

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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June 23, 2009
Start: 10:30am
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HELD AT: Council Chambers
City Hall

B E F O R E:
LEROY G. COMRIE, JR.
Chairperson

COUNCIL MEMBERS:
Charles Barron
Daniel R. Garodnick
James F. Gennaro
G. Oliver Koppell
Rosie Mendez

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

William Heinzen
Deputy Counselor
Office of the Mayor

Louise Seeley
Executive Director
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James Fishman
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Katie Ringer
Staff Attorney, Legal Aid
The Bronx Housing Court

CHAIRPERSON COMRIE: Good morning.

My name is Leroy Comrie, I'm the Chair of the Committee on Consumer Affairs. Today we'll be holding our first hearing on Introductory Bill 995, a local law to amend the administrative code of the City of New York, in relation to disclosure of tenant screening reports. I'd like to begin by thanking the administration for attending and testifying at today's hearing, as well as the housing advocates, consumer advocates, and tenant screening industries and representatives from the real estate industry. As many in this room know, already know, finding and renting an apartment in New York City can be a long and drawn out process. One of the obstacles which most prospective tenants most overcome is the tenants screening report, a collection of information about one's housing, court history, among other items, which a landlord then uses to evaluate a person's fitness as a renter. A history of involvement with Housing Court as reported on a tenant screening report, will cause that person to encounter considerable difficulty if he or she every looks for a new apartment. Housing Court data for

1
2 tenant screening reports is purchased from the New
3 York City Housing Court's Office of Court
4 Administration. Since they are a type of credit
5 report, they are subject to both the Fair, Federal
6 Fair Credit Reporting Act and the New York State
7 Fair Credit Reporting Act. Many have criticized
8 the sale of these records, because the information
9 that is released publishes only the filings, not
10 the deposition or eventual outcome. For many
11 landlords, the very existence of a Housing Court
12 filing, even if the tenant prevailed, or the case
13 was dismissed, is reason enough to reject an
14 application. Yet there are many legitimate
15 reasons that one might have a Housing Court filing
16 on their record. A tenant might be the victim of
17 an unfair eviction, after he or she legally
18 withheld rent from a landlord, in order to get
19 repairs accomplished; other unfair evictions such
20 as owner occupancy evictions or harassment based
21 evictions will also produce a Housing Court file
22 for a tenant. Even a person has never been to
23 Housing Court may be rejected for an apartment
24 when a tenant screening report mistakes him or her
25 for someone with a similar name. That a person

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2 with good credit and a clean record, would be
3 rejected from an apartment simply because he or
4 she has ever appeared in Housing Court, or has
5 been the victim of mistaken identity, is wholly
6 unfair. Intro 995 attempts to address this issue.
7 It would require any landlord or management
8 company to disclose to the potential tenant the
9 name of the screening company it is using, and
10 post signs alerting tenants to their right to
11 obtain a free copy of their screening report every
12 year from that agency. This disclosure would
13 wrongfully, this disclosure would give wrongfully
14 rejected tenants the opportunity to correct any
15 inaccuracies and to clear their name. Today we
16 will be also holding our first hearing on Local
17 1030, a law in relation to the enforcement of
18 etching acid legislation. In May, the Council
19 passed a bill requiring registration for the
20 purchase and possession of etching acid, Local Law
21 30 of 2009. Unfortunately, there was a drafting
22 error in the language of the bill, Intro 1030
23 would replace the term "section" with the term
24 "subchapter," in Section 20-616 of the
25 administrative code, which would ensure that the

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2 etching acid bill may be properly enforced. I'll
3 conclude my remarks here by thanking everyone for
4 attending today's hearing, and open up the
5 microphone if anyone would like to say, if any of
6 my colleagues, which only one is here at the
7 moment, Council Member Barron, would like to say a
8 few words about either bill. Council Member
9 Barron? Okay, great. We are first going to hear
10 from the Deputy Counselor to the Mayor, Mr.
11 William Heinzen. Good morning. You can--start
12 whenever you're ready, and I'm sure you've
13 testified before, I believe, so you know to turn
14 on the mic now.

15 WILLIAM HEINZEN: Okay. I think I
16 have it now.

17 CHAIRPERSON COMRIE: Alright,
18 great. Thank you.

19 WILLIAM HEINZEN: Thank you,
20 Councilman. Good morning, Chairman Comrie and
21 Councilman Barron, and thank you for this
22 opportunity today to testify before the Committee
23 on Consumer Affairs. My name is William Heinzen
24 and I'm Deputy Counselor to the Mayor, and we're
25 glad to be heard today about Intro 995, which

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2 would require landlords to disclose to potential
3 renters the contact information of any tenant
4 screening agency that is used to review the
5 potential tenants' backgrounds. The bill would
6 also require landlords to notify potential renters
7 of a right to obtain one free tenant screening
8 report per year from tenant screening agencies.

9 Bloomberg Administration is committed to
10 increasing transparency not only in government
11 processes, but also encouraging private industry
12 to do the same. In dealing with a subject as
13 important as accurate personal credit information,
14 we understand that a small error can create a big
15 problem. That's why we support the intent of this
16 bill, and we appreciate the Council's support in
17 our efforts to help New Yorkers gain access to the
18 information they need to make informed decisions
19 in the housing market. With respect to Intro 995,
20 we share your concern that New Yorkers should not
21 be disadvantaged by personal credit information
22 that is incorrect, or that they have no
23 opportunity to challenge potentially incorrect
24 credit information. And I would add to that based
25 on the opening comments, we share your concern

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2 that New Yorkers would have no ability to put
3 information on their credit report into the proper
4 context, particularly in the context of Housing
5 Court filings. As written, we think that this
6 bill presents a number of implementation concerns.
7 First, if a landlord simply declines to state that
8 it has used a tenant screening agency, it would be
9 difficult, if not impossible, to demonstrate
10 otherwise. Further, even if after these hearings
11 we are able to determine the universe of agencies
12 that compile tenant screening reports, there is an
13 enormous amount of similar information available
14 to any landlord with a computer. In other words,
15 even if those agencies did not exist, landlords
16 could still use readily information available
17 against tenants. And again, playing off on your
18 earlier remarks, some of that readily information
19 available, readily available information, may be
20 incomplete or completely devoid of proper context.
21 That said, we appreciate the council's focus on
22 this issue, and we agree it is ripe for review.
23 To that end, the mayor's office has asked the
24 Department of Consumer Affairs, through its Office
25 of Financial Empowerment, and the Department of

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2 Housing, Preservation and Development, our
3 agencies with the most relevant expertise to
4 review tenant screening agencies and to evaluate
5 how they affect the city's rental market and
6 renters. Particularly, we would like to better
7 understand the universe of such agencies, how they
8 work, where they receive their information, how
9 often they update it, and how widely such agencies
10 are used. We also want to review the overlay of
11 state and federal regulatory schemes governing
12 credit reports to ensure that any regulation taken
13 up by the City does not conflict with any federal
14 credit report regulations. Further, we anticipate
15 speaking with the Office of Court Administration
16 about information concerning Housing Court cases,
17 and how it is reported. Informed by the
18 information your Committee develops today, and our
19 review, we anticipate reporting back to you
20 shortly, and certainly within 30 days, with our
21 findings. We look forward to working with the
22 Speaker, with this Committee, with Council Member
23 Garodnick and the entire City Council, to allow
24 this bill to improve transparency in the rental
25 process, and to protect potential tenants. Thank

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you, and I'd be happy to take any questions.

[pause]

CHAIRPERSON COMRIE: Can we ask you how come the Department of Consumer Affairs is not here this morning to talk about their involvement or consideration regarding this bill?

WILLIAM HEINZEN: Sure. We decided that this is actually, this issue is actually somewhat larger than just one agency, that the Department of Consumer Affairs has a role to play in credit reports to the extent that through its Office of Financial Empowerment, it offers credit counseling in all the boroughs, to low income New Yorkers and helps people understand the impact of bad credit or incorrect credit information. However, we thought it would be better to have this directed through the Mayor's office, so that it's not just the Department of Consumer Affairs, but also HPD and possibly other agencies that would be helpful in reviewing this.

CHAIRPERSON COMRIE: So have you started to put this joint taskforce together to review it? Or are you saying that you need more time to take a look at the entire issue? If you--

2 WILLIAM HEINZEN: We have started.
3 I certainly need more time. I've just received a
4 copy of your Committee report about 15 minutes
5 ago, so I would want to review--

6 CHAIRPERSON COMRIE: I'm sorry, you
7 received a copy of--?

8 WILLIAM HEINZEN: Of your Committee
9 report about 15 minutes ago, so I would want to
10 review that.

11 CHAIRPERSON COMRIE: Oh, you hadn't
12 gotten that Committee report? You hadn't gotten
13 the bill before?

14 WILLIAM HEINZEN: Yes, when we
15 reviewed the bill.

16 CHAIRPERSON COMRIE: Alright.

17 WILLIAM HEINZEN: We have
18 definitely started the process of considering the
19 bill, considering how to go at the problem.

20 CHAIRPERSON COMRIE: And why do you
21 think that this may be in conflict with any other
22 agency, or any other entity as far as the state or
23 federal rules may be concerned? When we're asking
24 the office to deal with something that's pretty
25 clear cut. And what do you, why do you think it

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2 would cross the jurisdiction, if we're asking the
3 Court Administration just to provide a clear cut
4 and more understandable response to, so that
5 people can understand what their actual status is.
6 Or that the, even the landlord could understand
7 what the actual status is, as opposed to the
8 ambiguous way that it's done now?

