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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

JANUARY 29, 2021

12:02 P.M.

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HELD VIA VIDEOCONFERENCE

B E F O R E :

FREDERICK R. DAVIE, CHAIR.

JONATHAN DARCHE, ESQ.,
EXECUTIVE DIRECTOR

TRANSCRIBED BY :

DANIELLE M. RIVERA

1 PUBLIC MEETING AGENDA

2 =====

- 3 1. Welcome & Virtual Meeting Protocol
- 4 2. Call to Order
- 5 3. Report from the Chair
- 6 4. Presentation from General Counsel's Office
- 7 5. Old Business
- 8 6. New Business
- 9 7. Public Comment on Disciplinary Matrix
- 10 8. Board Comment on Disciplinary Matrix
- 11 9. Adjourn to Executive Session

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1 BOARD MEMBERS PRESENT

2

3 FREDERICK DAVIE,
4 CHAIR

5 JOHN SIEGAL, ESQ.
6 BOARD MEMBER

7 ERICA BOND, ESQ.
8 BOARD MEMBER

9 CORRINE IRISH, ESQ.
10 BOARD MEMBER

11 JOSEPH A. PUMA
12 BOARD MEMBER

13 MICHAEL RIVADENEYRA, ESQ.
14 BOARD MEMBER

15 ANGELA SUNG PINSKY
16 BOARD MEMBER

17 WILLIE FREEMAN
18 BOARD MEMBER

19 FRANK DWYER
20 BOARD MEMBER

21 SAL CARCATERRA
22 BOARD MEMBER

23 NATHAN JOSEPH
24 BOARD MEMBER

25 MARBRE STAHLY-BUTTS, ESQ.
BOARD MEMBER

ESMERALDA SIMMONS, ESQ.
BOARD MEMBER

22

23 PRESENTER:

24 HEATHER COOK,
25 ASSISTANT GENERAL COUNSEL
CIVILIAN COMPLAINT REVIEW BOARD

1 PUBLIC APPEARANCES

2 ADRIENNE ADAMS,
NEW YORK CITY COUNCIL MEMBER

3
4 DEBORAH ROSE,
NEW YORK CITY COUNCIL MEMBER

5 YASMEEN KHAN,
WNYC-FM

6
7 MICHAEL SISITZKY, ESQ.,
SENIOR POLICY COUNSEL FOR
THE NEW YORK CIVIL LIBERTIES UNION

8
9 MICHAEL NOBLE,
MANHATTAN COMMUNITY BOARD 4

10 SAMAH SISAY, ESQ.
11 BERTHA FELLOW AT
THE CENTER FOR CONSTITUTIONAL RIGHTS

12 JACKIE CODY, M.D.,
13 COMMUNITY EDUCATION COUNCIL 22

14 JOHN TEUFEL, ESQ.,
FORMER CCRB INVESTIGATOR

15 JENNVINE WONG, ESQ.,
16 THE COP ACCOUNTABILITY PROJECT FOR
THE LEGAL AID SOCIETY

17 KARMITA MORGAN-RANDELL, MPA
18 CO-CHAIR OF MANHATTAN BOROUGH-BASED COUNCIL

19 CAROLYN MARTINEZ-CLASS,
COMMUNITIES UNITED FOR POLICE REFORM

20 ABIGAIL LOFCHIE, M.D.

21 LESLIE WILLIAMS

22

23

24

25

1 MS. ALVAREZ: Hello. Good
2 afternoon, everyone. Before we begin, I
3 just want to announce that we have two
4 ASL interpreters here today, Craig
5 Ridgway and Felice Shays. I will send,
6 in the chat, their names and ways to
7 view their video throughout the Board
8 Meeting. Thank you.

9 CHAIR DAVIE: Thank you, Yojaira,
10 and good afternoon to everyone. Welcome
11 to the Civilian Complaint Review Board's
12 Special Board Meeting on the NYPD's
13 Disciplinary Matrix.

14 I am Fred Davie. I am Chair of the
15 Board. Before we get started, I would
16 like to ask my colleagues on the Board
17 to introduce themselves. I am going to
18 start on my screen with Mr. Siegal.

19 MR. SIEGAL: (No response.)

20 CHAIR DAVIE: John, are you with us?

21 MR. SIEGAL: (No response.)

22 CHAIR DAVIE: And it looks like John
23 might have frozen. So, let me go to
24 Ms. Irish. Corrine.

25 MS. IRISH: Hi, my name is Corrine

1 Irish. I live in Harlem, and I am a
2 mayoral appointee.

3 CHAIR DAVIE: Great. Ms. Bond.

4 MS. BOND: Good afternoon. My name
5 is Erica Bond. I am a mayoral designee
6 to the Board and a resident of Brooklyn.

7 CHAIR DAVIE: Ms. Simmons.

8 MS. SIMMONS: Good afternoon.
9 Esmeralda Simmons, I am the public
10 advocate's appointment to the Board, and
11 I live in Bed-Stuy, Brooklyn.

12 CHAIR DAVIE: Great. Mr. Dwyer.

13 MR. DWYER: Good afternoon. My name
14 is Frank Dwyer, and I am a Police
15 Commissioner designee.

16 CHAIR DAVIE: Mr. Puma.

17 MR. PUMA: Good afternoon, everyone.
18 I am Joseph Puma, the Manhattan City
19 Council designee to the Board, a
20 lifelong resident of the Lower East Side
21 and public housing.

22 CHAIR DAVIE: Ms. Stahly-Butts?

23 MS. STAHLY-BUTTS: Hello. My name
24 is Marbre Stahly-Butts.

25 (Telephonic interruption.)

1 MS. STAHLY-BUTTS: -- and I am a
2 Council appointee in Brooklyn.

3 CHAIR DAVIE: Mr. Rivadeneyra.

4 MR. RIVADENEYRA: Good afternoon,
5 everyone. My name is Michael
6 Rivadeneyra. I live in the Bronx, and I
7 am a Council designee to the Board.

8 CHAIR DAVIE: Mr. Joseph, are you
9 there?

10 MR. JOSEPH: (No response.)

11 CHAIR DAVIE: Mr. Joseph may have a
12 connection problem. Mr. Siegal, shall
13 we try you again?

14 MR. SIEGAL: Yes. Good afternoon
15 I'm John Siegal. I am a mayoral
16 appointee to the CCRB.

17 CHAIR DAVIE: Mr. Joseph, I see
18 you're back.

19 MR. JOSEPH: Yes, sorry. I keep
20 getting bounced off. Yes, my name is
21 Nathan Joseph. I am a City Council
22 appointee from Staten Island.

23 CHAIR DAVIE: And is Mr. Carcaterra
24 there?

25 MR. CARCATERRA: Yes, hi. Good

1 afternoon, everyone. I'm Sal
2 Carcatterra, and I am a Police
3 Commissioner designee to the Board.

4 CHAIR DAVIE: Thank you. I think I
5 got everyone; is that correct? Did I
6 miss anyone?

7 (No response.)

8 CHAIR DAVIE: All right. I want to
9 thank all of you. I want to start this
10 afternoon's discussion by recognizing
11 all the work that has been done to get
12 us to this point. We would not be here
13 discussing the merits of this
14 first-of-its-kind disciplinary matrix if
15 it weren't for the advocacy and public
16 scrutiny that got the Department to
17 appoint a blue ribbon panel in the first
18 place.

19 We would not be here if the mayor,
20 Mayor DiBlasio, the City Council, the
21 Police Commissioner, Commissioner Dermot
22 Shea, and the First Deputy Police
23 Commissioner Ben Tucker did not take
24 seriously the recommendations of the
25 panel and need for transparency.

1 We would not be here without the
2 early and enthusiastic work of CCRB
3 staff, especially Heather Cook, but all
4 the legal staff, the executive staff and
5 all other staff at CCRB who work to make
6 the matrix stronger for our
7 investigations and for our civilians.

8 So, first, to the Mayor, Police
9 Commissioner, First Deputy Commissioner,
10 City Council and especially the CCRB
11 staff and this Board, I want to say
12 thank you for all of your hard work to
13 make this matrix and the accompanying
14 MOU possible.

15 This disciplinary matrix is really
16 an opportunity for a reset of police
17 accountability in New York City. With
18 clear guidelines for punishments and a
19 written public commitment from both the
20 CCRB and NYPD to stick to these
21 guidelines, there should be little
22 daylight between what the CCRB
23 recommends and what the Police
24 Commissioner ultimately imposes.

25 A myriad of allegations now have

1 presumptive penalties that are harsher
2 than what previous precedent allowed the
3 CCRB to recommend. If the Board chooses
4 to adopt this matrix and the MOU, and I
5 certainly hope we will today, the Board
6 will immediately incorporate these
7 guidelines into our recommendations.

8 The Administrative Prosecution
9 Union, the APU, will immediately pursue
10 sentencing under these new guidelines,
11 regardless of when the misconduct being
12 considered or prosecuted occurred.

13 There is room for improvement with
14 this matrix. However, in addition to
15 the adoption of the MOU, this
16 disciplinary matrix will be subject to a
17 yearly review, during which the CCRB and
18 the community would have an opportunity
19 to weigh in on exactly what that
20 improvement should look like. These
21 guidelines are also as permanent as the
22 community and the CCRB want them to be.

23 If these do not materially improve
24 the Department's application of
25 discipline for police misconduct, the

1 CCRB has the opportunity six months from
2 now, then on a yearly basis, to revisit
3 this agreement and the use of the matrix
4 all together.

5 Now, it is my hope that we will be
6 able to be continue to use the matrix
7 and be guided by the MOU, but I'm also
8 committed to having open and honest
9 dialogue with the community and the
10 advocates about the efficiency of the
11 matrix and if it is accomplishing its
12 stated goals.

13 The matrix is a step in the right
14 direction, but isn't the only reason
15 past, present or future to have hope for
16 policing and police oversight in New
17 York City.

18 Last year, the reforms New Yorkers
19 voted on to empower the CCRB took hold.
20 We began investigating false official
21 statements made during our
22 investigations, sped up our subpoena
23 process and added our Board Member,
24 Esmeralda Simmons, our first public
25 advocate appointee to the Board.

1 We released a report on youth
2 policing and our youth advisory counsel
3 issued their own message to young New
4 Yorkers to utilize CCRB if they
5 experience misconduct.

6 New Yorkers took to the streets to
7 demand better from their Police
8 Department and departments across the
9 country. Their demands were heard loud
10 and clear in Albany, and state lawmakers
11 finally did away with Civil Rights Law
12 Section 50(A), an action that this Board
13 strongly supported.

14 And for a brief moment, we had the
15 transparency promised by the 50(A)
16 repeal, and the City learned what many
17 who've attended these meetings and work
18 at the CCRB already knew, that the
19 Police Department has a lot of work to
20 do for more consistently and justly
21 imposition of discipline for police
22 misconduct.

23 We made a lot of progress last year.
24 And last night, we learned just how
25 bright the future is for police

1 oversight in New York City. The Mayor's
2 former boss, and my former boss, Mayor
3 David Dinkins, gave New York City the
4 potential to curb police misconduct when
5 he created the CCRB in its current
6 manifestation.

7 Mayor DiBlasio, with David Dinkins'
8 plan, announced last night during the
9 Mayor's State of the City speech, taps
10 into that potential and takes critical
11 steps toward a stronger, empowered and
12 independent CCRB. This year, the Board
13 and I look forward to exploring more
14 ways we can make policing transparent,
15 accountable and fair for all New
16 Yorkers.

17 We are committed to releasing our
18 own report on policing of last summer's
19 protests as soon as we can, and we are
20 eager to publish our own database of
21 CCRB disciplinary history and deliver on
22 the transparency promised by 50(A)'s
23 repeal. And, we are excited to
24 implement the Mayor, David Dinkins',
25 plan.

1 At the end of this past year, the
2 CCRB recommended substantial changes
3 that should be made to improve police
4 oversight in New York City, including
5 providing our agency with direct access
6 to body-worn camera footage, again
7 examining the Police Commissioner's
8 disciplinary authority.

9 I believe we should consider giving
10 that authority to CCRB in CCRB's
11 adjudicated basis, making this Board's
12 recommendation binding rather than
13 advisory. I do want to say this has
14 nothing to do with the current Police
15 Commissioner. I have a great deal of
16 respect for Commissioner Shea.

17 This has to do with the office of
18 the Commissioner and the Department.
19 And so, I remain convinced that our
20 binding authority would be a better way
21 to go when it comes to CCRB-adjudicated
22 cases.

23 I will also say that we have taken
24 the law as far as it can go, in terms of
25 our being able to create little daylight

1 between what CCRB recommends and what
2 the Commissioner does in both the matrix
3 and particularly in the MOUs. I am
4 looking forward to having more
5 conversations about that, like this one
6 today, as we all chart a path forward
7 toward transparent and accountable
8 policing in New York City.

9 Today, we will begin with a
10 presentation on the disciplinary matrix
11 from CCRB Assistant General Counsel
12 Heather Cook. We will then have an
13 opportunity for the Board to discuss the
14 matrix and the Memorandum of
15 Understanding to implement the matrix.

16 Following the Board's discussion, we
17 will open the floor for public comment.
18 Please reserve your comments to two
19 minutes and keep them on topic. If you
20 have any concerns about other issues
21 outside of the disciplinary matrix and
22 MOU, please send them to our outreach
23 unit, either over e-mail or through the
24 Webex chat and they will do their best
25 to assist you.

1 Again, the comments and questions
2 today should be focused on the MOU and
3 the matrix following Heather Cook's
4 presentation. To make a comment or ask
5 a question, whether you are a member of
6 the public or press, please use the
7 "raise hand" button and Yojaira Alvarez,
8 our Director of Outreach, will call on
9 you.

10 Thanks to all of you, again, for
11 attending this special board meeting
12 today, and I'm looking forward to this
13 discussion.

14 I am now going to turn it over to
15 Heather Cook. Heather.

16 MS. COOK: Okay. Good afternoon,
17 everyone. I am going to share my screen
18 really quickly. The presentation that I
19 am about to give is pretty full. And
20 so, I want to spend most of my time on
21 the hypos.

22 So, some of the stuff, I might go
23 through a little bit more quickly. But,
24 as I said, I want to be able spend most
25 of the time on the hypos. So, we are

1 going to go through the new disciplinary
2 matrix.

3 As many of you know, the CCRB had an
4 internal discipline framework that we've
5 been using for a few years now. Our
6 goal with that framework was to just
7 increase consistency among our panels
8 and give a little bit more transparency
9 about what we were doing and how we were
10 going to analyze cases so that members
11 of service and civilians all, sort of,
12 knew what to expect from the CCRB.

13 The new matrix, the overall penalty
14 recommendations are going to be higher
15 than both what we have been recommending
16 and what the NYPD Deputy Commissioner of
17 Trials has been recommending. So,
18 basically, this is going to be greater
19 penalties than the past precedent.

20 One thing that I want to bring up
21 that is especially interesting for our
22 Board is this concept of One Officer,
23 One Penalty. CCRB, when we vote on the
24 allegations, the Board Members, they
25 vote on each allegation, but the officer

1 has to get one penalty to cover all of
2 the allegations. So, right now, that
3 means that the way we vote is the
4 highest penalty is what the Board votes
5 for each officer. Then, that gets sent
6 over to the Department.

7 Because the new matrix provides for
8 a lot of the penalties to run
9 consecutively, we will no longer be
10 doing it that way. So, what we are
11 going to do is, with each allegation,
12 there will be a separate vote by the
13 Board Members for a penalty for each
14 allegation.

15 Then, those penalties will be
16 totalled up, if they are to run
17 consecutively, or the highest penalty
18 will take precedent, if they are to run
19 concurrently. What we will send to the
20 Department, however, will be the same
21 One Officer, One Penalty. So, the
22 highest penalty will still control.

23 So, I'm going to go in and I'm going
24 to take you through some stats really
25 quick of what we've done in the past two

1 years, then go through some of the more
2 popular types of cases that we get, that
3 we see most often and how this new
4 matrix will work.

5 So, you can see that for chokeholds,
6 in 2018 to 2020, we substantiated twenty
7 allegations, and we recommended charges
8 for all of those allegations.

9 For tasers, we substantiated
10 twenty-four allegations, charges in
11 twenty-one of them; CD-A in two,
12 training in one.

13 Unlawful entry, we subbed 123
14 allegations, we gave charges for
15 thirty-three; CD-B, twelve; CD-A,
16 eighteen; training for fifty-two of
17 those allegations and instructions for
18 eight.

19 Stop, Question and Frisk, which we
20 do a lot of, you can see substantiated
21 allegations, 390; charges, fifty-six of
22 them; CD-B, 129; CD-A, eighty-five;
23 training eighty-five; instructions,
24 thirty-five.

25 And finally, offensive language, we

1 substantiated forty-five allegations.
2 We gave charges in fifteen of those
3 allegations; CD-B in nine; CD-A in ten;
4 training in eight and instructions in
5 three.

6 So, now I'm going to take you
7 through some hypotheticals in those
8 categories so we can work through the
9 matrix and see how it's going to be
10 applied. So, the hypothetical here is,
11 we are going to look at a chokehold, a
12 substantiated chokehold, -- and again,
13 the matrix only applies to the
14 substantiated allegations.

15 So, we've substantiated a chokehold,
16 and we're going to say for the purposes
17 of our hypo, there was a serious
18 physical injury. So, with this one, the
19 presumptive penalty is termination.
20 Now, not every single chokehold
21 allegation has a presumptive penalty of
22 termination, but serious physical injury
23 has a presumptive penalty of
24 termination.

25 Therefore, there is no aggravating

1 penalty. You can't get any higher than
2 termination. If there's mitigating
3 factors, the mitigating penalty would be
4 forced separation, which is basically a
5 resignation, as opposed to a firing.

6 That is the difference between
7 termination and forced separation. So,
8 the end result ends up being the same.
9 So, under the matrix, any chokeholds
10 that we substantiate with serious
11 physical injury would result in the
12 officer no longer being on the police
13 force.

14 Tasers, we see a lot of cases where
15 there is excessive force substantiated
16 for taser use, where maybe force was
17 justified, but there are multiple taser
18 discharges. So, for example, the taser
19 was discharged three or four times with
20 only one to three seconds in between and
21 no ability for the victim, or civilian,
22 to comply with any directives in
23 between.

24 In this case, we are going to say
25 that the officer -- MOS stands for

1 Member Of Service, and we are going to
2 say the officer has no prior history.
3 There will be some aggravating factors.
4 There's minor physical injury when it
5 comes to tasers, they usually break the
6 skin when the prongs hit.

7 In this case, we'll say there's
8 prolonged or exaggerated duration
9 because there's only seconds between
10 charges, there's multiple charges and no
11 ability to comply with the commands in
12 between. There will be some mitigating
13 factors, though, in that in many of
14 these cases the complainant is actively
15 resisting.

16 So, we will balance that. The
17 presumptive penalty here would be twenty
18 days, which, for CCRB terms, is charges.
19 But that is the presumptive penalty on
20 tasers in the matrix.

21 Here, if the aggravating factors, --
22 and I'll go back again, just quickly --
23 if the Board decides that the
24 aggravating outweighs the mitigating,
25 and I've just used that here, but, you

1 know, it's not a specific number, the
2 Board will have to look at each factor
3 and say, "Oh, you know what? Maybe the
4 injury here was more important than
5 resisting," or maybe the Board will say,
6 "Oh, maybe the resisting was more
7 important than just the minor physical
8 injury from the taser prongs." So, the
9 Board will determine that.

10 For the purposes of this hypo,
11 though, I've said that the aggravating
12 factors outweigh the mitigating. So,
13 then you would go to the aggravated
14 penalty in the matrix for tasers, which
15 would be twenty-five days.

16 So, the recommendation would be
17 twenty-five days, which, again, for the
18 CCRB would still equate to charges. So,
19 if the aggravating and the mitigating
20 cancelled each other out, then we would
21 have just stuck with the presumptive
22 penalty.

23 For an unlawful entry, we see a lot
24 of these entries, where officers enter
25 an apartment for an arrest and they

1 don't have a warrant, they have maybe an
2 I-Card for probable cause to arrest, and
3 sometimes other officers will intervene.

4 So, in this hypo, we have a
5 situation where an officer comes to the
6 door with an I-Card, knocks on the door,
7 sees that the person is inside, but the
8 person does not want to come out to be
9 arrested. The officer then enters,
10 engages in a little scuffle trying to
11 pull the person out, other officers
12 intervene and they leave.

13 For this example, we will say the
14 MOS history is none, and we'll add an
15 aggravating for the heated-ness, or
16 escalation, of the interaction; that
17 force was involved and that the other
18 officers had to intervene to pull them
19 out. Here, there are no mitigating
20 circumstances.

21 So, here, the presumptive penalty
22 for the unlawful entry -- and all of the
23 Fourth Amendment categories; entries,
24 searches, frisks, stops, all of them are
25 broken down by subcategories, most of

1 them by intent. Unlawful entry and the
2 entry and search are broken down,
3 basically, by the extent of the entry or
4 the search.

5 So, here, we have an unlawful entry
6 that involves substantial physical
7 presence and/or remaining on the
8 premises. That's our -- we have an
9 aggravating factor here in that the
10 other officers tried to intervene. So,
11 that would end up going to the
12 aggravated, presumptive penalty, which
13 would be twenty days, which would be
14 charges.

15 So, you can see, if you don't count
16 the aggravating factor, if that's
17 weighed out or if it's offset by a
18 mitigating factor or if the Board just
19 doesn't believe that that was
20 aggravating enough to raise it to the
21 presumptive penalty, you would have a
22 big difference in recommendation from
23 the CCRB.

24 The presumptive penalty is ten days,
25 which is a Schedule B Command

1 Discipline, but with the matrix
2 aggravating factors, the penalty would
3 rise to twenty days, which would then
4 make it a charges recommendation from
5 the CCRB.

6 Stop, Question, Frisk, we get a lot
7 of these. So, in this hypo, we have a
8 vague description of a shoplifting
9 suspect. We get a lot of vague
10 descriptions that will just say the race
11 and gender of a person, maybe wearing a
12 white t-shirt and jeans, which could be
13 any number of people.

14 And because it's a shoplift, it's
15 not a violent crime. Frisk and Search,
16 in this case, would only be limited to
17 if there was any indicia of a weapon or
18 that someone was armed and a threat to
19 safety.

20 So, in this hypo, you have a
21 shoplifting suspect. 911 called in,
22 says, you know, "This is the description
23 of the person: Black male, white
24 t-shirt, jeans," and the officers come
25 up and they get no additional

1 information.

2 They don't talk to anybody at the
3 store, they just stop the first person
4 that they see who fits the general
5 description. They frisk that person,
6 and they search the person, even though
7 there's no indicia of weapons.

8 So, in this example, this is where
9 it's going to get a little more
10 complicated, the officer has two prior
11 substantiations in the past five years,
12 2016 and 2018, for the same conduct.
13 And what they received is a Schedule A
14 Command Discipline.

15 So, what we know is that a
16 Schedule A Command Discipline can be
17 anything from a reprimand, all the way
18 up to five days of penalty days and
19 vacation forfeiture.

20 The issue is, with the new matrix,
21 if the officer received five days on
22 that CD-A, then the lookback period is
23 going to be five years, which means that
24 the MOS history is going to include the
25 2016 substantiated case.

1 If, however, the person got less
2 than five days; four, three, two, one or
3 a reprimand, then the lookback period is
4 going to be three years, which means
5 only one prior substantiation, the 2018,
6 would factor into the analysis.

7 So, here, we are going to say that
8 it's a sergeant, so we have an
9 aggravating factor of rank, and failure
10 to activate body-worn camera, which we
11 see a lot, which is also an aggravating
12 factor under the matrix. No mitigating
13 circumstances here, we could put in one
14 mitigating circumstance even, if we
15 wanted to, to say it was unfolding very
16 quickly.

17 So, here, because it's basically --
18 it's not necessarily an intentional
19 frisk or search, and again, the matrix
20 now lays it out into intentional,
21 negligent or reckless Stop, Frisk,
22 Search and Question. Here, we are going
23 to go under these facts, that it's a
24 negligent frisk and a negligent search
25 in that they had some information, but

1 they didn't actually get as much
2 information as they should have to stop
3 this person -- I'm sorry, to frisk and
4 search this person.

5 So, the presumptive penalty under
6 the Patrol Guide is training for both
7 the frisk and the search. But, again,
8 we have the MOS history. So, we would
9 have to look and see how many actual
10 penalty days were imposed on both of
11 those CD-As in 2016 and 2018.

12 So, the number of days that we would
13 have to add to the penalty would be
14 anywhere from five to ten days for prior
15 misconduct, if only the 2018 case
16 counts; meaning that they got less than
17 five days on one of the CD-As. But if
18 they got more than five days on the 2016
19 case, then the potential additional
20 penalty would add an extra fifteen to
21 twenty days.

22 Here, again, we've talked about we
23 have some aggravating factors. So, then
24 you would take the aggravated frisk
25 penalty and the aggravated search

1 penalty. So, that would be seven days
2 from each. Then, because we're talking
3 about different conduct here, a frisk is
4 a separate action from a search, they
5 would run consecutively.

6 So, here comes the math. Your
7 matrix penalty recommendation would be
8 somewhere between nineteen to
9 twenty-four days, which, again, under
10 our recommendation would be charges from
11 the CCRB. You would have seven days for
12 the frisk, the aggravated frisk, seven
13 days for the aggravated search. Then,
14 you'd have to add on -- we're going to
15 assume that only one of them had five
16 days -- you would add on five to ten
17 additional days, and that's going to be
18 a range.

19 So, the aggravated penalties for the
20 frisk and the search, that's a definite.
21 That's in the matrix, it's in the table.
22 That's seven days. Then, when you add
23 on for MOS history, you're going to get
24 a range.

25 So, that's going to be between five

1 and ten days, and that's when the Board
2 will have a little bit more discretion
3 in determining how many more days to add
4 on, based on the history. So, for
5 example, even though it's five to ten
6 days and you're not counting in the 2016
7 case, that can still inform where you're
8 going to go in your five to ten days.

9 As you can see, there is going to be
10 some math involved in this. There's a
11 number of different penalties that are
12 going to have to be set penalties, like
13 the frisk and search, that are going to
14 have to be combined with range
15 penalties, like the MOS history
16 aggravating penalties. So, it's going
17 to take a little bit sometimes to come
18 up with these penalties for multiple
19 allegations.

20 Now, offensive language, for an
21 example, we'll use the N-word. That's
22 the most typical example of offensive
23 language. We'll say MOS history, none;
24 no aggravating factors; no mitigating
25 factors, just something screamed out by

1 the officer.

2 So, here, the presumptive penalty
3 for offensive language would be twenty
4 days. Now, that would be charges under
5 the CCRB's recommendations. But the
6 conduct, using the N-word, that same
7 conduct not only also satisfies
8 offensive language, but it also
9 satisfies discourtesy.

10 The presumptive penalty for
11 discourtesy is five days. However,
12 because it was the same underlying act
13 that satisfies both allegations, these
14 penalties, under the matrix, will run
15 concurrently.

16 So, here, even though you have
17 twenty days for offensive language and
18 five days for discourtesy, you would
19 substantiate both allegations, but we
20 would still only end up recommending
21 twenty days with charges to the
22 Department, instead of twenty-five,
23 because these penalties are going to run
24 concurrently.

25 Now I'm just going to go into a

1 little bit of a comparison to see what
2 happened from the draft matrix when we
3 held our hearing and we submitted some
4 comments to the Police Department, and
5 seeing some of those changes; if they
6 were made or if they weren't, just to
7 give you a little bit of a history of
8 what has changed since the last time
9 we've discussed the matrix.

10 One of the common themes that a
11 number of people and advocates raised
12 were that there were inappropriate legal
13 standards in the draft matrix. So,
14 objectively, a reasonable mistake of
15 fact or law was listed with a number of
16 the Fourth Amendment allegations. That
17 has been removed, but as I mentioned
18 earlier, it's been replaced by specific
19 intents of negligence, reckless and
20 intentional.

21 There was a recommendation that
22 force allegation should be analyzed by
23 conduct, not by outcome. Half of that
24 was taken. So, now they are analyzed
25 both by conduct and outcome. So, for

1 the conduct, for example, force is now
2 broken into deadly use, non-deadly, less
3 lethal/device, which would be your
4 tasers and OC-spray, and chokeholds.

5 But the outcome, it's still broken
6 down. So, you would have, like,
7 chokeholds with serious physical injury
8 or death, chokehold with physical
9 injury, chokehold with no injuries. So,
10 we are still analyzing them, both based
11 on the conduct and on the outcome.

12 The aggravating and mitigating
13 factors were deemed too subjective and
14 too vague and not consistent with
15 progressive discipline systems. One of
16 the things that was asked for was
17 minimum and maximum penalty ranges. And
18 as you can see from the hypos that we
19 just went through, that has been put in
20 there.

21 So, for the majority of allegations,
22 especially the ones that the CCRB is
23 going to deal with, there are now
24 minimum and maximum penalty ranges. So,
25 if you determine the aggravating factors

1 outweigh the mitigating factors, there
2 is a specific penalty that corresponds
3 to that aggravated allegation.

4 There are still, as we said, ranges
5 you can see with the officer history.
6 That's an aggravating factor, but it
7 gives a range rather than specific
8 target. There are floors and ceilings
9 now, where before there wasn't.

10 One of the suggestions was that this
11 MOS history should be only an
12 aggravating factor, not mitigating.
13 That was taken; it is no longer a
14 mitigating factor. However, there are
15 job responsibilities used as mitigating
16 factors.

17 You know, officers are under a duty
18 to use de-escalation tactics. They are
19 expected to come and testify
20 voluntarily. They are supposed to give
21 their very honest and cooperative
22 testimony to the CCRB about an incident.
23 So, these are still used as mitigating
24 factors in some allegations. And those
25 are actually just part of their regular

1 job responsibilities anyway.

2 The BWC categories have been
3 expanded. We asked for them to be
4 expanded. They didn't cover everything
5 in the draft matrix. Now they've
6 expanded them, but they have become a
7 little bit unclear. So, they've added a
8 bunch of new categories, but they kind
9 of put in intents to them as well.

10 And some of those intents are a
11 little bit unclear. You have, for
12 example, unintentional failure to record
13 and negligent failure to record, which
14 basically sort of says the same thing.
15 Then, they combined failure to record
16 and terminating a recording, which are
17 two very distinct issues.

18 It's one thing to show up to an
19 incident that you're supposed to be
20 recording and never turn your camera on.
21 It's another to have your camera on,
22 then, regardless of what is happening on
23 the scene, you turn it off too soon,
24 then it is unclear as to how the rest of
25 the incident unfolded.

1 Another issue was the allegations
2 weren't -- they still didn't cover all
3 of the allegations that are necessary
4 for us to conduct our investigations.
5 So, for example, there is nothing that
6 addresses officers failing to log the
7 BWC properly at the end of the tour,
8 failing to upload it at the end of the
9 tour.

10 So, if it's not uploaded, if it's
11 not tagged properly, if the location is
12 not there, the identifying information
13 is not there, when we go to investigate
14 an incident and we request the body-worn
15 camera footage, it's not always going to
16 pop as a hit that there is body-worn
17 camera footage or even if it's
18 mistagged, and there is no repercussions
19 for that in this matrix.

20 At the end of the day, the penalties
21 for BWC are still too low to really
22 deter any misconduct.

23 Tasers, we had a big concern. We
24 thought that they should be included
25 specifically. They weren't. Now, it is

1 listed under the less lethal
2 force/device category. We still believe
3 it should have had its own category,
4 though.

5 The Right to Know Act only addressed
6 failing to provide a business card in
7 the draft matrix. We wanted it to also
8 address the consent portion, which it
9 now does. There's been an addition of
10 an allegation of failure to comply with
11 the Right to Know Act regarding consent
12 to search.

13 The uniformity of recommendations is
14 still a little unclear. There's the
15 presumptive penalties, but other than
16 that, there are still ranges. How is
17 that going to work borough to borough,
18 precinct to precinct?

19 There is a requirement that the
20 Police Commissioner put into writing
21 whenever he's going to deviate from a
22 recommendation and why. But there's
23 still no indication as to what
24 percentage of deviations will be
25 acceptable, what types of deviations

1 will be acceptable. That will be
2 something that will have to play out as
3 we see what types of cases will result
4 in deviations.

5 Training, CCRB had a big issue with
6 training because we never know what that
7 means. So, when an officer is given
8 training as a penalty, we're never told
9 what that training entails; whether it
10 entails a full day at the police
11 academy, a half day at the police
12 academy, something with the legal
13 bureau.

14 We are never, sort of, told what
15 that training is. So, because this is a
16 progressive discipline system and
17 because a number of these allegations
18 have to run consecutively, in adopting
19 this matrix, the CCRB is going to
20 consider training as a half of a day, a
21 half of a penalty day.

22 So, if, for example, there is a
23 Stop, Question and Frisk and each one
24 gets training, that would add up to one
25 and a half days, which would be a

1 recommendation of a CD-A. However,
2 because this is non-binding, if the
3 Board determines, "We gave training on
4 all three allegations because we think
5 this person needs training, not any
6 penalty days," the Board can still do
7 that.

8 The Board can say, "We gave training
9 for all three. The recommendation is
10 training. We're going to deviate from
11 what the matrix would require," and just
12 put that in writing.

13 The biggest issue we had is that
14 it's very hard to participate in a
15 progressive discipline without knowing
16 an officer's actual disciplinary
17 history, which we didn't have access to.
18 The Central Personnel Index, or the CPI,
19 of each officer was never provided to
20 us.

21 What we would need is something like
22 what the APU gets at the stage when it
23 goes to trial, which is what's called a
24 Summary of Employment History. That
25 includes an officer's pedigree, their

1 assignment, when they joined the force,
2 their most recent evaluation, as well as
3 any prior internal disciplinary history.

4 So, we know the CCRB history, but we
5 don't know about any internal history.
6 And because now the matrix is supposed
7 to be comprehensive and take into
8 account all of an officer's history, we
9 really need to get that information in
10 order for us to participate in this
11 progressive discipline system that the
12 matrix lays out.

13 The NYPD has agreed to provide us
14 with a Summary of Employment History
15 within twenty days of the request. CCRB
16 would only be requiring the Summary of
17 Employment Histories for officers when
18 an investigator is closing a case and
19 recommending a substantiation for that
20 officer for an allegation, or one or
21 more allegations.

22 So, we would request it before the
23 case is closed. Then, once it's
24 received, the case would then be
25 submitted to the Board so that at the

1 time of the Board vote they will have
2 all of the relevant information in front
3 of them.

4 The most important thing to remember
5 about the matrix is that at the end of
6 the day, the Police Commissioner will
7 still have all the discretion to either
8 accept or deviate from recommendations,
9 both from the CCRB, as well as the
10 Deputy Commissioner of Trials in the
11 NYPD as well. Much like the PC is not
12 mandated to follow it, it is a
13 non-binding guide on the PC and it would
14 be a non-binding guide on the CCRB as
15 well.

16 So, that is the end of my
17 presentation for today, and I will turn
18 it back over to Fred.

19 CHAIR DAVIE: Thank you, Heather.
20 Thanks very much for that thorough
21 presentation.

22 So, the way we are going to proceed
23 is that we are going to ask our Board
24 Members if they have any clarifying
25 questions or comments. Then, after the

1 Board has had a chance to ask its
2 questions, we are going to ask Mr. Puma
3 to read the resolution into the record,
4 make a motion with regard to the
5 resolution they've proposed.

6 After that motion, we will then open
7 it up for public comment and questions
8 and more questions from other Board
9 Members, if necessary. Then, we will
10 proceed.

11 MR. DARCHE: Mr. Chair, if it would
12 be okay, I think there were two slides
13 that mistakes were made on. I would
14 just like to correct them, --

15 CHAIR DAVIE: Sure, yes.

16 MR. DARCHE: -- so we could give the
17 people the correct information. I am
18 going to try and share my screen so we
19 can show the links for the Mayor's
20 website, which has the matrix on it.
21 But for -- I don't think I can. Now I
22 can, thank you so much.

23 As you can see, for chokeholds, the
24 presumptive penalty is termination,
25 regardless of the injury, and forced

1 separation, if there is a mitigating
2 circumstance and there is no injury.

3 And then, with regard to Stop,
4 Question and Frisk, there is no longer a
5 requirement for intent. It's just any
6 stop of a person, the presumptive
7 penalty will be three days, and the
8 mitigative penalty would be training,
9 and the aggravated penalty would be
10 fifteen days.

11 CHAIR DAVIE: Excellent. Thank you,
12 Jon. So, before we go to questions from
13 the Board, or comments from the Board,
14 to Heather, let me acknowledge the
15 presence of two additional Board Members
16 that have come in since we've started;
17 Mr. Willie Freeman, who is a Police
18 Commissioner designee. Then, I think I
19 saw Ms. Pinsky; is that right? Angela
20 Pinsky, who is a designee of the
21 Mayor -- an appointee of the Mayor,
22 rather.

