

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Severe lead poisoning in children
3 causes mental retardation and can even cause death. "

4 In addition, as many medical and
5 technical authorities have documented, an improperly
6 done lead abatement job can result in children being
7 exposed to greatly increase amounts of toxic lead
8 dust, more than if no work at all had been done.

9 We at the Legal Aid Society have
10 witnessed abatement of lead in apartments. We have
11 seen apartments full of uncleaned dust and debris,
12 household furnishings and rugs saturated with toxic
13 lead dust, and workers wearing only shorts, shirts
14 and tennis shoes, lugging open plastic garbage bags
15 full of hazardous lead waste down several floors of
16 walk-up apartments, spreading piles of lead dust
17 throughout the building.

18 We have also seen abatement jobs half
19 done with paint debris falling down to the floor
20 behind sheetrock left open at the bottom, and
21 untouched, peeling and flaking radiators in the
22 midst of a model abatement site.

23 Consequently, it has been our
24 experience that what is needed is legislation to
25 clarify and strengthen the existing law to protect

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2 children from poisoning caused by lead paint.

3 Unfortunately, the proposed lead bill
4 under discussion today is dangerously backwards.

5 This bill would remove the teeth from existing
6 statutes that help protect children at risk of lead
7 poisoning.

8 The bill would also lead to
9 substantial delays in immediately addressing
10 hazardous lead emergencies and encourage substandard
11 remediation.

12 The proposed bill should be rejected.
13 We urge the Committee to support the approach taken
14 in Intro. 205 that would strengthen current
15 protections and reduce the threat of continued lead
16 poisoning of young children and expectant mothers.

17 CHAIRPERSON SPIGNER: Can I ask a
18 question, please? I am looking at page two, it says
19 we have seen apartments full of uncleaned dust and
20 debris, household furniture and rugs saturated with
21 toxic lead dust, do you have -- do you have evidence
22 that that was lead dust?

23 Given the testimony by some previous
24 witnesses that a large percentage of the buildings
25 -- are you certain this was lead?

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2 MS. BODDEN: Yes, sir. We were there
3 to observe the abatement of the apartment.

4 CHAIRPERSON SPIGNER: Were there any
5 kind of tests? I just ask out of curiosity.

6 MS. BODDEN: Actually on occasion we
7 have used a company, an environmental services
8 company that has tested lead for us in our clients'
9 apartments.

10 CHAIRPERSON SPIGNER: All right. Thank
11 you.

12 COUNCIL MEMBER MICHELS: Using an XRF
13 machine?

14 MS. BODDEN: Pardon?

15 COUNCIL MEMBER MICHELS: Using an XRF
16 machine?

17 MS. BODDEN: Yes.

18 MS. GOLDINER: I wanted to discuss the
19 five ways that the current bill is deficient.

20 It limits the definition of lead to
21 peeling paint or on deteriorated surfaces, which
22 ignores lead hazards resulting from building
23 surfaces or defects that cause exposure to lead.

24 CHAIRPERSON MICHELS: What is that
25 now?

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2 MS. GOLDINER: Lead hazards resulting
3 from building surfaces or defects that cause
4 exposure to lead, lead friction surfaces like wood
5 doors and wooden window frames, chewable surfaces, a
6 building's common areas. It also exempts day care
7 centers, pre-K schools and playgrounds, all of which
8 can cause childhood exposure to lead.

9 In addition, the proposed bill gives
10 the Department, HPD, 15 to 25 days to conduct an
11 inspection, 60 days before issuing a violation. The
12 landlord then has 21 days to clean up, during which
13 they are not required to follow DOH guidelines,
14 which mandate sealing off lead contaminated rooms,
15 wet scraping the affected area, thoroughly cleaning
16 up and wipe testing by labs to ensure that lead dust
17 and particles have indeed been removed.

18 The time frames are utterly
19 unacceptable and when added up, as others have said,
20 would give the landlord almost a year to abate the
21 condition.

22 In addition, the bill allows HPD's
23 duties to become discretionary rather than
24 mandatory, making it difficult to ensure that lead
25 violations are actually detected, tracked and

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2 corrected. And given HPD's unfortunately lamentable
3 role in this area, we think that giving HPD more
4 discretion rather than less discretion is a big
5 mistake.

6 It allows a landlord to self-certify
7 abatement of lead violations without submission of
8 clearance dust tests. Again, the Comptroller has
9 documented that in 70 percent of the cases, the
10 self-certification is fraudulent and unfortunately
11 this is something that HPD has done very little
12 about. We are very concerned about false
13 certification.

14 It also relieves landlords of their
15 duty to maintain a safe dwelling and take measures
16 to prevent peeling lead conditions, and shifts the
17 burden to tenants to notify the landlord of lead
18 hazards.

19 In our experience our clients often
20 don't get the notices that the landlords are
21 required to send, either because the landlord
22 doesn't send them, because the landlord steals them
23 or because their mailboxes are broken. We see this
24 over and over with sewer service in Housing Court,
25 we see no reason that these notices will be any

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2 different. At least in Housing Court they are
3 required to personally serve the notices, and these
4 notices are not required any sort of personal
5 service.

6 Finally, New York City does not have
7 the resources to pay for the lifetime costs of lead
8 paint poisoning in terms of increased spending on
9 health care, special education and public assistance
10 for brain damaged children who cannot compete in the
11 work place.

12 Caring for brain damaged children is
13 extremely debilitating to the parents and
14 grandparents who are our clients. We strongly oppose
15 the proposed bill and continue to urge the adoption
16 of Intro. 205 which will provide great assistance
17 and efforts to fight lead poisoning to protect the
18 health and potential of our children. We would be
19 happy to answer any questions that the Council
20 people have.

21 CHAIRPERSON SPIGNER: Your testimony
22 is rather clear, after a number of others have
23 preceded you. So, we thank you for your time and
24 your testimony.

