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THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

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In the Matter of  
NEW YORK CITY DEPARTMENT OF EDUCATION  
MIDDLE COLLEGE HIGH SCHOOL

v.

BOUBAKAR FOFANA

Section 3020-a Education Law Proceeding (File #8,234)

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DATE: June 3, 2008  
TIME: 10:17 a.m. to 1:38 p.m.  
LOCATION: NYC Department of Education  
Office of Legal Services  
49-51 Chambers Street  
New York, New York 10007

BEFORE: JAY M. SIEGEL, ESQ.  
Hearing Officer  
12 Rock Street  
Cold Spring, New York 10516  
Telephone: (845) 265-3124

1 Boubakar Fofana - 6-3-2008  
 2 APPEARANCES:  
 3 FOR THE COMPLAINANT:  
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1 Boubakar Fofana - 6-3-2008  
 2 INDEX OF PROCEEDINGS  
 Page No.  
 3 Anna Porter, Sworn ..... 1178  
 4 Direct Examination by Ms. Hemans-Brantley ..... 1178  
 Cross Examination by Mr. Fofana ..... 1202  
 5 Redirect Examination by Ms. Hemans-Brantley ... 1219  
 Recross Examination by Mr. Fofana ..... 1221  
 6  
 Robert Colon, Sworn ..... 1231  
 7 Direct Examination by Ms. Hemans-Brantley ..... 1231  
 Cross Examination by Mr. Fofana ..... 1248  
 8 Redirect Examination by Ms. Hemans-Brantley ... 1281  
 Recross Examination by Mr. Fofana ..... 1282  
 9 Examination by the Hearing Officer ..... 1285  
 F. Redirect Examination by Ms. Hemans-Brantley 1289  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
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1 Boubakar Fofana - 6-3-2008  
 2 (The hearing resumed at 10:17  
 3 a.m.)  
 4 THE HEARING OFFICER: Good  
 5 morning. My name is Jay Siegel. And I have  
 6 been designated as hearing officer in an  
 7 Education Law Section 3020-a proceeding between  
 8 the New York City Department of Education and  
 9 Boubakar Fofana. This is day five of the  
 10 formal hearing and it is June 3, 2008.  
 11 May I have appearances for  
 12 the record?  
 13 MS. HEMANS-BRANTLEY: Laura  
 14 Hemans-Brantley on behalf of the New York City  
 15 Department of Education.  
 16 MR. FOFANA: Boubakar Fofana,  
 17 math teacher, Respondent.  
 18 THE HEARING OFFICER: Okay.  
 19 Before we have testimony, I would like to just  
 20 note one or two matters for the record and then  
 21 have some discussion about it on the record.  
 22 At the conclusion of the last day of this  
 23 proceeding, which was May 28, 2008, Mr. Fofana  
 24 made a request to have the Department subpoena

1 Boubakar Fofana - 6-3-2008  
 2 certain witnesses that are Department  
 3 employees. The Department indicated that it  
 4 would assist in the supplying of the  
 5 subpoena's, but that it was not going to sign  
 6 the subpoena's since it's an adverse party to  
 7 Mr. Fofana.  
 8 It was then asked that the  
 9 hearing officer would sign the subpoenas and I  
 10 agreed to do so. The record should reflect  
 11 that I returned to my office on May 28, 2008.  
 12 I prepared I believe it was four subpoenas for  
 13 signature that Mr. Fofana requested and I  
 14 submitted those to the Department for  
 15 submission.  
 16 I know, for sure, that two  
 17 people who were subpoenaed by myself at Mr.  
 18 Fofana's request received those subpoenas  
 19 because I received telephone calls from those  
 20 two individuals on Friday, May 30th. Those two  
 21 individuals being Jennifer Hummer, H-U-M-M-E-R  
 22 and Anchintya, that's capital  
 23 A-N-C-H-I-N-T-Y-A, Dasgupta, capital  
 24 D-A-S-G-U-P-T-A.

1 Boubakar Fofana - 6-3-2008  
 2 Both of those individuals,  
 3 after discussion with me have indicated that  
 4 they will be appearing tomorrow. They both  
 5 have work commitments, and I did commit to  
 6 them, and I'm hopeful that the parties will  
 7 cooperate, that Ms. Hummer will be the first  
 8 witness tomorrow and Mr. Dasgupta will be the  
 9 second witness tomorrow.  
 10 Obviously, we have to see if  
 11 the Department's case finishes today. And then  
 12 we'll have to deal with the -- the  
 13 ramifications of that if it doesn't finish.  
 14 In any case, I have not heard  
 15 from Diane Nolte who is another individual that  
 16 Mr. Fofana had asked me to subpoena. And I  
 17 know that the Department knew that it was going  
 18 to be calling Robert Colon, so I believe, Ms.  
 19 Brantley, that the Department did not subpoena  
 20 him because you knew he was coming; correct?  
 21 MS. HEMANS-BRANTLEY: That's  
 22 correct.  
 23 THE HEARING OFFICER: And  
 24 then there was a final subpoena request made at

1 Boubakar Fofana - 6-3-2008  
 2 the last day of hearing for the return of a  
 3 witness that the Department had called and Mr.  
 4 Fofana had an opportunity to cross-examine, and  
 5 that was Ms. Adonai, the assistant principal at  
 6 Mr. Fofana's school.  
 7 And before we get into some  
 8 supplemental issues that have arisen, I would  
 9 like to give the Department an opportunity to  
 10 respond to Mr. Fofana's request for the further  
 11 subpoena.  
 12 MS. HEMANS-BRANTLEY: Well,  
 13 initially, I should note that the Department  
 14 will object to Ms. -- the recall of Ms. Adonai.  
 15 As you stated, Mr. Siegel, just now in the  
 16 records, she did appear here I believe two or  
 17 three times. And she was cross-examined  
 18 extensively by Mr. Fofana. So, at this point,  
 19 you know, we don't feel that it's appropriate,  
 20 or even not in violation of the rules of  
 21 evidence to have her come back, unless Mr.  
 22 Fofana can provide an offer of proof that would  
 23 substantiate the need to call her back.  
 24 THE HEARING OFFICER: Mr.

1 Boubakar Fofana - 6-3-2008  
 2 Fofana?  
 3 MR. FOFANA: Yes. First of  
 4 all, the -- the D.O.E. counsel restricted me in  
 5 my cross-examination, she restricted me to what  
 6 Ms. Adonai say.  
 7 In other words,  
 8 cross-examination from her understanding is to  
 9 respond to what the witness say. Now, my  
 10 questioning goes beyond what she said. What  
 11 was -- what was unsaid is very important as  
 12 well.  
 13 THE HEARING OFFICER: So --  
 14 so, before you go on, are you suggesting  
 15 that -- you're saying that your questioning  
 16 will go beyond the -- the scope of the direct  
 17 examination --  
 18 MR. FOFANA: Well --  
 19 THE HEARING OFFICER: -- is  
 20 that what I'm understanding?  
 21 MR. FOFANA: -- what is -- in  
 22 essence.  
 23 THE HEARING OFFICER: Okay.  
 24 MR. FOFANA: Because it all,

1 Boubakar Fofana - 6-3-2008  
 2 the -- the counsel has all latitude to confine  
 3 herself to aspects that suit her.  
 4 THE HEARING OFFICER: Right.  
 5 MR. FOFANA: And then, I'm --  
 6 I'm not able, during cross-examination --  
 7 THE HEARING OFFICER: Okay.  
 8 MR. FOFANA: -- to raise  
 9 certain issues, because she would object to it.  
 10 THE HEARING OFFICER: Okay.  
 11 Well, obviously the counsel may object to it,  
 12 but ultimately it's within my purview  
 13 whether --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- to  
 16 make a determination as to whether the  
 17 questioning and subject matter was appropriate.  
 18 --  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: -- I  
 21 would just, at the outset, say that Ms. Adonai  
 22 certainly did have a fairly rigorous  
 23 cross-examination. It was --  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: --  
 3 fairly lengthy. As I recall in the  
 4 cross-examination, and I -- I haven't looked at  
 5 my notes in detail right now --  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: -- the  
 8 cross-examination was focused on the charges  
 9 that were related to Ms Adonai. Namely, her  
 10 assessment of your teaching performance on one  
 11 or two particular days in question, as well as  
 12 some allegations concerning her observation of  
 13 some Internet sites.  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: And  
 16 that you did get an opportunity to ask her  
 17 questions about that.  
 18 MR. FOFANA: Yes.  
 19 THE HEARING OFFICER: Now,  
 20 you know, if you have topics that are related  
 21 to the charges that you were not permitted to  
 22 explore, you're going to need to articulate  
 23 those --  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: --  
 3 before I'm going to grant a request. Because  
 4 on the topics of the charges themselves --  
 5 MR. FOFANA: Uh-huh.  
 6 THE HEARING OFFICER: -- that  
 7 involved her, I -- I did think that she was  
 8 given a sufficient opportunity -- you were  
 9 given a sufficient opportunity to question her.  
 10 MR. FOFANA: Yeah. But once  
 11 again, I had the opportunity to question her on  
 12 what she said and what the counsel elicited  
 13 from her.  
 14 In other words, I was  
 15 confined to what they wanted to say. That's  
 16 the -- that's the -- this issue. If you say  
 17 that I extensively questioned her, fine, true,  
 18 but on -- on the subject that was waiting to  
 19 touch. Okay. Now --  
 20 THE HEARING OFFICER: Right,  
 21 but --  
 22 MR. FOFANA: -- if -- if --  
 23 if --  
 24 THE HEARING OFFICER: --

1 Boubakar Fofana - 6-3-2008  
 2 but -- but --  
 3 MR. FOFANA: -- I -- I'm  
 4 going -- I'm --.  
 5 THE HEARING OFFICER: --  
 6 before you go any further --  
 7 MR. FOFANA: Uh-huh.  
 8 THE HEARING OFFICER: -- but  
 9 to your benefit, and to any other Respondent's  
 10 benefit, 3020-a requires that the charges be  
 11 specific.  
 12 MR. FOFANA: Uh-huh.  
 13 THE HEARING OFFICER: And you  
 14 know, this hearing officer does not want to get  
 15 into matters --  
 16 MR. FOFANA: Uh-huh.  
 17 THE HEARING OFFICER: -- that  
 18 are not directly related to the charges.  
 19 MR. FOFANA: Exactly.  
 20 THE HEARING OFFICER: And  
 21 that's to your benefit, obviously --  
 22 MR. FOFANA: Uh-huh.  
 23 THE HEARING OFFICER: --  
 24 because we should not be dealing with

1 Boubakar Fofana - 6-3-2008  
 2 tangential matters.  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: So, I  
 5 guess what I'm getting at is this --  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: -- if  
 8 you were, and I would state for the record that  
 9 I believe you very much were, given the chance  
 10 to cross-examine Ms. Adonai --  
 11 MR. FOFANA: Uh-huh.  
 12 THE HEARING OFFICER: -- on  
 13 the topics that are at issue in the charges --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- what  
 16 is it -- you're going to need to explain to  
 17 myself --  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: -- and  
 20 Ms. Brantley, what it is that you would want to  
 21 question her about --  
 22 MR. FOFANA: Uh-huh.  
 23 THE HEARING OFFICER: -- that  
 24 is related to the charges that you did not get

1 Boubakar Fofana - 6-3-2008  
 2 to cover.  
 3 MR. FOFANA: Well, this is a  
 4 tricky question because if I answer, I will  
 5 inform counsel to have an exchange with the  
 6 witness, and that wouldn't going to be fair.  
 7 THE HEARING OFFICER: Mr. --  
 8 MR. FOFANA: Because as I --  
 9 THE HEARING OFFICER: -- Mr.  
 10 Fofana --  
 11 MR. FOFANA: -- as I said --.  
 12 THE HEARING OFFICER: -- I  
 13 want to cut you off right there.  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: Ms. --  
 16 Ms. Brantley is an officer of the court.  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: If, in  
 19 fact, I made an order --  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: -- that  
 22 Ms. Adonai return, it would be as if she was to  
 23 remain on the stand, and I would direct Ms.  
 24 Brantley not to speak with her --

1 Boubakar Fofana - 6-3-2008  
 2 MR. FOFANA: Uh-huh.  
 3 THE HEARING OFFICER: --  
 4 other than to tell her that she needs to  
 5 return.  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: So,  
 8 that is not going to be an issue should we go  
 9 in that direction.  
 10 MR. FOFANA: If you -- if you  
 11 don't mind, I will go to -- I have a -- one  
 12 obvious question; in New York State to be a  
 13 teacher, especially to be a math teacher, you  
 14 must have a license, and have to have a  
 15 license, a teaching license, you must have a  
 16 master's in the subject. That is a  
 17 prerequisite.  
 18 Now, I want to know why, as a  
 19 assistant principal in charge of the math  
 20 department, she was allowed to -- you know,  
 21 to -- put it this way, I want to know how --  
 22 how come she becomes the head of the math  
 23 department even when she -- she has only a  
 24 bachelor's in math.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: All  
 3 right.  
 4 MR. FOFANA: This is a  
 5 legitimate question --  
 6 THE HEARING OFFICER: Okay.  
 7 MR. FOFANA: -- and this is a  
 8 question I will ask her.  
 9 And also, directly to --  
 10 to -- to specification three, if you remember,  
 11 I asked her why there was no preobservation.  
 12 She said I refuse, you remember that?  
 13 THE HEARING OFFICER: Yes.  
 14 Uh-huh.  
 15 MR. FOFANA: Now, the  
 16 question I want directly related to that will  
 17 be -- this is, why is it not documented, number  
 18 one, because this is clearly a case of  
 19 insubordination. I cannot refuse, no way, no  
 20 employee cannot decree his will on the process;  
 21 it's illegal. Then I want to ask her to  
 22 produce document showing that.  
 23 Number two, if she doesn't  
 24 have such document, I'm going to ask her, in

1 Boubakar Fofana - 6-3-2008  
 2 your -- in her observation report, she clearly  
 3 mentioned postobservation. Why on earth she  
 4 did not mention the preobservation, and lying  
 5 saying, "well, I -- you refused to -- to -- to  
 6 show up for preobservation," and exercise  
 7 the --  
 8 THE HEARING OFFICER: Okay.  
 9 MR. FOFANA: -- because  
 10 there's no such mention.  
 11 THE HEARING OFFICER: All  
 12 right. Okay. Ms. Brantley, do you have  
 13 anything you wish to say before I make a  
 14 ruling?  
 15 MS. HEMANS-BRANTLEY: Other  
 16 than there has not been new grounds to present  
 17 it.  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: All  
 20 right. Mr. Fofana --  
 21 MR. FOFANA: Uh-huh.  
 22 THE HEARING OFFICER: -- this  
 23 is going to be my ruling.  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: I -- I  
 3 do happen to agree with the Department that  
 4 these topics were actually sufficiently raised  
 5 by you --  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: -- and  
 8 I fully recognize your argument.  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: And you  
 11 actually addressed these issues during some of  
 12 your cross-examination: The fact that its your  
 13 contention that Ms. Adonai's --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: --  
 16 background and history --  
 17 MR. FOFANA: Uh-huh. Uh-huh.  
 18 Uh-huh.  
 19 THE HEARING OFFICER: -- does  
 20 not make her a worthy --  
 21 MR. FOFANA: Uh-huh.  
 22 THE HEARING OFFICER: --  
 23 evaluator of folks in -- who are math teachers  
 24 who may, in fact, have greater credentials than

1 Boubakar Fofana - 6-3-2008  
 2 she.  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: And to  
 5 ask her those questions, I don't think does  
 6 anything --  
 7 MR. FOFANA: Uh-huh.  
 8 THE HEARING OFFICER: --  
 9 to -- to add to the record because those  
 10 arguments are already very much understood by  
 11 the hearing officer.  
 12 I -- I would say similarly --  
 13 MR. FOFANA: Uh-huh.  
 14 THE HEARING OFFICER: -- the  
 15 point you raised regarding the pre- and  
 16 postobservation --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: --  
 19 that's in the record.  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: You can  
 22 make those arguments to me when you close this  
 23 case.  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: And  
 3 they may or may not have resonance with me.  
 4 But the fact that she did or didn't do it, you  
 5 can certainly make those arguments. And I  
 6 think that, you know, those topics you were  
 7 given opportunity to question her about. So,  
 8 I -- I'm going to deny the request to call her.  
 9 MR. FOFANA: Okay. Well,  
 10 I'm -- I -- I appreciate it. And I'm happy  
 11 that you -- you know, you understand my  
 12 concern.  
 13 THE HEARING OFFICER: I -- I  
 14 do understand the arguments, and I -- and I  
 15 encourage you to make them in your closing  
 16 arguments. They are certainly valid arguments  
 17 that you can make. It doesn't mean that they  
 18 will ultimately persuade me, but they are valid  
 19 arguments.  
 20 MR. FOFANA: Okay.  
 21 THE HEARING OFFICER: And you  
 22 did pursue those arguments on the record during  
 23 your cross --  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: -- with  
 3 some of the questioning that occurred.  
 4 MR. FOFANA: Okay.  
 5 THE HEARING OFFICER: The  
 6 only other thing I'd like to say is that --  
 7 MR. FOFANA: Uh-huh.  
 8 THE HEARING OFFICER: -- the  
 9 only other person listed, I -- I think I might  
 10 have mentioned. I have not heard from Diane  
 11 Nolte. So, whether she will appear pursuant to  
 12 the subpoena, I do not know. And there's  
 13 nothing we can do about that.  
 14 MR. FOFANA: Okay. We -- I'm  
 15 sorry, go ahead.  
 16 THE HEARING OFFICER: No,  
 17 that's -- the -- the last thing I think we do  
 18 need to deal with, though --  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: -- is  
 21 then there was a further request of another  
 22 witness, a Charles --  
 23 MR. FOFANA: A new -- a  
 24 new --

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: --  
 3 Majors --  
 4 MR. FOFANA: -- witness.  
 5 THE HEARING OFFICER: a new  
 6 witness. So, I -- I did think we needed to  
 7 discuss that on the record.  
 8 MR. FOFANA: Uh-huh.  
 9 THE HEARING OFFICER: Ms.  
 10 Brantley, do you have a position on that?  
 11 MS. HEMANS-BRANTLEY: Well,  
 12 with regards to Mr. Majors, again I would ask  
 13 for an offer of proof as to why he's being  
 14 called. And then -- and secondly, just to note  
 15 for the record that Mr. Majors has retired from  
 16 the Department. He's been retired for  
 17 approximately four to five years now, so he's  
 18 not within the Department's control anymore.  
 19 THE HEARING OFFICER: All  
 20 right. Well, I'm -- I'm going to try and  
 21 actually cut this off quickly --  
 22 MR. FOFANA: Uh-huh.  
 23 THE HEARING OFFICER: --  
 24 because I've -- I've reviewed -- I -- I mean I

1 Boubakar Fofana - 6-3-2008  
 2 think Mr. Fofana did make an offer of proof.  
 3 He's essentially alleging --  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: -- that  
 6 Mr. Majors, or Dr. Majors, whatever he is, had  
 7 at a certain point in time removed Dr.  
 8 Wiltshire for allegations of incompetence and  
 9 misconduct. So, I think, if I understand Mr.  
 10 Fofana's position --  
 11 MR. FOFANA: Uh-huh.  
 12 THE HEARING OFFICER: -- he  
 13 says it follows that if Wiltshire has been  
 14 deemed incompetent then, you know, he shouldn't  
 15 be evaluating.  
 16 Well -- and -- and that may  
 17 or may not be true, and I'm not sure that I  
 18 would agree with that.  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: But I  
 21 will agree with one thing; Superintendent  
 22 Majors' opinion of Dr. Wiltshire is not  
 23 relevant to the hearing officer.  
 24 MR. FOFANA: Uh-huh.

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: I will  
 3 tell you what is relevant.  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: If its  
 6 true that Dr. Wiltshire has been formally  
 7 found, in a proceeding such as this, in a  
 8 3020-a proceeding --  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: --  
 11 which is the only proceeding that tenured  
 12 principals and teachers can be found guilty of  
 13 misconduct or incompetence --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- if  
 16 it's true that that has happened --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: -- I  
 19 would conduct an in-camera review of that  
 20 record --  
 21 MR. FOFANA: Uh-huh. Uh-huh.  
 22 THE HEARING OFFICER: -- and  
 23 determine whether it's relevant to submit on  
 24 your behalf --

1 Boubakar Fofana - 6-3-2008  
 2 MR. FOFANA: Uh-huh.  
 3 THE HEARING OFFICER: -- for  
 4 this case for my determination as to whether --  
 5 MR. FOFANA: Uh-huh.  
 6 THE HEARING OFFICER: -- it  
 7 might bear on his credibility or abilities to  
 8 conduct evaluative measures.  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: Because  
 11 if, in fact, just as an example, Mr. Fofana  
 12 if -- and this is completely speculative, I  
 13 want to make for the record.  
 14 MR. FOFANA: Yeah.  
 15 THE HEARING OFFICER: But  
 16 I -- since you're a pro se I want to explain  
 17 the rationale.  
 18 If, in fact, there was a  
 19 charge, and a proof --  
 20 MR. FOFANA: Yeah.  
 21 THE HEARING OFFICER: -- that  
 22 somebody found an individual guilty of lying --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: --

1 Boubakar Fofana - 6-3-2008  
 2 in -- in a procedure, you know that would be  
 3 relevant to the arbitrator.  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: But if  
 6 he's been found guilty of absenteeism --  
 7 MR. FOFANA: Uh-huh.  
 8 THE HEARING OFFICER: --  
 9 that's probably not going to be relevant.  
 10 MR. FOFANA: Uh-huh. Okay.  
 11 THE HEARING OFFICER: I will  
 12 give you -- I will give you the -- I will ask  
 13 the Department to produce, or -- or conduct a  
 14 review of -- of his file and to affirm for me  
 15 whether there is any proof that he's ever been  
 16 convicted of any charges in a 3020-a  
 17 proceeding.  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: If you  
 20 affirm that that is not the case, then the  
 21 matter is closed. If you affirm that it is the  
 22 case, then I will conduct an in-camera review  
 23 of the file, really just of the 3020-a  
 24 documents --

1 Boubakar Fofana - 6-3-2008  
 2 MS. HEMANS-BRANTLEY: Uh-huh.  
 3 THE HEARING OFFICER: -- and  
 4 then I will determine whether it should be  
 5 disposed at that point.  
 6 MS. HEMANS-BRANTLEY: And I  
 7 should say for the record, I did, at the time  
 8 of receipt of Mr. Fofana's e-mail, I did check  
 9 our central database, where all cases go, are  
 10 stored, where you can quickly see if any  
 11 charges, I did not -- Mr. Wiltshire's name did  
 12 not come up.  
 13 MR. FOFANA: Oh.  
 14 MS. HEMANS-BRANTLEY:  
 15 However, to make sure that it's a proper  
 16 review, I will then -- I will review his  
 17 personnel file.  
 18 THE HEARING OFFICER: Okay.  
 19 I thank you.  
 20 MR. FOFANA: All right.  
 21 Well, on this matter, I do have a remark to  
 22 make.  
 23 THE HEARING OFFICER: Sure.  
 24 MR. FOFANA: This is

1 Boubakar Fofana - 6-3-2008  
 2 essentially a corruptive thing, in other words  
 3 when I receive a letter telling me to go to the  
 4 rubber room called, for unbecoming conduct what  
 5 I -- I say that this is a corruptive, you know,  
 6 issue.  
 7 Now, if the principal who --  
 8 who initiated such an investigation, must be,  
 9 at the least, clean to -- innocent. But now,  
 10 if he, himself, has been investigated twice for  
 11 sexually harassing a female teacher, even if  
 12 the case did not go through the 3020-a it is  
 13 something that must be discussed.  
 14 THE HEARING OFFICER: Well,  
 15 Mr. Fofana, this hearing officer disagrees with  
 16 you. And I'm not going to get into matters  
 17 such as that.  
 18 Just as you --  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: -- very  
 21 much, deem yourself to be fully innocent and  
 22 wish to be fully exonerated of these charges --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: -- and

1 Boubakar Fofana - 6-3-2008  
 2 just as you --  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: --  
 5 would not wish for anybody to draw any negative  
 6 inferences from the fact that the Board has  
 7 filed charges against you --  
 8 MR. FOFANA: Uh-huh.  
 9 THE HEARING OFFICER: -- all  
 10 other employees deserve the very same  
 11 treatment.  
 12 MR. FOFANA: Uh-huh.  
 13 THE HEARING OFFICER: And  
 14 this arbitrator --  
 15 MR. FOFANA: Uh-huh.  
 16 THE HEARING OFFICER: --  
 17 hearing officer --  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: -- will  
 20 not go in that direction. That ruling is  
 21 final. Okay.  
 22 MS. HEMANS-BRANTLEY: There  
 23 is one more issue.  
 24 THE HEARING OFFICER: Sure.

1 Boubakar Fofana - 6-3-2008  
 2 MS. HEMANS-BRANTLEY: I  
 3 believe in that same e-mail, Mr. Fofana has  
 4 made a request for Mr. Marin, who testified --  
 5 MR. FOFANA: Yes.  
 6 MS. HEMANS-BRANTLEY: -- at  
 7 our last hearing --  
 8 THE HEARING OFFICER: Oh --  
 9 MS. HEMANS-BRANTLEY: -- to  
 10 come back.  
 11 THE HEARING OFFICER: -- That  
 12 is true.  
 13 MS. HEMANS-BRANTLEY: And  
 14 again, the Department's position is the same as  
 15 with Ms. -- as we took with regards to Ms.  
 16 Adonai --  
 17 THE HEARING OFFICER: Right.  
 18 MS. HEMANS-BRANTLEY: --  
 19 Adonai.  
 20 THE HEARING OFFICER: Yes.  
 21 So, Mr. Fofana you really need to explain what  
 22 you -- you know, what -- what you were  
 23 prevented from asking him, because I -- I do  
 24 recall we gave you opportunity to have time to

1 Boubakar Fofana - 6-3-2008  
 2 think about your questions and to ask him  
 3 questions.  
 4 MR. FOFANA: All right. Mr.  
 5 Siegel, if you remember I complained that I did  
 6 not know who was coming. The -- the witness  
 7 just dropped in, and I was caught off guard and  
 8 I had to quickly, you know, set a -- up my  
 9 defense.  
 10 THE HEARING OFFICER: Uh-huh.  
 11 MR. FOFANA: And the whole  
 12 cross-examination bore on the -- on the C.D.  
 13 Now, there is a -- an essential, crucial item  
 14 in D.O.E. Number Ten, and I would like -- if I  
 15 may I would like to discuss it. And it was  
 16 sent to me and sent to my counselor --  
 17 THE HEARING OFFICER: All  
 18 right.  
 19 MR. FOFANA: -- it was sent  
 20 to us electronically.  
 21 THE HEARING OFFICER: Okay.  
 22 MR. FOFANA: And it was not  
 23 legible, by the way, and I made it a copy from  
 24 this. If it's not -- then I have to produce

1 Boubakar Fofana - 6-3-2008  
 2 what I received whether it's legible -- legible  
 3 or not.  
 4 Yes it is, here.  
 5 THE HEARING OFFICER: Okay.  
 6 MR. FOFANA: This -- these  
 7 are -- I made a copy for counsel, if I may.  
 8 These three pages.  
 9 MS. HEMANS-BRANTLEY: Well,  
 10 tell me what they say on top and I'll order  
 11 index of --.  
 12 THE HEARING OFFICER:  
 13 M.C.H.S.  
 14 MS. HEMANS-BRANTLEY: Okay.  
 15 MR. FOFANA: And the --  
 16 MS. HEMANS-BRANTLEY: You  
 17 have three pages; correct?  
 18 MR. FOFANA: -- and the three  
 19 pages --  
 20 MS. HEMANS-BRANTLEY: Okay.  
 21 MR. FOFANA: -- here.  
 22 THE HEARING OFFICER: All  
 23 right. So, it's your contention that since  
 24 those documents were not legible, that now that

1 Boubakar Fofana - 6-3-2008  
 2 you feel you didn't have a chance to prepare to  
 3 question --  
 4 MR. FOFANA: That's --  
 5 that's --.  
 6 THE HEARING OFFICER: -- Mr.  
 7 Marin on those issues?  
 8 MR. FOFANA: Yeah. That's --  
 9 that's part of it. And we -- we just, you  
 10 know, you know, we dwell on -- on the C.D.s,  
 11 and the cross-examination, you know, concluded  
 12 on -- on that item.  
 13 THE HEARING OFFICER: Ms.  
 14 Brantley, any response to that?  
 15 MS. HEMANS-BRANTLEY: I don't  
 16 remember what, as you were here, Mr. Siegel, so  
 17 you know that during Mr. Marin's  
 18 cross-examination, as well as the S.C.I.  
 19 investigators, I handed -- along with you, I  
 20 handed certain documents to Mr. Fofana. I am  
 21 not sure if those were the documents that I  
 22 handed to him or not.  
 23 And I don't see where Mr.  
 24 Fofana's -- just looking at that document,

Page 1169

1 Boubakar Fofana - 6-3-2008  
 2 would have been prejudice during his  
 3 cross-examination of Mr. Marin with regards to  
 4 those items.  
 5 MR. FOFANA: I cannot -- I'm  
 6 sorry.  
 7 THE HEARING OFFICER: Wait,  
 8 let her finish.  
 9 MR. FOFANA: I'm sorry.  
 10 THE HEARING OFFICER: Let her  
 11 finish.  
 12 MS. HEMANS-BRANTLEY: And I'd  
 13 just like to say for the record that Mr. Fofana  
 14 indicated that he did not know Mr. Marin was  
 15 coming. On our last date, I indicated who  
 16 would be testifying today. And I know I said  
 17 the S.C.I. investigator and the director of  
 18 information -- I don't know if its technologies  
 19 or systems.  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: That --  
 22 I mean my recollection is similar to that,  
 23 although I don't, we don't obviously have the  
 24 transcripts --

Page 1171

1 Boubakar Fofana - 6-3-2008  
 2 I don't need more than fifteen minutes in this  
 3 second cross-examination of Mr. Marin.  
 4 THE HEARING OFFICER: And  
 5 you -- you will limit it to those three  
 6 documents, Mr. Fofana?  
 7 MR. FOFANA: I'm sorry?  
 8 THE HEARING OFFICER: You  
 9 will limit your cross-examination to a review  
 10 of those three documents?  
 11 MR. FOFANA: Absolutely.  
 12 THE HEARING OFFICER: All  
 13 right. You know what? I -- I mean, just to --  
 14 to move this along, I -- I would ask the  
 15 Department to produce Mr. Marin for that very  
 16 limited purpose.  
 17 I think that it would be  
 18 beneficial to the parties for the upholding of  
 19 the record --  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: --  
 22 in -- in the overall scheme of things to allow  
 23 Mr. Fofana to be afforded that opportunity.  
 24 So, without further ado --.