9 WILLIAM HEINZEN: And I would say
10 that the bill doesn't do that on its face. The
11 bill actually doesn't refer to the Office of Court
12 Administration. [pause] I think it will be a
13 good start to look at the way the Office of Court
14 Administration does report this information, and
15 you mentioned in your opening remarks the lack of
16 context of that information.

17 CHAIRPERSON COMRIE: I'm sorry,
18 I'm, my mistake. So, we're, we're asking, we're
19 asking to, the landlords to take the burden on to
20 create the reports. I'm sorry, I'm, just to
21 disclose the names and the addresses of the people
22 that they're using for that. And why--do you
23 think that, I'm concerned, you said you support
24 the intent of the bill, but you're, you feel that
25 that would be a conflict for the bill to be

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2 implemented?

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WILLIAM HEINZEN: I don't know that if it's the best way to get at the problem, just to have the landlords list out whether or not they used the agency; because if, I'm not sure what the enforcement would be if the landlord simply doesn't do it. I'm not, I'm not sure how you would determine whether or not the landlord is telling the truth.

CHAIRPERSON COMRIE: And why do you not consider the issue of tenant screening to be under DCA's jurisdiction, even though the federal and state reports are considered to be a type of credit report, and as such subject to the federal reporting credit law?

WILLIAM HEINZEN: And I, if I said or suggested that tenants aren't under the jurisdiction of DCA, I misspoke. Credit reports-- I'm not saying that DCA does not have jurisdiction over credit reports. My concern about existing federal and state law is just, I frankly don't have a good enough picture right now of the interplay of federal and state law, and of the extent to which these would qualify as credit

1 reports under federal law. The specific tenant
2 screening information, specifically where they
3 talk about, for example, family housing court
4 filings, or anecdotal information from landlords,
5 to the extent that's contained in the report, I'm
6 not, I'm informed that that probably does come
7 within the definition of a federal credit report.
8 And your counsel is nodding to me, ensuring me
9 that it does, but I would just want to do a little
10 bit more research on it.

12 CHAIRPERSON COMRIE: Okay. So.
13 Myself not being an expert, and have only been an,
14 having been an apartment owner for 16 or 17 years
15 now. I can, it's difficult for me to understand
16 that the issue of how exactly this, how exactly it
17 would be limiting or a jurisdictional problem for
18 both sides of the issue, actually. How it is that
19 the Office of Court Administration can put out
20 incomplete reports that we're not dealing with how
21 it is that the landlords would not be able to
22 disclose who they're using to do the credit
23 reporting, and how it is also that the tenants are
24 not able to find out the adequate information so
25 that they can be on prior to doing a search. So,

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2 I'm trying to just go through my cloud of
3 confusion here, since this is not my bill, this is
4 Council Member Garodnick's bill, I'm trying to
5 work it through. Speaking of the person, he is in
6 the room. But how do you, what--right. How do
7 you suggest, in your opinion, the best way it
8 would be that we could as in, in our role as City
9 officials, help to resolve this type of problem,
10 as you understand it?

11 WILLIAM HEINZEN: I think, and I've
12 been a tenant since I've, you know, for eleven
13 years, and I'm a tenant now. And so, I understand
14 the concerns that tenants would have going into
15 this kind of situation. I think one way is to
16 really explore more of OCA, with the Office of
17 Court Administration, how they compile this
18 information, how they make this information
19 available. And the extent to which, as you said
20 it in your opening remarks, that the information
21 that's made available is incomplete, is without
22 context, so that you simply see that someone has
23 filed one or three actions, or has been a party to
24 actions without knowing anything more about them.
25 If there's a way we can not only learn more about

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2 that process, but try to, you know, put a little
3 more sunlight into that process, I think that
4 would be one of the most helpful things that we
5 could achieve.

6 CHAIRPERSON COMRIE: So you do
7 think that there's some opportunity for us to have
8 some input with the Office of Court Administration
9 and clear it up from that end, to make it more
10 transparent. So that we wouldn't have, so it
11 would be easier for the tenants to find out this
12 information themselves?

13 WILLIAM HEINZEN: Yeah, I think
14 there's a, yes, I think there's always an
15 opportunity for input. I mean, we can't guarantee
16 exactly what OCA will say to us, but yes. And I
17 think we can, we can approach that together.

18 CHAIRPERSON COMRIE: But the City
19 has had other opportunities to input and make
20 suggestions to OCA about things that they needed
21 to do, so it wouldn't be--

22 WILLIAM HEINZEN: So we can, we
23 will definitely approach that together.

24 CHAIRPERSON COMRIE: Right. But
25 you're saying it not necessarily has to be done

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2 through legislation.

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WILLIAM HEINZEN: Might not.

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CHAIRPERSON COMRIE: Okay.

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Alright, great. Alright, well Council Member

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Garodnick is here. I'm sure he has a opening

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statement and a few questions, so we'll turn it

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over to him. I don't see you wearing a rose, so

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whatever graduation you went to must've been low

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budget.

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COUNCIL MEMBER GARODNICK: Thank

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you. You know, they, they're a little more

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restrained, perhaps, with their roses and

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carnations on the east side of Manhattan. I very

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rarely get them, I don't know why.

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CHAIRPERSON COMRIE: Oh, okay.

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COUNCIL MEMBER GARODNICK: But

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thank you for your patience, and I'm glad to be

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here. And thank you for your testimony, I did

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have a chance to read it. And very glad we're

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able to have a hearing on Intro 995. We all know

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that landlords conduct varying amounts of due

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diligence on prospective renters before agreeing

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to offer a lease. And with the help of tenant

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screening reports, the housing equivalent to a

1 credit report, landlords can easily and
2 inexpensively find out about a prospective
3 tenant's rental history, including his or her
4 experience in housing court. Any tenant who goes
5 to housing court is likely to be listed in tenant
6 screening reports, but because the reports often
7 lack meaningful detail regarding the case, tenants
8 who went to court to assert their rights against a
9 landlord may find themselves listed alongside
10 others with bad credit or history of nonpayment.
11 The way we illustrate it is, imagine if you were
12 taken to Housing Court because you withheld rent
13 to force your landlord to make necessary repairs.
14 Or, if you were sued by your landlord but the
15 judge ruled in your favor. Or, that your building
16 entered into foreclosure, despite the fact that
17 you had dutifully paid your rent every month, and
18 that you were brought to Housing Court as part of
19 the standard eviction process in the context of
20 foreclosure. Or worse, that you had never even
21 been taken to Housing Court, but you share a name
22 with someone who has been taken to Housing Court.
23 Unfortunately, each of these scenarios is not only
24 plausible, but common, and is likely grounds for
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2 the denial of a lease. The implications of such
3 missing or incorrect information can be
4 devastating for renters. The City has today no
5 formal mechanism to monitor agencies that sell
6 tenant screening reports, and because hundreds of
7 such agencies exist, tenants find it nearly
8 impossible to track down all versions of their
9 tenant screening report. While we acknowledge a
10 landlord's need to screen for people who are
11 unlikely to pay the bills, screening reports have
12 improperly created problems for diligent, rent
13 paying renters. In order to add a measure of
14 clarity to the reports and give perspective
15 renters the chance to correct and amend
16 information about their tenancy, Intro 995, which
17 we call the Tenant Fair Chance Act, will require
18 any landlord, management agency or broker who uses
19 a tenant screening report, to disclose the name of
20 the agency providing a copy of the report, giving
21 the tenant the chance to dispute any inaccuracies
22 directly with the agency; furthermore, all users
23 of tenant screening reports will be required to
24 post a sign telling tenants that under federal law
25 they are entitled to one free copy of their report

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per year from each tenant screening agencies. No tenant should be scared to exercise his or her rights in Housing Court or held accountable for someone else's mistakes. With the Tenant Fair Chance Act, we'll have the opportunity to ensure that they no longer will be. Now, I appreciate Mr. Heinzen, your testimony, I wasn't here to hear it, but I read it, 'cause it was brief enough. And so, I am briefed on what you said here. So let me just go through real quick. I think the sum and substance of it is that the Administration is not formally taking a position on this bill today, is that correct?

WILLIAM HEINZEN: Our position is we completely support the intent of the bill, having learned more about the problem, and looking forward to learning more about the problem we want to work with you to address the concern. We have concerns about the enforceability of the bill as written. Or maybe I should say not so much the enforceability as much as the effectiveness of the bill.

COUNCIL MEMBER GARODNICK: Okay--

WILLIAM HEINZEN: And that would

1
2 specifically be how do you catch--if someone just
3 doesn't disclose this information, how do you, how
4 would you capture that?

5 COUNCIL MEMBER GARODNICK: Mhm.

6 WILLIAM HEINZEN: And so we want to
7 explore if there are other ways to get at this
8 problem, explore with you whether there might be
9 other ways to get at this problem.

10 COUNCIL MEMBER GARODNICK: Okay,
11 so, it's my understanding that you have referred
12 this to all of the agencies or entities within the
13 Mayor's office, DCA, HPD, to review this issue, is
14 that correct? And--

15 WILLIAM HEINZEN: Referred it
16 really, it's, I would say we're going to be
17 working with those agencies, we're not kicking out
18 of the Mayor's office, we'll be directing it.

