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2 schools, so therefore we are going to get rid of
3 reading requirements for children. I mean it sounds
4 like that is what we are doing here. Because the
5 landlords can't make it and they can't meet the
6 requirements for common areas and other things, then
7 let's just take away the requirements, which I can't
8 imagine any of us would ever propose as it relates
9 to reading and math scores in our public schools.

10 And just one last question, you said
11 if a common area --

12 CHAIRPERSON SPIGNER: That was a
13 statement, now your last question.

14 COUNCIL MEMBER QUINN: Right. That is
15 a statement, yes.

16 CHAIRPERSON SPIGNER: That is your
17 last statement too.

18 COUNCIL MEMBER QUINN: You said you
19 will deal with common areas when notified, you know,
20 if there is a violation by HPD, but as I understand
21 it, HPD is no longer going to communicate with DOH,
22 and the way you will find out if there are
23 violations are from the families and the children,
24 not from HPD, so how exactly would that DOH
25 intervention in a common area be triggered by HPD if

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2 they no longer have to communicate with you?

3 COMMISSIONER COHEN: Council Member, I
4 believe that HPD does have the authority to issue
5 violations for peeling paint in common areas.

6 COUNCIL MEMBER QUINN: I am talking
7 about notification to you, though, not issuing.

8 COMMISSIONER COHEN: Well, Councilman
9 Michels is saying it is not a C violation, but it is
10 a violation that can be addressed by HPD, that is a
11 violation nevertheless, and we expect that landlords
12 and owners would respond to those HPD violations and
13 address the concern in the common area.

14 COUNCIL MEMBER QUINN: Thank you. I
15 would like a second round, please.

16 CHAIRPERSON SPIGNER: Council Member
17 Miller.

18 COUNCIL MEMBER MILLER: Commissioner,
19 let me just try to understand this. With regard to
20 the violations which HPD write for lead-based paint
21 hazards, and the communication between your
22 Department and HPD, did I understand this correctly
23 that there is no communication there at all and that
24 you don't do testing based upon HPD violations for
25 any particular resident? You don't test the kids in

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2 that resident based upon those violations; is that
3 correct?

4 ASSISTANT COMMISSIONER CLITZMAN:

5 Currently it is a state law that health care
6 providers do the testing and do the risk assessment
7 on children. They must be tested at age one and two
8 and have a risk assessment up through age six. So it
9 is health care providers' responsibility to test
10 children for lead, and we believe that is the
11 correct approach, because children need
12 comprehensive medical care.

13 COUNCIL MEMBER MILLER: You do some
14 testing for children for lead poisoning, right?

15 ASSISTANT COMMISSIONER CLITZMAN: We
16 do very little direct screening of children, except
17 primarily during emergencies. We have several
18 mechanisms in place to assure that children have
19 access to free or low-cost screening services.

20 COUNCIL MEMBER MILLER: In other
21 words, if something feels that their child has been
22 lead poisoned and they call you, you help them?

23 ASSISTANT COMMISSIONER CLITZMAN: We
24 will help them get a lead test and --

25 COUNCIL MEMBER MILLER: Why do you

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2 help them?

3 ASSISTANT COMMISSIONER CLITZMAN: It
4 is the state law that all young children have lead
5 testing because young children in general, although
6 not on a specific basis --

7 COUNCIL MEMBER MILLER: You do it
8 because your mission of the Department of Health is
9 to help ensure that they are healthy kids in the
10 City?

11 ASSISTANT COMMISSIONER CLITZMAN: In a
12 general way that is correct.

13 COUNCIL MEMBER MILLER: Right. So then
14 it would seem to me, you know, I mean -- and it is
15 your testimony essentially that the reason we have
16 to have -- you are for certain parts of this bill
17 because it creates an advancement in the terms of
18 protecting children, with regard to removing lead
19 paint hazards and addressing lead paint, which is a
20 serious health problem for children, right?

21 I mean, that is the reason we are all
22 here, because we want to see these hazards cured.

23 COMMISSIONER COHEN: That is the
24 reason we are here.

25 COUNCIL MEMBER MILLER: Then wouldn't

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2 it seem then, if there is a hazard and you know
3 there is a hazard, not you personally but the City
4 knows that there is a hazard, and it is your mission
5 at the Department of Health to protect children from
6 these types of hazards and ensure that they get the
7 appropriate medical care, wouldn't it seem that
8 there would be sort of a higher priority from your
9 point of view in terms of making sure that those
10 kids get immediate testing?

11 Why wouldn't it? Is it expensive?
12 What is the problem?

13 COMMISSIONER COHEN: We do that
14 currently, Councilman. Any time we get referral of a
15 potential lead paint hazard, we are vigilant to make
16 sure that children in those units are attended to,
17 we prefer to see them linked with their primary
18 health care provider so that we don't do a lead test
19 in isolation from a more complete picture of their
20 health needs. We do that now and we would plan to
21 continue to do that in the future.

22 In fact, I would hope --

23 COUNCIL MEMBER MILLER: But it is not
24 in the legislation.

25 COMMISSIONER COHEN: No, it is not in

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2 the legislation.

3 COUNCIL MEMBER MILLER: So you would
4 support it being in the legislation? Since you plan
5 to do it, but we would have to make you responsible,
6 Commissioner, and the responsible agency, but we
7 want to make sure that future administrations behave
8 just as responsibly, right?

9 COMMISSIONER COHEN: The legislation
10 does articulate that HPD shall refer to appropriate
11 medical providers. Any person who requests
12 assistance in blood-lead screening testing -- you
13 know, we are --

14 COUNCIL MEMBER MILLER: I am sorry, I
15 am just trying to get -- because I was told that was
16 not in the current bill. They are not referring it
17 to you;-- they are referring it to who?

18 COMMISSIONER COHEN: Well, they have a
19 choice. They might refer it to a primary care
20 provider, they might refer it to the Department of
21 Health.

22 COUNCIL MEMBER MILLER: They might or
23 they have to?

24 COMMISSIONER COHEN: Shall refer.

25 COUNCIL MEMBER MILLER: So your

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2 feeling, the current practice, what you are saying
3 here is you engaged in the current practice, they
4 refer it to you and you do something about it,
5 right? Currently that is what happens? That is what
6 you are saying happens?

