on the City for timely enforcement of
17 Local Law 1.

18 The City has already been held in
19 contempt for violation of these orders and has been
20 paying fines for those contempts. This is nothing
21 new. Nor has the court issued any particular order
22 directing action by the end of this June.

23 Instead, the Administration appears
24 to have manufactured a false crisis.

25 Last January, right after this

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2 hearing by this Committee on the lead issue, NYCCELP
3 plaintiffs volunteered to stay enforcement of all
4 the outstanding court orders through the end of
5 April, including any further contempt fines, so that
6 the litigation would not be used as an excuse for a
7 hurried, ill-considered adoption of alternative
8 legislation.

9 When the City asked for an extension
10 through the end of June, the plaintiffs offered
11 unconditionally to extend it to October the 15th.
12 The City refused that offer and instead demanded
13 that the stay end on June the 30th.

14 Notwithstanding this, the NYCCELP
15 plaintiffs remain willing to extend the stay well
16 into this autumn to give the Council time for a
17 reasoned consideration and debate on any new
18 legislation.

19 We urge you to urge the City to
20 accept this unconditional offer. There is a case
21 conference scheduled in this case for 3:30 this
22 Wednesday, and we invite you to participate and
23 request that the stay be extended by the City. We
24 are willing to do it.

25 The goal of the NYCCELP lawsuit has

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2 always been to obtain real enforcement of the laws
3 designed to prevent childhood lead poisoning. The
4 many decisions and orders in this case over 14 years
5 are too numerous to repeat here. But they have
6 repeatedly reemphasized that inspection and
7 enforcement must be timely and thorough.

8 The fact that as we sit here today
9 there are some 30,000 children by the City's own
10 estimate with blood lead levels over the definition
11 of lead poisoning in the City's Health Code, is
12 striking evidence that we have a long way to go. For
13 that reason, it is more than baffling that the
14 Administration and the Council leadership intends to
15 dramatically weaken the existing law in a blatant
16 attempt to effectively demolish all the case law
17 established over the past 14 years of the suit.

18 In addition, the proposed bill seeks
19 to legislatively reverse the holding of the court of
20 appeals three years ago in the Juarez versus
21 Wavecrest Management case. In that case, New York's
22 highest court held that landlords in effect are
23 under a continuing non-delegable duty to ensure that
24 the dwellings that they rent to families with small
25 children are safe from lead hazards.

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2 A majority of the members of this
3 City Council at that time joined with NYCCELP in a
4 Friend of the Court Brief to the highest court
5 urging that result; i.e. that the burden of
6 identifying lead paint hazards must remain on the
7 landlord, otherwise the legislative intent to
8 protect children under-age seven and consequent
9 obligations imposed on landlords would be rendered
10 meaningless.

11 NYCCELPs specific objections to
12 today's proposed bill are far too numerous to
13 adequately discuss in the few minutes allotted here.

14 I have attached to my written
15 testimony a table comparing the provisions of this
16 bill with Intro. 205, including many areas where the
17 former fails to adequately protect children, which
18 is what we ought to be talking about.

19 However, I would touch briefly on
20 several specific concerns.

21 First, the Court decisions in the
22 NYCCELP case repeatedly direct the City to provide
23 for prompt enforcement. The City Comptroller earlier
24 testified about the fact that while the City
25 recently found 66,000 lead paint violations in its

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2 database, 43 percent of them existed over an average
3 of a year.

4 Yet, the time frames for enforcement
5 of immediately hazardous violations for any other
6 condition in the Housing Maintenance Code is 24
7 hours. The proposed enforcement scheme for lead
8 paint, a toxin which has the potential for permanent
9 irreparable lifetime injury in this bill adds up to
10 approximately 300 days, that is the better part of
11 the year, between when a tenant makes a complaint
12 and when there is any potential for enforcing City
13 removal of these conditions if the landlord is
14 failing to do so.

15 If ever in the lifetime of a young
16 child a month is a long time, more than enough for
17 that child to be poisoned. How does this bill
18 protect children?

19 Secondly, the definition of lead
20 hazards is clearly inconsistent with national
21 standards and accepted science, and indeed with the
22 testimony of the prior Health Commissioner, Dr.
23 Margaret Hamburg, the federal definition of lead
24 paint hazard is, and I quote, "any condition that
25 causes exposure to lead from lead contaminated dust,

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2 lead contaminated soil, lead contaminated paint that
3 is deteriorated or present in accessible surfaces,
4 friction surfaces or impact surfaces that would
5 result in an adverse human health affect." That is
6 the Toxic Substances Control Act.