19 COUNCIL MEMBER GARODNICK: Okay.
20 And is it your goal in this, and it sounds like
21 you've given them thirty days to report back to
22 you with their findings about the problem.

23 WILLIAM HEINZEN: Mhm.

24 COUNCIL MEMBER GARODNICK: Okay.
25 Will you be present for the hearing, the rest of

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2 the hearing today?

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WILLIAM HEINZEN: I won't, but
people working with me will.

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COUNCIL MEMBER GARODNICK: Okay,
'cause I think it's important, 'cause we've got a
lot of advocates, lawyers who represent tenants
who are here, who will be sharing their
experiences. And I think it's important for you
and for your staff to hear directly from them to
instruct, you know, if this is news to the Mayor's
office that this is a problem, then we want to
make sure that everybody understands, you know,
directly what the issues are. Because we think
that there are some real issues.

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WILLIAM HEINZEN: Right, and I
wouldn't necessarily say that it's news to us, but
I would say, I don't think we understand the full
extent of the problem, which I assume is the
reason for the hearings.

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COUNCIL MEMBER GARODNICK: Okay.
And that is partially the reason for the hearing,
yes. We also generally like to have the
Administration's views on the legislation--

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WILLIAM HEINZEN: Understood,

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2 understood.

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COUNCIL MEMBER GARODNICK: --before
the Committee.

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WILLIAM HEINZEN: Understood.

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COUNCIL MEMBER GARODNICK: And so,
I must admit I'm a little surprised that we don't
have an opinion, you know, an opinion one way or
the other, or we agree but we think that you need
to strengthen the language on this particular
paragraph in this particular way, and we could
take it back and allow the advocates to comment on
what you've suggested, so that we can actually
have a well-informed discussion. That's usually
the process that we engage, and I can't really ask
you any questions of substance here because we
don't really have much to talk about today, as it
seems. Other than you believe it's ripe for
review. Is that right?

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WILLIAM HEINZEN: I'm not sure I
think that that's completely fair. I'd be very
happy to sit down and talk with any member of the
Committee or staff, or counsel, to talk about the
bill and to talk about details of the bill.

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COUNCIL MEMBER GARODNICK: Okay.

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2 You noted in your testimony that you want to
3 review overlay of state and federal regulatory
4 schemes governing credit reports, to ensure that
5 regulation taken up by the City does not conflict
6 with any federal credit report regulations. We
7 certainly agree with that, we don't want to
8 conflict, we think that this compliments rather
9 than conflicts.

10 WILLIAM HEINZEN: I understand.

11 COUNCIL MEMBER GARODNICK: And it
12 seems that the only substantive concern that
13 you've raised in your testimony is the enforcement
14 or finding a way to demonstrate that a landlord
15 has used a tenant screen agency when they decline
16 to state or they say that they have not. Is that,
17 is that accurate?

18 WILLIAM HEINZEN: Respectfully, I
19 wouldn't say that's the only substantive critique.
20 I think also we've offered, and then in discussion
21 that I had before with your colleague, I think it
22 would also be useful to work with OCA and to
23 explore more, exactly what type of information
24 they do report, and how it could be helpful to
25 provide more context in the information they

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2 report.

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4 COUNCIL MEMBER GARODNICK: You, do
you happen--

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6 WILLIAM HEINZEN: It may, and I'm
sorry.

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8 COUNCIL MEMBER GARODNICK: Yeah,
sorry, finish your thought, sorry.

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10 WILLIAM HEINZEN: My understanding
11 is that the problem is coming from OCA's reporting
12 of information that is somewhat blunt and doesn't
13 provide the, may not provide all the proper
14 context rather than that they're providing the
15 full information, and the tenant screening
16 agencies themselves are just cherry picking. But
I'm not--is that correct? I'm not certain.

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18 COUNCIL MEMBER GARODNICK: Well,
19 it's, it's correct to say that, that they are, it
20 is blunt information which does not capture what
21 is going on. And the existence of the reports,
22 frequently, are used as bases for denial of leases
23 where in fact the person under review or
24 consideration for an apartment was either
25 victorious in Housing Court or they're part of a
foreclosure proceeding, or they were never there

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2 in the first place. So, do you have any
3 familiarity with these tenant screening repots,
4 like for example how much tenant screening
5 companies pay OCA for tenant records?

6 WILLIAM HEINZEN: Do I personally?

7 COUNCIL MEMBER GARODNICK: Yeah.

8 WILLIAM HEINZEN: I don't.

9 COUNCIL MEMBER GARODNICK: Okay.

10 And you don't, so you don't, and you don't have
11 any knowledge about how much money landlords
12 generally pay per tenant screening report, or any
13 financial arrangements between tenant screening
14 companies and the Office of Court Administration.

15 WILLIAM HEINZEN: I'm aware of the
16 general pattern, but I don't know the details.

17 COUNCIL MEMBER GARODNICK: Do you
18 know if there's any way for a landlord to obtain
19 the information that is contained in these tenant
20 screening reports, other than by buying them from
21 the Office of Court Administration.

22 WILLIAM HEINZEN: Probably sitting
23 on the internet and running a search.

24 COUNCIL MEMBER GARODNICK: Do you
25 know for certain?

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2 WILLIAM HEINZEN: I'm pretty sure
3 you can get a lot of information about people on
4 the internet, including--

5 COUNCIL MEMBER GARODNICK: You
6 thinking--

7 WILLIAM HEINZEN: --including
8 filings, including court filings.

9 COUNCIL MEMBER GARODNICK: Okay.
10 Do you know about the variation between tenant
11 screening reports? The different categories of
12 information? You know, whether different
13 screening reporting, tenant screening companies
14 would have different information on their reports?
15 Or any of the differences between the tenant
16 screening companies?

17 WILLIAM HEINZEN: I assume they
18 would.

19 COUNCIL MEMBER GARODNICK: I'm
20 sorry.

21 WILLIAM HEINZEN: I assume, I
22 assume there would--

23 COUNCIL MEMBER GARODNICK: The
24 question is do you--

25 WILLIAM HEINZEN: --be differences.

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2 Do I know? No, Councilman, I mean, if you're--Are
3 you trying, if you're trying to get at the fact
4 that I'm not a complete expert on tenant screening
5 reports, then I confess to that.

6 COUNCIL MEMBER GARODNICK: No.

7 Okay--

8 WILLIAM HEINZEN: I just received a
9 copy of the Committee report 15 minutes before I
10 testified. I intend to read it.

11 COUNCIL MEMBER GARODNICK: Okay.

12 WILLIAM HEINZEN: I intend to
13 review everything that's said in the hearing
14 today.

15 COUNCIL MEMBER GARODNICK: Okay,
16 thank you for mentioning that.

17 WILLIAM HEINZEN: And to look into
18 it more.

19 COUNCIL MEMBER GARODNICK: Then I
20 will stop right there. I did not know that you
21 just got it 15 minutes. I, this is not a
22 criticism of you, because obviously you're here
23 representing the Administration. But I am really
24 disappointed. This is not directed at you, at the
25 way the Administration has handled this particular

1
2 issue, because we're, we're coming to the table
3 here with legislation which we believe to be
4 important, and we think that it's the
5 responsibility of the administration to come here
6 prepared and ready to analyze the details of the
7 bill. This is, again, this is not a criticism--

8 WILLIAM HEINZEN: And I've come
9 here, Councilman, I, now I actually reject that, I
10 have come here prepared to analyze the details of
11 this bill. And I have--I can analyze the details
12 of the bill. The bill does not talk about the
13 variety of tenant screening reports. It does not
14 talk about the process.

15 COUNCIL MEMBER GARODNICK: Okay.
16 No, but I think you're, I think you're parsing my
17 words here. What I'm trying to say to you is that
18 there's a lot of background that goes into all of
19 this. As you acknowledged in your testimony--

20 WILLIAM HEINZEN: Understood.

21 COUNCIL MEMBER GARODNICK: --that
22 you, the Administration needs to review it, and we
23 appreciate that. But we just wish that they had
24 reviewed it and come to the table today to have
25 this conversation. But we don't need to go in a

1
2 back and forth about that. I don't mean this as a
3 criticism of you personally, because this is a far
4 bigger issue. And it sort of stalls us here in
5 terms of the Administration's position, but we'll
6 be eager to hear from the advocates, 'cause they
7 will surely enlighten us on what the problem is.
8 And I do very much hope that, if not you, but
9 members of your staff, or staffs of HPD, or staff
10 of DCA, or staff of all of the folks that you've
11 asked for feedback, will be here to listen to what
12 the advocates have to say.

13 WILLIAM HEINZEN: Okay, thank you
14 very much. And I just want to stress that we are
15 absolutely will and looking forward to working
16 with you, and working with the Committee on this
17 issue.

18 COUNCIL MEMBER GARODNICK: But,
19 thank you, and I--

20 WILLIAM HEINZEN: I personally.

21 COUNCIL MEMBER GARODNICK: Good. I
22 look forward to that, too.

23 WILLIAM HEINZEN: Thank you, I
24 think we'll--

25 COUNCIL MEMBER GARODNICK: And we

1
2 will come to a, find a way to get this done right.
3 And we appreciate the concerns that you did raise
4 today. And we will do our best to try to address
5 them today and beyond. So thank you very much.

