

1 purpose of this? The whole purpose is to try to figure
2 out who not to execute because of their functioning, the
3 way they function. That's the purpose.

4 Let's look at what Texas citizens would
5 think about this person, and let's try to get standards
6 that reflect that. I really did think that's what they
7 were trying to do in that opinion. And they are arguing
8 that that's the wrong thing to try to do in this
9 instance.

10 First, because it would produce
11 nonuniformity among 50 states or among the many states
12 that have the death penalty.

13 Second, because the question is not what the
14 citizens of the state think about who should be
15 executed. That has nothing to do with it. Oddly
16 enough, in this case, what has to do with it is a
17 technical matter about this individual, that would free
18 some while subjecting others to the death penalty,
19 irrespective of what Texas citizens think.

20 So do you see my question? What were they
21 up to in this opinion? Briseno. I think they were up
22 to going back to the citizens of Texas. You saw what I
23 think they are up to. And you tell me if I'm right,
24 wrong or why.

25 MR. KELLER: Justice Breyer, I -- I believe

1 that's mistaken, because there are two points after that
2 discussion in Texas consensus where the Court says, and
3 this is page 6 of Briseno, as a Court dealing with
4 individual cases and litigants, we decline to answer
5 that normative question about the Texas consensus
6 without the significant greater assistance from the
7 citizenry acting through its legislature. And then two
8 pages later, it's again assessing the difference between
9 legal determination and the medical diagnosis, and the
10 Court says that definitional question is not before us
11 in this case, because it goes on to adopt the AAMR 9th
12 Clinical Standards.

13 JUSTICE SOTOMAYOR: Mr. General, going --
14 just -- is it your view that what Texas is trying to do
15 is determine who is truly on the clinical borderline as
16 opposed to trying to determine the type of mentally
17 disabled people that it thinks should be executed --

18 MR. KELLER: Correct.

19 JUSTICE SOTOMAYOR: -- on the latter?

20 MR. KELLER: Yes. Texas has adopted
21 clinical definitions in the AAMR 9.

22 JUSTICE SOTOMAYOR: All right. So is it
23 fair to say that in Texas, a mildly disabled person is
24 unlikely to be considered disabled by the CCA under the
25 Briseno factors?

1 MR. KELLER: No. If there was a diagnosis
2 of intellectual disability, even mild intellectual
3 disability, that would satisfy the --

4 JUSTICE SOTOMAYOR: But you -- according to
5 one of the cases that you've cited to me where someone
6 was clinically diagnosed as mildly disabled, and the CCA
7 said under the Briseno factors that they should not be
8 executed. A lot of the cases that you provided me with,
9 there was clinical evidence of moderate -- and mostly
10 severe -- but moderate to severe disability. But
11 there -- was there anyone with mild disability that the
12 Briseno factors would find sufficiently disabled?

13 MR. KELLER: Well, Justice Sotomayor, the
14 Van Alstyne case is the case that I can point to where
15 the CCA looked at the Briseno factors and granted her
16 leave.

17 If I can pull back up the question --

18 JUSTICE SOTOMAYOR: Did they find him mildly
19 disabled?

20 MR. KELLER: The testimony there was on
21 adaptive deficits. And I believe the mild -- whether
22 it's mild or moderate would go more towards IQ scores.

23 If I can pull back out: So the question
24 presented here is whether Texas has prohibited the
25 current standards from being used and is erring by using

1 outdated standards. Petitioners concede we couldn't
2 have used an older version. And Texas is not
3 prohibiting the use of current standards. In this case,
4 the CCA repeatedly quoted -- it cited --

5 JUSTICE SOTOMAYOR: So why did it go through
6 so much trouble in saying that it wasn't going to use
7 current standards, that it was only going to use the
8 older standards and the Briseno factors?

9 MR. KELLER: Because the current standard
10 used by AAIDD 11th does not have the relatedness
11 inquiry. And now, that is an extraneous part of this
12 case. It was a second alternative holding. But that
13 was the main reason why the CCA said, trial court,
14 you're not following our precedence. That's error.

15 JUSTICE SOTOMAYOR: Well, if we believe that
16 its definition of relatedness has no support anywhere,
17 would that have been a valid reason for discounting the
18 current clinical standards?

19 MR. KELLER: Well, that was a second
20 alternative holding. Here, it's facially valid for
21 Texas and any other State to have a relatedness
22 requirement. That's in the DSM-5. The DSM-5 talks
23 about needing something to be directly related, but it
24 doesn't flesh that out. So what we were talking about
25 is the application of that.

1 And this would be an odd case to decide that
2 issue. When it's a second alternative holding, there is
3 no State consensus on this causation point. That's the
4 Coleman case from the Tennessee Supreme Court cited in
5 the reply brief. We are not aware of any case in which
6 the relatedness inquiry was the dispositive point on
7 which an Atkins claim was denied.

8 JUSTICE SOTOMAYOR: Well, I'm not sure how I
9 can accept your characterization of the CCA decision
10 when basically it's saying his poor intellectual
11 functioning on IQ tests, which happened when he was
12 younger, were not related to his intellectual abilities;
13 they were related to his poverty, his -- his morbidity
14 factors.

15 If they are saying that, how are you saying
16 they weren't finding that he wasn't intellectually
17 disabled because of those other factors?

18 MR. KELLER: Well, it wasn't just --

19 JUSTICE SOTOMAYOR: That's how I read their
20 decision.

21 MR. KELLER: Well, it wasn't just the CCA
22 saying that. It was relying on testimony. Here,
23 Petitioner argued --

24 JUSTICE SOTOMAYOR: Well, wait a minute.
25 The testimony of Compton was, having looked at all of

1 the IQ tests, was: I'm not sure. It's probable that
2 he's intellectually disabled by IQ, but he wouldn't
3 qualify in my judgment because of his adaptive skills.
4 But even the State's own expert said that it was
5 probable that he was intellectually disabled.

6 MR. KELLER: The State's expert said that it
7 would have been borderline on intellectual functioning.
8 But the CCA on relatedness -- and, again, this is a
9 second alternative holding that the Court doesn't have
10 to reach -- it looked at testimony from Petitioner's
11 retrial in 2001 when Petitioner affirmatively argued
12 that he was not intellectually disabled. And the expert
13 there that was Petitioner's own expert agreed.

14 JUSTICE GINSBURG: It was a strategic
15 advantage to doing that back in those days; right?

16 MR. KELLER: Well, actually, at the time,
17 Penry would have been decided, and there would have been
18 a valid basis to say, Petitioner, I'm intellectually
19 disabled; therefore, use it as mitigation evidence. The
20 strategy, which was a reasonable strategy from counsel,
21 was to say that Petitioner would be able to grow in
22 prison, and, therefore, that was mitigation evidence
23 that he could be reformed.

24 But, right, the Petitioner expert agreed
25 with the prosecutor the Petitioner was, quote, nowhere

1 near, unquote, intellectually disabled and that a lack
2 of education was to blame. That's at Joint Appendix
3 269.

4 JUSTICE SOTOMAYOR: Well, that happened in
5 Atkins, too. Regrettably, until we decided that mental
6 disability was a ground to excuse execution, many
7 mentally disabled defendants were represented by counsel
8 who thought that arguing differently was a better
9 strategy.

10 MR. KELLER: Of course, Penry would have
11 been on the books, and so there would have been an
12 advantage to argue that. And that's why that's a
13 contradicting argument. Regardless, even if that's not
14 controlling now here, the CCA credited Compton's
15 testimony as the most reliable expert who is the only
16 forensic psychologist who thoroughly reviewed the
17 records and personally evaluated Petitioner for
18 intellectual disability. And Compton said, I don't have
19 the deficits for diagnosis.

20 But this is a fact-bound question of the
21 application of the test. The question presented here is
22 whether Texas' well-established, three-prong test for
23 intellectual disability violates the Eighth Amendment.
24 And Texas is well within the national consensus. There
25 are only four States that have categorically wholesale

1 adopted one of the current frameworks. Two of them did
2 so saying there's no material difference in the language
3 between the current framework and that test. And that's
4 the precise position the Petitioner has taken in the
5 reply brief.

6 JUSTICE GINSBURG: Can you explain why Texas
7 applies a different test to determine whether a school
8 child is intellectually disabled, or a juvenile
9 offender, to determine what to do with that offender,
10 Texas applies a different test when compatible with
11 current medical standards in both of those categories?
12 Why does it have a different standard for capital cases
13 only?

14 MR. KELLER: So first of all, the juvenile
15 offender discharge rule that Petitioner cites at page 7
16 of the reply brief, that actually adopts the three-prong
17 test that Briseno adopted. That's 37 Texas
18 Administrative Code 380.8779(c)(1).

19 Now, there are other provisions that
20 incorporate by reference the latest manual of the DSM.
21 But as the DSM-5 itself noted, there is an imperfect fit
22 between a determination of legal -- a legal
23 determination of culpability for Eighth Amendment
24 purposes and a medical diagnosis. And since you have
25 those different purposes, it is valid for a State to

1 have a different definition of when someone is morally
2 culpable under the Eighth Amendment versus when someone
3 should be able to get social-services benefit.

