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2 bill, you know, are favorable to children, and those
3 that want this bill somehow are opposed to safety in
4 children and nothing could be further from the
5 truth. I think all of us have an interest in seeing
6 that the lead paint hazard is abated and the
7 children are cared for.

8 The issue that I am always concerned
9 with is sometimes there is a degree of overkill. I
10 suppose that it is an unfair comparison but to make
11 it a comparison, we could have public safety for
12 pedestrians in this City by lowering the speed limit
13 to five miles an hour, and I am sure that everybody
14 would agree that if cars went five miles an hour,
15 that there hardly would be any injuries or damage,
16 but the problem is that we can't do that, that it is
17 not practical, that we tried it under local law 1,
18 and so we have at least resolved here to come up
19 with a piece of legislation that we think is
20 workable, that accomplishes the goals that we want
21 to accomplish and fortunately, or unfortunately,
22 people may disagree but that we do it in a way that
23 has the least necessary fiscal impact, both on
24 private landlords and as the City as a landlord and
25 as a regulator. And you had indicated that there

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2 wasn't enough information or certainly enough time
3 to evaluate this piece of legislation but in terms
4 of just your experience as the Comptroller, what do
5 you think will be the reduction in the liability
6 exposure for the City of New York as a result of
7 this legislation that is passed?

8 COMPTROLLER HEVESI: I haven't done
9 the calculation, I don't know the answer to that,
10 and I know you will forgive me for not accepting
11 your analogy between the five mile an hour rule for
12 citizens, the overwhelming majority of whom are
13 adults, and whether we should have an analogous five
14 mile rule for children who are aged up to six years
15 old. When it comes to children and their health.
16 This is not about the taste quality of their peanut
17 butter sandwiches, this is about their health, and
18 there I think the five-mile rule absolutely applies.
19 You go the safest route, whatever the expense. You
20 try to minimize the expense but that is the
21 secondary consideration.

22 COUNCIL MEMBER OGNIBENE: Would you
23 agree that that when we are talking about safety for
24 children from lead poisoning, I will use the word,
25 term lead poisoning, that there are additional

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2 components besides simply the requirement that the
3 illness of property, whether they be the City or
4 privately make it lead safe, that there is also an
5 important function to be served through education,
6 through public health testing, through not only
7 education but adequate cleanliness. You know, in
8 other words, the parents and the families had to
9 ensure that they play their role in this, it simply
10 can't be done simply by the owner of the building.

11 COMPTROLLER HEVESI: Well, what can be
12 done is the elimination to the extent possible of
13 the lead hazard, and that as a landlord obligation.
14 In the same way that landlords are obligated to
15 provide a minimum amount of heat in the building,
16 particularly during the winter. But I will accept
17 the premise that the parents, or families certainly
18 have a large responsibility to be on alert, and in
19 the legislation they were proposing they would play
20 a role in the notification, letting the landlords
21 know there is a problem. We are not imposing on
22 families that don't have children, any obligations
23 in children over the age of six. We are trying to
24 limit the hit on the landlord.

25 And there are ways to help the

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2 landlords as well, through abatements or grants or
3 some other financial arrangements that I would be
4 amenable to. But the bottom line is zero tolerance
5 for lead paint poisoning.

6 COUNCIL MEMBER OGNIBENE: I have been
7 advised that the City currently has approximately a
8 \$250 million lead liability exposure under current
9 law, would you --

10 COMPTROLLER HEVESI: Well, the people
11 who would advise me as to those numbers are sitting
12 here making faces which indicates to me they never
13 heard of that before. This is, the one whispering
14 her, his lips don't move as I speak, seems to
15 indicate that the 250 is probably a little bit high.
16 It is maybe the number for existing claims against
17 the City that have not yet been adjudicated.

18 COUNCIL MEMBER OGNIBENE: Right.

19 COMPTROLLER HEVESI: At the level that
20 the plaintiff puts in as a number. It is as if
21 somebody puts in I am suing the City for \$60 million
22 when the end result is a million dollar claim. So
23 that probably would be high; on the other hand, I
24 don't want to minimize it. It's a serious issue. And
25 the best way to reduce claims down the road is lead

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2 paint prevention. Let's prevent it. Let's abate it.

3 COUNCIL MEMBER OGNIBENE: Do you also
4 agree that making the rules and regulations to
5 strident, that there is a potential for a great deal
6 of abandonment of property in the City of New York
7 and that we ought to take that into consideration
8 before we make it nearly impossible for people to
9 comply in their financial means?

10 COMPTROLLER HEVESI: I think as a
11 generalization and a truism you are absolutely
12 right. How that applies to a particular provision,
13 for example, of the Michels bill we may not agree
14 what is onerous and what isn't onerous.

15 If it is onerous for a landlord to
16 abate, to prevent, and in order to save the landlord
17 money we allow a child to be injured then I wouldn't
18 accept the proposition applies.

19 So, there is a balance, we will find
20 the balance. But we won't find the balance, I don't
21 think, by a draft that is introduced on Friday and
22 passed on Wednesday.

23 COUNCIL MEMBER OGNIBENE: Yes. Well, I
24 would agree with you on that, except I do want to
25 stress for the people out here, that although the

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2 draft was introduced on Friday, I know that
3 discussions concerning the provisions of it had been
4 going on for some time, so it wasn't something that
5 was put together hastily, it was something that was
6 well thought out and there was a lot of input from a
7 lot of segments of the community.

8 CHAIRPERSON SPIGNER: And we continue
9 to --

10 COUNCIL MEMBER OGNIBENE: Please. I
11 could have stayed home and be treated like that.

12 CHAIRPERSON SPIGNER: We continue to
13 take suggestions and all of the points made by
14 subsequent witnesses will be given every
15 consideration.

16 Council Member Linares.

17 COUNCIL MEMBER LINARES: Thank you,
18 Mr. Chair.

19 COUNCIL MEMBER OGNIBENE: Thank you.

20 COUNCIL MEMBER LINARES: I appreciate
21 your testimony, Mr. Comptroller, with regards to
22 this legislation, and just by following up on the
23 last question that my Republican colleague just
24 asked, one would tend to think and wonder --

25 COUNCIL MEMBER OGNIBENE: Can't I just

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2 be your colleague.