6 WILLIAM HEINZEN: Okay, thank you.

7 CHAIRPERSON COMRIE: Thank you for
8 being here, Mr. Heinzen. You got a--Oh,
9 Councilman Barron has a question for you.

10 COUNCIL MEMBER BARRON: Not to
11 belabor the point, but I don't want to let you off
12 that easily. I mean, I mean you knew about--

13 CHAIRPERSON COMRIE: But we did
14 just get the report.

15 COUNCIL MEMBER BARRON: I
16 understand that, Mr. Chairman, let me just ask my
17 question. He just got the report, but he knew
18 about the bill for about a month, so it's not like
19 this is something new. And the same research, the
20 same information that's in the report, you can do
21 that kind of background research and information
22 on this particular bill. So it's not like 'cause
23 you got a report 15 minutes ago, that more work
24 could not have been put into doing the preparation
25 for this kind of hearing. So, I don't think that-

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WILLIAM HEINZEN: We've been--

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COUNCIL MEMBER BARRON: Let me

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finish my point.

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WILLIAM HEINZEN: Excuse me,

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Councilman.

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COUNCIL MEMBER BARRON: My only

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point is that I think that more research, more

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effort, more work should've been done into getting

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all the information--you probably could've gotten

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the same kind of information that the report even

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has if we, if you'd done a more thorough job. So,

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I just wanted to say that, Mr. Chair, that I

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thought he should've come more prepared at this

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hearing to handle some of this stuff, rather than

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saying, "I just got the thing 15 minutes ago,"

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like he only knew about it 15 minutes ago. You

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knew about this for a month, and there's plenty of

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information that you could've come here with to

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deal with this very, very serious issues. So I

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just wanted to make that statement, not to really

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ask you any questions.

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WILLIAM HEINZEN: Thank you,

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Councilman. And I just want to stress that I have

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2 had the bill, you're absolutely right, and we take
3 this issue very seriously. We have looked into
4 the issue. When I, my comment about not having
5 the Committee report just meant that I was not
6 aware of some of the specific variations between
7 types of tenant screening reports. We have looked
8 into trying to locate tenant screening agencies in
9 a very informal web search, and we did find some
10 of them. That doesn't tell us, that didn't tell
11 me the entire story. So, I apologize.

12 COUNCIL MEMBER BARRON:
13 [interposing] Well, I just think that there's
14 information out there that where--

15 WILLIAM HEINZEN: I meant no
16 disrespect to you or to the Committee.

17 COUNCIL MEMBER BARRON: You
18 could've gotten the different types of screenings
19 the same way we got it. It's like, there's
20 nothing that we have exclusive information of, and
21 you don't. So, I mean, the same thing could've
22 happened. I just think more work should've been
23 done, put into this.

24 CHAIRPERSON COMRIE: Okay. Thank
25 you for being here. Next we'll hear from--

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WILLIAM HEINZEN: Thank you.

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CHAIRPERSON COMRIE: Louise Seeley
from the Citywide Taskforce Housing Court, and
James Fishman from Fishman and Neil.

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COUNCIL MEMBER KOPPELL: Mr.
Chairman, good morning.

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CHAIRPERSON COMRIE: Yes, I'm
sorry.

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COUNCIL MEMBER KOPPELL: I
apologize for being late. I would like to be
added as a sponsor of this measure, I think it's a
very good idea.

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CHAIRPERSON COMRIE: Okay. Thank
you.

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COUNCIL MEMBER KOPPELL: Thank you.

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CHAIRPERSON COMRIE: Okay, you're
going to have three minutes each to present your
testimony. We do have to be wrapped up by 11:30,
I want to remind everybody. So let's try to be
succinct with our questions and so we can move
forward on this. Whoever would like to speak
first.

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LOUISE SEELEY: Sure. Sure.

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JAMES FISHMAN: Alright, thanks.

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CHAIRPERSON COMRIE: Ladies first.

JAMES FISHMAN: Oh, alright. She wants to defer.

CHAIRPERSON COMRIE: Y'all work it out, work it out.

JAMES FISHMAN: Alright.

LOUISE SEELEY: Hi, I'm Louise Seeley, I'm the Executive Director of the Citywide Taskforce on Housing Court. And I'm here today to testify in support of Intro 995. I want to thank the Committee for allowing me to testify. The Citywide Taskforce on Housing Court is a nonprofit organization that provides information referrals for unrepresented tenants and landlords with questions about Housing Court. Every year we assist over 40,000 New Yorkers at our information tables, which are located in Housing Court, and through our hotline which operates Monday through Friday, 9:00 to 5:00 p.m. At our information table and through our hotline we encounter many New Yorkers who are having difficulty securing apartments because their name appears on a tenant screening report. Most of these people are shocked to learn of the existence of tenant

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2 screening reports, and are appalled that the
3 Office of Court Administration, OCA, sells the
4 data from Housing Court. Some of these people
5 were brought to court for legitimate reasons, such
6 as owing rent, but others were brought to Court
7 through no fault of their own. Some of the people
8 we speak to were not even aware a case had been
9 filed against them. And others find their names
10 on the report in complete error. Intro 995, while
11 not solving all the problems associated with
12 tenant blacklisting, provides needed relief and an
13 avenue for redress for some tenants. So what are
14 tenant screening reports and where does the data
15 come from? A tenant screening report is a report
16 which lists all Housing Court cases against a
17 particular tenant. In New York City, OCA, which
18 administers Housing Court, sells the data of
19 Housing Court cases to anyone willing to pay for
20 it. Currently, OCA has contracts with five
21 companies: First Advantage Safe Rent, Incisive
22 Media, National Tenant Network, Onsite and Rent
23 Port. These companies have to buy all the old
24 data and then get a daily field of whatever
25 happened in Court that day. Up until last

1
2 January, OCA would send the data as soon as a case
3 was filed. However, thanks to our and other
4 organizations' advocacy efforts, and with the help
5 of elected officials, OCA now only sells the data
6 of calendared cases. But to put real numbers on
7 this, in 2008 there were 290,986 cases filed in
8 New York City Housing Court. 157,101 of them were
9 added to the calendar. Thus, the 133,885 cases
10 that were not filed and not calendared were not
11 reported. However, the data from the 157,000 plus
12 cases that were calendared and were sold, were
13 sold, and herein lies the problem. The tenants on
14 these 157 plus cases are now blacklisted. These
15 tenants will have difficult times securing
16 apartment, new housing, and we've recently
17 discovered they may have difficult securing
18 employment. Tenants applying for apartments are
19 screened for prior Housing Court history. Many
20 tenants, many landlords will not rent to anyone
21 who's ever been to Housing Court. However, in New
22 York City, tenants are brought to Housing Court
23 for all kinds of reasons, and not all of them
24 reflect on whether a person will be a good tenant.
25 For example, after a bank takes over a home in

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2 foreclosure, they move to evict everyone. We are
3 seeing many people brought to Housing Court
4 because their landlord had defaulted on the
5 mortgage. These people did nothing wrong, yet
6 they are now blacklisted. Predatory equity
7 companies, like Vantage and Pinnacle, use Housing
8 Court to try and empty buildings of rent
9 stabilized tenants. This Council has heard much
10 testimony about tenants being brought to court on
11 frivolous suits. [tone] Can I continue?

12 CHAIRPERSON COMRIE: Yeah, if you
13 could wrap it up.

14 LOUISE SEELEY: Yeah, alright, I'll
15 wrap it up. Just, in sum and substance, the
16 problem with tenant blacklists is that tenants
17 can't find housing. This bill will not actually
18 address many of the problems associated with
19 blacklisting, but it will allow tenants to know
20 which companies a possible landlord's going to
21 use, so that they can clean up their report. The
22 administration's concern that the universe is
23 unknown and they don't have a name is exactly why
24 this bill has to be passed. Tenants needs to know
25 before they go rent an apartment what company a

1
2 landlord's using, so they can get the report,
3 clean up any errors, and secure the apartment if
4 there were any errors in the report.

5 CHAIRPERSON COMRIE: Thank you.

6 [pause] Whenever you're ready.

7 JAMES FISHMAN: Thank you.

8 Chairman Comrie and members of the Committee, my
9 name is James Fishman. I'm an attorney in private
10 practice, specializing in representing tenants and
11 consumers. I'm a former Assistant Attorney
12 General in the Bureau of Consumer Frauds and
13 Protection, as well as a former senior staff
14 attorney with the Legal Aid Society, Civil
15 Division. I'm here this morning to speak in
16 support of Intro Number 995, a proposal to amend
17 the administrative code to provide disclosure of
18 tenant screening information to applicants for
19 rental housing. For the past six years, I've been
20 extensively involved in the problem of tenant
21 blacklisting. I have seen many of my clients
22 unable to rent housing because they found
23 themselves trapped in a database who's only
24 criteria for admission is being named in an
25 eviction proceeding filed in the Housing Court.

