

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

JASON SMITH,)
)
) Petitioner,)
)
) v.) No. 22-899
)
) ARIZONA,)
)
) Respondent.)
)

Pages: 1 through 102
Place: Washington, D.C.
Date: January 10, 2024

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

JASON SMITH,)

Petitioner,)

v.)

No. 22-899

ARIZONA,)

Respondent.)

- - - - -

Washington, D.C.

Wednesday, January 10, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:04 a.m.

1 APPEARANCES:
2 HARI SANTHANAM, ESQUIRE, Chicago, Illinois; on behalf
3 of the Petitioner.
4 ERIC J. FEIGIN, Deputy Solicitor General, Department
5 of Justice, Washington, D.C.; for the United
6 States, as amicus curiae, supporting neither
7 party.
8 ALEXANDER W. SAMUELS, Principal Deputy Solicitor
9 General, Phoenix, Arizona; on behalf of the
10 Respondent.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	HARI SANTHANAM, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	ERIC J. FEIGIN, ESQ.	
7	For the United States, as amicus	
8	curiae supporting neither party	32
9	ORAL ARGUMENT OF:	
10	ALEXANDER W. SAMUELS, ESQ.	
11	On behalf of the Respondent	59
12	REBUTTAL ARGUMENT OF:	
13	HARI SANTHANAM, ESQ.	
14	On behalf of the Petitioner	97
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 22-899, Smith versus Arizona.

Mr. Santhanam.

ORAL ARGUMENT OF HARI SANTHANAM

ON BEHALF OF THE PETITIONER

MR. SANTHANAM: Mr. Chief Justice, and may it please the Court:

Jason Smith was denied his Sixth Amendment confrontation right when the State used a substitute expert, Gregory Longoni, to convey the out-of-court testimonial statements of the witness who actually analyzed the evidence in his case, Elizabeth Rast. Longoni had no personal knowledge of the testing that Rast performed. And in terms of what Rast did, Longoni -- Longoni had no personal knowledge of what Rast did in terms of her testing.

But what he did do was he conveyed Rast's statements from her own documents, from her report and notes, where he conveyed specifically the tests that she performed, the specific items that she tested, the procedures

1 that she used. And when he purported to give
2 his own opinions, Longoni was actually reciting
3 verbatim the same statements that Rast made in
4 her report to set forth her conclusions.

5 Rast's statements were testimonial
6 because any reasonable, objective person would
7 understand that she prepared those statements
8 for the primary purpose of creating evidence to
9 use against Smith in his prosecution. The
10 State's request in this case at Pet. App. 127a
11 specifically identified Smith, the charges
12 against him, that trial had been set in his
13 case, and as the record shows at Pet. App. 99a,
14 the -- the State's attorney actually coordinated
15 with Rast on her testing.

16 And it is no wonder that in this case
17 that the United States agrees that the judgment
18 below cannot stand.

19 The court of appeals nonetheless found
20 that Longoni's testimony was permissible, and it
21 did so applying the legal fiction that an expert
22 may state the basis for his underlying
23 conclusions and opinions under Rule 703 without
24 offering that basis for the truth.

25 That legal fiction, as this -- as the

1 plurality in this Court recognized in Williams,
2 is unrealistic. It's unrealistic to expect that
3 a jury such as Smith would understand that
4 fiction. And, in this case, for the jury to
5 have understood what Longoni's opinions were and
6 to have evaluated those opinions, it necessarily
7 had to have considered the truth of those
8 underlying statements that were offered to
9 support them.

10 The State here made a strategic choice
11 to make Rast a witness against Smith, and in
12 doing so, it -- it elicited Rast's statements
13 from -- through Longoni, and when it did so, it
14 was required to present Rast for
15 cross-examination. Its failure to do so
16 violated Smith's confrontation right.

17 I welcome the Court's questions.

18 JUSTICE THOMAS: Would you take a step
19 back and explain why you, first, think that this
20 is -- that the -- is testimonial and, two, how
21 is it different from the report in Williams?

22 MR. SANTHANAM: Sure. Rast's
23 statements here are testimonial because any
24 reasonable, objective person would understand
25 that they were prepared for the primary and,

1 indeed, sole, exclusive purpose of creating
2 evidence for Smith's prosecution.

3 Again, that -- that's -- that's set
4 out from the State's initial request identifying
5 Rast, the charges against him, that trial had
6 been set, she coordinated with the State's
7 attorney, and it was all generated through a
8 formalized process in which she prepared notes
9 and a report all on typewritten DPS letterhead
10 bearing the seal of the DPS. And it bears
11 emphasis that these are documents that were
12 served as part of discovery in this case, you
13 know, to prove the facts that the prosecution
14 was going to put on.

15 So all of those circumstances meet the
16 primary evidentiary purpose test, they meet the
17 targeted individual test, and they also meet any
18 requirement of solemnity that's required of
19 Rast.

20 JUSTICE ALITO: If we're --

21 CHIEF JUSTICE ROBERTS: I was just
22 going to ask, why isn't it enough for the
23 defense counsel to be able to ask Longoni about
24 what happened in the lab? And he's going to
25 have to say, you know, I don't know. Well, then

1 you're just relying on, you know, what something
2 -- somebody told you, right? Well, what basis
3 do you have for that? You -- you say you're
4 relying on, you know, this particular type of
5 test. How do you know that was done? How long
6 -- how do -- do you know how long that was kept
7 in whatever?

8 In other words, it seems to me that
9 there is a -- it's a two-edged sword. I mean,
10 you put somebody up there like Longoni, whose
11 knowledge is very limited. It seems that he's
12 ripe for cross-examination. It could be pretty
13 effective.

14 MR. SANTHANAM: Right. So there's a
15 -- yeah, Mr. Chief Justice, to answer your --
16 your question, this is not a scenario where the
17 State put on Longoni to testify about data that
18 he reviewed in the abstract, that, you know --
19 and that would have been fine. There are a lot
20 of things that -- that the State could have done
21 here that would have been fine. They could have
22 had Longoni retest the evidence. They could
23 have asked for a continuance so that they could
24 secure Rast's presence.

25 But, at the end of the day, what they

1 could have done was simply had Longoni take the
2 stand and testify that I reviewed certain data
3 in the abstract and that is consistent with
4 certain illicit substances.

5 What the State couldn't do through
6 Rast -- through Longoni was to say recount
7 Rast's statements that I -- that she performed
8 certain tests on specific evidence in Smith's
9 case. Those came from her testimonial
10 documents, and that's what implicates the
11 confrontation issue here.

12 So we're not suggesting that a expert
13 witness cannot rely on others. It's the moment
14 when they introduce the testimonial statement of
15 someone else where the confrontation right is
16 implicated.

17 JUSTICE SOTOMAYOR: Counsel --

18 JUSTICE ALITO: Well, that --

19 JUSTICE SOTOMAYOR: -- there's --

20 JUSTICE ALITO: -- that's an
21 interesting -- I mean, that's an interesting
22 point, and I think it's correct. And if it is
23 correct, then I don't understand why, in your
24 brief and in your introductory statement this
25 morning, you've gone out of your way to trash

1 Rule 703. I mean, you just -- what are you
2 trying to do?

3 MR. SANTHANAM: Well, under Rule
4 703 -- I think Rule 703, Justice Alito, operates
5 in conjunction or in parallel with the Sixth
6 Amendment. Rule 703, you know, it -- as a rule
7 of evidence, it can prohibit certain evidence,
8 and if you pass the hurdle in Rule 703, when you
9 deal with testimonial statements, you have to
10 pass the higher burdle -- burden of the Sixth
11 Amendment confrontation.

12 JUSTICE ALITO: Yeah, of course. But
13 703 does not provide that the facts on which an
14 expert relies in reaching his or her expert
15 opinion are put before the trier of fact for the
16 truth of the matter asserted. Isn't that
17 correct?

18 MR. SANTHANAM: We disagree with that.
19 Logic tells us, commentators, jurists, legal
20 treatises all tell us, that when you put forth
21 an expert's underlying statements that are
22 offered -- on which the expert bases an opinion
23 and the -- those statements can only support the
24 expert's opinion insofar as they're true, then
25 you're necessarily offering those statements

1 for --

2 JUSTICE ALITO: Oh, okay. Well, I
3 understood you in your introductory statement to
4 retreat from that, so that's what I want to
5 pursue.

6 You can win this case if you establish
7 that Rast's notes were intro -- were testimonial
8 and introduced -- therefore, introduced for the
9 truth of the matter asserted. You don't have to
10 take -- you don't have to take out Rule 703 in
11 order to do that.

12 Now suppose Longoni had testified in
13 the old style by answering a hypothetical
14 question, which is what I understood you to talk
15 about before.

16 Would there be a Confrontation Clause
17 problem there?

18 MR. SANTHANAM: If it was simply he
19 was asked to assume certain facts before
20 providing his opinion, we don't think there
21 would be a confrontation violation.

22 JUSTICE ALITO: Okay. All right.
23 Step 2. This is a trial. Now this was a jury
24 trial. And a lot of the stuff that was done is
25 kind of mind-boggling. There was no request for

1 an instruction to the jury that they should not
2 accept Rast's statements -- the information in
3 Rast's reports or notes for the truth of the
4 matter asserted, right? There was no request
5 for that?

6 MR. SANTHANAM: That's correct,
7 Justice Alito, but our position is that there
8 was no need for it because, in this case, the --
9 when you get to an instruction --

10 JUSTICE ALITO: I -- I understand.
11 But, really, I don't understand why competent
12 defense counsel wouldn't at least do that.
13 There was not a request for a judgment of
14 acquittal on the ground that there was no
15 competent evidence to show that the substances
16 that your client possessed were controlled
17 substances.

18 MR. SANTHANAM: There was a judgment,
19 a motion for a judgment of acquittal.

20 JUSTICE ALITO: Yeah, on other
21 grounds. All right. Let me get to the step 2,
22 beyond the hypothetical.

23 So let's say it's a -- it's a bench
24 trial before a very experienced trial judge, and
25 the trial judge says: Look, I've been a judge

1 for 25 years, and I don't -- I don't need to do
2 with this business with the hypothetical. I
3 know that you, Mr. Expert, Ms. Expert, you've
4 looked at an -- an actual report, so tell me
5 what's in the report and the conclusion --
6 excuse me -- that you drew from the report, and
7 I will not consider the underlying facts for the
8 truth of the matter asserted. Swear on the
9 Bible, I'm not going to consider them for that
10 purpose. I've been a judge a long time. I -- I
11 can do that.

12 Confrontation Clause problem there?

13 MR. SANTHANAM: Well, you know, first
14 off, it's important to remember this was a jury
15 trial. But our --

16 JUSTICE ALITO: I -- I understand.
17 But what's the answer to the hypothetical?

18 MR. SANTHANAM: Our answer is that
19 regardless of whether this case or any case is
20 tried to a judge or a jury, there will still be
21 a confrontation violation here because, at the
22 end of the day, the underlying statement is
23 offered for the truth to prove the -- the basis
24 of the expert's opinion.

25 And I think there's a -- to -- to kind

1 of explain that, if we look at the delta between
2 a scenario where the expert offers an opinion
3 based on a hypothetical set of facts and what
4 occurred here, which is where Longoni
5 specifically stated Rast did certain things,
6 reached certain results, used certain
7 procedures, the delta between that is the truth
8 of the statements.

9 JUSTICE ALITO: I -- I understand
10 that. But get back to my bench trial. You --
11 you don't believe the trial judge? The trial
12 judge says, I'm not going to consider this for
13 the truth of the matter asserted. If you
14 Ms. Prosecutor, Mr. Prosecutor, want to prove
15 that this was meth or marijuana, you're going to
16 have to produce other evidence.

17 MR. SANTHANAM: The problem --

18 JUSTICE ALITO: Confrontation Clause
19 problem there?

20 MR. SANTHANAM: Yeah, the problem --
21 we -- we do think so. And the problem I have
22 with that hypothetical, Justice Alito, is that
23 even when it's a judge that's the trier of fact,
24 when you begin with the premise that you're
25 offering a statement for the truth, it makes no

1 sense to say, I'm not considering it for the
2 truth.

3 JUSTICE ALITO: If you're offering it
4 for the truth. What if you're not offering it
5 for the truth and the judge says, I'm not going
6 to consider it for the truth?

7 MR. SANTHANAM: Right. And -- and our
8 position is, as we've laid out in the briefing,
9 if a expert's underlying statements are
10 presented and those statements only support the
11 expert's opinion insofar as they're true, then
12 they are offered for the truth in all -- all
13 respects.

14 JUSTICE SOTOMAYOR: Counsel, the
15 common law is very different from Rule 703. 703
16 is a modern rule, isn't it?

17 MR. SANTHANAM: Yes, it is.

18 JUSTICE SOTOMAYOR: In the common law,
19 an expert couldn't even often do a hypothetical.
20 In the common law, they had to be evidence
21 presented at trial from which the expert then
22 offered an opinion, correct?

23 MR. SANTHANAM: That -- that is
24 correct.

25 JUSTICE SOTOMAYOR: And so we've now

1 very -- strayed very far. I -- I take your
2 point in your brief that the Confrontation
3 Clause under anybody's theory on the bench
4 that's been articulated previously, if -- if she
5 -- if the lab technician had written an
6 affidavit, I swear under the penalties of
7 perjury that I did X, Y, and Z tests, that these
8 were the results, these are my notes, I attach
9 them hereto, and the expert got up and read that
10 affidavit without saying, I hereby say, that
11 that would be a clear Confrontation Clause
12 violation?

13 MR. SANTHANAM: Yes. That's -- that's
14 the Court's holdings in Melendez-Diaz and
15 Bullcoming.

16 JUSTICE SOTOMAYOR: All right. So the
17 fiction of 703 that somehow you read somebody
18 else's notes, procedures, conclusions -- I think
19 this is your argument, isn't it?

20 MR. SANTHANAM: Yes, it is.

21 JUSTICE SOTOMAYOR: Is just that,
22 correct?

23 MR. SANTHANAM: That's correct,
24 Justice Sotomayor.

25 JUSTICE ALITO: It's a fiction --

1 JUSTICE SOTOMAYOR: So they gave the
2 rule --

3 JUSTICE ALITO: Go ahead.

4 JUSTICE SOTOMAYOR: -- they gave the
5 game away according to you when they said this
6 was testimonial, correct?

7 MR. SANTHANAM: That's correct.

8 JUSTICE SOTOMAYOR: Because, once you
9 just give someone else's testimony and it is the
10 only basis for your opinion, then it's really
11 you being a conduit.

12 It's the policeman getting up at the
13 Star Chamber and reading your notes and saying:
14 This guy is guilty because of that. Put this
15 guy away because he did all these things.

16 That's what a policeman did in the
17 Star Chamber, right?

18 MR. SANTHANAM: That -- that's
19 correct, Justice Sotomayor. And -- and to -- to
20 carry your -- your hypothetical for -- forward,
21 we can imagine a scenario where a police officer
22 goes to a crime scene and records notes of his
23 or her observations at the crime scene, even
24 generates an affidavit summarizing what he or
25 she had observed.

1 Now, under this Court's precedent, it
2 would be a violation of the confrontation right
3 if the report were introduced without
4 confrontation. It would be a confrontation
5 violation if the notes are introduced without
6 confrontation.

7 JUSTICE BARRETT: Why would that be?
8 Let's imagine that he takes the notes, but he
9 never actually produces the affidavit. I -- I
10 think it depends how close -- I mean, if -- if
11 you stretch out primary purpose tests too far,
12 then it covers every antecedent.

13 I mean, if he's just taking notes,
14 like window was open, footprint was outside, I
15 mean, that's not created as a substitute for
16 trial testimony anyway.

17 MR. SANTHANAM: Well, a -- a couple of
18 answers, Justice Barrett. In that hypothetical
19 of the police officer, we would also submit that
20 if a second police officer took the stand and --
21 and recited statements from the notes, that too
22 would be improper.

23 But, to answer your -- Your Honor's --

24 JUSTICE BARRETT: But it has to be the
25 notes, right? The notes then would be the --

1 the statement that mattered, the testimonial
2 statement on the notes?

3 MR. SANTHANAM: That is -- that is
4 correct. And -- and the -- if -- there
5 shouldn't be a distinction drawn in this case
6 between the notes and the report.

7 JUSTICE BARRETT: Not this case. You
8 -- you said -- I -- I'm taking your
9 hypothetical. And you said it wouldn't be any
10 different if a police officer went to the scene
11 and jotted some notes down, that there would be
12 no functional difference between the notes and
13 the affidavit.

14 That doesn't seem right to me, so I'm
15 wondering why.

16 MR. SANTHANAM: The -- the reason is
17 is that the police officer's recording those
18 notes, depending on the circumstances, for a
19 primary evidentiary purpose, that, you know,
20 this -- these statements could later be used at
21 trial --

22 JUSTICE BARRETT: But everything --

23 JUSTICE KAVANAUGH: Well, that --

24 JUSTICE BARRETT: -- in an
25 investigation is done for the purpose of

1 establishing a case against the defendant. So
2 you're saying everything, everything you jot
3 down?

4 MR. SANTHANAM: Well, not everything.
5 It has to be a primary purpose, right?

6 JUSTICE KAVANAUGH: Well --

7 MR. SANTHANAM: So, if the police
8 officer, as -- as the Court has addressed in
9 past cases like Davis, Hammon, Bryant, Clark --

10 JUSTICE BARRETT: He jots it down for
11 himself. He's never intending to produce it to
12 anyone. He jots it down for himself because,
13 when he goes back and thinks about the case and
14 thinks about who he's going to target, he wants
15 to have his notes there about what the scene
16 looked like.

17 MR. SANTHANAM: Right. And -- and if
18 we can imagine how that would translate here to
19 the scenario of a forensic examiner.

20 JUSTICE BARRETT: No, no, no, no, no.

21 MR. SANTHANAM: Yeah.

22 JUSTICE BARRETT: Stick with the
23 hypothetical.

24 MR. SANTHANAM: Right. From our
25 perspective, that would be testimonial because

1 the police officer is going there with a
2 objective, primary purpose of recording
3 observations at a crime scene knowing that that
4 will be --

5 JUSTICE KAVANAUGH: On the -- on the
6 --

7 JUSTICE BARRETT: How --

8 JUSTICE KAGAN: But it must depend on
9 the facts, right? I mean, it must depend on the
10 facts as to whether the notes are sufficiently
11 closely tied to the report to fall within the
12 same umbrella or not. I mean, there are some
13 notes that wouldn't and some notes that would.

14 MR. SANTHANAM: I -- I -- I agree,
15 Justice Kagan.

16 JUSTICE BARRETT: But you just said
17 the notes in that hypothetical would under your
18 test.

19 MR. SANTHANAM: Well, I -- yeah,
20 Justice Barrett, I'm assuming in that
21 hypothetical that the notes were prepared in
22 conjunction knowing that an affidavit would be
23 prepared.

24 JUSTICE KAVANAUGH: Can I just --

25 JUSTICE BARRETT: That -- that wasn't

1 the hypothetical I gave you, though. I said it
2 was just for himself and he wanted to take it
3 back as he thought about who to target in this
4 investigation, and you said that would be
5 testimonial.

6 MR. SANTHANAM: Yeah. From -- from --
7 from our perspective, that -- there's a link
8 there between their notes and the report if it
9 --

10 JUSTICE KAVANAUGH: On the question of
11 what is testimonial, I guess one question I
12 have, which goes back a ways, is what tests to
13 apply. And so I just have a question, why
14 shouldn't we adopt the test that Justice Thomas
15 has been advocating in his opinions since White,
16 and under Justice Thomas's test, under that test
17 about formality and solemnity, why don't you
18 lose here?

19 MR. SANTHANAM: Well, first off, as we
20 understand Justice Thomas's opinions in -- in
21 White, in Williams and -- and Clark, the
22 circumstances matter. It's -- it doesn't have
23 to be that the statements are necessarily in a
24 formalized affidavit or deposition testimony.
25 The circumstances matter.

1 JUSTICE KAVANAUGH: Why shouldn't we
2 adopt that test was the first question.

3 MR. SANTHANAM: Because I think it
4 strikes too narrowly. It would preclude the
5 Sixth Amendment from applying to a vast swath of
6 the types of problems that inspired the
7 Confrontation Clause to begin with. It -- it
8 would -- it would provide a means for
9 prosecutors to come up with ways to introduce
10 statements simply by making things less formal,
11 and they -- you know, they don't necessarily
12 have to do it in a way that is deceptive. They
13 could enact policies where everything is done
14 instead of just --

15 JUSTICE KAVANAUGH: It seems like it
16 would be more predictable, more easily applied
17 and, therefore, helpful in that respect. Do you
18 agree with that?

19 MR. SANTHANAM: It certainly would
20 draw brighter lines. I -- I agree with that.
21 But, at the end of the day, it strikes too
22 narrowly for the protections that are intended
23 by the Sixth Amendment Confrontation Clause.

24 JUSTICE KAVANAUGH: And under that
25 test, suppose that test, why do you win here?

1 MR. SANTHANAM: Right. In the -- in
2 this case, the notes, the report, however you
3 want to consider them, they were created as part
4 of a formalized process, a formalized dialogue,
5 if you may. The prosecuting attorney, the
6 State's attorney, coordinated with Rast on her
7 testing. She prepared her statements as part of
8 a formalized process at a crime lab that
9 resulted in her typewriting nine pages of
10 reports, three pages -- of notes, three pages of
11 a report, all on DPS letterhead. These things
12 were served. These weren't handwritten notes on
13 scrap pieces of paper. They were served as part
14 of discovery in this case to prove facts.

15 All of those circumstances together
16 reflect a level of formality and solemn --
17 solemnity that we feel meets the -- whatever
18 tests members of this Court have -- have
19 articulated.

20 JUSTICE SOTOMAYOR: This -- in this
21 report, this is very close to Bullcoming, isn't
22 it?

23 MR. SANTHANAM: Our view is that it
24 is.

25 JUSTICE SOTOMAYOR: And not to

1 Williams. Williams, the report wasn't signed,
2 wasn't admitted into evidence, nothing else,
3 correct?

4 MR. SANTHANAM: That's correct.

5 JUSTICE SOTOMAYOR: Here, like in
6 Bullcoming, which Justice Thomas signed onto, it
7 was signed, even though it wasn't an affidavit
8 in its traditional sense?

9 MR. SANTHANAM: The report was signed.
10 That's correct.

11 JUSTICE SOTOMAYOR: And the notes --

12 JUSTICE KAVANAUGH: Not the notes,
13 though.

14 JUSTICE SOTOMAYOR: -- here were
15 attached to that report?

16 MR. SANTHANAM: Pardon me?

17 JUSTICE SOTOMAYOR: And the notes here
18 were attached to that?

19 MR. SANTHANAM: Yes. The notes
20 essentially were an appendix to the report that
21 Rast prepared. She --

22 JUSTICE SOTOMAYOR: There might be an
23 argument that we don't really know when they
24 were appended, but that's -- they -- that's how
25 they were introduced.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 Justice Thomas, anything further?

4 Justice Alito?

5 JUSTICE ALITO: Well, just to follow
6 up on your answer to something that Justice
7 Sotomayor asked, I thought that when -- when we
8 finished our little questioning that you -- you
9 were saying that Rule 403 -- I'm sorry -- 703
10 created a problem under the Confrontation
11 Clause, but do you want to go further than that
12 and say that experts not only can't answer
13 hypothetical questions but also that they can't
14 take into account any facts that are not proved
15 at trial in their presence?