4 JUSTICE BREYER: Well, that's the point.
5 That's exactly the point. That's the point that we've
6 been making, or at least I thought we were. That the
7 whole point of *Briseno* is really to answer the question
8 that you said -- probably should say, no, it isn't
9 really there -- it's to help determine which persons
10 suffering borderline cases of mental disability ought to
11 be executed, or should not be because they are less
12 morally culpable.

13 Now, I did think that's what they said.
14 That does supply a reason for making differences, as
15 Justice Ginsburg just pointed out. And then the
16 question is, is it what the purpose of *Atkins* and the
17 other case *Hall* was, was it to give each State the right
18 to decide in borderline cases whom or whom not to
19 execute in light of their feelings about capital
20 punishment?

21 I thought it had a different purpose --
22 unusual in the law -- but which was to appeal to
23 technical definitions of who and who is not mentally
24 retarded or intellectually disabled. That's a real
25 issue. But I think that this case does present that

1 issue.

2 MR. KELLER: And what Atkins and Hall said
3 was there's a critical role for the States. And while
4 States don't have unfettered discretion, they do have
5 some discretion. And every time the DSM-5 or the next
6 edition of the AAIDD 11th -- or 12th comes out, the
7 States don't have to automatically wholesale about that,
8 because there is a well-established three-prong test.
9 This test has existed for 50 years. And the States --
10 there's a national consensus adopting that test.
11 There's not a national consensus against the
12 relatedness-inquiries causation. There is not a
13 national consensus that the various factors of the
14 Briseno factor-of-an-entry test can't be applied.

15 And on adaptive strengths in particular, no
16 State prohibits the use of adaptive strengths. In fact,
17 three of the States that use the current frameworks,
18 that have adopted wholesale the current frameworks,
19 still look at adaptive strengths. The Hackett case from
20 Pennsylvania is the best example of that.

21 JUSTICE SOTOMAYOR: Well, the problem is
22 that, as I read the CCA opinion, it's looking at
23 adaptive strengths only and not at adaptive deficits and
24 looking at the depth of them or how they form the
25 intellectual disability component. Even Dr. Compton,

1 the State's expert, testified that Mr. Moore could not,
2 from memory, recreate a clock.

3 Now, she says, I don't quite believe that,
4 but she doesn't quite believe that of a person who, at
5 13's, father threw him out because he was dumb and
6 illiterate: Couldn't tell the days of the week;
7 couldn't tell the months of the year; couldn't tell
8 time; couldn't do anything that one would consider
9 within an average, or even a low average, of
10 intellectual functioning, who is eating out of garbage
11 cans repeatedly and getting sick after each time he did
12 it, but not learning from his mistakes.

13 The -- the State's opinion does very little
14 except say those are products of his poor environment;
15 they're not products of his intellectual disability.

16 MR. KELLER: No. Compton's testimony was
17 she did not have the adaptive deficits. In addition to
18 analyzing, she said, there are limitations I see,
19 whether it's academic ability or social skills, but
20 there has to be significant limitations, and she said
21 that wasn't there.

22 She noted Petitioner testified four
23 different times in the course of these proceedings, even
24 in a Faretta hearing, and filing pro se motions, and was
25 responsive to questions and was understanding what was

1 going on. He lived on the streets. After the crime, he
2 absconded to Louisiana.

3 JUSTICE SOTOMAYOR: The problem with Lennie,
4 who the Briseno factors were -- were fashioned after --
5 Lennie was working on a farm. How is that different
6 from mowing a lawn?

7 And -- and the State had no problem in
8 saying that Lennie, even though he could work, earn a
9 living, plan his trying to hide the death of the rabbit
10 he killed, that he could do all of those things, and yet
11 he was not just mildly, but severely disabled.

12 Why is the fact that he could mow lawns and
13 play pool indicative of a strength that overcomes all
14 the other deficits?

15 MR. KELLER: Lennie, and the character from
16 Of Mice and Men, was never part of the test. It's not
17 part of the test. It was an aside in the opinion, and
18 the Court said it was not going to address that separate
19 question and instead adopted the clinical standards.

20 JUSTICE SOTOMAYOR: But it informed its view
21 of how to judge the lack or strength of adaptive
22 functions. It used the Lennie standard.

23 MR. KELLER: No, it absolutely did not. And
24 we can see that, not only from the fact that what
25 happened in Briseno was the Lennie paragraph was an

1 aside, and then the Court adopted the clinical
2 standards.

3 The CCA has only once since then ever cited
4 Lennie, and it was in a footnote quoting a trial court,
5 and the CCA granted Atkins relief in that case. The
6 Lennie standard has never been part of a standard.
7 That's one of the most misunderstood aspects of the
8 briefing here.

9 JUSTICE KAGAN: General, can I ask -- I'm
10 sort of trying to reconcile the various statements you
11 made here, and in your briefs, and here's what I come up
12 with, and tell me if it's right.

13 I think what you're saying is the Texas
14 Court of Appeals is complying with Atkins because it
15 used a three-pronged test, focusing on IQ and adaptive
16 function and age. But within each of those prongs, in
17 order to make this distinction between clinical
18 disability and moral culpability within each of those
19 prongs, the Court can choose how to apply that prong,
20 and particularly what levels of impairment to use.

21 Is that a fair assessment?

22 MR. KELLER: Mr. Chief Justice, may I
23 answer?

24 CHIEF JUSTICE ROBERTS: Sure. Sure.

25 MR. KELLER: I don't believe so, Justice

1 Kagan, because what the Court has done is it has adopted
2 the clinical prongs. It has adopted the three-part
3 test.

4 JUSTICE KAGAN: Right. I -- yes, it has
5 adopted the three-part test. But within each of those
6 prongs, you get to apply it.

7 I thought that that was the entire point of
8 Hall: No, that's wrong. You don't get to apply it
9 however you want.

10 MR. KELLER: But on intellectual
11 functioning, Texas has never had an IQ cutoff. As Hall
12 recognized, it applied the -- the error of measurement.
13 And even on the adaptive prong analysis, that is going
14 to account for conceptual, social, and practical skills
15 as Texas has actually adopted the current standards.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 Three minutes, Mr. Sloan.

18 REBUTTAL ARGUMENT OF CLIFFORD M. SLOAN

19 ON BEHALF OF THE PETITIONER

20 MR. SLOAN: Thank you, Your Honor. Just a
21 few brief points.

22 First, there was a lot of discussion about
23 the role of Briseno and the relationship to clinical
24 standards in the Texas Court of Criminal Appeals'
25 decisions.

1 And I would suggest that the Court look at
2 the American Bar Association amicus brief because it
3 goes through three decisions of the Court of Criminal
4 Appeals where in each of those three decisions, the
5 clinical testimony, the expert testimony, was unanimous
6 that the individual was intellectually disabled, and the
7 Texas courts used the Briseno factors to conclude that,
8 in fact, he was eligible for execution notwithstanding
9 the unanimity of that expert testimony.

10 Second, my friend said that I conceded that
11 they could have just applied the DSM-IV and rejected the
12 DSM-5. Just to -- to be clear, and just for the record,
13 I did not concede that.

14 And in my response to Justice Kennedy, I was
15 saying that if a court -- if a State is going to reject
16 clinical consensus and in the current clinical standard,
17 as in that example, then there would be a number of
18 factors that the court would look at.

19 And what I didn't get to was, and very
20 importantly, is the Eighth Amendment principles and
21 concerns that this Court outlined in Hall and in Atkins,
22 and the absolute requirement to ensure that somebody who
23 is intellectually disabled is not going to be executed.

24 Third, one point about Chief Justice's
25 initial question that I never quite got to about the

1 question presented, in addition to the fact that, as we
2 did discuss, its interwoven with the Briseno decision.

3 In the cert papers themselves, in our cert
4 petition and our reply, we repeatedly used the phrases
5 like "nonclinical," "unscientific," "standards
6 completely untethered to clinical consensus." And,
7 indeed, the State, in its opposition to the cert
8 petition, rested heavily on the Briseno factors. There
9 is a few pages of their opposition that are specifically
10 directed to that. So there -- that was very extensively
11 discussed in the cert papers at the time.

12 JUSTICE ALITO: Could you just clarify what
13 you said about DSM-IV and DSM-5, because I had a
14 different impression from your initial argument.

15 So if we were to say today every State must
16 adopt DSM-5, and then at some point in the future DSM-6
17 comes out, would it be your position that those States
18 would all have to go back and reconsider what they're
19 doing?