3 COUNCIL MEMBER LINARES: My colleague
4 that happens to be Republican.

5 COMPTROLLER HEVESI: I want to be very
6 clear for the record, that the people who reacted to
7 Mr. Ognibene were reacting to the public, Mr.
8 Ognibene. The private, Mr. Ognibene, is the nicest,
9 most decent caring people you would imagine. On the
10 other hand, there is the public, Mr. Ognibene.

11 COUNCIL MEMBER OGNIBENE: I think my
12 wife would disagree though.

13 COMPTROLLER HEVESI: I have had
14 conversations with your wife about it, Tom.

15 COUNCIL MEMBER LINARES: Sometimes I
16 wonder, getting back to my statement, whether what
17 is driving this piece of legislation is not so much
18 the financial liabilities that are at stake in terms
19 of what is mandated to protect children as opposed
20 to the health and well-being of our children, which
21 should be the fundamental issue to drive this type
22 of legislation.

23 I want to refer to some effort that
24 your office undertook several years back where you
25 found approximately 66,000 lead paint violations in

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2 the database held under HPD I believe, and where
3 about 43 percent of those violations had not been
4 tended to a year after. And I am wondering whether
5 that particular situation that seems to prevail
6 would again continue to persist or worsen under this
7 new legislation.

8 COMPTROLLER HEVESI: We have not done
9 a follow up yet on whether that situation has
10 improved. It was a very serious finding that a
11 series of thousands of violations are found and they
12 are not pursued, and we do periodically follow up
13 and this will be on our agenda. This was a second
14 report that he is referring to.

15 COUNCIL MEMBER LINARES: So, given the
16 fact that it seems to be a lack of a mechanism
17 between DOH and HPD, HPD having to intervene to
18 monitor and enforce and DOH having to make sure that
19 whatever the appropriate testing needs to take
20 place, given the lack of a mechanism to help
21 articulate that type of intervention, reconciling
22 enforcement with protection of children, doesn't
23 this put a greater number of children at risk?

24 COMPTROLLER HEVESI: Absolutely. The
25 issue that you were pursuing, Mr. Miller was.

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2 pursuing a little while ago, about the connections
3 between HPD and the notification through the
4 Department of Health, that should be in the
5 legislation. That should be codified. It should be
6 mandated, it will reduce the number of children who
7 are injured, and one would hope that whoever is
8 drafting the final version of this legislation would
9 include that provision, otherwise there will be
10 greater risk and greater liability to the landlords
11 and to the City.

12 COUNCIL MEMBER LINARES: Thank you
13 very much. I turn it back to you.

14 CHAIRPERSON SPIGNER: Mr. Comptroller,
15 one final question, have you analyzed, have you
16 analyzed how the City's liabilities are affected by
17 this proposed legislation?

18 COMPTROLLER HEVESI: We have not.

19 CHAIRPERSON SPIGNER: Okay. Have you
20 analyzed the total fiscal impact to the City of this
21 legislation?

22 COMPTROLLER HEVESI: We have not. We
23 received it Friday.

24 CHAIRPERSON SPIGNER: Okay.

25 Now, how much of the judgment in

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2 1998/1999 were paid by the City in one instance as a
3 landlord, in another instance as a regulator?

4 COMPTROLLER HEVESI: It was mostly as
5 a landlord.

6 CHAIRPERSON SPIGNER: Mostly as a
7 landlord.

8 COMPTROLLER HEVESI: Yes. That is of
9 the 11 million, for fiscal '98. Mostly as a
10 landlord.

11 CHAIRPERSON SPIGNER: Mr. Comptroller,
12 and good friend, I want to thank you for your
13 testimony.

14 COMPTROLLER HEVESI: Thank you very
15 much.

16 CHAIRPERSON SPIGNER: Wait. One more
17 question.

18 What impact will this proposed
19 legislation have on co-ops and condos?

20 COMPTROLLER HEVESI: We don't know,
21 but we know that there would be less enforcement and
22 unquestioned level of liability that we haven't
23 analyzed as a result of the draft that we have. Sort
24 of chaotic, don't know the answer.

25 CHAIRPERSON SPIGNER: Council Member

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2 Michels, one last question.

3 COUNCIL MEMBER MICHELS: I would like
4 to know from the Comptroller as to how much time he
5 thinks he would need to study and give us a report
6 on the fiscal impacts of this legislation, as well
7 as the impacts from the course of lawsuits as well
8 as --

9 COMPTROLLER HEVESI: If I was being
10 cute I would say, oh, about October 1st but -- a
11 couple of weeks. Give us a couple of weeks and we
12 could run some numbers for you.

13 COUNCIL MEMBER MICHELS: Thank you.

14 COUNCIL MEMBER QUINN: I just have one
15 question.

16 CHAIRPERSON SPIGNER: Council Member
17 Quinn.

18 COUNCIL MEMBER QUINN: Mr.
19 Comptroller, I assume that your office would be more
20 than willing to do that for us over the next couple
21 of weeks?

22 COMPTROLLER HEVESI: Sure. We are now
23 committed, I am being taped I understand.

24 COUNCIL MEMBER QUINN: Perfect.

25 CHAIRPERSON SPIGNER: Thank you, Mr.

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2 Comptroller, and we are going to take a five-minute
3 break and then we are going to the general public.

4 (Recess taken.)

5 CHAIRPERSON SPIGNER: The first person
6 I am calling is Celia Irvine, from the Manhattan
7 Borough President's Office. Is she here? Celia
8 Irvine. Will you please take a seat.

9 We are going to begin with two
10 gentlemen from Washington, D.C. Gentlemen, will you
11 have a seat and identify yourselves, please, and we
12 will be happy to take your testimony. If you have
13 any copies of your testimony, if not we will have
14 whatever it is that you are prepared to present to
15 us.

16 Identify yourself, sir, and then
17 begin.

18 MR. FARR: My name is Nick Farr. I am
19 the Executive Director of the National Center for
20 Lead Safe Housing, which is a non-profit
21 organization.

22 Our mission is to help prevent child
23 lead poisoning, while preserving the nation's stock
24 of affordable housing. In other words, we are
25 interested in the balance between protecting

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2 children and recognizing the realities of the
3 housing market.