16 MR. SANTHANAM: I -- I don't think we
17 would go that far. So I -- I think, under Rule
18 703, a hypothetical question is fine so long as
19 you're not saying -- reciting Rast's statements
20 that I did X, got X, Y -- Y results. I think
21 that's fine.

22 Where, again, the problem arises is
23 when someone like Longoni takes the stand and --
24 and provides those statements.

25 JUSTICE ALITO: Okay. You're not

1 making the argument that that's what the common
2 -- that was the state of the common law in 1791
3 and, therefore, that's what the Confrontation
4 Clause incorporates? You're not making that
5 argument?

6 MR. SANTHANAM: We're not making that
7 argument, but also we --

8 JUSTICE ALITO: Okay.

9 MR. SANTHANAM: -- we ought to be
10 mindful that the notion that you can introduce a
11 statement through an expert under Rule 703 also
12 wasn't around at the time.

13 JUSTICE ALITO: Okay. Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Sotomayor?

16 JUSTICE SOTOMAYOR: There's a circuit
17 split on two separate questions. The first is
18 what test exists for an out-of-court statement
19 to be testimonial. That's Justice Thomas's
20 position and the one that Justice Kavanaugh
21 asked you about, does it have to be sworn and
22 signed, sworn how and signed, et cetera, et
23 cetera.

24 Here, I understand Arizona conceded
25 that. I know in its brief it raises that

1 question. But the Question Presented,
2 everything, centers around that concession that
3 it was testimonial, right?

4 MR. SANTHANAM: Well, the State of
5 Arizona, the State did not challenge whether any
6 of these statements were testimonial in the
7 proceedings below. That's correct.

8 JUSTICE SOTOMAYOR: So the question
9 before us is whether, under the facts of this
10 case, the statements were offered for the truth?

11 MR. SANTHANAM: That's correct.

12 JUSTICE SOTOMAYOR: That's a separate
13 question, and that's the second part of the
14 split among the circuits, right?

15 MR. SANTHANAM: That is correct,
16 Justice Sotomayor. And, you know, to the extent
17 that there is a consensus on the Court, we do
18 think the Court should decide the full issue
19 here and condemn this practice of, you know,
20 using a substitute expert to convey testimonial
21 statements. But the Court may, for prudential
22 reasons, decide to just write an opinion that's
23 narrower.

24 JUSTICE SOTOMAYOR: Just on the second
25 split, which is --

1 MR. SANTHANAM: That's correct.

2 JUSTICE SOTOMAYOR: -- whether this is
3 testimonial the way it was done?

4 MR. SANTHANAM: That's correct.

5 JUSTICE SOTOMAYOR: All right.

6 CHIEF JUSTICE ROBERTS: Justice Kagan?
7 Justice Gorsuch?

8 Justice Kavanaugh?

9 Justice Barrett?

10 Justice Jackson?

11 JUSTICE JACKSON: Good morning. Can I
12 just -- I want to give you an opportunity to
13 speak to the administrative burden point. As I
14 read some of the arguments on the other side,
15 there's a concern about criminal defendants
16 challenging every piece of forensic evidence and
17 bringing the criminal justice system to a halt
18 under your rule.

19 Are they right about that? And if --
20 if not, why not?

21 MR. SANTHANAM: So we respond with,
22 you know, that there are three significant
23 practical limitations on the confrontation right
24 that would prevent the sorts of outreach that
25 the State and the United States complain of.

1 The first is that you'd have to deal
2 with statements. Most of what experts deal with
3 are physical evidence, photographs, things found
4 at a crime scene. And we're not suggesting that
5 an expert can't rely on that simply because
6 someone else collected that physical evidence.

7 The second is, is that the -- even if
8 a statement is involved, it has to be
9 testimonial. So, as this Court has recognized
10 in Melendez-Diaz, Bullcoming, statements that
11 are made in a hospital context, for example, for
12 treatment purposes aren't testimonial.
13 Similarly, most statements in a -- in the course
14 of the business that isn't directed to
15 generating evidence isn't going to be
16 testimonial. And experts can rely on all of
17 that.

18 And then, third, I think very
19 critically, the State, the prosecution does not
20 have to put on every statement to prove its
21 case. And to kind of provide an example here
22 with this case, what -- you know, again, what
23 the State could have done was simply have
24 Longoni testify in a hypothetical, abstract
25 fashion that he reviewed certain data and that's

1 consistent with the -- the findings of -- that
2 this is a illicit drug.

3 But they went further than that. They
4 had Longoni actually recount, recite statements
5 saying Rast did X, she used Y procedures, and
6 she reached Z results. And that, in our sense,
7 underscores the truth of the matter asserted.
8 That is the reason that they are presenting it,
9 because without --

10 JUSTICE JACKSON: And is it your
11 position as well that that really raises the
12 Confrontation Clause problem? Because to what
13 extent could a defendant actually challenge
14 those statements --

15 MR. SANTHANAM: Yes.

16 JUSTICE JACKSON: -- that she did X or
17 Y, because the person who's testifying doesn't
18 know. He's just looking at the report that says
19 that.

20 MR. SANTHANAM: That's correct,
21 Justice Jackson.

22 JUSTICE JACKSON: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Mr. Feigin?

1 ORAL ARGUMENT OF ERIC J. FEIGIN
2 FOR THE UNITED STATES, AS AMICUS CURIAE,
3 SUPPORTING NEITHER PARTY

4 MR. FEIGIN: Thank you, Mr. Chief
5 Justice, and may it please the Court:

6 We agree with Petitioner that
7 Longoni's testimony here may have gone too far.
8 Our principal interest is in making clear that
9 careful application of the federal rules can
10 avoid confrontation concerns.

11 Two main points on that. Number one
12 is that there's no confrontation problem when an
13 expert comes up and testifies to the expert's
14 bare fact of the bottom-line conclusion that the
15 expert's drawn, like these are drugs. The
16 problem comes in when evidence surrounding that
17 so-called basis evidence or methodology evidence
18 comes in.

19 The second point is that methodology
20 evidence can sometimes come in subject to
21 careful limiting instructions in some
22 appropriate cases.

23 It's a little bit hard for me to tell,
24 admittedly, but I think Petitioner largely
25 agrees with us on the first point and to some

1 degree on the second point. So I think the
2 Court can resolve this case narrowly without
3 suggesting that we need Justice Pryor --
4 Breyer's parade of 13 witnesses every time we
5 want to introduce a DNA match.

6 JUSTICE THOMAS: Do you think that
7 Ms. Rast's notes are testimonial?

8 MR. FEIGIN: So I'd like to -- Justice
9 Thomas, I think it's very important there to
10 break this into pieces. There are actually
11 three different pieces of Rast's materials in
12 the appendix, and we think that you could
13 potentially go different directions with each of
14 them, and they kind of match how we do it in the
15 federal system as well.

16 So there is an attested report on --
17 or a close to, you know, signed report on
18 stationery that's three pages long. That may
19 well be testimonial.

20 There are some further lab notes about
21 -- they aren't quite notes, but they're a little
22 more data about what the material -- how the
23 material was tested and so forth. Those may or
24 may not be testimonial. I'd need to know more
25 about exactly how they were prepared and for

1 what purpose. They may not be testimonial if
2 all that was intended to go into court is that
3 one report I mentioned earlier, which is like
4 the first three or four pages of the Pet. App.

5 And then, third, you have kind of just
6 Rast's notes, and, by and large, we think those
7 probably aren't testimonial. In particular,
8 they contain materials the Petitioner appears to
9 agree don't implicate the Confrontation Clause,
10 like the graphs from the gas chromatographer
11 mass spectrometry machine.

12 JUSTICE KAGAN: So why do you --

13 CHIEF JUSTICE ROBERTS: And so there
14 -- there are a lot -- so there are a lot of
15 "mays" and "probablys" in your presentation this
16 morning and there were in your brief as well.
17 You said -- began by saying you agree with
18 Petitioner that, you know, that may have gone
19 too far.

20 Petitioner's position's actually a
21 little more than that. They think it did go too
22 far. What -- what is the basis of your
23 reservation?

24 MR. FEIGIN: Well, Your Honor, I think
25 there is some dispute between the parties as to

1 how the jury would have understood this, the
2 degree to which Rast may have been testifying --
3 I'm sorry, Longoni may have been testifying sort
4 of verbatim from Rast's notes or how well the
5 jury might have understood that to be the case.
6 And we're not really taking a position on any of
7 that.

8 All -- all that said, you know, if the
9 Court wanted to narrowly reverse this case, we
10 think this is a much easier case than a case
11 that we think would follow scrupulously under
12 the federal rules.

13 And we think, under the federal rules,
14 you could have done something like this in -- in
15 a case like this. There'd -- there'd be
16 basically three steps to it. Longoni testifies
17 to his independent conclusion that these
18 materials are drugs, saying that he reviewed the
19 GCMS data that even Petitioner agrees is not
20 testimonial.

21 Second, there'd need to be some chain
22 of custody evidence that could come in as it did
23 in this case from Longoni himself based on his
24 personal familiarity with the procedures at the
25 lab that would at least supply circumstantial

1 evidence that connected up the bottom-line
2 conclusion he's drawing with the case. And
3 then, at that point, as you pointed out, Mr.
4 Chief Justice, the defense could just savage him
5 for not having an -- an appropriate basis here.

6 But we think those two things would at
7 least get you over the line to sufficiency,
8 which is a -- in any event, a state law or -- or
9 federal law evidence issue, and it wouldn't
10 present any confrontation concerns because, even
11 if you gave the jury a not for the truth of the
12 matter instruction in a case like that, I think
13 the jury would be very confused.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 MR. FEIGIN: Well, what am I not
17 considering?

18 CHIEF JUSTICE ROBERTS: Thank you.

19 JUSTICE KAGAN: But if -- if I can
20 understand, Mr. Feigin, your position and why it
21 is that you're not supporting the State as you
22 do in most cases. I'm -- I'm -- I'm just going
23 to read you a -- a portion of the testimony and
24 you tell me whether this is appropriate or not
25 and, you know, whether -- oh, that -- that's

1 fine or no, that's the reason why we're not
2 supporting the State as we usually do.

3 So this is after Mr. Longoni gets up
4 and they establish that he's reviewed the -- the
5 Rast report and also the Rast notes. So the --
6 the prosecutor says: Did you notice whether the
7 policies and practices that you've just
8 described were followed? Because he's also
9 described the lab's policies and practices.

10 And he says: Yes.

11 Prosecutor: Were they followed?

12 Yes.

13 From your review of the lab notes in
14 this case, can you tell me what scientific
15 method was used to analyze Item 26?

16 Answer: Yes. The microscopic
17 examination and the chemical color test were
18 used.

19 Question: That was done in this case?

20 Answer: Yes, it was.

21 Question: Was there a blank done to
22 prevent contamination?

23 Answer: According to the notes, yes.

24 Now is that the kind of thing that you
25 think there's no other -- that there's nothing

1 else going on there than the truth of the matter
2 asserted?

3 MR. FEIGIN: So, for that, Justice
4 Kagan, I'm going to go with Option B. That is
5 why we are not supporting the State as we
6 usually would. But I'd emphasize that if there
7 were more --

8 JUSTICE KAGAN: Because explain that a
9 little bit further. I mean, get to the second
10 part of your answer. I don't mean to cut you
11 off. But that is why you're not on the other
12 side, because what?

13 MR. FEIGIN: Well, so, as I was
14 explaining in response to the Chief Justice, we
15 do think that you could introduce circumstantial
16 evidence about what procedures and tests might
17 have -- were likely run in a particular case by
18 just saying every time we get something that we
19 think might be methamphetamine --

20 JUSTICE KAGAN: Yeah, I understand
21 that, but I was asking --

22 MR. FEIGIN: They went much further
23 here, and we don't think that's the way this
24 should come in, and that's not how we would try
25 to introduce it in federal court or, if we did,

1 we'd have someone who could testify from
2 personal knowledge to that.

3 There, you might have a problem, and
4 that's not even the kind of thing we necessarily
5 think you could get in not for the truth of the
6 matter asserted.

7 The kinds of things you might be able
8 to get in not for the truth of the matter
9 asserted, to take a couple of -- of simpler
10 conceptual examples, are, number one, you could
11 imagine some ballistics evidence where one
12 expert does it by taking some measurements and
13 calculating based on math and another expert
14 sets up some sort of experimental setup.

15 The jury might not be able to
16 understand the -- either the math or the
17 experimental physics, but they might have some
18 intuition as to which methodology they thought
19 was more reliable.

20 Another example might be a case where
21 both the --

22 JUSTICE GORSUCH: Mr. Feigin, I'm
23 sorry to interrupt you, but --

24 MR. FEIGIN: I'm sorry. No, no.

25 JUSTICE GORSUCH: -- I just want to --

1 MR. FEIGIN: You have every right,
2 Justice Gorsuch.

3 (Laughter.)

4 JUSTICE GORSUCH: Whether I have a
5 right or not, I'm still sorry. But, before you
6 go on, I just wanted to make sure I understood
7 your answer to Justice Kagan.

8 And I -- I think the distinction
9 you're drawing -- and I just think this -- is,
10 on the one hand, if the expert had gotten up and
11 said industry standards or forensic standards
12 require these tests and assuming they were done,
13 then, yes, the -- I believe this was a
14 controlled substance. Permissible.

15 I hear that more or less as what
16 you're saying you want to reserve and make sure
17 is possible versus saying, Ms. Rast ran these
18 tests, Ms. Rast found that they -- they meet the
19 criteria, and, therefore, I believe they are
20 controlled substances.

21 Is that a fair distinction that you're
22 -- is that a fair understanding of the
23 distinction you're drawing with Justice Kagan?

24 MR. FEIGIN: Yes, if -- I -- I -- I
25 think that is basically fair. If I could just

1 qualify it in slightly --

2 JUSTICE GORSUCH: Sure.

3 MR. FEIGIN: -- two ways? I think the
4 problem with the second -- with the second one
5 is simply testifying that Rast did something.

6 JUSTICE GORSUCH: Did these things,
7 yes.

8 MR. FEIGIN: And as to the first one,
9 I'd just add on something -- I think the expert
10 could testify or someone else could provide this
11 testimony that not only do forensic standards
12 require this, but our lab is accredited, our
13 accreditation requires it, this is what we
14 invariably do.

15 JUSTICE GORSUCH: Based on his
16 personal knowledge?

17 MR. FEIGIN: Based on his personal
18 knowledge of what the lab does.

19 JUSTICE GORSUCH: So it's either
20 personal knowledge, an industry standard, or a
21 hypothetical would be all okay. The line is
22 saying, I -- I am telling -- I am sitting here
23 telling you what Ms. Rast did for the truth of
24 that?

25 MR. FEIGIN: That's correct, Your

1 Honor.

2 JUSTICE GORSUCH: All right. Perfect.

3 MR. FEIGIN: But we do think that the
4 former evidence would be sufficient under the
5 federal rules --

6 JUSTICE GORSUCH: Right.

7 MR. FEIGIN: -- because it's evidence
8 that --

9 JUSTICE GORSUCH: No, I just wanted to
10 make sure --

11 MR. FEIGIN: Yeah.

12 JUSTICE GORSUCH: -- I understood the
13 distinction. I'm sorry for interrupting.
14 Perhaps when I --

15 JUSTICE KAVANAUGH: Can I -- can I
16 take you -- oh, I won't.

17 CHIEF JUSTICE ROBERTS: Thank you.
18 Thank you, counsel.

19 Justice Thomas?

20 Justice Sotomayor?

21 JUSTICE SOTOMAYOR: It's just a
22 follow-up at the end of the questioning of
23 Petitioner's counsel.

24 I understand that only about 3 percent
25 of criminal drug cases ever go to trial?

1 MR. FEIGIN: I think that's true.

2 JUSTICE SOTOMAYOR: Generous actually?

3 MR. FEIGIN: I think that's true of
4 most federal trials, yes, Your Honor.

5 JUSTICE SOTOMAYOR: So most -- most
6 people -- most cases go by plea and you don't
7 need an expert at all, correct?

8 MR. FEIGIN: I don't think that's
9 quite correct, Your Honor, because, of course,
10 we don't know when they're going to plead, and
11 we've had cases where we get all the witnesses
12 lined up that we need --

13 JUSTICE SOTOMAYOR: Absolutely. But
14 --

15 MR. FEIGIN: -- and they plead at the
16 last minute. And they have every right. And I
17 don't contest the --

18 JUSTICE SOTOMAYOR: But we're still
19 talking --

20 MR. FEIGIN: Yeah.

21 JUSTICE SOTOMAYOR: -- I mean --

22 MR. FEIGIN: Sorry.

23 JUSTICE SOTOMAYOR: -- the statistic
24 is at least 85 percent are pleas, correct?

25 MR. FEIGIN: Well --

1 JUSTICE SOTOMAYOR: California has the
2 rule that Petitioner wants. Are you aware of
3 some massive problem in California with --

4 MR. FEIGIN: Well, Your Honor, I don't
5 --

6 JUSTICE SOTOMAYOR: -- the prosecution
7 being able to prove its case?

8 MR. FEIGIN: I don't think they have a
9 rule that either precludes an independent expert
10 from -- an independent reviewer from testifying
11 or a -- a rule that requires a parade of
12 witnesses.

13 And you don't have to take my word for
14 it. You can look --

15 JUSTICE SOTOMAYOR: No, that's --

16 MR. FEIGIN: -- at the Alameda PD
17 brief --

18 JUSTICE SOTOMAYOR: Mm-hmm.

19 MR. FEIGIN: -- which just describes
20 the California rule as really going to the kind
21 of basis evidence that I've been talking about
22 today that may or may not be problematic.

23 JUSTICE SOTOMAYOR: Then I phrased the
24 question wrong. California follows the rule as
25 you understand it and we don't have a parade of

1 witnesses, correct?

2 MR. FEIGIN: I think California may
3 follow a somewhat stricter rule than the one
4 we'd urge in the federal courts, but they don't
5 go all the way to a point where I -- I don't
6 even think Petitioner's urging the Court to go,
7 but they really don't go all the way to a rule
8 that says this kind of thing is out.

9 JUSTICE SOTOMAYOR: Mr. Feigin, my
10 bottom line --

11 MR. FEIGIN: Yeah.

12 JUSTICE SOTOMAYOR: -- is the parade
13 of horrors is not happening.

14 MR. FEIGIN: The parade of horrors
15 --

16 JUSTICE SOTOMAYOR: You paint it as
17 you --

18 MR. FEIGIN: -- is not happening, but
19 if this Court were to suggest to us that -- or
20 to suggest to the lower courts either that you
21 can't have even a "substitute expert" who, to be
22 clear, is doing the exact same thing a reviewer,
23 a second reviewer at the time would be doing, or
24 if the Court were to suggest that we really do
25 need a parade of witnesses in these cases, I

1 think it would get substantially worse, not
2 necessarily because the cases would go to trial
3 but because defendants -- and I -- I don't
4 begrudge them this -- would have every right to
5 put us to our proof, see if we can actually come
6 up with the 13 witnesses we need at once and
7 only then deciding to plead. And I -- I think
8 it --

9 JUSTICE SOTOMAYOR: All right. You --

10 MR. FEIGIN: -- there would be
11 agencies --

12 JUSTICE SOTOMAYOR: -- want to qualify
13 everything.

14 MR. FEIGIN: Yeah.

15 JUSTICE SOTOMAYOR: You've answered
16 the question.

17 MR. FEIGIN: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice Kagan?

19 JUSTICE KAGAN: No.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch?

22 Justice --

23 JUSTICE GORSUCH: Oh, I'm -- I'm
24 sorry, Chief.

25 I did interrupt you. You wanted to go

1 say something else entirely. Here's your shot,
2 if you can still remember.

3 MR. FEIGIN: Thank you, Justice
4 Gorsuch. I believe, if -- if I recall
5 correctly -- I'm tempted to go any number of
6 directions with this, but --

7 (Laughter.)

8 JUSTICE GORSUCH: No, no.

9 MR. FEIGIN: I believe, when I was
10 interrupted --

11 JUSTICE GORSUCH: That is not -- that
12 is not the invitation I gave you, Mr. Feigin.

13 (Laughter.)

14 MR. FEIGIN: Understanding what you're
15 asking me, I believe I was in the middle of
16 giving a second example of methodology evidence
17 that a jury might be able to separate -- easily
18 separate out from any -- for truth purpose.

19 And the -- the second -- the second
20 one would be where, for example, both sides
21 might be relying on the same piece of evidence,
22 and one side thinks it proves one thing and the
23 other side thinks it proves another thing.
24 They're both applying the same -- you know,
25 they're both looking at the same X-ray. One

1 radiologist thinks the carcinoma was caused by
2 this. The other thinks it was caused by this.

3 And I would emphasize that under the
4 federal rules, you are entitled under Rule 105
5 to a limiting instruction that it not be used
6 for the truth, and we presume that juries follow
7 those instructions.

8 Thank you, Justice Gorsuch.

9 JUSTICE GORSUCH: No, thank you.

10 MR. FEIGIN: I appreciate it.

11 JUSTICE GORSUCH: Appreciate it.

12 CHIEF JUSTICE ROBERTS: Justice
13 Kavanaugh?

14 JUSTICE KAVANAUGH: Can I take you
15 back to your answers to Justice Thomas at the
16 beginning about whether it's testimonial? What
17 test were you applying?

18 MR. FEIGIN: There, I was applying
19 what I think the Court has announced as its
20 test, which is the primary purpose of creating
21 an out-of-court substitute for trial testimony.
22 I think that's basically a direct quote from
23 Bryant.

24 JUSTICE KAVANAUGH: Do you have a
25 position on whether the test that Justice Thomas

1 articulated in Williams versus primary purpose
2 is more consistent with the constitutional --
3 Constitution or better in application?

4 MR. FEIGIN: We don't have one that
5 we're -- we don't have a position that we're
6 presenting today because that hasn't really been
7 the focus of the case. I think one thing on
8 remand would be whether the testimoniality of
9 the statements is still open to question.

10 But, as between the two of them, you
11 know, if the Court wanted to open that up again
12 or to adopt Justice Thomas's test, we -- we
13 wouldn't oppose it doing that. We just haven't,
14 as we admittedly might sometimes do, exceeded
15 our focused amicus by suggesting the Court take
16 this case as an opportunity to do so.

17 JUSTICE KAVANAUGH: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Barrett?

20 JUSTICE BARRETT: Mr. Feigin, you said
21 at one point, I can't remember in response to
22 who, perhaps Justice Thomas, that Rast's notes
23 came in a couple of different categories and you
24 stepped through them -- maybe it was Justice
25 Thomas -- and you stepped through them and you

1 said some might be testimonial, et cetera. You
2 would need to know more, I think you said, about
3 the circumstances under which they were
4 prepared.

5 Could you say a little bit more about
6 that? Is that just the application? I guess I
7 just want to make sure -- let's say that I think
8 --

9 MR. FEIGIN: Sure.

10 JUSTICE BARRETT: -- they're all being
11 introduced for their truth. Are you saying that
12 you would need more information to figure out
13 whether they were created with the primary
14 purpose of creating a substitute for trial
15 testimony?

16 MR. FEIGIN: That's -- that's right,
17 Justice Barrett, and let me -- maybe I can go a
18 little bit further and explain that. The sort
19 of bare report of these are drugs, this was the
20 weight, I'm signing this, this is on our
21 stationery, to the extent that was created with
22 an understanding that it go into court as
23 opposed to, I don't know, some, like, national
24 security purpose or something like that, I mean,
25 that's probably going to be testimonial.