20 MR. SLOAN: They -- they would have to
21 consider them as part of the diagnostic framework.

22 And, again, these new editions come out
23 about once every 10 years. But, yes, Your Honor,
24 because those editions represent the scientific method
25 at work, people using their best clinical and medical

1 training to refine and to sharpen the tools, and with
2 regard to intellectual disability, to identify the
3 people --

4 JUSTICE KENNEDY: Is it your view that
5 Briseno factors are all consistent with DSM-IV?

6 MR. SLOAN: No, Your Honor. They are
7 completely inconsistent with clinical factors, and they
8 have been from the day that they were announced. But it
9 is even more clear that they are inconsistent with
10 clinical factors in light of the current clinical
11 standards.

12 And my friend also was suggesting that there
13 is some question about -- based on Briseno -- may I
14 finish this sentence, your Honor?

15 CHIEF JUSTICE ROBERTS: Sure.

16 MR. SLOAN: -- based on Briseno about
17 whether, in fact, there is a bright line exemption for
18 the intellectually disabled. He was suggesting that
19 it's clear there is. And I just briefly wanted to call
20 the Court's attention to what the Court of Criminal
21 Appeals has said relying on Briseno.

22 In *Ex parte Hearn*, the Court said, and I
23 quote: "This Court has expressly declined to establish
24 a mental retardation bright line exemption from
25 execution without significantly greater assistance from

1 the Legislature." Briseno 135 Southwest 3d., et seq.

2 And, similarly, in Ex parte Sosa, the Court
3 said, "Answering questions about whether the defendant
4 is mentally retarded for a particular clinical purpose
5 is -- is instructive but not conclusive."

6 Thank you, Your Honor.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.
8 The case is submitted.

9 (Whereupon, at 11:11 a.m., the case in the
10 above-entitled matter was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A	21:15 38:22 adaptive-func... 16:9 add 6:3 addition 19:6 20:7 35:16 50:17 55:1 additional 10:22 address 4:24 25:9 35:5 51:18 adjudications 12:18,21 Administrative 47:18 admit 39:13 adopt 28:22 31:14,16 41:11 55:16 adopted 3:18 10:4 28:1 29:17 30:6,25 41:20 47:1,17 49:18 51:19 52:1 53:1,2,5 53:15 adopting 49:10 adopts 47:16 advantage 45:15 46:12 affirm 36:7 affirmatively 45:11 affirmed 37:12 age 20:4 29:25 52:16 aggravates 4:22 agree 28:13,19 39:19 agreed 45:13,24 ahead 31:25 air 34:22 alike 21:5 25:1,2 Alito 8:12,24 9:1 9:7,18 10:3,15 12:4 18:13 19:24 20:10,17	20:22 21:9 22:1,7 35:10 55:12 Alito's 18:18 alleged 18:2 Alstyne 37:11 37:24 42:14 alternative 35:23 43:12,20 44:2 45:9 Amendment 3:11,15 4:4 26:13 30:23 46:23 47:23 48:2 54:20 American 20:24 21:12 54:2 amicus 19:14 21:2 54:2 analysis 20:11 28:6 36:2 53:13 analyzed 34:8 analyzing 28:2 50:18 announced 56:8 answer 8:16 23:12,13 29:14 39:9 41:4 48:7 52:23 answered 28:4 answering 10:16 57:3 answers 26:24 anti-clinical 11:10 appeal 48:22 appeals 7:7 9:10 9:22 10:4,10 16:19 26:10 28:14 33:11 52:14 54:4 56:21 appeals' 5:3 6:24 10:7 28:24 29:8 53:24	APPEARAN... 1:15 appears 34:9 appellate 37:2 appendix 5:13 11:16 18:21 27:25 35:14 46:2 applicability 15:16 application 15:25 26:1 43:25 46:21 applied 12:12 30:8,10 33:18 49:14 53:12 54:11 applies 47:7,10 apply 9:12 24:24 34:7 36:20,21 38:25 52:19 53:6,8 applying 16:12 appreciate 8:16 approach 3:18 appropriate 9:22 area 22:21,23,24 23:4 24:4 36:19 areas 22:17,20 argue 46:12 argued 44:23 45:11 arguing 40:7 46:8 argument 1:13 2:2,5,8 3:3,6 5:20 6:20 26:19 39:5 46:13 53:18 55:14 arguments 24:1 article 20:22,23 aside 51:17 52:1 asked 24:11 asking 24:22	27:12 28:23 aspects 52:7 assessing 20:25 41:8 assessment 21:4 32:9 52:21 assessments 30:18 assets 21:5 assistance 41:6 56:25 associated 19:11 Association 21:13 54:2 assumed 18:3 Atkins 3:10 4:1 6:8 8:18 11:19 11:20 12:18 14:2,14,23 19:19 26:4,12 30:14 37:11 44:7 46:5 48:16 49:2 52:5,14 54:21 attention 56:20 attributable 18:5 Austin 1:18 authoritative 21:24 automatically 49:7 average 50:9,9 aware 44:5
			B	
			back 6:19 13:9 13:13,14 31:1 34:6 40:22 42:17,23 45:15 55:18 balance 26:15 Bar 54:2 barred 7:7 based 11:11 27:2 56:13,16 basically 26:3	

<p>39:2 44:10 basis 17:23 36:7 38:21 45:18 bear 36:14 beginning 16:18 behalf 1:16,19 2:4,7,10 3:7 26:20 53:19 behavior 18:14 believe 28:20 40:25 42:21 43:15 50:3,4 52:25 Bell 37:13 bench 36:23 benefit 48:3 best 25:7 49:20 55:25 better 46:8 beyond 15:16 big 32:19 blame 46:2 BOBBY 1:3 bolster 35:23 books 46:11 border 23:19 borderline 23:18,18 24:8 39:16 41:15 45:7 48:10,18 Breyer 23:11 24:10,19 32:2 39:2 40:25 48:4 brief 19:14 27:1 27:9,21 29:1 29:21 30:8,14 30:20 31:18 37:16 44:5 47:5,16 53:21 54:2 briefing 52:8 briefly 56:19 briefs 18:3 21:2 39:6 52:11 bright 14:3 26:7 56:17,24</p>	<p>Briseno 3:22 5:6 5:7,8 6:7 7:8 7:10,14,15,25 8:3 10:18,18 10:23 11:4,7,8 12:10,11 13:14 13:15,20,21,24 14:5 15:11 26:9 27:5,7,15 27:17 28:5,8 28:15,21,21,24 29:12 30:6,24 31:15,22 32:7 32:14,20 33:8 33:11,15 34:3 34:7,9,20 35:9 35:17 36:8,10 36:12 37:10,10 37:16,25 38:3 38:7 39:14 40:21 41:3,25 42:7,12,15 43:8 47:17 48:7 49:14 51:4,25 53:23 54:7 55:2,8 56:5,13,16,21 57:1 broader 13:19 Brumfield 14:23 built 34:11,12 bullet 27:18 bullet-point 27:8 bunch 23:15</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 calculate 34:18 calculating 34:22 call 56:19 called 23:20 cans 50:11 capital 3:19 36:24 47:12 48:19</p>	<p>capture 36:10 case 3:4 5:19 6:11 7:15 27:4 31:13 34:6,8 35:12,21 37:2 37:4,7,12,14 40:16 41:11 42:14,14 43:3 43:12 44:1,4,5 48:17,25 49:19 52:5 57:8,9 cases 3:19 20:25 23:13,15,16,18 23:23 24:8 30:7 33:11 36:24 37:25 38:3 39:16 41:4 42:5,8 47:12 48:10,18 categorically 31:14 35:7 46:25 categories 47:11 category 4:2 Cathey 37:2 causation 3:24 18:9,12,20 19:1,21 44:3 49:12 cause 18:23 19:3 19:17 caused 18:22 causes 18:23 CCA 16:2 34:6 35:5 36:15 37:1,10,20 38:8,21 41:24 42:6,15 43:4 43:13 44:9,21 45:8 46:14 49:22 52:3,5 cert 55:3,3,7,11 certain 20:3 challenges 3:25 changed 4:19 chapter 25:17 25:17</p>	<p>character 51:15 characteristics 19:11 characterizati... 44:9 chase 10:9 Chief 3:3,8 4:5,6 4:8 5:17 6:13 7:19 8:6 15:23 18:16 19:23 26:17,21 32:4 52:22,24 53:16 54:24 56:15 57:7 child 47:8 childhood 19:8 choose 28:16 52:19 chopped 16:25 circumstances 33:6 36:13 citation 27:19 cited 21:1 30:8 31:11 38:1 42:5 43:4 44:4 52:3 cites 47:15 citizenry 41:7 citizens 26:11,14 29:5 38:13,15 39:19 40:4,14 40:19,22 claim 44:7 clarify 55:12 classification 37:17 clear 6:5 12:25 13:8 24:16 28:15 30:13 32:14 35:19 54:12 56:9,19 clearly 12:11 29:10 30:6 client 23:16 24:1 CLIFFORD 1:16 2:3,9 3:6 53:18</p>	<p>clinical 3:16 4:18,19 5:9 6:3 10:10,11 11:20 11:22 12:8,24 13:2,4 14:7,10 14:23 15:1,7 16:15,16 17:5 17:6,23 18:24 19:4,15,17 21:11,13,18,25 22:12 27:3,3 27:10 28:7,22 29:17 30:18,25 32:13,20 33:12 34:8,10 38:11 41:12,15,21 42:9 43:18 51:19 52:1,17 53:2,23 54:5 54:16,16 55:6 55:25 56:7,10 56:10 57:4 clinically 3:23 16:4,6 17:9 18:7 42:6 clinician 29:3 32:10 clinician's 13:3 clinicians 28:18 30:4 32:11,24 33:13 34:15 38:15 clinicians' 30:2 clock 50:2 closely 14:16 co-morbidity 19:2 Code 29:18 47:18 coin 7:9 Coleman 44:4 come 11:8 52:11 55:22 comes 21:14 49:6 55:17 coming 27:17 common 21:22</p>
---	--	---	---	--