7 Three years ago Dr. Hamburg testified
8 here that where lead painted surfaces rub against
9 each other, dust is created that can contaminate
10 floors and other surfaces. To prevent young children
11 from being exposed to lead hazards means preventing
12 them from being exposed to dust.

13 Unless all of the lead-based paint is
14 removed or covered on friction surfaces such as
15 window frames, over time the constant movement will
16 cause the hazard to recur.

17 We strongly recommend a requirement
18 to abate window friction surfaces as the
19 Administration previously posed. I am quoting the
20 prior Health Commissioner.

21 Although friction surfaces and lead
22 dust hazards are considered in Intro. 205, they are
23 noticeably absent in today's bill.

24 Thirdly, and lastly, the entire
25 concept of exchanging full enforcement of the safety

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2 regulations, which were promulgated by the
3 Department of Health, based^l on federal, HUD and EPA
4 practices and documented methodologies, for a more
5 rapid removal of lead paint, is beyond absurd.

6 A similar proposal was again
7 vigorously opposed by then Commissioner Hamburg in
8 testimony before this very Committee in 1996, and I
9 quote:

10 "Our first concern is that the safety
11 procedures required when an owner repairs peeling
12 paint voluntarily are not adequate. Unfortunately,
13 the risk to young children is actually increased by
14 work that disturbs lead paint if it is done without
15 appropriate safety considerations. To voluntarily
16 reduce safety requirements solely on the voluntary
17 and response and rapid response of an owner with no
18 risk assessment is not logical."

19 NYCCELP is unaware of any intervening
20 change in the science that could supply a reason for
21 this Council to reconsider the obvious logic of her
22 statement.

23 In addition to the above, the
24 Council's leadership's bill will ignore building
25 problems that cause wet paint to peel such as water

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2 leaks, ignore common building areas, model landlords
3 investigation for the presence of young children on
4 the old window guard law which didn't work. Shift
5 the burden from landlords to tenants to keep
6 apartments safe by placing the onus on tenants to
7 notify landlords of lead hazards. We would recommend
8 that the entire concept in this bill of landlord
9 inspection on an annual basis be scrapped. The law
10 already requires landlords to inspect their
11 dwellings on sufficient frequency to make sure they
12 are safe. That is what the Court of Appeals had in
13 Juarez. There is no reason to diminish that
14 responsibility.

15 The Housing Maintenance Code and the
16 Multiple Dwelling Law places that obligation on
17 landlords to make the buildings safe.

18 Finally, it fails to improve HPD's
19 current inspection practices.

20 For example, at present, HPD
21 inspectors often walk into an apartment, see
22 children or evidence of them, such as toys, and
23 obvious lead hazards, such as peeling paint and
24 broken plaster, but they don't cite them as lead
25 paint violations simply because the parent called

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2 the complaint about maybe a leaking faucet but
3 didn't ~~he~~ complain about lead paint.

4 Essentially it eliminates the ability
5 of children to sue for injuries and the Comptroller
6 has already spoken about why that is simply not good
7 policy to advance the agenda of preventing
8 poisoning.

9 If the Council seeks a compromise
10 that still protects children, it doesn't need to
11 look far. Intro. 205, which is sponsored by
12 two-thirds of this Council, and endorsed by
13 practically every medical and public health expert
14 in the field, as well as environmental justice,
15 tenant, education, parent, religious, labor and
16 other organizations and leaders, would no longer
17 require landlords to remove all lead paint, but
18 rather merely ensure the landlords remain obligated
19 to prevent all lead hazards. Lead hazards being
20 whatever conditions cause children to be poisoned.
21 That simple.

22 For years the real estate lobby has
23 argued here that it knows where the hazards are and
24 that the removal of all lead paint is not warranted.

25 Intro. 205 simply takes them at their

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2 word. If landlords believe intact paint is safe they
3 merely must continue to monitor it with sufficient
4 frequency to make sure that it remains so.

5 On the other hand, the bill
6 simplified the City's enforcement obligations by
7 only requiring the City to inspect for peeling paint
8 or paint on deteriorated surfaces, or conditions
9 that cause lead paint to peel, such as water leaks.

10 Despite Intro. 205's overwhelming
11 co-sponsorship, it has never received a public
12 hearing in this Council.

13 We must continue to ask why this is.
14 The real estate lobby has to my knowledge never,
15 never come forward and public stated why any
16 particular provision of Intro. 205 is objectional,
17 and they refuse to do so again today.