4 Before I had this job, I was the Vice
5 President of the Enterprise Foundation and set up
6 the program in New York City which has rehabilitated
7 thousands of houses in New York City, so we care a
8 lot about affordable housing, just as we do about
9 preventing kids from being poisoned.

10 We agree that Local Law 1 needs to be
11 changed because removing intact lead-based paint, as
12 has been stated, is as likely to cause harm as it is
13 to do good. So, I think there is no question about
14 that.

15 I wanted to focus mostly on the
16 importance of clearance testing, but since the
17 Health Commissioner has already eloquently indicated
18 why that is appropriate, I will cut out a lot of my
19 testimony, but I want to leave you with a few
20 statistics.

21 Our organization is primarily a
22 research and evaluation organization. We have taken
23 dust samples and lead samples from hundreds of
24 thousands of places around the country, including
25 hundreds of units in New York City, and thousands of

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2 samples taken from New York City houses, as part of
3 our evaluation of HUD's lead-based paint poisoning
4 control grant program, of which New York is one of
5 the grantees, and also because we have been engaged
6 in three research projects here in New York City
7 with the Health Department, and others. So we have a
8 lot of data on New York City.

9 The first statistic I want to give
10 you is to indicate why disturbing lead-based paint
11 in connection with preparation for repainting is a
12 dangerous thing to do. I think the Health
13 Commissioner alluded to a study carried out by the
14 Environmental Protection Agency precisely to
15 determine what kinds of activities which renovators
16 and painters might carry out which would cause lead
17 paint hazard.

18 What they did in one part of this
19 test was they got a contractor to sand a door and
20 they found that in the area from where the door hit
21 the floor out six feet, that the amount of lead in
22 the dust in the floor was as much as 43,000
23 micrograms per square foot. That is against EPA's
24 standards for floors of 50 micrograms per square
25 foot.

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2 So, this was dry sanding, but sanding
3 can create an awful lot of lead in the dust. And it
4 has been indicated wet scraping and wet sanding is a
5 good thing, principally because it protects the
6 workers. It doesn't in any way reduce the amount of
7 lead that is created, it just turns it into a
8 slurry, which sometimes is harder to clean up than
9 if it was dry dust.

10 So, it also was pointed out to me by
11 one of the representatives of the property owners,
12 that it probably is likely to induce owners to put
13 down plastic sheeting on the floor so it won't make
14 such a mess, so it's a good thing to do but it by no
15 means prevents the spread of lead in dust and
16 floors.

17 A second set of statistics that I
18 want to give you based on New York City's dwelling
19 units is to note that there is a lot of lead in the
20 paint in New York City dwelling units.

21 We looked at 425 dwelling units and
22 took about 100 XRF tests to find out whether there
23 was lead in the various surfaces, and we found that
24 in 27 percent of those units there was lead in the
25 paint on walls and ceilings.

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2 In 45 percent of those units there
3 was lead in interior trim. In 46 percent of those
4 units, there was lead in the paint in windows.

5 CHAIRPERSON SPIGNER: These are
6 pre-'60 buildings, right?

7 MR. FARR: They are all pre-'60
8 buildings, yes. It happens they are all pre-'50 as
9 well. And indoors 29 percent, so there is a lot of
10 lead in the building. So repairing and stabilizing
11 paint on interiors in New York City can create a lot
12 of lead in dust, and don't let anybody tell you to
13 the contrary.

14 On the other hand, if this work is
15 done with the kind of containment that is
16 recommended in this legislation that is further
17 described in Health Department safe practices,
18 regulations which I think are very reasonable and
19 sensible regulations should be retained for all
20 circumstances, if the work is done reasonably
21 carefully and if the property is cleaned up
22 reasonably well, it is not rocket science to get the
23 lead levels on the floor down way below whatever
24 standard you want to adopt, and we have -- again, we
25 have looked at all of these houses, and we found

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2 that pre-intervention, that is before you do
3 anything, you are just going cold to a house, that
4 the median level of lead in dust on floors is 35
5 micrograms per deciliter. After the work has been
6 done and clean up has been carried out, it goes down
7 to 17 and a year later with nothing further being
8 done, we found the median level of lead in dust on
9 floors was five micrograms per deciliter. Now, all
10 of this is against the standard which EPA is
11 proposing of 50 micrograms per square foot on
12 floors.

13 So, as you can see, property owners
14 will not have difficulty in getting the lead in the
15 dust down to acceptable levels if they do the work
16 carefully, if they do the cleaning carefully. The
17 levels on windowsills and window wells are
18 considerably higher, but again they can be brought
19 down to very acceptable levels with reasonable care
20 and reasonable cleaning activity.

21 However, as the Health Commissioner
22 indicated, even when fully trained abatement workers
23 do this work, they sometimes fail. In New York City
24 we found that eight and a half percent of the work
25 which was done with full clean up failed the dust

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2 test in floors. We found that three and a half
3 percent failed on windowsills and eight percent
4 failed on wells. Now, you multiply that by the
5 number of houses in New York City, you've got a lot
6 of houses.

7 So, as the Health Commissioner
8 indicated, you simply can't tell by looking at a
9 floor or a windowsill or a window well whether or
10 not the lead that remains sticky on the surface is a
11 hazard or not.

12 I mean, most people realize that a
13 microgram is a millionth of a gram, a millionth of a
14 gram, or one-five-millionth of a nickel which weighs
15 five grams.

16 Another way of looking at it is, you
17 get a packet of coffee sweetener, and each one of
18 those little particles is about 100 micrograms. So,
19 that you drop one of those on the floor and you are
20 double the standard that EPA is setting up.

21 CHAIRPERSON SPIGNER: You are saying
22 that the standard is a little unreal?

23 MR. FARR: No, I have given you the
24 statistics of what is happening in New York City,
25 where they have gotten the lead in the dust on

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2 floors down initially to 17 and then a year later it
3 is down to five. What I am saying is that you can't
4 tell whether there is too much lead on the floor
5 simply by looking at it, because we are talking
6 about tiny, tiny particles of lead, which of course
7 are picked up on the hand, get into the mouth, get
8 into the small intestine, the smaller the particles,
9 the easier it is to absorb into the children's blood
10 stream. So, what we are worried about are very small
11 amounts of lead, which you cannot see, which is why
12 the Health Commissioner is 100 percent correct when
13 he says that you cannot be sure that you have a
14 house, a dwelling unit, which is safe for children
15 to live in and to play on the floor on and to get
16 their hands on the windowsills and so on, unless you
17 take dust tests.