7 COMMISSIONER COHEN: I'm sorry.

8 COUNCIL MEMBER MILLER: I am too.

9 COMMISSIONER COHEN: What I would like
10 to communicate is that it is in the bill for the
11 Department of Health to refer to medical providers
12 any children who come to our attention that we
13 believe are in need of lead screening and other
14 health care --

15 COUNCIL MEMBER MILLER: DOH refers,
16 but HPD doesn't --

17 CHAIRPERSON SPIGNER: That is your
18 last question, Council member.

19 COUNCIL MEMBER MILLER: My last
20 question is my first question, I am just trying to
21 get an answer here.

22 CHAIRPERSON SPIGNER: There will be a
23 second round as well.

24 COUNCIL MEMBER MILLER: Okay, but I am
25 just trying to get an answer. I am not trying to

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2 establish a new question, I am trying to get an
3 answer for the same one.

4 CHAIRPERSON SPIGNER: You did receive
5 an answer. It might not be the one you enjoy or
6 understand.

7 COUNCIL MEMBER MILLER: No, no, I am
8 not clear. I don't think I did.

9 Let me just rephrase it, very
10 quickly.

11 You are saying that currently HPD
12 writes a violation and then refers it to you to do
13 some screening of children where the violation has
14 occurred.

15 Apparently it is not in the bill, or
16 it is in the bill but you are saying you are going
17 to continue to practice regardless of whether it is
18 in the bill because it is a good practice; is that
19 your testimony?

20 COMMISSIONER COHEN: No. Currently
21 what is required of HPD is to provide information to
22 the family of the potential for alleged screening
23 exposure that would be best addressed through their
24 links with their primary health care provider. But
25 by giving them information they have the numbers of

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2 the Department of Health, it is not a direct HPD to
3 DOH referral.

4 COUNCIL MEMBER MILLER: And that is
5 different from the current practice?

6 COMMISSIONER COHEN: That is different
7 from the current law, correct.

8 CHAIRPERSON SPIGNER: Council Member,
9 that is your last question.

10 COUNCIL MEMBER MILLER: Okay. I will
11 come back because I would love an answer.

12 CHAIRPERSON SPIGNER: Council Member
13 Ognibene.

14 COUNCIL MEMBER MILLER: Just keep
15 trying.

16 COUNCIL MEMBER OGNIBENE: Thank you,
17 Mr. Chairman.

18 Doctor, earlier you alluded to
19 practices and procedures that could be implemented
20 outside of the scope of this legislation which you
21 thought were effective in reducing lead poisoning in
22 children, I believe you were about to answer that
23 but were cut off. I would like to hear your answer,
24 and also your assessment on how effective these
25 practices and procedures are, compared with the

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2 effectiveness of the legislation.

3 ASSISTANT COMMISSIONER CLITZMAN: The
4 point I was trying to make earlier was just that
5 lead poisoning prevention is a multi-faceted process
6 and we are not saying that one part is more
7 important than another, we are just saying that
8 there are several things that need to be in place.
9 There needs to be access to screening and medical
10 care. There needs to be information and education to
11 all affected parties about preventing hazards and
12 reducing hazards, and there needs to be fixing of
13 lead-based paint hazards when they are identified.

14 So, all three pieces are important
15 and I would be hardpressed to say which one is more
16 important than the other, but we do have evidence
17 that all of these pieces are very effective in
18 reducing children's blood-lead levels, or in
19 preventing lead poisoning.

20 COUNCIL MEMBER OGNIBENE: And you had
21 talked something about the educational process. What
22 are you doing to implement this educational
23 training, and what does it involve?

24 ASSISTANT COMMISSIONER CLITZMAN:
25 Currently at the Department of Health we spend

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2 significant amounts of time with families of lead
3 poisoned children, giving them information about the
4 multiplicity of things that need to be done to
5 reduce a child's blood-lead levels and to prevent
6 further poisoning from occurring, including
7 nutritional, counseling, doing assessment of the
8 child's typical diet and what improvements can be
9 made in the diet to reduce the absorption of lead.

10 We address the issue of identifying
11 what are the possible hazards that that child faces
12 and what could be done to take that child
13 immediately away of those hazards, like that day,
14 even if the abatement or hazard reduction doesn't
15 occur immediately, housekeeping, hand-washing, it is
16 just so important to make sure that the children
17 frequently wash their hands and have their toys
18 washed so that the typical normal hand-to-mouth
19 activity which toddlers engaged in as part of their
20 normal development does not become a vehicle for
21 lead exposure.

22 COUNCIL MEMBER OGNIBENE: And after we
23 pass the legislation, whatever the bill is, whatever
24 Mr. Michels' bill or the Spigner bill, you will be
25 promulgating rules and regulations in order to carry

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2 that forward. From what source will you draw most of
3 the information or requirements for your rules and
4 regulations?

5 Will you be adopting any particular
6 standards?

7 COMMISSIONER COHEN: Councilman, there
8 is no reference to the promulgation of rules by the
9 Department of Health to implement this particular
10 bill. Our jurisdiction comes in where we are
11 responding to violations that are in this bill go
12 beyond 21 days after a notice of violation by HPD or
13 where the Department of Health has issued a
14 violation, when we are aware of the presence of a
15 lead-poisoned child.

16 COUNCIL MEMBER OGNIBENE: Right.

17 COMMISSIONER COHEN: That continues to
18 be under the jurisdiction of the Board of Health,
19 and over time we can continue to make modifications
20 in the Health Codes to meet the standards and
21 knowledge that will be acquired regarding how to
22 strengthen lead poisoning prevention standards.

23 COUNCIL MEMBER OGNIBENE: Now, as you
24 know we have had a lead abatement law on the books
25 of the City of New York now for some 17 years, and

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2 my understanding is that it has been an ineffective
3 piece of legislation, simply because carrying it out
4 may also increase the risk to children who were
5 exposed to lead paint hazards.

6 In view of that, it has become clear
7 to most of us that we need a new piece of
8 legislation. One that is not draconian and one that
9 is capable of being carried out in a fair manner so
10 that we can prevent lead poisoning in children.

