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2 CITY COUNCIL

3

CITY OF NEW YORK

4 -----x

5 THE TRANSCRIPT OF THE MINUTES

6 of the

7 COMMITTEE ON HOUSING And BUILDINGS

8 -----x

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City Hall

11

Council Chambers

New York, New York

12

13 B E F O R E:

14 MADELINE PROVENZANO

Chairperson,

15

16 COUNCIL MEMBERS: Joel Rivera
17 Tony Avella
18 Gale Brewer
19 Leroy Comrie
20 Simcha Fidler
21 Robert Jackson
22 Melinda Katz
23 Kendall Stewart
24 James Oddo
25 Charles Barron
Bill Perkins
Christine Quinn
David Weprin
Speaker Miller

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2 A P P E A R A N C E S

3

Mary Jean Brown, ScD, RN
Chief, Lead Poisoning Prevention Branch
Centers for Disease Control and Prevention

5

Bruce P. Lanphear, M.D., M.P.H.
Cincinnati Children's Hospital Medical Center

7

Susan Klitzman, DrPH
Associate Professor, Environmental and Occupational
Health Sciences
Hunter College, City University of New York

9

Martin Benitez

10

Janet Sanchez

11

Enrique Modesta

12

Adrian Rodriguez

13

John McCarthy

14

Community Preservation Corporation

15

Michael McGuire
Mason Tenders' District Council

16

Michael McKee

17

NYS Tenants And Neighbors Coalition

18

Darryl Ramsey
President

19

Local 768

20

Joel Shufro, Ph.D
Executive Director
New York Committee for Occupational
Safety and Health

22

Public Advocate Betsy Gotbaum

23

Helen Daniels

24

Black and Latino Property Owners

25

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2 A P P E A R A N C E S (CONTINUED)
3
4 Martin Benitez
5 Jeannette Sanchez
6 Enriques Modesto
7 Andrea Rodriguez
8 Northern Manhattan Improvement Corp
9 Frank Ricci
10 Rent Stabilization Association
11 Mitchell Pasilikin
12 General Counsel
13 Rent Stabilization Association
14 Manuel Castro
15 Make the Road By Walking
16 Jedidah Baptiste
17 Christina Brito
18 Michael McKee
19 NYS Tenants and Neighbors Coalition
20 Michelle Alvarez
21 Natural Resources Defense Council
22 Eddy Dixon
23 Camile Rivera
24 Chris Rembold
25 Sierra Club
26 Mark Caserta
27 New York League of Conservation Voters
28 Adriene Holder, Esq.
29 The Legal Aid Society
30 Matthew Chachere
31 NYCCELP

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2 A P P E A R A N C E S (CONTINUED)

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Irene Shen

4 New York City Environmental Justice Alliance

5 Cordell Cleare

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON PROVENZANO: Good

3 morning. My name is Chairwoman Madeline Provenzano,
4 I chair the Committee on Housing and Buildings. I
5 would like to thank all of you for attending this
6 hearing. This is a continuation of the last recessed
7 hearing on proposed Intro. No. 101-A. The hearing
8 was held on June 23rd. There's a sound problem.

9 Is this one working? Okay, let's get
10 on with it.

11 Okay, as you know, we're continuing
12 our deliberations on proposed Intro. No. 101-A, in
13 relation to childhood lead poisoning prevention. We
14 are once again expecting that this hearing will draw
15 a large crowd of potential witnesses and observers.
16 Please be mindful of any time constraints that are
17 imposed and please be considerate of your fellow
18 colleagues and of one another in general.

19 In order to move things along quickly
20 and smoothly, all witnesses have been asked to be
21 concise and to stay focused on the bill. I also
22 reiterate my request that only one spokesperson
23 testify from each group or organization.

24 Again, this could be a very emotional
25 hearing, but I expect that it will be conducted in a

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2 dignified manner. You may not agree with all of the
3 comments made, but please allow everyone to testify
4 without boos or heckling. The first part of this
5 hearing on June 23rd went very well. It also went
6 seven hours. I commended all participants on their
7 patience and their courtesy, and, again, some of you
8 that were here were here at the first hearing, and I
9 again commend all of you and ask that you extend the
10 same courtesy to others that you expect.

11 Today the Committee expects to hear
12 from Dr. Mary Jean Brown from the Centers for
13 Disease Control and Prevention, and from Dr. Bruce
14 Lanphear from Children's Hospital Medical Center in
15 Ohio, as well as from representatives of
16 environmental interests, representatives of the real
17 estate industry, tenants organizations and other
18 interested persons.

19 Since this is a continuation of the
20 first hearing, anyone who has already testified at
21 the first hearing may not testify again.

22 We did contact all of those who had
23 signed in at the first hearing and did not get a
24 chance to testify, so they were given the
25 opportunity and most of them will be testifying

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2 today.

3 I am joined by the Speaker, and he
4 would like to make a few comments before we begin.

5 SPEAKER MILLER: Thank you, Madam
6 Chair, and let me thank you in advance for
7 conducting this hearing in a dignified and fair
8 manner, and to let everybody have their viewpoints
9 be heard.

10 I just wanted to say a few thoughts
11 before the hearing, and mostly I wanted to thank all
12 the advocates on all sides of the issue who I met
13 with over the summer and to look at this issue,
14 which is I think the most pressing issue that the
15 City Council is considering at this time. We need to
16 address the issue of childhood lead poisoning, the
17 terrible scourge upon this City and upon this
18 country, but we have a responsibility to deal with
19 this, not the least because the Court of Appeals has
20 laid that upon us, and because we ultimately have
21 the responsibility as human beings to our children
22 who are being poisoned at unacceptable levels.

23 And having spent a great deal of time
24 meeting with a lot of people this summer, you know,
25 some important principles that I think are contained

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2 in this legislation and should be contained in any
3 legislation that is passed by this Council, and I've
4 just spoken with some of you and I wanted to put it
5 on record and in public.

6 First, I believe that it is
7 absolutely necessary that any effective lead
8 poisoning bill regulates lead dust. It's the main
9 pathway to poisoning and we must treat it as the
10 hazard that it is and for the first time in the
11 City.

12 But you know, I just think we need to
13 carefully craft it so that with regard to the
14 responsibility of landlords for that lead dust, it
15 is related to conditions that are within their
16 control and in the apartments that are in their
17 responsibility or in the buildings that are their
18 responsibility.

19 It's also clear to me that Local Law
20 38 was inadequate with regard to the notice and
21 investigation requirements. I don't personally see
22 why it is that we can't treat this issue just the
23 same way that we treat the window guards
24 notification requirements.

25 In fact, I don't see why we can't

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2 just add the line. People are already having to do
3 this, whether it's burdensome or not, and I heard
4 different arguments about it, it's already being
5 done, there's really no reason why we can't add a
6 line and then it won't be burdensome at all, it will
7 just be the same requirement that is already there.

8 I am very concerned about the time
9 frames that were in Local Law 38, and I think we
10 should be reviewing them for determining how to
11 shorten them. I also think that there's a tremendous
12 opportunity to better focus our time frames if we
13 were to require all HPD inspectors to be equipped
14 and trained to use XRF machines, so that an
15 immediate determination can be made whether the
16 deteriorating paint is lead-based paint.

17 If, as HPD has testified on a number
18 of occasions, 75 percent of the cases in which there
19 is an alleged lead paint -- or a lead paint
20 violation that is issued, turn out in the end to not
21 actually be lead paint deterioration, it seems to me
22 that an enormous amount of time and energy is being
23 wasted on the wrong types of cases and not enough is
24 being focused on the right types of cases, and so it
25 would be more reasonable to require shorter time

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2 frames, if in three-quarters of the cases we're not
3 going to have a lead paint violation at all because
4 that's not lead paint, and this allows the City and
5 landlords and everyone to focus better on conditions
6 that are actually for certain endangering children.

7 I also believe that the workers who
8 conduct the clean-up should be properly trained so
9 that they don't exacerbate the problem and protect
10 themselves from harm.

11 Having spent a lot of time on this
12 issue, and I look forward to the hearing, I still
13 think there are some areas where 101-A could be
14 better focused in terms of dealing with primary
15 prevention.

16 One simple measure that would be
17 incredibly important would be for DOH, when it
18 identifies a child as being lead poisoned, to be
19 required to check the other apartments in the
20 building, wherever that child is, to see whether or
21 not there are conditions that are endangering other
22 children in that building.

23 You know, this is critically
24 important, it seems to me, since the likelihood is,
25 and certainly having spent time talking to

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2 pediatricians and health experts, it often actually
3 is the case that if there is one lead poisoning
4 building there are often going to be others, because
5 if the landlord has allowed the situation to
6 deteriorate in one apartment, there's a good chance
7 they've allowed it to deteriorate in others.

8 So, I think that it would make sense
9 in legislation to focus on sort of primary
10 prevention on making sure that when we find one
11 case, that we don't wait for the inadequate testing
12 that's going on elsewhere to identify other cases,
13 but that we go out and actually try to prevent them,
14 which also brings me to another point which is I
15 think that more needs to be done to increase testing
16 for elevated blood levels in this City. We do not do
17 a good enough job and some simple things, just
18 requiring the Department of Health to mail a yearly
19 reminder to pediatricians, notifying them of the
20 State law regarding children being blood tested, and
21 also looking at earmarking funds for education and
22 testing in the lead belt area.

23 So, I think there's a lot of
24 opportunity for this Council to work very
25 thoughtfully and seriously to try to enact

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2 legislation that will, and succeed in enacting

3 legislation that will protect children.

4 I look forward to working with all of
5 my colleagues here on the Council, with the
6 advocates on all sides of this issue, and with the
7 Administration as well, to try to make sure that we
8 focus the cost of this bill on protecting children
9 as effectively as humanely possible, and that to
10 enact legislation that will in the end put this City
11 where it belongs, at the front of protecting
12 children from lead poisoning in this country.

13 So, I thank my colleagues. I
14 apologize for taking the time of everyone before
15 this hearing, and I look forward to hearing the
16 testimony, as much as I can stay for.

17 Thank you.

18 CHAIRPERSON PROVENZANO: Thank you,
19 Mr. Speaker.

20 Before we start I'd like to introduce
21 members of the Committee.

22 To my left, Council Member Joel
23 Rivera. I'm going to do the Committee first.
24 Councilwoman Melinda Katz; Councilman Tony Avella.
25 To my right, Council Member Robert Jackson. How are

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2 you? And Councilwoman Gale Brewer.

3 We also have some of the Council
4 folks here who are not on the Committee but are
5 interested in what's going on. We have Council
6 Member Charles Barron, Council Member Bill Perkins,
7 Councilwoman Christine Quinn, and Chair of our
8 Finance Committee, Councilman David Weprin.

9 COUNCIL MEMBER PERKINS: Madam Chair,
10 before we begin I'd appreciate your indulgence to
11 make some opening remarks as the prime sponsor of
12 Intro. 101-A.

13 CHAIRPERSON PROVENZANO: All right.

14 COUNCIL MEMBER PERKINS: Thank you
15 very much for your graciousness. I appreciate it.

16 First let me start by extending my
17 appreciations to the Speaker for effectively
18 endorsing 101-A in his opening remarks. It seems as
19 if the research that he has done has shown him that
20 we are on the right track, and I very much
21 appreciate that and I say that in all sincerity, and
22 as he pointed out, look forward to working with him,
23 the Administration, the advocates, et cetera, in
24 making sure that this law is actually passed by this
25 Council.

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2 So, it's about time that we are
3 standing up on behalf of the children and their
4 health as opposed to crafting legislation that
5 speaks to the needs simply of the landlords.

6 Local law was struck down by the
7 State's highest court because the Council failed to
8 comply with the Environmental Quality Review Act.

9 In their ruling the court admonished
10 the City by stating that the number of lead poisoned
11 children was "alarmingly high," and we know from the
12 testimony of the Administration that over 4,000
13 children continue to be lead poisoned, and 95
14 percent of them are children of color, particularly
15 in the African American, Latino and Asian
16 communities.

17 So, hopefully today we will come to
18 the end of what has thus far been a public health
19 nightmare, though we are doing this in the Housing
20 Committee, hopefully today we'll begin the end of
21 this nightmare.

22 Unfortunately, progress has been made
23 on protecting children, but Local Law 38 was clearly
24 a step backwards. Not only did the court deem it
25 invalid, but also was -- blatantly accommodated

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2 landlords at the expense of the health of our
3 children.

4 As a result, the problem is still all
5 too prevalent.

6 We are in a crisis and now we have an
7 opportunity to finally set the record straight,
8 comply with the court's orders and do the right
9 thing for our children.

10 I look forward to hearing the
11 testimony today and I know that once again the case
12 for Intro. 101-A will be as strong as ever. Thank
13 you very much.

14 CHAIRPERSON PROVENZANO: Thank you,
15 Councilman Perkins.

16 Our first testifier will be Mary Jean
17 Brown, from the Center for Disease Control and
18 Prevention. She's the federal rep, and we thank you
19 for coming.

20 DR. BROWN: Good morning. I'm Dr. Mary
21 Jean Brown. I am the Chief of the Lead Poisoning
22 Prevention Branch at the Centers for Disease Control
23 and Prevention.

24 I have been involved in childhood
25 lead poisoning and its prevention since 1982. As a

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2 public health nurse, as an assistant director of the
3 Massachusetts Lead Poisoning Prevention Program and
4 as a scientist. I have a doctoral degree in maternal
5 and child health from the Harvard School Public
6 Health, where until recently, I was on the faculty.

7 I have conducted applied research and
8 evaluated the effectiveness of housing policies,
9 parental education and other strategies to prevent
10 lead exposure.

11 I appreciate this opportunity to
12 speak to you today about CDC's role in preventing
13 lead poisoning.

14 CDC is mandated to support
15 comprehensive programs, to prevent lead poisoning in
16 children. CDC funded state and local programs are
17 part of an interdisciplinary federal effort
18 encompassing programs administered to health and
19 human services, the Department of Housing and Urban
20 Development and the Environmental Protection Agency.

21 Recently CDC and its state and local
22 partners have begun to shift efforts from solely
23 providing direct services, blood lead testing and
24 case management, to primary prevention of lead
25 poisoning, by taking measures to prevent children

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2 from being exposed in the first place.

3 Primary prevention is crucial to our
4 meeting the healthy people 2010 objective of the
5 nation's Blueprint for Action to Improve the
6 Public's Health of eliminating lead poisoning by the
7 end of the decade.

8 The steady decline in the proportion
9 of US children with elevated blood lead levels
10 between 1980 and 2000 is a true public health
11 success.

12 The most recent estimates from 1999
13 to 2000 indicate that approximately 434,000 children
14 are 2.2 percent of the United States childhood
15 population less than six years old, has elevated
16 blood lead levels of ten micrograms per deciliter or
17 greater. In New York City in 2000, the estimate was
18 1.9 percent of young children.

19 However, this improvement has not
20 been realized uniformly across communities, and
21 there remain areas where we know that the risk for
22 lead exposure is disproportionately high.

23 To eliminate lead poisoning, we must
24 focus efforts to prevent children from being exposed
25 to lead in these areas at highest risk.

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2 Blood lead screening is an important
3 element of a comprehensive strategy to eliminating
4 lead poisoning and CDC recommends that screening be
5 targeted to those children who are most at risk.
6 These would be children living in neighborhoods with
7 a high concentration of poverty and old poorly
8 maintained housing, as well as children between the
9 ages of 12 and 36 months.

10 Blood lead levels tend to be highest
11 in this age group. CDC also recommends screening of
12 children age 36 to 72 months of age who live in
13 high-risk areas, if they not been tested previously
14 or have previously elevating.

15 As children grow their risk for lead
16 exposure decreases because they have less hand to
17 mouth activity, because their absorption of lead is
18 decreased, and because they spent less time at home.
19 There are a few health benefits to routinely
20 screening children after the age of six, and the
21 Center for Disease Control does not recommend it.

22 In addition, routine screening of
23 children after six years of age may deflect
24 resources away from children who are most at risk.

25 In addition to blood lead screening,

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2 CDC also makes recommendations regarding the medical
3 and environmental follow-up of children identified
4 with elevated blood lead levels. Although lead-based
5 paint was banned from residential use in 1978, it
6 remains the most prevalent source of lead exposure
7 for children in the United States.

8 Repairing lead paint hazards, such as
9 loose and peeling paint and lead paint on high-risk
10 surfaces, such as windows and doors and other areas
11 where paint is subject to abrasion is crucial to
12 preventing new cases of lead poisoning because these
13 surfaces shed paint and contaminate house dust and
14 soil.

15 Dust lead levels have a strong and
16 direct association with resident children's blood
17 lead levels, because infants and toddlers come into
18 contact with substantial amounts of lead dust during
19 normal hand-to-mouth behavior.

20 In order to prevent children from
21 being exposed to this hazard, CDC recommends that
22 dust lead testing be conducted as part of
23 environmental investigations of children with
24 elevated blood lead levels, and for clearance
25 testing following the lead hazard remediation work

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2 or other work that disturbs lead paint.

3 However, the value of continued dust
4 testing in homes where paint is intact or where
5 remediation and proper clean up have been conducted,
6 as demonstrated by clearance dust testing, is
7 unclear, and such testing may deflect needed
8 resources from areas where the lead hazards are more
9 immediate.

10 In addition to dust testing, we must
11 ensure that lead paint removal and repair is
12 conducted safely.

13 It is essential that all workers who
14 disturb all painted surfaces, including home
15 renovators, be familiar with lead-safe work
16 practices and the clean up of lead paint debris and
17 dust generated by the activity.

18 Educational efforts should include
19 formal training of lead paint abatement contractors
20 and workers who will be removing large amounts of
21 leaded paint as part of their job.

22 However, less formal and more
23 widespread education of do-it-your-selfers and
24 handymen is also required to prevent them from
25 unwittingly exposing resident children to lead

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2 contaminated dust.

3 The CDC remains committed to
4 supporting state and local efforts to limit
5 children's exposure to lead. This involves
6 maintaining ongoing efforts to screen children at
7 high risk for exposure and provide follow-up
8 services to children with elevated blood lead
9 levels.

10 Primary prevention of exposure both
11 through education and outreach and control or
12 elimination of lead hazards in those -- I'm sorry.
13 Elimination of lead hazards should first focus on
14 those units where the risk for exposure is known to
15 be highest, such as poorly maintained older housing
16 and in housing where children have repeatedly been
17 identified with elevated blood lead levels. To
18 achieve the national goal of eliminating childhood
19 lead poisoning by 2010, it is absolutely crucial
20 that we focus our resources on those neighborhoods
21 where children are at greatest risk.

22 Thank you for allowing me to make
23 these comments, and I'm happy to answer any
24 questions.

25 CHAIRPERSON PROVENZANO: Thank you

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2 very much. Do we have any questions?

3 COUNCIL MEMBER BARRON: Yes, I have a
4 question.

5 CHAIRPERSON PROVENZANO: Okay, Council
6 Member Barron.

7 I was looking for Committee members,
8 you know, but since there are none. Ut-oh.

9 COUNCIL MEMBER BARRON: I'll defer to
10 you.

11 COUNCIL MEMBER JACKSON: Good morning,
12 Doctor. And thank you for coming and giving
13 testimony regarding this very important issue.

14 I'm a member of the Housing
15 Committee, and I have attended the hearing last June
16 and sat through all of the testimony and
17 subsequently the court decision by the highest court
18 in New York State, the Court of Appeals, rendered a
19 decision that basically threw out Local Law 38, and
20 even though I have not read, but have you seen the
21 New York City Independent Budget Office report
22 concerning --

23 DR. BROWN: No, I'm sorry.

24 COUNCIL MEMBER JACKSON: So you can't
25 answer any questions on that then? Not on the

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2 budget, no. I'm sorry.

3 Okay. Now, concerning your experience
4 and knowledge about lead dust, it is a given that
5 lead dust is a terrible hazard for young children.
6 Am I correct? Am I wrong?

7 DR. BROWN: Lead dust is highly --
8 high levels of lead dust are highly associated with
9 high blood lead levels for children.

10 COUNCIL MEMBER JACKSON: Okay. And,
11 now, in your testimony you referred to, I think
12 it's, and I'm reading from page two, where you
13 indicate that there were 434,000 or 2.2 percent of
14 US children less than six years of age had elevated
15 blood levels of more than 10 -- what do you call it?

16 DR. BROWN: Micrograms per deciliter.

17 COUNCIL MEMBER JACKSON: Micrograms
18 per deciliter.

19 Now, what is the effect of children
20 with less than ten percent? Let's say seven, six,
21 five? What's the effect on that on children's body
22 and brain development? If you have any knowledge on
23 that?

24 DR. BROWN: In its 1991 statement, the
25 Centers for Disease Control recognized that we have

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2 not been able to identify a threshold at which
3 adverse health effects in children don't occur. We
4 have not found a threshold below which lead causes
5 no effects.

6 Right now the Advisory Committee to
7 the Centers for Disease Control on Lead Poisoning
8 Prevention is looking at scientific evidence.

9 There have been several reports of
10 effects below ten micrograms per deciliter on
11 children, including their educational attainment and
12 intellectual development. This work group is looking
13 at a large number of studies to see if across the
14 studies we can identify these effects, that the
15 Committee will report back to us in October, and at
16 that point we'll begin to have conversation about
17 what policies need to be put in place to address
18 this.

19 COUNCIL MEMBER JACKSON: The level of
20 ten is a CDC --

21 DR. BROWN: It is our recommendation
22 at which there should be an intervention for an
23 individual child.

24 COUNCIL MEMBER JACKSON: And if you
25 have any knowledge about assuming that there was

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2 Intro. 101 was law right now, and there was strict
3 enforcement of that, in your opinion, would that
4 cost the owners of the buildings and apartments a
5 lot of money, or do you have any value as to whether
6 or not it would be the cost of doing the strict
7 enforcement, if you have an opinion on that?

8 DR. BROWN: I am not familiar enough
9 with all of the aspects of the law 101-A. I was
10 asked to testify today on CDC.

11 COUNCIL MEMBER JACKSON: Okay.

12 DR. BROWN: I can tell you that my own
13 research suggests that allowing children to become
14 repeatedly lead poisoned, particularly in units
15 where we know children have been poisoned in the
16 past, is far more expensive in the longrun and
17 society in general than doing the kinds of clean-up
18 that are generally recommended for these units.

19 COUNCIL MEMBER JACKSON: Oh. Well, I
20 thank you for your opinion.

21 DR. BROWN: Thank you.

22 CHAIRPERSON PROVENZANO: Council
23 Member Barron.

24 COUNCIL MEMBER BARRON: For the life
25 of me, I really can't understand why children who

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2 record under ten who you can sit here and say will
3 be adversely damaged, are not included in these
4 numbers. I mean, it just doesn't make any sense to
5 talk about ten, when you know five can create severe
6 brain damage. So, we shouldn't be looking at numbers
7 that ignore the depth and breadth, because once we
8 look at the real impact of lead on children, and
9 then we come to hearings with the true impact, the
10 numbers will increase, the severity of the problem
11 will be clear, and I just don't understand why that
12 is not included in your research and findings and
13 your testimony?

14 DR. BROWN: I think when we consider
15 the adverse health effects of blood lead levels less
16 than ten, it is important that we also consider very
17 limited benefits. And we have scientific evidence of
18 the very limited benefits from the effectiveness of
19 any strategy that we come up with to lower these
20 blood lead levels.

21 I am not suggesting that we ignore
22 children at these levels. What I am suggesting is
23 that we get serious about primary prevention and not
24 wait til a child has a blood lead level of five or
25 ten.

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2 COUNCIL MEMBER BARRON: Well, I
3 understand all of that. But what do you mean
4 benefits? I mean, when you look at a child who has
5 five, four, three, and the damage it's doing them,
6 they need to be dealt with, and dealt with in a very
7 serious way, and not be excluded.

8 DR. BROWN: No, that's not what I'm
9 saying. What I'm saying is that if I look at a child
10 with a blood lead level of four, I have nothing that
11 I have been able to demonstrate that will reduce
12 that blood lead level. The only way is to prevent it
13 in the first place.

14 COUNCIL MEMBER BARRON: Well, I agree
15 with prevention, just the numbers here would
16 increase tremendously if we told the true story of
17 the dangerous impact of lead paint on children.

18 DR. BROWN: I think you can tell that
19 story without necessarily labeling children as lead
20 poisoned, and I think we could get ahead of this
21 disease if we get serious about primary prevention.

22 I also know that communities that
23 have lots of children with blood lead levels greater
24 than ten are also those communities that have the
25 most children with blood lead levels greater than

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2 five, and being serious about addressing lead paint
3 hazards, independent of a child's blood lead level,
4 is the only way we can get ahead of this.

5 COUNCIL MEMBER BARRON: Thank you very
6 much.

7 CHAIRPERSON PROVENZANO: Thank you.
8 We've been joined by Council Member Stewart in back
9 of me, and the next questioner will be Council
10 Member Rivera, he's a member of the Committee.

11 COUNCIL MEMBER RIVERA: Thank you very
12 much, Ms. Brown, for joining us here today. We are
13 not experts on the City Council so we depend on
14 experts like yourself to inform us what would be the
15 best protocol to follow.

16 One of my questions is, should the
17 childhood lead poisoning intervention level be
18 lowered in children? And if so, what affect would it
19 have on the cases?

20 DR. BROWN: Okay, while we have
21 concluded as early as 1991 that there was no
22 threshold that has been identified below which there
23 are no harmful effects of lead, and since then a
24 number of new studies have come out documenting the
25 adverse effects. We have a working group at the

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2 Centers for Disease Control, the Advisory Committee
3 on Childhood Lead Poisoning Prevention, that is
4 reviewing the scientific evidence of these health
5 effects of less than ten micrograms per deciliter.

6 A finding of adverse effects across a
7 large number of studies will raise important
8 questions about what, if any, changes CDC should
9 make in its recommendations for medical and
10 environmental intervention of an individual child.

11 In considering these changes, we also
12 need to consider the research that demonstrates that
13 there is limited benefit and limited effectiveness
14 of interventions to lower blood lead levels once
15 children have been exposed. Taken together with
16 these recent reports of children with adverse health
17 effects at levels less than ten micrograms per
18 deciliter, these studies add further weight in the
19 need for accelerating the expansion of primary
20 prevention activities.

21 Primary prevention activities do not
22 rely on the diagnosis of an individual child having
23 an elevated blood lead level, but rather focus on
24 identifying and correcting lead hazards before
25 children are exposed.

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2 Shifting our focus to primary
3 prevention does not require changing the
4 intervention levels for individual children, nor
5 does it prevent using this as one tool for
6 identifying populations of children at highest risk.
7 In fact, continuing to focus our efforts on those
8 populations and those communities is extremely
9 important.

10 COUNCIL MEMBER RIVERA: Now, my second
11 question is, with modern technology, I've heard some
12 stories about the modern technology cannot
13 accurately read lead levels at .7; is that true?
14 Where do we stand in terms of modern technology,
15 being able to read the lead levels?

16 DR. BROWN: That's the level of lead
17 in paint, 0.7 milligrams per centimeter squared.

18 COUNCIL MEMBER RIVERA: And does that
19 technology allow us to read it at that level
20 accurately? Or does it --

21 DR. BROWN: The technology has all
22 been standardized to use the level of 1.0 milligrams
23 per centimeter squared. And in fact, if you go
24 into these houses where children are lead poisoned,
25 the level of the lead in paint is usually much

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2 higher than that.

3 Lowering the acceptable level of
4 paint will also increase the error that is
5 unavoidable with this technology. So, you're going
6 to get a lot more questionable results that will
7 require more expensive kinds of testing.

8 And, again, this deflects resources
9 away from areas where we know that the levels are
10 very high, we know that the hazards are very
11 immediate.

12 COUNCIL MEMBER RIVERA: In your
13 studies, have you seen that children that have been
14 affected with 0.7 micrograms of dust, have they had
15 the same levels of damage to their brain or to their
16 neurological systems as children with 1 gram?

17 DR. BROWN: I am not aware of any
18 studies that have looked at an association between a
19 particular level of lead in paint and a particular
20 lead level in children. So, I can't answer that
21 question.

22 COUNCIL MEMBER RIVERA: Thank you very
23 much.

24 CHAIRPERSON PROVENZANO: Thank you.

25 Council Member Perkins.

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2 COUNCIL MEMBER PERKINS: Thank you
3 very much.

4 Thank you, Ms. Brown, for your
5 attendance today and your testimony and your focus
6 on early intervention, obviously that's in all
7 health matters of great value and of great concern.

8 In your article on costs and benefits
9 of enforcing housing policies to prevent childhood
10 lead poisoning, written I guess in the December
11 issue of medical decision-making, November/December
12 2002, you do cite that lead blood levels below five
13 are very, very bad in this, you make mention of that
14 in this article, that there are effects that
15 children have even at five?

16 DR. BROWN: I think what I said was
17 that they were effects in children at levels less
18 than ten, no?

19 COUNCIL MEMBER PERKINS: Well, it says
20 here five.

21 DR. BROWN: As low as five?

22 COUNCIL MEMBER PERKINS: Yes.

23 DR. BROWN: I'm sorry. I wrote this
24 four years ago.

25 COUNCIL MEMBER PERKINS: Okay.

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2 DR. BROWN: Yes. And I don't think
3 I've contradicted that today.

4 COUNCIL MEMBER PERKINS: No, I just
5 want to be clear that you have established that
6 there are those effects, and what I guess is of
7 concern is that you seem to suggest that even though
8 those effects are taking place at that level,
9 there's no need to intervene until the child is even
10 more deeply poisoned, and that seems to be kind of a
11 contradiction. It's almost as if to say the child is
12 not sick enough, the child is not poisoned enough
13 for any intervention, and especially since most of
14 the science, medical science and whatnot is now
15 saying that at any level, it's a big problem.

16 DR. BROWN: Well, and I think that's
17 the point I'm trying to make, is that if at any
18 level it's a big problem, allowing it to get to a
19 level is a poor idea. And while we can find effects,
20 if we look at large numbers of children we will find
21 effects in some children at fairly low levels
22 considering historically what blood lead levels have
23 been in the past. We have not been able to design an
24 intervention that effectively decreases those
25 levels.

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2 COUNCIL MEMBER PERKINS: But early
3 intervention would suggest that we intervene early,
4 even at five.

5 You're saying on one hand early
6 intervention should come later.

7 DR. BROWN: No, what I am saying is
8 that we should be serious about primary prevention
9 and intervene before a child is exposed, perhaps
10 before he's born.

11 COUNCIL MEMBER PERKINS: But then wait
12 until it's exposed to a higher level than five?

13 DR. BROWN: If I have to label the
14 child as lead poisoned, and I have to tell his
15 parents that we're going to do something that will
16 effectively lower that blood lead level, that will
17 require their own vigilance and work and expense to
18 them, the parents, then I want to be sure that the
19 interventions that we recommend are in fact
20 successful in doing that. We have not been able to
21 find one that is.

22 COUNCIL MEMBER PERKINS: Let me switch
23 to this question of the budget, because in this same
24 report you seem to indicate that strict enforcement
25 of lead saves about \$50,000 per apartment; are you

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2 still holding to that?

3 DR. BROWN: No. That study was
4 conducted in the Northeastern part of the United
5 States, and I looked at -- triple deckers, so we
6 were looking at buildings that typically had three
7 units in them, and what we found was that if you
8 address the lead hazards in all three units, you
9 will prevent a large number of future children from
10 having blood lead levels, and I was looking at ten
11 as the level of concern, and that that would save
12 over the 60 year or so life, economic life of those
13 children, employment life of those children, we save
14 about \$50,000 per unit. Those benefits can seem
15 quite modest, it's about \$110 a year per child,
16 unless you multiply them by the hundreds of
17 thousands of children who are poisoned in this
18 country every year.

19 COUNCIL MEMBER PERKINS: So you're
20 still firm on that number, though? I mean that it's
21 a significant savings if we do this?

22 DR. BROWN: It's a significant
23 savings. There are lots of variables that went into
24 that that we could talk about.

25 COUNCIL MEMBER PERKINS: All right,

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2 thank you.

3 CHAIRPERSON PROVENZANO: Okay, thank
4 you.

5 We've also been joined by Council
6 Member James Sanders, and Council Member Stewart,
7 you have some questions? Why don't you go ahead.

8 COUNCIL MEMBER STEWART: Thank you.

9 Madam Chair, I have one simple
10 question, and I think if our focus is on prevention
11 of lead poisoning in our children. The approach I
12 feel that we should use is that the multiple
13 dwellings, there should be inspection before any of
14 those apartments are being invented. Why wait until
15 the child is poisoned to seek correction? Why not go
16 into these multiple dwellings and inspect them? Just
17 as we register these apartments, we can inspect them
18 just the same, with cars that we put on the road, we
19 do inspection, and we register these cars. The same
20 way that we register multiple dwellings, why can't
21 we go in there and inspect them before we rent it to
22 any child that is under the age of seven, if we're
23 dealing with prevention?

24 I feel the focus should be on that,
25 and not so much of trying to correct, we should try

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2 to prevent more than we're trying to correct. What
3 is your comment on that?

4 DR. BROWN: I think that it's very
5 important that we correct lead hazards in high risk
6 housing first. So, I think that the first thing to
7 do is to find those areas where the lead hazards are
8 most immediate. That can be done either by knowing
9 where children have been lead poisoned in the past.
10 I can't speak to New York City specifically, but I
11 do know many places in the country where a public
12 health nurse can walk down the street and say there
13 were three children poisoned in that house last year
14 and the year before, and four poisoned children in
15 that house in the last five years, and those would
16 be the houses that I would start with.

17 A house that has poisoned a child in
18 the past is the best predictor that it will poison a
19 child in the future. We know where the high risk
20 areas are.

21 The next step is a resource issue,
22 and it's not something that CDC can comment on, but
23 clearly we do see immediate lead hazards before
24 children get lead poisoned. It's not only less
25 expensive, but it's more compassionate.

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2 CHAIRPERSON PROVENZANO: Thank you.

3 Council Member Sanders.

4 COUNCIL MEMBER SANDERS: Thank you,

5 Madam Chair.

6 Thank you, Dr. Brown for being here.

7 It is good that someone representing such a

8 prestigious organization is here to speak on this

9 subject.

10 I'm glad that I heard you speak and
11 point out that prevention, as Benjamin Franklin said
12 it so many years ago, "an ounce of prevention is
13 better than a pound of cure." So, until we have a
14 cure, a real cure for this problem, it seems to me
15 that prevention should be our primary task.

16 Now the question becomes what is the
17 most effective means of prevention.

18 Seemingly to me, as you have stated
19 earlier, that we should look at those buildings that
20 have had the most problems. We should look at all of
21 these places that have created the problems and put
22 our main energy there, but we must also of course
23 look to see the age and conditions of all buildings
24 to ensure these things.

25 Is there any one guideline, is there

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2 any one thing that you would want the people of New
3 York, and especially this Council, to know to aid us
4 in our deliberations.

5 DR. BROWN: I think there are a few
6 factors that can help target the resources. The
7 resources are limited. They are not, there are more
8 resources for primary prevention of lead hazards
9 than there ever have been, but there are still
10 limitation, so we have to be focused and careful.

11 So, the first place to go as you
12 indicated, those buildings where we have a history
13 of problems in the past.

14 Then the buildings next door, or the
15 buildings around the corner, in neighborhoods where
16 old housing, usually housing built before 1950,
17 poorly maintained housing, and rental properties
18 where the turnover of families is such that there's
19 more opportunity to poison kids because you have
20 more children going through the units. That's where
21 I would focus my efforts.

