



To the candidates running for Manhattan District Attorney,

On behalf of the New York State Association of Criminal Defense Lawyers (NYSACDL) and National Association of Criminal Defense Lawyers (NACDL), we invite you to complete the attached questionnaire for candidates seeking the office of Manhattan District Attorney.

In March, NYSACDL and NACDL released the first ever report examining the prevalence and impact of the trial penalty in New York, [The New York State Trial Penalty: The Constitutional Right to Trial Under Attack](#), finding the trial penalty is a major [driver of injustice](#) in the state requiring widespread action by criminal justice practitioners to eradicate.

In a Manhattan District Attorney candidate forum hosted by VOCAL-NY in October 2020, the then nine Democratic candidates [pledged](#) to end the “trial tax,” or the “trial penalty” as it is also known. With this questionnaire, we are seeking to understand how each candidate might accomplish this task.

This questionnaire is being sent to all candidates, and the results will be shared publicly. Thank you in advance for your participation.

Sincerely,

Susan J. Walsh, Partner, Vladeck, Raskin & Clark, PC and Chair of the NYSACDL Trial Penalty Task Force

Norman L. Reimer, Executive Director of NACDL

NYSACDL & NACDL Manhattan District Attorney Candidate Questionnaire

Short Answer

- 1. How will you use your position as Manhattan District Attorney to ensure people have access to fair trials and can exercise their full Sixth Amendment rights?**

Tahanie Aboushi (D): To ensure fair trials, we will begin with charging decisions and end the habit of upcharging people to try to intimidate them into pleading guilty. I have seen how prosecutors can use up-charging to coerce a person into accepting a plea. My mother was charged to coerce my father to take a plea. She was nothing more than leverage; the prosecutors did not care about what would happen to me or my siblings. Those initial charging decisions can impact everything that happens as a case unfolds.

We will disclose all discovery as early as possible and ensure our attorneys are fully compliant with not just the letter of Brady but the full spirit of open file—that any information that may be helpful to the defense is disclosed. Next, we will employ a do-not-call list so that when witnesses, in particular law enforcement, testify, we can be reasonably confident in their credibility. We will also not hesitate to dismiss cases where law enforcement has violated people’s constitutional rights. Every attorney in the office will know they are judged not by the number of convictions they secure, or the length of sentences, but whether they, in all they do, are seeking justice.

Alvin Bragg (D): As a matter of formal policy, we will eliminate the “trial tax” by not permitting the recommendation of sentences after hearings or trials that are higher than those recommended before hearings or trial. More fundamentally, we will reform the ways our office thinks about the purpose of criminal prosecution so that enacting a “trial tax” will not be part of how our ADAs analyze cases in the first place. As I explain in my “Day One Memo,” my office will no longer value traditional metrics like conviction rates, instead using a more holistic view of justice that rewards fairness, judgment, and values life experiences as well as professional experiences. We will consider factors such as the impacts of incarceration on recidivism, the financial cost of incarceration, the impact of incapacitation on public safety, the racially disparate impacts of incarceration, the challenges posed by reentry, and other holistic factors in determining appropriate outcomes. These factors inherently do not allow for a “trial penalty” and other coercive tactics that discourage those charged with crimes from exercising their constitutional right to a hearing or trial.

Thomas Kenniff (R): As District Attorney I will commit to charging crimes proportionately as opposed to tactically. Too often I see prosecutors indict the highest possible charge, even when it is disproportionate to the alleged conduct, in order to trigger mandatory minimum and enhanced sentencing exposure. A defendant who might otherwise exercise his 6th Amendment right to trial, is intimidated into pleading guilty by the prospect of a disproportionate sentence if trial does not go their way. I will also use my influence to support increased budgets for both the District Attorney’s Office and our institutional defense providers, including the grossly underpaid assigned counsel, or 18-B, lawyers. It is naïve to think that the overburdened caseloads of prosecutors and indigent defense lawyers, does not pressure both sides to resolve cases that otherwise might be tried, particularly with the ever-increasing amount of electronic discovery that is now part of almost every criminal case. The appointment of additional judges and the creation of additional trial parts will also help. A criminal justice system that is

sufficiently funded, is much more likely to ensure a defendant's rights, including the right to trial.

Lucy Lang (D): Ensuring that everyone's sixth amendment rights are respected requires both eliminating the trial penalty and dealing effectively with the enormous case backlog stemming from the pandemic. I will eliminate the trial penalty as Manhattan DA and have a [comprehensive plan](#) for addressing the extensive backlog preventing New Yorkers from exercising their right to a speedy trial.