Page 1170

1 Boubakar Fofana - 6-3-2008  
 2 MS. HEMANS-BRANTLEY: Uh-huh.  
 3 THE HEARING OFFICER: -- so  
 4 that would verify it for sure.  
 5 This is my thought. Mr.  
 6 Fofana, do you have a copy of the illegible  
 7 document that you believe you -- or the three  
 8 illegible documents?  
 9 Because I do think that if --  
 10 if Mr. Fofana can show us that they were not  
 11 legible, I -- I may, in fact, let him have  
 12 limited recross on that topic only. Because  
 13 I -- I certainly would not want the record to  
 14 reflect that he did not, you know, get a full  
 15 opportunity to cross on something that he did  
 16 not have complete access to until the day of  
 17 hearing. Even assuming he may have gotten that  
 18 on the day itself, Ms. Brantley.  
 19 MR. FOFANA: I don't even  
 20 need more than fifteen minutes, I promise you.  
 21 No more. Might even five minutes.  
 22 THE REPORTER: I'm sorry, I  
 23 can't hear Mr. Fofana.  
 24 MR. FOFANA: I -- I'm sorry,

Page 1172

1 Boubakar Fofana - 6-3-2008  
 2 MS. HEMANS-BRANTLEY: Well, I  
 3 do have one more.  
 4 THE HEARING OFFICER: Okay.  
 5 MR. FOFANA: Happens when  
 6 I --.  
 7 THE HEARING OFFICER: Once we  
 8 allow motions, look what happens.  
 9 MS. HEMANS-BRANTLEY: Oh, is  
 10 this -- okay. In evidence is D.O.E. Exhibit  
 11 Number Nine, which is regarding the Teacher's  
 12 for -- Choice policies, and it has come to my  
 13 attention that what -- D.O.E. Nine is not a  
 14 complete document, and it's for the wrong  
 15 school year. What I do have is the full  
 16 document for the correct school year.  
 17 THE HEARING OFFICER: Okay.  
 18 MS. HEMANS-BRANTLEY: So,  
 19 what I would like to do is to supplement D.O.E.  
 20 Nine with D.O.E. Nine-A, which is the complete  
 21 Teacher's Choice guidelines.  
 22 THE HEARING OFFICER: Okay.  
 23 Why don't you show a copy to Mr. Fofana.  
 24 MR. FOFANA: Thank you. I

10 (Pages 1169 to 1172)

1 Boubakar Fofana - 6-3-2008  
 2 highly object to that, because the document  
 3 you -- which is in -- you know, which was  
 4 produced, was clearly shown as what the -- the  
 5 payroll secretary gave me. Now, you cannot  
 6 update her documents. The document she gave  
 7 me.  
 8 THE HEARING OFFICER: Well,  
 9 this -- this is how I'm going to rule on this.  
 10 I'm going to try and move this along. As I  
 11 understand, my recollection is that Mr. -- Dr.  
 12 Wiltshire testified as to this. That  
 13 testimony's in the record.  
 14 MS. HEMANS-BRANTLEY: Uh-huh.  
 15 THE HEARING OFFICER: If you  
 16 have another witness who's testifying --  
 17 MS. HEMANS-BRANTLEY: Uh-huh.  
 18 THE HEARING OFFICER: -- who  
 19 might supplement the record --  
 20 MS. HEMANS-BRANTLEY: Uh-huh.  
 21 THE HEARING OFFICER: -- and  
 22 explain it, you can do it that way.  
 23 MS. HEMANS-BRANTLEY: Okay.  
 24 THE HEARING OFFICER: So, why

1 Boubakar Fofana - 6-3-2008  
 2 don't we --  
 3 MS. HEMANS-BRANTLEY: All  
 4 right.  
 5 THE HEARING OFFICER: -- go  
 6 on that basis.  
 7 MS. HEMANS-BRANTLEY: Okay.  
 8 THE HEARING OFFICER: So,  
 9 D.O.E. Nine will stay in.  
 10 MR. FOFANA: Uh-huh.  
 11 THE HEARING OFFICER: And if  
 12 the Department chooses to supplement its  
 13 evidence, it can try and do so.  
 14 MS. HEMANS-BRANTLEY: So,  
 15 would I still do it as Nine -- can I still do  
 16 it as Nine-A --  
 17 THE HEARING OFFICER: No --  
 18 MS. HEMANS-BRANTLEY: -- or  
 19 do you want me to --  
 20 THE HEARING OFFICER: -- I  
 21 think we'll put it in --  
 22 MS. HEMANS-BRANTLEY: -- have  
 23 it --?  
 24 THE HEARING OFFICER: -- as

1 Boubakar Fofana - 6-3-2008  
 2 whatever the next exhibit is --  
 3 MS. HEMANS-BRANTLEY: All  
 4 right.  
 5 THE HEARING OFFICER: based  
 6 on whatever this witness says.  
 7 MR. FOFANA: Yeah. But  
 8 that --  
 9 MS. HEMANS-BRANTLEY: Okay.  
 10 MR. FOFANA: -- it has --  
 11 it -- it has to be clearly indicated that I did  
 12 not receive that document, and --.  
 13 THE HEARING OFFICER: Well,  
 14 I -- I -- I can't clearly indicate anything  
 15 until somebody testifies.  
 16 MR. FOFANA: I -- I --  
 17 absolutely.  
 18 THE HEARING OFFICER: We have  
 19 to wait for testimony.  
 20 MR. FOFANA: All right.  
 21 THE HEARING OFFICER: And  
 22 then if you disagree with it --  
 23 MR. FOFANA: All right.  
 24 THE HEARING OFFICER: -- you

1 Boubakar Fofana - 6-3-2008  
 2 will get a chance to testify, should you choose  
 3 to do so.  
 4 MS. HEMANS-BRANTLEY: And I'm  
 5 up to what exhibit number?  
 6 THE HEARING OFFICER: We are  
 7 up to -- bear with me.  
 8 MS. HEMANS-BRANTLEY: Exhibit  
 9 Ten?  
 10 THE HEARING OFFICER: We're  
 11 up to ten. So, you'll be up to eleven.  
 12 MS. HEMANS-BRANTLEY: oh, no,  
 13 no. Did I do the S.C.I. file?  
 14 THE HEARING OFFICER: The  
 15 S.C.I. file went in as Ten.  
 16 MS. HEMANS-BRANTLEY: Okay.  
 17 THE HEARING OFFICER: Yes.  
 18 MR. FOFANA: And also, Mr.  
 19 Siegel, the -- my witness Ms. Nolte, her  
 20 appearance is contingent on one thing, a single  
 21 thing. Will student, Kk. will be called in to  
 22 testify. Because if this student is coming,  
 23 then I will need Ms. Nolte.  
 24 THE HEARING OFFICER: And if

1 Boubakar Fofana - 6-3-2008  
 2 the student doesn't come, you don't?  
 3 MR. FOFANA: I would have to  
 4 drop her.  
 5 THE HEARING OFFICER: All  
 6 right. So, then we'll -- we'll deal with that  
 7 as it comes.  
 8 MR. FOFANA: Yes.  
 9 THE HEARING OFFICER: All  
 10 right. Okay. Is there -- I -- I assume then,  
 11 we're done with preliminary matters; the  
 12 Department's ready to call its first witness?  
 13 MS. HEMANS-BRANTLEY: I  
 14 believe so.  
 15 THE HEARING OFFICER: All  
 16 right. Why don't we take about three minutes  
 17 off the record, and then we'll --  
 18 MS. HEMANS-BRANTLEY: Uh-huh.  
 19 THE HEARING OFFICER: -- get  
 20 ready to start. So, let's go on pause for a  
 21 moment.  
 22 (Off the record)  
 23 THE HEARING OFFICER: Ms.  
 24 Brantley, I see that you have Ms. Anna Porter

1 Porter - Direct - Hemans-Brantley  
 2 here?  
 3 MS. HEMANS-BRANTLEY: That's  
 4 correct.  
 5 THE HEARING OFFICER: Okay.  
 6 Ms. Porter, I'm going to ask you to raise your  
 7 right hand, so I can swear you in.  
 8 Do you swear or affirm that  
 9 the testify you're about to give will be the  
 10 truth, the whole truth and nothing but the  
 11 truth?  
 12 MS. PORTER: Yes, I do.  
 13 ANNA PORTER; Sworn  
 14 THE HEARING OFFICER: Okay,  
 15 Ms. Brantley, you may begin with your  
 16 questioning.  
 17 DIRECT EXAMINATION  
 18 BY MS. HEMANS-BRANTLEY:  
 19 Q. Good morning, Mrs. Porter.  
 20 Where are you currently employed?  
 21 **A. Medgar Evers College Prep**  
 22 **School in Brooklyn.**  
 23 Q. And are you with -- is that  
 24 with the Department of Education?

1 Porter - Direct - Hemans-Brantley  
 2 **A. Yes.**  
 3 Q. What is your position at the  
 4 school?  
 5 **A. Payroll secretary.**  
 6 Q. How long have you been the  
 7 payroll secretary?  
 8 **A. Four years.**  
 9 Q. Are you the only payroll  
 10 secretary at the school?  
 11 **A. Yes. There's two**  
 12 **secretaries.**  
 13 Q. Okay. But are -- are they --  
 14 are you both payroll secretaries?  
 15 **A. No.**  
 16 Q. Okay. Are you the only  
 17 person titled payroll secretary?  
 18 **A. Yes.**  
 19 Q. Okay. Can you tell us what  
 20 are you duties and responsibilities as payroll  
 21 secretary?  
 22 **A. Well, my duties are to, I**  
 23 **distribute checks to the teachers and staff. I**  
 24 **put in their absences and other dates that**

1 **Porter - Direct - Hemans-Brantley**  
 2 **they -- they might not be in -- in -- in --**  
 3 **come to work. I manage the office. I do**  
 4 **overtime for the teachers. I schedule**  
 5 **classes -- coverages for the teachers. For**  
 6 **payroll I -- I basically deal with absences,**  
 7 **distributing checks, overtime and anything**  
 8 **having to do with, again checks, Teacher's**  
 9 **Choice.**  
 10 Q. All right. Now, you just  
 11 mentioned Teacher's Choice. Can you tell us,  
 12 what is Teacher's Choice?  
 13 **A. Well, it's an allotment that**  
 14 **the teachers get in order to provide -- to buy**  
 15 **resources and materials for their classroom.**  
 16 **They get that every year.**  
 17 Q. And can you tell us when --  
 18 well, withdrawn.  
 19 Are the checks distributed at  
 20 a certain point in time?  
 21 **A. Usually at the end of the**  
 22 **year, December.**  
 23 Q. And how are the checks  
 24 received by you? Tell us the process of how

1 Porter - Direct - Hemans-Brantley  
 2 the checks come to you.  
 3 **A. A courier brings them with**  
 4 **all the payroll checks for that day.**  
 5 Q. And tell us what, if  
 6 anything, do you do upon receipt of the  
 7 Teacher's Choice checks?  
 8 **A. Well, I file them in the**  
 9 **payroll -- in my payroll file. And when the**  
 10 **teachers come to receive their checks I**  
 11 **distribute the checks.**  
 12 Q. How do -- how do you  
 13 distribute the checks?  
 14 **A. I have a list, and they sign**  
 15 **the list, and I put the check in the envelope.**  
 16 **So, usually at that time they know it's payday**  
 17 **and they come and they -- to receive their**  
 18 **checks.**  
 19 Q. Now, you just made reference  
 20 to a list. Please tell us what list you're  
 21 talking about.  
 22 **A. Well, I have -- for regular**  
 23 **checks I have a list and the teachers sign**  
 24 **their name -- sign next to their name that they**

1 **Porter - Direct - Hemans-Brantley**  
 2 **receive the check. And the Teacher's Choice**  
 3 **there's a list of the names of the checks that**  
 4 **will be distributed to teachers, and they sign**  
 5 **off when they receive the check.**  
 6 Q. And is the -- the list you  
 7 just mentioned does that accompany the  
 8 Teacher's Choice --  
 9 **A. Yes.**  
 10 Q. -- checks?  
 11 **A. Right.**  
 12 Q. How do you, or -- withdrawn.  
 13 Who is the individual who  
 14 alerts the teachers that Teacher's Choice  
 15 checks have arrived?  
 16 **A. Mostly they know that around**  
 17 **the time of the year when -- they're looking**  
 18 **for the checks basically. They know that**  
 19 **they're there at the end of the year. And they**  
 20 **know that during one of the pay cycles in**  
 21 **December that they will receive the check.**  
 22 Q. Are any postings or any sort  
 23 of notices posted at the school?  
 24 **A. No.**

1 **Porter - Direct - Hemans-Brantley**  
 2 Q. Are you the only individual  
 3 who distributes Teacher's for -- Teacher's  
 4 Choice checks?  
 5 **A. No. No.**  
 6 Q. Who else at your school can  
 7 distribute the checks?  
 8 **A. The other person that can**  
 9 **distribute checks is the principal's secretary,**  
 10 **Ms. Cowell, if I'm not present at the time.**  
 11 Q. And what is her first name,  
 12 please?  
 13 **A. Marsha Cowell.**  
 14 Q. And how do you spell her last  
 15 name, just so the record -- so the record is  
 16 clear?  
 17 **A. C-O-W-E-L-L.**  
 18 **MS. HEMANS-BRANTLEY: I'm**  
 19 **going to show you as soon as I find it. Oh,**  
 20 **boy, I just had it. Bear with me, bear with me**  
 21 **on moment, I just had it here.**  
 22 **I know I just put this**  
 23 **together today.**  
 24 THE HEARING OFFICER: D.O.E.

1 Porter - Direct - Hemans-Brantley  
 2 Eleven. The -- the -- is that what you're  
 3 looking for? That's --  
 4 MS. HEMANS-BRANTLEY: No,  
 5 no --  
 6 THE HEARING OFFICER:  
 7 underneath.  
 8 MS. HEMANS-BRANTLEY: -- no,  
 9 no, I'm looking for -- and I just made copies.  
 10 Oh, here they are. Okay.  
 11 I'm going to show you what's  
 12 marked as D.O.E. -- I just had -- for  
 13 identification, which is a two-page  
 14 document --.  
 15 THE REPORTER: I'm sorry, Ms.  
 16 Brantley, I can't hear you.  
 17 MS. HEMANS-BRANTLEY: I'm  
 18 just marking exhibits, a two-page exhibit, I'm  
 19 marking it as D.O.E. Twelve for identification.  
 20 THE HEARING OFFICER: And I  
 21 would just like the record to reflect that  
 22 we're kind of going out of order in numbers.  
 23 MS. HEMANS-BRANTLEY: Yes.  
 24 THE HEARING OFFICER: We

1 Porter - Direct - Hemans-Brantley  
 2 haven't officially marked D.O.E. Eleven, but  
 3 we'll do that for ease of reference.  
 4 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 5 Q. Please take a look at D.O.E.  
 6 Twelve, which is a two-page exhibit, and tell  
 7 me if you recognize it?  
 8 **A. Yes.**  
 9 Q. What is it?  
 10 **A. Excuse me. It's a sign sheet**  
 11 **for Teacher's Choice for 2006.**  
 12 Q. And was this exhibit sent  
 13 along with the Teacher's Choice check for that  
 14 school year?  
 15 **A. Yes.**  
 16 Q. And did you receive D.O.E.  
 17 Twelve?  
 18 **A. Yes.**  
 19 **MS. HEMANS-BRANTLEY: At this**  
 20 **point I'm going to ask that D.O.E. Twelve be**  
 21 **admitted into evidence.**  
 22 **THE HEARING OFFICER: Mr.**  
 23 **Fofana, yeah, any objection?**  
 24 **MR. FOFANA: No.**

1 **Porter - Direct - Hemans-Brantley**  
 2 THE HEARING OFFICER: Okay.  
 3 MR. FOFANA: No objection.  
 4 THE HEARING OFFICER: D.O.E.  
 5 Twelve then, is in evidence. And this is the  
 6 check --  
 7 MR. FOFANA: I'm sorry.  
 8 THE HEARING OFFICER: --  
 9 processing --  
 10 MR. FOFANA: I'm sorry, sir.  
 11 THE HEARING OFFICER: --  
 12 fulfillment report.  
 13 MR. FOFANA: I'm sorry, I  
 14 need some clarification. It's to what purpose  
 15 is this? This -- what's this -- what's this --  
 16 what do -- what do you intend to -- to prove  
 17 with this? Because she just said a list  
 18 What's -- what's the purpose?  
 19 MS. HEMANS-BRANTLEY: Do I  
 20 have to respond?  
 21 THE HEARING OFFICER:  
 22 Well --.  
 23 MR. FOFANA: Because if you  
 24 introduced a document, there has to be some

1 Porter - Direct - Hemans-Brantley  
 2 purpose; right?  
 3 THE HEARING OFFICER: So,  
 4 you're arguing this is not relevant; is that  
 5 what --  
 6 MR. FOFANA: Yes.  
 7 THE HEARING OFFICER: --  
 8 you're trying to say?  
 9 MR. FOFANA: Yes. Yes.  
 10 THE HEARING OFFICER: Okay.  
 11 Well --  
 12 MS. HEMANS-BRANTLEY: Well --  
 13 THE HEARING OFFICER: -- why  
 14 don't you argue, you know --  
 15 MS. HEMANS-BRANTLEY: Sure, I  
 16 mean --  
 17 THE HEARING OFFICER: --  
 18 explain the relevance?  
 19 MS. HEMANS-BRANTLEY: -- I  
 20 think the relevance is obvious; however the  
 21 relevance of this document as to indicate that  
 22 Mr. Fofana received the Teacher's Choice check  
 23 for that school year as indicated on the list.  
 24 MR. FOFANA: Well, this will

1 Porter - Direct - Hemans-Brantley  
 2 be redundant because we already agreed that I  
 3 receive a check, and even sent, you know,  
 4 documentation on items I bought. And you even  
 5 sent me copies of what I sent to payroll  
 6 secretary.  
 7 THE HEARING OFFICER: All  
 8 right.  
 9 MS. HEMANS-BRANTLEY: But  
 10 then, the --.  
 11 THE HEARING OFFICER: Well,  
 12 Mr. Fofana, the Department -- the Department  
 13 has the right to put in its case --  
 14 MR. FOFANA: Of course.  
 15 THE HEARING OFFICER: -- and  
 16 you have the right to put your case in.  
 17 MR. FOFANA: Yes. Yes.  
 18 THE HEARING OFFICER: So,  
 19 D.O. -- D.O.E. Twelve will be admitted into  
 20 evidence.  
 21 MR. FOFANA: Yes.  
 22 THE HEARING OFFICER: Thank  
 23 you.  
 24 BY MS. HEMANS-BRANTLEY: (Cont'g.)

Page 1189

1 Porter - Direct - Hemans-Brantley  
 2 Q. Now, I'm sorry, let me go  
 3 back.  
 4 MR. FOFANA: I'm -- I'm  
 5 sorry, once again. I believe that something is  
 6 here -- here -- I -- I believe --.  
 7 THE HEARING OFFICER: Those  
 8 are certainly questions you can ask on  
 9 cross-examination, because --  
 10 MR. FOFANA: Okay. Yes.  
 11 THE HEARING OFFICER: -- it  
 12 might not be clear to me either, so.  
 13 MS. HEMANS-BRANTLEY: Okay.  
 14 MR. FOFANA: Yes, sir.  
 15 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 16 Q. With regards to D.O.E.  
 17 Twelve, and you can just look at it. Now,  
 18 D.O.E. Twelve has a list of teacher's names and  
 19 the check amounts that -- that they are to  
 20 receive; correct?  
 21 **A. Yes.**  
 22 Q. And to the right of that  
 23 also, is a line for teachers to sign for their  
 24 checks; correct?

Page 1191

1 Porter - Direct - Hemans-Brantley  
 2 you make this notation?  
 3 THE WITNESS: What notation?  
 4 THE HEARING OFFICER: The  
 5 notation right here, next to Mr. Fofana's name?  
 6 THE WITNESS: What says --  
 7 oh, "on the back of," yes, sure, I did, yes.  
 8 Uh-huh.  
 9 THE HEARING OFFICER: Okay.  
 10 Then -- then I -- we can have --  
 11 THE WITNESS: Uh-huh.  
 12 Uh-huh.  
 13 THE HEARING OFFICER: -- have  
 14 her answer that.  
 15 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 16 Q. Okay. What is the notation  
 17 that you made on the document?  
 18 **A. "On back of check" -- I'm**  
 19 **sorry, "on back of page."**  
 20 Q. Okay.  
 21 **A. Uh-huh.**  
 22 Q. Can you tell us why you made  
 23 that notation?  
 24 **A. On this day, the -- the page**

Page 1190

1 Porter - Direct - Hemans-Brantley  
 2 **A. Yes.**  
 3 Q. Okay. Now, does Mr. Fofana's  
 4 name appear on this document?  
 5 **A. On -- not on the top.**  
 6 Q. Is his -- does his name --  
 7 does his name appear in this --  
 8 **A. Oh, yes, ma'am.**  
 9 Q. -- does his name --?  
 10 **A. Yes. Yes. Okay.**  
 11 Q. And next to his name, there's  
 12 some notation. Can you tell us what this  
 13 notation says?  
 14 **A. Oh, right here?**  
 15 Q. No, no, on -- in this --  
 16 where --  
 17 **A. Okay.**  
 18 Q. -- where teachers were to  
 19 sign there is --  
 20 **A. Uh-huh.**  
 21 Q. -- a notation. Tell us what  
 22 the notation is?  
 23 THE HEARING OFFICER: Well,  
 24 I -- before she does that, I want to know, did

Page 1192

1 **Porter - Direct - Hemans-Brantley**  
 2 **that he had to sign, this page, the original**  
 3 **page, was with Marsha Cowell. She had**  
 4 **distributed checks. So, I used the -- another**  
 5 **page from the Teacher's Choice check to let**  
 6 **several teachers sign, to indicated that they**  
 7 **received their checks.**  
 8 Q. And that page that you're  
 9 referring to, is that the -- the second page of  
 10 D.O.E. Twelve?  
 11 **A. Yes, ma'am.**  
 12 Q. Okay. And does Mr. Fofana's  
 13 name and signature appear on page two of D.O.E.  
 14 Twelve?  
 15 **A. Yes.**  
 16 Q. And is there also a date next  
 17 to his name and signature?  
 18 **A. Yes. I put that there.**  
 19 Q. Okay. And would that be the  
 20 date that Mr. Fofana received his check?  
 21 **A. Yes.**  
 22 Q. Okay. Now, Mrs. Porter, I'd  
 23 like to show you now what's marked as D.O.E.  
 24 Eleven for identification. Please tell me if

15 (Pages 1189 to 1192)

1 Porter - Direct - Hemans-Brantley  
 2 you recognize the document.  
 3 MR. FOFANA: I object to this  
 4 one, sir, because the document that was  
 5 produced earlier was originated from the  
 6 payroll secretary. You cannot, you know, show  
 7 her a dated document, and make it an argument,  
 8 when actually you already said that the -- she  
 9 handed in -- handed a copy of the -- the -- the  
 10 D.O.E. Number Ten items, if you remember. So,  
 11 I mean it -- it doesn't make sense.  
 12 THE HEARING OFFICER: Well,  
 13 we -- we haven't heard this witness say what  
 14 this document is or explain it.  
 15 MR. FOFANA: Uh-huh.  
 16 THE HEARING OFFICER: And  
 17 obviously the Department's going to have to  
 18 explain why one of its witnesses was not clear  
 19 about what he said he thought he knew.  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: So  
 22 that's -- they've obviously made the decision  
 23 that its better to clarify the record --  
 24 Uh-huh. Yes. And you know, I'm going to let

1 Porter - Direct - Hemans-Brantley  
 2 them pursue this if they think its important.  
 3 So --  
 4 MS. HEMANS-BRANTLEY: Thank  
 5 you.  
 6 THE HEARING OFFICER: --  
 7 you -- you can question the witness.  
 8 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 9 Q. Okay. Do you recognize  
 10 D.O.E. Eleven?  
 11 A. Yes.  
 12 Q. What is it?  
 13 A. It's a document stating what  
 14 the -- what the checks for -- the Teacher's  
 15 Choice checks are used for, and also guidelines  
 16 that the teacher should follow, and what  
 17 personnel of the D.O.E. received checks.  
 18 MS. HEMANS-BRANTLEY: Okay.  
 19 Actually, I should put the number of pages, it  
 20 says D.O.E. Eleven on the record.  
 21 THE HEARING OFFICER: Okay.  
 22 You've got -- the first fifteen are -- are  
 23 numbered.  
 24 MS. HEMANS-BRANTLEY: Oh,

1 Porter - Direct - Hemans-Brantley  
 2 sorry.  
 3 THE HEARING OFFICER: And  
 4 then you've got a -- then you've got a few  
 5 attachments after that --  
 6 MS. HEMANS-BRANTLEY: Okay.  
 7 THE HEARING OFFICER: --  
 8 though.  
 9 MS. HEMANS-BRANTLEY: So,  
 10 that would be - fifteen sixteen seventeen  
 11 eighteen - so, it's a nineteen-page document.  
 12 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 13 Q. Now, with regards to D.O.E.  
 14 Eleven -- oh, sorry. I'm sorry. One moment.  
 15 I'm sorry.  
 16 You indicated, now with  
 17 regards to D.O.E. Eleven, is D.O.E. Eleven used  
 18 by teachers for the purposes of the Teacher's  
 19 Choice program?  
 20 A. Yes.  
 21 MS. HEMANS-BRANTLEY: At this  
 22 time I'm going to -- I wish to move in what's  
 23 been marked as D.O.E. Exhibit Eleven for  
 24 evidence -- I mean for I.D., into evidence.

1 Porter - Direct - Hemans-Brantley  
 2 THE HEARING OFFICER: Mr.  
 3 Fofana?  
 4 MR. FOFANA: Once again, I  
 5 will object to it, because these -- if it was  
 6 an item it was used independently of what she  
 7 produced, I have no choice but to let -- you  
 8 know, to -- to let the -- the question stand.  
 9 But if you try to -- to introduce it, you --  
 10 it's marked because you -- you -- these are in  
 11 submission here. Try to substitute the  
 12 original paper by this one.  
 13 THE HEARING OFFICER: All  
 14 right.  
 15 MR. FOFANA: That -- that --  
 16 that is not --.  
 17 THE HEARING OFFICER: I  
 18 guess, Ms. Brantley, before I admit it, I -- I  
 19 need the witness to give a lot more foundation  
 20 in terms of, you know, where this is located,  
 21 how teacher --  
 22 MS. HEMANS-BRANTLEY: Uh-huh.  
 23 THE HEARING OFFICER: -- are  
 24 apprised of it. And maybe explain why Nine

1 Porter - Direct - Hemans-Brantley  
 2 versus Eleven, you know.  
 3 MS. HEMANS-BRANTLEY: Well,  
 4 let me show her D.O.E. Nine.  
 5 THE HEARING OFFICER: Okay,  
 6 but -- but before you do that, you know, I  
 7 think we need to get into --.  
 8 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 9 Q. Is D.O.E. -- all right, I'll  
 10 ask -- D.O.E. Eleven, can you flip through it,  
 11 please?  
 12 MR. FOFANA: Mr. Siegel, I  
 13 have to object to this examination. To study  
 14 the document before, you know, answering  
 15 questions.  
 16 THE HEARING OFFICER: Well,  
 17 I'm -- I -- I --.  
 18 MR. FOFANA: Because if --  
 19 if -- if the document is familiar to her  
 20 there's no -- she doesn't have to -- to study  
 21 it, to go through it. I can understand in a  
 22 couple of seconds, you can look at one page,  
 23 but if you spend one, two, three minutes  
 24 reading, that's a problem.

1 Porter - Direct - Hemans-Brantley  
 2 THE HEARING OFFICER: Mr.  
 3 Fofana, I want the record to be accurate and  
 4 I'm going to give her the time she needs to  
 5 identify it. And --.  
 6 MR. FOFANA: Okay.  
 7 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 8 Q. Now, with regards to the  
 9 Teacher's Choice check, can you tell us after a  
 10 teacher receives his or her Teacher's Choice  
 11 check, can you tell us what is the next step in  
 12 the process?  
 13 **A. Well, excuse me, they must**  
 14 **acquire all of their receipts from August of**  
 15 **that year until March of the next year. They**  
 16 **can only be dated from August to March, and for**  
 17 **that total amount of the check, and fill out**  
 18 **the accountability form. And then, there's a**  
 19 **deadline that they must return it back to me.**  
 20 Q. Now, the accountability form,  
 21 as a deadline for that school year, where is  
 22 that information accessed by the teacher?  
 23 **A. No, it's from Teacher's**  
 24 **Choice. Well, they -- it's -- I post it. I**

1 **Porter - Direct - Hemans-Brantley**  
 2 **post it in like February.**  
 3 Q. And when you say you post it,  
 4 what are you posting?  
 5 **A. I post when the Teacher's**  
 6 **Choice accountability forms are due back to the**  
 7 **payroll office. So, by February, I usually**  
 8 **post it.**  
 9 Q. Now, with regards to the  
 10 accountability form you just mentioned, where  
 11 does the teacher access that particular form?  
 12 **A. Off the computer. They can**  
 13 **go into the D.O.E. Web site and they can go to**  
 14 **Teacher's Choice and they can pull up the form.**  
 15 **Everything they can download.**  
 16 Q. Okay.  
 17 **A. Uh-huh.**  
 18 Q. Now, with regards to that  
 19 form, is that form part of D.O.E. Number  
 20 Eleven?  
 21 **A. Yes.**  
 22 Q. Okay. Now also, I'm going to  
 23 show you D.O.E. -- what's in evidence as D.O.E.  
 24 Twelve. Now, with regards to D.O.E. Twelve, on

1 Porter - Direct - Hemans-Brantley  
 2 this particular form, above where the -- the --  
 3 the row -- the column where the teachers sign,  
 4 is there an affirmation that the -- the  
 5 teacher's attests to?  
 6 **A. Yes.**  
 7 **MS. HEMANS-BRANTLEY: Okay.**  
 8 **Thank you.**  
 9 **At this time, I wish to move**  
 10 **D.O.E. Eleven -- I'm sorry,**  
 11 **BY MS. HEMANS-BRANTLEY: (Cont'g.)**  
 12 Q. And now you said, just so the  
 13 record's clear, you said that D.O.E. Eleven is  
 14 assessed -- accessed by teachers, via the Web;  
 15 correct?  
 16 **A. Uh-huh.**  
 17 Q. Okay. Do you also provide  
 18 copies, hard copies of D.O.E. Eleven?  
 19 **A. If they ask me, because I**  
 20 **make copies. If they ask, I'll give them a**  
 21 **copy. But most teachers they do it themselves.**  
 22 **Even the forms, they -- they download them**  
 23 **themselves.**  
 24 **MS. HEMANS-BRANTLEY: At this**

1 **Porter - Direct - Hemans-Brantley**  
 2 **time I wish to move D.O.E. Eleven into**  
 3 **evidence.**  
 4 **THE HEARING OFFICER: All**  
 5 **right. Mr. Fofana, I assume you're still**  
 6 **objecting to this, or you're going to accept**  
 7 **this in evidence?**  
 8 MR. FOFANA: I object to it  
 9 because the very purpose of Ms. -- you know,  
 10 you know, Mr. Siegel, let's go. It's not going  
 11 to change much.  
 12 THE HEARING OFFICER: Right.  
 13 MR. FOFANA: Let's move on.  
 14 THE HEARING OFFICER: All  
 15 right. D.O.E. Eleven is --  
 16 MR. FOFANA: Yes, I would  
 17 admit it.  
 18 THE HEARING OFFICER: --  
 19 D.O.E. Eleven is in evidence.  
 20 And thank you.  
 21 MR. FOFANA: No problem.  
 22 MS. HEMANS-BRANTLEY: I have  
 23 no further questions of this witness.  
 24 THE HEARING OFFICER: Mr.

1 Porter - Cross - Fofana  
 2 Fofana, would you like a few minutes before you  
 3 do your cross, or --?  
 4 MR. FOFANA: No, no, just a  
 5 couple of questions quickly.  
 6 THE HEARING OFFICER: Okay.  
 7 MR. FOFANA: I don't want to  
 8 bother Ms. Porter.  
 9 THE WITNESS: That's what I'm  
 10 here for.  
 11 CROSS EXAMINATION  
 12 BY MR. FOFANA:  
 13 Q. I want you to go quickly.  
 14 Ms. Porter, did you receive,  
 15 yourself, a check?  
 16 **A. Yes.**  
 17 Q. Okay. Did Mr. Jean Brutus,  
 18 on D.O.E. Twelve -- Jean Brutus who is --?  
 19 MS. HEMANS-BRANTLEY: Wait,  
 20 I'm -- I'm going to object to the question.  
 21 BY MR. FOFANA: (Cont'g.)  
 22 Q. All right. Mr. -- Mr. Jean  
 23 Brutus received a check as indicated here; is  
 24 that correct?

1 Porter - Cross - Fofana  
 2 MS. HEMANS-BRANTLEY:  
 3 Objection. Irrelevant.  
 4 MR. FOFANA: No, it is,  
 5 well --.  
 6 THE HEARING OFFICER: Well --  
 7 MS. HEMANS-BRANTLEY: I'm  
 8 just asking, then --.  
 9 THE HEARING OFFICER: He --  
 10 he -- she's allowed to make an objection if she  
 11 doesn't feel it's relevant.  
 12 MR. FOFANA: Okay.  
 13 THE HEARING OFFICER: I'm  
 14 going to give you -- I'm going to allow you to  
 15 connect it. I'm going to --  
 16 MR. FOFANA: What --  
 17 THE HEARING OFFICER: --  
 18 allow the question.  
 19 MR. FOFANA: -- what --  
 20 it's -- it's -- it's a procedure, I guess to  
 21 mention that before asking my question, now,  
 22 that's -- that's --.  
 23 THE HEARING OFFICER: Okay.  
 24 You've asked --

1 Porter - Cross - Fofana  
 2 BY MR. FOFANA: (Cont'g.)  
 3 Q. Now, my question is, we  
 4 agreed that Mr. Jean Brutus is a guidance  
 5 counselor --.  
 6 MS. HEMANS-BRANTLEY:  
 7 Objection.  
 8 THE HEARING OFFICER: Well,  
 9 I'll allow it.  
 10 MS. HEMANS-BRANTLEY: That  
 11 foundation wasn't established.  
 12 MR. FOFANA: Well,  
 13 because --.  
 14 THE HEARING OFFICER: Well,  
 15 I'm going to -- I'm going to allow -- you can  
 16 ask her --  
 17 MR. FOFANA: Okay.  
 18 THE HEARING OFFICER: --  
 19 is -- is it true that Mr. Brutus is a guidance  
 20 counselor?  
 21 THE WITNESS: Yes.  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. He received a check?  
 24 **A. Yes.**

1 **Porter - Cross - Fofana**  
 2 Q. Okay. Marsha Cowell is a --  
 3 if I'm not mistaken, is the principal's  
 4 secretary?  
 5 **A. Yes.**  
 6 Q. She received a check?  
 7 **A. Yes.**  
 8 Q. Okay. Now, in general from  
 9 this document D.O.E. Eleven, page four at the  
 10 bottom.  
 11 MS. HEMANS-BRANTLEY: Oh  
 12 wait, hold on I have to give it to her.  
 13 BY MR. FOFANA: (Cont'g.)  
 14 Q. Uh-huh. You have a --  
 15 MR. FOFANA: I'm sorry, I  
 16 don't have it. Does she --?  
 17 BY MR. FOFANA: (Cont'g.)  
 18 Q. You have at the bottom, high  
 19 schools, disability, you have attendance  
 20 teachers who receive it?  
 21 **A. Yes.**  
 22 Q. Guidance counselor --  
 23 **A. Uh-huh.**  
 24 Q. -- social workers, school

1 Porter - Cross - Fofana  
 2 psychologists, laboratories position; is that  
 3 correct?  
 4 **A. Yes.**  
 5 Q. Now, are they teachers, all  
 6 of them?  
 7 **A. Okay. We --.**  
 8 Q. Are they teachers?  
 9 **A. Are who teachers?**  
 10 Q. All the list I just -- the  
 11 people I just named?  
 12 **A. No, they are not all**  
 13 **teachers.**  
 14 Q. All right. So --so, when you  
 15 were asked to define what Teacher's Choice  
 16 check is about, you said it was intended for  
 17 teachers. I just wanted to get here on the  
 18 record that you have all these people, even  
 19 secretaries, receive it, without being  
 20 teaching -- teaching.  
 21 Now, my next question is  
 22 this, who evaluate -- no, first of all, let me  
 23 ask you, do you remember receiving this  
 24 document by express mail --

1 Porter - Cross - Fofana  
 2 MS. HEMANS-BRANTLEY: Hold  
 3 on.  
 4 BY MR. FOFANA: (Cont'g.)  
 5 Q. -- from me?  
 6 MS. HEMANS-BRANTLEY: This  
 7 is -- this is in evidence. We should just put  
 8 what the --  
 9 THE HEARING OFFICER: Right.  
 10 MS. HEMANS-BRANTLEY: --  
 11 actual Exhibit --.  
 12 THE HEARING OFFICER: I -- I  
 13 have that.  
 14 MR. FOFANA: Right.  
 15 THE HEARING OFFICER: So,  
 16 just bear with me, and I'll get --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: -- the  
 19 number --  
 20 MR. FOFANA: Okay.  
 21 THE HEARING OFFICER: -- so  
 22 we can --  
 23 MR. FOFANA: Okay. If I --  
 24 if I can't get mine -- mine --.