18 So, dust tests, at least we think,
19 are absolutely essential if you care about
20 protecting children.

21 Now, we know, I mean we have been
22 advised lots, because we have worked on this issue,
23 as you know, in New York City for years, and have
24 talked to a lot of New York City property owners
25 about it, we know they oppose dust testing, and I

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2 assume they pose dust testing for one of two
3 reasons.

4 Reason number one, they might fail.
5 As I have indicated, if you do it carefully, you
6 will not fail, and if you do fail you are going to
7 subject children to a serious health hazard, so I
8 don't have a lot of sympathy to that issue.

9 And one of the reasons we want to
10 have dust testing is because if the person who is
11 doing the cleaning knows that somebody is going to
12 come behind them and do a dust test, they are going
13 to clean a lot better.

14 CHAIRPERSON SPIGNER: So, if you fail,
15 then you should clean again.

16 MR. FARR: If you flunk, and I mean I
17 gave the example of eight and a half percent of the
18 units I am talking about failed, they went back and
19 cleaned again.

20 CHAIRPERSON SPIGNER: You can clean to
21 the point of you get acceptable clearance?

22 MR. FARR: Absolutely. I mean,
23 ultimately all of the units that we looked at
24 cleared. It is just that a few of them didn't clear
25 right away.

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2 CHAIRPERSON SPIGNER: What about
3 carpeting?

4 MR. FARR: Competent, careful
5 cleaning.

6 CHAIRPERSON SPIGNER: Carpeting.

7 MR. FARR: Carpeting?

8 CHAIRPERSON SPIGNER: Yes.

9 MR. FARR: The carpets, carpet levels
10 are about half the levels of bare floors, we have
11 found. EPA has not yet set a standard for carpets
12 but we have been working with them on that. And we
13 have found that the levels of lead in carpets tends
14 to be, in the same house tends to be about half the
15 level of lead on bare floors.

16 CHAIRPERSON SPIGNER: But can you get
17 clearance on a carpet?

18 MR. FARR: Yes. So we therefore
19 obviously strongly feel that there should be lead
20 testing in this legislation.

21 The question is what kind of lead
22 testing, by whom and so forth. And I have got some
23 suggestions that I would like to make to you, so as
24 to make it -- because the other reason the property
25 owners object to it is because it is expensive or

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2 time-consuming or both, and they don't like that and
3 I don't blame them for not liking it.

4 So, it seems to me that the City
5 Council here should, (a) provide for dust testing,
6 and (b) make it as easy and inexpensive as possible.

7 Now, the Environmental Protection
8 Agency is presently --

9 CHAIRPERSON SPIGNER: Easy and
10 effective, but yet inexpensive.

11 MR. FARR: That's right. You want to
12 protect kids but you don't want to put an undue
13 burden --

14 CHAIRPERSON SPIGNER: And we can
15 accomplish both.

16 MR. FARR: You can accomplish both.

17 Now, the reason it is thought to be
18 expensive is that under some states, even after
19 interim controls, abatement, they require any work
20 to be done by so-called certified paint inspectors
21 or certified risk assessors, so there are
22 qualifications to take training to be that, and in
23 the case of inspectors it is a three-day training,
24 most of which is irrelevant to dust testing and in
25 the case of risk assessors, it is a five-day

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2 training, most of which is irrelevant to dust
3 testing.

4 We finally persuaded both HUD and EPA
5 to authorize a new discipline called "clearance
6 technicians". And EPA is presently developing a
7 six-hour, not three-day, a six-hour training program
8 for clearance technicians, and it is their plan that
9 anybody can qualify to take these tests. You do not
10 need to have five years experience, you do not need
11 to have a BA in economics or whatever. It is the
12 expectation that appraisers, I mean there are a lot
13 of appraisers that are out of work right now,
14 because most appraising is being done by computers.
15 Home inspector, whom I know are very interested in
16 doing this, I mean, the Health Department, the
17 Housing Department could have a lot of people
18 trained in this six-hour training.

19 Then the City should provide for some
20 method of certifying that these people have taken
21 the training and passed the test.

22 The reason you need to certify them
23 is because HUD in its new regulations says, that
24 whenever virtually any HUD money is used to
25 rehabilitate a house or whether it is Section 8 or

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2 whatever, you are going to have to do a certain
3 amount of work, mostly the same work you are talking
4 about, i.e. paint stabilization, and then you are
5 going to have to give clearance testing, and HUD is
6 going to require that those clearance testers, those
7 clearance technicians be certified. So, New York
8 City, if it wanted to, if it wanted to make things
9 simple, easy and effective, could provide for
10 clearance technicians, it could provide the training
11 which is required, and they can borrow the training
12 that EPA will have had finished by this fall, if
13 they want to. They can provide a simple test, they
14 can provide some sort of a certification. And the
15 net effect of this will be that the cost and delay
16 of dust testing will be reduced to an absolute
17 minimum.

18 I mean the laboratories charge \$4.75
19 to do a test, and they provide all the equipment and
20 the mailing and everything, they will send it back
21 to you by fax or letter so you can get it within 24
22 hours. So that dust testing need not be this great
23 terrible thing--

24 CHAIRPERSON SPIGNER: Will HUD require
25 that the person be independent, the testing agency

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2 be independent of the property owner?

3 MR. FARR: HUD will certainly require
4 that the people who do the cleaning, do the work,
5 cannot also provide the test. I am just not sure
6 whether they will provide that somebody else --

7 CHAIRPERSON SPIGNER: In other words,
8 you can't clean and test?

9 MR. FARR: No, they are not going to
10 let the fox guard the chicken coupe.

11 So, therefore, it seems to me that
12 the arguments against dust testing fall if the City
13 goes after the thing intelligently, as I am sure it
14 will.