Eliza Orlins (D): The Manhattan District Attorney has a responsibility to make sure that our city is safe — and that means protecting people and their rights. Public safety is every person knowing they have a fair shot, which is hard in a criminal legal system that by design has protected the wealthy and well-connected and has caused undue harm to communities of color and low-income communities. As a public defender, I know that trials can be unfair on a fundamental level because of the injustices in our system, and as DA I will work to change those. I will abolish the trial penalty, so people accused of crimes will not risk greater charges should they exercise their right to go to trial. I will ensure that all plea deals are offered on the record and that the sentence offered in bargaining is the same as the sentence recommendation after trial. And I will use the bully pulpit of the DA's office to push to abolish court fees, which are designed to strip resources from those who are disproportionately charged with crimes, especially the communities mentioned above.

Dan Quart (D): I have been a proponent of discovery reform in the legislature and co-sponsored the seminal legislation requiring some level of "open-file" discovery. I also fought against the efforts to roll back those reforms. The initial step in dealing with fairness for defendants in court requires providing defense counsel with full and complete relevant discovery so that all parties are aware of the same critical information. Thereafter, the office will ensure a higher degree of transparency and flexibility in the plea bargaining process. Consistent with the approach the DA's office will never implement a "trial penalty" for any case that is not resolved by plea agreement and moves forward towards trial. Beyond these points, my commitment to declining to prosecute multiple misdemeanor charges, as well as downgrading certain penal law offenses to felonies to misdemeanors will help address the extensive backlog in the court docket that currently exists.

Tali Farhadian Weinstein (D): Providing access to fair trials begins with robust investigation to gather the information necessary to make informed charging decisions. In cases where charges are brought, I will ensure that charging decisions are truthful and reflect the circumstances of the individual case. Charges should never be used to intimidate, gain leverage, and coerce guilty pleas. Overcharging also results in excessive sentences and trial penalties that are antithetical to ethical prosecution.

Additionally, I embrace the discovery changes that New York adopted in 2019 to ensure that defendants are provided with the information necessary to exercise their 6th Amendment rights.

2. **Will your office address the following underlying issues contributing to the perpetuation of the trial penalty? If so, what specific action will you take?**
 - a. **Unrestricted prosecutorial charging discretion**
 - b. **Mandatory minimum sentencing statutes**
 - c. **Discretionary use of enhancements for prior convictions**

Tahanie Aboushi (D): As indicated in my previous answer, everything begins with charging decisions—whether we bring charges at all and then if we do charge, what we decide to pursue. Our guiding philosophy begins with an aggressive declination policy ([here](#)). For cases that do proceed to charging, we will only charge the least serious offense we can that is appropriate for the particular case. We will do all we can within our charging discretion and in how we structure any plea agreements to avoid statutorily required mandatory minimums. When an enhancement is discretionary, we will never advocate for its application. We are going to end the Early Case Assessment Bureau, where a lot of unchecked prosecutorial discretion takes place and where overcharging and the subsequent triggering of mandatory minimums and sentence enhancements originates. Instead, we will have training and supervision over these charging decisions that guide every step of the process, and that will guarantee that the goals of reducing the impact of the DANY will take place. Prosecutors will have the option to deviate from our policies but that will be the exception and will require supervisor approval.

Lastly, I want to create a better New York for everyone, which means fighting for long-lasting change. I will use the platform of the DANY to advocate for legislative changes to remove all mandatory minimums and automatic sentence enhancements based on prior records. Mandatory minimums and automatic enhancements of any kind do not promote public safety, and they only tie judges' and prosecutors' hands and force people into pleading guilty. Every case should be judged on its own merits and each person has a different history and record. Despite sounding tough, mandatory punishments have never actually proven to stop crime. It will be the policy of my office to avoid charging crimes that carry mandatory minimums whenever there is an alternative and I will call for the state legislature to act to end all mandatory punishment sentences for all offenses.

Alvin Bragg (D): As I explain in my “Day One Memo,” my office will start by minimizing the use of pretrial detention, which studies have shown leads to more coercive plea bargaining practices that discourage the use of hearings and trials. Later in the process, when determining appropriate outcomes, ADAs will be required to use non-incarceratory outcomes in all but the most serious cases, and can only bargain for incarceratory sentences in extraordinary circumstances based on a holistic analysis of the charges, criminal history, victim’s input (particularly in cases of violence), and any other information available. ADAs must consider the impacts of incarceration on recidivism, the financial cost of incarceration, the impact of incapacitation on public safety, the racially disparate impacts of incarceration, the challenges posed by reentry, and other holistic factors. This will make jail sentences the “alternative” and non-jail sentences the default outcome, without exception for cases that progress to hearings or trials.