22 COUNCIL MEMBER SANDERS: Thank you
23 very much.

24 Thank you very much, Madam Chair.

25 CHAIRPERSON PROVENZANO: Council

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2 Member Perkins.

3 COUNCIL MEMBER PERKINS:

4 Congratulations, Councilwoman Madeline Provenzano.

5 CHAIRPERSON PROVENZANO: Also to you.

6 COUNCIL MEMBER PERKINS: Thank you.

7 Doctor, I would like to know, you
8 point out that intervention does not always
9 introduce blood lead levels, but can it help -- but
10 it can help stop it from getting worse, correct?

11 DR. BROWN: I think the jury may still
12 be out on that.

13 In the randomized trials of
14 interventions that I've looked at, the progress of
15 children who were in the control group, those who
16 did not get the intervention, the decline of their
17 blood lead levels over time have been the same as
18 those children that were in the intervention group.

19 In addition to that, recent studies
20 of children at admittedly higher levels have
21 received a chelating agent called suximer. Half the
22 group got the chelating agent, the other half
23 didn't. When they were tested at the age of five or
24 six, there was no difference in the intellectual
25 achievement in the children who were treated,

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2 compared to the children who were not treated. So,
3 again, waiting for children to have blood lead
4 elevations and then doing something is not going to
5 get us ahead of the game.

6 The only way to get ahead of the game
7 is to be serious about primary prevention.

8 COUNCIL MEMBER PERKINS: Thank you
9 very much.

10 CHAIRPERSON PROVENZANO: Are there any
11 other questions?

12 Having none, we thank you very much.
13 We really appreciate your coming up today.

14 DR. BROWN: Thank you.

15 CHAIRPERSON PROVENZANO: We've been
16 joined by Council Member Leroy Comrie, a member of
17 the Committee.

18 And the next person to testify will
19 be Bruce Landphear, the Director of the Children's
20 Environmental Center at Children's Hospital Medical
21 Center, Cincinnati, Ohio.

22 Welcome.

23 DR. LANPHEAR: Thank you very much for
24 inviting me to come and share a perspective on
25 protecting children from lead poisoning. I'd like

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2 first to point out that this is quite an honor. As a
3 physician trained in public health, New York City
4 has a long history of being at the forefront of
5 public health, of protecting children from hazards,
6 like lead poisoning, like housing hazards. I think
7 today we're at a point where you can make some
8 decisions where retain or maintain that position or
9 perhaps fall back.

10 I would also like to point out that
11 your a bell weather city, what you do here today
12 will have a ripple effect across the country.

13 Up until yesterday, I didn't quite
14 understand why New York City's blood lead levels
15 seem to come down just a little bit faster than some
16 other major cities, like Chicago, Philadelphia,
17 Rochester.

18 In talking to Matt Chinchere, I think
19 I understand now why. In 1960, New York City banned
20 the use of lead-based paint in housing. That banning
21 was essential, I think, to the kind of progress
22 you've seen. Now we've got a much more difficult
23 problem, contamination from decades of lead-based
24 paint.

25 CHAIRPERSON PROVENZANO: Could I

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2 interrupt you just one minute?

3 DR. LANPHEAR: Yes.

4 CHAIRPERSON PROVENZANO: I understand
5 you're supposed to be joined by Martin Benitez.

6 DR. LANPHEAR: I don't believe so. Is
7 that next?

8 CHAIRPERSON PROVENZANO: Okay.

9 DR. LANPHEAR: We're good.

10 CHAIRPERSON PROVENZANO: We're good.
11 Okay, I'm sorry. Continue.

12 DR. LANPHEAR: I also appreciate the
13 opportunity to share my perspective through slides
14 and to have a few extra minutes to do so.

15 I think this is important because
16 most of us really think that lead exposure or lead
17 toxicity is a problem of children. That's just the
18 tip of the iceberg.

19 I hope everybody can see this. This
20 is a cartoon from the 1700s depicting the common
21 manifestation of lead poisoning, abdominal colic,
22 and you can see the demons wrenching this woman's
23 abdomen apart.

24 At this point lead poisoning was
25 primary disease of workers, and it wasn't until the

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2 beginning of the 1900s that it was discovered that
3 childhood lead poisoning was a distinct entity, as a
4 result of lead-based paint that was in disrepair,
5 the damage from floods in Australia.

6 In New York City, as in many other
7 major cities, hundreds of children every year in the
8 1960s were lead poisoned and developed brain
9 encephalopathy or brain swelling. Some of these
10 children developed a coma. Anywhere from one out of
11 four or half of these children died. At that time it
12 was thought if you survived that acute lead
13 poisoning, you were fine. But then physicians,
14 pediatricians in Chicago in this case began to ask
15 questions and look at children who had been lead
16 poisoned but survived, and what they found is that
17 as many as 22 percent of those children developed
18 mental retardation; 20 percent had seizures; two
19 percent developed a picture that resembled cerebral
20 palsy or blindness. And as a result, a number of
21 scientists and a number of studies began to be
22 conducted to try to ask questions about whether
23 there might not be adverse effects at lower and
24 lower levels.

25 This is a series of studies that

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2 tried to estimate the impact of lead exposure in a
3 population of children and each of these numbers
4 represents the effect on children's IQ of increasing
5 blood lead levels from 10 micrograms per deciliter
6 to 20 micrograms per deciliter, so anywhere from
7 about a 1.3 drop in IQ to almost a 6. Drop in IQ.

8 There were critics of these studies.
9 Not surprisingly, many of them were funded by the
10 lead industry, and one of the major criticisms was
11 that these wide estimates, anywhere from 1. Drop in
12 IQ to almost a 6. drop clearly meant that this was
13 not a real problem, that these were not true effects
14 from lead exposure.

15 Still as a result of those studies
16 and others, the CDC consistently and incrementally
17 lowered their blood lead levels of concern until
18 most recently, as already pointed out, in 1991 they
19 set it at 10 micrograms per deciliter.

20 They realized that already there was
21 some evidence that there were effects below ten, but
22 it wasn't enough to be definitive.

23 What I'd like to point out here is
24 that even CDC recognized that there may in fact be
25 adverse consequences below ten microgram per

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2 deciliter, there is no systematic attempt to go out
3 and answer that question.

4 There is no systematic public health
5 effort to try to answer whether there could in fact
6 be damage of blood lead levels less than ten.

7 Still, as pointed out, blood lead
8 levels fell dramatically. From the 1970s to the
9 early 1990s, blood lead levels fell by over 90
10 percent. A proportion of children who had blood lead
11 levels over ten fell by 90 percent.

12 Now, what that means, it's kind of a
13 bittersweet success, but that means is that many of
14 you who had children who might have been one to six
15 in the 1970s, or were between the ages of one to six
16 in the 1970s had blood lead levels over ten, almost
17 90 percent of us did.

18 About seven years ago, when I was
19 doing research in Rochester, New York, these studies
20 came out showing these dramatic reductions and blood
21 lead levels. Many of my advisors told me, get out of
22 this line of research, there's not going to be any
23 funding. The problem is going away. Besides that,
24 there's not going to be any funding to do this kind
25 of research again.

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2 And I really had to step back and ask
3 the question, was it time to get out of lead
4 poisoning prevention research? This is very
5 difficult research. A lot of people don't appreciate
6 it, even when you do it.

7 Asthma is easier to sell. I can get
8 grants pretty easy to do asthma research. It's very
9 difficult to get funding to do lead research.

10 So, I had to ask myself, was it time
11 to jump ship? Was the problem gone? And after five
12 years, these were my conclusions:

13 First, that lead toxicity is still
14 epidemic in many part of the United States.

15 Second, it remains a major
16 environmental justice problem.

17 Third, there is increasing evidence
18 of adverse effects below ten micrograms per
19 deciliter. Which, by the way, doesn't surprise any
20 of the people who have been studying lead for five
21 or more years.

22 And, finally, it's a systemic toxin,
23 and it's associated with numerous adverse conditions
24 and diseases in humans.

25 This is a map of Rochester. It's been

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2 done in every City, including New York City, and you
3 can see with the increasing darkness of the red
4 neighborhood, that in some cases, in 1995, one in
5 two children in these neighborhoods had a blood lead
6 level of over ten.

7 Overall in the City, in 1995 one in
8 three children in Rochester had a blood lead level
9 of over ten. One in three children.

10 Now, it has come down. We did a
11 reanalysis and in 2000 it was only one in five.

12 We also know, and this, again, is
13 from our studies in Rochester, that if you look at
14 African-American children, their blood lead levels
15 are two or three times higher than their white
16 counterparts, even after taking into account
17 differences in socioeconomic status, mounting (sic)
18 behaviors, lead contaminated dust, lead contaminated
19 soil.

20 What do we know about effects below
21 ten microgram per deciliter?

22 Well, the first study we did was to
23 take the National Health and Nutrition Examination
24 Survey, which is a nationally representative study,
25 and we asked the question: After taking into account

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2 other kinds of factors, like mother's education,
3 household income, race, child sex, iron status, do
4 we see inverse relationships? Do we see harm as a
5 result of having a higher blood lead level? And
6 indeed we did. We looked at these four academic
7 abilities, or cognitive outcomes. Math and reading,
8 which you all are very familiar with, for those of
9 you who have kids, or who maybe remember taking it
10 in school, digit span, which was a measure of
11 short-term memory, I'll give you five numbers and
12 you give them back to me, forward and backward. And
13 then block design, as a measure of puzzles or visual
14 spacial skills, and in each case we saw that there
15 were negative effects of lead exposure in the
16 nation's children.

17 To put that into a little bit
18 different perspective, and to help perhaps
19 understand the magnitude of that, if we took a
20 population of children with a blood lead level of
21 two and a half micrograms per deciliter, and we
22 compared that to a population of children with blood
23 lead levels of ten micrograms per deciliter, the
24 estimated deficits in reading scores due to lead
25 exposure was 15 points.

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2 Now, 15 points is huge, reading like
3 IQ is measured on a scale of 100. So, this is a huge
4 effect, and that's, again, after taking into account
5 other factors.

6 Now, from a scientific perspective,
7 this had some limitations. We weren't able to, for
8 example, take into account mother's IQ score, we had
9 to rely on a surrogate marker, income or mother's
10 education level. And, so, this by itself was still
11 of some concern, but needed to be replicated.

12 But perhaps even more striking is if
13 you look at this graph. Now, if you just focus on
14 reading for a moment, which is across the entire
15 sample of children, for every one microgram per
16 deciliter increase in blood lead level, there is
17 about a one point drop in the reading scores of
18 those children.

19 But as we looked at children with
20 lower and lower blood lead levels, that is, for
21 example, if you look at the less than five group of
22 children, instead of a one point drop, there was
23 over a one and a half point drop, so that there
24 seemed to be a greater reduction in reading scores
25 for each incremental change in lead exposure at the

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2 lower blood lead levels, which was a little bit
3 surprising, but troubling. Again, because that study
4 had some limitations. We had to wait for some
5 additional evidence.

6 This was a study that came out in the
7 New England Journal in April of this year, and we
8 did the same basic thing, but now we're looking at
9 IQ scores instead of reading. And for the total
10 sample of children, 172, we found evidence of a
11 deficit after taking into account a number of other
12 factors that may impact children's intellectual
13 abilities, and we found about a six point drop in
14 IQs for every ten microgram per deciliter increase
15 in blood lead levels, on average, and the children
16 in this study had blood lead levels anywhere from
17 less than one to about 35. But once again, what was
18 extremely troublesome and worrying is that when we
19 looked at the children whose blood lead levels never
20 exceeded or met ten micrograms per deciliter, we
21 found evidence that there was a drop as high as ten
22 IQ points in that first ten microgram per deciliter
23 increase in blood lead levels. That's at levels
24 below the CDC level of concern.

25 Now, it's been pointed out this was

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2 just yet one more study, and there are only 101
3 children. Should we take action based upon that
4 small sample of children, and I'll come back to that
5 in just a minute. Let me give you a graphic of that,
6 and I hope this helps to make the point clear.

7 What we know from that study is that
8 the deficit linked with lead exposure seems to occur
9 much more rapidly at lower blood lead levels than at
10 higher blood lead levels.

11 Having a blood lead level of 15 is
12 worse than having a blood lead level of five, this
13 data suggests. But going from five to ten appears to
14 be more harmful, at least related to IQ scores, than
15 going from 15 to 20.

16 So, here's two studies, and then in
17 response to the New England Journal article, David
18 Bellinger who is -- actually, David Bellinger and
19 Herb Needleman, who are at Boston and Pittsburgh,
20 looked, or reanalyzed their data, and, so, now in
21 addition to the first two studies, we have a third
22 study with 48 children, and what they found is, for
23 children whose blood lead levels never exceeded ten
24 micrograms per deciliter, again after taking into
25 account all of these other factors, they estimated

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2 that there was about a 15 point drop in that first
3 ten microgram per deciliter increase in blood lead
4 level.

5 Now, you might say, well, gee, these
6 are all new findings. We don't really know that
7 they're real. Are they spurious? Are they consistent
8 with the earlier literature? And in fact, they are
9 entirely consistent.

10 The problem was in the past, all of
11 our children, all of us had blood lead levels that
12 were so high that we could never ask questions about
13 whether there were adverse effects below ten.

14 If you look at this slide, and I'm
15 going to get up, because I think I need to point to
16 it, what I'm going to suggest is that the studies
17 that were done in the past that had children with
18 mean blood lead levels or average blood lead levels
19 that tend to be lower, in some cases below ten, the
20 deficits were much steeper than those with studies
21 with higher blood lead levels.

22 So, here you can see that studies
23 with children less than ten, the deficit, that is as
24 blood lead levels increased the IQ scores fell much
25 more rapidly than those studies that had children

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2 who had higher average blood lead levels.

3 So, what we're seeing is entirely
4 consistent with these earlier studies.

5 We are in the middle of an
6 international collaboration, and this is real
7 exciting. Mostly because all of these scientists are
8 volunteering their time, they shared their raw data
9 from studies that were done in Boston, Mexico City,
10 Port Pieri, Cleveland, Cincinatti, Rochester and
11 Yugoslavia. And what we're doing is we're pooling
12 those studies together, because that will allow us
13 to have a larger sample size and we hope even more
14 definitive one way or the other about the effects of
15 lead exposure.

16 Now, this is a very controversial
17 area of research, and I have been asked by this
18 Committee not to reveal these findings. But what I
19 can do is point out two things that I think will
20 give you enough of a hint of what we're finding.

21 First of all, if you again look at
22 Boston and Rochester, that is the groups with the
23 lowest blood lead levels, you see the steepest
24 decrement.

25 Now, that's important, because Boston

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2 was a study of more fluent white families, Rochester

3 was a study that involved both white and African

4 American families and tended to be less affluent.

5 So, now we're seeing the same finding in different

6 groups of children, and that's important because

7 often times people say, yeah, but maybe it's only in

8 one group of kids or another. That doesn't bear out.

9 I think what you also can see, maybe

10 if you cross your eyes, since I can't share the

11 data, you can see pretty much the same kind of shape

12 we've seen in the New England Journal Medicine

13 Article studies.

14 Now, this slide doesn't come across

15 real well. These are three cartoons, and there are

16 dots that get more concentrated as you go from this

17 cartoon to this cartoon.

18 This cartoon represents a lead

19 poisoned individual, and there are roughly 400, 500

20 dots representing the amount of lead in his body or

21 her body.

22 In this case, this is a human of

23 about 20 to 30 years ago. That is the normal level

24 at the time. I shouldn't say normal. The typical

25 level of lead exposure at the time, and this is the

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2 amount of lead, one dot right in the middle, that's
3 estimated to represent a preindustrial human.

4 So, even at levels of two micrograms
5 per deciliter, which is about where children are
6 today in this country, we estimate that they are
7 still ten to a hundred times more heavily exposed
8 than our preindustrial ancestors.

9 So, we may think that one or two
10 micrograms is low. It sounds low, doesn't it? It's
11 almost zero. At least on the microgram per deciliter
12 scale. But evolutionarily speaking, it's actually
13 quite high.

14 I also wanted to talk a little bit
15 about the fact that now we focus most of our
16 attention on neurobehavioral affects of lead
17 exposure in children. That's really just the tip of
18 the iceberg. Some of the more troubling data coming
19 out in the last five or six years is suggesting that
20 lead exposure or having a higher blood lead level or
21 a higher bone lead level as associated with higher
22 rates of delinquent behaviors of conduct disorders
23 and even of criminal behaviors.

24 And perhaps one of the strongest
25 scientifically speaking studies, Ken Dietrich found

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2 that the amount of lead a child was exposed to in
3 utero and during early childhood were both risk
4 factors, after taking a whole host of other factors
5 into account for self-reported delinquent behaviors.

6 For example, the children in this
7 group reported on average four and a half more
8 episodes of delinquent behaviors in the previous 12
9 months that were assumed based on this analysis to
10 be due to lead exposure itself. Four and a half
11 episodes. Each of those would have been grounds for
12 an arrest.

13 In other study done in the 1950s,
14 other than being male, the strongest single
15 predictor of criminal behavior was a childhood
16 history of lead poisoning.

17 Now, this study by Rick Nevin, I
18 actually ignored for a couple of years, because
19 scientifically speaking it's kind of weak, it's an
20 ecologic study. But as these other studies have come
21 in, I've begun to put more weight to it.

22 What this study did is they looked at
23 the amount of lead exposure over the past century,
24 and they lagged it by 21 years.

25 They lagged it by 21 years because as

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2 you've already heard, children are most heavily
3 exposed in the first two to three years of life, but
4 they're most likely to perform violent acts, or to
5 commit homicide between the ages of 15 to 25. And,
6 so, what Rick found is, when he looked at the
7 relationship of lead exposure, lagged 21 years, and
8 the murder rate, there was this striking
9 correlation.

10 Now, this is hard to study, as you
11 can imagine, trying to look back in time. But we
12 really don't understand what many of the factors
13 that led to this epidemic of crime, and again, there
14 is evidence both from other studies and the animal
15 literature.

16 There's also some other studies that
17 raise serious questions about what are the leading
18 causes of diseases in adults.

19 Joel Schwartz estimated that for
20 every one microgram per deciliter reduction in adult
21 blood lead levels, there would be in the United
22 States 635,000 fewer people with hypertension, 3,200
23 fewer heart attacks every year, 1,300 fewer strokes
24 every year, and all together 3,300 fewer deaths
25 every year.

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2 Now, if that's true, we should see a
3 rather dramatic decline in cardiovascular disease
4 over the past 30 years or so. And we have.

5 Now, it depends who you ask why that
6 is. If you ask the pharmaceutical companies, because
7 we've got better drugs, you ask the interns, because
8 we've got better treatment, probably a number of
9 factors, but there is considerable evidence that
10 lead exposure is in fact one of those.

11 The leading physician of the 1900s,
12 William Osler, at the turn of the century, 1900,
13 just began to see cases of angina, of heart attacks,
14 this is a relatively new phenomena.

15 Tooth decay. We estimated that about
16 two and a half million children have tooth decay in
17 the United States as a result of lead exposure that
18 otherwise wouldn't.

19 And finally, this is particularly
20 troubling. Does everybody know what the acceptable
21 level of lead of an adult woman is? Forty micrograms
22 per deciliter. Now, we know that we should start
23 thinking about that woman differently when she's
24 pregnant, but of course, it's very hard to all of a
25 sudden tell a woman when she's pregnant to stop

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2 having a blood lead level of whatever you were
3 allowed before. What this study for Mexico City
4 found is that, again after taking other factors into
5 account, if you compare pregnant women with blood
6 lead levels of less than five to pregnant women with
7 blood lead levels of ten to 14, considerably lower
8 than what is allowable, there was about a five-fold
9 increase in spontaneous abortion or miscarriage.
10 Five-fold increase. This is huge. And yet, we ignore
11 it. We don't know it.

12 Well, how did we get to this point?
13 This is really troubling stuff. Over the past
14 century there has been a very concerted effort of
15 deceptive advertising. We knew back in 1908 from the
16 Queens lead study that prevention is easy. Paint
17 containing lead should never employed, where
18 children, especially young children, are accustomed
19 to play. And I should point out, AJ Turner, this
20 physician and another Turner, first focused on
21 educational efforts. They spent the first four years
22 trying to educate moms not to let their kids put
23 their fingers in their mouths.

24 After four years Turner said, look,
25 this isn't the way to do it. Take lead out of paint.

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2 That was 1908.

3 As a result of that, a number of
4 countries, France, Belgium and Austria banned the
5 use of lead-based paint in 1909. The State of
6 Massachusetts banned it in 1921 but it was repealed
7 by the lead industry. Greece, 1922 and so on.

8 I didn't put the United States on
9 here, or even New York City, because we ran out of
10 slide space. And yet, despite those early warnings,
11 despite the fact that there is an international
12 treaty calling for the banning of lead-based paint
13 in 1921, you can see that there were thousands and
14 thousands of tons used in the United States from in
15 the early 1900s, continuing in some cases out into
16 the early, or into 1980.

17 There was a voluntary reduction
18 again, as you can see from the slide, in the 1940s,
19 mostly because there was a tremendous need for lead
20 for the war effort. But subsequently the lead
21 industry found an even more effective way to
22 disseminate in the environment, as you all know,
23 through leaded gasoline.

24 There is a website that we put
25 together in collaboration with two of your finest

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2 historians in New York City at Columbia University.
3 This tries to catalog the century of deceptive
4 advertising, the focus that the paint industry had
5 on marketing to children. For two reasons: One is it
6 gave the message that lead-based paint was safe, and
7 it also recognized that these children would grow
8 up, and if you gave them beautiful coloring books
9 and beautiful paint books, they would remember that
10 and go back and buy lead-based paint.

11 So, they learned decades before the
12 tobacco industry that the way you sell your product
13 is to market to children.

14 And then finally, Warner Mayer, who
15 was president of the Lead Industry Association said
16 in 1984, "our victories have been a deferral of
17 implementation of certain regulations."

18 One of the things that I think is
19 important as these lead suits spread across the
20 country, is that the paint and pigment industry, the
21 lead industry, is spreading their accusations of
22 blame.

23 In the past they used to just blame
24 mothers by not doing an adequate job cleaning their
25 houses, by not washing their kids' hands. Now for

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2 those landlords and real estate investors, they're
3 spreading the blame and they're starting to blame
4 the landlords and the real estate investors.

5 An element of prevention. I think
6 we've already talked about some of these, but I
7 think it's worth pointing out.

8 In public health we think of three
9 types of prevention; education, enforcement and
10 engineering.

11 The vast majority of our efforts for
12 lead poisoning prevention are what? Who would hazard
13 to guess? Education, enforcement or engineering?
14 Education. Why is that? Is education more effective?
15 What we know from the work place studies is that
16 engineering is always more effective when you're
17 dealing with an environmental hazard. So, why are we
18 focusing on education? Why do we rely on moms? Why
19 do we give them brochures? Why do we give them mops
20 and stop there? Because it's inexpensive. It's not
21 because it's more effective.

22 And then the other way to think about
23 prevention is primary secondary and tertiary
24 prevention, and I think we've talked enough about
25 that so that you all know the vast majority of our

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2 efforts on secondary and tertiary prevention. That
3 is, we wait for the child to be exposed or poisoned.

4 This is a photo that I have on my
5 wall to remind me of the absurdity of that. This is
6 a canary cage, and the miners would send the canary
7 in the cage down into the mine shaft. If the canary
8 stopped singing, or if the canary died, they knew
9 that there was toxic gases down in the mine shaft
10 and they wouldn't go down there that day.

11 This is how we protect children from
12 lead contaminated houses. We let children live in
13 houses that may or may not be lead contaminated, and
14 we test them, and then we think we've done a good
15 job, but we have not yet protected that child.

16 So, why primary prevention? First,
17 all the evidence, and it's considerable, indicates
18 that the adverse effects of lead are persistent.
19 They're systemic. As you already heard, chelation
20 does not appear to be a way that we can resolve this
21 because it did not lead to benefits for children who
22 had blood lead levels between 20 and 45 micrograms
23 per deciliter.

24 There's no discernible threshold for
25 the adverse effects of lead exposure. Now, what that

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2 means is, if I put it a little different way, over
3 95 percent of children in this country never achieve
4 a blood lead level of ten, and since there's no
5 apparent threshold that over 90 percent, perhaps 95
6 percent of children who are harmed by lead exposure
7 never achieve a blood lead level of ten micrograms
8 per deciliter. And yet, most cases we don't
9 intervene until a child has a blood lead level of
10 15, let alone ten, in terms of environmental
11 interventions. And then finally, prevention is cost
12 beneficial.

13 Bill Lanergan at Mount Sinai has
14 estimated that the annual cost of lead poisoning to
15 this country is \$43 billion. \$43 billion. Now, he
16 couldn't take into account some of these other
17 factors like delinquency and criminality and tooth
18 decay because some of those studies haven't been
19 done repetitively enough to say with confidence if
20 those are real. So, that's an underestimate. So, why
21 haven't we done more?

22 What about prevention of childhood
23 lead exposure. I think the recipe is rather
24 straightforward, first identifying the sources of
25 lead exposure in the child's home. But I can go to

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2 every one of your homes, and I can measure lead and
3 house dust, and then probably 15 and 20 percent I
4 can measure lead and the water in your home. And if
5 you have a yard, I can measure soil and I'll find
6 lead in every case.

7 So, it's not a question of whether
8 lead is there. That's a done thing. The question is
9 when is it unacceptably high. And, so, we need to
10 identify unacceptable levels of lead and
11 contributing sources.

12 We need to test whether the
13 interventions that we use are beneficial to
14 children, or whether they might not even be harmful.
15 And then, finally, we need to develop and implement
16 regulations and screening programs, which is exactly
17 what you're struggling with right now.

18 So, what are the pathways or the
19 sources? I think we said this again and again. Most
20 important, overall important sources, lead
21 contaminated paint. But as you can see, with each of
22 these arrows, this is a type of analysis called
23 pathway analysis that for the most part, except for
24 about five percent of kids who put paint chips in
25 their mouths, most children get exposed to lead

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2 contaminated paint through ingestion of house dust.

3 Now, each of these arrows, the width
4 of each of those arrows represents the relative
5 contribution, so paint lead is a more important
6 source of lead in house dust than in soil lead, but
7 they both contribute. Playing outside, a child
8 putting soil or dirt in their mouth also is a
9 contributor. Income I think is probably fairly
10 obvious, and no matter what we tried to do to take
11 into account other factors, like socioeconomic
12 status, calcium intake, iron intake,
13 African-American race or black race is the second
14 strongest risk factor, and we couldn't get rid of
15 that from our statistical models.

16 If we're going to focus on primary
17 prevention, you have to start early, presumably
18 before birth. If you wait until six months of age,
19 you've already missed your opportunity because
20 children's mounting behaviors and increasing
21 mobility come together and you can see in the first
22 12-month supply, the blood lead levels go up
23 dramatically.

24 The reason being that the frequency
25 of certain mounting behaviors, the frequency of the

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2 percent of certain mounting behaviors like putting
3 the mouth on the windowsill, a child at six months
4 of age just sort of sits there.

5 Around nine to 12 months of age they
6 start to stand up, and then they often times will
7 hold on the windowsill and put their mouth on the
8 windowsill. So, we could actually even begin to see
9 how sources change over the first two years of a
10 child's life.

11 So, what about lead standards? I
12 think that's where we need to shift and begin to
13 think really carefully, if we're going to focus on
14 primary prevention, so far we've relied on the EPA's
15 residential lead standard. They set a standard of 40
16 micrograms per square foot on floors, and 250 on
17 sills. And the way we measure lead, for those of you
18 who aren't familiar with it, I essentially take what
19 looks like a baby wipe and a 12 square inch template
20 and I make an S shape motion, fold it over and make
21 another S shape motion, and then I analyze that
22 light for lead, and the amount of lead in that wipe
23 over the floor area gives me this answer.

24 Now, how did they arrive at 40
25 microgram per square foot? I'm not entirely sure,

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2 but they used our research, and it's a little
3 confusing. But let me step back for a minute and say
4 what do we know about these controlled trials?

5 The one thing that we need to be
6 careful of, because we know this happened in the
7 past, is that we would send people into the homes to
8 fix it up, to take the lead out, and in some cases
9 we would scrape it and contaminate the floor. And,
10 so, you can make the problem worse. These first
11 three studies found that for children whose blood
12 lead levels at baseline were 25 micrograms did find
13 some overall benefit, and showed some lowering of
14 their blood lead levels. But now we're beginning to
15 ask questions about how do we protect children who
16 have at baseline lower blood lead levels, and I
17 think you can imagine that for these children who
18 are most highly exposed, and are actually older, and
19 so may be growing out of some of those mounting
20 behaviors, we may need to be more careful with
21 children who start out with lower blood lead levels,
22 or who are younger. And in fact, the only study that
23 included children with blood lead levels below 25
24 found that paint abatement was associated with an
25 increase in blood lead levels. So, we have to be

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2 careful.

3 What can we do to prevent that? Well,
4 I think we all know why blood lead levels increase
5 in children. As a result of abatement, you can get
6 rather striking increases in floor dust, in the
7 amount of lead in floor dust.

8 But I want to point out two things
9 here besides that. The second is that, if you look
10 at this, this is very high risk Baltimore housing,
11 and had contained children with lead poisoning.

12 The median floor lead level in that
13 very high-risk housing that poisoned kids, was 35.
14 Not too far off from what the EPA said is their
15 health-based standard.

16 And in fact, in our Rochester study,
17 which is represented on this red line, we found that
18 at 40 microgram per square foot, about 15 to 20
19 percent of kids would be expected to have a blood
20 lead level over ten. So, how did EPA arrive at this?
21 Forty microgram per square foot? Because at five or
22 ten we already see about five percent of kids having
23 a blood lead over ten.

24 Well, I'll tell you, they
25 misrepresented my data. They misrepresented the

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2 study from Rochester, because the EPA has this
3 dilemma. They had to take economic considerations
4 into account, as well as to protect children's
5 health.

6 And guess what? Time and again, when
7 you go back and look at history, and if there is
8 economic considerations that compete with children's
9 health, guess who wins? Guess who won?

10 There was some concern that in
11 Rochester, because we found at this time floor dust
12 lead levels of 200 on floors were set, as the normal
13 or acceptable, that was pretty much pulled out of
14 thin air. It was thought to be feasible to attain
15 back in 1988. It wasn't based on scientific
16 evidence.

17 So, when we found 40, people said no
18 way. There's no way that can be normal or low,
19 because we know that the last time we set a standard
20 it was 200.

21 One of the scientists who did a peer
22 review on our study said maybe the dust in Rochester
23 is different. So, we did a pooled analysis which
24 pulled together 12 studies from across the country
25 and essentially showed the same thing, that is,

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2 below 40 micrograms per square foot there's a lot of
3 activity and a lot of potential for damage in
4 children, and to put that a little different way, if
5 we look at children whose floor dust lead levels are
6 below two and a half micrograms per square foot.

7 Now, right now, don't forget, you're
8 talking about a standard at 40 and that's what the
9 EPA has set. Below two and a half micrograms per
10 square foot as a comparison group, and for children
11 who have floor dust lead levels between five and 25,
12 they're already at four times increased risk to have
13 a blood lead level over ten.

14 Now, this is despite the fact that
15 we've already started asking them questions about
16 are there effects below ten. So, the 40 microgram
17 per deciliter, the 40 microgram per square foot
18 floor standard is inadequate to protect children
19 from having blood lead levels over ten, now we have
20 evidence coming out and saying there's adverse
21 effects below ten.

22 Out of all the different things that
23 we've told moms to do over the past 15 or 20 years,
24 only one of them has been proven to be of benefit
25 from the standpoint of these kinds of interventions,

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2 and that's dust control.

3 It didn't seem to change the overall
4 mean blood lead level of children, but when we
5 looked at all the studies together, there is over a
6 50 percent reduction in children having blood lead
7 levels over 15 and over 20.

8 So, dust control was somewhat
9 beneficial, and clearly was -- dust is clearly an
10 important source of lead for children.

11 What I think the other conclusion we
12 can make from this is just going in and doing house
13 cleaning is not enough. You've got to find ways to
14 reduce ongoing contamination of that house dust from
15 peeling paint, from an active lead smelter, whatever
16 the source might be.

17 So, what are some of the implications
18 I would suggest? First is we need to shift or expand
19 our emphasis from screening children to screening
20 houses, yards and water. And I think this has
21 already been suggested. When might you do that?
22 Before you provide federal subsidies for rental
23 properties. Before you buy a house, after any
24 renovation project or even moderate renovation
25 project, you may want to do wipe testing in that

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2 home. Because it actually can be quite misleading.
3 If I go in and I repair old paint, now it looks like
4 it's in good shape, doesn't it? I might have
5 actually contaminated the floor. So if I just rely
6 on a visual inspection, I might miss the fact that
7 as the father, I've gone in to fix up the nursery,
8 and I just set the stage for poisoning my own child.
9 And, in fact, that's one of the worst problems with
10 the EPA standard as it is. It provides an illusion
11 of safety. It's not adequately protective for
12 children.

13 The other reason that this is so
14 critical is that it shifts us away from using
15 children as the trigger, as the biological indicator
16 of when there are lead hazards present. As long as
17 we continue to rely on that child having an elevated
18 blood lead level, and knowing that the effects of
19 lead exposure on average are persistent, it's a
20 failed system.

21 Now, there is a place for screening
22 children, but it should be seen as a safety net, it
23 seems to me. Where have we failed to protect
24 children by reducing exposures before they live in a
25 house or an apartment.

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2 But if we rely on those standards, of
3 course they have to be based upon real data. They've
4 got to be driven by science and not politics.

5 We do need trials, and I would
6 suggest randomized trials to make sure that the kind
7 of things we're doing are effective in preventing
8 exposure.

9 Dr. Brown raised some questions about
10 the effectiveness of the interventions we have
11 today, and I agree 100 percent with her. The way I
12 like to think about it is sort of like chemotherapy
13 for cancer. Nobody wants chemotherapy. It's toxic
14 stuff. But in the absence of anything better, we've
15 got some things that we can do to prevent children
16 from being exposed.

17 HUD guidelines I think are very
18 reasoned, as long as we use a lower dust lead level,
19 not 40 micrograms per square foot on floors, not 20
20 micrograms per square foot on floors. I think we
21 need to try to achieve something less than ten to
22 protect children.

23 We certainly do need more studies to
24 examine adverse effects of lead exposure at blood
25 lead levels below ten or five, but I don't think we

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2 need to wait for those studies to be completed to
3 take action. I think we know enough. Throughout
4 history, whenever there's been uncertainty, we've
5 aired on the side of protecting industry, protecting
6 the status quo. The evidence is too compelling, it
7 seems to me, not to take action.

8 And then, finally, while housing is
9 clearly the most important source, I think we need
10 to go a step further. We need to eliminate all
11 non-essential uses of lead and develop regulations
12 to control lead emissions, whether that's from lead
13 smelters, power plants, and whatever source it is.
14 Denmark two years ago led a charge to eliminate all
15 non-essential uses of lead over the next decade, and
16 I think we're at that stage as well.

17 Let me just end with two quick
18 quotes. The first: Over 25 years ago Donald Baltrap
19 said "until effective standards for the domestic
20 environment are devised, it is likely that children
21 will continue to be employed as biological
22 indicators of substandard housing.