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2 In 2004, I brought a federal class action against
3 First American Registry, now known as First
4 American Safe Rent--First Advantage Safe Rent, I'm
5 sorry--the nation's largest tenant screening
6 bureau, on behalf of thousands of tenants who had
7 been sued in the New York City Housing Court. The
8 suit charged First Advantage with violating the
9 federal and state Fair Credit Reporting Acts, by
10 failing to completely and accurately report the
11 disposition of Housing Court cases. Tenant
12 blacklisting is probably the most serious threat
13 facing tenants in New York City today, because it
14 prevents them from being able to exercise the
15 rights given to them by the legislature. Every
16 tenant who is sued in a summary eviction
17 proceeding, even where the tenant's position was
18 justified, or if the case was brought by mistake,
19 is immediately swept into the electronic database
20 dragnet created by the Office of Court
21 Administration. That database is then used by
22 data companies, known as tenant screening bureaus,
23 to create reports which are sold to landlords and
24 brokers, who want to know if a prospective tenant
25 was ever named in a Housing Court proceeding.

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2 CHAIRPERSON COMRIE: Quiet, please,
3 can we have someone close those doors in the back
4 and close the side doors, so that the speaker can
5 have time to finish? Can I have someone in the
6 back close those doors? Thank you. Anyone can
7 close the doors, thank you. Sorry, go ahead.

8 JAMES FISHMAN: Thank you. In
9 addition, many tenant screening companies fail to
10 expunge cases that are more than seven years old,
11 as is required by federal and state law. It is
12 well known that many New York City landlords and
13 brokers routinely reject applicants out of hand,
14 simply because they were named in an eviction
15 proceeding regardless of its outcome. It is also
16 well known that it is almost impossible for
17 individuals who are seeking to rent an apartment
18 to determine in advance if their tenant screening
19 file contains erroneous, inaccurate or obsolete
20 information. A recent Yale Law Journal article
21 reported that there are currently over 650 tenant
22 screening companies that are operating in the
23 United States. Unlike the big three credit
24 reporting agencies--TransUnion, Experian, and
25 Equifax--there is an almost endless number of

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2 tenant screening bureaus. Under the current law,
3 landlords and brokers are not required to disclose
4 in advance [tone] the number, the name of the
5 tenant screening bureau they use in the
6 application evaluation process. The proposed
7 legislation represents an important first step
8 toward making the tenant screening process more
9 equitable, by making it possible for apartment
10 applicants to check their tenant screening file in
11 advance, and correct any errors. The primary
12 responsibility for tenant screening and credit
13 reporting protection rests with the state and
14 federal governments, leaving few areas for
15 involvement by City government. However, this
16 bill is the type of proactive legislation that
17 addresses a need that neither the federal or state
18 governments have dealt with. New York City in
19 particular, where the rental housing market is so
20 tight, needs legislation like this, because it is
21 too late for tenants to learn the name of the
22 tenant screening company a particular landlord
23 used, after an application is denied, as current
24 state and federal law provides. I urge this
25 Committee, and the full Council, to pass this

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2 bill. Thank you. I also want to add something in
3 response to what the Mayor's Office representative
4 said earlier. That one of the implementation
5 problems that the Administration sees is that it
6 would be difficult to determine if a landlord was
7 lying, by simply saying "We don't use a tenant
8 screening report." That's actually not the case,
9 because under current federal and state law,
10 landlords are already required to disclose the
11 name of the company they use, but after the fact.
12 So, if a landlord's going to break that law,
13 they're going to break this one, too. So I don't
14 think that's a legitimate concern. There are
15 certainly landlords who comply with the law, there
16 are certainly some who do not. But making another
17 law that a landlord might violate is not a reason
18 not to make the law. Thank you.

19 CHAIRPERSON COMRIE: Council Member
20 Garodnick has a question. I just, so you're
21 saying that the landlords are already required to
22 disclose after they make a determination.

23 JAMES FISHMAN: If the application
24 is denied--

25 CHAIRPERSON COMRIE: Right.

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JAMES FISHMAN: --the landlord, like any other creditor, is required to disclose the name and address of the credit reporting agency, including any tenant screening bureau that they used in making the determination. It either has to be, in New York, it has to be orally or in writing, if it's for an apartment. So, under current law, they have to give you the information after the fact. This law would make it before the fact.

CHAIRPERSON COMRIE: Okay. And you find that most of the legitimate landlords don't have a problem with doing that type of information exchange.

JAMES FISHMAN: Well, actually, the tenant screening companies already help the landlords to do this. They prepare forms, when a landlord signs up as a subscriber to a tenant screening bureau, one of the things you get as a subscriber, are the forms to send to the people you rejected. So they do the work for them. This is not heavy lifting on the landlord's part, to comply with the law.

CHAIRPERSON COMRIE: But you also

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2 said that these companies, or I think there was
3 allusion by Ms. Seeley that most of these
4 companies get the wrong information 80 percent of
5 the time, or--

6 LOUISE SEELEY: That's not what I
7 said.

8 CHAIRPERSON COMRIE: Oh.

9 LOUISE SEELEY: Information can be
10 accurate, and I don't know the statistics on how
11 much of it is accurate, is not. The problem is
12 that we've certainly seen that there are
13 inaccuracies on these reports. And people that
14 are in the, on the report, either in error or like
15 in the case of Louise Brown, a woman who tried to
16 get subsidized housing, her report came up that
17 she had ten Housing Court cases filed against her.
18 She'd actually never been brought to Housing Court
19 at all, and was denied the housing. If she was
20 able to know beforehand that the senior housing
21 development she was applying for used Onsite, or
22 First Advantage, she could've pulled her report,
23 cleaned it up, and then put in her application.
24 And that's really what this bill addresses. The
25 problems of the inaccuracy and the bluntness of

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2 the data, those are bigger problems that we are
3 also trying to address on a state and federal
4 level, but this is the type of thing that as Mr.
5 Fishman pointed out, the City can do to help
6 tenants right now.

7 CHAIRPERSON COMRIE: Okay, thank
8 you. Thank you, both. Mr., Councilman Garodnick
9 and then Council Member Barron have questions. -

10 -

11 COUNCIL MEMBER GARODNICK:

12 [interposing] Thank you very much. I know the
13 time is--

14 CHAIRPERSON COMRIE: Time is short.

15 COUNCIL MEMBER GARODNICK: --tight,
16 so. I'm going to into quick lightning round here,
17 give me like the short two-three word answers. I
18 got a few questions, but let's do 'em really fast,
19 we want to make sure we get as much of this on the
20 record as possible. First is you dispensed with
21 the issue about difficult to demonstrate whether
22 they're using the report. Let's talk about the
23 other thing the Administration said: Is there any
24 other way for a landlord to get the information
25 that is obtained in the tenant screening report.

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LOUISE SEELEY: No.

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JAMES FISHMAN: Absolutely not.

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COUNCIL MEMBER GARODNICK: Okay.

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There's no other way for them to do it.

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LOUISE SEELEY: On the internet you can find out cases that are currently calendared, but it's not the full data, and it's--

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JAMES FISHMAN: All you would know is the name of the case.

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LOUISE SEELEY: Right, the name of the case, that's it.

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COUNCIL MEMBER GARODNICK: Okay, so you don't know the disposition of the case.

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LOUISE SEELEY: Right.

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JAMES FISHMAN: If it could be done, landlords wouldn't be paying for it.

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COUNCIL MEMBER GARODNICK: Got it, thank you. Is there any variation among the tenant screening reports provided by different companies?

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JAMES FISHMAN: Yes. There are some companies that routinely fail to expunge obsolete information, they report it forever. So, the ones that comply with the law would take out a

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2 case that's more than seven years old. The ones
3 that don't, don't.

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COUNCIL MEMBER GARODNICK: Is there
any way for legally, legally for tenants to
challenge information contained in their tenant
screening report today?

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JAMES FISHMAN: Yes.

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LOUISE SEELEY: Yes.

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COUNCIL MEMBER GARODNICK: And how
do they do that?

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JAMES FISHMAN: Well, there's a
dispute mechanism under the Fair Credit Reporting
Act, as well as under the State Fair Credit
Reporting Act, where the agency is required to
investigate when a tenant submits documentation
that the information is incomplete, inaccurate or
erroneous.

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COUNCIL MEMBER GARODNICK: Now how
would a tenant know that they, that there is
incorrect or, you know, problematic information on
their report.

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JAMES FISHMAN: They have to get
the report.

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LOUISE SEELEY: Right, and if they

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2 go--

3 COUNCIL MEMBER GARODNICK: And how
4 do they know, how do they know--

5 LOUISE SEELEY: --and apply for an
6 apartment, they'd be denied, they'd try to find
7 out why, then they'd get it, and at that point
8 it's too late, the apartment's gone. This is just
9 trying to do it at the front end, so you can stop
10 the problem before it happens.

11 COUNCIL MEMBER GARODNICK: Is there
12 any licensing agency in the City, Department of
13 Consumer Affairs, or any other City agency that
14 licensed tenant screening companies, or even have
15 a list of all of the companies that sell the data?

16 JAMES FISHMAN: No.

17 LOUISE SEELEY: No.

18 JAMES FISHMAN: I don't think
19 anybody knows how many companies there are at any
20 give time.

21 COUNCIL MEMBER GARODNICK: Do we
22 have any sense of what percentage of landlords
23 purchase or use tenant screening reports?

24 JAMES FISHMAN: I don't. I think
25 maybe some of the representatives from the

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2 industry might be able to tell you that, but I
3 think it is a growing phenomenon in New York.