25 MS. GOLDINER: Thank you for the

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2 opportunity to testify.

3 CHAIRPERSON SPIGNER: Oh, my pleasure."

4 MR. GOLDBERG: Mr. Chairman, I am not
5 going to read my testimony, it is about 25 pages
6 long, and I will spare you that because most of the
7 points were made. But I just want to respond to five
8 or six points that were made during the morning and
9 afternoon specifically.

10 First of all, when Mr. Lappin and Mr.
11 McCarthy were up here testifying, I really believe
12 that they were mixing apples and oranges in their
13 discussion of ambient lead and their rejection of
14 clearance testing after an abatement is accomplished
15 in an apartment. The purpose of the clearance
16 testing, and I think the --

17 CHAIRPERSON SPIGNER: They must have
18 testified when I was out of the room.

19 COUNCIL MEMBER MICHELS: They did.

20 MR. GOLDBERG: It's possible.

21 COUNCIL MEMBER MICHELS: They did.

22 MR. GOLDBERG: But the two experts
23 from Washington, as they explained the purpose of
24 that clearance testing, is not to ascertain the risk
25 in an apartment, but rather to determine whether or

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2 not the abatement job has been properly cleaned. It
3 is just a snapshot in time. Using clearance testing
4 for ascertaining risk is an entirely different
5 matter and it is not a part of this bill.

6 If you recall, you were on -- do you
7 remember the task force, Mr. Chairman, you and I
8 were on back in 1992? And at that time the City
9 proposed using the dust wipes to figure out the
10 risk, and NYCCELP, who I represented at that time,
11 opposed that, and surprisingly the landlords, the
12 RSA and the Real Estate Board at that time supported
13 the proposal.

14 CHAIRPERSON SPIGNER: You are the best
15 argument not for term limits.

16 MR. GOLDBERG: Well, you and I have
17 been going through this for a long time.

18 CHAIRPERSON SPIGNER: That is another
19 need for urgency because we won't be around after a
20 very short period of time, so we have got to get
21 this work done.

22 MR. GOLDBERG: All right. The point
23 is, and this also ties into what Mr. Ricci said,
24 this idea of ambient lead, I have not seen any
25 documents, if you keep on saying there are

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2 documented studies, we keep on asking Council staff
3 and Mr. Ricci to show us --

4 CHAIRPERSON SPIGNER: Will you explain
5 to the members the definition of ambient lead?

6 MR. GOLDBERG: I can't define it. This
7 is the term that Mr. Ricci was using, that Mr.
8 Lappin was using, that Mr. McCarthy was using, this
9 idea of ambient lead, that there is lead that is
10 floating around. You did hear -- did you hear -- Mr.
11 Chairman, were you here when the two gentlemen from
12 Washington, D.C. testified.

13 CHAIRPERSON SPIGNER: Yes, I was here.

14 MR. GOLDBERG: I mean, Mr. Ricci also
15 mischaracterized their testimony. Mr. Farr did not
16 say that he agreed that there was ambient lead, what
17 he said was that in some places, I think it was
18 Chicago, or Milwaukee where there was not much lead
19 paint used, but --

20 COUNCIL MEMBER MICHELS: And
21 Cleveland?

22 MR. GOLDBERG: Cleveland, right. Not
23 much lead paint used in Cleveland that the houses
24 had large yards. So in that setting, if they find
25 lead contaminated dust, they would look to soil

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2 contamination as well. But he made it very clear
3 from the hundreds of apartments they have inspected
4 in New York City, that lead dust originating from
5 any other source than lead paint is not considered
6 to be a major problem or a legitimate source. I
7 think he was very clear in his testimony and I think
8 Mr. Ricci's characterization was incorrect.

9 Another point I would like to make is
10 one that hasn't been raised today, except by you;
11 and that is, why is this Committee, why is the
12 Council engaged in the process of legislating in the
13 field of health regulation that already exists. We
14 have in place an existing regulatory scheme that was
15 issued by the Department of Health, that applies to
16 violations placed by HPD, applies to the mediation
17 that is done by landlords, when you don't have a
18 lead poisoned child.

19 And Mr. Chairman, you pointed out, I
20 think it was a rhetorical question to Mr. Ryan,
21 that, well, in a democracy the legislative process
22 is a process of compromise and you have to make
23 compromises.

24 And other times you referred to the
25 process as sausage making. Well, you cannot make

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2 sausage --

3 CHAIRPERSON SPIGNER: I will have to
4 remember not to make any remarks around you that I
5 don't want to hear repeated.

6 MR. GOLDBERG: You cannot make sausage
7 out of a process that is intended to protect
8 children. And I think your point is well taken that
9 this whole discussion, the idea of legislating,
10 rather than having the Department of Health engage
11 in rule-making, where you have health experts who
12 are medical experts, who are environmental experts,
13 who are epidemiologists, who can figure out and make
14 sure that each one of these steps that you go
15 through will lead to a safe process. That is how you
16 create a program, a safety procedure or a protocol
17 to protect children. Not in the legislative process.

18 And nobody has explained yet why the
19 Council is even engaged in legislating in this field
20 when there is an existing program. The owners went
21 to the Department of Health in 1996 and engaged them
22 in rule-making, the Department of Health relaxed
23 some of their requirements to try to deal with some
24 of the points that were made by the owners, but the
25 reality is they could not make a case for all the

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2 arguments that they were making.

3 And now they have come to the City
4 Council, and asked the City Council -- some of you
5 are lawyers, some of you are -- I don't know what
6 anybody else is, I know some of you are lawyers and
7 I know --

8 CHAIRPERSON SPIGNER: They are lawyers
9 and lay people.

10 MR. GOLDBERG: And lay people and one
11 is a law student, but I don't know who that is. But
12 the point is, nobody on the Council is an
13 epidemiologist, nobody on the Council is a
14 pediatrician or a medical doctor --

15 CHAIRPERSON SPIGNER: We hire that
16 expertise. We have accesses to that expertise.

17 MR. GOLDBERG: But nobody has answered
18 the question why is the Council even engaged in
19 legislating when the Board of Health -- you heard
20 the opinion of the Commissioner, but the Health Code
21 is promulgated by the Board of Health, and the
22 Commissioner is only one member of the Board of
23 Health.