1 Porter - Cross - Fofana  
 2 MS. HEMANS-BRANTLEY: Here,  
 3 I'll give him mine. I just don't wanted to --  
 4 MR. FOFANA: Thank you.  
 5 MS. HEMANS-BRANTLEY: -- show  
 6 her. It's R-Sixteen.  
 7 MR. FOFANA: Right.  
 8 MS. HEMANS-BRANTLEY: Okay.  
 9 Here it is. All right.  
 10 THE HEARING OFFICER: Yes.  
 11 Correct. Thank you, Ms. Brantley.  
 12 BY MR. FOFANA: (Cont'g.)  
 13 Q. Did you receive it?  
 14 **A. Yes.**  
 15 Q. Okay. Now, my question is  
 16 this, when -- so you see the receipt, you see  
 17 the receipt --  
 18 **A. Yes.**  
 19 Q. -- and all the documentation.  
 20 Now, my question is regarding  
 21 this statement above our signature. The last  
 22 column of D.O.E. Twelve, the last column above  
 23 the signature, this statement reads "the  
 24 undersigned agrees to the terms and conditions

1 Porter - Cross - Fofana  
 2 of the Teacher's Choice program, and will  
 3 comply with all of the procedure outlined in  
 4 the purchasing and accountability guidelines;"  
 5 now, I'm asking you if a teacher, or anybody,  
 6 violates this statement, what happens?  
 7 **A. Well, one thing is if they do**  
 8 **not turn in their receipts,**  
 9 Q. Any -- any item. No, this is  
 10 violated for any reason, if this is violated,  
 11 what happens?  
 12 **A. If it's violated in the sense**  
 13 **that --?**  
 14 Q. In any way, yes.  
 15 **A. In any way.**  
 16 Q. Uh-huh.  
 17 **A. Well, I would definitely**  
 18 **tell --**  
 19 Q. Uh-huh.  
 20 **A. -- the principal --**  
 21 Q. Uh-huh.  
 22 **A. -- okay?**  
 23 Q. Uh-huh.  
 24 **A. And I would also contact**

1 **Porter - Cross - Fofana**  
 2 **Teacher's Choice.**  
 3 Q. Uh-huh.  
 4 **A. It depends on what the**  
 5 **situation is.**  
 6 Q. Uh-huh.  
 7 **A. Like I said, if I don't get**  
 8 **receipts, I contact the assistant principal --**  
 9 Q. Correct.  
 10 **A. -- over those teachers.**  
 11 Q. Yes. Okay. During your --  
 12 during your career, or at least during your --  
 13 during your presence at our school, can you  
 14 remember any incidents in which this statement  
 15 has been violated and force you to -- to --  
 16 to -- you know, to have recourse to the  
 17 principal?  
 18 **A. Well, in your case, can I**  
 19 **speak on that?**  
 20 Q. Yes, in -- in -- in this  
 21 particular case.  
 22 **A. After I issued the check when**  
 23 **you came in that day --**  
 24 Q. Uh-huh.

1 Porter - Cross - Fofana  
 2 **A. -- I called Michelle Nacht.**  
 3 Q. No, no, that's not my  
 4 question.  
 5 **A. Not what --**  
 6 Q. No, no, no.  
 7 **A. -- you're asking me? Okay.**  
 8 **You --.**  
 9 Q. It's about the documentation.  
 10 Is this documentation --  
 11 **A. Well, the --**  
 12 Q. -- because the --.  
 13 **A. -- did --**  
 14 **MS. HEMANS-BRANTLEY: Let him**  
 15 **finish.**  
 16 THE WITNESS: I'm sorry.  
 17 BY MR. FOFANA: (Cont'g.)  
 18 Q. Because the -- the -- the  
 19 statement is about the validity -- validity of  
 20 the documentation --  
 21 **A. Uh-huh.**  
 22 Q. -- with a -- the -- is there  
 23 inconformity with the guidelines or  
 24 accountability. So, I'm asking you, do you

1 Porter - Cross - Fofana  
 2 feel -- do you feel any anomaly or  
 3 irregularities on -- in -- in this document?  
 4 Is there anything that --?  
 5 THE HEARING OFFICER: Meaning  
 6 the document that has your name on it?  
 7 THE WITNESS: Uh-huh.  
 8 MR. FOFANA: This document.  
 9 THE HEARING OFFICER:  
 10 D.O.E. -- Respondent's Sixteen?  
 11 BY MR. FOFANA: (Cont'g.)  
 12 Q. This document.  
 13 **A. Oh, okay.**  
 14 Q. Okay. Is there any --  
 15 **A. Oh, yeah.**  
 16 Q. -- anomaly --  
 17 **A. See, I don't --.**  
 18 Q. -- is there any irregularity;  
 19 is there any violation with regard to the  
 20 guidelines -- to the accountability guidelines?  
 21 THE HEARING OFFICER: Okay.  
 22 You've asked the question.  
 23 Now, you answer.  
 24 **A. Only in that -- I don't know**

1 **Porter - Cross - Fofana**  
 2 **how to answer that, in the sense that -- only**  
 3 **in that if you were -- meant to -- supposed to**  
 4 **get the checks, if it was really something you**  
 5 **were supposed to get, then no.**  
 6 Q. I'm sorry, I didn't hear you.  
 7 THE HEARING OFFICER: Okay.  
 8 **A. But only -- only knowing what**  
 9 **I know now, like I said, because of what**  
 10 **happened after I gave them the check, yes, I**  
 11 **know that's not clear.**  
 12 THE HEARING OFFICER: Maybe  
 13 you can --.  
 14 **A. (Cont'g.) But sometimes --.**  
 15 THE HEARING OFFICER: Try to  
 16 tell us, to the best of your ability, what --  
 17 THE WITNESS: Right.  
 18 THE HEARING OFFICER: -- what  
 19 you're thinking.  
 20 **A. (Cont'g.) Under -- under**  
 21 **regular -- under regular circumstances, Mr.**  
 22 **Fofana, I would say no.**  
 23 BY MR. FOFANA: (Cont'g.)  
 24 Q. Uh-huh.

1 Porter - Cross - Fofana  
 2 **A. Because these are the items**  
 3 **you use in order to instruct your class.**  
 4 Q. Uh-huh.  
 5 THE HEARING OFFICER: Why do  
 6 you think these aren't regular circumstances?  
 7 THE WITNESS: Because he did  
 8 not have a -- he did not -- he was not a  
 9 classroom instructional teacher at the time.  
 10 That's why.  
 11 BY MR. FOFANA: (Cont'g.)  
 12 Q. Uh-huh. I'm -- I'm --  
 13 THE HEARING OFFICER: Your  
 14 turn.  
 15 BY MR. FOFANA: (Cont'g.)  
 16 Q. -- I'm afraid that that's not  
 17 my question.  
 18 Because -- let me -- let me  
 19 try to rephrase it. You and I, we all know  
 20 about the issue; you know, the -- the -- the  
 21 receiving or not -- the -- the -- the receiving  
 22 the check whether it's proper or not. That's  
 23 not the issue. I just want -- I want to make  
 24 sure that the -- this documentation reflects

1 Porter - Cross - Fofana  
 2 the guidelines. And this is not about whether  
 3 the check is legitimately received or not.  
 4 THE HEARING OFFICER: Mr.  
 5 Fofana and I'm going to ask you, Ms. Brantley,  
 6 and maybe we can avoid this issue. It's my  
 7 understanding that the Department is not  
 8 alleging that your paperwork --  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: -- was  
 11 not properly filled out.  
 12 MR. FOFANA: Yeah.  
 13 THE HEARING OFFICER: It is  
 14 alleging --  
 15 MR. FOFANA: Yeah.  
 16 THE HEARING OFFICER: -- that  
 17 by virtue of the fact that you were not in a  
 18 classroom --  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: --  
 21 teaching environment during that particular  
 22 year, that --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: --

1 Porter - Cross - Fofana  
 2 after you were issued the check --  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: -- that  
 5 you should have returned the check.  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: And  
 8 that the failure constitutes an issue for me to  
 9 be considering. Not -- they're not questioning  
 10 that you prepared the paperwork --  
 11 MR. FOFANA: Perfect.  
 12 THE HEARING OFFICER: --  
 13 properly.  
 14 MR. FOFANA: Perfect.  
 15 THE HEARING OFFICER: Am I  
 16 right about that --  
 17 MS. HEMANS-BRANTLEY:  
 18 Absolutely.  
 19 THE HEARING OFFICER: -- Ms.  
 20 Brantley?  
 21 MS. HEMANS-BRANTLEY: Yes.  
 22 MR. FOFANA: You -- you --  
 23 you just clarified --  
 24 THE HEARING OFFICER: Okay.

1 Porter - Cross - Fofana  
 2 MR. FOFANA: -- I mean that  
 3 was my concern.  
 4 THE HEARING OFFICER: Good.  
 5 That's what we're trying to do.  
 6 BY MR. FOFANA: (Cont'g.)  
 7 Q. And now to move on from this,  
 8 I'm asking you now, you called Ms. Nacht. I  
 9 would like to know what happened, you called --  
 10 why you called Ms. Nacht, why?  
 11 **A. Because I had some question,**  
 12 **when you came in to pick up the check --**  
 13 Q. Uh-huh.  
 14 **A. -- whether I -- what your**  
 15 **duties were --**  
 16 Q. Uh-huh.  
 17 **A. -- because I wasn't clear.**  
 18 Q. Uh-huh.  
 19 **A. So, when I called her, she**  
 20 **said no you should not have received a check**  
 21 **because you are not performing any**  
 22 **instructional teaching.**  
 23 Q. Okay. All right.  
 24 **A. That's when I was clear on**

1 **Porter - Cross - Fofana**  
 2 **that.**  
 3 Q. I just wanted to hear that.  
 4 Thank you very much. But let me ask you now  
 5 you mentioned earlier that neither you nor Ms.  
 6 Cowell, secretaries, you are not teachers, you  
 7 are not teachers, you don't perform any  
 8 instruction --  
 9 **A. No.**  
 10 Q. -- and then -- and then  
 11 you -- and yet you received the -- you know,  
 12 the check; am I right?  
 13 **A. Yes.**  
 14 Q. So -- thank you. Let me ask  
 15 you also, to your knowledge, the items  
 16 purchased by teachers, are they school property  
 17 or not?  
 18 **A. They are.**  
 19 Q. Thank you.  
 20 **A. Yes, they are.**  
 21 MR. FOFANA: All right. So,  
 22 I think I don't have a further question.  
 23 THE HEARING OFFICER:  
 24 Anything for redirect?

1 Porter - Redirect - Hemans-Brantley  
 2 MS. HEMANS-BRANTLEY: Yes.  
 3 REDIRECT EXAMINATION  
 4 BY MS. HEMANS-BRANTLEY:  
 5 Q. On cross-examination, you  
 6 were asked about contacting Michelle Nacht.  
 7 When you spoke with Ms. Nacht, what if  
 8 anything, did you do after speaking with her?  
 9 **A. Well, after she told me that**  
 10 **he should not have received the check --**  
 11 MR. FOFANA: Uh-huh.  
 12 **A. (Cont'g.) -- that she said**  
 13 **she would talk to him first and tell him to**  
 14 **return the check.**  
 15 MR. FOFANA: Uh-huh.  
 16 **A. (Cont'g.) So, she said that**  
 17 **she would handle it first, the first step.**  
 18 MR. FOFANA: Uh-huh. Well --  
 19 I'm sorry.  
 20 THE HEARING OFFICER: Okay.  
 21 They're -- they're on redirect, so --  
 22 MR. FOFANA: Yeah. Okay.  
 23 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 24 Q. And do you recall when you

1 Porter - Redirect - Hemans-Brantley  
 2 had that conversation with Michelle Nacht?  
 3 **A. It was soon after, I don't --**  
 4 **it was that same week.**  
 5 Q. The same week as --  
 6 **A. Right.**  
 7 Q. -- as what?  
 8 **A. Right.**  
 9 Q. As what?  
 10 **A. That I issued the check to**  
 11 **Mr. Fofana.**  
 12 Q. Okay. And with regards to  
 13 just -- with regards to D.O.E., it was D.O.E.  
 14 Eleven, which is in evidence, on -- as part of  
 15 the Teacher's Choice guidelines, I'll just ask  
 16 you to look at page three, are -- is there a  
 17 section that deals with the determination of  
 18 eligibility for teachers to receive Teacher's  
 19 Choice checks?  
 20 **A. Say that again?**  
 21 Q. Is there --  
 22 **A. There --**  
 23 Q. -- a section --  
 24 **A. Uh-huh.**

Page 1221

1 **Porter - Recross - Fofana**  
 2 Q. -- on page three of D.O.E.  
 3 Eleven that spells out which teachers are  
 4 eligible to receive Teacher's Choice checks?  
 5 **A. Well, right here.**  
 6 Q. So, there is a section --  
 7 **A. Yes.**  
 8 Q. -- that deals with that?  
 9 **A. Yes. Uh-huh.**  
 10 Q. Okay. Thank you.  
 11 MS. HEMANS-BRANTLEY: I have  
 12 no further questions.  
 13 THE HEARING OFFICER: Mr.  
 14 Fofana?  
 15 MR. FOFANA: Very, very  
 16 quickly.  
 17 RE CROSS EXAMINATION  
 18 BY MR. FOFANA:  
 19 Q. Who -- why would you call Ms.  
 20 Nacht, who if I'm not mistaken, because I'm not  
 21 her, who is an administrative assistant, who is  
 22 in -- who -- who is -- who was in charge of the  
 23 rubber room attendance items. Why would you  
 24 call her, instead of calling this agency who

Page 1222

1 Porter - Recross - Fofana  
 2 issues -- who issue the check, and send the  
 3 list; why?  
 4 **A. Because she had direct**  
 5 **contact with you --**  
 6 Q. Uh-huh.  
 7 **A. -- and as far as I knew, she**  
 8 **was supervising you.**  
 9 Q. No, she was not.  
 10 **A. Okay. Well --.**  
 11 Q. Go ahead. I'm sorry, go  
 12 ahead.  
 13 **A. Again, I -- that's the only**  
 14 **contact person that I knew --**  
 15 Q. No problem.  
 16 **A. -- in order to contact --**  
 17 Q. Yeah.  
 18 **A. -- about this issue. And**  
 19 **what -- again, whether you were eligible or**  
 20 **not. And she said immediately that you were**  
 21 **not.**  
 22 Q. Okay.  
 23 **A. That was your assignment, Mr.**  
 24 **Fofana --**

Page 1223

1 **Porter - Recross - Fofana**  
 2 Q. I understand.  
 3 **A. -- and that's why I**  
 4 **called --.**  
 5 Q. I understand. Well, my -- my  
 6 question was, if -- if someone told you, for  
 7 instance, "well, she's not the authority in  
 8 this matter, because if you have any misgivings  
 9 about anything related to the check, you should  
 10 contact the very office who prepared them, sent  
 11 them to you, and give you the list." The  
 12 list -- on the list my name is on it. So, they  
 13 are the authority in the matter. Why you did  
 14 not call them and contact them for  
 15 clarification?  
 16 **A. Because she told me she would**  
 17 **discuss with you about returning the check.**  
 18 **And she would handle it from there. That's --.**  
 19 Q. That's -- that's not my  
 20 question, ma'am. I'm sorry. This is -- this  
 21 is not about what Nacht told you, or -- let me  
 22 rephrase it.  
 23 If -- if -- if you -- if you  
 24 received this, and you think there's something,

Page 1224

1 Porter - Recross - Fofana  
 2 let's say, fishy, and -- or some uncertainty  
 3 about one name, you know, who sent it, you  
 4 know, where they are; why you did not -- you  
 5 did not call them and say, "okay, I saw the  
 6 name of Mr. Boubakar Fofana, is -- is this --  
 7 and you know, did you make -- you know, the  
 8 name on -- on the list, or is it a mistake, can  
 9 you verify it for me?" That's the way --  
 10 **A. Uh-huh.**  
 11 Q. -- the business should be  
 12 done. Why you didn't do that?  
 13 **A. Because, like I said, at the**  
 14 **time I called her, and she said she would**  
 15 **handle it. And she then -- well, she then**  
 16 **contacted the principal. So, then that was**  
 17 **made that -- so the principal was aware of this**  
 18 **issue.**  
 19 MR. FOFANA: Well, I -- I'm  
 20 sorry, she --  
 21 THE WITNESS: No, I follow.  
 22 MR. FOFANA: -- we are going  
 23 around.  
 24 THE HEARING OFFICER: Yes,

23 (Pages 1221 to 1224)

1 Porter - Recross - Fofana  
 2 she's answered the question --  
 3 THE WITNESS: Yeah.  
 4 THE HEARING OFFICER: -- to  
 5 her ability.  
 6 MR. FOFANA: Yeah. Yeah.  
 7 Well, let -- let's -- thank you, ma'am.  
 8 THE HEARING OFFICER: Any  
 9 other questions?  
 10 MR. FOFANA: No, no, no, no.  
 11 THE HEARING OFFICER: Okay.  
 12 Anything further for you?  
 13 MS. HEMANS-BRANTLEY: No.  
 14 THE HEARING OFFICER: I just  
 15 have one quick question. This D.O.E. Number  
 16 Twelve, so you were present, Mr. Fofana - --  
 17 you were present when --  
 18 THE WITNESS: Yes.  
 19 THE HEARING OFFICER: Mr.  
 20 Fofana signed this?  
 21 THE WITNESS: Right. Uh-huh.  
 22 THE HEARING OFFICER: Okay.  
 23 All right.  
 24 MR. FOFANA: I'm sorry, sir.

1 Porter - Recross - Fofana  
 2 BY MR. FOFANA: (Cont'g.)  
 3 Q. You said -- very quickly, you  
 4 said earlier that the -- this -- the  
 5 documentation -- the documentation, teachers go  
 6 online and downloaded them; is that right?  
 7 **A. Yes.**  
 8 Q. But you -- you don't print  
 9 out yourself and give out to teachers; do you?  
 10 **A. I print them out, and if they**  
 11 **ask --**  
 12 Q. If -- if they ask.  
 13 **A. -- I will given them a copy.**  
 14 MR. FOFANA: Now, did -- did  
 15 I request -- may I see, sir, D-Twelve, yes  
 16 D-Twelve?  
 17 THE HEARING OFFICER: Twelve.  
 18 Sure.  
 19 MR. FOFANA: Yeah. I'm  
 20 sorry, I should have my own documents.  
 21 THE HEARING OFFICER: That's  
 22 okay. Don't worry about it.  
 23 MS. HEMANS-BRANTLEY: Don't  
 24 worry, they're right here.

1 Porter - Recross - Fofana  
 2 MR. FOFANA: No, just one  
 3 page. Right.  
 4 MS. HEMANS-BRANTLEY: Oh, you  
 5 need an -- you need an extra one? I have  
 6 extras.  
 7 MR. FOFANA: No, it's the  
 8 Twelve, actually, it's the package that comes  
 9 with --.  
 10 THE HEARING OFFICER: That  
 11 would be Eleven.  
 12 MR. FOFANA: Eleven.  
 13 THE HEARING OFFICER: Eleven.  
 14 MS. HEMANS-BRANTLEY: That's  
 15 it -- this --.  
 16 MR. FOFANA: Well, we have a  
 17 problem, because this is not what I received,  
 18 sir.  
 19 THE HEARING OFFICER: Well,  
 20 that -- that was Eleven.  
 21 MR. FOFANA: Uh-huh.  
 22 THE HEARING OFFICER: And  
 23 then we have the other document that was put  
 24 in --

1 Porter - Recross - Fofana  
 2 MR. FOFANA: Uh-huh.  
 3 THE HEARING OFFICER: --  
 4 through Dr. Wiltshire --  
 5 MR. FOFANA: Uh-huh.  
 6 THE HEARING OFFICER: --  
 7 which is D.O.E. Nine.  
 8 MR. FOFANA: Yes.  
 9 Absolutely. That -- that -- that is the --.  
 10 THE HEARING OFFICER: That's  
 11 the one you want to ask her about?  
 12 MR. FOFANA: Yes.  
 13 THE HEARING OFFICER: Okay.  
 14 So, let me just make sure I have all the  
 15 copies.  
 16 MR. FOFANA: Right.  
 17 THE HEARING OFFICER: Here it  
 18 is.  
 19 MR. FOFANA: I just -- I  
 20 just -- I just want to show her.  
 21 THE HEARING OFFICER: That's  
 22 fine.  
 23 BY MR. FOFANA: (Cont'g.)  
 24 Q. Did I -- did I request any

1 Porter - Recross - Fofana  
 2 documentation when -- when I -- I took my  
 3 check?  
 4 **A. Your files, a copy of your**  
 5 **files.**  
 6 Q. No.  
 7 **A. No.**  
 8 Q. I'm talking about my files  
 9 for this 3020-a procedure, I -- I just  
 10 requested my file. But this is totally -- I'm  
 11 just asking you, did I request, from you, any  
 12 documentation on the Teacher's Choice check?  
 13 **A. No.**  
 14 MR. FOFANA: Thank you.  
 15 THE HEARING OFFICER:  
 16 Anything further?  
 17 MR. FOFANA: No.  
 18 MS. HEMANS-BRANTLEY: No.  
 19 THE HEARING OFFICER: All  
 20 right. You're excused. Have a nice day.  
 21 Thank you very much.  
 22 Why don't we take about five  
 23 minutes, Ms. Brantley?  
 24 MS. HEMANS-BRANTLEY: Sure,

1 Porter - Recross - Fofana  
 2 that's fine.  
 3 THE HEARING OFFICER: All  
 4 right. So, let's take five minutes on pause  
 5 and we'll be ready to start after that again.  
 6 (Off the record)  
 7 THE HEARING OFFICER: All  
 8 right. The parties have actually had a delay  
 9 that was a little longer than we anticipated.  
 10 The Department during this, what I'll call  
 11 intermission, photocopied some documents that  
 12 Mr. Fofana had made a request for, which he has  
 13 now received.  
 14 In addition, the Department  
 15 did see -- check to see whether Mr. Marin could  
 16 make himself available for this afternoon. His  
 17 work schedule does not allow for that, and the  
 18 parties have discussed the fact that Mr. Marin  
 19 will appear at ten o'clock sharp tomorrow, and  
 20 Mr. Fofana will be afforded the opportunity to  
 21 finish with his testimony at that time.  
 22 So, at this time I know that  
 23 the Department has brought Mr. Robert Colon in  
 24 the -- into the office -- I mean, into the

1 Colon - Direct - Hemans-Brantley  
 2 hearing room.  
 3 So, Mr. Colon, I'm going to  
 4 swear you in.  
 5 MR. COLON: Yes.  
 6 THE HEARING OFFICER: Would  
 7 you please raise your right hand?  
 8 Do you swear or affirm that  
 9 the testimony you're about to give, will be the  
 10 truth, the whole truth and nothing but the  
 11 truth?  
 12 MR. COLON: I do.  
 13 ROBERT COLON; Sworn  
 14 THE HEARING OFFICER: Okay,  
 15 Ms. Brantley, you may begin.  
 16 MS. HEMANS-BRANTLEY: Thank  
 17 you.  
 18 DIRECT EXAMINATION  
 19 BY MS. HEMANS-BRANTLEY:  
 20 Q. Good afternoon, Mr. Colon.  
 21 **A. Good afternoon.**  
 22 Q. By whom are you currently  
 23 employed?  
 24 **A. The Council of School**

1 **Colon - Direct - Hemans-Brantley**  
 2 **Supervisors and Administrators.**  
 3 Q. And what do you do at that  
 4 agency?  
 5 **A. I am a chief investigator for**  
 6 **the union.**  
 7 Q. Now, prior to going to that  
 8 agency, where were you employed?  
 9 **A. I worked for the New York**  
 10 **City Department of Investigation Office of the**  
 11 **Inspector General Public Assistance and Grants**  
 12 **Unit.**  
 13 Q. Okay. At any time have you  
 14 been employed by the Department of Education?  
 15 **A. After working for D.O.I. I**  
 16 **was an investigator for the New York City**  
 17 **Department of Education Office of Special**  
 18 **Investigation.**  
 19 Q. And what -- tell us the time  
 20 period in which you were employed at O.S.I.?  
 21 **A. I was there for about four**  
 22 **years, I think from 2000 to 2004 if my memory**  
 23 **serves me.**  
 24 Q. And in what capacity were you

1 Colon - Direct - Hemans-Brantley  
2 employed by the Department of Education?

3 **A. I was a confidential**  
4 **investigator.**

5 Q. Okay. Tell us, please what  
6 your duties and responsibilities were as a  
7 confidential investigator.

8 **A. I investigated allegations,**  
9 **mainly of corporal punishment, but of sexual**  
10 **harassment, as well as financial impropriety**  
11 **and misconduct and things of that sort.**

12 Q. Now, prior to just for the  
13 record, just briefly, just prior to coming to  
14 the Department of -- the Department of  
15 Education, where were you employed?

16 **A. I was a criminal defense**  
17 **investigator for the New York City Legal Aid**  
18 **Society, Brooklyn Defense Division.**

19 Q. And that was, you held that  
20 position immediately prior to coming to the  
21 Department of Education?

22 **A. Yes, approximately two and a**  
23 **half years.**

24 Q. Now, I would like to ask you

1 Colon - Direct - Hemans-Brantley  
2 if on or about December 6th, 2004, you  
3 received -- or you were assigned to investigate  
4 certain allegations as to Medgar Evers Middle  
5 College High School?

6 **A. Yes, I was.**

7 Q. Okay. Can you please tell us  
8 how your assignment came about?

9 **A. An online report was made for**  
10 **the office of special investigations by Dr.**  
11 **Wiltshire from Medgar Evers, and that then**  
12 **became assigned to me by Chris Dalton the chief**  
13 **investigator at that time.**

14 THE REPORTER: I would ask  
15 that the witness speak up, please.

16 THE WITNESS: Okay.  
17 BY MS. HEMANS-BRANTLEY: (Cont'g.)

18 Q. And what, if anything --  
19 please tell us, what, if anything, you did upon  
20 receipt of your assignment?

21 **A. I visited the school at the**  
22 **first opportunity.**

23 Q. And let me just go back, do  
24 you recall the name of the individual the

1 Colon - Direct - Hemans-Brantley  
2 allegations were made against?

3 **A. Yes, Boubakar Fofana. I hope**  
4 **I'm pronouncing that correctly, if not --.**

5 MR. FOFANA: That's all  
6 right.

7 BY MS. HEMANS-BRANTLEY: (Cont'g.)

8 Q. Okay. And so, you indicated  
9 that you went to the school; correct?

10 **A. Yes.**

11 Q. Okay. Did you do anything  
12 prior to going to the school?

13 **A. No.**

14 Q. Do you recall the date you  
15 went to the school?

16 **A. I believe the first date was**  
17 **March 7th, 2005.**

18 Q. Okay. Let me just go back.  
19 Now, I asked you whether or not you were  
20 assigned to investigate certain allegations.  
21 Can you tell us what the allegations were?

22 **A. I believe it was three --**  
23 **there were three allegations. And I think two**  
24 **of them dealt with verbal abuse, and another**

1 **Colon - Direct - Hemans-Brantley**  
2 **dealt with an allegation that Mr. Fofana threw**  
3 **a paper at a student and cutted her nose.**

4 Q. With regards to the three  
5 allegations you -- you just mentioned, were  
6 those allegations assigned different case  
7 numbers?

8 **A. Yes, they were.**

9 Q. Were you the only person  
10 assigned to investigate all three allegations?

11 **A. Yes, I was.**

12 Q. Okay. Now, you indicated  
13 that you went to the school. When you went to  
14 the school, please tell us what, if anything,  
15 you did.

16 **A. I interviewed the student**  
17 **complainants, first and foremost, in the**  
18 **presence of the principal. And then I**  
19 **interviewed any potential witnesses to the**  
20 **allegations.**

21 Q. Now, when you went to the  
22 school and you performed your interviews, can  
23 you tell us who, if anyone, was present during  
24 your interviews?

1 Colon - Direct - Hemans-Brantley  
 2 **A. Can I review my notes?**  
 3 Q. Okay. You don't recall?  
 4 **A. No, not off the top of my**  
 5 **head.**  
 6 Q. All right. I'll move on.  
 7 After you conducted  
 8 interviews, at the school, what, if anything,  
 9 did you do?  
 10 **A. After I conducted the**  
 11 **interviews, I returned to my office and**  
 12 **sometime after that, not immediately after, but**  
 13 **probably weeks after that, I began to write the**  
 14 **report. Prior to writing the report, I did the**  
 15 **mandatory background check on Mr. Fofana. And**  
 16 **once I had the background check in place, I**  
 17 **began writing the report.**  
 18 Q. And did there come a time  
 19 when you completed a final report with regards  
 20 to the investigation of the three allegations?  
 21 **A. Yes.**  
 22 Q. Okay. I'm now going to show  
 23 you -- I'm sorry, I just want to go back. When  
 24 you conducted interviews of students, did you

1 Colon - Direct - Hemans-Brantley  
 2 take notes?  
 3 **A. Yes.**  
 4 Q. Okay. And did you, were  
 5 those notes placed in your O.S.I. file with  
 6 regards to the allegations?  
 7 **A. Yes.**  
 8 **MS. HEMANS-BRANTLEY: I'm**  
 9 **going to show you, I'm going to mark D.O.E. --**  
 10 **I'm sorry, Mr. Siegel, Thirteen?**  
 11 THE HEARING OFFICER: This --  
 12 this would be Thirteen, yes.  
 13 MS. HEMANS-BRANTLEY: Hand  
 14 these over to the arbitrator, please.  
 15 THE HEARING OFFICER: Thank  
 16 you very much.  
 17 MS. HEMANS-BRANTLEY: These  
 18 documents were provided to you, however I don't  
 19 know if you have them --  
 20 MR. FOFANA: Well, I --.  
 21 MS. HEMANS-BRANTLEY: Do you  
 22 have them with you? Do you want to look at it?  
 23 Okay. Look at it and tell me  
 24 if you have it with you.

1 Colon - Direct - Hemans-Brantley  
 2 MR. FOFANA: I would rather  
 3 have a copy, because that would make it much  
 4 easier, especially we would know what documents  
 5 have been, you know, used as evidence. If you  
 6 don't mind I will keep it.  
 7 MS. HEMANS-BRANTLEY: Let me  
 8 have that back. I'll make you a courtesy copy.  
 9 MR. FOFANA: Okay.  
 10 MS. HEMANS-BRANTLEY: I'm  
 11 just going to put together a packet for Mr.  
 12 Fofana  
 13 THE HEARING OFFICER: Sure.  
 14 MS. HEMANS-BRANTLEY: It has  
 15 been provided, but I'll provide him with a  
 16 courtesy of preparing another copy.  
 17 MR. FOFANA: No. I'm --  
 18 I'm -- I'm sorry, but I have to put them  
 19 together in a -- you know, to put them together  
 20 in a functional manner, you know, make it one,  
 21 it's better that I have the same --.  
 22 THE HEARING OFFICER: She --  
 23 she's agreed to do it --  
 24 MR. FOFANA: Oh.

1 Colon - Direct - Hemans-Brantley  
 2 THE HEARING OFFICER: -- so  
 3 there's no need --.  
 4 MR. FOFANA: Okay.  
 5 (Off-the-record discussion)  
 6 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 7 Q. Okay. Take a look at D.O.E.  
 8 Thirteen, tell me if you recognize it.  
 9 **A. Yes.**  
 10 Q. What is it?  
 11 **A. This is my final report.**  
 12 Q. Uh-huh.  
 13 **A. The initial allegation that**  
 14 **was made on-line -- allegations, I'm sorry; the**  
 15 **students' statements; as well as my notes that**  
 16 **became part of the case file of the students I**  
 17 **interviewed and Mr. Fofana.**  
 18 Q. Okay. And with regards to  
 19 D.O.E. Thirteen, these were all documents  
 20 either prepared by you, or part of your  
 21 investigation, with regards to the three  
 22 allegations?  
 23 **A. Yes.**  
 24 **MS. HEMANS-BRANTLEY: Okay.**

1 **Colon - Direct - Hemans-Brantley**  
 2 **At this time I wish like to move D.O.E. Exhibit**  
 3 **Thirteen into evidence.**  
 4 **THE HEARING OFFICER: Mr.**  
 5 **Fofana, any objection?**  
 6 MR. FOFANA: I'm looking at  
 7 the -- at the document. I -- I object to the  
 8 student E, in -- Mf. had it. I haven't looked  
 9 well at it, but where it says reason -- here  
 10 you go -- Mf. had it.  
 11 The reason is, in the  
 12 classroom you have -- if you have seven  
 13 students, either you interview all -- all of  
 14 them and have information on them or you don't.  
 15 Because if she was single one that is damaging  
 16 to a -- to the Respondent, that's not  
 17 acceptable.  
 18 I can understand and it's a  
 19 must to -- to bring the -- the accusers'  
 20 statements, which you have, but if you single  
 21 out one student, and consider -- and insert it  
 22 in a -- in a package, that is, you know, I  
 23 cannot -- cannot accept it.  
 24 THE HEARING OFFICER: Well,

1 **Colon - Direct - Hemans-Brantley**  
 2 Mr. Fofana, those are -- those are arguments  
 3 you can raise to me --  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: -- in  
 6 your closing insofar as your claim --  
 7 MR. FOFANA: Uh-huh. Uh-huh.  
 8 THE HEARING OFFICER: -- that  
 9 Department didn't meet its burden of proof  
 10 and --  
 11 MR. FOFANA: Uh-huh.  
 12 THE HEARING OFFICER: -- you  
 13 can certainly contend --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- that  
 16 the lack of -- the number of interviews  
 17 constitutes a less-than-complete investigation.  
 18 But nonetheless --  
 19 MR. FOFANA: Uh-huh.  
 20 THE HEARING OFFICER: -- if  
 21 the witnesses said this constitutes his  
 22 investigatory packet --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: -- and

1 **Colon - Direct - Hemans-Brantley**  
 2 he's identified it as such, I will admit it  
 3 into evidence.  
 4 MR. FOFANA: Okay. Okay. No  
 5 problem.  
 6 THE HEARING OFFICER: So,  
 7 D.O.E. Thirteen will be admitted into evidence.  
 8 MR. FOFANA: Okay. All  
 9 right.  
 10 BY MS. HEMANS-BRANTLEY: (Cont'g.)  
 11 Q. Now, with regards to your  
 12 investigation of these three allegations, what,  
 13 if any, conclusions did you reach?  
 14 **A. I conclude -- substantiated**  
 15 **two of the three allegations. And those**  
 16 **substantiated allegations were that Mr. Fofana**  
 17 **used inappropriate language. If I could look**  
 18 **at the report, I could say specifically what I**  
 19 **found.**  
 20 Q. You -- so, you -- are you  
 21 saying you need to review D.O.E. Thirteen to  
 22 refresh your memory?  
 23 **A. Yes.**  
 24 Q. Okay. Please do so.