15 There are a couple of other points
16 that I would like to make which have already been
17 made, or at least the questions have been asked by
18 people before. One of them has to do with halls and
19 stairways, common areas, the common areas we are
20 talking about are halls and stairways. My person
21 position is that when properties turn over, which is
22 a simple, easy time to do things, you already have
23 people in the building, they should stabilize the
24 paint on the halls and stairways. Some children do
25 play there, some children do get poisoned, I don't

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2 have good statistics exactly to what percentage of
3 them are poisoned that way, but they are clearly are
4 exposed in those circumstances. That is not a big
5 deal. At turnover, I am not talking about when you
6 go in at a complaint and you are fixing up one wall
7 or one window or whatever, I am talking about a
8 turnover when people are already there. You should
9 do, you should stabilize the paint on halls and
10 stairways as well.

11 Secondly, the present statute for
12 some reason has HEPA-vacuumping and wet washing as an
13 either/or. That makes no sense. The vacuumping is for
14 one purpose - the vacuumping is to pick up larger
15 debris of any kind or other, and the wet washing
16 with a detergent, and I would say any detergent, EPA
17 has found that no detergent is better than any
18 other, so you don't need to get fancy on that. The
19 wet wash picks up, and only the wet wash, the
20 detergent, followed by a rinse, picks up the little
21 tiny particles that I was talking about, so you need
22 both.

23 I personally am not as hung up as
24 others are on the vacuum cleaner being a HEPA-vacuum
25 cleaner. It is much better. I mean, a HEPA-vacuum

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2 cleaner doesn't pick up any more than a regular
3 vacuum cleaner does. The reason you have a
4 HEPA-vacuum is because there is a very fine filter
5 and it doesn't spit out little particles of lead out
6 the back end. So a HEPA-vacuum cleaner is much
7 better, but I would much rather have vacuuming and
8 wet wash than just vacuuming or just wet wash.

9 Thirdly, I agree with this
10 contentious issue that property owners should take
11 the same care to find out whether there is a young
12 children in the unit, as they do to protect the
13 child from falling out of the window. I mean, it is
14 the same thing so that the window guard rule should
15 just apply. It should just apply the present rules
16 of the situation, and it seems to me it is a
17 no-brainer.

18 And finally, I agree with the
19 Councilwoman, that there should be training for the
20 people who do paint stabilization and cleaning. Not
21 a two-week training or anything like that. Indeed,
22 HUD has already created a two-day training program
23 for people who do repair work and so on, which is
24 publicly available. I personally think that for
25 painters you could do a training program, which

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2 would be a half-day training, indeed we have been
3 pushing EPA to develop such a training program,
4 mostly for remodeling and painting, and I am quite
5 sure they are going to do that but they haven't done
6 it yet. So for the City to develop a simple training
7 program so that painters, remodelers and the repair
8 people who do this kind of work have enough so they
9 know what the problem is, they know basically what
10 they have to do, and it will cost practically
11 nothing and it will make it somewhat safer, it would
12 seem to me it is an easy thing to do and you should
13 do it.

14 CHAIRPERSON SPIGNER: Sir, do you have
15 something to add?

16 MR. RYAN: My name is Don Ryan. I am
17 with the Alliance to End Childhood Lead Poisoning, a
18 national public interest policy and advocacy
19 organization in Washington.

20 First, this is my first time to New
21 York and I very much appreciate the opportunity to
22 appear before you today. I have for some years
23 followed the debate and the contentious debate in
24 New York City. I know many of you have struggled
25 with this issue for years, if not decades. And the

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2 reason you struggle with this issue is because there
3 is lead-based paint in two-thirds of the housing
4 stock in New York City.

5 The message I want to bring to you is
6 that there is also lead-based paint in two-thirds of
7 the housing stock across the United States, other
8 cities, other states are struggling with this issue
9 just as the New York City Council is.

10 You are in the process of making a
11 fundamental shift, a shift from worrying about the
12 presence of lead paint, to worrying about lead-based
13 paint hazards and controlling those hazards.

14 I want to say that I fully support
15 the shift that you are making, from the
16 preoccupation with the presence of paint to lead
17 safety and controlling lead hazards. But making this
18 shift has inherent risks. It must be done carefully,
19 it must be done properly.

20 The shift needs to, number one,
21 protect children's health, and to do that it must be
22 based on the science.

23 When Local Law 1 was written in 1982,
24 relatively little was known about the sources and
25 pathways of children's exposure to lead, about

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2 cost-effective measures to protect children from
3 lead poisoning.

4 We now know much, much more. Over the
5 last five years the research has greatly expanded
6 our base of knowledge, and this base of knowledge
7 needs now to inform New York City's new approach.

8 What does the science tell us? Well,
9 number one, it tells us the paint condition is more
10 important than the lead content, that peeling paint
11 in and of itself is always of concern. It is a
12 concern because kids can eat paint chips, it is also
13 a concern because it is the primary source of lead
14 dust. So that science tells us we need to worry
15 about the source, the peeling paint, and the pathway
16 of exposure which is the lead dust.

17 So we have a dual challenge to
18 promptly and safely repair the peeling paint, as
19 well as to control, contain and clean up the lead
20 dust.

21 This is what the future looks like,
22 this is how we, as a nation, can protect our
23 children from lead hazards in their homes.

24 And this is where the Vallone bill
25 fails, because it does not pay attention to lead

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2 dust. I want to tell you that as an advocate for
3 children's health, I am deeply concerned and I have
4 been, and I saw the first version of this bill about
5 ten days or two weeks ago. It is a great concern
6 because of its failure to control and to check for
7 lead dust.

8 I will tell you this is not an idle
9 fear or an empty fear or a bargaining chip in the
10 equation. This concern is based on the science of
11 what we know.

12 The environmental protection agency
13 undertook detailed studies of different activities
14 and how much lead dust they generate. In paint prep,
15 the work that is done to prepare a surface of
16 peeling paint, and to prepare it for repainting is
17 among the most dust generating of all the
18 activities. From the HUD national evaluation, the
19 National Center has taken detailed studies, research
20 in ten cities around the country over the last five
21 years.

22 In those cities, work done with
23 trained contractors, with certified abatement
24 specialists, 30 percent of the time those units are
25 left with lead dust hazards behind, and as Nick

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2 said, it is invisible, the only way to check for it
3 is to do a clearance test and when you find a
4 problem, the answer is elbow grease and a detergent
5 to clean it up and then pass.