18 Intro. 205 has the benefit of an
19 extensive 80-page survey of its cost and benefits
20 prepared last year by the Public Advocate's Office,
21 a level of analysis surely few pieces of legislation
22 ever receive. It has received the endorsement of
23 over 40 medical doctors, including some of the
24 leading lead poisoning experts in this City and
25 large numbers of the City's environmental,

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2 religious, community health, tenant, housing, and
3 children's organizations. And just recently, as you
4 know, the Independent Budget Office issued an
5 analysis of 205 showing that the cost of its
6 implementation would be minimal.

7 Yet, it appears that the Council
8 leadership has simply rejected it out of hand, and
9 we must again ask why?

10 Last fall, as a candidate for
11 Governor, Council Speaker Vallone issued a statement
12 where he pledged that he, quote --

13 CHAIRPERSON SPIGNER: Sir, we have a
14 long list --

15 MR. CHACHERE: I am almost done, Mr.
16 Chairman.

17 Where he pledged that, quote, he
18 "opposes the weakening of laws that protect
19 children from the dangers of lead poisoning."
20 Unfortunately, he appears ready to abandon that
21 pledge.

22 This Council has a duty under Section
23 28 of the Charter to adopt local laws for the
24 preservation of public health, and thus, NYCCELP
25 urges you to examine each and every provision of

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2 this proposal with a question foremost in mind, what
3 does this do to protect kids?

4 Let me close with this thought. If
5 30,000 children in the City were annually struck by
6 drive-by shootings, speeding drivers, or by
7 billy-clubs, surely this Council would be impelled
8 by a massive public outcry to act to prevent further
9 poisonings. But while it is often said that lead is
10 a silent poisoning, is no less repugnant to allow
11 this utterly preventable tragedy by inaction.

12 Our kids have a tough enough time
13 growing up in this City and getting an education in
14 our schools. How can we possibly tolerate their
15 infliction with additional impediments of reduced
16 IQ, attention deficits, hyperactivity, learning
17 disabilities and the other panoply of lead poisoning
18 injures?

19 If this Committee is seriously
20 contemplating making revisions of the current law,
21 we would urge that Intro. 205 be brought up for a
22 hearing so that those constituents have concerns or
23 criticisms about its provisions, have an opportunity
24 to make them out in a public forum.

25 We believe that such a full and open

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2 debate can only serve to enhance the public health
3 and housing policies of this City.

4 Thank you.

5 CHAIRPERSON SPIGNER: Thank you.

6 Next. Is there anyone to speak after
7 Mr. Chachere? Identify yourself for the record,
8 please.

9 MS. MATTEI: My name is Suzanne
10 Mattei. I am the Public Policy Director for the New
11 York State Trial Lawyers Association. With me is a
12 member of our Board of Directors, Mr. Jeff Lichtman,
13 who is an experienced lead paint litigator. So, I
14 hope that our testimony will be useful to you.

15 I thank you for the opportunity to
16 present this testimony, I am going to summarize --

17 CHAIRPERSON SPIGNER: Do we have a
18 copy?

19 MS. MATTEI: Yes. You have been
20 provided with it.

21 CHAIRPERSON SPIGNER: Thank you.

22 MS. MATTEI: And I will not read it
23 directly because I am going to skip over a few
24 things in the interests of time.

25 The New York State Trial Lawyers

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2 Association is a professional organization that
3 seeks to protect the public's right to civil
4 justice.

5 With this testimony we are submitting
6 two items of information. The first is a booklet
7 entitled New York City Children Poisoned By Toxic
8 Lead Paint. This is a compilation of 16 personal
9 stories about the harm caused when children are
10 exposed to lead paint. All of the stories are true,
11 all of these children were poisoned and all of them
12 suffered because of it.

13 The first story, for example, tells
14 of a child who was poisoned when a landlord
15 conducted sloppy repair work on an apartment full of
16 lead paint creating an even greater hazards.

17 These stories represent the tip of
18 the iceberg. Every year over a thousand more
19 children in the City are discovered to have so much
20 toxic lead in their blood, that they require medical
21 intervention. The total number of young children in
22 the City with unhealthful levels of lead in their
23 blood, that is ten micrograms per deciliter or more,
24 is estimated to be 30,000.

25 Our members, experienced litigators,

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2 tell us that just a few years ago the stories were
3 even worse. The lead levels were even higher, and
4 that many more children used to become poisoned, but
5 fear of liability and enforcement of health
6 regulations for safe clean-up of lead paint hazards
7 has slowly been bringing the numbers of lead
8 poisoned children down. More targeted enforcement,
9 continued vigilance and continuing to hold landlords
10 accountable when their negligent conduct poisons
11 children would further reduce the numbers of lead
12 poisoned children in the five boroughs.