11 You have read through this statute
12 that is being proposed here today, is it your
13 opinion that this statute will be effective in
14 reduction the incidence of lead paint poisoning and
15 reduce that risk to children under the ages of six
16 years?

17 COMMISSIONER COHEN: I think that
18 there is no question that it is an advance over
19 Local Law 1. I don't believe that that is really a
20 controversial statement on my part.

21 Councilman Michels is shaking his
22 head in agreement, so that is saying something. But
23 let --

24 COUNCIL MEMBER MICHELS: I have always
25 agreed.

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2 COUNCIL MEMBER OGNIBENE: Wait a
3 second --

4 COUNCIL MEMBER MICHELS:-- That when
5 the state-of-the-art was --

6 COUNCIL MEMBER OGNIBENE: Stanley,
7 when it is your Committee you can jump right in
8 there when you are the Chairman. But you are not the
9 Chairman so you have to wait.

10 COMMISSIONER COHEN: There are a
11 number of advances, there are opportunities that
12 will create a maintenance program that will not lead
13 to the deterioration of paint surfaces that will
14 pose the risk of exposure to children to lead dust
15 and to peeling paint. This is something that doesn't
16 exist right now. There are safety standards for the
17 work methods and materials and the clean-up for the
18 carrying out of these maintenance and repair work
19 that doesn't exist now, and I have gone on record
20 today as saying that in my view, a clearance dust
21 testing measure will significantly afford us a
22 degree of comfort that these safety standards will
23 have been carried out successfully so that there
24 wouldn't diminish any risk of leaving behind an
25 exposure to lead dust in the apartments that we are

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2 striving to make lead-safe.

3 CHAIRPERSON SPIGNER: Thank you,
4 Doctor.

5 COUNCIL MEMBER OGNIBENE: Thank you,
6 Mr. Chairman.

7 CHAIRPERSON SPIGNER: Council Member
8 Linares.

9 COUNCIL MEMBER LINARES: Thank you,
10 Mr. Chair.

11 Commissioner, I am going to raise
12 something here referring to the statistics, unless
13 you or some of my colleagues have raised it
14 previously, but it is something quite disturbing and
15 sort of underlies a great concern, and that is the
16 reality of the statistics of children that are left
17 poisoned, which are glaring and are very direct in
18 how the numbers speak.

19 I am talking about 80 percent of the
20 children that are identified and reported on are
21 either black, which is about 47 percent, or
22 Hispanic, which is about 33 percent. Those two
23 numbers constitute 80 percent of the children that
24 are poisoned or exposed to be black and Hispanic
25 while only six percent happen to be white. That is a

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2 reality of the situation that we are addressing
3 here.

4 Now, I take it that you mandate is to
5 protect, regardless of ethnicity and otherwise the
6 health of children in the City of New York,
7 according to the law. But I wanted to highlight
8 this, because this is a matter that really speaks
9 about race and how we approach this, and there is a
10 context there that is quite disturbing, and I happen
11 to be Latino, but it is in districts like mine that
12 is mostly concentrated by Hispanics, and by
13 African-Americans that are mostly affected. And when
14 you analyze the map in the City of New York, it is
15 precisely the areas where you have those
16 concentrations, and the poor and the most
17 indefensible that are affected.

18 So, my question to you in terms of
19 having said this, which, again, I say it and I say
20 it intentionally because there is something in my
21 mind and it has to be in the minds of a lot of
22 people of conscience, when we consider this type of
23 legislation.

24 Doesn't this legislation undermine or
25 compromise your mandate to protect children at all

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2 costs when this legislation does not give you the
3 most important tool for you to be able to determine
4 whether a child is lead poisoned or not, which is a
5 test after the reparations of the -- repairs have
6 been done in a given apartment which is most likely
7 to be where black and Hispanic children are.

8 COMMISSIONER COHEN: Councilman, I
9 appreciate your question and your concern for the
10 minority community and the potential exposure that
11 children of color have to potential lead toxicity.

12 I know that Councilman Michels knows,
13 because he attended the last hearing we had at the
14 Health Committee when we were discussing the budget,
15 where I formally announced that the Department of
16 Health was taking measures to be in full compliance
17 with CDC guidelines, so that effective this summer
18 we will be lowering the threshold of the blood test
19 level, lead blood test level that will trigger an
20 environmental risk assessment and case management
21 from the current level 20 to 15.

22 We also have announced that we are
23 going to step up our activities for children who for
24 whom we get blood levels between the levels of ten
25 and 14, so that we will do significant outreach and

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2 education, both to the family members to alert them
3 to the fact that they are now in sort of a zone in
4 their lead level that requires close monitoring and
5 attention by their health care provider, so we will
6 be reaching out to the family, as well as reaching
7 out to the health care provider to alert them to the
8 fact that this level is consistent with the need to
9 maintain very close monitoring and attention to the
10 child's blood level and to do a nutritional
11 assessment and look at that in the full context of a
12 child's health picture.

13 So, we are not doing that with
14 legislation, we are doing it because in my view it
15 is the right thing to do. We are going to of course
16 have an increased number of children who are going
17 to be officially labeled as lead poisoned, because
18 whenever over the course of the 30 years we have
19 gone from one threshold level to another threshold
20 level, the number of children goes up because we are
21 casting a wider net. We are casting this wide net
22 because we think that even without a law, that we
23 can do a better job of identifying those children
24 who are at risk, and those children are in the
25 communities that you described and I think over

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2 time, I think we all can agree that there have been
3 successes, significant successes, in the lead
4 poisoning prevention program. I didn't make up those
5 numbers, they are real. I feel we should feel good
6 about that, but our efforts don't stop here. So --

7 CHAIRPERSON SPIGNER: Thank you,
8 Doctor.

9 COUNCIL MEMBER LINARES: Let him
10 finish.

11 COMMISSIONER COHEN: We will continue
12 through the implementation of this program to have a
13 very effective and outreaching lead poisoning
14 prevention program in New York City.