1 **Colon - Direct - Hemans-Brantley**  
 2 MR. FOFANA: I -- I will  
 3 object to that, sir, because he is the  
 4 investigator. If he knows the case, then he  
 5 doesn't have to study the -- the -- the  
 6 documentation during the proceeding in order to  
 7 answer the questions.  
 8 THE HEARING OFFICER: Well,  
 9 Mr. Fofana, the way, in legal proceedings,  
 10 when --  
 11 MR. FOFANA: Uh-huh. Uh-huh.  
 12 THE HEARING OFFICER: --  
 13 someone cannot remember --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- the  
 16 specific details --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: -- and  
 19 if they do have a document --  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: -- it  
 22 is legal and permissible for --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: -- them

Page 1245

1 Colon - Direct - Hemans-Brantley  
 2 to review it to see if it refreshes their  
 3 recollection.  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: Then  
 6 they're supposed to turn it around --  
 7 MR. FOFANA: Okay.  
 8 THE HEARING OFFICER: -- and  
 9 then testify based on whether it did refresh  
 10 their recollection. So --  
 11 MR. FOFANA: Okay.  
 12 THE HEARING OFFICER: --  
 13 we're going to allow them to do that.  
 14 MR. FOFANA: All right.  
 15 THE HEARING OFFICER: So, if  
 16 you want to take your time and read through  
 17 it --  
 18 THE WITNESS: Sure.  
 19 THE HEARING OFFICER: -- you  
 20 can.  
 21 **A. Yes, in case number --.**  
 22 **BY MS. HEMANS-BRANTLEY: (Cont'g.)**  
 23 Q. Okay. Now, you have to --  
 24 did -- did reviewing the document refresh your

Page 1247

1 **Colon - Direct - Hemans-Brantley**  
 2 Q. Okay. Which are the  
 3 allegations -- actually never mind, withdrawn.  
 4 Withdrawn. I caught myself.  
 5 Okay. And in D.O.E. Thirteen  
 6 just for the record, your final report  
 7 indicates the steps you took with regards to  
 8 the investigation, the individuals you  
 9 interviewed, and your conclusions; correct?  
 10 **A. Yes.**  
 11 **MS. HEMANS-BRANTLEY: Okay.**  
 12 **I have no further questions.**  
 13 **THE HEARING OFFICER: Mr.**  
 14 **Fofana, did you need a few minutes to prepare**  
 15 **for cross?**  
 16 MR. FOFANA: I -- I do. Ten  
 17 minutes.  
 18 THE HEARING OFFICER: Okay.  
 19 Then why don't we go on pause.  
 20 MR. FOFANA: Just -- just to  
 21 put these together.  
 22 THE HEARING OFFICER: That's  
 23 fine. No problem.  
 24 MR. FOFANA: Okay.

Page 1246

1 Colon - Direct - Hemans-Brantley  
 2 recollection as to charges -- any -- what, if  
 3 any, charges were substantiated by you?  
 4 **A. In the charges zero four --**  
 5 **case number zero four eight three eight two, I**  
 6 **found that Mr. Fofana did direct derogatory**  
 7 **comments towards students, as well as in case**  
 8 **number zero four eight three eight five.**  
 9 **In the other case I found it**  
 10 **unsubstantiated.**  
 11 Q. Okay. Now, do you recall  
 12 what the allegations were in the case you found  
 13 unsubstantiated?  
 14 **A. That he used disparaging**  
 15 **remarks to students.**  
 16 THE REPORTER: I'm sorry, can  
 17 the witness speak up, please?  
 18 **A. (Cont'g.) Yes, that he -- he**  
 19 **used derogatory, disparaging remarks to**  
 20 **students in the classroom on those two cases.**  
 21 **BY MS. HEMANS-BRANTLEY: (Cont'g.)**  
 22 Q. Right, but those are the two  
 23 you substantiated; correct?  
 24 **A. Right.**

Page 1248

1 Colon - Cross - Fofana  
 2 THE HEARING OFFICER: Take  
 3 ten minutes, and we'll reconvene in about ten  
 4 minutes. Thank you.  
 5 (Off the record)  
 6 THE HEARING OFFICER: Mr.  
 7 Fofana, are you ready for cross-examination?  
 8 MR. FOFANA: I am.  
 9 THE HEARING OFFICER: Okay.  
 10 You may begin.  
 11 CROSS EXAMINATION  
 12 BY MR. FOFANA:  
 13 Q. Okay. Mr. Colon, all these  
 14 allegations were made on December 6th?  
 15 **A. Yes.**  
 16 Q. And it didn't struck you  
 17 that -- that all these incidents were -- all of  
 18 them on one day, between nine a.m. to  
 19 eleven-thirty, if it looked like the principal  
 20 hand-picked?  
 21 **A. Yes.**  
 22 Q. Okay. It didn't struck  
 23 you --?  
 24 **A. Yes, it did.**

29 (Pages 1245 to 1248)

1 **Colon - Cross - Fofana**  
 2 Q. So, in what -- what -- what  
 3 sense?  
 4 **A. I thought it was extremely**  
 5 **curious that all these incidents happened on**  
 6 **the same date, within a period -- a period of**  
 7 **time, I think it's two and a half, three hours.**  
 8 Q. Right. Exactly. Okay. I  
 9 would like to -- to discuss the -- an item  
 10 in -- in -- in your report. The background.  
 11 If I may, I would like to read the brief  
 12 passage: "A search of New York City Department  
 13 of Education databases revealed that Mr. Fofana  
 14 had seven prior allegations, two of those  
 15 allegations were substantiated." Can you tell  
 16 us what allegations that were substantiated?  
 17 **A. No.**  
 18 Q. You cannot? So, don't you  
 19 think it was unfair to mention them without  
 20 giving any reference to them?  
 21 **A. No.**  
 22 Q. Which -- no, to what? Is it  
 23 fair to mention without reference?  
 24 **A. Yes.**

1 **Colon - Cross - Fofana**  
 2 Q. Is that -- that's acceptable  
 3 to you?  
 4 **A. Yes.**  
 5 Q. Well -- okay. So, you think  
 6 it's acceptable to mention -- to -- to -- to  
 7 say that the allegation were substantiated in  
 8 the past, and you mentioned them, but you don't  
 9 indicate any reference to them. You think  
 10 that's okay; that's acceptable?  
 11 **A. Yes.**  
 12 Q. Okay. Now, in your book for  
 13 an allegation to be substantiated, what is the  
 14 criteria? What -- what are the criteria for --  
 15 as an investigator when you read these why do  
 16 you think it is substantiated? What was the  
 17 criteria?  
 18 **A. The preponderance of the**  
 19 **evidence points to a substantiated allegation.**  
 20 Q. Okay. Was it this -- this  
 21 was the -- is there any 3020-a proceeding  
 22 behind this report?  
 23 **A. I don't -- I don't -- as far**  
 24 **as I'm concerned -- as -- as I understand, this**

1 **Colon - Cross - Fofana**  
 2 **is a 3020-a.**  
 3 Q. Well, so you understand that  
 4 this was a 3020-a proceeding that substantiate  
 5 it?  
 6 MS. HEMANS-BRANTLEY:  
 7 Objection.  
 8 **A. I -- I don't --.**  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. Well -- well, I'm going to  
 11 put it another way. These allegations you said  
 12 they are substantiated. If allegations are  
 13 substantiated, by definition it will be pursued  
 14 on a 3020-a proceeding. I'm asking you is  
 15 there a --?  
 16 MS. HEMANS-BRANTLEY:  
 17 Objection.  
 18 MR. FOFANA: Well, sir --.  
 19 THE HEARING OFFICER: Well,  
 20 let's let her -- let him finish the question.  
 21 BY MR. FOFANA: (Cont'g.)  
 22 Q. Yes. If -- if -- if  
 23 allegations are substantiated in this system,  
 24 okay, it will be, you know, sanctioned by a

1 Colon - Cross - Fofana  
 2 3020-a proceeding. I'm asking you, can you  
 3 cite any 3020-a proceeding in which these  
 4 allegations were examined?  
 5 **A. Well, your presumption is**  
 6 **wrong that every allegation that's**  
 7 **substantiated --**  
 8 Q. Uh-huh.  
 9 **A. -- results in a 3020-a.**  
 10 Q. Okay. Well, so my  
 11 assumptions is wrong because you're saying, as  
 12 I understand - and tell me if -- if I'm wrong -  
 13 an allegation can be substantiated without  
 14 being pursued in a 3020-a --  
 15 **A. Correct.**  
 16 Q. -- proceeding?  
 17 THE HEARING OFFICER: That's  
 18 what he's saying.  
 19 BY MR. FOFANA: (Cont'g.)  
 20 Q. Okay. All right. Well,  
 21 it's -- in the database, there's no indication  
 22 in what circumstances these allegations were  
 23 made, if it's -- if it's substantiated, it will  
 24 be on the database. So, is there any --?

1 Colon - Cross - Fofana  
 2 **A. That's not true.**  
 3 Q. What's not true?  
 4 **A. That's not true. In the**  
 5 **database you can find what circumstances.**  
 6 Q. So, what kind of databases  
 7 you have, sir, if you accuse someone and you  
 8 don't put any reference to that, any  
 9 indication, where you can find document to  
 10 support this substantiation?  
 11 **A. What's your question?**  
 12 Q. The question is, is there any  
 13 indication in your database that refer you to a  
 14 document that deals with these allegations?  
 15 THE HEARING OFFICER: He's --  
 16 he's speaking of the two priors --  
 17 **A. Two prior allegations.**  
 18 BY MR. FOFANA: (Cont'g.)  
 19 Q. Yes.  
 20 THE HEARING OFFICER: that  
 21 you made reference to.  
 22 **A. Is there any information**  
 23 **indicating --?**  
 24 THE HEARING OFFICER: What

1 Colon - Cross - Fofana  
 2 they were about, or the -- the details;  
 3 correct?  
 4 MR. FOFANA: Yes.  
 5 **A. (Cont'g.) Sure. Yes, there**  
 6 **were.**  
 7 BY MR. FOFANA: (Cont'g.)  
 8 Q. All right. Well, do you --  
 9 do you have any reference to those documents?  
 10 **A. Here now?**  
 11 Q. Well, then or now it doesn't  
 12 matter. Do you -- do you have any --?  
 13 **A. No, they were not made part**  
 14 **of the report.**  
 15 Q. Why they were not; because  
 16 you mentioned them?  
 17 **A. Because I didn't want the**  
 18 **reader of the report to take them into account**  
 19 **when assessing the report. I didn't feel that**  
 20 **it should -- the person reading it, whoever**  
 21 **they may be --**  
 22 Q. Uh-huh.  
 23 **A. -- should be biased by the**  
 24 **prior allegations.**

1 **Colon - Cross - Fofana**  
 2 Q. Okay. Okay. Well, let's  
 3 just move on.  
 4 Do you recall asking me if I  
 5 knew Dw.Du. during your interview in front of  
 6 Mr. Robert Sullivan the U.F.T.?  
 7 **A. No, I don't recall that.**  
 8 Q. You don't recall asking me if  
 9 I knew Dw.?  
 10 **A. No.**  
 11 Q. Okay. You don't recall  
 12 asking me, "is it true or not, Mr. Fofana, if  
 13 you called student retarded, if you tell  
 14 them -- if you called them stupid. You don't  
 15 amount to nothing," do you recall asking me  
 16 such questions --  
 17 **A. I -- I may --**  
 18 Q. -- in general?  
 19 **A. -- I may have called -- yeah,**  
 20 **I may have asked --.**  
 21 Q. When --?  
 22 **A. Do I recall specifically?**  
 23 **No, but I --**  
 24 Q. But --

1 Colon - Cross - Fofana  
 2 **A. -- it sounds like that would**  
 3 **be something that I would have asked, yes.**  
 4 Q. In general terms?  
 5 **A. Uh-huh. If it was from the**  
 6 **allegations.**  
 7 Q. All right. Well, I -- I --  
 8 I'm going -- I'm asking you, in -- in that  
 9 context do you recall me telling you that I  
 10 don't go in wholesale accusation, I want you to  
 11 be specific. Do you -- do you remember that?  
 12 **A. That, I don't recall.**  
 13 Q. You don't recall. You don't  
 14 recall when -- when I say, "give me some  
 15 specifics," you ask me, "do you know, Dw.Du.,"  
 16 you don't recall that?  
 17 **A. No.**  
 18 Q. You don't recall. Okay. Do  
 19 you recall this document, this incident report  
 20 I provided during the interview and Mr.  
 21 Sullivan was present, you have to remember  
 22 that; do you recall this document?  
 23 **A. No, I don't.**  
 24 Q. You don't recall this

Page 1257

1 Colon - Cross - Fofana  
 2 document. Okay. All right.  
 3 THE HEARING OFFICER: So, I'm  
 4 going to put those back, we won't even mark  
 5 them.  
 6 MR. FOFANA: Yes.  
 7 BY MR. FOFANA: (Cont'g.)  
 8 Q. You don't recall this  
 9 document. Do you recall the package I gave you  
 10 during the interview, and just to refresh your  
 11 memory I -- I told you that "things do not  
 12 happen in vacuum, I'm giving you these packages  
 13 as background, the story behind the story." Do  
 14 you recall this package? It was almost thirty  
 15 pages.  
 16 **A. Yes, I do.**  
 17 Q. You do recall?  
 18 **A. Yes.**  
 19 Q. All right. Can you produce  
 20 it, because -- well, I'm sorry take that -- I  
 21 take that back. We can skip that, we know --  
 22 you read it?  
 23 **A. No.**  
 24 Q. You didn't read it?

Page 1259

1 Colon - Cross - Fofana  
 2 something struck me. We will -- I ask a  
 3 question about it. Eighty-three eighty-two,  
 4 you investigate -- you interview of B, one two  
 5 three four five -- no, I'm sorry. Let me --  
 6 let me count. Yes, one two three four five.  
 7 MS. HEMANS-BRANTLEY: Do you  
 8 want him to look at a certain page?  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. Four -- four -- four  
 11 students. Page two, B, C, D, E. Page two, B,  
 12 C, D; all right?  
 13 B, C, D, E, and can you  
 14 locate them?  
 15 **A. Uh-huh.**  
 16 Q. Okay.  
 17 **A. Yes.**  
 18 Q. Now, I'll just want to -- to  
 19 me that they're in for each student, the last  
 20 sentence for B. Just the last sentence.  
 21 **A. Okay.**  
 22 **(The hearing was**  
 23 **interrupted.)**  
 24 MR. FOFANA: I'll just shut

Page 1258

1 Colon - Cross - Fofana  
 2 **A. Nope.**  
 3 Q. Okay. Well, you -- you --  
 4 you take it -- you took it?  
 5 **A. Yes.**  
 6 Q. Why; if you don't want to  
 7 read it?  
 8 **A. Because I was being polite to**  
 9 **you.**  
 10 Q. Well, you -- well, you could  
 11 be polite to me that day by -- are -- are you  
 12 polite in such manner with all -- in your  
 13 investigations --  
 14 **A. Always.**  
 15 Q. -- to be, you know, very  
 16 accommodating with the accusers?  
 17 **A. Of course.**  
 18 Q. Just like that?  
 19 **A. With the accused --**  
 20 Q. Okay.  
 21 **A. -- as well.**  
 22 Q. All right. Well, we need to  
 23 read the documents you received.  
 24 Reading your -- your report,

Page 1260

1 Colon - Cross - Fofana  
 2 it off.  
 3 BY MR. FOFANA: (Cont'g.)  
 4 Q. Yes, can you tell me please,  
 5 what you read there?  
 6 **A. You want me to read student**  
 7 **B?**  
 8 Q. Yes, B, the last sentence.  
 9 **A. "She stated that she did not**  
 10 **recall Mr. Fofana calling students derogatory**  
 11 **names."**  
 12 Q. C. Last sentence.  
 13 **A. "Student C does not recall**  
 14 **who those student are."**  
 15 Q. Okay. On the -- the -- the  
 16 second sentence in the same paragraph.  
 17 **A. "She stated that she did not**  
 18 **recall the specific incident involving student**  
 19 **A."**  
 20 Q. Okay. The last sentence for  
 21 D -- student D.  
 22 **A. "Student D stated that she**  
 23 **did not recall the specific incident involving**  
 24 **student A and Mr. Fofana."**

32 (Pages 1257 to 1260)

Page 1261

1 **Colon - Cross - Fofana**  
 2 Q. Finally, student E, the last  
 3 sentence -- sentence.  
 4 **A. "She stated that she did not**  
 5 **recall the specific incident involving student**  
 6 **A and Mr. Fofana."**  
 7 Q. Okay. Let's -- do you -- do  
 8 you think -- based on this, do you think you  
 9 have enough material to conclude that this case  
 10 is substantiated?  
 11 **A. Yes.**  
 12 Q. Okay. Now, to -- to -- and  
 13 on this one, is this the student phrasing --  
 14 wording, "I don't recall" for all of them? "I  
 15 don't recall," "I don't recall," or --?  
 16 **A. No.**  
 17 Q. What -- can -- can you give  
 18 me another wording you heard other than "I  
 19 don't recall?"  
 20 **A. It was more likely "I don't**  
 21 **remember."**  
 22 Q. Uh-huh.  
 23 **A. "Recall" is my word.**  
 24 Q. Okay. Why don't you, just

Page 1263

1 Colon - Cross - Fofana  
 2 the student's answer?  
 3 **A. Right.**  
 4 Q. Yeah. The next case, A --  
 5 okay, student A is the accuser, let's go to B,  
 6 C, D, E, F, G.  
 7 MS. HEMANS-BRANTLEY: What  
 8 page, please?  
 9 MR. FOFANA: I'm sorry?  
 10 MS. HEMANS-BRANTLEY: What  
 11 page?  
 12 MR. FOFANA: Page three.  
 13 Page three.  
 14 MS. HEMANS-BRANTLEY: Okay.  
 15 And just for the record, you're referencing o  
 16 five dash eight three eight five.  
 17 MR. FOFANA: I'm sorry?  
 18 MS. HEMANS-BRANTLEY: You're  
 19 referencing case number o five dash eight three  
 20 eight five?  
 21 MR. FOFANA: Yes.  
 22 MS. HEMANS-BRANTLEY: Okay.  
 23 MR. FOFANA: Yes. Yes.  
 24 BY MR. FOFANA: (Cont'g.)

Page 1262

1 Colon - Cross - Fofana  
 2 so -- for accuracy, use students' own --?  
 3 **A. Because sometimes they're not**  
 4 **grammatically correct, and I don't like to**  
 5 **write --**  
 6 Q. Well --.  
 7 **A. -- grammatically incorrectly.**  
 8 Q. Yeah, but this is.  
 9 **A. So, "recall" or "remember,"**  
 10 **it's just a matter of word choice.**  
 11 Q. You're saying none of them  
 12 said, point blank, "no, that's not true," point  
 13 blank?  
 14 **A. No.**  
 15 Q. You never heard that?  
 16 **A. No.**  
 17 Q. So, you don't remember all of  
 18 them, "I don't recall," "I don't recall."  
 19 **A. No. If they would have said,**  
 20 **"that's not true," I would have written "that's**  
 21 **not true."**  
 22 Q. All right. You do  
 23 remember -- all you remember is -- is you --  
 24 you just wrote, "recall," because it reflects

Page 1264

1 Colon - Cross - Fofana  
 2 Q. Okay. Student B, sometimes  
 3 number two, can you read the second sentence?  
 4 **A. "She stated that she**  
 5 **recalled."**  
 6 Q. I'm talking about sentence  
 7 number two.  
 8 **A. I -- the second sentence.**  
 9 Q. Oh, three, three, I'm sorry.  
 10 **A. "Student B did not recall the**  
 11 **specific circumstances that caused Mr. Fofana**  
 12 **to tell student A to leave the classroom."**  
 13 Q. Okay. Sentence two, in  
 14 student B.  
 15 **A. "She stated that she did not**  
 16 **recall an incident between student A and Mr.**  
 17 **Fofana."**  
 18 Q. Student D, the second to the  
 19 last sentence. The second, you have only two  
 20 actually.  
 21 **A. "She stated that she did not**  
 22 **recall an incident in between student A and Mr.**  
 23 **Fofana."**  
 24 Q. Okay. Student E. Second

33 (Pages 1261 to 1264)

Page 1265

1 Colon - Cross - Fofana  
 2 sentence.  
 3 **A. "She stated that she did not**  
 4 **recall an incident in between student A and Mr.**  
 5 **Fofana."**  
 6 Q. Student F, second sentence.  
 7 **A. "She stated that she did not**  
 8 **recall an incident in between student A and Mr.**  
 9 **Fofana."**  
 10 Q. Student G.  
 11 **A. "She stated that she did not**  
 12 **recall an incident in between student A and Mr.**  
 13 **Fofana."**  
 14 Q. All the students don't recall  
 15 the incident, an incident that took place in  
 16 class; is that correct?  
 17 **A. Yes.**  
 18 Q. Okay.  
 19 **A. This incident; right.**  
 20 Q. All right. I would like to  
 21 refer you to your interview to Fofana, last --  
 22 you know, last page. Okay. Did I tell you  
 23 that I snatched the exam from the student,  
 24 crumble it up, and threw it on the floor?

Page 1267

1 **Colon - Cross - Fofana**  
 2 **specific incident that was alleged on**  
 3 **December --.**  
 4 Q. Well, I didn't -- I did  
 5 not -- I did not use the word "specific."  
 6 **A. I did.**  
 7 Q. Well, you don't have to,  
 8 because I didn't mention it.  
 9 **A. But I choose to.**  
 10 Q. No, you don't, you don't --  
 11 you don't get --  
 12 THE HEARING OFFICER:  
 13 Gentlemen --  
 14 BY MR. FOFANA: (Cont'g.)  
 15 Q. -- to choose --.  
 16 THE HEARING OFFICER: -- Mr.  
 17 Fofana, Mr. Fofana?  
 18 MR. FOFANA: Yes?  
 19 THE HEARING OFFICER: There's  
 20 no need to get into banter.  
 21 MR. FOFANA: Yes.  
 22 THE HEARING OFFICER: You can  
 23 ask the questions.  
 24 BY MR. FOFANA: (Cont'g.)

Page 1266

1 Colon - Cross - Fofana  
 2 **A. I believe you said that the**  
 3 **student snatched it. According to this.**  
 4 Q. The student snatched or I  
 5 snatched?  
 6 **A. What you said?**  
 7 Q. Never mind, I take that back.  
 8 **A. Okay.**  
 9 Q. So, it will be -- now, from  
 10 what you just read, from all the students, all  
 11 the sixteen students, all of them stated they  
 12 don't recall this incident for each incident.  
 13 Do you -- is that correct, you know, accurate  
 14 to -- to say that?  
 15 **A. They don't recall the**  
 16 **specific incident that was reported --**  
 17 Q. No, that's not --  
 18 **A. -- on December --**  
 19 Q. -- my -- my question is --  
 20 **A. -- on December --.**  
 21 Q. -- is very simple. They  
 22 don't recall these allegations, these -- these  
 23 incidents?  
 24 **A. No, they don't recall the**

Page 1268

1 Colon - Cross - Fofana  
 2 Q. Yes. All right. This -- for  
 3 this first case you have five students. All of  
 4 them say they don't recall, it's your  
 5 statement, it's what you have in mind right  
 6 now, sir. What is on the paper, you recall --  
 7 do you recall - we're talking about recall - if  
 8 students say they don't recall Mr. Fofana, you  
 9 know, calling students derogatory names?  
 10 THE HEARING OFFICER: Is that  
 11 right?  
 12 **A. Yeah.**  
 13 BY MR. FOFANA: (Cont'g.)  
 14 Q. Yeah.  
 15 **A. No, that's not true.**  
 16 Q. Well, read it again. Page  
 17 two.  
 18 **A. I have it.**  
 19 **MS. HEMANS-BRANTLEY: He has**  
 20 **it.**  
 21 BY MR. FOFANA: (Cont'g.)  
 22 Q. All right. Read it again,  
 23 page two.  
 24 **A. Which student?**

34 (Pages 1265 to 1268)

1 **Colon - Cross - Fofana**  
 2 Q. B. Last sentence.  
 3 **A. Student B, yes.**  
 4 Q. Okay. All right. So, now --  
 5 and the other students, I don't have to go -- I  
 6 don't want to have you read again, but all of  
 7 them say they don't recall.  
 8 **A. The specific incident.**  
 9 Q. They didn't say that. You  
 10 didn't say that. You didn't put in your  
 11 sentence, if they recall -- you didn't write  
 12 specific. You just said the student --.  
 13 **A. No, I did say "specific."**  
 14 Q. Okay.  
 15 **A. Because it -- "she stated**  
 16 **that she did not recall the specific incident**  
 17 **involving student A." That's --.**  
 18 Q. As to the -- in some  
 19 sentences, I admit that. I'm sorry. In some,  
 20 you know, not in all of them, in some of them,  
 21 like this -- this --.  
 22 **A. Student D, student D --.**  
 23 Q. Well --.  
 24 MS. HEMANS-BRANTLEY: Wait.

1 Colon - Cross - Fofana  
 2 THE HEARING OFFICER: Okay.  
 3 No, no, no.  
 4 MS. HEMANS-BRANTLEY: This is  
 5 not a question.  
 6 BY MR. FOFANA: (Cont'g.)  
 7 Q. Well, please, do not  
 8 volunteer information without question. So,  
 9 yeah.  
 10 All right. For the five  
 11 students, or six in each case, who pulled them  
 12 out of the classroom, sir?  
 13 **A. When you say "pull them out,"**  
 14 **what do you mean?**  
 15 Q. Well, you have thirty  
 16 students approximately in each -- in each  
 17 class, so how do you reach -- you know you  
 18 know, how do you identify the students. How --  
 19 what is the criteria to bring them out to the  
 20 interview room?  
 21 **A. I get a class list from the**  
 22 **principal --**  
 23 Q. Uh-huh.  
 24 **A. -- and I picked the students**

1 **Colon - Cross - Fofana**  
 2 **at random from that list.**  
 3 Q. Randomly?  
 4 **A. Yes.**  
 5 Q. Thank you. I would like to  
 6 draw your attention to -- okay. Do you know  
 7 which Chancellor Regulations govern corporal  
 8 punishment and verbal abuse?  
 9 **A. A-420.**  
 10 Q. A-420. Now, I would have  
 11 to -- to make it very, very simple we have --  
 12 we have it here to on-line, I just -- I -- I  
 13 went to the Chancellor Regulations, I had a  
 14 couple of questions about it.  
 15 Now, we are on-line  
 16 Chancellor's Regulations I will just click on  
 17 it and ask you a couple of questions.  
 18 Okay. Now, okay. This is --  
 19 MS. HEMANS-BRANTLEY: Scroll  
 20 down to in between Y and A.  
 21 MR. FOFANA: Farther down,  
 22 you say?  
 23 MS. HEMANS-BRANTLEY: Go to  
 24 A-420, it's -- just it's right there.

1 Colon - Cross - Fofana  
 2 THE HEARING OFFICER: See  
 3 that; pupil behavior and discipline, A-420?  
 4 MR. FOFANA: Uh-huh. Uh-huh.  
 5 MS. HEMANS-BRANTLEY: Scroll  
 6 down.  
 7 THE HEARING OFFICER: A  
 8 little further down.  
 9 MS. HEMANS-BRANTLEY: Down,  
 10 down.  
 11 MR. FOFANA: Further down?  
 12 MS. HEMANS-BRANTLEY: Yeah.  
 13 THE HEARING OFFICER: Right  
 14 there. Right there. You have it now on the --  
 15 you see that?  
 16 MR. FOFANA: It's in  
 17 alphabetical order. Is that it?  
 18 THE HEARING OFFICER: Right  
 19 there. Right there.  
 20 THE WITNESS: Yes.  
 21 THE HEARING OFFICER: That's  
 22 you. No problem.  
 23 BY MR. FOFANA: (Cont'g.)  
 24 Q. Uh-huh. Okay. The -- it --

1 Colon - Cross - Fofana  
 2 this is an undisputable, this is the documents  
 3 that governs corporal punishment. All right.  
 4 Now, I'm -- I'm going to ask you, once you  
 5 are -- you are informed about a corporal  
 6 punishment or verbal abuse allegation, what is  
 7 the first steps you take in the O.S.I. --  
 8 with -- in regards to -- to these documents?  
 9 **A. I make an appointment with**  
 10 **the principal of the school to come visit the**  
 11 **school.**  
 12 Q. Uh-huh. Okay. What -- at  
 13 what -- at what moment in a -- in the process  
 14 is it possible to fill out the incident  
 15 report --  
 16 **A. At the --.**  
 17 Q. -- after -- or after your  
 18 investigation or before?  
 19 **A. I don't know. Usually**  
 20 **before.**  
 21 Q. You don't know?  
 22 **A. I don't know when the**  
 23 **principal does what he does, you know?**  
 24 Q. Okay. But is -- is -- is

1 Colon - Cross - Fofana  
 2 it -- okay. Well, probably -- okay. One  
 3 second.  
 4 Okay. I would like to draw  
 5 attention to -- to the -- I will highlight.  
 6 Can you read it, please? I would like you to  
 7 read it.  
 8 MS. HEMANS-BRANTLEY: I'm  
 9 going to object to this.  
 10 MR. FOFANA: Well, this is  
 11 not my personal document, because my question  
 12 is about this.  
 13 THE HEARING OFFICER: Well,  
 14 you -- I have no problem if you want to ask  
 15 questions about it.  
 16 MR. FOFANA: Uh-huh.  
 17 THE HEARING OFFICER: We  
 18 don't need to read the --  
 19 MR. FOFANA: Well, I -- I  
 20 want to read it --  
 21 THE HEARING OFFICER: --  
 22 document right into the record.  
 23 MR. FOFANA: -- I want to  
 24 read it for the record.

1 Colon - Cross - Fofana  
 2 THE HEARING OFFICER:  
 3 Well --.  
 4 MR. FOFANA: I need to read  
 5 it for the record because this is controlled in  
 6 a -- in -- in -- in the question that will  
 7 follow. And we must inform whoever will read  
 8 the transcript to know what we are talking  
 9 about. I will read it, if you don't mind, sir?  
 10 THE HEARING OFFICER: Well,  
 11 you -- there's an objection?  
 12 MS. HEMANS-BRANTLEY: Yes,  
 13 I'm still going to object to relevance, to the  
 14 person whose testifying now, the highlighted  
 15 section -- first of all, I object to reading  
 16 the document, that section as indicated by you,  
 17 Mr. Siegel.  
 18 In addition, the highlighted  
 19 section is referring to a matter not within the  
 20 province of this investigator. That has  
 21 nothing to do with -- he's already testified  
 22 that he does not know what the principal does.  
 23 What he does know is -- he  
 24 can only attest to the things that he does.

1 Colon - Cross - Fofana  
 2 So, I think it's inappropriate --  
 3 MR. FOFANA: I --  
 4 MS. HEMANS-BRANTLEY: -- to  
 5 pursue this line of questioning with this  
 6 witness.  
 7 MR. FOFANA: -- sir, I object  
 8 to this, because this document governs the  
 9 whole process, and it is absolutely, you know,  
 10 legitimate for me to refer to in questioning  
 11 the investigator.  
 12 THE HEARING OFFICER: I'll --  
 13 I'll allow you to -- I'll give you some  
 14 latitude on questions. I don't need you to  
 15 read the document. So, ask the next question.  
 16 BY MR. FOFANA: (Cont'g.)  
 17 Q. All right. My question is  
 18 when such allegations are made, are you aware  
 19 that the principal is supposed to fill out a  
 20 form called A-420?  
 21 Can you take a look at this?  
 22 This is a form --.  
 23 **A. Yes.**  
 24 Q. All right. Now, have you

1 Colon - Cross - Fofana  
 2 received, yourself, a copy of -- of this  
 3 document, in the -- in -- in --  
 4 MS. HEMANS-BRANTLEY: I --  
 5 I'm sorry I --  
 6 BY MR. FOFANA: (Cont'g.)  
 7 Q. -- in the course of your  
 8 investigation?  
 9 MS. HEMANS-BRANTLEY: -- I'm  
 10 going to have to object to this, Mr. Siegel.  
 11 And if --.  
 12 MR. FOFANA: To what, ma'am?  
 13 MS. HEMANS-BRANTLEY: I don't  
 14 know that I necessarily --  
 15 MR. FOFANA: I want to know  
 16 to what?  
 17 MS. HEMANS-BRANTLEY: -- need  
 18 to --.  
 19 THE HEARING OFFICER: Well,  
 20 I -- I'm not quite understanding -- he's asking  
 21 about the process of this particular  
 22 investigation.  
 23 MR. FOFANA: Yes.  
 24 MS. HEMANS-BRANTLEY: Right.

1 Colon - Cross - Fofana  
 2 But he's wrong with regards to the completion  
 3 of this form. This form is completed if O.S.I.  
 4 directs the principal to conduct the  
 5 investigation. That's the only time. In this  
 6 case O.S.I. conducted the investigation.  
 7 THE HEARING OFFICER: Well,  
 8 that -- that may be the case, but he can still  
 9 ask the witness if he knows about the process.  
 10 And if this was followed in this instance.  
 11 I mean this is permissible  
 12 cross-examination.  
 13 BY MR. FOFANA: (Cont'g.)  
 14 Q. Would it be fair to ask you,  
 15 sir, if you -- in -- in the course of  
 16 investigating, in the course of establishing  
 17 your report, wouldn't it be fair to ask you,  
 18 did you read an A-420 -- an A-420 incident  
 19 report?  
 20 **A. No, I don't recall.**  
 21 Q. You don't recall?  
 22 **A. No.**  
 23 Q. And -- and you -- you -- you  
 24 are aware of the existence of this form?