23 So, let's go to comments and
24 questions from the Board.

25 MS. IRISH: I have a question.

1 Typically, when we make a charges
2 recommendation, the Board does not make
3 a recommendation as to days. It usually
4 then goes to the APU. Is that going to
5 be the same process, or are we actually
6 going to be making a recommendation for
7 charges and the number of days?

8 MR. DARCHE: Mr. Chair, can I answer
9 that?

10 CHAIR DAVIE: Sure, absolutely.

11 MR. DARCHE: So, we are in the
12 process of updating our voting app
13 research so that it will allow you to
14 calculate those things easily and
15 convert them to the discipline
16 recommendations that we currently make.

17 If, after the year, we decide to
18 adopt the matrix as part of the rules,
19 then we could change our rules and how
20 we make discipline recommendations. I
21 can assure you that the APU will be
22 taking the information that is in the
23 voting app and making their penalty
24 recommendations on charges.

25 CHAIR DAVIE: Thank you, Mr. Darche.

1 You might want to turn your camera on
2 too. We'd love to see you.

3 MR. DARCHE: My apologies.

4 CHAIR DAVIE: No worries. Other
5 questions or comments?

6 MS. SIMMONS: (Indicating.)

7 CHAIR DAVIE: Ms. Simmons.

8 MS. SIMMONS: Yes. I would like
9 some clarity around the chokehold. I
10 was under the impression that the
11 chokehold, regardless of result, was
12 grounds for charges -- termination.

13 And from what I'm understanding, I
14 could be wrong, with the new matrix,
15 depending upon the result the of the
16 chokehold, an officer can now remain on
17 the Force. So, please clarify that for
18 me.

19 CHAIR DAVIE: Jon, you want to?

20 MR. DARCHE: Yes. Under the matrix,
21 officers will not be allowed to remain
22 on the Force. If there are mitigating
23 circumstances, they would be allowed to
24 resign or retire from the Force before
25 they're terminated.

1 MS. STAHLY-BUTTS: (Indicating.)

2 CHAIR DAVIE: Ms. Stahly-Butts.

3 MS. SIMMONS: I'm sorry. I'm sorry.

4 But according to what Heather said, if
5 there is not serious, physical injury in
6 a chokehold, they are not terminated.

7 MR. DARCHE: I --

8 MS. SIMMONS: So, is that true or
9 not?

10 MR. DARCHE: I believe Ms. Cook made
11 a mistake.

12 MS. SIMMONS: Oh, all right. Okay,
13 thank you. Thank you, Heather.

14 MR. DARCHE: If Soren could let me
15 share the screen again, I will bring us
16 back to that.

17 CHAIR DAVIE: Did Soren hear you
18 about sharing the screen?

19 MR. DARCHE: Yes. It is my fault
20 for my inability to share. So, you
21 could see here? "Application of a
22 Chokehold." The presumptive penalty is
23 termination. Then, there's a mitigative
24 penalty of forced separation.

25 MR. PUMA: Can that be further

1 broken down, just in terms of how that
2 is defined?

3 MR. DARCHE: Can you clarify that
4 question, Mr. Puma?

5 MR. PUMA: What does forced
6 separation mean, I guess, just to sort
7 of break it down for the public?

8 MR. DARCHE: I may be incorrect, but
9 when you are terminated, you don't get
10 to keep your pension. But someone who
11 is forced to separate from the Force
12 would still be allowed to keep their
13 pension and benefits, other benefits.

14 MR. PUMA: Okay, thank you.

15 MS. SIMMONS: On this chart, under
16 "Physical Injury," it says, "thirty
17 suspension days, dismissal, probation."
18 "No injury, ten penalty days." Then,
19 the last column says, "N/A or
20 termination." So, explain that to me,
21 please.

22 MR. DARCHE: Are you talking about a
23 document that you have, Ms. Simmons?

24 MS. IRISH: No, this is what's on
25 the screen underneath "chokeholds."

1 MR. JOSEPH: Yes, but it's
2 applicational method of restraint, other
3 than a chokehold. You know, sitting,
4 standing or kneeling on a person's chest
5 or back results --

6 MR. DARCHE: Sorry. Thank you,
7 Mr. Joseph. The chokehold portion is
8 just this top line.

9 MS. IRISH: I see.

10 MR. DARCHE: Then, below that is
11 other than a chokehold.

12 CHAIR DAVIE: The last hand I saw,
13 and I can't see everyone's hand now, was
14 Ms. Stahly-Butts. Did you have a
15 question or comment?

16 MS. STAHLY-BUTTS: Yes. I mean, I
17 think the first thing was addressed,
18 which was, I think in the presentation
19 there was a conflation of being
20 terminated with this forced separation,
21 and there is clearly a huge difference
22 when you receive your pension and all
23 other benefits after being terminated.

24 So, I just wanted to name that
25 difference so when we see forced

1 termination -- or forced separation, we
2 shouldn't assume that that is the same
3 as termination. It's very, very
4 different.

5 Also, I'm a little bit confused, to
6 be honest with you, about this
7 applicationable method of restraint,
8 which means making it unable for someone
9 to breathe by standing on them, kneeling
10 on them, what the difference between
11 that and the chokehold actually is in
12 practice.

13 For instance, on Eric Garner, was
14 that a chokehold, or was he restrained?
15 And what is the difference between those
16 two things? And who gets to decide the
17 difference between them?

18 As we can see, for chokeholds, it's
19 not always a termination. But also, I
20 feel there's this whole, kind of, gray
21 area of when people are restricting
22 breathing by standing on somebody, the
23 same way we saw George Floyd die. That
24 is not technically a chokehold, it may
25 not be a chokehold.

1 So, some clarity on that, on who is
2 making this distinction. This document
3 is full of discretionary distinctions,
4 I'm unclear about who gets to make. But
5 this one specifically, when is it a
6 chokehold versus when it's just choking
7 somebody out with your knee on their
8 neck and killing or hurting or injuring
9 them is one question I had.

10 Then, I'll ask the rest after that
11 gets addressed about this distinction
12 between chokeholds versus
13 applicationable method of restraint of
14 someone's breathing and what the
15 difference is and who gets to decide the
16 difference.

17 MR. DARCHE: So, my understanding is
18 is that when the Board is using the
19 matrix, it's the Board Members making
20 the decision. Then, when the Department
21 is using the matrix, it's the Police
22 Commissioner who makes the final
23 decision.

24 MS. STAHLY-BUTTS: About whether
25 something constitutes a chokehold or

1 restraint of breathing?

2 MR. DARCHE: Yes.

3 MS. STAHLY-BUTTS: And ultimately,
4 the Department will be the decider of
5 the final the penalty. So, that's the
6 discretionary distinction that actually
7 will matter in the long run.

8 CHAIR DAVIE: Yes. I mean, the
9 purpose of this is to, again, try to
10 ensure that there are only rare
11 deviations from what the CCRB
12 recommends, both in terms of disposition
13 and penalty, and what the Department's
14 final decision is. But both, for the
15 CCRB and for the Department, there is a
16 non-binding component to this.

17 MS. STAHLY-BUTTS: I guess the
18 question that I'm asking is, in part,
19 both because I was kind of confused, but
20 also just to point out how, in every
21 single one of these decisions, the
22 amount of discretionary choice that's
23 made -- "Is it a chokehold or not? Is
24 it aggravated or not? Is it mitigated
25 or not?" -- all of these, in fact, I

1 think showcase and undermine the actual
2 outcome that we reach the same decision
3 in that there are so many discretionary
4 loopholes in all of this.

5 So, I just wanted to name them. And
6 also, it feels like, even this thing
7 about chokeholds is just a huge, kind
8 of, question mark. Like, who decides,
9 and how do we (inaudible), which we
10 probably won't.

11 I guess my other quick question is
12 just about, I just wanted to make sure I
13 understood the sexual advances, kind of,
14 the whole body of discipline that we
15 just picked up as a result of a kind of
16 acknowledgement how widespread that is.

17 None of those sexual advances,
18 propositions, none of those result in
19 termination; is that correct?

20 CHAIR DAVIE: It is not a
21 presumption of termination; is that
22 correct, Jon?

23 MR. DARCHE: I believe that is
24 correct.

25 MS. STAHLY-BUTTS: Okay. Then,

1 along the same lines, unlawful and
2 unconstitutional stop and frisks also,
3 under no circumstances, result in
4 termination; is that also correct?

5 So that we have officers who
6 consistently abuse and undermine the
7 Constitution via stop and frisk and they
8 can rest assured that they will not be
9 terminated for that behavior; is that
10 also correct, according to this matrix?

11 CHAIR DAVIE: I think the principle
12 here is that there is a difference
13 between a presumption of termination,
14 which we've said that's where you begin,
15 and looking at officer history, et
16 cetera, and being able to recommend
17 charges that then go to the APU where
18 the recommended penalty is termination.

19 So, I just want us to make that
20 distinction. That just because an
21 infraction doesn't have a presumptive
22 termination penalty attached to it,
23 doesn't mean that given the officer's
24 full history, the circumstances under
25 which something occurred, that you can't

1 get to charges in a Departmental trial
2 where the recommended penalty is
3 termination.

4 MS. STAHLY-BUTTS: But just to be
5 clear, under this matrix, even the
6 aggravated, which I'm assuming is this
7 kind of, like, what you're talking
8 about, the escalation of it, the
9 aggravated penalty for a violation of
10 stop and frisk, constitutional
11 violations, is not termination either.

12 So, even with aggravating factors,
13 this matrix doesn't land us on
14 termination, even if there was a
15 long-established pattern of an officer
16 violating constitutional rights. So,
17 first off, systematically, over the --

18 CHAIR DAVIE: It doesn't prevent us
19 from recommending termination. It is a
20 penalty in a Departmental trial.

21 MS. STAHLY-BUTTS: That makes it
22 hard to understand why we'd go through
23 all this trouble to adopt the matrix if
24 there is a number of people who walk
25 outside the matrix. But thank you,

1 those were my questions.

2 CHAIR DAVIE: Sure, thank you. Any
3 other questions?

4 MR. DARCHE: Mr. Chair, the --

5 MS. COOK: Can I just jump in and
6 clarify real quick for a moment? The
7 matrix says that if a combined penalty
8 is ninety days or more, the
9 recommendation is termination.

10 So, if somebody has, you can see in
11 the matrix, with each prior, it
12 escalates. So, if you have a pattern,
13 you're going to be escalating. Like
14 when I went through it before and I
15 showed you that if it was within five
16 years, it went up five to ten days; if
17 it was the second, it would go up ten to
18 fifteen days, et cetera.

19 So, with each additional act of
20 misconduct in the past, it goes up
21 higher. So, you could theoretically
22 come to a place where if you have three
23 prior acts of misconduct or four prior
24 acts of misconduct, and they are all
25 twenty days extra for that misconduct,

1 then you're getting up into close to
2 ninety days. Then, your recommendation
3 would be.

4 So, I think if there is a pattern,
5 there is still -- it's math. There's a
6 lot of math going on, but you still have
7 an ability, once you hit ninety days,
8 that the recommendation goes to
9 termination. So, I think that's where
10 patterns come in.

11 MS. STAHLY-BUTTS: It's a lot of
12 hoops to jump through, but I appreciate
13 the clarification.

14 CHAIR DAVIE: Jon, did you have a
15 comment?

16 MR. DARCHE: I did.

17 CHAIR DAVIE: Mr. Darche, and then
18 John Siegal. I'm sorry, then
19 Mr. Siegal.

20 MR. DARCHE: I'm pretty sure that
21 for sexual harassment, that it is overt
22 sexual touching or intimate physical
23 contact. The presumptive penalty is
24 termination. Then, sexual harassment,
25 which is habitual predatory behavior,

1 the presumptive penalty is termination.

2 CHAIR DAVIE: Mr. Siegal.

3 MR. SIEGAL: Yes. Thank you,
4 Mr. Chair. I have a series of questions
5 and comments on the matrix that I think
6 is important, or I'd at least like to
7 make a record on, as we're considering
8 this.

9 I do appreciate that it has evolved
10 since we've reviewed it. And in
11 particular, the concerns that we
12 expressed about the need to tighten
13 vague descriptions of aggravating and
14 mitigating circumstances and factors and
15 mistakes of fact or law that just seemed
16 to lack standards at all, had been
17 removed and tightened.

18 And I do think that orientation
19 towards progressive discipline, the
20 importance of de-escalation as an
21 aggravating or mitigating factor and the
22 supervisory responsibilities and
23 aggravating factor are all important
24 things that I think we have been working
25 towards in our cases.

1 And so, the matrix is a step forward
2 in all of those directions. I am going
3 to limit my questions to the matrix and
4 not the Memorandum of Understanding,
5 which I don't think we are discussing
6 now. But there is one statement in the
7 matrix that I want to flag. It's on
8 page 9.

9 It states that, "If the Department's
10 determination is made that the
11 misconduct is appropriately mitigated or
12 aggravated, the relevant factors,
13 including a description of how the
14 factors were applied, will be documented
15 as part of any recommendation submitted
16 to the PC."

17 I now see that's "submitted to the
18 PC." What I want to flag is that that
19 requirement of specificity, including a
20 description of how the factors were
21 applied, I believe is absent from the
22 MOU. And that is a particular concern
23 and a place where I think there is a
24 deviation between what is being said in
25 the matrix and the MOU. That is of

1 concern to me. That, I guess, we'll get
2 to when we get to the MOU because this
3 description in the matrix is better.

4 I had a couple of questions about
5 mitigating factors. Heather's
6 presentation indicated that employment
7 history has been removed as a mitigating
8 factor. I don't think that is entirely
9 true. At page 9, it states that a
10 positive employment history in the form
11 of accomplishments or Departmental
12 recognitions are still a mitigating
13 factor, and that just seems wrong to me.

14 I mean, an officer can be a hero one
15 day, and we commend that. But if he or
16 she then commits misconduct the next
17 day, the fact of the prior bravery or
18 heroism really should not be a
19 mitigating factor. And so, I think that
20 concept is still in here, and that is a
21 concern.

22 There is a mitigating factor
23 described as the limited impact of the
24 violation on the Department and its
25 mission. I have no idea what that

1 means. The purpose of this is public
2 safety and protection of the public.

3 And I don't think that the
4 Department should be able to find that
5 there was a disciplinary violation, but
6 it didn't really impact the departmental
7 rights mission. That is not a
8 mitigating factor. The Department's
9 mission is public safety, courtesy,
10 respect and professionalism. So, I
11 don't understand what that mitigating
12 factor is.

13 Third, and I know there is
14 disagreement on this issue on the Board
15 and in policy discussions, the fact of
16 supervisor's participation as an
17 aggravating factor. I think it's very
18 important, but I do not think that the
19 presence of a supervisor should be a
20 mitigating factor for a member of
21 service who commits a disciplinary
22 violation.

23 We've had a lot of debate about that
24 in panels. I know there is differences
25 of opinion, but officers are responsible

1 for their conduct. And it is not
2 excusable because there is a superior
3 officer on the scene, if they commit
4 misconduct.

5 I think the presumptive penalty of
6 three days for an unlawful stop and
7 frisk or vehicle search is too little.
8 Given the history and the finding of
9 systematic unconstitutionality that is
10 still in place, that three days as a
11 presumptive penalty is too little.

12 And I note that it's lower than this
13 data that Heather outlined on the prior
14 CCRB recommendations. Our
15 recommendations, the plurality of them,
16 at least, maybe most of them, were CD-Bs
17 for stop, frisk and search violations
18 and three days falls below that. So,
19 that too is an area of concern to me.

20 Finally, what I want to note is that
21 page 32, with respect to false and
22 misleading or inaccurate statements by
23 officers. In this, "As a mitigating
24 factor, a member of service's inability
25 to recall activities before or after

1 they made the false, misleading or
2 inaccurate statement," that makes no
3 sense to me. That seems, to me, to be
4 an incentive to not remember, to not
5 recall, and I don't understand the
6 purpose of that.

7 So, I flag these to make a record to
8 the issues that I think we should
9 monitor. We should engage in further
10 discussions with the Department as this
11 matrix takes effect, and I appreciate
12 the opportunity to do that.

13 CHAIR DAVIE: Thank you, Mr. Siegal.
14 And let me say that the document is a
15 living document. We will revisit it in
16 six months, and then on a yearly basis
17 after that. We can address the issues
18 raised at both of those points along the
19 way, and then on a continuous basis.
20 That is on the matrix.

21 On the MOU, we can make sure that
22 the language between the MOU and the
23 matrix is consistent on the issue you've
24 raised before it is formally signed.
25 And we will prepare that revised MOU to

1 make sure that language is consistent
2 with the Board before it's formally
3 signed.

4 MR. SIEGAL: Well, my understanding
5 is we're not really discussing the MOU.
6 It hasn't been presented. I think that
7 what you've just said would actually be
8 a very material change to the MOU. And
9 at the right, appropriate time, I would
10 like to discuss that issue.

11 CHAIR DAVIE: To discuss which
12 issue; that specific issue, John?

13 MR. SIEGAL: Yes. I think that the
14 requirement, again, I will just raise it
15 now since you've asked, there appears to
16 be a substantial difference in the MOU
17 between the obligations of the CCRB when
18 our recommendations deviate from the
19 matrix, and the obligations of the
20 Police Commissioner when the Police
21 Commissioner deviates from the matrix.
22 And in Section 1, paragraph 2, --

23 MR. DARCHE: John?

24 MR. SIEGAL: Yes?

25 CHAIR DAVIE: Hold on one second.

1 Let me ask my colleagues if they can
2 mute their line so that we don't get the
3 background noise.

4 MR. SIEGAL: So, the CCRB is
5 required to describe with particularity
6 its reasons for deviating from the
7 matrix, and there is not a corresponding
8 requirement on the Department.

9 And the CCRB is required to describe
10 how the aggravating or mitigating
11 factors were applied, which is the
12 language that I read from the matrix.
13 But the MOU does not require that in the
14 PC's memos on deviating from the matrix.

15 So, those are concerns that I have
16 about the MOU and, really, the
17 requirement of in the extraordinary
18 circumstances, whenever those are, that
19 the Commissioner deviates from the
20 matrix, it doesn't appear there is a
21 requirement of a very reasoned
22 explanation.

23 And that is the language I was
24 flagging in the matrix that says there
25 needs to be a reason that the

1 recommendation submitted to the PC, and
2 I'd like to see that carried out
3 throughout the process. If the point of
4 the matrix is standardization and here
5 there is deviation, there needs to be
6 real explanation so that all
7 participants in the process and the
8 public can understand what that is.

9 CHAIR DAVIE: Understood, and we
10 will make sure that the language, again,
11 between the MOU and the matrix on that,
12 and any other issues, but I think that's
13 the one that is flagged now, is
14 consistent. Mr. Puma.

15 MR. PUMA: Yes. Thank you, Chair.
16 Just a couple of questions; I wanted
17 clarity as to when the matrix would
18 start to be applied to disciplinary
19 cases. My understanding is that since
20 it was introduced last week by the
21 Department, that it would only apply to
22 incidents that occur on or after then.

23 CHAIR DAVIE: As I said in my
24 remarks, it applies immediately.

25 MR. PUMA: Okay, including for

1 incidents that occurred prior to the
2 release of the matrix?

3 CHAIR DAVIE: That is my
4 understanding, yes.

5 MR. PUMA: Oh, okay. Then, the
6 other question is related to body-worn
7 cameras, which I thought was very
8 helpful for Heather to highlight.
9 Currently, the Board has notes when a
10 body-worn camera has not been properly
11 used. And so, some treatment of that in
12 the presentation was helpful.

13 However, we just don't have
14 jurisdiction over building discipline
15 about those infractions. That is my
16 understanding, and is that going to
17 continue to be the case.

18 CHAIR DAVIE: Heather or Jon, do you
19 want to comment?

20 MS. COOK: We don't have
21 jurisdiction over it, but failing to
22 document something and make a record of
23 something is an aggravating and
24 mitigating factor on many of our thetos
25 and many of the things we do have

1 jurisdiction over. So, it comes into
2 play that way for us.

3 MR. PUMA: Okay. Thank you.

4 CHAIR DAVIE: Sure. Mr. Joseph.

5 MR. JOSEPH: Thank you. I need some
6 clarification on the matrix on page 10,
7 the effect of rank on discipline.

8 I know John kind of eluded to this
9 earlier, but in the last paragraph, it
10 says, "A downward departure from a
11 presumptive penalty may be warranted
12 when a subordinate is acting under the
13 close supervision or direction of a
14 superior, and the supervisor is subject
15 to discipline for any misconduct related
16 to this event."

17 So, does that mean we can now look
18 at misconduct, not only of the officer,
19 but their supervisor involved; because
20 right now, we don't do that?

21 CHAIR DAVIE: Jon, do you want to
22 answer that or Heather?

23 MS. COOK: I mean, in the panels, we
24 do do that. There are cases where if
25 there is an officer on the scene and the

1 sergeant is in charge of what's going
2 on, we hold the sergeant accountable for
3 what the officers are doing because the
4 sergeant is the one directing the
5 operation.

6 So, we've done cases like that where
7 we do hold the sergeant accountable and
8 we wouldn't hold the officer
9 accountable. That's pretty consistent
10 with what our general practice is and
11 the way that the investigators write it
12 up when it's clear. When it's clear in
13 the way that they've described it here;
14 when the sergeant is on the scene, the
15 sergeant is directing.

16 So, for example, if we have a case
17 where there's a car stop, and the
18 sergeant says, "Stop that car." Then,
19 the officers walk up to the car, we
20 would plead the car stop, that would go
21 against the sergeant. That we wouldn't
22 hold every officer who was there for
23 stopping that car because the sergeant
24 made the decision to stop the car.

25 If the sergeant is on the scene and

1 says, "Let's get them out, frisk and
2 search them," we wouldn't hold the
3 officer responsible for the frisk and
4 search because the sergeant is directing
5 them. The way that the NYPD works is
6 that they take the order from the
7 sergeant. So, we do that in our panels
8 already.

9 MR. JOSEPH: Okay. So, is there any
10 time when a superior officer, or the
11 sergeant supervisor, gives an illegal
12 order and you follow it, there is no --
13 you are still justified? Meaning, the
14 member of service is still okay. The
15 sergeant says, "Take them outside --"

16 MS. COOK: I think that goes to
17 subs. I think that goes to subs. That
18 doesn't go to what is here in the
19 matrix, which comes into play after
20 something has been subbed.

21 So, that's a discussion that the
22 Board can have before we hit the matrix
23 point. But once we get to the matrix,
24 it's already determined who is getting
25 subbed in that case.

1 So, I think we just don't want to
2 conflate those two issues in terms of
3 whether, you know, who is really
4 responsible is a threshold that issue
5 gets us to the matrix. Once we get to
6 the matrix, we've already made that
7 determination.

8 CHAIR DAVIE: Does that answer your
9 question, Mr. Joseph?

10 MR. JOSEPH: Yes, thank you.

11 CHAIR DAVIE: Sure. And I saw
12 Mr. Rivadeneyra's hand.

13 MR. RIVADENEYRA: Yes, thank you,
14 Chair. I just wanted some
15 clarification. And I know Jon had said
16 this earlier, but the definition that is
17 within the matrix for termination and
18 forced separation, they still apply.

19 Under termination, "A member of
20 service may be entitled to all or part
21 of their accrued pension benefits." And
22 I will admit, I haven't had a chance to
23 read the case law that governs that,
24 that's cited for that, as well as the
25 state law that's cited there.

1 But I would like to have a little
2 bit more distinction of, like, the
3 distinction between termination and
4 forced termination and the amount of
5 benefits that the officer, or member of
6 service, is entitled to if they are
7 found guilty and then terminated.

8 CHAIR DAVIE: Can anyone take that
9 one?

10 MR. DARCHE: Sure.

11 MS. COOK: I think Jon -- yes, I was
12 going to say Jon.

13 MR. DARCHE: So, I think that is
14 something we need to get back to the
15 Board on because it's not something that
16 we deal with very much.

17 And I recently learned there are
18 differences in the tiers of which
19 pension you are in that determine, if
20 you were in the NYPD, how much pension
21 you bring with you when you retire or
22 when you are forced to separate.

23 So, I just don't want to give you
24 incorrect information. So, I will come
25 back to you with the correct

1 information.

2 CHAIR DAVIE: Jon, is that a matter
3 of law?

4 MR. DARCHE: I think it's actually a
5 matter of the contract, but it may also
6 be a matter of law.

7 MR. DWYER: Jon, I believe there's
8 law on it also. I believe after twenty
9 years there's law. Now, what's not
10 being pointed out here is that if a
11 person voluntarily separates, then a
12 Court won't order them back into
13 employment. If they are fired, the
14 Court may order them back into
15 employment, if they find the proceedings
16 unfair.

17 So, this is not as simple as some
18 people might perceive it as, "Oh, you're
19 giving the person a great benefit." If
20 you terminate them and they go to court,
21 and the Court finds the decision
22 inappropriate, they can be rehired. If
23 they voluntarily retired, they're
24 retired. So, this is not as clear as
25 some might perceive it.

1 CHAIR DAVIE: Thank you. Ms.
2 Simmons.

3 MR. RIVADENEYRA: I--

4 CHAIR DAVIE: I'm sorry, go ahead.
5 You had a follow-up?

6 MR. RIVADENEYRA: I just had one
7 more question about the -- well, two
8 more questions about the matrix. The
9 first question, the matrix puts "Failure
10 to Intervene" under "Excessive Force."
11 I'm wondering if that's something we are
12 going to look into as having
13 jurisdiction over.

14 Then, a question to Heather in
15 regards to when we piloted our matrix,
16 we put up data on the concurrency rate,
17 meaning our charges and subs with the
18 PC.

19 CHAIR DAVIE: You mean our
20 framework?

21 MR. RIVADENEYRA: Yes, our
22 framework.

23 MS. COOK: I think that would be in
24 the standard -- we can run it. I think,
25 though, that would be our standard

1 concurrency rate because that's just
2 what we've been -- right? I mean,
3 that's what we've been --

4 CHAIR DAVIE: We have disambiguated
5 -- is that how you say that term? -- the
6 charges from the, at the times in our
7 data, from non-charges cases. And we
8 looked at where the Commissioner has
9 concurred on both guilty verdicts, then
10 the following on penalties, and we've
11 done the same for the disposition for
12 the non-charges.

13 So, I think maybe what
14 Mr. Rivadeneyra is asking, can we look
15 at those APU cases where we refer
16 charges under the matrix to see what the
17 Commissioner's concurrency rate has
18 been, both on the outcome, which is
19 pleas and verdicts, then the penalties.

20 MR. RIVADENEYRA: Yes, thank you.

21 MS. COOK: So, the guilties, then
22 what was the second part?

23 CHAIR DAVIE: The guilties and the
24 penalties, right.

25 MS. COOK: So, the penalties,

1 remember, because we refer charges, we
2 don't give a specific penalty.

3 MR. DARCHE: But on the APU, we keep
4 the statistics of whether or not if
5 there is a guilty verdict and what the
6 penalty was.

7 MS. COOK: And what the penalty is,
8 right.

9 CHAIR DAVIE: Right.

10 MR. DARCHE: So, we can get that
11 data for Mr. Rivadeneyra and the others.

12 MS. COOK: I just want to make sure
13 I'm clear. So, do you want to know when
14 they deviated from the recommendation
15 that we asked for, that the APU asked
16 for?

17 So, before trial, the APU is saying,
18 "We want twenty days," then they're
19 found guilty and they get five days; is
20 that what your question is?

21 MR. RIVADENEYRA: In regards to a
22 plea, but when the Commissioner deviates
23 from what has -- and even if he deviated
24 from the plea, but in those cases where
25 the framework cases went to the APU and

1 there was either a plea or a finding of
2 'X' days, whenever the Police
3 Commissioner deviated from those bigger
4 cases.

5 MR. DARCHE: So, this is going
6 forward, Mr. Rivadeneyra, or in the
7 past?

8 MR. RIVADENEYRA: Under the use of
9 our framework.

10 MR. DARCHE: So, we have that
11 information. We'll get it for you.

12 CHAIR DAVIE: Yes. And I think we
13 can look at the instances where we
14 recommended charges, and then the
15 Department decided that they were going
16 to go with something lesser.

17 MR. DARCHE: We will break it up.

18 CHAIR DAVIE: Right. Whose hand did
19 I see? Ms. Bond.

20 MS. BOND: I just had sort of a
21 practical, procedural question in terms
22 of how we are going to use this matrix.
23 I think what's coming to light here is
24 that this is a fairly complicated matrix
25 to apply. And historically, when board

1 panels have convened to look at these
2 cases, investigators in their reports
3 have really just provided us with a
4 recommendation around whether to
5 substantiate or not. Then, it had been
6 a relatively simple process to determine
7 what kind of disciplinary recommendation
8 to make.

9 Here, it is much more complicated,
10 and I think for some good reason, in the
11 sense that we will now have more
12 information to consider from an
13 officer's disciplinary history that will
14 need to be applied and considerations
15 around aggravating and mitigating
16 circumstances that we'll, both, want to
17 apply and then we'll want to document.

18 And so, I guess my question is, how
19 is this going to work? Are the
20 investigators now going to be trained on
21 the matrix and be making a
22 recommendation around both, the
23 determination or whether something
24 should be substantiated, as well as
25 providing information about the kind of

1 discipline that we should be
2 recommending under the matrix, or is
3 that something that panels are going to
4 be doing themselves?

5 MS. COOK: That's still something
6 panels are going to do. What we are
7 going to do is we're going to --
8 obviously CTS is going to need to be
9 updated to add more information and more
10 fields.

11 Liz and I are going to put together
12 for you guys, the same way we usually
13 do, you know how right now the current
14 framework that we use, you can click on
15 it if you need refreshers and there's
16 buttons in CTS you can click on for the
17 framework, for definitions of what
18 everything means.

19 Thankfully, one of the good things
20 about the matrix is, a lot of it is in
21 chart form. So, what we are going to do
22 is, we'll upload those charts for you.
23 But then, Liz and I, when we are in the
24 panels, we'll help, kind of, walk you
25 through it, the same way we used to walk

1 you through the framework where,
2 obviously, we don't vote. The staff
3 doesn't vote.

4 The votes are for you guys, but if
5 you have questions about where to find
6 something, how to use something, we can
7 walk you through it the same way. So,
8 the bigger burden will probably be on
9 Liz and myself in the panels to have
10 more of the knowledge of where to find
11 everything in the matrix so that we can
12 direct you.

13 But we can't really -- you know, I
14 think it would be a larger discussion
15 about whether or not investigations
16 should be making those recommendations
17 because we want to make sure that we
18 keep all of the discretion for the
19 recommendations with you guys and making
20 sure that the result that comes, comes
21 from a deliberation from the Board.

22 So, we can certainly talk about what
23 ways you guys want it -- how you want it
24 to work and what would make things
25 easier for you. And we are going to put

1 together a training for you guys on the
2 matrix so that we can walk you through
3 it in more detail.

4 So, it will be sort of be like a
5 much more extensive version of the hypos
6 that we walked through here, and we'll
7 show you where you can find all the
8 resources to find the different tables.
9 We're going to try to work with Lincoln
10 to get CTS to a point where there can
11 just be drop downs that give you the
12 options.

13 So, like, drop downs with
14 aggravating will tell you, drop downs
15 with mitigating will tell you. It won't
16 just say "substantiated charges." It
17 will say, "substantiated aggravated
18 penalty," "substantiated presumptive
19 penalty." And that will be, hopefully,
20 built in, so it will be sort of one less
21 mathematical calculation that you'll
22 have to do. We can get the computer to
23 do that, hopefully.

24 But in the beginning, at least, the
25 plan is for Liz and I to do the heavy

1 lifting in the panels of walking you
2 guys through it.

3 MS. BOND: Okay, that's helpful.
4 And I raise that, in part, just as a
5 practical issue, but also because I
6 think it will be very important for us
7 to be documenting in a very detailed
8 way, where we potentially are departing.
9 Or I think, probably, the bigger issue
10 here is that we're going to potentially
11 be interpreting the matrix differently
12 than the Department.

13 And I think that gets a little bit
14 to Mr. Siegal's point, which is that I
15 think not only will we want to document,
16 sort of, how we are using the matrix,
17 but it's important that we get
18 information back from the Department
19 about the ways in which they are
20 potentially either deviating or frankly
21 interpreting the matrix in a way that's
22 different than we are so that we can
23 report to the public and we are in a
24 position at regular intervals, as are
25 built into this process.

1 I think the Chair said every six or
2 twelve months this is going to be
3 reviewed in some way, but I just want to
4 make sure that we are able to really
5 identify where there's potential pain
6 points, where there's disagreements
7 about what kind of penalty should be
8 imposed.

9 Again, either because we are
10 interpreting things differently or
11 because there's just substantive
12 differences about what kinds of
13 penalties should attach.

14 CHAIR DAVIE: Thank you.

15 MR. DARCHE: If the Department--

16 CHAIR DAVIE: Go ahead. Was that
17 Jon?

18 MR. DARCHE: If the Department
19 deviates from our recommendations, they
20 have to explain why under, both the
21 Charter change and the 2012 Order.
22 There is nothing in the matrix that is
23 going to change that, I think.

24 So, we are still going to get the
25 explanations, but I think Ms. Bond is

1 one-hundred percent correct that we need
2 to document our reasons, and the team is
3 working on that. Lincoln and his team
4 are going to have something that will
5 easily track these things for you in the
6 midst of deciding a case, but also for
7 us so that we have an idea of what is
8 going on, like, a global trend
9 situation.

10 MS. BOND: Yes, Jon. I understand
11 that the Charter requires some
12 explanation and the current draft of the
13 MOU requires some explanation, it's just
14 not specific as to, I think, again,
15 Mr. Siegal said earlier, the specific
16 rationales.

17 And now that we have a matrix that
18 allows for very specific mitigating
19 factors, we've just got to make sure
20 that we're getting all of those details,
21 as opposed to an explanation, along the
22 lines of, you know, "We didn't think
23 because it's inconsistent with the
24 Department's mission that we should
25 impose this kind of penalty or this kind

1 of discipline."

2 I just want to make sure that we're
3 getting the level of specificity we need
4 so we can identify where there's
5 differences. Thank you, Mr. Chair.

6 CHAIR DAVIE: Thank you. I saw
7 Ms. Irish, Ms. Simmons and then
8 Mr. Dwyer.

9 MS. IRISH: Just a quick point about
10 timing. I really think it's important
11 that we understand the concurrence rates
12 before that six-month review period
13 where we have to make the decision as to
14 how this is working. This is a lot of
15 work for us to be doing, and it's still
16 just a recommendation.

17 So, to the extent that we are -- and
18 we are willing to do the work, but to
19 the extent that we are seeing things
20 getting overturned with frequency, that
21 would not be acceptable. And I don't
22 understand the timing of when we
23 actually will be getting back those
24 explanations of deviations, and I think
25 that is important to really nail down

1 and to have some data at that six-month
2 period point.

3 CHAIR DAVIE: Yes. I would agree,
4 Ms. Irish, and I just want to say that
5 if it is the case, that there is the
6 frequent -- there are frequent
7 deviations from CCRB's recommendations,
8 then we have a very serious problem with
9 this arrangement.

10 And these documents are only as good
11 as the integrity of the people who are
12 responsible for implementing them. We
13 have done pretty well with the MOU
14 related to the Administrative
15 Prosecution Unit, so we have preference
16 here.

17 And again, I'm going to ask to
18 silence your microphones on your
19 computers. But we have some pretty good
20 evidence with the use of the MOU and the
21 APU. So, the commitment has to be that
22 the deviations will only be for
23 extraordinary circumstances. And if
24 that doesn't hold, then we have got a
25 serious issue with this entire

1 structure. Who was next, Ms. Simmons?

2 MR. JOSEPH: Don't we have a problem
3 with the deviation now, that the Police
4 Commissioner is not sending us the
5 reasons why he deviated?

6 CHAIR DAVIE: That changes with
7 this. And if it doesn't change, then
8 we've got a promise.

9 MS. SIMMONS: I'm emphasizing what
10 the Chair has just stated, that this is
11 a leap of faith on our part. And I, for
12 one, have serious issues with some of
13 the terms and I look forward to making
14 stronger changes in the future. But if
15 this is an exercise of futility, then at
16 six months, I'm going to have a very
17 strong recommendation, --

18 CHAIR DAVIE: Yes, but I'm just --

19 MS. SIMMONS: -- just so you know.
20 Let me finish. Because there's too many
21 problems with it, as it is right now.
22 So, for us go along with that in the
23 hopes to improve it, if, in fact, it is
24 a one-way deal.

25 CHAIR DAVIE: Right. Well, let me

1 just say this, that is not how this is
2 being entered into. And I would agree
3 with you three months, six months, down
4 the road, if we see that this process is
5 not holding, then, again, we've got some
6 serious issues to reckon with. Who was
7 next? I think it was Mr. Dwyer.