1 JUSTICE BARRETT: Yeah.

2 MR. FEIGIN: Then you have these two
3 other pieces of it. One is just kind of a
4 further explication of what the expert did, and
5 then the other is what we might call raw data.

6 We think the raw data is very unlikely
7 to be testimonial. And the middle kind of, you
8 know, here's a little more detail could or could
9 not be. And the things you might want to know
10 are, number one, was this just being written
11 down because of lab procedures or to document it
12 for someone else or for some later internal
13 review as opposed to for the purpose of it ever
14 coming into court.

15 And another one just might be, what do
16 the accreditation requirements require?
17 Because, for a lot of forensic science, there
18 are accreditation requirements that require that
19 notes be -- notes be gathered and -- and made so
20 that they can do, for example, reviews of
21 whether you're following your accreditation
22 provisions.

23 JUSTICE BARRETT: So it sounds like
24 your answer would be different. You know,
25 Petitioner said in -- in response to the

1 hypothetical he raised about a police officer
2 taking notes at the scene of the crime that
3 because those would be made with the primary
4 purpose of creating evidence or establishing a
5 fact material to the case, that those would be
6 testimonial. It sounds like, under your
7 definition and your approach to Rast's notes,
8 you would disagree with that?

9 MR. FEIGIN: Well, I -- I would agree
10 with Justice Kagan that it would depend on the
11 facts and circumstances under which the
12 notes were taken.

13 JUSTICE BARRETT: Right, but the facts
14 and circumstances being he's jotting notes down
15 that he's not doing because he anticipates
16 incorporating them into a later affidavit. He's
17 just jotting them down so that when he goes back
18 and he looks, he can say, you know, here is the
19 lay of the land, who do I think the suspect
20 might be.

21 I understood Petitioner to say that's
22 testimonial.

23 MR. FEIGIN: Yeah, I think something
24 that is created for an investigatory purpose, as
25 opposed to with a focus on court, may well be --

1 not be testimonial.

2 JUSTICE BARRETT: And so, in your
3 response to me about Rast's notes, it's kind of
4 like the further away the notes get from the
5 report she was creating, that's some evidence or
6 a factor to take into account in determining
7 whether they were created for the primary
8 purpose of being a substitute for testimony?

9 MR. FEIGIN: I think that's a very
10 important factor, Your Honor, because
11 particularly -- I mean, there's admittedly a
12 little bit of a chicken-and-egg thing going on
13 here with the Court's ruling versus how I'm
14 answering this question --

15 JUSTICE BARRETT: Right.

16 MR. FEIGIN: -- because I think, you
17 know, a lot of experts are fairly likely to be
18 aware of how the Court is construing these
19 things, but to the extent that you have what you
20 have in basically every case, no scientist is an
21 island, some collaborative lab work, and I'm
22 just preparing some work for you to look at, and
23 then you're kind of running the show, I -- I --
24 I don't know that what I'm preparing for you are
25 just careful documentation in accord with

1 accreditation or internal review procedures. I
2 don't think that's going to be testimonial.

3 JUSTICE BARRETT: Okay. Thank you,
4 Mr. Feigin.

5 CHIEF JUSTICE ROBERTS: Justice
6 Jackson?

7 JUSTICE JACKSON: So I found Justice
8 Gorsuch's question very, very helpful, and I'm
9 just trying to bear down again on the
10 government's position about methodology --
11 methodological evidence, as you've articulated
12 it.

13 So I think I hear you saying that when
14 an expert testifies in general about, as -- as
15 Justice Gorsuch said, you know, industry
16 standard, this is the way this kind of testing
17 is ordinarily done, this is from my own personal
18 knowledge how the methodology is typically taken
19 care of in these situations, that that could be
20 okay and no Confrontation Clause problem but
21 that the problem arises, I guess in this case,
22 when the expert's testimony actually relies on
23 the statements in this lab report about what was
24 done to this evidence and sort of vouches for
25 that, right?

1 When the expert says not this is the
2 way things are normally tested and I'm telling
3 you that from my expert view, but in this
4 particular case, the evidence that was collected
5 was tested in a certain way, I'm assuming that
6 that's actually true and now my testimony is X
7 on the basis of that assumption.

8 Is it the government's view that that
9 is not being offered for truth or it is in the
10 latter scenario?

11 MR. FEIGIN: Well, let me just make
12 one thing clear on your first scenario.

13 JUSTICE JACKSON: Yes.

14 MR. FEIGIN: The general evidence that
15 the witness could testify about through personal
16 knowledge, essentially, they're a fact witness
17 on this, it doesn't even need to be the same
18 expert, could be very specific to this lab as
19 well. It doesn't just --

20 JUSTICE JACKSON: Yes, yes.

21 MR. FEIGIN: -- have to be about
22 accreditation.

23 JUSTICE JACKSON: It doesn't have to,
24 but -- but -- but it's not specific to the
25 testing of this evidence necessarily. That's

1 the distinction I'm trying to make.

2 MR. FEIGIN: Okay. And then the -- as
3 to the second, I guess I would -- that -- there
4 were a couple of different pieces in there. One
5 would be, if you really just had testimony like
6 this was done in this case, I know it, that
7 would be -- we -- we -- we don't -- we're not
8 arguing that that would be permissible.

9 If -- depending on exactly how it --
10 JUSTICE JACKSON: And that's because
11 why?

12 MR. FEIGIN: Well, there, you're
13 testing something outside the personal
14 knowledge. You really are just repeating the
15 statement -- in effect repeating the substance
16 of out-of-court statements.

17 JUSTICE JACKSON: And offering it for
18 its truth, right? Because you're assuming that
19 it actually was done in that way, in the way
20 that you're testifying.

21 MR. FEIGIN: So where the statement is
22 to the jury, you know, Expert B, who is not me
23 and you're not hearing from, did these tests,
24 that's a problem -- that's problematic.

25 I think there might be -- I would

1 reserve, Justice Jackson, just depending on how
2 it comes in as trial -- at trial and how it
3 actually winds up being shaped and what kind of
4 limitations there are on it, something like the
5 notes purported to say that these tests were run
6 in this case, I have no reason to believe
7 otherwise and I have proceeded on that
8 assumption, that that --

9 JUSTICE JACKSON: Why is that --
10 and -- and your objection or the reason why you
11 think that's okay is because why?

12 MR. FEIGIN: Well, there, the expert
13 is making clear that the expert is not making
14 this direct testimony about what, in fact,
15 happened in the case. I think it may well in
16 that -- those circumstances be a lot closer to
17 the circumstantial evidence. And it's -- it
18 shows what --

19 JUSTICE JACKSON: But isn't he still
20 offering it for truth to the extent that he's
21 assuming that it is -- that it did happen in
22 that way?

23 MR. FEIGIN: I think, in that
24 circumstance, all the expert's offering for the
25 truth is that the expert's assuming it.

1 I think, to get back to the Chief
2 Justice's point that these people can be savaged
3 on cross-examination, you'd say you're just
4 assuming that because that's what -- because
5 that's what usually happens and that's what
6 purported to happen in this case, but, actually,
7 you -- you don't know for a fact that that
8 happened, do you?

9 And I think you could --

10 JUSTICE JACKSON: How would a
11 defendant ever, without the lab technician,
12 actually challenge the assumption? Are you
13 saying the Confrontation Clause doesn't speak to
14 the defendant's ability to challenge the
15 assumption in a meaningful way?

16 MR. FEIGIN: First of all, Your Honor,
17 I -- I -- I just want to be quite clear that we
18 don't think that testimony has to come in in the
19 way I was just describing to you for the expert
20 to testify. I think the expert can testify very
21 simply at a somewhat higher level of abstraction
22 in line with what I was --

23 JUSTICE JACKSON: Right. But, if he
24 doesn't --

25 MR. FEIGIN: -- explaining to the

1 Chief Justice.

2 JUSTICE JACKSON: -- my question is --
3 yeah.

4 MR. FEIGIN: But, if he does, then I
5 think where the defense gets its opportunity to
6 cross-examine -- and, again, nobody is actually
7 saying in this circumstance that the expert did
8 these things. The -- the -- sorry, that the
9 testing analyst actually did these things. The
10 testifying expert is simply saying, I am -- you
11 know, this is how we usually do it. I've
12 reviewed a case file that says it was done in
13 this case. I've no reason to disbelieve that.
14 But makes clear I don't personally -- I can't
15 personally tell you that's exactly what happened
16 in this case.

17 JUSTICE JACKSON: Okay. Thank you.

18 MR. FEIGIN: Okay. Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Mr. Samuels.

22 ORAL ARGUMENT OF ALEXANDER W. SAMUELS

23 ON BEHALF OF THE RESPONDENT

24 MR. SAMUELS: Thank you, Mr. Chief
25 Justice, and may it please the Court:

1 This Court has long been clear and
2 Petitioner I don't think disputes that evidence
3 that is not offered for the truth of the matter
4 asserted, is not offered to prove the truth of
5 the matter asserted, does not implicate the
6 Confrontation Clause.

7 Meanwhile, Arizona law has long been
8 clear that evidence offered only for the purpose
9 of explaining the basis of an expert's opinion
10 is not and cannot be offered for the truth of
11 the matter asserted.

12 In a case like this, everyone agrees
13 that a testifying expert like Longoni cannot
14 serve as a mere conduit for the conclusions of a
15 testing expert like Rast. That's just not what
16 happened here, though.

17 Longoni explicitly testified that he
18 could form independent conclusions and then
19 testified that he had formed independent
20 conclusions and revealed what those conclusions
21 were. He based those conclusions on information
22 in Rast's notes and the computer-generated
23 graphs from her testing.

24 The trial judge who heard that
25 testimony thus correctly found that Longoni had

1 testified to his own opinion and correctly held
2 that there was no Confrontation Clause
3 violation.

4 The judgment below could also be
5 affirmed on the independent ground that Rast's
6 notes were non-testimonial. That is not
7 something that the State has ever affirmatively
8 conceded in this case.

9 The notes, which were the source of
10 the statements here, were neither prepared to be
11 a substitute for trial testimony, nor were they
12 sufficiently formal or solemn to qualify as
13 testimonial.

14 The notes differ in many key ways from
15 the report, and Petitioner, perhaps recognizing
16 this, repeatedly tries to make the report the
17 focus of this Court's inquiry, but there is just
18 nothing in the record to support the assertion
19 that any statements from the report were
20 referenced at trial here.

21 The closest they get to coming to that
22 is they say that he recited the conclusions from
23 the report. There's no indication in the record
24 that's what he did. He said the same words, but
25 it's just a standard conclusion, it's the

1 standard language that a lab analyst would use
2 that a substance has a usable quantity of fill
3 in the blank.

4 In this way and in other ways,
5 Petitioner encourages the Court to look well
6 beyond the unique facts of this case, and he
7 sets his sights instead on a far-reaching new
8 rule without any real workable limiting
9 principle. We don't think the Confrontation
10 Clause requires the anomalous results that would
11 result from Petitioner's rule.

12 And we think this Court should decline
13 Petitioner's invitation to greatly expand the
14 reach of the Confrontation Clause, which is what
15 they think they -- what we think they invite.

16 I welcome the Court's questions.

17 JUSTICE THOMAS: You put quite a bit
18 of weight on the argument that Ms. Rast's
19 statements or notes were not in -- introduced
20 for the truth of those state -- of those notes.
21 But, if they were inaccurate or just flat out
22 wrong, what would be the value of Mr. Longoni's
23 testimony?

24 MR. SAMUELS: We don't dispute, Your
25 Honor, that the value of Longoni's testimony is

1 very much directly related to Rast's notes and
2 -- and whether they are reliable or not. But we
3 think that's exactly what 703 gets at, which is
4 that the jury can use that information, the
5 underlying, what we've called basis evidence
6 here, to evaluate Longoni's opinion, but not for
7 other purposes.

8 JUSTICE THOMAS: Well, you don't think
9 that in the context of this trial, of a criminal
10 trial, that that has some friction with the
11 Confrontation Clause, if the truth does -- is
12 necessary in order for the opinion to be useful?

13 MR. SAMUELS: No, Your Honor. I -- I
14 think it's helpful to take a step back and think
15 about what this case would have looked like if a
16 limiting instruction had been given, because a
17 limiting instruction is something that the
18 defendant would have been entitled to if he had
19 asked for one.

20 JUSTICE THOMAS: Mm-hmm.

21 MR. SAMUELS: And if one had been
22 given, I -- I think this Court would presume
23 that a limiting instruction would be followed.
24 It presumes that in nearly all cases, with the,
25 you know, one exception I think of Bruton.

1 And we think, you know, counsel for
2 criminal defendants have stood at this lectern
3 and have argued many times in other contexts
4 that certain instructions are very difficult for
5 a jury to follow and, nonetheless, the
6 presumption applies.

7 And we think it would similarly apply
8 in this case. That -- that then begs the
9 question, well, why does that matter here
10 because there was no limiting instruction here,
11 but I think the answer to that question is
12 simply that the Petitioner never requested the
13 limiting instruction, and for that reason, I --
14 I think there's not a Confrontation Clause
15 violation here.

16 JUSTICE SOTOMAYOR: Counsel, can I go
17 back to one point and that was your argument
18 that this is non-testimonial. The government
19 says that's not unclear. To be frank with you,
20 I don't see it argued anywhere below and
21 anywhere at trial actually.

22 You didn't -- I don't see it anywhere
23 in your cert stage briefs in the courts below.
24 I see it in your red brief, and you argue it
25 here, but you sort of have a footnote on that

1 argument and that's all.

2 I -- I don't know of any time that
3 we've ever addressed a question that wasn't
4 raised in the cert brief in opposition here,
5 wasn't raised by the courts below, was raised in
6 a footnote at best in the red brief.

7 Isn't the entire premise of the
8 question before us that the information was
9 testimonial?

10 MR. SAMUELS: I don't think so, Your
11 Honor, and I'd like to say a couple things about
12 that. Let me start with the red brief and maybe
13 rewind.

14 JUSTICE SOTOMAYOR: No, why don't
15 you -- why don't you work with the court below.

16 MR. SAMUELS: Well --

17 JUSTICE SOTOMAYOR: Where did you
18 argue that in the court below?

19 MR. SAMUELS: Happy to proceed in the
20 other fashion.

21 JUSTICE SOTOMAYOR: Okay.

22 MR. SAMUELS: So, in the court of
23 appeals, there was a citation to Justice
24 Thomas's concurrence in Williams, which was only
25 helpful for the State on the testimonial

1 question.

2 JUSTICE SOTOMAYOR: Have we ever had a
3 case where a mere citation preserves such a
4 consequential argument as overturning precedent?

5 Where did you point out that this --
6 that all components of this report were
7 non-testimonial or testimonial?

8 MR. SAMUELS: Candidly, Your Honor, we
9 didn't further develop the argument in the
10 Arizona court of appeals. There was --

11 JUSTICE SOTOMAYOR: Okay. So now come
12 here.

13 JUSTICE KAGAN: Or in the trial court,
14 am I right?

15 MR. SAMUELS: No. I mean, I don't
16 think that there was any reason to discuss it in
17 the trial court given that the -- the trial
18 court's ruling was what it was on the other
19 question. And that --

20 JUSTICE KAGAN: Yeah. I mean, but in
21 both the Arizona courts and then also in your --
22 in -- in -- in your -- the filing that you filed
23 in the Arizona Supreme Court, although they
24 never took the case, but in all these filings,
25 everything was about the truth of the matter

1 asserted?

2 MR. SAMUELS: Well, in the trial
3 court, that was the focus. In the court of
4 appeals, like I said, it was except for this
5 citation. In the Arizona Supreme Court --

6 JUSTICE KAGAN: Yeah. I mean, it's a
7 citation in, like, a 30-page brief which clearly
8 focuses on, you know, the first question that
9 you started your -- your -- when you got up to
10 the podium, you started with. It was all about
11 that. It was all about the hearsay question.

12 MR. SAMUELS: I take the point. That
13 was certainly the primary focus in the state
14 courts. I -- I would like to explain why, which
15 is it had been settled for, I think, a little
16 more than a decade at this point in the Arizona
17 courts that that first preliminary question, the
18 -- the not for the truth question, settled this
19 case. I mean, this was a case decided in an
20 unpublished opinion without oral argument in the
21 Arizona court of appeals on that question.

22 And so the State didn't develop a
23 testimonial argument right there. But I think
24 there was -- frankly, there was never going to
25 be any relevance to that argument unless the

1 very unlikely event that this Court granted
2 certiorari.

3 Now I would like to talk about what --
4 (Laughter.)

5 MR. SAMUELS: Perhaps that looks less
6 unlikely now.

7 (Laughter.)

8 MR. SAMUELS: But I -- I would like
9 to, though, brief --

10 JUSTICE KAGAN: In hindsight.

11 MR. SAMUELS: Yes. Our briefs here --
12 because I think I would disagree with some of
13 the premises of your question, Justice
14 Sotomayor. In the red brief, I think we spend
15 nine or 10 pages talking about whether these
16 statements were testimonial or -- or not.

17 JUSTICE KAVANAUGH: Eleven pages.

18 MR. SAMUELS: Eleven pages. Thank
19 you, Justice Kavanaugh.

20 JUSTICE KAVANAUGH: Yeah.

21 JUSTICE KAGAN: No, I agree with you.
22 It's been totally briefed here. The question is
23 whether it's been forfeited below.

24 MR. SAMUELS: Understood. And -- and
25 last thing I'll say, because this is maybe the

1 last brief I haven't mentioned yet, is, in our
2 brief in opposition at the cert stage, I think
3 even Petitioner understood us to be arguing that
4 Justice Thomas's view supported our case here.
5 Again, that's only helpful on the testimonial
6 question.

7 In their reply at the cert stage, they
8 say -- they assert that we didn't dispute that
9 this was testimonial under the tests applied by
10 the plurality or the dissent in Williams.
11 Notably absent from that is Justice Thomas's
12 view and which we laid out and -- and talked
13 about how it -- you know, again, not developed
14 with very, very specific facts, I don't dispute
15 that, but did talk about how that supports the
16 --

17 JUSTICE KAGAN: Can I talk about the
18 substance of the testimonial question for a
19 minute? I want to start with this -- the report
20 question, which I think Mr. Feigin said, you
21 know, on any test that we've ever used in this
22 Court is pretty clearly testimonial.

23 And I think you -- you sort of
24 acknowledged that by suggesting that the real
25 thing is, oh, he'd only relied on the notes.

1 But is -- is that really true? I mean, I'm just
2 looking -- I'm just going to read you some
3 places where the witness really couldn't seem to
4 answer questions without, you know, reviewing
5 the report.

6 So there's a question: Did your
7 review help show how State's Exhibit 26 was
8 tested in this case?

9 And Longoni says: May I review the
10 report, Your Honor?

11 The court says: You may.

12 Another question: Do you know who was
13 responsible for intake?

14 Longoni says: If I may refer again to
15 the report, Your Honor?

16 The court says: You may.

17 Another question: Did you also look
18 at what was done to Item 28?

19 Longoni says: Again, can I refer to
20 the report, Your Honor?

21 The court says: You may.

22 I mean, this report is all over the --
23 the -- the transcript.

24 MR. SAMUELS: The word "report,"
25 Justice Kagan, is all over the transcript, and I

1 -- we made this point in the brief, but I want
2 to emphasize a close look at the record reveals
3 he couldn't possibly have been looking at the
4 report for those statements. So I think you're
5 looking at Pet. App. 40. That first question,
6 did you review how State's Exhibit 26 was tested
7 in this case? And he's, you know, referencing
8 to the report at that point. That information
9 is not in the report.

10 JUSTICE KAGAN: So I -- I -- I take
11 that point, but it just sort of shows how, in
12 this case, he's up there on the stand and he has
13 both the official report and some of the notes
14 in an -- essentially an appendix, and he's kind
15 of going back and forth between them.

16 And, you know, that just shows how
17 closely related the two were. That's what he
18 prepared from. You know, he reviewed the report
19 and he reviewed those underlying notes, which --
20 which basically, you know, went through --
21 because the -- the report, as you say, is just
22 the conclusions, but it's the notes that tell
23 you exactly what Ms. Rast did in the case. And
24 he is repeating the -- the -- the notes
25 essentially to say this is how it was tested,

1 this is the -- you know, this -- this -- this is
2 what Rast did.

3 MR. SAMUELS: We don't dispute that
4 he's relaying some information from the notes,
5 certainly. But, as it relates to the notes
6 versus report question, you know, we're not
7 saying here that he never would have looked at
8 the report or that he was totally ignorant of
9 it. But there's no indication in the record
10 that he ever relayed anything from it.

11 The only thing in the report was the
12 conclusions, and --

13 JUSTICE KAGAN: And he does state the
14 exact same conclusions in the exact same words
15 after using the notes to say -- you know, to go
16 through essentially in the same words again
17 everything that Rast said about what she did.

18 MR. SAMUELS: He uses the same words.
19 I made the point in my opening, and I -- and I
20 think it's an important one, that this is just
21 standard language for this. You know, usable
22 quantity of X is the legal thing that you have
23 to prove in a case like this. And I think the
24 folks at the lab know that.

25 I think it's -- it's also the case

1 that if you think about what it is that he is
2 actually testifying to, if you look at his
3 actual testimony, he's asked specifically if he
4 can form an independent opinion. I don't think
5 he would have said yes to that question if he
6 couldn't form it from, for example, the graphs,
7 which he specifically says he looked at.

8 JUSTICE JACKSON: But we don't have to
9 -- we don't have to just accept his word for it,
10 right? I mean, we -- we do have to kind of
11 figure out the extent to which his opinion is
12 independent, and I guess that takes me back to
13 Justice Thomas's initial question about your
14 argument with respect to this being offered for
15 the truth of the matter asserted.

16 And I created a hypothetical that I'm
17 hoping you can respond to that would help me to
18 understand what you mean about it not being
19 offered for truth.

20 So suppose we have a murder that the
21 police believe was committed with some kind of
22 unconventional weapon that they find in the
23 defendant's possession. So I'm envisioning
24 something like a unique 3D-printed gun or
25 something. And at trial, the state puts on a

1 ballistics expert who has not examined the
2 weapon himself, but he bases his opinion on a
3 report of a lab technician who has tested this
4 weapon.

5 And the lab report says how the weapon
6 works, it explains how the technician figured
7 that out, it says that the technician took the
8 weapon in both of his hands, he stood three feet
9 away from the target, he lifted it at a certain
10 angle, pointed it, the projectile came out at a
11 certain angle and velocity, and here is the
12 photographs even of the final result, et cetera,
13 of how it entered, here are the measurements,
14 the scatter plot.

15 On the stand, the expert says, I
16 reviewed the report and the photos and the
17 measurements and also the pathologist's report
18 of the wound on the victim, and in my expert
19 opinion, this is the weapon that killed the
20 victim.

21 I take it that your argument is that
22 the underlying lab reports are not being offered
23 for truth in that situation, but I guess I don't
24 understand why. The lab report is what is
25 explaining to the expert how this weapon

1 actually worked since he never tested it, and
2 he's unquestionably assuming the truth of the
3 testing as the technician laid it out.