23 We haven't come too far from this.
24 And then finally, Flo said it first, as she always
25 does, the connection between health and the dwelling

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2 of the population are one of the more important that
3 exist. The picture on the bottom is by Jacob Riss,
4 somebody you all know, and I would just like to end
5 there by saying that I hope this has been of some
6 help in your deliberations to try to retain your
7 status as one of the leaders and at the forefront of
8 protecting children from lead poison.

9 CHAIRPERSON PROVENZANO: Doctor, thank
10 you.

11 Two things. Do you have any written
12 testimony? Did you bring any written testimony?

13 DR. LANPHEAR: I can provide it.

14 CHAIRPERSON PROVENZANO: Yes, to the
15 Committee.

16 DR. LANPHEAR: Yes, e-mail.

17 CHAIRPERSON PROVENZANO: The second
18 question, just to clarify for the record, when you
19 started you said that you were asked by the
20 Committee to testify to clarify some points. Could
21 you just say what Committee that was?

22 DR. LANPHEAR: Maybe I misspoke. I was
23 asked to come to represent the group that Matthew
24 Chechere is involved with.

25 CHAIRPERSON PROVENZANO: Oh, okay.

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2 Because usually when they say Committee, they mean
3 the Housing and Buildings Committee. So, we just
4 needed to clarify that for the record.

5 DR. LANPHEAR: Yes.

6 CHAIRPERSON PROVENZANO: Thank you
7 very much.

8 Speaker Miller has a question.

9 SPEAKER MILLER: Thank you for that
10 very comprehensive presentation. I wanted to just
11 sort of ask if you could more succinctly respond
12 directly. Were you here when the representative of
13 the Center for Disease Control was?

14 DR. LANPHEAR: Dr. Brown, yes.

15 SPEAKER MILLER: Can you just kind of
16 respond sort of directly what your views were on
17 that testimony with regard to the importance of
18 primary prevention, vis-a-vis, you know, in relative
19 to the question of intervention and at what levels?

20 DR. LANPHEAR: As scientists we often
21 like to see things confirmed again and again. I
22 think there is enough compelling evidence, both
23 published in the medical and biomedical literature
24 and soon to be published, that indicates there are
25 no safe levels of lead in blood.

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2 I think we can come up with some very
3 specific things we can do to prevent children's
4 exposure, very specific tests, including wipe
5 testing in homes, including testing water in homes.

6 It may be a more important source in
7 many cities. So, I think we're at a point where we
8 have enough evidence to take aggressive action to
9 reduce lead exposure from whatever sources.

10 SPEAKER MILLER: So what I understood
11 her to be saying was that, you know, if everything
12 else was equal, she's got a dollar to spend, she'd
13 rather spend it on prevention rather than
14 correction. I hate to summarize somebody's testimony
15 in one sentence.

16 What I understood her to be saying is
17 that the focus for this Committee, for this Council,
18 should be on primary prevention and if you could
19 just sort of respond to that, what your thoughts
20 are?

21 DR. LANPHEAR: I agree. I think the
22 vast majority of children who are damaged by lead
23 exposure never have a blood lead level over ten
24 micrograms per deciliter, and children who have
25 blood lead levels over that will also be benefitted

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2 by primary prevention efforts.

3 Moreover, the medical therapy we
4 have, except at very high blood lead levels, over 60
5 or 70, do not appear to be a magic bullet to resolve
6 the problem. So, we've got to rely on reducing the
7 exposure in the first place, on primary prevention.

8 SPEAKER MILLER: Thank you.

9 CHAIRPERSON PROVENZANO: Council
10 Member Comrie.

11 COUNCIL MEMBER COMRIE: Thank you,
12 Doctor, for your comprehensive presentation.

13 At one point in your testimony you
14 said that the lead levels that are presently used as
15 the standard needs to be lowered, but you never
16 indicated as to what you thought an acceptable new
17 standard would be.

18 DR. LANPHEAR: I think the question
19 is, and the balance is, and I think Dr. Brown tried
20 to capture this, is pediatricians don't want to be
21 in a position where a child with a blood lead level
22 of 2.3 comes into their office and they're told that
23 the child is lead poisoned.

24 So, clinically dealing with one child
25 can be very difficult. We don't want to label

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2 children. At the same time, what I worry about,
3 unless we lower the action level, there is no
4 perceived threat. And if there's no perceived threat
5 as a society, we're not going to take the necessary
6 action.

7 Is five micrograms per deciliter low
8 enough? I don't know. I think there's enough
9 evidence to lower it to that level. At the same time
10 we need to be able to articulate that there does not
11 appear to be any safe level.

12 But I think we need to do something
13 to make sure that people recognize that this is
14 clearly a threat, even though blood lead levels
15 have, for the most part, fallen below ten micrograms
16 per deciliter, which is the current action level.

17 COUNCIL MEMBER COMRIE: So you're
18 saying that in your opinion, no level is a safe
19 level, and you have document -- and you presented
20 documentation to that effect, or you have
21 statistical analysis to that effect?

22 DR. LANPHEAR: I think we can say with
23 some certainty that there is effects below ten. We
24 can also say that if you look at the data, there did
25 not appear to be safe levels. That is more of an

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2 interpretation or an extrapolation of the data.

3 COUNCIL MEMBER COMRIE: Okay, thank
4 you.

5 You did talk about secondary effects
6 and other things that have happened to people that
7 are lead poisoned, but I think I might have stepped
8 out when you talked about prevention. Did you agree
9 with Dr. Brown on her prevention ideas? Or is there
10 any other idea that you would say that would be an
11 effective preventative measure?

12 DR. LANPHEAR: I think there's about
13 five or six things we could do. From the standpoint
14 of housing, at the time you buy a house, at the time
15 you evaluate a home for federal subsidies, at the
16 time you do a painting job or renovation work,
17 whether that's a contract, or whether you do your
18 own work, at each stage that should be an
19 opportunity to go in and make sure that you haven't
20 created a problem, at least in the older housing. I
21 think we need to do a better job at determining what
22 levels of lead and water and dust and soil are truly
23 safe for children. I think we need to find ways to
24 reduce all the other sources, whether it's from
25 powerplants, whether it's from lead smelters,

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2 whether it's from wheel weights. There is a variety
3 of sources that are present throughout that we
4 really don't even think about.

5 COUNCIL MEMBER COMRIE: Thank you.
6 Thank you, Madam Chair.

7 CHAIRPERSON PROVENZANO: Thank you.
8 Council Member Barron.

9 COUNCIL MEMBER BARRON: I was
10 thoroughly impressed by your presentation. We should
11 just take a unanimous vote today, have the Speaker
12 have an emergency meeting tomorrow with the full
13 City Council, all of us should vote it out and
14 arrest any landlord that's against it.

15 Arrest them. Any landlord that is
16 against this need to be arrested.

17 But on a very, and I'm very serious
18 about that, too, but on a more serious note, I don't
19 think we should have prevention versus intervention.
20 I don't think that should be an argument. I think
21 both are critical to this issue.

22 And I just want to ask another
23 question. I curious about the study that you
24 couldn't reveal information to us on, why not, and
25 is there something pertinent in there that would

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2 move this process even further?

3 DR. LANPHEAR: It won't in any way
4 contradict anything I said today. In fact, it's very
5 consistent. Lead research and lead policy has been
6 very contentious and controversial. We have on the
7 panel two people who have had battle with one
8 another. One of them was accused with scientific
9 fraud, it took five years to clear their name. So,
10 it's a very contentious area, and, so, to honor
11 their wishes, I just can't reveal it at this point.

12 COUNCIL MEMBER BARRON: Thank you very
13 much.

14 CHAIRPERSON PROVENZANO: Council
15 Member Jackson, and then Council Member Perkins.

16 COUNCIL MEMBER JACKSON: Doctor, I
17 want to thank you for your presentation, and it is
18 obvious to me that you are dedicated to your
19 research, and on behalf of the people of New York
20 City, I want to thank you for coming and providing
21 testimony and evidence about this particular matter.
22 It's very, very important in the deliberation of
23 this particular matter.

24 In one of the slides that you showed,
25 you showed that from 1970 to 1990 there's been a

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2 drop as far as CDC's recommended level of
3 intervention from 40 I believe in 1970 to ten in
4 1990. If we follow that trend, then can I assume
5 that whenever the next recommendation will come out
6 that it will be less than that, based on all of the
7 information and evidence that below ten, what is it,
8 micro --

9 DR. LANPHEAR: Micrograms per
10 deciliter.

11 COUNCIL MEMBER JACKSON: Micrograms
12 per deciliter, it's harmful to children?

13 DR. LANPHEAR: I can't say. I was
14 nominated for the CDC Lead Advisory Committee, who
15 will be coming out and making that recommendation;
16 however, representatives of the national lead
17 industry visited with Tommy Thompson before I was
18 approved and were able to get me kicked off the
19 panel. So, since that panel is making the
20 determinations, the only thing that I can do at this
21 point is try to do the science and provide it in a
22 timely manner.

23 And despite not being able to share
24 the pooled analysis today with you here, we did
25 present it to the CDC's working group about two or

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2 three weeks ago.

3 COUNCIL MEMBER JACKSON: Now, as
4 someone that is a lay person, as far as the only
5 information I know about this is what has been
6 presented and what I've read in the newspapers and
7 what have you, and you know that everything you read
8 in the newspaper is not true, that's obvious. But
9 I've listened to all of the evidence, and let me
10 just ask a stupid question, if I may ask.

11 Could the paint industry not include
12 any lead whatsoever? I mean, they did that, we
13 banned it in 1960. What was the positive effects, or
14 what was the effects of landlords -- or excuse me,
15 the paint industry, putting lead in paint? Why was
16 that needed?

17 DR. LANPHEAR: Yes. There were
18 alternatives. Even in the 1880s in England, there
19 were advertisements for non-lead-based paint,
20 because it was non-toxic. So, there were
21 alternatives.

22 On the other hand, the lead industry
23 argued, and there's some truth to it, it's a good
24 product, the only problem is it happens to be toxic.
25 But there have been alternatives throughout the past

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2 century, and it was mostly because of the marketing
3 strategy that the White House and schools and houses
4 across the United States used lead-based paint,
5 there were alternatives.

6 COUNCIL MEMBER JACKSON: And I guess,
7 finally, let me just ask this question. I live in an
8 apartment building, and if I were to take the test
9 that you indicated, as far as on the floor or on the
10 sill, tell the average individual that lives in an
11 apartment building, if they want to test their
12 apartment with that wipe, what would it cost to do
13 that type of test, to wipe, to see if in fact what
14 level of lead paint or lead dust is in their unit,
15 especially if they have children?

16 DR. LANPHEAR: There's two answers to
17 that. Right now if you wanted to be more confident
18 in the results, you would hire somebody to come in
19 and probably that would cost around \$200 or so, and
20 it might differ, depending upon the City and state
21 that you live in.

22 You can also get home test kits
23 through the mail.

24 COUNCIL MEMBER JACKSON: Through the
25 mail?

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2 DR. LANPHEAR: Through the mail. Now,
3 the only thing I say with some caution is we haven't
4 validated that families can accurately assess their
5 own homes for lead hazards. We are doing a study in
6 Cincinatti to try to prove that.

7 I think it seems very reasonable for
8 people to try to do that. There are instructions
9 that you get along with that. If the levels are
10 higher than you'd like, and, again, I'd suggest over
11 five or ten, then at that point maybe you could
12 justify somebody going out and bringing somebody in
13 that might cost a couple hundred dollars.

14 COUNCIL MEMBER JACKSON: Well, you can
15 get them in the mail. Are they free?

16 DR. LANPHEAR: No, they cost ten to
17 \$20.

18 COUNCIL MEMBER JACKSON: Ten to \$20.

19 DR. LANPHEAR: Yes. One other thing,
20 though, and that is, as we start thinking about
21 multi-unit dwellings, there are one-day training
22 courses, and, so, as landlords or maintenances
23 workers do renovations, they can be trained to do
24 these as well, but you don't have to necessarily
25 come in and have a certified environmental

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2 laboratory do them. And, so, there are ways to make
3 it less expensive for investors.

4 COUNCIL MEMBER JACKSON: Thank you
5 very much, Doctor.

6 CHAIRPERSON PROVENZANO: Thank you.
7 Council Member Perkins.

8 COUNCIL MEMBER PERKINS: Thank you
9 very much.

10 First, let me take a moment to
11 remember that one of the 37 sponsors of Intro. 101-A
12 was James Davis, and I just wanted to take a moment
13 to acknowledge the fact that his mother is with us
14 here today, and we appreciate her presence as a sign
15 of support for her son's work and the work of this
16 City Council.

17 Secondly, in case you haven't heard,
18 you are welcome to be here, even though the
19 Committee may not have invited you, you are
20 nevertheless highly welcomed by this City Council
21 for the extraordinary work that you've been doing on
22 this matter, and obviously for the rather in-depth
23 and extraordinary presentation you made.

24 And as the credit to the movement,
25 the NYCAP movement (phonetic), that they reached out

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2 to you and made the effort to make sure you were
3 here to provide us with necessary information for us
4 to make the very historic and important decision on
5 behalf of the children.

6 CHAIRPERSON PROVENZANO: May I just
7 interrupt to clarify?

8 As I said to you, Doctor, it was just
9 to clarify for the record, the Committee does
10 welcome you, even though you are not here at our
11 request, and we did enjoy your presentation.

12 COUNCIL MEMBER PERKINS: Let me just
13 first point out that, I find it awfully cynical when
14 those of us in policy-making positions, government,
15 elected officials, balance budgets with needs.

16 Very often, when you do that, needs
17 lose out because we claim we have a fiscal problem,
18 a budgetary problem.

19 One of the things that has happened
20 in this Council under the leadership of this
21 Speaker, is that recently we were able to avoid that
22 in the fiscal crisis, making sure that the needs of
23 the people of the City of New York are met, despite
24 the fact that the Administration, the Mayor's
25 Office, wanted to close senior citizen centers and

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2 other essential services.

3 So, I always take a pause when people
4 try to tell me that one need that everyone
5 acknowledges is necessary to deal with, may not be
6 able to be met because of some fiscal or budgetary
7 constraints.

8 Generally speaking, what we decide to
9 do with those dollars, we can do, and in fact, very
10 often we can do both. And in this case, I think we
11 can both do the early prevention, as well as the
12 early intervention.

13 In that regard, I just want to make
14 sure that I'm clear, from your point of view, versus
15 the point of view of the representative of CDC, as
16 to whether or not early intervention, at the levels
17 that you describe, as well as she describes, are
18 harmful to children. Do you think that intervention
19 at that level is helpful?

20 DR. LANPHEAR: There is certainly
21 evidence, particularly from the dust control
22 studies, and I think there are other measures that I
23 would take in my home, if I had lead and water for
24 example, or lead in the soil, to try to make the
25 soil, or make the water with lead less accessible to

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2 my child.

3 COUNCIL MEMBER PERKINS: If the child
4 has a level of five, is there something positive
5 that could be done for that child?

6 DR. LANPHEAR: The most rigorous
7 scientific evidence would suggest that dust control,
8 making sure dust lead levels are below five or ten
9 is the single most important thing we can do, and,
10 so, the way you find that out is you use the wipe
11 test, and I think most people today would recognize
12 that the single most important test, and that helps
13 to distinguish not so much whether there is
14 lead-based paint in the walls, there might be
15 lead-based paint in my 1911 house, it might be ten,
16 12 layers back, it may not be accessible. What the
17 wipe test does is it gives me a measure of
18 accessibility of that lead to my child, or it gives
19 me a measure of the hazard to my child.

20 COUNCIL MEMBER PERKINS: So the answer
21 is yes?

22 DR. LANPHEAR: Yes.

23 COUNCIL MEMBER PERKINS: Thank you
24 very much.

25 CHAIRPERSON PROVENZANO: Thank you

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2 very much. We appreciate you being here.

3 The next person to testify is Susan
4 Klitzman. She's an Associate Professor, Urban Hunter
5 Health Program at Hunter College. I'm an alumni of
6 Hunter, so welcome.

7 DR. KLITZMAN: Great. It's still
8 morning, I guess, so good morning, Committee Chair
9 Provenzano and Speaker Miller, and other
10 distinguished members of the City Council.

11 As Councilwoman Provenzano mentioned,
12 my name is Dr. Susan Klitzman. I have over 20 years
13 of public health experience in the field of
14 environmental health.

15 Currently I'm an Associate Professor
16 of Environmental and Occupational Health Sciences at
17 Hunter College and the City University of New York.
18 I'm also a member of the New York City Board of
19 Health.

20 From 1997 to 1999, I served as
21 Assistant Commissioner for Environmental and
22 Occupational Disease Prevention with the New York
23 City Department of Health.

24 As part of my responsibilities, I
25 managed the Childhood Lead Poisoning Prevention

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2 Program.

3 I also have coauthored numerous
4 articles and reports on lead poisoning issues
5 affecting New York City, and I appreciate the
6 opportunity to speak before the Housing and
7 Buildings Committee about preventing childhood lead
8 poisoning in New York City.

9 As you know, New York City is now at
10 the crossroads of childhood lead poisoning
11 prevention.

12 As you've heard, tremendous progress
13 has been made over the last three decades in
14 reducing both the number of children with lead
15 poisoning, as well as the severity of the problem.

16 Virtually no children in the City
17 develop severe acute lead poisoning anymore, as Dr.
18 Lanphear described, as occurred previously. Still,
19 hundreds develop mild lead poisoning every year, so
20 mild in fact, that they generally don't have any
21 symptoms.

22 As you've heard, new research has
23 shown that even mild lead poisoning can permanently
24 damage a young child developing nervous systems.

25 With a recent court decision striking

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2 down Local Law 38, there is a pressing need to put
3 into place a new workable law and program that will
4 prevent those children at highest risk from
5 developing lead poisoning, and, yet, this task has
6 remained elusive.

7 Fortunately, there is a wealth of
8 scientific data to aid in this effort.

9 You're undoubtedly familiar with
10 reports from the Department of Health and Mental
11 Hygiene's blood lead surveillance system, which show
12 that the children who are most likely to develop
13 lead poisoning in the City, are between one and five
14 years old, and live in neighborhoods with the oldest
15 dilapidated housing, such as parts of Central
16 Brooklyn and Southeast Queens.

17 From my experience in managing the
18 lead poisoning prevention program, the majority of
19 these children were exposed to lead paint hazards
20 inside their homes. An effective plan for preventing
21 child for lead poisoning in New York City, also
22 needs to make use of National data too, such as that
23 compiled by the US Department of Housing and Urban
24 Development, which shows that lead hazard control
25 methods to prevent lead poisoning are effective in

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2 lowering dust and blood lead levels on a long-term
3 basis.

4 The current bill before the Council,
5 Intro. 101-A, contains many important provisions for
6 protecting young children from lead poisoning, such
7 as requiring that landlords regularly inspect their
8 dwellings for lead paint hazards, using trained
9 personnel to repair peeling lead paint, requiring
10 that the work area be thoroughly cleaned afterward,
11 and requiring that dust lead clearance testing be
12 conducted to make sure that cleaning has been
13 effective.

14 At the same time, many would argue
15 that the bill contains other provisions whose
16 relevance to New York City or effectiveness, has not
17 been demonstrated.

18 For example, removing soil or using
19 the standard of 0.7 milligrams per centimetered
20 squared, instead of the current federal standard of
21 1.0 milligrams per centimetered squared.

22 Expending resources on such
23 questionable practices may actually divert attention
24 from those children at highest, and partly for these
25 reasons, I believe that efforts at developing a new

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2 plan remain stalled.

3 So, an important question is how to
4 break the stalemate. I believe we need to
5 incorporate the best available data and public
6 health principals into a sound policy that will
7 protect those children at greatest risk.

8 It must include the following
9 elements:

10 - repairing peeling paint and doors
11 and window frames with abraded lead paint.

12 - focusing on homes where children
13 under age six live.

14 - utilizing trained personnel for
15 controlling lead paint hazards.

16 - thoroughly cleaning the work area
17 after repairs are completed.

18 - conducting clearance testing to
19 verify that it is properly cleaned.

20 - and requiring that lead paint
21 hazards are corrected and verified as quickly as
22 possible.

23 I urge the Council to act quickly to
24 enact a policy that will focus on these key
25 elements. Such an approach will help to assure that

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2 the City continues on its successful path in
3 addressing childhood lead poisoning.

4 I would be pleased to answer any
5 questions.

6 CHAIRPERSON PROVENZANO: Thank you,
7 Doctor.

8 Do we have any questions?

9 Council Member Jackson.

10 COUNCIL MEMBER JACKSON: Doctor, I
11 want to thank you for coming in and giving
12 testimony. I was reading along with you while you
13 were reading your testimony, and I'm going to the --
14 you indicated utilizing trained personnel for
15 controlling lead paint hazards, and would you agree
16 that it would be best to use a trained and certified
17 by a board that individuals have met certain
18 qualifications and that they are certified by either
19 the City or a State agency that they're expected to
20 use this protocol, rather than just having someone,
21 for example, an owner, train people and they're not
22 certified by a board such as the New York City
23 Department of Health or HPD or DHCR or the New York
24 State Department of Health?

25 DR. KLITZMAN: I feel it's very

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2 important that personnel are trained.

3 I also feel that it's important that
4 there's some standard or verification that training
5 has occurred and that the person is competent.

6 How you choose to do that is an
7 administrative decision and there are a number of
8 ways that it can be accomplished; however, the
9 objective of documenting the training has occurred,
10 and that the person is competent to perform the work
11 is what is most important.

12 COUNCIL MEMBER JACKSON: Yes, I
13 totally agree with you, but what I'm soliciting is,
14 you explained some of the things in the process in
15 order to make sure that things are done, but what
16 I'm asking you, based on everything that you know,
17 and you're entire knowledge base and life history,
18 and your opinion, I'm asking you an opinion on
19 whether or not a certification would be best overall
20 to ensure that the protocols were followed out, and
21 having a board to certify that employees are trained
22 in all of the areas for abatement and/or cleaning or
23 following all the protocols. So, I'm really, I'm not
24 asking you to reiterate the standards, I'm asking
25 you an opinion, so if you can express an opinion; if

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2 you can't, just say you can't.

3 DR. KLITZMAN: I feel that there
4 should be some external standard, an independent
5 standard that a person has to meet. It could be
6 certification by a board or an agency, but it should
7 be some independent standard that has to be met. I
8 hope that answers your question.

9 COUNCIL MEMBER JACKSON: It does.
10 Thank you very much, Doctor.

11 Thank you, Madam Chair.

12 CHAIRPERSON PROVENZANO: Any other
13 questions?

14 Thank you very much.

15 COUNCIL MEMBER JACKSON: Madam Chair,
16 are we on a break or what?

17 CHAIRPERSON PROVENZANO: No, no
18 breaks.

19 COUNCIL MEMBER JACKSON: I see
20 everybody is getting up and leaving.

21 CHAIRPERSON PROVENZANO: That's their
22 choice. We're going on.

23 We're just looking for someone to
24 possibly shut this down, by press an off button or
25 something? Oh, there you are, okay.

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2 Oh, you left your computer, too,
3 okay.

4 And remember that you're getting us
5 testimony, right? Okay, thank you.

6 Since we're probably looking at
7 another couple of hours, although I don't plan on
8 going past about 2:00 or 2:30, we will now put on
9 the clock. So, the folks that will be testifying
10 from here on will be on a three-minute clock.

11 The next folks to testify will be
12 Martin Benitez. And we need one more chair up there,
13 because we'll probably be testifying in groups of
14 three. Jeannette Sanchez and Enrique Modesto.

15 We only need three chairs, we only
16 have three people testifying. Okay, who will be
17 first?

18 Okay, just remember to identify
19 yourself when you start to speak, okay? You're on.

20 MR. RODRIGUEZ: (In Spanish.)

21 CHAIRPERSON PROVENZANO: Excuse me.
22 Could we just ask you, because you're the
23 interpreter, do the interpretation now, because some
24 of us understand, but some of us don't, and we do
25 want to -- and also keep to the three-minute clock,

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2 because even though people left the room, they're
3 all going to be back, we have a lot of people to
4 testify. And I see that it's a very emotional story,
5 but I don't know what he's saying.

6 MS. RODRIGUEZ: My name is Andrea
7 Rodriguez --

8 CHAIRPERSON PROVENZANO: I don't think
9 you're on. Why don't you use his mic.

10 MS. RODRIGUEZ: (Through the
11 interpreter.) My name is Andrea Rodriguez, from
12 Northern Manhattan Improvement Corporation.

13 CHAIRPERSON PROVENZANO: Thank you.

14 MS. RODRIGUEZ: I'll translate up to
15 the point where he stopped.

16 CHAIRPERSON PROVENZANO: Fine.

17 MR. BENITEZ: (Through the
18 interpreter, Ms. Rodriguez.) My name is Martin
19 Benitez. I am the father of four children: Juan, who
20 is 15 years old, Jose who is 11 years old, Martin
21 who is eight, and my daughter Jazmin who is four
22 years old.

23 Jose was poisoned ten years ago when
24 we were living on Himrod Street in Bushwick. He had
25 a blood lead level of 30 micrograms per deciliter.

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2 When the landlord found out about his poisoning, he
3 told us to leave the apartment.

4 We wanted to avoid these problems, so
5 we left and moved to 1729 Grove Street in Ridgewood,
6 Queens, but our problems with lead poisoning did not
7 end there.

8 In October of 2000, my youngest child
9 Jazmin was hospitalized with a blood lead level of
10 119. The Health Department inspected our home on
11 Grove Street, and ordered the landlord to remove the
12 lead hazards.

13 The landlord tried to evict us, but
14 we knew our rights. We stayed in the Manhattan lead
15 safe house for five months while the repairs were
16 being done in the apartment, and while my daughter
17 continued to receive treatment for the poisoning.
18 After five months, the Department of Health told us
19 it was safe for us to move back into her home on
20 Grove Street. They told us the lead hazards were now
21 gone.

22 We thought we could trust the Health
23 Department but we were wrong. Although Jazmin's
24 blood lead level had been monitored almost every
25 month since age one, her blood lead level has never

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2 dropped below 14. She is now four years old, and
3 this past May she was hospitalized for the second
4 time, when her blood lead level went back up to 58.

5 The Health Department has now found
6 new lead violations in our home. This is the same
7 home on Grove Street that the Health Department
8 inspected and cleared in 2001, the same home that
9 the Health Department said was safe to move into
10 again. How could this happen?

11 MR. BENITEZ: (In Spanish.)

12 CHAIRPERSON PROVENZANO: Excuse me.
13 Again, why don't you continue it in English, please.

14 MS. RODRIGUEZ: And this time the
15 landlord succeeded in evicting us. With nowhere to
16 go, we moved into a room into a relative's house,
17 only to be told by the Health Department that we had
18 to move into the Manhattan lead safe house again,
19 only for 60 days. Our 60 days ran up last week, back
20 in a room without a permanent home.

21 Jose now is in the sixth grade and
22 has learning disabilities. I know it's because of
23 his lead poisoning. I'm afraid what will happen to
24 Jazmin, how her severe lead poisoning will affect
25 her performance in school and her quality of life in

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2 the years to come.

3 Two of my four children will now have
4 to deal with the effects of lead poisoning for the
5 rest of their lives. If there were stricter law
6 requirements on landlords to avoid lead hazards, my
7 children would not have been poisoned, if the Health
8 Department had looked for all the lead, not just
9 peeling paints the first time Jazmin got poisoned,
10 maybe she wouldn't have had to be hospitalized
11 twice and we would not be homeless right now.

12 I came here to tell you how my family
13 has been devastated by lead, my bad landlords and
14 the City's failure to protect us from slumlords.
15 Don't let this tragedy happen to one more child.

16 Thank you.

17 CHAIRPERSON PROVENZANO: Thank you.
18 And what I need is, I need both your testimony. I
19 need his, a copy of his, and I need a copy of yours
20 for the record, okay?

21 Okay, thank you very much. That was
22 Martin, right, Benitez that's spelled? And you are
23 Janet Sanchez?

24 MS. SANCHEZ: (In Spanish.)

25 CHAIRPERSON PROVENZANO: Can I

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2 interrupt one more time? Could we possibly do the
3 same thing here? But, again, we need to have both
4 testimony. You'd have to make a copy and make sure
5 that we get it. Is it difficult for you to translate
6 as she speaks?

7 MS. RODRIGUEZ: That's fine. I'll just
8 let her finish her sentence, and I'll --

9 CHAIRPERSON PROVENZANO: Right. That
10 would be better. And we're putting her on the clock.

11 Okay.

12 MS. SANCHEZ: (In Spanish.) Through
13 Ms. Rodriguez, the interpreter.) My name is Janet
14 Sanchez. I'm here to tell you that no matter what
15 the landlords and the City agencies tell you,
16 children are still being lead poisoned in New York.

17 I have two daughters: Dania, who
18 turned eight in March, and my younger daughter
19 Nayeli, who is 21 months old.

20 Until a year ago, I really did not
21 know anything about lead poisoning. Now,
22 unfortunately, my children and I have had to learn
23 the hard way.

24 Last January Dania was sick with a
25 cough that wouldn't go away. After my doctor

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2 couldn't seem to find the problem, I insisted that
3 she get a complete exam, including blood work.

4 This blood work discovered that she
5 had a blood lead level of 42 and she was
6 hospitalized. She had to receive chelation therapy.
7 She was in the hospital for seven days when her
8 blood lead level had dropped to 21.

9 I lived in an old home with peeling
10 paint in the East New York area of Brooklyn. The
11 Health Department found that my home was full of
12 lead. They also found that Dania's school, PS 65 was
13 full of lead too, in the lounge, second floor, and
14 in the library.

15 My landlord, who lived downstairs,
16 was very angry at me, and accused me of calling the
17 Health Department myself. My landlord, who lived
18 downstairs, was very angry at me. He did some work
19 with unlicensed workers to remove some of the lead
20 paint, putting my children at further risk.

21 After Dania was released from the
22 hospital, I was so desperate to protect my children
23 that I agreed to accept the landlord's offer for me
24 to move out, if he gave me back my security deposit.
25 I am now staying with my sister-in-law, and looking

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2 for a permanent home.

3 Dania has suffered terribly. Her
4 blood lead level went down in the hospital but then
5 went back up. She had a level of 30. I'm told this
6 happens after chelation.

7 In school she used to get excellent
8 report grades and report cards, but since this
9 happened her report cards are terrible and she has a
10 lot of behavioral problems. She's done things like
11 throw her chair and her food tray at her teacher.

12 Now I've learned that my 22-month-old
13 Nayeli is lead poisoned as well. She has a blood
14 lead level of 19 and the Department of Health has
15 just opened her case.

16 No child and no parent should have to
17 go through what my family has gone through. We need
18 to stop lead poisoning now.

19 CHAIRPERSON PROVENZANO: Thank you
20 very much. I have one question. The house she was in
21 before she moved in with her sister-in-law, is that
22 an apartment building or a private house?

23 MS. RODRIGUEZ: Private house.

24 CHAIRPERSON PROVENZANO: That's what I
25 thought.

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2 Okay, thank you very much.

3 Enrique.

4 MR. MODESTA: My name is Enrique
5 Modesta. I was working for Park Community Council. I
6 had a very bad experience with my daughter Christa
7 Modesta in 1991, and I was asking the Councilman if
8 it's possible to go to the federal reserves who has
9 to find out a way to stop this, because in Bushwick
10 we had so many problems with HPD. What HPD answered
11 is it's impossible to get this. We've having too
12 much problems, we had a lot of money to pay, but I
13 think it's too much money to pay a child to be sick,
14 or to have this forever, like my daughter. She's
15 going to receive a SSI check. I don't know if it
16 going to be the rest of her life, but I had a bad
17 experience because my daughter is almost pass away,
18 and like right now I working for the community and I
19 try to hunt (sic) the place like Bed Stuy that
20 having so many problems. And one of the things I
21 urge the Councilman, to try to find out the jobs
22 about HPD, when they do inspections, to try to go
23 back and find out if the inspection or if the
24 elections be done, because what I used to live in in
25 Bushwick, they have now three child being bad and

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2 HPD have violations but they don't have the result
3 that they fix it or not. And I think 101-A help us
4 to push a little bit forward. Because if your child
5 is not sick, the Health Department, they don't give
6 you any help. So, that's what I think, if it's
7 possible to change the law to give help to children,
8 because the children I think is the most important
9 in New York.

10 And like I say, I was working for
11 community, and I find out so many problems, like
12 where I live to have a building for over 100
13 violations, HPD didn't notice that. They never go
14 back in to find if the violations be done, and I
15 don't know why we cannot change all these policies
16 with the City house, when the child old. People live
17 in New York City, pay rent, they support, they pay
18 taxes, they support, all the City workers, and why
19 they don't try to do the right job.

20 Thank you.

21 CHAIRPERSON PROVENZANO: Thank you,
22 Mr. Modesto.

23 Is John McCarthy in the house? John
24 McCarthy from the Community Preservation
25 Corporation.

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2 MR. McCARTHY: Thank you. I have
3 copies of the statement that will be distributed.

4 CHAIRPERSON PROVENZANO: Oh, okay.

5 MR. McCARTHY: But I'll diverge from
6 it to try to address some of the issues that have
7 been raised earlier.

8 I'm John McCarthy, I'm the Executive
9 Vice President of CPC, the Community Preservation
10 Corporation. We've been an affordable housing lender
11 for over 25 years.

12 We're a non-profit corporation, owned
13 by most of the City's major financial institutions.
14 Our specialty is providing rehabilitation financing
15 for older apartment buildings. We've reached more
16 than 70,000 apartments in the City. This includes
17 over 18,000 in Manhattan, concentrated in Harlem,
18 Washington Heights, Inwood, over 27,000 units in the
19 Bronx and Morrisania University Heights, Fordham
20 Heights in Bedford, Tremont, and also over 17,000
21 units in Brooklyn, and 6,000 in Queens.

22 Our financing pays for the
23 replacement of aging mechanical systems, leaking
24 plumbing, obsolete electrical, aged heating systems,
25 leaking roofs and so on. We provide this financing

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2 with funds from our own member banks and the public
3 sector partners, such as the City's HPD, the State's
4 Division of Housing and Community Renewal, and
5 mortgage insurance agencies at the City and the
6 State level.

7 In New York City most affordable
8 housing is the existing stock, and it was built in
9 the early part of the century, 1.9 million of the
10 City's 3 million units were built before '61 lead
11 paint was banned here.

12 Pre-'60 housing is more than 90
13 percent of all the units in neighborhoods such as
14 Washington Heights, Inwood, Bushwick, Sunset Park
15 and many others.

16 Financing for upgrading this housing
17 with long-term mortgages therefore had to seriously
18 address the possibilities that lead paint exists in
19 this housing and the risk that brings.

20 We have therefore been involved in
21 various task forces and discussions on this issue at
22 the City, the State and the federal level. The
23 special expertise is financing this rehab in the
24 occupied older buildings. Aluminum framed windows
25 are replaced with wood framed ones. Deteriorated

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2 plumbing, which breaks down plaster walls and
3 painted surfaces and therefore leads to dust. That
4 plumbing is replaced, leaking roofs are replaced,
5 deteriorating plaster is repaired.

6 These rehabs are conducted using the
7 lead-safe work practices that have been detailed in
8 HUD's guidelines, promulgated nationally, since the
9 mid-1990s.

10 Rehabilitation of this sort not only
11 approves the quality of life generally, but it also
12 removes likely lead hazards, and it should be
13 encouraged in most of New York's older apartments.