8 MS. STAHLY-BUTTS: I have something
9 to add. It's Marbre.

10 CHAIR DAVIE: Okay, Mr. Dwyer, then
11 Ms. Stahly-Butts.

12 MR. DWYER: Mr. Chair, I didn't open
13 this Pandora's Box, and I will respect
14 your response of, "We will deal with it
15 later." But since my colleagues opened
16 the issue of process, I will again raise
17 the issue that disciplinary records
18 should be viewed after a decision is
19 made, whether an allegation is
20 substantiated or not.

21 That's not how it is currently,
22 where I'm given the person's partial
23 disciplinary record, then I'm given the
24 case at the same time. So, if we are
25 going to get a comprehensive

1 disciplinary record, just like a jury,
2 we should decide whether the person is
3 substantiated or not substantiated, then
4 we should be given their disciplinary
5 record.

6 I understand that doesn't fit
7 exactly within today's discussion, but
8 I'm not the Board Member who opened how
9 cases will be processed. So, I join in
10 that discussion, but totally respect if
11 you want to defer it to another day.

12 CHAIR DAVIE: Yes, I think we
13 should. I think we should just focus on
14 the matrix, per se, and the MOU, per se,
15 for now. But we can decide -- I mean,
16 we can have that discussion. I think we
17 have a process and if we want, we can
18 have a discussion about whether or not
19 we are going to deviate from that
20 process.

21 But we will table that for another
22 discussion, another time, but it is on
23 the record. Ms. Stahly-Butts, and I
24 just want to make one point. We still
25 haven't heard from the public, so I

1 would hope that we would leave some time
2 so that we can do that.

3 Ms. Stahly-Butts.

4 MS. STAHLY-BUTTS: Absolutely, I
5 agree. I just want to, I think,
6 reiterate the suggestive point about the
7 reality that we have been working with
8 the Department since our inception and
9 we have seen both extreme instances of
10 non-adherence to our recommendations, as
11 well as a lack of transparency in
12 providing detailed explanations of why
13 they deviate.

14 I am so bewildered about why we
15 would act as if anything has changed in
16 the Department at this moment and why we
17 would put blind faith and so much effort
18 and time and capacity into a deeply
19 flawed matrix in light of that history
20 and track record.

21 And so, I just want to reiterate
22 that we have that requirement. I have
23 yet to see an explanation that is
24 actually in good faith to that, and we
25 have a huge gap in the actual adherence

1 to our suggestions. This idea to just
2 blindly trust the NYPD is so incredibly
3 bewildering to me in this moment and in
4 my experience, in any actual reasoning
5 besides -- I'm actually not sure of the
6 reasons. But I just wanted to name that
7 that is the history that we are
8 approaching this year with. Even if
9 it's "a new day," that, actually, it's
10 not a new day. It's the same Department
11 and history. So, I just want to name
12 that and ground us in that.

13 CHAIR DAVIE: And I would say that,
14 you know, at these interviews where
15 we're checking in, if that pertained,
16 I'll say it again, we've got a huge
17 issue.

18 So, one more. Then, I think we
19 should really have the reso. introduced,
20 get the motion, then let's hear from the
21 public. Ms. Bond.

22 MS. BOND: I just want to make one
23 quick point, which is that I understand
24 the skepticism of some of my fellow
25 Board Members. I do think this matrix

1 presents an opportunity to bring some
2 consistency and transparency to the way
3 we do our work, and also to the way that
4 NYPD approaches discipline.

5 But I do think that we have to hold
6 them accountable, and I think we have
7 two ways of doing that. One is, that I
8 think it needs to be very transparent,
9 which is why I was, I think, asking the
10 questions, and others were asking
11 questions, about documentation and
12 ensuring that the Department is actually
13 providing us with detailed information
14 about how they're applying the matrix.

15 And I just also would point out that
16 I think our second option for
17 accountability is that our MOU is
18 subject to termination, I think, on
19 thirty days notice. And so, to the
20 extent that we are not getting the
21 cooperation that we need, or we feel
22 like this is not a good faith effort on
23 the part of the Department, we do have
24 the option of terminating the MOU and
25 going about this work in a different

1 way.

2 CHAIR DAVIE: Thank you. That's a
3 very good summary. The Chair will now
4 recognize Mr. Puma to read into the
5 record the resolution, followed by a
6 motion. Then, we will open it to the
7 public for comment, and Board Members
8 can continue to comment as well and ask
9 questions. But let's see if we can give
10 the public an opportunity as well. So,
11 Mr. Puma.

12 MR. PUMA: All right. Thank you,
13 Mr. Chair. Thank you, everyone,
14 actually, for a really substantive
15 discussion. And you know, there is
16 clearly still a lot more questions and
17 substantive and practical issues that
18 need to be clarified. It also has taken
19 a lot of work and input and cooperation
20 from others to get to this point.

21 And there is also a process
22 question, not just related to how the
23 matrix would be implemented, but also, I
24 guess, as to the current status of the
25 matrix and being used by the Department

1 and how the CCRB's work fits -- how the
2 CCRB, within its current legal
3 structure, how our cases would get
4 treated.

5 And as I was clarifying, the
6 Department did adopt the disciplinary
7 matrix last week. So, with all this
8 said, I guess there is an open question
9 as to what is next for the Agency, which
10 is why we are having the meeting,
11 vis-a-vis the matrix.

12 So, with all of this said, I wanted
13 to propose a resolution regarding
14 adopting the matrix for a one-year pilot
15 program. At the end of the year, we can
16 analyze the results and determine
17 whether CCRB's continued use of the
18 matrix would truly serve the interest of
19 the people of New York City.

20 And I am told that I must read this
21 resolution into the record, and also
22 understand that the text of this will be
23 made available in the packet. So, I
24 will read the text:

25 "Whereas, the New York City Police

1 Department, NYPD, has developed a
2 discipline matrix that details the
3 presumptive penalties for various forms
4 of misconduct, including misconduct
5 falling within the jurisdiction of the
6 Civilian Complaint Review Board, CCRB:

7 Whereas, the CCRB has been using its
8 own discipline framework to determine
9 what level of discipline to recommend,
10 depending on the type of allegation and
11 the totality of circumstances and is
12 committed to having more consistency in
13 the level of discipline imposed on
14 police officers found to have engaged in
15 misconduct:

16 Whereas, the CCRB is committed to
17 increase transparency of the police
18 disciplinary process and more public
19 awareness about the penalty an officer
20 faces for engaging in misconduct:

21 Now, therefore, the Board of the
22 CCRB resolves that, beginning
23 February 1, 2021, it utilize the NYPD's
24 disciplinary matrix on a trial basis for
25 a period of one year as the non-binding

1 framework for its discipline
2 recommendations in all CCRB cases,
3 including cases handled by the CCRB's
4 Administrative Prosecution Unit.

5 After the one-year trial period, the
6 Board will examine the data collected
7 during the trial and determine whether
8 continued use of the discipline matrix
9 by the CCRB increases transparency and
10 consistency and serves the people of the
11 City of New York."

12 CHAIR DAVIE: So, will you move it?

13 MR. PUMA: I'm sorry?

14 CHAIR DAVIE: Mr. Puma, do you move
15 that?

16 MR. PUMA: I move.

17 CHAIR DAVIE: So, the motion has
18 been made to adopt the resolution.
19 We're just going to get a second, then
20 we'll go into comment and questions from
21 the public. Is there a second?

22 MR. DWYER: Second.

23 CHAIR DAVIE: Thank you. Now we
24 will open it up to the public for
25 comment and questions. Yojaira?

1 MR. SIEGAL: Mr. Chair, can I just
2 ask a quick question? I think I know
3 the answer, but I want to be clear. We
4 are voting on the matrix and not on the
5 MOU?

6 CHAIR DAVIE: Yes. I was informed
7 by Counsel that we don't need to vote on
8 the MOU.

9 MR. SIEGAL: Okay, because I'm not
10 prepared to vote in favor of the MOU at
11 this time, but my vote is defeated. So,
12 thank you.

13 CHAIR DAVIE: So, just the matrix is
14 all we're voting on. All right.

15 MR. JOSEPH: I'm sorry, Chair.

16 CHAIR DAVIE: Yes?

17 MR. JOSEPH: Just one clarification;
18 it is said that it will be reviewed in a
19 year. Does that preclude us from
20 looking at it in three months and six
21 months?

22 CHAIR DAVIE: It does not.

23 MR. JOSEPH: Thank you.

24 CHAIR DAVIE: Sure. Yojaira.

25 MS. ALVAREZ: Thank you, Chair. For

1 those that would like to make a comment,
2 please use the raise-your-hand feature.
3 As a reminder, we are asking folks to
4 limit comments to two minutes. We will
5 have the timer up. Also, keep your
6 comments limited to the discussion of
7 the disciplinary matrix.

8 If you have any questions or
9 comments outside of that, you can e-mail
10 me at outreach@CCRB.NYC.gov.

11 We will first be hearing from
12 Council Member Adrienne Adams, followed
13 by Council Member Debi Rose and Michael
14 Sisitzky after that.

15 CHAIR DAVIE: Council Member Adams,
16 welcome.

17 MS. ADAMS: Thank you very much, and
18 good afternoon. Thank you for having
19 this meeting. It has been very
20 interesting to hear the take of the
21 Board on the disciplinary matrix. I
22 really don't have a whole lot to share.

23 I, too, would like to hear the
24 questions from the public as well. And
25 I, too, am looking forward to the use of

1 this matrix by the CCRB, and knowing
2 what your feedback is as we proceed with
3 this living document.

4 I ask again that all Members do
5 realize this is a living document. I
6 appreciate your vote today, and again,
7 look forward to your suggestions on how
8 to move forward to make sure that the
9 NYPD is in compliance. Thank you very
10 much.

11 CHAIR DAVIE: Thank you, Council
12 Member, and we will look to the Council
13 to also raise with the CCRB issues that
14 you see emerging that you think we
15 should consider. So, thank you for your
16 leadership of the public safety
17 committee. Council Member Rose.

18 MS. ROSE: Okay, thank you. Good
19 afternoon. I want to thank Chair Davie
20 and the entire CCRB Board for convening
21 this hearing to gather public input on
22 this very important issue.

23 I am really heartened by the
24 thoughtful discourse that I've heard
25 this morning and your commitment to make

1 accountability a reality. Last June, we
2 in the New York City Council passed
3 Local Law 69, a long overdue bill which
4 required the NYPD to develop a
5 disciplinary matrix that would spell out
6 a recommended range of penalties for
7 each type of violation.

8 This issue was very personal to me
9 and my constituents. More than six
10 years ago, then Officer Daniel Pantaleo
11 used an unauthorized chokehold that
12 killed my constituent, Eric Garner. The
13 officer then held his job for more than
14 five years, even receiving overtime pay
15 at taxpayer expense.

16 We had no indication that he would
17 be dismissed from the Department until
18 the Commissioner made the announcement
19 in 2019, five years later and after much
20 public pressure. What is even more
21 painful is knowing that Pantaleo had
22 multiple substantiated claims of
23 misconduct before he killed Mr. Garner
24 in 2014.

25 If NYPD's disciplinary system

1 functioned the way disciplinary systems
2 in other professions function, Pantaleo
3 would not have been on the job and Eric
4 Garner could possibly be alive today.
5 That is the primary motivation for me
6 for this matrix, to give some semblance
7 of order to disciplinary process, to
8 give standards that all officers are
9 held to account.

10 Indeed, with regard to Pantaleo's
11 case, I see that the matrix includes
12 harsher penalties for repeat progressive
13 discipline offenses, something we
14 should've had in place a very long time
15 ago. But unfortunately, while the new
16 matrix moves our city in the right
17 direction, it does not guarantee that
18 the civil rights of all New Yorkers will
19 be respected.

20 This matrix can be rendered
21 meaningless at the sole discretion of
22 the Police Commissioner, And that is
23 troubling to me and my constituents.
24 Under this document, the New York Police
25 Department Commissioner retains the

1 ultimate discretion to override the
2 recommendation of the matrix, just as
3 the Commissioner has had the power to
4 override the decisions of the Civilian
5 Complaint Review Board.

6 The NYPD should not have the ability
7 to excuse or deviate violations that
8 were committed by its own officers. The
9 police shouldn't be able to police
10 themselves.

11 Under this new matrix, the
12 Commissioner would merely have to issue
13 a memo explaining the factors he
14 considered for deviating from the
15 matrix, and the Department would be
16 required to report on how often the
17 Commissioner deviated from that matrix.

18 It is then up to vigilant elected
19 officials, community activists and the
20 press to keep an eye on these deviations
21 and continue the call for
22 accountability.

23 I was really glad to hear that the
24 CCRB is going to re-examine that after a
25 year's time. I have long said that

1 accountability, transparency and
2 consistency are necessary steps in
3 police reform, as it relates to
4 respecting the civil rights of New
5 Yorkers.

6 This matrix brings some level of
7 transparency and consistency to the
8 process, as in, the public will know
9 when officers were held to standards and
10 when they were not. But, it fails to
11 bring true accountability, it is not
12 only meaningful if the New York Police
13 Commissioner does not abide by this
14 matrix.

15 The Mayor and the Commissioner have
16 called this a living document, and I and
17 many across the City call on them revise
18 this non-binding matrix and make
19 disciplinary authority independent of
20 the NYPD and bring New Yorkers the true
21 accountability they deserve. Thank you
22 for allowing me to exceed my time.

23 CHAIR DAVIE: Thank you, Council
24 Member, and let's say that it is going
25 to take all of the stakeholders in this

1 process to ensure that both the spirit
2 and the law of this matrix and the
3 accompanying MOU are carried out. And
4 we are going to, as I said to Council
5 Member Adams, we are going to really
6 depend on the New York City Council to
7 exercise that level of vigilance with us
8 in this process.

9 And I do believe that we have gone
10 right up to the gates of what the law
11 will allow, and we look forward to
12 continuing to monitor this process. So,
13 thank you for your leadership and all
14 that you do, and thank you for your
15 comments.

16 Who is the next speaker, Yojaira?

17 MS. ALVAREZ: Thank you, Council
18 Member. Next we will be hearing from
19 Michael Sisitzky followed by Yasmeen
20 Khan.

21 CHAIR DAVIE: Please go ahead.
22 Michael?

23 (No response.)

24 CHAIR DAVIE: So, do we want to go
25 to the next speaker then come back,

1 Yojaira?

2 MS. ALVAREZ: Yes. Next we will be
3 hearing from Yasmeen Khan.

4 MS. KHAN: Hi, can you hear me okay?

5 CHAIR DAVIE: Yes, we can.

6 MS. KHAN: I am a member of the
7 media. I'm from WNYC.

8 CHAIR DAVIE: Sure.

9 MS. KHAN: Chair Davie, I know you
10 were asked about this, but I just want
11 to sneak in two questions. I know you
12 were asked about this before, you said
13 that your understanding is that the
14 matrix will apply even to behavior prior
15 to January 15th.

16 We are having a hard time getting a
17 clear answer on that, actually, from
18 City Hall and the NYPD. So, I'm
19 wondering how you have come to that
20 understanding, or if you can just tell
21 us when the public can get an ironclad
22 understanding of whether the matrix
23 applies to behavior, to any acts of
24 misconduct, before January 15th?

25 The other question I have is related

1 to the MOU. It's been touted a bunch,
2 when is it going to be signed? And what
3 if you don't get the employment history
4 and the other things in the agreement in
5 a timely manner?

6 CHAIR DAVIE: So, on the first
7 question, I'm going to ask Jon or Matt
8 Kadushin to comment if they wish, or
9 Heather. Thank you. While we wait for
10 them to come on, because I can't see
11 them due to the --

12 MR. DARCHE: So, I think the -- can
13 you folks hear me?

14 CHAIR DAVIE: Yes, go ahead. Yes.

15 MR. DARCHE: For the purposes of the
16 Board, we are going to follow the matrix
17 going forward. And I think any one of
18 the reasons why the Board is adopting
19 the matrix is because the penalties
20 appear to be the appropriate one in the
21 vast majority of cases for the
22 discipline.

23 So, it would seem to me that there
24 would be no reason for the Department to
25 deviate from the CCRB recommendation

1 based on this matrix merely because the
2 conduct occurred before the adoption of
3 the matrix. The Police Commissioner had
4 final authority, still has final
5 authority. And so, if he wants to use
6 the matrix, he can use the matrix.

7 CHAIR DAVIE: Then, on the second
8 question on the MOU, we hope to have
9 that signed some time in the next week.
10 We do have to work out any
11 inconsistencies, as were pointed out by
12 Mr. Siegal, between the MOU and the
13 matrix.

14 I don't think those are many,
15 although the one Mr. Siegal pointed out
16 could be described as substantive, but I
17 think we can make that change without
18 any major challenges there. So,
19 hopefully some time within the next week
20 we will be in a position to sign the
21 MOU.

22 MS. KHAN: Thank you, again. And as
23 the next part of that, I was just
24 wondering, part of the MOU was getting
25 the disciplinary history of the

1 officers. And I know obviously you have
2 had trouble with getting other evidence
3 and body camera footage in a timely
4 manner. What happens if you do not get
5 this documentation in a timely manner?
6 You said twenty days was the
7 extricated --

8 CHAIR DAVIE: The Commissioner, the
9 public and everyone else will know about
10 it. And part of the accountability in
11 this entire reset, as we have called it,
12 is a new level of transparency. We are
13 going to -- so, we are going to
14 anticipate that the Department is going
15 to live up to its part of this
16 commitment. And if they do not, we will
17 be the first to call them to task on
18 that.

19 MS. KHAN: Thank you.

20 CHAIR DAVIE: Sure. Who is next,
21 Yojaira?

22 MS. ALVAREZ: Thanks. Next, we will
23 be hearing from Michael Sisitzky,
24 followed by Michael Noble from Community
25 Board 4.

1 CHAIR DAVIE: Sure. Please go
2 ahead, speaker.

3 MR. SISITZKY: Good afternoon. My
4 name is Michael Sisitzky. I'm Senior
5 Policy Counsel with the New York Civil
6 Liberties Union.

7 Because of our longstanding concerns
8 regarding the NYPD's approach to
9 discipline, we've historically called
10 for the creation of the disciplinary
11 matrix to provide objective standards
12 and, in theory, place some guardrails
13 around the unrestrained exercise of
14 discretion, and basically to serve as a
15 metric by which we can hold public
16 officials accountable to the rules they
17 claim they are following.

18 So, while there is some significance
19 to the fact this document now exists, it
20 has to be viewed in the proper context.
21 And that context is that the NYPD simply
22 lacks the commitment to accountability
23 that is a necessary precursor to this,
24 or any, matrix operating effectively.

25 In recent weeks, the Administration

1 and NYPD leadership have been touting
2 the matrix as constituting a seat change
3 in their approach to discipline,
4 claiming that the NYPD is taking
5 leadership, reforming itself and
6 recommitting to prioritize
7 accountability. But unacknowledged in
8 the Administration's messaging is the
9 simple fact that the NYPD didn't have a
10 choice as to whether to develop a
11 discipline matrix.

12 As we heard from Council Member
13 Rose, in June 2020, the City Council
14 passed legislation requiring that the
15 Department issue a disciplinary matrix.
16 So, the mere fact that the Department
17 has complied with the law that was
18 passed while thousands of New Yorkers
19 were demonstrating in the streets,
20 doesn't signal a culture shift in
21 attitudes surrounding discipline from
22 the Department.

23 And any promises that the NYPD is
24 going to utilize this matrix to maximize
25 accountability are elusory when this is

1 the same Administration and same NYPD
2 leadership that has long fought to keep
3 police misconduct records secret and
4 that in recent months persistently
5 defended obvious instances of police
6 violence against protesters. These
7 problems can't be fixed through simply
8 adopting a disciplinary matrix. They
9 require a culture change in City Hall
10 and One Police Plaza.

11 The CCRB should not put stock and
12 assurances around the Police
13 Commissioner that he will limit his
14 legally unlimited discretion, and nor
15 should the CCRB rush into any agreement
16 that limits its own ability to make
17 independent recommendations for cases
18 within its jurisdiction.

19 Simply accepting rules written by
20 the NYPD subject to the Commissioner's
21 unilateral ability to apply, reject or
22 modify would undercut the independent
23 credibility of the CCRB as an oversight
24 agency.

25 So, the NYCLU urges the CCRB to

1 seriously consider the propositions of
2 this matrix from communities that are
3 most directly impacted by police
4 violence and respond to public advocacy
5 for a stronger matrix.

6 Rather than simply accept an
7 NYPD-generated formula, the CCRB needs
8 to be demanding stronger accountability
9 mechanisms and aggressively counter any
10 efforts by NYPD to use this or any other
11 matrix to justify their continued
12 unwillingness to hold officers
13 accountable. We sent in full written
14 comments, so I will stop there and thank
15 you for the time.

16 CHAIR DAVIE: Thank you, Michael.
17 Let me just say that I do believe that
18 the Mayor and Police Commissioner have
19 negotiated in good faith around this
20 matrix and what was demanded by the
21 legislation from the Council.

22 That said, this matrix is not
23 perfect. It is a living document. And
24 as I said before, it's just going to
25 require all of us, including the New

1 York City Civil Liberties Union, to hold
2 all parties accountable.

3 I do think we've got as much as we
4 could get through by law, and we will
5 have to refine major portions of this.
6 And I am sure you will make sure that we
7 know when we need to do that, if somehow
8 we missed the mark.

9 But I would not have encouraged my
10 colleagues to enter into this if I
11 thought the Police Commissioner or the
12 Mayor were not proceeding with us in
13 good faith, and I think they are, but we
14 all have to be held accountable.

15 And as I said before, we are going
16 to expect everyone, and especially the
17 advocates in the legal community to help
18 us do that. So, I thank you for your
19 comments. Next speaker, please,
20 Yojaira.

21 MS. ALVAREZ: Thank you, Michael.
22 Next, we will be hearing from Michael
23 Noble, followed by Samah Sisay, then
24 Dr. Jackie Cody.

25 CHAIR DAVIE: Will the speaker

1 please go ahead?

2 MR. NOBLE: Okay, I'm unmuted now.
3 Thank you. Thank you for the
4 presentation. Everything that I had to
5 say has already been said, more or less,
6 by Council Member Rose, so that cuts off
7 some of my time.

8 I want to thank Yojaira for the
9 great presentation she gave to one of
10 our committee meetings recently. She
11 did an outstanding job, and I asked her
12 a lot of questions, and she had the
13 answers to them.

14 One question that I had, though, and
15 I asked her this, the matrix is great,
16 it opened our eyes in the public to not
17 only the kinds of things that one could
18 be charged for as a police officer, but
19 what you do about them.

20 It's a huge matrix, the question is,
21 a member of the public who wants to make
22 a complaint to you can't be aware of the
23 things that it took to substantiate.
24 And there's got to be some transparency
25 on your end too.

1 I tell you this from personal
2 experience, something I observed and got
3 an unsubstantiated finding in the mail,
4 it's disturbing to me. So, I would like
5 to know, where do we find this? Before
6 somebody calls you to make a complaint,
7 they should know what they need to tell
8 you in order to have their complaint be
9 substantiated.

10 CHAIR DAVIE: So, this is a process
11 question that I'm going to ask staff to
12 reach out to you about. We want to take
13 questions and comments on the matrix
14 itself, specifically.

15 So, I'm going to ask Yojaira if she
16 will reach out to you, or one of her
17 team, to have a conversation with you
18 about that question.

19 MR. NOBLE: Okay, thanks. Because
20 we don't ever get to the matrix without
21 getting to you first.

22 CHAIR DAVIE: Understood. Thank
23 you, sir. Next speaker, please,
24 Yojaira.

25 MS. ALVAREZ: Thank you so much,

1 Michael. I will be reaching out. Next,
2 we will be hearing from Samah Sisay,
3 followed by Dr. Cody.

4 MS. SISAY: Great, thank you. Good
5 afternoon. My name is Samah Sisay. I
6 am an attorney and a Bertha Justice
7 Fellow at the Center for Constitutional
8 Rights. CCR has served, for the past
9 thirteen years, as lead Plaintiff's
10 counsel in Floyd versus The City of New
11 York, a federal lawsuit that
12 successfully challenged the NYPD's
13 unconstitutional and racially
14 discriminatory stop and frisk practices.

15 In September 2020, the CCR, along
16 with many other groups submitted a
17 public comment and testified before the
18 CCRB regarding detailed concerns with
19 the NYPD's proposed discipline matrix.
20 However, despite these efforts and
21 concern, we believe that the finalized
22 matrix still remains an inadequate
23 reform.

24 First, many people have already
25 mentioned this, but the matrix is filled

1 with broad discretion to disregard the
2 presumptive penalties. Abuse of
3 discretion in discipline has always been
4 one of the primary impediments
5 identified by impacted communities,
6 particularly Black and Latin X
7 communities, to accountability for
8 police misconduct.

9 Yet, the finalized discipline matrix
10 essentially emboldens the Police
11 Commissioner's discretion, destroying
12 any trust in the matrix leading to
13 meaningful change. This issue of
14 discretion is evident throughout the
15 matrix, especially as applied to
16 mitigating factors.

17 Several factors are unexplained and
18 have the potential to broadly shield
19 officers from meaningful disciplinary
20 consequences. Factors like any
21 extraordinary circumstances or hardships
22 that may be relevant.

23 Furthermore, the finalized
24 discipline matrix uses the state of mind
25 of an officer in the absence of intent,

1 which is subjective to mitigate any
2 meaningful penalty for violations. We
3 think this just provides officers room
4 to place blame on the characteristics or
5 circumstances of the victims of their
6 misconduct to get around any form of
7 accountability.

8 This has already been mentioned, but
9 the presumptive penalties for stop and
10 frisk are inadequate. Three penalty
11 days are inadequate and can be easily
12 mitigated down to training through vague
13 mitigating factors.

14 Unconstitutional stop and searches
15 are grave violations that NYPD officers
16 have been trained on repeatedly. And
17 this inadequate penalty highlights the
18 Department's lack of interest in holding
19 officers accountable for these abuses.

20 Moreover, the matrix does not
21 include any disciplinary penalties for
22 improper Level 1 and 2 DeBour
23 Investigative Encounters.

24 Lastly, the discipline matrix claims
25 to define clear escalating penalties for

1 repeated offenses by officers. However,
2 the section of progressive discipline
3 only states that acts of misconduct
4 adjudicated through command discipline
5 may be considered for progressive
6 discipline purposes leaving discretion
7 for them to not be considered.

8 So, we've submitted a full written
9 statement, so I'm going to stop in the
10 interest of time. But, in conclusion,
11 these issues with the matrix undermine
12 the stated goals and they're serious
13 issues. Therefore, we're calling on
14 CCRB to think really hard about
15 accepting this matrix. We're asking for
16 it to be rejected and also the proposed
17 MOU. Thank you.

18 CHAIR DAVIE: Thank you. Next
19 speaker, please.

20 MS. ALVAREZ: Thank you. Next, we
21 will be hearing from Dr. Jackie Cody,
22 followed by John Teufel, then Jennvine
23 Wong.

24 CHAIR DAVIE: Will the speaker go
25 ahead? Dr. Cody?

1 DR. CODY: Yes, yes.

2 CHAIR DAVIE: Please go ahead.

3 DR. CODY: Can you hear me?

4 CHAIR DAVIE: Yes, we can.

5 DR. CODY: Oh, good. Thank you so
6 much. I'm multi-tasking. Hi, everyone.
7 Yes. So, the matrix is a start. And I
8 am so glad, Chair, that you gave
9 recognition to the late Mayor Dinkins,
10 that was excellent.

11 I want to -- now I've got all these
12 less seconds. All right. So, as far as
13 the matrix is concerned, I am really
14 concerned about the ambiguity of the
15 discipline. And using the word
16 discipline, we need to find out the
17 definition because it looks like penalty
18 or punishment system, this is what we
19 are given.

20 So, in order to lessen the ambiguity
21 in determining violations, I want to
22 know, is there best practices or
23 procedures that police officers or
24 people hired within NYPD are signing to
25 commit to, so that if they do commit a

1 misconduct or violation, it is clear.

2 Here, you were given this training,
3 so to speak, and you signed to it, and
4 you clearly understood what the best
5 practice/procedure is. This is not what
6 you did. And that would lessen the
7 ambiguity.

8 So, I want to know, are there best
9 practices given for the officers to sign
10 to and agree to, so that on the other
11 side if they do commit a misconduct, the
12 ambiguity of their actions is less -- is
13 more -- well, there's no ambiguity?
14 Thank you.

15 CHAIR DAVIE: Thank you. And I
16 would say that there is a Patrol Guide
17 that governs the officers' conduct. And
18 when that Patrol Guide is violated, that
19 is both where the -- that's where this
20 entire -- or at least alleged to have
21 been violated, that is where this entire
22 process comes into play.

23 Again, we will see over the next
24 year and with these intervals along the
25 way, how well this matrix and the

1 accompanying MOU helps us to get to
2 first more consistent application of
3 penalties to infractions, and, to
4 whether or not we actually get to the
5 rare occurrence of the Department's
6 deviations from the CCRB's
7 recommendation. That is the goal.

8 Next speaker, please.

9 DR. CODY: Thank you.

10 MS. ALVAREZ: Thank you, Dr. Cody.

11 Next, we will be hearing from John
12 Teufel, followed by Jennvine Wong and
13 Karmita Morgan.

14 MR. TEUFEL: Yes, hello, Council
15 Members. My name is John Teufel. I am
16 a former CCRB investigator and an
17 attorney. I have written extensively
18 about this.

19 My first point is that, and this
20 seems to have been skipped over, but the
21 matrix allows an officer who calls a
22 Black person the N-word to keep his job.
23 I cannot image why an officer who would
24 feel compelled to do that would ever be
25 allowed to keep his job. I'm curious

1 who will vote for a matrix that allows
2 police officers to call Black people the
3 N-word and still keep their job.

4 So, anyone who has followed this
5 issue must be very frustrated by what
6 they heard today. What I heard was,
7 "faith in the Police Commissioner;"
8 "trust," "hope," "faith," "good faith
9 negotiations." What I did not hear?
10 Sixty to seventy percent. That is the
11 number, the percentages, of when the
12 Police Commissioner has rejected CCRB
13 discipline over the past few years.

14 This matrix does absolutely nothing
15 to change that. The Police Commissioner
16 and the NYPD do not deserve the trust of
17 the CCRB. What you are doing today is
18 you are voting on whether to bind the
19 CCRB's hands, but not the NYPD's hands.

20 Council Member Rose mentioned that
21 she would like to prevent another Eric
22 Garner, and that is what we are all
23 trying to do. This matrix does not do
24 that. This matrix keeps in place the
25 exact same system that has resulted in

1 one police officer being fired for
2 misconduct in the last ten years.

3 There is no reason to trust the
4 Commissioner, and right now is your
5 leverage. Your leverage is not three
6 months from now, it is not six months
7 from now. If you vote for this today,
8 you will be voting for a propaganda
9 point for the NYPD and for Mayor
10 DiBlasio.

11 Now, I am not naive. I understand
12 that there are ten appointees from the
13 Mayor or from the NYPD. Now I can
14 understand why the NYPD wants you to
15 vote for this; it doesn't affect them,
16 quite simply. It allows them to
17 continue the same corrupt practices that
18 they've been doing for many, many, many
19 years now.

20 But, I would ask the Board Members
21 who still care about NYPD discipline not
22 to allow the Mayor to keep going on TV
23 and saying how we have completely
24 overhauled police discipline when we
25 know that this matrix does nothing of

1 the sort.

2 And I would also say, please do not
3 vote for a matrix that allows racist
4 police officers who call Black people
5 the N-word to keep their job. Thank you
6 very much.

7 CHAIR DAVIE: Next speaker, please,
8 Yojaira.

9 MS. ALVAREZ: Next, we will be
10 hearing from Jennvine Wong.

11 MS. WONG: Good afternoon. Thank
12 you for the opportunity to testify. My
13 name is Jennvine Wong. I am an attorney
14 with the Cop Accountability Project at
15 The Legal Aid Society. We are the
16 largest provider for indigent criminal
17 legal services across the five boroughs.
18 Thanks for letting me testify.

19 I wanted to note, first, something
20 that was brought up earlier was
21 Commissioner Shae's promise to share,
22 publicly, investigations. And while
23 that is a positive and welcome response
24 after years of advocacy for greater
25 transparency and accountability, I

1 wanted to bring up something that has
2 also been brought up several times now.
3 That the promises are not enough to
4 address and repair the harms of this
5 traditionally opaque disciplinary system
6 and the harm it has brought impacted
7 communities.

8 Ultimately, the disciplinary matrix
9 is still a discretionary tool that the
10 NYPD can disregard or change at any
11 time. And much like the Patrol Guide,
12 while there may be progressive
13 principles espoused, it can be and is
14 easily undermined by the Department
15 itself.

16 And so, a disciplinary matrix
17 compromised by the Commissioner's
18 retention of ultimate discretion over
19 disciplinary decisions can never be
20 considered a complete or adequate
21 response to the NYPD's deeply entrenched
22 culture of impunity and record of
23 protecting bad cops.

24 So, the NYPD and the Mayor have a
25 lot of work to do to rebuild trust with

1 New Yorkers, if they hope to have any
2 credibility when it comes to any of
3 these reforms within the NYPD.

4 Something that the Chair had brought
5 up earlier was the application of this
6 matrix to cases or to incidents that
7 predate January 15th. In one of the
8 cases where Legal Aid is Counsel, our
9 client was brutally assaulted. He was
10 placed in a chokehold and tased thirteen
11 times by Detective Fabio Nunez in
12 Washington Heights in the Summer of 2018
13 over a noise issue.

14 Detective Nunez has a lengthy
15 misconduct history, including multiple
16 applications of chokeholds and forty-six
17 CCRB allegations. One thing that could
18 be done to start to rebuild trust is to
19 start by terminating officers, like
20 Detective Nunez, who has not yet even
21 had his disciplinary trial or received
22 any discipline for these actions.

23 I'm running out of time, and so I
24 just wanted to say one last thing. That
25 the CCRB should not have to rely on the

1 NYPD to produce necessary documents and
2 body-worn camera in order to complete
3 their investigations. They should be
4 provided directly and without
5 obstruction.

6 And so, ultimately what New Yorkers
7 need is a disciplinary system that will
8 not be subject to the discretion and
9 whims of the Police Commissioner. It
10 needs to be independent. New Yorkers
11 deserve something more than
12 unenforceable promises. They deserve
13 real accountability.

14 And so, we hope that leadership will
15 continue to acknowledge that the public
16 cannot simply be told to just trust the
17 NYPD blindly and to remember to push for
18 greater transparency and for greater
19 true accountability. Thank you.

20 CHAIR DAVIE: Thank you, and we hope
21 you will help us do that. Thank you.
22 Next speaker, Yojaira.

23 MS. ALVAREZ: Thank you. Next, we
24 will be hearing from Karmita Morgan,
25 followed by Carolyn Martinez, and then

1 Abigail Lofchie.

2 CHAIR DAVIE: Is our speaker there?

3 MS. MORGAN-RANDELL: Can you hear
4 me?

5 CHAIR DAVIE: Yes. Please go ahead.

6 MS. MORGAN-RANDELL: Okay. Good
7 afternoon. My name is Karmita
8 Morgan-Randell, and I am a co-chair for
9 the Manhattan Borough-based Council.

10 As a community member, I am
11 concerned about the lack of transparency
12 regarding the training information in
13 the discipline policy. I am not sure
14 why there is not more accessibility to
15 what trainings are going to be offered
16 to officers who violate those policies.
17 So, that is what I wanted noted.

18 CHAIR DAVIE: Thank you. Next
19 speaker, please.

20 MS. ALVAREZ: Thank you, Karmita.
21 Next, we will be hearing from Carolyn
22 Martinez-Class.

23 MS. MARTINEZ-CLASS: Hello?

24 CHAIR DAVIE: Yes, please go ahead.

25 MS. MARTINEZ-CLASS: Thank you.

1 Hello. My name is Carolyn
2 Martinez-Class, and I am testifying on
3 behalf of Communities United for Police
4 Reform. I've submitted written comments
5 to the Board, so my comments here will
6 be more focused.

7 It's important to begin by noting
8 that the NYPD did not elect to create a
9 discipline matrix. It was forced to do
10 so by City Council-advanced legislation
11 as a result of the mass mobilizations
12 that occurred last year in response to
13 police violence nationally and here in
14 New York City.

15 The NYPD is incapable of policing
16 itself. Over the course of the last
17 year, we have seen example after example
18 of NYPD officers acting violently and
19 with little regard for the public and
20 the systematic lack of accountability
21 that plagues the Department. These
22 behaviors by the nation's largest police
23 department have been enabled by a
24 chronic lack of accountability.

25 Unfortunately, the NYPD's new

1 disciplinary matrix will enshrine it in
2 policies, the NYPD's problematic
3 approach to discipline. The NYPD's
4 matrix is flawed, and as written, it
5 will embolden and empower officers to
6 engage in a wide spectrum of police
7 violence.

8 Some issues include many of the
9 presumptive penalties for police
10 misconduct to not cover firing, despite
11 the fact that it's harmful. That's for
12 things like intentionally withholding
13 medical assistance, unwanted sexual
14 advances, improper searches of vehicles,
15 unauthorized or unwarranted strip
16 searches or retaliatory actions for
17 submitting a complaint to this Agency.