Unfortunately, although I have long publicly opposed mandatory minimums and would otherwise use these laws only in the most extraordinary cases, New York state law requires DAs to use mandatory minimums in felony cases, as the Court of Appeals has held. This means that DAs have no discretion in opposing sentencing enhancements for “second felony offenders” and “persistent violent felony offenders” under New York Penal Law Article 70. This constrains our ability to negotiate appropriate dispositions on

felony cases based on the factors I outlined in the previous paragraph, however these minimums do not apply to misdemeanor cases, or to cases plea bargained down to misdemeanor convictions, and in appropriate cases my office would use misdemeanors to avoid these minimums. Also, DAs do reserve discretion under Penal Law Section 70.10 for “persistent felony offenders,” and I oppose the use of this discretionary sentencing enhancement.

Thomas Kenniff (R): An office as large as the New York County District Attorney’s Office does, and should, have multiple layers of supervision. While I will trust my assistant district attorneys to seek justice, not just convictions, major charging decisions will be evaluated at a supervisory level and each case will be judged on its individual merits. While I do believe that mandatory minimums can serve the goals of deterrence in violent felony cases, they are not appropriate in every case, and I will discourage my prosecutors from overcharging indictments simply to trigger a mandatory minimum. I also believe that sentencing enhancements based on prior convictions are appropriate to further the goals of deterrence and to protect the public from demonstrably dangerous offenders. I believe these enhancements should be discretionary in most cases, however, and just as I would not condone my office upcharging a case for the purpose of leveraging a mandatory minimum, I would also discourage the inclusion of a prior conviction enhancement where it would expose the defendant to a sentence disproportionate to the crime in question.

Lucy Lang (D): a. As DA, I will publicly lay out a policy for charging that will guide all charging decisions. I will develop this policy in conjunction with the defense bar and publish it on the DA’s website so that the public can hold the Office accountable.

b. I will have a policy of taking mandatory minimums into consideration pre-indictment, and making the decision to present to the Grand Jury accordingly.

c. I will have a default policy against using prior conviction enhancements.

Eliza Orlins (D): As a public defender, I know that prosecutors have held immense power when it comes to deciding the charges that individuals are offered at trial. And while it’s important that progressive DAs have some discretion when it comes to sentencing, under my administration completely unrestricted prosecutorial charging discretion will be eliminated. I would never support mandatory minimums, but we will put guidelines on what prosecutors can and cannot charge. We will ensure that they cannot charge more punitive charges because of any “dangerous standards” which are based in the racism and white supremacy that threads through our criminal legal system. My office will always seek the lowest appropriate sentence — because right now, the inverse is true, and it is not keeping anyone safer.

I do not believe in mandatory minimums, and while judges’ hands are currently tied with the laws as they are, as DA I will work with legislators in Albany to abolish those laws and bring fairness to our legal system. I will select charges so as to avoid or minimize mandatory minimums where possible.

When it comes to the discretionary use of enhancements for prior convictions, there is nuance to the conversation. The biggest problem is that these enhancements are disproportionately used on people of color who are charged with crimes to add additional time or severity to their sentences. That is unacceptable, and I will not tolerate that as district attorney. If someone has been charged with petty crimes, that is not an

excuse to charge them as a felon later on. However, if someone has a history of violence, we will address that person with more seriousness with the intention of offering the lowest possible sentence for every person accused of a crime and will never overcharge in cases.

Dan Quart (D): I will not rely on unrestricted prosecutorial charging discretion as DA. Many of the former prosecutors in this race have taken the position that their discretion can't be given up as DA, but I believe the discretion is the tool that results in racially disparate and unfair outcomes which is why I won't rely on them as DA. My declination policy and never seeking cash bail will reduce the perpetuation of the trial penalty. I will also not seek longer sentences if a defendant decides to take their case to trial.

As a legislator for 10 years I will be in a unique position to work with the legislature to eliminate many of the mandatory minimum state statutes. None of the candidates in this race can or will be as effective as I can be in working with the legislature to achieve this critical reform.