1 Colon - Cross - Fofana  
 2 **A. Yes.**  
 3 Q. All right. So -- and -- and  
 4 you don't recall the principal providing such  
 5 documents?  
 6 **A. Correct.**  
 7 Q. You don't recall having even  
 8 used them at all in establishing your report?  
 9 **A. Correct.**  
 10 Q. Now, in the -- in the -- in  
 11 the Chancellor's Regulation we can see very  
 12 specifically, you know, the A-420 -- let me  
 13 pinpoint. "Further instructions will be given  
 14 with" --  
 15 MS. HEMANS-BRANTLEY:  
 16 Objection.  
 17 BY MR. FOFANA: (Cont'g.)  
 18 Q. -- "respect to" --  
 19 MS. HEMANS-BRANTLEY: We've  
 20 already --  
 21 BY MR. FOFANA: (Cont'g.)  
 22 Q. -- "completing this  
 23 document."  
 24 MS. HEMANS-BRANTLEY: --

1 Colon - Cross - Fofana  
 2 established he can't read to him.  
 3 MR. FOFANA: I'm sorry?  
 4 Well --.  
 5 THE HEARING OFFICER: What's  
 6 the question?  
 7 MR. FOFANA: The question  
 8 is --.  
 9 THE HEARING OFFICER: To the  
 10 witness.  
 11 BY MR. FOFANA: (Cont'g.)  
 12 Q. The question is, don't you  
 13 think there is a discrepancy between your  
 14 report and the regulations? Because you  
 15 mention at no time the A-420, which is central  
 16 to -- to the regulation?  
 17 **A. No.**  
 18 Q. Why no; I don't understand  
 19 what you mean, you --?  
 20 THE HEARING OFFICER: He --  
 21 he just answered your question.  
 22 **A. You asked me if there was a  
 23 discrepancy, I said no.**  
 24 MR. FOFANA: It is

1 Colon - Redirect - Hemans-Brantley  
 2 interesting -- it is -- well, that's fine.  
 3 That's not really -- I just want to -- okay.  
 4 I have no further questions,  
 5 sir.  
 6 THE HEARING OFFICER: Any  
 7 redirect?  
 8 MS. HEMANS-BRANTLEY: Just  
 9 briefly.  
 10 REDIRECT EXAMINATION  
 11 BY MS. HEMANS-BRANTLEY:  
 12 Q. With -- when a complaint  
 13 comes into the office of special  
 14 investigations, and certain allegations are  
 15 asked to be investigated, what are the two ways  
 16 in which an investigation can be investigated?  
 17 **A. Either the principal is to**  
 18 **investigate, in which case an A-420 is**  
 19 **completed; or the office of special**  
 20 **investigations investigates, in which the**  
 21 **office of special investigations completes the**  
 22 **investigation, and the A-420 is not completed.**  
 23 MS. HEMANS-BRANTLEY: I have  
 24 nothing further.

1 **Colon - Recross - Fofana**  
 2 **THE HEARING OFFICER:**  
 3 **Anything further as a result of that question,**  
 4 **Mr. Fofana?**  
 5 MR. FOFANA: I do.  
 6 RECROSS EXAMINATION  
 7 BY MR. FOFANA:  
 8 Q. So, from you -- from you --  
 9 this statement you're saying, no form A-420 --  
 10 no A-420 form is filled out by the principal  
 11 unless the principal has conducted the  
 12 investigation?  
 13 **A. That's incorrect.**  
 14 Q. Well, then you have to  
 15 elaborate? In what circumstances --?  
 16 **A. A-420.**  
 17 Q. Let -- let me finish my  
 18 question, sir.  
 19 **A. Oh.**  
 20 Q. In what circumstances A-420  
 21 must be filled out, and proceed -- and -- and  
 22 forwarded to O.S.I.?  
 23 **A. Okay. In both cases, some**  
 24 **information, or all of the information, is**

1 **Colon - Recross - Fofana**  
 2 **filled out.**  
 3 Q. Uh-huh.  
 4 **A. In the case where a principal**  
 5 **is doing the investigation --**  
 6 Q. Uh-huh.  
 7 **A. -- the form is completed.**  
 8 Q. Okay.  
 9 **A. In the case where O.S.I. is**  
 10 **doing the investigation --**  
 11 Q. Uh-huh.  
 12 **A. -- only the initial portion**  
 13 **of the form, giving the basic information of**  
 14 **the complainant --**  
 15 Q. Uh-huh.  
 16 **A. -- and the Respondent --**  
 17 Q. Uh-huh.  
 18 **A. -- is filled out.**  
 19 Q. Now, when you say that  
 20 complete, not -- incomplete, what's the  
 21 difference between the two; can you elaborate?  
 22 **A. Sure. As I said earlier --**  
 23 Q. Uh-huh.  
 24 **A. -- when the principal is**

1 **Colon - Recross - Fofana**  
 2 **doing the investigation --**  
 3 Q. Uh-huh.  
 4 **A. -- the form is filled out**  
 5 **from beginning to end, including --**  
 6 Q. Uh-huh. Uh-huh.  
 7 **A. -- a conclusion --**  
 8 Q. Uh-huh.  
 9 **A. -- a resolution or a finding.**  
 10 Q. Okay.  
 11 **A. When the O.S.I. is doing the**  
 12 **investigation --**  
 13 Q. Uh-huh.  
 14 **A. -- as I said earlier --**  
 15 Q. Uh-huh.  
 16 **A. -- only the basic**  
 17 **information --**  
 18 Q. Uh-huh.  
 19 **A. -- the first portion of the**  
 20 **form --**  
 21 Q. Yeah.  
 22 **A. -- saying who made the**  
 23 **complaint --**  
 24 Q. Uh-huh.

1 Colon - Examination - Hearing Officer  
 2 **A. -- and who the complaint is**  
 3 **against --**  
 4 Q. Uh-huh.  
 5 **A. -- is filled out.**  
 6 Q. Yeah. I see. But in any --  
 7 in -- in either case, A-420 must be forward to  
 8 O.S.I. from your own explanation?  
 9 **A. According to Chancellor's**  
 10 **Regulations, it should be, yes.**  
 11 MR. FOFANA: Thank you.  
 12 I have no further questions.  
 13 EXAMINATION  
 14 BY THE HEARING OFFICER:  
 15 Q. I -- I just -- I do have a  
 16 quick question or two -- hopefully a quick  
 17 question or two.  
 18 I'm just trying to understand  
 19 the timing of the investigation. I understand  
 20 that there was an initial allegation brought to  
 21 O.S.I. December 6th, 2004?  
 22 **A. Uh-huh. Uh-huh.**  
 23 Q. Okay. And then, when did you  
 24 conduct your interviews?

1 Colon - Examination - Hearing Officer  
 2 **A. In March and April 2005.**  
 3 Q. And that's when these  
 4 statements that are attached to D.O.E. Thirteen  
 5 were taken?  
 6 **A. Yes.**  
 7 Q. And then -- but you didn't  
 8 issue your report until March 2006; is that  
 9 correct?  
 10 **A. Right. Right.**  
 11 Q. Is -- was there a reason for  
 12 the timing discrepancy?  
 13 **A. Because of the heavy workload**  
 14 **at O.S.I. and there's a triage process, we tend**  
 15 **to take the physical corporal punishment and**  
 16 **sexual harassment cases, and more serious cases**  
 17 **and put them up front. And that's really why**  
 18 **this got put to the back; this is a verbal**  
 19 **abuse case, and that tends to get put back.**  
 20 MR. FOFANA: I -- I have a  
 21 question.  
 22 THE HEARING OFFICER: Okay.  
 23 Oh, so let me just -- I'll go back to Ms.  
 24 Brantley first. Do you have any questions as a

1 Colon - Examination - Hearing Officer  
 2 result of my question?  
 3 MS. HEMANS-BRANTLEY: Yes. I  
 4 just have -- I just want to clarify something.  
 5 You asked the investigator, Mr. Colon, whether  
 6 or not the statements were taken on -- on March  
 7 7th, and whatever else's date. Just for  
 8 clarity what statements were you referring to  
 9 when you asked him that question?  
 10 THE HEARING OFFICER: I was  
 11 referring to, first, the written statements.  
 12 THE WITNESS: Yeah.  
 13 MS. HEMANS-BRANTLEY: Uh-huh.  
 14 THE HEARING OFFICER: That's  
 15 what I was referring to.  
 16 MS. HEMANS-BRANTLEY: Okay.  
 17 THE HEARING OFFICER: All  
 18 these attached -- there's -- there's numerous  
 19 written statements --  
 20 MS. HEMANS-BRANTLEY: Right.  
 21 THE HEARING OFFICER: -- and  
 22 some of them indicate a different date, other  
 23 than --  
 24 MS. HEMANS-BRANTLEY: Right.

1 Colon - Examination - Hearing Officer  
 2 THE HEARING OFFICER: --  
 3 March 2005.  
 4 THE WITNESS: Well, you said  
 5 collected.  
 6 BY THE HEARING OFFICER: (Cont'g.)  
 7 Q. No, no, I said take -- I  
 8 meant -- I meant, when did the kids write them  
 9 up --  
 10 **A. Oh.**  
 11 Q. -- essentially.  
 12 **A. The dates that are written on**  
 13 **the -- on the statements themselves.**  
 14 Q. Okay. So, as I understand  
 15 it, there's a date that's written on the  
 16 statements but then you visited the kids  
 17 separately?  
 18 **A. Yes.**  
 19 Q. And you visited with them,  
 20 and presumably took your own notes --  
 21 **A. Right.**  
 22 Q. -- in March of 2005?  
 23 **A. Yes.**  
 24 Q. And then when you compiled

1 Colon - Further Recross - Fofana  
 2 their written statements with your own notes,  
 3 that is what led you to produce the report  
 4 ultimately in March '06?  
 5 **A. Yes.**  
 6 THE HEARING OFFICER: Okay.  
 7 Any questions as a result of that now, Mr. --  
 8 you're done with -- Ms. Brantley?  
 9 MS. HEMANS-BRANTLEY: Yes, I  
 10 just wanted that out.  
 11 THE HEARING OFFICER: Thank  
 12 you, that was helpful.  
 13 Mr. Fofana?  
 14 FURTHER RECROSS EXAMINATION  
 15 BY MR. FOFANA:  
 16 Q. Yes. So, the allegations  
 17 were made on December 6th, 2004?  
 18 **A. Yes.**  
 19 Q. And you investigated which  
 20 date again; when you went in the school?  
 21 **A. In March and April, I made**  
 22 **two visits to the school.**  
 23 Q. March?  
 24 **A. Of 2005.**

1 **Colon - Further Recross - Fofana**  
 2 Q. 2005.  
 3 **A. And April of 2005.**  
 4 Q. All right. Now, which is  
 5 three months after the incident?  
 6 **A. Three and four months, yes.**  
 7 Q. Okay. Now -- and the -- you  
 8 wrote the report as indicated on -- on the top,  
 9 you wrote the report one year later?  
 10 **A. Yes.**  
 11 Q. One year later you wrote the  
 12 report; that's what you said?  
 13 **A. Yes.**  
 14 MR. FOFANA: All right.  
 15 Thank you.  
 16 THE HEARING OFFICER: Any  
 17 other questions?  
 18 MS. HEMANS-BRANTLEY: No.  
 19 THE HEARING OFFICER: All  
 20 right. Then you are excused as a witness.  
 21 Thank you very much and have a good day.  
 22 THE WITNESS: It's my  
 23 pleasure.  
 24 THE HEARING OFFICER: Ms.

1 Boubakar Fofana - 6-3-2008  
 2 Brantley --  
 3 MS. HEMANS-BRANTLEY: Uh-huh.  
 4 THE HEARING OFFICER: -- does  
 5 the Department have any further witnesses for  
 6 today?  
 7 MS. HEMANS-BRANTLEY: No.  
 8 THE HEARING OFFICER: Now,  
 9 it's my understanding that the Department would  
 10 essentially be prepared to rest its case,  
 11 except for the -- well, you'd be prepared in  
 12 total, but since I've allowed for Mr. Marin to  
 13 be reproduced for that very limited purpose  
 14 that we discussed earlier today --  
 15 MS. HEMANS-BRANTLEY: Uh-huh.  
 16 THE HEARING OFFICER: --  
 17 otherwise the Department is prepared to rest  
 18 its case; is that correct?  
 19 MS. HEMANS-BRANTLEY: Yes.  
 20 THE HEARING OFFICER: All  
 21 right. So -- and Mr. Fofana, I presume that  
 22 you would rather not start your case until such  
 23 time as the Department has -- you've concluded  
 24 with Mr. Marin; correct?

1 Boubakar Fofana - 6-3-2008  
 2 MR. FOFANA: Yes.  
 3 THE HEARING OFFICER: Then at  
 4 this time, I'm going to suggest that Mr. Marin  
 5 be reconfirmed to be here at ten o'clock sharp  
 6 tomorrow.  
 7 MS. HEMANS-BRANTLEY: Uh-huh.  
 8 THE HEARING OFFICER: We will  
 9 immediately go to his testimony.  
 10 MS. HEMANS-BRANTLEY: Right.  
 11 THE HEARING OFFICER: And  
 12 then as I had indicated earlier on the record,  
 13 two of the individuals who Mr. Fofana  
 14 subpoenaed will -- will hopefully be appearing  
 15 tomorrow at approximately ten o'clock and  
 16 eleven o'clock respectively.  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: We can  
 19 proceed with that. And then after that it will  
 20 be up to Mr. Fofana to decide which witnesses,  
 21 if any, he will produce, or whether he, if he  
 22 chooses to testify --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: -- will

Page 1293

1 Boubakar Fofana - 6-3-2008  
 2 start his testimony.  
 3 MR. FOFANA: Yes.  
 4 THE HEARING OFFICER: Does  
 5 everyone understand that?  
 6 MS. HEMANS-BRANTLEY: Uh-huh.  
 7 THE HEARING OFFICER: Mr.  
 8 Fofana?  
 9 MR. FOFANA: I'm sorry,  
 10 regarding --?  
 11 THE HEARING OFFICER: Is that  
 12 clear to you though, in terms of process?  
 13 MR. FOFANA: Oh, yes,  
 14 absolutely.  
 15 Since this is the last  
 16 witness from -- from the D.O.E., there's no  
 17 need to -- to subpoena Ms. Nolte, as I  
 18 indicated earlier. Her appearance was  
 19 contingent on the appearance of a student. And  
 20 since that's -- since that's not the case, I  
 21 drop that subpoena. So, in total, my witnesses  
 22 will be confined to Mr. Dasgupta, Ms. Hummer,  
 23 two teachers, and obviously the very quick, you  
 24 know, cross-examination of Mr. Marin.

Page 1295

1 Boubakar Fofana - 6-3-2008  
 2 record --  
 3 MR. FOFANA: Yes.  
 4 THE HEARING OFFICER: -- you  
 5 had made mention of that to me --  
 6 MR. FOFANA: Yes, I did.  
 7 THE HEARING OFFICER: -- so I  
 8 did want --  
 9 MR. FOFANA: Yeah.  
 10 THE HEARING OFFICER: -- that  
 11 to be clear, since I had heard that.  
 12 MR. FOFANA: Yes. I would  
 13 arrange that.  
 14 THE HEARING OFFICER: Right.  
 15 So -- so, I think then just from a procedural  
 16 standpoint, it sounds as if the parties will be  
 17 able to conclude the two witnesses who have  
 18 been subpoenaed tomorrow, assuming that they  
 19 appear.  
 20 MS. HEMANS-BRANTLEY: Uh-huh.  
 21 THE HEARING OFFICER: And  
 22 we'll begin -- then we can -- if you choose to,  
 23 Mr. Fofana, you can start testifying, and then  
 24 I understand that your forensic expert can

Page 1294

1 Boubakar Fofana - 6-3-2008  
 2 THE HEARING OFFICER: Right.  
 3 MR. FOFANA: So, that is --  
 4 as far as I'm concerned, you know, my  
 5 witnesses, you know, appearances.  
 6 THE HEARING OFFICER: Well, I  
 7 will only say it since we -- I -- I do  
 8 understand you may, in fact, be choosing to  
 9 testify yourself?  
 10 MR. FOFANA: Uh-huh. That's  
 11 possible.  
 12 THE HEARING OFFICER: And  
 13 that you may, in fact, have some kind of  
 14 forensic person testify, but not tomorrow.  
 15 MR. FOFANA: Yes, I -- I  
 16 forgot that's one of --  
 17 THE HEARING OFFICER: Okay.  
 18 MR. FOFANA: -- my  
 19 appearances.  
 20 THE HEARING OFFICER: All  
 21 right. I just wanted --  
 22 MR. FOFANA: Yes.  
 23 THE HEARING OFFICER: -- so  
 24 Ms. Brantley -- because I -- we -- off the

Page 1296

1 Boubakar Fofana - 6-3-2008  
 2 appear on June 11th; is that correct?  
 3 MR. FOFANA: That's correct.  
 4 THE HEARING OFFICER: Okay.  
 5 All right. So, I think we've outlined exactly  
 6 where -- where things stand at this point. And  
 7 is there anything further for the record at  
 8 this time?  
 9 MS. HEMANS-BRANTLEY: Just  
 10 that I would request, as -- as requested  
 11 previously, the C.V. on the forensic expert  
 12 before he testifies on June 11th. Only  
 13 because, if -- if necessary, I want to prepare  
 14 myself to have my -- I could start my rebuttal  
 15 on June 11th as well.  
 16 MR. FOFANA: There's no  
 17 question about it. I will just provide you  
 18 with the document.  
 19 I have a last, you know,  
 20 comment. I haven't received the -- the  
 21 transcripts. And it's really hurting my case,  
 22 because I haven't even received the May 7th,  
 23 you know, transcript, which is one month ago.  
 24 Now, I don't know how

41 (Pages 1293 to 1296)

1 Boubakar Fofana - 6-3-2008  
 2 expedited, expedited is. I haven't received  
 3 it. I haven't received the transcript for May  
 4 14, and it's -- it's a serious hindrance to --  
 5 to my defense. I --.  
 6 THE HEARING OFFICER: Well,  
 7 it --  
 8 MR. FOFANA: At this point to  
 9 make, you know, this objection -- well, not  
 10 objection, but to make these comment on --  
 11 on -- on the record.  
 12 THE HEARING OFFICER: I  
 13 understand. And you know, we've --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: --  
 16 we've allowed you to put that on the record  
 17 before, and we've -- as you know, I've spoken  
 18 with the previous reporters about letting the  
 19 powers to be in their organization know about  
 20 your concerns about that.  
 21 MR. FOFANA: Yeah, I called.  
 22 THE HEARING OFFICER: Okay.  
 23 MR. FOFANA: I have  
 24 already -- I called the report -- you know,

1 Boubakar Fofana - 6-3-2008  
 2 the -- the number that was provided. I called  
 3 many times. I was told that this week, the  
 4 first day, you know, they have only two days to  
 5 complete them. I haven't received them.  
 6 THE HEARING OFFICER: Okay.  
 7 MR. FOFANA: And --.  
 8 THE HEARING OFFICER: All  
 9 right. Well --.  
 10 MR. FOFANA: Unfortunately.  
 11 THE HEARING OFFICER: Yes.  
 12 All right. Well, this proceeding will be  
 13 scheduled to convene again tomorrow at ten  
 14 o'clock a.m.  
 15 Thank you very much.  
 16 MR. FOFANA: Thank you.  
 17 (The hearing adjourned at  
 18 1:38 p.m.)  
 19  
 20  
 21  
 22  
 23  
 24

1 Boubakar Fofana - 6-3-2008  
 2 I, Tracy M. Williams, do hereby certify that the  
 3 foregoing was taken by me, in the cause, at the time  
 4 and place, and in the presence of counsel, as stated  
 5 in the caption hereto, at Page 1 hereof; that before  
 6 giving testimony said witness(es) was (were) duly  
 7 sworn to testify the truth, the whole truth and  
 8 nothing but the truth; that the foregoing typewritten  
 9 transcription, consisting of pages number 1136 to  
 10 1298, inclusive, is a true record prepared by me and  
 11 completed by Associated Reporters Int'l., Inc. from  
 12 materials provided by me.  
 13 \_\_\_\_\_  
 14 Tracy M. Williams, Reporter  
 15 \_\_\_\_\_ Date  
 16  
 17 rtmw/tjmc/pllm  
 18  
 19  
 20  
 21  
 22  
 23  
 24

1 ERRATA SHEET  
 2 Case: Boubakar Fofana, File #8,234  
 3 Date: June 3, 2008  
 4  
 5 CORRECTIONS:  
 6 Page - line  
 7 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 8 Corrected to: \_\_\_\_\_  
 9 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 10 Corrected to: \_\_\_\_\_  
 11 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 12 Corrected to: \_\_\_\_\_  
 13 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 14 Corrected to: \_\_\_\_\_  
 15 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 16 Corrected to: \_\_\_\_\_  
 17 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 18 Corrected to: \_\_\_\_\_  
 19 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 20 Corrected to: \_\_\_\_\_  
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N A M E I N D E X

Allyne, Nikita	Ni.Ae.
DeVignes, Curleen	Cu.Tr.
Duvall, Dwight (phonetic spelling)	Dw.Du.
James, Loikel	Lk.Jm.
Jones, Jalissa	Jl.Jn.
Kakesha (phonetic spelling)	Kk.
Mercedes	Mc.
Monifa (phonetic spelling)	Mf.
Trotman, Curleen	Cu.Tr.
Trotman, Lisa-Marie	Ls.Tr.
Yusuf, Mohammed	Mh.Ys.

<b>A</b>		
<b>abilities</b> 1160:7	1149:22 1165:16,19	<b>amounts</b> 1189:19
<b>ability</b> 1213:16 1225:5	<b>Adonai's</b> 1153:13	<b>Anchintya</b> 1140:22
<b>able</b> 1144:6 1295:17	<b>adverse</b> 1140:6	<b>Anna</b> 1138:3 1177:24
<b>absences</b> 1179:24 1180:6	<b>affirm</b> 1161:14,20,21	1178:13
<b>absenteeism</b> 1161:6	1178:8 1231:8	<b>anomaly</b> 1212:2,16
<b>absolutely</b> 1171:11	<b>affirmation</b> 1200:4	<b>answer</b> 1149:4 1191:14
1175:17 1216:18 1228:9	<b>afforded</b> 1171:23 1230:20	1212:23 1213:2 1244:7
1276:9 1293:14	<b>afraid</b> 1214:16	1263:2
<b>abuse</b> 1235:24 1271:8	<b>afternoon</b> 1230:16 1231:20	<b>answered</b> 1225:2 1280:21
1273:6 1286:19	1231:21	<b>answering</b> 1197:14
<b>accept</b> 1201:6 1241:23	<b>agency</b> 1221:24 1232:4,8	<b>anticipated</b> 1230:9
<b>acceptable</b> 1241:17 1250:2	<b>ago</b> 1296:23	<b>anybody</b> 1164:5 1209:5
1250:6,10	<b>agree</b> 1153:3 1158:18,21	<b>anymore</b> 1157:18
<b>access</b> 1170:16 1199:11	<b>agreed</b> 1140:10 1188:2	<b>appear</b> 1142:16 1156:11
<b>accessed</b> 1198:22 1200:14	1204:4 1239:23	1190:4,7 1192:13
<b>accommodating</b> 1258:16	<b>agrees</b> 1208:24	1230:19 1295:19 1296:2
<b>accompany</b> 1182:7	<b>ahead</b> 1156:15 1222:11,12	<b>appearance</b> 1176:20
<b>account</b> 1254:18	<b>Aid</b> 1233:17	1293:18,19
<b>accountability</b> 1198:18,20	<b>alerts</b> 1182:14	<b>appearances</b> 1137:2
1199:6,10 1209:4	<b>allegation</b> 1236:2 1240:13	1139:11 1294:5,19
1211:24 1212:20	1250:7,13,19 1252:6,13	<b>appearing</b> 1141:4 1292:14
<b>accuracy</b> 1262:2	1273:6 1285:20	<b>appointment</b> 1273:9
<b>accurate</b> 1198:3 1266:13	<b>allegations</b> 1145:12 1158:8	<b>appreciate</b> 1155:10
<b>accusation</b> 1256:10	1233:8 1234:4 1235:2,20	<b>apprised</b> 1196:24
<b>accuse</b> 1253:7	1235:21,23 1236:5,6,10	<b>appropriate</b> 1142:19
<b>accused</b> 1258:19	1236:20 1237:20 1238:6	1144:17
<b>accuser</b> 1263:5	1240:14,22 1243:12,15	<b>approximately</b> 1157:17
<b>accusers</b> 1241:19 1258:16	1243:16 1246:12 1247:3	1233:22 1270:16 1292:15
<b>acquire</b> 1198:14	1248:14 1249:14,15,16	<b>April</b> 1286:2 1289:21
<b>actual</b> 1207:11	1251:11,12,23 1252:4,22	1290:3
<b>add</b> 1154:9	1253:14,17 1254:24	<b>Apt</b> 1137:9
<b>addition</b> 1230:14 1275:18	1256:6 1266:22 1276:18	<b>arbitrator</b> 1161:3 1164:14
<b>addressed</b> 1153:11	1281:14 1289:16	1238:14
<b>adjourned</b> 1298:17	<b>alleged</b> 1267:2	<b>argue</b> 1187:14
<b>administrative</b> 1221:21	<b>alleging</b> 1158:3 1215:8,14	<b>arguing</b> 1187:4
<b>Administrators</b> 1232:2	<b>allotment</b> 1180:13	<b>argument</b> 1153:8 1193:7
<b>admit</b> 1196:18 1201:17	<b>allow</b> 1171:22 1172:8	<b>arguments</b> 1154:10,22
1243:2 1269:19	1203:14,18 1204:9,15	1155:5,14,16,16,19,22
<b>admitted</b> 1185:21 1188:19	1230:17 1245:13 1276:13	1242:2
1243:7	<b>allowed</b> 1150:20 1203:10	<b>arisen</b> 1142:8
<b>ado</b> 1171:24	1291:12 1297:16	<b>arrange</b> 1295:13
<b>Adonai</b> 1142:5,14 1143:6	<b>Allyne</b> 1301:3	<b>arrived</b> 1182:15
1144:21 1145:9 1148:10	<b>alphabetical</b> 1272:17	<b>articulate</b> 1145:22
	<b>amount</b> 1198:17 1255:15	<b>asked</b> 1140:8 1141:16

<p>1151:11 1203:24 1206:15  1212:22 1219:6 1235:19  1255:20 1256:3 1280:22  1281:15 1287:5,9  <b>asking</b> 1165:23 1203:8,21  1209:5 1211:7,24 1217:8  1229:11 1251:14 1252:2  1255:4,8,12,15 1256:8  1277:20  <b>aspects</b> 1144:3  <b>assessed</b> 1200:14  <b>assessing</b> 1254:19  <b>assessment</b> 1145:10  <b>assigned</b> 1234:3,12  1235:20 1236:6,10  <b>assignment</b> 1222:23  1234:8,20  <b>assist</b> 1140:4  <b>Assistance</b> 1232:11  <b>assistant</b> 1142:5 1150:19  1210:8 1221:21  <b>Associated</b> 1299:11  <b>assume</b> 1177:10 1201:5  <b>assuming</b> 1170:17 1295:18  <b>assumptions</b> 1252:11  <b>attached</b> 1286:4 1287:18  <b>attachments</b> 1195:5  <b>attendance</b> 1205:19  1221:23  <b>attention</b> 1172:13 1271:6  1274:5  <b>attest</b> 1275:24  <b>attests</b> 1200:5  <b>Audubon</b> 1137:9  <b>August</b> 1198:14,16  <b>authority</b> 1223:7,13  <b>available</b> 1230:16  <b>Avenue</b> 1137:9  <b>avoid</b> 1215:6  <b>aware</b> 1224:17 1276:18  1278:24  <b>A-N-C-H-I-N-T-Y-A</b>  1140:23  <b>A-420</b> 1271:9,10,24 1272:3</p>	<p>1276:20 1278:18,18  1279:12 1280:15 1281:18  1281:22 1282:9,10,16,20  1285:7  <b>a.m</b> 1136:11 1139:3  1248:18 1298:14</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>B</b> 1259:4,11,11,13,20  1260:7,8 1263:5 1264:2  1264:10,14 1269:2,3  <b>bachelor's</b> 1150:24  <b>back</b> 1142:21,23 1165:10  1189:3 1191:7,18,19  1198:19 1199:6 1234:23  1235:18 1237:23 1239:8  1257:4,21 1266:7  1286:18,19,23  <b>background</b> 1153:16  1237:15,16 1249:10  1257:13  <b>banter</b> 1267:20  <b>based</b> 1175:5 1245:9  1261:8  <b>basic</b> 1283:13 1284:16  <b>basically</b> 1180:6 1182:18  <b>basis</b> 1174:6  <b>bear</b> 1160:7 1176:7  1183:20,20 1207:16  <b>began</b> 1237:13,17  <b>beginning</b> 1284:5  <b>behalf</b> 1139:14 1159:24  <b>behavior</b> 1272:3  <b>believe</b> 1140:12 1141:18  1142:16 1148:9 1165:3  1170:7 1177:14 1189:5,6  1235:16,22 1266:2  <b>beneficial</b> 1171:18  <b>benefit</b> 1147:9,10,21  <b>best</b> 1137:4 1213:16  <b>better</b> 1193:23 1239:21  <b>beyond</b> 1143:10,16  <b>biased</b> 1254:23  <b>blank</b> 1262:12,13</p>	<p><b>Board</b> 1164:6  <b>book</b> 1250:12  <b>bore</b> 1166:12  <b>bother</b> 1202:8  <b>bottom</b> 1205:10,18  <b>Boubakar</b> 1136:7 1137:1,9  1138:1 1139:1,9,16  1140:1 1141:1 1142:1  1143:1 1144:1 1145:1  1146:1 1147:1 1148:1  1149:1 1150:1 1151:1  1152:1 1153:1 1154:1  1155:1 1156:1 1157:1  1158:1 1159:1 1160:1  1161:1 1162:1 1163:1  1164:1 1165:1 1166:1  1167:1 1168:1 1169:1  1170:1 1171:1 1172:1  1173:1 1174:1 1175:1  1176:1 1177:1 1224:6  1235:3 1291:1 1292:1  1293:1 1294:1 1295:1  1296:1 1297:1 1298:1  1299:1 1300:3  <b>bought</b> 1188:4  <b>boy</b> 1183:20  <b>Brantley</b> 1141:19 1148:20  1149:16,24 1152:12  1157:10 1168:14 1170:18  1177:24 1178:15 1184:16  1196:18 1208:11 1215:5  1216:20 1229:23 1231:15  1286:24 1289:8 1291:2  1294:24  <b>brief</b> 1249:11  <b>briefly</b> 1233:13 1281:9  <b>bring</b> 1241:19 1270:19  <b>brings</b> 1181:3  <b>Brooklyn</b> 1178:22 1233:18  <b>brought</b> 1230:23 1285:20  <b>Brutus</b> 1202:17,18,23  1204:4,19  <b>burden</b> 1242:9  <b>business</b> 1224:11</p>
---	---	---