18 Penalties for use of force are
19 contingent on how severely injured the
20 person is, not the illegality or the
21 inappropriateness of the conduct, which
22 makes it clear -- instead of making
23 clear that all excessive force is
24 unacceptable. This encourages coverups
25 and continued violence.

1 The guidelines codify the troubling
2 practice of allowing officers to retire
3 from the NYPD when officers engage in
4 police violence. That means the
5 Department has the discretion to cut a
6 deal with officers who have been found
7 to have engaged in misconduct and allow
8 them to retire with benefits, instead of
9 facing termination.

10 And, as others have said, the
11 disciplinary matrix obscures and
12 incentivizes police violence by being
13 overly discretionary. The NYPD has the
14 power at any moment to disregard or make
15 changes to the matrix and the Mayor and
16 the NYPD are counting on the opaqueness
17 and complexities of this discipline
18 system to obscure their guidelines to
19 provide cover to protect cops who kill,
20 brutalize, sexually harass and lie in
21 official capacity.

22 And these concerns are not new. In
23 September of 2020, CPR, as well as
24 nearly seventy organizations and sixteen
25 families of New Yorkers killed by NYPD,

1 including Gwen Carr, the mother of Eric
2 Garner, signed a letter that was shared
3 with Chair Davie and Executive Director
4 Darche that outlined many of the same
5 concerns with the matrix that I have
6 shared.

7 The CCRB has a responsibility to the
8 public to reject the NYPD's matrix and
9 to vote against the resolution to adopt
10 the NYPD's discipline matrix. The CCRB
11 was created as an agency independent of
12 the NYPD, and it undermines CCRB's
13 credibility to be bound to a matrix that
14 the NYPD controls and that codifies the
15 officers who will be able to keep their
16 jobs after engaging in misconduct
17 against members of the public.

18 Many New Yorkers currently don't
19 file complaints with the CCRB because
20 they don't have faith that the
21 complaints will result in meaningful
22 discipline. Agreeing to the NYPD's MOU
23 will ensure that even more New Yorkers
24 make the choice not to submit
25 complaints.

1 We need the CCRB to stand up for New
2 Yorkers whose rights have been violated
3 and have experienced harassment and
4 violence due to these officers. And
5 this can't happen if the CCRB settles
6 for a slap on the wrist instead of
7 pursuing firing officers who engage in
8 misconduct.

9 In addition to urging Members of the
10 Board to vote against --

11 CHAIR DAVIE: I'd like to ask you,
12 we have a lot of people behind you who
13 have been waiting quite a while. So,
14 could you take the next ten seconds and
15 wrap up, please?

16 MS. MARTINEZ-CLASS: Sure. Just to
17 close out, in addition to voting against
18 the proposal to adopt the NYPD's matrix,
19 we would actually ask the CCRB to create
20 a matrix over areas that CCRB has
21 jurisdiction for, that's been formed
22 primarily by families of New Yorkers who
23 have been killed by police and
24 communities that regularly experience
25 police violence and police

1 accountability organizations working
2 with and representing those communities.
3 Thank you.

4 CHAIR DAVIE: We note your comments.
5 Thank you. Next speaker, please.

6 MS. ALVAREZ: Thank you, Carolyn.
7 Next, we will be hearing from Abigail
8 Lofchie followed by Leslie Williams and
9 that will conclude our public comment
10 portion.

11 CHAIR DAVIE: So, as soon as we hear
12 from Mr. Williams, I'll ask the Board
13 Members if they are ready to call to
14 question. Then, we simply can proceed
15 to a vote.

16 So, please, mind your two minutes
17 because we just have some business to
18 get to. So, thank you.

19 DR. LOFCHIE: Sure. My name is
20 Abigail Lofchie. I agree with a lot of
21 the comments people have made. This is
22 really a problematic matrix, but, as a
23 doctor, just as an individual who values
24 human life, I want to emphasize that
25 failure or refusal to obtain medical

1 assistance intentionally or when the
2 injury is readily visible gets you
3 thirty penalty days and probation,
4 unless they decide -- they could also
5 decide to give you a favor and just give
6 you twenty days.

7 This is completely unacceptable. We
8 know that people have died in police
9 custody because they've been refused
10 medical care. There have been court
11 cases about how it's unconstitutional to
12 do this, to deny medical care to people
13 in prisons. I don't know why it would
14 be constitutional to do it -- for a
15 police officer to do it.

16 I think it shows a disregard for
17 human life that none of us would want in
18 our police officers. And I can also
19 say, as someone who has treated people
20 in police custody, it doesn't do the
21 justice system any harm to take people
22 to the hospital first.

23 They are still in handcuffs. I have
24 to ask for them to be taken out of
25 handcuffs to examine them. They're

1 still being guarded by the police. It's
2 not like people go unpunished, if they
3 get medical care first. There is no
4 justifiable reason ever to deny someone
5 medical care that they need, and this
6 should be something that is automatic
7 termination.

8 CHAIR DAVIE: Thank you for your
9 comments. Next speaker, please.

10 MS. ALVAREZ: Thank you, Doctor.
11 Next, we will be hearing from Leslie
12 Williams.

13 MR. WILLIAMS: Good afternoon.
14 Dr. Davie, can you hear me?

15 CHAIR DAVIE: Yes, thank you.

16 MR. WILLIAMS: Okay. I want to read
17 one short subject. And it says,
18 "Superior orders are often known as a
19 Nuremberg defense. Just following
20 orders."

21 That was a German way of backing up
22 the plea in a court of law that a
23 person, whether a member of the
24 military, law enforcement or a fighting
25 force of the civilian population should

1 not be considered guilty of committing
2 actions that were ordered by a superior
3 officer.

4 This is an issue that we need to
5 deal with with the Police Department,
6 with the rank and file. It's not just
7 the superior ordered them, but they
8 should be following what should be right
9 for the public.

10 Secondly, we need to deal with
11 Albany to change the pension laws to
12 ensure that they reflect that a person
13 who is terminated for any of these
14 reasons that we have cited before should
15 not be eligible for pension. They
16 should not be able to retire with a
17 pension if they've killed someone.
18 Thank you.

19 CHAIR DAVIE: Thank you. So, that
20 concludes our public speakers. Let me
21 see if there are any more questions or
22 comments by the Board Members. We have
23 a motion on the floor. So, questions or
24 comments from Board Members?

25 (No response.)

1 CHAIR DAVIE: All right. Hearing
2 none, --

3 MS. STAHLY-BUTTS: I have a comment,
4 a few comments.

5 CHAIR DAVIE: Sure.

6 MS. STAHLY-BUTTS: First of all, I
7 feel deeply saddened by this vote. It
8 feels almost like a forgone conclusion,
9 but nonetheless, I think it's really
10 important for me to say a few things.

11 One is that this matrix is clearly
12 insufficient. I think that's been shown
13 by the folks who've spoke and shared all
14 of the loopholes, all of their concerns,
15 all of the egregious behavior police can
16 engage in and not be terminated. But
17 also, it's so full of loopholes as to be
18 meaningless.

19 So, as a stated objective that, I
20 think, Chairman, you've stated about
21 making sure there's alignment that
22 should be objective. But in reality,
23 this does not achieve that because
24 there's just a wide, wide ability for
25 complication and discretion that's

1 throughout the document.

2 If you read page 6, it's obvious
3 that this actually maintains full
4 authority of the police. However, it
5 also doesn't stop the police from
6 policing themselves in any way, shape or
7 form. What it does is it put our rubber
8 stamp on them policing themselves. And
9 I think in many ways, it just makes us a
10 pawn of the NYPD and the Mayor's
11 performative attempts to rescue their
12 reputations and makes us mouthpieces for
13 this lie.

14 At the end of the day, we have a
15 Department that, for the tens of
16 thousands of us that were in the streets
17 this summer, we were are very well, very
18 well aware are not accountable to the
19 brutality and remain absolutely above
20 the law in many ways and refuse to do
21 that.

22 So, this performance that the Mayor
23 is asking us to put on and our
24 willingness to adhere to it, I think is
25 really problematic and in every possible

1 way undermines our independence and
2 really our functionality inside this
3 system.

4 And although I think we pay tribute
5 to the incredible movement and the
6 advocates who really made this moment
7 possible to pass even the demand for
8 this disciplinary matrix, that by
9 informing it, we are really betraying
10 them.

11 Not only have we heard their voices
12 today and for the last few months that
13 are in stark opposition to us adopting
14 this, but the reality is we are
15 swallowing and being handfed a policy by
16 the NYPD, as opposed to developing one
17 of our own.

18 And by doing that, we are relying on
19 elusive promises of accountability that
20 have been proven over and over again to
21 be false. And we are putting our faith
22 in a Department that has failed our
23 people, as opposed to people who have
24 held them accountable.

25 It really delegitimizes us as a body

1 that was put into practice that was
2 created to hold police accountable. And
3 instead, we are literally adopting the
4 police's own policies and binding
5 ourselves to it and on blind faith
6 saying, "We'll revisit this in a year,"
7 when we actually will have less power,
8 is the reality.

9 So, I think if we are serious about
10 accountability to the communities and
11 not just the ambitions and applications
12 to the politicians who've appointed us
13 to this seat, we will commit to a
14 community-based process and not adopt a
15 handfed matrix that has huge flaws and
16 huge loopholes and really changes
17 nothing in terms of our power.

18 I also think, as it stands, we're
19 trading our independence and our
20 legitimacy for, at best, empty symbolism
21 and at worst, political theater.

22 And I think this is a huge, huge
23 mistake and a huge undermining of this
24 institution and the work that advocates
25 in the community have done, not only

1 this year, but for the last few decades
2 that put us into existence. I think it
3 is a betrayal of that.

4 So, I am voting no, and I beg my
5 co-workers and colleagues to do the
6 same.

7 CHAIR DAVIE: Any other comments
8 from Board Members?

9 (No response.)

10 CHAIR DAVIE: Are we ready to vote?

11 MR. JOSEPH: (Indicating.)

12 CHAIR DAVIE: Sure.

13 MR. JOSEPH: There are definitely
14 issues with this matrix, but I am going
15 to vote for it. And as we do now, we
16 don't have to go along with it.

17 Where there are issues, areas, that
18 are problematic and we don't agree with,
19 we need to speak to it. We need to say,
20 "Yes, this is in the matrix, but it is
21 not something that we feel comfortable
22 with. And so, we are going to move in a
23 different direction." These are things
24 that will be made public. These are
25 things that will be documented and

1 moving forward.

2 By voting for this, or using this,
3 since the City Council made the Police
4 Department do it, does not mean that we
5 accept it and that are just going to
6 blindly and quietly move along with it.
7 I, for one, will not be quiet about
8 issues or parts of it that don't make
9 sense and are not fair to the public.
10 Am I still online?

11 CHAIR DAVIE: We can hear you. We
12 can hear you, but we can't see you.

13 MR. JOSEPH: Oh, okay. Sorry. I
14 thought I was talking to myself. That's
15 it. That's all I have to say.

16 CHAIR DAVIE: All right, thank you.
17 Anyone else?

18 (No response.)

19 CHAIR DAVIE: All right.

20 MR. RIVADENEYRA: Mr. Chairman, I
21 just wanted to definitely thank all of
22 the advocates for the work that they
23 have done to get us to where we are
24 right now. I do agree with Nathan on
25 the fact that this was created, the

1 legislation that compelled the NYPD to
2 do this lives within the City Council.

3 And I think one of the things that
4 we need do is really push more on City
5 Council to sure-up, and, you know,
6 listen to the testimony from today, and
7 we should also be sharing the testimony
8 from today with the City Council so that
9 they are aware of the flaws within the
10 matrix.

11 I just wanted to name that and put
12 that out there. That we do have other
13 mechanisms to really correct and amend
14 and push forth a more transparent and
15 accountable matrix.

16 I vote yes today, though, just
17 because I feel that we need to move this
18 forward. And the way to move this
19 forward and keep the conversation moving
20 forward is by doing this.

21 I do not believe -- and correct me
22 if I'm wrong, that this is only a
23 non-binding, and we are entertaining the
24 matrix as something to help us and guide
25 us, but we are not bound to the matrix.

1 So, therefore, we still have a level
2 of independence. And hopefully, we can
3 work with the City Council to amend the
4 matrix and push for more transparency
5 and accountability.

6 CHAIR DAVIE: Thank you, Mike.
7 Esmeralda.

8 (No response.)

9 CHAIR DAVIE: You're on mute.

10 MS. SIMMONS: I think that the many
11 flaws of the matrix have been made
12 readily apparent by colleagues here on
13 the Board, as well as by the advocates,
14 who actually are the ones that got the
15 matrix created to begin with.

16 Let's not kid ourselves, NYPD is not
17 reforming itself. This is not a new day
18 for NYPD, and we are an independent
19 body. But our job here, in my opinion,
20 is to use the matrix to show what can be
21 done and to monitor the matrix to show
22 what NYPD does.

23 What we need to do is have the
24 courage, if, in fact, there are
25 contradictions indicated, which,

1 unfortunately, I believe will show up,
2 to do the right thing and say that this
3 is a farce and we're out of the MOU.

4 I am voting yes, but I have looked
5 at NYPD long and hard, and I'm hoping
6 this is a new day, but I don't think,
7 let's see what they do. We know what we
8 can do, document everything.

9 CHAIR DAVIE: Got it. Ms. Bond.
10 Thank you, Ms. Simmons.

11 MS. BOND: I want to add this from
12 myself and fellow Board Members and
13 thank all of the speakers today, all of
14 the advocates that have been pushing for
15 greater accountability today and over
16 the summer and all the years prior.

17 I agree with Ms. Simmons, that this
18 is just another tool for us to help
19 drive accountability, it is not the be
20 all and end all, nor is it necessarily a
21 new day. But I think it's important
22 because it gives us another mechanism
23 for concretely holding the NYPD
24 accountable, holding ourselves
25 accountable to the public, because there

1 will be ample opportunities to revisit
2 aspects of this disciplinary matrix that
3 will require change.

4 I think that it is one-hundred
5 percent certain that we will be
6 requesting changes to this matrix in the
7 future, but I think it is a starting
8 place. And I think, ultimately, with
9 respect to accountability, a matrix is
10 not what is going to drive
11 accountability. Giving the CCRB binding
12 disciplinary authority is what's going
13 to truly empower the CCRB to represent
14 the people of New York City and their
15 interest with respect to interactions
16 with NYPD.

17 So, I vote yes today, not because
18 the matrix is a panacea, but because I
19 do think it represents a tool for us to
20 use in holding the Agency accountable.
21 Thank you, Chair.

22 CHAIR DAVIE: Thank you. All right.
23 Are we ready to vote? Mr. Dwyer, you
24 want to comment? And I'd like to see if
25 we can get a vote before we have members

1 who have to leave. Mr. Dwyer.

2 MR. DWYER: My brief comment is I
3 believe I heard a member of staff say
4 that having analyzed this, the penalties
5 in this are collectively stronger than
6 the penalties in the CCRB matrix we
7 adopted a year or two ago. So, I think
8 that needs to be recognized.

9 CHAIR DAVIE: So noted. Thank you,
10 Mr. Dwyer. All right. Are we ready to
11 vote?

12 (No response.)

13 CHAIR DAVIE: All right. All those
14 in favor, please say, "aye."

15 ALL: Aye.

16 CHAIR DAVIE: All those opposed,
17 please say, "no."

18 MS. STAHLY-BUTTS: Absolutely no.

19 CHAIR DAVIE: Abstentions?

20 (No response.)

21 CHAIR DAVIE: All right. Thank you,
22 Board Members. The motion passes, and
23 we appreciate staff, Board Members, the
24 public, the Department, City Hall, City
25 Council and all the stakeholders,

1 particularly the advocates and the
2 public, and particularly those people
3 who have suffered egregiously at the
4 hands of the Police Department.

5 This is a start. A journey of a
6 thousand miles begins with the first
7 step. This is just the first step.
8 We've got a long way to go, and I
9 appreciate all the input that has gone
10 into getting us here.

11 And now, we will spend a year
12 checking in periodically along the way,
13 seeing if all of us are going to hold up
14 to our part of this bargain.

15 So, thank you all. We need to do a
16 quick executive session. So, may I have
17 a motion that we adjourn to executive
18 session?

19 MS. PINSKY: So moved.

20 CHAIR DAVIE: And a second?

21 MR. SIEGAL: Second.

22 CHAIR DAVIE: All those in favor of
23 adjourning to executive session, please
24 say, "aye."

25 ALL: Aye.

1 CHAIR DAVIE: Opposed?

2 (No response.)

3 CHAIR DAVIE: No. We will move to
4 executive session, and Soren will let us
5 know when we are ready.

6 Thank you all. Thank you to
7 everyone for coming out. We've got a
8 lot of work still to do, but thank you.

9

10 (TIME NOTED: 2:30 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

I, Danielle Rivera, a shorthand reporter within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the statement taken on 01/29/2021.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January 2021.

Danielle Rivera

DANIELLE RIVERA

<p>& 2:3</p> <p>'x' 77:2</p> <p>01292021 152:10</p> <p>15th 105:15,24 127:7</p> <p>29th 152:16</p> <p>50a 12:12,15</p> <p>50a's 13:22</p> <p>=====</p> <p>=====</p> <p>=====</p> <p>2:2 3:1</p> <p>abide 103:13</p> <p>abigail 4:20 129:1 135:7,20 (4)</p> <p>ability 21:21 22:11 57:7 102:6 111:16,21 139:24 (7)</p> <p>able 11:6 14:25 16:24 54:16 61:4 83:4 102:9 133:15 138:16 (9)</p> <p>about 11:10 15:5,20 16:19 17:9 29:22 30:3 35:22 41:5 42:5 47:18 48:22 50:6 51:4,11,24 53:7,12 55:8 58:12 60:4 61:23 65:16 67:15 74:7,8 78:25 79:20 80:5,15,22 82:19 83:7,12 85:9 89:18 90:6,14 92:11,14,25 95:19 105:10,12 108:9 114:19 115:12,18 119:14 120:14 122:18 124:21</p>	<p>129:11 136:11 139:20 142:9 144:7 (57)</p> <p>above 140:19</p> <p>absence 117:25</p> <p>absent 59:21</p> <p>absolutely 45:10 90:4 123:14 140:19 149:18 (5)</p> <p>abstentions 149:19</p> <p>abuse 54:6 117:2</p> <p>abuses 118:19</p> <p>academy 39:11,12</p> <p>accept 42:8 112:6 144:5</p> <p>acceptable 38:25 39:1 85:21</p> <p>accepting 111:19 119:15</p> <p>access 14:5 40:17</p> <p>accessibility 129:14</p> <p>accompanying 9:13 104:3 122:1</p> <p>accomplishing 11:11</p> <p>60:11</p> <p>according 47:4 54:10</p> <p>account 41:8</p>	<p>101:9</p> <p>accountability 4:15 9:17 92:17 100:1 102:22 103:1,11,21 108:10 109:22 110:7,25 112:8 117:7 118:7 125:14,25 128:13,19 130:20,24 135:1 141:19 142:10 146:5 147:15,19 148:9,11 (29)</p> <p>accountable 13:15 15:7 69:2,7,9 92:6 109:16 112:13 113:2,14 118:19 140:18 141:24 142:2 145:15 147:24,25 148:20 (18)</p> <p>accrued 71:21</p> <p>accurate 152:9</p> <p>achieve 139:23</p> <p>acknowledge 44:14 128:15</p> <p>acknowledgement 53:16</p> <p>across 12:8 103:17 125:17</p> <p>act 32:12 38:5,11 56:19 90:15 (5)</p> <p>acting 68:12 130:18</p> <p>action 12:12 30:4 152:12</p> <p>actions 121:12 127:22 131:16 138:2 (4)</p>	<p>activate 28:10</p> <p>actively 22:14</p> <p>activists 102:19</p> <p>activities 62:25</p> <p>acts 56:23,24 105:23 119:3 (4)</p> <p>actual 29:9 40:16 53:1 90:25 91:4 (5)</p> <p>actually 29:1 35:25 45:5 50:11 52:6 64:7 73:4 85:23 90:24 91:5,9 92:12 93:14 105:17 122:4 134:19 140:3 142:7 146:14 (19)</p> <p>adams 4:2 98:12,15,17 104:5 (5)</p> <p>add 24:14 29:13,20 30:14,16,22 31:3 39:24 79:9 88:9 147:11 (11)</p> <p>added 11:23 36:7</p> <p>addition 10:14 38:9 134:9,17 (4)</p> <p>additional 26:25 29:19 30:17 44:15 56:19 (5)</p> <p>address 38:8 63:17 126:4</p> <p>addressed 38:5 49:17 51:11</p> <p>addresses 37:6</p> <p>adequate 126:20</p>	<p>adhere 140:24</p> <p>adherence 90:25</p> <p>adjourn 2:11 150:17</p> <p>adjourning 150:23</p> <p>adjudicated 14:11 119:4</p> <p>administration 109:25 111:1</p> <p>administration's 110:8</p> <p>administrative 10:8 86:14 96:4</p> <p>admit 71:22</p> <p>adopt 10:4 45:18 55:23 94:6 96:18 133:9 134:18 142:14 (8)</p> <p>adopted 149:7</p> <p>adopting 39:18 94:14 106:18 111:8 141:13 142:3 (6)</p> <p>adoption 10:15 107:2</p> <p>adrienne 4:2 98:12</p> <p>advances 53:13,17 131:14</p> <p>advisory 12:2 14:13</p> <p>advocacy 8:15 112:4 125:24</p> <p>advocate 11:25</p>
---	---	--	---	---

<p>advocate's 6:10</p> <p>advocates 11:10 33:11 113:17 141:6 142:24 144:22 146:13 147:14 150:1 (9)</p> <p>affect 124:15</p> <p>after 42:25 43:6 45:17 49:23 51:10 62:25 63:17 66:22 70:19 73:8 88:18 96:5 98:14 100:19 102:24 125:24 130:17 133:16 (18)</p> <p>afternoon 5:2,10 6:4,8,13,17 7:4,14 8:1 16:16 98:18 99:19 109:3 116:5 125:11 129:7 137:13 (17)</p> <p>afternoon's 8:10</p> <p>again 7:13 14:6 16:1,10 20:12 22:22 23:17 28:19 29:7,22 30:9 47:15 52:9 64:14 66:10 83:9 84:14 86:17 88:5,16 91:16 99:4,6 107:22 121:23 141:20 (26)</p> <p>against 69:21 111:6 133:9,17 134:10,17 (6)</p> <p>agency 14:5 94:9 111:24 131:17 133:11 148:20 (6)</p> <p>agenda 2:1</p> <p>aggravated 23:13 25:12 29:24,25 30:12,13,19 35:3 44:9 52:24 55:6,9</p>	<p>59:12 81:17 (14)</p> <p>aggravating 20:25 22:3,21,24 23:11,19 24:15 25:9,16,20 26:2 28:9,11 29:23 31:16,24 34:12,25 35:6,12 55:12 58:13,21,23 61:17 65:10 67:23 78:15 81:14 (29)</p> <p>aggressively 112:9</p> <p>ago 100:10 101:15 149:7</p> <p>agree 86:3 88:2 90:5 121:10 135:20 143:18 144:24 147:17 (8)</p> <p>agreed 41:13</p> <p>agreeing 133:22</p> <p>agreement 11:3 106:4 111:15</p> <p>ahead 74:4 83:16 104:21 106:14 109:2 114:1 119:25 120:2 129:5,24 (10)</p> <p>aid 4:16 125:15 127:8</p> <p>albany 12:10 138:11</p> <p>alignment 139:21</p> <p>alive 101:4</p> <p>allegation 17:25 18:11,14 20:21 33:22 35:3 38:10 41:20 88:19 95:10 (10)</p>	<p>allegations 9:25 17:24 18:2 19:7,8,10,14,17,21 20:1,3,14 31:19 32:13,19 33:16 34:21 35:24 37:1,3 39:17 40:4 41:21 127:17 (24)</p> <p>alleged 121:20</p> <p>allow 45:13 104:11 124:22 132:7 (4)</p> <p>allowed 10:2 46:21,23 48:12 122:25 (5)</p> <p>allowing 103:22 132:2</p> <p>allows 84:18 122:21 123:1 124:16 125:3 (5)</p> <p>almost 139:8</p> <p>along 54:1 63:18 84:21 87:22 116:15 121:24 143:16 144:6 150:12 (9)</p> <p>already 12:18 70:8,24 71:6 114:5 116:24 118:8 (7)</p> <p>also 10:21 11:7 14:23 28:11 32:7,8 38:7 50:5,19 52:20 53:6 54:2,4,10 73:5,8 82:5 84:6 92:3,15 93:18,21,23 94:21 98:5 99:13 119:16 125:2 126:2 136:4,18 139:17 140:5 142:18 145:7 (35)</p>	<p>although 107:15 141:4</p> <p>alvarez 5:1 16:7 97:25 104:17 105:2 108:22 113:21 115:25 119:20 122:10 125:9 128:23 129:20 135:6 137:10 (15)</p> <p>always 37:15 50:19 117:3</p> <p>am 5:14,14,17 6:1,5,9,14,18 7:1,7,15,21 8:2 15:3 16:14,17,19 43:17 59:2 90:14 94:20 98:25 99:23 105:6 113:6 116:6 120:8,13 122:15 124:11 125:13 129:8,10,13 130:2 143:4,14 144:10 147:4 152:11,13 (41)</p> <p>ambiguity 120:14,20 121:7,12,13 (5)</p> <p>ambitions 142:11</p> <p>amend 145:13 146:3</p> <p>amendment 24:23 33:16</p> <p>among 17:7</p> <p>amount 52:22 72:4</p> <p>ample 148:1</p> <p>analysis 28:6</p> <p>analyze 17:10 94:16</p>	<p>analyzed 33:22,24 149:4</p> <p>analyzing 34:10</p> <p>andor 25:7</p> <p>angela 3:12 44:19</p> <p>announce 5:3</p> <p>announced 13:8</p> <p>announcement 100:18</p> <p>another 36:21 37:1 89:11,21,22 123:21 147:18,22 (8)</p> <p>answer 45:8 68:22 71:8 97:3 105:17 (5)</p> <p>answers 114:13</p> <p>anticipate 108:14</p> <p>anybody 27:2</p> <p>anyone 8:6 72:8 123:4 144:17 (4)</p> <p>anything 27:17 90:15</p> <p>anyway 36:1</p> <p>anywhere 29:14</p> <p>apartment 23:25</p> <p>apologies 46:3</p> <p>app 45:12,23</p> <p>apparent 146:12</p> <p>appear 65:20 106:20</p>
---	---	--	---	--

<p>appearances 4:1</p> <p>appears 64:15</p> <p>application 10:24 47:21 122:2 127:5 (4)</p> <p>applicationable 50:7 51:13</p> <p>applicational 49:2</p> <p>applications 127:16 142:11</p> <p>applied 20:10 59:14,21 65:11 66:18 78:14 117:15 (7)</p> <p>applies 20:13 66:24 105:23</p> <p>apply 66:21 71:18 77:25 78:17 105:14 111:21 (6)</p> <p>applying 92:14</p> <p>appoint 8:17</p> <p>appointed 142:12</p> <p>appointee 6:2 7:2,16,22 11:25 44:21 (6)</p> <p>appointees 124:12</p> <p>appointment 6:10</p> <p>appreciate 57:12 58:9 63:11 99:6 149:23 150:9 (6)</p> <p>approach 109:8 110:3 131:3</p> <p>approaches 92:4</p>	<p>approaching 91:8</p> <p>appropriate 64:9 106:20</p> <p>appropriately 59:11</p> <p>apu 10:9 40:22 45:4,21 54:17 75:15 76:3,15,17,25 86:21 (11)</p> <p>are 5:20 7:8 10:1,21 13:17,19,23 16:5,25 17:14 18:10,16,18 20:11 21:17,24 22:1 24:19,24 25:2 28:7,22 31:11,13 32:23 33:24 34:10,23 35:4,8,14 ,17,18,20,23,25 36:10,16 37:3,21 38:16 39:14 42:22,23 43:2 45:5,11 46:22 47:6 48:9,22 50:21 52:10 53:3 56:24 58:23 59:5 60:12 61:25 65:15,18 68:24 69:3 70:13 72:6,17,19,22 73:13 74:11 77:22 78:19 79:3,6,6,11,21,23 80:4,25 82:8,16,19 ,22,23,24 83:4,9,24 84:4 85:17,18,19 86:6,10,11 88:24 89:19 91:7 92:20 94:10 97:4 98:3 101:8 103:2 104:3,4,5 105:16 106:16 107:14 108:12,13 109:17 110:25 112:2 113:13,15 117:17</p>	<p>118:10,11,15 120:19,24 121:8 123:17,18,22 124:12 125:15 126:3 129:15 131:18 132:16,22 135:13 136:23 137:18 138:21 140:17,18 141:9,13,14,18,21 142:3,9 143:10,13, 17,18,22,23,24 144:5,9,23 145:9,23,25 146:14,18,24 148:23 149:5,10 150:13 151:5 (169)</p> <p>area 50:21 62:19</p> <p>areas 134:20 143:17</p> <p>armed 26:18</p> <p>around 46:9 78:4,15,22 109:13 111:12 112:19 118:6 (8)</p> <p>arrangement 86:9</p> <p>arrest 23:25 24:2</p> <p>arrested 24:9</p> <p>ask 5:16 16:4 42:23 43:1,2 51:10 65:1 86:17 93:8 97:2 99:4 106:7 115:11,15 124:20 134:11,19 135:12 136:24 (19)</p> <p>asked 34:16 36:3 64:15 76:15,15 105:10,12 114:11,15 (9)</p> <p>asking 52:18</p>	<p>75:14 92:9,10 98:3 119:15 140:23 (7)</p> <p>asl 5:4</p> <p>aspects 148:2</p> <p>assaulted 127:9</p> <p>assignment 41:1</p> <p>assist 15:25</p> <p>assistance 131:13 136:1</p> <p>assistant 3:24 15:11</p> <p>assume 30:15 50:2</p> <p>assuming 55:6</p> <p>assurances 111:12</p> <p>assure 45:21</p> <p>assured 54:8</p> <p>attach 83:13</p> <p>attached 54:22</p> <p>attempts 140:11</p> <p>attended 12:17</p> <p>attending 16:11</p> <p>attitudes 110:21</p> <p>attorney 116:6 122:17 125:13</p> <p>authority 14:8,10,20 103:19 107:4,5 140:4 148:12 (8)</p> <p>automatic 137:6</p>	<p>available 94:23</p> <p>aware 114:22 140:18 145:9</p> <p>awareness 95:19</p> <p>away 12:11</p> <p>aye 149:14,15 150:24,25 (4)</p> <p>b 1:15 25:25</p> <p>back 7:18 22:22 42:18 47:16 49:5 72:14,25 73:12,14 82:18 85:23 104:25 (12)</p> <p>background 65:3</p> <p>backing 137:21</p> <p>bad 126:23</p> <p>balance 22:16</p> <p>bargain 150:14</p> <p>based 31:4 34:10 107:1</p> <p>basically 17:18 21:4 25:3 28:17 36:14 109:14 (6)</p> <p>basis 11:2 14:11 63:16,19 95:24 (5)</p> <p>because 18:7 22:9 26:14 28:17 30:2 32:12,23 39:6,15,17 40:2,4 41:6 52:19 54:20 60:2 62:2 68:19 69:3,23 70:4 72:15 75:1 76:1 80:17 82:5 83:9,11 84:23 87:20 97:9 106:10,19 107:1 109:7 115:19</p>
--	---	---	---	--

<p>120:17 133:19 135:17 136:9 139:23 145:17 147:22,25 148:17,18 (46)</p> <p>become 36:6</p> <p>bedstuy 6:11</p> <p>before 5:2,15 35:9 41:22 44:12 46:24 56:14 62:25 63:24 64:2 70:22 76:17 85:12 100:23 105:12,24 107:2 112:24 113:15 115:5 116:17 138:14 148:25 (23)</p> <p>beg 143:4</p> <p>began 11:20</p> <p>begin 5:2 15:9 54:14 130:7 146:15 (5)</p> <p>beginning 81:24 95:22</p> <p>begins 150:6</p> <p>behalf 130:3</p> <p>behavior 54:9 57:25 105:14,23 139:15 (5)</p> <p>behaviors 130:22</p> <p>behind 134:12</p> <p>being 10:11 14:25 21:8,12 49:19,23 54:16 59:24 73:10 88:2 93:25 124:1 132:12 137:1 141:15 (15)</p> <p>believe 14:9</p>	<p>25:19 38:2 47:10 53:23 59:21 73:7,8 104:9 112:17 116:21 145:21 147:1 149:3 (14)</p> <p>below 49:10 62:18</p> <p>ben 8:23</p> <p>benefit 73:19</p> <p>benefits 48:13,13 49:23 71:21 72:5 132:8 (6)</p> <p>bertha 4:10 116:6</p> <p>besides 91:5</p> <p>best 15:24 120:22 121:4,8 142:20 (5)</p> <p>betrayal 143:3</p> <p>betraying 141:9</p> <p>better 12:7 14:20 60:3</p> <p>between 9:22 15:1 21:6,20,23 22:9,12 30:8,25 50:10,15,17 51:12 54:13 59:24 63:22 64:17 66:11 72:3 107:12 (20)</p> <p>bewildered 90:14</p> <p>bewildering 91:3</p> <p>big 25:22 37:23 39:5</p> <p>bigger 77:3 80:8 82:9</p> <p>biggest 40:13</p>	<p>bill 100:3</p> <p>bind 123:18</p> <p>binding 14:12,20 142:4 148:11 (4)</p> <p>bit 16:23 17:8 31:2,17 33:1,7 36:7,11 50:5 72:2 82:13 (11)</p> <p>black 26:23 117:6 122:22 123:2 125:4 (5)</p> <p>blame 118:4</p> <p>blind 90:17 142:5</p> <p>blindly 91:2 128:17 144:6</p> <p>blood 152:12</p> <p>blue 8:17</p> <p>board 1:2 2:10 3: 1,5,6,8,9,11,12,14, 15,17,18,20,21,25 4:9 5:7,12,15,16 6:6,10,19 7:7 8:3 9:11 10:3,5 11:23,25 12:12 13:12 15:13 16:11 17:22,24 18:4,13 22:23 23:2,5,9 25:18 31:1 40:3,6,8 41:25 42:1,23 43:1,8 44:13,13,15,24 45:2 51:18,19 61:14 64:2 67:9 70:22 72:15 77:25 80:21 89:8 91:25 93:7 95:6,21 96:6 98:21 99:20 102:5 106:16,18 108:25 124:20 130:5 134:10 135:12 138:22,24 143:8 146:13 147:12 149:22,23 (90)</p>	<p>board's 5:11 14:11 15:16</p> <p>body 53:14 108:3 141:25 146:19 (4)</p> <p>bodyworn 14:6 28:10 37:14,16 67:6,10 128:2 (7)</p> <p>bond 3:6 6:3,4,5 77:19,20 82:3 83:25 84:10 91:21,22 147:9,11 (13)</p> <p>borough 38:17,17</p> <p>boroughbased 4:17 129:9</p> <p>boroughs 125:17</p> <p>boss 13:2,2</p> <p>both 9:19 15:2 17:15 29:6,10 32:13,19 33:25 34:10 42:9 52:12,14,19 63:18 75:9,18 78:16,22 83:20 90:9 104:1 121:19 (22)</p> <p>bounced 7:20</p> <p>bound 133:13 145:25</p> <p>box 88:13</p> <p>bravery 60:17</p> <p>break 22:5 48:7 77:17</p> <p>breathe 50:9</p> <p>breathing 50:22 51:14 52:1</p> <p>brief 12:14 149:2</p>	<p>bright 12:25</p> <p>bring 17:20 47:15 72:21 92:1 103:11,20 126:1 (7)</p> <p>brings 103:6</p> <p>broad 117:1</p> <p>broadly 117:18</p> <p>broken 24:25 25:2 34:2,5 48:1 (5)</p> <p>bronx 7:6</p> <p>brooklyn 6:6,11 7:2</p> <p>brought 125:20 126:2,6 127:4 (4)</p> <p>brutality 140:19</p> <p>brutalize 132:20</p> <p>brutally 127:9</p> <p>building 67:14</p> <p>built 81:20 82:25</p> <p>bunch 36:8 106:1</p> <p>burden 80:8</p> <p>bureau 39:13</p> <p>business 2:7,8 38:6 135:17 (4)</p> <p>button 16:7</p> <p>buttons 79:16</p> <p>bwc 36:2 37:7,21</p> <p>c 152:1,1</p> <p>calculate 45:14</p>
--	---	---	---	--