I've stated publicly at multiple forums that I will not use sentencing enhancements as a tool of this office. As someone who has been committed throughout my legislative career to actual decarceration, I understand how these enhancements are antithetical to this principle.

Tali Farhadian Weinstein (D): a. I believe that the most junior prosecutors should not be responsible for making the most consequential decisions. As such, I will staff the office's Early Case Assessment Bureau with senior-level assistant district attorneys who bring the necessary judgment and experience to be gatekeepers to the criminal justice system, and who must give supervisory approval for the charging of offenses that have been disparately charged, such as resisting arrest, obstructing government administration, disorderly conduct and others.

Moreover, I will require ADAs to only bring the charges they would see through the end of a case. Building on my experience helping Attorney General Holder create and disseminate charging guidance to the legion of federal prosecutors, I will ensure that ADAs never use charges to intimidate, gain leverage, and coerce guilty pleas.

b. I support the elimination of mandatory minimum sentences. As district attorney, I will support legislative efforts to end mandatory minimums in New York.

c. As district attorney, I will advocate for legislation to eliminate these sentencing enhancements, in favor of a system that allows for more discretion for prosecutors and judges, and avoids the imposition of severe penalties in cases in which public safety does not require such sentences.

3. Delaying discovery, including *Brady* violations, is a major contributing factor to the trial penalty. How will you ensure your office provides discovery in a timely manner?

Tahanie Aboushi (D): I will open a new Open-File Discovery Compliance and Accountability Unit that will guide how ADAs collect all potentially favorable information from and about law enforcement and then immediately disclose it to the defense. The unit will also train prosecutors on proper *Brady* procedure and ensure accountability for complying with *Brady*. We will employ a broad definition of what is deemed favorable, viewing all information from a defense perspective. We will not play games with *Brady* information either—we will not hold on to material for a strategic

purpose. Instead, we will disclose information as soon as it is discovered. If there are close calls, we will err on the side of disclosure, and if need be, ask a court to make a ruling. We will also have no tolerance for Brady violations, and employ a presumption that if a Brady violation is discovered after a conviction, we will support a new trial or withdrawal of a plea if the person desires. Lastly, I will commit to tracking and making public a Brady list that tracks law enforcement officers with credibility issues.

Alvin Bragg (D): I know from my time in the U.S. Attorney's and state Attorney General's offices that a law or rule is not worth the paper it's printed on if it is not enforced. That is why my plan to address Brady and discovery focuses on culture change as well as a change in our office's formal policies. First, we will address our office's values. Full and fair disclosure simply cannot exist in a culture of "winning," because in that culture, the notion is that giving full disclosure hurts your chances of winning. This is why I will shift the offices' culture and values away from "winning," as outlined above. Also, messaging from the top will be clear: there will be zero tolerance for Brady violations. Flagrant and willful hiding of evidence from the defense will no longer be treated as something requiring "more training," because training is not the issue in most of these cases. We will be public and upfront about disciplining those who violate these rules, so every employee of the Manhattan District Attorney's Office will receive the message loud and clear.

Thomas Kenniff (R): New York's new discovery statute has made discovery in New York much more transparent. When I was a young prosecutor, well before the recent revisions to our Criminal Procedure Law, we practiced open file discovery. My philosophy even then, was when in doubt, turn it over. If there is ever a case where there should be no intrigue or surprises, it is a criminal case, where a defendant's freedom is on the line. The Manhattan District Attorney's Office has been doing a reasonably good job sharing electronic discovery, but I believe there is room for improvement as far as making the technology more user friendly for defense attorneys on the receiving end.

Lucy Lang (D): Delaying discovery is antithetical to the District Attorney's obligation to the community, precludes justice, and undermines trust in the system. I will enact and enforce a comprehensive early discovery policy, and will not tolerate Brady violations. As District Attorney, I will establish the position of [Prosecutorial Ombudsman](#) and appoint an independent lawyer who will create a consistent and transparent process for receiving, reviewing, and appropriately addressing allegations of misconduct, including anonymous allegations, whether they come from defense attorneys, judges, crime victims, people charged with crimes, other agencies, or fellow ADAs or District Attorney's Office staff. The Ombudsman will also be responsible for investigating such allegations. The attorney appointed as Prosecutorial Ombudsman — whose name and contact information will be publicized — will establish a simple and secure method for lodging complaints, will lodge ethics complaints with the New York State Bar Association, and will refer individual lawyers to the District Attorney for discipline or dismissal.