24 CHAIRPERSON SPIGNER: Let me ask you,
25 Mr. Goldberg, don't you think it is time we come to

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2 closure on this?

3 You did not mention the endless
4 meetings that we held on a commission that was set
5 up, that you were a part of, I mean we have spent
6 hours and endless days on this topic. Clearly we are
7 never going to have a bill, we are never going to
8 have legislation that is going to satisfy everyone.
9 Never going to have it. Never going to have it.
10 Trust me, I am older than you. We are never going to
11 have it. But we must have a bill.

12 MR. GOLDBERG: But this bill is not
13 going to be the end of it.

14 CHAIRPERSON SPIGNER: So we will have
15 a bill --

16 MR. GOLDBERG: If this bill were
17 enacted into law, it will not be the end of it. It
18 will fail. You have heard the experts, all of the
19 experts who wrote letters to the Health Commissioner
20 and to the Speaker said that this will fail.

21 CHAIRPERSON SPIGNER: We are having a
22 hearing on a proposed bill as the process calls for.
23 The testimony given today, the points of views
24 stated, will be taken into consideration of the
25 final product of this process. They will be

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2 reflected in the final product.

3 MR. GOLDBERG: I would like to make
4 two other points.

5 CHAIRPERSON SPIGNER: You can make as
6 many as you like. Why should you go home? Why should
7 you be different from anybody else?

8 MR. GOLDBERG: I will make five and
9 maybe it will be less.

10 Ms. Davenport and others have pointed
11 out that this notice provision that has been
12 incorporated into the bill that is under
13 consideration, the way it is constructed and worded
14 is reasonable.

15 I have to point out that the Housing
16 and Maintenance Code specifically defines the
17 definition of an owner, and that definition does not
18 include the managing agent or the employees of the
19 owner, and the bill is very specific that the tenant
20 must give the owner written notice. Most tenants
21 never have any contact with the owners.

22 COUNCIL MEMBER MICHELS: Except when
23 they go to Florida.

24 MR. GOLDBERG: Well, if they go to
25 Florida too.

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2 They have no contact with the owner.
3 So, imagine this scenario, that the landlord -- that
4 the managing agent gives the notices to the super,
5 has the super deliver them, and then tells the super
6 to tell everybody in the building to deliver the
7 notices back to them, they haven't complied with the
8 law. They don't know that they haven't complied with
9 the law, and if a child is lead poisoned and the
10 case goes to suit many years later, then the owner
11 will have an absolute defense, because he will say I
12 never received written notice and the bill is very
13 specific about that. Unlike Intro. 205, which was
14 very clear that the obligation runs close to the
15 owner, to the managing agents and employees of an
16 owner.

17 And there are many other provisions
18 in this bill that are written that way. So, it is
19 much more treacherous territory that I think many of
20 the proponents of this bill have really let on.

21 CHAIRPERSON SPIGNER: Thank you.

22 MR. GOLDBERG: Another point I would
23 like to make, was the one that was made by Council
24 Member Perkins, and I wish that others had
25 emphasized it, but I think --

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2 CHAIRPERSON SPIGNER: The Comptroller
3 spoke about some subsidies for landlords.

4 MR. GOLDBERG: Yes. But Council Member
5 Perkins pointed out, that in questioning the Health
6 Commissioner, questioned him about this two-tiered
7 violation that the bill creates. One is, 21 days to
8 do a quick and dirty abatement, or scrape and paint.

9 CHAIRPERSON SPIGNER: No, no. Under
10 this bill, as I understand it, all peeling paint in
11 a pre-60 with a child under six, creates a
12 circumstance where you must use a certain protocol.

13 MR. GOLDBERG: You use a protocol,
14 which the way the bill was written simply won't
15 work. It's a quick and dirty incentive to owners.

16 CHAIRPERSON SPIGNER: We will hear you
17 on that.

18 MR. GOLDBERG: You tell me how this
19 protocol is any different than what you would expect
20 of an ordinary painter; what does it tell you to do?
21 It tells you to put down a piece of plastic. Well, I
22 would expect an ordinary painter to put down a piece
23 of plastic, it says cover the furniture with
24 plastic. Well, I would expect an ordinary painter to
25 do that irrespective of lead paint. And it says when

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2 you are done --

3 CHAIRPERSON SPIGNER: And the wet
4 scrape.

5 MR. GOLDBERG: It says the wet scrape.
6 It does say the wet scrape, but it says that
7 everybody in New York should wet scrape now. And the
8 purpose of wet scraping, as was pointed out, is to
9 protect the painter, or protect the worker.

10 CHAIRPERSON SPIGNER: And to clean up
11 after himself.

12 MR. GOLDBERG: Don't you expect that
13 of a painter when they come into your house, don't
14 you expect them to wash up or sweep? Because that is
15 all the bill requires. It says HEPA-vacuum or wash.
16 Isn't that what you would expect of an ordinary
17 painter? I don't understand what this new protocol
18 is. It's like the Emperor's new clothes, well, what
19 were painters doing? They were coming in, putting
20 down their canvas, they are putting down their
21 plastic, they are covering their furniture and they
22 were washing when they left.

23 CHAIRPERSON SPIGNER: They weren't wet
24 scraping, no way. They weren't doing that.

25 MR. GOLDBERG: But the experts you

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2 heard said that wet scraping protects the workers.

3 It is ~~not~~ a panacea. It is not in and of itself a
4 message that reduces the hazards and risks of
5 children residing in the apartment.