<p><b>buy</b> 1180:14</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 1138:2 1259:11,12,13 1260:12,13 1263:6</p> <p><b>call</b> 1142:23 1155:8 1177:12 1221:19,24 1223:14 1224:5 1230:10</p> <p><b>called</b> 1142:3 1157:14 1163:4 1176:21 1211:2 1217:8,9,10,19 1223:4 1224:14 1255:13,14,19 1276:20 1297:21,24 1298:2</p> <p><b>calling</b> 1141:18 1221:24 1260:10 1268:9</p> <p><b>calls</b> 1140:19</p> <p><b>capacity</b> 1232:24</p> <p><b>capital</b> 1140:22,23</p> <p><b>caption</b> 1299:5</p> <p><b>career</b> 1210:12</p> <p><b>case</b> 1141:11,14 1151:18 1154:23 1160:4 1161:20 1161:22 1163:12 1188:13 1188:16 1210:18,21 1236:6 1240:16 1244:4 1245:21 1246:5,7,9,12 1261:9 1263:4,19 1268:3 1270:11 1278:6,8 1281:18 1283:4,9 1285:7 1286:19 1291:10,18,22 1293:20 1296:21 1300:3</p> <p><b>cases</b> 1162:9 1246:20 1282:23 1286:16,16</p> <p><b>caught</b> 1166:7 1247:4</p> <p><b>cause</b> 1299:3</p> <p><b>caused</b> 1264:11</p> <p><b>central</b> 1162:9 1280:15</p> <p><b>certain</b> 1140:2 1144:9 1158:7 1168:20 1180:20 1234:4 1235:20 1259:8 1281:14</p> <p><b>certainly</b> 1144:22 1155:5 1155:16 1170:13 1189:8</p>	<p>1242:13</p> <p><b>certify</b> 1299:2</p> <p><b>Chambers</b> 1136:13 1137:6</p> <p><b>chance</b> 1148:9 1168:2 1176:2</p> <p><b>Chancellor</b> 1271:7,13</p> <p><b>Chancellor's</b> 1271:16 1279:11 1285:9</p> <p><b>change</b> 1201:11</p> <p><b>charge</b> 1150:19 1160:19 1221:22</p> <p><b>charges</b> 1145:8,21 1146:4 1147:10,18 1148:13,24 1161:16 1162:11 1163:22 1164:7 1246:2,3,4</p> <p><b>Charles</b> 1156:22</p> <p><b>check</b> 1162:8 1181:15 1182:2,5,21 1185:13 1186:6 1187:22 1188:3 1189:19 1191:18 1192:5 1192:20 1198:9,11,17 1202:15,23 1204:23 1205:6 1206:16 1210:22 1213:10 1214:22 1215:3 1216:2,5 1217:12,20 1218:12 1219:10,14 1220:10 1222:2 1223:9 1223:17 1229:3,12 1230:15 1237:15,16</p> <p><b>checks</b> 1179:23 1180:7,8 1180:19,23 1181:2,4,7,10 1181:11,13,18,23 1182:3 1182:10,15,18 1183:4,7,9 1189:24 1192:4,7 1194:14,15,17 1213:4 1220:19 1221:4</p> <p><b>chief</b> 1232:5 1234:12</p> <p><b>choice</b> 1172:12,21 1180:9 1180:11,12 1181:7 1182:2,8,14 1183:4 1185:11,13 1187:22 1192:5 1194:15 1195:19 1196:7 1198:9,10,24 1199:6,14 1206:15</p>	<p>1209:2 1210:2 1220:15 1220:19 1221:4 1229:12 1262:10</p> <p><b>choose</b> 1176:2 1267:9,15 1295:22</p> <p><b>chooses</b> 1174:12 1292:22</p> <p><b>choosing</b> 1294:8</p> <p><b>Chris</b> 1234:12</p> <p><b>circumstances</b> 1213:21 1214:6 1252:22 1253:5 1264:11 1282:15,20</p> <p><b>cite</b> 1252:3</p> <p><b>City</b> 1136:5 1137:10 1139:8,14 1232:10,16 1233:17 1249:12</p> <p><b>claim</b> 1242:6</p> <p><b>clarification</b> 1186:14 1223:15</p> <p><b>clarified</b> 1216:23</p> <p><b>clarify</b> 1193:23 1287:4</p> <p><b>clarity</b> 1287:8</p> <p><b>class</b> 1214:3 1265:16 1270:17,21</p> <p><b>classes</b> 1180:5</p> <p><b>classroom</b> 1180:15 1214:9 1215:18 1241:12 1246:20 1264:12 1270:12</p> <p><b>clean</b> 1163:9</p> <p><b>clear</b> 1183:16 1189:12 1193:18 1200:13 1213:11 1217:17,24 1293:12 1295:11</p> <p><b>clearly</b> 1151:18 1152:2 1173:4 1175:11,14</p> <p><b>click</b> 1271:16</p> <p><b>close</b> 1154:22</p> <p><b>closed</b> 1161:21</p> <p><b>closing</b> 1155:15 1242:6</p> <p><b>Cold</b> 1136:16</p> <p><b>collected</b> 1288:5</p> <p><b>College</b> 1136:5 1178:21 1234:5</p> <p><b>Colon</b> 1138:6 1141:18 1230:23 1231:1,3,5,12,13</p>
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<p>1231:20 1232:1 1233:1  1234:1 1235:1 1236:1  1237:1 1238:1 1239:1  1240:1 1241:1 1242:1  1243:1 1244:1 1245:1  1246:1 1247:1 1248:1,13  1249:1 1250:1 1251:1  1252:1 1253:1 1254:1  1255:1 1256:1 1257:1  1258:1 1259:1 1260:1  1261:1 1262:1 1263:1  1264:1 1265:1 1266:1  1267:1 1268:1 1269:1  1270:1 1271:1 1272:1  1273:1 1274:1 1275:1  1276:1 1277:1 1278:1  1279:1 1280:1 1281:1  1282:1 1283:1 1284:1  1285:1 1286:1 1287:1,5  1288:1 1289:1 1290:1  <b>column</b> 1200:3 1208:22,22  <b>come</b> 1142:21 1150:22  1162:12 1165:10 1172:12  1177:2 1180:3 1181:2,10  1181:17 1237:18 1273:10  <b>comes</b> 1177:7 1227:8  1281:13  <b>coming</b> 1141:20 1166:6  1169:15 1176:22 1233:13  1233:20  <b>comment</b> 1296:20 1297:10  <b>comments</b> 1246:7  <b>commit</b> 1141:5  <b>commitments</b> 1141:5  <b>compiled</b> 1288:24  <b>complainant</b> 1137:3  1283:14  <b>complainants</b> 1236:17  <b>complained</b> 1166:5  <b>complaint</b> 1281:12  1284:23 1285:2  <b>complete</b> 1170:16 1172:14  1172:20 1283:20 1298:5  <b>completed</b> 1237:19 1278:3</p>	<p>1281:19,22 1283:7  1299:11  <b>completely</b> 1160:12  <b>completes</b> 1281:21  <b>completing</b> 1279:22  <b>completion</b> 1278:2  <b>comply</b> 1209:3  <b>computer</b> 1199:12  <b>concern</b> 1155:12 1217:3  <b>concerned</b> 1250:24 1294:4  <b>concerning</b> 1145:12  <b>concerns</b> 1297:20  <b>conclude</b> 1243:14 1261:9  1295:17  <b>concluded</b> 1168:11  1291:23  <b>conclusion</b> 1139:22 1284:7  <b>conclusions</b> 1243:13  1247:9  <b>conditions</b> 1208:24  <b>conduct</b> 1159:19 1160:8  1161:13,22 1163:4  1278:4 1285:24  <b>conducted</b> 1237:7,10,24  1278:6 1282:11  <b>confidential</b> 1233:3,7  <b>confine</b> 1144:2  <b>confined</b> 1146:15 1293:22  <b>connect</b> 1203:15  <b>consider</b> 1241:21  <b>considering</b> 1216:9  <b>consisting</b> 1299:9  <b>constitutes</b> 1216:8 1242:17  1242:21  <b>contact</b> 1209:24 1210:8  1222:5,14,16 1223:10,14  <b>contacted</b> 1224:16  <b>contacting</b> 1219:6  <b>contend</b> 1242:13  <b>contention</b> 1153:13  1167:23  <b>context</b> 1256:9  <b>contingent</b> 1176:20  1293:19</p>	<p><b>control</b> 1157:18  <b>controlled</b> 1275:5  <b>Cont'g</b> 1185:4 1188:24  1189:15 1191:15 1194:8  1195:12 1197:8 1198:7  1200:11 1202:21 1204:2  1204:22 1205:13,17  1207:4 1208:12 1211:17  1212:11 1213:14,20,23  1214:11,15 1217:6  1219:12,16,23 1226:2  1228:23 1234:17 1235:7  1240:6 1243:10 1245:22  1246:18,21 1251:9,21  1252:19 1253:18 1254:5  1254:7 1257:7 1259:9  1260:3 1263:24 1267:14  1267:24 1268:13,21  1270:6 1272:23 1276:16  1277:6 1278:13 1279:17  1279:21 1280:11 1288:6  <b>convene</b> 1298:13  <b>conversation</b> 1220:2  <b>convicted</b> 1161:16  <b>cooperate</b> 1141:7  <b>copies</b> 1184:9 1188:5  1200:18,18,20 1228:15  <b>copy</b> 1166:23 1167:7  1170:6 1172:23 1193:9  1200:21 1226:13 1229:4  1239:3,8,16 1277:2  <b>corporal</b> 1233:9 1271:7  1273:3,5 1286:15  <b>correct</b> 1141:20,22  1167:17 1172:16 1178:4  1189:20,24 1200:15  1202:24 1206:3 1208:11  1210:9 1235:9 1246:23  1247:9 1252:15 1254:3  1262:4 1265:16 1266:13  1279:6,9 1286:9 1291:18  1291:24 1296:2,3  <b>Corrected</b> 1300:6,8,9,11  1300:12,14,15,17,18,20</p>
--	---	---

<p><b>CORRECTIONS</b> 1300:4  <b>correctly</b> 1235:4  <b>corruptive</b> 1163:2,5  <b>Council</b> 1231:24  <b>counsel</b> 1137:4,4 1143:4  1144:2,11 1146:12  1149:5 1167:7 1299:4  <b>counselor</b> 1166:16 1204:5  1204:20 1205:22  <b>count</b> 1259:6  <b>couple</b> 1197:22 1202:5  1271:14,17  <b>courier</b> 1181:3  <b>course</b> 1188:14 1258:17  1277:7 1278:15,16  <b>court</b> 1149:16  <b>courtesy</b> 1239:8,16  <b>cover</b> 1149:2  <b>coverages</b> 1180:5  <b>Cowell</b> 1183:10,13 1192:3  1205:2 1218:6  <b>credentials</b> 1153:24  <b>credibility</b> 1160:7  <b>criminal</b> 1233:16  <b>criteria</b> 1250:14,14,17  1270:19  <b>cross</b> 1138:4,7 1155:23  1170:15 1202:1,3,11  1203:1 1204:1 1205:1  1206:1 1207:1 1208:1  1209:1 1210:1 1211:1  1212:1 1213:1 1214:1  1215:1 1216:1 1217:1  1218:1 1247:15 1248:1  1248:11 1249:1 1250:1  1251:1 1252:1 1253:1  1254:1 1255:1 1256:1  1257:1 1258:1 1259:1  1260:1 1261:1 1262:1  1263:1 1264:1 1265:1  1266:1 1267:1 1268:1  1269:1 1270:1 1271:1  1272:1 1273:1 1274:1  1275:1 1276:1 1277:1</p>	<p>1278:1 1279:1 1280:1  <b>cross-examination</b> 1143:5  1143:8 1144:6,23 1145:4  1145:8 1153:12 1166:12  1168:11,18 1169:3  1171:3,9 1189:9 1219:5  1248:7 1278:12 1293:24  <b>cross-examine</b> 1142:4  1148:10  <b>cross-examined</b> 1142:17  <b>crucial</b> 1166:13  <b>crumble</b> 1265:24  <b>curious</b> 1249:5  <b>Curleen</b> 1301:3,7  <b>currently</b> 1178:20 1231:22  <b>cut</b> 1149:13 1157:21  <b>cutted</b> 1236:3  <b>Cu.Tr</b> 1301:3,7  <b>cycles</b> 1182:20  <b>C-O-W-E-L-L</b> 1183:17  <b>C.D</b> 1166:12  <b>C.D.s</b> 1168:10  <b>C.V</b> 1296:11</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 1138:2,2 1259:11,12,13  1260:21,21,22 1263:6  1264:18 1269:22,22  1301:2  <b>Dalton</b> 1234:12  <b>damaging</b> 1241:15  <b>Dasgupta</b> 1140:23 1141:8  1293:22  <b>dash</b> 1263:16,19  <b>database</b> 1162:9 1252:21  1252:24 1253:5,13  <b>databases</b> 1249:13 1253:6  <b>date</b> 1136:10 1169:15  1192:16,20 1235:14,16  1249:6 1287:7,22  1288:15 1289:20 1299:15  1300:3  <b>dated</b> 1193:7 1198:16  <b>dates</b> 1179:24 1288:12</p>	<p><b>day</b> 1139:9,22 1142:2  1170:16,18 1181:4  1191:24 1210:23 1229:20  1248:18 1258:11 1290:21  1298:4  <b>days</b> 1145:11 1298:4  <b>deadline</b> 1198:19,21  <b>deal</b> 1141:12 1156:18  1177:6 1180:6  <b>dealing</b> 1147:24  <b>deals</b> 1220:17 1221:8  1253:14  <b>dealt</b> 1235:24 1236:2  <b>December</b> 1180:22  1182:21 1234:2 1248:14  1266:18,20 1267:3  1285:21 1289:17  <b>decide</b> 1292:20  <b>decision</b> 1193:22  <b>decree</b> 1151:20  <b>deem</b> 1163:21  <b>deemed</b> 1158:14  <b>defense</b> 1166:9 1233:16,18  1297:5  <b>define</b> 1206:15  <b>definitely</b> 1209:17  <b>definition</b> 1251:13  <b>delay</b> 1230:8  <b>deny</b> 1155:8  <b>Department</b> 1188:12  <b>department</b> 1136:2,5,12  1137:5 1139:8,15,24  1140:2,3,14 1141:17,19  1142:3,9,13 1150:20,23  1153:3 1157:16 1161:13  1171:15 1174:12 1178:24  1188:12 1215:7 1230:10  1230:14,23 1232:10,14  1232:17 1233:2,14,14,21  1242:9 1249:12 1291:5,9  1291:17,23  <b>Department's</b> 1141:11  1157:18 1165:14 1177:12  1193:17</p>
---	---	--

<p><b>depends</b> 1210:4  <b>derogatory</b> 1246:6,19  1260:10 1268:9  <b>deserve</b> 1164:10  <b>designated</b> 1139:6  <b>detail</b> 1145:5  <b>details</b> 1244:16 1254:2  <b>determination</b> 1144:16  1160:4 1220:17  <b>determine</b> 1159:23 1162:4  <b>DeVignes</b> 1301:3  <b>Diane</b> 1141:15 1156:10  <b>difference</b> 1283:21  <b>different</b> 1236:6 1287:22  <b>direct</b> 1138:4,7 1143:16  1149:23 1178:1,17  1179:1 1180:1 1181:1  1182:1 1183:1 1184:1  1185:1 1186:1 1187:1  1188:1 1189:1 1190:1  1191:1 1192:1 1193:1  1194:1 1195:1 1196:1  1197:1 1198:1 1199:1  1200:1 1201:1 1222:4  1231:1,18 1232:1 1233:1  1234:1 1235:1 1236:1  1237:1 1238:1 1239:1  1240:1 1241:1 1242:1  1243:1 1244:1 1245:1  1246:1,6 1247:1  <b>direction</b> 1150:9 1164:20  <b>directly</b> 1147:18 1151:9,16  <b>director</b> 1169:17  <b>directs</b> 1278:4  <b>disability</b> 1205:19  <b>disagree</b> 1175:22  <b>disagrees</b> 1163:15  <b>discipline</b> 1272:3  <b>discrepancy</b> 1280:13,23  1286:12  <b>discuss</b> 1157:7 1166:15  1223:17 1249:9  <b>discussed</b> 1163:13 1230:18  1291:14</p>	<p><b>discussion</b> 1139:21 1141:3  1240:5  <b>disparaging</b> 1246:14,19  <b>disposed</b> 1162:5  <b>distribute</b> 1179:23 1181:11  1181:13 1183:7,9  <b>distributed</b> 1180:19  1182:4 1192:4  <b>distributes</b> 1183:3  <b>distributing</b> 1180:7  <b>Division</b> 1233:18  <b>document</b> 1151:22,24  1168:24 1170:7 1172:14  1172:16 1173:2,6  1175:12 1184:14 1186:24  1187:21 1190:4 1191:17  1193:2,4,7,14 1194:13  1195:11 1197:14,19  1205:9 1206:24 1212:3,6  1212:8,12 1227:23  1241:7 1244:19 1245:24  1253:9,14 1256:19,22  1257:2,9 1274:11,22  1275:16 1276:8,15  1277:3 1279:23 1296:18  <b>documentation</b> 1188:4  1208:19 1211:9,10,20  1214:24 1226:5,5 1229:2  1229:12 1244:6  <b>documented</b> 1151:17  <b>documents</b> 1161:24  1167:24 1168:20,21  1170:8 1171:6,10 1173:6  1226:20 1230:11 1238:18  1239:4 1240:19 1254:9  1258:23 1273:2,8 1279:5  <b>doing</b> 1283:5,10 1284:2,11  <b>download</b> 1199:15 1200:22  <b>downloaded</b> 1226:6  <b>Dr</b> 1158:6,7,22 1159:6  1173:11 1228:4 1234:10  <b>draw</b> 1164:5 1271:6  1274:4  <b>drop</b> 1177:4 1293:21</p>	<p><b>dropped</b> 1166:7  <b>due</b> 1199:6  <b>duly</b> 1299:6  <b>duties</b> 1179:20,22 1217:15  1233:6  <b>Duvall</b> 1301:4  <b>Dw</b> 1255:9  <b>dwell</b> 1168:10  <b>Dwight</b> 1301:4  <b>Dw.Du</b> 1255:5 1256:15  1301:4  <b>D-A-S-G-U-P-T-A</b>  1140:24  <b>D-Twelve</b> 1226:15,16  <b>D.O</b> 1188:19  <b>D.O.E</b> 1143:4 1166:14  1172:10,13,19,20 1174:9  1183:24 1184:12,19  1185:2,5,16,20 1186:4  1188:19 1189:16,18  1192:10,13,23 1193:10  1194:10,17,20 1195:13  1195:17,17,23 1197:4,9  1197:10 1199:13,19,23  1199:23,24 1200:10,13  1200:18 1201:2,15,19  1202:18 1205:9 1208:22  1212:10 1220:13,13  1221:2 1225:15 1228:7  1238:9 1240:7,19 1241:2  1243:7,21 1247:5 1286:4  1293:16  <b>D.O.I</b> 1232:15</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E</b> 1138:2,2,2 1241:8  1259:11,13 1261:2  1263:6 1264:24 1300:2,2  1300:2 1301:2,2  <b>earlier</b> 1193:5 1218:5  1226:4 1283:22 1284:14  1291:14 1292:12 1293:18  <b>earth</b> 1152:3  <b>ease</b> 1185:3</p>
--	---	---

<p><b>easier</b> 1239:4  <b>Education</b> 1136:2,5,8,12  1137:5 1139:7,8,15  1178:24 1232:14,17  1233:2,15,21 1249:13  <b>eight</b> 1246:5,5,8,8 1263:16  1263:16,19,20  <b>eighteen</b> 1195:11  <b>Eighty-three</b> 1259:3  <b>eighty-two</b> 1259:3  <b>either</b> 1189:12 1240:20  1241:13 1281:17 1285:7  <b>elaborate</b> 1282:15 1283:21  <b>electronically</b> 1166:20  <b>eleven</b> 1176:11 1184:2  1185:2 1192:24 1194:10  1194:20 1195:14,17,17  1195:23 1197:2,10  1199:20 1200:10,13,18  1201:2,15,19 1205:9  1220:14 1221:3 1227:11  1227:12,13,20 1292:16  <b>eleven-thirty</b> 1248:19  <b>elicited</b> 1146:12  <b>eligibility</b> 1220:18  <b>eligible</b> 1221:4 1222:19  <b>else's</b> 1287:7  <b>employed</b> 1178:20 1231:23  1232:8,14,20 1233:2,15  <b>employee</b> 1151:20  <b>employees</b> 1140:3 1164:10  <b>encourage</b> 1155:15  <b>envelope</b> 1181:15  <b>environment</b> 1215:21  <b>especially</b> 1150:13 1239:4  <b>ESQ</b> 1136:14 1137:4  <b>essence</b> 1143:22  <b>essential</b> 1166:13  <b>essentially</b> 1158:3 1163:2  1288:11 1291:10  <b>established</b> 1204:11  1280:2  <b>establishing</b> 1278:16  1279:8</p>	<p><b>evaluate</b> 1206:22  <b>evaluating</b> 1158:15  <b>evaluative</b> 1160:8  <b>evaluator</b> 1153:23  <b>Evers</b> 1178:21 1234:4,11  <b>evidence</b> 1142:21 1172:10  1174:13 1185:21 1186:5  1188:20 1195:24,24  1199:23 1201:3,7,19  1207:7 1220:14 1239:5  1241:3 1243:3,7 1250:19  <b>exactly</b> 1147:19 1249:8  1296:5  <b>exam</b> 1265:23  <b>examination</b> 1138:4,4,5,5  1138:7,7,8,8,9,9 1143:17  1178:17 1197:13 1202:11  1219:3 1221:17 1231:18  1248:11 1281:10 1282:6  1285:1,13 1286:1 1287:1  1288:1 1289:14  <b>examined</b> 1252:4  <b>example</b> 1160:11  <b>exchange</b> 1149:5  <b>excuse</b> 1185:10 1198:13  <b>excused</b> 1229:20 1290:20  <b>exercise</b> 1152:6  <b>exhibit</b> 1172:10 1175:2  1176:5,8 1184:18 1185:6  1185:12 1195:23 1207:11  1241:2  <b>exhibits</b> 1184:18  <b>existence</b> 1278:24  <b>exonerated</b> 1163:22  <b>expedited</b> 1297:2,2  <b>expert</b> 1295:24 1296:11  <b>explain</b> 1148:16 1160:16  1165:21 1173:22 1187:18  1193:14,18 1196:24  <b>explanation</b> 1285:8  <b>explore</b> 1145:22  <b>express</b> 1206:24  <b>extensively</b> 1142:18  1146:17</p>	<p><b>extra</b> 1227:5  <b>extras</b> 1227:6  <b>extremely</b> 1249:4  <b>e-mail</b> 1162:8 1165:3</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>F</b> 1138:2,9 1263:6 1265:6  <b>fact</b> 1149:19 1153:12,24  1155:4 1160:11,18  1164:6 1170:11 1215:17  1230:18 1294:8,13  <b>failure</b> 1216:8  <b>fair</b> 1149:6 1249:23  1278:14,17  <b>fairly</b> 1144:22 1145:3  <b>familiar</b> 1197:19  <b>far</b> 1222:7 1250:23 1294:4  <b>Farther</b> 1271:21  <b>February</b> 1199:2,7  <b>feel</b> 1142:19 1168:2  1203:11 1212:2,2  1254:19  <b>female</b> 1163:11  <b>fifteen</b> 1170:20 1171:2  1194:22 1195:10  <b>file</b> 1136:8 1161:14,23  1162:17 1176:13,15  1181:8,9 1229:10 1238:5  1240:16 1300:3  <b>filed</b> 1164:7  <b>files</b> 1229:4,5,8  <b>fill</b> 1198:17 1273:14  1276:19  <b>filled</b> 1215:11 1282:10,21  1283:2,18 1284:4 1285:5  <b>final</b> 1141:24 1164:21  1237:19 1240:11 1247:6  <b>Finally</b> 1261:2  <b>financial</b> 1233:10  <b>find</b> 1183:19 1253:5,9  <b>finding</b> 1284:9  <b>fine</b> 1146:17 1228:22  1230:2 1247:23 1281:2  <b>finish</b> 1141:13 1169:8,11</p>
---	---	---

<p>1211:15 1230:21 1251:20 1282:17 <b>finishes</b> 1141:11 <b>first</b> 1141:7 1143:3 1177:12 1183:11 1194:22 1206:22 1219:13,17,17 1234:22 1235:16 1236:17 1268:3 1273:7 1275:15 1284:19 1286:24 1287:11 1298:4 <b>fishy</b> 1224:2 <b>five</b> 1139:9 1157:17 1170:21 1229:22 1230:4 1246:8 1259:5,6 1263:16 1263:16,19,20 1268:3 1270:10 <b>flip</b> 1197:10 <b>floor</b> 1137:6 1265:24 <b>focused</b> 1145:8 <b>Fofana</b> 1136:7 1137:1,9 1138:1,4,5,7,8 1139:1,9 1139:16,16,23 1140:1,7 1140:13 1141:1,16 1142:1,4,18,22 1143:1,2 1143:3,18,21,24 1144:1,5 1144:8,14,19,24 1145:1,6 1145:14,18,24 1146:1,5 1146:10,22 1147:1,3,7,12 1147:16,19,22 1148:1,3,6 1148:11,14,18,22 1149:1 1149:3,8,10,11,14,17,20 1150:1,2,6,10 1151:1,4,7 1151:15 1152:1,9,18,20 1152:21,24 1153:1,6,9,14 1153:17,21 1154:1,3,7,13 1154:17,20,24 1155:1,9 1155:20,24 1156:1,4,7,14 1156:19,23 1157:1,4,8,22 1158:1,2,4,11,19,24 1159:1,4,9,14,17,21 1160:1,2,5,9,11,14,20,23 1161:1,4,7,10,18 1162:1 1162:13,20,24 1163:1,15 1163:19,23 1164:1,3,8,12</p>	<p>1164:15,18 1165:1,3,5,21 1166:1,4,11,19,22 1167:1 1167:6,15,18,21 1168:1,4 1168:8,20 1169:1,5,9,13 1169:20 1170:1,6,10,19 1170:23,24 1171:1,6,7,11 1171:20,23 1172:1,5,23 1172:24 1173:1 1174:1 1174:10 1175:1,7,10,16 1175:20,23 1176:1,18 1177:1,3,8 1185:23,24 1186:3,7,10,13,23 1187:6 1187:9,22,24 1188:12,14 1188:17,21 1189:4,10,14 1192:20 1193:3,15,20 1196:3,4,15 1197:12,18 1198:3,6 1201:5,8,13,16 1201:21 1202:1,2,4,7,12 1202:21 1203:1,4,12,16 1203:19 1204:1,2,12,17 1204:22 1205:1,13,15,17 1206:1 1207:1,4,14,17,20 1207:23 1208:1,4,7,12 1209:1 1210:1 1211:1,17 1212:1,8,11 1213:1,22,23 1214:1,11,15 1215:1,5,9 1215:12,15,19,23 1216:1 1216:3,6,11,14,22 1217:1 1217:2,6 1218:1,21 1219:11,15,18,22 1220:11 1221:1,14,15,18 1222:1,24 1223:1 1224:1 1224:6,19,22 1225:1,6,10 1225:16,20,24 1226:1,2 1226:14,19 1227:1,2,7,12 1227:16,21 1228:1,2,5,8 1228:12,16,19,23 1229:1 1229:14,17 1230:1,12,20 1235:3,5 1236:2 1237:15 1238:20 1239:2,9,12,17 1239:24 1240:4,17 1241:5,6 1242:2,4,7,11 1242:14,19,23 1243:4,8 1243:16 1244:2,9,11,14</p>	<p>1244:17,20,23 1245:4,7 1245:11,14 1246:6 1247:14,16,20,24 1248:1 1248:7,8,12 1249:1,13 1250:1 1251:1,9,18,21 1252:1,19 1253:1,18 1254:1,4,7 1255:1,12 1256:1 1257:1,6,7 1258:1 1259:1,9,24 1260:1,3,10 1260:24 1261:1,6 1262:1 1263:1,9,12,17,21,23,24 1264:1,11,17,23 1265:1,5 1265:9,13,21 1266:1 1267:1,14,17,17,18,21,24 1268:1,8,13,21 1269:1 1270:1,6 1271:1,21 1272:1,4,11,16,23 1273:1 1274:1,10,16,19,23 1275:1,4 1276:1,3,7,16 1277:1,6,12,15,23 1278:1 1278:13 1279:1,17,21 1280:1,3,7,11,24 1282:1 1282:4,5,7 1283:1 1284:1 1285:11 1286:20 1289:1 1289:13,15 1290:1,14 1291:1,21 1292:1,2,13,17 1292:20,23 1293:1,3,8,9 1293:13 1294:1,3,10,15 1294:18,22 1295:1,3,6,9 1295:12,23 1296:1,3,16 1297:1,8,14,21,23 1298:1 1298:7,10,16 1299:1 1300:3 <b>Fofana's</b> 1140:18 1142:6 1142:10 1158:10 1162:8 1168:24 1190:3 1191:5 1192:12 <b>folks</b> 1153:23 <b>follow</b> 1194:16 1224:21 1275:7 <b>followed</b> 1278:10 <b>follows</b> 1158:13 <b>force</b> 1210:15 <b>foregoing</b> 1299:3,8</p>
--	---	---

<p><b>foremost</b> 1236:17</p> <p><b>forensic</b> 1294:14 1295:24 1296:11</p> <p><b>forgot</b> 1294:16</p> <p><b>form</b> 1198:18,20 1199:10 1199:11,14,19,19 1200:2 1276:20,22 1278:3,3,24 1282:9,10 1283:7,13 1284:4,20</p> <p><b>formal</b> 1139:10</p> <p><b>formally</b> 1159:6</p> <p><b>forms</b> 1199:6 1200:22</p> <p><b>forward</b> 1285:7</p> <p><b>forwarded</b> 1282:22</p> <p><b>found</b> 1159:7,12 1160:22 1161:6 1243:19 1246:6,9 1246:12</p> <p><b>foundation</b> 1196:19 1204:11</p> <p><b>four</b> 1140:12 1157:17 1179:8 1205:9 1232:21 1246:4,5,8 1259:5,6,10 1259:10,10 1290:6</p> <p><b>Friday</b> 1140:20</p> <p><b>front</b> 1255:5 1286:17</p> <p><b>fulfillment</b> 1186:12</p> <p><b>full</b> 1170:14 1172:15</p> <p><b>fully</b> 1153:8 1163:21,22</p> <p><b>functional</b> 1239:20</p> <p><b>further</b> 1142:10 1147:6 1156:21 1171:24 1201:23 1218:22 1221:12 1225:12 1229:16 1247:12 1272:8 1272:11 1279:13 1281:4 1281:24 1282:3 1285:12 1289:1,14 1290:1 1291:5 1296:7</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 1138:2 1263:6 1265:10</p> <p><b>general</b> 1137:4 1205:8 1232:11 1255:18 1256:4</p> <p><b>Gentlemen</b> 1267:13</p> <p><b>getting</b> 1148:5</p>	<p><b>give</b> 1142:9 1161:12,12 1178:9 1196:19 1198:4 1200:20 1203:14 1205:12 1208:3 1223:11 1226:9 1231:9 1256:14 1261:17 1276:13</p> <p><b>given</b> 1146:8,9 1148:9 1155:7 1226:13 1279:13</p> <p><b>giving</b> 1249:20 1257:12 1283:13 1299:6</p> <p><b>go</b> 1143:14,16 1147:6 1150:8,11 1156:15 1162:9 1163:3,12 1164:20 1174:5 1177:20 1189:2 1197:21 1199:13 1199:13 1201:10 1202:13 1222:11,11 1226:5 1234:23 1235:18 1237:23 1241:10 1247:19 1256:10 1263:5 1269:5 1271:23 1286:23 1292:9</p> <p><b>goes</b> 1143:10</p> <p><b>going</b> 1140:5 1141:17 1145:22 1146:3 1147:4 1148:16 1149:6 1150:8 1151:24 1152:23 1155:8 1157:20 1161:9 1163:16 1173:9,10 1178:6 1183:19 1184:11,22 1185:20 1193:17,24 1195:22 1198:4 1199:22 1201:6,10 1202:20 1203:14,14,15 1204:15 1204:15 1215:5 1224:22 1231:3 1232:7 1235:12 1237:22 1238:9,9 1239:11 1245:13 1251:10 1256:8 1257:4 1273:4 1274:9 1275:13 1277:10 1292:4</p> <p><b>good</b> 1139:4 1178:19 1217:4 1231:20,21 1290:21</p> <p><b>gotten</b> 1170:17</p>	<p><b>govern</b> 1271:7</p> <p><b>governs</b> 1273:3 1276:8</p> <p><b>grammatically</b> 1262:4,7</p> <p><b>grant</b> 1146:3</p> <p><b>Grants</b> 1232:11</p> <p><b>greater</b> 1153:24</p> <p><b>grounds</b> 1152:16</p> <p><b>guard</b> 1166:7</p> <p><b>guess</b> 1148:5 1196:18 1203:20</p> <p><b>guidance</b> 1204:4,19 1205:22</p> <p><b>guidelines</b> 1172:21 1194:15 1209:4 1211:23 1212:20,20 1215:2 1220:15</p> <p><b>guilty</b> 1159:12 1160:22 1161:6</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>H</b> 1300:2</p> <p><b>half</b> 1233:23 1249:7</p> <p><b>hand</b> 1178:7 1231:7 1238:13</p> <p><b>handed</b> 1168:19,20,22 1193:9,9</p> <p><b>handle</b> 1219:17 1223:18 1224:15</p> <p><b>hand-picked</b> 1248:20</p> <p><b>happen</b> 1153:3 1257:12</p> <p><b>happened</b> 1159:16 1213:10 1217:9 1249:5</p> <p><b>happens</b> 1172:5,8 1209:6 1209:11</p> <p><b>happy</b> 1155:10</p> <p><b>harassing</b> 1163:11</p> <p><b>harassment</b> 1233:10 1286:16</p> <p><b>hard</b> 1200:18</p> <p><b>head</b> 1150:22 1237:5</p> <p><b>hear</b> 1170:23 1184:16 1213:6 1218:3</p> <p><b>heard</b> 1141:14 1156:10 1193:13 1261:18 1262:15</p>
--	---	--

<p>1295:11  <b>hearing</b> 1136:15 1138:9  1139:2,4,6,10,18 1140:9  1141:23 1142:2,24  1143:13,19,23 1144:4,7  1144:10,15,20 1145:2,7  1145:15,19 1146:2,6,20  1146:24 1147:5,8,13,14  1147:17,20,23 1148:4,7  1148:12,15,19,23 1149:7  1149:9,12,15,18,21  1150:3,7 1151:2,6,13  1152:8,11,19,22 1153:2,7  1153:10,15,19,22 1154:4  1154:8,11,14,18,21  1155:2,13,21 1156:2,5,8  1156:16,20 1157:2,5,9,19  1157:23 1158:5,12,20,23  1159:2,5,10,15,18,22  1160:3,6,10,15,21,24  1161:5,8,11,19 1162:3,18  1162:23 1163:14,15,20  1163:24 1164:4,9,13,16  1164:17,19,24 1165:7,8  1165:11,17,20 1166:10  1166:17,21 1167:5,12,22  1168:6,13 1169:7,10,21  1170:3,17 1171:4,8,12,21  1172:4,7,17,22 1173:8,15  1173:18,21,24 1174:5,8  1174:11,17,20,24 1175:5  1175:13,18,21,24 1176:6  1176:10,14,17,24 1177:5  1177:9,15,19,23 1178:5  1178:14 1183:24 1184:6  1184:20,24 1185:22  1186:2,4,8,11,21 1187:3  1187:7,10,13,17 1188:7  1188:11,15,18,22 1189:7  1189:11 1190:23 1191:4  1191:9,13 1193:12,16,21  1194:6,21 1195:3,7  1196:2,13,17,23 1197:5  1197:16 1198:2 1201:4</p>	<p>1201:12,14,18,24 1202:6  1203:6,9,13,17,23 1204:8  1204:14,18 1207:9,12,15  1207:18,21 1208:10  1212:5,9,21 1213:7,12,15  1213:18 1214:5,13  1215:4,10,13,16,20,24  1216:4,7,12,15,19,24  1217:4 1218:23 1219:20  1221:13 1224:24 1225:4  1225:8,11,14,19,22  1226:17,21 1227:10,13  1227:19,22 1228:3,6,10  1228:13,17,21 1229:15  1229:19 1230:3,7 1231:2  1231:6,14 1238:11,15  1239:13,22 1240:2  1241:4,24 1242:5,8,12,15  1242:20,24 1243:6  1244:8,12,15,18,21,24  1245:5,8,12,15,19  1247:13,18,22 1248:2,6,9  1251:19 1252:17 1253:15  1253:20,24 1257:3  1259:22 1267:12,16,19  1267:22 1268:10 1270:2  1272:2,7,13,18,21  1274:13,17,21 1275:2,10  1276:12 1277:19 1278:7  1280:5,9,20 1281:6  1282:2 1285:1,14 1286:1  1286:22 1287:1,10,14,17  1287:21 1288:1,2,6  1289:6,11 1290:16,19,24  1291:4,8,16,20 1292:3,8  1292:11,18,24 1293:4,7  1293:11 1294:2,6,12,17  1294:20,23 1295:4,7,10  1295:14,21 1296:4  1297:6,12,15,22 1298:6,8  1298:11,17  <b>heavy</b> 1286:13  <b>held</b> 1233:19  <b>helpful</b> 1289:12</p>	<p><b>Hemans-Brantley</b> 1137:4  1138:4,5,7,8,9 1139:13  1139:14 1141:21 1142:12  1152:15 1157:11 1162:2  1162:6,14 1164:22  1165:2,6,9,13,18 1167:9  1167:14,16,20 1168:15  1169:12 1170:2 1172:2,9  1172:18 1173:14,17,20  1173:23 1174:3,7,14,18  1174:22 1175:3,9 1176:4  1176:8,12,16 1177:13,18  1178:1,3,18 1179:1  1180:1 1181:1 1182:1  1183:1,18 1184:1,4,8,17  1184:23 1185:1,4,19  1186:1,19 1187:1,12,15  1187:19 1188:1,9,24  1189:1,13,15 1190:1  1191:1,15 1192:1 1193:1  1194:1,4,8,18,24 1195:1  1195:6,9,12,21 1196:1,22  1197:1,3,8 1198:1,7  1199:1 1200:1,7,11,24  1201:1,22 1202:19  1203:2,7 1204:6,10  1205:11 1207:2,6,10  1208:2,5,8 1211:14  1216:17,21 1219:1,2,4,23  1220:1 1221:11 1225:13  1226:23 1227:4,14  1229:18,24 1231:1,16,19  1232:1 1233:1 1234:1,17  1235:1,7 1236:1 1237:1  1238:1,8,13,17,21 1239:1  1239:7,10,14 1240:1,6,24  1241:1 1242:1 1243:1,10  1244:1 1245:1,22 1246:1  1246:21 1247:1,11  1251:6,16 1259:7 1263:7  1263:10,14,18,22  1268:19 1269:24 1270:4  1271:19,23 1272:5,9,12  1274:8 1275:12 1276:4</p>
---	---	--