Eliza Orlins (D): I cannot count the times as a public defender that prosecutors have withheld or delayed offering evidence or discovery in order to try and send my client to jail. It's an immoral and unacceptable practice, and will end when I am district attorney. My policy will be that the second the DA has evidence, we will offer that evidence to the defense. We will waive any right to prosecutorial review.

Dan Quart (D): For the past ten years in the legislature, I have advocated for and co-sponsored legislation that culminated in the 2019 budget language that resulted in greater disclosure of documents and information to defendants in criminal trials.

Further, I led efforts in the legislature opposing the District Attorney's Association's efforts at rolling back these reforms. By declining to prosecute a host of low-level offenses, I would free up resources to support our ADAs in complying with these discovery rules to ensure that our work is thorough and effective. Additionally, the DA's office is 169 million dollars, under proper management there are resources that exist within the office to ensure full compliance with the law. As far as I know, I am the only candidate who publicly criticized DA Vance when he appeared before the city council and claimed he lacked the sufficient resources to comply with the new state law.

Tali Farhadian Weinstein (D): I am a proponent of early and open discovery consistent with much of the recent discovery reform legislation. In my office, ADAs will understand that their discovery obligations must be prioritized.

4. Will your office review previous convictions in which defendants experienced particularly egregious examples of the trial penalty? If so, what plans do you have in place to address this?

Tahanie Aboushi (D): In my administration, the CIU will have a broad mandate to review not only wrongful convictions but also cases that involve police or prosecutorial misconduct, extreme sentences, or a sentence that has long since ceased having any arguable public safety component to it. The CIU will work with the local defense bar, public defender offices, and Innocence Project attorneys to identify cases, as well as adopt processes to hear directly from incarcerated individuals and the community. The CIU will pursue multiple remedies, ranging from requests for new trials followed by dismissal to reduced sentencing where appropriate if there is an available legal mechanism. The Unit will also develop reports on the causes of wrongful convictions, as well as on all aspects of sentencing (length, gender, race, criminal history). We will use this information to help guide our line prosecutors in their cases, to adjust any of our policies that can be made more fair and just, and to push for any needed legislative fixes. Our goal as an office is not merely to rectify past wrongs but to do all we can to ensure wrongful convictions and unfair sentences do not happen in the future.

Alvin Bragg (D): Yes, we will put in place a plan to review all egregious convictions and/or sentences from the previous regime, in a plan to come. When I become Manhattan's District Attorney, I will abolish the existing CIU and start a new unit from scratch, fully resourced, and reporting directly to me. My new unit will be a Free The Wrongfully Convicted Unit (FWCU). My FWCU shows a new way forward for the Manhattan DA, completely unencumbered by the failed efforts of the past CIU. We will follow national best practices, including the guidance of The Innocence Project, leading reform-minded DAs, and other experts in this field.

Thomas Kenniff (R): The New York County District Attorney was one of the first offices to create a conviction review unit. I was amongst one of the first defense attorneys to start asking the criminal court's bureau and the special litigation bureau to start reviewing convictions that may not have been legally unsound, but carried with them consequences that were impacting my clients disproportionately. I have been very successful in this regard. As District Attorney, I will be respectful of a court's autonomy in matters of sentencing, but will certainly be willing to review any instances where a defendant may have been sentenced disproportionately and join them in seeking redress where appropriate.

Lucy Lang (D): I plan to build a Retroactive Review Unit, which will be responsible for investigating allegations of wrongful conviction, conducting sentinel event reviews for cases in which there are exonerations, undertaking mass sealing and expungements for

convictions under statutes that are no longer prosecuted, and Sentence Reviews — the RRU will take a proactive role in reviewing overly punitive sentences. This practice will reduce extreme sentences — disproportionately given to people of color — account for people’s capacity to grow and change while incarcerated, improve the ability for people to reintegrate, and reflect recent developments in our understanding of criminal conduct and rehabilitation. The RRU will support applications for parole and clemency in appropriate cases and promote legislation that would allow a court to recall a case in order to reduce a sentence.

Eliza Orlins (D): Yes, and I have created a robust, revolutionary Conviction Review Unit policy to do exactly this. The criminal legal system far too often gets it wrong. For some crimes, the wrongful conviction rate is estimated as high as 40 percent. While most of the great work being done on wrongful convictions focuses on exonerations, my office will take a broader view of wrongful convictions, as we review and protect against them.