6 But Council Member Perkins' point was
7 that you have in your bill a higher standard. That
8 is, if the landlord doesn't do the quick and dirty
9 job, then he has 21 days to do it in full compliance
10 with the Health Code. And Council Member Perkins
11 pointed out that this makes no sense, that our
12 children should always be protected by the higher
13 standards. And I heard no justification --

14 CHAIRPERSON SPIGNER: You are
15 suggesting that any peeling paint in a pre-60
16 building should be addressed -- I mean, I don't know
17 who is going to check on it because there is no
18 violation addressed to it. If you lived in my
19 building, and you would tell me there is peeling
20 paint, I would go and clean it up as I am told. But
21 who is going to check on it, no violation --

22 MR. GOLDBERG: That was the
23 distinction that Intro. 205 made. Which is another
24 point that you just reminded me of --

25 CHAIRPERSON SPIGNER: Do you want to

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2 place a violation on that?

3 MR. GOLDBERG: No, no, no. When we " " "
4 were here two years ago, and at that time the bill
5 didn't go anywhere.

6 CHAIRPERSON SPIGNER: It was more than
7 two years ago, we have been here a long time.

8 MR. GOLDBERG: The last time we were
9 here on a bill was two years ago. We were asked to
10 come up with a proposal that would separate good
11 owners from bad owners, and that proposal was Intro.
12 205, and what it said was that good owners,
13 following the current window guard law, essentially
14 just adding one more check box to the window guard
15 form, saying there is a child under the age of six,
16 a good owner would go in and do his annual
17 inspection, and if he found a condition, Intro. 205
18 doesn't regulate that owner in any way, I can't see
19 why the owners would ever have objected to that. It
20 just says go in and do your inspection and do what
21 you think is the right thing to do, just make sure
22 you don't poison a child because if you do then you
23 are going to be held to the ordinary standard for
24 negligence case of whether or not you acted
25 reasonably. But you know what? We had confidence

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2 that good owners would act reasonably, and that is
3 where we divided the universe, between good owners
4 and bad owners. But we said that someone who gets a
5 violation, then that person has to be regulated and
6 that person should comply with the existing
7 Department of Health Safety Regulations until such
8 time as the Board of Health changed those
9 regulations, not the City Council.

10 So we accepted the bargain and tried
11 to come up with an approach to separate the good
12 owners from bad owners.

13 I haven't heard any of that today. I
14 didn't hear any of the proponents of this bill
15 saying that this was an approach that was going to
16 separate good owners from bad owners.

17 CHAIRPERSON SPIGNER: Mr. Goldberg,
18 the Council will determine that is included in this
19 bill. We have heard you, we are hearing you and we
20 have heard them. I am not responsible for what they
21 say or what you say. All I can do is show the
22 respect and attention and sensitivity to your
23 testimony, as I have to everyone else, and try to
24 ensure to the best of my ability that it is given
25 every consideration as we go forward with this

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2 process. But they say I can't explain. Next time you
3 read your testimony it will be shorter. Are you
4 done?

5 MR. GOLDBERG: Yes.

6 CHAIRPERSON SPIGNER: Stanley.

7 COUNCIL MEMBER MICHELS: Yes, I don't
8 think that this moment should go by without at least
9 saying something about Andrew's work on this
10 subject. I don't know of anybody who knows more
11 about it than he does. He has worked harder and
12 spent more time --

13 CHAIRPERSON SPIGNER: I am aware
14 personally --

15 COUNCIL MEMBER MICHELS: If we pass
16 this legislation that we have in front of us, I
17 think he and I will be equally disappointed, because
18 what we have done in 205 is presented the people of
19 the City of New York with a reasonable decent piece
20 of legislation, which would benefit the landlords
21 and the tenants and what now we are proposing is a
22 piece of legislation that will harm and perhaps even
23 do worse to children and at the same time protecting
24 the landlords in the ways they don't need
25 protection.

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2 The fact is that 205 was drafted in
3 order to give relief to those people who complained
4 about Local Law 1, about the fact that Local Law 1
5 required the removal of all lead paint, and what we
6 have done in 205 is say you only have to remove that
7 paint which is peeling or where there is a
8 subsurface which is in trouble, or when there are
9 situations where there is friction surfaces. And we
10 thought that the landlord in this City would be very
11 happy to give that relief, but agreed, and the
12 everest of the landlords of this City knows no
13 bounds, and so then they accepted that and they
14 wanted in addition to protect themselves from all
15 liability which in a way has the effect of doing
16 away with the motivation to clean up their
17 apartments properly by those landlords who do not do
18 the work when they are supposed to do them. So, we
19 may find ourselves with more lead poisoned children
20 than ever before. This is indeed a tragedy. This is
21 indeed a situation where government has not worked
22 for the people of this City, and has worked for a
23 small select crew who had more influence than others
24 for reasons which are obvious.

25 Thank you.

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2 MR. GOLDBERG: Thank you.

3 CHAIRPERSON SPIGNER: Thank you,
4 ladies, gentlemen.

5 Now, we have left to speak yet is
6 Joel Shufro, we have Montefiore Safe House Families,
7 we have Lenora Colbert, we have Batya Lewton, we
8 have Brian Honan, we have Joel Kupferman, we have
9 Carmen Perez, we have Glen Pasanen, we have Carmen
10 Veras, and Beverly Hartley. In that order please,
11 take a seat, identify yourself and we would be happy
12 to take your testimony.

13 Would you identify yourself, please,
14 and we will hear your testimony.

15 MS. COLBERT: My name is Lenora
16 Colbert and I represent 1199 Health Care Workers,
17 and we represent 170,000 workers, and we also take
18 care of the benefits their families receive for all
19 of their children that get exposed to lead.

20 The majority of our members are
21 people of color, immigrants and lower-wage workers,
22 who live and work in this City. Members of 1199 live
23 in the housing, which will come under this law. We
24 object to the precipitous nature of this hearing, we
25 were not informed of the hearing, and did not hear

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2 about it until late on Friday afternoon. Even though
3 we have a big stake in this legislation.