6 So, I would reiterate four major
7 changes that are needed to the bill.

8 Number one, lead dust hazards must be
9 put on the same level with peeling paint. The
10 definition of a lead-based paint hazard must
11 encompass lead dust, and a standard needs to be
12 established by the City in terms of the lead dust
13 levels. Until EPA standards are promulgated, you
14 should use 50 micrograms per square foot for floors.
15 Nothing certainly higher than 50.

16 Number two, requirements must be
17 routinely plugged in for clearance dust testing,
18 both at unit turnover and after paint repair work.

19 As Nick said, the clearance
20 technician is the way that this can happen, quickly,
21 easily, efficiently and in a way that on a broad
22 scale can be enforced to protect children's health.

23 CHAIRPERSON SPIGNER: And you also
24 said inexpensively.

25 MR. RYAN: Yes. I know landlords are

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2 so concerned they are going to be held hostage by
3 the certified industry. This is an opportunity for
4 the City of New York to take the course that EPA is
5 developing specifically for this purpose, the
6 clearance technician, and with one day's training, a
7 cadre of different kinds of people, Health
8 Department, Housing Department, inspectors,
9 appraisers, community groups, can provide this
10 function at low cost.

11 In most situations the regulated
12 industry is always pounding their fists, we want a
13 performance standard, not command and control. Well,
14 the dust clearance test is the bottom line, that is
15 the quality control, that is the performance check
16 on this system.

17 Again, I would second Nick Farr's
18 recommendation that basic training in lead safety, a
19 half day's training should be part of every painter,
20 every super in the City, every remodeler. When
21 anyone is fussing with old paint, which is probably
22 leaded, they need to understand the dangers of lead
23 dust. This won't make them abatement contractors, it
24 won't prepare them for tackling the complex job or
25 following up on an EBL child, but lead safety needs

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2 to be mainstreamed into our basic and rehab work.

3 Finally, I would again second the
4 comment that the approach of holding tenants
5 responsible for notifying the landlord of the
6 presence of the young child is not workable. It is
7 not going to protect the children at highest risk.
8 It will work to protect property owners who aren't
9 taking the steps needed to make units safe.

10 So, I would say in closing that what
11 you decide will be important to the children of New
12 York and to the affordable housing stock of New
13 York, it will also be important to our nation.

14 Local Law 1 has not worked, but it
15 aspired to be as protective as possible. It would be
16 a great tragedy now from New York, for New York City
17 to move from where you have been on this spectrum to
18 the back end of the line. So, I would hope that the
19 City Council can apply the scientific knowledge, the
20 experience it has gained, and develop a model that
21 will be protective of children's health and that the
22 rest of the country can follow.

23 So, I would urge you to take the time
24 to master the science. It is incredibly complicated,
25 I will grant you that, but it is complex, and

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2 children's health is too important simply to decide
3 in a process of political compromise that splits the
4 difference.

5 CHAIRPERSON SPIGNER: Well, let me
6 say, sir, I don't know how we ever can reach a point
7 in a democracy, I don't know how we are going to
8 reach a point in a democracy where often times, more
9 often than we like that we have to split the
10 differences. This is a system that just calls for
11 consensus. The system calls for consensus, it calls
12 for bringing divergent groups together, the one who
13 is controlled and the one who is doing the
14 controlling, if it is to achieve its goal, to
15 operate by fiat, some more autocratic style, does
16 not fit the City government of New York. Maybe it
17 fits Washington, D.C., but we have to be more
18 sensitive to all views and opinions in this City.

19 Let me ask you one question. Mr.
20 Farr, are there areas within a dwelling where
21 landlords and the City should concentrate their
22 inspections because of a greater prevalence of lead
23 in those areas?

24 MR. FARR: Well, I gave you the
25 statistics on the percentage of various surfaces

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2 which we found, and half a thousand houses have
3 lead-based paint on them. But the lowest percentage
4 I gave you was 17 percent, for walls and ceilings,
5 which means that 17 percent of them have lead-based
6 paint on them. If what we are talking about is
7 stabilizing paint, and stabilizing paint is a
8 requirement in every Housing Maintenance Code in the
9 country. It is not as though we are saying that the
10 landlord has to cover the wall with wall borders,
11 all we are saying is you have to stabilize the paint
12 which is not very much to ask.

13 Now, we are presently, we have taken
14 an awful lot of tests, 75 dwelling units in New York
15 City last summer, and we are presently analyzing
16 them to determine what are the best places to take
17 dust tests, to determine whether a house is safe or
18 not. And by the fall, I mean we are doing this for
19 HUD so that it will have in its guidelines, which we
20 actually drafted the original guidelines, that when
21 we revise the guidelines they will say where are the
22 places in a house where you should take dust tests
23 so that the results of the dust test best correlate
24 with children blood-lead levels, and we did it in
25 New York because we have 75 houses, we took like 50

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2 dust tests in each house, and then we got the blood
3 lead levels of the children in those houses and then
4 by various statistical techniques, which fortunately
5 I have a statistician, several of them to do, we
6 will determine exactly where you should take a test.
7 But in answer to your first question, there is
8 really no surface which you can assume does not have
9 lead-based paint in New York City, and then the next
10 question is where you should take the test, and you
11 should leave that up to regulations by the Health
12 Department or the Housing Department or preferably
13 both, and we and others will be able to provide you
14 an awful lot of data to help you make, as a sensible
15 -- we think four tests will probably be enough.
16 Four tests, that's all.

17 CHAIRPERSON SPIGNER: Council Member
18 Linares, you had a question?

19 COUNCIL MEMBER LINARES: In terms of
20 this law and actually the way things are approached,
21 what triggers the intervention by the Department of
22 Health is, you know, when there is a complaint and
23 that their request for intervention in an apartment,
24 but that is really what gives us the uniform of
25 violations that exist. And what I was wondering is,

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2 if in your experience in analyzing different cities,
3 is there a way that we can figure out how many
4 children are poisoned and affected because of lead
5 paint, the universe of children that we have, that
6 would allow us to be more efficient in preventing,
7 not just preventing but intervening in cases where
8 children are exposed?