4 So why -- why is it that he's not --
5 that -- that -- that it's not being offered for
6 truth in this way?

7 MR. SAMUELS: Well, in -- in talking
8 about that hypothetical, I think it's important
9 to emphasize these cases can be very
10 fact-specific in evaluating a question like
11 that. It's easy to think about two poles, but I
12 think there really is a spectrum. And there's a
13 spectrum in part because, you know, as we've
14 said, mere conduit testimony is not permitted.

15 And so I think there's an evaluation
16 that's required in any case and in a case like
17 that one to figure out is the expert who's
18 testifying really adding something and is his --
19 is his testimony really the central thing that
20 matters.

21 JUSTICE JACKSON: Yes, he's adding
22 something in my hypothetical because the
23 technician is not saying anything about whether
24 this is the actual gun that killed the victim.
25 The technician is just saying this is how this

1 machine that you found in the defendant's
2 possession works.

3 But that's a basis, right? The expert
4 is saying, I have to assume that it works in
5 this way because I never -- I never tested it
6 myself, and on the assumption that it works in
7 the way that the technician says it does, my
8 testimony is that this is the murder weapon.

9 MR. SAMUELS: So it's possible that
10 testimony like that, obviously, might not come
11 in because of Daubert or other reasons, but --

12 JUSTICE JACKSON: Yes.

13 MR. SAMUELS: -- setting that aside,
14 if -- if the expert was not familiar at all with
15 the type of weapon involved, I'm not quite sure
16 how they could offer a completely independent
17 opinion. But, again, assume that they have
18 enough expertise in -- in this particular type
19 of 3D printing or something like that to do
20 that. I do think it's possible that the
21 different basis evidence that you're talking
22 about there could be referenced.

23 And, again, the defendant --

24 JUSTICE JACKSON: But let me ask you,
25 isn't -- isn't this exactly the Confrontation

1 Clause problem that the Constitution worries
2 about? Because the expert gets up and he relies
3 on this report that explains how this machine
4 works, but he has not actually tested it. So
5 the defendant could say, I agree with you, Mr.
6 Expert, that if the machine worked in this way,
7 it is the murder weapon. What I'd like to do is
8 interrogate whether or not the testing of this
9 machine was accurate. And what -- what you
10 haven't done, State, is presented to me the
11 person who actually tested it.

12 I want to say, says the defendant,
13 that the photographs that are here are not
14 really the photographs, this is not what
15 happened, or that you didn't really stand only
16 three feet, you stood a lot closer in order to
17 make this result. But I can't do that because
18 the expert is not -- the person who tested it is
19 not before me.

20 I feel like that's the real problem
21 that -- that the Confrontation Clause is about
22 and that you'd say I couldn't do without a
23 Confrontation Clause issue.

24 MR. SAMUELS: I -- I just think expert
25 testimony is different in several ways, and I

1 think that is well established for -- for quite
2 some time. And it -- it's different in a few
3 ways, I think, that really matter here.

4 One is, under 703, there's going to be
5 an instruction if the defendant requests it, and
6 the jury, we would presume, would follow it.
7 And -- and I think that that's really important
8 in this context.

9 And so I -- I'm just not sure that it
10 is what the Confrontation Clause is designed to
11 get at because the jury would be told not to
12 consider it as substantive evidence.

13 I also think, in the context of expert
14 testimony, this is maybe a less important point,
15 but -- but it's still worth noting that there
16 are other ways to confront expert testimony that
17 are available that are not available in other
18 contexts. So it's, you know, folks from this
19 Court and others have noted that the defendant
20 could subpoena the analyst, but set that aside
21 for a moment. It's also the case that
22 defendants can hire defense experts. They'll
23 have disclosures about this testing before
24 trial. They can attack this in other ways.

25 And so I -- I'm not sure that that

1 necessarily is critical to the Confrontation
2 Clause analysis, but I do think it's worth
3 noting that it makes expert testimony -- it's
4 yet another way that expert testimony is
5 different from the percipient witness testimony
6 that we think lies really at the heart of the
7 Confrontation Clause.

8 JUSTICE GORSUCH: Mr. Samuels --

9 JUSTICE ALITO: What about --

10 JUSTICE GORSUCH: -- you mentioned --
11 oh, I'm sorry, please.

12 JUSTICE ALITO: An expert's -- an
13 expert's opinion is always worthless unless the
14 facts on which the expert relied in reaching the
15 opinion are -- are true.

16 And so, if we were to say that an
17 expert cannot -- that anytime an expert
18 testifies based on -- on facts, that that
19 suggests that the facts are true, regardless of
20 whether they are -- the -- the -- the facts are
21 omitted because of a hypothetical or the trier
22 of fact knows or is instructed that they're not
23 admitted for the truth of the matter asserted.
24 I don't know what's left of expert testimony,
25 but there's the problem of whether those facts

1 are proved.

2 So, here, what evidence in the record
3 shows that the substances in question were meth
4 and marijuana?

5 MR. SAMUELS: Sure. And if -- if I
6 may, I'd like to address the first -- the first
7 part of that question just briefly, which is
8 I -- I do think, and -- and some commentators
9 have observed, that if this Court were to adopt
10 a rule like what Petitioner proposes, it doesn't
11 necessarily just have criminal law implications
12 because it really does change the landscape of
13 Rule 703. And so it could have implications
14 beyond that.

15 To get to the -- the last part of your
16 question about what evidence was in the record,
17 I -- I want to be clear, but I take Your Honor
18 to be asking about the evidence that -- that
19 this particular substance was tested, or are you
20 asking about that this particular substance was
21 what it --

22 JUSTICE ALITO: Was. So, if the --
23 you know, the facts on which the expert -- on
24 which Longoni relied as an expert in reaching
25 his conclusion were not offered for the truth of

1 the matter asserted, then what evidence is there
2 in the record that the substances were meth and
3 marijuana?

4 MR. SAMUELS: So there is -- there's
5 Longoni's opinions, first of all, which
6 obviously are offered for the truth of the
7 matter asserted. And I do think there's, as
8 there was in Williams, independent evidence from
9 which the jury could draw the conclusion that
10 this was the evidence that was tested.

11 JUSTICE ALITO: And what is that?

12 MR. SAMUELS: So that would be --
13 there's a line drawn all the way literally from
14 the crime scene to the courtroom.

15 JUSTICE ALITO: Yeah.

16 MR. SAMUELS: So, if I start at the
17 end there, the three substances, Items 20, 26,
18 and 28, were admitted as physical exhibits at
19 trial. So they were present in the courtroom
20 for the jury.

21 Photos of that -- of those --

22 JUSTICE ALITO: Well, what good does
23 that do? I mean, the -- the jury would taste it
24 or sample these --

25 (Laughter.)

1 MR. SAMUELS: I should hope not.

2 JUSTICE ALITO: -- sample these drugs
3 and see what they were?

4 MR. SAMUELS: But I think, in terms of
5 them being able to draw the conclusion that
6 these really were the substances that were
7 tested and thus, you know, Longoni had something
8 relevant to rely on in terms of the testing, so
9 starting at the crime scene, photographs of
10 those exact same items were admitted at trial so
11 the jury could see that these are the same
12 things.

13 JUSTICE ALITO: All right.

14 MR. SAMUELS: There's chain-of-custody
15 evidence that was testified to by law
16 enforcement about how it got from the crime
17 scene to an evidence locker --

18 JUSTICE ALITO: Right.

19 MR. SAMUELS: -- that the only reason
20 it left an evidence locker, the only time --

21 JUSTICE ALITO: Right.

22 MR. SAMUELS: -- was to go to the lab.
23 And then the physical exhibits actually bear
24 initials and a date that's just a few days after
25 the evidence got to the lab.

1 JUSTICE ALITO: Yeah, okay. So that
2 those exhibits were the ones that were taken
3 from the scene, and let's say they -- those are
4 the exhibits that were sent to the -- to the
5 lab, okay? What -- what evidence is there that
6 they were tested at the lab and they -- and --
7 and this is -- this data is the -- the data that
8 was produced?

9 MR. SAMUELS: So, in terms of evidence
10 that these particular items were actually tested
11 by Rast, I think, in terms of substantive
12 evidence, a lot of the details that are in the
13 record obviously couldn't be considered as
14 substantive evidence, but I do think Longoni,
15 even if you set all that basis aside, basis
16 evidence aside, and pretend it never was
17 referenced at all, Longoni testified that he was
18 asked to evaluate the materials from a
19 particular case, a particular case number. That
20 case number was otherwise in the record from law
21 enforcement.

22 And I think, if you imagine no basis
23 evidence at all, I think at the very least he
24 could say, as he did here, that he reviewed the
25 records from this particular case number, he

1 independently reviewed the materials that were
2 there, and these are his independent
3 conclusions. And I think --

4 JUSTICE GORSUCH: Certainly --

5 MR. SAMUELS: -- that's what I
6 understand --

7 JUSTICE GORSUCH: -- certainly, if he
8 had done so himself and -- and replicated the
9 tests, I -- I follow everything you're saying.
10 I get it.

11 I also understand that if he had said,
12 well, I -- as Mr. Feigin indicated, that I
13 assumed that traditional processes were followed
14 and here's what those traditional processes are,
15 it would still be incumbent upon the State to
16 prove up that that assumption's a valid
17 assumption because, as it was done in common
18 law, a hypothetical is only as good as the
19 hypothetical, right, the hypothetical opinion?

20 And if -- if the hypo -- if the bases
21 aren't proven up, then the expert's opinion can
22 be stricken even at common law.

23 And, here, I -- I think Justice Alito
24 is just pointing out how could it -- the only
25 thing that this testimony could have been

1 offered for does seem to be the truth that Rast
2 did these tests and found these results.

3 And I'm just struggling with how is it
4 not the truth, counsel?

5 MR. SAMUELS: Sure. And -- and let me
6 try to explain why. If you think about the
7 hypothetical I just posed where none of that
8 basis evidence was ever referenced at trial,
9 and -- and assume Longoni was permitted to
10 testify that he reviewed the case records for
11 this case --

12 JUSTICE GORSUCH: No, no, no, no.
13 But, see, that's the whole point. I -- I -- he
14 -- let's put Rast aside. Rast doesn't exist.
15 He -- he just comes in and says, I think this is
16 meth and marijuana. That would be stricken,
17 right? I -- I -- I assume something happened
18 and you never prove up the assumptions of what
19 happened. That would be stricken?

20 MR. SAMUELS: I think the link I'm
21 talking about, which is to say he reviewed the
22 records from a particular case number, I think
23 would be required in order to make the evidence
24 relevant. I -- I'd point out that relevance is
25 really not a constitutional concern, but --

1 JUSTICE GORSUCH: No, of course not.
2 We're not talking about relevance. We're
3 talking about Confrontation Clause, right, to
4 confront the witnesses against you, right? It
5 doesn't say witnesses who put their testimony
6 with wax seals. It says witnesses, all
7 witnesses.

8 And -- and, here, it just -- he
9 completely and utterly, as I think even the
10 federal government recognizes, it's quite
11 unusual to come in not with the State, as
12 Justice Kagan points out, and this is what --
13 well, in this case, there's a lot of stuff in
14 which he -- he says Rast says this and Rast says
15 that, the report says this, the report says
16 that, and I'm taking it as true and that's
17 important for my opinion.

18 MR. SAMUELS: And that's why I think
19 there's a critical difference potentially
20 between him just being able to say that he
21 reviewed these materials and not reveal anything
22 about them and him revealing so many details
23 about the materials. That's what I understand
24 the United States' concern to be.

25 Obviously, we don't think they're

1 right about that. We think they misread the
2 record a little bit here. But set that
3 disagreement aside. I still think under the
4 United States' view that, you know, one of the
5 options that really should be preserved even if
6 Petitioner were to succeed in this case, and
7 this would require a significant narrowing, I
8 think, of Petitioner's suggested rule, is that
9 the independent opinion testimony should still
10 be possible even if the detailed basis evidence
11 can't be revealed.

12 JUSTICE GORSUCH: Oh, I -- I -- I --
13 again -- well, I'm sorry. I'll get back to it.

14 JUSTICE JACKSON: But it seems --

15 CHIEF JUSTICE ROBERTS: Justice
16 Thomas?

17 Justice Alito?

18 Justice Sotomayor?

19 Justice Kagan?

20 Back to you, Justice Gorsuch.

21 (Laughter.)

22 JUSTICE GORSUCH: I've almost
23 forgotten where I was at.

24 I -- I -- I certainly took the United
25 States and understood them to say, all right, he

1 can testify based on assumptions, hypotheticals,
2 he can -- that have to -- all those have to be
3 proven up later to the satisfaction of the jury
4 that -- that they're true in order for the
5 opinion to be valid.

6 And, here, again, the only thing -- he
7 didn't do that. He said, Rast did this and,
8 therefore, I have this opinion. He didn't say,
9 well, if somebody did this and then the State
10 later comes back and proves Rast did this
11 because they called Rast or something else, that
12 didn't happen here. So I -- I get that there
13 are many ways to skin the evidentiary cat, but
14 this case just seems to fall on the wrong line
15 of it.

16 And -- and then, when we get to the
17 testimonial question, whether it was preserved
18 or not preserved, it's a big question, and the
19 Court has splintered on -- on that in the past.
20 And you're asking us to essentially adopt a --
21 a -- a very thoughtful view of one of my
22 colleagues, but one of my colleagues, and -- and
23 that's -- that's a heavy lift in a case where it
24 hasn't been argued below, isn't it?

25 MR. SAMUELS: Well, a couple things.

1 One is, you know, we briefed both Justice
2 Thomas's view and the primary purpose tests in
3 the briefs, and -- and we think ultimately these
4 are non-testimonial under either view. And
5 so --

6 JUSTICE GORSUCH: So we don't need to
7 decide that question?

8 MR. SAMUELS: Well, in terms of what
9 the test is, I mean, we do think Justice
10 Thomas's view is persuasive, but we don't think
11 you need to revisit the primary purpose test
12 because we think, even under the primary purpose
13 test, for some of the reasons that I think
14 Justice Barrett was getting at with some of her
15 questioning, the notes here just are
16 non-testimonial under that test as well. So we
17 don't think you necessarily need to confront
18 whether to get rid of the primary purpose test
19 or anything like that.

20 And as to the preservation question, I
21 do think it's well established that this Court
22 has the discretion to affirm on alternative
23 grounds. And this really is a subsidiary
24 question to the Question Presented. I mean,
25 ultimately, the Question Presented here --

1 JUSTICE GORSUCH: Okay. Thank you,
2 counsel. I appreciate it.

3 CHIEF JUSTICE ROBERTS: Justice
4 Kavanaugh?

5 JUSTICE KAVANAUGH: Finish that.

6 MR. SAMUELS: Yeah. Thank you,
7 Justice Kavanaugh.

8 (Laughter.)

9 MR. SAMUELS: My point was, you know,
10 that this Court's rule, 14.1, says that a
11 Question Presented comprises every subsidiary
12 question. Really, at its core, the Question
13 Presented here was, was there a Confrontation
14 Clause violation? And deciding that question
15 without the testimonial issue just doesn't make
16 a lot of sense. Even Petitioner, as I
17 understood them this morning, encourages the
18 Court to reach that question, I think, unless
19 it's going to come out against them, and then
20 maybe issue a narrow ruling. And I -- I just
21 think that this Court really should reach that
22 question. I think there's adequate briefing in
23 front of it.

24 And I would also point out, to the
25 extent that the Court is concerned that the test

1 -- the Question Presented assumes that
2 statements are testimonial, as it's framed by
3 Petitioner, that was exactly true in Bullcoming.
4 Nonetheless, it was a significant focus in this
5 Court. And again, in Williams, Petitioner tried
6 to reframe the question that way. Five Justices
7 found that this was non-testimonial.

8 JUSTICE KAVANAUGH: And you said you
9 had briefed both the primary purpose test and
10 the historical test that Justice Thomas had --
11 has advocated. If you were to lose under the
12 primary purpose test but prevail under the
13 Justice Thomas test, then you -- you would say
14 we should consider which test is the better
15 test, I assume.

16 MR. SAMUELS: Yes, and I'll do one
17 better and make it less blatantly
18 outcome-determinative in that --

19 (Laughter.)

20 JUSTICE KAVANAUGH: No, there's
21 nothing wrong with being -- I mean, that's --
22 that's -- you're -- as an advocate, that's fine.
23 But go ahead.

24 MR. SAMUELS: Well, my point is only
25 that, you know, we think Justice Thomas is right

1 regardless. But we just ultimately don't think
2 the Court necessarily needs to revisit the
3 primary purpose test. And we recognize that's
4 the test the Court has applied. And so, you
5 know, while we think Justice Thomas is right, we
6 just don't think you need to reach that question
7 here.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Barrett?

11 JUSTICE BARRETT: You didn't ask us to
12 overrule Davis and the cases setting forth the
13 primary purpose test, did you?

14 MR. SAMUELS: No. I -- and -- and,
15 again, I think the reason for that is that under
16 our view, we win under either of the tests.
17 These are just non-testimonial statements either
18 way. And so we just don't think it's a question
19 that this Court needs to confront in this case.
20 It might want to confront it down the road.

21 CHIEF JUSTICE ROBERTS: Justice
22 Jackson?

23 JUSTICE JACKSON: Yeah, I just am
24 trying to understand the extent to which it
25 matters that the testifying witness in this case

1 actually revealed the source of the statements.
2 There's been a lot of talk about how -- and this
3 was primarily from the SG, and I apologize
4 because I didn't ask him this -- but, you know,
5 what's really problematic here is that when he
6 was on the stand, he was basically saying:
7 Well, the lab technician said X, Y, and Z. The
8 report she wrote said X, Y, and Z.

9 And I guess I'm not sure that it
10 really matters in terms of whether or not we
11 think it's problematic. So could you speak to
12 that?

13 MR. SAMUELS: Certainly. So I -- I --
14 I do think the core disagreement between us and
15 the United States is, you know, they say in
16 their brief that Longoni appears to have
17 possibly served as a mouthpiece for Rast's
18 conclusions, testimony, et cetera. Obviously,
19 we disagree with that assessment of the record,
20 but we do think it matters to some extent.

21 So assume the Court is, you know,
22 persuaded by the United States' view or at least
23 is heading in that direction and thinks too much
24 of the basis evidence came out here or the way
25 it came out is problematic in some ways. We do

1 think it's still important to preserve the
2 possibility to offer independent opinion
3 testimony even if the basis evidence itself
4 can't be revealed. And this was what I was
5 trying to get at with Justice Gorsuch.

6 JUSTICE JACKSON: But is that really
7 possible? And, again -- yes, you were trying to
8 get at that with Justice Gorsuch. And I guess
9 I'm trying to understand. So you think there's
10 a difference between an expert who says my
11 opinion is that this is drugs because the lab
12 report said so, right -- that's world one; he --
13 he's testifying to that on the stand -- versus
14 the opinion -- the expert who says my opinion is
15 that this is drugs, period, but it turns out
16 that the only reason, the basis for him saying
17 that, was because the lab report said so?

18 MR. SAMUELS: Well, in the -- in the
19 hypothetical scenario I'm envisioning, he would
20 reveal what he's looking at. He would say, I --
21 I was asked to pull the records from this case
22 number, I pulled them, I looked at them, and
23 here's my independent conclusion, without
24 telling you anything about --

25 JUSTICE JACKSON: That he'd say it was

1 independent. But that's the question. Is it
2 really independent if he hasn't done the -- the
3 testing on his own? If he has no other basis
4 for determining that this is drugs other than
5 what the lab report says, does it matter that he
6 revealed that or that he just says this is my
7 "independent position"?

8 MR. SAMUELS: I think it matters a
9 lot, especially as a practical perspective. So
10 take this out of the drug context and put it in
11 the DNA context for a second. Oftentime the key
12 witness in the DNA context who -- who is
13 evaluating things at the end wasn't necessarily
14 involved in the testing or maybe performed one
15 out of five key steps, and then, ultimately,
16 they evaluate the materials and reach an
17 independent opinion, which is what we think
18 Longoni did here.

19 And so, if the Court were to conclude
20 that, in fact, in order for an expert to rely on
21 underlying materials when they weren't involved
22 in the testing, that's where we really get
23 afraid of the multi-analyst scenario where you
24 have a --

25 JUSTICE JACKSON: What if the

1 conclusion is not that he can't rely on it?
2 Sure, he can be put up there, he can rely on it,
3 but you have to make available the person who
4 actually did the testing, because what I want to
5 do is, as the defendant, challenge the veracity
6 or reliability of the testing, and I think
7 that's what the Confrontation Clause allows me
8 to do.

9 MR. SAMUELS: Well, the Confrontation
10 Clause, of course, is a procedural and not a
11 substantive right. And I think that type of
12 reasoning starts to put it more in substantive
13 territory to say that he's allowed to do a
14 certain thing rather than to confront the
15 evidence that's offered against him. And we
16 perceive the key evidence being offered against
17 him in --

18 JUSTICE JACKSON: Is the testimony?

19 R. SAMUELS: -- in a case like this
20 one is the testimony.

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Rebuttal, counsel?

25

1 REBUTTAL ARGUMENT OF HARI SANTHANAM

2 ON BEHALF OF THE PETITIONER

3 MR. SANTHANAM: Yes. Thank you, Mr.
4 Chief Justice.

5 My friend agreed that -- that there
6 was never an argument in the proceedings below
7 that the evidence was -- was testimonial. Maybe
8 a citation here or a citation there. No
9 argument in the proceedings below. So, as the
10 case comes here to this Court, it comes here on
11 the assumption that the statements were
12 testimonial, and the Court can treat it as such
13 in deciding this case.

14 But, to the extent that the Court does
15 reach the testimonial question, we recognize
16 that there is going to be a difficulty. There
17 are going to be marginal cases where
18 circumstances are different, and it's going to
19 be difficult to apply either the primary purpose
20 test, the targeted individual test, or Justice
21 Thomas's solemnity test.

22 But I'd like to emphasize here that
23 this is not a marginal case. This is a case
24 where, under any of those tests, the statements
25 here are testimonial. And I'd urge the Court to

1 take a look at Pet. App. 127a. That is the
2 prosecution, the State, telling Rast that this
3 trial has been set in Smith's case, that these
4 are the charges against him, and that she needs
5 to create forensic analyses, evidence, to
6 support the prosecution's case against Mr.
7 Smith.

8 And it also bears emphasis, if you
9 look at the notes in this case, they start on
10 page 88 of Petitioner's Appendix, and if you
11 look at the notes, they are written -- these are
12 not scrap pieces of paper; they're written on
13 letterhead of the Arizona Department of Public
14 Services with their seal. They're typewritten.
15 And they were created on the exact same day that
16 the report was created as essentially an
17 appendix to that report.

18 And so these are not some scraps of
19 paper that were scrounged up and provided in
20 this case. They are formalized documents that
21 reflect the solemnity of Rast's statements in
22 those -- in those documents. And so all of
23 those factors, we emphasize, were not present in
24 Williams with respect to the report in that
25 case.

1 Now, to the extent that -- and I -- I
2 do want to go back to the hypothetical that I
3 was discussing with Justice Barrett. And we are
4 not suggesting that notes, any and all notes
5 that are created, are going to be testimonial.
6 It is, of course, going to be
7 circumstance-dependent. But what is equally
8 true is that a set of notes cannot be said to be
9 non-testimonial simply because they use
10 shorthand to set forth factual statements.