14 Our concerns with some of the
15 provisions of 101-A are measures that would obstruct
16 the rehabilitation process.

17 It would require the City to
18 promulgate its own work practices that differ from
19 the HUD guidelines. Inconsistent practices will only
20 create confusion and obstruct rehab.

21 Second, in any significant
22 renovation, for example, if more than two windows
23 are going to be replaced, it would require that all
24 of the workers performing the rehab be certified in
25 accordance with the federal EPA standards.

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2 To our knowledge, few workers who do
3 this work today do have that certification. Having a
4 crew chief or a general contractor who knows about
5 safe work practices is definitely sensible, but to
6 require every single worker is not necessary.

7 Finally, Intro. 101-A would require a
8 notice of commencement at least ten days before
9 beginning any repairs or renovations of this sort.
10 It's really difficult to see the benefit of the
11 additional paperwork and delay from those notices in
12 getting the rehab action performed.

13 Public health success over the next
14 year or the next two years would be to reduce the
15 total of new cases of elevated blood in kids.

16 The data since 1996 actually shows
17 really significant declines. There were 1,265 new
18 EBL cases in '96, and in the Department of Health's
19 last reporting year 2001, there were only 452.

20 I say only not because a small number
21 is accessible, it's not, but it's so tantalizingly
22 small, the targeted remediation efforts of the sort
23 that the CDC woman and other health professionals
24 this morning were advocating, those targeted
25 remediation efforts actually have a chance of

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2 success.

3 This is further borne out by the fact
4 that these new EBL cases are not distributed evenly
5 throughout all of the housing stock, good stock,
6 poor stock, some neighborhoods throughout the City.

7 45 percent of all the new EBL cases
8 were in seven health districts and they were the
9 same health districts where new EBL cases have been
10 concentrated for the last ten years when we've been
11 following the data.

12 Those are East New York, Bed Stuy,
13 Crown Heights, downtown Brooklyn Heights and Park
14 Slope, Williamsburg, Bushwick, East Flatbush,
15 Flatbush, Jamaica and Southwest Queens.

16 Forty-five percent of all the cases
17 were there. For instance in Brooklyn it was only a
18 little over 300 cases. It really is credible that
19 targeted enforcement going after deterioriated
20 housing stock in areas such as Bushwick could
21 actually eliminate these several hundred cases,
22 which nothing is done on a targeted basis, will
23 produce more poisoned in those neighborhoods as they
24 have for the last decade.

25 The concern with 101-A is that it

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2 would not amount to that targeted remediation where
3 the risks are known to be and have been known to be
4 for years, but it would apply additional costly
5 standards on the millions of older apartments where
6 the risks are known to be negligible, but which
7 otherwise could have the benefits for quality of
8 life as well as hazard reduction from moderate
9 rehabilitation. I see I'm out of time. Thank you.

10 CHAIRPERSON PROVENZANO: Thank you
11 very much.

12 Do we have any questions?

13 Council Member Comrie.

14 COUNCIL MEMBER COMRIE: A couple of
15 years ago, this Council put together an initiative
16 to try and create lead-safe housing for people; are
17 you aware of that initiative? Were you part of it?

18 MR. McCARTHY: I'm not really. I know
19 that HPD had some targeted enforcement efforts and
20 remediation efforts.

21 COUNCIL MEMBER COMRIE: Not
22 remediation or enforcement, but it was a program
23 that the Department of Health was supposed to
24 monitor and fund where they were going to create,
25 what was-- lead-safe apartments for people? Anyhow,

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2 okay, in your estimation, could you see a program
3 like that being implemented in targeted areas where
4 lead levels are high, where you could create a
5 lead-safe dwelling for them, and what would you
6 estimate those costs could take you to rehab an
7 apartment to do that kind of thing?

8 MR. McCARTHY: Well, I know that there
9 have been some safe houses, lead safe houses that
10 have been created, where families can live while
11 they're apartment is being renovated.

12 Actually, a moderate renovation in an
13 older building, conducted with lead-safe practices,
14 is not that expensive, several thousand dollars per
15 apartment, but it's the kind of upgrading that many
16 apartments need anyway. I mean I think it's really
17 important, it's important for the Council to
18 consider, a targeted effort to inspect housing in
19 the lead belt community to look for severe
20 deterioration, look for lead in soil.

21 EPA has said over the last few years
22 that the phasing out of leaded gas has been one of
23 the public health successes of the last two years,
24 because as leaded gas was phased out, blood lead
25 levels began to decline, but soil received

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2 particular deposits from leaded gas exhaust, and
3 unless that's cleaned up, or unless it's washed
4 away, it continues.

5 COUNCIL MEMBER COMRIE: So you think
6 that if you had an aggressive rehab program that was
7 undertaken by your agency or other agencies in those
8 targeted areas, you could substantially cut back the
9 lead levels in those specific targeted areas, and do
10 it at a lower cost than this bill now proposes,
11 because you could do it, you're saying that the way
12 this bill is set up, it would cost you more money
13 because they would have to do additional abatement
14 procedures, and I think at one point you have here
15 in your written testimony, or you verbally said it,
16 I'm not sure which, that that 101-A would require
17 more, would require that you have to have, instead
18 of replacing two windows, you would have to rebate
19 the whole apartment?

20 MR. McCARTHY: No, I wasn't saying
21 that. My point was really that, I think 101-A would
22 be better mandating very aggressive targeted
23 enforcement in areas where hazards are known to
24 exist, but not require costly measures that would
25 obstruct rehabilitation that would apply to tens of

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2 thousands of older apartments elsewhere where the
3 risks are known not to be that likely.

4 COUNCIL MEMBER COMRIE: All right,
5 thank you.

6 Thank you, Madam Chair.

7 CHAIRPERSON PROVENZANO: Thank you
8 very much.

9 The next people to testify are,
10 Michael McGuire, Nation Tenders District Council,
11 Joel Shufro, New York Committee on Occupational
12 Safety Hazard.

13 Joel, is that you? Okay. Michael
14 McKee. Darryl Ramsey, President of Local 768 of DC
15 37. Do you want to come to the mic?

16 Okay, decide who wants to go first,
17 and whoever that is.

18 MR. MCGUIRE: Mike McGuire, Mason
19 Tenders District Council of Greater New York.

20 Good afternoon, Madam Chair and
21 distinguished Committee members. I've testified on
22 this topic before this Committee more times than I'm
23 sure all of us care to remember.

24 The thing I wanted to talk about
25 today is, I think we all agree that we need a good

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2 lead law, and the thing I want to talk today about
3 is specifics, and the thing that's of concern to us
4 today is the potential conflict between the HUD
5 requirements on how procedures could be used to
6 skirt any meaningful lead-based paint poisoning
7 prevention legislation brought before this
8 Committee.

9 The question I have is what is termed
10 to be interim controls. The fear is that some
11 landlords will undertake interim control measures
12 that are in reality abatement.

13 The problem with that is that it's
14 very clear under Title 24 of the CFR, that any
15 removal of lead-based paint is an abatement and not
16 an interim control. An abatement is what is needed
17 to stop the epidemic of lead-poisoned children in
18 New York, and prevent contamination from recurring.

19 Under the HUD guidelines, interim
20 control is defined as a set of measures designed to
21 reduce temporarily human exposure and likely
22 exposure to lead paint, based paint hazards. Interim
23 controls include but are not limited to repairs,
24 painting, temporary containment, specialized
25 cleaning clearance, undergoing lead-based

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2 maintenance activities and the establishment and
3 operation of management and resident education
4 programs.

5 The same guidelines defined abatement
6 as any set of measures designed to permanently
7 eliminate lead-based paint or lead-based paint
8 hazards.

9 The confusion stems from the fact
10 that the two definitions seem similar, however,
11 further reading of the code shows that certain
12 methods mentioned and interim controls are clearly
13 designed to reduce the likely exposure to lead-based
14 paint hazards, not to abate what are already
15 lead-based paint hazards.

16 For instance, painting is mentioned
17 as an interim control. Certainly painting may be an
18 interim control of likely exposure when referring to
19 lead-based paint applied to stable substrate. But
20 once the substrate or the paint itself becomes
21 unstable, resulting in peeling, chipping, chalking
22 or cracked painted surfaces, painting is no longer
23 an option as an interim control.

24 The reason for this is simple: You
25 simply cannot paint over an unstable lead-based

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2 paint painted surface without removal of the loose
3 paint chips.

4 If you do, this technique actually
5 does nothing to control the problem. But if you
6 scrape the loose paint, in fact, if you remove any
7 lead-based paint at all, it is clearly defined in
8 CFR as abatement.

9 The definition of paint removal in
10 section 35-110, paint removal means a method of
11 abatement that permanently eliminated lead-based
12 paint from surfaces.

13 Paint removal, any kind of paint
14 removal, is clearly defined as an abatement
15 procedure, and thus cannot be an interim control.

16 As an abatement, it is therefore
17 subject to all rules and regulations concerned
18 lead-based paint hazard abatement, including the use
19 of certified workers.

20 The Mason Tenders District Council of
21 Greater New York and Long Island, along with its six
22 local unions and their 15,000 members, urges the New
23 York City Council to address this potential problem
24 by creating strong penalties for landlords who
25 attempt to skirt the regulations as laid out in

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2 Intro. 101-A, or any other lead-based paint poison
3 prevention bill that comes before the City Council.

4 Thank you.

5 CHAIRPERSON PROVENZANO: Good,
6 Michael, you got in right on time.

7 MR. McGUIRE: Madam Chair, I have to
8 run to a meeting with the Mayor's Office, so if I
9 may be excused?

10 CHAIRPERSON PROVENZANO: Okay. Don't
11 run, walk.

12 MR. McGUIRE: Thank you.

13 CHAIRPERSON PROVENZANO: Mr. Ramsey.

14 MR. RAMSEY: Good afternoon. My name
15 is Darryl Ramsey, and I'm the President of Local 768
16 of the Allied Health Services Employees Union, part
17 of District Council 37 family.

18 We represent over 5,000 government
19 health professionals in this City. This includes
20 pest control aids and exterminators, public health
21 advisors, medical record specialists and
22 hospital-based social workers, just to name a few
23 titles I have.

24 In addition to these workers, one of
25 the one most important groups that we represent in

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2 the Department of Health and Mental Health, is the
3 Public Health Sanitarian, which is a group of
4 certified workers. I think we've talked about this
5 earlier this morning, one of the doctors in the
6 presentation questioned certification. Our members
7 are certified and trained well.

8 They usually are the first ones on
9 the scene to investigate hazardous lead paint
10 conditions in a building.

11 They are the folks that also make
12 sure that restaurants are clean, day care centers
13 are safe, and windows have window guards.

14 Local 768's sanitarians and advisors
15 are the core of the Department of Health and Mental
16 Health's lead poisoning prevention program.

17 We are dedicated to reducing the
18 number of children in this City that are victims of
19 lead poisoning.

20 We inspect the sites, report the
21 findings, and issue violations of negligence to
22 negligent landlords.

23 We educate family members about the
24 dangers of lead paint, and provide information on
25 nutrition and health care.

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2 We also collect information from
3 doctors and schools about the affected children.

4 The bill we are discussing today,
5 Intro. 101-A, would increase the time it takes for a
6 lead paint hazard to be corrected, and will also
7 help the City prevent lead poisoning from happening
8 in the first place.

9 We want to be a part of that process,
10 but we would like this Committee to consider some
11 concerns from the sanitarians' point of view.

12 Number one, this bill needs to be
13 fully funded. This City just lost over 300
14 Department of Health and Mental Health public health
15 professionals to layoffs in school health and pest
16 controls.

17 We cannot afford to create another
18 unfunded mandate in public health. In order to make
19 the bill a success we need the proper amount of
20 field staff to go out there to the far reaches of
21 all five boroughs, and conduct proper investigations
22 and enforcement.

23 Number two, this bill should not lead
24 to more complicated paperwork. Sanitarians already
25 carry around volumes of forms every day. There needs

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2 to be a review of any new forms and processing that
3 comes out of this bill. We know that the last thing
4 the landlord and tenants need are more forms to
5 complicate the process.

6 This bill would be more successful if
7 the paperwork is streamlined.

8 Number three, keep in mind that
9 statistics are not the only measure of success. This
10 Committee, and perhaps the Health Committee too,
11 need to keep track of the results of this bill. Is
12 it resulting in more satisfied residents, public
13 health employees and building trades workers? Can
14 the inspection and abatement teams handle the
15 caseload?

16 These are questions that need to be
17 asked. As you know, lead poisoning and elevated
18 blood levels in children in this City continue to
19 fall. Local 768 sanitarians and advisors have made
20 the DOH-MH programs a success that it is today.

21 Improvements and reporting inspection
22 and abatement can only make things better for
23 everyone. We want to make sure that success
24 continues.

25 Thank you for your attention.

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2 CHAIRPERSON PROVENZANO: Thank you
3 very much.

4 Dr. Shufro, you're next. I notice you
5 have a very lengthy testimony, if you could keep it
6 to three minutes I'd appreciate it.

7 DR. SHUFRO: Yes, I plan to talk
8 extemporaneously.

9 CHAIRPERSON PROVENZANO: Thank you
10 very much.

11 DR. SHUFRO: My name is Joel. I am the
12 Executive Director of the New York Committee for
13 Occupational Safety and Health, a coalition of about
14 200 local unions in the New York metropolitan area
15 that provide training and advocate safe working
16 conditions.

17 We have a history of 25 years. We're
18 here to testify that our Local 101-A is far superior
19 to local law 38 in safeguarding the health of lead
20 abatement workers, their families and the children
21 living in the affected residences.

22 Our main concern has to do with work
23 practices and worker training. We believe that it is
24 absolutely important to have strong work practices
25 that protect the workers which in the same token

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2 will protect the affected families in which
3 abatement and remediation goes on.

4 Let me just go quickly through
5 several components of this bill, which I think are
6 very important.

7 First and foremost, the issue of
8 training. Workers need to be trained in the
9 appropriate methods of lead abatement and
10 supervisors certified as workers need to be
11 certified. We have, in the last couple of weeks,
12 called around to EPA training centers throughout the
13 country to ask them about the amount of training
14 that they find necessary, and we uniformly come back
15 that HUD training of six and a half hours is not
16 sufficient to protect workers or the environment in
17 which they are working to be a successful lead
18 training program. They need full lead training which
19 is in the order of the 16-hour training, 30 hours
20 for the supervisors.

21 Secondly, we want to say that
22 stringent work practices are essential for doing the
23 job correctly. This is like doing an asbestos
24 abatement. A small mistake can muck up the job and
25 result in worse contamination than the existing

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2 condition, so the job has to be done right, and
3 unless you have highly trained, highly skilled
4 workers, and a strong enforcement, you are going to
5 create a worst hazard than you started out with.

6 Thirdly, we just want to say that the
7 law is much, the proposed law is much better in that
8 it has a standard work practices that apply
9 throughout. The idea that you can allow landlords
10 abatement within the first 21 days of work under
11 different sorts of conditions than work that's done
12 after the first 21 days, is an incentive to do the
13 work wrong, and to muck it up, and it says that the
14 conditions that remain for the families that are
15 there will be highly dangerous.

16 I know that I've overgone my time,
17 and I appreciate it. If I can make one last comment.
18 One. And that is, the other provision of the bill
19 which is very, very important, is that this allows
20 for mandates, clean-up of apartments, and such
21 standards for the clean-up which far exceed what
22 exists under the current law.

23 We think that that will result not
24 only in benefits for the workers themselves, but for
25 the family. Thank you.

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2 CHAIRPERSON PROVENZANO: Thank you,
3 Doctor.

4 Any questions? Thank you very much.

5 Three minutes. We will have a
6 three-minute recess so some of us can do a couple of
7 things.

8 (Recess taken.)

9 CHAIRPERSON PROVENZANO: Okay, let's
10 get back to business. We have the Honorable Betsy
11 Gotbaum, Public Advocate. You're on.

12 PUBLIC ADVOCATE GOTBAUM: Good
13 morning, and thank you very much for having me here
14 this morning for this important hearing.

15 I want to thank former Council Member
16 Stanley Michels. I don't know if he's here, and
17 Deputy Majority Leader Bill Perkins, for the
18 leadership role they had taken in the plight to
19 protect families from lead poisoning.

20 Without them, I'm not sure we'd be
21 here today discussing this important legislation.
22 For most of the 20th Century, lead paint was used as
23 a protective paint coating for homes, and used on
24 cribs, toys and furniture.

25 However, 43 years ago, New York City

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2 became one of the first areas in the country to ban
3 the use of lead-based paint in residential
4 buildings. Yet, despite this important step, many
5 buildings to this day still contain lead paint, and
6 while the number of lead poisoning cases decreased,
7 lead poisoning remains a dangerous health hazard for
8 our youngest with thousands of children poisoned
9 every year.

10 Lead poisoning leads to loss of
11 intelligence, changes of behavior, and even more
12 serious cases, it can damage the central nervous
13 system, kidneys and blood cells.

14 In addition, it has been estimated
15 that childhood lead poisoning costs the City over a
16 billion dollars in economic loss every year.

17 All the facts point to the urgent
18 need to attack this problem head on, even before one
19 more child is beset with lifelong problems.

20 Local Law 38 passed in 1999 but
21 recently declared invalid, had certain inherent
22 weaknesses that must be looked at when considering
23 new legislation.

24 For example, doctors have recognized
25 that dust is a hazard in addition to paint, and it

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2 is time that the New York City law does also.

3 As a co-sponsor of Intro. 101-A, I
4 support and believe it is imperative that we
5 acknowledge that regulating and controlling lead
6 dust must happen in order to continue to bring down
7 the rolls of lead poisoning.

8 Lead dust caused from friction
9 surfaces, such as a window or peeling paint, must be
10 recognized as a hazard.

11 Another problem with Local Law 38 was
12 the lengthy time landlords had to remediate
13 problems. Intro 101-A requires a faster clean-up in
14 addition to requiring HPD to serve violation notices
15 sooner.

16 This is essential. The longer we
17 allow our children to be exposed, the greater the
18 harm. Every minute every day every week wasted could
19 lead to another child's life being put at risk.

20 Also, Local Law 38 has no specified
21 time for tenant notifications. Intro. 101-A requires
22 that tenants are informed of violations at the same
23 time as the landlords. A parent must know if his or
24 her child is at risk.

25 The way in which hazardous lead

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2 violations are treated is a prime concern.

3 Local Law 38 permitted untrained
4 workers to perform the abatement, putting both the
5 workers and the tenants at risk. This is simply
6 unacceptable and defies common sense.

7 Intro. 101-A sets standards for the
8 workers and gives them the training that they need.

9 Ninety percent children who were
10 poisoned in 2001 were black, Latino or Asian. A
11 recent study by the Pratt Area Community Council
12 indicated that one-third of all infants in Bedford
13 Stuyvesant are still exposed to hazardous levels of
14 lead.

15 Because of this, New York City must
16 concentrate its efforts in areas where we know lead
17 poisoning hits the hardest, the minority
18 communities.

19 It is a horrific fact that must be
20 taken into consideration with the allocation of
21 resources.

22 When we consider how to use our
23 resources best, we must not only look at how and
24 where to remediate lead poisoning, how to prevent
25 future cases.

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2 Moving from the practice of treating
3 lead poisoning to prevention of poisoning must be a
4 priority for the City and the Department of Health.

5 I strongly support the concept of
6 HPD, Housing Preservation Development agency,
7 creating a proactive program to inspect high-risk
8 dwellings, even those without a tenant's complaint.
9 Regular inspections of lead belt area must be
10 undertaken.

11 This means testing apartments before
12 a child is harmed, Intro. 101-A sets goals for
13 reducing lead poisoning and requires the Department
14 of Health to make recommendations to improve the law
15 that these goals are not met.

16 We are all here today with the goal
17 of protecting our most vulnerable New York City
18 children, that we may have difference on how to
19 accomplish that goal, all of us are united in our
20 desire to protect our children. Let us move forward
21 with 101-A. The needs of the children are paramount
22 and should be our focus.

23 I look forward to working with the
24 City Council to achieve this goal, and know that
25 everyone here will work tirelessly until it is met.

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2 Thank you.

3 CHAIRPERSON PROVENZANO: Thank you
4 very much.

5 Do we have any questions? Council
6 Member Perkins.

7 COUNCIL MEMBER PERKINS: Thank you
8 very much, Madam Chairwoman. First, let me commend
9 you, Madam Public Advocate, for your consistent
10 advocacy on behalf of children, not simply with
11 regard to this bill but also with regard to their
12 issues in education and health and hunger campaigns
13 and so forth. It was a wonderful opportunity to join
14 you this past weekend at a press conference in which
15 you brought out the fact that our schools are
16 hazardous in terms of their physical condition and
17 needed some immediate attention, and today you once
18 again are showing how a Public Advocate can truly be
19 helpful in terms of protecting our children. And,
20 so, I personally want to also thank you for
21 endorsing 101-A. I want to ask you, do you have any
22 sense of the costs involved? Have you had a chance
23 to see any of the Independent Budget Office
24 material?

25 PUBLIC ADVOCATE GOTBAUM: Yes, I read

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2 the Independent Budget Office report, it just came
3 out earlier in the summer. I'm sorry I don't
4 remember it, there's been a lot between then and
5 now.

6 COUNCIL MEMBER PERKINS: Okay, very
7 good. Because I just wanted to make sure that for
8 the record, it was clear that the Independent Budget
9 Office has come out with a new report, which new
10 numbers have been established, as far as the actual
11 costs of the work, and earlier they had a cost of
12 8.2 and now they've revised their estimate for \$18
13 million by virtue of clarification of some of the
14 language that was in the bill originally.

15 So, I just wanted to alert you to
16 that because that's a very, very important aspect of
17 this.

18 The Administration in particular
19 seems to be harping on the notion that it's too
20 costly and they seem to have come up with an
21 estimate of over \$200 million, and my point of view
22 is that the social cost, as given to us by Dr.
23 Landrigan, are over a billion dollars; are you
24 familiar with those numbers?

25 PUBLIC ADVOCATE GOTBAUM: Yes. I in

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2 the beginning of my testimony talked about that.

3 COUNCIL MEMBER PERKINS: Sorry.

4 PUBLIC ADVOCATE GOTBAUM: That's okay.

5 COUNCIL MEMBER PERKINS: I wasn't here
6 for the beginning.

7 And, so, we either pay now, or we pay
8 ten-fold later; is the position that we've taken,
9 and those of us in government should not be weighing
10 the health of our children next to a fiscal crisis
11 or something like that.

12 PUBLIC ADVOCATE GOTBAUM: Well, I
13 couldn't agree with you more, and I also in the
14 beginning of my testimony complimented you and
15 former Council Member Stanley Michels for your
16 leadership in this very important issue, and you
17 didn't hear that, so I wanted to say it again.

18 COUNCIL MEMBER PERKINS: Thank you
19 very much. I appreciate it.

20 CHAIRPERSON PROVENZANO: Thank you.

21 Since there are no more questions, we
22 thank you for being here.

23 PUBLIC ADVOCATE GOTBAUM: Thank you
24 very much.

25 CHAIRPERSON PROVENZANO: Our next

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2 people to testify are Helen Daniels, the president
3 of the Black and Latino Property Owners of New York,
4 and Frank Ricci, Director of Government Affairs for
5 RSA. Since the elected official got the free ride,
6 from here on we go back to the three-minute clock.

7 MR. RICCI: Thank you, Madam
8 Chairperson, members of the Committee.

9 My name is Frank Ricci, I'm Director
10 of Government Affairs for the Rent Stabilization
11 Association. With me is Mitch Pisilkin, our General
12 Counsel.

13 The RSA, as you know, represents over
14 20,000 owners of multiple dwellings in New York
15 City, which collectively represents about 1 million
16 apartments in the City of New York.

17 As we all know, complex problems do
18 not go away with a wave of a magic wand. The lead
19 paint problem will not go away with the adoption of
20 Intro. 101-A.

21 This bill is punitive, poorly
22 drafted, and costly far beyond the City's ability to
23 pay.

24 Worst of all, it will not result in
25 the eradication of childhood lead poisoning in the

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2 City. If you truly want to respond to the problem of
3 childhood lead poisoning, you would proceed along a
4 different path and certainly not the path outlined
5 in Intro. 101-A.

6 As the City's two leading experts on
7 this subject, the Health Commissioner and Housing
8 Commissioner, demonstrated in their June 2003
9 testimony opposing 101-A, the facts speak for
10 themselves.

11 There's been a decline of 79 percent
12 in the number of lead cases in the City since 1995,
13 equally telling is the fact that the numerical goal
14 contained in Intro. 101-A, which is 4,000 cases of
15 elevated blood lead levels in 2004, was already met
16 in 2002, in the goal for cases requiring remediation
17 is close to being met.

18 The real issue at this point in time
19 for the City and for all the participants in this
20 debate, this had to eliminate the last and
21 presumably most difficult vestiges of lead, as the
22 number of cases of actual lead poisoning have
23 dwindled to several hundred per year.

24 The facts also highlight contained
25 misplaced reliance upon the so-called presumption of

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2 lead-based paint. Like Local Law 1 and Local Law 38,
3 101-A would rely upon a presumption that peeling
4 paint is lead-based paint, when it's in the
5 apartment where the building was built before 1960,
6 and there's a child under seven. One of the most
7 important pieces of information contained in HPD's
8 annual reports to the Council regarding the
9 enforcement of Local Law 38, is that when HPD went
10 beyond the presumption and tested thousands of
11 violations prior to performing emergency repairs,
12 they found that 75 percent of those cases came back
13 negative. There's no lead-based paint in those
14 apartments.

15 In this era of fiscal constraint,
16 services threatened and fire hazards closed, how
17 costly and how wasteful is it for the City to
18 administer a system for approximately 15,000
19 violations in the last two years have been issued in
20 error.

21 101-A continues this inefficient
22 shotgun approach to the lead paint problem. It is
23 indeed embarrassing if this is the best we can do.

24 We must ask ourself who benefits from
25 the continuation of such a system. Certainly not the

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2 children.

3 Equally remarkable was the
4 information provided to the Council in June by the
5 Health Commissioner.

6 The Commissioner stated that 32
7 percent of the apartments tested by the Health
8 Department, after children were found to be lead
9 poisoned, did not contain lead-based paint.

10 If they were not exposed to lead in
11 their apartments, then they were exposed elsewhere.
12 As the Commissioner indicated, children are exposed
13 to other sources of lead, such as lead-based
14 pottery, traditional medicines, cultural practices,
15 and the remaining vestiges of leaded gasoline, and
16 potential exposures from other countries where these
17 sources are plentiful, by way of example, in 2001,
18 40 lead poisoned pregnant women received services
19 from the Health Department, 95 percent of whom were
20 foreign borne, and more than half were from just one
21 country. We must better understand what this all
22 means before continuing to place the sole burden and
23 responsibility on property owners. If we do not do
24 so, the children who we all seek to help will not
25 benefit. If the system does not take into account

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2 these other realities, then the system must change.

3 All of these facts taken together and
4 separately indicate that the lead problem is not
5 solely the result of housing conditions. By the
6 City's own data, three-quarters of HPD's presumptive
7 violations are wrong, and one-third of lead
8 poisoning cases, health, cannot trace the cause back
9 to the child's apartment. These facts tell you that
10 the Council needs to look elsewhere. It may be
11 politically convenient to use owners as scape goats,
12 but doing so will not help children in our City.

13 Passing 101-A to put the liability
14 burden back onto the backs of landlords for a
15 problem that goes far beyond housing, may satisfy
16 those trial lawyers looking for a deep pocket, but
17 the facts show that little will be done for the
18 children most in need.

19 Intro. 101-A is not the answer, and
20 accusing those who do not jump on the 101 bandwagon
21 of acting contrary to interest the City's children
22 is also not helpful.

23 I urge you to read Intro. 101-A
24 carefully and ask yourself, why does 101-A make it
25 easier to sue owners in the City? Why does 101-A

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2 continue to rely upon a presumption which is wrong
3 75 percent of the time?

4 Why should owners be liable for lead
5 dust when the apartment does not contain lead paint?
6 What is the answer for owners who cannot afford the
7 full scale abatement required by 101-A that will
8 cost \$20,000 per apartment.

9 When 101-A requires the correction of
10 underlying defects that cause paint to peel, what is
11 the answer for owners who cannot determine the
12 source?

13 How does 101-A address the many cases
14 where children have come to our City with existing
15 blood lead levels. What services will the City need
16 to forego as the impact of 101-A estimated by the
17 City at \$260 million becomes a reality? Why should
18 101-A be adopted over the strong objections of the
19 City's two commissioners?

20 Almost 20 years ago in the 1980s
21 litigations brought challenging --

22 CHAIRPERSON PROVENZANO: Mr. Ricci,
23 can we just ask you to wind up?

24 MR. RICCI: You have the testimony in
25 front of you, so I'll just follow-up with a final

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2 paragraph.

3 I'm just going to finish up by saying
4 if we really want to eliminate the lead poisoning
5 problem here and develop a strategy to understand
6 the causes, we should not punish owners and make
7 them scape goats in the situation.

8 Thank you.

9 CHAIRPERSON PROVENZANO: Thank you.
10 Ms. Daniels.

11 MS. DANIELS: Good afternoon, Madam
12 Chair, and members of the Housing and Buildings
13 Committee. My name is Helen Daniels, and I am the
14 president of the Black and Latino property owners
15 coalition.

16 This coalition represents property
17 owners of New York. Most of our members either live
18 in a building or live in the same neighborhood where
19 their property is located. That means the owners of
20 the buildings are owner/occupied.

21 Most of our members even
22 self-maintain that their buildings. That means
23 they're responsible for maintaining the buildings as
24 far as the maintenance is concerned, who also end up
25 having to work often times two jobs themselves, and

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2 a spouse, if there is one, to ensure the buildings
3 are properly maintained. They are committed to their
4 buildings, and to providing quality housing for
5 their tenants.

6 We're here today to discuss Intro
7 Bill 101-A, but as has been proposed, it relates to
8 lead paint poisoning in residential buildings.

9 You've heard from experts, both pro
10 and con, on the issue. Some say we have a problem,
11 and others say we don't. However, the numbers, have
12 the numbers really gone up? Are more children being
13 affected by lead paint? Is lead paint really a
14 problem in the City?

15 We realize that some children do have
16 lead paint, have been affected by lead paint, and
17 there is poisoning, but the question now is, where,
18 why and what do we do about it?

19 The one thing that we can't deny,
20 regardless of what side you sit on the issue, is the
21 amount of emotion this debate creates, especially
22 when one debate along racial and economic lines.

23 Council Member Perkins and others
24 contend the problem exists in minority
25 neighborhoods, and the owners of these properties do

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2 not abate the lead because of where the properties
3 are located.

4 True, there is a problem in these
5 older communities because that's where the older
6 housing is. However, there is very little discussion
7 about lead paint in our schools, in our playgrounds,
8 in the soil, and just in areas where our children
9 come in contact with it. We need to also address
10 these areas.

11 The City continues to create an
12 environment where owners feel they're under siege.
13 Why not create a partnership with owners rather than
14 an adversarial relationship?

15 Prevention and intervention is the
16 key, and if we were truly concerned about lead paint
17 poisoning, again, let's work with owners to create a
18 council, a program where owners can figure what is
19 the best way to take care of the issues in their
20 buildings.

21 As members of the City Council, you
22 were elected to represent the members of your
23 community. It does not mean one segment of the
24 community, but the entire community.

25 I want to believe that we all want

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2 the same thing, a healthy environment for both
3 renters and owners. Let's focus our attention on
4 achieving that goal for all the children of New
5 York.

6 Do not support Intro. 101-A. Thank
7 you.

8 CHAIRPERSON PROVENZANO: Thank you. Do
9 we have any questions?

10 Council Member Jackson.

11 COUNCIL MEMBER JACKSON: Thank you,
12 all, for coming in and giving testimony. And I agree
13 with you that this should not be an adversarial
14 relationship, and by all means that's not the way I
15 look at it. I look at it as a relationship to try to
16 come up with resolving a problem so that no children
17 are exposed to lead paint dust or lead paint, which
18 I call lead poisoning, and which I've heard members
19 of RSA say that it's not poisoning, and I've heard
20 the Commissioner of the Department of Health say
21 it's not poisoning, but in fact it damages the
22 brains and it is damaging, and as my interpretation
23 it is poisoning.

24 But I just wanted to ask you, I'm
25 sorry, Ms. Daniels?

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2 MS. DANIELS: Correct.

3 COUNCIL MEMBER JACKSON: As an owner,
4 I'd say to you I'm a City Council member, and I
5 don't know if you live in my district or not, but I
6 do represent all of the people in my district
7 sometimes when I make decisions that affect my
8 constituents. Everyone may not agree with that, but
9 I try to make all of the decisions as thoughtfully
10 and honestly as possible, and that I have no hidden
11 agenda as a City Council member, I try to do the
12 best that I can under the circumstances, and that's
13 the way I approach my job as an elected
14 representative, because I've said to constituents at
15 Town Hall meetings that I did not run for office
16 because this job pays \$90,000 a year, because I was
17 earning more than that when I came into the job. So,
18 I ran for office and try to do the best that I can
19 to represent the people of my district. And that's
20 all people working together.

21 So, I am clearly not communicating
22 here as a legislator in an adversary relationship,
23 and I try to bring about peace and unity of all
24 people, and that's very, very important.

25 But concerning Intro. 101-A, you

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2 know, I've heard before, and I attended a previous
3 hearing as a member of the Housing and Buildings
4 Committee, and that hearing is on June 23rd, I
5 believe, and I heard from the Commissioners and
6 other people that Intro. 38 is working, and Intro.
7 38, Local Law 38 is a good law -- well, in reality
8 it's not a good law. The highest court in New York
9 State said it was not a good law, and that it did
10 not go far enough to protect the children of New
11 York City.

12 Now, is Intro. 101 everything that
13 needs to be done? I don't know about that, but I
14 think that I'm willing to listen to you and everyone
15 else has to say to try to bring about the bottom
16 line is to prevent children from being exposed and
17 poisoned by lead dust or peeling lead paint in the
18 homes, in the schools, I agree with you, in the
19 schools and anywhere that the environment is
20 poisoning our children.

21 It just so happens that Intro. 101 I
22 guess is dealing with the housing part of it, but I
23 agree with you, if children are being lead poisoned
24 in school, then we need to address that as
25 vigorously as we're addressing Intro. 101. So, I

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2 want to let you know that, all of you.

3 And maybe it's because I'm not so in
4 tuned with the details of Intro. 101, as my
5 colleague Bill Perkins is as a primary sponsor and
6 other people, but have you submitted a substitute
7 bill that you think that would be appropriate to
8 address the needs so that children will not be lead
9 poisoned in their homes?

10 When I say you, RSA, because I've
11 heard RSA say this is not working, that's not
12 working, you know, have you sat down with the
13 advocates on the other side that say that too many
14 kids are being lead poisoned in their home and try
15 to come to an agreement on what would be the best
16 solution in order to make it work so that children
17 are safe in their homes?

18 MR. RICCI: If I can answer the
19 question?

20 MS. DANIELS: I'm going to respond
21 first, because the last part of your question was
22 regarding what RSA has done.