<p>calculation 81:21</p> <p>call 2:4 16:8 102:21 103:17 108:17 123:2 125:4 135:13 (8)</p> <p>called 26:21 40:23 103:16 108:11 109:9 (5)</p> <p>calling 119:13</p> <p>calls 115:6 122:21</p> <p>camera 14:6 28:10 36:20,21 37:15,17 46:1 67:10 108:3 128:2 (10)</p> <p>cameras 67:7</p> <p>can 13:14,19 14:24 19:5,20 20:8 25:15 27:16 31:7,9 34:18 35:5 40:6,8 43:19,21,22,23 45:8,21 46:16 47:25 48:3 50:18 54:8 56:5,10 60:14 63:17,21 65:1 66:8 68:17 70:22 72:8 73:22 74:24 75:14 76:10 77:13 79:14,16 80:6,11,22 81:2,7,10,22 82:22 85:4 89:15,16,17 90:2 93:8,9 94:15 97:1 98:9 101:20 105:4,5,20,21 106:12 107:6,17 109:15 118:11 120:3,4 124:13 126:10,13,19 129:3 135:14 136:18 137:14 139:15 144:11,12 146:2,20 147:8 148:25 (87)</p>	<p>can't 21:1 49:13 54:25 80:13 106:10 111:7 114:22 134:5 144:12 (9)</p> <p>cancelled 23:20</p> <p>cannot 122:23 128:16</p> <p>capacity 90:18 132:21</p> <p>car 69:17,18,19,2 0,23,24 (6)</p> <p>carcaterra 3:16 7:23,25 8:2 (4)</p> <p>card 38:6</p> <p>care 124:21 136:10,12 137:3,5 (5)</p> <p>carolyn 4:18 128:25 129:21 130:1 135:6 (5)</p> <p>carr 133:1</p> <p>carried 66:2 104:3</p> <p>case 21:24 22:7 26:16 27:25 29:15,19 31:7 41:18,23,24 67:17 69:16 70:25 71:23 84:6 86:5 88:24 101:11 (18)</p> <p>cases 14:22 17:10 19:2 21:14 22:14 39:3 58:25 66:19 68:24 69:6 75:7,15 76:24,25 77:4 78:2 89:9 94:3 96:2,3 106:21 111:17 127:6,8 136:11 (25)</p>	<p>categories 20:8 24:23 36:2,8 (4)</p> <p>category 38:2,3</p> <p>cause 24:2</p> <p>ccr 116:8,15</p> <p>ccrb 4:14 7:16 9:2,5,10,20,22 10:3,17,22 11:1,19 12:4,18 13:5,12,21 14:2,10 15:1,11 17:3,12,23 22:18 23:18 25:23 26:5 30:11 34:22 35:22 39:5,19 41:4,15 42:9,14 52:11,15 62:14 64:17 65:4,9 94:2 95:6,7,16,22 96:2,9 99:1,13,20 102:24 106:25 111:11,15,23,25 112:7 116:18 119:14 122:16 123:12,17 127:17,25 133:7,10,19 134:1,5,19,20 148:11,13 149:6 (77)</p> <p>ccrb's 14:10 32:5 86:7 94:1,17 96:3 122:6 123:19 133:12 (9)</p> <p>ccrbadjudicated 14:21</p> <p>cda 19:11,15,22 20:3 27:22 40:1 (6)</p> <p>cdas 29:11,17</p> <p>cdb 19:15,22 20:3</p> <p>cdbs 62:16</p>	<p>ceilings 35:8</p> <p>center 4:11 116:7</p> <p>central 40:18</p> <p>certain 148:5</p> <p>certainly 10:5 80:22</p> <p>certify 152:9,11</p> <p>cetera 54:16 56:18</p> <p>chair 1:16 2:5 3:3 5:9,14,20,22 6:3,7,12,16,22 7:3,8,11,17,23 8:4,8 42:19 43:11,15 44:11 45:8,10,25 46:4,7,19 47:2,17 49:12 52:8 53:20 54:11 55:18 56:2,4 57:14,17 58:2,4 63:13 64:11,25 66:9,15,23 67:3,18 68:4,21 71:8,11,14 72:8 73:2 74:1,4,19 75:4,23 76:9 77:12,18 83:1,14,16 85:5,6 86:3 87:6,10,18,25 88:10,12 89:12 91:13 93:2,3,13 96:12,14,17,23 97: 1,6,13,15,16,22,24 ,25 98:15 99:11,19 103:23 104:21,24 105:5,8,9 106:6,14 107:7 108:8,20 109:1 112:16 113:25 115:10,22 119:18,24 120:2,4,8 121:15 125:7 127:4 128:20 129:2,5,18,24 133:3 134:11 135:4,11 137:8,15</p>	<p>138:19 139:1,5 143:7,10,12 144:11,16,19 146:6,9 147:9 148:21,22 149:9,13,16,19,21 150:20,22 151:1,3 (155)</p> <p>chairman 139:20 144:20</p> <p>challenged 116:12</p> <p>challenges 107:18</p> <p>chance 43:1 71:22</p> <p>change 45:19 64:8 83:21,23 87:7 107:17 110:2 111:9 117:13 123:15 126:10 138:11 148:3 (13)</p> <p>changed 33:8 90:15</p> <p>changes 14:2 33:5 87:6,14 132:15 142:16 148:6 (7)</p> <p>characteristics 118:4</p> <p>charge 69:1</p> <p>charged 114:18</p> <p>charges 19:7,10,14,21 20:2 22:10,10,18 23:18 25:14 26:4 30:10 32:4,21 45:1,7,24 46:12 54:17 55:1 74:17 75:6,16 76:1 77:14 81:16 (26)</p>
---	--	---	--	--

<p>chart 15:6 48:15 79:21</p> <p>charter 83:21 84:11</p> <p>charts 79:22</p> <p>chat 5:6 15:24</p> <p>checking 91:15 150:12</p> <p>chest 49:4</p> <p>choice 52:22 110:10 133:24</p> <p>chokehold 20:11,12,15,20 34:8,9 46:9,11,16 47:6,22 49:3,7,11 50:11,14,24,25 51:6,25 52:23 100:11 127:10 (23)</p> <p>chokeholds 19:5 21:9 34:4,7 43:23 48:25 50:18 51:12 53:7 127:16 (10)</p> <p>choking 51:6</p> <p>chooses 10:3</p> <p>chronic 130:24</p> <p>circumstance 28:14 44:2</p> <p>circumstances 24:20 28:13 46:23 54:3,24 58:14 65:18 78:16 86:23 95:11 117:21 118:5 (12)</p> <p>cited 71:24,25 138:14</p> <p>city 4:2,4 6:18 7:21 8:20 9:10,17</p>	<p>11:17 12:16 13:1,3,9 14:4 15:8 94:19,25 96:11 100:2 101:16 103:17 104:6 105:18 110:13 111:9 113:1 116:10 130:10,14 144:3 145:2,4,8 146:3 148:14 149:24,24 (36)</p> <p>civil 4:7 12:11 101:18 103:4 109:5 113:1 (6)</p> <p>civilian 1:2 3:25 5:11 21:21 95:6 102:4 137:25 (7)</p> <p>civilians 9:7 17:11</p> <p>claim 109:17</p> <p>claiming 110:4</p> <p>claims 100:22 118:24</p> <p>clarification 57:13 68:6 71:15 97:17 (4)</p> <p>clarified 93:18</p> <p>clarify 46:17 48:3 56:6</p> <p>clarifying 42:24 94:5</p> <p>clarity 46:9 51:1 66:17</p> <p>clear 9:18 12:10 55:5 69:12,12 73:24 76:13 97:3 105:17 118:25 121:1 131:22,23 (13)</p> <p>clearly 49:21</p>	<p>93:16 121:4 139:11 (4)</p> <p>click 79:14,16</p> <p>client 127:9</p> <p>close 57:1 68:13 134:17</p> <p>closed 41:23</p> <p>closing 41:18</p> <p>cochair 4:17 129:8</p> <p>codifies 133:14</p> <p>codify 132:1</p> <p>cody 4:12 113:24 116:3 119:21,25 120:1,3,5 122:9,10 (10)</p> <p>colleagues 5:16 65:1 88:15 113:10 143:5 146:12 (6)</p> <p>collected 96:6</p> <p>collectively 149:5</p> <p>column 48:19</p> <p>combined 31:14 36:15 56:7</p> <p>come 24:8 26:24 31:17 35:19 44:16 56:22 57:10 72:24 104:25 105:19 106:10 (11)</p> <p>comes 14:21 22:5 24:5 30:6 68:1 70:19 80:20,20 121:22 127:2 (10)</p> <p>comfortable 143:21</p>	<p>coming 77:23 151:7</p> <p>command 25:25 27:14,16 119:4 (4)</p> <p>commands 22:11</p> <p>commend 60:15</p> <p>comment 2:9,10 15:17 16:4 43:7 49:15 57:15 67:19 93:7,8 96:20,25 98:1 106:8 116:17 135:9 139:3 148:24 149:2 (19)</p> <p>comments 15:18 16:1 33:4 42:25 44:13,23 46:5 58:5 98:4,6,9 104:15 112:14 113:19 115:13 130:4,5 135:4,21 137:9 138:22,24 139:4 143:7 (24)</p> <p>commissioner 6:15 8:3,21,21,23 9:9,9,24 14:15,16,18 15:2 17:16 38:20 42:6,10 44:18 51:22 64:20,21 65:19 75:8 76:22 77:3 87:4 100:18 101:22,25 102:3,12,17 103:13,15 107:3 108:8 111:13 112:18 113:11 123:7,12,15 124:4 125:21 128:9 (44)</p> <p>commissioner's 14:7 75:17 111:20 117:11 126:17 (5)</p> <p>commit 62:3 120:25,25 121:11 142:13 (5)</p>	<p>commitment 9:19 86:21 99:25 108:16 109:22 (5)</p> <p>commits 60:16 61:21</p> <p>committed 11:8 13:17 95:12,16 102:8 (5)</p> <p>committee 99:17 114:10</p> <p>committing 138:1</p> <p>common 33:10</p> <p>communities 4:19 112:2 117:5,7 126:7 130:3 134:24 135:2 142:10 (9)</p> <p>community 4:9 10:18,22 11:9 102:19 108:24 113:17 129:10 142:25 (9)</p> <p>communitybased 142:14</p> <p>comparison 33:1</p> <p>compelled 122:24 145:1</p> <p>complainant 22:14</p> <p>complaint 1:2 3:25 5:11 95:6 102:5 114:22 115:6,8 131:17 (9)</p> <p>complaints 133:19,21,25</p> <p>complete 126:20 128:2</p>
---	--	---	--	--

completely 124:23 136:7	concretely 147:23	92:2 95:12 96:10 103:2,7 (6)	control 18:22	corrupt 124:17
complexities 132:17	concurred 75:9	consistent 34:14 63:23 64:1 66:14 69:9 122:2 (6)	controls 133:14	could 26:12 28:13 43:16 45:19 46:14 47:14,21 56:21 101:4 107:16 113:4 114:17 127:17 134:14 136:4 (15)
compliance 99:9	concurrence 85:11	consistently 12:20 54:6	convened 78:1	
complicated 27:10 77:24 78:9	concurrency 74:16 75:1,17	constituent 100:12	convening 99:20	
complication 139:25	concurrently 18:19 32:15,24	constituents 100:9 101:23	conversation 115:17 145:19	council 4:2,4,22,17 6:19 7:2,7,21 8:20 9:10 98:12,13,15 99:11,12,17 100:2 103:23 104:4,6,17 110:12,13 112:21 114:6 122:14 123:20 129:9 144:3 145:2,5,8 146:3 149:25 (34)
complied 110:17	conduct 27:12 30:3 32:6,7 33:23,25 34:1,11 37:4 62:1 107:2 121:17 131:21 (13)	constitutes 51:25	conversations 15:5	
comply 21:22 22:11 38:10	conflate 71:2	constituting 110:2	convert 45:15	
component 52:16	conflation 49:19	constitution 54:7	convinced 14:19	
comprehensive 41:7 88:25	confused 50:5 52:19	constitutional 4:11 55:10,16 116:7 136:14 (5)	cook 3:24 9:3 15:12 16:15,16 47:10 56:5 67:20 68:23 70:16 72:11 74:23 75:21,25 76:7,12 79:5 (17)	counciladvanced 130:10
compromised 126:17	connection 7:12	contact 57:23	cook's 16:3	counsel 3:24 4:7 12:2 15:11 97:7 109:5 116:10 127:8 (8)
computer 81:22	consecutively 18:9,17 30:5 39:18 (4)	context 109:20,21	cooperation 92:21 93:19	counsel's 2:6
computers 86:19	consent 38:8,11	contingent 131:19	cooperative 35:21	count 25:15
concept 17:22 60:20	consequences 117:20	continue 11:6 67:17 93:8 102:21 124:17 128:15 (6)	cop 4:15 125:14	counter 112:9
concern 37:23 59:22 60:1,21 62:19 116:21 (6)	consider 14:9 39:20 78:12 99:15 112:1 (5)	continued 94:17 96:8 112:11 131:25 (4)	cops 126:23 132:19	counting 31:6 132:16
concerned 120:13,14 129:11	considerations 78:14	continuing 104:12	correct 8:5 43:14,17 53:19,22,24 54:4,10 72:25 84:1 145:13,21 (12)	country 12:9
concerns 15:20 58:11 65:15 109:7 116:18 132:22 133:5 139:14 (8)	considered 10:12 102:14 119:5,7 126:20 138:1 (6)	continuous 63:19	corresponding 65:7	counts 29:16
conclude 135:9	considering 58:7	contract 73:5	corresponds 35:2	county 152:5
concludes 138:20	consistency 17:7	contradictions 146:25	corrine 3:7 5:24,25	couple 60:4 66:16
conclusion 119:10 139:8				courage 146:24
				course 130:16
				court

73:12,14,20,21 136:10 137:22 (6)	(4)	88:10 89:12 91:13 93:2	(58)	defense 137:19
courtesy 61:9	custody 136:9,20	96:12,14,17,23	deadly 34:2	defer 89:11
cover 18:1 36:4 37:2 131:10 132:19 (5)	cut 132:5	97:6,13,16,22,24	deal 14:15 34:23 72:16 87:24 88:14 132:6 138:5,10 (8)	define 118:25
coverups 131:24	cuts 114:6	98:15 99:11,19	death 34:8	defined 48:2
coworkers 143:5	daniel 100:10	103:23 104:21,24	debate 61:23	definite 30:20
cpi 40:18	danielle 1:24 152:7	105:5,8,9 106:6,14 107:7 108:8,20 109:1 112:16 113:25 115:10,22 119:18,24 120:2,4 121:15 125:7 128:20	debi 98:13	definitely 143:13 144:21
cpr 132:23	darche 1:17 43:11,16	129:2,5,18,24	deborah 4:3	definition 71:16 120:17
craig 5:4	45:8,11,25 46:3,20 47:7,10,14,19	133:3 134:11	debour 118:22	definitions 79:17
create 14:25 130:8 134:19	48:3,8,22 49:6,10 51:17 52:2 53:23 56:4 57:16,17,20 64:23 72:10,13 73:4 76:3,10 77:5,10,17 83:15,18 106:12,15 133:4 (38)	135:4,11 137:8,14,15 138:19 139:1,5 143:7,10,12 144:11,16,19 146:6,9 147:9 148:22 149:9,13,16,19,21 150:20,22 151:1,3 (137)	decades 143:1	delegitimizes 141:25
created 13:5 133:11 142:2 144:25 146:15 (5)	data 62:13 74:16 75:7 76:11 86:1 96:6 (6)	147:6,21 152:16 (16)	decide 45:17 50:16 51:15 89:2,15 136:4,5 (7)	deliberation 80:21
creation 109:10	database 13:20	day 37:20 39:10,11,20,21 42:6 60:15,17 89:11 91:9,10 140:14 146:17 147:6,21 152:16 (16)	decided 77:15	deliver 13:21
credibility 111:23 127:2 133:13	david 13:3,7,24	daylight 9:22 14:25	decider 52:4	demand 12:7 141:7
crime 26:15	davie 1:16 3:3 5:9,14,20,22 6:3,7,12,16,22 7:3,8,11,17,23 8:4,8 42:19 43:15 44:11 45:10,25 46:4,7,19 47:2,17 49:12 52:8 53:20 54:11 55:18 56:2 57:14,17 58:2 63:13 64:11,25 66:9,23 67:3,18 68:4,21 71:8,11 72:8 73:2 74:1,4,19 75:4,23 76:9 77:12,18 83:14,16 85:6 86:3 87:6,18,25	days 22:18 23:15,17 25:13,24 26:3 27:18,18,21 28:2 29:10,12,14,1 7,18,21 30:1,9,11, 13,16,17,22 31:1,3,6,8 32:4,11,17,18,21 39:25 40:6 41:15 44:7,10 45:3,7 48:17,18 56:8,16,18,25 57:2,7 62:6,10,18 76:18,19 77:2 92:19 108:6 118:11 136:3,6	decides 22:23 53:8	demanding 112:8
criminal 125:16			deciding 84:6	demanding 112:8
critical 13:10			decision 51:20,23 52:14 53:2 69:24 73:21 85:13 88:18 (8)	demanding 112:8
cts 79:8,16 81:10			decisions 52:21 102:4 126:19	demanding 112:8
culture 110:20 111:9 126:22			deemed 34:13	demanding 112:8
curb 13:4			deeply 90:18 126:21 139:7	demanding 112:8
curious 122:25			deescalation 35:18 58:20	demanding 112:8
current 13:5 14:14 79:13 84:12 93:24 94:2 (6)			defeated 97:11	denial 136:12 137:4
currently 45:16 67:9 88:21 133:18			defended 111:5	departing 82:8
				department 8:16 12:8,19 14:18 18:6,20 32:22 33:4 51:20 52:4,15 60:24 61:4 63:10 65:8 66:21 77:15 82:12,18 83:15,18 90:8,16 91:10

<p>92:12,23 93:25 94:6 95:1 100:17 101:25 102:15 106:24 108:14 110:15,16,22 126:14 130:21,23 132:5 138:5 140:15 141:22 144:4 149:24 150:4 (47)</p> <p>department's 10:24 52:13 59:9 61:8 84:24 118:18 122:5 (7)</p> <p>departmental 55:1,20 60:11 61:6 (4)</p> <p>departments 12:8</p> <p>departure 68:10</p> <p>depend 104:6</p> <p>depending 46:15 95:10</p> <p>deputy 8:22 9:9 17:16 42:10 (4)</p> <p>dermot 8:21</p> <p>describe 65:5,9</p> <p>described 60:23 69:13 107:16</p> <p>description 26:8,22 27:5 59:13,20 60:3 (6)</p> <p>descriptions 26:10 58:13</p> <p>deserve 103:21 123:16 128:11,12 (4)</p> <p>designee 6:5,15,19 7:7 8:3</p>	<p>44:18,20 (7)</p> <p>despite 116:20 131:10</p> <p>destroying 117:11</p> <p>detail 81:3</p> <p>detailed 82:7 90:12 92:13 116:18 (4)</p> <p>details 84:20 95:2</p> <p>detective 127:11,14,20</p> <p>deter 37:22</p> <p>determination 59:10 71:7 78:23</p> <p>determine 23:9 34:25 72:19 78:6 94:16 95:8 96:7 (7)</p> <p>determined 70:24</p> <p>determines 40:3</p> <p>determining 31:3 120:21</p> <p>develop 100:4 110:10</p> <p>developed 95:1</p> <p>developing 141:16</p> <p>deviate 38:21 40:10 42:8 64:18 89:19 90:13 102:7 106:25 (8)</p> <p>deviated 76:14,23 77:3</p>	<p>87:5 102:17 (5)</p> <p>deviates 64:21 65:19 76:22 83:19 (4)</p> <p>deviating 65:6,14 82:20 102:14 (4)</p> <p>deviation 59:24 66:5 87:3</p> <p>deviations 38:24,25 39:4 52:11 85:24 86:7,22 102:20 122:6 (9)</p> <p>dialogue 11:9</p> <p>diblasio 8:20 13:7 124:10</p> <p>didn't 29:1 36:4 37:2 40:17 61:6 84:22 88:12 110:9 (8)</p> <p>die 50:23</p> <p>died 136:8</p> <p>difference 21:6 25:22 49:21,25 50:10,15,17 51:15,16 54:12 64:16 (11)</p> <p>differences 61:24 72:18 83:12 85:5 (4)</p> <p>different 30:3 31:11 50:4 81:8 82:22 92:25 143:23 (7)</p> <p>differently 82:11 83:10</p> <p>dinkins 13:3 120:9</p>	<p>dinkins' 13:7,24</p> <p>direct 14:5 80:12</p> <p>directing 69:4,15 70:4</p> <p>direction 11:14 68:13 101:17 143:23 (4)</p> <p>directions 59:2</p> <p>directives 21:22</p> <p>directly 112:3 128:4</p> <p>director 1:17 16:8 133:3</p> <p>disagreement 61:14</p> <p>disagreements 83:6</p> <p>disambiguated 75:4</p> <p>discharged 21:19</p> <p>discharges 21:18</p> <p>disciplinary 2:9,10 5:13 8:14 9:15 10:16 13:21 14:8 15:10,21 17:1 40:16 41:3 61:5,21 66:18 78:7,13 88:17,23 89:1,4 94:6 95:18,24 98:7,21 100:5,25 101:1,7 103:19 107:25 109:10 110:15 111:8 117:19 118:21 126:5,8,16,19 127:21 128:7 131:1 132:11 141:8 148:2,12 (49)</p>	<p>discipline 10:25 12:21 17:4 26:1 27:14,16 34:15 39:16 40:15 41:11 45:15,20 53:14 58:19 67:14 68:7,15 79:1 85:1 92:4 95:2,8,9,13 96:1,8 101:13 106:22 109:9 110:3,11,21 116:19 117:3,9,24 118:24 119:2,4,6 120:15,16 123:13 124:21,24 127:22 129:13 130:9 131:3 132:17 133:10,22 (52)</p> <p>discourse 99:24</p> <p>discourtesy 32:9,11,18</p> <p>discretion 31:2 42:7 80:18 101:21 102:1 109:14 111:14 117:1,3,11,14 119:6 126:18 128:8 132:5 139:25 (16)</p> <p>discretionary 51:3 52:6,22 53:3 126:9 132:13 (6)</p> <p>discriminatory 116:14</p> <p>discuss 15:13 64:10,11</p> <p>discussed 33:9</p> <p>discussing 8:13 59:5 64:5</p> <p>discussion 8:10 15:16 16:13 70:21 80:14 89:7,10,16,18,22 93:15 98:6 (12)</p>
--	---	---	---	--

<p>discussions 61:15 63:10</p> <p>dismissal 48:17</p> <p>dismissed 100:17</p> <p>disposition 52:12 75:11</p> <p>disregard 117:1 126:10 132:14 136:16 (4)</p> <p>distinct 36:17</p> <p>distinction 51:2,11 52:6 54:20 72:2,3 (6)</p> <p>distinctions 51:3</p> <p>disturbing 115:4</p> <p>doctor 135:23 137:10</p> <p>document 48:23 51:2 63:14,15 67:22 78:17 82:15 84:2 99:3,5 101:24 103:16 109:19 112:23 140:1 147:8 (16)</p> <p>documentation 92:11 108:5</p> <p>documented 59:14 143:25</p> <p>documenting 82:7</p> <p>documents 86:10 128:1</p> <p>does 15:2 24:8 38:9 45:2 48:5 65:13 68:17 71:8 97:19,22 101:17 103:13 118:20 123:14,23 124:25</p>	<p>139:23 140:7 144:4 146:22 (20)</p> <p>doesn't 25:19 54:21,23 55:13,18 65:20 70:18 80:3 86:24 87:7 89:6 110:20 124:15 136:20 140:5 (15)</p> <p>doing 17:9 18:10 69:3 79:4 85:15 92:7 123:17 124:18 141:18 145:20 (10)</p> <p>done 8:11 18:25 69:6 75:11 86:13 127:18 142:25 144:23 146:21 (9)</p> <p>door 24:6,6</p> <p>down 24:25 25:2 34:6 48:1,7 85:25 88:3 118:12 (8)</p> <p>downs 81:11,13,14</p> <p>downward 68:10</p> <p>dr 113:24 116:3 119:21,25 120:1,3,5 122:9,10 135:19 137:14 (11)</p> <p>draft 33:2,13 36:5 38:7 84:12 (5)</p> <p>drive 147:19 148:10</p> <p>drop 81:11,13,14</p> <p>due 106:11 134:4</p> <p>duration 22:8</p> <p>during 10:17 11:21 13:8 96:7</p>	<p>(4)</p> <p>duty 35:17</p> <p>dwyer 3:15 6:12,13,14 73:7 85:8 88:7,10,12 96:22 148:23 149:1,2,10 (14)</p> <p>e 1:15,15 152:1,1 (4)</p> <p>each 17:25 18:5,11,13 23:2,20 30:2 39:23 40:19 56:11,19 100:7 (12)</p> <p>eager 13:20</p> <p>earlier 33:18 68:9 71:16 84:15 125:20 127:5 (6)</p> <p>early 9:2</p> <p>easier 80:25</p> <p>easily 45:14 84:5 118:11 126:14 (4)</p> <p>east 6:20</p> <p>education 4:22</p> <p>effect 63:11 68:7</p> <p>effectively 109:24</p> <p>efficiency 11:10</p> <p>effort 90:17 92:22</p> <p>efforts 112:10 116:20</p> <p>egregious 139:15</p> <p>egregiously 150:3</p>	<p>eight 19:18 20:4</p> <p>eighteen 19:16</p> <p>eightyfive 19:22,23</p> <p>either 15:23 42:7 55:11 77:1 82:20 83:9 (6)</p> <p>elect 130:8</p> <p>elected 102:18</p> <p>eligible 138:15</p> <p>else 108:9 144:17</p> <p>eluded 68:8</p> <p>elusive 141:19</p> <p>elusory 110:25</p> <p>email 15:23 98:9</p> <p>embolden 131:5</p> <p>emboldens 117:10</p> <p>emerging 99:14</p> <p>emphasize 135:24</p> <p>emphasizing 87:9</p> <p>employment 40:24 41:14,17 60:6,10 73:13,15 106:3 (8)</p> <p>empower 11:19 131:5 148:13</p> <p>empowered 13:11</p> <p>empty 142:20</p>	<p>enabled 130:23</p> <p>encounters 118:23</p> <p>encouraged 113:9</p> <p>encourages 131:24</p> <p>end 14:1 21:8 25:11 32:20 37:7,8,20 42:5,16 94:15 114:25 140:14 147:20 (13)</p> <p>ends 21:8</p> <p>enforcement 137:24</p> <p>engage 63:9 131:6 132:3 134:7 139:16 (5)</p> <p>engaged 95:14 132:7</p> <p>engages 24:10</p> <p>engaging 95:20 133:16</p> <p>enough 25:20 126:3</p> <p>enshrine 131:1</p> <p>ensure 52:10 104:1 133:23 138:12 (4)</p> <p>ensuring 92:12</p> <p>entails 39:9,10</p> <p>enter 23:24 113:10</p> <p>entered 88:2</p>
---	--	--	---	---

<p>enters 24:9</p> <p>entertaining 145:23</p> <p>enthusiastic 9:2</p> <p>entire 86:25 99:20 108:11 121:20,21 (5)</p> <p>entirely 60:8</p> <p>entitled 71:20 72:6</p> <p>entrenched 126:21</p> <p>entries 23:24 24:23</p> <p>entry 19:13 23:23 24:22 25:1,2,3,5 (7)</p> <p>equate 23:18</p> <p>eric 50:13 100:12 101:3 123:21 133:1 (5)</p> <p>erica 3:6 6:5</p> <p>escalates 56:12</p> <p>escalating 56:13 118:25</p> <p>escalation 24:16 55:8</p> <p>esmeralda 3:21 6:9 11:24 146:7 (4)</p> <p>especially 9:3,10 17:21 34:22 113:16 117:15 (6)</p> <p>espoused 126:13</p> <p>esq 1:17</p>	<p>3:4,6,7,10,19,21 4:6,10,13,15 (11)</p> <p>essentially 117:10</p> <p>et 54:15 56:18</p> <p>evaluation 41:2</p> <p>even 27:6 28:14 31:5 32:16 37:17 53:6 55:5,12,14 76:23 91:8 100:14,20 105:14 127:20 133:23 141:7 (17)</p> <p>event 68:16</p> <p>ever 115:20 122:24 137:4</p> <p>every 20:20 52:20 69:22 83:1 140:25 (5)</p> <p>everyone 5:2,10 6:17 7:5 8:1,5 16:17 93:13 108:9 113:16 120:6 151:7 (12)</p> <p>everyone's 49:13</p> <p>everything 36:4 79:18 80:11 114:4 147:8 (5)</p> <p>evidence 86:20 108:2</p> <p>evident 117:14</p> <p>evolved 58:9</p> <p>exact 123:25</p> <p>exactly 10:19 89:7</p> <p>exaggerated 22:8</p>	<p>examine 96:6 136:25</p> <p>examining 14:7</p> <p>example 21:18 24:13 27:8 31:5,21,22 34:1 36:12 37:5 39:22 69:16 130:17,17 (13)</p> <p>exceed 103:22</p> <p>excellent 44:11 120:10</p> <p>excessive 21:15 74:10 131:23</p> <p>excited 13:23</p> <p>excusable 62:2</p> <p>excuse 102:7</p> <p>executive 1:17 2:11 9:4 133:3 150:16,17,23 151:4 (8)</p> <p>exercise 87:15 104:7 109:13</p> <p>existence 143:2</p> <p>exists 109:19</p> <p>expanded 36:3,4,6</p> <p>expect 17:12 113:16</p> <p>expected 35:19</p> <p>expense 100:15</p> <p>experience 12:5 91:4 115:2 134:24 (4)</p> <p>experienced</p>	<p>134:3</p> <p>explain 48:20 83:20</p> <p>explaining 102:13</p> <p>explanation 65:22 66:6 84:12,13,21 90:23 (6)</p> <p>explanations 83:25 85:24 90:12</p> <p>exploring 13:13</p> <p>expressed 58:12</p> <p>extensive 81:5</p> <p>extensively 122:17</p> <p>extent 25:3 85:17,19 92:20 (4)</p> <p>extra 29:20 56:25</p> <p>extraordinary 65:17 86:23 117:21</p> <p>extreme 90:9</p> <p>extricated 108:7</p> <p>eye 102:20</p> <p>eyes 114:16</p> <p>f 1:15 152:1</p> <p>fabio 127:11</p> <p>faces 95:20</p> <p>facing 132:9</p> <p>fact 33:15 52:25 58:15 60:17 61:15 87:23 109:19</p>	<p>110:9,16 131:11 144:25 146:24 (12)</p> <p>factor 23:2 25:9,16,18 28:6,9,12 35:6,12,14 58:21,23 60:8,13,19,22 61:8,12,17,20 62:24 67:24 (22)</p> <p>factors 21:3 22:3,13,21 23:12 26:2 29:23 31:24,25 34:13,25 35:1,16,24 55:12 58:14 59:12,14,20 60:5 65:11 84:19 102:13 117:16,17,20 118:13 (27)</p> <p>facts 28:23</p> <p>failed 141:22</p> <p>failing 37:6,8 38:6 67:21 (4)</p> <p>fails 103:10</p> <p>failure 28:9 36:12,13,15 38:10 74:9 135:25 (7)</p> <p>fair 13:15 144:9</p> <p>fairly 77:24</p> <p>faith 87:11 90:17,24 92:22 112:19 113:13 123:7,8,8 133:20 141:21 142:5 (12)</p> <p>falling 95:5</p> <p>falls 62:18</p> <p>false 11:20 62:21 63:1 141:21 (4)</p>
---	--	--	--	---

families 132:25 134:22	(5)	flagged 66:13	43:25 47:24 48:5,11 49:20,25 50:1 71:18 72:4,22 130:9 (13)	79:14,17 80:1 95:8 96:1 (11)
far 14:24 120:12	finalized 116:21 117:9,23	flagging 65:24		frank 3:15 6:14
farce 147:3	finally 12:11 19:25 62:20	flawed 90:19 131:4	forcedevice 38:2	frankly 82:20
fault 47:19	find 61:4 73:15 80:5,10 81:7,8 115:5 120:16 (8)	flaws 142:15 145:9 146:11	forfeiture 27:19	fred 5:14 42:18
favor 97:10 136:5 149:14 150:22 (4)	finding 62:8 77:1 115:3	floor 15:17 138:23	forgone 139:8	frederick 1:16 3:3
feature 98:2	finds 73:21	floors 35:8	form 60:10 79:21 118:6 140:7 (4)	freeman 3:13 44:17
february 95:23	finish 87:20	floyd 50:23 116:10	formally 63:24 64:2	frequency 85:20
federal 116:11	fired 73:13 124:1	focus 89:13	formed 134:21	frequent 86:6,6
feedback 99:2	firing 21:5 131:10 134:7	focused 16:2 130:6	former 4:14 13:2,2 122:16 (4)	frisk 19:19 26:6,15 27:5 28:19,21,24 29:3,7,24 30:3,12,12,20 31:13 39:23 44:4 54:7 55:10 62:7,17 70:1,3 116:14 118:10 (25)
feel 50:20 92:21 122:24 139:7 143:21 145:17 (6)	first 8:17,22 9:8,9 11:24 27:3 49:17 55:17 74:9 98:11 106:6 108:17 115:21 116:24 122:2,19 125:19 136:22 137:3 139:6 150:6,7 (22)	folks 98:3 106:13 139:13	forms 95:3	
feels 53:6 139:8	firstofitskind 8:14	follow 42:12 70:12 106:16	formula 112:7	
felice 5:5	fit 89:6	followed 93:5 98:12 104:19 108:24 113:23 116:3 119:22 122:12 123:4 128:25 135:8 (11)	forth 145:14	
fellow 4:10 91:24 116:7 147:12 (4)	fits 27:4 94:1	following 15:16 16:3 75:10 109:17 137:19 138:8 (6)	fortyfive 20:1	
few 17:5 123:13 139:4,10 141:12 143:1 (6)	five 27:11,18,21,23 28:2 29:14,17,18 30:15,16,25 31:5,8 32:11,18 56:15,16 76:19 100:14,19 125:17 (21)	followup 74:5	fortysix 127:16	frisks 24:24 54:2
fields 79:10	fixed 111:7	footage 14:6 37:15,17 108:3 (4)	forward 13:13 15:4,6 16:12 59:1 77:6 87:13 98:25 99:7,8 104:11 106:17 144:1 145:18,19,20 (16)	front 42:2
fifteen 20:2 29:20 44:10 56:18 (4)	flag 59:7,18 63:7	force 21:13,15,16 24:17 33:22 34:1 41:1 46:17,22,24 48:11 74:10 131:18,23 137:25 (15)	four 21:19 28:2 56:23	frozen 5:23
fiftysix 19:21		forced 21:4,7	fourth 24:23 33:16	frustrated 123:5
fiftytwo 19:16			fought 111:2	full 16:19 39:10 51:3 54:24 112:13 119:8 139:17 140:3 (8)
fighting 137:24			found 72:7 76:19 95:14 132:6 (4)	function 101:2
file 133:19 138:6			framework 17:4,6 74:20,22 76:25 77:9	functionality 141:2
filled 116:25				functioned 101:1
final 51:22 52:5,14 107:4,4				further 47:25 63:9 152:11