11 So going back to the example of the
12 police officer, if the police officer is taking
13 statements from a witness -- and this is a
14 hypothetical that comes right out of Davis -- if
15 the police officer is taking statements from a
16 witness and happens to do so in shorthand, that
17 does not give the prosecution right to put on
18 that police officer to introduce those
19 statements from a witness. Nor does it provide
20 a license to the prosecution to put on a
21 different police officer and read statements
22 from those notes, interpreting those shorthand.
23 But, at the end of the day, you're conveying a
24 set of testimonial statements, out-of-court
25 statements, that have not been confronted.

1 Now I want to address a few -- few
2 other points. The -- the United States made the
3 point that there -- there may be circumstantial
4 evidence. And, in fact, in Williams, the
5 plurality recognized that there was ample
6 circumstantial evidence in there that -- that
7 the prosecution might have relied on in addition
8 to those testimonial statements. And that's
9 likely to be true in a lot of cases, but, you
10 know, that is not what was done here.

11 In this case, they didn't rely on
12 circumstantial evidence. They -- they could
13 have said Longoni looked at certain data and
14 reached certain conclusions based on that data
15 in the abstract, but they went further. They
16 went further by having Longoni recite and
17 recount from Rast's statements the specific
18 items she tested, the particular procedures she
19 used, and the results she reached.

20 And the reason -- and, of -- of
21 course, if -- if the State rested on
22 circumstantial evidence, their case would be
23 much -- not as strong, certainly not as strong.
24 But the strength of their case, as been -- as
25 has been noted, is not a confrontation issue,

1 and it doesn't raise a confrontation violation.
2 The reason that the State recognized that it
3 needed to introduce Rast's statements into the
4 record through Longoni is that it strengthened
5 their case, and that in a nutshell underscores
6 why her statements were being offered for the
7 truth of the matter asserted.

8 One other point I'd like to address,
9 which is this notion of a limiting instruction.
10 My friend at the State indicated that several
11 times that Smith did not request a limiting
12 instruction.

13 It bears emphasis that you get to
14 the -- the -- the notion of a limiting
15 instruction only after you have a legitimate
16 non-hearsay purpose for admitting the statements
17 in the first place. If in the first instance
18 they are offered for the truth, such as when the
19 statement is -- you know, would support the
20 expert's opinion only insofar as it is true,
21 then it makes no sense from a logical standpoint
22 to tell the jury do not consider it.

23 CHIEF JUSTICE ROBERTS: Thank you.
24 Thank you, counsel.

25 The case is submitted.

1 (Whereupon, at 11:33 a.m., the case
2 was submitted.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Official - Subject to Final Review

<p>1</p> <p>10 [2] 1:11 68:15 10:04 [2] 1:15 4:2 105 [1] 48:4 11:33 [1] 102:1 127a [2] 5:10 98:1 13 [2] 33:4 46:6 14.1 [1] 90:10 1791 [1] 27:2</p> <hr/> <p>2</p> <p>2 [2] 11:23 12:21 20 [1] 81:17 2024 [1] 1:11 22-899 [1] 4:4 25 [1] 13:1 26 [4] 37:15 70:7 71:6 81:17 28 [2] 70:18 81:18</p> <hr/> <p>3</p> <p>3 [1] 42:24 30-page [1] 67:7 32 [1] 3:8 3D [1] 76:19 3D-printed [1] 73:24</p> <hr/> <p>4</p> <p>4 [1] 3:4 40 [1] 71:5 403 [1] 26:9</p> <hr/> <p>5</p> <p>59 [1] 3:11</p> <hr/> <p>7</p> <p>703 [17] 5:23 10:1,4,4,6,8, 13 11:10 15:15,15 16:17 26:9,18 27:11 63:3 78:4 80:13</p> <hr/> <p>8</p> <p>85 [1] 43:24 88 [1] 98:10</p> <hr/> <p>9</p> <p>97 [1] 3:14 99a [1] 5:13</p> <hr/> <p>A</p> <p>a.m [3] 1:15 4:2 102:1 ability [1] 58:14 able [7] 7:23 39:7,15 44:7 47:17 82:5 86:20 above-entitled [1] 1:13 absent [1] 69:11 Absolutely [1] 43:13 abstract [4] 8:18 9:3 30:24 100:15 abstraction [1] 58:21 accept [2] 12:2 73:9 accord [1] 53:25 according [2] 17:5 37:23 account [2] 26:14 53:6 accreditation [6] 41:13 51: 16,18,21 54:1 55:22</p>	<p>accredited [1] 41:12 accurate [1] 77:9 acknowledged [1] 69:24 acquittal [2] 12:14,19 actual [3] 13:4 73:3 75:24 actually [27] 4:15 5:2,14 18: 9 31:4,13 33:10 34:20 43: 2 46:5 54:22 55:6 56:19 57:3 58:6,12 59:6,9 64:21 73:2 75:1 77:4,11 82:23 83:10 93:1 96:4 add [1] 41:9 adding [2] 75:18,21 addition [1] 100:7 address [3] 80:6 100:1 101:8 addressed [2] 20:8 65:3 adequate [1] 90:22 administrative [1] 29:13 admitted [4] 25:2 79:23 81: 18 82:10 admittedly [3] 32:24 49:14 53:11 admitting [1] 101:16 adopt [5] 22:14 23:2 49:12 80:9 88:20 advocate [1] 91:22 advocated [1] 91:11 advocating [1] 22:15 affidavit [9] 16:6,10 17:24 18:9 19:13 21:22 22:24 25: 7 52:16 affirm [1] 89:22 affirmatively [1] 61:7 affirmed [1] 61:5 afraid [1] 95:23 agencies [1] 46:11 agree [9] 21:14 23:18,20 32:6 34:9,17 52:9 68:21 77:5 agreed [1] 97:5 agrees [4] 5:17 32:25 35: 19 60:12 ahead [2] 17:3 91:23 Alameda [1] 44:16 ALEXANDER [3] 2:8 3:10 59:22 ALITO [35] 7:20 9:18,20 10: 4,12 11:2,22 12:7,10,20 13: 16 14:9,18,22 15:3 16:25 17:3 26:4,5,25 27:8,13 79: 9,12 80:22 81:11,15,22 82: 2,13,18,21 83:1 84:23 87: 17 allowed [1] 96:13 allows [1] 96:7 almost [1] 87:22 alternative [1] 89:22 although [1] 66:23 Amendment [5] 4:12 10:6, 11 23:5,23 amicus [4] 2:6 3:7 32:2 49: 15 among [1] 28:14</p>	<p>ample [1] 100:5 analyses [1] 98:5 analysis [1] 79:2 analyst [3] 59:9 62:1 78:20 analyze [1] 37:15 analyzed [1] 4:15 angle [2] 74:10,11 announced [1] 48:19 anomalous [1] 62:10 another [7] 39:13,20 47:23 51:15 70:12,17 79:4 answer [14] 8:15 13:17,18 18:23 26:6,12 37:16,20,23 38:10 40:7 51:24 64:11 70: 4 answered [1] 46:15 answering [2] 11:13 53:14 answers [2] 18:18 48:15 antecedent [1] 18:12 anticipates [1] 52:15 anybody's [1] 16:3 anytime [1] 79:17 anyway [1] 18:16 apology [1] 93:3 App [5] 5:10,13 34:4 71:5 98:1 appeals [5] 5:19 65:23 66: 10 67:4,21 APPEARANCES [1] 2:1 appears [2] 34:8 93:16 appended [1] 25:24 appendix [5] 25:20 33:12 71:14 98:10,17 application [3] 32:9 49:3 50:6 applied [3] 23:16 69:9 92:4 applies [1] 64:6 apply [3] 22:13 64:7 97:19 applying [5] 5:21 23:5 47: 24 48:17,18 appreciate [3] 48:10,11 90: 2 approach [1] 52:7 appropriate [3] 32:22 36:5, 24 aren't [4] 30:12 33:21 34:7 84:21 argue [2] 64:24 65:18 argued [3] 64:3,20 88:24 arguing [2] 56:8 69:3 argument [27] 1:14 3:2,5,9, 12 4:4,7 16:19 25:23 27:1, 5,7 32:1 59:22 62:18 64: 17 65:1 66:4,9 67:20,23,25 73:14 74:21 97:1,6,9 arguments [1] 29:14 arises [2] 26:22 54:21 ARIZONA [13] 1:6 2:9 4:5 27:24 28:5 60:7 66:10,21, 23 67:5,16,21 98:13 around [2] 27:12 28:2 articulated [4] 16:4 24:19 49:1 54:11 aside [6] 76:13 78:20 83:15, 16 85:14 87:3 assert [1] 69:8 asserted [18] 10:16 11:9 12:4 13:8 14:13 31:7 38:2 39:6,9 60:4,5,11 67:1 73: 15 79:23 81:1,7 101:7 assertion [1] 61:18 assessment [1] 93:19 assume [7] 11:19 76:4,17 85:9,17 91:15 93:21 assumed [1] 84:13 assumes [1] 91:1 assuming [8] 21:20 40:12 55:5 56:18 57:21,25 58:4 75:2 assumption [7] 55:7 57:8 58:12,15 76:6 84:17 97:11 assumption's [1] 84:16 assumptions [2] 85:18 88: 1 attach [1] 16:8 attached [2] 25:15,18 attack [1] 78:24 attested [1] 33:16 attorney [4] 5:14 7:7 24:5, 6 available [3] 78:17,17 96:3 avoid [1] 32:10 aware [2] 44:2 53:18 away [4] 17:5,15 53:4 74:9</p> <hr/> <p>B</p> <p>back [17] 6:19 14:10 20:13 22:3,12 48:15 52:17 58:1 63:14 64:17 71:15 73:12 87:13,20 88:10 99:2,11 ballistics [2] 39:11 74:1 bare [2] 32:14 50:19 BARRETT [28] 18:7,18,24 19:7,22,24 20:10,20,22 21: 7,16,20,25 29:9 49:19,20 50:10,17 51:1,23 52:13 53: 2,15 54:3 89:14 92:10,11 99:3 based [9] 14:3 35:23 39:13 41:15,17 60:21 79:18 88:1 100:14 bases [3] 10:22 74:2 84:20 basically [6] 35:16 40:25 48:22 53:20 71:20 93:6 basis [23] 5:22,24 8:2 13: 23 17:10 32:17 34:22 36:5 44:21 55:7 60:9 63:5 76:3, 21 83:15,15,22 85:8 87:10 93:24 94:3,16 95:3 bear [2] 54:9 82:23 bearing [1] 7:10 bears [3] 7:10 98:8 101:13 began [1] 34:17 begin [2] 14:24 23:7 beginning [1] 48:16 beggrudge [1] 46:4 begs [1] 64:8 behalf [8] 2:2,9 3:4,11,14 4: 8 59:23 97:2 believe [8] 14:11 40:13,19 47:4,9,15 57:6 73:21 below [12] 5:18 28:7 61:4 64:20,23 65:5,15,18 68:23 88:24 97:6,9 bench [3] 12:23 14:10 16:3 best [1] 65:6 better [3] 49:3 91:14,17 between [11] 14:1,7 19:6, 12 22:8 34:25 49:10 71:15 86:20 93:14 94:10 beyond [3] 12:22 62:6 80: 14 Bible [1] 13:9 big [1] 88:18 bit [7] 32:23 38:9 50:5,18 53:12 62:17 87:2 blank [2] 37:21 62:3 blatantly [1] 91:17 both [9] 39:21 47:20,24,25 66:21 71:13 74:8 89:1 91: 9 bottom [1] 45:10 bottom-line [2] 32:14 36:1 break [1] 33:10 Breyer's [1] 33:4 brief [16] 9:24 16:2 27:25 34:16 44:17 64:24 65:4,6, 12 67:7 68:9,14 69:1,2 71: 1 93:16 briefed [3] 68:22 89:1 91:9 briefing [2] 15:8 90:22 briefly [1] 80:7 briefs [3] 64:23 68:11 89:3 brighter [1] 23:20 bringing [1] 29:17 Bruton [1] 63:25 Bryant [2] 20:9 48:23 Bullcoming [5] 16:15 24: 21 25:6 30:10 91:3 burden [2] 10:10 29:13 burdle [1] 10:10 business [2] 13:2 30:14</p> <hr/> <p>C</p> <p>calculating [1] 39:13 California [5] 44:1,3,20,24 45:2 call [1] 51:5 called [2] 63:5 88:11 came [6] 1:13 9:9 49:23 74: 10 93:24,25 Candidly [1] 66:8 cannot [6] 5:18 9:13 60:10, 13 79:17 99:8 carcinoma [1] 48:1 care [1] 54:19 careful [3] 32:9,21 53:25 carry [1] 17:20 Case [97] 4:4,16 5:10,13,16 6:4 7:12 9:9 11:6 12:8 13: 19,19 19:5,7 20:1,13 24:2, 14 28:10 30:21,22 33:2 35: 16</p>	<p>8 59:23 97:2 believe [8] 14:11 40:13,19 47:4,9,15 57:6 73:21 below [12] 5:18 28:7 61:4 64:20,23 65:5,15,18 68:23 88:24 97:6,9 bench [3] 12:23 14:10 16:3 best [1] 65:6 better [3] 49:3 91:14,17 between [11] 14:1,7 19:6, 12 22:8 34:25 49:10 71:15 86:20 93:14 94:10 beyond [3] 12:22 62:6 80: 14 Bible [1] 13:9 big [1] 88:18 bit [7] 32:23 38:9 50:5,18 53:12 62:17 87:2 blank [2] 37:21 62:3 blatantly [1] 91:17 both [9] 39:21 47:20,24,25 66:21 71:13 74:8 89:1 91: 9 bottom [1] 45:10 bottom-line [2] 32:14 36:1 break [1] 33:10 Breyer's [1] 33:4 brief [16] 9:24 16:2 27:25 34:16 44:17 64:24 65:4,6, 12 67:7 68:9,14 69:1,2 71: 1 93:16 briefed [3] 68:22 89:1 91:9 briefing [2] 15:8 90:22 briefly [1] 80:7 briefs [3] 64:23 68:11 89:3 brighter [1] 23:20 bringing [1] 29:17 Bruton [1] 63:25 Bryant [2] 20:9 48:23 Bullcoming [5] 16:15 24: 21 25:6 30:10 91:3 burden [2] 10:10 29:13 burdle [1] 10:10 business [2] 13:2 30:14</p> <hr/> <p>C</p> <p>calculating [1] 39:13 California [5] 44:1,3,20,24 45:2 call [1] 51:5 called [2] 63:5 88:11 came [6] 1:13 9:9 49:23 74: 10 93:24,25 Candidly [1] 66:8 cannot [6] 5:18 9:13 60:10, 13 79:17 99:8 carcinoma [1] 48:1 care [1] 54:19 careful [3] 32:9,21 53:25 carry [1] 17:20 Case [97] 4:4,16 5:10,13,16 6:4 7:12 9:9 11:6 12:8 13: 19,19 19:5,7 20:1,13 24:2, 14 28:10 30:21,22 33:2 35: 16</p>
--	---	--	--

Official - Subject to Final Review

5,9,10,10,15,23 36:2,12 37:14,19 38:17 39:20 44:7 49:7,16 52:5 53:20 54:21 55:4 56:6 57:6,15 58:6 59:12,13,16 60:12 61:8 62:6 63:15 64:8 66:3,24 67:19,19 69:4 70:8 71:7,12,23 72:23,25 75:16,16 78:21 83:19,19,20,25 85:10,11,22 86:13 87:6 88:14,23 92:19,25 94:21 96:19 97:10,13,23,23 98:3,6,9,20,25 100:11,22,24 101:5,25 102:1	circumstantial [7] 35:25 38:15 57:17 100:3,6,12,22	17 92:19,20 96:14	18,21 30:9 32:5 33:2 34:2 35:9 38:25 45:6,19,24 48:19 49:11,15 50:22 51:14 52:25 53:18 59:25 60:1 62:5,12 63:22 65:15,18,22 66:10,13,17,23 67:3,3,5,21 68:1 69:22 70:11,16,21 78:19 80:9 88:19 89:21 90:18,21,25 91:5 92:2,4,19 93:21 95:19 97:10,12,14,25	4 59:5 78:22
cases [13] 20:9 32:22 36:22 42:25 43:6,11 45:25 46:2 63:24 75:9 92:12 97:17 100:9	Clark [2] 20:9 22:21	confrontation [46] 4:12 6:16 9:11,15 10:11 11:16,21 13:12,21 14:18 16:2,11 18:2,4,4,6 23:7,23 26:10 27:3 29:23 31:12 32:10,12 34:9 36:10 54:20 58:13 60:6 61:2 62:9,14 63:11 64:14 76:25 77:21,23 78:10 79:1,7 86:3 90:13 96:7,9 100:25 101:1	courtroom [2] 81:14,19	denied [1] 4:11
cat [1] 88:13	Clause [29] 11:16 13:12 14:18 16:3,11 23:7,23 26:11 27:4 31:12 34:9 54:20 58:13 60:6 61:2 62:10,14 63:11 64:14 77:1,21,23 78:10 79:2,7 86:3 90:14 96:7,10	confronted [1] 99:25	courts [7] 45:4,20 64:23 65:5 66:21 67:14,17	Department [2] 2:4 98:13
categories [1] 49:23	clear [10] 16:11 32:8 45:22 55:12 57:13 58:17 59:14 60:1,8 80:17	confused [1] 36:13	covers [1] 18:12	depend [3] 21:8,9 52:10
caused [2] 48:1,2	clearly [2] 67:7 69:22	conjunction [2] 10:5 21:22	create [1] 98:5	depending [3] 19:18 56:9 57:1
centers [1] 28:2	client [1] 12:16	connected [1] 36:1	created [11] 18:15 24:3 26:10 50:13,21 52:24 53:7 73:16 98:15,16 99:5	depends [1] 18:10
central [1] 75:19	close [4] 18:10 24:21 33:17 71:2	consensus [1] 28:17	critical [2] 79:1 86:19	deposition [1] 22:24
cert [4] 64:23 65:4 69:2,7	closely [2] 21:11 71:17	consequential [1] 66:4	critically [1] 30:19	Deputy [2] 2:4,8
certain [16] 9:2,4,8 10:7 11:19 14:5,6,6 30:25 55:5 64:4 74:9,11 96:14 100:13,14	closer [2] 57:16 77:16	consider [8] 13:7,9 14:12 15:6 24:3 78:12 91:14 101:22	cross-examination [3] 6:15 8:12 58:3	described [2] 37:8,9
certainly [8] 23:19 67:13 72:5 84:4,7 87:24 93:13 100:23	closest [1] 61:21	considered [2] 6:7 83:13	cross-examine [1] 59:6	describes [1] 44:19
certiorari [1] 68:2	collaborative [1] 53:21	considering [2] 15:1 36:17	curiae [3] 2:6 3:8 32:2	describing [1] 58:19
cetera [5] 27:22,23 50:1 74:12 93:18	colleagues [2] 88:22,22	consistent [3] 9:3 31:1 49:2	custody [1] 35:22	designed [1] 78:10
chain [1] 35:21	collected [2] 30:6 55:4	Constitution [2] 49:3 77:1	cut [1] 38:10	detail [1] 51:8
chain-of-custody [1] 82:14	color [1] 37:17	constitutional [2] 49:2 85:25	D	detailed [1] 87:10
challenge [5] 28:5 31:13 58:12,14 96:5	come [10] 23:9 32:20 35:22 38:24 46:5 58:18 66:11 76:10 86:11 90:19	construing [1] 53:18	D.C [2] 1:10 2:5	details [2] 83:12 86:22
challenging [1] 29:16	comes [9] 32:13,16,18 57:2 85:15 88:10 97:10,10 99:14	contain [1] 34:8	data [11] 8:17 9:2 30:25 33:22 35:19 51:5,6 83:7,7 100:13,14	determining [2] 53:6 95:4
Chamber [2] 17:13,17	coming [2] 51:14 61:21	contamination [1] 37:22	date [1] 82:24	develop [2] 66:9 67:22
change [1] 80:12	commentators [2] 10:19 80:8	contest [1] 43:17	Daubert [1] 76:11	developed [1] 69:13
charges [3] 5:11 7:5 98:4	committed [1] 73:21	context [7] 30:11 63:9 78:8,13 95:10,11,12	Davis [3] 20:9 92:12 99:14	dialogue [1] 24:4
chemical [1] 37:17	common [7] 15:15,18,20 27:1,2 84:17,22	contexts [2] 64:3 78:18	day [5] 8:25 13:22 23:21 98:15 99:23	differ [1] 61:14
Chicago [1] 2:2	competent [2] 12:11,15	continuance [1] 8:23	days [1] 82:24	difference [3] 19:12 86:19 94:10
chicken-and-egg [1] 53:12	complain [1] 29:25	controlled [3] 12:16 40:14,20	deal [3] 10:9 30:1,2	different [14] 6:21 15:15 19:10 33:11,13 49:23 51:24 56:4 76:21 77:25 78:2 79:5 97:18 99:21
CHIEF [32] 4:3,9 7:21 8:15 26:1 27:14 29:6 31:23 32:4 34:13 36:4,14,18 38:14 42:17 46:18,20,24 48:12 49:18 54:5 58:1 59:1,19,24 87:15 90:3 92:9,21 96:22 97:4 101:23	completely [2] 76:16 86:9	convey [2] 4:14 28:20	decade [1] 67:16	difficult [2] 64:4 97:19
choice [1] 6:10	components [1] 66:6	conveyed [2] 4:21,23	deceptive [1] 23:12	difficulty [1] 97:16
chromatographer [1] 34:10	comprises [1] 90:11	conveying [1] 99:23	decide [3] 28:18,22 89:7	direct [2] 48:22 57:14
circuit [1] 27:16	computer-generated [1] 60:22	coordinated [3] 5:14 7:6 24:6	decided [1] 67:19	directed [1] 30:14
circuits [1] 28:14	conceded [2] 27:24 61:8	core [2] 90:12 93:14	deciding [3] 46:7 90:14 97:13	direction [1] 93:23
circumstance [2] 57:24 59:7	conceptual [1] 39:10	correct [26] 9:22,23 10:17 12:6 15:22,24 16:22,23 17:6,7,19 19:4 25:3,4,10 28:7,11,15 29:1,4 31:20 41:25 43:7,9,24 45:1	decline [1] 62:12	directions [2] 33:13 47:6
circumstance-depende nt [1] 99:7	concern [3] 29:15 85:25 86:24	correctly [3] 47:5 60:25 61:1	defendant [10] 20:1 31:13 58:11 63:18 76:23 77:5,12 78:5,19 96:5	directly [1] 63:1
circumstances [10] 7:15 19:18 22:22,25 24:15 50:3 52:11,14 57:16 97:18	concerned [1] 90:25	couldn't [7] 9:5 15:19 70:3 71:3 73:6 77:22 83:13	defendants [4] 29:15 46:3 64:2 78:22	disagree [4] 10:18 52:8 68:12 93:19
	concerns [2] 32:10 36:10	counsel [17] 7:23 9:17 12:12 15:14 26:2 31:24 36:15 42:18,23 59:20 64:1,16 85:4 90:2 96:23,24 101:24	defense [5] 7:23 12:12 36:24 59:5 78:22	disagreement [2] 87:3 93:14
	concession [1] 28:2	couple [6] 18:17 39:9 49:23 56:4 65:11 88:25		disbelieve [1] 59:13
	conclude [1] 95:19	course [7] 10:12 30:13 43:9 86:1 96:10 99:6 100:21		disclosures [1] 78:23
	conclusion [10] 13:5 32:14 35:17 36:2 61:25 80:25 81:9 82:5 94:23 96:1	COURT [64] 1:1,14 4:10 5:19 6:1 20:8 24:18 28:17,		discovery [2] 7:12 24:14
	conclusions [15] 5:4,23 16:18 60:14,18,20,20,21 61:22 71:22 72:12,14 84:3 93:18 100:14			discretion [1] 89:22
	concurrency [1] 65:24			discuss [1] 66:16
	condemn [1] 28:19			discussing [1] 99:3
	conduit [3] 17:11 60:14 75:14			dispute [5] 34:25 62:24 69:8,14 72:3
	confront [6] 78:16 86:4 89:			disputes [1] 60:2
				dissent [1] 69:10
				distinction [6] 19:5 40:8,21,23 42:13 56:1
				DNA [3] 33:5 95:11,12
				document [1] 51:11
				documentation [1] 53:25
				documents [5] 4:22 7:11 9:10 98:20,22
				doing [5] 6:12 45:22,23 49:13 52:15
				done [23] 8:5,20 9:1 11:24 19:25 23:13 29:3 30:23 35:14 37:19,21 40:12 54:17,24 56:6,19 59:12 70:18 77:

Official - Subject to Final Review

<p>10 84:8,17 95:2 100:10 down [9] 19:11 20:3,10,12 51:11 52:14,17 54:9 92:20 DPS [3] 7:9,10 24:11 draw [3] 23:20 81:9 82:5 drawing [3] 36:2 40:9,23 drawn [3] 19:5 32:15 81:13 drew [1] 13:6 drug [3] 31:2 42:25 95:10 drugs [7] 32:15 35:18 50: 19 82:2 94:11,15 95:4</p> <hr/> <p style="text-align: center;">E</p> <p>each [1] 33:13 earlier [1] 34:3 easier [1] 35:10 easily [2] 23:16 47:17 easy [1] 75:11 effect [1] 56:15 effective [1] 8:13 either [8] 39:16 41:19 44:9 45:20 89:4 92:16,17 97:19 Eleven [2] 68:17,18 elicited [1] 6:12 Elizabeth [1] 4:16 else's [2] 16:18 17:9 emphasis [3] 7:11 98:8 101:13 emphasize [6] 38:6 48:3 71:2 75:9 97:22 98:23 enact [1] 23:13 encourages [2] 62:5 90: 17 end [7] 8:25 13:22 23:21 42: 22 81:17 95:13 99:23 enforcement [2] 82:16 83: 21 enough [2] 7:22 76:18 entered [1] 74:13 entire [1] 65:7 entirely [1] 47:1 entitled [2] 48:4 63:18 envisioning [2] 73:23 94: 19 equally [1] 99:7 ERIC [3] 2:4 3:6 32:1 especially [1] 95:9 ESQ [4] 3:3,6,10,13 ESQUIRE [1] 2:2 essentially [7] 25:20 55:16 71:14,25 72:16 88:20 98: 16 establish [2] 11:6 37:4 established [2] 78:1 89:21 establishing [2] 20:1 52:4 et [5] 27:22,22 50:1 74:12 93:18 evaluate [3] 63:6 83:18 95: 16 evaluated [1] 6:6 evaluating [2] 75:10 95:13 evaluation [1] 75:15 even [21] 14:23 15:19 17: 23 25:7 30:7 35:19 36:10</p>	<p>39:4 45:6,21 55:17 69:3 74:12 83:15 84:22 86:9 87: 5,10 89:12 90:16 94:3 event [2] 36:8 68:1 everyone [1] 60:12 everything [10] 19:22 20:2, 2,4 23:13 28:2 46:13 66: 25 72:17 84:9 evidence [7] 1:4 16 5:8 7:2 8:22 9:8 10:7,7 12:15 14: 16 15:20 25:2 29:16 30:3, 6,15 32:16,17,17,20 35:22 36:1,9 38:16 39:11 42:4,7 44:21 47:16,21 52:4 53:5 54:11,24 55:4,14,25 57:17 60:2,8 63:5 76:21 78:12 80:2,16,18 81:1,8,10 82:15, 17,20,25 83:5,9,12,14,16, 23 85:8,23 87:10 93:24 94: 3 96:15,16 97:7 98:5 100: 4,6,12,22 evidentiary [3] 7:16 19:19 88:13 exact [5] 45:22 72:14,14 82: 10 98:15 exactly [7] 33:25 56:9 59: 15 63:3 71:23 76:25 91:3 examination [1] 37:17 examined [1] 74:1 examiner [1] 20:19 example [8] 30:11,21 39: 20 47:16,20 51:20 73:6 99: 11 examples [1] 39:10 exceeded [1] 49:14 except [1] 67:4 exception [1] 63:25 exclusive [1] 7:1 excuse [1] 13:6 Exhibit [2] 70:7 71:6 exhibits [4] 81:18 82:23 83: 2,4 exist [1] 85:14 exists [1] 27:18 expand [1] 62:13 expect [1] 6:2 experienced [1] 12:24 experimental [2] 39:14,17 expert [6] 1:4 13 5:21 9:12 10:14,14,22 13:3,3 14:2 15:19,21 16:9 27:11 28:20 30:5 32:13 39:12,13 40:10 41:9 43:7 44:9 45:21 51:4 54:14 55:1,3,18 56:22 57: 12,13 58:19,20 59:7,10 60: 13,15 74:1,15,18,25 75:17 76:3,14 77:2,6,18,24 78:13, 16 79:3,4,14,17,17,24 80: 23,24 94:10,14 95:20 expert's [15] 10:21,24 13: 24 15:9,11 32:13,15 54:22 57:24,25 60:9 79:12,13 84: 21 101:20 expertise [1] 76:18</p>	<p>experts [5] 26:12 30:2,16 53:17 78:22 explain [6] 6:19 14:1 38:8 50:18 67:14 85:6 explaining [4] 38:14 58:25 60:9 74:25 explains [2] 74:6 77:3 explicitation [1] 51:4 explicitly [1] 60:17 extent [11] 28:16 31:13 50: 21 53:19 57:20 73:11 90: 25 92:24 93:20 97:14 99:1</p> <hr/> <p style="text-align: center;">F</p> <p>fact [10] 10:15 14:23 32:14 52:5 55:16 57:14 58:7 79: 22 95:20 100:4 fact-specific [1] 75:10 factor [2] 53:6,10 factors [1] 98:23 facts [20] 7:13 10:13 11:19 13:7 14:3 21:9,10 24:14 26:14 28:9 52:11,13 62:6 69:14 79:14,18,19,20,25 80:23 factual [1] 99:10 failure [1] 6:15 fair [3] 40:21,22,25 fairly [1] 53:17 fall [2] 21:11 88:14 familiar [1] 76:14 familiarity [1] 35:24 far [6] 16:1 18:11 26:17 32: 7 34:19,22 far-reaching [1] 62:7 fashion [2] 30:25 65:20 federal [11] 32:9 33:15 35: 12,13 36:9 38:25 42:5 43: 4 45:4 48:4 86:10 feel [2] 24:17 77:20 feet [2] 74:8 77:16 FEIGIN [7] 2:4 3:6 31:25 32:1,4 33:8 34:24 36:16, 20 38:3,13,22 39:22,24 40: 1,24 41:3,8,17,25 42:3,7, 11 43:1,3,8,15,20,22,25 44: 4,8,16,19 45:2,9,11,14,18 46:10,14,17 47:3,9,12,14 48:10,18 49:4,20 50:9,16 51:2 52:9,23 53:9,16 54:4 55:11,14,21 56:2,12,21 57: 12,23 58:16,25 59:4,18 69: 20 84:12 few [4] 78:2 82:24 100:1,1 fiction [5] 5:21,25 6:4 16: 17,25 figure [3] 50:12 73:11 75: 17 figured [1] 74:6 file [1] 59:12 filed [1] 66:22 filing [1] 66:22 filings [1] 66:24 fill [1] 62:2</p>	<p>final [1] 74:12 find [1] 73:22 findings [1] 31:1 fine [6] 8:19,21 26:18,21 37: 1 91:22 Finish [1] 90:5 finished [1] 26:8 first [19] 6:19 13:13 22:19 23:2 27:17 30:1 32:25 34: 4 41:8 55:12 58:16 67:8, 17 71:5 80:6,6 81:5 101: 17,17 Five [2] 91:6 95:15 flat [1] 62:21 focus [6] 49:7 52:25 61:17 67:3,13 91:4 focused [1] 49:15 focuses [1] 67:8 folks [2] 72:24 78:18 follow [7] 26:5 35:11 45:3 48:6 64:5 78:6 84:9 follow-up [1] 42:22 followed [4] 37:8,11 63:23 84:13 following [1] 51:21 follows [1] 44:24 footnote [2] 64:25 65:6 footprint [1] 18:14 forensic [6] 20:19 29:16 40:11 41:11 51:17 98:5 forfeited [1] 68:23 forgotten [1] 87:23 form [3] 60:18 73:4,6 formal [2] 23:10 61:12 formality [2] 22:17 24:16 formalized [6] 7:8 22:24 24:4,4,8 98:20 formed [1] 60:19 former [1] 42:4 forth [6] 5:4 10:20 33:23 71: 15 92:12 99:10 forward [1] 17:20 found [8] 5:19 30:3 40:18 54:7 60:25 76:1 85:2 91:7 four [1] 34:4 framed [1] 91:2 frank [1] 64:19 frankly [1] 67:24 friction [1] 63:10 friend [2] 97:5 101:10 front [1] 90:23 full [1] 28:18 functional [1] 19:12 further [12] 26:3,11 31:3 33:20 38:9,22 50:18 51:4 53:4 66:9 100:15,16</p> <hr/> <p style="text-align: center;">G</p> <p>game [1] 17:5 gas [1] 34:10 gathered [1] 51:19 gave [5] 17:1,4 22:1 36:11 47:12 GCMS [1] 35:19</p>	<p>General [4] 2:4,9 54:14 55: 14 generated [1] 7:7 generates [1] 17:24 generating [1] 30:15 Generous [1] 43:2 gets [4] 37:3 59:5 63:3 77: 2 getting [2] 17:12 89:14 give [4] 5:1 17:9 29:12 99: 17 given [3] 63:16,22 66:17 giving [1] 47:16 Gorsuch [35] 29:7 39:22, 25 40:2,4 41:2,6,15,19 42: 2,6,9,12 46:21,23 47:4,8, 11 48:8,9,11 54:15 79:8,10 84:4,7 85:12 86:1 87:12, 20,22 89:6 90:1 94:5,8 Gorsuch's [1] 54:8 got [5] 16:9 26:20 67:9 82: 16,25 gotten [1] 40:10 government [2] 64:18 86: 10 government's [2] 54:10 55:8 granted [1] 68:1 graphs [3] 34:10 60:23 73: 6 greatly [1] 62:13 Gregory [1] 4:13 ground [2] 12:14 61:5 grounds [2] 12:21 89:23 guess [8] 22:11 50:6 54:21 56:3 73:12 74:23 93:9 94: 8 guilty [1] 17:14 gun [2] 73:24 75:24 guy [2] 17:14,15</p> <hr/> <p style="text-align: center;">H</p> <p>halt [1] 29:17 Hammon [1] 20:9 hand [1] 40:10 hands [1] 74:8 handwritten [1] 24:12 happen [3] 57:21 58:6 88: 12 happened [8] 7:24 57:15 58:8 59:15 60:16 77:15 85: 17,19 happening [2] 45:13,18 happens [2] 58:5 99:16 Happy [1] 65:19 hard [1] 32:23 HARI [5] 2:2 3:3,13 4:7 97: 1 heading [1] 93:23 hear [3] 4:3 40:15 54:13 heard [1] 60:24 hearing [1] 56:23 hearsay [1] 67:11 heart [1] 79:6</p>
--	---	---	--	---

Official - Subject to Final Review

<p>heavy [1] 88:23 held [1] 61:1 help [2] 70:7 73:17 helpful [5] 23:17 54:8 63:14 65:25 69:5 hereby [1] 16:10 hereto [1] 16:9 higher [10] 10:10 58:21 himself [6] 20:11,12 22:2 35:23 74:2 84:8 hindsight [1] 68:10 hire [1] 78:22 historical [1] 91:10 holdings [1] 16:14 Honor [15] 34:24 42:1 43:4, 9 44:4 53:10 58:16 62:25 63:13 65:11 66:8 70:10,15, 20 80:17 Honor's [1] 18:23 hope [1] 82:1 hoping [1] 73:17 horribles [2] 45:13,14 hospital [1] 30:11 however [1] 24:2 hurdle [1] 10:8 hypo [1] 84:20 hypothetical [30] 11:13 12:22 13:2,17 14:3,22 15:19 17:20 18:18 19:9 20:23 21:17,21 22:1 26:13,18 30:24 41:21 52:1 73:16 75:8,22 79:21 84:18,19,19 85:7 94:19 99:2,14 hypotheticals [1] 88:1</p>	<p>industry [3] 40:11 41:20 54:15 information [7] 12:2 50:12 60:21 63:4 65:8 71:8 72:4 initial [2] 7:4 73:13 initials [1] 82:24 inquiry [1] 61:17 insofar [3] 10:24 15:11 101:20 inspired [1] 23:6 instance [1] 101:17 instead [2] 23:14 62:7 instructed [1] 79:22 instruction [13] 12:1,9 36:12 48:5 63:16,17,23 64:10, 13 78:5 101:9,12,15 instructions [3] 32:21 48:7 64:4 intake [1] 70:13 intended [2] 23:22 34:2 intending [1] 20:11 interest [1] 32:8 interesting [2] 9:21,21 internal [2] 51:12 54:1 interpreting [1] 99:22 interrogate [1] 77:8 interrupt [2] 39:23 46:25 interrupted [1] 47:10 interrupting [1] 42:13 intro [1] 11:7 introduce [8] 9:14 23:9 27:10 33:5 38:15,25 99:18 101:3 introduced [7] 11:8,8 18:3, 5 25:25 50:11 62:19 introductory [2] 9:24 11:3 intuition [1] 39:18 invariably [1] 41:14 investigation [2] 19:25 22:4 investigatory [1] 52:24 invitation [2] 47:12 62:13 invite [1] 62:15 involved [4] 30:8 76:15 95:14,21 island [1] 53:21 isn't [12] 7:22 10:16 15:16 16:19 24:21 30:14,15 57:19 65:7 76:25,25 88:24 issue [7] 9:11 28:18 36:9 77:23 90:15,20 100:25 Item [2] 37:15 70:18 items [5] 4:25 81:17 82:10 83:10 100:18 itself [1] 94:3</p>	<p>JASON [2] 1:3 4:11 jot [1] 20:2 jots [2] 20:10,12 jotted [1] 19:11 jotting [2] 52:14,17 judge [10] 12:24,25,25 13:10,20 14:11,12,23 15:5 60:24 judgment [5] 5:17 12:13, 18,19 61:4 juries [1] 48:6 jurists [1] 10:19 jury [23] 6:3,4 11:23 12:1 13:14,20 35:1,5 36:11,13 39:15 47:17 56:22 63:4 64:5 78:6,11 81:9,20,23 82:11 88:3 101:22 Justice [299] 2:5 4:3,9 6:18 7:20,21 8:15 9:17,18,19,20 10:4,12 11:2,22 12:7,10,20 13:16 14:9,18,22 15:3,14, 18,25 16:16,21,24,25 17:1, 3,4,8,19 18:7,18,24 19:7, 22,23,24 20:6,10,20,22 21:5,7,8,15,16,20,24,25 22:10, 14,16,20 23:1,15,24 24:20, 25 25:5,6,11,12,14,17,22 26:1,3,4,5,6,25 27:8,13,14, 14,16,19,20 28:8,12,16,24 29:2,5,6,6,7,8,9,10,11,17 31:10,16,21,22,23 32:5 33:3,6,8 34:12,13 36:4,14,18, 19 38:3,8,14,20 39:22,25 40:2,4,7,23 41:2,6,15,19 42:2,6,9,12,15,17,19,20,21 43:2,5,13,18,21,23 44:1,6, 15,18,23 45:9,12,16 46:9, 12,15,18,18,19,20,20,22, 23 47:3,8,11 48:8,9,11,12, 12,14,15,24,25 49:12,17, 18,18,20,22,24 50:10,17 51:1,23 52:10,13 53:2,15 54:3,5,5,7,7,15 55:13,20, 23 56:10,17 57:1,9,19 58:10,23 59:1,2,17,19,25 62:17 63:8,20 64:16 65:14,17, 21,23 66:2,11,13,20 67:6 68:10,13,17,19,20,21 69:4, 11,17 70:25 71:10 72:13 73:8,13 75:21 76:12,24 79:8,9,10,12 80:22 81:11,15, 22 82:2,13,18,21 83:1 84:4, 7,23 85:12 86:1,12 87:12, 14,15,15,17,18,19,20,22 89:1,6,9,14 90:1,3,3,5,7 91:8,10,13,20,25 92:5,8,9, 9,11,21,21,23 94:5,6,8,25 95:25 96:18,21,22 97:4,20 99:3 101:23 Justice's [1] 58:2 Justices [1] 91:6</p>	<p>34:12 36:19 38:4,8,20 40:7,23 46:18,19 52:10 66:13, 20 67:6 68:10,21 69:17 70:25 71:10 72:13 86:12 87:19 KAVANAUGH [25] 19:23 20:6 21:5,24 22:10 23:1, 15,24 25:12 27:20 29:8 42:15 48:13,14,24 49:17 68:17,19,20 90:4,5,7 91:8,20 92:8 kept [1] 8:6 key [4] 61:14 95:11,15 96:16 killed [2] 74:19 75:24 kind [18] 11:25 13:25 30:21 33:14 34:5 37:24 39:4 44:20 45:8 51:3,7 53:3,23 54:16 57:3 71:14 73:10,21 kinds [1] 39:7 knowing [2] 21:3,22 knowledge [10] 4:17,19 8:11 39:2 41:16,18,20 54:18 55:16 56:14 knows [1] 79:22</p>	<p>license [1] 99:20 lies [1] 79:6 lift [1] 88:23 lifted [1] 74:9 likely [3] 38:17 53:17 100:9 limitations [2] 29:23 57:4 limited [1] 8:11 limiting [11] 32:21 48:5 62:8 63:16,17,23 64:10,13 101:9,11,14 line [6] 36:7 41:21 45:10 58:22 81:13 88:14 lined [1] 43:12 lines [1] 23:20 link [2] 22:7 85:20 literally [1] 81:13 little [11] 26:8 32:23 33:21 34:21 38:9 50:5,18 51:8 53:12 67:15 87:2 locker [2] 82:17,20 Logic [1] 10:19 logical [1] 101:21 long [7] 8:5,6 13:10 26:18 33:18 60:1,7 Longoni [37] 4:13,16,19,19 5:2 6:13 7:23 8:10,17,22 9:1,6 11:12 14:4 26:23 30:24 31:4 35:3,16,23 37:3 60:13,17,25 70:9,14,19 80:24 82:7 83:14,17 85:9 93:16 95:18 100:13,16 101:4 7 62:22,25 63:6 81:5 Look [11] 12:16:14 44:14 53:22 62:5 70:17 71:2 73:2 98:1,9,11 looked [7] 13:4 20:16 63:15 72:7 73:7 94:22 100:13 looking [6] 31:18 47:25 70:2 71:3,5 94:20 looks [2] 52:18 68:5 lose [2] 22:18 91:11 lot [14] 8:19 11:24 34:14,14 51:17 53:17 57:16 77:16 83:12 86:13 90:16 93:2 95:9 100:9</p>
L				
<p>lab [27] 7:24 16:5 24:8 33:20 35:25 37:13 41:12,18 51:11 53:21 54:23 55:18 58:11 62:1 72:24 74:3,5, 22,24 82:22,25 83:5,6 93:7 94:11,17 95:5 lab's [1] 37:9 laid [3] 15:8 69:12 75:3 land [1] 52:19 landscape [1] 80:12 language [2] 62:1 72:21 large [1] 34:6 largely [1] 32:24 last [4] 43:16 68:25 69:1 80:15 later [5] 19:20 51:12 52:16 88:3,10 latter [1] 55:10 Laughter [9] 40:3 47:7,13 68:4,7 81:25 87:21 90:8 91:19 law [12] 15:15,18,20 27:2 36:8,9 60:7 80:11 82:15 83:20 84:18,22 lay [1] 52:19 least [6] 12:12 35:25 36:7 43:24 83:23 93:22 lectern [1] 64:2 left [2] 79:24 82:20 legal [4] 5:21,25 10:19 72:22 legitimate [1] 101:15 less [5] 23:10 40:15 68:5 78:14 91:17 letterhead [3] 7:9 24:11 98:13 level [2] 24:16 58:21</p>	<p>lab [27] 7:24 16:5 24:8 33:20 35:25 37:13 41:12,18 51:11 53:21 54:23 55:18 58:11 62:1 72:24 74:3,5, 22,24 82:22,25 83:5,6 93:7 94:11,17 95:5 lab's [1] 37:9 laid [3] 15:8 69:12 75:3 land [1] 52:19 landscape [1] 80:12 language [2] 62:1 72:21 large [1] 34:6 largely [1] 32:24 last [4] 43:16 68:25 69:1 80:15 later [5] 19:20 51:12 52:16 88:3,10 latter [1] 55:10 Laughter [9] 40:3 47:7,13 68:4,7 81:25 87:21 90:8 91:19 law [12] 15:15,18,20 27:2 36:8,9 60:7 80:11 82:15 83:20 84:18,22 lay [1] 52:19 least [6] 12:12 35:25 36:7 43:24 83:23 93:22 lectern [1] 64:2 left [2] 79:24 82:20 legal [4] 5:21,25 10:19 72:22 legitimate [1] 101:15 less [5] 23:10 40:15 68:5 78:14 91:17 letterhead [3] 7:9 24:11 98:13 level [2] 24:16 58:21</p>	<p>Jackson [32] 29:10,11 31:10,16,21,22 54:6,7 55:13, 20,23 56:10,17 57:1,9,19 58:10,23 59:2,17 73:8 75:21 76:12,24 87:14 92:22, 23 94:6,25 95:25 96:18,21 January [1] 1:11</p>	<p>lab [27] 7:24 16:5 24:8 33:20 35:25 37:13 41:12,18 51:11 53:21 54:23 55:18 58:11 62:1 72:24 74:3,5, 22,24 82:22,25 83:5,6 93:7 94:11,17 95:5 lab's [1] 37:9 laid [3] 15:8 69:12 75:3 land [1] 52:19 landscape [1] 80:12 language [2] 62:1 72:21 large [1] 34:6 largely [1] 32:24 last [4] 43:16 68:25 69:1 80:15 later [5] 19:20 51:12 52:16 88:3,10 latter [1] 55:10 Laughter [9] 40:3 47:7,13 68:4,7 81:25 87:21 90:8 91:19 law [12] 15:15,18,20 27:2 36:8,9 60:7 80:11 82:15 83:20 84:18,22 lay [1] 52:19 least [6] 12:12 35:25 36:7 43:24 83:23 93:22 lectern [1] 64:2 left [2] 79:24 82:20 legal [4] 5:21,25 10:19 72:22 legitimate [1] 101:15 less [5] 23:10 40:15 68:5 78:14 91:17 letterhead [3] 7:9 24:11 98:13 level [2] 24:16 58:21</p>	<p>machine [5] 34:11 76:1 77:3,6,9 made [8] 5:3 6:10 30:11 51:19 52:3 71:1 72:19 100:2 main [1] 32:11 many [4] 61:14 64:3 86:22 88:13 marginal [2] 97:17,23 marijuana [4] 14:15 80:4 81:3 85:16 mass [1] 34:11 massive [1] 44:3 match [2] 33:5,14 material [3] 33:22,23 52:5 materials [9] 33:11 34:8</p>
K				
<p>KAGAN [24] 21:8,15 29:6</p>				