23 Let me first say, I commend you for
24 saying that you work for your entire constituency.
25 My concern is this: Most often when the issue is

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2 related to housing or something of that nature, what
3 people do within this City, and most elected
4 officials have done, and that's not all, I'm not
5 saying all, but many have done, they have simply
6 said, if the owner, if the landlord is punitive,
7 he's punitive. Well, you know, we get very little
8 done and we accomplish very little with punitive
9 measures. What makes us accomplish things helps us
10 achieve our goal, and we all sit down and try to
11 work out issues together so that we can achieve the
12 common goal.

13 No one wants to see any child, any
14 adult, or anyone else injured by anything that
15 relates to housing in other areas. So, when I say
16 that, that is what I'm making reference to. And
17 there are many around the table who have known me
18 long enough to know that I come here and I have said
19 this repeatedly.

20 Now to answer your question as to
21 whether or not RSA has put forth anything, I will
22 have to let Frank address what RSA is doing. As we
23 know, the Black and Latinos work hand-in-hand with
24 RSA and other housing groups, because there are
25 other housing groups out here, not just the two of

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2 us, just happened to be the two of us who are here
3 today making conversation and bringing testimony.
4 But my membership has discussed the issue and we're
5 extremely concerned about the punitive tone of the
6 bill, and that's what we're really here to address.

7 COUNCIL MEMBER JACKSON: Before,
8 Frank, before you answer, are you as an owner,
9 owner/occupied, and also you have other properties
10 that you own as an individual? And Ms. Daniels, if
11 you don't mind answering that?

12 MS. DANIELS: Let me tell you, I
13 represent an organization whose membership is only
14 in New York City, also Westchester County and
15 Dutchess, so my membership is reflected not just
16 within the five boroughs, but other parts across the
17 state.

18 I currently, myself, I do not own any
19 property in the City, I have owned property, but I
20 do speak as the organization as the president's
21 organization, as I have for about the last ten to 15
22 years.

23 COUNCIL MEMBER JACKSON: And I'm just
24 going to make a note of that, what is the name of
25 the organization you represent again, please?

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2 MS. DANIELS: The Black and Latino
3 Property Owners Coalition.

4 COUNCIL MEMBER JACKSON: Property
5 Owners Coalition.

6 MS. DANIELS: We are a coalition.

7 COUNCIL MEMBER JACKSON: And I'll talk
8 to you a little later, I would just like to get the
9 place, so I can have some contact with them.

10 You're the president of that
11 organization?

12 MS. DANIELS: Yes, I am.

13 COUNCIL MEMBER JACKSON: Okay, thank
14 you.

15 And are you also a member, or your
16 organization a member of RSA also?

17 MS. DANIELS: Our organization works
18 with RSA, we are not a member of RSA as an
19 organization now.

20 COUNCIL MEMBER JACKSON: Okay. I'm
21 sorry, Frank.

22 MR. RICCI: To answer your question, I
23 guess going back to 1989, I used to serve on Mayor
24 Dinkins' Lead Task Force. Have we sat down with the
25 advocates? For the last 14 years that I know of,

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2 we've had numerous meetings with various advocates
3 on the other side of the lead issue.

4 We did not put a bill forward because
5 Local Law 38, as you know, was struck down on
6 technical grounds back in July, I believe it was
7 July 1st.

8 So, we supported Local Law 38 because
9 we thought it was working, and I still that it was a
10 good bill, and I still think that it was working,
11 and if you could fine-tune Local Law 38 in any way,
12 I would fine-tune it by targeting more to what's
13 commonly known now as the lead bill, and focusing in
14 on those neighborhoods, maybe providing some sort of
15 tax abatement for owners, to go in and proactively
16 remove the most common components of a building that
17 contained lead-based paint, such as windows, door
18 frames, any kind of protruding woodwork, things,
19 like that.

20 But other than that, we've always
21 taken the position that Local Law 38 was working,
22 and I think that the reports that they made to this
23 Committee over the last two years have shown that.

24 COUNCIL MEMBER JACKSON: Have you
25 seen, at the last hearing I asked the Independent

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2 Budget Office to meet with the Administration to
3 ascertain the reasons for the very large differences
4 in their respective estimates of Intro. 101 Fiscal
5 Impact, and the IBO responded on September 10th,
6 2003. Has your organization had an opportunity to
7 look at this report? And if so, do you have any
8 opinions about any aspect of the report?

9 MR. RICCI: Mitchell Pasilkin, our
10 General Counsel.

11 MR. PASILKIN: Hi. Good morning. Good
12 afternoon.

13 COUNCIL MEMBER JACKSON: Good
14 afternoon.

15 MR. PASILKIN: Well, what's
16 interesting about the IBO correspondence dated
17 September 10th is --

18 CHAIRPERSON PROVENZANO: Do you just
19 want to state your name, please.

20 MR. PASILKIN: I'm sorry. My name is
21 Mitchell Pasilkin, and I'm General Counsel for RSA.

22 The IBO letter makes a couple of very
23 interesting points. First of all, not to be
24 overlooked as the fact that their cost estimate was
25 increased to \$18 million, even given their

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2 relatively narrow interpretation of the requirements
3 of Intro. 101-A. So, that was an increase of over
4 \$10 million in their estimate.

5 But more importantly, what they did
6 in their original letter estimating the \$8 million
7 cost, was that they took, like I said before, a very
8 narrow interpretation, and it turns out, in fact,
9 that their interpretations, as to how the law would
10 be applied by agencies was not necessarily agreed to
11 by anyone, specifically the agencies that they were
12 evaluating.

13 COUNCIL MEMBER JACKSON: That's the
14 Department of Health and HPD.

15 MR. PASILKIN: Department of Health
16 and HPD. So, in fact, if you go back to their
17 original letter in June, I believe in fact they did
18 not estimate in the \$8 million the education and day
19 care expenses which are covered by Intro. 101-A.

20 You know, interestingly today there's
21 been no discussion of those other components of
22 101-A, which are in fact the day care and Department
23 of Education costs. We've only talked today about
24 housing.

25 But be that as it may, what they have

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2 now done in their September 10th letter, and I point

3 you to page two, is they say with regard to their

4 narrow interpretation, they concede, they say, "we

5 cannot ignore the fact that in the future a

6 Department Counsel or a court could interpret Intro.

7 101-A as requiring more than we have assumed. If so"

8 -- this is important, this sentence" -- "if so,

9 then the annual cost of the bill could be much

10 higher than we currently anticipate. Now, I'm not a

11 budget expert, and I try to stick to the law, but I

12 think it's important that if the IBO position is

13 going to be articulated and used as a justification

14 for one perspective or another, it's important to

15 understand that even the IBO letters, both in June

16 and in September, are extremely qualified, as to how

17 committed they are to the actual cost of impact of

18 Intro. 101-A, to the point where I think it's fair

19 to say that I'm not really sure what the IBO

20 estimate really is, because they, themselves,

21 concede the fact that they may very well be wrong,

22 and that the positions of the Health Department and

23 HPD, with regard to how the courts may ultimately

24 interpret 101, that the agencies in fact may be

25 correct and that the IBO may be wrong.

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2 COUNCIL MEMBER JACKSON: Mr. --

3 MR. PASILKIN: Pasilkin.

4 COUNCIL MEMBER JACKSON: But also in
5 this September 10th letter to me, it also indicates
6 that the Administration has also revised its
7 estimate from 265 million at the time of the hearing
8 to 231 million, so it seems as though that both the
9 Administration and the IBO has changed its figures
10 based on analysis, further analysis.

11 MR. PASILKIN: That's correct. The IBO
12 has effectively doubled their cost estimate from
13 eight to 18, and the City has reduced their
14 anticipated cost by whatever their percentage is
15 from 260 to 230. There is obviously an enormous gap
16 between the two, and I would assume that before a
17 major policy determination is reached on legislation
18 of this import, there would be some diligent effort
19 to try to understand the basis of a distinction
20 between 18 and 230 million dollars. I mean, that is
21 an enormous difference in interpretation between the
22 Independent Budget Office and the City budget
23 officials.

24 COUNCIL MEMBER JACKSON: I would
25 totally agree with you. And that's why going back I

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2 asked the question, you know, but also I do know
3 that quite frankly, to be quite frank with you, you
4 know, money is a big, you know, situation here, but
5 what's most important, though, is the fact that
6 children are being lead poisoned, and that's what we
7 have to stop.

8 MR. PASILKIN: There's no dispute. I
9 think as long as we are dealing with the same set of
10 facts, and we all have the same facts on the table,
11 and we're making that decision, then we're in the
12 place we need to be, but I would think that, you're
13 right, obviously the children's health, the health
14 of the City's children is first and foremost, but we
15 still do need to know is the actual anticipated
16 impact \$18 million, or is it \$231 million, and in an
17 era, at a time when we're closing firehouses, it
18 needs to be understood, that is a \$210 million
19 discrepancy.

20 We need to understand more about the
21 lead problem, we need to know about the cost, so we
22 need to have a better idea of what the solutions may
23 be, including the other aspects of Intro. 1-A.

24 COUNCIL MEMBER JACKSON: And I'll ask
25 this to Mr. Ricci, but you're the General Counsel of

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2 RSA, so either one of you can answer it: Knowing
3 where we were back at the first hearing, and then
4 with the court decision, and the fact that Intro.
5 101 has how many signatories? Thirty-seven members
6 of the City Council that have signed on as primary
7 sponsors; have you made any recommendations that can
8 make some revisions of Intro. 101 that would be
9 satisfactory to RSA, rather than saying get rid of
10 Intro. 101?

11 So you can answer that or you don't
12 have to answer that, but the bottom line is it
13 appears as though that based on the cost that we're
14 going, that Intro. 101 is going to pass. That's the
15 way it appears. And I wanted to know whether or not
16 any recommendations had been made by RSA, to see if
17 we can try to reach some agreement on areas of
18 disagreement.

19 MR. RICCI: I think at this point our
20 position is that we would work off Local Law 38 and
21 make changes to that to satisfy the court
22 requirements and that would be preferable from our
23 position.

24 But just the vagueness of the
25 definition in 101-A of what constitutes a violation,

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2 it's a standard that's impossible for anyone to
3 comply with, and doesn't help children in any way,
4 shape or form, and just leads to litigation. So,
5 that almost makes it a non-starter from an owners'
6 perspective. So, I think maybe at some point you
7 might see our position as it evolves will be a blend
8 of a lot of the concepts, you've heard people
9 testify, medical experts, as well as housing
10 experts.

11 COUNCIL MEMBER JACKSON: You mentioned
12 Local Law 38. Local Law 38 is now out the window.

13 MR. RICCI: Local Law 38 is out the
14 window because there wasn't an in-depth enough
15 Environmental Impact Statement. 101-A is going to
16 require now clearly an in-depth Environmental Impact
17 Statement, so it's not going to happen tomorrow or
18 next week or next month, so I think there's going to
19 be a lot of time to debate this issue.

20 COUNCIL MEMBER JACKSON: I totally
21 agree with you. I think that, at least from, I'm
22 looking at the way many advocates have approached me
23 on this, and obviously I'm a signatory, I'm a
24 primary sponsor, do you think by continuing to
25 discuss, you know, adjustment to Local Law 38 when

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2 the courts threw it out is the best approach to
3 take? Or saying that, okay, Local Law 38 is out the
4 window, you know, can we then modify Intro. 101 in
5 order to meet the needs of the children, and also
6 meet the needs of the property owners?

7 MR. RICCI: I think there are a lot of
8 elements of Local Law 38 which worked very well, and
9 it was proven by the decrease in the number of lead
10 poisoned children at the 10 level and the 20 level
11 that you've seen in the last five years, and that's
12 why our preference is from an owner's perspective
13 where it's in painstaking detail procedures that
14 owners have to follow. They know exactly what they
15 have to do, that that's why I think it works. And
16 when you have a law that's vague in many respects,
17 and people don't know what the responsibilities are,
18 and that includes parents, and I think you heard the
19 medical experts that I talk about, the need for
20 parents to be up front and the front lines of
21 solving this problem, that the only way it's
22 ultimately going to work is to have some specific
23 details when it's such an emotional issue for
24 everybody. But to leave it vague and have it left up
25 to the interpretation of courts which have spent far

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2 less time on the subject than you or any other
3 member of the Council, as well as members of the
4 advocacy community and members of the real estate
5 community and the banking community and the medical
6 community, I think is silly.

7 COUNCIL MEMBER JACKSON: My last
8 comment or question, Madam Chair.

9 Were you here for the testimony and
10 presentation of the power point? In my opinion, and
11 I'm not an expert in this field by any stretch of
12 the imagination, I'm a lay person. In my opinion the
13 testimony was compelling and that the statistics and
14 facts and all of the reports that were analyzed, and
15 I just thought that -- do you have any opinion about
16 that testimony or his presentation?

17 MR. RICCI: I think there's no
18 question that everyone's goal is to eliminate blood
19 lead levels in every child, in every person, and I
20 think that's what he was saying, the real question
21 is how do we get there?

22 COUNCIL MEMBER JACKSON: Okay, thank
23 you.

24 Thank you, Madam Chair.

25 CHAIRPERSON PROVENZANO: Any other

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2 questions?

3 COUNCIL MEMBER BREWER: One quick one.

4 CHAIRPERSON PROVENZANO: Council

5 Member Brewer.

6 COUNCIL MEMBER BREWER: Frank, I

7 missed your testimony. I'm sorry, I was speaking at

8 a luncheon.

9 But the question is, when Gifford

10 spoke he talked about this lead indicator, I guess

11 as some kind of an inspection tool? Are you familiar

12 with it, because I thought I was and I'm not. I

13 don't know what it is. Is that something --

14 MR. RICCI: Well, it's the first that

15 I've heard of it today. I'm assuming he's talking

16 about using an XRF machine to actually go, and that

17 we referred to in our testimony in that right now

18 the inspector goes out, he doesn't test any surface

19 at all. It's based on the presumption, based on the

20 indicators. If that owner does not correct that

21 violation, the City has an obligation to correct it.

22 And what they've done over the last five years is

23 they've gone back to those apartments, and because

24 the City doesn't want to expend the money, you know,

25 in total abatement, they test it. In 75 percent of

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2 the cases they have found that it's not even
3 lead-based paint to begin with, and for the benefit
4 of those who weren't at the hearings on Local Law 38
5 back in 1999 when it was passed, there were experts
6 brought up by the same Committee from Washington who
7 had had a contract at that time through HUD and EPA,
8 to go around and test buildings in New York City,
9 and the two gentlemen came up in the heat of that
10 debate, said that based on their surveys of over 500
11 buildings in the City, between 65 and 75 percent of
12 the apartments they tested on walls and ceilings did
13 not contain lead-based paint, but where it did
14 contain lead-based paint, more often than not was on
15 a door frame or a window or some kind of protruding
16 woodwork, which is why the dust clearance tests,
17 which were required in Local Law 38, any time you
18 had a violation on one of those surfaces.

19 So, the testimony and the testing
20 from five years ago was certainly consistent with
21 what the City has found out in the last five years.

22 COUNCIL MEMBER BREWER: Okay. Thank
23 you very much.

24 COUNCIL MEMBER PERKINS: I have a
25 question.

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2 CHAIRPERSON PROVENZANO: Go right
3 ahead.

4 COUNCIL MEMBER PERKINS: Thank you
5 very much.

6 Local Law 38 does not identify the
7 main culprit in lead poisoning and that is lead
8 dust, yet you feel that it's effective.

9 MR. RICCI: You want a comment on
10 that?

11 COUNCIL MEMBER PERKINS: Yes.

12 MR. RICCI: I think it does deal with
13 lead dust, as I just explained to Councilwoman
14 Brewer, in that it uses more of a carrot approach
15 than the stick approach. But in all the places where
16 people know that there is a high likelihood there is
17 going to be lead-based paint, door frames, windows,
18 protruding woodwork, that if you have a violation
19 there, you then have to do a dust clearance test to
20 clear that violation. And that's how every locality
21 in the country deals with lead dust. They don't in
22 prospectively and take a sample of dust, at least as
23 far as I know in any City, and say, oh, now we have
24 a violation, it's all based on clearance testing
25 when you actually have a deteriorated paint

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2 condition to begin with, and that's what Local Law
3 38 was dealing with.

4 COUNCIL MEMBER PERKINS: But it
5 doesn't identify dust as part of the problem, it's
6 silent with respect to lead dust, correct?

7 MR. RICCI: No, I think I just
8 answered your question. I don't think it's silent.

9 COUNCIL MEMBER PERKINS: You describe
10 how you think it's being implemented, but in fact
11 the law doesn't speak to it.

12 MR. PASILIKIN: As a component of the
13 violation, it does not include dust as a component
14 of the violation.

15 But to the extent that you asked
16 whether Local Law 38 could be considered a success,
17 if it didn't include dust within the definition of a
18 violation, I think the numbers speak for themselves.
19 The numbers continue to drop under Local Law 38 and
20 the numbers, as you know, receiving the same
21 Department of Health reports that we all receive,
22 the numbers continue to decline, the number of
23 children below, is below 4,000, which was the target
24 number in Intro. 101-A for the year 2004, that
25 number was already reached in 2002.

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2 So, if you're using data as the
3 reason, as a basis for considering whether 38 is a
4 success or not, I think the numbers do speak for
5 themselves. The numbers continue to decline, and,
6 yes, I think Local Law 38 has been an enormous
7 success. It's been disparaged, I think it's been
8 played badly, I think it's been misconstrued, but
9 there's no question when you look at the numbers
10 that Local Law 38 has worked extraordinarily well,
11 and certainly worked at least as well as Intro. 101
12 is ever going to work.

13 COUNCIL MEMBER PERKINS: According to
14 the testimony of the Commissioner, the Health
15 Commissioner, 4,000 kids are still being poisoned,
16 number one. Number two, the rate of decline in the
17 number of children being poisoned as not kept up
18 pace, it slowed down.

19 MR. PASILIKIN: That's correct. And if
20 I remember Commissioner Frieden's testimony in June
21 correctly, what Commissioner Frieden said, and again
22 it's a little awkward given that he's not here, but
23 my recollection of his testimony is that as the
24 number of children who are considered lead poisoned,
25 whether you use the ten standard or the 20 standard,

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2 as that number continues to decline, you're getting
3 down and the case of the 20 and aboves, it's about
4 500 cases. What he said was that as you begin to get
5 to the last vestiges, as you begin to get to that
6 final core group, you then have to begin to look at
7 other causes, and that is when I believe
8 Commissioner Frieden in his testimony made reference
9 to the issue of immigrants, and he brought up the
10 issue of other causes, whether it's pottery, whether
11 it's children coming to the United States who
12 already have elevated levels, and I know he received
13 a substantial amount of criticism for some of his
14 remarks, but I think that is in fact one of the
15 things that I believe the Committee should look at,
16 which is why is it as the number is shrinking, it is
17 harder to reduce that final number, and I think the
18 Commissioner's testimony is exactly the place where
19 the Committee should look, which is the issue of
20 immigration and other issues.

21 COUNCIL MEMBER PERKINS: With respect
22 to the IBO's report, let me just be clear. The IBO's
23 report reflects new numbers that take into
24 consideration new information that came to their
25 attention through the Administration, and their

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2 report also indicates the larger number by the
3 Administration is by virtue of a broad
4 interpretation of some of the language that's in
5 Intro. 101-A, and in that regard, one of the most
6 significant areas that they point to is this maximum
7 extent possible language.

8 MR. PASILIKIN: Right.

9 COUNCIL MEMBER PERKINS: And there's
10 already been a recognition of the fact that the
11 language needed to be more explicit and even with
12 that recognition of more explicit and clearer
13 language, they nevertheless have come up with their
14 same number of 18 million.

15 MR. RICCI: Councilman, I think given
16 the history of Local Law 1, which was over 15 years
17 of litigation, and then five years of litigation on
18 Local Law 38, and all the court decisions taken
19 collectively, I think the City is correct in
20 assuming that courts will ultimately interpret this
21 in the strictest sense of the word. And Councilman
22 Jackson referred to a few minutes ago about the
23 court decision on Local Law 38.

24 I think you can do nothing but
25 interpret it in very strict sense, which is and take

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2 a cautious approach.

3 COUNCIL MEMBER PERKINS: Well, we have
4 conceded that the language needed to be fixed so
5 that that type of interpretation would not be the
6 case. And, so, I don't think that we're going to
7 have that problem now, because we're fixing the
8 language so that it doesn't open those doors. So,
9 there's a letter that as a matter of fact, if you
10 can have a copy of, that addresses that concern.

11 I want to also mention for the record
12 that, again, for the record, that the social costs
13 are substantially greater by allowing these children
14 to be poisoned, and we've gotten testimony from Dr.
15 Landrigan in that vein, or reports from him in that
16 vein, that far exceed the cost that it would take
17 for us to implement 101-A, so it's essentially a
18 matter of paying now or paying much, much more
19 later. Not to mention the fact that the children's
20 lives will be crippled.

21 MR. PASILKIN: There's no question, as
22 I think I said earlier to Council Member Jackson,
23 there's no question that the needs of the children
24 come first here, and RSA is not here to take issue
25 with whether the IBO number, or the City number, for

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2 example, on budget is the right number. Those are
3 the numbers that have been tossed around by the
4 budget experts. We are here because we take issue
5 with 101. We believe 101-A is the wrong approach. We
6 believe Local Law 38 was right then, and we believe
7 Local Law 38 provides a good starting point for
8 future discussions.

9 We're not taking issue with the
10 social cost. We don't take issue with any of those
11 factors. Obviously no child, no one wants one child
12 to be lead poisoned. We're not disputing that, we
13 don't take issue with that. Our concern is, is 101-A
14 any better than Local Law 38 or Local Law 38 as
15 modified, and I don't think anyone, I don't think
16 anyone has demonstrated that Intro. 101-A would
17 result in any more children, any fewer children,
18 having elevated lead levels in the City of New York
19 than Local Law 38.

20 I think there's been a lot of
21 speculation, but I don't think anyone has
22 demonstrated at all, the ability of Intro. 101 to
23 accomplish that. Local Law 38's numbers, as I said
24 before, are successful, and I think it's a mistake
25 to disregard them.

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2 MR. RICCI: If I could just add one
3 thing to that. You know, as I said, I've been
4 dealing with this issue a long time, and in
5 Baltimore and in the State of Massachusetts, years
6 ago they had laws similar to 101-A, and in some way
7 the City has to at least look at the cost to owners,
8 because they had a very strict law like this in
9 Baltimore and you had owners who walked away from
10 buildings. So, now you had families who were
11 homeless, just had abandonment outright. According
12 to the City's income and expense statements from the
13 Department of Finance now, you still have ten
14 percent of all owners of multiple dwellings in the
15 City who are losing money. They're subsidizing the
16 building to pay taxes, water and sewer and to heat
17 the building out of their own pocket, which means
18 they have another job and they're doing it. My guess
19 is most of those buildings are in the poorer
20 neighborhoods that we're actually talking about.

21 So, I think before we take a really
22 stringent approach, we at least need to acknowledge
23 that that's a real fact, possibly the City and all,
24 we're trying to accomplish some good social goals
25 here, we all need to share in it equally and not put

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2 it on the back of an owner who is already
3 overburdened and may have to make a choice between
4 heating the building or doing a total abatement when
5 it might not be necessary in the apartment. And I
6 think those are all just real things that you can't
7 ignore.

8 COUNCIL MEMBER JACKSON: Madam Chair,
9 I just wanted to follow up on a conclusion.

10 CHAIRPERSON PROVENZANO: Go right
11 ahead.

12 COUNCIL MEMBER JACKSON: A conclusion
13 that the general counsel made.

14 You concluded, or you expressed your
15 opinion you did not believe that Intro. 101 would be
16 any more effective than Local Law 38. Well, I say
17 why not give Intro. 101, let's make it Local Law 101
18 and let's give that the same period of time that
19 we've given Local Law 38, and let's see where the
20 statistics come out on that; are you willing to do
21 that?

22 MR. PASILIKIN: No.

23 COUNCIL MEMBER JACKSON: Because you
24 expect your opinion that Intro. 101 is not going to
25 be more effective than Local Law 38, and I just want

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2 to know from you, you know, the only thing that's
3 going to really determine that is by having
4 statistics by actual trials. Let's put this on trial
5 and introduce it into law. If that's the case, let's
6 assume that it was introduced in the law. I assume
7 that RSA will probably go to court and so forth and
8 so on, and see what happens five years down the road
9 when the courts deal with Local Law 101.

10 MR. PASILIKIN: Fundamentally we
11 believe Intro. 101 is wrong. We believe it's wrong
12 for owners, we believe it's wrong for kids, we
13 believe it's wrong for the City. We believe it's
14 wrong on every level.

15 So, obviously if Intro. 101 gets
16 passed, time will tell whether we are right or
17 wrong. We believe based on a lot of experience, and
18 a lot of understanding of the lead paint issue in
19 the City of New York, that Intro. 101-A is not the
20 answer. And I think we just are going to have to
21 disagree on that.

22 COUNCIL MEMBER JACKSON: Everyone
23 agrees that Local Law 38 was the answer and the
24 courts indicated it's not the answer.

25 MR. PASILIKIN: Well, accept just for

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2 one point --

3 COUNCIL MEMBER JACKSON: Just like the
4 State of New York and Pataki felt that my lawsuit
5 concerning education was not the answer, and the
6 higher court said it is the answer.

7 MR. PASILIKIN: None of the courts,
8 and especially not the Court of Appeals, said that
9 Local Law 38 was wrong.

10 COUNCIL MEMBER JACKSON: It threw it
11 out.

12 MR. PASILIKIN: Excuse me.

13 Let's understand what the Court of
14 Appeals did.

15 What the Court of Appeals did was
16 they threw out Local Law 38, not because of policy
17 issues, that's not what the Court of Appeals does.
18 The Court of Appeals doesn't decide whether they
19 like or don't like something, what the Court of
20 Appeals said was that as a matter of law, the City
21 Council had failed to comply with the Environmental
22 Procedure laws. The Court of Appeals did not say
23 that Local Law 38 was bad policy. The Court of
24 Appeals said that Local Law 38 was not adopted
25 properly by the City Council, and that the City

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2 Council had failed to comply with the environmental
3 procedure laws that it must comply with when it
4 passes certain types of legislation. That is what
5 the Court of Appeals did.

6 COUNCIL MEMBER JACKSON: Correct me if
7 I'm wrong. I think it expressed, from what I read in
8 the paper that too many, did not take into effect
9 that too many children were being lead poisoned as a
10 result of this law.

11 MR. PASILIKIN: But that is not, at
12 the end of the day that is not the basis for the
13 Court of Appeals invalidating a law.

14 The Court of Appeals, regardless of
15 their view about too many children being lead
16 poisoned, because we all agree that too many
17 children are being lead poisoned, there's no dispute
18 about that.

19 Let me ask you a question. I totally
20 agree with you, and I'm sorry, Madam Chair.

21 CHAIRPERSON PROVENZANO: Councilman,
22 can I ask you to, we still have a lot of folks to
23 testify, and you're kind of debating this issue, and
24 you're not going to resolve it today.

25 COUNCIL MEMBER JACKSON: I do think,

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2 though --

3 CHAIRPERSON PROVENZANO: And I have
4 parents waiting.

5 COUNCIL MEMBER JACKSON: I think that
6 what this shows is that people can discuss this
7 issue with respect to the advocates for RSA and
8 myself as a legislator, we're discussing this, which
9 is good. We're not yelling or screaming at each
10 other or stuff like that. So, that's one example of
11 that.

12 You know, I've heard testimony as far
13 as landlords that failed to implement the law and
14 not follow through; what are you doing to make your
15 members get on the case and do what's right
16 according to the law, in order to prevent children
17 from being lead poisoned?

18 MR. RICCI: I can tell you what we do
19 for our members. A lot of the stories I've heard of
20 owners who don't comply happen to not be our
21 members. And why would they be a member? They're not
22 going to spend the money in the basic maintenance of
23 the building, they're certainly not going to
24 voluntarily pay dues to be a member of an
25 organization like ours. But we do run classes on

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2 teaching people to comply with the lead law. We take
3 regular notices from the Department of Health and
4 HPD, because they run a lot of courses. We try and
5 get as many people to attend those, to get the
6 certification courses in dust testing, as well as --

7 COUNCIL MEMBER JACKSON: If you have a
8 member that let's say is not complying with the law
9 and is a big violator of Local Law 38, okay, do you
10 expel that member or penalize that member for not
11 following the regulations or the rules or policies
12 of --

13 MR. RICCI: We wouldn't know that. I
14 mean, to have 25,000 members and to know who is
15 complying with what --

16 COUNCIL MEMBER JACKSON: Okay.

17 MR. RICCI: If you want to bring that
18 person to our attention --

19 COUNCIL MEMBER JACKSON: And see if
20 that individual is a member and then you would take
21 some action?

22 MR. RICCI: I spend half of my week
23 doing things like that.

24 COUNCIL MEMBER JACKSON: Okay, thank
25 you.

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2 Thank you very much.

3 CHAIRPERSON PROVENZANO: Do you have
4 another question, Councilman?

5 COUNCIL MEMBER PERKINS: Just real
6 quick.

7 First of all, I can appreciate your
8 strong support for 38, because as I recall, it was
9 basically crafted in support of the concerns of the
10 landlord, and this was acknowledged quite openly at
11 the time, and there was not one advocate or one
12 parent that spoke at the time in support of the
13 bill. So, even Crain's has acknowledged that it's
14 the landlord friendly bill.

15 And let me just say, you know, we
16 don't want to see any good landlord leaving town or
17 punished, but this law is strictly targeting bad
18 landlords, black, white or whatever, and if they
19 leave town, good-bye.

20 CHAIRPERSON PROVENZANO: Okay, thank
21 you very much. The next folks to testify are Mike
22 McKee. No, you're not testifying? You want parents
23 to go first.

24 We have Manuel Castro, Christino
25 Brido, Chudia Batista. I called three names, who's

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2 the fourth person? Who is going first. You're
3 translating for everybody? Just that lady there. So,
4 you want to start on this end or work our way down.
5 Obviously you're manual.

6 MR. CASTRO: Yes.

7 CHAIRPERSON PROVENZANO: Identify
8 yourself, please.

9 MR. CASTRO: My name is Castro. I'm
10 the Community Organizer in Make The Road By Walking,
11 in Bushwick, Brooklyn, and I'm here today to let the
12 City Council member know about the situation of lead
13 poisoning in Bushwick.

14 Our community has one of the highest
15 levels of child lead poisoning in New York City.

16 The whole debate about lead poisoning
17 seems to devalue the lives and well-being of
18 low-income immigrant children and children of color.

19 It is a disgrace that so many people,
20 so many children, so many people in government can
21 ignore the fact that immigrants and people of color
22 are paying the price for New York City's inadequate
23 protections for tenants.

24 Low-income families of color continue
25 to see their daughters and sons suffer physical

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2 damage to their brains and central nervous systems.
3 These families continue to suffer emotional trauma,
4 fear and frustration as well. These children are the
5 ones who are then dumped into dysfunctional special
6 education programs that all too often compound the
7 damage done by lead poisoning. In a very clear way,
8 lead poisoning is endangering the future and health
9 of our children.

10 Sadly, 6,000 lead poisoned children
11 may not be enough to override the campaign
12 contributions made by the landlord lobby for those
13 politicians to have no fear that the lead poisoning
14 will ever affect their own children.

15 Out in Bushwick, at Make the Road by
16 Walking, it's hard to explain that indifference to
17 Maria Nolasco, a grandmother of three lead-poisoned
18 children, or to Viridiana Padilla, a mother of one
19 lead-poisoned child, or to Shirley Wood, a mother of
20 four lead-poisoned children, or to the so many other
21 mothers and fathers who everyday endure the
22 consequences of raising a lead poisoned child.

23 New Yorkers deserve protective
24 legislation to prevent our children from becoming
25 lead poisoned. We urgently need the City Council to

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2 pass Intro. 101. As a community, we are tired of
3 putting up with the serious problems created by
4 preventable childhood lead poisoning. That's why we
5 are fighting so hard to make Intro. 101 the law in
6 New York City.

7 Recently the Speaker of the City
8 Council said that he will only sign good lead
9 legislation, and that he has agreed with the main
10 provisions of Intro 101. Exactly what the Speaker's
11 position is, though, is not clear yet. I am
12 skeptical about the Speaker's position, though,
13 because Intro 101 is, to date, the only lead bill
14 before the Council, and the best lead legislation
15 put forward in years.

16 Intro. 101 is also sponsored by the
17 vast majority of the City Council. Although we are
18 happy to hear the Speaker's position with regards of
19 supporting the main provisions of Intro 101, the
20 Speaker is far from making a concrete commitment to
21 work to pass Intro 101.

22 We, the people from Bushwick and
23 around the City who are watching our children and
24 our families devastated by lead poisoning, will not
25 going to give up until we get the justice that Intro

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2 101 would provide. We are hopeful that we will see
3 action and leadership from the Speaker and this City
4 Council, to protect our children from lead
5 poisoning. Thank you.

6 CHAIRPERSON PROVENZANO: Thank you.

7 MS. BAPTISTE: Good afternoon. My name
8 is Jedidah Baptiste, and I am a high school senior
9 at Benjamin Banneker Academy in Brooklyn, and I was
10 born and raised in the neighborhood of Bedford
11 Stuyvesant.

12 Sometimes the problems that surround
13 us go unnoticed because we are too busy to look, at
14 least that's what I sometimes think about the adult
15 world. This year I learned about something I didn't
16 want to know. I found out that thousands of young
17 children are being poisoned in our City, even though
18 we have the tools to prevent it.

19 I also learned what lead poisoning
20 does to a child and how that causes more problems
21 for a society over time.

22 I became an EPA certified lead
23 sampling technician this year, along with ten other
24 students in my school, as part of a project started
25 by the Pratt Area Community Council.

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2 We spent our weekends this spring
3 taking samples of apartments for lead dust and
4 sending them for laboratories in Maryland for
5 analysis.

6 After three months we tested 59
7 apartments in 35 buildings. As the results came back
8 from Maryland, we couldn't believe our eyes. Of the
9 59 apartments tested, 19 failed the federal safety
10 threshold, and we mean fail. We found apartments
11 that had levels five times greater than the
12 threshold, 25 times greater, 50 times greater, even
13 100 times greater. Most troubling of all to me was
14 the 89 percent of the dangerous units contain
15 children under six.

16 I was shocked that many of these
17 children had not been tested and that before we came
18 to the parents, they had not even known that their
19 children were at risk.

20 It seemed to me that if one-third of
21 the children whose apartments we tested were found
22 to be living with hazardous amounts of lead, then
23 the current laws are not good enough.

24 The Department of Housing
25 Preservation and Development needs to be more

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2 proactive in going out into high-risk neighborhoods,
3 like we did, to fix apartments before more children
4 are poisoned.

5 They also should force the landlords
6 to clean up unsafe apartments quickly. Both of these
7 reasons are why I support Intro. 101-A.

8 Of course, there is good news. Lead
9 poisoning is entirely preventable. I hope that today
10 both the Health Department and the Department of
11 Housing Preservation and Development are listening
12 and that the City Council passes Intro. 101-A
13 quickly.

14 I also hope that Commissioner Thomas
15 Frieden of the Department of Health immediately
16 changes the New York City Health Code's definition
17 of poisoning, so that parents can receive help
18 before their children become seriously ill.

19 Working with PACC has made me realize
20 that we must take the time to look, learn and take
21 action if we desire change in our community. I am
22 inspired to continue fighting. This experience has
23 convinced me that if great minds - younger and older
24 - come together in our community, we can bring
25 about change. Now it is time for the City Council to

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2 take action, and I urge you to pass Intro. 101-A
3 quickly, so neighborhoods like Bedford Stuyvesant
4 can get the help they need in preventing lead
5 poisoning.