My office will prioritize the review of every case to protect against this broader definition of wrongful conviction. The Unit will develop a robust notification system to identify when cases appear to deviate from the defined targets set by my policies. These include sentences that are too long, sentence requests after trial that depart from pretrial offers, criminal charges that were not preceded by an attempt at diversion, and many more. Additionally, it is not enough to review cases years after conviction when new evidence is presented or when court appeals are successful. The Manhattan DA’s office must be proactive to ensure cases are executed justly. Any Manhattan DA that espouses justice reform and progress must prioritize the rigorous examination of their own agency and use data-driven, expert guided, and scientifically valid approaches to do so.

Dan Quart (D): I have long criticized DA Vance for his overly punitive charging decisions, prosecutorial practices, and sentencing requests. One of the main focuses of my administration will be to undo the harm caused by the Manhattan DA in this regard. Initially, I will work with the legislature to pass my legislation reforming penal law Section 440. This is of critical significance to allow greater flexibility to individual defendants claiming innocence and/or that their conviction was improperly secured. This will be an important first step in rectifying nearly a decade of “trial by ambush” convictions secured by the Manhattan DA’s office. Beyond legislative changes, we will work with the defense council to identify individual cases with overly punitive sentences to address this widespread problem.

Tali Farhadian Weinstein (D): As district attorney, I will advocate vigorously for the legislative creation of a second look mechanism for revisiting and correcting excessive sentences — whether they arise from the trial penalty or other causes.

5. Our report found that being Black and younger than 25 years old increased the probability someone would receive a trial penalty. How will your office work against racial disparities in sentencing?

Tahanie Aboushi (D): First, we will end the trial penalty for everyone. We will also take special care to protect young New Yorkers. We will be guided by the science of brain development that says people under 25 still have developing brains and though they may be more prone to act impulsively, they are also most likely to grow and change. My office’s declination policy will cover the vast amount of charges involving young adults, but we need to expand access to family court and Youthful Offender status for any young person who does end up facing prosecution to protect them from adult-oriented systems and programs. We will connect them with age-appropriate ATI programs and other supportive services. And we will collect and share data to determine where the patterns

of racism and bias are occurring, and then take proactive steps to address these situations, including not prosecuting certain types of offenses if there is clear evidence of bias and racism in how the law is enforced. A guiding principle of our office will be that we must do all we can to stop the patterns of racism and bias that have been ignored for far too long.

Alvin Bragg (D): As the only Black candidate in this race, I have a multitude of plans to address racial injustices. Under my leadership, the District Attorney's Office will focus on eliminating these racial disparities. We will assign experienced prosecutors and data analysts to track these disparities in real time, and develop training and management protocols that ensure that similarly situated defendants receive equal treatment. To rebuild trust in the office, we will engage with groups representing all the diverse communities within Manhattan, and to be fully transparent with all the office's processes and outcomes – publishing comprehensive data on race at every step of a criminal case.

Thomas Kenniff (R): My office will seek to avoid any racial disparities at sentencing by ensuring that we assess each case individually and fully consider all factors in mitigation at sentencing. I will also make sure that there is supervisory approval in place before a prosecutor makes a sentencing recommendation to a court.

Lucy Lang (D): District Attorneys have historically played a harmful role by helping perpetuate racial injustice in America. Now they must play a unique role in eliminating it. The criminal justice system has a disproportionate impact on marginalized – and especially Black – communities. To begin addressing this injustice, we must recognize past harms, shrink the system's footprint, support historically marginalized communities, affirmatively enact anti-racist policies, and develop an anti-racist workplace culture. To ensure against racial disparities sentencing, I will analyze cases at each stage of the criminal justice process to identify areas of racial disparity, and create targeted policies to correct any racial disparities found. I will require racial justice training that incorporates the history of American prosecution and mass incarceration. The Office will partner with local communities – including directly impacted community members – to develop an educational program for staff about Manhattan's racial history. Staff will be trained in implicit bias, procedural justice, cultural humility, and the impacts of trauma. I will regularly visit jails and prisons to meet with incarcerated Manhattanites, and will require that all attorneys participate in the Inside Criminal Justice course in which DA staff members study criminal justice alongside incarcerated students and collaboratively develop policy.