<p>furthermore 117:23</p> <p>futility 87:15</p> <p>future 11:15 12:25 87:14 148:7 (4)</p> <p>gap 90:25</p> <p>garner 50:13 100:12,23 101:4 123:22 133:2 (6)</p> <p>gates 104:10</p> <p>gather 99:21</p> <p>gave 13:3 19:14 20:2 40:3,8 114:9 120:8 (7)</p> <p>gender 26:11</p> <p>general 2:6 3:24 15:11 27:4 69:10 (5)</p> <p>george 50:23</p> <p>german 137:21</p> <p>get 5:15 8:11 18:1 19:2 21:1 26:6,9,25 27:9 29:1 30:23 41:9 48:9 55:1 60:1,2 65:2 70:1,23 71:5 72:14 76:10,19 77:11 81:10,22 82:17 83:24 88:25 91:20 93:20 94:3 96:19 105:21 106:3 108:4 113:4 115:20 118:6 122:1,4 135:18 137:3 144:23 148:25 (45)</p> <p>gets 18:5 39:24 40:22 50:16 51:4,11,15 71:5</p>	<p>82:13 136:2 (10)</p> <p>getting 7:20 57:1 70:24 84:20 85:3,20,23 92:20 105:16 107:24 108:2 115:21 150:10 (13)</p> <p>give 16:19 17:8 33:7 35:20 43:16 72:23 76:2 81:11 93:9 101:6,8 136:5,5 (13)</p> <p>given 39:7 54:23 62:8 88:22,23 89:4 120:19 121:2,9 (9)</p> <p>gives 35:7 70:11 147:22</p> <p>giving 14:9 73:19 148:11</p> <p>glad 102:23 120:8</p> <p>global 84:8</p> <p>go 5:23 14:21,24 16:22 17:1 18:23 19:1 22:22 23:13 28:23 31:8 32:25 37:13 44:12,23 54:17 55:22 56:17 69:20 70:18 73:20 74:4 77:16 83:16 87:22 96:20 104:21,24 106:14 109:1 114:1 119:24 120:2 129:5,24 137:2 143:16 150:8 (38)</p> <p>goal 17:6 122:7</p> <p>goals 11:12 119:12</p> <p>goes 40:23 45:4 56:20 57:8</p>	<p>70:16,17 (6)</p> <p>going 5:17 16:14,17 17:1,10,14,18 18:11,23,23 20:6,9,11,16 21:24 22:1 25:11 27:9,23,24 28:4,7,22 30:14,17,23,25 31:8,9,12,13,16 32:23,25 34:23 37:15 38:17,21 39:19 40:10 42:22,23 43:2,18 45:4,6 56:13 57:6 59:2 67:16 69:1 72:12 74:12 77:5,15,22 78:19,20 79:3,6,7,7,8,11,21 80:25 81:9 82:10 83:2,23,24 84:4,8 86:17 87:16 88:25 89:19 92:25 96:19 102:24 103:24 104:4,5 106:2,7,16,17 108:13,13,14 110:24 112:24 113:15 115:11,15 119:9 124:22 129:15 143:14,22 144:5 148:10,12 150:13 (104)</p> <p>gone 104:9 150:9</p> <p>good 5:1,10 6:4,8,13,17 7:4,14,25 16:16 78:10 79:19 86:10,19 90:24 92:22 93:3 98:18 99:18 109:3 112:19 113:13 116:4 120:5 123:8 125:11 129:6 137:13 (28)</p> <p>got 8:5,16 28:1 29:16,18 84:19</p>	<p>86:24 87:8 88:5 91:16 113:3 114:24 115:2 120:11 146:14 147:9 150:8 151:7 (18)</p> <p>governs 71:23 121:17</p> <p>grave 118:15</p> <p>gray 50:20</p> <p>great 6:3,12 14:15 73:19 114:9,15 116:4 (7)</p> <p>greater 17:18 125:24 128:18,18 147:15 (5)</p> <p>ground 91:12</p> <p>grounds 46:12</p> <p>groups 116:16</p> <p>guarantee 101:17</p> <p>guarded 137:1</p> <p>guardrails 109:12</p> <p>guess 48:6 52:17 53:11 60:1 78:18 93:24 94:8 (7)</p> <p>guide 29:6 42:13,14 121:16,18 126:11 145:24 (7)</p> <p>guided 11:7</p> <p>guidelines 9:18,21 10:7,10,21 132:1,18 (7)</p> <p>guilties 75:21,23</p> <p>guilty 72:7 75:9</p>	<p>76:5,19 138:1 (5)</p> <p>guys 79:12 80:4,19,23 81:1 82:2 (6)</p> <p>gwen 133:1</p> <p>habitual 57:25</p> <p>half 33:23 39:11,20,21,25 (5)</p> <p>hall 105:18 111:9 149:24</p> <p>hand 16:7 49:12,13 71:12 77:18 152:16 (6)</p> <p>handcuffs 136:23,25</p> <p>handfed 141:15 142:15</p> <p>handled 96:3</p> <p>hands 123:19,19 150:4</p> <p>happen 134:5</p> <p>happened 33:2</p> <p>happening 36:22</p> <p>happens 108:4</p> <p>harass 132:20</p> <p>harassment 57:21,24 134:3</p> <p>hard 9:12 40:14 55:22 105:16 119:14 147:5 (6)</p> <p>hardships 117:21</p> <p>harlem 6:1</p> <p>harm 126:6</p>
--	--	--	--	--

<p>136:21</p> <p>harmful 131:11</p> <p>harms 126:4</p> <p>harsher 101:12</p> <p>has 8:11 11:1 12:19 14:13,17 17:17 18:1 20:21,23 22:2 27:10 33:8,17 34:19 41:13 43:1,20 56:10 58:9 60:7 67:9,10 70:20 75:8,17 76:23 86:21 87:10 90:15 93:18 95:1,7 96:17 98:19 102:3 107:4 109:20 110:17 111:2 114:5 116:8 117:3 118:8 123:4,12,25 126:1,6 127:14,20 132:5,13 133:7 134:20 136:19 141:22 142:15 150:9 (58)</p> <p>hasher 10:1</p> <p>hasn't 64:6</p> <p>haven't 71:22 89:25</p> <p>having 11:8 15:4 74:12 94:10 95:12 98:18 105:16 149:4 (8)</p> <p>he 13:5 50:14 60:15 76:23 87:5 100:16,23 102:13 107:5,6 111:13 127:9 (12)</p> <p>he's 38:21</p> <p>hear 47:17 91:20 98:20,23 102:23</p>	<p>105:4 106:13 120:3 123:9 129:3 135:11 137:14 144:11,12 (14)</p> <p>heard 12:9 89:25 99:24 110:12 123:6,6 141:11 149:3 (8)</p> <p>hearing 33:3 98:11 99:21 104:18 105:3 108:23 113:22 116:2 119:21 122:11 125:10 128:24 129:21 135:7 137:11 139:1 (16)</p> <p>heartened 99:23</p> <p>heatedness 24:15</p> <p>heather 3:24 9:3 15:12 16:3,15,15 42:19 44:14 47:4,13 62:13 67:8,18 68:22 74:14 106:9 (16)</p> <p>heather's 60:5</p> <p>heavy 81:25</p> <p>heights 127:12</p> <p>held 1:8 33:3 100:13 101:9 103:9 113:14 141:24 (7)</p> <p>hello 5:1 6:23 122:14 129:23 130:1 (5)</p> <p>help 79:24 113:17 128:21 145:24 147:18 (5)</p> <p>helpful 67:8,12 82:3</p>	<p>helps 122:1</p> <p>her 114:11,15 115:16</p> <p>here 5:4 8:12,19 9:1 20:10 22:17,21,25 23:4 24:19,21 25:5,9 28:7,13,17,22 29:22 30:3,6 32:2,16 47:21 54:12 60:20 66:4 69:13 70:18 73:10 77:23 78:9 81:6 82:10 86:16 121:2 130:5,13 146:12,19 150:10 (40)</p> <p>hereby 152:8</p> <p>hereunto 152:15</p> <p>hero 60:14</p> <p>heroism 60:18</p> <p>hi 5:25 7:25 105:4 120:6 (4)</p> <p>higher 17:14 21:1 56:21</p> <p>highest 18:4,17,22</p> <p>highlight 67:8</p> <p>highlights 118:17</p> <p>hired 120:24</p> <p>his 84:3 100:13 111:13 122:22,25 127:21 (6)</p> <p>historically 77:25 109:9</p> <p>histories 41:17</p> <p>history 13:21</p>	<p>22:2 24:14 27:24 29:8 30:23 31:4,15,23 33:7 35:5,11 40:17,24 41:3,4,5,8,14 54:15,24 60:7,10 62:8 78:13 90:19 91:7,11 106:3 107:25 127:15 (31)</p> <p>hit 22:6 37:16 57:7 70:22 (4)</p> <p>hold 11:19 64:25 69:2,7,8,22 70:2 86:24 92:5 109:15 112:12 113:1 142:2 150:13 (14)</p> <p>holding 88:5 118:18 147:23,24 148:20 (5)</p> <p>honest 11:8 35:21 50:6</p> <p>hoops 57:12</p> <p>hope 10:5 11:5,15 90:1 107:8 123:8 127:1 128:14,20 (9)</p> <p>hopefully 81:19,23 107:19 146:2 (4)</p> <p>hopes 87:23</p> <p>hoping 147:5</p> <p>hospital 136:22</p> <p>housing 6:21</p> <p>how 12:24 17:9 19:3 20:9 29:9 31:3 36:24 38:16 45:19 48:1 52:20 53:9,16 59:13,20 65:10 72:20 75:5 77:22 78:18 79:13</p>	<p>80:6,23 82:16 85:14 88:1,21 89:8 92:14 93:22 94:1,1,3 99:7 102:16 105:19 121:25 124:23 131:19 136:11 (40)</p> <p>however 10:14 18:20 28:1 32:11 35:14 40:1 67:13 116:20 119:1 140:4 (10)</p> <p>huge 49:21 53:7 90:25 91:16 114:20 142:15,16, 22,22,23 (10)</p> <p>human 135:24 136:17</p> <p>hurting 51:8</p> <p>hypo 20:17 23:10 24:4 26:7,20 (5)</p> <p>hypos 16:21,25 34:18 81:5 (4)</p> <p>hypothetical 20:10</p> <p>hypotheticals 20:7</p> <p>i'd 58:6 66:2 134:11 148:24 (4)</p> <p>i'll 22:22 51:10 91:16 135:12 (4)</p> <p>i'm 7:15 8:1 11:7 16:12 18:23,23 20:6 29:3 32:25 46:13 47:3,3 50:5 51:4 52:18 55:6 57:18,20 74:4,11 76:13 86:17 87:9,16,18 88:22,23 89:8 91:5 96:13</p>
--	--	--	--	---

97:9,15 105:7,18 106:7 109:4 114:2 115:11,15 119:9 120:6 122:25 127:23 145:22 147:5 (45)	important 23:4,7 42:4 58:6,23 61:18 82:6,17 85:10,25 99:22 130:7 139:10 147:21 (14)	inception 90:8	indicated 60:6 146:25	instance 50:13
i've 22:25 23:11 99:24 120:11 130:4 (5)	impose 84:25	incident 35:22 36:19,25 37:14 (4)	indicating 46:6 47:1 143:11	instances 77:13 90:9 111:5
icard 24:2,6	imposed 29:10 83:8 95:13	incidents 66:22 67:1 127:6	indication 38:23 100:16	instead 32:22 131:22 132:8 134:6 142:3 (5)
idea 60:25 84:7 91:1	imposes 9:24	include 27:24 118:21 131:8	indicia 26:17 27:7	institution 142:24
identified 117:5	imposition 12:21	included 37:24	indigent 125:16	instructions 19:17,23 20:4
identify 83:5 85:4	impression 46:10	includes 40:25 101:11	individual 135:23	insufficient 139:12
identifying 37:12	improper 118:22 131:14	including 14:4 59:13,19 66:25 95:4 96:3 112:25 127:15 133:1 (9)	inform 31:7	integrity 86:11
illegal 70:11	improve 10:23 14:3 87:23	inconsistencies 107:11	information 27:1 28:25 29:2 37:12 41:9 42:2 43:17 45:22 72:24 73:1 77:11 78:12,25 79:9 82:18 92:13 129:12 (17)	intent 25:1 44:5 117:25
illegality 131:20	improvement 10:13,20	inconsistent 84:23	informed 97:6	intentional 28:18,20 33:20
image 122:23	impunity 126:22	incorporate 10:6	informing 141:9	intentionally 131:12 136:1
immediately 10:6,9 66:24	inability 47:20 62:24	incorrect 48:8 72:24	infraction 54:21	intents 33:19 36:9,10
impact 60:23 61:6	inaccurate 62:22 63:2	increase 17:7 95:17	infractions 67:15 122:3	interaction 24:16
impacted 112:3 117:5 126:6	inadequate 116:22 118:10,11,17 (4)	increases 96:9	injured 131:19	interactions 148:15
impediments 117:4	inappropriate 33:12 73:22	incredible 141:5	injuries 34:9	interest 94:18 118:18 119:10 148:15 (4)
implement 13:24 15:15	inappropriatenes s 131:21	incredibly 91:2	injuring 51:8	interested 152:13
implemented 93:23	inaudible 53:9	indeed 101:10	injury 20:18,22 21:11 22:4 23:4,8 34:7,9 43:25 44:2 47:5 48:16,18 136:2 (14)	interesting 17:21 98:20
implementing 86:12	incapable 130:15	independence 141:1 142:19 146:2	input 93:19 99:21 150:9	internal 17:4 41:3,5
importance 58:20	incentive 63:4	independent 13:12 103:19 111:17,22 128:10 133:11 146:18 (7)	inside 24:7 141:2	interpreters 5:4
	incentivizes 132:12	index 40:18		interpreting 82:11,21 83:10

interruption 6:25	irish 3:7 5:24,25 6:1 44:25 48:24 49:9 85:7,9 86:4 (10)	68:12,14,25 69:1,4,10,14,15,25 70:4,5,9,12,14,18, 24 71:3,4,16 72:6,13 73:2,10,17,24 75:5,14,18 76:5,7,17,19,20 77:5,23,24 78:9,18,19 79:2,7,8,20,20,22 81:25 82:10,14 83:2,22,22,25 84:2,7 85:14,14,25 86:5,5 87:4,10,15,21,23 88:1,1,4,18,19,21 89:2,22 90:23 91:2,7,23 92:7,9,12,17,17,22 93:15,21 94:8,9,10 95:11,16 96:21 97:11,13,18 99:2,5,9 100:20,21 101:5,22 102:18,24 103:11,24 104:16 105:13,25 106:2,18,19 108:12,14,20 109:4,18,21,23 110:4,8,23,25 112:22,23 114:15,20 115:10 116:5,25 117:14 118:1 120:7,13,18,22 12 1:1,5,5,12,12,16,1 8,19,21 122:7,15,19 123:10,17,22 124:3,4,5,6 125:13,23 126:9,13 127:8,18 128:7 129:2,7,14,17 130:1,15 131:4,20,23 135:19,21 136:2,7 137:3,6 138:4,13 139:11,11 140:7,23,24 141:14 142:8,22	143:3,20,20 145:4,20,22 146:16,17,20,23 147:3,6,18,19,20 148:4,7,9,10,12,18 149:2 150:5,7 152:9 (406)	125:10,13 (5) job 35:15 36:1 100:13 101:3 114:11 122:22,25 123:3 125:5 146:19 (10) jobs 133:16 john 3:4 4:13 5:20,22 7:15 57:18 64:12,23 68:8 119:22 122:11,15 (12) join 89:9 joined 41:1 jon 44:12 46:19 53:22 57:14 67:18 68:21 71:15 72:11,12 73:2,7 83:17 84:10 106:7 (14) jonathan 1:17 joseph 3:9,18 6:18 7:8,10,11,17,19,21 49:1,7 68:4,5 70:9 71:9,10 87:2 97:15,17,23 143:11,13 144:13 (23) journey 150:5 jump 56:5 57:12 june 100:1 110:13 jurisdiction 67:14,21 68:1 74:13 95:5 111:18 134:21 (7) jury 89:1 just 5:3 12:24
intervals 82:24 121:24	ironclad 105:21		island 7:22	
intervene 24:3,12,18 25:10 74:10 (5)	is 5:25 6:5,14,24 7:5,20,23 8:5 9:15 10:13 11:5,11,13 12:25 16:19 17:18,21,22 18:3,4,11 20:10,19,25 21:4,6,15 22:14,18,19 24:7,14 25:24,25 26:22 27:8,13,15,2 0,22,24 28:3,11 29:6 30:3 31:9 32:11 34:1,22 35:2,13 36:22,24 3 7:5,11,13,16,18,25 38:13,16,19 39:7,15,15,19,22 40:2,9,13,21,23 41:6,18,23 42:5,11,12,16,23 43:24 44:1,2,4,17,19,20 45:4,22 47:5,8,19,22 48:2,11,24 49:7,10,21 50:2,11,15,24 51:1 ,3,5,9,15,17,18,18, 21 52:9,14,15,18,2 3,23,24 53:7,11,16 ,19,20,21,23 54:4,9,12,12,18 55:2,6,11,19,24 56:8,9 57:4,5,21,23,25 58:1,6 59:1,6,10,1 1,18,21,22,23,24,2 5 60:3,8,20,20,22 61:1,7,9,12,13,24 62:1,2,7,9,11,19,2 0 63:14,20,23,24 64:1,5 65:4,7,9,11,20,23 66:4,5,8,13,13,19 67:3,6,15,16,23		isn't 11:14 issue 27:20 37:1 39:5 40:13 61:14 63:23 64:10,12,12 71:4 82:5,9 86:25 88:16,17 91:17 99:22 100:8 102:12 110:15 117:13 123:5 127:13 138:4 (24) issued 12:3 issues 15:20 36:17 63:8,17 66:12 71:2 87:12 88:6 93:17 99:13 119:11,13 131:8 143:14,17 144:8 (16) its 11:11 13:5 38:3 43:1 60:24 65:6 94:2 95:7 96:1 102:8 108:15 111:16,18 (13) itself 110:5 115:14 126:15 130:16 146:17 (5) jackie 4:12 113:24 119:21 january 1:4 105:15,24 127:7 152:16 (5) jeans 26:12,24 jennvine 4:15 119:22 122:12	
interviews 91:14				
intimate 57:22				
into 10:7 13:10 28:6,20 32:25 34:2 38:20 41:7 43:3 57:1 68:1 70:19 73:12,14 74:12 82:25 88:2 90:18 93:4 94:21 96:20 111:15 113:10 121:22 142:1 143:2 150:10 (27)				
introduce 5:17				
introduced 66:20 91:19				
investigate 37:13				
investigating 11:20				
investigations 9:7 11:22 37:4 80:15 125:22 128:3 (6)				
investigative 118:23				
investigator 4:14 41:18 122:16				
investigators 69:11 78:2,20				
involved 24:17 31:10 68:19				
involves 25:6				

<p>17:6 22:22,25 23:7,21 25:18 26:10 27:3 31:25 32:25 33:6 34:19 35:25 40:11 43:14 44:5 48:1,6 49:8,24 51:6 52:20 53:5,7,12,12,15 54:19,20 55:4 56:5 58:15 60:13 64:7,14 66:16 67:13 71:1,14 72:23 74:6 75:1 76:12 77:20 78:3 81:11,16 82:4 83:3,11 84:13,19 85:2,9,16 86:4 87:10,18,19 88:1 89:1,13,24 90:5,21 91:1,6,11,22 92:15 93:22 96:19 97:1,13,17 102:2 105:10,20 107:23 112:17,24 118:3 127:24 128:16 134:16 135:17,23 136:5 137:19 138:6 139:24 140:9 142:11 144:5,21 145:11,16 147:18 150:7 (101)</p> <p>justice 116:6 136:21</p> <p>justifiable 137:4</p> <p>justified 21:17 70:13</p> <p>justify 112:11</p> <p>justly 12:20</p> <p>kadushin 106:8</p> <p>karmita 4:17 122:13 128:24 129:7,20 (5)</p> <p>keep 7:19 15:19</p>	<p>48:10,12 76:3 80:18 98:5 102:20 111:2 122:22,25 123:3 124:22 125:5 133:15 145:19 (16)</p> <p>keeps 123:24</p> <p>khan 4:5 104:20 105:3,4,6,9 107:22 108:19 (8)</p> <p>kid 146:16</p> <p>kill 132:19</p> <p>killed 100:12,23 132:25 134:23 138:17 (5)</p> <p>killing 51:8</p> <p>kind 36:8 50:20 52:19 53:7,13,15 55:7 68:8 78:7,25 79:24 83:7 84:25,25 (14)</p> <p>kinds 83:12 114:17</p> <p>knee 51:7</p> <p>kneeling 49:4 50:9</p> <p>knew 12:18 17:12</p> <p>knocks 24:6</p> <p>know 17:3 23:1,3 26:22 27:15 35:17 38:5,11 39:6 41:4,5 49:3 61:13,24 68:8 71:3,15 76:13 79:13 80:13 84:22 87:19 91:14 93:15 97:2 103:8 105:9,11 108:1,9 113:7 115:5,7</p>	<p>120:22 121:8 124:25 136:8,13 145:5 147:7 151:5 (41)</p> <p>knowing 40:15 99:1 100:21</p> <p>knowledge 80:10</p> <p>known 137:18</p> <p>lack 58:16 90:11 118:18 129:11 130:20,24 (6)</p> <p>lacks 109:22</p> <p>land 55:13</p> <p>language 19:25 31:20,23 32:3,8,17 63:22 64:1 65:12,23 66:10 (11)</p> <p>larger 80:14</p> <p>largest 125:16 130:22</p> <p>last 11:18 12:23,24 13:8,18 33:8 48:19 49:12 66:20 68:9 94:7 100:1 124:2 127:24 130:12,16 141:12 143:1 (18)</p> <p>lastly 118:24</p> <p>late 120:9</p> <p>later 88:15 100:19</p> <p>latin 117:6</p> <p>law 12:11 14:24 33:15 58:15 71:23,25 73:3,6,8,9 100:3 104:2,10 110:17</p>	<p>113:4 137:22,24 140:20 (18)</p> <p>lawmakers 12:10</p> <p>laws 138:11</p> <p>lawsuit 116:11</p> <p>lays 28:20 41:12</p> <p>lead 116:9</p> <p>leadership 99:16 104:13 110:1,5 111:2 128:14 (6)</p> <p>leading 117:12</p> <p>leap 87:11</p> <p>learned 12:16,24 72:17</p> <p>least 58:6 62:16 81:24 121:20 (4)</p> <p>leave 24:12 90:1 149:1</p> <p>leaving 119:6</p> <p>legal 4:16 9:4 33:12 39:12 94:2 113:17 125:15,17 127:8 (9)</p> <p>legally 111:14</p> <p>legislation 110:14 112:21 130:10 145:1 (4)</p> <p>legitimacy 142:20</p> <p>lengthy 127:14</p> <p>leslie 4:21 135:8 137:11</p> <p>less 28:1 29:16 34:2 38:1 81:20</p>	<p>114:5 120:12 121:12 142:7 (9)</p> <p>lessen 120:20 121:6</p> <p>lesser 77:16</p> <p>let 5:23 44:14 47:14 63:14 65:1 87:20,25 112:17 138:20 151:4 (10)</p> <p>let's 44:23 70:1 91:20 93:9 103:24 146:16 147:7 (7)</p> <p>lethal 38:1</p> <p>lethaldevice 34:3</p> <p>letter 133:2</p> <p>letting 125:18</p> <p>level 85:3 95:9,13 103:6 104:7 108:12 118:22 146:1 (8)</p> <p>leverage 124:5,5</p> <p>liberties 4:7 109:6 113:1</p> <p>lie 132:20 140:13</p> <p>life 135:24 136:17</p> <p>lifelong 6:20</p> <p>lifting 82:1</p> <p>light 77:23 90:19</p> <p>like 5:16,22 10:20 15:5 31:12,15 34:6 40:21 42:11 43:14 46:8 53:6,8 55:7 56:13 58:6 64:10 66:2 69:6 72:1,2</p>
--	--	--	---	--

<p>81:4,13 84:8 89:1 92:22 98:1,23 115:4 117:20 120:17 123:21 126:11 127:19 131:12 134:11 137:2 139:8 148:24 (39)</p> <p>limit 59:3 98:4 111:13</p> <p>limited 26:16 60:23 98:6</p> <p>limits 111:16</p> <p>lincoln 81:9 84:3</p> <p>line 49:8 65:2</p> <p>lines 54:1 84:22</p> <p>links 43:19</p> <p>listed 33:15 38:1</p> <p>listen 145:6</p> <p>literally 142:3</p> <p>little 9:21 14:25 16:23 17:8 24:10 27:9 31:2,17 33:1,7 36:7,11 38:14 50:5 62:7,11 72:1 82:13 130:19 (19)</p> <p>live 6:1,11 7:6 108:15 (4)</p> <p>lives 145:2</p> <p>living 63:15 99:3,5 103:16 112:23 (5)</p> <p>liz 79:11,23 80:9 81:25 (4)</p> <p>local 100:3</p>	<p>location 37:11</p> <p>lofchie 4:20 129:1 135:8,19,20 (5)</p> <p>log 37:6</p> <p>long 52:7 100:3 101:14 102:25 111:2 147:5 150:8 (7)</p> <p>longer 18:9 21:12 35:13 44:4 (4)</p> <p>longestablished 55:15</p> <p>longstanding 109:7</p> <p>look 10:20 13:13 20:11 23:2 29:9 68:17 74:12 75:14 77:13 78:1 87:13 99:7,12 104:11 (14)</p> <p>lookback 27:22 28:3</p> <p>looked 75:8 147:4</p> <p>looking 15:4 16:12 54:15 97:20 98:25 (5)</p> <p>looks 5:22 120:17</p> <p>loopholes 53:4 139:14,17 142:16 (4)</p> <p>lot 12:19,23 18:8 19:20 21:14 23:23 26:6,9 28:11 57:6,11 61:23 79:20 85:14 93:16,19 98:22 114:12 126:25 134:12 135:20</p>	<p>151:8 (22)</p> <p>loud 12:9</p> <p>love 46:2</p> <p>low 37:21</p> <p>lower 6:20 62:12</p> <p>m 1:24</p> <p>made 11:21 12:23 14:3 33:6 43:13 47:10 52:23 59:10 63:1 69:24 71:6 88:19 94:23 96:18 100:18 135:21 141:6 143:24 144:3 146:11 (20)</p> <p>mail 115:3</p> <p>maintains 140:3</p> <p>major 107:18 113:5</p> <p>majority 34:21 106:21</p> <p>make 9:5,13 13:14 16:4 26:4 43:4 45:1,2,16,20 51:4 53:12 54:19 58:7 63:7,21 64:1 66:10 67:22 76:12 78:8 80:17,24 83:4 84:19 85:2,13 89:24 91:22 98:1 99:8,25 103:18 107:17 111:16 113:6 114:21 115:6 132:14 133:24 144:8 (41)</p> <p>makes 51:22 55:21 63:2 131:22 140:9,12 (6)</p> <p>making 14:11</p>	<p>45:6,23 50:8 51:2,19 78:21 80:16,19 87:13 131:22 139:21 (12)</p> <p>male 26:23</p> <p>mandated 42:12</p> <p>manhattan 4:9,17 6:18 129:9 (4)</p> <p>manifestation 13:6</p> <p>manner 106:5 108:4,5</p> <p>many 12:16 17:3 22:13 29:9 31:3 53:3 67:24,25 87:20 103:17 107:14 116:16,24 124:18,18,18 131:8 133:4,18 140:9,20 146:10 (22)</p> <p>marbre 3:19 6:24 88:9</p> <p>mark 53:8 113:8</p> <p>marriage 152:13</p> <p>martinez 128:25</p> <p>martinezclass 4:18 129:22,23,25 130:2 134:16 (6)</p> <p>mass 130:11</p> <p>material 64:8</p> <p>materially 10:23</p> <p>math 30:6 31:10 57:5,6 (4)</p> <p>mathematical</p>	<p>81:21</p> <p>matrix 2:9,10 5:13 8:14 9:6,13,15 10:4,14,16 11:3,6,11,13 15:2,10,14,15,21 16:3 17:2,13 18:7 19:4 20:9,13 21:9 22:20 23:14 26:1 27:20 28:12,19 30:7,21 32:14 33:2,9,13 36:5 37:19 38:7 39:19 40:11 41:6,12 42:5 43:20 45:18 46:14,20 51:19,21 54:10 55:5,13,23,25 56:7,11 58:5 59:1,3,7,25 60:3 63:11,20,23 64:19,21 65:7,12,14,20,24 66:4,11,17 67:2 68:6 70:19,22,23 71:5,6,17 74:8,9,15 75:16 77:22,24 78:21 79:2,20 80:11 81:2 82:11,16,21 83:22 84:17 89:14 90:19 91:25 92:14 93:23,25 94:7,11,14,18 95:2,24 96:8 97:4,13 98:7,21 99:1 100:5 101:6,11,16,20 102:2,11,15,17 103:6,14,18 104:2 105:14,22 106:16,19 107:1,3,6,6,13 109:11,24 110:2,11,15,24 111:8 112:2,5,11,20,22 114:15,20 115:13,20 116:19,22,25 117:9,12,15,24</p>
--	---	---	--	---

<p>118:20,24 119:11,15 120:7,13 121:25 122:21 123:1,14,23,24 124:25 125:3 126:8,16 127:6 130:9 131:1,4 132:11,15 133:5,8,10,13 134:18,20 135:22 139:11 141:8 142:15 143:14,20 145:10,15,24,25 146:4,11,15,20,21 148:2,6,9,18 149:6 (214)</p> <p>matt 106:7</p> <p>matter 52:7 73:2,5,6 152:14 (5)</p> <p>maximize 110:24</p> <p>maximum 34:17,24</p> <p>may 7:11 48:8 50:24 68:11 71:20 73:5,14 117:22 119:5 126:12 150:16 (11)</p> <p>maybe 21:16 23:3,5,6 24:1 26:11 62:16 75:13 (8)</p> <p>mayor 8:19,20 9:8 13:2,7,24 44:21,21 103:15 112:18 113:12 120:9 124:9,13,22 126:24 132:15 140:22 (18)</p> <p>mayor's 13:1,9 43:19 140:10 (4)</p> <p>mayoral 6:2,5 7:15</p>	<p>md 4:12,20</p> <p>me 5:23 44:14 46:18 47:14 48:20 60:1,13 62:19 63:3,3,14 65:1 87:20,25 91:3 98:10 100:8 101:5,23 103:22 105:4 106:13,23 112:17 115:4 120:3 125:18 129:4 137:14 138:20 139:10 145:21 (32)</p> <p>mean 48:6 49:16 52:8 54:23 60:14 68:17,23 74:19 75:2 89:15 144:4 (11)</p> <p>meaning 29:16 70:13 74:17</p> <p>meaningful 103:12 117:13,19 118:2 133:21 (5)</p> <p>meaningless 101:21 139:18</p> <p>means 18:3 27:23 28:4 39:7 50:8 61:1 79:18 132:4 (8)</p> <p>mechanism 147:22</p> <p>mechanisms 112:9 145:13</p> <p>media 105:7</p> <p>medical 131:13 135:25 136:10,12 137:3,5 (6)</p> <p>meeting 1:3 2:1,3 5:8,12 16:11 94:10 98:19 (8)</p>	<p>meetings 12:17 114:10</p> <p>member 3:5,6,8, 9,11,12,14,15,17,1 8,20,21 4:2,4 11:23 16:5 22:1 61:20 62:24 70:14 71:19 72:5 89:8 98:12,13,15 99:12,17 103:24 104:5,18 105:6 110:12 114:6,21 123:20 129:10 137:23 149:3 (39)</p> <p>members 3:1 17:10,24 18:13 42:24 43:9 44:15 51:19 91:25 93:7 99:4 122:15 124:20 133:17 134:9 135:13 138:22,24 143:8 147:12 148:25 149:22,23 (23)</p> <p>memo 102:13</p> <p>memorandum 15:14 59:4</p> <p>memos 65:14</p> <p>mentioned 33:17 116:25 118:8 123:20 (4)</p> <p>mere 110:16</p> <p>merely 102:12 107:1</p> <p>merits 8:13</p> <p>message 12:3</p> <p>messaging 110:8</p> <p>method 49:2 50:7 51:13</p> <p>metric 109:15</p>	<p>michael 3:10 4:6,8 7:5 98:13 104:19,22 108:23,24 109:4 112:16 113:21,22 116:1 (14)</p> <p>microphones 86:18</p> <p>midst 84:6</p> <p>might 5:23 16:22 46:1 73:18,25 (5)</p> <p>mike 146:6</p> <p>miles 150:6</p> <p>military 137:24</p> <p>mind 117:24 135:16</p> <p>minimum 34:17,24</p> <p>minor 22:4 23:7</p> <p>minutes 15:19 98:4 135:16</p> <p>misconduct 10:11,25 12:5,22 13:4 29:15 37:22 56:20,23,24,25 59:11 60:16 62:4 68:15,18 95:4,4,15,20 100:23 105:24 111:3 117:8 118:6 119:3 121:1,11 124:2 127:15 131:10 132:7 133:16 134:8 (34)</p> <p>misleading 62:22 63:1</p> <p>miss 8:6</p> <p>missed 113:8</p>	<p>mission 60:25 61:7,9 84:24 (4)</p> <p>mistagged 37:18</p> <p>mistake 33:14 47:11 142:23</p> <p>mistakes 43:13 58:15</p> <p>mitigate 118:1</p> <p>mitigated 52:24 59:11 118:12</p> <p>mitigating 21:2,3 22:12,24 23:12,19 24:19 25:18 28:12,14 31:24 34:12 35:1,12,14,15,23 44:1 46:22 58:14,21 60:5,7,12,19,22 61:8,11,20 62:23 65:10 67:24 78:15 81:15 84:18 117:16 118:13 (37)</p> <p>mitigative 44:8 47:23</p> <p>mobilizations 130:11</p> <p>modify 111:22</p> <p>moment 12:14 56:6 90:16 91:3 132:14 141:6 (6)</p> <p>monitor 63:9 104:12 146:21</p> <p>months 11:1 63:16 83:2 87:16 88:3,3 97:20,21 111:4 124:6,6 141:12 (12)</p> <p>more 12:20 13:13</p>
---	--	--	---	--

<p>15:4 16:23 17:8 19:1 23:4,6 27:9 29:18 31:2,3 41:21 43:8 56:8 72:2 74:7,8 78:9,11 79:9,9 80:10 81:3,5 91:18 93:16 95:12,18 100:9,13,20 114:5 121:13 122:2 128:11 129:14 130:6 133:23 138:21 145:4,14 146:4 (43)</p> <p>moreover 118:20</p> <p>morgan 122:13 128:24</p> <p>morganrandell 4:17 129:3,6,8 (4)</p> <p>morning 99:25</p> <p>mos 21:25 24:14 27:24 29:8 30:23 31:15,23 35:11 (8)</p> <p>most 16:20,24 19:3 24:25 31:22 41:2 42:4 62:16 112:3 (9)</p> <p>mother 133:1</p> <p>motion 43:4,6 91:20 93:6 96:17 138:23 149:22 150:17 (8)</p> <p>motivation 101:5</p> <p>mou 9:14 10:4,15 11:7 15:22 16:2 59:22,25 60:2 63:21,22,25 64:5,8,16 65:13,16 66:11 84:13 86:13,20 89:14 92:17,24 97:5,8,10 104:3 106:1</p>	<p>107:8,12,21,24 119:17 122:1 133:22 147:3 (37)</p> <p>mous 15:3</p> <p>mouthpieces 140:12</p> <p>move 96:12,14,16 99:8 143:22 144:6 145:17,18 151:3 (9)</p> <p>moved 150:19</p> <p>movement 141:5</p> <p>moves 101:16</p> <p>moving 144:1 145:19</p> <p>mpa 4:17</p> <p>ms 5:1,24,25 6:3,4,7,8,22,23 7:1 16:16 44:19,25 46:6,7,8 47:1,2,3,8,10,12 48:15,23,24 49:9,14,16 51:24 52:3,17 53:25 55:4,21 56:5 57:11 67:20 68:23 70:16 72:11 74:1,2,3 75:21,25 76:7,12 77:19,20 79:5 82:3 83:25 84:10 85:7,7,9 86:4 87:1,9,19 88:8,11 89:23 90:3,4 91:21,22 97:25 98:17 99:18 104:17 105:2,4,6,9 107:22 108:19,22 113:21 115:25 116:4 119:20 122:10 125:9,11 128:23 129:3,6,20,23,25 134:16 135:6 137:10 139:3,6</p>	<p>146:10 147:9,10,11,17 149:18 150:19 (102)</p> <p>much 29:1 42:11,20 43:22 72:16,20 78:9 81:5 90:17 98:17 99:10 100:19 113:3 115:25 120:6 125:6 126:11 (17)</p> <p>multiple 21:17 22:10 31:18 100:22 127:15 (5)</p> <p>multitasking 120:6</p> <p>must 94:20 123:5</p> <p>mute 65:2 146:9</p> <p>my 5:16,18,25 6:4,13,23 7:5,20 11:5 13:2 16:17,20 42:16 43:18 46:3 47:19,20 51:17 53:11 56:1 59:3 64:4 65:1 66:19,23 67:3,15 78:18 88:15 91:4,24 97:11 100:9,12 101:23 103:22 109:3 113:9 114:7 116:5 122:15,19 125:12 129:7 130:1,5 135:19 143:4 146:19 149:2 152:16 (51)</p> <p>myriad 9:25</p> <p>myself 80:9 144:14 147:12</p> <p>na 48:19</p> <p>nail 85:25</p>	<p>naive 124:11</p> <p>name 5:25 6:4,13,23 7:5,20 49:24 53:5 91:6,11 109:4 116:5 122:15 125:13 129:7 130:1 135:19 145:11 (18)</p> <p>names 5:6</p> <p>nathan 3:18 7:21 144:24</p> <p>nation's 130:22</p> <p>nationally 130:13</p> <p>nearly 132:24</p> <p>necessarily 28:18 147:20</p> <p>necessary 37:3 43:9 103:2 109:23 128:1 (5)</p> <p>neck 51:8</p> <p>need 8:25 40:21 41:9 58:12 68:5 72:14 78:14 79:8,15 84:1 85:3 92:21 93:18 97:7 113:7 115:7 120:16 128:7 134:1 137:5 138:4,10 143:19,19 145:4,17 146:23 150:15 (28)</p> <p>needs 40:5 65:25 66:5 92:8 112:7 128:10 149:8 (7)</p> <p>negligence 33:19</p> <p>negligent 28:21,24,24 36:13 (4)</p>	<p>negotiated 112:19</p> <p>negotiations 123:9</p> <p>never 36:20 39:6,8,14 40:19 126:19 (6)</p> <p>new 2:8 4:2,4,7 9:17 10:10 11:16,18 12:3,6 13:1,3,15 14:4 15:8 17:1,13 18:7 19:3 27:20 36:8 46:14 91:9,10 94:19,25 96:11 100:2 101:15,18,24 102:11 103:4,12,20 104:6 108:12 109:5 110:18 112:25 116:10 127:1 128:6,10 130:14,25 132:22,25 133:18,23 134:1,22 146:17 147:6,21 148:14 152:3,5,8 (59)</p> <p>next 60:16 87:1 88:7 94:9 104:16,18,25 105:2 107:9,19,23 108:20,22 113:19,22 115:23 116:1 119:18,20 121:23 122:8,11 125:7,9 128:22,23 129:18,21 134:14 135:5,7 137:9,11 (33)</p> <p>night 12:24 13:8</p> <p>nine 20:3</p> <p>nineteen 30:8</p> <p>ninety 56:8</p>
---	--	--	---	--