<p>community 20:18 24:17 community's 3:16 11:24 12:1 14:20 compared 39:8 comparison 7:21 compatible 47:10 complete 28:17 completely 17:9 19:3 55:6 56:7 complying 52:14 component 49:25 Compton 44:25 46:18 49:25 Compton's 36:4 46:14 50:16 concede 43:1 54:13 conceded 26:23 54:10 concepts 31:10 conceptual 35:3 36:17 53:14 concern 6:19 concerns 54:21 conclude 22:3 54:7 concluded 36:1 conclusions 28:1 conclusive 57:5 concrete 38:25 condition 15:15 conflict 5:24 6:4 6:8 14:8,10,25 16:15 23:5 conflicts 17:5 congruent 27:23 consensus 15:7 20:18 22:13,19 22:22 26:11,13 28:12,17,17 29:5,10,13 37:19 38:20</p>	<p>39:18 41:2,5 44:3 46:24 49:10,11,13 54:16 55:6 consider 10:6 12:18 13:10 50:8 55:21 consideration 21:5 35:16 considerations 10:22 15:3,4 22:11 considered 25:13 27:24 41:24 consistent 13:15 13:16 17:12 39:7 56:5 consistently 33:17 constitutional 22:8 consult 13:1,12 consulting 5:5 context 15:10,12 15:13 27:6 continue 34:5 contradicting 46:13 contrary 29:9 contrast 11:19 controlling 34:10 46:14 core 4:1 26:3 correct 6:12 8:5 41:18 correspondence 4:18 counsel 26:17 45:20 46:7 53:16 57:7 country 24:2,5 24:25 26:1 course 14:22 17:11 26:12 38:2 46:10 50:23</p>	<p>court 1:1,13 3:9 3:10,13 5:2,4,4 5:7,12 6:23 7:7 9:10,15,19,19 9:21,24,25,25 10:2,4,6,10 11:3,7,12,19 11:21 12:6 14:2,5,19,22 15:3,14,15 16:9,19,20,24 17:7,10,13,23 18:11,21 19:5 19:16,18 20:14 22:11 23:24 24:16 25:16 26:9,10,12,22 27:14,21,23 28:1,14,24 29:7,14,16,23 30:22 31:10 32:22 33:11 34:1,6,7 35:6,6 35:12 36:1,20 36:23 37:12 38:11,19 39:13 41:2,3,10 43:13 44:4 45:9 51:18 52:1,4,14,19 53:1,24 54:1,3 54:15,18,21 56:20,22,23 57:2 court's 4:1 11:16 17:6 18:13 27:7,22 56:20 courts 9:9 12:7 12:12 24:15 30:18 37:2 54:7 covered 4:16 37:9 credited 46:14 crime 35:8 51:1 criminal 5:3</p>	<p>6:24 9:10,22 10:4,6,9 16:19 26:10 28:14 53:24 54:3 56:20 critical 12:23 49:3 culpability 30:24 47:23 52:18 culpable 48:2,12 current 3:20 4:11,22 5:6,22 6:3,15,25 7:21 7:23 8:9,19 9:17 10:1,20 10:25 11:1,13 12:2,8 13:1,13 14:11,12 15:11 16:16 17:5 25:8,11,15 26:24 27:3 28:4 31:8,15 35:2 42:25 43:3,7,9,18 47:1,3,11 49:17,18 53:15 54:16 56:10 cut 5:18 10:8 17:16 cutoff 53:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 D.C 1:9,16 day 56:8 days 20:5 45:15 50:6 deal 18:16 39:4 dealing 41:3 dealt 18:12 death 13:23 15:12,16,20 17:14,15,16 20:25 23:17 39:20 40:12,18 51:9</p>	<p>decide 23:3 26:11 44:1 48:18 decided 5:7 26:13 45:17 46:5 decision 5:3 6:24 10:7,21 16:2 17:6 35:21 44:9,20 55:2 decisions 26:4,6 28:24 29:8 37:13 53:25 54:3,4 decisive 17:2 decline 41:4 declined 56:23 defendant 57:3 defendants 46:7 deficit 17:3,12 22:21 23:2,4 28:3 deficits 16:18 18:22 20:1,9 20:16 21:5,16 22:19 27:11 28:7 29:24 33:6 35:3 36:4 36:5,14 42:21 46:19 49:23 50:17 51:14 defined 37:18 definition 12:8 27:10 29:18 33:17,21,21 43:16 48:1 definitional 41:10 definitions 11:20,22 14:24 41:21 48:23 definitive 21:13 degree 21:19 30:1,11 denied 44:7 deny 37:22</p>
---	--	---	--	--

<p>depart 4:19 depend 33:5 depending 36:22 depressed 17:14 depressive 17:24 depth 49:24 describe 5:19 27:16 determination 5:5,13 24:7 30:23 41:9 47:22,23 determine 23:1 41:15,16 47:7 47:9 48:9 determining 17:2 detract 19:9 developmental 32:23 diagnosed 42:6 diagnosis 11:18 30:24 36:6 41:9 42:1 46:19 47:24 diagnostic 3:16 11:24 12:1 14:21 24:18 55:21 difference 6:9 25:10 27:1 31:18 32:19 41:8 47:2 differences 48:14 different 7:24 8:13 9:9,13 10:17 22:15 24:2,3,22 25:1 30:22 32:13 36:16 47:7,10 47:12,25 48:1 48:21 50:23 51:5 55:14 differently 15:18 25:2</p>	<p>46:8 dignity 12:20 dimensions 29:24 directed 55:10 directing 34:6 directly 43:23 disabilities 32:18 disability 3:19 11:18 14:6 15:9,13,16,19 16:23 17:4,13 19:1,10,12 32:21 36:11 37:18 42:2,3 42:10,11 46:6 46:18,23 48:10 49:25 50:15 52:18 56:2 disabled 3:12,14 4:2,3 12:9,21 13:7,23,25 14:3 16:5 21:24 25:14,19 28:18 29:3,5,6 30:5 33:14 34:16,19,24 38:4 41:17,23 41:24 42:6,12 42:19 44:17 45:2,5,12,19 46:1,7 47:8 48:24 51:11 54:6,23 56:18 disagree 11:2 15:1 22:4,11 disagreeing 26:3 disagrees 3:25 discharge 47:15 discounting 43:17 discretion 9:19 9:20,24 14:15 29:2 49:4,5 discretionary 36:15,19 37:1</p>	<p>discuss 55:2 discussed 55:11 discusses 35:15 discussion 27:5 41:2 53:22 disparities 24:25 dispositive 33:5 44:6 dispute 23:7 disregard 10:24 distinction 52:17 distinctions 26:5 district 24:6 DMA 34:14 doing 15:2,5,17 16:12 45:15 55:19 door 6:14,18 36:22 doubt 12:5 Dr 21:9 49:25 dramatic 6:18 7:22 drawing 26:5 drive 23:8,10 Drogin 21:9 DSM 31:11 47:20 DSM-5 8:19 21:1 25:9 26:24 31:8 43:22,22 47:21 49:5 54:12 55:13,16 DSM-6 55:16 DSM-IV 8:20 26:24 54:11 55:13 56:5 dumb 50:5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:1 3:1,1 earn 51:8 easy 23:15,22 eating 50:10 edition 25:8,12</p>	<p>25:16 49:6 editions 55:22 55:24 education 46:2 effect 37:23 Eighth 3:11,14 4:4 26:13 30:23 46:23 47:23 48:2 54:20 eligible 54:8 emphasize 18:22 21:25 25:25 employing 10:1 12:8 employment 34:25 encompassed 4:13 endorsed 27:15 ensure 54:22 entire 4:1 53:7 entirely 25:17 entrusted 13:4 environment 50:14 episode 17:24 erred 9:25 12:7 erring 42:25 error 16:13,21 16:25 17:9 18:2 39:7 43:14 53:12 especially 16:16 ESQ 1:16,18 2:3 2:6,9 essential 7:15 essentially 7:6 18:6 27:4 33:9 establish 17:3,4 30:15 56:23 established 12:10,10 28:10 30:7 33:16 et 57:1 evaluated 46:17 evaluating 13:5</p>	<p>15:5 evaluation 13:6 everybody 29:2 everyday 21:20 evidence 33:3,7 37:5 42:9 45:19,22 evidentiary 27:5 33:16 35:17,19 Ex 34:5 56:22 57:2 exacerbates 4:23 exact 31:11 exactly 7:17 11:12 12:14 13:18 23:6 25:20,23 48:5 exam 17:25 example 8:19,20 20:4 23:7 34:17 49:20 54:17 exceedingly 5:10 11:6 exclusion 12:2 excuse 4:6 46:6 execute 28:16 33:13 40:2 48:19 executed 30:4 40:15 41:17 42:8 48:11 54:23 executing 3:11 execution 4:3 46:6 54:8 56:25 exempt 4:3 13:23 14:1 exempted 39:20 exemption 14:3 26:8 56:17,24 exhaustive 38:5 38:8 existed 49:9 experience</p>
--	--	---	---	--