6 Thank you.

7 CHAIRPERSON PROVENZANO: Thank you.

8 You did a very good job.

9 Do you want to do it the way we did
10 before and read? Or have you decided? Okay.

11 MS. BRITO: (Through an interpreter.)

12 Good afternoon. My name is Christina Brito, and I
13 live in Washington Heights. I am a member of the
14 Washington Heights and Inwood Community Union, an
15 organization that represents over 2,000 families in
16 the community.

17 I am also the mother of a child who
18 was lead poisoned at one time. I didn't know that my
19 daughter could be poisoned by the paint in my
20 apartment, until the doctor informed me of the
21 results of her blood test.

22 My landlord didn't want to repair my
23 apartment until I took him to Housing Court.

24 I still have peeling paint in my
25 apartment because I have to fight with the landlord

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2 to get him to repair every time there's a problem.

3 After going through this experience,
4 I wanted to work in my community to prevent other
5 parents and children from going through what we had
6 suffered, so much that my daughter is still
7 experiencing problems in school. She's 12 years old
8 and when she should be in seventh grade she's in
9 fifth grade.

10 The neighborhood of Washington
11 Heights has the highest level of lead poisoning in
12 the Borough of Manhattan. Our buildings are old and
13 suffer from lack of maintenance. I can tell you this
14 because last year we began a program to measure the
15 amount of lead dust in apartments in Washington
16 Heights.

17 In one year we have expected 200
18 apartments where children under seven live. As part
19 of the campaign to prevent lead poisoning in the
20 community, we took samples of the dust in the
21 apartment and sent them to a laboratory to be
22 analyzed for its lead content.

23 In this study of 200 apartments
24 between 167th and 184th Streets and Amsterdam and
25 St. Nicolas Avenues, one-third had amounts of lead

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2 that exceed federally established guidelines for
3 lead and dust.

4 This is to say that there is a real
5 lead danger in these apartments.

6 Of this group, one apartment had 222
7 times more lead than the accepted norm. Another had
8 73 times more than the accepted level. And many more
9 apartments tested ten and 20 times the accepted
10 level.

11 Children between the ages of six
12 months and seven years live in the majority of these
13 apartments.

14 We also found peeling paint on the
15 walls and ceilings in these apartments, water
16 infiltrations and a lot of mold, in addition to
17 mice, rats and cockroaches. We sent the results to
18 all of the landlords, but only a few have begun the
19 necessary repairs, and when the tenants call the
20 City, they don't always send out inspectors.

21 In many cases when there is a lead
22 violation, the landlord takes too much time to
23 repair, which is why many children are lead
24 poisoned.

25 All of this means that we need to do

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2 something immediately. Thank you.

3 CHAIRPERSON PROVENZANO: Thank you
4 both very much. Do you want to get one more picture
5 of her before she goes? Finished? Okay.

6 Okay, we have some questions. Council
7 Member Brewer.

8 COUNCIL MEMBER BREWER: I have a quick
9 question for the two women in particular. When you
10 go as an inspector in a sense trained by Pratt, and
11 look at the apartments, do you have any sense, you
12 said that the families had not been notified,
13 particularly in the ones that you found the level,
14 did you find that these are children who had been in
15 school and in fact they had perhaps some preventive
16 health care? In other words, we were told earlier by
17 CDC that a way to handle this is early health care,
18 and I'm always of the opinion that that's easier
19 said than done.

20 So, I was just wondering if there was
21 any discussion from parents about the fact that they
22 had perhaps been to the doctor with the child, and
23 this health issue had not been identified, or maybe
24 that didn't come up.

25 MS. BAPTISTE: Well, it hadn't been

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2 identified in most of the homes that we went in.

3 They hadn't had their children tested at all, and we

4 actually initiated that, that they went out --

5 COUNCIL MEMBER BREWER: So an early --

6 Bill and I were talking about this, an early

7 preventive health care check-up didn't bring up this

8 level of lead, because that's of course, CDC said

9 what we need is preventive health care, and I would

10 argue what you say is, that that doesn't necessarily

11 deal with the problem of finding the lead, and

12 that's what you found, basically?

13 MS. BAPTISTE: Right.

14 COUNCIL MEMBER BREWER: And when you

15 were able to refer, that's the first time that the

16 health challenge arose.

17 MS. BAPTISTE: Yes.

18 COUNCIL MEMBER BREWER: And then a

19 question I had for you, Ma'am, is that the landlord

20 took approximately how long, or maybe is continuing

21 in terms of some of the repairs? And that is even

22 when your child was identified, even after that

23 nothing has been done to correct the situation?

24 MS. BRITO: (Through the interpreter)

25 they still haven't done anything in our apartment,

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2 even though this happened ten years ago that her
3 child was lead poisoned.

4 COUNCIL MEMBER BREWER: Thank you very
5 much.

6 CHAIRPERSON PROVENZANO: Thank you.
7 Thank you, all.

8 Michelle Alvarez. Eddy Dixon, and
9 Michael McKee. You're on, Mike. We'll start with the
10 ladies. Ms. Alvarez, would you like to start?

11 MS. ALVAREZ: Good afternoon. Thank
12 you for the opportunity to be here. My name is
13 Michelle Alvarez. I'm an attorney with the Natural
14 Resources Defense Council. Founded 1970, NRDC is a
15 national non-profit environmental organization that
16 has long been involved with environmental health
17 issues, and in particular reducing the public's
18 exposure to lead.

19 I am pleased to be here to testify on
20 this important matter of environmental justice. In
21 short, NRDC vigorously supports the direction and
22 foundation of Intro. 101-A, which NRDC believes is
23 necessary to protect families from the persistent
24 yet preventable scourge of lead poisoning in New
25 York City.

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2 My testimony today will be very
3 brief, and I will submit more detailed written
4 testimony at a later time.

5 Unfortunately even today thousands of
6 children in New York City are unnecessarily
7 suffering from exposure to lead paint. According to
8 the Department of Health, in 2000 there were over
9 7,600 children with blood lead levels about ten
10 micrograms per deciliter. Now, the Department of
11 Health figures likely represent an underestimation
12 of the problem. Since each year from '95 to 2000,
13 the percent of children aged six to less than six
14 years tested for lead poisoning in a given calendar
15 year consistently hovered around 50 percent for the
16 various age groups. And while New York City
17 officials claim that between '95 and 2000 both the
18 prevalence rate and the rate of children newly
19 identified with elevated blood lead levels has
20 declined, Dr. John Rosen at Montefiore has testified
21 before this Council that these claims of declining
22 blood levels are unsubstantiated for a number of
23 reasons.

24 Second, even if these official claims
25 are true, it is unacceptable for any children in New

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2 York City to suffer from the devastating health
3 affects of lead poisoning.

4 Compared to many other areas of the
5 nation, New York City's children are at higher risk,
6 mainly due to the prevalence of poverty and the
7 associated deterioration of older housing.

8 Therefore, it is essential to impose
9 a rigorous duty on property owners to inspect for
10 and correct lead paint hazards. Intro. 101-A does
11 this.

12 Secondly, any statutory scheme that
13 purports to address lead poisoning must define lead
14 dust as a hazard, and Intro. 101-A does this.

15 The safe execution of lead-based
16 paint activities requires particular training and
17 expertise, and should not be performed by
18 unqualified persons. Failure to properly execute any
19 steps in the abatement process can result in
20 immediate contamination or future health hazards,
21 and Intro. 101-A imposes a duty on owners to abate
22 lead-based paint hazards with all applicable worker
23 certification, occupant protection, dust wipe
24 clearance testing, and work practice standards under
25 applicable law, including EPA regulations and HUD

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2 regulations.

3 In large part, the effectiveness of
4 101-A will rest on the enforcement of its provisions
5 and holding violators accountable for failure to
6 comply, and 101-A has key liability provisions that
7 include fines and/or imprisonment on property owners
8 for failure to comply with duties including
9 inspection for hazards, the determination of
10 presence, children residing in dwellings, the
11 owner's duty to inform tenants of the landlord's
12 obligations, and let's see here, it also allows
13 folks to enforce against the Department of Health
14 for failure to enforce 101-A's provisions.

15 It also has civil penalties against
16 owners who falsely certify to HPD that violations
17 have been corrected and penalties for those who fail
18 to correct violations.

19 In conclusion, Intro. 101-A provides
20 a solid foundation for a lead paint law that will
21 effectively and expeditiously protect children from
22 the devastating affects from exposure to lead.

23 Thank you for the opportunity to be
24 here, and NRDC looks forward to our continuing work
25 on this issue.

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2 ACTING CHAIRPERSON QUINN: Thank you.

3 MS. DIXON: Good afternoon, ladies and
4 gentlemen. My name is Eddy Dixon and I am an English
5 tutor, at the College of Staten Island for foreign
6 students.

7 I am here today to relate to you the
8 impact of exposure of lead poisoning on the family
9 of a grandmother and seven children, while the
10 Department of Health, the Department of Housing and
11 the Legal Aid Society did little to enforce the law.

12 The family learned 11 years ago that
13 lead poisoning was detected in the blood of the
14 youngest child, a three-year-old. Because the house
15 was infested with lead, the family had to relocate
16 while lead poisoning was being evicted from the
17 premises.

18 After the abatement, the family was
19 to return to the premises, according to the
20 Department of Health. The landlord, a very well
21 known property owner, after trying to move
22 successfully to a family shelter, placed its members
23 in the dwelling next door with the permit that they
24 would remain in there for a maximum of two weeks
25 while the lead poisoning was being abated.

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2 Consequently the family moved from
3 house number one infected with lead to house number
4 two. A few days after arriving in their new home,
5 the manager of the property told the family that it
6 could not return to house number one because it
7 would be too expensive to repair it.

8 Less than two months later, the
9 landlord threatened to start similar proceedings,
10 should the family still occupy the premises of house
11 number two by the end of four months.

12 The mother contacted the Department
13 of Health, which stated that it could not intervene
14 because the family was no longer residing at house
15 number one, although it was still infested with lead
16 poisoning. The Legal Aid office said that it could
17 not help because the family had not been served an
18 eviction notice.

19 The Department of Housing, on the
20 other hand, recommended that the family fill an
21 application for Section 8. The landlord, as it is
22 commonly said, was "off the hook," after a family
23 with seven children was exposed to high levels of
24 lead poisoning on his property. A few months later
25 the youngest child was retested for lead poisoning,

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2 the level of lead in her blood had increased, after
3 decreased by 10 microgram of lead.

4 Every other member of the family was
5 retested for lead poisoning, which was found only in
6 the mother's blood.

7 The Department of Health, subduing
8 its timidity, demanded that the landlord abate lead
9 poisoning from the area occupied by the family.

10 This time the landlord had to comply.
11 The Department of Housing offered to help, only if a
12 doctor wrote on a form that house number two
13 contained lead poisoning.

14 This was impossible because the lead
15 was abated in that house.

16 The family continued its unwelcome
17 residence at house number two, being often
18 humiliated and degraded. The family was not given a
19 lease, and was not asked to pay rent, except for the
20 monetary contributions expected of it.

21 The mother persisted on asking for
22 compensation because her family was constructively
23 evicted from house number one, because nine members
24 of her family were exposed to high levels of lead
25 poisoning, and also because of some other

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2 challenging problems confronted by the family.

3 Six of the children did terribly in
4 high school. Their mother, in order to encourage
5 them to overcome challenges, returned to school and
6 received her master's degree, in spite of headaches,
7 dizziness and listlessness.

8 She had to stop working full time
9 because of her lethargy, causing financial hardship
10 on the family.

11 The landlord went to court recently
12 to have the family evicted for not paying rent,
13 disregarding the fact that so many members of the
14 same family were exposed and re-exposed to lead
15 poisoning on his premises and were initially
16 constructively evicted house number one while still
17 giving monetary contributions to the landlord.

18 Anyway, I will finish. Intro. 101-A
19 is a great step toward eradicating lead poisoning
20 from our society. The members of the City Council
21 and of all the City's agencies must be courageous
22 enough to fight for its enactment on behalf of the
23 voiceless, faceless and underprivileged members of
24 our society.

25 Thank you.

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2 CHAIRPERSON PROVENZANO: Thank you.

3 MR. McKEE: Good afternoon. My name is
4 Michael McKee, I'm a staff organizer and Associate
5 Director of the New York State Tenants and Neighbors
6 Coalition. I don't have a written statement, as I
7 turned in one on June 23rd, even though I didn't
8 even get a chance to testify.

9 I'm here to express the strong
10 support of Tenants and Neighbors of Intro. 101-A. I
11 want to take this opportunity to thank Council
12 Member Quinn, Council Member Brewer, Council Member
13 Jackson, and above all, Council Member Perkins, for
14 your sponsorship and leadership on this issue.

15 We have been dealing with this issue
16 since the mid or even the early 1980s. I remember
17 going to a meeting in I think 1983 or 1984 with
18 Stanley Michels, former City Council members about
19 the problems of getting the City of New York, in
20 that case the Koch Administration, to enforce what
21 was then Local Law 1. And since 1985, 18 years, we
22 have been, tenants and neighbors has been a
23 plaintiff, in a lawsuit initiated by the New York
24 City Coalition to End Lead Poisoning, of which we
25 are proud to be a member and that lawsuit is still

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2 pending, and whether it's the Koch Administration,
3 the Dinkins Administration, the Giuliani
4 Administration, or the current Administration,
5 essentially the City of New York has had to be
6 dragged kicking and screaming into doing anything
7 about this entirely preventable disease.

8 They always say we can't do that,
9 it's impossible, and then we get a court order
10 directing them to do it, and they do it.

11 For example, the Department of Health
12 adopted regulations finally in 1993, excellent
13 regulations, on safe work practices, only in
14 response to a court order.

15 So, it's really not enough for the
16 Council merely to pass a bill, and we certainly are
17 hoping that you will pass Intro. 101-A. You have to
18 help us make the City, whoever the Mayor is at that
19 time, make the City enforce this law, and stop
20 saying no. And the same people, who back in the
21 1980s, staff members at HPD, who shall remain
22 nameless, who were then saying we can't do this, are
23 the same ones now sitting at the table with us in
24 the aftermath of the appeals decision saying we
25 can't do this.

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2 I'm basically here to ask what will
3 it take before the City Council and the City of New
4 York does the right thing, and how many more
5 children will have to be poisoned, before we have
6 some serious solutions to this problem, and every
7 week that goes by more children get poisoned. That's
8 why we are so impatient and so angry about the delay
9 in having Intro. 101 considered by this Council.

10 This bill is overdue, let's get it
11 done and let's get it done now.

12 Thank you very much.

13 ACTING CHAIRPERSON QUINN: Michael,
14 with three seconds to spare.

15 MR. McKEE: Yes, I was determined.

16 ACTING CHAIRPERSON QUINN: Council
17 Member Jackson, please.

18 COUNCIL MEMBER JACKSON: Thank you for
19 coming. Good afternoon, everyone.

20 Did you sit through the testimony and
21 the response and dialogue with RSA and myself and I
22 want to get some feedback from you as advocates in
23 the field concerning their opinion that Intro. 101
24 is not going to work, and I sort of challenge them
25 to say we had Local Law 38 for several years and the

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2 highest court threw that out, let's try 101 and
3 let's statistically see the results of that.
4 Obviously they're not willing to do that, but they
5 mentioned, and Mike, and anyone else, you can
6 comment, that the vagueness of what is a violation
7 is a problem. They raised that. Can you comment on
8 that, as far as, or anyone can comment on that?

9 MR. McKEE: You know, it's very ironic
10 to hear, and although it's not surprising, to hear
11 Intro. 101-A described as an extreme, radical,
12 punitive, I think that was the word they used, bill.

13 Everyone knows Intro. 101-A is
14 already a compromised bill, and in the view of some
15 of us, it's not strong enough. But I think the
16 bottom line is that landlords, it's amazing to me
17 why the real estate organizations are spending so
18 much effort defending slumlords, because that's who
19 this bill, Intro. 101, addresses.

20 The bill separates good landlords
21 from bad landlords, and it goes after the bad
22 landlords. Why are they defending bad landlords? And
23 yet they are. And yet they also seem to be
24 recognizing that we are basically on the march to
25 getting Intro. 101 enacted into law, and they're

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2 basically playing a holding action or a rear-guard
3 kind of action.

4 They don't have any arguments. They
5 really do not have any arguments against Intro.
6 101-A.

7 COUNCIL MEMBER JACKSON: Well, I
8 gather from their argument, that Intro. 101 is not
9 the solution. Let's take Local Law 38 and just
10 revise it a little bit, and you heard what I said,
11 Local Law 38 was thrown out the window by the Court
12 of Appeals. But it seems as though it's about money.

13 MR. McKEE: It's certainly about
14 money, and I just want to put on the record, let's
15 be real - Frank Ricci helped draft that bill, Local
16 Law 38.

17 COUNCIL MEMBER JACKSON: And I wasn't
18 here at the time.

19 MR. McKEE: I was here at the time. He
20 practically lived in Peter Vallone's office.

21 I mean, let's cut to the chase here,
22 this is about money. There's no question about it.
23 And the real estate lobby has an enormous amount of
24 power, and that's why they've been able to stall on
25 this issue.

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2 COUNCIL MEMBER JACKSON: I think that
3 what you said, it's not -- you know, this bill
4 separates good landlords out from bad landlords, or
5 slumlords, and tends to go after those ones that are
6 not doing the corrections, and those individuals
7 that know that they have violations and doing
8 nothing about it; is that correct?

9 MR. McKEE: A responsible landlord
10 would do the right thing that the responsible
11 landlords do, and that's a lot of landlords. We're
12 talking about the ones who really aren't doing the
13 right thing and that's a lot of landlords, too, and
14 that's a lot of children. And I think maybe my
15 colleagues want to comment.

16 MS. ALVAREZ: I would also like to add
17 that if our top priority is to protect children's
18 health, you ask the leading experts in this area,
19 many of whom have already testified before this
20 Council, including Dr. John Rosen at Montefiore, Dr.
21 Bruce Lanphear, Dr. Philip Landrigan at Mount Sinai,
22 Dr. Charles Gilbert, they all say that 101-A is
23 movement in the right direction and it provides the
24 right foundation for effectively protecting
25 children's health.

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2 COUNCIL MEMBER JACKSON: Well, and I'm
3 going to ask you if you know that, I ask them this
4 question, if they thought that Intro. 101 is not the
5 solution, have they introduced a law that will
6 protect our children? And their answer was no, they
7 have not put in -- is there any dialogue, Mike, or
8 advocates in the field, with RSA, and advocates for
9 Intro. 101 to try to address the issues that they
10 have in order to see whether or not any compromise
11 could be reached that will protect the children?

12 MR. McKEE: I think we'll defer to Dr.
13 Matthew Chachere when he testifies, but the answer
14 is yes.

15 I mean, look, we have been totally
16 reasonable, totally accessible, in my view too
17 reasonable. Intro. 101-A is the successor bill to
18 Intro. 205-A, which was a compromised bill. Speaker
19 Vallone asked Stanley Michels if he would sit down
20 with the RSA and address their concerns. Stanley did
21 that in good faith. He got taken, because then the
22 RSA came out and said, oh, no, this is still an
23 extreme bill, we don't support it.

24 I mean, really.

25 COUNCIL MEMBER JACKSON: Okay. Well, I

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2 asked them that question, and I'm asking you also.

3 MR. McKEE: And you didn't get an
4 answer from them either. I know you tried to ask
5 them several times.

6 COUNCIL MEMBER JACKSON: I got an
7 answer from you. That's important, because as an
8 individual, like I said, I'm not involved in these
9 negotiations or the details of it. I need to know,
10 and I want to hear on the record, publicly what the
11 position is, and I'm hearing that, you know, what
12 you said. And I know I talk to Stanley all the time,
13 and I know he's an advocate.

14 MR. McKEE: And I spoke to Stanley
15 last week and he's still very angry about this whole
16 issue, as he has a right to be.

17 COUNCIL MEMBER JACKSON: Thank you.
18 Thank you, Madam Chair.

19 CHAIRPERSON PROVENZANO: Thank you.

20 Camile Rivera, Chris Rembold, Mark
21 Caserta. Camile, do you want to start?

22 MS. RIVERA: Thank you for allowing me
23 the opportunity to make a brief statement.

24 My name is Camile Rivera, and I'm the
25 Environmental Justice Coordinator for the New York

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2 Public Interest Research Group. I'm not going to
3 take too much of your time, I'm just going to
4 basically make a couple of points about the
5 political history of this long battle with lead.

6 Let me just say for one that Local
7 Law 38, any aspects of Local Law 38 is wrong, from
8 lead dust to switching the burden from the landlord
9 to the parents of lead poisoned children is wrong.

10 Intro. 101-A is not a new bill. It
11 was Intro. 205, and even before that it was Intro.
12 956 in 1997. Council Members, HPD, the Department of
13 Health, the Mayor, Speaker, et cetera, all say that
14 they want to do the right thing, but in 1999, Local
15 Law 38 was jammed through the Council in only eight
16 days, with barely any type of public participation,
17 and it was the slap in the face of so many children
18 who suffered today from lead poisoning.

19 Intro. 101-A was introduced in March
20 of 2002, and a hearing wasn't set up until a year
21 and a half afterwards, until June 23rd of 2003.

22 With all due respect to this
23 Committee, this bill should have been dealt with in
24 the Health Committee. This is a health issue and it
25 affects children.

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2 I just basically want to say that it
3 is time, and we understand, with all due respect to
4 the Speaker, who has made a statement about the lead
5 issue, we hope that he goes even further, takes
6 leadership and endorses Intro. 101-A fully.

7 Now, I just want to tell you a brief
8 story. We all talk about the children, you know, the
9 children from ages four to seven, who suffer from
10 childhood lead poisoning, and I want to talk to you
11 very briefly about an adult who is 22 years old, who
12 is a family friend of mine, who suffers from lead
13 poisoning. He's 22 years old and he has the mind of
14 a 15 year old. He is unable to function like me and
15 you. He will never run for City Council, he will
16 never be Mayor of New York City. He will never
17 graduate high school. He works as a chef making
18 sandwiches at an airport.

19 I can tell you that he is extremely
20 bright but is hindered from all the aspects of lead
21 poisoning. He suffers from asthma, he suffers from
22 neurological disorders, he suffers from kidney
23 problems, and this is an every day thing for him.
24 And his family has to deal with this issue, and I,
25 as a friend of the family, have to deal with this

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2 issue.

3 He is on disability, he is on Social
4 Security, and he's one of the many adults who
5 suffers from lead poisoning and is still a part of
6 the system.

7 And I would say today that I would
8 urge the Speaker, I urge this Committee to do what
9 they have to do to pass Intro. 101-A as is, it is
10 the right bill.

11 Local Law 38, no matter what RSA or
12 any other person who supports Local Law 38, it is
13 the wrong bill. Even if they think modifying it
14 would make it better, it would not make it better.
15 Intro. 101-A is the way to go.

16 I thank you for allowing me the
17 chance to testify and make this statement. Thank
18 you.

19 CHAIRPERSON PROVENZANO: Thank you.

20 Chris.

21 MR. REMBOLD: Good day. Thank you,
22 Madam Chairwoman, for allowing me --

23 CHAIRPERSON PROVENZANO: Is your mic
24 on?

25 MR. REMBOLD: I believe so, yes.

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2 My name is Chris Rembold, and I am
3 the Vice Chair of the New York City Sierra Club, and
4 I serve as co-chair of the Sierra Club's
5 Environmental Justice Committee, and today I'm
6 joined by Suzanne Mattei, on my left, who is the
7 Seirra Club's executive in New York.

8 This testimony is being presented on
9 behalf of the Sierra Club, New York City Group. We
10 strongly support Childhood Lead Poisoning Prevention
11 Act, Intro. 101-A, and urge the City Council to act
12 quickly to adopt legislation.

13 You have heard from several experts
14 during the course of this hearing process on the
15 need for stronger measures to protect children
16 against this harmful environmental toxin.

17 We know that lead contaminated dust
18 generated by lead paint is poisoning children in
19 this City. We know that most, if not all of this
20 exposure, can be prevented through proper repair of
21 deterioriated lead paint, and removal of lead paint
22 from friction services, if, and this is important,
23 if the work is done by trained workers under proper
24 safety procedures.

25 We know how to prevent childhood lead

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2 poisoning, but do we have the will to do it?

3 The fundamental question is this:

4 Does it matter that thousands of children, mostly
5 children of color, are suffering permanent brain
6 damage that impairs their ability to succeed in
7 school and in life?

8 Does this matter to the elected
9 officials of our City? If it does then you must pass
10 a strong and effective law to put a stop to it, and
11 Intro. 101-A is that law.

12 Intro. 101-A is a sound, reasonable
13 bill, that will give the children of our City the
14 protection they need and deserve.

15 As you know, Local Law 38 eviscerated
16 the Health Code Safety rules that former Health
17 Commissioner Dr. Margaret Hamburg had adopted in
18 1993 to protect children from sloppy lead abatement
19 work.

20 It allowed landlords to ignore those
21 rules to do a swift and dirty repair job during the
22 first three weeks after violation had been issued,
23 and it did this based on no science whatsoever.

24 Here are a few examples of what we
25 lost in the summer of 1999 under Local Law 38.

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2 Local Law 38 eliminated the
3 requirement to seal off forced air vents or other
4 openings in the abatement area to prevent the
5 dispersement of lead dust to other rooms.

6 Local Law 38 eliminated the
7 requirement to use a HEPA vacuum designed to catch
8 tiny lead particles followed by detergent washing
9 and a second vacuuming.

10 Local Law 38 eliminated the
11 requirement that an independent testing firm take
12 dust wipe samples wherever lead paint abatement
13 occurs.

14 Local Law 38 only required lead dust
15 testing if lead paint was removed for a window, a
16 door or a wood trim, and the person who took the
17 samples did not even have to be from an independent
18 testing firm.

19 Clearly, Local Law 38 was not
20 designed to protect our children from toxic lead
21 dust. No wonder the Court of Appeals tossed it out
22 for lack of proper environmental review. So, now we
23 have the chance to start over and the chance to do
24 it right.

25 What is the most important lesson to

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2 be learned here? Halfway measures won't work. Either
3 you control the dust or you don't, and either you
4 protect our kids or you don't.

5 And if I can skip to the end here,
6 it's time for us to stop using our children as
7 though they were the canaries in the coal mine, as
8 Dr. Lanphear referred to earlier. Their permanent
9 brain damage is now serving as the belated warning
10 that housing has become unsafe and unhealthful.

11 The Sierra Club wishes to emphasize
12 that it is important not to be misled also about
13 the scale of lead poisoning in New York City.

14 When you hear how many children were
15 being poisoned in a given year, that number is
16 provided, is usually only the number of new
17 documented cases, and that's misleading for a couple
18 of reasons.

19 First, about two-thirds of New York
20 City children who should be screened for lead are
21 not being screened. So, the City is not identifying
22 all or even most of the poisoned children in our
23 neighborhoods. Consider children who are not
24 screened because they have limited access to health
25 care are also likely to be living in substandard

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2 housing. Given this fact, the real number of new
3 cases is probably much higher than what the agencies
4 report.

5 CHAIRPERSON PROVENZANO: Can you sum
6 up, please?

7 MR. REMBOLD: Yes.

8 We know this Committee is going to be
9 under heavy pressure to adopt limited lead paint
10 poisoning prevention measures.

11 Again, this law is a compromised bill
12 and it's been developed under a good faith process
13 and a dialogue process. It is the product of many
14 years of work, many years of consulting with
15 experts, and many years of listening to concerns and
16 criticisms of the landlord lobby.

17 We urge the Housing and Buildings
18 Committee, don't mangle this bill. This is a
19 carefully balanced approach to protect children from
20 exposure to this brain-damaging toxin, and good
21 landlords will not have trouble complying with it.

22 Thank you, and we urge you to adopt
23 Intro. 101 expeditiously.

24 CHAIRPERSON PROVENZANO: Thank you.

25 Mark.

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2 MR. CASERTA: Good afternoon. My name
3 is Mark Caserta. I'm a New York City Policy and
4 Adequacy Director for the New York League of
5 Conservation Voters. The League is a non-profit
6 organization that works to educate and elect leaders
7 for the environment.

8 We've been a strong supporter of
9 Intro. 101-A through our candidate endorsements and
10 our advocacy efforts.

11 In addition, in January of 2003,
12 Intro. 101-A was added to a list of bills that will
13 be part of our environmental score card of the City
14 Council, which will be released this month -- or
15 next month. I'm sorry.

16 NYLCV is concerned about the
17 conflicting information twirling around this bill,
18 and it's our hope that this hearing will help the
19 City Council to sort through these issues, and find
20 a solution to this troubling public health problem.

21 In listening to the evidence today,
22 we hope the Council will keep in mind two important
23 facts: One, an April 2003 report referred to
24 earlier, in the New England Journal of Medicine that
25 showed that lead paint had adverse effects on

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2 childhood IQ scores, and much lower levels currently
3 allowed by law.

4 Two, a recent report by the City's
5 Department of Health and Mental Hygiene showed the
6 number of lead poisoning cases in the City continues
7 to decline, this decline, this rate of decline is
8 slowing.

9 As you know, New York State's highest
10 court recently struck down Local Law 38 of 1999
11 leaving the previous lead paint law, Local Law 1.

12 While this is a welcoming
13 development, we believe that the passage of Intro.
14 101-A has a much better outcome, because it will
15 require more proactive action of landlords in the
16 City before children get poisoned. It will also
17 provide financial incentive to remove lead paint
18 from apartments and protect tenants from the dangers
19 of lead paint.

20 We thank Gifford Miller, and Housing
21 and Building's Chair Madeline Provenzano for holding
22 this hearing, and I want to specially thank Council
23 Member Perkins for a determination in this effort.

24 We thank you for acting quickly to
25 implement a new and better lead paint law and we

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2 look forward to the passage of Intro. 101-A. Thank
3 you.

4 CHAIRPERSON PROVENZANO: Thank you
5 very much.

6 Questions? Or we're moving on? I
7 think we're moving on. Thank all of you.

8 Jenny Laurie. Okay. Matthew Chachere.
9 That's one. Adriene Holder. Samuel Hirsch. Mr.
10 Hirsch. Mr. Hirsch, you testified at the last
11 hearing, so what we're going to do is we're going to
12 excuse you, and we're going to call Irene Shen. Is
13 there an Irene Shen. And I'm calling her also.

14 MR. HIRSCH: I didn't testify.

15 CHAIRPERSON PROVENZANO: Sam, when we
16 had the first part of this hearing you testify.

17 MR. HIRSCH: I did not testify.

18 CHAIRPERSON PROVENZANO: I think you
19 did.

20 All right, we'll give you two
21 minutes, okay? We have evidence to the fact that you
22 did.

23 MR. HIRSCH: If you people act on what
24 you heard earlier, there's no need for more
25 testimony.

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2 CHAIRPERSON PROVENZANO: Okay, just
3 because you sat here and kept me company since
4 10:00, okay? You can be first up there. Adriene, are
5 you speaking?

6 MS. HOLDER: Yes.

7 CHAIRPERSON PROVENZANO: Okay.

8 MS. HOLDER: Thank you. It's a real
9 pleasure to be here. I'd like to thank the Council
10 for having this continued hearing. The Legal Aid
11 Society is very proud to participate in this, and
12 has been a supporter of strengthening all laws that
13 protect New Yorkers, especially our children in
14 areas of housing.

15 I would like to just also first say,
16 just for purposes of introduction, I'm an attorney
17 with the Legal Aid Society, I'm also the tenant
18 representative of the New York City Rent Guidelines
19 Board. Housing is a huge issue for the Civil
20 Division of the Legal Aid Society. We represent over
21 20,000 households a year on issues on housing alone.

22 We have nine trial offices throughout
23 the City. But also the Legal Aid Society, as you all
24 well know, has various other divisions. We have the
25 Juvenile Rights Division, we have the Criminal

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2 Defense Division. I like to say that we represent
3 all parts of the house during different points in
4 their life, depending on the issues that they face.

5 What's very interesting is that when
6 you look at a lot of the young people that we
7 represent in detention centers, and our Juvenile
8 Rights practice, where you look at a lot of the
9 mothers who are accused of neglecting their
10 children, and you look at people's health, you find
11 that some of the issues that are pervasive for
12 low-income people throughout this City, regardless
13 of race, is that often times there are issues of
14 health that have not been properly addressed for
15 them as children or adults, include issues like
16 mental health, general mental health issues, but
17 also issues about people having been made ill
18 through lead paint poisoning through their youth and
19 even as adults as pregnant women.

20 So, these kind of issues to us are
21 just so very important because we see where the
22 effects come through and affect our clients in
23 different aspects of their lives and we end up
24 having to represent folks who have been saddled with
25 these issues.

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2 It's interesting to me, given the
3 fact that I work for a law firm that represents poor
4 people, women, children of color, and also some
5 people that may be considered some of the less
6 desirable folks, young men who are told that they
7 may have committed or have been accused or allegedly
8 have committed crimes, it's interesting to me that
9 people always tell us that whenever it comes to
10 issues of children, though, that the Legal Aid
11 Society always has it easy. And it's easy for us to
12 get things passed to protect children to enhance
13 children's rights.

14 And we know here in this City that
15 it's been very difficult from issues of education on
16 down to trying to trying to in this state ensure
17 equal and adequate health care for young people. But
18 you would think that something so simple about
19 talking about an epidemic, about lead poisoning in
20 the City with our housing stock, you would think
21 that this would be something that our City could
22 address and be bold and understanding about our
23 responsibilities to young people to be able to
24 address it.

25 I beg, it's been years now, and how

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2 long has my organization worked with Matt and
3 Cordell Cleare and this City Council in different,
4 you know, different looks that it's taken, different
5 administrations, that how long have we worked on
6 this issue? Before I even graduated from law school,
7 I've been at Legal Aid for 12 years, it's been years
8 and years and years, please, it is unconscionable at
9 this point that we cannot get Intro. 101-A, with all
10 of its sponsors, passed.

11 I dare say it would be environmental
12 racism, and we should say that and not just talk
13 about that it is about environmental and economic
14 injustice for low income and people of color. It is
15 environmental racism. I'm an African-American woman
16 who lives in Harlem, I see these issues on a
17 personal level, as well as in my capacity as a
18 housing advocate, and as well as your tenant
19 representative to the Rent Guidelines Board, please,
20 it is unconscionable and it's criminal for us not to
21 strengthen this law and pass Intro. 101-A. I leave
22 it to this great panel of experts that we have, here
23 and again. I am very pleased to be here, but I've
24 had enough of this. My organization has had enough
25 of this. We lose all kinds of fights, this is

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2 supposed to be an easy one. Please, let's pass this
3 intro.

4 CHAIRPERSON PROVENZANO: Thank you.

5 Matthew, are you next?

6 MR. CHACHERE: Would you like me to
7 be?

8 CHAIRPERSON PROVENZANO: Yes.

9 MR. CHACHERE: Okay.

10 Good afternoon. My name is Matthew
11 Chachere, and as a staff attorney at Northern
12 Manhattan Improvement Corporation, I serve as
13 Counsel to the New York City Coalition to End Lead
14 Poisoning or NYCCELP.