Eliza Orlins (D): There is absolutely racism within our criminal legal system, and it is the job of the district attorney – and every leader and elected official – to use the tools at their disposal in order to eradicate it. Through our transformative Conviction Review Unit, we will have a data and research team in the DA's office that will build automatic flags into our system, so we know when it appears that charges or sentence recommendations in a particular case depart from the office norm. From there, we can review a case and see if there needs to be an adjustment in the sentencing, or a review of the case as a whole. We will also be enacting stringent reviews on what we do not charge as an office, because racial disparities exist most frequently and egregiously in lower-level cases – a clear example of this is in drug possession cases, which I would decline to prosecute as DA. Information and widespread, transparent data is key to eliminating racial disparities in sentencing.

Dan Quart (D): The trial penalty is a form of pressure on defendants that further criminalizes poverty, contributes to mass incarceration, and is frankly dishonest and predatory. As DA, I would only file charges that evidence supports and I'd get rid of the

trial tax so people don't feel pressured into pleading guilty. To reduce racial disparities I will not prosecute most low-level offenses and make sure that cases that come before my office are looked at objectively and ensure that one standard of justice is applied to all. In order to ensure that our decisions are free of bias, I'll also collect and make public the data on charging decisions and plea offers, disaggregated by race, ethnicity, gender identity/expression because District Attorney must also consider the aggregate impact of their work; careful consideration of each individual case cannot bring about justice if disproportionate racial impacts still exist.

As compared to other candidates who refuse to give up that discretion, I will not use the "enterprise statute" that has been used by DA Vance in "drug sweeps" as a tool against Black and brown men in Manhattan. I have a fundamental belief that these laws as applied in communities of color cannot be used in a race neutral way. Therefore I will not use these tools that expand incarceration in a racially disparate manner. The same holds true for the use of surveillance based technology which overwhelmingly identifies young men and boys of color throughout Manhattan based on faulty or nebulous evidence, for example Facebook posts or website references. These tools have an obvious racial bias that, when applied, will result in a disproportionate number of people of color being incarcerated.

Tali Farhadian Weinstein (D): I am committed to doing the data collection, monitoring, and studies necessary to eliminate racial and unacceptable disparities in charging and sentencing. To this end, I will partner with outside organizations to review our data and will make our data on disparities publicly available.

6. Our report recommends that judges and prosecutors be prevented from penalizing defendants with longer sentences based on their decision to go to trial or challenge the government's case through pretrial motion practice. How will your office ensure defendants are not unduly penalized in this way?

Tahanie Aboushi (D): We will never advocate for a trial penalty or conduct plea-trial negotiations in a way that makes people think they will be penalized by the DANY for exercising their constitutional rights. We know the harm the trial penalty, and the fear of it, causes—it leads people to plead guilty even if innocent, or overcharged, or if they have a strong defense. We will make sure all people charged by the DANY know that if the plea offer is to a certain sentence for a certain offense, the DANY will never advocate for a longer sentence or new collateral consequences for that offense if the case goes to trial. Criminal sentences should not be bargaining chips. Incarceration will be a last resort for our office, and then only for the shortest period that will reasonably keep the public safe. That calculus does not suddenly change if a person goes to trial. Lastly, our plea offers will not come with catches—such as accept this plea offer or we will seek an enhanced penalty. Those types of coercive tactics will have no place in the DANY if I am elected.

Alvin Bragg (D): As articulated above, our office's policies on sentencing simply do not allow for a trial penalty to exist. Real-time monitoring of these policies' implementation at the highest levels will ensure compliance, and my experience managing over 1500 employees at the Attorney General's office gives me the skills to manage implementation effectively.

Thomas Kenniff (R): I do not see any circumstance where it would be appropriate to seek a harsher sentence because a defendant engaged in pre-trial motion practice. I also do not believe in punishing a defendant for exercising their right to go to trial, although it may be appropriate for a defendant to receive a sentencing benefit for accepting

responsibility by way of a guilty plea. In many instances, it is a matter of proportionality. Being the longest serving defense attorney in this race, I have been particularly aghast at the unjust penalties I have seen criminal defendant's pay for the mere act of exercising their trial right under the 6th Amendment. I had one recent case where my client was offered a conditional discharge pretrial, and after conviction at trial, where my client did not testify, District Attorney Vance sought 4 to 12 years (the statutory maximum was 5 to 15). Thankfully the judge did not go along with this and, in fact, scolded the prosecutor for making such a recommendation. These sort of vindictive sentencing requests will not happen under my administration.

Lucy Lang (D): I will work with the defense bar to ensure transparency around charging guidelines, that everyone charged with a crime has access to the entirety of the evidence against them, and that people are not penalized for exercising their right to pre-trial litigation or trial.