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5 COUNCIL MEMBER GARODNICK: Thank
6 you very much.

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7 LOUISE SEELEY: Thank you.

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8 CHAIRPERSON COMRIE: Councilman
9 Barron.

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10 COUNCIL MEMBER BARRON: Thank you
11 very much. I just wanted to know, are there any
12 other numbers you have of the, this problem beyond
13 just the Housing Court rejections, 'cause there
14 are other methods, other reasons why they're
15 rejected, other than the, going to Housing Court.
16 Do you have any numbers there?

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17 LOUISE SEELEY: No, I don't, I
18 mean, tenants are rejected for all kinds of
19 reasons.

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20 COUNCIL MEMBER BARRON: Right.

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21 JAMES FISHMAN: For not paying
22 their bills.

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23 LOUISE SEELEY: For not paying
24 their bills, bad credit reports--

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25 COUNCIL MEMBER BARRON: I mean that
are erroneous, you know, that--

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LOUISE SEELEY: Not that I can think of, no.

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COUNCIL MEMBER BARRON: So, basically the housing piece is where you get the accurate stuff, because you know for a fact.

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LOUISE SEELEY: And just to put on the record, I recently discovered that the New York Police Department uses tenant screening reports in determining whether they want to give people jobs. So, it's actually being used by other industries, as well, which is a new problem we're going to be facing.

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JAMES FISHMAN: There's one other point I want to make, and that is, we've been talking this morning only about applicants who are actually rejected on the basis of the report. There's a whole other slew of people who are told, primarily by brokers, "If there's something on this report, let us know in advance, because don't even bother filling out the application."

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COUNCIL MEMBER BARRON: Mm, see that's my--

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JAMES FISHMAN: "We don't, our clients aren't interested. So don't waste your

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2 time."

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COUNCIL MEMBER BARRON: This may be more massive than what we even think, if we really put all the numbers of people affected.

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JAMES FISHMAN: Right, those you never know how many there are, but there's anecdotal data, and there was--some of the articles in the New York Times that are quoted in their committee report, talk about landlords who actually say this, and brokers who actually say this, on the record, "Don't fill out the application, we're not interested." So, that's a whole, you know, hidden under-

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COUNCIL MEMBER BARRON: There's a whole nother--

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JAMES FISHMAN: --you know, under the radar group here.

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COUNCIL MEMBER BARRON: This may seem unrelated and minor to you, but to me, I try to be the race conscious person of the Council, blacklisted.

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LOUISE SEELEY: I know, it's a--

COUNCIL MEMBER BARRON:
Blacklisted. We need to find another term, just

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2 like Black Tuesday, we didn't crash the black, the
3 stock market.

4 LOUISE SEELEY: I'm very open to
5 finding a better term.

6 COUNCIL MEMBER BARRON: Hold it,
7 hold it, please do, because we didn't crash the
8 stock market.

9 LOUISE SEELEY: Right.

10 COUNCIL MEMBER BARRON: We don't
11 even own stock, but they called it Black Tuesday.
12 So we just tired of blackness being a negative
13 thing.

14 JAMES FISHMAN: Sure.

15 COUNCIL MEMBER BARRON: And since
16 most of the people doing that, those reports are
17 white, maybe make it white listed or rejected
18 listed, or the rejection list, but find another
19 term, I think that would be good, a good thing to
20 do. Thank you.

21 LOUISE SEELEY: Thank you.

22 CHAIRPERSON COMRIE: Thank you both
23 for coming. Next we'll hear from Mitchell
24 Posilkin and Frank Ricci [phonetic], from RSA.
25 Excuse me if I mangled your last name. [pause]

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MITCHELL POSILKIN: Good morning.
My name is Mitchell Posilkin, and with me is Frank Ricci, and we're from the Rent Stabilization Association. On behalf of the 25,000 members of RSA who own or manage approximately one million apartments in the City, I'm here to testify in opposition to Intro 995. Over the course of the past year, property owners have been unfairly targeted by the City Council. In 2008, the Council passed yet another in a series of laws to address harassment of tenants by owners, even though at least a dozen laws on the subject already exist. Also in 2008, the Council passed over the Mayor's veto a bill to prohibit discrimination against persons with Section VIII vouchers by property owners, even though over 35,000 property owners already accept Section VIII vouchers. RSA testified against those bills not because we believe that owners should harass or discriminate; rather, we testified against those bills to question the effectiveness of enacting laws which only serve to perpetuate outdated stereotypes of property owners. Intro 995 joins the list of bills which unfairly target property

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2 owners. Intro 995 would amend the administrative
3 code to address the screening procedures utilized
4 by property owners as part of the apartment
5 application process. The application process in
6 general, and screening procedures in particular,
7 are the most important mechanisms which help
8 owners ensure that the tenants to whom they are
9 about to allow into their property are worthy in
10 all respects. As anyone familiar with Housing
11 Court knows, it is far more preferable to screen
12 applicants at the outset than to attempt to evict
13 them after they have become tenants. We are not
14 here to suggest that tenants should not be
15 informed of their rights to credit related
16 information. That is already the law in this
17 country, and about which there is no dispute.
18 Rather we are here to point out that existing
19 federal law already provides these protections,
20 and to highlight the Council's willingness to put
21 ever increasing burdens on property owners.
22 Section 615(a) of the Federal Fair Credit
23 Reporting Act already imposes virtually the same
24 disclosure requirements that are required by Intro
25 995. The major difference, however, is that

1
2 instead of requiring disclosure of this
3 information at the application stage, federal law
4 imposes these requirements at the more appropriate
5 time, when there is a so-called adverse action,
6 which occurs if and when, for example, the tenants
7 application for the apartment is denied, or if the
8 owner requires a cosigner. Why would the Council
9 impose these requirements even in the vast
10 majority of instances where tenant applications
11 are granted? Unlike Intro 995, federal law is
12 properly geared for those situations when
13 applications are denied, when there is a genuine
14 need for the applicant to know this information.
15 In addition, unlike Intro 995, the federal law
16 also contains defenses for property owners who
17 inadvertently fail to provide a notice in an
18 isolated case. If the Council was truly intent on
19 protecting all consumers, instead of simply
20 targeting owners, it could've crafted a bill which
21 provided that the protections set forth in Intro
22 995 would apply to all transactions which are
23 dependent upon information provided by a credit
24 reporting agency. All consumers, such as those
25 applying for car loans, or mortgages, or credit

1
2 cards, or participating in any other credit
3 dependent transaction, should have the same rights
4 as tenants applying for apartments. If expanding
5 credit related disclosure requirements for tenants
6 is such a great idea, why doesn't the Council do
7 so for everyone? Why should only property owners
8 be obliged to provide this information at the
9 application stage? If the Council is so intent on
10 ensuring that tenants are aware of their rights in
11 this regard, why doesn't the Council fund a public
12 information campaign so that tenants know what
13 their rights are under the federal law? Why does
14 the Council now put the burden on property owners
15 instead? Instead of coming up with genuine
16 solutions to real life concerns, the Council once
17 again has chosen the easy way out, by targeting
18 property owners for no legitimate public purpose.
19 Thank you and we're here to take any questions you
20 may have.

21 CHAIRPERSON COMRIE: Council Member
22 Koppell, I heard you first, so I'm, I know all
23 three of you--

24 COUNCIL MEMBER KOPPELL: I just
25 would like to ask the witness, do you always--

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2

whenever you make a mistake, do you always

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immediately admit it?

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MITCHELL POSILKIN: I'm not sure I

5

follow your question.

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COUNCIL MEMBER KOPPELL: Well, when

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you make a mistake, if you make a mistake, do you

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always, regardless of circumstance, always say,

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"Oh, I made a mistake, I've got to correct that

10

right away." Is that what you do?

11

MITCHELL POSILKIN: Depends on the

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circumstances.

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COUNCIL MEMBER KOPPELL: In some

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circumst--but not every time.

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MITCHELL POSILKIN: But, I mean--

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COUNCIL MEMBER KOPPELL: Most of us

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don't. So you think that landlords who make a

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mistake in rejecting a tenant, once that's brought

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to their attention a month or so later, are going

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to turn around and now rent to that tenant? What

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if the apartment's gone?

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MITCHELL POSILKIN: The federal

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law, which applies to all credit dependent

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transactions, not just landlord/tenant

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transactions, but all transactions of this type,

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2 provide that that, when there is an adverse
3 action, that is when that consumer, including
4 tenants, are provided with that information. And
5 what, all we're suggesting here is that in any
6 transaction where credit is relevant, that it
7 should not only be the landlord who has the
8 obligation--excuse, let me finish--to, it's not
9 only the owner who should be obligated to provide
10 this information in advance, but all creditor
11 should use, should be required to do so.

12 COUNCIL MEMBER KOPPELL: But think
13 about this: you're, a landlord's renting an
14 apartment.

15 MITCHELL POSILKIN: Mhm.

16 COUNCIL MEMBER KOPPELL: There's
17 not an infinite number of apartments. Let's
18 assume they have two or three apartments for rent,
19 or even only one apartment for rent, and they turn
20 down Oliver Koppell because they believe that
21 Oliver Koppell was in Housing Court 16 times in
22 the last twelve months.