4 Consequently, we want time to review
5 legislation and comment. Our experience in the
6 hospitals with asbestos legislation parallels the
7 removal of lead. Hospitals are used 24 hours a day.
8 Abatement workers would come into the hospitals
9 which are filled with asbestos, dressed in personal
10 protective equipment, as required by applicable
11 OSHA, and state and city regulations to remove
12 asbestos, while our members and our patients work in
13 the areas with no protective equipment, exposed to
14 the dust created by the asbestos abatement projects.
15 This is an issue of bystander exposure to asbestos,
16 which led to the work to get legislation requiring
17 strict work practices.

18 We believe that this is a similar
19 situation. We need stringent workplace regulations
20 to ensure that workers will be protected and
21 additional regulations to ensure that innocent
22 bystanders will not be exposed.

23 Like asbestos removal, lead abatement
24 work is difficult, time consuming and must be done
25 correctly, done without attention to details, it is

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2 possible of creating increased exposure of lead dust
3 far worse than those hazards which exist in the
4 first instance.

5 It is not hard to muck up a job,
6 consequently we need trained workers. The EPA
7 requires that workers receive 16 hours of training,
8 including eight hours of hands-on training provided
9 by an accredited trainer. Workers, supervisors and
10 contractors must be trained. The playing field
11 between landlord and tenants is not level. Tenants
12 are extremely vulnerable. This law cannot place the
13 burden on tenants to inform landlords of hazards or
14 whether children under the age of six are present.

15 The law must contain an affirmative
16 requirement on the landlord to inquire whether
17 children under the age are living in their
18 apartments.

19 Tenants need to be provided with
20 notification of lead abatement work, when lead
21 abatement work is being done, allowed to have access
22 to all landlord records concerning lead abatement,
23 including all test results, as well as the
24 information about what procedure the contractors
25 must adhere to to ensure the safety of the job being

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2 done.

3 Like workers working with toxic
4 substances, tenants must have the right to know.
5 Nothing should interfere with the tenants right to
6 sue either the City or the landlord for damages.

7 We know that there are strong
8 financial interests involved here. Landlords have a
9 lot at stake. We fear that this proposed legislation
10 provides an economic incentive for landlords to
11 remove lead and poisoning the future of our
12 children.

13 On behalf of our members who live in
14 many of the buildings where work will be done, we
15 urge that there be an extensive hearing and
16 discussion prior to enactment of legislation.

17 Holding this hearing on such short
18 notice without adequate time to review and digest
19 the proposed legislation does not leave us with the
20 confidence that the rights of our members will be
21 attended to.

22 CHAIRPERSON SPIGNER: May I say, with
23 the great respect I have for 1199, I mean you are
24 here --

25 MS. COLBERT: I am here only by word

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2 of mouth from someone else at almost 6:00 on Friday
3 afternoon to say that there would be a hearing.

4 CHAIRPERSON SPIGNER: But you are
5 here.

6 MS. COLBERT: Yes, fortunate for
7 someone else to inform us.

8 COUNCIL MEMBER MICHELS: Have you
9 analyzed the bill and read the bill?

10 MS. COLBERT: I received the bill
11 today when I came in. We have not had the
12 opportunity to go through it and to figure out just
13 -- I heard from someone else that fortunately had
14 the foresight to get it from somewhere else, about
15 5:00 in the afternoon on Friday.

16 CHAIRPERSON SPIGNER: Well, Ms.
17 Colbert, I am glad you are here.

18 MS. COLBERT: I am pleased to be here.

19 CHAIRPERSON SPIGNER: Whatever way you
20 got the word, I am glad you got it, I am glad you
21 are here, and I am thankful for your testimony.

22 MS. COLBERT: You are quite welcome.

23 COUNCIL MEMBER MICHELS: I am sorry
24 you haven't had an opportunity to read the bill.

25 MS. COLBERT: And we wish that our

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2 thoughts will be taken into consideration before you
3 pass such a bill that will definitely hurt our
4 members that live all over the City.

5 Thank you.

6 CHAIRPERSON SPIGNER: Sir.

7 MR. SHUFURU: My name is Joel Shufuru. I
8 am the Executive Director of the New York Committee
9 for Occupational Safety and Health, a coalition of
10 about 250 local unions in the New York Metropolitan
11 area who have been concerned with work place safety
12 and health for the last 20 years. We fight for the
13 rights of workers for safe and healthy jobs.

14 We have worked with members of the
15 City Council over the last 20 years on several
16 issues.

17 CHAIRPERSON SPIGNER: I have been to
18 some of your events.

19 MR. SHUFURU: That's correct.

20 We worked with the City Council in
21 passing landmark legislation on video display
22 terminals, which had Mayor Koch not vetoed it would
23 have resulted in a reduced epidemic of repetitive
24 stress injury which is now rampant among the City
25 workers.

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2 We also worked with the City Council
3 to enact legislation governing asbestos abatement,
4 landmark legislation which protected workers and the
5 public from asbestos dust. One of the most potent
6 carcinogens, which like lead, I am sorry, was and
7 still is present in the building.

8 It was like deja vu seeing the person
9 from the -- Marilyn, I forget her last name, from
10 the Real Estate Board -- who I last saw here in 1983
11 fighting over the asbestos legislation who claimed
12 that the building owners would go bankrupt if we
13 passed the real estate asbestos legislation.

14 We want to state at the outset that
15 we are deeply concerned that the Council is moving
16 forward to consider this complex legislation under
17 the current circumstances.

18 This issue requires careful and
19 thoughtful and thorough consideration. We received
20 notification of this bill at approximately 5:00 p.m.
21 on Thursday and did not receive the legislation
22 until Friday afternoon. Consequently our review is
23 superficial and cursory, however, on first reading,
24 while this draft is an improvement over previous
25 drafts, we pose the legislation as posing a

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2 significant threat to the health and safety of
3 working families, workers and their families.