32:17 expert 13:4 45:4 45:6,12,13,24 46:15 50:1 54:5,9 experts 12:25 20:23 21:1 22:4 explain 47:6 explained 14:19 15:14 16:20 explains 19:14 explicit 21:15 expressly 56:23 extensively 55:10 extent 33:25 extraneous 43:11 extraordinary 3:23 extreme 26:2 eye-catching 6:15	33:16,25 34:7 34:9,10 35:9 35:15,17,20 36:8,10,12 37:6,10,11,17 37:21,25 38:3 38:7,11 39:3 41:25 42:7,12 42:15 43:8 44:14,17 49:13 51:4 54:7,18 55:8 56:5,7,10 facts 28:2 35:8 36:13 fair 8:14 41:23 52:21 far 15:16 37:8 Faretta 50:24 farm 51:5 fashioned 51:4 father 50:5 feelings 48:19 figure 39:15,18 40:1 filing 50:24 find 14:6 28:18 29:3,4,6 30:4 33:13 36:5 42:12,18 finding 15:19 19:9 44:16 findings 35:18 finish 56:14 finished 10:16 first 5:2 6:23 8:7 10:25 14:5 15:6 18:17,20 21:18 22:12 24:14 25:11,15 25:22 36:3 40:10 47:14 53:22 fit 31:10 47:21 flag 15:21 flags 29:12 flesh 43:24 flip 7:9	floating 28:9 Florida 3:12 focused 4:10 focuses 20:14 21:16 focusing 21:20 52:15 follow 22:8 30:18 follow-up 31:23 32:3 following 11:4 43:14 footnote 34:5 52:4 forensic 46:16 form 49:24 found 16:3 four 15:4 20:12 22:20 37:25 46:25 50:22 framework 3:16 5:7,8 7:1 11:24 12:1 13:20,21 14:21 27:3 28:7 31:9 47:3 55:21 frameworks 27:4 35:2 47:1 49:17,18 framing 7:12 free 28:9 40:17 freedom 34:2 friend 54:10 56:12 function 27:13 32:9 40:3 52:16 functioning 18:5 20:25 21:4 22:17,18 23:21 32:12,14 33:23 34:16 36:3 38:24 40:2 44:11 45:7 50:10 53:11 functions 51:22	fundamental 11:22 fundamentally 3:25 11:21 further 39:10 future 55:16	good 18:6 24:1 gotten 13:7 governs 5:8 grant 37:11 granted 37:24 42:15 52:5 greater 41:6 56:25 ground 46:6 grounded 5:4 7:2 27:7 group 25:20 grow 45:21 growing 32:8 guess 29:19 30:17 guidance 13:2 13:13 16:16 21:12,14,25 guide 25:21 Guilmette 21:10
<hr/> F <hr/>			<hr/> G <hr/>	<hr/> H <hr/>
face 23:22 facial 31:21 facially 43:20 fact 11:10 20:21 31:16 32:25 49:16 51:12,24 54:8 55:1 56:17 fact-bound 46:20 factor 27:22,22 37:7 factor-of-an-e... 49:14 factors 3:22 10:23 11:8 13:15 14:5 15:11 19:5,11 27:5,7,15,23 28:5,9 31:22 32:7,14,20			gains 34:25 garbage 50:10 general 1:18 24:16 26:18 28:13 33:19 35:10 38:2 41:13 52:9 generally 5:10 14:11 16:6,16 genesis 38:10,16 genuinely 15:6 getting 36:7,8 50:11 Ginsburg 12:5 12:16,23 27:16 36:18,25 45:14 47:6 48:15 give 8:15 21:4 27:19 48:17 gives 17:7 go 13:9,13,14 15:4,22,24 24:7 27:9,21 31:1,5,24,25 34:2 39:5,10 42:22 43:5 55:18 goes 12:20 41:11 54:3 going 6:19 11:7 22:11 23:16 28:8,22 29:14 29:15,21,23 30:2 33:4,5 37:6 38:3 40:22 41:13 43:6,7 51:1,18 53:13 54:15,23	habes 9:25 12:7 Hackett 49:19 Hagan 21:9 Hall 3:12 8:18 11:20,21,22,23 14:19,23 15:2 15:14,15 16:21 17:6 19:18 21:1,3 22:10 24:17 32:22 48:17 49:2 53:8,11 54:21 happened 6:5 44:11 46:4 51:25 happening 36:24 harmful 3:21 25:22 head 34:18 Health 29:18 hear 3:3 heard 39:4

<p>hearings 23:25 Hearn 56:22 heart 5:18 heavily 35:17,24 35:25 55:8 held 3:10 14:2 help 48:9 helpful 10:6 12:18 37:3,7 hew 14:16 hide 51:9 high 18:25 25:18 25:19 higher 16:5 history 17:10 holding 4:1 7:10 7:15 35:23 43:12,20 44:2 45:9 home 18:6 Honor 5:1 6:2 6:12,22 7:3,18 8:7,23 9:4,6 10:12 11:3 12:14 13:19 16:14 18:8,10 18:19,23 19:6 19:25 20:2,13 20:20 21:11 22:9 23:7 24:9 24:14 25:6,20 25:24 26:15 53:20 55:23 56:6,14 57:6 Honor's 4:24 hostility 14:12 huge 36:19 human 12:20,20</p> <hr/> <p style="text-align: center;">I</p> <p>i.e 24:5 idea 32:7 identified 15:3 identifies 22:10 identify 16:11 56:2 Idiot 34:17</p>	<p>ignore 37:3 illiterate 50:6 impaired 21:20 impairment 30:1,3,12,19 33:25 52:20 impairments 21:21 imperfect 31:10 47:21 important 3:14 5:12 12:19 13:5 14:24 20:2 21:17 24:15 25:10 importantly 19:13 54:20 impossible 19:18 impression 55:14 improper 20:19 inappropriate 3:21 incidence 18:25 include 19:6 includes 25:23 including 3:22 5:8 inconsistent 36:22 56:7,9 incorporate 47:20 indicative 51:13 indispensable 35:20 individual 40:17 41:4 54:6 individuals 36:10 37:22 inform 14:25 informed 3:15 11:23,25 14:20 24:17 51:20 initial 54:25 55:14 inquiry 3:13</p>	<p>11:23 19:2 21:15,19 27:11 36:1,8 43:11 44:6 insisted 34:1 instance 40:9 instruction 13:8 instructive 57:5 insuperable 3:23 intellectual 3:19 11:18 14:6 15:9,13,15,19 16:18,22 17:3 17:4,12,13 18:5,22 19:1,9 19:11 30:19 32:18,21 36:3 36:11 37:18 42:2,2 44:10 44:12 45:7 46:18,23 49:25 50:10,15 53:10 56:2 intellectually 3:12,14 4:2,3 12:8,21 13:7 13:22,25 14:3 16:5 21:23 25:14,19 28:18 29:3,4,6 30:5 34:19,23 44:16 45:2,5,12,18 46:1 47:8 48:24 54:6,23 56:18 intended 37:17 38:18 interrupt 7:5 interwoven 13:20 55:2 IQ 16:5,19,20 23:20 25:18,19 29:25 33:22 42:22 44:11 45:1,2 52:15 53:11</p>	<p>irrelevant 33:2 irrespective 40:19 issue 7:13 12:20 29:12,13 44:2 48:25 49:1 issues 25:18</p> <hr/> <p style="text-align: center;">J</p> <p>JAMES 1:3 job 34:22 Joint 46:2 Journal 20:24 judge 9:12,13 12:7 24:7 36:20 51:21 judges 12:24 judgment 5:3 6:25 45:3 Justice 3:3,8 4:5 4:6,7,8 5:15,16 5:17 6:6,13 7:4 7:19 8:6,12,24 9:1,7,18 10:3,8 10:13,15 12:4 12:5,16,23 13:11 14:4,7 14:14 15:22,23 15:23,24 17:18 17:21 18:1,13 18:16,17,17 19:23,24 20:10 20:17,22 21:9 22:1,7,10,14 23:1,11 24:10 24:19 26:17,21 27:16 28:13,23 29:19 30:10,21 31:1,2,3,7,23 31:24,25 32:2 32:4,4,6 33:8 33:19 34:4,14 34:21 35:10 36:9,18,25 37:8,15,23 38:2,10,17 39:2 40:25</p>	<p>41:13,19,22 42:4,13,18 43:5,15 44:8 44:19,24 45:14 46:4 47:6 48:4 48:15 49:21 51:3,20 52:9 52:22,24,25 53:4,16 54:14 55:12 56:4,15 57:7 Justice's 54:24 justification 11:13,15 juvenile 47:8,14</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan 5:15 6:6 7:4 13:11 14:7 22:14 23:1 28:13,23 29:19 30:10,21 31:3 31:7,23 32:4,6 33:8,19 38:10 52:9 53:1,4 Kagan's 31:2 keep 33:20 Keller 1:18 2:6 26:18,19,21 27:20 28:20 29:9 30:6,21 31:7 32:22 33:15,20 34:3 34:12,20 35:1 35:22 36:12,25 37:20,24 38:7 38:19 40:25 41:18,20 42:1 42:13,20 43:9 43:19 44:18,21 45:6,16 46:10 47:14 49:2 50:16 51:15,23 52:22,25 53:10 Kennedy 4:6 5:16 14:4,14 22:10 36:9</p>
--	---	---	---	--