15 In my view, what we have here is an
16 opportunity to have landlords have more incentive to
17 responsibly do clean-up and monitoring of their
18 units so that they don't reach a level of
19 deterioration that could pose a significant risk to
20 our children that would lead to a much greater
21 likelihood, that their blood lead levels would be
22 elevated and that at that point they are ready, they
23 are cognitive and their behavioral response to those
24 levels will have already put them at significant
25 risk and set them apart from their peers.

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2 COUNCIL MEMBER LINARES: Even though
3 at the end of that process and that effort we are
4 not considering a scientific, inexpensive testing
5 that needs to take place according to this law.

6 COMMISSIONER COHEN: In my view, I am
7 speaking favorably today for that, and I will speak
8 out and continue to inform the crafters of this bill
9 from a public health perspective I strongly
10 encourage them to incorporate that into that into
11 the --

12 COUNCIL MEMBER LINARES: I appreciate
13 that very much. Thank you.

14 CHAIRPERSON SPIGNER: Council Member
15 Michels and Quinn, for a second round of two
16 minutes.

17 COUNCIL MEMBER MICHELS: Yes, very
18 quickly, I wanted to remind the Commissioner, I have
19 a copy of Local Law 1 in front of me. Local Law 1
20 does provide that the Department and the HPD shall
21 transmit the Department of the list of violations
22 placed pursuant to this section, by premises. The
23 purpose of that was very clear, that was in order to
24 give you the premises to check the children to make
25 sure they weren't poisoned, and that is left out of

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2 this bill.

3 So that is one way the present bill
4 is not as good as the past law. And I remind you
5 that the state-of-the-art at that time was pica you
6 said and lead paint chips, now we know since that
7 time that is lead dust, and that is why I agree with
8 you that it is better, the law that we have in front
9 of us is better but not good enough than Local Law
10 1.

11 Let me just ask you this: You have
12 said that we should give every incentive to the
13 landlord to clean up. Do you believe by insulating
14 the landlord so that he cannot be effectively sued
15 in court to recover damages for a lead poisoned
16 child, we are giving the landlord an incentive or
17 disincentive from cleaning up his apartments?

18 Did you get that, Commissioner? I
19 know you were talking to someone.

20 Do you want me to repeat the
21 question?

22 COMMISSIONER COHEN: Just the last
23 part of the question.

24 COUNCIL MEMBER MICHELS: I said you
25 have said that we should make every incentive to

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2 give the landlord to clean up his apartment to
3 remove the dangerous substance of lead paint hazard
4 so the children wouldn't be lead poisoned. Do you
5 believe that is an incentive or disincentive to tell
6 landlords that we are putting something in the
7 current proposed legislation which will make it
8 extremely more difficult, almost impossible, for you
9 to bring a lawsuit against an owner to recover
10 damages for a lead poisoned child. Is that an
11 incentive or disincentive?

12 COMMISSIONER COHEN: Well, you are
13 asking a physician, not a lawyer, to answer that
14 question.

15 COUNCIL MEMBER MICHELS: No, I am
16 asking a motivational psychiatrist.

17 COMMISSIONER COHEN: Well, I certainly
18 believe in incentives, but I don't believe in
19 incentives that create quick and dirty solutions
20 that don't meet public health standards.

21 COUNCIL MEMBER MICHELS: We agree.

22 But do you think that telling a
23 landlord no matter what you do you are not going to
24 be sued and you can't lose a lawsuit, because that
25 is what this bill does, it says to the landlord that

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2 the Juarez case no longer applied, you cannot be
3 recovered against for a lead poisoned child, because
4 we are putting something in the legislation to help
5 you.

6 CHAIRPERSON SPIGNER: Stanley, that is
7 the last question.

8 COUNCIL MEMBER MICHELS: That is why I
9 call this piece of legislation nothing more than a
10 landlord protection act, and that is what this thing
11 is.

12 CHAIRPERSON SPIGNER: That doesn't
13 require an answer, Doctor.

14 Council Member Freed.

15 COUNCIL MEMBER FREED: Okay, thank
16 you.

17 I had a question. Are we in agreement
18 that you would include lead dust in this, the
19 definition of dust and part of the removal, as
20 opposed to what is now in the bill?

21 COMMISSIONER COHEN: In my view we
22 cannot ignore the dangers of lead contaminated dust,
23 and dust should be incorporated into the bill in the
24 language of what constitutes lead-based paint
25 hazards.

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2 COUNCIL MEMBER FREED: As far as the
3 bill requires wet scraping of all peeling paint and
4 water misting, are we in agreement that that may not
5 be all that is necessary as far as keeping the dust
6 down?

7 COMMISSIONER COHEN: I don't
8 understand the question.

9 No, wet scraping of peeling paint is
10 an alternative to other measures that pose a greater
11 risk. In and of itself it is not sufficient to
12 eliminate the potential for lead dust getting kicked
13 up. Of course not.

14 We prohibit dry scraping and sanding,
15 there is a requirement in work methods and materials
16 that would adjust all doors and cabinets, as well as
17 look at windows, keeping all paints and flammable
18 materials in their original containers, minimizing
19 the dispersion of debris, and very importantly, each
20 and every day there would be HEPA-vacuuming or
21 washing with a detergent of all surfaces prior to
22 repainting. On a daily basis this kind of
23 wash/vacuuming to be done, and this again would
24 further minimize the chance that any lead dust would
25 be left unattended for potential exposure for a

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2 child.

3 COUNCIL MEMBER FREED: All right. But
4 do you think that goes far enough? Would you require
5 that there be some training course for the people
6 who are actually doing the -- the technicians who
7 are actually doing these procedures?

8 COMMISSIONER COHEN: I believe that
9 these measures carried out are a safe and effective
10 way to reach our goal, minimizing any chance that
11 contaminated, lead contaminated dust would remain
12 the apartment as a result of the repair work, and
13 the clearance dust testing will be our quality
14 control measure to make sure that the work has been
15 done properly and that no risks have remained to the
16 children in those apartment units.

17 COUNCIL MEMBER FREED: Okay. Because I
18 know EPA is now developing a one-day training course
19 for sampling technicians to reduce the cost and
20 expand the availability of dust sampling. Do you
21 think it would be a better bill if you required
22 that?