<p>1277:4,9,13,17,24  1279:15,19,24 1281:1,8  1281:11,23 1287:3,13,16  1287:20,24 1289:9  1290:18 1291:3,7,15,19  1292:7,10 1293:6  1295:20 1296:9  <b>hereof</b> 1299:5  <b>hereto</b> 1299:5  <b>high</b> 1136:5 1205:18  1234:5  <b>highlight</b> 1274:5  <b>highlighted</b> 1275:14,18  <b>highly</b> 1173:2  <b>hindrance</b> 1297:4  <b>history</b> 1153:16  <b>hold</b> 1205:12 1207:2  <b>hope</b> 1235:3  <b>hopeful</b> 1141:6  <b>hopefully</b> 1285:16 1292:14  <b>hours</b> 1249:7  <b>Hummer</b> 1140:21 1141:7  1293:22  <b>hurting</b> 1296:21  <b>H-U-M-M-E-R</b> 1140:21</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>identification</b> 1184:13,19  1192:24  <b>identified</b> 1243:2  <b>identify</b> 1198:5 1270:18  <b>illegal</b> 1151:21  <b>illegible</b> 1170:6,8  <b>immediately</b> 1222:20  1233:20 1237:12 1292:9  <b>important</b> 1143:11 1194:2  <b>impropriety</b> 1233:10  <b>inappropriate</b> 1243:17  1276:2  <b>incident</b> 1256:19 1260:18  1260:23 1261:5 1264:16  1264:22 1265:4,8,12,15  1265:15,19 1266:12,12  1266:16 1267:2 1269:8</p>	<p>1269:16 1273:14 1278:18  1290:5  <b>incidents</b> 1210:14 1248:17  1249:5 1266:23  <b>including</b> 1284:5  <b>inclusive</b> 1299:10  <b>incompetence</b> 1158:8  1159:13  <b>incompetent</b> 1158:14  <b>incomplete</b> 1283:20  <b>inconformity</b> 1211:23  <b>incorrect</b> 1282:13  <b>incorrectly</b> 1262:7  <b>independently</b> 1196:6  <b>index</b> 1167:11  <b>indicate</b> 1175:14 1187:21  1250:9 1287:22  <b>indicated</b> 1140:3 1141:3  1169:14,15 1175:11  1187:23 1192:6 1195:16  1202:23 1235:8 1236:12  1275:16 1290:8 1292:12  1293:18  <b>indicates</b> 1247:7  <b>indicating</b> 1253:23  <b>indication</b> 1252:21 1253:9  1253:13  <b>individual</b> 1141:15  1160:22 1182:13 1183:2  1234:24  <b>individuals</b> 1140:20,21  1141:2 1247:8 1292:13  <b>inferences</b> 1164:6  <b>inform</b> 1149:5 1275:7  <b>information</b> 1169:18  1198:22 1241:14 1253:22  1270:8 1282:24,24  1283:13 1284:17  <b>informed</b> 1273:5  <b>initial</b> 1240:13 1283:12  1285:20  <b>initially</b> 1142:13  <b>initiated</b> 1163:8  <b>innocent</b> 1163:9,21</p>	<p><b>insert</b> 1241:21  <b>insofar</b> 1242:6  <b>Inspector</b> 1232:11  <b>instance</b> 1223:7 1278:10  <b>instruct</b> 1214:3  <b>instruction</b> 1218:8  <b>instructional</b> 1214:9  1217:22  <b>instructions</b> 1279:13  <b>insubordination</b> 1151:19  <b>intend</b> 1186:16  <b>intended</b> 1206:16  <b>interesting</b> 1281:2  <b>intermission</b> 1230:11  <b>Internet</b> 1145:13  <b>interrupted</b> 1259:23  <b>interview</b> 1241:13 1255:5  1256:20 1257:10 1259:4  1265:21 1270:20  <b>interviewed</b> 1236:16,19  1240:17 1247:9  <b>interviews</b> 1236:22,24  1237:8,11,24 1242:16  1285:24  <b>introduce</b> 1196:9  <b>introduced</b> 1186:24  <b>Int'l</b> 1299:11  <b>investigate</b> 1234:3 1235:20  1236:10 1259:4 1281:18  <b>investigated</b> 1163:10  1233:8 1281:15,16  1289:19  <b>investigates</b> 1281:20  <b>investigating</b> 1278:16  <b>investigation</b> 1163:8  1232:10,18 1237:20  1240:21 1242:17 1243:12  1247:8 1273:18 1277:8  1277:22 1278:5,6  1281:16,22 1282:12  1283:5,10 1284:2,12  1285:19  <b>investigations</b> 1234:10  1258:13 1281:14,20,21</p>
--	--	--

<p><b>investigator</b> 1169:17 1232:5,16 1233:4,7,17 1234:13 1244:4 1250:15 1275:20 1276:11 1287:5</p> <p><b>investigators</b> 1168:19</p> <p><b>investigatory</b> 1242:22</p> <p><b>involved</b> 1146:7</p> <p><b>involving</b> 1260:18,23 1261:5 1269:17</p> <p><b>in-camera</b> 1159:19 1161:22</p> <p><b>irregularities</b> 1212:3</p> <p><b>irregularity</b> 1212:18</p> <p><b>Irrelevant</b> 1203:3</p> <p><b>issue</b> 1146:16 1148:13 1150:8 1163:6 1164:23 1214:20,23 1215:6 1216:8 1222:2,18 1224:18 1286:8</p> <p><b>issued</b> 1210:22 1216:2 1220:10</p> <p><b>issues</b> 1142:8 1144:9 1153:11 1168:7 1222:2</p> <p><b>item</b> 1166:13 1168:12 1196:6 1209:9 1249:9</p> <p><b>items</b> 1169:4 1188:4 1193:10 1214:2 1218:15 1221:23</p> <p><b>I'm</b> 1222:11</p> <p><b>I.D</b> 1195:24</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>Jalissa</b> 1301:5</p> <p><b>James</b> 1301:4</p> <p><b>Jay</b> 1136:14 1139:5</p> <p><b>Jean</b> 1202:17,18,22 1204:4</p> <p><b>Jennifer</b> 1140:21</p> <p><b>Jersey</b> 1137:10,10</p> <p><b>Jl.Jn</b> 1301:5</p> <p><b>Jones</b> 1301:5</p> <p><b>June</b> 1136:10 1139:10 1296:2,12,15 1300:3</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/>	<p><b>Kakesha</b> 1301:5</p> <p><b>keep</b> 1239:6</p> <p><b>kids</b> 1288:8,16</p> <p><b>kind</b> 1184:22 1253:6 1294:13</p> <p><b>Kk</b> 1176:21 1301:5</p> <p><b>knew</b> 1141:17,20 1193:19 1222:7,14 1255:5,9</p> <p><b>know</b> 1140:16 1141:17 1142:19 1145:20 1147:14 1150:18,20,21 1155:6,11 1156:12 1158:14 1161:2 1163:5 1165:22 1166:6,8 1168:10,10,11,17 1169:14,16,18 1170:14 1171:13 1173:3 1181:16 1182:16,18,20 1183:22 1187:14 1188:3 1190:24 1193:6,24 1196:8,20 1197:2,6,14 1201:9,10 1210:16 1212:24 1213:9 1213:11 1214:19,20 1217:9 1218:11 1224:3,4 1224:7,7 1230:22 1238:19 1239:4,5,19,20 1241:22 1251:24 1256:15 1257:21 1258:15 1265:22 1266:13 1268:9 1269:20 1270:17,18 1271:6 1273:19,21,22,23 1275:8 1275:22,23 1276:9 1277:14,15 1279:12 1293:24 1294:4,5 1296:19,23,24 1297:9,13 1297:17,19,24 1298:4</p> <p><b>knowing</b> 1213:8</p> <p><b>knowledge</b> 1218:15</p> <p><b>knows</b> 1244:4 1278:9</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>laboratories</b> 1206:2</p> <p><b>lack</b> 1242:16</p> <p><b>language</b> 1243:17</p> <p><b>latitude</b> 1144:2 1276:14</p>	<p><b>Laura</b> 1137:4 1139:13</p> <p><b>Law</b> 1136:8 1139:7</p> <p><b>leave</b> 1264:12</p> <p><b>led</b> 1289:3</p> <p><b>legal</b> 1136:12 1137:5 1233:17 1244:9,22</p> <p><b>legible</b> 1166:23 1167:2,2 1167:24 1170:11</p> <p><b>legitimate</b> 1151:5 1276:10</p> <p><b>legitimately</b> 1215:3</p> <p><b>lengthy</b> 1145:3</p> <p><b>less-than-complete</b> 1242:17</p> <p><b>letter</b> 1163:3</p> <p><b>letting</b> 1297:18</p> <p><b>let's</b> 1177:20 1201:10,13 1224:2 1225:7 1230:4 1251:20 1255:2 1261:7 1263:5</p> <p><b>license</b> 1150:14,15,15</p> <p><b>limit</b> 1171:5,9</p> <p><b>limited</b> 1170:12 1171:16 1291:13</p> <p><b>line</b> 1189:23 1276:5 1300:5</p> <p><b>Lisa-Marie</b> 1301:7</p> <p><b>list</b> 1181:14,15,20,20,23 1182:3,6 1186:17 1187:23 1189:18 1206:10 1222:3 1223:11,12,12 1224:8 1270:21 1271:2</p> <p><b>listed</b> 1156:9</p> <p><b>little</b> 1230:9 1272:8</p> <p><b>Lk.Jm</b> 1301:4</p> <p><b>locate</b> 1259:14</p> <p><b>located</b> 1196:20</p> <p><b>LOCATION</b> 1136:12</p> <p><b>Loikel</b> 1301:4</p> <p><b>long</b> 1179:6</p> <p><b>longer</b> 1230:9</p> <p><b>look</b> 1172:8 1185:5 1189:17 1197:22 1220:16 1238:22,23 1240:7 1243:17 1259:8 1276:21</p> <p><b>looked</b> 1145:4 1241:8</p>
--	--	--

1248:19 <b>looking</b> 1168:24 1182:17 1184:3,9 1241:6 <b>lot</b> 1196:19 <b>Ls.Tr</b> 1301:7 <b>lying</b> 1152:4 1160:22	<b>mean</b> 1155:17 1157:24 1169:22 1171:13 1187:16 1193:11 1195:24 1217:2 1230:24 1270:14 1278:11 1280:19 <b>Meaning</b> 1212:5 <b>meant</b> 1213:3 1288:8,8 <b>measures</b> 1160:8 <b>Medgar</b> 1178:21 1234:4,11 <b>meet</b> 1242:9 <b>memory</b> 1232:22 1243:22 1257:11 <b>mention</b> 1152:4,10 1203:21 1249:19,23 1250:6 1267:8 1280:15 1295:5 <b>mentioned</b> 1152:3 1156:10 1180:11 1182:7 1199:10 1218:5 1236:5 1250:8 1254:16 <b>Mercedes</b> 1301:6 <b>Mf</b> 1241:8,10 1301:6 <b>Mh.Ys</b> 1301:8 <b>MICHAEL</b> 1137:4 <b>Michelle</b> 1211:2 1219:6 1220:2 <b>Middle</b> 1136:5 1234:4 <b>mind</b> 1150:11 1239:6 1247:3 1266:7 1268:5 1275:9 <b>mine</b> 1207:24,24 1208:3 <b>minutes</b> 1170:20,21 1171:2 1177:16 1197:23 1202:2 1229:23 1230:4 1247:14 1247:17 1248:3,4 <b>misconduct</b> 1158:9 1159:13 1233:11 <b>misgivings</b> 1223:8 <b>mistake</b> 1224:8 <b>mistaken</b> 1205:3 1221:20 <b>Mohammed</b> 1301:8 <b>moment</b> 1177:21 1183:21 1195:14 1273:13 <b>Monifa</b> 1301:6	<b>month</b> 1296:23 <b>months</b> 1290:5,6 <b>morning</b> 1139:5 1178:19 <b>motions</b> 1172:8 <b>move</b> 1171:14 1173:10 1195:22 1200:9 1201:2 1201:13 1217:7 1237:6 1241:2 1255:3 <b>M.C.H.S</b> 1167:13
<b>M</b>		<b>N</b>
<b>M</b> 1136:14 1299:2,14 1301:2 <b>mail</b> 1206:24 <b>Majors</b> 1157:3,12,15 1158:6,6,22 <b>manage</b> 1180:3 <b>mandatory</b> 1237:15 <b>manner</b> 1239:20 1258:12 <b>March</b> 1198:15,16 1235:17 1286:2,8 1287:6 1288:3 1288:22 1289:4,21,23 <b>Marin</b> 1165:4 1168:7 1169:3,14 1171:3,15 1230:15,18 1291:12,24 1292:4 1293:24 <b>Marin's</b> 1168:17 <b>mark</b> 1238:9 1257:4 <b>marked</b> 1184:12 1185:2 1192:23 1195:23 1196:10 <b>marking</b> 1184:18,19 <b>Marsha</b> 1183:13 1192:3 1205:2 <b>master's</b> 1150:16 <b>material</b> 1261:9 <b>materials</b> 1180:15 1299:12 <b>math</b> 1139:17 1150:13,19 1150:22,24 1153:23 <b>matter</b> 1136:4 1144:17 1161:21 1162:21 1223:8 1223:13 1254:12 1262:10 1275:19 <b>matters</b> 1139:20 1147:15 1148:2 1163:16 1177:11 <b>ma'am</b> 1190:8 1192:11 1223:20 1225:7 1277:12 <b>Mc</b> 1301:6		<b>N</b> 1138:2,2 1301:2,2 <b>Nacht</b> 1211:2 1217:8,10 1219:6,7 1220:2 1221:20 1223:21 <b>name</b> 1139:5 1162:11 1181:24,24 1183:11,15 1190:4,6,7,9,11 1191:5 1192:13,17 1212:6 1223:12 1224:3,6,8 1234:24 <b>named</b> 1206:11 <b>names</b> 1182:3 1189:18 1260:11 1268:9 <b>necessarily</b> 1277:14 <b>necessary</b> 1296:13 <b>need</b> 1142:23 1145:22 1148:16 1156:18 1165:21 1170:20 1171:2 1176:23 1186:14 1196:19 1197:7 1227:5,5 1240:3 1243:21 1247:14 1258:22 1267:20 1274:18 1275:4 1276:14 1277:17 1293:17 <b>needed</b> 1157:6 <b>needs</b> 1150:4 1198:4 <b>negative</b> 1164:5 <b>neither</b> 1218:5 <b>never</b> 1247:3 1262:15 1266:7 <b>new</b> 1136:2,5,13,13,16 1137:6,6,10 1139:8,14 1150:12 1152:16 1156:23 1156:24 1157:5 1232:9

<p>1232:16 1233:17 1249:12  <b>nice</b> 1229:20  <b>Nikita</b> 1301:3  <b>nine</b> 1172:11,13,20 1174:9  1174:15 1196:24 1197:4  1228:7 1248:18  <b>nineteen-page</b> 1195:11  <b>Nine-A</b> 1172:20 1174:16  <b>Ni.Ae</b> 1301:3  <b>Nolte</b> 1141:15 1156:11  1176:19,23 1293:17  <b>Nope</b> 1258:2  <b>nose</b> 1236:3  <b>notation</b> 1190:12,13,21,22  1191:2,3,5,16,23  <b>note</b> 1139:20 1142:13  1157:14  <b>notes</b> 1145:5 1237:2  1238:2,5 1240:15  1288:20 1289:2  <b>notices</b> 1182:23  <b>number</b> 1151:17,23  1166:14 1172:11 1176:5  1193:10 1194:19 1199:19  1207:19 1225:15 1242:16  1245:21 1246:5,8  1263:19 1264:3,7 1298:2  1299:9  <b>numbered</b> 1194:23  <b>numbers</b> 1184:22 1236:7  <b>numerous</b> 1287:18  <b>NYC</b> 1136:12 1137:5</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>o</b> 1138:2,2 1263:15,19  <b>object</b> 1142:14 1144:9,11  1173:2 1193:3 1196:5  1197:13 1201:8 1202:20  1241:7 1244:3 1274:9  1275:13,15 1276:7  1277:10  <b>objecting</b> 1201:6  <b>objection</b> 1185:23 1186:3  1203:3,10 1204:7 1241:5</p>	<p>1251:7,17 1275:11  1279:16 1297:9,10  <b>observation</b> 1145:12  1152:2  <b>obvious</b> 1150:12 1187:20  <b>obviously</b> 1141:10 1144:11  1147:21 1169:23 1193:17  1193:22 1293:23  <b>occurred</b> 1156:3  <b>offer</b> 1142:22 1157:13  1158:2  <b>office</b> 1136:12 1137:5  1140:11 1180:3 1199:7  1223:10 1230:24 1232:10  1232:17 1234:10 1237:11  1281:13,19,21  <b>officer</b> 1136:15 1138:9  1139:4,6,18 1140:9  1141:23 1142:24 1143:13  1143:19,23 1144:4,7,10  1144:15,20 1145:2,7,15  1145:19 1146:2,6,20,24  1147:5,8,13,14,17,20,23  1148:4,7,12,15,19,23  1149:7,9,12,15,16,18,21  1150:3,7 1151:2,6,13  1152:8,11,19,22 1153:2,7  1153:10,15,19,22 1154:4  1154:8,11,14,18,21  1155:2,13,21 1156:2,5,8  1156:16,20 1157:2,5,9,19  1157:23 1158:5,12,20,23  1159:2,5,10,15,18,22  1160:3,6,10,15,21,24  1161:5,8,11,19 1162:3,18  1162:23 1163:14,15,20  1163:24 1164:4,9,13,16  1164:17,19,24 1165:8,11  1165:17,20 1166:10,17  1166:21 1167:5,12,22  1168:6,13 1169:7,10,21  1170:3 1171:4,8,12,21  1172:4,7,17,22 1173:8,15  1173:18,21,24 1174:5,8</p>	<p>1174:11,17,20,24 1175:5  1175:13,18,21,24 1176:6  1176:10,14,17,24 1177:5  1177:9,15,19,23 1178:5  1178:14 1183:24 1184:6  1184:20,24 1185:22  1186:2,4,8,11,21 1187:3  1187:7,10,13,17 1188:7  1188:11,15,18,22 1189:7  1189:11 1190:23 1191:4  1191:9,13 1193:12,16,21  1194:6,21 1195:3,7  1196:2,13,17,23 1197:5  1197:16 1198:2 1201:4  1201:12,14,18,24 1202:6  1203:6,9,13,17,23 1204:8  1204:14,18 1207:9,12,15  1207:18,21 1208:10  1212:5,9,21 1213:7,12,15  1213:18 1214:5,13  1215:4,10,13,16,20,24  1216:4,7,12,15,19,24  1217:4 1218:23 1219:20  1221:13 1224:24 1225:4  1225:8,11,14,19,22  1226:17,21 1227:10,13  1227:19,22 1228:3,6,10  1228:13,17,21 1229:15  1229:19 1230:3,7 1231:6  1231:14 1238:11,15  1239:13,22 1240:2  1241:4,24 1242:5,8,12,15  1242:20,24 1243:6  1244:8,12,15,18,21,24  1245:5,8,12,15,19  1247:13,18,22 1248:2,6,9  1251:19 1252:17 1253:15  1253:20,24 1257:3  1267:12,16,19,22  1268:10 1270:2 1272:2,7  1272:13,18,21 1274:13  1274:17,21 1275:2,10  1276:12 1277:19 1278:7  1280:5,9,20 1281:6</p>
--	--	---

<p>1282:2 1285:1,14 1286:1  1286:22 1287:1,10,14,17  1287:21 1288:1,2,6  1289:6,11 1290:16,19,24  1291:4,8,16,20 1292:3,8  1292:11,18,24 1293:4,7  1293:11 1294:2,6,12,17  1294:20,23 1295:4,7,10  1295:14,21 1296:4  1297:6,12,15,22 1298:6,8  1298:11  <b>officially</b> 1185:2  <b>Off-the-record</b> 1240:5  <b>oh</b> 1162:13 1165:8 1172:9  1176:12 1183:19 1184:10  1190:8,14 1191:7  1194:24 1195:14 1205:11  1212:13,15 1227:4  1239:24 1264:9 1282:19  1286:23 1288:10 1293:13  <b>okay</b> 1139:18 1143:23  1144:7,10 1146:19  1151:6 1152:8,12 1155:9  1155:20 1156:4,14  1161:10 1162:18 1164:21  1166:21 1167:5,14,20  1172:4,10,17,22 1173:23  1174:7 1175:9 1176:16  1177:10 1178:5,14  1179:13,16,19 1184:10  1186:2 1187:10 1189:10  1189:13 1190:3,10,17  1191:9,16,20 1192:12,19  1192:22 1194:9,18,21  1195:6 1197:5 1198:6  1199:16,22 1200:7,17  1202:6,17 1203:12,23  1204:17 1205:2,8 1206:7  1207:20,23 1208:8,15  1209:22 1210:11 1211:7  1212:13,14,21 1213:7  1216:24 1217:23 1219:20  1219:22 1220:12 1221:10  1222:10,22 1224:5</p>	<p>1225:11,22 1226:22  1228:13 1231:14 1232:13  1233:5 1234:7,16 1235:8  1235:11,18 1236:12  1237:3,22 1238:4,23  1239:9 1240:4,7,18,24  1243:4,4,8,24 1245:7,11  1245:23 1246:11 1247:2  1247:5,11,18,24 1248:9  1248:13,22 1249:8  1250:5,10,12,20 1251:24  1252:10,20 1255:2,2,11  1256:18 1257:2 1258:3  1258:20 1259:16,21  1260:15,20 1261:7,12,24  1263:5,14,22 1264:2,13  1264:24 1265:18,22  1266:8 1269:4,14 1270:2  1271:6,18,18 1272:24  1273:12,24 1274:2,2,4  1281:3 1282:23 1283:8  1284:10 1285:23 1286:22  1287:16 1288:14 1289:6  1290:7 1294:17 1296:4  1297:22 1298:6  <b>once</b> 1146:10 1172:7  1189:5 1196:4 1237:16  1273:4  <b>online</b> 1226:6 1234:9  <b>on-line</b> 1240:14 1271:12,15  <b>opinion</b> 1158:22  <b>opportunity</b> 1142:4,9  1145:16 1146:8,9,11  1155:7 1165:24 1170:15  1171:23 1230:20 1234:22  <b>order</b> 1149:19 1167:10  1180:14 1184:22 1214:3  1222:16 1244:6 1272:17  <b>organization</b> 1297:19  <b>original</b> 1192:2 1196:12  <b>originated</b> 1193:5  <b>outlined</b> 1209:3 1296:5  <b>outset</b> 1144:21  <b>overall</b> 1171:22</p>	<p><b>overtime</b> 1180:4,7  <b>o'clock</b> 1230:19 1292:5,15  1292:16 1298:14  <b>O.S.I</b> 1232:20 1238:5  1273:7 1278:3,6 1282:22  1283:9 1284:11 1285:8  1285:21 1286:14</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 1138:2  <b>package</b> 1227:8 1241:22  1257:9,14  <b>packages</b> 1257:12  <b>packet</b> 1239:11 1242:22  <b>page</b> 1138:2 1191:19,24  1192:2,3,5,8,9,13  1197:22 1205:9 1220:16  1221:2 1227:3 1259:8,11  1259:11 1263:8,11,12,13  1265:22 1268:16,23  1299:5 1300:5  <b>pages</b> 1167:8,17,19  1194:19 1257:15 1299:9  <b>paper</b> 1196:12 1236:3  1268:6  <b>paperwork</b> 1215:8  1216:10  <b>paragraph</b> 1260:16  <b>part</b> 1168:9 1199:19  1220:14 1240:16,20  1254:13  <b>particular</b> 1145:11  1199:11 1200:2 1210:21  1215:21 1277:21  <b>parties</b> 1141:6 1171:18  1230:8,18 1295:16  <b>party</b> 1140:6  <b>passage</b> 1249:12  <b>pause</b> 1177:20 1230:4  1247:19  <b>pay</b> 1182:20  <b>payday</b> 1181:16  <b>payroll</b> 1173:5 1179:5,7,9  1179:14,17,20 1180:6</p>
--	--	---

<p>1181:4,9,9 1188:5 1193:6 1199:7 <b>people</b> 1140:17 1206:11,18 <b>Perfect</b> 1216:11,14 <b>perform</b> 1218:7 <b>performance</b> 1145:10 <b>performed</b> 1236:22 <b>performing</b> 1217:21 <b>period</b> 1232:20 1249:6,6 <b>permissible</b> 1244:22 1278:11 <b>permitted</b> 1145:21 <b>person</b> 1156:9 1179:17 1183:8 1222:14 1236:9 1254:20 1275:14 1294:14 <b>personal</b> 1274:11 <b>personnel</b> 1162:17 1194:17 <b>persuade</b> 1155:18 <b>phonetic</b> 1301:4,5,6 <b>photocopied</b> 1230:11 <b>phrase</b> 1300:6,7,9,10,12,13 1300:15,16,18,19 <b>phrasing</b> 1261:13 <b>physical</b> 1286:15 <b>pick</b> 1217:12 <b>picked</b> 1270:24 <b>pinpoint</b> 1279:13 <b>place</b> 1237:16 1265:15 1299:4 <b>placed</b> 1238:5 <b>please</b> 1181:20 1183:12 1185:5 1192:24 1197:11 1231:7 1233:5 1234:7,15 1234:19 1236:14 1238:14 1243:24 1246:17 1260:4 1263:8 1270:7 1274:6 <b>pleasure</b> 1290:23 <b>point</b> 1142:18 1154:15 1158:7 1162:5 1180:20 1185:20 1262:12,12 1296:6 1297:8 <b>points</b> 1250:19 <b>policies</b> 1172:12 <b>polite</b> 1258:8,11,12</p>	<p><b>Porter</b> 1138:3 1177:24 1178:1,6,12,13,19 1179:1 1180:1 1181:1 1182:1 1183:1 1184:1 1185:1 1186:1 1187:1 1188:1 1189:1 1190:1 1191:1 1192:1,22 1193:1 1194:1 1195:1 1196:1 1197:1 1198:1 1199:1 1200:1 1201:1 1202:1,8,14 1203:1 1204:1 1205:1 1206:1 1207:1 1208:1 1209:1 1210:1 1211:1 1212:1 1213:1 1214:1 1215:1 1216:1 1217:1 1218:1 1219:1 1220:1 1221:1 1222:1 1223:1 1224:1 1225:1 1226:1 1227:1 1228:1 1229:1 1230:1 <b>portion</b> 1283:12 1284:19 <b>position</b> 1157:10 1158:10 1165:14 1179:3 1206:2 1233:20 <b>possible</b> 1273:14 1294:11 <b>post</b> 1198:24 1199:2,3,5,8 <b>posted</b> 1182:23 <b>posting</b> 1199:4 <b>postings</b> 1182:22 <b>postobservation</b> 1152:3 1154:16 <b>potential</b> 1236:19 <b>powers</b> 1297:19 <b>pre</b> 1154:15 <b>prejudice</b> 1169:2 <b>preliminary</b> 1177:11 <b>preobservation</b> 1151:11 1152:4,6 <b>Prep</b> 1178:21 <b>prepare</b> 1168:2 1247:14 1296:13 <b>prepared</b> 1140:12 1216:10 1223:10 1240:20 1291:10 1291:11,17 1299:10</p>	<p><b>preparing</b> 1239:16 <b>preponderance</b> 1250:18 <b>prerequisite</b> 1150:17 <b>presence</b> 1210:13 1236:18 1299:4 <b>present</b> 1152:16 1183:10 1225:16,17 1236:23 1256:21 <b>presumably</b> 1288:20 <b>presume</b> 1291:21 <b>presumption</b> 1252:5 <b>prevented</b> 1165:23 <b>previous</b> 1297:18 <b>previously</b> 1296:11 <b>principal</b> 1142:5 1150:19 1163:7 1209:20 1210:8 1210:17 1224:16,17 1236:18 1248:19 1270:22 1273:10,23 1275:22 1276:19 1278:4 1279:4 1281:17 1282:10,11 1283:4,24 <b>principals</b> 1159:12 <b>principal's</b> 1183:9 1205:3 <b>print</b> 1226:8,10 <b>prior</b> 1232:7 1233:12,13 1233:20 1235:12 1237:14 1249:14 1253:17 1254:24 <b>priors</b> 1253:16 <b>pro</b> 1137:9 1160:16 <b>probably</b> 1161:9 1237:13 1274:2 <b>problem</b> 1197:24 1201:21 1222:15 1227:17 1243:5 1247:23 1272:22 1274:14 <b>procedural</b> 1295:15 <b>procedure</b> 1161:2 1203:20 1209:3 1229:9 <b>proceed</b> 1282:21 1292:19 <b>proceeding</b> 1136:8 1139:7 1139:23 1159:7,8,11 1161:17 1244:6 1250:21 1251:4,14 1252:2,3,16 1298:12</p>
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<p><b>proceedings</b> 1244:9</p> <p><b>process</b> 1151:20 1180:24 1198:12 1273:13 1276:9 1277:21 1278:9 1286:14 1293:12</p> <p><b>processing</b> 1186:9</p> <p><b>produce</b> 1151:22 1161:13 1166:24 1171:15 1257:19 1289:3 1292:21</p> <p><b>produced</b> 1173:4 1193:5 1196:7</p> <p><b>program</b> 1195:19 1209:2</p> <p><b>promise</b> 1170:20</p> <p><b>pronouncing</b> 1235:4</p> <p><b>proof</b> 1142:22 1157:13 1158:2 1160:19 1161:15 1242:9</p> <p><b>proper</b> 1162:15 1214:22</p> <p><b>properly</b> 1215:11 1216:13</p> <p><b>property</b> 1218:16</p> <p><b>prove</b> 1186:16</p> <p><b>provide</b> 1142:22 1180:14 1200:17 1239:15 1296:17</p> <p><b>provided</b> 1238:18 1239:15 1256:20 1298:2 1299:12</p> <p><b>providing</b> 1279:4</p> <p><b>province</b> 1275:20</p> <p><b>psychologists</b> 1206:2</p> <p><b>Public</b> 1232:11</p> <p><b>pull</b> 1199:14 1270:13</p> <p><b>pulled</b> 1270:11</p> <p><b>punishment</b> 1233:9 1271:8 1273:3,6 1286:15</p> <p><b>pupil</b> 1272:3</p> <p><b>purchased</b> 1218:16</p> <p><b>purchasing</b> 1209:4</p> <p><b>purpose</b> 1171:16 1186:14 1186:18 1187:2 1201:9 1291:13</p> <p><b>purposes</b> 1195:18</p> <p><b>pursuant</b> 1156:11</p> <p><b>pursue</b> 1155:22 1194:2 1276:5</p> <p><b>pursued</b> 1251:13 1252:14</p>	<p><b>purview</b> 1144:12</p> <p><b>put</b> 1150:21 1174:21 1179:24 1181:15 1183:22 1188:13,16 1192:18 1194:19 1207:7 1227:23 1239:11,18,19 1247:21 1251:11 1253:8 1257:4 1269:10 1286:17,18,19 1297:16</p> <p><b>p.m</b> 1136:11 1298:18</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> 1145:11 1146:9 1146:11 1148:21 1149:4 1150:12 1151:5,8,16 1155:7 1168:3 1194:7 1196:8 1202:20 1203:18 1203:21 1204:3 1206:21 1208:15,20 1211:4 1212:22 1214:17 1217:11 1218:22 1223:6,20 1225:2,15 1251:20 1253:11,12 1259:3 1266:19 1270:5,8 1274:11 1275:6 1276:15 1276:17 1280:6,7,12,21 1282:3,18 1285:16,17 1286:21 1287:2,9 1296:17</p> <p><b>questioned</b> 1146:17</p> <p><b>questioning</b> 1143:10,15 1144:17 1156:3 1178:16 1216:9 1276:5,10</p> <p><b>questions</b> 1145:17 1154:5 1166:2,3 1189:8 1197:15 1201:23 1202:5 1221:12 1225:9 1244:7 1247:12 1255:16 1267:23 1271:14 1271:17 1274:15 1276:14 1281:4 1285:12 1286:24 1289:7 1290:17</p> <p><b>quick</b> 1225:15 1285:16,16 1293:23</p> <p><b>quickly</b> 1157:21 1162:10</p>	<p>1166:8 1202:5,13 1221:16 1226:3</p> <p><b>quite</b> 1277:20</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 1138:2 1300:2,2</p> <p><b>raise</b> 1144:8 1178:6 1231:7 1242:3</p> <p><b>raised</b> 1153:4 1154:15</p> <p><b>ramifications</b> 1141:13</p> <p><b>random</b> 1271:2</p> <p><b>Randomly</b> 1271:3</p> <p><b>rationale</b> 1160:17</p> <p><b>reach</b> 1243:13 1270:17</p> <p><b>read</b> 1245:16 1249:11 1250:15 1257:22,24 1258:7,23 1260:5,6 1264:3 1266:10 1268:16 1268:22 1269:6 1274:6,7 1274:18,20,24 1275:4,7,9 1276:15 1278:18 1280:2</p> <p><b>reader</b> 1254:18</p> <p><b>reading</b> 1197:24 1254:20 1258:24 1275:15</p> <p><b>reads</b> 1208:23</p> <p><b>ready</b> 1177:12,20 1230:5 1248:7</p> <p><b>really</b> 1161:23 1165:21 1213:4 1281:3 1286:17 1296:21</p> <p><b>reason</b> 1209:10 1241:9,11 1286:11</p> <p><b>rebuttal</b> 1296:14</p> <p><b>recall</b> 1142:14 1145:3 1165:24 1219:24 1234:24 1235:14 1237:3 1246:11 1255:4,7,8,11,15,22 1256:9,12,13,14,16,18,19 1256:22,24 1257:8,9,14 1257:17 1260:10,13,18 1260:23 1261:5,14,15,15 1261:19,23 1262:9,18,18 1262:24 1264:10,16,22 1265:4,8,12,14 1266:12</p>
--	---	---