37:8,15,23 38:2,17 54:14 56:4 killed 51:10 kind 19:16,21 24:24 knew 33:1 know 7:25 8:24 22:24 30:10 39:17	40:4,5 level 9:12 39:18 levels 52:20 life 21:20 life-or-death 12:19 light 12:22 29:21 48:19 56:10 limit 37:17 limitations 23:21 38:24 50:18,20 limits 25:16 line 14:3 26:7,12 56:17,24 list 4:9 25:22 27:8 38:6,8 listed 27:17 litigants 41:4 little 6:14 50:13 lived 51:1 living 51:9 long 4:8 long-standing 11:16 look 6:24 22:24 23:2,15 25:7 29:23 32:24 33:12,22,22,23 33:24 35:3 40:4 49:19 54:1,18 looked 4:15 32:22 42:15 44:25 45:10 looking 7:1 35:8 37:4,25 49:22 49:24 looks 35:2 lopping 17:7 lot 42:8 53:22 Louisiana 51:2 low 50:9 lower 9:9 16:25 17:8,16 34:6	<hr/> M <hr/> M 1:16 2:3,9 3:6 53:18 main 43:13 major 15:20 18:11 majority 22:2 making 10:13 13:5 24:7 36:18 48:6,14 Maldonado 37:14 manual 25:8,22 47:20 marching 12:6 material 27:1 31:18 47:2 materialize 29:13 math 34:18 matter 1:12 18:25 19:17 22:7,20 23:21 40:17 57:10 mean 4:17 7:20 9:8,8 14:22 23:25 30:16 measurement 16:21 17:1,9 20:8 53:12 medical 3:15,20 4:11,12,22 5:6 5:10,23 7:1 8:3 8:10,19 9:17 10:11,19,20,25 11:5,14,17,24 11:25 12:2 14:12,12,17,20 15:11 17:18,21 17:22 20:18 24:17 30:24 31:15 37:19 41:9 47:11,24 55:25 memory 50:2 Men 51:16	mental 46:5 48:10 56:24 mentally 13:25 26:6 34:15 41:16 46:7 48:23 57:4 mention 38:19 mentioned 4:17 22:12 38:1 message 12:25 met 16:4 method 55:24 Mice 51:16 mild 30:3 42:2 42:11,21,22 mildly 13:25 26:7,8 41:23 42:6,18 51:11 minute 44:24 minutes 53:17 mistaken 41:1 mistakes 50:12 misunderstan... 21:22 misunderstood 52:7 mitigation 45:19 45:22 moderate 42:9 42:10,22 moment 16:1 39:4 months 20:6 50:7 Moore 1:3 3:4 16:3 17:3 20:5 50:1 moral 52:18 morally 48:1,12 morbidity 44:13 morning 3:4 motions 50:24 motive 24:23 mow 51:12 mowing 51:6 multiple 19:1	<hr/> N <hr/> N 2:1,1 3:1 NASA 34:22 national 28:11 30:15 46:24 49:10,11,13 near 46:1 necessarily 33:4 need 6:6,9 30:18 needing 43:23 negates 28:10 neighbor 32:16 never 37:20 38:8 51:16 52:6 53:11 54:25 new 4:20 6:9,10 7:8,13 13:17 25:17 55:22 newer 9:20 ninth 31:19 nonclinical 11:9 55:5 nonuniformity 40:11 normative 41:5 note 34:4 noted 27:14 47:21 50:22 notes 14:19 notwithstandi... 54:8 November 1:10 nullity 19:20,22 number 17:1 20:23 54:17 numerous 20:8 nutrition 18:4
<hr/> L <hr/> lack 18:6 46:1 51:21 language 10:1 27:2 29:11 30:2 31:11,19 31:21 35:24 47:2 latest 47:20 Laughter 31:6 launches 34:23 laundry 4:9 law 9:16 20:24 22:8 24:4,4 28:2 39:25 48:22 lawn 51:6 lawns 51:12 lawyers 12:24 13:9 lay 3:21 11:11 32:7 33:1 layperson 32:12 learning 50:12 leave 42:16 left 14:15 leg 18:15 legal 30:23 41:9 47:22,22 legislature 29:16 41:7 57:1 length 35:15 Lennie 51:3,5,8 51:15,22,25 52:4,6 let's 10:24 16:2	<hr/> O <hr/> O 2:1 3:1 objections 4:9 obligated 22:5 obviates 28:10 obviously 12:19 odd 44:1 Oddly 40:15 odds 19:3			

<p>offender 47:9,9 47:15 Okay 8:6 20:17 24:21 25:2 39:10 old 4:20 6:8,10 6:20 8:3 13:16 older 5:23 8:20 43:2,8 once 21:14 52:3 55:23 ones 6:9,10,10 9:22 10:3 open 13:24 opening 36:21 operate 38:18 38:18 opinion 5:6 10:18 12:22 28:21,21 29:11 29:12 39:23 40:7,21 49:22 50:13 51:17 opposed 8:20 9:20,21 10:3 41:16 opposite 20:7 opposition 55:7 55:9 oral 1:12 2:2,5 3:6 26:19 39:4 orally 23:12 order 52:17 orders 12:6 organizations 21:3 22:2,8 31:15 ought 48:10 outdated 4:12 6:16 7:22,24 43:1 outlined 54:21 outset 20:2 outweighs 20:16 overcomes 51:13 overlap 28:8</p>	<p>P</p> <hr/> <p>P 3:1 page 2:2 12:16 18:21 30:20 35:16 38:1 39:22 41:3 47:15 pages 25:9 27:9 27:21 35:13,23 36:2 41:8 55:9 papers 55:3,11 paragraph 51:25 paraphrase 8:15 part 10:25 13:19 18:2 28:11 38:21 43:11 51:16,17 52:6 55:21 parte 34:5 56:22 57:2 particular 15:4 22:17 23:8 34:24 37:4 49:15 57:4 particularly 52:20 passage 12:23 12:24 pause 39:14 penalty 13:23 15:12,17,20 20:25 39:20 40:12,18 penalty-phase 32:25 Pennsylvania 27:14 49:20 Penry 45:17 46:10 people 3:11 25:1 25:2,13,18,20 28:16 30:3,5 32:8 33:1,13 34:16 37:9 41:17 55:25</p>	<p>56:3 people/psycho... 22:23 perceives 20:15 percent 28:17 performance 17:11 18:4 19:7 period 32:23 person 4:2 13:7 23:9 29:2,6 32:8 34:22,23 39:19 40:5 41:23 50:4 personally 46:17 persons 37:18 48:9 perspective 13:4 19:15 petition 5:13 11:16 18:21 27:25 35:13,14 55:4,8 Petitioner 1:4,17 2:4,10 3:7 26:23,25 31:9 33:1 44:23 45:11,18,21,24 45:25 46:17 47:4,15 50:22 53:19 Petitioner's 28:1 31:17 37:16 45:10,13 Petitioners 43:1 phrased 38:23 phrases 55:4 phrasing 36:16 places 25:7 28:15 plan 51:9 Plata 37:13 play 51:13 played 35:20 please 3:9 26:22 32:5 point 6:3 15:7,8</p>	<p>20:11 22:13 23:13 24:6,21 24:22 27:8 29:1 32:15 34:20 38:20 42:14 44:3,6 48:4,5,5,7 53:7 54:24 55:16 pointed 48:15 points 4:13 5:1 6:22 14:8 17:24 19:5 20:3 24:13 25:10 27:18 31:9 41:1 53:21 pool 51:13 poor 17:11 18:4 18:4 19:7 44:10 50:14 position 34:17 47:4 55:17 positions 31:14 possibly 39:3 poverty 18:3 44:13 practical 15:25 35:4 36:17 53:14 practice 14:17 practices 4:18 4:20 precedence 27:22 43:14 precedents 27:8 precise 47:4 precisely 27:13 precursor 31:17 premise 11:22 26:4 29:7 present 6:20 48:25 presented 4:10 4:14,25 5:18 6:14,18 7:21 8:8 9:3,5 26:25 42:24 46:21</p>	<p>55:1 pretty 7:22 29:22 30:13 prevail 9:2 prevent 36:24 previous 31:11 principle 20:7 24:16 principles 54:20 prison 36:6 45:22 pro 50:24 probable 45:1,5 probably 24:2 48:8 probative 33:3,7 problem 13:19 20:11 25:12 36:19 49:21 51:3,7 problems 18:11 20:12 25:18 proceed 12:22 proceedings 50:23 produce 40:10 products 50:14 50:15 professional 21:3 22:1 prohibit 6:15 9:6,8,8 prohibited 8:9 9:17,24 35:7 42:24 prohibiting 9:5 43:3 prohibition 4:21 5:5 6:25 11:13 12:2 14:11 15:11 prohibits 3:11 3:20 4:11 49:16 prong 16:7,9 27:10 28:3,3,7 28:8 36:3,14</p>
---	---	---	--	--