4 First and foremost, the bill seems to
5 be an effort to avoid coverage by EPA regulations,
6 by defining lead abatement work as interim repair
7 work.

8 It is our understanding that the EPA
9 regulations dealing with the childhood lead
10 poisoning will go into effect in August, and these
11 regulations outline safe work practices and
12 specifically require training of workers in
13 appropriate work practices.

14 There is no provision in the draft
15 that is in front of us in this law, proposed law,
16 for workers to be trained in appropriate work
17 practices.

18 In fact, it appears that the point of
19 this draft is to avoid use of certified, trained
20 workers.

21 This is a serious problem, both
22 because workers are required to disturb lead dust,
23 posing a threat to themselves, and to the occupants
24 of the apartments in which work is taking place.

25 OSHA standards which govern this work

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2 are not designed to protect the health of the
3 residents in the apartment where work is being
4 performed. Consequently, we believe, like the
5 asbestos control law, that workers, supervisors and
6 contractors must be trained and supervised.

7 Second, we do not understand why
8 these regulations are less stringent than the
9 regulations being proposed by the EPA for exactly
10 the same circumstances.

11 Workers in New York get sick, like
12 workers from all over the rest of the country, as do
13 the residents of the building. Why do we have less
14 stringent regulation?

15 The work practices, for example, we
16 talked recently, Mr. Chairman, about putting down
17 the plastic on the ground, why are we not requiring
18 that this plastic be taped? Why are we not defining,
19 since you have entered into the areas which I think
20 are more appropriate for regulation, that the
21 thickness of the plastic which has been used, it is
22 not defined in the bill. It should be in the bill.
23 It is not.

24 You talk about covering furniture.
25 The furniture is going to be contaminated because

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2 the dust that is going to be created will get
3 underneath the plastic which is defined in the bill
4 as just covering. There is no requirement that the
5 plastic be taped so that the surfaces will not
6 become contaminated.

7 Similarly, as pointed out earlier,
8 why do we only have either HEPA-vacuuming or washing
9 of surfaces? It does not make sense not to have one
10 with the other.

11 So, we are concerned that the work
12 practices in this bill are too lax.

13 Third, failure to include clearance
14 testing for lead dust upon completion of abatement
15 work is a fatal omission. Visual inspection upon
16 completion of a job is not adequate and will result,
17 in our opinion, given the unregulated lead abatement
18 work and work practices permitted under this law to
19 increase exposure, not reduce exposure of children.

20 I could go on but the hour is late,
21 and let me just end by telling you, you understand
22 as we do, that there are huge economic and social
23 consequences of the legislation being completed
24 today.

25 We believe stringent work practices,

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2 strong enforcement, with strong fines for
3 non-compliance, worker training, as well as full
4 disclosure and reporting are important components of
5 the public health law, which would prevent lead
6 poisoning.

7 We do not deny that there are costs
8 in protecting children from exposure of lead
9 poisoning.

10 The question is, who is going to pay
11 these costs. This bill --

12 CHAIRPERSON SPIGNER: I think who is
13 going to pay it ultimately is going to be the tenant
14 or whoever their renters are, because whatever the
15 cost of defending and lawsuits comes to be passed on
16 to --

17 MR. SHUFRO: We think there are many
18 additional costs which are going to be shifted onto
19 the taxpayers in the form of paying for remedial
20 services, health services and you could prevent that
21 by enacting legislation which provides for stringent
22 enforcement of EPA guidelines which are already
23 there. It is a no brainer for the City Council to
24 adopt them wholesale, frankly.

25 CHAIRPERSON SPIGNER: Sir.

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2 MR. KUPFERMAN: I am Joel Kupferman,
3 from the National Lawyers Guild, Environmental
4 Justice Committee and the New York Environmental Law
5 and Justice Committee.

6 I know the hour is late and I won't
7 repeat anything, I just want to bring up three
8 things. I have been following enforcement practices
9 of the state, the federal government and the City
10 and word on the street is, especially in New York,
11 that the City and the State are not enforcing much
12 of any law.

13 I testified in front of the New York
14 State Senate Committee on the Environment about
15 self-reporting and the main issue that I talked
16 about was under the Clean Water Act, polluters are
17 supposed to take, people with permits are supposed
18 to take water samples for manhole covers and I
19 learned through the Health Department many
20 inspectors were very, very upset that the manhole
21 covers were actually asphalted over, and they
22 couldn't understand how reports are being filed and
23 signed and yet there were no manhole covers to go
24 through.

25 The second thing I wanted to bring up

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2 is that I also worked with the immigrant community
3 and they are also very fearful of any type of
4 bureaucracy, and you are putting the onus back on
5 them, you are putting the onus back on them as to
6 filling out forms, and I think the fear that the
7 City has created in the immigrant community must be
8 noted.

9 The third thing I want to bring up
10 is, one of the last cases that we worked on was the
11 Williamsburg Bridge lead paint removal, that the
12 City was in violation, continued to violate even
13 after court order, correct removal practices. And I
14 want to point out that if the City itself can't keep
15 contractors from following the law and the right
16 regulations, now they are basically saying to any
17 landlord, you can do what you want, we are not even
18 watching.

19 Also, I want to point out that it is
20 also very ironic that all of the lessons that we
21 have learned from all of these tobacco cases that
22 has gone on in the last four, five years, and
23 finally realized after all of this, all of the
24 health costs, that the tobacco companies are now
25 being held responsible, it seems, Chairman, that you

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2 are reversing all of that jurisprudence and all that
3 we have learned and giving a nice give back to the
4 landlords, and just in spite of all evidence
5 providing lead damage.