13 Unfortunately, Council members today
14 are being asked to reverse this progress. They are
15 under pressure to pass an unwise and poorly written
16 bill that would take away landlords' accountability,
17 leave lead poisoned children with essentially no
18 ability to challenge their careless landlord in
19 court and sanction floppy lead paint removal work,
20 the result will be more children poisoned like those
21 described in that booklet.

22 Make no mistake, this bill will deny
23 children civil justice under law and let careless
24 landlords off the hook, for the terrible
25 irreversible damage to children caused by lead

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2 poisoning.

3 Attached to the testimony is our
4 second item of information, a detailed memorandum
5 from lead litigator Judith Keenan, explaining why
6 this bill would bar lead poisoned children from our
7 civil justice system and remove the financial
8 incentive for landlords to do the right thing.

9 We met three times with staff of
10 Speaker Peter Vallone's Office to explain these
11 matters.

12 CHAIRPERSON SPIGNER: Who recently did
13 you meet?

14 MS. MATTEI: In the past week and a
15 half. Approximately three times.

16 CHAIRPERSON SPIGNER: Three times?

17 MS. MATTEI: We met several times.

18 CHAIRPERSON SPIGNER: I want those who
19 believe that this has been a superficial process,
20 here is -- just a moment.

21 MS. MATTEI: No, you are wrong.

22 CHAIRPERSON SPIGNER: Permit me.
23 Permit me. This is one group that has met with our
24 staff three times and that is one of dozens of
25 groups who had access to the staff in formulating

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2 this --

3 MS. MATTEI: Over about a week, maybe
4 a week and a half at most. They made it clear to us
5 that they would not address any of our concerns.

6 The first time we met we saw a draft
7 of the bill that was very bad.

8 The second time we met, it was worse,
9 okay? That is not negotiation. That is not input.

10 CHAIRPERSON SPIGNER: That is in your
11 opinion. They are lawyers as well as you.

12 MS. MATTEI: I am not going to argue
13 with you on that. I am telling you it was not a
14 negotiation because the bill kept getting worse.

15 CHAIRPERSON SPIGNER: See, Stanley is
16 a lawyer, he can --

17 COUNCIL MEMBER MICHELS: And I will
18 tell you, the third draft was even worse.

19 MS. MATTEI: That's right.

20 So the question is, why are we on a
21 fast track to poison? We all know the Court order is
22 subject to a stay that can be extended by the
23 parties consent. That is what it says in the
24 original stay.

25 The plaintiffs have already offered

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2 the City administration a stay until October 15th,
3 the City refused, plainly an effort to manufacture a
4 crisis.

5 The City Council could and should
6 urge the City Administration and the Judge, if need
7 be, to extend the stay as offered.

8 If the Council wants to act now, it
9 could hold a hearing instead on Intro. 205. That
10 bill was a sincere attempt on the part of children's
11 health advocates, we weren't involved in the
12 development of that bill, by the way, to compromise
13 with the real estate lobby, and we think they
14 compromised too much. But it is a better option than
15 what you have before you, and it is already
16 co-sponsored by two-thirds of the Council.

17 Easier yet, the Council could simply
18 make a minor change to Local Law 1, to establish
19 that it does not apply to intact lead paint that is
20 merely on the wall or ceiling, which we all agree is
21 not presenting a health hazard, and leave everything
22 else for now to reasonable common law standards and
23 agency regulations. That is a quick temporary fix.

24 Instead we are engaged in this fast
25 track power-driven hearing, with so little notice

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2 that most of our concerned members and the families
3 of lead poisoned children could not attend and they
4 wanted to. We had lots of calls from people who
5 wanted to attend and we couldn't tell them when the
6 hearing was.

7 And what is being lost in this
8 political power play is a terrible health impact of
9 lead paint hazards, so who are the victims of lead
10 poisoning? Our youngest children, our poorest
11 children, they are overwhelmingly minority, they are
12 one-year-olds, two-year-olds and three-year-olds who
13 already have so much to struggle against and with
14 permanent irreversible brain damage, they are being
15 denied even the chance to succeed.

16 So, we urge the members of the
17 Council to stand strong against this harmful bill,
18 protect the most vulnerable children of our City
19 from lead poisoning.

20 We have got specific items that have
21 come up today expressions of the law, I would like
22 to respond to just very, very quickly, and I would
23 like to invite Jeff Lichtman to join me here to talk
24 just a little bit about the issue of notice.

25 MR. LICHTMAN: Good evening.