9 MR. FARR: Well, the Department of
10 Health and Human Services does the survey every two
11 years, and the last survey which was done found
12 estimated, I mean I don't test every house in the
13 country, it is a statistical survey, that there are
14 about 900,000 kids nationally who have elevated
15 blood levels, as has been indicated that has been
16 going down. We don't know if it is going to go down
17 any further without work.

18 But as you, yourself, pointed out,
19 all over the country, not just in New York City,
20 African-Americans and Hispanics have the highest
21 level of lead poisoning because if they correlate
22 for better or worse with older housing, with lower
23 incomes and all of the conditions, demographic and
24 housing conditions which are conducive to lead
25 poisoning.

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2 So if I had a certain amount of money
3 which HUD gave me, for example, one of these HUD
4 grants, I would focus that money on those areas. But
5 there are kids all over the City who are getting
6 poisoned, so it seems to me that the approach that
7 this legislation is taking, which is requiring
8 property owners to do the reasonable thing, to make
9 their houses reasonably safe, not 100 percent safe,
10 reasonably safe, is the best way to prevent
11 childhood poisoning.

12 If you have a windfall or a HUD grant
13 of \$3 million or \$4 million, I think you can do what
14 you have done, is focus that money on the areas who
15 have the greatest need, I certainly think that. But
16 as a prevention measure it seems to me you should do
17 it Citywide.

18 COUNCIL MEMBER LINARES: So, from your
19 response I gather that the reality that we face in
20 80 percent of children that are identified with lead
21 poisoning, based on the trigger mechanism that we
22 have, being black and Hispanic, is that more or less
23 the trend or the circumstances as far as minority
24 children are when you look at other cities in the
25 country?

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2 Pretty much, I mean it varies
3 obviously around the country.

4 I would say there are two kinds of
5 kids who are most addressed, one child is a child
6 who lives in a poorly maintained older house, and
7 that is what we are talking about here.

8 The other situation is where
9 renovation or repainting work is redone without
10 taking the kind of precautions which you require.
11 That goes across the demographic board. Those are
12 really the two classes, if you will, or groups of
13 kids who are most at risk.

14 MR. RYAN: Nationwide, Mr. Linares,
15 poor children are eight times more likely to be lead
16 poisoned than well to do. Black children are five
17 times more likely and Hispanic children, I think it
18 is about two and a half to three times.

19 COUNCIL MEMBER LINARES: Thank you
20 very much. I will turn it back to you, Mr. Chair.

21 CHAIRPERSON SPIGNER: Council Member
22 Michels.

23 COUNCIL MEMBER MICHELS:
24 Unfortunately, gentlemen -- first of all, I
25 appreciate you both coming here, and I recognize the

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2 great expertise you have and the fact that you are
3 national leaders on this subject from Washington and
4 you should be afforded the respect that you deserve
5 as to who you are and what you are trying.

6 MR. RYAN: We are from Washington and
7 we are here to help.

8 COUNCIL MEMBER MICHELS: Right, and I
9 think that is one of the things I wanted to be said.

10 The other thing, you are harboring
11 under a fiction here, and the fiction being that the
12 legislation in front of you has been around for a
13 long, long time, and that it is the latest
14 state-of-the-art and nothing could be further from
15 the truth.

16 The truth is the legislation that has
17 been around is Intro. 205, it has been around two
18 and a half years, never had a hearing. You have seen
19 it, both of you I think have seen it, I think you
20 commented on it, and that is the legislation if you
21 would like to comment on it, I would appreciate
22 hearing your comments on Intro. 205, which we should
23 have been having a hearing on today.

24 I wish I could take all of the credit
25 for it, but I can't. The work of a lot of people

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2 went into that.

3 MR. RYAN: I have reviewed Intro. 205.
4 It has been some months, I guess, since it has been
5 on the table for discussion. I will say that in
6 virtually all respects it seems to me that Intro.
7 205 provides a better framework, a better departure
8 point, for a preventive piece of legislation.

9 I would add that I think that intro.
10 205 needs additional emphasis on lead dust. It needs
11 to be made very clear that a lead dust standard
12 needs to be included in the definition, and
13 established in the Health Code, and additional
14 triggers for lead dust testing at turnover and
15 possibly Intro. 205 invokes those dust tests by
16 virtue of referring to regulation. But I think it is
17 important for the statute itself to put lead dust
18 hazards on a par with peeling paint, to send the
19 right message to property owners and to the rest of
20 the country.

21 COUNCIL MEMBER MICHELS: Well, it has
22 been a while since you read it, you have seen it.
23 Actually, you define in Intro. 205 lead-based paint
24 hazard shall mean any condition in the multiple
25 dwelling that causes exposure to lead from lead

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2 contaminated dust. It is there, it is the same
3 definition as in the HUD regulations, EPA, which is
4 unfortunately not to be found in the current
5 proposed legislation.

6 MR. RYAN: I would hope that the local
7 law could instruct I suppose the Health Department
8 to establish a standard for lead-contaminated dust
9 on floors and windowsills.

10 COUNCIL MEMBER MICHELS: Would you
11 like to comment on 205, Mr. Farr?

12 MR. FARR: Well, I agree that it was a
13 good starting point.

14 I had little differences on exactly
15 what should be done to windows, which is not
16 terribly clear there. I think that the change which
17 has been made quite recently in this legislation we
18 are talking about today, which requires windows to
19 be opened and closed smoothly, as well as doors
20 which will prevent the friction.

21 I also personally think --

22 COUNCIL MEMBER MICHELS: 205 is not
23 the bill we have before us today.

24 MR. FARR: No, that's right.

25 COUNCIL MEMBER MICHELS: 205 is the

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2 old bill and it does do those things on windows.

3 MR. FARR: I would have changed the
4 window treatment required in 205 a little bit.

5 Secondly, I personally think that it
6 is very inexpensive to cap window wells, and I
7 didn't give you the statistics on the amount of lead
8 found and dust in window wells, but it is much
9 higher, it is several orders of magnitude higher
10 than that found on floors.

11 Now, children don't play in window
12 wells as much as they play on floors, so if it is a
13 combination of the amount of lead that is found some
14 place, and the amount of time kids spend in that
15 which results in child lead poisoning. But if I were
16 drafting the statute I would at least enable the
17 Health Department to require having window wells,
18 which is a very inexpensive thing to do,
19 particularly on framed houses with framed windows.