15 For over a decade I've worked very
16 hard representing children and their parents
17 struggling with lead poisoning.

18 Three days ago I was present at the
19 birth of one of New York City's newest citizens, Tai
20 Torres, who was my first grandchild. I watched my
21 son Adreas, a New York City firefighter, pick up his
22 son for the first time. I saw the joy in his eyes.
23 The high expectations he has for his son,
24 expectations I share. Here is my son, here is my
25 grandson. But I want to tell you this: I couldn't

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2 stay there. I was waiting for this birth to happen,
3 and I had to run off to meet with a client, Mr.
4 Benitez, who testified earlier today. I rushed to
5 the hospital to that meeting I had set up the
6 previous week. Mr. Benitez told an absolutely
7 heart-breaking story today of not one, but two of
8 his children who were lead poisoned, one of them two
9 times in the same home after the Health Department
10 told them that it was safe. And the juxtaposition of
11 those events were so painful to me. I think Mr.
12 Benitez surely had the same expectations for his
13 children as my son Adreas did for his newborn three
14 days ago, and sadly those expectations are
15 compromised from a fully avoidable tragedy.

16 Year after year, those of us in the
17 advocacy community encounter family after family
18 just like the Benitez's. Children who are victims of
19 careless, negligent slumlords, failures of public
20 policy and to sultry enforcement by City agencies,
21 and that's why we're here today, we keep coming back
22 asking that more be done and be done better.

23 We put a great deal of effort into
24 working with caring, concerned Council members like
25 Bill Perkins and his co-sponsors in creating an

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2 effective working policy proposal and the fruit of
3 that is largely embodied in Intro. 101-A. And I'm
4 not going to go into Intro. 101-A line-by-line here
5 today and explain the need for its provisions. We've
6 prepared a massive briefing package that was
7 distributed to every member who cared to come to the
8 briefing session that Council Member Perkins held in
9 June to explain the rationale and basis of every
10 paragraph in that bill, the science, the policy
11 implications. I think it's there if you need to read
12 it, and suffice it to say, I think Intro. 101-A
13 seeks to incorporate the lessons we've learned, what
14 systemic failures we've come to understand in the
15 years of working with victims of lead poisoning and
16 how they can come up with reasonable and enforceable
17 remedies.

18 Thus, I'm really disturbed to hear
19 some of the irrational and frankly misleading
20 discourse that comes before the Council on this
21 issue. I've heard repeated claims that because the
22 numbers of kids who are poisoned is coming down, it
23 must mean that the now nullified local law 38 was
24 quote/unquote working, and we should not do things
25 differently.

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2 Well, first of all, let me just say
3 that when I meet with a parent like Mr. Benitez or
4 Leslie Powell or Cordell Cleare, who came into my
5 office nine years ago, what am I supposed to tell a
6 parent in tears about the tragic loss of the
7 potential their child has suffered? Don't be sad? Be
8 happy that the statistics show that less of you have
9 this problem than before? Somehow I don't think it
10 nullifies them. And, in fact, these statistical
11 arguments don't prove Local Law 38 was working at
12 all.

13 We previously heard people testify
14 that the rate of decline under Local Law 38 slowed
15 from before. But I want to point out something that
16 just came out today, it was published by the Centers
17 for Disease Control, you heard the Chair of that
18 testify earlier, this is their morbidity and
19 mortality weekly report, it was published today,
20 September 12th.

21 Here is an interesting statistic for
22 you. The numbers of lead poisoning outside of New
23 York State, the City, and the rest of New York
24 State, where we didn't have Local Law 1 -- Local Law
25 38, declined faster in the last five years than they

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2 did in New York City.

3 So, what does this tell us? I have no
4 idea. But I'm not going to be the first to jump up
5 and say the statistics prove it was working or
6 wasn't working, you know? I just think those are
7 very fascile conclusions.

8 But here's what CBC says in that
9 report. It says, "we're not meeting our goals. We
10 have to intensify our efforts." And I'd like to
11 think that what we would all agree with that
12 objective, and, yet, I hear Council members say
13 things like Intro. 101-A is a meal ticket for
14 lawyers. Well, to paraphrase Comptroller Hevesi when
15 he testified in opposition to Local Law 38 a few
16 years ago, if you want to stop paying lawsuits, the
17 way you do it is you hold poisoning of our kids. You
18 can't have a lawsuit over lead poisoning, unless you
19 have a victim. And unfortunately, we continue to
20 supply a stream of such victims year in and year
21 out.

22 Likewise, the opposition we hear from
23 the agencies charged with the task of enforcing lead
24 poisoning prevention seems to have little to do with
25 science or effective policy and everything to do

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2 with law political posturing.

3 For example, they oppose on
4 cross-grounds, Intro. 101-A's proposal that code
5 enforcement personnel when you go into a home for
6 any reason, they ask if there's a child present, and
7 if so, conduct a line of sight inspection for
8 peeling paint and write down the results on a
9 preprinted form.

10 Why? Because first of all, we're
11 painfully aware of too many situations where this
12 didn't happen, the kids were later lead poisoned
13 when this could have been prevented.

14 CHAIRPERSON PROVENZANO: Matthew, can
15 I ask you to --

16 MR. CHACHERE: I will try to sum up
17 quickly, okay?

18 This is not only bad from a public
19 health perspective, it's a waste of precious
20 inspection resources to have an inspector in a
21 child's home and not look for peeling paint.

22 And we know that in the past HPD has
23 had a preprinted form for this very purpose. It's a
24 simple device to make sure the inspectors look at
25 every wall.

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2 The Independent Budget Office
3 reviewed this concept, they found it would add very
4 little to the City's cost, and would result in the
5 finding of more violations. Yet, the Administration
6 postures that Intro. 101-A would cost a quarter of a
7 billion dollars, largely by taking absurd broad
8 interpretations that they know full well, would
9 never be followed if this statute was enacted.

10 The IBO's latest report in response
11 to Council Member Jackson's request, conclusively
12 demolished the Administration's arguments and should
13 give cause for great concern regarding the
14 credibility of all of the pronouncements and
15 testimony they've offered on Intro. 101 from the
16 Administration.

17 For example, currently HPD recouped
18 56 percent of its abatement costs from building
19 owners. But as IBO pointed out, the City's estimates
20 concerning Intro. 101, they say they're going to
21 recover zero. There's no reason given for this.

22 The Board of Ed tossed in \$22 million
23 in costs for abating lead paint in second grade
24 classrooms, even though, as IBO points out, Intro.
25 101-A specifically limits its scope to

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2 kindergartens, day care and first grade. Intro. 101
3 was amended into 101-A to make it specifically clear
4 that when HPD does not have a mandate to remove
5 turnover violations when landlords fail to do so,
6 yet HPD throws in that estimate anyway and says it
7 will cost \$3 million.

8 In fact, IBO found nearly \$10 million
9 in the City's estimates, were simple math errors in
10 their spread sheets. Ten million dollars. I mean,
11 I've had problems balancing my checkbook a few
12 times, so come on.

13 Then the Administration claims it's
14 confused by the use of the word "abatement" to
15 describe the universe of activities that would
16 require the use of properly trained workers, and
17 that is confusing and overbroad.

18 And you know where they got the
19 language in Intro 101, you know where the definition
20 of abatement came from? That's the very language
21 that's in the City's present Health Code in Section
22 173-14 of the safety rules. The City itself defines
23 abatement as including, quote, the reduction of
24 lead-based paint conditions or hazards through wet
25 scraping or repainting. Now they turn around and

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2 claim that that's not abatement, it's interim
3 control, and anyone ought to be able to do it
4 without their lack of training.

5 Even more galling to me, is that
6 these agencies turn our ideas around on their heads.

7 Intro. 101 is the first proposal to
8 come before this Council that suggested that these
9 agencies, using their discretion, come up with a
10 plan for doing additional target enforcement that
11 goes beyond our present complaint-driven model.

12 We suggested because while no
13 community in New York City is immune from lead
14 poisoning, we know from experience there are certain
15 buildings, neighborhoods and situations where there
16 is even more likely to be lead poisoning.

17 We know that the City has the data
18 right now to figure out that if one child has been
19 poisoned in a building with a lot of code
20 violations, there is a good chance that it could
21 happen to another child.

22 Until this proposal appeared in
23 Intro. 101-A, this City never talked about
24 targeting. Now the agencies turn around, suddenly
25 claim that 101-A would interfere with targeting,

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2 even know the City doesn't even do targeting today.

3 Likewise, we pointed out for years
4 that under Local Law 38 there was no monitoring
5 enforcement mechanism regarding the annual notices
6 that landlords were supposed to be sending out to
7 tenants, and we learned from many families who we
8 interviewed in our agencies, that none of them ever
9 seem to receive those forms.

10 It wasn't until a few months ago when
11 Council Member Perkins wrote to HPD this year,
12 regarding one of his constituents who never got such
13 a notice, that HPD suddenly began to make any
14 inquiries of landlords by subpoenaing records. And
15 for all that, no one owned up to this Committee that
16 Local Law 38 provided no mechanism for HPD to seek
17 any penalties, even if landlords didn't send out
18 those notices.

19 The sad reality is that virtually
20 every step in the policy that's come about in our
21 lead poisoning prevention programs in the City has
22 only occurred after a protracted fight by advocates.
23 The requirements of safe work practices arose from
24 our lawsuits, the requirements that HPD step in when
25 landlords fail to correct violations came out of

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2 another order in the NYCCELP litigation, after we
3 saw too many instances of HPD placing violations and
4 leaving them unenforced for years until the children
5 became safely lead poisoned.

6 These agencies will always come here
7 and tell you they can't do what they need to do.
8 Your job is to tell them to do it.

9 NYCCELP members have lead the push to
10 get blood lead levels triggers that are more
11 stringent than DOH intervention, in response to
12 research that shows that these lower blood levels
13 have a much more significant adverse impact than we
14 once thought.

15 Agencies oppose this as being
16 out-of-step with national standards, yet New York
17 City should be the leader in this field, not ratchet
18 ourselves to the lowest common denominator, and in
19 fact, we've done research on our own and discovered
20 there is a number of other jurisdictions in this
21 country that already do that, such as Miami, St.
22 Petersburg, North Carolina and San Diego, that have
23 lower action triggers than New York.

24 ACTING CHAIRPERSON BREWER: You're
25 going to sum up, right? I'm sorry. I think you're

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2 over time.

3 MR. CHACHERE: Okay.

4 And lastly, I just want to turn to
5 the real estate's confabulations that we're also
6 contending with, you know? I mean, these are the
7 same folks I testified last year, the Black, Asian
8 and Latino Caucus at a level of ten micrograms per
9 deciliter in your blood is equal to having a 99
10 degree temperature.

11 You know, it's interesting that they
12 oppose Local Law 1, the current law, as overbroad,
13 because it required them to safely remove or cover
14 all lead paint.

15 They argued don't tell us to do that,
16 we know where the hazards are, and what lead paint
17 can be managed safely in place, leave it to us as
18 professionals.

19 And now they're confronted with a
20 bill, Intro. 101, that says that. It takes them at
21 their word and says you don't have to take over lead
22 paint out, just make sure it doesn't become
23 hazardous.

24 And what did they do? Well, you heard
25 Mr. Ricci testify today, this won't work. We think

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2 we'd have to take out all the lead paint anyway
3 because we're worried we'd be liable because we
4 might not actually be protecting the children. So
5 much for that faith and professional judgment. They
6 come up with this figure of \$20,000 for apartment,
7 which can only be justified, and when I confronted
8 Mr. Ricci and Mr. Pasilikin on this, they said,
9 well, that's because we believe the only way to make
10 a home safe is to sheetrock every single square
11 centimeter of the dwelling, and that's because they
12 said there's this presumption that it's all lead
13 paint. And I said, yes, but you test for it. You're
14 the first people who are going to get up and say
15 that it's not all over the apartments, and we agree.
16 So, what landlord would in fact sheetrock an entire
17 apartment before first testing and finding out is
18 there a lead paint there, and where is it?

19 It's a very reasonable proposition,
20 you make your dwelling safe, you make sure it
21 doesn't poison children, good landlords do that, the
22 slumlords don't, that's who we have to protect.

23 I'm going to conclude here, I'm sure
24 there will be some questions. Thank you.

25 ACTING CHAIRPERSON BREWER: Thank you

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2 very much.

3 Sam, or Cordell, who wants to go
4 next?

5 MR. HIRSH: My name is Sam Hirsh. I'm
6 Chair of Laborers Coalition, however, I want to
7 testify as from because of my expertise of
8 yesteryear, when I helped get the federal law passed
9 in 1970. In 1969 I was approached to join with a
10 group of people to explore the issue of lead
11 poisoning. I was the Executive Director of the
12 Painting and Decorating Industry of the City of New
13 York. I did have some expertise. What we learned at
14 that time, was I want to just correct the number of
15 misstatements that I've heard over and over and that
16 is that the 1960 law banned lead paint. It banned
17 lead paint only in the interior apartments, it did
18 not ban lead paint on the exterior, and I'm telling
19 you, I have seen practices over and over again when
20 I was there where the landlords would take the lead
21 paint that was left over from a previous job, mix it
22 over in the next job. It was good economics, but it
23 certainly was in violation of the law, but it was
24 universal practice, nobody was looking into it at
25 the time.

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2 Only when Stan Michels' bill was
3 passed later in 1970 was that law corrected. But I
4 can tell you from past practices that I know, that
5 even though that was the law, the lead paint that
6 was left around was constantly used well into the
7 1980s. I know that as a fact.

8 So, I really came here, you've got
9 plenty of other expertise on this whole issue, but
10 I'll tell you something, when I was lobbying for
11 that bill, I was ordered by the employers, I worked
12 for the employees and the union, that I was told
13 they can try to fire me because the painting
14 industry heard that I had had the gall to speak to
15 Congressman Bill Ryan, a friend of mine, and Senator
16 Kennedy's staff, about my concern about lead
17 poisoning. And I tell you, the same mentality I just
18 felt, I smelled it this afternoon, listening to the
19 representatives of the landlords here.

20 I say, I'm saying if you want to have
21 a clear conscience, you better pass this bill, but
22 it's the most immoral thing I've seen going on. It's
23 38 years since we passed the federal bill and the
24 statistics show 4,000 new cases in New York. It's
25 utterly disgusting.

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2 ACTING CHAIRPERSON BREWER: Thank you
3 very much. Who is testifying next? Okay, Irene Shen.

4 MS. SHEN: Hi. Good afternoon. My nam
5 is Irene Shen. I'm a staff member at the New York
6 City Environmental Justice Alliance. I'm reading a
7 testimony on behalf of Timothy J.W. Logan, who is
8 the Urban Infrastructure Coordinator also at the New
9 York City Environmental Justice Alliance.

10 The New York City Environmental
11 Justice Alliance, NYEJA, is a City-wide network that
12 links grassroots organizations in low-income
13 neighborhoods and communities of color in their
14 struggle against environmental racism.

15 Founded in 1991, NYEJA supports
16 community lead initiatives through its network of
17 professional environmental advocates, attorneys,
18 scientists, and health specialists.

19 NYEJA provides resources that enable
20 our membership organizations to engage in effective
21 advocacy on behalf of grassroots communities and
22 health impacts of public and private actions and
23 policies.

24 In 1999, when Local Law 38 was being
25 considered, NYEJA, in cooperation with the New York

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2 City Coalition to End Lead Poisoning vehemently
3 opposed the weakening of protections for lead in New
4 York City.

5 We opposed that law not only because
6 it would increase occurrence of environmental health
7 problems to the children of the City, but surely any
8 advocacy organization that fights on behalf of
9 children could have done that, but rather because of
10 the disproportionate impact that lead poisoning
11 continues to present low-income children of color.

12 Since Local Law 38 was passed, well
13 over 90 percent of childhood victims of lead
14 poisoning in New York City over the past four years
15 have been black, Latino, Asian and Pacific Islanders
16 by ancestry. This kind of disparity is inexcusable
17 under any circumstances.

18 While the causes for this disparity
19 may have been benign, we can no longer turn our
20 backs on this disparity. Any elected official or
21 bureaucrat who does must be considered complicit in
22 this pattern of defacto environmental racism.

23 We believe unequivocally that Intro.
24 101-A is the appropriate bill in our current
25 political circumstances. It has compromised on some

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2 of the considerations that advocates have asked for,
3 however, it is acceptable in its present state.

4 Any alternative legislation that has
5 not yet been introduced must be considered as an
6 intentional attempt to further prolong the dangers
7 of lead poisoning for children of color in the City,
8 and could only be considered as an immoral act by
9 the sponsor.

10 In conclusion, NYEJA wholly and
11 unequivocally asks that the Chair of this Committee
12 and the Speaker of the City Council put this piece
13 of legislation to a vote at the next possible
14 moment, as 36 members of this Council, the City
15 Council, are sponsors of this piece of legislation,
16 37 members prior to the senseless murder of
17 Councilman Davis. Attempts to divert the issue from
18 prominence in the media could only be construed as
19 destructive to the victims of this entirely
20 preventable poison.

21 Thank you for your consideration on
22 this matter.

23 ACTING CHAIRPERSON BREWER: Thank you
24 very much.

25 Cordell Cleare.

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2 MS. CLEARE: Thank you. I'm going to
3 be very brief.

4 There was some confusion about
5 whether I would testify here today. I do represent
6 an organization, the New York City Coalition to End
7 Lead Poisoning, but I'm not here today necessarily
8 as a representative of that organization, and I also
9 work very proudly for Council Member Bill Perkins,
10 one of the prime sponsors, the prime sponsor of this
11 bill, but I am here to testify to you as the parent
12 of a child affected by lead poisoning.

13 It is very difficult for me to speak
14 on this issue. I feel the same way I felt when I
15 first got the horrible news. But today I have
16 listened to testimony that has jarred all type of
17 emotion inside of me. Some of it was terrorizing,
18 and it went to comedy, some of it was very funny and
19 humorous, but the thing that will resonate with me
20 the most as a parent, if you can understand, to sit
21 here and hear someone make a correlation between
22 murder rates and lead poisoning, and to know the
23 reality that this is something that I have to think
24 about with my child is so painful. It's painful for
25 me and all the other children of the City,

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2 particularly because we know who they are, they're
3 the children with the most to lose, the most risk.
4 Lead poisoning is not the only issue for black and
5 Latino children. Most of them belong to failing,
6 overburdened school systems, they have trouble with
7 access to health care, and intervention services to
8 begin with, and for us to add another burden to
9 these children is wrong. It is unfair.

10 And those of us who sit and we say,
11 you know, that tragedy happened, if I could have
12 done anything to prevent it I would have. Oh, if I
13 could have done this, I would have changed
14 everything. This Council has the opportunity to
15 change this for other families and other children
16 and this City. You can change it for all that you
17 represent, all those that you represent, those who
18 are immigrants, those who are not; those who vote
19 and those who do not; those who have money to give
20 and those who do not; those who speak English, those
21 who do not.

22 I heard disgusting testimony
23 commenting on the fact that some of these children
24 may or may not be immigrants. Who cares? So what.
25 They are part of our City, and they will be our

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2 burden in the future in other ways. We will be faced
3 with unemployment, we will be faced with drop-out
4 rates, we will be faced with criminal activities,
5 disabilities, you name it. This problem just doesn't
6 end with children affected by lead poisoning.
7 Because you know what, they grow up to be adults,
8 and all these handicaps play a role in society and
9 they impact us all.

10 So, today I call upon the City
11 Council, I plead and I beg with you, please be
12 guided by the common good. Be guided by what is
13 right for children. Someone testified that landlords
14 are under siege. Black children are under siege.
15 Thank you.

16 ACTING CHAIRPERSON BREWER: Thank you
17 very much.

18 She's also a great school board
19 member. Are there any questions? Mr. Jackson, yes.

20 COUNCIL MEMBER JACKSON: I want to
21 thank all of you for hanging in here to the end. I
22 understand this is the last panel, and I appreciate
23 your testimony, and especially knowing who each one
24 of you represent. That's very, very important. I've
25 always said that many members come and hear the

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2 testimony of the Administration first, and then when
3 the real people are testifying at the end, and you
4 look around, there's only one or two or three, if
5 that many members of the Council are available to
6 hear the real testimony.

7 So, I want to thank you for hanging
8 in here to the end, and giving your testimony. And I
9 want to say that you've heard the questions that I
10 asked of RSA and they said that there's vagueness in
11 the fact of the interpretation of what a violation
12 is, and I ask you as experts, can you give me your
13 opinion, is there vagueness in Intro. 101-A
14 concerning what a violation is, and you start over
15 here?

16 MR. CHACHERE: I'm glad you asked me
17 that. I think the description of what a violation is
18 in Intro. 101-A is very explicit. For code
19 enforcement purposes it's peeling paint and those
20 conditions which will cause the paint to peel, such
21 as concealed water leaks. It's very explicit in
22 Intro. 101-A.

23 What the real estate industry,
24 however, feels uncomfortable about, is the fact that
25 Intro. 101-A does not limit their responsibilities

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2 to just peeling paint. It does permit them, as

3 opposed to current local law 1, to have lead paint

4 in a dwelling, but it says that it's your

5 obligation, as it is right now, to make sure that a

6 child isn't poisoned. That's what they object to.

7 They want you to write a law just like Local Law 30

8 -- Local Law 38 that says if you go this far and

9 you just do A and B, you're off the hook, whether or

10 not a kid gets lead poisoned. And I urge you to

11 reject that concept, I urge you to tell them to put

12 their money where their mouth is. They're the ones

13 who have been coming for years and saying we know

14 how to deal with lead paint. Well, good, do it. It's

15 not that difficult for most landlords to do. But

16 don't come wandering in here after you've poisoned a

17 kid because you left lead paint on a wall where

18 there was a leak there, or where there was some

19 indicia that that lead paint could at some point in

20 the relatively foreseeable future, turn into a

21 hazard and poison a child. Don't waltz in and say,

22 well, I'm not responsible just because that child

23 got lead poisoned. I'm sorry. You're the property

24 owner, you're a professional, you should know how to

25 make the dwelling safe, and if you don't, there is a

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2 whole industry out there, it's called risk
3 assessment, these are licensed certified personnel,
4 they will come into your dwelling, they will tell
5 you where the hazards are and they will write a plan
6 for you that will tell you how to maintain those
7 hazards. It's no different than when you buy a piece
8 of real property and you get an engineer in to tell
9 you, this is the foundation is good, the roof is
10 going to be replaced in five years, and you need a
11 new boiler next week. That should be part of your
12 negotiations. It's no different than when you buy a
13 property and you get a title company to give you a
14 title report. Hire someone and have them come in and
15 tell you where the risks are.

16 Most property owners understand that.
17 It's the bad ones we have to worry about, and
18 they're the ones we have to hold accountable.

19 COUNCIL MEMBER JACKSON: Any other
20 opinions from the three of you on that? You all
21 agree? I mean, your response is very, very clear.

22 CHAIRPERSON PROVENZANO: I didn't
23 realize that you were the subchair of this
24 Committee, Council member, but --

25 COUNCIL MEMBER JACKSON: No one wants

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2 to go home more than I do. I've already missed
3 several meetings, but I understand --

4 CHAIRPERSON PROVENZANO: Even Council
5 Member Perkins wants to go home.

6 COUNCIL MEMBER JACKSON: So, I
7 appreciate your response because you talk about the
8 risk assessment company coming in and doing an
9 assessment for a property owner and determining,
10 letting them know where the risks are and what to do
11 in order to abate the risks, is an important
12 process, so I'm glad to hear your perspective on it,
13 because the other people that were giving testimony
14 were given statistics and what have you and so
15 forth, and you're giving, in my opinion, practical
16 solutions to resolving the issues that we face, so I
17 appreciate that.

18 MR. CHACHERE: I mean, I just want to
19 say, I have spoken and been on panels with risk
20 assessors, I mean they say in a multi-unit building
21 they can go through the place for 100, \$200 a pop
22 per apartment, walk through, tell you where the
23 problems are, and you can deal with it. It's not
24 brain surgery. But what would not be right, would be
25 to write a single maintenance standard for every

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2 single dwelling, because I've never been in your
3 home, Council Member Jackson, you've never been in
4 mine, I don't know what's appropriate in yours.

5 CHAIRPERSON PROVENZANO: Okay, I would
6 like to adjourn this meeting. If you two want to
7 have a conversation, you can stay here.

8 I would like to thank the folks that
9 did stay to the bitter end. Robert, you always stay
10 to the end with me, I appreciate that. Council
11 Member Perkins, Council Member Gale Brewer, she also
12 stays to the bitter end, Council Member Chris Quinn.
13 I would also like to thank my staff who are all
14 here, Terzah Nasser, Andy Scherer, Sarah Marks, and
15 David Pechefsky, who really are the brains behind
16 this Committee, so I want to thank them for their
17 time and their energy and their efforts.

18 COUNCIL MEMBER JACKSON: Madam Chair,
19 I don't have another question, I don't have a
20 question for the panel, but what I would like for
21 this Committee to accept is to accept the IBO's
22 report or response to me that's dated I believe two
23 days ago, there's a response to my question. So, I
24 would like for this Committee to have that as part
25 of the record, is that okay?

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2 CHAIRPERSON PROVENZANO: Okay, fine.

3 COUNCIL MEMBER JACKSON: Thank you.

4 And I'll submit it to the Council. Thank you.

5 MS. HOLDER: Also, Madam Chair, just
6 as part of the record, I think I see Councilman
7 Jackson has it, but The Legal Aid Society submitted
8 testimony on September 4th, and okay, it's part of
9 the record. Thank you.

10 CHAIRPERSON PROVENZANO: Okay.

11 MS. CLEARE: Madam Chair, can I be
12 allowed to just thank the Council members that did
13 stay and hear what parents and others had to say
14 about this very important issue?

15 CHAIRPERSON PROVENZANO: Okay. They're
16 all waiting for me to hit the gavel, but I have
17 business first. Proposed Intro. No. 101-A is laid
18 over, and this meeting of how many hours? Seven, six
19 something, is adjourned.

20 (The following written testimony was
21 read into the record.)

22

23

24 Written Testimony Of:

25 Borough President Adolfo Carrion, Jr.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Borough of the Bronx

3

4 Good morning, Chairwoman Provenzano
5 and members of the Housing and Buildings Committee.

6 I am Adolfo Carrion, President of the Borough of the
7 Bronx. Thank you for the opportunity to comment on
8 this proposed legislation relating to childhood lead
9 poisoning prevention, including the avoidance and
10 correction of lead-based paint hazards in housing,
11 schools, child day care centers and playgrounds.

12 The Bronx had 20.4% of the newly
13 identified children less than 18 years of age with
14 blood levels at or above the environmental
15 intervention blood level in 2001, and was third
16 after Brooklyn with 43.3% and Queens with 23.4%. The
17 highest concentration of these cases was from poor
18 districts with older housing.

19 Over the years, many efforts have
20 been made to remove lead from the environment but
21 lead poisoning continues to be a problem in young
22 children. Because lead poisoning often occurs with
23 no obvious symptoms, it frequently goes
24 unrecognized. The major source of lead exposure
25 among U.S. children is lead-based paint and

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2 lead-contaminated dust found in deteriorating
3 buildings.

4 Long acknowledged as a serious public
5 health threat, lead exposure is among the most
6 significant preventable childhood environmental
7 health problems in our town. It threatens the
8 optimal health and developmental outcomes for our
9 young children. Lead can damage the brain and
10 nervous system, damage kidneys, cause vomiting and
11 even low-level lead exposure can cause learning
12 disabilities, hearing loss, speech, language and
13 behavior problems and other serious health effects
14 in children. In fact, lead poisoning at very high
15 levels can lead to seizures, coma and even death.

16 Lead poisoning is an issue that has
17 been gaining momentum, due in large measure to its
18 prevalence in the Bronx, and in fact, throughout our
19 city, especially in those communities suffering from
20 poverty. Poor neighborhoods endure a
21 disproportionate share of children who have been
22 afflicted by lead-based paint poisoning.

23 The group most at risk for lead
24 poisoning is our infant to seven year olds. Lately,
25 however, pregnant mothers are also demonstrating

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2 blood levels that can significantly affect the
3 intellectual ability of their unborn children.

4 By the way, in adults, lead paint
5 poisoning from dust can cause irritability, poor
6 muscle coordination, and nerve damage to the sense
7 organs and nerves controlling the body. Lead
8 poisoning may also cause problems with reproduction
9 (such as decreased sperm count). It may also
10 increase blood pressure. Thus, young children,
11 fetuses, infants, and even adults with high blood
12 pressure are the most vulnerable to the effects of
13 lead.

14 According to recent Center for
15 Disease Control estimates 890,000, U.S. children age
16 1-5 have elevated blood levels, and more than
17 one-fifth of African-American children living in
18 housing built before 1946 have elevated blood
19 levels.

20 The enactment of Local Law 38 of 1999
21 was an improvement over Local Law 1 of 1982 and was
22 another step forward in our City's attempt to reduce
23 childhood lead poisoning. However, the July 1, 2003
24 decision of the New York State Court of Appeals
25 struck down Local Law 38. Because, in the opinion of

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2 the Court, the legislation did not take into
3 consideration the environmental health impact on
4 children as required by SEQRA.

5 Proposed Int. 101-A is an improvement
6 over Local Law 38 especially since the threshold age
7 of a child will now be seven years. Also, in
8 schools, day care centers and playgrounds, peeling
9 lead paint must be removed following a clearly
10 defined method established by the Department of
11 Health. The proposed legislation defines lead dust,
12 an issue that is not addressed in LL 38. It also
13 tightens property owner responsibility and the
14 Department of Housing Preservation and
15 Development/Department of Health
16 inspection/violation processes. The requirements
17 relating to the removal of lead paint hazards in
18 apartment turnovers are another step forward in
19 ensuring the protection of children from this
20 serious health hazard.

21 With the nullification of Local Law
22 38, it is my understanding that Local Law 1 is now
23 the operative law relating to Childhood Lead
24 Poisoning Prevention. In the main, that law was
25 ineffective and therefore the Council must act

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2 swiftly in enacting appropriate legislation that
3 will provide for the complete health and safety of
4 our children.

5 As elected officials and guardians of
6 New York City, our goal must be a healthy, lead-safe
7 environment where all children can achieve their
8 full potential. Our mission - to eliminate childhood
9 lead poisoning caused by a child's ingestion of
10 lead-based paint chips and dust. I urge the council
11 to enact comprehensive legislation that will achieve
12 this, the cornerstone in our town's lead poisoning
13 prevention initiative.

14 Thank you.

15

16

17 The City of New York Independent Budget Office

18 Ronnie Lowenstein, Director

19

20 September 10, 2003

21

22 The Honorable Robert Jackson

23 Council of the City of New York

24 250 Broadway, Room 1846

25 New York, NY 10007

1 COMMITTEE ON HOUSING AND BUILDINGS

2

3 Dear Council Member Jackson:

4 At the June 23rd hearing of the
5 Housing and Buildings Committee on Intro 101A, you
6 asked the Independent Budget Office to meet with the
7 administration to ascertain the reasons for the very
8 large differences in our respective estimates of the
9 Intro's fiscal impact. This letter summarizes the
10 results of the review.

11 In light of further information
12 received during the review, we have revised our
13 estimate, originally \$8.2 million to \$18.0 million
14 in recurring costs and \$14.9 million in
15 non-recurring (primarily capital-eligible) expenses.
16 The administration has also revised its estimate,
17 from \$265 million at the time of the hearing, to
18 \$231 million, of which \$149.9 million are recurring
19 costs. There remains about \$39 million in primarily
20 non-recurring, capital-eligible costs projected by
21 the administration that we were unable to
22 independently estimate.

23 Clearly, we remain far apart.
24 However, we can now explain the bulk of the
25 difference. The rest of this letter summarizes some

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2 of the major points, and the attachment provides
3 further detail.

4 In some instances the differences can
5 be explained by reliance on different assumptions.
6 For example, while HPD and IBO both agreed that the
7 accelerated timeline for correction of a lead paint
8 violation in Intro 101A would result in a drop in
9 the amount of emergency repair costs assumed a
10 recoupment rate of 40 percent (compared to the
11 current 56 percent). This amounts to a \$3.1 million
12 difference in annual net costs.

13 Other differences arise from
14 different interpretations of what the proposed
15 legislation would require. For example, section
16 17-186 requires building owners to register certain
17 renovation work that could disturb lead-based paint
18 with the Department of Health and Mental Hygiene
19 (DOHMH). The administration has interpreted this
20 provision to require reporting - and pro-active
21 inspection of - routine repainting of apartments as
22 required under local law. We found nothing in the
23 bill's language to support this interpretation.

24 Some of the differences in
25 interpretation arise from ambiguous, unclear or

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2 inconsistent legislative language. For example, HPD
3 assumes that a more expansive - and hence more
4 costly - scope of work would be required when its
5 Emergency Repair Bureau performs lead abatement work
6 because the definition of the term "abatement" in
7 the legislation is inconsistent. It could be
8 interpreted, as we did, to mean "reduction" of a
9 lead-based paint condition "through wet-scraping and
10 painting," or it could require "removal,
11 encapsulation, enclosure, or replacement." Although
12 we used the interpretation that we believed was
13 intended by the sponsors, there is room for more
14 than one plausible interpretation, and hence for a
15 wide disparity in estimates of the fiscal impact.

16 This points to a more fundamental
17 difference between the approach we took in preparing
18 our estimate of the fiscal impact and that taken by
19 the administration. Our assumption was that, if
20 Intro 101A were passed as written, the
21 administration would make a good faith effort to
22 meet the legislation's provisions, including a
23 reasonable increase in resources and level of
24 effort. In contrast, the administration has assumed
25 that, in order to protect itself against future

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2 liability, it must interpret literally the intro's
3 statement of findings and purpose, which calls upon
4 the city to "diligently perform its duties so that
5 the hazardous conditions identified in this article
6 shall be eradicated from all applicable housing to
7 the maximum extent possible" (emphasis added) - in
8 effect, requiring it to assume that every other
9 provision of the intro must be given the most
10 stringent interpretation. Although we believe that
11 this leads to interpretations that were not intended
12 by the intro's authors, we cannot ignore the fact
13 that in the future a department counsel or a court
14 could interpret Intro. 101A as requiring more than
15 we have assumed. If so, then the annual costs of the
16 bill could be much higher than we currently
17 anticipate.

18 Some provisions of the legislation
19 will require legislative clarification if the
20 uncertainty embodied in our widely varying estimates
21 is to be reduced. Members of the Council and the
22 administration will have to exercise their best
23 judgment as to how to resolve these issues to
24 produce a bill that balances effective protection of
25 the health of children with affordability, while

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2 minimizing the need for judicial interpretation.

3 Finally, we appreciate the time and
4 effort of the Mayor's Office of Management and
5 Budget and of the concerned departments in meeting
6 with us to review our respective estimates in
7 detail.

8 If you would like further details of
9 this analysis, we would be pleased to provide it.
10 The estimates were prepared under the supervision of
11 Preston Niblack, IBO deputy director.

12

13 Sincerely, Ronnie Lowenstein

14

15 Results of Review of IBO and Administration Analyses
16 of the Fiscal Impact of Intro 101A

17 I. Introduction

18 On June 23rd, 2003 at the City
19 Council Housing and Buildings Committee hearing on
20 Intro 101A, the Independent Budget Office presented
21 its estimate of the fiscal impact of Intro 101A. At
22 the same hearing, the Commissioner of Housing
23 Preservation and Development reported that the
24 administration estimate was significantly higher.
25 Pursuant to a request by Council Member Robert

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2 Jackson, IBO met with the administration to review
3 the estimates and determine the reasons for the
4 discrepancy. In this report on the results of that
5 review, we begin in Section II by comparing the
6 current IBO and administration estimates. We then
7 review in Section III our revisions to our previous
8 estimate. In Section IV we provide a detailed review
9 by agency of the remaining differences.