6 Thank you.

7 CHAIRPERSON SPIGNER: Thank you very
8 much, gentlemen, for your testimony.

9 Sir.

10 MR. HONAN: Is it evening yet? Good
11 evening. My name is Brian Honan, and I am here today
12 representing Tenants and Neighbors, we are a
13 statewide organization who has over 10,000 tenant
14 members.

15 Before I start, I would like to thank
16 the Chairman and other members of the Housing
17 Committee for giving me this opportunity to testify
18 on the bill before us.

19 In 1998, City Council Speaker Peter
20 Vallone made a promise to tenants groups to oppose
21 any weakening of laws to protect children from lead
22 paint poisoning. Many tenant advocates took him for
23 his word and as a result Speaker Vallone received
24 the endorsement of groups like Tenants Pact when he
25 ran for Governor. That is why it is very

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2 disappointing to be here today testifying on a bill
3 that will do just the opposite of what the Speaker
4 promised.

5 This bill does not have the interest
6 of children or tenants in mind. In fact, if the
7 draft bill that advocate groups were shown on Friday
8 afternoon passes the Council, we believe that
9 children will become, more children will become lead
10 poisoned.

11 The Speaker's staff says that the
12 purpose of this bill is to encourage landlords to
13 correct lead paint problems that they may have in
14 the apartments in which they own. But the truth is
15 that this bill will do nothing of the sort. It is
16 our experience that no bill is needed to encourage a
17 responsible decent landlord to correct a health
18 hazard.

19 As for the irresponsible landlord, it
20 is absurd to think that he or she will respond to
21 anything except for fear of liability and/or fines.
22 By giving irresponsible landlords lengthy time
23 limits to correct the lead-based hazard, this bill
24 does not encourage him or her to correct the problem
25 but rather encourages them to wait and put off

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2 correcting the problem for months, if he or she does
3 so at all.

4 This bill starts off on the wrong
5 track by requiring the tenant to provide written
6 notice that a child under the age of six is present
7 in the apartment.

8 Failure to do so, relieves all
9 responsibility on the part of the landlord of any
10 future action and civil penalty.

11 It is clear what we are doing here is
12 repeating a mistake made with window guards. Many of
13 you might remember a similar provision was in the
14 original window guard bill. It didn't work and later
15 had to be changed. Why do the authors of this bill
16 think it will work in this case?

17 The Council is repeating a mistake
18 that they were wise enough to correct some 15 years
19 ago.

20 But even if the tenant complies with
21 the landlord's request and serves him or her with
22 written notice that a child under six is living in
23 the Department, if a lead-based hazard is found in
24 the apartment, this bill is far too generous in the
25 amount of time landlords are given to correct the

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2 problem.

3 As you can see, an irresponsible
4 landlord -- this whole process can go on for months,
5 during that time the child will be living in an
6 unsafe apartment with the very real threat of
7 permanent brain damage.

8 The good news is there is a way out
9 of this mess. Council Member Michels, who sponsored
10 the bill Intro. 205, which is widely supported by
11 health professionals, advocate groups and 35 Council
12 members, we urge a similar hearing on this bill and
13 eventual passage. But if the Michels' bill is
14 unacceptable to leadership, the Council may wish to
15 follow the advice this morning of the New York Times
16 editorial and ask the Court for an extension until
17 October.

18 Given more times with the advice of
19 health professionals, social workers who have dealt
20 with lead poisoned children and their families and
21 advocate groups, I am confident that this body will
22 have the wisdom to correct this bill that has the
23 health and safety of children in mind.

24 Lastly, page one of the draft begins
25 with flowery language about how lead paint poisoning

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2 is very preventful. If what I know is correct, one
3 of the reasons why it is so preventable is because
4 of tough regulations the City and this body has put
5 on landlords. So why are we turning back the clock
6 now? If we are going to continue to make in-roads in
7 preventing lead paint hazards, we just continue to
8 treat it as a serious and life-threatening problem.

9 COUNCIL MEMBER MICHELS: Thank you.

10 MR. HONAN: Thank you.

11 CHAIRPERSON SPIGNER: Sir, will you
12 identify yourself?

13 MR. PASANEN: Thank you. Good evening,
14 Mr. Chairman, members of the Committee. I am Glenn
15 Pasanen, Associate Director of the City Project.

16 I am here to voice City Project's
17 strong opposition to the lead poisoning legislation
18 introduced today. I am also here to object to the
19 process by which this legislation is being handled.
20 A process that thus far looks like a rush to bad
21 judgment.

22 Lead paint legislation is too
23 important to be on such a fast track, avoiding
24 public scrutiny and ignoring professional public
25 comment.

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2 Everything we know thus far about
3 this bill suggests that it will, if enacted,
4 endanger tens of thousands of largely poor New York
5 City children, the vast majority of whom are
6 children of color by severely weakening protections
7 against childhood lead poisoning.

8 I won't speak at this late hour to
9 the merits of the bill.

10 We have heard a lot today, I have
11 been here all day. I simply would point out that
12 there are fundamental points of scientific facts
13 that simply have not been addressed either in this
14 hearing or in this bill.

15 There are fundamental facts that are
16 ambiguous, that need full disclosure, that has not
17 happened and apparently will not happen under this
18 current course.

19 We recognize that there is a need for
20 an alternative to Local Law 1, one which will enable
21 landlords to provide lead safe housing without
22 incurring unreasonable costs.

23 Intro. 205, which has been under
24 consideration for years, provides such an
25 alternative, a responsible lead safe alternative

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2 which is both workable for landlords and protective
3 of children.

4 The bill before you today, however,
5 goes far beyond balancing the rights of landlords
6 with the needs and concerns of children. It reduces
7 children's protection and endangers their health in
8 order to free landlords from responsibility and
9 liability.

10 Given the great importance of any
11 lead paint legislation, the current rush to bad
12 legislation is unconscionable. In fact, in my ten
13 years looking back, I can't recall a bill of this
14 significance, a bill of this importance that is
15 being treated as cavalierly as this bill is being
16 handled.