23 COMMISSIONER COHEN: The EPA standards
24 are referring specifically to lead abatement
25 activity and --

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2 COUNCIL MEMBER FREED: It is not
3 abatement.

4 COMMISSIONER COHEN: Right.

5 This bill we are referring to
6 maintenance and prevention of deterioration that
7 would lead to necessary lead abatement.

8 CHAIRPERSON SPIGNER: Thank you,
9 Doctor.

10 Council Member Miller, the last
11 questioner for the Doctor and Commissioner of
12 Health.

13 COUNCIL MEMBER MILLER: Thank you, Mr.
14 Chairman.

15 Let me just return to the issue, and
16 Stanley mentioned this as well, I am trying to get
17 an answer to this because I don't understand why the
18 difficulty, what the confusion is.

19 Under Local Law 1, and under current
20 practice, rather, HPD when it issues a violation
21 refers the violation to DOH and you do some
22 follow-up screening; is that the case? Yes or no?

23 ASSISTANT COMMISSIONER CLITZMAN: My
24 understanding is that currently, again, it is health
25 care providers' responsibility to do the actual

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2 screening, the Department of Health --

3 COUNCIL MEMBER MILLER: Ensures that
4 some screening is done?

5 ASSISTANT COMMISSIONER CLITZMAN: When
6 we find out, when we get a referral from any source,
7 whether it is HPD or from a tenant, we will do
8 referrals and link the child up with a way to get
9 tested.

10 COUNCIL MEMBER MILLER: Then you do
11 get referrals currently from HPD?

12 ASSISTANT COMMISSIONER CLITZMAN: We
13 get referrals from a number of different sources.

14 COUNCIL MEMBER MILLER: Including HPD?

15 ASSISTANT COMMISSIONER CLITZMAN: Yes.

16 COUNCIL MEMBER MILLER: And you think
17 that is a good practice? I mean, I believe,
18 Commissioner, you testified that was a good practice
19 and you would continue that practice; is that not
20 the case? You did say that; are you withdrawing
21 that?

22 COMMISSIONER COHEN: No, I am not
23 withdrawing that. We will continue to have close
24 working relationships with City agencies that can
25 work collaboratively with us.

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2 COUNCIL MEMBER MILLER: Do you think
3 it is a good idea for HPD to notify you -- in other
4 words, when HPD discovers there is a lead-based
5 paint hazard in an apartment, is it a good idea for
6 them to notify you that there is this hazard?
7 Because that would be a child who it would be your
8 mission to try to protect, right? Is that a good
9 thing?

10 COMMISSIONER COHEN: There is no
11 question, Councilman, that the goal here is to get
12 children who may have a lead exposure to be linked
13 with their health care provider and make sure --

14 COUNCIL MEMBER MILLER: And that is
15 the role that you guys play?

16 COMMISSIONER COHEN: That is a role
17 that we can play, but it is also a role that health
18 care providers play.

19 COUNCIL MEMBER MILLER: Yes, but the
20 health care provider --

21 COMMISSIONER COHEN: HPD provides
22 information to individuals that would allow them to
23 --

24 COUNCIL MEMBER MILLER: I am
25 understanding you to say that it is a good thing

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2 that HPD advises you of these situations, isn't it?

3 COMMISSIONER COHEN: We will continue
4 to have the close-working relationship to allow us
5 --

6 COUNCIL MEMBER MILLER: Is it a good
7 thing for them to advise you of the violation? Just
8 yes or no. Because it is not in the bill now.

9 So, what I am saying is, if you think
10 that it is a good thing, why isn't it in the bill?
11 Is it expensive? I mean, I am just trying to
12 understand. I have to vote on this legislation, do
13 you see what I am saying? And I need to know whether
14 it is a good idea for you to be notified or whether
15 it is a bad idea, because it either has to be in the
16 bill or not in the bill.

17 If it is in the bill, we would assume
18 it should be in the bill, if it is a good idea, and
19 you are the Commissioner of the Department of
20 Health, you ought to be able to tell us whether it
21 is a good idea or a bad idea for HPD to notify you
22 of these violations; yes or no -- well, no, I am
23 sorry. Good or bad?

24 ASSISTANT COMMISSIONER CLITZMAN: I
25 know you are thinking one word from us and we are

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2 giving you much more.

3 COUNCIL MEMBER MILLER: It is either
4 good or bad.

5 ASSISTANT COMMISSIONER CLITZMAN: Let
6 me just tell you, our real world experience is that
7 there are a number of ways that work for different
8 people, linking people up with testing.

9 COUNCIL MEMBER MILLER: Okay, this is
10 one way that might work. Is it a good way for it to
11 work or a bad way for it to work? Is it good or bad?
12 I am not going to stop, I will follow you, all
13 right?

14 ASSISTANT COMMISSIONER CLITZMAN: It
15 is not necessarily the most efficient way. It is not
16 necessarily in all cases the most efficient way.

17 COUNCIL MEMBER MILLER: Okay, so it is
18 the position of the Department of Health that it
19 would be a bad thing for this bill to include a
20 referral to the Department of Health when HPD finds
21 a lead-based violation. You are saying to me and the
22 members of this Committee, that the Department of
23 Health would prefer not to learn when there are
24 lead-based violations in people's apartments that
25 threaten their children? That would be a yes or no.

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2 Yes, you would prefer not to learn; or no, you would
3 prefer to learn?

4 CHAIRPERSON SPIGNER: That is your
5 last question, Council Member.

6 COMMISSIONER COHEN: The answer is
7 that we prefer to know that children are getting the
8 necessary health care they need to ensure their
9 health and safety.

10 CHAIRPERSON SPIGNER: So, you would
11 like to know then? You would like us to include it.

12 CHAIRPERSON SPIGNER: Council Member,
13 you have asked your question. Please, I have got a
14 long list of witnesses.

15 COUNCIL MEMBER MILLER: They don't
16 answer, Mr. Chairman.

17 CHAIRPERSON SPIGNER: I can't make
18 them answer, neither can you.

19 COUNCIL MEMBER MILLER: Well, we could
20 try.

21 COMMISSIONER COHEN: As it appears in
22 Local Law 1, Councilman, that was before the state
23 mandate that children be tested for lead at age one
24 and two, so we had practically no other way to
25 ensure that these children were getting the

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2 necessary attention that they require. Now there are
3 multiple ways. We have the Medicaid Managed Care
4 Program at the Health Department. I am pleased we
5 will be holding contracts with HMOs, and lead health
6 and safety will be an issue that will be closely
7 monitored by the Health Department with our HMOs to
8 make sure that children are getting the necessary
9 testing they need, when they show higher levels we
10 will expect higher standards by the health care
11 provider, and I think in numerous ways we have the
12 opportunity at the millennium to be more successful
13 in making sure these kids are linked with good
14 health providers and good health practices.