Official - Subject to Final Review

<p>35:18 83:18 84:1 86:21,23 95:16,21</p> <p>math [2] 39:13,16</p> <p>matter [25] 1:13 10:16 11:9 12:4 13:8 14:13 22:22,25 31:7 36:12 38:1 39:6,8 60:3,5,11 64:9 66:25 73:15 78:3 79:23 81:1,7 95:5 101:7</p> <p>mattered [1] 19:1</p> <p>matters [5] 75:20 92:25 93:10,20 95:8</p> <p>mays [1] 34:15</p> <p>mean [25] 8:9 9:21 10:1 18:10,13,15 21:9,12 38:9,10 43:21 50:24 53:11 66:15,20 67:6,19 70:1,22 73:10,18 81:23 89:9,24 91:21</p> <p>meaningful [1] 58:15</p> <p>means [1] 23:8</p> <p>Meanwhile [1] 60:7</p> <p>measurements [3] 39:12 74:13,17</p> <p>meet [4] 7:15,16,17 40:18</p> <p>meets [1] 24:17</p> <p>Melendez-Diaz [2] 16:14 30:10</p> <p>members [1] 24:18</p> <p>mentioned [3] 34:3 69:1 79:10</p> <p>mere [3] 60:14 66:3 75:14</p> <p>meth [4] 14:15 80:3 81:2 85:16</p> <p>methamphetamine [1] 38:19</p> <p>method [1] 37:15</p> <p>methodological [1] 54:11</p> <p>methodology [6] 32:17,19 39:18 47:16 54:10,18</p> <p>microscopic [1] 37:16</p> <p>middle [1] 47:15 51:7</p> <p>might [2] 25:22 35:5 38:16,19 39:3,7,15,17,20 47:17,21 49:14 50:1 51:5,9,15 52:20 56:25 76:10 92:20 100:7</p> <p>mind-boggling [1] 11:25</p> <p>mindful [1] 27:10</p> <p>minute [2] 43:16 69:19</p> <p>misread [1] 87:1</p> <p>Mm-hmm [2] 44:18 63:20</p> <p>modern [1] 15:16</p> <p>moment [2] 9:13 78:21</p> <p>morning [5] 4:4 9:25 29:11 34:16 90:17</p> <p>Most [7] 30:2,13 36:22 43:4,5,5,6</p> <p>motion [1] 12:19</p> <p>mouthpiece [1] 93:17</p> <p>Ms [8] 13:3 14:14 33:7 40:17,18 41:23 62:18 71:23</p> <p>much [5] 35:10 38:22 63:1 93:23 100:23</p> <p>multi-analyst [1] 95:23</p>	<p>murder [3] 73:20 76:8 77:7</p> <p>must [2] 21:8,9</p> <p>myself [1] 76:6</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>narrow [1] 90:20</p> <p>narrower [1] 28:23</p> <p>narrowing [1] 87:7</p> <p>narrowly [4] 23:4,22 33:2 35:9</p> <p>national [1] 50:23</p> <p>nearly [1] 63:24</p> <p>necessarily [12] 6:6 10:25 22:23 23:11 39:4 46:2 55:25 79:1 80:11 89:17 92:2 95:13</p> <p>necessary [1] 63:12</p> <p>need [16] 12:8 13:1 33:3,24 35:21 43:7,12 45:25 46:6 50:2,12 55:17 89:6,11,17 92:6</p> <p>needed [1] 101:3</p> <p>needs [3] 92:2,19 98:4</p> <p>neither [4] 2:6 3:8 32:3 61:10</p> <p>never [12] 18:9 20:11 64:12 66:24 67:24 72:7 75:1 76:5,5 83:16 85:18 97:6</p> <p>new [1] 62:7</p> <p>nine [2] 24:9 68:15</p> <p>nobody [1] 59:6</p> <p>non-hearsay [1] 101:16</p> <p>non-testimonial [8] 61:6 64:18 66:7 89:4,16 91:7 92:17 99:9</p> <p>none [1] 85:7</p> <p>nonetheless [3] 5:19 64:5 91:4</p> <p>nor [2] 61:11 99:19</p> <p>normally [1] 55:2</p> <p>Notably [1] 69:11</p> <p>noted [2] 78:19 100:25</p> <p>notes [73] 4:23 7:8 11:7 12:3 16:8,18 17:13,22 18:5,8,13,21,25,25 19:2,6,11,12,18 20:15 21:10,13,13,17,21 22:8 24:2,10,12 25:11,12,17,19 33:7,20,21 34:6 35:4 37:5,13,23 49:22 51:19,19 52:2,7,12,14 53:3,4 57:5 60:22 61:6,9,14 62:19,20 63:1 69:25 71:13,19,22,24 72:4,5,15 89:15 98:9,11 99:4,4,8,22</p> <p>nothing [4] 25:2 37:25 61:18 91:21</p> <p>notice [1] 37:6</p> <p>noting [2] 78:15 79:3</p> <p>notion [3] 27:10 101:9,14</p> <p>Number [9] 32:11 39:10 47:5 51:10 83:19,20,25 85:22 94:22</p> <p>nutshell [1] 101:5</p>	<p style="text-align: center;">O</p> <hr/> <p>objection [1] 57:10</p> <p>objective [3] 5:6 6:24 21:2</p> <p>observations [2] 17:23 21:3</p> <p>observed [2] 17:25 80:9</p> <p>obviously [5] 76:10 81:6 83:13 86:25 93:18</p> <p>occurred [1] 14:4</p> <p>offer [2] 76:16 94:2</p> <p>offered [22] 6:8 10:22 13:23 15:12,22 28:10 55:9 60:3,4,8,10 73:14,19 74:22 75:5 80:25 81:6 85:1 96:15,16 101:6,18</p> <p>offering [8] 5:24 10:25 14:25 15:3,4 56:17 57:20,24</p> <p>offers [1] 14:2</p> <p>officer [12] 17:21 18:19,20 19:10 20:8 21:1 52:1 99:12,12,15,18,21</p> <p>officer's [1] 19:17</p> <p>official [1] 71:13</p> <p>often [1] 15:19</p> <p>Offentime [1] 95:11</p> <p>okay [17] 11:2,22 26:25 27:8,13 41:21 54:3,20 56:2 57:11 59:17,18 65:21 66:11 83:1,5 90:1</p> <p>old [1] 11:13</p> <p>omitted [1] 79:21</p> <p>once [2] 17:8 46:6</p> <p>one [38] 22:11 27:20 32:11 34:3 39:10,11 40:10 41:4,8 45:3 47:20,22,22,25 49:4,7,21 51:3,10,15 55:12 56:4 63:19,21,25 64:17 72:20 75:17 78:4 87:4 88:21,22 89:1 91:16 94:12 95:14 96:20 101:8</p> <p>ones [1] 83:2</p> <p>only [22] 10:23 15:10 17:10 26:12 41:11 42:24 46:7 60:8 65:24 69:5,25 72:11 77:15 82:19,20 84:18,24 88:6 91:24 94:16 101:15,20</p> <p>open [3] 18:14 49:9,11</p> <p>opening [1] 72:19</p> <p>operates [1] 10:4</p> <p>opinion [34] 10:15,22,24 11:20 13:24 14:2 15:11,22 17:10 28:22 60:9 61:1 63:6,12 67:20 73:4,11 74:2,19 76:17 79:13,15 84:19,21 86:17 87:9 88:5,8 94:2,11,14,14 95:17 101:20</p> <p>opinions [7] 5:2,23 6:5,6 22:15,20 81:5</p> <p>opportunity [3] 29:12 49:16 59:5</p> <p>oppose [1] 49:13</p> <p>opposed [3] 50:23 51:13 52:25</p>	<p>opposition [2] 65:4 69:2</p> <p>Option [1] 38:4</p> <p>options [1] 87:5</p> <p>oral [8] 1:14 3:2,5,9 4:7 32:1 59:22 67:20</p> <p>order [6] 11:11 63:12 77:16 85:23 88:4 95:20</p> <p>ordinarily [1] 54:17</p> <p>other [23] 8:8 12:20 14:16 29:14 37:25 38:11 47:23 48:2 51:3,5 62:4 63:7 64:3 65:20 66:18 76:11 78:16,17,24 95:3,4 100:2 101:8</p> <p>others [2] 9:13 78:19</p> <p>otherwise [2] 57:7 83:20</p> <p>ought [1] 27:9</p> <p>out [28] 7:4 9:25 11:10 15:8 18:11 36:3 45:8 47:18 50:12 62:21 66:5 69:12 73:11 74:7,10 75:3,17 84:24 85:24 86:12 90:19,24 93:24,25 94:15 95:10,15 99:14</p> <p>out-of-court [5] 4:14 27:18 48:21 56:16 99:24</p> <p>outcome-determinative [1] 91:18</p> <p>outreach [1] 29:24</p> <p>outside [2] 18:14 56:13</p> <p>over [3] 36:7 70:22,25</p> <p>overrule [1] 92:12</p> <p>overturning [1] 66:4</p> <p>own [5] 4:22 5:2 54:17 61:1 95:3</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>PAGE [2] 3:2 98:10</p> <p>pages [8] 24:9,10,10 33:18 34:4 68:15,17,18</p> <p>paint [1] 45:16</p> <p>paper [3] 24:13 98:12,19</p> <p>parade [6] 33:4 44:11,25 45:12,14,25</p> <p>parallel [1] 10:5</p> <p>Pardon [1] 25:16</p> <p>part [9] 7:12 24:3,7,13 28:13 38:10 75:13 80:7,15</p> <p>particular [13] 8:4 34:7 38:17 55:4 76:18 80:19,20 83:10,19,19,25 85:22 100:18</p> <p>particularly [1] 53:11</p> <p>parties [1] 34:25</p> <p>party [3] 2:7 3:8 32:3</p> <p>pass [2] 10:8,10</p> <p>past [2] 20:9 88:19</p> <p>pathologist's [1] 74:17</p> <p>PD [1] 44:16</p> <p>penalties [1] 16:6</p> <p>people [2] 43:6 58:2</p> <p>perceive [1] 96:16</p> <p>percent [2] 42:24 43:24</p> <p>percipient [1] 79:5</p> <p>Perfect [1] 42:2</p> <p>performed [4] 4:18,24 9:7 95:14</p>	<p>Perhaps [4] 42:14 49:22 61:15 68:5</p> <p>period [1] 94:15</p> <p>perjury [1] 16:7</p> <p>permissible [3] 5:20 40:14 56:8</p> <p>permitted [2] 75:14 85:9</p> <p>person [6] 5:6 6:24 31:17 77:11,18 96:3</p> <p>personal [10] 4:17,19 35:24 39:2 41:16,17,20 54:17 55:15 56:13</p> <p>personally [2] 59:14,15</p> <p>perspective [3] 20:25 22:7 95:9</p> <p>persuaded [1] 93:22</p> <p>persuasive [1] 89:10</p> <p>Pet [5] 5:10,13 34:4 71:5 98:1</p> <p>Petitioner [24] 1:4 2:3 3:4,14 4:8 32:6,24 34:8,18 35:19 44:2 51:25 52:21 60:2 61:15 62:5 64:12 69:3 80:10 87:6 90:16 91:3,5 97:2</p> <p>Petitioner's [7] 34:20 42:23 45:6 62:11,13 87:8 98:10</p> <p>Phoenix [1] 2:9</p> <p>photographs [5] 30:3 74:12 77:13,14 82:9</p> <p>photos [2] 74:16 81:21</p> <p>phrased [1] 44:23</p> <p>physical [4] 30:3,6 81:18 82:23</p> <p>physics [1] 39:17</p> <p>piece [2] 29:16 47:21</p> <p>pieces [6] 24:13 33:10,11 51:3 56:4 98:12</p> <p>place [1] 101:17</p> <p>places [1] 70:3</p> <p>plea [1] 43:6</p> <p>plead [3] 43:10,15 46:7</p> <p>pleas [1] 43:24</p> <p>please [4] 4:10 32:5 59:25 79:11</p> <p>plot [1] 74:14</p> <p>plurality [3] 6:1 69:10 100:5</p> <p>podium [1] 67:10</p> <p>point [26] 9:22 16:2 29:13 32:19,25 33:1 36:3 45:5 49:21 58:2 64:17 66:5 67:12,16 71:1,8,11 72:19 78:14 85:13,24 90:9,24 91:24 100:3 101:8</p> <p>pointed [2] 36:3 74:10</p> <p>pointing [1] 84:24</p> <p>points [3] 32:11 86:12 100:2</p> <p>poles [1] 75:11</p> <p>police [14] 17:21 18:19,20 19:10,17 20:7 21:1 52:1 73:21 99:12,12,15,18,21</p> <p>policeman [2] 17:12,16</p>
--	---	---	--	--

Official - Subject to Final Review

<p>policies [3] 23:13 37:7,9 portion [1] 36:23 posed [1] 85:7 position [10] 12:7 15:8 27:20 31:11 35:6 36:20 48:25 49:5 54:10 95:7 position's [1] 34:20 possessed [1] 12:16 possession [2] 73:23 76:2 possibility [1] 94:2 possible [5] 40:17 76:9,20 87:10 94:7 possibly [2] 71:3 93:17 potentially [2] 33:13 86:19 practical [2] 29:23 95:9 practice [1] 28:19 practices [2] 37:7,9 precedent [2] 18:1 66:4 preclude [1] 23:4 precludes [1] 44:9 predictable [1] 23:16 preliminary [1] 67:17 premise [2] 14:24 65:7 premises [1] 68:13 prepared [11] 5:7 6:25 7:8 21:21,23 24:7 25:21 33:25 50:4 61:10 71:18 preparing [2] 53:22,24 presence [2] 8:24 26:15 present [4] 6:14 36:10 81:19 98:23 presentation [1] 34:15 presented [9] 15:10,21 28:1 77:10 89:24,25 90:11,13 91:1 presenting [2] 31:8 49:6 preservation [1] 89:20 preserve [1] 94:1 preserved [3] 87:5 88:17, 18 preserves [1] 66:3 presume [3] 48:6 63:22 78:6 presumes [1] 63:24 presumption [1] 64:6 pretend [1] 83:16 pretty [2] 8:12 69:22 prevail [1] 91:12 prevent [2] 29:24 37:22 previously [1] 16:4 primarily [1] 93:3 primary [22] 5:8 6:25 7:16 18:11 19:19 20:5 21:2 48:20 49:1 50:13 52:3 53:7 67:13 89:2,11,12,18 91:9, 12 92:3,13 97:19 Principal [2] 2:8 32:8 principle [1] 62:9 printing [1] 76:19 probably [2] 34:7 50:25 probablys [1] 34:15 problem [20] 11:17 13:12 14:17,19,20,21 26:10,22 31:12 32:12,16 39:3 41:4</p>	<p>44:3 54:20,21 56:24 77:1, 20 79:25 problematic [5] 44:22 56:24 93:5,11,25 problems [1] 23:6 procedural [1] 96:10 procedures [9] 4:25 14:7 16:18 31:5 35:24 38:16 51:11 54:1 100:18 proceed [1] 65:19 proceeded [1] 57:7 proceedings [3] 28:7 97:6, 9 process [3] 7:8 24:4,8 processes [2] 84:13,14 produce [2] 14:16 20:11 produced [1] 83:8 produces [1] 18:9 prohibit [1] 10:7 projectile [1] 74:10 proof [1] 46:5 proposes [1] 80:10 prosecuting [1] 24:5 prosecution [9] 5:9 7:2,13 30:19 44:6 98:2 99:17,20 100:7 prosecution's [1] 98:6 Prosecutor [4] 14:14,14 37:6,11 prosecutors [1] 23:9 protections [1] 23:22 prove [10] 7:13 13:23 14:14 24:14 30:20 44:7 60:4 72:23 84:16 85:18 proved [2] 26:14 80:1 proven [2] 84:21 88:3 proves [3] 47:22,23 88:10 provide [5] 10:13 23:8 30:21 41:10 99:19 provided [1] 98:19 provides [1] 26:24 providing [1] 11:20 provisions [1] 51:22 prudential [1] 28:21 Pryor [1] 33:3 Public [1] 98:13 pull [1] 94:21 pulled [1] 94:22 purported [3] 5:1 57:5 58:6 purpose [30] 5:8 7:1,16 13:10 18:11 19:19,25 20:5 21:2 2 34:1 47:18 48:20 49:1 50:14,24 51:13 52:4,24 53:8 60:8 89:2,11,12,18 91:9, 12 92:3,13 97:19 101:16 purposes [2] 30:12 63:7 pursue [1] 11:5 put [16] 7:14 8:10,17 10:15, 20 17:14 30:20 46:5 62:17 85:14 86:5 95:10 96:2,12 99:17,20 puts [1] 73:25</p>	<p style="text-align: center;">Q</p> <p>qualify [3] 41:1 46:12 61:12 quantity [2] 62:2 72:22 question [65] 8:16 11:14 22:10,11,13 23:2 26:18 28:1,1,8,13 37:19,21 44:24 46:16 49:9 53:14 54:8 59:2 64:9,11 65:3,8 66:1,19 67:8,11,17,18,21 68:13,22 69:6,18,20 70:6,12,17 71:5 72:6 73:5,13 75:10 80:3,7,16 88:17,18 89:7,20,24,25 90:11,12,14,18,22 91:1, 6 92:6,18 95:1 97:15 questioning [3] 26:8 42:22 89:15 questions [5] 6:17 26:13 27:17 62:16 70:4 quite [7] 33:21 43:9 58:17 62:17 76:15 78:1 86:10 quote [1] 48:22</p> <p style="text-align: center;">R</p> <p>radiologist [1] 48:1 raise [1] 101:1 raised [4] 52:1 65:4,5,5 raises [2] 27:25 31:11 ran [1] 40:17 Rast [36] 4:16,18,18,20 5:3, 15 6:11,14 7:5,19 9:6 14:5 24:6 25:21 31:5 35:2 37:5, 5 40:17,18 41:5,23 60:15 71:23 72:2,17 83:11 85:1, 14,14 86:14,14 88:7,10,11 98:2 Rast's [25] 4:22 5:5 6:12, 22 8:24 9:7 11:7 12:2,3 26:19 33:7,11 34:6 35:4 49:22 52:7 53:3 60:22 61:5 62:18 63:1 93:17 98:21 100:17 101:3 rather [1] 96:14 raw [2] 51:5,6 reach [6] 62:14 90:18,21 92:6 95:16 97:15 reached [4] 14:6 31:6 100:14,19 reaching [3] 10:14 79:14 80:24 read [6] 16:9,17 29:14 36:23 70:2 99:21 reading [1] 17:13 real [3] 62:8 69:24 77:20 really [33] 12:11 17:10 25:23 31:11 35:6 44:20 45:7, 24 49:6 56:5,14 70:1,3 75:12,18,19 77:14,15 78:3,7 79:6 80:12 82:6 85:25 87:5 89:23 90:12,21 93:5,10 94:6 95:2,22 reason [13] 19:16 31:8 37:1 57:6,10 59:13 64:13 66:</p>	<p>16 82:19 92:15 94:16 100:20 101:2 reasonable [2] 5:6 6:24 reasoning [1] 96:12 reasons [3] 28:22 76:11 89:13 REBUTTAL [3] 3:12 96:24 97:1 recall [1] 47:4 recite [2] 31:4 100:16 recited [2] 18:21 61:22 reciting [2] 5:2 26:19 recognize [2] 92:3 97:15 recognized [4] 6:1 30:9 100:5 101:2 recognizes [1] 86:10 recognizing [1] 61:15 record [13] 5:13 61:18,23 71:2 72:9 80:2,16 81:2 83:13,20 87:2 93:19 101:4 recording [2] 19:17 21:2 records [5] 17:22 83:25 85:10,22 94:21 recount [3] 9:6 31:4 100:17 red [4] 64:24 65:6,12 68:14 refer [2] 70:14,19 referenced [4] 61:20 76:22 83:17 85:8 referencing [1] 71:7 reflect [2] 24:16 98:21 reframe [1] 91:6 regardless [3] 13:19 79:19 92:1 related [2] 63:1 71:17 relates [1] 72:5 relayed [1] 72:10 relaying [1] 72:4 relevance [3] 67:25 85:24 86:2 relevant [2] 82:8 85:24 reliability [1] 96:6 reliable [2] 39:19 63:2 relied [4] 69:25 79:14 80:24 100:7 relies [3] 10:14 54:22 77:2 rely [8] 9:13 30:5,16 82:8 95:20 96:1,2 100:11 relying [3] 8:1,4 47:21 remand [1] 49:8 remember [3] 13:14 47:2 49:21 repeatedly [1] 61:16 repeating [3] 56:14,15 71:24 replicated [1] 84:8 reply [1] 69:7 report [62] 4:23 5:4 6:21 7:9 13:4,5,6 18:3 19:6 21:11 22:8 24:2,11,21 25:1,9,15, 20 31:18 33:16,17 34:3 37:5 50:19 53:5 54:23 61:15, 16,19,23 66:6 69:19 70:5, 10,15,20,22,24 71:4,8,9,13,</p>	<p>18,21 72:6,8,11 74:3,5,16, 17,24 77:3 86:15,15 93:8 94:12,17 95:5 98:16,17,24 reports [3] 12:3 24:10 74:22 request [6] 5:10 7:4 11:25 12:4,13 101:11 requested [1] 64:12 requests [1] 78:5 require [5] 40:12 41:12 51:16,18 87:7 required [4] 6:14 7:18 75:16 85:23 requirement [1] 7:18 requirements [2] 51:16,18 requires [3] 41:13 44:11 62:10 reservation [1] 34:23 reserve [2] 40:16 57:1 resolve [1] 33:2 respect [3] 23:17 73:14 98:24 respects [1] 15:13 respond [2] 29:21 73:17 Respondent [4] 1:7 2:10 3:11 59:23 response [4] 38:14 49:21 51:25 53:3 responsible [1] 70:13 rested [1] 100:21 result [3] 62:11 74:12 77:17 resulted [1] 24:9 results [7] 14:6 16:8 26:20 31:6 62:10 85:2 100:19 retest [1] 8:22 retreat [1] 11:4 reveal [2] 86:21 94:20 revealed [5] 60:20 87:11 93:1 94:4 95:6 revealing [1] 86:22 reveals [1] 71:2 reverse [1] 35:9 review [6] 37:13 51:13 54:1 70:7,9 71:6 reviewed [14] 8:18 9:2 30:25 35:18 37:4 59:12 71:18, 19 74:16 83:24 84:1 85:10, 21 86:21 reviewer [3] 44:10 45:22, 23 reviewing [1] 70:4 reviews [1] 51:20 revisit [2] 89:11 92:2 rewind [1] 65:13 rid [1] 89:18 ripe [1] 8:12 road [1] 92:20 ROBERTS [22] 4:3 7:21 26:1 27:14 29:6 31:23 34:13 36:14,18 42:17 46:18,20 48:12 49:18 54:5 59:19 87:15 90:3 92:9,21 96:22 101:23</p>
--	--	--	--	---