<p>57:2,7</p> <p>no 5:19,21 7:10 8:7 18:9 20:25 21:12,21 22:2,10 24:19 26:25 27:7 28:12 31:24,24 34:9 35:13 37:18 38:23 44:2,4 46:4 48:18,24 54:3 60:25 63:2 70:12 100:16 104:23 106:24 121:13 124:3 137:3 138:25 143:4,9 144:18 146:8 149:12,17,18,20 151:2,3 152:13 (47)</p> <p>noble 4:8 108:24 113:23 114:2 115:19 (5)</p> <p>noise 65:3 127:13</p> <p>nonadherence 90:10</p> <p>nonbinding 40:2 42:13,14 52:16 95:25 103:18 145:23 (7)</p> <p>noncharges 75:7,12</p> <p>nondeadly 34:2</p> <p>none 24:14 31:23 53:17,18 136:17 139:2 (6)</p> <p>nonetheless 139:9</p> <p>nor 111:14 147:20</p> <p>note 62:12,20 125:19 135:4 (4)</p> <p>noted 129:17</p>	<p>149:9 151:10</p> <p>notes 67:9</p> <p>nothing 14:14 37:5 83:22 123:14 124:25 142:17 (6)</p> <p>notice 92:19</p> <p>noting 130:7</p> <p>now 9:25 11:2,5 16:14 17:5 18:2 20:6,20 28:20 31:20 32:4,25 33:24 34:1,23 35:9 36:5 37:25 38:9 41:6 43:21 46:16 49:13 59:6,17 64:15 66:13 68:17,20 73:9 78:11,20 79:13 84:17 87:3,21 89:15 93:3 95:21 96:23 109:19 114:2 120:11 124:4,6,7,11,13,19 126:2 143:15 144:24 150:11 (53)</p> <p>number 23:1 26:13 29:12 31:11 33:11,15 39:17 45:7 55:24 123:11 (10)</p> <p>nunez 127:11,14,20</p> <p>nuremberg 137:19</p> <p>nword 31:21 32:6 122:22 123:3 125:5 (5)</p> <p>nyclu 111:25</p> <p>nypd 9:20 17:16 41:13 42:11 70:5</p>	<p>72:20 91:2 92:4 95:1 99:9 100:4 102:6 103:20 105:18 109:21 110:1,4,9,23 111:1,20 112:10 118:15 120:24 123:16 124:9,13,14,21 126:10,24 127:3 128:1,17 130:8,15,18 132:3,13,16,25 133:12,14 140:10 141:16 145:1 146:16,18,22 147:5,23 148:16 (52)</p> <p>nypd's 5:12 95:23 100:25 109:8 116:12,19 123:19 126:21 130:25 131:2,3 133:8,10,22 134:18 (15)</p> <p>nypdgenerated 112:7</p> <p>o 1:15</p> <p>objective 109:11 139:19,22</p> <p>objectively 33:14</p> <p>obligations 64:17,19</p> <p>obscure 132:18</p> <p>obscures 132:11</p> <p>observed 115:2</p> <p>obstruction 128:5</p> <p>obtain 135:25</p> <p>obvious 111:5 140:2</p>	<p>obviously 79:8 80:2 108:1</p> <p>occur 66:22</p> <p>occurred 10:12 54:25 67:1 107:2 130:12 (5)</p> <p>occurrence 122:5</p> <p>ocspray 34:4</p> <p>off 7:20 36:23 55:17 114:6 (4)</p> <p>offenses 101:13 119:1</p> <p>offensive 19:25 31:20,22 32:3,8,17 (6)</p> <p>offered 129:15</p> <p>office 2:6 14:17</p> <p>officer 17:22,25 18:5,21 21:12,25 22:2 24:5,9 27:10,21 32:1 35:5 39:7 40:19 41:20 46:16 54:15 55:15 60:14 62:3 68:18,25 69:8,22 70:3,10 72:5 95:19 100:10,13 114:18 117:25 122:21,23 124:1 136:15 138:3 (38)</p> <p>officer's 40:16,25 41:8 54:23 78:13 (5)</p> <p>officers 23:24 24:3,11,18 25:10 26:24 35:17 37:6 41:17 46:21 54:5 61:25 62:23 69:3,19 95:14 101:8 102:8 103:9 108:1 112:12</p>	<p>117:19 118:3,15,19 119:1 120:23 121:9 123:2 125:4 127:19 129:16 130:18 131:5 132:2,3,6 133:15 134:4,7 136:18 (41)</p> <p>officers' 121:17</p> <p>official 11:20 132:21</p> <p>officials 102:19 109:16</p> <p>offset 25:17</p> <p>often 19:3 102:16 137:18</p> <p>oh 23:3,6 47:12 67:5 73:18 120:5 144:13 (7)</p> <p>old 2:7</p> <p>once 41:23 57:7 70:23 71:5 (4)</p> <p>one 15:5 17:20,22,23 18:1,21,21 19:12 20:18 21:20 28:2,5,13 29:17 30:15 33:10 34:15 35:10 36:18 39:23,24 41:20 51:5,9 52:21 59:6 60:14 64:25 66:13 69:4 72:9 74:6 79:19 81:20 87:12 89:24 91:18,22 92:7 95:25 97:17 106:17,20 107:15 111:10 114:9,14,17 115:16 117:4 124:1 127:7,17,24 137:17 139:11 141:16 144:7</p>
---	---	---	--	--

<p>145:3 (59)</p> <p>onehundred 84:1 148:4</p> <p>ones 34:22 146:14</p> <p>oneway 87:24</p> <p>oneyear 94:14 96:5</p> <p>online 144:10</p> <p>only 11:14 20:13 21:20 22:9 26:16 28:5 29:15 30:15 32:7,20 35:11 38:5 41:16 52:10 66:21 68:18 82:15 86:10,22 103:12 114:17 119:3 141:11 142:25 145:22 (25)</p> <p>opaque 126:5</p> <p>opaqueness 132:16</p> <p>open 11:8 15:17 43:6 88:12 93:6 94:8 96:24 (7)</p> <p>opened 88:15 89:8 114:16</p> <p>operating 109:24</p> <p>operation 69:5</p> <p>opinion 61:25 146:19</p> <p>opportunities 148:1</p> <p>opportunity 9:16 10:18 11:1 15:13 63:12 92:1 93:10 125:12 (8)</p>	<p>opposed 21:5 84:21 141:16,23 149:16 151:1 (6)</p> <p>opposition 141:13</p> <p>option 92:16,24</p> <p>options 81:12</p> <p>order 2:4 41:10 70:6,12 73:12,14 83:21 101:7 115:8 120:20 128:2 (11)</p> <p>ordered 138:2,7</p> <p>orders 137:18,20</p> <p>organizations 132:24 135:1</p> <p>orientation 58:18</p> <p>other 9:5 15:20 23:20 24:3,11,17 25:10 38:15 43:8 46:4 48:13 49:2,11,23 53:11 56:3 66:12 67:6 101:2 105:25 106:4 108:2 112:10 116:16 121:10 143:7 145:12 (27)</p> <p>others 76:11 92:10 93:20 132:10 (4)</p> <p>our 9:6,7 10:7 11:21,22,23,24 12:2 13:17,20 14:5,19,25 15:22 16:8 17:5,7,21 20:17 25:8 30:10 33:3 37:4 42:23 45:12,19 58:25 62:14 64:18 67:24 69:10 70:7 74:15,17,19,21,25 75:6 77:9 83:19</p>	<p>84:2 87:11 90:8,10 91:1 92:3,16,17 94:3 101:16 109:7 114:10,16 127:8 129:2 135:9 136:18 138:20 140:7,23 141:1,2,17,21,22 142:17,19,19 146:19 150:14 (70)</p> <p>ourselves 142:5 146:16 147:24</p> <p>out 23:20 24:8,11,19 25:17 28:20 31:25 39:2 41:12 51:7 52:20 66:2 70:1 73:10 92:15 100:5 104:3 107:10,11,15 115:12,16 116:1 120:16 127:23 134:17 136:24 145:12 147:3 151:7 (30)</p> <p>outcome 33:23,25 34:5,11 53:2 75:18 152:14 (7)</p> <p>outlined 62:13 133:4</p> <p>outreach 15:22 16:8</p> <p>outreach@ccrbn ycgov 98:10</p> <p>outside 15:21 55:25 70:15 98:9 (4)</p> <p>outstanding 114:11</p> <p>outweigh 23:12 35:1</p>	<p>outweighs 22:24</p> <p>over 15:23 16:14 18:6 42:18 55:17 67:14,21 68:1 74:13 121:23 122:20 123:13 126:18 127:13 130:16 134:20 141:20,20 147:15 (19)</p> <p>overall 17:13</p> <p>overdue 100:3</p> <p>overhauled 124:24</p> <p>overly 132:13</p> <p>override 102:1,4</p> <p>oversight 11:16 13:1 14:4 111:23 (4)</p> <p>overt 57:21</p> <p>overtime 100:14</p> <p>overturned 85:20</p> <p>own 12:3 13:18,20 38:3 95:8 102:8 111:16 141:17 142:4 (9)</p> <p>packet 94:23</p> <p>page 59:8 60:9 62:21 68:6 140:2 (5)</p> <p>pain 83:5</p> <p>painful 100:21</p> <p>panacea 148:18</p> <p>pandora's 88:13</p> <p>panel 8:17,25</p>	<p>panels 17:7 61:24 68:23 70:7 78:1 79:3,6,24 80:9 82:1 (10)</p> <p>pantaleo 100:10,21 101:2</p> <p>pantaleo's 101:10</p> <p>paragraph 64:22 68:9</p> <p>part 35:25 45:18 52:18 59:15 71:20 75:22 82:4 87:11 92:23 107:23,24 108:10,15 150:14 (14)</p> <p>partial 88:22</p> <p>participants 66:7</p> <p>participate 40:14 41:10</p> <p>participation 61:16</p> <p>particular 58:11 59:22</p> <p>particularity 65:5</p> <p>particularly 15:3 117:6 150:1,2 (4)</p> <p>parties 113:2 152:12</p> <p>parts 144:8</p> <p>pass 141:7</p> <p>passed 100:2 110:14,18</p> <p>passes 149:22</p> <p>past 11:15 14:1</p>
--	---	--	--	---

<p>17:19 18:25 27:11 56:20 77:7 116:8 123:13 (9)</p> <p>path 15:6</p> <p>patrol 29:6 121:16,18 126:11 (4)</p> <p>pattern 55:15 56:12 57:4</p> <p>patterns 57:10</p> <p>pawn 140:10</p> <p>pay 100:14 141:4</p> <p>pc 42:11,13 59:16,18 66:1 74:18 (6)</p> <p>pc's 65:14</p> <p>pedigree 40:25</p> <p>penalties 10:1 17:19 18:8,15 30:19 31:11,12,15,16,18 32:14,23 37:20 38:15 75:10,19,24,25 83:13 95:3 100:6 101:12 106:19 117:2 118:9,21,25 122:3 131:9,18 149:4,6 (32)</p> <p>penalty 17:13,23 18:1,4,13,17,21,22 20:19,21,23 21:1,3 22:17,19 23:14,22 24:21 25:12,21,24 26:2 27:18 29:5,10,13,20,25 30:1,7 32:2,10 34:17,24 35:2 39:8,21 40:6 43:24 44:7,8,9 45:23 47:22,24 48:18 52:5,13</p>	<p>54:18,22 55:2,9,20 56:7 57:23 58:1 62:5,11 68:11 76:2,6,7 81:18,19 83:7 84:25 95:19 118:2,10,17 120:17 136:3 (72)</p> <p>pension 48:10,13 49:22 71:21 72:19,20 138:11,15,17 (9)</p> <p>people 26:13 33:11 43:17 50:21 55:24 73:18 86:11 94:19 96:10 116:24 120:24 123:2 125:4 134:12 135:21 136:8,12,19,21 137:2 141:23,23 148:14 150:2 (24)</p> <p>per 89:14,14</p> <p>perceive 73:18,25</p> <p>percent 84:1 123:10 148:5</p> <p>percentage 38:24</p> <p>percentages 123:11</p> <p>perfect 112:23</p> <p>performance 140:22</p> <p>performative 140:11</p> <p>period 27:22 28:3 85:12 86:2 95:25 96:5 (6)</p> <p>periodically 150:12</p> <p>permanent 10:21</p>	<p>persistently 111:4</p> <p>person 24:7,8,11 26:11,23 27:3,5,6 28:1 29:3,4 40:5 44:6 73:11,19 89:2 122:22 131:20 137:23 138:12 (20)</p> <p>person's 49:4 88:22</p> <p>personal 100:8 115:1</p> <p>personnel 40:18</p> <p>pertained 91:15</p> <p>physical 20:18,22 21:11 22:4 23:7 25:6 34:7,8 47:5 48:16 57:22 (11)</p> <p>picked 53:15</p> <p>pilot 94:14</p> <p>piloted 74:15</p> <p>pinsky 3:12 44:19,20 150:19 (4)</p> <p>place 8:18 56:22 59:23 62:10 101:14 109:12 118:4 123:24 148:8 (9)</p> <p>placed 127:10</p> <p>plagues 130:21</p> <p>plaintiff's 116:9</p> <p>plan 13:8,25 81:25</p> <p>play 39:2 68:2 70:19 121:22 (4)</p>	<p>plaza 111:10</p> <p>plea 76:22,24 77:1 137:22 (4)</p> <p>plead 69:20</p> <p>pleas 75:19</p> <p>please 15:18,22 16:6 46:17 48:21 98:2 104:21 109:1 113:19 114:1 115:23 119:19 120:2 122:8 125:2,7 129:5,19,24 134:15 135:5,16 137:9 149:14,17 150:23 (26)</p> <p>plurality 62:15</p> <p>pm 1:5 151:10</p> <p>point 8:12 52:20 66:3 70:23 81:10 82:14 85:9 86:2 89:24 90:6 91:23 92:15 93:20 122:19 124:9 (15)</p> <p>pointed 73:10 107:11,15</p> <p>points 63:18 83:6</p> <p>police 4:19 6:14 8:2,21,22 9:8,16,23 10:25 11:16 12:7,19,21,25 13:4 14:3,7,14 21:12 33:4 38:20 39:10,11 42:6 44:17 51:21 64:20,20 77:2 87:3 94:25 95:14,17 101:22,24 102:9,9 103:3,12 107:3 111:3,5,10,12 112:3,18 113:11</p>	<p>114:18 117:8,10 120:23 123:2,7,12,15 124:1,24 125:4 128:9 130:3,13,22 131:6,9 132:4,12 134:23,25,25 136:8,15,18,20 137:1 138:5 139:15 140:4,5 142:2 144:3 150:4 (81)</p> <p>police's 142:4</p> <p>policies 129:16 131:2 142:4</p> <p>policing 11:16 12:2 13:14,18 15:8 130:15 140:6,8 (8)</p> <p>policy 4:7 61:15 109:5 129:13 141:15 (5)</p> <p>political 142:21</p> <p>politicians 142:12</p> <p>pop 37:16</p> <p>popular 19:2</p> <p>population 137:25</p> <p>portion 38:8 49:7 135:10</p> <p>portions 113:5</p> <p>position 82:24 107:20</p> <p>positive 60:10 125:23</p> <p>possible 9:14 140:25 141:7</p>
---	--	--	---	--

<p>possibly 101:4</p> <p>potential 13:4,10 29:19 83:5 117:18 (5)</p> <p>potentially 82:8,10,20</p> <p>power 102:3 132:14 142:7,17 (4)</p> <p>practical 77:21 82:5 93:17</p> <p>practice 50:12 69:10 132:2 142:1 (4)</p> <p>practiceprocedure e 121:5</p> <p>practices 116:14 120:22 121:9 124:17 (4)</p> <p>precedent 10:2 17:19 18:18</p> <p>precinct 38:18,18</p> <p>preclude 97:19</p> <p>precursor 109:23</p> <p>predate 127:7</p> <p>predatory 57:25</p> <p>preference 86:15</p> <p>premises 25:8</p> <p>prepare 63:25</p> <p>prepared 97:10</p> <p>presence 25:7 44:15 61:19</p> <p>present 3:1 11:15</p>	<p>presentation 2:6 15:10 16:4,18 42:17,21 49:18 60:6 67:12 114:4,9 (11)</p> <p>presented 64:6</p> <p>presenter 3:23</p> <p>presents 92:1</p> <p>press 16:6 102:20</p> <p>pressure 100:20</p> <p>presumption 53:21 54:13</p> <p>presumptive 10:1 20:19,21,23 22:17,19 23:21 24:21 25:12,21,24 29:5 32:2,10 38:15 43:24 44:6 47:22 54:21 57:23 58:1 62:5,11 68:11 81:18 95:3 117:2 118:9 131:9 (29)</p> <p>pretty 16:19 57:20 69:9 86:13,19 (5)</p> <p>prevent 55:18 123:21</p> <p>previous 10:2</p> <p>primarily 134:22</p> <p>primary 101:5 117:4</p> <p>principle 54:11</p> <p>principles 126:13</p> <p>prior 22:2 27:10 28:5 29:14 41:3 56:11,23,23 60:17 62:13 67:1 105:14</p>	<p>147:16 (13)</p> <p>prioritize 110:6</p> <p>prisons 136:13</p> <p>probable 24:2</p> <p>probably 53:10 80:8 82:9</p> <p>probation 48:17 136:3</p> <p>problem 7:12 86:8 87:2</p> <p>problematic 131:2 135:22 140:25 143:18 (4)</p> <p>problems 87:21 111:7</p> <p>procedural 77:21</p> <p>procedures 120:23</p> <p>proceed 42:22 43:10 99:2 135:14 (4)</p> <p>proceeding 113:12</p> <p>proceedings 73:15</p> <p>process 11:23 45:5,12 66:3,7 78:6 82:25 88:4,16 89:17,20 93:21 95:18 101:7 103:8 104:1,8,12 115:10 121:22 142:14 (21)</p> <p>processed 89:9</p> <p>produce 128:1</p> <p>professionalism</p>	<p>61:10</p> <p>professions 101:2</p> <p>program 94:15</p> <p>progress 12:23</p> <p>progressive 34:15 39:16 40:15 41:11 58:19 101:12 119:2,5 126:12 (9)</p> <p>project 4:15 125:14</p> <p>prolonged 22:8</p> <p>promise 87:8 125:21</p> <p>promised 12:15 13:22</p> <p>promises 110:23 126:3 128:12 141:19 (4)</p> <p>prongs 22:6 23:8</p> <p>propaganda 124:8</p> <p>proper 109:20</p> <p>properly 37:7,11 67:10</p> <p>proposal 134:18</p> <p>propose 94:13</p> <p>proposed 43:5 116:19 119:16</p> <p>propositions 53:18 112:1</p> <p>prosecuted 10:12</p> <p>prosecution 10:8 86:15 96:4</p>	<p>protect 132:19</p> <p>protecting 126:23</p> <p>protection 61:2</p> <p>protesters 111:6</p> <p>protests 13:19</p> <p>protocol 2:3</p> <p>proven 141:20</p> <p>provide 38:6 41:13 109:11 132:19 (4)</p> <p>provided 40:19 78:3 128:4</p> <p>provider 125:16</p> <p>provides 18:7 118:3</p> <p>providing 14:5 78:25 90:12 92:13 (4)</p> <p>public 1:3 2:1,9 4:1 6:9,21 8:15 9:19 11:24 15:17 16:6 43:7 48:7 61:1,2,9 66:8 82:23 89:25 91:21 93:7,10 95:18 96:21,24 98:24 99:16,21 100:20 103:8 105:21 108:9 109:15 112:4 114:16,21 116:17 128:15 130:19 133:8,17 135:9 138:9,20 143:24 144:9 147:25 149:24 150:2 (49)</p> <p>publicly 125:22</p> <p>publish 13:20</p>
--	--	--	--	--

<p>pull 24:11,18</p> <p>puma 3:9 6:16,17,18 43:2 47:25 48:4,5,14 66:14,15,25 67:5 68:3 93:4,11,12 96:13,14,16 (20)</p> <p>punishment 120:18</p> <p>punishments 9:18</p> <p>purpose 52:9 61:1 63:6</p> <p>purposes 20:16 23:10 106:15 119:6 (4)</p> <p>pursue 10:9</p> <p>pursuing 134:7</p> <p>push 128:17 145:4,14 146:4 (4)</p> <p>pushing 147:14</p> <p>put 28:13 34:19 36:9 38:20 40:12 74:16 79:11 80:25 90:17 111:11 140:7,23 142:1 143:2 145:11 (15)</p> <p>puts 74:9</p> <p>putting 141:21</p> <p>question 16:5 19:19 26:6 28:22 39:23 44:4,25 48:4 49:15 51:9 52:18 53:8,11 67:6 71:9 74:7,9,14 76:20 77:21 78:18 93:22 94:8 97:2 105:25 106:7 107:8 114:14,20</p>	<p>115:11,18 135:14 (32)</p> <p>questions 16:1 42:25 43:2,7,8 44:12,24 46:5 56:1,3 58:4 59:3 60:4 66:16 74:8 80:5 92:10,11 93:9,16 96:20,25 98:8,24 105:11 114:12 115:13 138:21,23 (29)</p> <p>quick 18:25 53:11 56:6 85:9 91:23 97:2 150:16 (7)</p> <p>quickly 16:18,23 22:22 28:16 (4)</p> <p>quiet 144:7</p> <p>quietly 144:6</p> <p>quite 124:16 134:13</p> <p>r 1:15,16 152:1</p> <p>race 26:10</p> <p>racially 116:13</p> <p>racist 125:3</p> <p>raise 16:7 25:20 64:14 82:4 88:16 99:13 (6)</p> <p>raised 33:11 63:18,24</p> <p>raiseyourhand 98:2</p> <p>range 30:18,24 31:14 35:7 100:6 (5)</p> <p>ranges 34:17,24 35:4 38:16 (4)</p>	<p>rank 28:9 68:7 138:6</p> <p>rare 52:10 122:5</p> <p>rate 74:16 75:1,17</p> <p>rates 85:11</p> <p>rather 14:12 35:7 44:22 112:6 (4)</p> <p>rationales 84:16</p> <p>reach 53:2 115:12,16</p> <p>reaching 116:1</p> <p>read 43:3 65:12 71:23 93:4 94:20,24 137:16 140:2 (8)</p> <p>readily 136:2 146:12</p> <p>ready 135:13 143:10 148:23 149:10 151:5 (5)</p> <p>real 56:6 66:6 128:13</p> <p>reality 90:7 100:1 139:22 141:14 142:8 (5)</p> <p>realize 99:5</p> <p>really 9:15 16:18 18:24 37:21 41:9 60:18 61:6 64:5 65:16 71:3 78:3 80:13 83:4 85:10,25 91:19 93:14 98:22 99:23 102:23 104:5 119:14 120:13 135:22 139:9 140:25 141:2,6,9,25</p>	<p>142:16 145:4,13 (33)</p> <p>reason 11:14 65:25 78:10 106:24 124:3 137:4 (6)</p> <p>reasonable 33:14</p> <p>reasoned 65:21</p> <p>reasoning 91:4</p> <p>reasons 65:6 84:2 87:5 91:6 106:18 138:14 (6)</p> <p>rebuild 126:25 127:18</p> <p>recall 62:25 63:5</p> <p>receive 49:22</p> <p>received 27:13,21 41:24 127:21 (4)</p> <p>receiving 100:14</p> <p>recent 41:2 109:25 111:4</p> <p>recently 72:17 114:10</p> <p>reckless 28:21 33:19</p> <p>reckon 88:6</p> <p>recognition 120:9</p> <p>recognitions 60:12</p> <p>recognize 93:4</p> <p>recognized 149:8</p> <p>recognizing 8:10</p>	<p>recommend 10:3 54:16 95:9</p> <p>recommendation 14:12 23:16 25:22 26:4 30:7,10 33:21 38:22 40:1,9 45:2,3,6 56:9 57:2,8 59:15 66:1 76:14 78:4,7,22 85:16 87:17 102:2 106:25 122:7 (27)</p> <p>recommendation s 8:24 10:7 17:14 32:5 38:13 42:8 45:16,20,24 62:14,15 64:18 80:16,19 83:19 86:7 90:10 96:2 111:17 (19)</p> <p>recommended 14:2 19:7 54:18 55:2 77:14 100:6 (6)</p> <p>recommending 17:15,17 32:20 41:19 55:19 79:2 (6)</p> <p>recommends 9:23 15:1 52:12</p> <p>recommitting 110:6</p> <p>record 36:12,13,15 43:3 58:7 63:7 67:22 88:23 89:1,5,23 90:20 93:5 94:21 126:22 (15)</p> <p>recording 36:16,20</p> <p>records 88:17 111:3</p> <p>reexamine</p>
---	---	--	--	--

102:24	123:12	repeatedly 118:16	rescue 140:11	61:25 70:3 71:4 86:12 (4)
refer 75:15 76:1	related 67:6 68:15 86:14 93:22 105:25 152:11 (6)	repercussions 37:18	research 45:13	rest 36:24 51:10 54:8
refine 113:5	relates 103:3	replaced 33:18	reserve 15:18	restrained 50:14
reflect 138:12	relatively 78:6	report 2:5 12:1 13:18 82:23 102:16 (5)	reset 9:16 108:11	restraint 49:2 50:7 51:13 52:1 (4)
reform 4:19 103:3 116:23 130:4 (4)	release 67:2	reporter 152:7	resident 6:6,20	restricting 50:21
reforming 110:5 146:17	released 12:1	reports 78:2	resign 46:24	result 21:8,11 39:3 46:11,15 53:15,18 54:3 80:20 130:11 133:21 (11)
reforms 11:18 127:3	releasing 13:17	represent 148:13	resignation 21:5	resulted 123:25
refreshers 79:15	relevant 42:2 59:12 117:22	representing 135:2	resisting 22:15 23:5,6	results 49:5 94:16
refusal 135:25	rely 127:25	represents 148:19	reso 91:19	retains 101:25
refuse 140:20	relying 141:18	reprimand 27:17 28:3	resolution 43:3,5 93:5 94:13,21 96:18 133:9 (7)	retaliatory 131:16
refused 136:9	remain 14:19 46:16,21 140:19 (4)	reputations 140:12	resolves 95:22	retention 126:18
regard 43:4 44:3 101:10 130:19 (4)	remaining 25:7	request 37:14 41:15,22	resources 81:8	retire 46:24 72:21 132:2,8 138:16 (5)
regarding 38:11 94:13 109:8 116:18 129:12 (5)	remains 116:22	requesting 148:6	respect 14:16 61:10 62:21 88:13 89:10 148:9,15 (7)	retired 73:23,24
regardless 10:11 36:22 43:25 46:11 (4)	remarks 66:24	require 40:11 65:13 111:9 112:25 148:3 (5)	respected 101:19	review 1:2 3:25 5:11 10:17 85:12 95:6 102:5 (7)
regards 74:15 76:21	remember 42:4 63:4 76:1 128:17 (4)	required 65:5,9 100:4 102:16 (4)	respecting 103:4	reviewed 58:10 83:3 97:18
regular 35:25 82:24	reminder 98:3	requirement 38:19 44:5 59:19 64:14 65:8,17,21 90:22 (8)	respond 112:4	revise 103:17
regularly 134:24	removed 33:17 58:17 60:7	requires 84:11,13	response 5:19,21 7:10 8:7 88:14 104:23 125:23 126:21 130:12 138:25 143:9 144:18 146:8 149:12,20 151:2 (16)	revised 63:25
rehired 73:22	rendered 101:20	requiring 41:16 110:14	responsibilities 35:15 36:1 58:22	revisit 11:2 63:15 142:6 148:1 (4)
reiterate 90:6,21	repair 126:4		responsibility 133:7	ribbon 8:17
reject 111:21 133:8	repeal 12:16 13:23		responsible	
rejected 119:16	repeat 101:12			
	repeated 119:1			

<p>ridgway 5:5</p> <p>right 8:8 11:13 18:2 38:5,11 44:19 47:12 64:9 68:20 75:2,24 76:8,9 77:18 79:13 87:21,25 93:12 97:14 101:16 104:10 120:12 124:4 138:8 139:1 144:16,19,24 147:2 148:22 149:10,13,21 (33)</p> <p>rights 4:11 12:11 55:16 61:7 101:18 103:4 116:8 134:2 (8)</p> <p>rise 26:3</p> <p>rivadenevra 3:10 7:3,4,6 71:13 74:3,6,21 75:14,20 76:11,21 77:6,8 144:20 (15)</p> <p>rivadenevra's 71:12</p> <p>rivera 1:24 152:7</p> <p>road 88:4</p> <p>room 10:13 118:3</p> <p>rose 4:3 98:13 99:17,18 110:13 114:6 123:20 (7)</p> <p>rubber 140:7</p> <p>rules 45:18,19 109:16 111:19 (4)</p> <p>run 18:8,16,18 30:5 32:14,23 39:18 52:7 74:24 (9)</p>	<p>running 127:23</p> <p>rush 111:15</p> <p>saddened 139:7</p> <p>safety 26:19 61:2,9 99:16 (4)</p> <p>said 16:24 23:11 35:4 47:4 54:14 59:24 64:7 66:23 71:15 83:1 84:15 94:8,12 97:18 102:25 104:4 105:12 108:6 112:22,24 113:15 114:5 132:10 (23)</p> <p>sal 3:16 8:1</p> <p>samah 4:10 113:23 116:2,5 (4)</p> <p>same 18:20 21:8 27:12 32:6,12 36:14 45:5 50:2,23 53:2 54:1 75:11 79:12,25 80:7 88:24 91:10 111:1,1 123:25 124:17 133:4 143:6 (23)</p> <p>satisfies 32:7,9,13</p> <p>saw 44:19 49:12 50:23 71:11 85:6 (5)</p> <p>say 9:11 14:13,23 20:16 21:24 22:2,7 23:3,5 24:13 26:10 28:7,15 31:23 40:8 63:14 72:12 75:5 81:16,17 86:4 88:1 91:13,16 103:24 112:17 114:5 121:16 125:2 127:24 136:19</p>	<p>139:10 143:19 144:15 147:2 149:3,14,17 150:24 (39)</p> <p>saying 76:17 124:23 142:6</p> <p>says 26:22 36:14 48:16,19 56:7 65:24 68:10 69:18 70:1,15 137:17 (11)</p> <p>scene 36:23 62:3 68:25 69:14,25 (5)</p> <p>schedule 25:25 27:13,16</p> <p>screamed 31:25</p> <p>screen 5:18 16:17 43:18 47:15,18 48:25 (6)</p> <p>scrutiny 8:16</p> <p>scuffle 24:10</p> <p>se 89:14,14</p> <p>search 25:2,4 26:15 27:6 28:19,22,24 29:4,7,25 30:4,13,20 31:13 38:12 62:7,17 70:2,4 (19)</p> <p>searches 24:24 118:14 131:14,16 (4)</p> <p>seat 110:2 142:13</p> <p>second 56:17 64:25 75:22 92:16 96:19,21,22 107:7 150:20,21 (10)</p> <p>secondly 138:10</p>	<p>seconds 21:20 22:9 120:12 134:14 (4)</p> <p>secret 111:3</p> <p>section 12:12 64:22 119:2</p> <p>see 7:17 19:3,5,20 20:9 21:14 23:23 25:15 27:4 28:11 29:9 31:9 33:1 34:18 35:5 39:3 43:23 46:2 47:21 49:9,13,25 50:18 56:10 59:17 66:2 75:16 77:19 88:4 90:23 93:9 99:14 101:11 106:10 121:23 138:21 144:12 147:7 148:24 (39)</p> <p>seeing 33:5 85:19 150:13</p> <p>seem 106:23</p> <p>seemed 58:15</p> <p>seems 60:13 63:3 122:20</p> <p>seen 90:9 130:17</p> <p>sees 24:7</p> <p>semblance 101:6</p> <p>send 5:5 15:22 18:19</p> <p>sending 87:4</p> <p>senior 4:7 109:4</p> <p>sense 63:3 78:11 144:9</p> <p>sent 18:5 112:13</p>	<p>sentencing 10:10</p> <p>separate 18:12 30:4 48:11 72:22 (4)</p> <p>separates 73:11</p> <p>separation 21:4,7 44:1 47:24 48:6 49:20 50:1 71:18 (8)</p> <p>september 116:15 132:23</p> <p>sergeant 28:8 69: 1,2,4,7,14,15,18,2 1,23,25 70:4,7,11,15 (15)</p> <p>series 58:4</p> <p>serious 20:17,22 21:10 34:7 47:5 86:8,25 87:12 88:6 119:12 142:9 (11)</p> <p>seriously 8:24 112:1</p> <p>serve 94:18 109:14</p> <p>served 116:8</p> <p>serves 96:10</p> <p>service 17:11 22:1 61:21 70:14 71:20 72:6 (6)</p> <p>service's 62:24</p> <p>services 125:17</p> <p>session 2:11 150:16,18,23 151:4 (5)</p> <p>set 31:12 152:15</p>
---	--	--	---	---

<p>settles 134:5</p> <p>seven 30:1,11,12,22 (4)</p> <p>seventy 123:10 132:24</p> <p>several 117:17 126:2</p> <p>severely 131:19</p> <p>sexual 53:13,17 57:21,22,24 131:13 (6)</p> <p>sexually 132:20</p> <p>shae's 125:21</p> <p>shall 7:12</p> <p>shape 140:6</p> <p>share 16:17 43:18 47:15,20 98:22 125:21 (6)</p> <p>shared 133:2,6 139:13</p> <p>sharing 47:18 145:7</p> <p>shays 5:5</p> <p>she 60:16 114:9,10,12 115:15 123:21 (6)</p> <p>shea 8:22 14:16</p> <p>shield 117:18</p> <p>shift 110:20</p> <p>shoplift 26:14</p> <p>shoplifting 26:8,21</p> <p>short 137:17</p>	<p>shorthand 152:7</p> <p>should 9:21 10:20 14:3,9 16:2 29:2 33:22 35:11 37:24 38:3 60:18 61:4,19 63:8,9 78:24 79:1 80:16 83:7,13 84:24 88:18 89:2,4,13,13 91:19 99:15 102:6 111:11,15 115:7 127:25 128:3 137:6,25 138:8,8,14,16 139:22 145:7 (42)</p> <p>should've 101:14</p> <p>shouldn't 50:2 102:9</p> <p>show 36:18 43:19 81:7 146:20,21 147:1 (6)</p> <p>showcase 53:1</p> <p>showed 56:15</p> <p>shown 139:12</p> <p>shows 136:16</p> <p>side 6:20 121:11</p> <p>siegal 3:4 5:18,19,21 7:12,14,15 57:18,19 58:2,3 63:13 64:4,13,24 65:4 84:15 97:1,9 107:12,15 150:21 (22)</p> <p>siegal's 82:14</p> <p>sign 107:20 121:9</p> <p>signal 110:20</p> <p>signature 152:18</p>	<p>signed 63:24 64:3 106:2 107:9 121:3 133:2 (6)</p> <p>significance 109:18</p> <p>signing 120:24</p> <p>silence 86:18</p> <p>simmons 3:21 6:7,8,9 11:24 46:6,7,8 47:3,8,12 48:15,23 74:2 85:7 87:1,9,19 146:10 147:10,17 (21)</p> <p>simple 73:17 78:6 110:9</p> <p>simply 109:21 111:7,19 112:6 124:16 128:16 135:14 (7)</p> <p>since 33:8 44:16 58:10 64:15 66:19 88:15 90:8 144:3 (8)</p> <p>single 20:20 52:21</p> <p>sir 115:23</p> <p>sisay 4:10 113:23 116:2,4,5 (5)</p> <p>sisitzky 4:6 98:14 104:19 108:23 109:3,4 (6)</p> <p>sitting 49:3</p> <p>situation 24:5 84:9</p> <p>six 11:1 63:16 83:1 87:16 88:3 97:20 100:9 124:6 (8)</p>	<p>sixmonth 85:12 86:1</p> <p>sixteen 132:24</p> <p>sixty 123:10</p> <p>skepticism 91:24</p> <p>skin 22:6</p> <p>skipped 122:20</p> <p>slap 134:6</p> <p>slides 43:12</p> <p>sneak 105:11</p> <p>so 5:23 9:8 14:19 16:20,22,25 17:10,17 18:2,10,21,23 19:5 20:6,8,10,15,18 21:7,9,18 22:16 23:8,12,16,18 24:4,21 25:5,10,15 26:7,20 27:8,15 28:7,8,17 29:5,8,12,23 30:1,6,19,25 31:4,16 32:2,16 33:13,24,25 34:6,9,21,24 35:23 36:7 37:5,10 39:7,15,22 41:4,22,25 42:16,22 43:16,18,22 44:12,23 45:11,13 46:17 47:8,20 48:20 49:24,25 51:1,17 52:5 53:3,5 54:5,19 55:12,16 56:10,12,19,21 57:4,9 59:1 60:19 61:10 62:18 63:7 65:2,4,15 66:6 67:11 68:1,17 69:6,16 70:7,9,21 71:1 72:13,23,24 73:17,24</p>	<p>75:13,21,25 76:10,13,17 77:5,10 78:18 79:21 80:7,11,22 81:2,4,13,20 82:22 83:24 84:7 85:4,17 86:15,21 87:19,22 88:24 89:9,25 90:2,14,17,21 91:2,11,18 92:19 93:10 94:7,12,23 96:12,17 97:11,13 99:15 104:12,24 105:18 106:6,12,23 107:5,18 108:13 109:18 110:16 111:25 112:14 113:18 114:6 115:4,10,15,25 119:8,9 120:5,7,8,12,20,25 121:3,8,10 123:4 126:16,24 127:23 128:6,14 129:17 130:5,10 134:13 135:11,16,18 138:19,23 139:17,19 140:22 142:9 143:4,22 145:8 146:1 148:17 149:7,9 150:15,16,19 (225)</p> <p>society 4:16 125:15</p> <p>sole 101:21</p> <p>some 16:22 18:24 19:1 20:7 22:3,12 28:25 29:23 31:10 33:3,5 35:24 36:10 46:9 51:1 67:11 68:5 71:14 73:17,25 78:10 83:3 84:11,13 86:1,19 87:12 88:5 90:1 91:24 92:1 101:6 103:6 107:9,19 109:18</p>
---	--	--	---	---