Eliza Orlins (D): I agree with your report, because I have seen egregious actions on the part of the DA's office as a public defender right here in Manhattan. Penalizing defendants with longer sentences because they choose to execute their constitutional right to a trial is simply beyond the pale. It's unjust, it's racist, and it's wrong. While the District Attorney cannot control what judges do, we can do a few important things to ensure that defendants are not penalized for exercising their rights. As DA, I will fight to make sure that laws are changed that end this practice. I will mandate that my staff argue in court and ask the judge for what was originally asked for in the plea deal — ending the trial tax. Under my leadership, the DA's office will also work to persuade judges to accept plea deals.

Dan Quart (D): My declination policy will reduce the number of cases brought against New Yorkers. For the cases we do bring, my office will never seek longer sentences just because a defendant decided to go to trial or filed a pretrial motion, as is their right.

Tali Farhadian Weinstein (D): As a default rule, I will require ADAs to seek the minimum sentences—supervisory approval will be required in order to seek a higher sentence. As part of the supervisory approval process, ADAs will be required to examine the office's sentencing data to ensure that like cases are treated alike.

Yes or No

- 1. In 2019, New York State passed bail reform legislation which abolished bail for many misdemeanors and nonviolent crimes. However, our report found the trial penalty manifests itself through the use of bail to leverage plea deals. For example, if a defendant doesn't plead guilty at the first appearance, bail may be set. Will your office commit to not using bail to coerce defendants into waiving their right to trial? Yes or no.**

Tahanie Aboushi (D): Yes

Avlin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes, I will not seek bail as DA and am proud of my work to write the original bail laws and vote against the rollbacks.

Tali Farhadian Weinstein (D): Yes, my office will never use bail to coerce defendants into plea deals. Moreover, I will continue to advocate for the elimination of cash bail and the creation of a limited means for prosecutors and judges to consider public safety risk in deciding pretrial detention or terms of release — a system like that existing in Illinois, New Jersey, and federal courts.

2. Will you instruct ADAs in your office to provide full access to discovery, not just the potentially exculpatory evidence? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes. I am a proponent of early and open discovery. In my office, ADAs will understand that their discovery obligations must be prioritized.

3. Do you support limited judicial oversight of plea bargaining? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes

4. Do you support judicial “second looks”? (By second looks, we are referring to a right to petition the court for a sentence reduction after the passage of some specified time). Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes, I have been a staunch advocate for judicial second looks, and as district attorney I will continue to vigorously advocate for the creation of a second look mechanism to revisit and correct excessive sentences.

5. Do you support proportionality between pre-trial and post-trial sentencing? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes

6. Do you support NYCPL § 220.10(5) being repealed because it limits the ability to resolve a case by pleading guilty to a lesser charge? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): I need further study of this proposal.

7. Do you believe The Code of Judicial Conduct should include an express prohibition against retaliatory or vindictive sentences for a defendant who has rejected a pretrial plea offer and proceeded to trial? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes, defendants should not be sentenced in retaliatory or vindictive manner for their decision to exercise their constitutional rights.

8. **Do you think prosecutors should be prohibited from conditioning plea offers on a waiver of statutory or constitutional rights necessary for a defendant to make an informed decision on whether to plead guilty? Yes or no.**

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): I need more information about the waivers at issue, but in general I believe defendants should know the charges and evidence against them before making an informed decision to plead guilty.

9. **Do you believe it should be unethical for a prosecutor to seek a higher sentence compared to the pretrial offer based on the defendant litigating their statutory or constitutional rights, including the right to trial? Yes or no.**

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): No (not in all cases)

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): No. As a default rule, I will require ADAs to seek the minimum sentences—supervisory approval will be required in order to seek a higher sentence. As part of the supervisory approval process, ADAs will be required to examine the office's sentencing data to ensure that like cases are treated alike. But, in some cases, it may be appropriate to seek a higher sentence after trial.

10. Will you encourage courts, prosecutors, and the defense bar to collect information on plea offers and trial outcomes? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes, I will prioritize the collection of this data and partner with outside organizations to study the data in order to eliminate unacceptable disparities.

11. Do you support increased funding for public defense? Yes or no.

Tahanie Aboushi (D): Yes

Alvin Bragg (D): Yes

Thomas Kenniff (R): Yes

Lucy Lang (D): Yes

Eliza Orlins (D): Yes

Dan Quart (D): Yes

Tali Farhadian Weinstein (D): Yes, I would advocate for increased funding for public defense.