17 CHAIRPERSON SPIGNER: You think
18 cavalierly.

19 MR. PASANEN: Yes.

20 CHAIRPERSON SPIGNER: We have been
21 discussing this issue, sir, for 15 years.

22 MR. PASANEN: This bill has been
23 discussed for; I got here at 10:00, we started at
24 11:00, it has been discussed for approximately seven
25 hours.

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2 CHAIRPERSON SPIGNER: This bill, it is
3 like the tip of an iceberg.

4 MR. PASANEN: I am familiar with the
5 workings of government, sir.

6 CHAIRPERSON SPIGNER: Well, then you
7 have got to know that there is a tremendous amount
8 of work by this staff and this Council that went
9 into this product.

10 Didn't you just hear the trial lawyer
11 say that they met with our staff three times in the
12 last two weeks, everybody who wanted to meet we have
13 been meeting, we are fine-tuning and we continue to
14 meet.

15 We have sat here since 10:30 this
16 morning, and we are still here giving you an
17 opportunity to speak.

18 MR. PASANEN: I appreciate it.

19 CHAIRPERSON SPIGNER: And anyone else
20 who wants to speak.

21 MR. PASANEN: The trial lawyer has
22 also retorted that their experience was not
23 satisfactory either, but --

24 CHAIRPERSON SPIGNER: Well, I can't
25 guarantee satisfaction.

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2 MR. PASANEN: I understand that.

3 CHAIRPERSON SPIGNER: I can guarantee
4 access, and an opportunity.

5 MR. PASANEN: There have been any
6 number, I would say at least, 45, 50 references to
7 Intro. 205, which has not received a public hearing
8 that may well have been the subject of further
9 negotiations.

10 CHAIRPERSON SPIGNER: But it has been
11 duly noted, and each one of those references are on
12 the record. They are not discarded.

13 MR. PASANEN: The fact is that the
14 process that you are running this bill on is to
15 ignore the 45 or 50 comments about Intro. 205.

16 CHAIRPERSON SPIGNER: No, they are not
17 being ignored. I am saying to you that this is a
18 work-in-progress, we are holding a hearing on a
19 bill, all references to 205 and any other relevant
20 issues are on the record and will be taken under
21 advisement as we go forward with this process.

22 MR. PASANEN: May I ask if you are
23 intending to vote on this bill on Wednesday?

24 CHAIRPERSON SPIGNER: We intend to
25 vote on the bill as rapidly as we can put it in the

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2 form that we think represents good public policy.

3 MR. PASANEN: You had perhaps a
4 handful of scientists able to testify because of the
5 nature of the last minute hearing, you have not
6 heard the evidence that I have heard in other places
7 that perhaps you are familiar with but certainly --

8 CHAIRPERSON SPIGNER: And perhaps we
9 never will. I am serious, I have been on this issue
10 for the last ten years myself personally, and
11 perhaps I will never hear it all.

12 MR. PASANEN: Well, I am suggesting
13 that the process I think is an embarrassment to the
14 Council and to City government, and I understand
15 that the Mayor shares a great deal of that
16 embarrassment. I hope he does. I think history will
17 show that this is an unfortunate, and if it
18 succeeds, a tragic misuse of the legislative
19 process.

20 CHAIRPERSON SPIGNER: Duly noted.

21 MR. PASANEN: Thank you.

22 COUNCIL MEMBER MICHELS: The other
23 thing that I want to make sure is on the record,
24 that it is only until we started drafting the
25 current version did we for the first time introduce

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2 that which has never been 'discussed before, and that
3 is protecting landlords from^l the liability which'
4 actually turns this bill into nothing less than a
5 landlord protective law, and protects them from
6 liability, and at the same time has a terrible
7 purpose of doing away with the main motivation to
8 make sure they do a good job in protecting the
9 children that are living in their buildings. Because
10 if they no longer have the threat of lawsuits, they
11 no longer have the motivation to clean their
12 apartments the way they should be doing it.

13 A brand new item which we never
14 discussed before, that is the outrageous give-away
15 that has taken place here today.

16 MR. PASANEN: Absolutely.

17 I would point lastly to the New York
18 Times editorial, which I think only a couple of
19 people mentioned, perhaps because they --

20 CHAIRPERSON SPIGNER: But I think we
21 all read it. We read the Times along with three or
22 four other papers.

23 COUNCIL MEMBER MICHELS: I mentioned
24 it in my opening statement and I did make reference
25 to the fact that they also look at scans upon the

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2 give-away of the landlords.

3 MR. PASANEN: I will just repeat their
4 recommendation that we all pull back from this rapid
5 process and ask for more time, certainly the early
6 fall would be an appropriate time I think.

7 Thank you for the chance to testify.

8 CHAIRPERSON SPIGNER: Thank you for
9 your time and your testimony.

10 There being no other requests to
11 testify at today's hearing, this bill is laid over,
12 and this meeting is adjourned.

13 (Hearing concluded at 7:20 p.m.)

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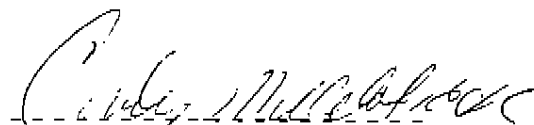
CERTIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, CINDY MILLELOT, a Certified Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the within proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

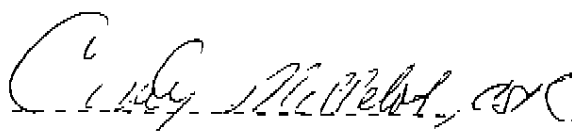
IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of June 1999.


CINDY MILLELOT, CSR.

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C E R T I F I C A T I O N

I, CINDY MILLELOT, a Certified Shorthand Reporter and a Notary Public in and for the State of New York, do hereby certify the aforesaid to be a true and accurate copy of the transcription of the audio tapes of this hearing.



CINDY MILLELOT, CSR.