<p>114:7,24 131:8 135:17 (40)</p> <p>somebody 50:22 51:7 56:10 115:6 (4)</p> <p>somehow 113:7</p> <p>someone 26:18 48:10 50:8 136:19 137:4 138:17 (6)</p> <p>someone's 51:14</p> <p>something 31:25 39:2,12 40:21 51:25 54:25 67:22,23 70:20 72:14,15 74:11 77:16 78:23 79:3,5 80:6,6 84:4 88:8 101:13 115:2 125:19 126:1 127:4 128:11 137:6 143:21 145:24 (29)</p> <p>sometimes 24:3 31:17</p> <p>somewhere 30:8</p> <p>sone 109:12</p> <p>soon 13:19 36:23 135:11</p> <p>soren 47:14,17 151:4</p> <p>sorry 7:19 29:3 47:3,3 49:6 57:18 74:4 96:13 97:15 144:13 (10)</p> <p>sort 17:11 36:14 39:14 48:6 77:20 81:4,20 82:16 125:1 (9)</p> <p>speak 121:3 143:19</p>	<p>speaker 104:16,25 109:2 113:19,25 115:23 119:19,24 122:8 125:7 128:22 129:2,19 135:5 137:9 (15)</p> <p>speakers 138:20 147:13</p> <p>special 5:12 16:11</p> <p>specific 23:1 33:18 35:2,7 64:12 76:2 84:14,15,18 (9)</p> <p>specifically 37:25 51:5 115:14</p> <p>specificity 59:19 85:3</p> <p>spectrum 131:6</p> <p>sped 11:22</p> <p>speech 13:9</p> <p>spell 100:5</p> <p>spend 16:20,24 150:11</p> <p>spirit 104:1</p> <p>spoke 139:13</p> <p>ss 152:4</p> <p>staff 9:3,4,4,5,11 80:2 115:11 149:3,23 (9)</p> <p>stage 40:22</p> <p>stahlybutts 3:19 6:22,23,24 7:1 47:1,2 49:14,16 51:24 52:3,17 53:25 55:4,21</p>	<p>57:11 88:8,11 89:23 90:3,4 139:3,6 149:18 (24)</p> <p>stakeholders 103:25 149:25</p> <p>stamp 140:8</p> <p>stand 134:1</p> <p>standard 74:24,25</p> <p>standardization 66:4</p> <p>standards 33:13 58:16 101:8 103:9 109:11 (5)</p> <p>standing 49:4 50:9,22</p> <p>stands 21:25 142:18</p> <p>stark 141:13</p> <p>start 5:18 8:9 66:18 120:7 127:18,19 150:5 (7)</p> <p>started 5:15 44:16</p> <p>starting 148:7</p> <p>state 12:10 13:9 71:25 117:24 152:3,8 (6)</p> <p>stated 11:12 87:10 119:12 139:19,20 (5)</p> <p>statement 59:6 63:2 119:9 152:10 (4)</p> <p>statements 11:21</p>	<p>62:22</p> <p>staten 7:22</p> <p>states 59:9 60:9 119:3</p> <p>statistics 76:4</p> <p>stats 18:24</p> <p>status 93:24</p> <p>step 11:13 59:1 150:7,7 (4)</p> <p>steps 13:11 103:2</p> <p>stick 9:20</p> <p>still 18:22 23:18 31:7 32:20 34:5,10 35:4,23 37:2,21 38:2,14,16,23 40:6 42:7 48:12 57:5,6 60:12,20 62:10 70:13,14 71:18 79:5 83:24 85:15 89:24 93:16 107:4 116:22 123:3 124:21 126:9 136:23 137:1 144:10 146:1 151:8 (40)</p> <p>stock 111:11</p> <p>stop 19:19 26:6 27:3 28:21 29:2 39:23 44:3,6 54:2,7 55:10 62:6,17 69:17,18,20,24 112:14 116:14 118:9,14 119:9 140:5 (23)</p> <p>stopping 69:23</p> <p>stops 24:24</p> <p>store 27:3</p>	<p>streets 12:6 110:19 140:16</p> <p>strip 131:15</p> <p>strong 87:17</p> <p>stronger 9:6 13:11 87:14 112:5,8 149:5 (6)</p> <p>strongly 12:13</p> <p>structure 87:1 94:3</p> <p>stuck 23:21</p> <p>stuff 16:22</p> <p>subbed 19:13 70:20,25</p> <p>subcategories 24:25</p> <p>subject 10:16 68:14 92:18 111:20 128:8 137:17 (6)</p> <p>subjective 34:13 118:1</p> <p>submit 133:24</p> <p>submitted 33:3 41:25 59:15,17 66:1 116:16 119:8 130:4 (8)</p> <p>submitting 131:17</p> <p>subordinate 68:12</p> <p>subpoena 11:22</p> <p>subs 70:17,17 74:17</p> <p>substantial 14:2</p>
---	--	--	---	---

25:6 64:16 substantiate 21:10 32:19 78:5 114:23 (4) substantiated 19:6,9,20 20:1,12,14,15 21:15 27:25 78:24 81:16,17,18 88:20 89:3,3 100:22 115:9 (18) substantiation 28:5 41:19 substantiations 27:11 substantive 83:11 93:14,17 107:16 (4) successfully 116:12 suffered 150:3 suggestions 35:10 91:1 99:7 suggestive 90:6 summary 40:24 41:14,16 93:3 (4) summer 127:12 140:17 147:16 summer's 13:18 sung 3:12 superior 62:2 68:14 70:10 137:18 138:2,7 (6) supervision 68:13 supervisor 61:19 68:14,19 70:11 (4)	supervisor's 61:16 supervisory 58:22 supported 12:13 supposed 35:20 36:19 41:6 sure 43:15 45:10 53:12 56:2 57:20 63:21 64:1 66:10 68:4 71:11 72:10 76:12 80:17,20 83:4 84:19 85:2 91:5 97:24 99:8 105:8 108:20 109:1 113:6,6 129:13 134:16 135:19 139:5,21 143:12 (31) sureup 145:5 surrounding 110:21 suspect 26:9,21 suspension 48:17 swallowing 141:15 symbolism 142:20 system 39:16 41:11 100:25 120:18 123:25 126:5 128:7 132:18 136:21 141:3 (10) systematic 62:9 130:20 systematically 55:17 systems 34:15	101:1 t 152:1,1 table 30:21 89:21 tables 81:8 tactics 35:18 tagged 37:11 take 8:23 18:18,24 20:6 29:24 31:17 41:7 70:6,15 72:8 98:20 103:25 115:12 134:14 136:21 (15) taken 14:23 33:24 35:13 93:18 136:24 152:10 (6) takes 13:10 63:11 taking 45:22 110:4 talk 27:2 80:22 talked 29:22 talking 30:2 48:22 55:7 144:14 (4) taps 13:9 target 35:8 tased 127:10 taser 21:16,17,18 23:8 (4) tasers 19:9 21:14 22:5,20 23:14 34:4 37:23 (7) task 108:17 taxpayer 100:15	team 84:2,3 115:17 technically 50:24 telephonic 6:25 tell 81:14,15 105:20 115:1,7 (5) ten 20:3 25:24 29:14 30:16 31:1,5,8 48:18 56:16,17 124:2,12 134:14 (13) tens 140:15 term 75:5 terminate 73:20 terminated 46:25 47:6 48:9 49:20,23 54:9 72:7 138:13 139:16 (9) terminating 36:16 92:24 127:19 termination 20:19,22,24 21:2,7 43:24 46:12 47:23 48:20 50:1,3,19 53:19,21 54:4,13,18,22 55:3,11,14,19 56:9 57:9,24 58:1 71:17,19 72:3,4 92:18 132:9 137:7 (33) terms 14:24 22:18 48:1 52:12 71:2 77:21 87:13 142:17 (8) testified 116:17 testify 35:19 125:12,18	testifying 130:2 testimony 35:22 145:6,7 teufel 4:13 119:22 122:12,14,15 (5) text 94:22,24 than 10:2 14:12 17:15,19 21:1 23:4,7 28:2 29:16,18 35:7 38:15 49:3,11 62:12 82:12,22 100:9,13 112:6 128:11 149:5 (22) thank 5:8,9 8:4,9 9:12 42:19 43:22 44:11 45:25 47:13,13 48:14 49:6 55:25 56:2 58:3 63:13 66:15 68:3,5 71:10,13 74:1 75:20 83:14 85:5,6 93:2,12,13 96:23 97:12,23,25 98:17,18 99:9,11,15,18,19 103:21,23 104:13,14,17 106:9 107:22 108:19 112:14,16 113:18,21 114:3,3,8 115:22,25 116:4 119:17,18,20 120:5 121:14,15 122:9,10 125:5,11 128:19,20,21,23 129:18,20,25 135:3,5,6,18 137:8,10,15 138:18,19 144:16,21 146:6 147:10,13 148:21,22 149:9,21 150:15 151:6,6,8 (98)
---	--	---	--	---

<p>thankfully 79:19</p> <p>thanks 16:10 42:20 108:22 115:19 125:18 (5)</p> <p>theater 142:21</p> <p>their 5:6,7 12:3,7,9 15:24 35:21,25 40:25 41:2 45:23 48:12 51:7 62:1 65:2 68:19 71:21 78:2 89:4 110:3 112:11 115:8 118:5 121:12 123:3 125:5 128:3 132:18 133:15 139:14 140:11 141:11 148:14 (33)</p> <p>them 10:22 15:19,22 19:11,22 24:18,24 25:1 30:15 34:10 36:3,6,9 42:3 43:14 45:15 50:9,10,17 51:9 53:5 62:15,16 70:1,2,5,15 73:12,14,20 86:12 92:6 103:17 106:10,11 108:17 114:13,19 119:7 124:15,16 132:8 136:24,25 138:7 140:8 141:10,24 (48)</p> <p>themes 33:10</p> <p>themselves 5:17 79:4 102:10 140:6,8 (5)</p> <p>theoretically 56:21</p> <p>theory 109:12</p> <p>there's 21:2</p>	<p>22:4,7,9,10 27:7 31:10 38:9,14,22 47:23 50:20 57:5 69:17 73:7,9 79:15 83:5,6,11 85:4 87:20 114:24 121:13 139:21,24 (26)</p> <p>therefore 20:25 95:21 119:13 146:1 (4)</p> <p>these 9:20 10:6,10,20,23 12:17 22:14 23:24 26:7 28:23 31:18 32:13,23 35:23 39:17 52:21,25 63:7 78:1 84:5 86:10 91:14 102:20 111:6 116:20 118:19 119:11 120:11 121:24 127:3,22 130:21 132:22 134:4 138:13 143:23,24 (37)</p> <p>thetos 67:24</p> <p>they're 46:25 73:23 76:18 92:14 119:12 136:25 (6)</p> <p>they've 36:5,7 43:5 69:13 124:18 136:9 138:17 (7)</p> <p>thing 17:20 36:14,18 42:4 49:17 53:6 127:17,24 147:2 (9)</p> <p>things 34:16 45:14 50:16 58:24 67:25 79:19 80:24 83:10 84:5 85:19 106:4 114:17,23 131:12 139:10 143:23,25 145:3 (18)</p>	<p>think 8:4 40:4 43:12,21 44:18 49:17,18 53:1 54:11 57:4,9 58:5,18,24 59:5,23 60:8,19 61:3,17,18 62:5 63:8 64:6,13 66:12 70:16,17 71:1 72:11,13 73:4 74:23,24 75:13 77:12,23 78:10 80:14 82:6,9,13,15 83:1,23,25 84:14,22 85:10,24 88:7 89:12,13,16 90:5 91:18,25 92:5,6,8,9,16,18 97:2 99:14 106:12,17 107:14,17 113:3,13 118:3 119:14 136:16 139:9,12,20 140:9,24 141:4 142:9,18,22 143:2 145:3 146:10 147:6,21 148:4,7,8,19 149:7 (93)</p> <p>third 61:13</p> <p>thirteen 116:9 127:10</p> <p>thirty 48:16 92:19 136:3</p> <p>thirtyfive 19:24</p> <p>thirtythree 19:15</p> <p>thorough 42:20</p> <p>those 18:15 19:8,17 20:2,7 29:11 33:5 35:24 36:10 45:14 50:15 53:17,18 56:1 59:2 63:18 65:15,18 67:15 71:2 75:15 76:24</p>	<p>77:3 79:22 80:16 84:20 85:23 98:1 107:14 129:16 135:2 149:13,16 150:2,22 (35)</p> <p>though 22:13 23:11 27:6 31:5 32:16 38:4 74:25 114:14 145:16 (9)</p> <p>thought 37:24 67:7 113:11 144:14 (4)</p> <p>thoughtful 99:24</p> <p>thousand 150:6</p> <p>thousands 110:18 140:16</p> <p>threat 26:18</p> <p>three 20:5 21:19,20 28:2,4 40:4,9 44:7 56:22 62:6,10,18 88:3 97:20 118:10 124:5 (16)</p> <p>threshold 71:4</p> <p>through 15:23 16:23 17:1 18:24 19:1 20:7,8 34:19 55:22 56:14 57:12 79:25 80:1,7 81:2,6 82:2 111:7 113:4 118:12 119:4 (21)</p> <p>throughout 5:7 66:3 117:14 140:1 (4)</p> <p>tiers 72:18</p> <p>tighten 58:12</p> <p>tightened 58:17</p> <p>time 16:20,25</p>	<p>33:8 42:1 64:9 70:10 88:24 89:22 90:1,18 97:11 101:14 102:25 103:22 105:16 107:9,19 112:15 114:7 119:10 126:11 127:23 151:10 (23)</p> <p>timely 106:5 108:3,5</p> <p>timer 98:5</p> <p>times 21:19 75:6 126:2 127:11 (4)</p> <p>timing 85:10,22</p> <p>today 5:4 10:5 15:6,9 16:2,12 42:17 99:6 101:4 123:6,17 124:7 141:12 145:6,8,16 147:13,15 148:17 (19)</p> <p>today's 89:7</p> <p>together 11:4 79:11 81:1</p> <p>told 39:8,14 94:20 128:16 (4)</p> <p>too 34:13,14 36:23 37:21 46:2 62:7,11,19 87:20 98:23,25 114:25 (12)</p> <p>took 11:19 12:6 114:23</p> <p>tool 126:9 147:18 148:19</p> <p>top 49:8</p> <p>topic 15:19</p> <p>totality 95:11</p>
---	--	---	---	--

<p>totalled 18:16</p> <p>totally 89:10</p> <p>touching 57:22</p> <p>tour 37:7,9</p> <p>touted 106:1</p> <p>touting 110:1</p> <p>toward 13:11 15:7</p> <p>towards 58:19,25</p> <p>track 84:5 90:20</p> <p>trading 142:19</p> <p>traditionally 126:5</p> <p>trained 78:20 118:16</p> <p>training 19:12,16,23 20:4 29:6 39:5,6,8,9,15, 20,24 40:3,5,8,10 44:8 81:1 118:12 121:2 129:12 (21)</p> <p>trainings 129:15</p> <p>transcribed 1:23</p> <p>transcript 152:10</p> <p>transparency 8:25 12:15 13:22 17:8 90:11 92:2 95:17 96:9 103:1,7 108:12 114:24 125:25 128:18 129:11 146:4 (16)</p> <p>transparent 13:14 15:7 92:8 145:14 (4)</p>	<p>treated 94:4 136:19</p> <p>treatment 67:11</p> <p>trend 84:8</p> <p>trial 40:23 55:1,20 76:17 95:24 96:5,7 127:21 (8)</p> <p>trials 17:17 42:10</p> <p>tribute 141:4</p> <p>tried 25:10</p> <p>trouble 55:23 108:2</p> <p>troubling 101:23 132:1</p> <p>true 47:8 60:9 103:11,20 128:19 152:9 (6)</p> <p>truly 94:18 148:13</p> <p>trust 91:2 117:12 123:8,16 124:3 126:25 127:18 128:16 (8)</p> <p>try 7:13 43:18 52:9 81:9 (4)</p> <p>trying 24:10 123:23</p> <p>tshirt 26:12,24</p> <p>tucker 8:23</p> <p>turn 16:14 36:20,23 42:17 46:1 (5)</p> <p>tv 124:22</p> <p>twelve 19:15 83:2</p>	<p>twenty 19:6 22:17 25:13 26:3 29:21 32:3,17,21 41:15 56:25 73:8 76:18 108:6 136:6 (14)</p> <p>twentyfive 23:15,17 32:22</p> <p>twentyfour 19:10 30:9</p> <p>twentyone 19:11</p> <p>two 5:3 15:18 18:25 19:11 27:10 28:2 36:17 43:12 44:15 50:16 71:2 74:7 92:7 98:4 105:11 135:16 149:7 (17)</p> <p>type 95:10 100:7</p> <p>types 19:2 38:25 39:3</p> <p>typical 31:22</p> <p>typically 45:1</p> <p>ultimate 102:1 126:18</p> <p>ultimately 9:24 52:3 126:8 128:6 148:8 (5)</p> <p>unable 50:8</p> <p>unacceptable 131:24 136:7</p> <p>unacknowledged 110:7</p> <p>unauthorized 100:11 131:15</p> <p>unclear 36:7,11,24 38:14 51:4 (5)</p>	<p>unconstitutional 54:2 116:13 118:14 136:11 (4)</p> <p>unconstitutionality 62:9</p> <p>under 10:10 21:9 28:12,23 29:5 30:9 32:4,14 35:17 38:1 46:10,20 48:15 54:3,24 55:5 68:12 71:19 74:10 75:16 77:8 79:2 83:20 101:24 102:11 (25)</p> <p>undercut 111:22</p> <p>underlying 32:12</p> <p>undermine 53:1 54:6 119:11</p> <p>undermined 126:14</p> <p>undermines 133:12 141:1</p> <p>undermining 142:23</p> <p>underneath 48:25</p> <p>understand 55:22 61:11 63:5 66:8 84:10 85:11,22 89:6 91:23 94:22 124:11,14 (12)</p> <p>understanding 15:15 46:13 51:17 59:4 64:4 66:19 67:4,16 105:13,20,22 (11)</p> <p>understood 53:13 66:9 115:22 121:4 (4)</p>	<p>unenforceable 128:12</p> <p>unexplained 117:17</p> <p>unfair 73:16</p> <p>unfolded 36:25</p> <p>unfolding 28:15</p> <p>unfortunately 101:15 130:25 147:1</p> <p>uniformity 38:13</p> <p>unilateral 111:21</p> <p>unintentional 36:12</p> <p>union 4:7 10:9 109:6 113:1 (4)</p> <p>unit 15:23 86:15 96:4</p> <p>united 4:19 130:3</p> <p>unlawful 19:13 23:23 24:22 25:1,5 54:1 62:6 (7)</p> <p>unless 136:4</p> <p>unlimited 111:14</p> <p>unmuted 114:2</p> <p>unpunished 137:2</p> <p>unrestrained 109:13</p> <p>unsubstantiated 115:3</p> <p>until 100:17</p>
---	---	--	--	---

<p>unwanted 131:13</p> <p>unwarranted 131:15</p> <p>unwillingness 112:12</p> <p>up 11:22 17:20 18:16 21:8 25:11 26:25 27:18 31:18 32:20 36:18 39:24 43:7 53:15 56:16,17,20 57:1 69:12,19 74:16 77:17 96:24 98:5 102:18 104:10 108:15 125:20 126:1,2 127:5 134:1,15 137:21 147:1 150:13 (35)</p> <p>updated 79:9</p> <p>updating 45:12</p> <p>upload 37:8 79:22</p> <p>uploaded 37:10</p> <p>upon 46:15</p> <p>urges 111:25</p> <p>urging 134:9</p> <p>us 5:20 8:12 37:4 40:20 41:10,13 47:15 54:19 55:13,18 68:2 71:5 78:3 82:6 84:7 85:15 87:4,22 91:12 92:13 97:19 104:7 105:21 112:25 113:12,18 122:1 128:21 136:17 140:9,12,16,23 141:13,25 142:12 143:2 144:23 145:24,25 147:18,22 148:19</p>	<p>150:10,13 151:4 (46)</p> <p>use 11:3,6 16:6 21:16 31:21 34:2 35:18 77:8,22 79:14 80:6 86:20 94:17 96:8 98:2,25 107:5,6 112:10 131:18 146:20 148:20 (22)</p> <p>used 22:25 35:15,23 67:11 79:25 93:25 100:11 (7)</p> <p>uses 117:24</p> <p>using 17:5 32:6 51:18,21 82:16 95:7 120:15 144:2 (8)</p> <p>usually 22:5 45:3 79:12</p> <p>utilize 12:4 95:23 110:24</p> <p>vacation 27:19</p> <p>vague 26:8,9 34:14 58:13 118:12 (5)</p> <p>values 135:23</p> <p>various 95:3</p> <p>vast 106:21</p> <p>vehicle 62:7</p> <p>vehicles 131:14</p> <p>verdict 76:5</p> <p>verdicts 75:9,19</p> <p>version 81:5</p>	<p>versus 51:6,12 116:10</p> <p>very 28:15 35:21 36:17 40:14 42:20 50:3,3 61:17 64:8 65:21 67:7 72:16 82:6,7 84:18 86:8 87:16 92:8 93:3 98:17,19 99:9,22 100:8 101:14 123:5 125:6 140:17,17 (29)</p> <p>via 1:8 54:7</p> <p>victim 21:21</p> <p>victims 118:5</p> <p>video 5:7</p> <p>videoconference 1:8</p> <p>view 5:7</p> <p>viewed 88:18 109:20</p> <p>vigilance 104:7</p> <p>vigilant 102:18</p> <p>violate 129:16</p> <p>violated 121:18,21 134:2</p> <p>violating 55:16</p> <p>violation 55:9 60:24 61:5,22 100:7 121:1 (6)</p> <p>violations 55:11 62:17 102:7 118:2,15 120:21 (6)</p> <p>violence 111:6 112:4 130:13 131:7,25 132:4,12</p>	<p>134:4,25 (9)</p> <p>violent 26:15</p> <p>violently 130:18</p> <p>virtual 2:3</p> <p>visavis 94:11</p> <p>visible 136:2</p> <p>voices 141:11</p> <p>voluntarily 35:20 73:11,23</p> <p>vote 17:23,25 18:3,12 42:1 80:2,3 97:7,10,11 99:6 123:1 124:7,15 125:3 133:9 134:10 135:15 139:7 143:10,15 145:16 148:17,23,25 149:11 (26)</p> <p>voted 11:19</p> <p>votes 18:4 80:4</p> <p>voting 45:12,23 97:4,14 123:18 124:8 134:17 143:4 144:2 147:4 (10)</p> <p>wait 106:9</p> <p>waiting 134:13</p> <p>walk 55:24 69:19 79:24,25 80:7 81:2 (6)</p> <p>walked 81:6</p> <p>walking 82:1</p> <p>want 5:3 8:8,9 9:11 10:22 14:13 16:20,24 17:20</p>	<p>24:8 46:1,19 54:19 59:7,18 62:20 67:19 68:21 71:1 72:23 76:12,13,18 78:16,17 80:17,23,23 82:15 83:3 85:2 86:4 89:11,17,24 90:5,21 91:11,22 97:3 99:19 104:24 105:10 114:8 115:12 120:11,21 121:8 135:24 136:17 137:16 147:11 148:24 (53)</p> <p>wanted 28:15 38:7 49:24 53:5,12 66:16 71:14 91:6 94:12 125:19 126:1 127:24 129:17 144:21 145:11 (15)</p> <p>wants 107:5 114:21 124:14</p> <p>warrant 24:1</p> <p>warranted 68:11</p> <p>washington 127:12</p> <p>wasn't 35:9</p> <p>way 14:20 18:3,10 27:17 42:22 50:23 63:19 68:2 69:11,13 70:5 79:12,25 80:7 82:8,21 83:3 92:2,3 93:1 101:1 121:25 137:21 140:6 141:1 145:18 150:8,12 152:13 (29)</p> <p>ways 5:6 13:14 80:23 82:19 92:7</p>
--	---	---	---	---

<p>140:9,20 (7)</p> <p>we'd 46:2 55:22</p> <p>we'll 22:7 24:14 31:21,23 60:1 77:11 78:16,17 79:22,24 81:6 96:20 142:6 (13)</p> <p>we're 20:16 30:2,14 39:8 40:10 58:7 64:5 79:7 81:9 82:10 84:20 85:2 91:15 96:19 97:14 119:13,15 142:18 147:3 (19)</p> <p>we've 17:4 18:25 20:15 29:22 33:9 44:16 54:14 58:10 61:23 69:6 71:6 75:2,3,10 84:19 87:8 88:5 91:16 109:9 113:3 119:8 150:8 151:7 (23)</p> <p>weapon 26:17</p> <p>weapons 27:7</p> <p>wearing 26:11</p> <p>webex 15:24</p> <p>website 43:20</p> <p>week 66:20 94:7 107:9,19 (4)</p> <p>weeks 109:25</p> <p>weigh 10:19</p> <p>weighed 25:17</p> <p>welcome 2:3 5:10 98:16 125:23 (4)</p> <p>well 36:9 41:2 42:9,11,15 64:4 71:24 74:7 78:24</p>	<p>86:13 87:25 90:11 93:8,10 98:24 121:13,25 132:23 140:17,18 146:13 (21)</p> <p>went 34:19 56:14,16 76:25 (4)</p> <p>weren't 8:15 33:6 37:2,25 (4)</p> <p>what 9:22,23 10:2,19 12:16 15:1,1 17:9,12,15,16 18:4,10,19,25 23:3 27:13,15 33:1,8 36:22 38:23,25 39:3,6,9,14 40:11,21,22 46:13 47:4 48:5 50:10,15 51:14 52:11,13 55:7 59:18,24 60:25 61:11 62:20 64:7 66:8 69:3,10 70:18 75:2,3,13,16,22 76:5,7,20,23 78:7 79:6,17,21 80:22,24 83:7,12 84:7 87:9 94:9 95:9 99:2 100:20 104:10 106:2 108:4 112:20 114:19 115:7 120:18 121:4,5 123:5,6,9,17,22 128:6 129:15,17 138:8 140:7 146:20,22,23 147:7,7 148:10 (97)</p> <p>what's 40:23 48:24 69:1 73:9 77:23 148:12 (6)</p> <p>when 10:11 13:4 14:21 17:23 22:4,6 30:22 31:1 33:2 37:13 39:7</p>	<p>40:22 41:1,17 45:1 48:9 49:22,25 50:21 51:5,6,18,20 56:14 60:2 64:17,20 66:17 67:9 68:12 69:12,12,14 70:10 72:21,22 74:15 76:13,22 77:25 79:23 85:22 103:9,10 105:21 106:2 110:25 113:7 121:18 123:11 124:24 127:2 132:3 136:1 142:7 151:5 (56)</p> <p>whenever 38:21 65:18 77:2</p> <p>where 21:14,16 23:24 24:5 27:8 31:7 35:9 54:14,17 55:2 56:22 57:9 59:23 68:24 69:6,17 75:8,15 76:24 77:13 80:1,5,10 81:7,10 82:8 83:5,6 85:4,13 88:22 91:14 115:5 121:19,19,21 127:8 143:17 144:23 (39)</p> <p>whereas 94:25 95:7,16</p> <p>whereof 152:15</p> <p>whether 16:5 39:9 51:24 71:3 76:4 78:4,23 80:15 88:19 89:2,18 94:17 96:7 105:22 110:10 122:4 123:18 137:23 (18)</p> <p>which 10:17 19:19 21:4 22:18 23:14,17</p>	<p>25:12,13,25 26:3,12 27:23 28:4,10,11 30:9 34:3 36:13,16 38:8 39:25 40:17,23 43:20 49:18 50:8 53:9 54:14,25 55:6 57:25 59:5 64:11 65:11 67:7 70:19 72:18 75:18 82:14,19 91:23 92:9 94:9 100:3 109:15 118:1 131:21 146:25 (48)</p> <p>while 101:15 106:9 109:18 110:18 125:22 126:12 134:13 (7)</p> <p>whims 128:9</p> <p>white 26:12,23</p> <p>who 9:5 27:4 44:17,20 48:10 50:16 51:1,4,15,22 53:8 54:5 55:24 61:21 69:22 70:24 71:3 86:11 87:1 88:6 89:8 104:16 108:20 114:21 122:21,23 123:1,4 124:21 125:4 127:20 129:16 132:6,19 133:15 134:7,12,22 135:23 136:19 138:13 141:6,23 146:14 149:1 150:3 (46)</p> <p>who've 12:17 139:13 142:12</p> <p>whole 50:20 53:14 98:22</p> <p>whose 77:18 134:2</p>	<p>why 38:22 55:22 83:20 87:5 90:12,14,16 92:9 94:10 106:18 122:23 124:14 129:14 136:13 (14)</p> <p>wide 131:6 139:24,24</p> <p>widespread 53:16</p> <p>will 5:5 10:5,6,9,16 11:5 14:23 15:9,12,17,24 16:8 18:9,12,15,18,19,2 0,22 19:4 22:3,12,16 23:2,5,9 24:3,13 26:10 31:2 32:14 38:24 39:1,1,2,3 42:1,6,17 43:6,9 44:7 45:13,21 46:21 47:15 52:4,7 54:8 59:14 63:15,25 64:14 66:10 71:22 72:24 77:17 78:11,13 80:8 81:4,14,15,17 ,19,20 82:6,15 84:4 85:23 86:22 88:13,14,16 89:9,21 93:3,6 94:22,24 96:6,12,24 97:18 98:4,11 99:12 101:18 103:8 104:11,18 105:2,14 107:20 108:9,16,22 111:13 112:14 113:4,6,22,25 115:16 116:1,2 119:21,24 121:23 122:11 123:1 124:8 125:9 128:7,14,21,24 129:21 130:5 131:1,5 133:15,21,23</p>
---	--	---	--	---

<p>135:7,9 137:11 142:7,13 143:24,25 144:7 147:1 148:1,3,5 150:11 151:3,4 (139)</p> <p>williams 4:21 135:8,12 137:12,13,16 (6)</p> <p>willie 3:13 44:17</p> <p>willing 85:18</p> <p>willingness 140:24</p> <p>wish 106:8</p> <p>withholding 131:12</p> <p>within 41:15 56:15 71:17 89:7 94:2 95:5 107:19 111:18 120:24 127:3 145:2,9 152:8,9 (14)</p> <p>without 9:1 40:15 107:17 115:20 128:4 (5)</p> <p>witness 152:15</p> <p>wnyc 105:7</p> <p>wnycfm 4:5</p> <p>won't 53:10 73:12 81:15</p> <p>wondering 74:11 105:19 107:24</p> <p>wong 4:15 119:23 122:12 125:10,11,13 (6)</p> <p>word 120:15</p> <p>work 8:11</p>	<p>9:2,5,12 12:17,19 19:4 20:8 38:17 78:19 80:24 81:9 85:15,18 92:3,25 93:19 94:1 107:10 126:25 142:24 144:22 146:3 151:8 (24)</p> <p>working 58:24 84:3 85:14 90:7 135:1 (5)</p> <p>works 70:5</p> <p>worries 46:4</p> <p>worst 142:21</p> <p>would 5:15 8:12,19 9:1 10:18 14:20 21:3,11 22:17 23:13,15,16,18,20 25:11,13,13,21 26:2,3,16 28:6 29:8,12,13,20,24 30:1,5,7,10,11,16 32:3,4,18,20 34:3,6 39:24,25 40:11,21 41:16,22,24 42:13 43:11,13 44:8,9 46:8,23 48:12 56:17 57:3 64:7,9 66:17,21 69:20,20 72:1 74:23,25 80:14,24 85:21 86:3 88:2 90:1,1,15,17 91:13 92:15 93:23 94:3,18 98:1,23 100:5,16 101:3 102:12,15 106:23,24 111:22 113:9 115:4 121:6,16 122:23,24 123:21 124:20 125:2 134:19 136:13,17 (101)</p> <p>wouldn't 69:8,21</p>	<p>70:2</p> <p>wrap 134:15</p> <p>wrist 134:6</p> <p>write 69:11</p> <p>writing 38:20 40:12</p> <p>written 9:19 111:19 112:13 119:8 122:17 130:4 131:4 (7)</p> <p>wrong 46:14 60:13 145:22</p> <p>x 1:1,6 117:6</p> <p>yasmeen 4:5 104:19 105:3</p> <p>year 11:18 12:23 13:12 14:1 45:17 91:8 94:15 95:25 97:19 121:24 130:12,17 142:6 143:1 149:7 150:11 (16)</p> <p>year's 102:25</p> <p>yearly 10:17 11:2 63:16</p> <p>years 17:5 19:1 27:11,23 28:4 56:16 73:9 100:10,14,19 116:9 123:13 124:2,19 125:24 147:16 (16)</p> <p>yes 7:14,19,20,25 43:15 46:8,20 47:19 49:1,16 52:2,8 58:3 64:13,24 66:15 67:4 71:10,13 72:11 74:21 75:20 77:12 84:10 86:3</p>	<p>87:18 89:12 97:6,16 105:2,5 106:14,14 120:1,1,4,7 122:14 129:5,24 137:15 143:20 145:16 147:4 148:17 (45)</p> <p>yet 90:23 117:9 127:20</p> <p>yojaira 5:9 16:7 96:25 97:24 104:16 105:1 108:21 113:20 114:8 115:15,24 125:8 128:22 (13)</p> <p>york 4:2,4,7 9:17 11:17 13:1,3 14:4 15:8 94:19,25 96:11 100:2 101:24 103:12 104:6 109:5 113:1 116:11 130:14 148:14 152:3,5,8 (24)</p> <p>yorkers 11:18 12:4,6 13:16 101:18 103:5,20 110:18 127:1 128:6,10 132:25 133:18,23 134:2,22 (16)</p> <p>you'd 30:14</p> <p>you'll 81:21</p> <p>you're 7:18 30:23 31:6,7 36:19 55:7 56:13 57:1 73:18 146:9 (10)</p> <p>you've 63:23 64:7,15 139:20 (4)</p> <p>young 12:3</p> <p>your 9:12 15:18 30:6 31:8 34:3 36:20,21 46:1</p>	<p>48:10 49:22 51:7 57:2 71:8 76:20 86:18,18 88:14 98:5 99:2,6,7,15,25 104:13,14 105:13 113:18 114:25 124:4,5 135:4,16 137:8 (33)</p> <p>youth 12:1,2</p> <p>230 151:10</p> <p>390 19:21</p> <p>911 26:21</p> <p>1202 1:5</p> <p>2012 83:21</p> <p>2014 100:24</p> <p>2016 27:12,25 29:11,18 31:6 (5)</p> <p>2018 19:6 27:12 28:5 29:11,15 127:12 (6)</p> <p>2019 100:19</p> <p>2020 19:6 110:13 116:15 132:23 (4)</p> <p>2021 1:4 95:23 152:16</p>
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