38:22 52:19 53:13 prongs 16:3 30:12 52:16,19 53:2,6 proof 23:9 propose 14:16 proposed 28:1 proposition 31:12 prosecutor 45:25 prospectively 9:16 prove 16:4 provided 42:8 provisions 47:19 Psychiatric 21:13 psychiatrists 39:8 Psychiatry 20:24 psychologist 46:16 psychologists 39:9 publications 10:20 pull 42:17,23 punishment 48:20 purpose 3:15 37:21 40:1,1,3 48:16,21 57:4 purposes 26:13 47:24,25 put 23:20 27:6 38:24	4:24,25 5:16 5:18,22 6:14 6:18 7:20,24 8:8,13,15,16 9:2,2,5,19 10:9 10:16 13:24 18:17 19:20 23:11 24:11 26:2,25 29:15 30:11 31:2,4 35:11 38:4,5 39:12 40:13,20 41:5,10 42:17 42:23 46:20,21 48:7,16 51:19 54:25 55:1 56:13 questions 4:15 27:12 50:25 57:3 quite 7:24 29:9 50:3,4 54:25 quote 27:22 28:4 29:21 45:25 56:23 quoted 12:23 43:4 quoting 52:4	45:20 reasons 17:7 21:17 REBUTTAL 2:8 53:18 recognize 20:2 recognized 16:6 19:10 30:22 34:15 53:12 reconcile 52:10 reconsider 55:18 record 20:3 33:6 36:14 37:5 39:1 54:12 records 46:17 recover 9:1 recreate 50:2 red 15:21 reference 47:20 referring 18:10 refine 56:1 reflect 38:12,14 38:15 39:7 40:6 reflected 5:21 7:12 reflecting 7:14 reformed 45:23 regard 5:1 56:2 regarded 10:22 regarding 30:23 Regardless 46:13 Regrettably 46:5 reiterated 3:13 reject 54:15 rejected 54:11 related 23:21 38:23 43:23 44:12,13 relatedness 35:24 36:1,8 43:10,16,21 44:6 45:8 relatedness-in...	49:12 relationship 53:23 relevant 32:8 reliable 46:15 relief 37:11,22 37:24 52:5 relies 3:21 rely 6:16 13:1 32:16 relying 44:22 56:21 repeatedly 26:4 43:4 50:11 55:4 rephrase 10:17 reply 26:25 31:17 44:5 47:5,16 55:4 report 39:23 reported 39:23 represent 55:24 represented 46:7 required 8:10 requirement 3:24 18:9 19:21 43:22 54:22 requires 4:12 19:16 reserve 26:15 respect 11:3 12:9 16:7,8 29:25 32:18 respected 22:4 respectfully 11:2 respond 19:24 Respondent 1:7 1:19 2:7 26:20 response 54:14 responsive 50:25 rested 55:8 restrictions 15:19	results 36:22 retardation 56:24 retarded 14:1 26:6 48:24 57:4 retrial 33:1 45:11 reversed 35:6 reviewed 46:16 reviewing 35:11 35:21 right 5:25 7:17 9:14 12:17 13:18 16:3 23:6,19,23 32:7 38:17 40:23 41:22 45:15,24 48:17 52:12 53:4 risk 19:10,19 ROBERTS 3:3 4:5,8 6:13 7:19 8:6 15:23 18:16 19:23 26:17 32:4 52:24 53:16 56:15 57:7 role 35:20 49:3 53:23 rooted 14:10 row 17:14,15,16 23:17 rule 14:15,18 17:15,18 47:15
<hr/> Q <hr/> QP 7:12 quacks 21:7 qualify 45:3 qualities 33:24 quality 29:25 question 4:9,14	<hr/> R <hr/> R 3:1 rabbit 51:9 range 16:22 reach 45:10 read 12:13 39:15,21,21,23 44:19 49:22 reading 39:6,14 real 48:24 really 7:20 29:20 31:18 37:17 38:21 40:6 48:7,9 reason 15:2,5 21:21 23:18 43:13,17 48:14 reasonable	<hr/> S <hr/> S 2:1 3:1 Safety 29:18 satisfy 42:3 savants 34:17 saw 40:22 saying 6:23 7:7 13:21 15:25 19:7 22:4,9 24:20 26:7 30:15,17 33:20		

<p>36:9 43:6 44:10,15,15,22 47:2 51:8 52:13 54:15 says 6:17 9:22 11:15 13:14,24 17:10,13 18:21 20:15 21:3 23:8 24:14 27:1 31:9,18 33:8,9 35:2,3 35:16 39:10 41:2,10 50:3 school 18:4 47:7 scientific 55:24 scores 42:22 SCOTT 1:18 2:6 26:19 screen 37:21 se 50:24 seasons 20:6 second 15:7 21:21 27:10 28:3,6 35:23 40:13 43:12,19 44:2 45:9 54:10 secondly 7:3 16:8 19:5 see 40:20 50:18 51:24 sent 34:6 sentence 56:14 separate 51:18 seq 57:1 set 22:18 sets 35:14 setting 13:21 seven 13:15 27:5 27:7,18 33:16 severe 15:18 42:10,10 severely 13:22 26:5 51:11 sharp 11:19 16:15 sharpen 56:1</p>	<p>sharply 12:11 shifted 27:4 show 27:23 38:4 showing 19:16 shuttle 34:23 siblings 32:23 sick 50:11 side 23:9 39:10 sides 7:9 significant 18:2 38:23 41:6 50:20 significantly 56:25 similarly 4:19 14:1 57:2 simply 19:18 34:24 single 27:19 sitting 36:23 skill 23:8 34:25 skills 35:4 45:3 50:19 53:14 slightly 5:23,23 Sloan 1:16 2:3,9 3:5,6,8 4:21 5:15 6:2,7,12 6:22 7:5,17 8:5 8:7,22,25 9:4 9:15,23 10:5,8 10:12,14,15 11:2 12:14,17 13:11,18 14:9 14:18 15:22 16:14 17:20,22 18:8,19 19:25 20:12,20 21:8 21:11 22:6,9 22:25 23:6 24:9,13 25:6 53:17,18,20 55:20 56:6,16 so-called 3:22 social 35:4 36:17 50:19 53:14 social-services 48:3</p>	<p>Solicitor 1:18 somebody 3:13 13:6 17:16 21:19,23 23:8 54:22 soon 29:22 sorry 7:5 31:1 33:19 sort 32:11,15,15 52:10 Sosa 34:5 35:5 35:11 57:2 Sotomayor 10:8 10:13 15:22,23 15:24 17:18,21 18:1 31:1,24 31:25 34:4,14 34:21 41:13,19 41:22 42:4,13 42:18 43:5,15 44:8,19,24 46:4 49:21 51:3,20 Sotomayor's 18:17 sound 15:2,5 sounds 23:22 source 27:17 sources 21:24 Southwest 57:1 space 34:22 specifically 55:9 stand 8:8 standard 4:20 8:11 9:9,11,13 10:10,11 11:5 13:9,14 15:1 16:21,25 17:8 17:17 20:8 24:24 27:2 30:15 35:1 43:9 47:12 51:22 52:6,6 54:16 standards 3:17 3:20 4:11,12 4:22 5:6,9,10</p>	<p>5:23 6:4,7,8,16 6:21 7:1,8,9,11 7:13,14,23,25 8:3,3,10,19,20 9:17,20,21 10:1,19 11:1,5 11:14 12:3 13:10,16,17 14:7,10,12,13 14:16 15:12 16:12,17 17:5 17:6 24:3 25:11 28:22 29:17 30:25 33:12 34:8,13 38:12,16 39:13 40:5 41:12 42:25 43:1,3,7 43:8,18 47:11 51:19 52:2 53:15,24 55:5 56:11 stands 10:7 11:18 26:2 start 29:21 state 8:18 9:6,25 14:20,25 15:9 15:17 22:5 29:1,4,10 40:14 43:21 44:3 47:25 48:17 49:16 51:7 54:15 55:7,15 State's 45:4,6 50:1,13 stated 12:11 statements 52:10 states 1:1,13 14:15 15:8 24:3 26:14 31:13 40:11,11 46:25 49:3,4,7 49:9,17 55:17 stereotype 21:22 stereotypes 3:21</p>	<p>11:11 25:12,23 34:11,12 stereotypical 32:11 story 25:3 strategic 45:14 strategy 45:20 45:20 46:9 streets 51:1 strength 51:13 51:21 strengths 20:15 21:16,23 25:13 49:15,16,19,23 stronger 18:15 subjecting 40:18 subjective 5:11 11:6 38:12,14 subjectivity 11:17 38:20 submitted 57:8 57:10 subtraction 20:7 suffered 19:8 suffering 48:10 sufficient 21:4 36:2,4,7 sufficiently 42:12 suggest 54:1 suggesting 56:12 56:18 suggests 38:17 supply 48:14 support 17:21 17:22 43:16 supporting 21:2 suppose 22:2 supposed 23:24 23:25 32:15,16 Supreme 1:1,13 27:14 44:4 sure 7:6 22:25 24:12 44:8 45:1 52:24,24 56:15 surprised 30:17</p>
---	--	---	--	---