<p>1266:15,22,24 1268:4,6,7  1268:7,8 1269:7,11,16  1278:20,21 1279:4,7  <b>recalled</b> 1264:5  <b>receipt</b> 1162:8 1181:6  1208:16,17 1234:20  <b>receipts</b> 1198:14 1209:8  1210:8  <b>receive</b> 1163:3 1175:12  1181:10,17 1182:2,5,21  1185:16 1188:3 1189:20  1202:14 1205:20 1206:19  1208:13 1220:18 1221:4  <b>received</b> 1140:18,19  1167:2 1180:24 1187:22  1192:7,20 1194:17  1202:23 1204:23 1205:6  1215:3 1217:20 1218:11  1219:10 1223:24 1227:17  1230:13 1234:3 1258:23  1277:2 1296:20,22  1297:2,3 1298:5  <b>receives</b> 1198:10  <b>receiving</b> 1206:23 1214:21  1214:21  <b>recognize</b> 1153:8 1185:7  1193:2 1194:9 1240:8  <b>recollection</b> 1169:22  1173:11 1245:3,10  1246:2  <b>reconfirmed</b> 1292:5  <b>reconvene</b> 1248:3  <b>record</b> 1139:12,20,21  1140:10 1148:8 1154:9  1154:19 1155:22 1157:7  1157:15 1159:20 1160:13  1162:7 1169:13 1170:13  1171:19 1173:13,19  1177:17,22 1183:15,15  1184:21 1193:23 1194:20  1198:3 1206:18 1230:6  1233:13 1247:6 1248:5  1263:15 1274:22,24  1275:5 1292:12 1295:2</p>	<p>1296:7 1297:11,16  1299:10  <b>records</b> 1142:16  <b>record's</b> 1200:13  <b>recourse</b> 1210:16  <b>recross</b> 1138:5,8 1170:12  1221:1,17 1222:1 1223:1  1224:1 1225:1 1226:1  1227:1 1228:1 1229:1  1230:1 1282:1,6 1283:1  1284:1 1289:1,14 1290:1  <b>redirect</b> 1138:5,8,9  1218:24 1219:1,3,21  1220:1 1281:1,7,10  <b>redundant</b> 1188:2  <b>refer</b> 1253:13 1265:21  1276:10  <b>reference</b> 1181:19 1185:3  1249:20,23 1250:9  1253:8,21 1254:9  <b>referencing</b> 1263:15,19  <b>referring</b> 1192:9 1275:19  1287:8,11,15  <b>reflect</b> 1140:10 1170:14  1184:21  <b>reflects</b> 1214:24 1262:24  <b>refresh</b> 1243:22 1245:9,24  1257:10  <b>refreshes</b> 1245:2  <b>refuse</b> 1151:12,19  <b>refused</b> 1152:5  <b>regard</b> 1212:19  <b>regarding</b> 1154:15  1172:11 1208:20 1293:10  <b>regards</b> 1157:12 1165:15  1169:3 1189:16 1195:13  1195:17 1198:8 1199:9  1199:18,24 1220:12,13  1236:4 1237:19 1238:6  1240:18,21 1243:11  1247:7 1273:8 1278:2  <b>regular</b> 1181:22 1213:21  1213:21 1214:6  <b>regulation</b> 1279:11</p>	<p>1280:16  <b>regulations</b> 1271:7,13,16  1280:14 1285:10  <b>related</b> 1145:9,20 1147:18  1148:24 1151:16 1223:9  <b>relevance</b> 1187:18,20,21  1275:13  <b>relevant</b> 1158:23 1159:3  1159:23 1161:3,9 1187:4  1203:11  <b>remain</b> 1149:23  <b>remark</b> 1162:21  <b>remarks</b> 1246:15,19  <b>remember</b> 1151:10,12  1166:5 1168:16 1193:10  1206:23 1210:14 1244:13  1256:11,21 1261:21  1262:9,17,23,23  <b>removed</b> 1158:7  <b>rephrase</b> 1214:19 1223:22  <b>report</b> 1152:2 1186:12  1234:9 1237:14,14,17,19  1240:11 1243:18 1247:6  1249:10 1250:22 1254:14  1254:18,19 1256:19  1258:24 1273:15 1278:17  1278:19 1279:8 1280:14  1286:8 1289:3 1290:8,9  1290:12 1297:24  <b>reported</b> 1266:16  <b>Reporter</b> 1170:22 1184:15  1234:14 1246:16 1299:14  <b>reporters</b> 1297:18 1299:11  <b>reproduced</b> 1291:13  <b>request</b> 1139:24 1140:18  1141:24 1142:10 1146:3  1155:8 1156:21 1165:4  1226:15 1228:24 1229:11  1230:12 1296:10  <b>requested</b> 1140:13 1229:10  1296:10  <b>requires</b> 1147:10  <b>resolution</b> 1284:9  <b>resonance</b> 1155:3</p>
---	--	--

<p><b>resources</b> 1180:15  <b>respect</b> 1279:18  <b>respectively</b> 1292:16  <b>respond</b> 1142:10 1143:9  1186:20  <b>Respondent</b> 1137:8  1139:17 1241:16 1283:16  <b>Respondent's</b> 1147:9  1212:10  <b>response</b> 1168:14  <b>responsibilities</b> 1179:20  1233:6  <b>rest</b> 1291:10,17  <b>restricted</b> 1143:4,5  <b>result</b> 1282:3 1287:2  1289:7  <b>results</b> 1252:9  <b>resumed</b> 1139:2  <b>retarded</b> 1255:13  <b>retired</b> 1157:15,16  <b>return</b> 1142:2 1149:22  1150:5 1198:19 1219:14  <b>returned</b> 1140:11 1216:5  1237:11  <b>returning</b> 1223:17  <b>revealed</b> 1249:13  <b>review</b> 1159:19 1161:14,22  1162:16,16 1171:9  1237:2 1243:21 1245:2  <b>reviewed</b> 1157:24  <b>reviewing</b> 1245:24  <b>right</b> 1144:4 1145:5  1146:20 1149:13 1151:3  1152:12,20 1157:20  1162:20 1165:17 1166:4  1166:18 1167:23 1171:13  1174:4 1175:4,20,23  1177:6,10,16 1178:7  1180:10 1182:11 1187:2  1188:8,13,16 1189:22  1190:14 1191:5 1196:14  1197:9 1201:5,12,15  1202:22 1206:14 1207:9  1207:14 1208:7,9</p>	<p>1213:17 1216:16 1217:23  1218:12,21 1220:6,8  1221:5 1225:21,23  1226:6,24 1227:3  1228:16 1229:20 1230:4  1230:8 1231:7 1235:6  1237:6 1243:9 1245:14  1246:22,24 1249:8  1252:20 1254:8 1256:7  1257:2,19 1258:22  1259:12 1262:22 1263:3  1265:19,20 1268:2,5,11  1268:22 1269:4 1270:10  1271:24 1272:13,14,18  1272:19 1273:3 1274:22  1276:17,24 1277:24  1279:3 1286:10,10  1287:20,24 1288:21  1290:4,14,20 1291:21  1292:10 1294:2,21  1295:14 1296:5 1298:9  1298:12  <b>rigorous</b> 1144:22  <b>Robert</b> 1138:6 1141:18  1230:23 1231:13 1255:6  <b>Rock</b> 1136:15  <b>room</b> 1163:4 1221:23  1231:2 1270:20  <b>row</b> 1200:3  <b>rtmw/tjmc/pllm</b> 1299:17  <b>rubber</b> 1163:4 1221:23  <b>rule</b> 1173:9  <b>rules</b> 1142:20  <b>ruling</b> 1152:14,23 1164:20  <b>R-Sixteen</b> 1208:6</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 1138:2 1300:2  <b>sanctioned</b> 1251:24  <b>saw</b> 1224:5  <b>saying</b> 1143:15 1152:5  1243:21 1252:11,18  1262:11 1282:9 1284:22  <b>says</b> 1158:13 1175:6</p>	<p>1190:13 1191:6 1194:20  1241:9  <b>schedule</b> 1180:4 1230:17  <b>scheduled</b> 1298:13  <b>scheme</b> 1171:22  <b>school</b> 1136:5 1142:6  1172:15,16 1178:22  1179:4,10 1182:23  1183:6 1185:14 1187:23  1198:21 1205:24 1210:13  1218:16 1231:24 1234:5  1234:21 1235:9,12,15  1236:13,14,22 1237:8  1273:10,11 1289:20,22  <b>schools</b> 1205:19  <b>scope</b> 1143:16  <b>Scroll</b> 1271:19 1272:5  <b>se</b> 1137:9 1160:16  <b>search</b> 1249:12  <b>second</b> 1141:9 1171:3  1192:9 1260:16 1264:3,8  1264:18,19,24 1265:6  1274:3  <b>secondly</b> 1157:14  <b>seconds</b> 1197:22  <b>secretaries</b> 1179:12,14  1206:19 1218:6  <b>secretary</b> 1173:5 1179:5,7  1179:10,17,21 1183:9  1188:6 1193:6 1205:4  <b>section</b> 1136:8 1139:7  1220:17,23 1221:6  1275:15,16,19  <b>see</b> 1141:10 1162:10  1168:23 1177:24 1208:16  1208:16 1212:17 1226:15  1230:15,15 1245:2  1272:2,15 1279:11  1285:6  <b>send</b> 1222:2  <b>sense</b> 1193:11 1209:12  1213:2 1249:3  <b>sent</b> 1166:16,16,19  1185:12 1188:3,5,5</p>
--	--	---

<p>1223:10 1224:3  <b>sentence</b> 1259:20,20  1260:8,12,16,20 1261:3,3  1264:3,6,8,13,19 1265:2  1265:6 1269:2,11  <b>sentences</b> 1269:19  <b>separately</b> 1288:17  <b>serious</b> 1286:16 1297:4  <b>serves</b> 1232:23  <b>Services</b> 1136:12 1137:5  <b>set</b> 1166:8  <b>seven</b> 1241:12 1249:14  <b>seventeen</b> 1195:10  <b>sexual</b> 1233:9 1286:16  <b>sexually</b> 1163:11  <b>sharp</b> 1230:19 1292:5  <b>sheet</b> 1185:10  <b>show</b> 1152:6 1170:10  1172:23 1183:19 1184:11  1192:23 1193:6 1197:4  1199:23 1208:5 1228:20  1237:22 1238:9  <b>showing</b> 1151:22  <b>shown</b> 1173:4  <b>shut</b> 1259:24  <b>Siegel</b> 1136:14 1139:5  1142:15 1166:5 1168:16  1176:19 1197:12 1201:10  1238:10 1275:17 1277:10  <b>sign</b> 1140:5,9 1181:14,23  1181:24 1182:4 1185:10  1189:23 1190:19 1192:2  1192:6 1200:3  <b>signature</b> 1140:13 1192:13  1192:17 1208:21,23  <b>signed</b> 1225:20  <b>similar</b> 1169:22  <b>similarly</b> 1154:12  <b>simple</b> 1266:21 1271:11  <b>single</b> 1176:20 1241:15,20  <b>sir</b> 1186:10 1189:14 1193:4  1225:24 1226:15 1227:18  1244:3 1251:18 1253:7  1268:6 1270:12 1275:9</p>	<p>1276:7 1278:15 1281:5  1282:18  <b>site</b> 1199:13  <b>sites</b> 1145:13  <b>situation</b> 1210:5  <b>six</b> 1270:11  <b>sixteen</b> 1195:10 1212:10  1266:11  <b>skip</b> 1257:21  <b>snatched</b> 1265:23 1266:3,4  1266:5  <b>social</b> 1205:24  <b>Society</b> 1233:18  <b>somebody</b> 1160:22  1175:15  <b>soon</b> 1183:19 1220:3  <b>sorry</b> 1156:15 1169:6,9  1170:22,24 1171:7  1184:15 1186:7,10,13  1189:2,5 1191:19 1195:2  1195:14,14,15 1200:10  1205:15 1211:16 1213:6  1219:19 1222:11 1223:20  1224:20 1225:24 1226:20  1237:23 1238:10 1239:18  1240:14 1246:16 1257:20  1259:5 1263:9,17 1264:9  1269:19 1277:5 1280:3  1293:9  <b>sort</b> 1182:22 1233:11  <b>sounds</b> 1256:2 1295:16  <b>speak</b> 1149:24 1210:19  1234:15 1246:17  <b>speaking</b> 1219:8 1253:16  <b>special</b> 1232:17 1234:10  1281:13,19,21  <b>specific</b> 1147:11 1244:16  1256:11 1260:18,23  1261:5 1264:11 1266:16  1267:2,5 1269:8,12,13,16  <b>specifically</b> 1243:18  1255:22 1279:12  <b>specification</b> 1151:10  <b>specifics</b> 1256:15</p>	<p><b>speculative</b> 1160:12  <b>spell</b> 1183:14  <b>spelling</b> 1301:4,5,6  <b>spells</b> 1221:3  <b>spend</b> 1197:23  <b>spoke</b> 1219:7  <b>spoken</b> 1297:17  <b>Spring</b> 1136:16  <b>staff</b> 1179:23  <b>stand</b> 1149:23 1196:8  1296:6  <b>standpoint</b> 1295:16  <b>start</b> 1177:20 1230:5  1291:22 1293:2 1295:23  1296:14  <b>state</b> 1136:2,2 1148:8  1150:12  <b>stated</b> 1142:15 1260:9,17  1260:22 1261:4 1264:4  1264:15,21 1265:3,7,11  1266:11 1269:15 1299:4  <b>statement</b> 1208:21,23  1209:6 1210:14 1211:19  1268:5 1282:9  <b>statements</b> 1240:15  1241:20 1286:4 1287:6,8  1287:11,19 1288:13,16  1289:2  <b>stating</b> 1194:13  <b>stay</b> 1174:9  <b>step</b> 1198:11 1219:17  <b>steps</b> 1247:7 1273:7  <b>stored</b> 1162:10  <b>story</b> 1257:13,13  <b>Street</b> 1136:13,15 1137:6  <b>struck</b> 1248:16,22 1259:2  <b>student</b> 1176:21,22 1177:2  1236:3,16 1241:8,21  1255:13 1259:19 1260:6  1260:13,14,18,21,22,24  1261:2,5,13 1263:5  1264:2,10,12,14,16,18,22  1264:24 1265:4,6,8,10,12  1265:23 1266:3,4</p>
--	--	--

<p>1268:24 1269:3,12,17,22 1269:22 1293:19 <b>students</b> 1237:24 1240:15 1240:16 1241:13 1246:7 1246:15,20 1259:11 1260:10 1262:2 1265:14 1266:10,11 1268:3,8,9 1269:5 1270:11,16,18,24 <b>student's</b> 1263:2 <b>study</b> 1197:13,20 1244:5 <b>stupid</b> 1255:14 <b>subject</b> 1144:17 1146:18 1150:16 <b>submission</b> 1140:15 1196:11 <b>submit</b> 1159:23 <b>submitted</b> 1140:14 <b>subpoena</b> 1139:24 1141:16 1141:19,24 1142:11 1156:12 1293:17,21 <b>subpoenaed</b> 1140:17 1292:14 1295:18 <b>subpoenas</b> 1140:9,12,18 <b>subpoena's</b> 1140:5,6 <b>substantiate</b> 1142:23 1251:4 <b>substantiated</b> 1243:14,16 1246:3,23 1249:15,16 1250:7,13,16,19 1251:12 1251:13,23 1252:7,13,23 1261:10 <b>substantiation</b> 1253:10 <b>substitute</b> 1196:11 <b>sufficient</b> 1146:8,9 <b>sufficiently</b> 1153:4 <b>suggest</b> 1292:4 <b>suggesting</b> 1143:14 <b>suit</b> 1144:3 <b>Sullivan</b> 1255:6 1256:21 <b>Superintendent</b> 1158:21 <b>supervising</b> 1222:8 <b>Supervisors</b> 1232:2 <b>supplement</b> 1172:19 1173:19 1174:12</p>	<p><b>supplemental</b> 1142:8 <b>supplying</b> 1140:4 <b>support</b> 1253:10 <b>supposed</b> 1213:3,5 1245:6 1276:19 <b>sure</b> 1140:16 1158:17 1162:15,23 1164:24 1168:21 1170:4 1187:15 1191:7 1214:24 1226:18 1228:14 1229:24 1239:13 1245:18 1254:5 1283:22 <b>swear</b> 1178:7,8 1231:4,8 <b>sworn</b> 1138:3,6 1178:13 1231:13 1299:7 <b>system</b> 1251:23 <b>systems</b> 1169:19 <b>S.C.I</b> 1168:18 1169:17 1176:13,15</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 1300:2,2 <b>take</b> 1177:16 1185:5 1229:22 1230:4 1238:2 1240:7 1245:16 1248:2 1254:18 1257:20,21 1258:4 1266:7 1273:7 1276:21 1286:15 1288:7 <b>taken</b> 1286:5 1287:6 1299:3 <b>talk</b> 1219:13 <b>talking</b> 1181:21 1229:8 1264:6 1268:7 1275:8 <b>tangential</b> 1148:2 <b>teacher</b> 1139:17 1150:13 1150:13 1163:11 1194:16 1196:21 1198:10,22 1199:11 1209:5 1214:9 <b>teachers</b> 1153:23 1159:12 1179:23 1180:4,5,14 1181:10,23 1182:4,14 1189:23 1190:18 1192:6 1195:18 1200:3,14,21 1205:20 1206:5,8,9,13,17 1210:10 1218:6,7,16</p>	<p>1220:18 1221:3 1226:5,9 1293:23 <b>teacher's</b> 1172:11,21 1180:8,11,12 1181:7 1182:2,8,14 1183:3,3 1185:11,13 1187:22 1189:18 1192:5 1194:14 1195:18 1198:9,10,23 1199:5,14 1200:5 1206:15 1209:2 1210:2 1220:15,18 1221:4 1229:12 <b>teaching</b> 1145:10 1150:15 1206:20,20 1215:21 1217:22 <b>technologies</b> 1169:18 <b>telephone</b> 1136:16 1137:7 1140:19 <b>tell</b> 1150:4 1159:3 1167:10 1179:19 1180:11,17,24 1181:5,20 1185:6 1190:12,21 1191:22 1192:24 1198:9,11 1209:18 1213:16 1219:13 1232:19 1233:5 1234:7 1234:19 1235:21 1236:14 1236:23 1238:23 1240:8 1249:15 1252:12 1255:13 1260:4 1264:12 1265:22 <b>telling</b> 1163:3 1256:9 <b>ten</b> 1166:14 1176:9,11,15 1193:10 1230:19 1247:16 1248:3,3 1292:5,15 1298:13 <b>tend</b> 1286:14 <b>tends</b> 1286:19 <b>tenured</b> 1159:11 <b>terms</b> 1196:20 1208:24 1256:4 1293:12 <b>testified</b> 1165:4 1173:12 1275:21 <b>testifies</b> 1175:15 1296:12 <b>testify</b> 1176:2,22 1178:9 1245:9 1292:22 1294:9</p>
---	--	---

<p>1294:14 1299:7  <b>testifying</b> 1169:16 1173:16  1275:14 1295:23  <b>testimony</b> 1139:19 1175:19  1230:21 1231:9 1292:9  1293:2 1299:6  <b>testimony's</b> 1173:13  <b>thank</b> 1162:19 1172:24  1188:22 1194:4 1200:8  1201:20 1208:4,11  1218:4,14,19 1221:10  1225:7 1229:14,21  1231:16 1238:15 1248:4  1271:5 1285:11 1289:11  1290:15,21 1298:15,16  <b>thing</b> 1156:6,17 1158:21  1163:2 1176:20,21  1209:7  <b>things</b> 1171:22 1233:11  1257:11 1275:24 1296:6  <b>think</b> 1146:7 1154:5  1155:6 1156:9,17 1157:6  1158:2,9 1166:2 1170:9  1171:17 1174:21 1187:20  1194:2 1197:7 1214:6  1218:22 1223:24 1232:22  1235:23 1249:7,19  1250:5,9,16 1261:8,8  1276:2 1280:13 1295:15  1296:5  <b>thinking</b> 1213:19  <b>Thirteen</b> 1238:10,12  1240:8,19 1241:3 1243:7  1243:21 1247:5 1286:4  <b>thirty</b> 1257:14 1270:15  <b>thought</b> 1170:5 1193:19  1249:4  <b>three</b> 1142:17 1151:10  1167:8,17,18 1170:7  1171:5,10 1177:16  1197:23 1220:16 1221:2  1235:22,23 1236:4,10  1237:20 1240:21 1243:12  1243:15 1246:5,8 1249:7</p>	<p>1259:5,6 1263:12,13,16  1263:19 1264:9,9 1290:5  1290:6  <b>threw</b> 1236:2 1265:24  <b>time</b> 1136:11 1158:7  1162:7 1165:24 1180:20  1181:16 1182:17 1183:10  1195:22 1198:4 1200:9  1201:2 1214:9 1224:14  1230:21,22 1232:13,19  1234:13 1237:18 1241:2  1245:16 1249:7 1278:5  1280:15 1291:23 1292:4  1296:8 1299:3  <b>times</b> 1142:17 1298:3  <b>timing</b> 1285:19 1286:12  <b>titled</b> 1179:17  <b>today</b> 1141:11 1169:16  1183:23 1291:6,14  <b>told</b> 1219:9 1223:6,16,21  1257:11 1298:3  <b>tomorrow</b> 1141:4,8,9  1230:19 1292:6,15  1294:14 1295:18 1298:13  <b>top</b> 1167:10 1190:5 1237:4  1290:8  <b>topic</b> 1170:12  <b>topics</b> 1145:20 1146:4  1148:13 1153:4 1155:6  <b>total</b> 1198:17 1291:12  1293:21  <b>totally</b> 1229:10  <b>touch</b> 1146:19  <b>Tracy</b> 1299:2,14  <b>transcript</b> 1275:8 1296:23  1297:3  <b>transcription</b> 1299:9  <b>transcripts</b> 1169:24  1296:21  <b>treatment</b> 1164:11  <b>triage</b> 1286:14  <b>tricky</b> 1149:4  <b>Trotman</b> 1301:7,7  <b>true</b> 1146:17 1158:17</p>	<p>1159:6,16 1165:12  1204:19 1253:2,3,4  1255:12 1262:12,20,21  1268:15 1299:10  <b>truth</b> 1178:10,10,11  1231:10,10,11 1299:7,7,8  <b>try</b> 1157:20 1173:10  1174:13 1196:9,11  1213:15 1214:19  <b>trying</b> 1187:8 1217:5  1285:18  <b>turn</b> 1209:8 1214:14  1245:6  <b>Twelve</b> 1184:19 1185:6,17  1185:20 1186:5 1188:19  1189:17,18 1192:10,14  1199:24,24 1202:18  1208:22 1225:16 1226:17  1227:8  <b>twice</b> 1163:10  <b>two</b> 1139:20 1140:16,20,20  1142:16 1145:11 1151:23  1179:11 1192:13 1197:23  1233:22 1235:23 1243:15  1246:5,20,22 1249:7,14  1253:16,17 1259:4,6,11  1259:11 1264:3,7,13,19  1268:17,23 1281:15  1283:21 1285:16,17  1289:22 1292:13 1293:23  1295:17 1298:4  <b>two-page</b> 1184:13,18  1185:6  <b>typewritten</b> 1299:8</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>Uh-huh</b> 1144:14,19,24  1145:6,14,24 1146:5  1147:7,12,16,22 1148:3,6  1148:11,14,18,22  1149:14,17,20 1150:2,6  1151:14 1152:18,21,24  1153:6,9,14,17,17,18,21  1154:3,7,13,17,20,24</p>
--	---	--

<p>1155:24 1156:7,19  1157:8,22 1158:4,11,19  1158:24 1159:4,9,14,17  1159:21,21 1160:2,5,9,23  1161:4,7,10,18 1162:2  1163:19,23 1164:3,8,12  1164:15,18 1166:10  1169:20 1170:2 1171:20  1173:14,17,20 1174:10  1177:18 1190:20 1191:8  1191:11,12,21 1193:15  1193:20,24 1196:22  1199:17 1200:16 1205:14  1205:23 1207:17 1209:16  1209:19,21,23 1210:3,6  1210:24 1211:21 1212:7  1213:24 1214:4,12  1215:9,19,23 1216:3,6  1217:13,16,18 1219:11  1219:15,18 1220:24  1221:9 1222:6 1224:10  1225:21 1227:21 1228:2  1228:5 1240:12 1242:4,7  1242:7,11,14,19,23  1244:11,11,14,17,20,23  1245:4 1252:8 1254:22  1256:5 1259:15 1261:22  1270:23 1272:4,4,24  1273:12 1274:16 1283:3  1283:6,11,15,17,23  1284:3,6,6,8,13,15,18,24  1285:4,22,22 1287:13  1291:3,15 1292:7,17,23  1293:6 1294:10 1295:20  1297:14  <b>ultimately</b> 1144:12  1155:18 1289:4  <b>unbecoming</b> 1163:4  <b>uncertainty</b> 1224:2  <b>underneath</b> 1184:7  <b>undersigned</b> 1208:24  <b>understand</b> 1155:11,14  1158:9 1173:11 1197:21  1223:2,5 1241:18</p>	<p>1250:24 1251:3 1252:12  1280:18 1285:18,19  1288:14 1293:5 1294:8  1295:24 1297:13  <b>understanding</b> 1143:8,20  1215:7 1277:20 1291:9  <b>understood</b> 1154:10  <b>undisputable</b> 1273:2  <b>unfair</b> 1249:19  <b>Unfortunately</b> 1298:10  <b>union</b> 1232:6  <b>Unit</b> 1232:12  <b>UNIVERSITY</b> 1136:2  <b>unsaid</b> 1143:11  <b>unsubstantiated</b> 1246:10  1246:13  <b>update</b> 1173:6  <b>upholding</b> 1171:18  <b>use</b> 1214:3 1262:2 1267:5  <b>usually</b> 1180:21 1181:16  1199:7 1273:19  <b>U.F.T</b> 1255:6</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>v</b> 1136:6  <b>vacuum</b> 1257:12  <b>valid</b> 1155:16,18  <b>validity</b> 1211:19,19  <b>verbal</b> 1235:24 1271:8  1273:6 1286:18  <b>verify</b> 1170:4 1224:9  <b>versus</b> 1197:2  <b>violated</b> 1209:10,10,12  1210:15  <b>violates</b> 1209:6  <b>violation</b> 1142:20 1212:19  <b>virtue</b> 1215:17  <b>visit</b> 1273:10  <b>visited</b> 1234:21 1288:16,19  <b>visits</b> 1289:22  <b>volunteer</b> 1270:8</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> 1169:7 1175:19</p>	<p>1202:19 1205:12 1269:24  <b>waiting</b> 1146:18  <b>want</b> 1147:14 1148:20  1149:13 1150:18,21  1151:16,21 1160:13,16  1170:13 1174:19 1190:24  1198:3 1202:7,13  1214:23,23 1228:11,20  1237:23 1238:22 1245:16  1254:17 1256:10 1258:6  1259:8,18 1260:6 1269:6  1274:14,20,23 1277:15  1281:3 1287:4 1295:8  1296:13  <b>wanted</b> 1146:15 1206:17  1208:3 1218:3 1289:10  1294:21  <b>wasn't</b> 1204:11 1217:17  <b>way</b> 1150:21 1151:19  1166:23 1173:22 1209:14  1209:15 1224:9 1244:9  1251:11  <b>ways</b> 1281:15  <b>Web</b> 1199:13 1200:14  <b>week</b> 1220:4,5 1298:3  <b>weeks</b> 1237:13  <b>went</b> 1176:15 1235:9,15  1236:13,13,21 1271:13  1289:20  <b>we'll</b> 1141:12 1174:21  1177:6,6,17 1185:3  1230:5 1248:3 1295:22  <b>we're</b> 1176:10 1177:11  1184:22 1217:5 1245:13  1268:7  <b>we've</b> 1279:19 1296:5  1297:13,16,17  <b>wholesale</b> 1256:10  <b>Williams</b> 1299:2,14  <b>Wiltshire</b> 1158:8,13,22  1159:6 1173:12 1228:4  1234:11  <b>Wiltshire's</b> 1162:11  <b>wish</b> 1152:13 1163:22</p>
---	--	--

1164:5 1195:22 1200:9 1201:2 1241:2 <b>withdrawn</b> 1180:18 1182:12 1247:3,4 <b>witness</b> 1141:8,9 1142:3 1143:9 1149:6 1156:22 1157:4,6 1166:6 1173:16 1175:6 1176:19 1177:12 1191:3,6,11 1193:13 1194:7 1196:19 1201:23 1202:9 1204:21 1211:16 1212:7 1213:17 1214:7 1224:21 1225:3,18,21 1234:15,16 1245:18 1246:17 1272:20 1276:6 1278:9 1280:10 1287:12 1288:4 1290:20,22 1293:16 <b>witnesses</b> 1140:2 1193:18 1236:19 1242:21 1291:5 1292:20 1293:21 1294:5 1295:17 <b>witness(es)</b> 1299:6 <b>word</b> 1261:23 1262:10 1267:5 1300:6,7,9,10,12 1300:13,15,16,18,19 <b>wording</b> 1261:14,18 <b>words</b> 1143:7 1146:14 1163:2 <b>work</b> 1141:5 1180:3 1230:17 <b>worked</b> 1232:9 <b>workers</b> 1205:24 <b>working</b> 1232:15 <b>workload</b> 1286:13 <b>worry</b> 1226:22,24 <b>worthy</b> 1153:20 <b>wouldn't</b> 1149:6 1278:17 <b>write</b> 1237:13 1262:5 1269:11 1288:8 <b>writing</b> 1237:14,17 <b>written</b> 1262:20 1287:11 1287:19 1288:12,15 1289:2	<b>wrong</b> 1172:14 1252:6,11 1252:12 1278:2 <b>wrote</b> 1262:24 1290:8,9,11 <hr/> <b>X</b> <hr/> <b>X</b> 1138:2 1301:2 <hr/> <b>Y</b> <hr/> <b>Y</b> 1271:20 <b>yeah</b> 1146:10 1160:14,20 1168:8 1175:7 1185:23 1212:15 1215:12,15 1219:22 1222:17 1225:3 1225:6,6 1226:19 1255:19 1262:8 1263:4 1268:12,14 1270:9 1272:12 1284:21 1285:6 1287:12 1295:9 1297:21 <b>year</b> 1172:15,16 1180:16 1180:22 1182:17,19 1185:14 1187:23 1198:15 1198:15,21 1215:22 1290:9,11 <b>years</b> 1157:17 1179:8 1232:22 1233:23 <b>York</b> 1136:2,5,13,13,16 1137:6,6 1139:8,14 1150:12 1232:9,16 1233:17 1249:12 <b>Yusuf</b> 1301:8 <hr/> <b>Z</b> <hr/> <b>zero</b> 1246:4,5,8 <hr/> <b>#</b> <hr/> <b>#402</b> 1137:9 <b>#8,234</b> 1136:8 1300:3 <hr/> <b>0</b> <hr/> <b>06</b> 1289:4 <hr/> <b>1</b> <hr/> <b>1</b> 1299:5 <b>1:38</b> 1136:11 1298:18 <b>10:17</b> 1136:11 1139:2	<b>10007</b> 1136:13 1137:6 <b>10516</b> 1136:16 <b>11th</b> 1296:2,12,15 <b>1136</b> 1299:9 <b>1178</b> 1138:3,4 <b>12</b> 1136:15 1137:9 <b>1202</b> 1138:4 <b>1219</b> 1138:5 <b>1221</b> 1138:5 <b>1231</b> 1138:6,7 <b>1248</b> 1138:7 <b>1281</b> 1138:8 <b>1282</b> 1138:8 <b>1285</b> 1138:9 <b>1289</b> 1138:9 <b>1298</b> 1299:10 <b>14</b> 1297:4 <b>17305</b> 1137:10 <hr/> <b>2</b> <hr/> <b>2000</b> 1232:22 <b>2004</b> 1232:22 1234:2 1285:21 1289:17 <b>2005</b> 1235:17 1286:2 1288:3,22 1289:24 1290:2,3 <b>2006</b> 1185:11 1286:8 <b>2008</b> 1136:10 1139:10,23 1140:11 1300:3 <b>212</b> 1137:7 <b>265-3124</b> 1136:16 <b>28</b> 1139:23 1140:11 <hr/> <b>3</b> <hr/> <b>3</b> 1136:10 1139:10 1300:3 <b>30th</b> 1140:20 <b>3020-a</b> 1136:8 1139:7 1147:10 1159:8 1161:16 1161:23 1163:12 1229:9 1250:21 1251:2,4,14 1252:2,3,9,14 <b>374-6770</b> 1137:7 <hr/> <b>4</b> <hr/> <b>49-51</b> 1136:13 1137:6
---	---	---

<b>6</b>		
<b>6th</b> 1137:6 1234:2 1248:14 1285:21 1289:17		
<b>6-3-2008</b> 1137:1 1138:1 1139:1 1140:1 1141:1 1142:1 1143:1 1144:1 1145:1 1146:1 1147:1 1148:1 1149:1 1150:1 1151:1 1152:1 1153:1 1154:1 1155:1 1156:1 1157:1 1158:1 1159:1 1160:1 1161:1 1162:1 1163:1 1164:1 1165:1 1166:1 1167:1 1168:1 1169:1 1170:1 1171:1 1172:1 1173:1 1174:1 1175:1 1176:1 1177:1 1291:1 1292:1 1293:1 1294:1 1295:1 1296:1 1297:1 1298:1 1299:1		
<b>7</b>		
<b>7th</b> 1235:17 1287:7 1296:22		
<b>8</b>		
<b>845</b> 1136:16		