23 MITCHELL POSILKIN: Mhm.

24 COUNCIL MEMBER KOPPELL: And then,
25 I'm diligent and I got and I get the report later,

1
2 and I show that the Oliver Koppell is someone who
3 lives in Brooklyn, I live in The Bronx, and I got
4 to the landlord and I say, "Well, you made a
5 mistake, I'm not the Oliver Koppell you thought I
6 was." By then the apartment's been rented, right?
7 What's he going to do to remedy that mistake he
8 made?

9 MITCHELL POSILKIN: Well, as
10 various other witnesses have already testified
11 today, the answer, in fact, relies on the accuracy
12 of the OCA information, not on the accuracy of the
13 information that's provided by the screening
14 agencies. And the answer is on getting more
15 specific, more accurate information produced by
16 the Office of Court Administration, and in terms
17 of the cases, the success of the cases that are
18 brought against the tenants, whether the tenants
19 prevailed in their defenses in the nonpayment
20 proceeding; whether the case--

21 COUNCIL MEMBER KOPPELL: No, no,
22 no, no, wait a minute, wait a minute. You're not
23 answering my question. So, with all due respect,
24 the purpose of this bill is to provide the report
25 on the tenant in advance.

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2 MITCHELL POSILKIN: I understand.

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COUNCIL MEMBER KOPPELL: The

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problem with your saying that the remedy right

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now, which is you can get a report later after

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you're denied, is that it may be too late to get

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the apartment, or the owner will just say, "Well,

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too bad." You know, unfortunately I got the wrong

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report, as is true of many of us who do not

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immediately admit we were wrong, and immediately

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correct the mistake. I mean, you're ignoring the

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reality. The reality is, that the owner who later

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learns that he made an error, because he was given

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an incorrect report, either can't do anything

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about it, or won't do anything about it. That's

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the problem with your, with your remedy, or your

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allegation, or your statement, that the current

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law is sufficient. It simply isn't sufficient,

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because the information has to come. And the

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other problem is, that with, at least with a

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credit report, there's only three, basically three

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credit reporting agencies.

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MITCHELL POSILKIN: Mhm.

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COUNCIL MEMBER KOPPELL: So I know

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right now that people are always offering me the

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2 opportunity, as they are to you on the internet,
3 "Get your credit report." But there's hundreds of
4 these tenant agencies, or at least dozens in New
5 York. You can't get it from all of them the way
6 you can get it from three credit reporting
7 agencies. It just doesn't work.

8 MITCHELL POSILKIN: I think first
9 of all, to presume that people know, you know,
10 that people know that they could obtain this
11 information from one or more credit reporting
12 agencies, you know, I think is not accurate. I
13 think it is, I think it presumes a little too much
14 to suggest that most people know that information.
15 And I, I'm really kind of, I don't understand why
16 the Council would in fact, would not want to
17 extend those protections to more consumers instead
18 of fewer consumers.

19 COUNCIL MEMBER KOPPELL: Well, that
20 may be a good suggestion, sir, but that doesn't
21 mean that this is a bad one. I'm finished with my
22 questions. Thank you, Mr. Chairman.

23 CHAIRPERSON COMRIE: Council Member
24 Barron.

25 COUNCIL MEMBER BARRON: You know,

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you are incredible. I can't believe that you came here with all of this, because we want landlords to just write the name of the screening agent.

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That is it. That is it. What a big burden. What a huge burden.

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MITCHELL POSILKIN: I didn't say it was a burden.

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COUNCIL MEMBER BARRON: I'm not finished. What a burden. Write down the name of the screening agency that you're using, so that renters can get it before you make an erroneous, or a mistake. What's the big deal? Then you throw in Section VIII, 35,000, look how many you rejected. So what you're basically saying, is let us continue to make these mistakes, and if you want to remedy it, then do it after we reject you. And we're just simply saying, this is not anything burdensome. Just write down this. And you come with this elaborate--you don't get it. You really don't. You came with this elaborate, two page, you know, it looks deep and intelligent, but it isn't. You know, it just doesn't make any sense, that they just can't write down the screening agency they're using, and say, "Here." So, then

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the tenant can perhaps correct this before a
mistake is made.

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MITCHELL POSILKIN: There's no
quarrel with that, Council Member.

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COUNCIL MEMBER BARRON: Well, then
that's the law, I mean that's all we're trying to
do.

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MITCHELL POSILKIN: Well, I'm,
there's no quarrel with that. What I'm suggesting
is that if you're going to do this in this
situation, instead of just doing, instead of just
taking the easy approach, and just targeting the
tenant screening legis--procedures, I, we submit
that this should apply to all consumers.

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COUNCIL MEMBER BARRON: Yeah, but
you're not making any sense. We're talking to you
right now.

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MITCHELL POSILKIN: I understand
that.

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COUNCIL MEMBER BARRON: So you're
saying that, this is so good, that we're rejecting
it 'cause you're just doing it to us, and we
should do it to everybody. You're not making any
sense. To reject this, because we're not doing it

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2 to everybody. That's what you're saying.

3 MITCHELL POSILKIN: I'm saying

4 that--

5 COUNCIL MEMBER BARRON: I'm

6 finished.

7 MITCHELL POSILKIN: Oh, okay.

8 COUNCIL MEMBER BARRON: Thank you.

9 CHAIRPERSON COMRIE: Okay. Well,
10 we're tight on time. Council Member Garodnick?

11 COUNCIL MEMBER GARODNICK: Thank
12 you. Will be extremely brief. I agree with
13 Council Member Barron on the testimony, and we're
14 sorry that you feel unfairly targeted by this
15 Council. But in the midst of all of the
16 testimony, I only noted one suggestion for the
17 bill, and that is the issue of defenses for
18 inadvertent failure to provide a notice on an
19 isolated case. We'll certainly take that under
20 advisement. But it sounds like you have no
21 quarrel with this disclosure, provided that you,
22 you think that we should be doing it in greater
23 cases, in more cases, is that right?

24 MITCHELL POSILKIN: That's correct.

25 COUNCIL MEMBER GARODNICK: Okay, so

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if I hear you correctly, what we're proposing here is not something that you object to, it's just something that you feel is singling you all out because of the circumstances that are present. Is that right?

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MITCHELL POSILKIN: That is

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correct.

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COUNCIL MEMBER GARODNICK: Okay.

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Well, we believe that the circumstances that are present here are different than in other

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situations. So, I'm, I just wanted to make sure

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that I understood where you were coming from, and

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I think that I do. And I'm prepared to leave it

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right there.

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FRANK RICCI: Okay, I just wanted

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to add one thing. I mean, one of the purposes of

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our objections to this, is to highlight the fact,

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I think that Mitch had pointed out in his

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testimony, and on questioning, is that if OCA just

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provided better information, a lot of these

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problems would go away. Right now, all they do is

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a name, they don't tie a name with an address. If

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they would tie a name with an address, a lot of

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these cases of someone with a fairly common name

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2 would go away. So--

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COUNCIL MEMBER GARODNICK: I guess the obvious question there is why are you guys buying information if you don't believe that it's accurate?

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FRANK RICCI: It's one--

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COUNCIL MEMBER GARODNICK: Why don't you demand that OC--before you buy it, why don't you say, "We're not going to buy it, OCA, unless you have certain standards and--"

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FRANK RICCI: Well, we're not--the tenant screening agencies are buying it. We're--

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COUNCIL MEMBER GARODNICK: Okay, but you're--

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FRANK RICCI: We're repurchasing. It's one of many tools an owner uses. And the reality is, in this market right now, owners routinely accept tenants who have gone to Housing Court. They ask them to explain why. Bring in the papers. You have a decision, you have a stipulation? Show me what it was. Oh, I see, the owner had violations, you were right to withhold your rent in this case. Fine. Happens every day, thousands of times a week.

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COUNCIL MEMBER GARODNICK: Okay.

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Well, thank you for that. And we appreciate your presence today. Thank you, Mr. Chairman.

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CHAIRPERSON COMRIE: Thank you. I

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appreciate you gentlemen coming in. I do think

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that there is a lot of issues that we need to work

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on this bill, and on OCA in general. I think I

9

made that point earlier, so I won't repeat it now.

10

The last panel--Matt Slotkin--[off mic] I can't

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read your handwriting. Matt, come on forward.

12

And David, David--from Legal Services? David, are

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you still here from Legal Services? I can't read

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your--[off mic] Legal Aid. And also, I can read

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hers, Katie Ringer, from the Legal Aid Society.

16

But you, you got lawyer handwriting. [laughter]

17

You can give it to the Sergeant-of-Arms, and

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you'll have three minutes each.

19

[pause, background noise]

20

MATT SLOTKIN: Mr. Chairman, is it

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okay if I make comments, the second ones are

22

brief, on both bills?

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CHAIRPERSON COMRIE: Yes, as long

24

as you stay to the three minute window, 'cause we

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are overtime.