20 COUNCIL MEMBER MICHELS: Is that the
21 same thing as providing smooth and cleanable
22 horizontal surfaces, including floor, window sills
23 and window wells so the dust can be removed by
24 normal cleaning without special equipment?

25 MR. FARR: That's right.

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2 COUNCIL MEMBER MICHELS: That's 205 by
3 the way.

4 MR. FARR: I would go beyond floors to
5 windowsills and window wells.

6 COUNCIL MEMBER MICHELS: Yes.

7 MR. FARR: Floors are the biggest
8 source of exposure.

9 COUNCIL MEMBER MICHELS: Let me ask
10 you this.

11 In your studies, what percentage of
12 lead dust found in these housing is from lead paint?

13 MR. FARR: It varies a lot from place
14 to place.

15 COUNCIL MEMBER MICHELS: In New York
16 City.

17 MR. FARR: In New York City I would
18 assume most of it is because there is not a lot of
19 soil in New York.

20 COUNCIL MEMBER MICHELS: Ninety
21 percent would you say?

22 MR. FARR: I honestly don't know.

23 You can't tell that without
24 extraordinarily expensive techniques, but it is
25 generally thought that in most places deteriorated

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2 paint and lead-based paint in windows and doors are
3 the principle sources in places like New York City.

4 In some places, like Cleveland, which
5 have pretty low levels of lead-based paint inside
6 the houses, but very high levels of lead in the
7 soil, and there are a lot of bare yards, big bare
8 yards around the low-income housing, their tracking
9 in lead from contaminated soil and children playing
10 in the soil is a significant problem.

11 So, I would say, like politics, all
12 that is local, and it just differs from place to
13 place.

14 COUNCIL MEMBER MICHELS: Because as we
15 know, you know, lead is cumulative in the child no
16 matter where he gets it from. Once it gets into the
17 system, he licks it off his fingers and lead dust,
18 and you should be aware that 205, and I think you
19 probably are, dust contained prevention from school
20 yards, around schools where the children are under
21 five, and playgrounds as well, which we have found
22 --

23 MR. FARR: In some places that is a
24 problem. The schools that have preschool in them, I
25 mean not a whole lot of kids over five years old

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2 crawl around on the floor very much. But school and
3 certainly day care situations are also places where
4 kids can get poisoned.

5 COUNCIL MEMBER MICHELS: The other
6 thing I wanted to point out to both of you is, you
7 keep talking about abatement, and the legislation in
8 front of us only keeps talking about interim
9 control, and there is a reason for that, you know
10 that, right?

11 You know the reason of interim, these
12 are terms of art, isn't that correct?

13 MR. FARR: Well, yes. I mean, I
14 personally --

15 COUNCIL MEMBER MICHELS: Well, they
16 call for different things to be done, they call it
17 abatement --

18 MR. FARR: Right.

19 COUNCIL MEMBER MICHELS: And under the
20 HUD rule. One calls for a certified worker, and the
21 adherence to the EPA rules and regs. The other does
22 not. And sometimes there is a situation which you
23 really should have an abatement when there is a real
24 problem an they define when it should be; can you
25 tell us about that?

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2 MR. FARR: Well, we have found, as I
3 say, we have looked at about 3,000 units nationwide,
4 and looked at what was done and what the
5 effectiveness of what was done, and we found that at
6 least up to two and three years, that kind of
7 interim controls are as effective as abatement. So,
8 I am not a major proponent of full abatement, if you
9 can afford it and if you have a house which is in
10 terrible shape you need to abate it or you need to
11 tear it down.

12 COUNCIL MEMBER MICHELS: But you see
13 this legislation in front of us doesn't have any
14 reference to abatement whatsoever.

15 MR. FARR: I understand that.

16 COUNCIL MEMBER MICHELS: And also
17 interim control doesn't call for lead testing,
18 clearance testing.

19 CHAIRPERSON SPIGNER: Second round,
20 Stanley.

21 MR. FARR: Well, you have heard what I
22 think about clearance testing.

23 CHAIRPERSON SPIGNER: Let me ask a
24 question of Mr. Farr and your colleague. You said
25 you should put dust at the same level of concern as

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2 peeling and cracking and blistering. Are you
3 suggesting that a property owner has to just
4 periodically go and wipe around the building and see
5 where there is a possibility, because you can't see
6 it, so how can you put it on the same level --

7 MR. FARR: No, we are not. We are
8 certainly not.

9 What we are saying is that when a
10 property owner at turnover, at turnover, which is a
11 very convenient time to do things, the property
12 owner should deal with dust on the floor.

13 CHAIRPERSON SPIGNER: This bill talks
14 about a protocol for turnover.

15 MR. FARR: That's right.

16 CHAIRPERSON SPIGNER: And cleaning and
17 all of that stuff.

18 MR. FARR: That's right. And I would
19 add dust testing to that, that's all.

20 CHAIRPERSON SPIGNER: Okay.

21 MR. FARR: And then in the case of
22 when you are responding to a complaint, I would make
23 sure he cleans up and then does a dust test where he
24 has done the work. Not all over the house, but just
25 where he has done the work.

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2 CHAIRPERSON SPIGNER: Sir, if you
3 don't know, in a vacant apartment, you don't know
4 whether a child under six is coming in, you don't
5 know. You want to raise the level of no matter where
6 there is a vacancy in a pre-'60, there should always
7 be the presumption --

8 MR. FARR: I certainly do. Because New
9 York City has less mobility than some other cities
10 do, but low-income renters move around a lot.

11 CHAIRPERSON SPIGNER: I don't think
12 so.

13 MR. FARR: They move around less in
14 New York City than they do in Baltimore or Milwaukee
15 where the average time a person lives in places is
16 like six months. But there is a fair amount of
17 mobility, and also, you don't know for sure when
18 children are going to play in the apartment next
19 door. You don't know for sure when children are
20 going to play in grandma's house. So, if the
21 requirements of the property owners are reasonable,
22 which I think what we are talking about are, and you
23 really care about prevention, you should do what you
24 are requiring, plus the dust test which we have
25 mentioned, whenever the house turns over. It is not