15 CHAIRPERSON SPIGNER: Thank you, Dr.
16 Cohen, for your testimony. That concludes the
17 doctor's testimony and we move now to the
18 Comptroller, who I see has entered the room.

19 Comptroller Hevesi, will you take a
20 seat at the table.

21 Mr. Comptroller, if you will identify
22 yourself for the record.

23 COMPTROLLER HEVESI: My name is Alan
24 Hevesi, New York City Comptroller.

25 Should I start, Mr. Chair?

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2 CHAIRPERSON SPIGNER: Surely. Thank
3 you.

4 COMPTROLLER HEVESI: I would like to
5 thank Chair Spigner and the Council's Committee on
6 Housing and Buildings for giving me the opportunity
7 to testify today on the lead paint legislation.

8 This legislation is extremely
9 important to children, to taxpayers and all New
10 Yorkers. Children, especially poor and minority
11 children, need effective protection from the
12 devastating affect of lead poisoning. Prevention
13 must be the primary goal of any legislation. But
14 let's be clear that an effective lead bill benefits
15 every New Yorker. The City already has a housing
16 shortage, many of its housing units are old enough
17 to have lead paint, an effective bill will preserve
18 the viability of all of the city's housing.

19 In addition, taxpayers now pay
20 millions of dollars on claims for children injured
21 by lead poisoning. In Fiscal Year 1998 alone the
22 City paid out \$11 million. This money cannot restore
23 a poisoned child's health. Both children and
24 taxpayers would be better served if the children
25 were protected from lead poisoning so the City could

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2 spend its money improving education and other vital
3 services.

4 Let me be very clear. What I do for a
5 living, among other things, is my office serves as
6 claims officer for the City. When claims against the
7 City are made, we are the ones who have to approve
8 them in conjunction with the Corporation Counsel.
9 Last year we paid out \$11 million in claims for
10 suits against the City for lead paint poisoning.

11 But the issue here should not be
12 about liability in the first instance, it has to be
13 about prevention in the first instance. That is
14 really crucial. And a real preventive program will
15 save lots of money for landlords for the City in
16 liability.

17 The best way to establish preventive
18 programs is to ensure that those responsible do the
19 work they are supposed to do.

20 My staff received the latest draft of
21 this bill last Friday. That did not provide us or
22 anyone else concerned with this issue sufficient
23 time to do a detailed analysis.

24 Unfortunately, it appears that this
25 bill is being rushed through to meet a June 30

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2 deadline, as stipulated in an agreement with the
3 plaintiffs in a suit against the City, that is my
4 understanding. And by the way, anybody on the
5 Committee can correct me if I am wrong, but I
6 understand the draft was introduced Friday
7 Afternoon, today is Monday, the public hearing, and
8 there is some rumors about passing this bill this
9 week some time.

10 CHAIRPERSON SPIGNER: Let me say,
11 Comptroller, I have been chair of this Committee now
12 about 15 years, and this has been a front issue
13 burner. I have held more hearings on this issue, and
14 as a matter of fact, both your hair and mine were
15 dark when we started discussing this issue. This
16 issue has been discussed from every perspective and
17 we could spend the rest of our career discussing it,
18 but there must be a time when closure has to come
19 and that is what we are trying to arrive at.

20 COMPTROLLER HEVESTI: Well, I
21 appreciate that you and I purchased the same gray
22 hair dye to look mature in our business.

23 As to whether this needs to be
24 closure by June 30th, let me say that in fact there
25 is no need to rush through a bill, and risk passing

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2 legislation that does not effectively deal with the
3 problem.

4 I have with me a June 17th letter
5 from Matthew Chachere, if I am pronouncing it
6 correctly.

7 COUNCIL MEMBER MICHELS: Correct.

8 COMPTROLLER HEVESI: An attorney for
9 the plaintiffs. Mr. Chachere notes that the deadline
10 for legislation has already been extended twice. The
11 last time the plaintiffs offered an extension to
12 October, but the City refused and demanded that the
13 extension last only until June 30th.

14 Mr. Chachere states that the
15 plaintiff stand ready to extend the deadline again
16 to October. This is in a letter to me as I indicated
17 dated June 17th last week. He writes, "Plaintiffs
18 believe that it is in the best interest of the class
19 they represent, young children in multiple
20 dwellings, that any legislation modifying the
21 current law be the product of as much careful study
22 and consideration as possible.

23 It is Plaintiffs' observation that
24 the current artificially created June 30th deadline
25 crisis will only result in ill-considered

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2 legislation that would be extremely harmful to the
3 interest of the children in this City."

4 Tenants organization, and here again
5 I will be corrected by anybody in the room, tenants
6 organizations and the New York Public Interest
7 Research Group apparently agree with Mr. Chachere,
8 so do I, I urge the City to extend the deadline.

9 The City's first lead law had severe
10 flaws. We cannot allow that to happen with the
11 second law.

12 CHAIRPERSON SPIGNER: I am just
13 reminded that we had Corp Counsel who testified
14 earlier that there is no indication from the judge,
15 is Corp Counsel still in the room? Yes, he is still
16 in the room. He indicated that there is no
17 indication, and he is the lawyer assigned
18 specifically to this issue, that he would extend the
19 deadline.

20 COMPTROLLER HEVESI: There may be no
21 indication too that he predicts the end result of
22 the NBA playoffs, somebody has to file a motion with
23 him with stipulations from both sides. If he then
24 has rejected that, then your point would be well
25 taken, sir.

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2 COUNCIL MEMBER MICHELS: Mr. Chairman,
3 I just want to say that the testimony of the
4 Corporation Counsel was he has not gone to the Judge
5 to ask him to extend the time.