1
2 MATT SLOTKIN: Okay, fine. On
3 Intro 995, according to subchapter 16 of Intro
4 995, tenants should help out with the tenant
5 screening, because no one wants any rotten apples
6 in the apartments. Furthermore, any documents
7 have to be completed in connection with Section
8 20-897. Also, according to letter B of the same
9 section, credit repots have to be obtained. A
10 tenant does absolutely have to be notified in
11 writing about the screening. Also, a sign has to
12 be posted with the names and addresses of any
13 consumer agencies. Also, Sections 20-808 and 20-
14 809 absolutely cannot be violated. If they are,
15 they are subjected to a serious civil penalty.
16 Also, a service of notice must be served, it must
17 take effect 120 days after the enactment of it.
18 Thanks for your time today. And on Intro 1030,
19 nobody on the subway carries spray paint anymore.
20 According to a recent straphangers campaign poll,
21 75-80 percent of the subway cars are clean. I
22 want to, I want it to stay that way. Thanks for
23 your time today.

24 CHAIRPERSON COMRIE: Thank you.

25 Next person.

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[pause]

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DAVID ROBINSON: Good morning, my name is David Robinson, from Legal Services NYC. I'm testifying today on behalf of both Legal Services and Legal Aid Society. We've submitted joint testimony. And we strongly urge the passage of Intro 995, the Tenant Fair Chance Act, which will allow prospective tenants to receive basic information about the existence of tenant screening reports and their right to challenge them. And we really commend the City Council for recognizing the problem that tenant screening reports pose to applicants for housing, in an economic climate in which housing is scarce, and apartments seekers are at a real disadvantage in seeking scarce, affordable, and available housing. And the housing that's available to the low income clients that Legal Services/Legal Aid represent, there is still a scarcity of that housing, there are not landlords that are going out of their way to try to find low income tenants to rent housing to. So, you really are dealing with a very important problem, and we really thank you for doing so. As has been mentioned before, the

1
2 legislation deals with a problem that rises
3 because OCA sells to tenant screening companies
4 data concerning cases brought by landlords in New
5 York City Housing Courts, to evict tenants. The
6 landlords use this information to evaluate
7 applicants, and the information that's given is
8 extremely basic, but very damaging to the tenants
9 involved. And so tenants who have been sued by a
10 prior landlord are prevented from renting
11 apartments. What this does is, part of what this
12 has served to do over time, is to deter tenants
13 from really exercising their rights to withhold
14 rent, for repairs, so that they can be taken to
15 Housing Court, to get the repairs dealt with at
16 the same time that an appropriate rent abatement
17 is awarded to the tenant. And the, the tenants
18 play an important role in the City's code
19 enforcement system, and this is really being
20 nullified by the existence of these tenant
21 screening reports. And we really think that this
22 legislation, although it won't entirely cure this
23 problem, will at least both bring public awareness
24 of this issue, and give tenants a chance to
25 challenge the inaccuracies in the tenant screening

1
2 reports. Thank you very much, and Katie Ringer
3 from Legal Aid will further testify here. Thanks,
4 thanks again.

5 KATIE RINGER: Good morning, I'm a
6 staff attorney in The Bronx Housing Court, and I
7 work with tenants every day. I want to give the
8 Committee a couple of real life examples of how
9 this tenant reporting issue affects tenants. I
10 recently represented Mrs. F., who lives with her
11 family in a rent stabilized apartment in The
12 Bronx. They've lived there for twelve years. She
13 withheld \$200 per month of her rent for several
14 months, after spending several hundred dollars of
15 her own money to repair terrible conditions in her
16 apartment. She was also forced to stay with
17 friends for about a month, after the Fire
18 Department ordered her to vacate the apartment.
19 Eventually, her landlord sued her for nonpayment
20 of rent, and after months of litigation, the
21 landlord agreed to waive the full amount of rent
22 that she owed, and agreed to make repairs in the
23 apartment. This matter took months to litigate,
24 and during that time she was approved for a very
25 valuable Section VIII voucher, and she began

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2 looking for another apartment in suitable
3 condition, where she could use that voucher. She
4 looked at over 30 apartments, and was declined for
5 all of them, due to her present Housing Court
6 case. The person who spoke right before us said
7 that he invites tenants to just bring in paperwork
8 and explain why they were in court, and then it's
9 okay, they go ahead and rent to them, even if
10 their name appears on one of these tenant
11 screening reports. But in Mrs. F.'s case, that
12 didn't work out for her. I've written letters and
13 included documents, along with the court papers,
14 to explain to these prospective landlords that she
15 is still a good tenant, that she has a good rent
16 paying history, and work history, and it has not
17 been enough to help her get an apartment. Another
18 tenant I worked with recently is Mrs. P. Her
19 landlord sued her when her lease for a two-family
20 house expired, because he himself wanted to live
21 in the other half of that two-family home. Mrs.
22 P. agreed to move out, but has been repeatedly
23 turned down by prospective landlords, even though
24 she has a solid work and credit history. The
25 landlords that she have spoken with claim that

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2 because she has been sued in housing court, they
3 will not consider renting to her. They look at it
4 simply as a pass/fail test, they're not looking at
5 why she was sued, or what her previous history as
6 a tenant was. Mrs. P., her husband and their
7 children are about to become homeless because of
8 the tenant screening report used by the
9 prospective landlords. Because the report does
10 not explain any of the reasons why Mrs. P. found
11 herself in court, and doesn't give Mrs. P. a
12 chance to challenge the information. The
13 landlords that she's speaking with also aren't
14 telling her what company they're getting the
15 information from, so she has no chance to
16 challenge what is being said about her. Thank
17 you.

18 CHAIRPERSON COMRIE: I want to
19 thank you all for testifying today. Due to the
20 fact that we're overtime and there's a full house
21 of people that are waiting for the next meeting,
22 well, including Council Member Mendez, who has a
23 question, I'll let her ask her question. Council
24 Member Mendez.

25 COUNCIL MEMBER MENDEZ: Thank you.

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2 And no one's more anxious than me for the next
3 hearing, 'cause it's on my bill, but I couldn't
4 sit there any longer. Mr. Robinson, tell me, how
5 many times have you heard of tenants or--I'm
6 sorry, I didn't catch your name--how many times
7 have you heard of tenants who have not been rented
8 an apartment because they've been put on this
9 tenant no-rent list? In deference to my brother
10 Charles Barron, I'm calling it the tenant no-rent
11 list.

12

13 DAVID ROBINSON: Right. We've
14 heard it many, many times. I couldn't give you a
15 number, and there's been no, we haven't collected
16 any data. But certainly that happens all the
17 time. Enough so that we really, every time, you
18 know, a tenant asks about whether or not they
19 should go, you know, withhold their rent, or
20 challenge something that a landlord is doing, in
21 the way of a rent overcharge that ultimately is
22 going to get resolved in Housing Court, maybe
23 challenging their legal side deal, or challenging
24 a DHR rent overcharge, and they don't--rent
25 stabilized rent overcharge--and they don't want to
go through DHCR. We advise them, "We really have

1
2 to warn you that there is this no-rent list that
3 you're going to end up being on, and it could
4 jeopardize your ability to get a future
5 apartment."

6 COUNCIL MEMBER MENDEZ: Thank you,
7 'cause I've heard these stories over and over
8 again from constituents in my district. How many
9 times have you heard of a tenant who said, "Yes, I
10 was on this no-rent list, but the landlord called
11 me to ask me why I didn't pay my rental, why there
12 was a nonpayment." 'Cause I haven't heard of any
13 such case where that has happened.

14 DAVID ROBINSON: Right. No, that
15 doesn't happen. I mean, realistically, maybe for,
16 you know, the RSA people, maybe for some of the
17 really, really high rent apartments, perhaps they
18 go, they're desperate for tenants, I don't know
19 about that. But for the apartments that our
20 clients look for, they have a real trouble finding
21 them and those landlords really have plenty of
22 people waiting. And they can just X out those
23 particular people. And honestly, you know, many
24 of them, if they find out they've been on a rent
25 strike, that's another reason not to rent to them,

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but that's another - - .

COUNCIL MEMBER MENDEZ: Oh, yes,
that's worse, organized [laughs]

DAVID ROBINSON: Right.

COUNCIL MEMBER MENDEZ: Organized
individuals. Thank you very much.

DAVID ROBINSON: Thank you.

CHAIRPERSON COMRIE: Thank you.

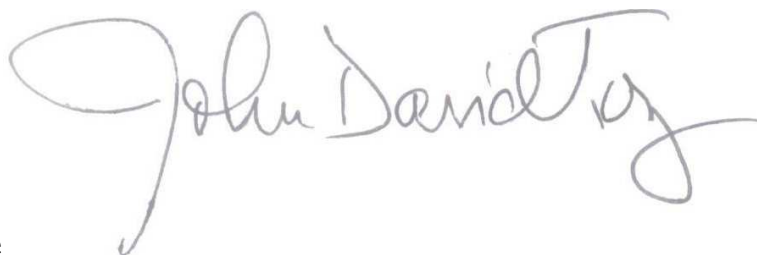
Thanks for being here, thanks for testifying.

Again, I want to thank everyone that came today
and testified. I think that clearly we have some
work to do on all sides on this bill. Thank
Councilman Garodnick for bringing it to us. I
want to thank Damien and, Butvick, and Lacey
Clarke for putting the Committee meeting together,
and doing the extensive research on the notes.

And I want to thank all of the members that were
here, and with that I'll declare the hearing
adjourned, so that we can move right to the
Landmarks Committee Hearing, which I'm a member of
also. Thank you. [gavel]

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. 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.

A handwritten signature in cursive script that reads "John David Tong". The signature is written in a dark ink and is positioned above the printed label "Signature".

Signature

Date August 7, 2009