10 II. IBO and Administration Estimates
11 of the Cost of Intro 101A

12 IBO's original estimate of the cost
13 of Intro 101A was \$8.2 million, which included costs
14 to the Department of Housing Preservation and
15 Development (HPD) and the Department of Health and
16 Mental Hygiene (DOHMH) and of expanded J-51 tax
17 abatements, net or partial recoupments of HPD
18 emergency repair work costs. Using additional
19 information received from HPD, DOHMH and other
20 agencies during the course of our review, IBO has
21 revised its estimate of the cost of the bill to
22 \$18.0 million. In addition, we have recognized \$14.9
23 million in capital costs, for a total of \$32.9
24 million.

25 The administration has also revised

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2 its original estimate, from \$265 million to \$231

3 million. The administration estimate continues to

4 include costs for which IBO felt it lacked

5 sufficient information on which to base an estimate.

6 As before, IBO has not estimated certain costs for

7 the Administration for Children's Services (ACS) or

8 the Department of Parks and Recreation (DPR).

9 Although there will certainly be costs for these

10 agencies, we continue to lack the data necessary to

11 develop reliable estimates of these costs. We do,

12 however, comment on some of the assumptions used by

13 those agencies in the calculations of their

14 estimates. In addition, we did accept certain of the

15 administration's estimates for spending in the

16 Department of Education (DOE).

17 Comparability. IBO and the

18 administration presented their estimates in not

19 entirely comparable ways. The administration's \$231

20 million figure includes non-recurring and capital

21 costs, such as one-time equipment purchases, and

22 lead-based paint abatement in schools, day care

23 centers, and playgrounds. We estimate that \$18.1

24 million of the administration's revised estimate

25 consists of non-recurring, one-time costs, much of

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2 which would be capital-eligible. Annual operating
3 costs of the bill are therefore \$149.9 million,
4 according to the administration's calculations,
5 which is more directly comparable with IBO's
6 estimate of \$18.0 million.

7 In addition, at least with respect to
8 HPD, and possibly to a lesser degree with other
9 agencies, certain existing program costs were
10 counted in the total, which therefore should be
11 considered as a "total program" cost. When IBO
12 performs a fiscal impact analysis, in contrast, it
13 includes only incremental costs - that is, new costs
14 associated with the bill, and not existing costs. We
15 estimate that the administration's cost estimate for
16 HPD includes \$15.1 million in existing spending.

17 III. Revised IBO Estimate

18 IBO's revisions to its earlier
19 estimate reflect information received from HPD and
20 other departments during the course of our review.

21 The revised IBO estimate reflects:

22 - inclusion of fringe benefit costs
23 for the new inspectors and other personnel that
24 would be required.

25 - an increase in the number of units

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2 that are inspected in a given year.

3 - an increase in the proportion of
4 units with children.

5 - an increase in the proportion of
6 violations that test positive for lead.

7 - refinements in our overall process
8 model to more accurately reflect the possible
9 outcomes once a lead violation is placed.

10 - reduction in HPD inspector
11 productivity to reflect the surface-by-surface
12 inspection requirement.

13 - training and administrative costs
14 for HPD and DOHMH.

15 - costs of monitoring the contracts
16 to correct lead hazards when landlords fail to do
17 so.

18 - acceptance of administration cost
19 estimates for certain provisions we had previously
20 been unable to calculate.

21 We also revised our high-cost
22 estimate to reflect certain of HPD's assumptions,
23 including a lower rate of landlord certification of
24 correction, lower inspector productivity, a higher
25 percentage of violations confirmed to be lead, and

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2 the higher cost of work.

3 However, our high-cost estimate
4 remains substantially lower than the
5 administration's for several reasons.

6 We continue to assume that some
7 emergency repair costs will be recovered from
8 landlords (25 percent), and that 42 percent of
9 violations uncovered during proactive inspections
10 will be closed inspections: A 50 percent reduction
11 in productivity (vs. 80 percent assumed by HPD and
12 25 percent assumed in our baseline) and 10 percent
13 new violations (vs. 50 percent assumed by HPD and 5
14 percent in our baseline).

15 IV. Comparison of IBO and
16 Administration Estimates

17 The two estimates remain far apart.
18 In what follows, we discuss the sources of these
19 differences. In some instances the differences can
20 be explained by reliance on different assumptions,
21 regarding, for example, the frequency with which
22 landlords would certify correction of lead
23 violations.

24 Other differences arise from
25 different interpretations of what the proposed

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2 legislation would require. Some of the differences
3 in interpretation arise from ambiguous, unclear, or
4 inconsistent legislative language. We discuss
5 several of these provisions in the attachment to
6 this report. One phrase in particular, however, had
7 particularly far-reaching implications for the wide
8 gap in our estimates: the phrase "to the maximum
9 extent possible."

10 The Interpretation of "Maximum Extent
11 Possible." One key clause in the Intro 101A
12 statement of findings and purpose (S27-2056.1) is at
13 the root of much of the difference between IBO's
14 estimate and the administration's. The Intro 101A
15 statement of findings and purpose calls upon the
16 city to "diligently perform its duties so that the
17 hazardous conditions identified in this article
18 shall be eradicated from all applicable housing to
19 the maximum extent possible" (emphasis added).
20 According to the administration, this provision
21 requires it to interpret Intro 101A very broadly, as
22 the courts did with Local Law 1. The
23 administration's approach was to estimate the
24 legislation's maximum potential liability to the
25 city. Where other provisions of the bill were

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2 subject to interpretation, due to unclear or
3 ambiguous language, the administration's premise was
4 that its interpretation of this clause governed.

5 IBO's analysis was and remains based
6 on a different interpretation of this clause. Our
7 assumption was that, if Intro 101A were passed as
8 written, the administration would make a good faith
9 effort to meet the legislation's provisions,
10 including a reasonable increase in resources and
11 level of effort, but that in practice, it would not
12 adopt the most stringent possible interpretation if
13 it did not believe that it had to legally or as a
14 matter of sound public policy.

15 Nonetheless, it should be emphasized
16 that the administration's interpretation is not
17 implausible and is not inconsistent with the city's
18 experience with previous lead legislation -
19 specifically, Local Law 1.

20 Ironically, it was in part the
21 courts' consistent interpretation of Local Law 1 as
22 requiring a scope of abatement that the city
23 believed it could not afford to enforce or perform
24 that led eventually to the passage of Local Law 38 -
25 the legislation that Intro 101A seeks to replace.

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2 The administration is not wrong to emphasize the
3 potential consequences of legislative language that
4 is vague, ambiguous, inconsistent, or unclear.

5 Major Differences by Agency

6 Department of Housing Preservation
7 and Development.

8 The administration's estimate for the
9 cost of Intro 101A for HPD is \$91.6 million, while
10 IBO's estimate for HPD is \$15.0 million, including
11 one-time costs in both cases. There are six major
12 factors that together account for more than 80
13 percent of the \$76.6 million difference.

14 Inclusion of Current Program Spending
15 and One-Time Costs. As noted previously, the
16 administration's estimate for HPD includes the
17 agency's existing costs for its current lead
18 programs. In contrast, IBO estimated the
19 incremental, or new costs, counting only those costs
20 arising from the changes to current law that Intro
21 101A would make. The administration figure also
22 includes certain one-time, or non-recurring, costs
23 associated with Intro 101A. Mixing non-recurring
24 costs with annual operating costs may lead to the
25 impression that the on-going annual costs of

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2 implementing 101A are higher than they would be.

3 Current Spending. Using the
4 administration's assumptions about inspector
5 productivity, the cost of work, and other
6 provisions, IBO estimates that \$15.1 million of the
7 total HPD cost of \$91.6 million is current spending.
8 The incremental cost in HPD's estimate is therefore
9 \$76.5 million, which is more directly comparable
10 with IBO's \$15.0 million estimate.

11 HPD's calculation of its costs
12 associated with Intro 101A begins by assuming a 12
13 percent increase in the number of lead complaints
14 and line of sight inspections done, to reflect the
15 increase in the number of children covered by the
16 bill (children under 7, as opposed to children under
17 6). Rather than counting only the increase in the
18 number of inspections, however, the administration
19 bases its cost estimates on the new total number of
20 inspections. In effect, this methodology includes
21 the costs for 8,606 complaint-driven problems and
22 4,083 line of sight problems that are already being
23 identified and dealt with under current practice
24 (based on 2003 experience).

25 One-Time Costs. HPD included \$7.2

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2 million in either one-time or periodic costs in its
3 estimate. These included items like computers, which
4 will need to be updated periodically, and changes to
5 the agency's existing databases, which will
6 presumably occur only once. Because these costs
7 would not be recurring, IBO did not include them in
8 our estimate of the annual operating costs of the
9 bill.

10 In addition, our estimate of these
11 one-time costs was lower than (sic) HPD's. Because
12 IBO estimates that the bill would require many fewer
13 people to implement than estimated by the
14 administration, the new equipment costs should be
15 much less than \$7.2 million. IBO estimates that HPD
16 would need 59 new inspectors and XRF machine
17 operators and another 74 non-inspector personnel.
18 Basic equipment - computers, phones, workstations,
19 chairs, etc. - for these 133 people would cost about
20 \$639,000.

21 The administration's estimate
22 includes \$2.6 million for database and other
23 software upgrades. IBO has no basis for estimating
24 these costs, and therefore has not included them,
25 although there will likely be some expenses

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2 associated with software changes.

3 Surface-by-Surface Inspections. Intro
4 101A (S27-2056.9(a) would require that every time an
5 HPD inspector entered an apartment occupied a child
6 under 7, he/she would have to "immediately inspect
7 all painted surfaces in the dwelling unit" and
8 "record in a report of such inspection whether the
9 paint or other similar surface-coating material on
10 each surface inspected is peeling or intact." At the
11 same time, the inspectors must "inspect the entire
12 dwelling unit for evidence of any underlying defect
13 and record in a report the existence or absence of
14 such condition." IBO's interpretation of this
15 clause's requirements had substantially lower cost
16 implications than HPD's.

17 HPD interpreted this provision to
18 require a highly detailed inspection - possibly
19 including moving all furniture, emptying and
20 inspecting the insides of closets, and inspecting
21 areas outside of the unit such as roofs and fire
22 escapes - and documenting their findings with
23 detailed drawings. They estimated that this would
24 reduce inspector productivity for all code
25 inspections in apartments occupied by a child under

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2 7 by 80 percent.

3 In addition, HPD estimated that the
4 surface-by-surface inspections would lead to the
5 detection of new violations - that is, violations
6 that would not have been detected under the current
7 line-of-sight approach - in 50 percent of cases. The
8 administration estimated the cost of this provision
9 at \$26.8 million.

10 IBO assumed that this provision could
11 be satisfied with a less extensive documentation
12 process. In a letter from Council Member Bill
13 Perkins to IBO, he stated that the intent of this
14 provision "is that HPD would perform ordinary and
15 customary 'line-of-sight' inspections of all rooms
16 in dwellings where children under the age of seven
17 reside, and would check off on a pre-printed form -
18 the type of form that HPD has previously had - the
19 condition of each wall."

20 IBO assumes that inspector
21 productivity would fall by 20 percent, rather than
22 80 percent. In addition, because HPD already does
23 line-of-sight inspections, IBO felt it was unlikely
24 that surface-by-surface inspections would lead to
25 the detection of violations that would not otherwise

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2 have been identified in 50 percent of apartments.

3 IBO assumed that new violations would be found in 5

4 percent of units.

5 Treatment of Violations Identified

6 through Proactive Inspections. HPD reports that it

7 currently closes fully 42 percent of confirmed lead

8 violations because the Emergency Repair Program is

9 unable to gain access to the apartment either to

10 verify correction or to make repairs. The department

11 interprets S27-2115(1)(4) of Intro 101A as denying

12 it the possibility of closing violations for lack of

13 access when the violation is identified during a

14 pro-active inspection under S27-2056.9(a).

15 When HPD identifies a lead hazard, it

16 issues a violation, and the landlord is given an

17 opportunity to correct the condition. If the

18 landlord fails to accurately certify correction, HPD

19 attempts to inspect the unit again. At that point

20 four outcomes are possible: the agency cannot get

21 access to the unit and the case is closed; the

22 landlord is found to have done the required work and

23 HPD only needs to conduct dust-wipe tests; HPD

24 confirms that no lead is present and no further

25 action is necessary; or HPD must perform the

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2 correction work.

3 In its own analysis of most
4 provisions of Intro 101A, HPD excluded these first
5 three outcomes from the universe of units requiring
6 HPD correction work. In estimating the cost of the
7 proactive inspection requirement (S17-188), HPD
8 continued to exclude dust wipe jobs and apartments
9 in which the paint was not lead-based, but made no
10 allowance for units to which the Emergency Repair
11 Program could not gain access. According to HPD,
12 Intro 101A would not allow the agency to close cases
13 for lack of access, because the bill prohibits the
14 removal of a violation from its records without
15 written evidence that the violation has been cleared
16 (S27-2115(1)(4)).

17 IBO's interpretation was that, while
18 this provision clearly states that a violation must
19 remain on the record until there is clear proof that
20 it has been cleared, that would not actually mean
21 that HPD would be required to persist until it could
22 gain access. If HPD cannot gain access to the
23 apartment to clear the violation, it is unlikely
24 that it will gain access to repair the violation.

25 The violation instead will simply

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2 remain on the record, as frequently already occurs.

3 Indeed, HPD assumes that "no access"
4 cases would be closed for violations identified
5 through complaints or line of sight inspections
6 under Intro 101A, and it was not clear why
7 violations identified through proactive inspections
8 would be treated differently.

9 IBO assumed that 42 percent of cases
10 identified through proactive inspections would also
11 be closed for lack of access. To illustrate: IBO
12 estimated that 4,001 violations - with lead and not
13 corrected by the building owner - would be
14 identified annually through the proactive inspection
15 process.

16 However, because the majority would
17 not require HPD correction, HPD would be responsible
18 for remediation work in only 1,415 apartments.

19 In contrast, while HPD estimated that
20 a similar number of apartments with lead violations
21 would be identified through proactive inspections
22 (3,424 versus IBO's 4,001) they concluded that HPD
23 would have to do correction work in 2,089 cases. In
24 short, our estimate of the number of HPD correction
25 jobs, and hence the cost of this provision, is

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2 substantially less than the administration's. The
3 difference is attributable to the cases closed - or
4 not closed - for lack of access.

5 Cost of Work. Intro 101A defines the
6 existence of a lead-based paint hazard in a dwelling
7 unit as a Class C emergency violation, requiring HPD
8 to correct the condition when the landlord fails to
9 certify correction (S27-2056.6; S27-2115(3)). The
10 cost of the work is dependent on the scope of the
11 correction job. IBO's estimate use an average cost
12 of \$3,728 per job, based on the average cost
13 reported to the City Council by HPD, adjusted
14 upwards by 25 percent to account for the faster
15 timeline required under Intro 101A.

16 HPD's estimate is based on an average
17 cost of \$6,285 per abatement job, based on the
18 current average cost for a DOHMH-ordered repair.
19 When HPD does work in response to a DOHMH order, it
20 replaces sections of wall, removes molding, and
21 otherwise permanently eliminates lead hazards - a
22 much more extensive scope of work than in non-DOHMH
23 jobs.

24 HPD interprets Intro 101A as
25 routinely requiring this more extensive scope of

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2 work based on the bill's use of the term

3 "abatement." The Intro 101A definition of abatement

4 (S27-2065.2(1) is the reduction or elimination of a

5 lead-based paint condition or lead-based paint

6 hazard through the wet scraping and repainting,

7 removal, encapsulation, enclosure, or replacement of

8 lead based paint, or other method approved by the

9 commissioner of health and mental hygiene...

10 The U.S. Environmental Protection

11 Agency (EPA) and Department of Housing and Urban

12 Development (HUD) definitions of abatement

13 specifically require permanent elimination of

14 lead-based paint hazards through removal or

15 encapsulation/enclosure. Intro 101A requires both

16 the abatement of a lead hazard - presumably

17 according to Intro 101A definition - and compliance

18 with EPA and HUD regulations. Given that these are

19 inconsistent, it is not clear which definition of

20 abatement applies.

21 In addition, under Intro 101A, a

22 building owner would have an affirmative duty to

23 correct underlying conditions - leaks and other

24 problems that can cause lead-based paint to peel

25 (S27-2056.3). When a landlord does not correct a

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2 lead violation, Intro 101A requires HPD to do so.

3 HPD is specifically charged with
4 correcting violations of S27-2056.6, which reads
5 "the existence of lead-based paint in any dwelling
6 unit in a multiple dwelling where a child under
7 seven years of age resides shall constitute a class
8 C immediately hazardous violation if such paint is
9 peeling or is on a deteriorated subsurface." There
10 is no mention of underlying conditions, but HPD
11 asserts that because it is acting as a building
12 owner when it does an Emergency Repair Program job,
13 it is also bound by the duty to correct underlying
14 conditions.

15 Based on the sponsor's explanation of
16 Intro 101A, IBO did not interpret the bill as
17 requiring HPD to perform permanent abatements, nor
18 to correct underlying conditions. IBO therefore
19 continued to use the lower cost of work in its
20 revised estimate. If the administration's more
21 stringent abatement standards were used in one-half
22 the emergency repair jobs, the IBO estimate would
23 rise by roughly \$1.3 million annually.

24 ERP Revenue. When HPD makes an
25 emergency repair, the cost of the repair is billed

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2 to the landlord, and a lien is placed on the
3 property. HPD currently collects about 56 percent of
4 ERP costs - including both lead and non-lead repairs
5 - within 3 years. The original IBO estimate assumed
6 that this collection rate holds constant, offsetting
7 56 percent of new ERP costs arising from the bill.

8 In its discussion of its assumptions,
9 HPD noted that it "expects to collect less in ERP
10 recoupment for Intro 101 [sic] Work due to the
11 higher cost of this work, the greater percentage of
12 ERP that will be for lead work, and especially in
13 pro-actively targeted buildings." In its cost
14 calculations, however, the administration assumes no
15 ERP recoupment. While it appears reasonable to
16 assume a reduction in the ERP collection rate, we
17 saw no reason to expect that ERP collections would
18 fall to zero. The revised IBO estimate assumes that
19 HPD will collect 40 percent of ERP costs.

20 Department of Health and Mental
21 Hygiene.

22 The administration estimates that the
23 cost to DOHMH of implementing Intro 101A would be
24 \$60.5 million, while IBO's estimate of DOHMH's costs
25 is \$1.4 million. The difference between these two

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2 figures can be almost entirely attributed to
3 differing estimates of one provision: monitoring
4 safe work practices.

5 Monitoring Safe Work Practices. Under
6 Intro 101A, DOHMH is required to create rules for
7 the safe removal of lead and to collect and record
8 building alteration notifications (S17-186). The
9 bill also calls for DOHMH to develop rules requiring
10 the department to respond to complaints about unsafe
11 lead-based paint work practices (S17-187).

12 In estimating the cost of these
13 provisions, the administration assumed DOHMH would
14 receive 145,000 notifications a year for building
15 alterations. In addition, the department assumed it
16 would receive nearly one million notifications each
17 year for the routine repainting of dwelling units
18 required every three years under the current local
19 law.

20 DOHMH assumed that each year it would
21 inspect all 145,000 units for which building
22 alteration notifications had been received and half
23 of all the units being repainted annually.
24 Furthermore, DOHMH estimated that violations would
25 be found in 10 percent of the inspected units, and

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2 that these violations would be reinspected to ensure
3 compliance.

4 Currently, DOHMH receives
5 notification whenever lead-based paint abatement
6 work is undertaken in response to the Commissioner's
7 Order to abate or whenever HPD performs lead-based
8 paint abatement work after the landlord has failed
9 to do so. In both of these scenarios, a lead-based
10 paint hazard has been positively identified in the
11 unit. DOHMH subsequently inspects each of these
12 units to ensure that the abatement work is conducted
13 according to federal regulations.

14 In its cost estimate of Intro 101A,
15 DOHMH treated the 145,000 new general building
16 alteration notifications as the functional
17 equivalent of the notifications the department
18 currently receives for units where a lead poisoned
19 child has already been identified. As a result,
20 DOHMH assumed that the department would have to
21 inspect 100 percent of the 145,000 units for which
22 building alteration notifications were filed.

23 IBO's estimate differed in two
24 primary ways from that of DOHMH. First, we did not
25 include the almost one million units with paint jobs

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2 in the universe of notifications and inspections.

3 The bill requires notification only "if at least two
4 existing windows containing lead-based paint are to
5 be replaced, or if at least 50 percent of the
6 surface area wall, ceiling, floor, or other
7 structure containing lead-based paint is to be
8 demolished or removed, provided that such surface is
9 at least 200 square feet (S17-186-(b))." IBO felt
10 that this requirement would not apply to routine
11 repainting jobs, and in fact would generally require
12 a building alteration permit. Second, Intro 101A
13 requires that DOHMH respond to complaints about work
14 practices, but does not mandate any proactive work
15 site inspections.

16 Like DOHMH, IBO assumed 145,000
17 rehabilitation notifications would be received by
18 the department annually. However, IBO felt that
19 Intro 101A did not require DOHMH to inspect each of
20 these units, as general building alteration
21 notifications are substantively different from
22 notifications of actual lead-based paint abatement
23 work. IBO's estimate assumed that inspections of
24 these 145,000 units would be complaint-driven. IBO
25 assumed a 1 percent complaint rate in its estimate,

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2 or 1,450 complaints annually. This is vastly more
3 than the 107 complaints about work practices that
4 DOHMH received in fiscal year 2002, according to the
5 2002 Mayor's Management Report. Responding only to
6 complaints significantly reduces the number of work
7 site inspections that DOHMH would conduct under
8 Intro 101A.

9 Other Agencies.

10 There are three other agencies that
11 would have new responsibilities under Intro 101A:
12 The Administration for Children's Services (ACS),
13 the Department of Parks and Recreation (DPR), and
14 the Department of Education (DOE).

15 IBO did not estimate the fiscal
16 impact of Intro 101A for these agencies because we
17 did not have the data necessary to do so. The
18 administration did estimate costs for these
19 agencies. We did discuss below the assumptions and
20 methods used by the administration and our
21 evaluation of them.

22 Department of Education. Intro 101A
23 would place a number of new requirements on DOE. It
24 would mandate that the agency create a worksite plan
25 for any lead-based paint project with a cost greater

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2 than \$2,500 (S17-812). The bill would also require
3 semi-annual inspections of schools (S17-815),
4 remediation of interior and exterior window surfaces
5 (S17-813), and testing and remediation of soil
6 hazards (S17-816.)

7 Second-grade classrooms. The
8 administration estimated that \$22.0 million would be
9 needed to abate lead hazards in second-grade
10 classrooms, which they believe would be required
11 because Intro 101A raises the age of at-risk
12 children to under seven (from under 6). However, the
13 language of the bill appears to specifically exclude
14 second-grade classrooms: "there shall be no peeling
15 lead-based paint in any portion of any school
16 facility where children in special education,
17 pre-kindergarten, kindergarten an first grade
18 regularly spend time" (S17-813(a)). Second grade
19 classrooms are not included in this list; moreover,
20 most children are 7 years old - not under 7 - when
21 they reach second grade. We therefore concluded that
22 remediation of second-grade classrooms was not
23 required.

24 Window Surfaces. Another major DOE
25 cost is the abatement of all interior and exterior

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2 window surfaces in education, pre-kindergarten,
3 kindergarten and first grade classrooms. According
4 to the administration, this will cost \$10.6 million.
5 This includes approximately \$940,000 to test 890
6 schools with classrooms covered by this provision at
7 an average of \$1,055 per school. The administration
8 expects that 40 percent of 10,115 special education,
9 pre-kindergarten, kindergarten, and first grade
10 classrooms will need remediation, at an estimated
11 \$2,390 per room, for a total correction cost of \$9.7
12 million. Intro 101A would give DOE until September
13 1, 2006 to complete this work.

14 DOE has already stripped all paint
15 from the interior of windows in 4,488 of the 10,115
16 total classrooms through its existing lead abatement
17 program. The administration assumes that in order to
18 comply with Intro 101A, it would have to remove all
19 the windows - including those in rooms that have
20 already been treated - and strip the paint from all
21 window surfaces. It is not clear that this broad
22 scope of work would be necessary in rooms that have
23 already been abated.

24 Work site plans. The administration's
25 estimate for the cost of the work site plan assumes

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2 that all jobs will require such a plan, because the
3 existing average cost for DOE lead work is well
4 above \$2,500. The cost assumes that 5,627 classrooms
5 (10,115 less the 4,488 already abated) will require
6 a plan, at an average cost of \$465, for a total cost
7 of \$2.6 million. Again, this cost would be a
8 one-time cost incurred over a period of 3 years
9 (assuming enactment of the bill this fall).

10 Soil abatement. Finally, the
11 administration's estimate for DOE assumes that 10
12 percent of schools will require soil abatement, and
13 that the average cost of such work will be \$2,640
14 per school. With survey costs of \$630 per school,
15 the total cost for this provision, according to the
16 administration, is \$795,660.

17 IBO has accepted DOE's analysis of
18 its non-recurring costs, with the exception of the
19 estimate for the second grade classrooms. Excluding
20 the \$22 million for second grade classrooms, the
21 three-year cost for the DOE remediation work
22 required under Intro 101A would be \$14.3 million.
23 IBO also accepted DOE's estimate of \$1.1 million for
24 its annual costs.

25 DOE currently has a budget for lead

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2 paint work of \$2.5 annually. While this includes
3 testing of water, which would presumably need to
4 continue if Intro 101A was passed, some of the new
5 work required by Intro 101A would likely be included
6 in the current budget.

7 Administration for Children's
8 Services. Intro 101A would require semi-annual
9 surveys of daycare centers (S17-824) and remediation
10 of soil-lead hazards (S17-825). Intro. 101A would
11 give ACS two years to complete the soil remediation.

12 According to ACS, there are 585
13 city-owned day care centers. The administration
14 assumed that all 585 would require soil abatement,
15 at an average cost of \$25,000 per abatement job. It
16 seems unlikely that 100 percent of day care centers
17 actually have lead-contaminated soil or lead paint.
18 We did not, however, possess the information
19 necessary to estimate how many centers might have
20 lead, but DOHMH estimates that 15 percent of day
21 care centers were built after 1978 and may therefore
22 be presumed not to have lead-based paint.

23 Furthermore, it is difficult to
24 estimate the cost of soil abatement, as it depends
25 on a variety of site-specific factors such as the

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2 type of soil and the concentration of lead. The ACS
3 estimate of \$25,000 per site is roughly 10 times
4 that of DOE. Similarly, a Brown University Center
5 for Environmental Studies report found that soil
6 abatement costs in Providence, RI and Boston ranged
7 from \$3,700 to \$10,000 per job.

8 If 85 percent of the 585 daycare
9 centers required correction work, and the average
10 remediation cost was \$10,000, the total cost for
11 remediation work in day care centers would be \$4.9
12 million.

13 The remaining \$4.3 million in ACS
14 costs in the administration's estimate reflect the
15 cost of completing required surveys of day care
16 centers. Again, the administration assumed that all
17 centers would have to be surveyed, but it is not
18 clear that post-1978 centers tend to be included in
19 the survey requirement. Like the remediation costs,
20 the bulk of the survey costs are one-time, although
21 Intro 101A would require some ongoing monitoring of
22 daycare sites.

23 Department of Parks and Recreation.
24 Intro 101A would require replacement of all pre-1978
25 playground equipment by September 1, 2008

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2 (S17-189(c)). In addition, the bill mandates that
3 there shall be no lead hazards on any playground
4 equipment or fencing (S17-189(d)).

5 According to DPR, there are 950
6 playgrounds in New York City. The administration
7 assumed that 20 percent would require remediation at
8 a cost of \$100,000 per job, for a total correction
9 cost of \$19 million.

10 However, DPR is just beginning to
11 compile a comprehensive database of the city's
12 playgrounds. At this time, they cannot report when
13 playgrounds were built or last upgraded. As a
14 result, it is impossible to accurately estimate how
15 many playgrounds will need lead remediation work, or
16 how extensive that work will have to be.

17 Nor is it clear that \$100,000 per
18 playground is the correct figure. The Consumer
19 Product Safety Commission released a report in 1996
20 reviewing playground lead hazards. While this report
21 was based on an extremely limited survey of cities'
22 playgrounds, and costs may well be higher in New
23 York City, the range of remediation costs was
24 significantly less than \$100,000.

25 The remaining \$1 million in DPR costs

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2 is for a survey of playgrounds and was estimated
3 based on assumption of \$200,000 per borough.

4 Other Differences. There are a number
5 of other minor differences between the IBO and
6 administration estimates, primarily concerning HPD,
7 that contribute to the remaining difference between
8 the estimates.

9 Legal Definition of Lead. Intro 101A
10 changes the definition of lead from 1.0 milligram
11 per square centimeter to 0.7 mg/cm². IBO had no
12 basis for estimating the impact of this technical
13 change, and therefore relied on HPD verbal reports
14 that it would increase the number of positive lead
15 cases by 10 percent, or from 24 percent to 26.4
16 percent.

17 The administration analysis, used HPD
18 data that showed that 10 percent of cases that
19 currently test negative for lead fall between 0.6
20 and 1.0 mg/cm². In addition, the HPD analysis
21 reported a higher percentage of positive lead tests
22 - 28 percent rather than 24 percent. The result is
23 a 25 percent increase in positive lead tests, or 35
24 percent of violations testing positive for lead.

25 If the currently negative XRF

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2 readings are evenly distributed between 0.6 and 1.0
3 mg/cm², then only three-quarters of these readings
4 would actually be positive under Intro 101A. This
5 would translate to 33 percent of violations testing
6 positive. The revised IBO estimate assumes that 33
7 percent of cases test positive for lead, while the
8 administration uses 35 percent.

9 Turnover Violations. Intro 101A would
10 require landlords to ensure that units meet certain
11 maintenance standards upon turnover. Failure to do
12 so is a Class C violation, but Intro 101A does not
13 explicitly require HPD to correct these violations
14 if the landlord does not. As a result, IBO did not
15 include any repair costs for this provision.

16 HPD, however, asserted that because
17 these violations are Class C, the agency must do
18 correction work. This adds \$3.2 million to the total
19 repair cost estimated by the administration.

20 Intro 101A handles common space
21 violations similarly to turnover violations - they
22 are Class C, but HPD has no correction
23 responsibility. Although HPD assumes correction
24 costs for turnover violations, the administration
25 adds nothing for correction of common space

1 COMMITTEE ON HOUSING AND BUILDINGS

2 violations.

3 Training Costs. The administration
4 estimate included funding for training costs for
5 both HPD and DOHMH inspectors, totaling \$7.4
6 million. This total includes both initial EPA
7 certification and ongoing training.

8 The HPD portion includes more than \$2
9 million to hire 40 full-time trainers to provide
10 ongoing training to field staff who have already
11 undergone EPA certification, as well as training for
12 private building owners, contractors, and
13 superintendents.

14 The DOHMH training figure included
15 EPA certification for all the inspectors necessary
16 to do work site inspections at half of all units
17 painted annually. As noted above, IBO assumes that
18 the universe of units for work site inspection is
19 substantially smaller, and as a result, DOHMH will
20 need many fewer new inspectors. All current DOHMH
21 inspectors are EPA certified, so training would be
22 necessary only for the limited number of new hires.
23 Unlike HPD, DOHMH did not plan to hire full-time
24 trainers to supplement the certification classes.

25 The IBO revised estimate projects

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2 that HPD and DOHMH would collectively need to hire
3 75 new field personnel, and that these individuals,
4 plus the existing 300 HPD code inspectors would need
5 to receive EPA training.

6 According to the July 2002 Code of
7 Federal Regulations, EPA inspector training courses
8 are \$2,500 per person, for a total training cost of
9 just over \$900,000.

10 These initial training costs are
11 one-time, but because Intro 101A and the EPA require
12 recertification, IBO has included training costs in
13 the list of annual expenses. IBO assumed that the
14 city was not responsible for training the private
15 sector, and therefore did not include full-time
16 trainers in its estimate.

17 Landlord Certification. According to
18 HPD, 23 percent of landlords who are currently
19 issued violations accurately certify that they have
20 corrected the violation within the required
21 timeframe. Because Intro 101A tightens work
22 standards and shortens timeframes, HPD assumed that
23 only 10 percent of landlords would certify
24 correction on time.

25 In its revised estimate, IBO also

1 COMMITTEE ON HOUSING AND BUILDINGS

2 assumed that owner compliance would fall, but to 17
3 percent (the midpoint between the 23 percent that
4 currently certify and the 10 percent which HPD
5 assumed would certify under Intro 101A.) Greater
6 owner compliance means fewer jobs for HPD, and thus
7 a lower cost.

8 Number of Units with Children. The
9 administration's analysis assumed that 19 percent of
10 apartments covered under the law have a child under
11 the age of 7 present. IBO, based on an analysis of
12 the 1999 Housing Vacancy Survey (HVS), found that
13 17.6 percent of pre-1960, privately-owned apartments
14 in multi-family buildings were occupied by a child
15 under 7. This is a slight increase from the
16 percentage used in IBO's original analysis. The 2002
17 HVS, which was recalibrated to reflect results of
18 the 2000 census, actually yields a smaller universe
19 of units with children.

20 Other Administrative Costs. The
21 administration's estimate of HPD's costs under Intro
22 101A includes several administrative provisions that
23 IBO did not accept or did not have enough data to
24 assess. In particular, HPD states it would need 9
25 full-time people to complete the annual report to

1 COMMITTEE ON HOUSING AND BUILDINGS

2 the City Council required in Intro 101A. The
3 salaries for these new personnel, plus equipment
4 costs and database modifications, total almost
5 \$800,000.

6 HPD also feels it would need to add
7 12 people to its Housing Education Services program,
8 to teach building owners and maintenance workers
9 about changes to the law. Their estimated cost for
10 these personnel is more than \$600,000.

11 J-51 Tax Benefits. The
12 administration's estimate of the cost of the
13 expanded J-51 tax benefits was \$2.5 million, while
14 IBO's revised estimate was about \$1 million.

15 The administration assumed that all
16 the building owners receiving J-51 tax benefits for
17 lead work would do both an inspection and a risk
18 assessment. IBO, on the other hand, assumed that
19 building owners would do an inspection or a risk
20 assessment, which accounts for about \$300,000 of the
21 difference.

22 Second, the administrative assumed
23 that 25 percent of the building owners that did
24 inspection/risk assessment work would then do
25 abatement work. IBO estimated that 12.1 percent of

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2 apartments inspected would have both peeling paint
3 and lead, and that all of these building owners
4 would do abatement, which accounted for close to
5 \$600,000 of the difference. The remainder of the
6 difference was attributable to rounding.

7 Miscellaneous Spreadsheet Errors. IBO
8 identified spreadsheet errors in the
9 administration's analysis of HPD's costs under Intro
10 101A, which we estimate raise the administration's
11 figure by about \$9.5 million. The actual difference
12 between IBO and the administration's estimate of
13 HPD's recurring costs is therefore \$60.6 million.

14 (Hearing concluded at 3:30 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 12th day of September 2003.

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.