6 COMPTROLLER HEVESI: Okay.

7 Now, as to the substance. Seventeen
8 years ago the City passed Local Law 1, which among
9 other things requires residences where young
10 children reside to be lead free. Today virtually
11 everyone agrees that a law which creates lead-safe
12 homes is a better way to protect both the public
13 health and the public purse. Therefore, passage of a
14 new lead-paint abatement law is needed.

15 And, again, let me put on the record,
16 as claims officer for New York City, we have
17 expended an enormous amount of time and money to
18 reform the method by which we pay out our claims,
19 30,000 claims a year come into the City, \$380
20 million was paid out in claims last year in total,
21 and we have spent a million dollars with Price
22 Waterhouse and the Corporation Counsel to reduce
23 that number to make early claims payments and so on.

24 I am committed to reducing the
25 liability of the City, but I want to emphasize that

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2 in this case the best way to reduce everybody's
3 liability for suits against the City is to have a
4 prevention program that works, and the notion from
5 the testimony of the Commissioner of Health that
6 this is better than the existing law, well, the
7 answer is the existing law for 1982 is
8 unenforceable, we all agree. So, anything would be
9 better. But we should not substitute the search for
10 the better for the search for the best, and there is
11 room to turn this process into an accomplishment
12 where the best legislation, protecting to the extent
13 possible the liability issues, but first protecting
14 children is the priority.

15 As I have noted, we only have time
16 for a quick analysis of the proposed legislation. We
17 have several concerns about the current provisions
18 of the bill. The bill only defines peeling paint as
19 a hazard, but lead dust poses the greatest hazard to
20 young children. So, a bill should define the hazard
21 as any condition that causes exposure from lead
22 contamination, whether from dust or lead-based
23 paint.

24 The current bill places too much
25 responsibility on the tenant to notify the landlord

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2 about the occupancy of young children. The tenant
3 should play a role, but there has to be an ultimate
4 determination as to the fact that a six-year-old or
5 younger is living in the building and that is a
6 joint responsibility.

7 Also, the current bill gives
8 landlords an unlimited number of 30-day extensions
9 before they are required to actually fix hazardous
10 conditions.

11 To effectively protect children a new
12 law should include the following:

13 1) The legislation should protect
14 public health. This will require active involvement
15 by both the Department for Housing Preservation
16 Development and the Department of Health in drafting
17 rules, procedures and oversight responsibilities.

18 Legislation should require the joint
19 submission of a detailed annual report to the City
20 Council, which should be available to the general
21 public. The legislation should also mandate a
22 publicly accessible registry of lead paint
23 violations and repairs.

24 2) Legislative purposes should be
25 able to be carried out. The purpose of Local Law 1

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2 lead-free housing, has proved to be unachievable.
3 New legislation should establish an effective
4 lead-safe housing program.

5 3) There must be good definitions of
6 lead-based paint and lead-based paint hazards and
7 underlying defects.

8 These are essential to establishing
9 the parameters of both the problem and the mandated
10 solutions. Peeling paint, underlying defects and
11 sources of lead-based paint dust should be included.

12 4) There must be credible
13 notification requirements. Legislation should
14 establish a tenant notification and owner inspection
15 program. New York City's window guard law could be a
16 model for lead-paint notification. The burden of
17 knowledge about the presence of a child under six
18 years of age should rest on the landlord. The
19 landlord should be required to inspect for children
20 in residence and for lead paint hazards at regular
21 intervals, say once or twice a year.

22 In between those inspections the
23 heads of households should be obligated to report
24 the arrival of a new child under six.

25 The tenants must be regularly

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2 notified of such obligation.

3 Legislation should provide only
4 stringently limited defenses to landlords, standards
5 for regular landlord inspections should be
6 promulgated by HPD and DOH. This is not an excessive
7 burden to have the landlord find out are there kids
8 living in those apartments, to notify parents that
9 if there is a kid to let them know and to do this
10 periodically. It is not a heavy burden.

11 That is not the liability issue that
12 the tenants bring to us and there are legitimate
13 liability issues that the tenants have.

14 Five, public health must be protected
15 during abatement. Abatements of violations should be
16 limited to 30 days and must be carried out pursuant
17 to City rules and technical standards. Provisions
18 for the courts to extend clean-up have deadlines
19 under extenuating circumstances should be included.

20 A landlord post abatement self
21 certification program that will be enforced is
22 essential.

23 Incentives for landlord compliance
24 can take the form of tax abatements, partial
25 reimbursements or small grants. The City must play

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2 its role here too.

3 Six, there must be an efficient post
4 remediation inspection program. It should include a
5 requirement for past abatement air monitoring.

6 Seven, there must be prompt City lead
7 paint abatement if a private landlord fails to abate
8 or fails to properly abate. Again, this is the
9 City's obligation now.

10 The public health justification for
11 this provision is obvious. Owners should have liens
12 imposed on their property for the cost of such
13 abatement and an effective mechanism to recover such
14 costs in bankruptcy should be created.

15 Eight, there must be clarity about
16 the City's programmatic requirements and its legal
17 liabilities. Clarification would stipulate the
18 City's responsibilities and therefore clarify both
19 the costs to the City of such legislation and the
20 limits of its legal liabilities.

21 I believe that the City as landlords
22 should be held to the same standards as private
23 landlords, except that the City should be given some
24 grace period, say one year, for properties duly
25 acquired in rem.

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2 Right now one of the motivations for
3 the City to go out of the in rem business is this
4 lead paint liability question.

5 The law should also hold the City
6 responsible for promulgating appropriate regulations
7 within a stipulated time period. The City's failure
8 to promulgate regulations should not create a cause
9 of action in tort, but should be handled in Article
10 78 summary proceedings in New York State Supreme
11 Court. An Article 78 is the quickest way to get
12 action by the City and thus the quickest way to
13 ensure that measures to protect children are
14 enacted, that is the bottom line, protecting
15 children.

16 No doubt there are other important
17 issues that should be included in the effective lead
18 paint bill that puts prevention first. But to go
19 back to my original point, that is why we should not
20 be rushing this legislation, but making sure it does
21 the job for our children and for all New Yorkers.