surrounding 11:17	36:5 42:20	22:10 23:12,12	treats 15:18	5:20 19:4
suspicion 24:10	44:22,25 45:10	24:15,23 25:6	trial 9:12,19,19	50:25
<hr/> T <hr/>	46:15 50:16	30:1 32:8	9:25 28:1 35:6	understood
T 2:1,1	54:5,5,9	38:13,15,16	35:6 36:20,23	18:24
take 10:24 16:2	testing 23:19	39:9 40:5,6,14	37:2,12 43:13	undisputed 20:3
16:21 32:6	tests 44:11 45:1	40:19,21,23	52:4	20:4,9
38:22	Tex 1:19	48:13,25 52:13	tried 14:4	unfettered 49:4
taken 10:20 47:4	Texas 1:6 3:4,18	thinks 9:13	trouble 43:6	uniform 24:5
talked 19:19	4:19 5:2,4 9:11	25:25 26:11	true 14:14 24:23	37:19
talking 11:4	9:16 12:6,7,12	41:17	30:21	uniformly 24:24
16:13 18:24	12:22,25 15:10	third 15:8 19:13	truly 41:15	unique 3:18
22:15 25:21	15:17 26:2,11	54:24	trump 33:9,10	United 1:1,13
30:14 31:3,20	28:11,14,16	thoroughly	33:16	26:14
31:22 35:25	29:5,10,13,17	46:16	try 36:23 40:1,5	units 20:8
43:24	29:23 30:16,18	thought 18:1	40:8	universe 37:9
talks 7:21 9:5	33:11,17 34:1	28:25 39:24	trying 38:22	unmistakable
43:22	35:1 38:13,15	46:8 48:6,21	39:15,24 40:7	13:1,8
task 26:10	38:20 39:13,19	53:7	41:14,16 51:9	unquote 28:5
teacher 32:17	40:4,19,22	threat 19:19	52:10	46:1
teachers 32:23	41:2,5,14,20	three 18:11	Tuesday 1:10	unscientific 55:5
technical 40:17	41:23 42:24	29:24 35:14	turn 14:7	unsupportable
48:23	43:2,21 46:24	49:17 53:17	turned 19:20	17:10
tell 8:14 20:6	47:6,10,17	54:3,4	turns 19:21	untethered 55:6
24:6 33:24	52:13 53:11,15	three-part 53:2	twice 29:14	unusual 48:22
40:23 50:6,7,7	53:24 54:7	53:5	two 5:1 6:22 7:9	unwarranted
52:12	Texas' 46:22	three-prong	10:16 16:3,11	3:24
tellingly 15:10	Texas's 27:2	28:10 30:7,11	21:16 22:15	use 3:20 4:11,22
tells 33:21	text 31:21	31:21 33:20,21	23:4 24:13	5:22 6:25 7:8
Tennessee 44:4	Thank 18:19	46:22 47:16	31:10 35:23	7:10,13,13,16
terms 8:13 18:9	26:17,21 31:7	49:8	39:2 41:1,7	7:23 8:9,11,18
18:20 20:1	53:16,20 57:6	three-pronged	47:1	9:20 11:13
38:23,25	57:7	33:17 52:15	type 41:16	14:5,11 34:24
terrible 19:8	theme 37:15	threw 50:5	<hr/> U <hr/>	35:9 43:3,6,7
test 12:9,10,11	theory 6:1	time 5:9 10:21	Um 21:8	45:19 49:16,17
16:20 23:20	thing 22:3 24:11	11:1 14:1 20:6	unanimity 54:9	52:20
28:9,10 30:7	25:24 40:8	25:11,15,22	unanimous 54:5	user's 25:21
30:11 31:21	things 10:17	26:16 33:2	uncertainties	uses 3:22 15:10
46:21,22 47:3	18:3 19:6	45:16 49:5	25:1	28:11
47:7,10,17	22:15 23:4	50:8,11 55:11	underlying 10:9	<hr/> V <hr/>
49:8,9,10,14	38:13 39:3,24	times 50:23	33:10	v 1:5 3:4,10,12
51:16,17 52:15	51:10	today 55:15	understand 6:20	Valdez 37:13
53:3,5	think 4:12 5:21	tools 56:1	7:6 9:7 14:21	valid 16:20
testified 50:1,22	8:2,7 9:18,23	totality 33:5	20:5 22:16	43:17,20 45:18
testifying 12:25	9:24 10:15	tough 23:23	24:19 29:20,20	47:25
testimony 32:25	12:17 13:3,11	training 56:1	39:17	Van 37:11,24
	14:8,18 15:2	treated 17:1	understanding	42:14
	18:9,13,15	25:1,2 38:8		

<p>various 49:13 52:10 version 43:2 versions 31:11 versus 48:2 view 5:9 11:5,17 19:2 24:4 26:3 28:15 29:1 30:3 32:12,13 32:20 33:11 41:14 51:20 56:4 views 17:24 violates 46:23 Virginia 3:10 virtually 3:23 vitality 12:19 13:5 vote 22:2</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 44:24 want 23:14 24:12,23 25:3 31:24 53:9 wanted 56:19 wants 14:25 Washington 1:9 1:16 wasn't 43:6 44:16,18,21 50:21 way 10:17 11:25 18:11 19:15 24:23 25:4 34:25 40:3 ways 16:11 36:16 We'll 3:3 we're 16:12 29:23 30:2 31:20,22 36:25 we've 30:8 39:3 48:5 week 20:5 50:6 weighs 35:17,24 35:25</p>	<p>weight 23:20 well-established 46:22 49:8 went 24:21 weren't 44:16 wholesale 31:14 46:25 49:7,18 wholly 5:21 win 6:10 witnesses 33:1 wondering 6:17 wording 8:22 11:6 words 37:4 39:15,22 work 51:8 55:25 working 51:5 world 27:13 wouldn't 6:6,9 45:2 woven 5:2 6:23 write 39:13 written 20:23 wrong 16:7,10 18:7 22:16 25:4 39:3 40:8 40:24 53:8</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,8</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yeah 23:2 year 20:6 50:7 years 17:25 21:14 23:17 49:9 55:23 yes-or-no 8:16 younger 44:12 youth 33:23</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 21:14 55:23 10:09 1:14 3:2</p>	<p>100 28:17 10a 18:21 11:11 57:9 11th 25:8,11,15 28:4 31:17,19 43:10 49:6 12 25:17 12th 49:6 13 20:4 13's 50:5 135 57:1 15-797 1:4 3:4 16 17:25 162a 27:25 19 30:20 1989 17:25 1992 8:11 10:5 11:4 13:9</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20 30:20 2001 45:11 2004 5:8 2005 17:25 2016 1:10 21 30:20 26 2:7 269 46:3 29 1:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 2:4 36 23:17 37 47:17 380.8779(c)(1) 47:18 3d 57:1</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>422 38:1</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 40:11 49:9 53 2:10 27:9,21 55 27:9,21</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 39:22 41:3</p>	<p>62a 35:13 63a 35:13 69 16:22 6a 5:13 11:15 12:16</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 47:15 74 16:20 17:1,1 7a 11:15</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>89 35:16</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 41:21 92 13:13 9th 27:3 29:17 30:25 31:16 41:11</p>
--	---	--	---