22 Let me close with one last point. I
23 urge the Council to pass a resolution, asking the
24 State Legislature to create a licensing and
25 certification program for lead abaters as required

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2 by federal regulations. For any program to work,
3 there must be companies that landlords in the City
4 can count on to perform lead abatement work
5 properly.

6 Again, this is fundamentally about
7 kids and their ability to learn, their ability to
8 survive in this society, their ability to avoid
9 injury. So the guiding principle must be prevention
10 of lead poisoning.

11 The other issue, such as liability,
12 must serve the issue of prevention.

13 Thank you very much.

14 CHAIRPERSON SPIGNER: Mr. Comptroller,
15 I want to thank you for --

16 COMPTROLLER HEVESI: And Mr. Chairman,
17 let me interrupt to apologize to you. I gave a half
18 snippy answer in response to one of your questions.

19 CHAIRPERSON SPIGNER: How long have I
20 known you?

21 COMPTROLLER HEVESI: You have known me
22 since the days you were younger than me.

23 I apologize.

24 CHAIRPERSON SPIGNER: I just want to
25 say, too, that I appreciate the concern as to the

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2 need for additional discussion and more discussion,
3 but I will tell you, I know firsthand that there
4 have been people for the last two weeks that have
5 been working 24 hours a day on this issue, and I am
6 sure as a long-time member of the State Legislature,
7 you are fully aware of the complexities of the
8 legislative process. And that is all I will say to
9 that. That is all I will say to that, that this
10 issue has long been before us.

11 COMPTROLLER HEVESI: I appreciate
12 that, Mr. Chairman.

13 CHAIRPERSON SPIGNER: That we have met
14 with the total spectrum of points in this
15 discussion, and I feel that it is time that we
16 moved, and if some would call us expeditious, some
17 would call it a snail space, but nonetheless, that
18 is the view and I respect your view.

19 COMPTROLLER HEVESI: I appreciate it.
20 I respect our disagreement. We agree to disagree.
21 And I do know the legislative process and the
22 pressures that people are under, and I am sure there
23 were people working around the clock 24 hours a day
24 to put this draft together.

25 On the other hand, the draft is a new

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2 work product, and it would require the view of many
3 experts who represent all points of view and I would
4 expect that the people working 24 hours a day on the
5 draft did not represent all of the perspectives that
6 should be brought to the table on this issue.

7 CHAIRPERSON SPIGNER: If you can ever
8 get to them, I have got about three dozen additional
9 experts who want to get on the record again on this,
10 again for the third and fourth time.

11 But in any event, speaking from your
12 expertise, your current expertise, have you analyzed
13 the total impact to the City as a landlord under the
14 current law? And what is the City's current exposure
15 to lead liability?

16 COMPTROLLER HEVESI: Well, it is hard
17 to say what the liability is, also understanding the
18 distance and time between the filing of a lawsuit
19 and the payouts, there are a number of years
20 difference. Last year was \$11 million, it might be
21 lower this year, it might be in the neighborhood of
22 \$7 million. That depends on the cycle of suits that
23 are brought. The City's liability of course comes
24 from the City determining that there have been code
25 violations and then nothing being done to solve the

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2 problem.

3 It is hard to predict, this is a
4 fairly new area of City liability, so it doesn't
5 have a long history that you can grade on a chart.
6 But it is substantial, and the liability issues are
7 very, very important. They are less important,
8 however, than making sure that the City's
9 expenditures for children who are injured as a
10 result of lead paint also has to be calculated and
11 it won't be necessarily directly in payouts subject
12 to lawsuits, but children who have deficits who need
13 special education who are unable to earn income and
14 pay taxes down the road. There is a huge expenditure
15 that flows from our failure to properly abate, that
16 is why we need the best bill possible.

17 CHAIRPERSON SPIGNER: Council Member
18 Michels.

19 COUNCIL MEMBER MICHELS: Mr.
20 Comptroller, I very much appreciate your statement,
21 I very much appreciate your interest in this issue
22 over the years. But I think you would agree with me,
23 and that is the question, whether you agree with me,
24 that the real object of all of the work that has
25 been done here and all of those drafts is to stop

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2 children from being lead poisoned, which we know is
3 a preventable disease.

4 COMPTROLLER HEVESI: Yes.

5 COUNCIL MEMBER MICHELS: And I think
6 you would also agree with me that the best way to do
7 that is to have landlords keep their property in
8 good repair and make sure that this lead dust
9 doesn't appear.

10 COMPTROLLER HEVESI: Yes. To the City
11 included as a landlord.

12 COUNCIL MEMBER MICHELS: And I think
13 you would also agree with me, that the best
14 incentive for that is for them to know that if they
15 don't do it they are going to have to compensate
16 children who have been seriously lead poisoned, have
17 huge medical bills, have pain and suffering and will
18 have to have special care for education the rest of
19 their lives.

20 COMPTROLLER HEVESI: I will accept
21 what I believe is the true, which is the
22 overwhelming majority of landlords are decent,
23 caring people.

24 COUNCIL MEMBER MICHELS: I agree with
25 you.

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2 COMPTROLLER HEVESI: Who want to
3 provide safe and proper housing for their tenants,
4 and also want to make a living. But that the threat
5 of a liability often is a motivator. We found that
6 in other aspects of the law and it is an aspect here
7 as well.

8 COUNCIL MEMBER MICHELS: And I don't
9 know of any other place in the housing and
10 maintenance code where we have removed that threat,
11 except when it comes to these thousands of kids who
12 are lead poisoned every day. And why we are picking
13 on these children, I don't know.

14 Thank you very much.

15 CHAIRPERSON SPIGNER: Council Member
16 Ognibene.

17 COUNCIL MEMBER OGNIBENE: Thank you,
18 Mr. Chairman. And thanks for your testimony.
19 Actually, I enjoyed it, too, because it is very
20 concise, too, where a lot of people tend to get
21 emotional about it you gave us some good ideas in
22 terms of the legislation.

23 One thing I always want to clarify
24 that Stanley, my good colleague, always brings up,
25 somehow that those people who are opposed to this