Official - Subject to Final Review

<p>Rule ^[29] 5:23 10:1,3,4,6,6,8 11:10 15:15,16 17:2 26:9,17 27:11 29:18 44:2,9,11,20,24 45:3,7 48:4 62:8,11 80:10,13 87:8 90:10</p> <p>rules ^[5] 32:9 35:12,13 42:5 48:4</p> <p>ruling ^[3] 53:13 66:18 90:20</p> <p>run ^[2] 38:17 57:5</p> <p>running ^[1] 53:23</p>	<p>scrap ^[2] 24:13 98:12</p> <p>scraps ^[1] 98:18</p> <p>scrounged ^[1] 98:19</p> <p>scrupulously ^[1] 35:11</p> <p>seal ^[2] 7:10 98:14</p> <p>seals ^[1] 86:6</p> <p>second ^[16] 18:20 28:13,24 30:7 32:19 33:1 35:21 38:9 41:4,4 45:23 47:16,19,19 56:3 95:11</p> <p>secure ^[1] 8:24</p> <p>security ^[1] 50:24</p> <p>see ^[7] 46:5 64:20,22,24 82:3,11 85:13</p> <p>seem ^[3] 19:14 70:3 85:1</p> <p>seems ^[5] 8:8,11 23:15 87:14 88:14</p> <p>sense ^[5] 15:1 25:8 31:6 90:16 101:21</p> <p>sent ^[1] 83:4</p> <p>separate ^[4] 27:17 28:12 47:17,18</p> <p>serve ^[1] 60:14</p> <p>served ^[4] 7:12 24:12,13 93:17</p> <p>Services ^[1] 98:14</p> <p>set ^[12] 5:4,12 7:3,6 14:3 78:20 83:15 87:2 98:3 99:8,10,24</p> <p>sets ^[2] 39:14 62:7</p> <p>setting ^[2] 76:13 92:12</p> <p>settled ^[2] 67:15,18</p> <p>setup ^[1] 39:14</p> <p>several ^[2] 77:25 101:10</p> <p>SG ^[1] 93:3</p> <p>shaped ^[1] 57:3</p> <p>shorthand ^[3] 99:10,16,22</p> <p>shot ^[1] 47:1</p> <p>shouldn't ^[3] 19:5 22:14 23:1</p> <p>show ^[3] 12:15 53:23 70:7</p> <p>shows ^[5] 5:13 57:18 71:11,16 80:3</p> <p>side ^[4] 29:14 38:12 47:22,23</p> <p>sides ^[1] 47:20</p> <p>sights ^[1] 62:7</p> <p>signed ^[7] 25:1,6,7,9 27:22,22 33:17</p> <p>significant ^[3] 29:22 87:7 91:4</p> <p>signing ^[1] 50:20</p> <p>Similarly ^[2] 30:13 64:7</p> <p>simpler ^[1] 39:9</p> <p>simply ^[10] 9:1 11:18 23:10 30:5,23 41:5 58:21 59:10 64:12 99:9</p> <p>since ^[2] 22:15 75:1</p> <p>sitting ^[1] 41:22</p> <p>situation ^[1] 74:23</p> <p>situations ^[1] 54:19</p> <p>Sixth ^[5] 4:11 10:5,10 23:5,23</p> <p>skin ^[1] 88:13</p>	<p>slightly ^[1] 41:1</p> <p>SMITH ^[9] 1:3 4:4,11 5:9,11 6:3,11 98:7 101:11</p> <p>Smith's ^[4] 6:16 7:2 9:8 98:3</p> <p>so-called ^[1] 32:17</p> <p>sole ^[1] 7:1</p> <p>solemn ^[2] 24:16 61:12</p> <p>solemnity ^[5] 7:18 22:17 24:17 97:21 98:21</p> <p>Solicitor ^[2] 2:4,8</p> <p>somebody ^[4] 8:2,10 16:17 88:9</p> <p>somehow ^[1] 16:17</p> <p>someone ^[7] 9:15 17:9 26:23 30:6 39:1 41:10 51:12</p> <p>sometimes ^[2] 32:20 49:14</p> <p>somewhat ^[2] 45:3 58:21</p> <p>sorry ^[11] 26:9 35:3 39:23,24 40:5 42:13 43:22 46:24 59:8 79:11 87:13</p> <p>sort ^[7] 35:3 39:14 50:18 54:24 64:25 69:23 71:11</p> <p>sorts ^[1] 29:24</p> <p>SOTOMAYOR ^[55] 9:17,19 15:14,18,25 16:16,21,24 17:1,4,8,19 24:20,25 25:5,11,14,17,22 26:7 27:15,16 28:8,12,16,24 29:2,5 42:20,21 43:2,5,13,18,21,23 44:1,6,15,18,23 45:9,12,16 46:9,12,15 64:16 65:14,17,21 66:2,11 68:14 87:18</p> <p>sounds ^[2] 51:23 52:6</p> <p>source ^[2] 61:9 93:1</p> <p>specific ^[6] 4:25 9:8 55:18,24 69:14 100:17</p> <p>specifically ^[5] 4:24 5:11 14:5 73:3,7</p> <p>spectrometry ^[1] 34:11</p> <p>spectrum ^[2] 75:12,13</p> <p>spend ^[1] 68:14</p> <p>splintered ^[1] 88:19</p> <p>split ^[3] 27:17 28:14,25</p> <p>stage ^[3] 64:23 69:2,7</p> <p>stand ^[9] 5:18 9:2 18:20 26:23 71:12 74:15 77:15 93:6 94:13</p> <p>standard ^[5] 41:20 54:16 61:25 62:1 72:21</p> <p>standards ^[3] 40:11,11 41:11</p> <p>standpoint ^[1] 101:21</p> <p>Star ^[2] 17:13,17</p> <p>start ^[4] 65:12 69:19 81:16 98:9</p> <p>started ^[2] 67:9,10</p> <p>starting ^[1] 82:9</p> <p>starts ^[1] 96:12</p> <p>State ^[31] 4:12 5:22 6:10 8:17,20 9:5 27:2 28:4,5 29:25 30:19,23 36:8,21 37:2 38:5 61:7 62:20 65:25 67:</p>	<p>13,22 72:13 73:25 77:10 84:15 86:11 88:9 98:2 100:21 101:2,10</p> <p>State's ^[7] 5:10,14 7:4,6 24:6 70:7 71:6</p> <p>stated ^[1] 14:5</p> <p>statement ^[14] 9:14,24 11:3 13:22 14:25 19:1,2 27:11,18 30:8,20 56:15,21 101:19</p> <p>statements ^[58] 4:14,22 5:3,5,7 6:8,12,23 9:7 10:9,21,23,25 12:2 14:8 15:9,10 18:21 19:20 22:23 23:10 24:7 26:19,24 28:6,10,21 30:2,10,13 31:4,14 49:9 54:23 56:16 61:10,19 62:19 68:16 71:4 91:2 92:17 93:1 97:11,24 98:21 99:10,13,15,19,21,24,25 100:8,17 101:3,6,16</p> <p>STATES ^[10] 1:1,15 2:6 3:7 5:17 29:25 32:2 87:25 93:15 100:2</p> <p>States' ^[9] 86:24 87:4 93:22</p> <p>stationery ^[2] 33:18 50:21</p> <p>statistic ^[1] 43:23</p> <p>step ^[4] 6:18 11:23 12:21 63:14</p> <p>stepped ^[2] 49:24,25</p> <p>steps ^[2] 35:16 95:15</p> <p>Stick ^[1] 20:22</p> <p>still ^[11] 13:20 40:5 43:18 47:2 49:9 57:19 78:15 84:15 87:3,9 94:1</p> <p>stood ^[3] 64:2 74:8 77:16</p> <p>strategic ^[1] 6:10</p> <p>strayed ^[1] 16:1</p> <p>strength ^[1] 100:24</p> <p>strengthened ^[1] 101:4</p> <p>stretch ^[1] 18:11</p> <p>stricken ^[3] 84:22 85:16,19</p> <p>stricter ^[1] 45:3</p> <p>strikes ^[2] 23:4,21</p> <p>strong ^[2] 100:23,23</p> <p>struggling ^[1] 85:3</p> <p>stuff ^[2] 11:24 86:13</p> <p>style ^[1] 11:13</p> <p>subject ^[1] 32:20</p> <p>submit ^[1] 18:19</p> <p>submitted ^[2] 101:25 102:2</p> <p>subpoena ^[1] 78:20</p> <p>subsidiary ^[2] 89:23 90:11</p> <p>substance ^[6] 40:14 56:15 62:2 69:18 80:19,20</p> <p>substances ^[8] 9:4 12:15,17 40:20 80:3 81:2,17 82:6</p> <p>substantially ^[1] 46:1</p> <p>substantive ^[5] 78:12 83:11,14 96:11,12</p> <p>substitute ^[8] 4:13 18:15</p>	<p>28:20 45:21 48:21 50:14 53:8 61:11</p> <p>succeed ^[1] 87:6</p> <p>sufficiency ^[1] 36:7</p> <p>sufficient ^[1] 42:4</p> <p>sufficiently ^[2] 21:10 61:12</p> <p>suggest ^[3] 45:19,20,24</p> <p>suggested ^[1] 87:8</p> <p>suggesting ^[6] 9:12 30:4 33:3 49:15 69:24 99:4</p> <p>suggests ^[1] 79:19</p> <p>summarizing ^[1] 17:24</p> <p>supply ^[1] 35:25</p> <p>support ^[6] 6:9 10:23 15:10 61:18 98:6 101:19</p> <p>supported ^[1] 69:4</p> <p>supporting ^[6] 2:6 3:8 32:3 36:21 37:2 38:5</p> <p>supports ^[1] 69:15</p> <p>suppose ^[3] 11:12 23:25 73:20</p> <p>SUPREME ^[4] 1:1,14 66:23 67:5</p> <p>surrounding ^[1] 32:16</p> <p>suspect ^[1] 52:19</p> <p>swath ^[1] 23:5</p> <p>Swear ^[2] 13:8 16:6</p> <p>sword ^[1] 8:9</p> <p>sworn ^[2] 27:21,22</p> <p>system ^[2] 29:17 33:15</p>
S				
<p>same ^[15] 5:3 21:12 45:22 47:21,24,25 55:17 61:24 72:14,14,16,18 82:10,11 98:15</p> <p>sample ^[2] 81:24 82:2</p> <p>SAMUELS ^[55] 2:8 3:10 59:21,22,24 62:24 63:13,21 65:10,16,19,22 66:8,15 67:2,12 68:5,8,11,18,24 70:24 72:3,18 75:7 76:9,13 77:24 79:8 80:5 81:4,12,16 82:1,4,14,19,22 83:9 84:5 85:5,20 86:18 88:25 89:8 90:6,9 91:16,24 92:14 93:13 94:18 95:8 96:9,19</p> <p>SANTHANAM ^[58] 2:2 3:3,13 4:6,7,9 6:22 8:14 10:3,18 11:18 12:6,18 13:13,18 14:17,20 15:7,17,23 16:13,20,23 17:7,18 18:17 19:3,16 20:4,7,17,21,24 21:14,19 22:6,19 23:3,19 24:1,23 25:4,9,16,19 26:16 27:6,9 28:4,11,15 29:1,4,21 31:15,20 97:1,3</p> <p>satisfaction ^[1] 88:3</p> <p>savage ^[1] 36:4</p> <p>savaged ^[1] 58:2</p> <p>saying ^[24] 16:10 17:13 20:2 26:9,19 31:5 34:17 35:18 38:18 40:16,17 41:22 50:11 54:13 58:13 59:7,10 72:7 75:23,25 76:4 84:9 93:6 94:16</p> <p>says ^[34] 12:25 14:12 15:5 31:18 37:6,10 45:8 55:1 59:12 64:19 70:9,11,14,16,19,21 73:7 74:5,7,15 76:7 77:12 85:15 86:6,14,14,14,15,15 90:10 94:10,14 95:5,6</p> <p>scatter ^[1] 74:14</p> <p>scenario ^[8] 8:16 14:2 17:21 20:19 55:10,12 94:19 95:23</p> <p>scene ^[11] 17:22,23 19:10 20:15 21:3 30:4 52:2 81:14 82:9,17 83:3</p> <p>science ^[1] 51:17</p> <p>scientific ^[1] 37:14</p> <p>scientist ^[1] 53:20</p>	<p>scrap ^[2] 24:13 98:12</p> <p>scraps ^[1] 98:18</p> <p>scrounged ^[1] 98:19</p> <p>scrupulously ^[1] 35:11</p> <p>seal ^[2] 7:10 98:14</p> <p>seals ^[1] 86:6</p> <p>second ^[16] 18:20 28:13,24 30:7 32:19 33:1 35:21 38:9 41:4,4 45:23 47:16,19,19 56:3 95:11</p> <p>secure ^[1] 8:24</p> <p>security ^[1] 50:24</p> <p>see ^[7] 46:5 64:20,22,24 82:3,11 85:13</p> <p>seem ^[3] 19:14 70:3 85:1</p> <p>seems ^[5] 8:8,11 23:15 87:14 88:14</p> <p>sense ^[5] 15:1 25:8 31:6 90:16 101:21</p> <p>sent ^[1] 83:4</p> <p>separate ^[4] 27:17 28:12 47:17,18</p> <p>serve ^[1] 60:14</p> <p>served ^[4] 7:12 24:12,13 93:17</p> <p>Services ^[1] 98:14</p> <p>set ^[12] 5:4,12 7:3,6 14:3 78:20 83:15 87:2 98:3 99:8,10,24</p> <p>sets ^[2] 39:14 62:7</p> <p>setting ^[2] 76:13 92:12</p> <p>settled ^[2] 67:15,18</p> <p>setup ^[1] 39:14</p> <p>several ^[2] 77:25 101:10</p> <p>SG ^[1] 93:3</p> <p>shaped ^[1] 57:3</p> <p>shorthand ^[3] 99:10,16,22</p> <p>shot ^[1] 47:1</p> <p>shouldn't ^[3] 19:5 22:14 23:1</p> <p>show ^[3] 12:15 53:23 70:7</p> <p>shows ^[5] 5:13 57:18 71:11,16 80:3</p> <p>side ^[4] 29:14 38:12 47:22,23</p> <p>sides ^[1] 47:20</p> <p>sights ^[1] 62:7</p> <p>signed ^[7] 25:1,6,7,9 27:22,22 33:17</p> <p>significant ^[3] 29:22 87:7 91:4</p> <p>signing ^[1] 50:20</p> <p>Similarly ^[2] 30:13 64:7</p> <p>simpler ^[1] 39:9</p> <p>simply ^[10] 9:1 11:18 23:10 30:5,23 41:5 58:21 59:10 64:12 99:9</p> <p>since ^[2] 22:15 75:1</p> <p>sitting ^[1] 41:22</p> <p>situation ^[1] 74:23</p> <p>situations ^[1] 54:19</p> <p>Sixth ^[5] 4:11 10:5,10 23:5,23</p> <p>skin ^[1] 88:13</p>	<p>slightly ^[1] 41:1</p> <p>SMITH ^[9] 1:3 4:4,11 5:9,11 6:3,11 98:7 101:11</p> <p>Smith's ^[4] 6:16 7:2 9:8 98:3</p> <p>so-called ^[1] 32:17</p> <p>sole ^[1] 7:1</p> <p>solemn ^[2] 24:16 61:12</p> <p>solemnity ^[5] 7:18 22:17 24:17 97:21 98:21</p> <p>Solicitor ^[2] 2:4,8</p> <p>somebody ^[4] 8:2,10 16:17 88:9</p> <p>somehow ^[1] 16:17</p> <p>someone ^[7] 9:15 17:9 26:23 30:6 39:1 41:10 51:12</p> <p>sometimes ^[2] 32:20 49:14</p> <p>somewhat ^[2] 45:3 58:21</p> <p>sorry ^[11] 26:9 35:3 39:23,24 40:5 42:13 43:22 46:24 59:8 79:11 87:13</p> <p>sort ^[7] 35:3 39:14 50:18 54:24 64:25 69:23 71:11</p> <p>sorts ^[1] 29:24</p> <p>SOTOMAYOR ^[55] 9:17,19 15:14,18,25 16:16,21,24 17:1,4,8,19 24:20,25 25:5,11,14,17,22 26:7 27:15,16 28:8,12,16,24 29:2,5 42:20,21 43:2,5,13,18,21,23 44:1,6,15,18,23 45:9,12,16 46:9,12,15 64:16 65:14,17,21 66:2,11 68:14 87:18</p> <p>sounds ^[2] 51:23 52:6</p> <p>source ^[2] 61:9 93:1</p> <p>specific ^[6] 4:25 9:8 55:18,24 69:14 100:17</p> <p>specifically ^[5] 4:24 5:11 14:5 73:3,7</p> <p>spectrometry ^[1] 34:11</p> <p>spectrum ^[2] 75:12,13</p> <p>spend ^[1] 68:14</p> <p>splintered ^[1] 88:19</p> <p>split ^[3] 27:17 28:14,25</p> <p>stage ^[3] 64:23 69:2,7</p> <p>stand ^[9] 5:18 9:2 18:20 26:23 71:12 74:15 77:15 93:6 94:13</p> <p>standard ^[5] 41:20 54:16 61:25 62:1 72:21</p> <p>standards ^[3] 40:11,11 41:11</p> <p>standpoint ^[1] 101:21</p> <p>Star ^[2] 17:13,17</p> <p>start ^[4] 65:12 69:19 81:16 98:9</p> <p>started ^[2] 67:9,10</p> <p>starting ^[1] 82:9</p> <p>starts ^[1] 96:12</p> <p>State ^[31] 4:12 5:22 6:10 8:17,20 9:5 27:2 28:4,5 29:25 30:19,23 36:8,21 37:2 38:5 61:7 62:20 65:25 67:</p>	<p>13,22 72:13 73:25 77:10 84:15 86:11 88:9 98:2 100:21 101:2,10</p> <p>State's ^[7] 5:10,14 7:4,6 24:6 70:7 71:6</p> <p>stated ^[1] 14:5</p> <p>statement ^[14] 9:14,24 11:3 13:22 14:25 19:1,2 27:11,18 30:8,20 56:15,21 101:19</p> <p>statements ^[58] 4:14,22 5:3,5,7 6:8,12,23 9:7 10:9,21,23,25 12:2 14:8 15:9,10 18:21 19:20 22:23 23:10 24:7 26:19,24 28:6,10,21 30:2,10,13 31:4,14 49:9 54:23 56:16 61:10,19 62:19 68:16 71:4 91:2 92:17 93:1 97:11,24 98:21 99:10,13,15,19,21,24,25 100:8,17 101:3,6,16</p> <p>STATES ^[10] 1:1,15 2:6 3:7 5:17 29:25 32:2 87:25 93:15 100:2</p> <p>States' ^[9] 86:24 87:4 93:22</p> <p>stationery ^[2] 33:18 50:21</p> <p>statistic ^[1] 43:23</p> <p>step ^[4] 6:18 11:23 12:21 63:14</p> <p>stepped ^[2] 49:24,25</p> <p>steps ^[2] 35:16 95:15</p> <p>Stick ^[1] 20:22</p> <p>still ^[11] 13:20 40:5 43:18 47:2 49:9 57:19 78:15 84:15 87:3,9 94:1</p> <p>stood ^[3] 64:2 74:8 77:16</p> <p>strategic ^[1] 6:10</p> <p>strayed ^[1] 16:1</p> <p>strength ^[1] 100:24</p> <p>strengthened ^[1] 101:4</p> <p>stretch ^[1] 18:11</p> <p>stricken ^[3] 84:22 85:16,19</p> <p>stricter ^[1] 45:3</p> <p>strikes ^[2] 23:4,21</p> <p>strong ^[2] 100:23,23</p> <p>struggling ^[1] 85:3</p> <p>stuff ^[2] 11:24 86:13</p> <p>style ^[1] 11:13</p> <p>subject ^[1] 32:20</p> <p>submit ^[1] 18:19</p> <p>submitted ^[2] 101:25 102:2</p> <p>subpoena ^[1] 78:20</p> <p>subsidiary ^[2] 89:23 90:11</p> <p>substance ^[6] 40:14 56:15 62:2 69:18 80:19,20</p> <p>substances ^[8] 9:4 12:15,17 40:20 80:3 81:2,17 82:6</p> <p>substantially ^[1] 46:1</p> <p>substantive ^[5] 78:12 83:11,14 96:11,12</p> <p>substitute ^[8] 4:13 18:15</p>	<p>28:20 45:21 48:21 50:14 53:8 61:11</p> <p>succeed ^[1] 87:6</p> <p>sufficiency ^[1] 36:7</p> <p>sufficient ^[1] 42:4</p> <p>sufficiently ^[2] 21:10 61:12</p> <p>suggest ^[3] 45:19</p>

Official - Subject to Final Review

<p>13 73:2 75:18 92:25 94:13 testimonial ^[55] 4:14 5:5 6:20,23 9:9,14 10:9 11:7 17:6 19:1 20:25 22:5,11 27:19 28:3,6,20 29:3 30:9,12,16 33:7,19,24 34:1,7 35:20 48:16 50:1,25 51:7 52:6,22 53:1 54:2 61:13 65:9,25 66:7 67:23 68:16 69:5,9,18,22 88:17 90:15 91:2 97:7,12,15,25 99:5,24 100:8</p> <p>testimony ^[38] 5:20 17:9 18:16 22:24 32:7 36:23 41:11 48:21 50:15 53:8 54:22 55:6 56:5 57:14 58:18 60:25 61:11 62:23,25 73:3 75:14,19 76:8,10 77:25 78:14,16 79:3,4,5,24 84:25 86:5 87:9 93:18 94:3 96:18,20</p> <p>testing ^[19] 4:17,20 5:15 24:7 54:16 55:25 56:13 59:9 60:15,23 75:3 77:8 78:23 82:8 95:3,14 22 96:4,6</p> <p>tests ^[17] 4:24 9:8 16:7 18:11 22:12 24:18 38:16 40:12,18 56:23 57:5 69:9 84:9 85:2 89:2 92:16 97:24</p> <p>theory ^[1] 16:3</p> <p>There'd ^[3] 35:15,15,21</p> <p>there's ^[27] 8:14 9:19 13:25 22:7 27:16 29:15 32:12 37:25,25 53:11 61:23 64:14 70:6 72:9 75:12,15 78:4 79:25 81:4,7,13 82:14 86:13,19 90:22 91:20 94:9</p> <p>There's ^[1] 93:2</p> <p>therefore ^[5] 11:8 23:17 27:3 40:19 88:8</p> <p>They'll ^[1] 78:22</p> <p>thinks ^[7] 20:13,14 47:22,23 48:1,2 93:23</p> <p>third ^[2] 30:18 34:5</p> <p>THOMAS ^[19] 6:18 22:14 25:6 26:3 33:6,9 42:19 48:15,25 49:22,25 62:17 63:8,20 87:16 91:10,13,25 92:5</p> <p>Thomas's ^[11] 22:16,20 27:19 49:12 65:24 69:4,11 73:13 89:2,10 97:21</p> <p>though ^[5] 22:1 25:7,13 60:16 68:9</p> <p>thoughtful ^[1] 88:21</p> <p>three ^[10] 24:10,10 29:22 33:11,18 34:4 35:16 74:8 77:16 81:17</p> <p>tied ^[1] 21:11</p> <p>today ^[2] 44:22 49:6</p> <p>together ^[1] 24:15</p> <p>took ^[4] 18:20 66:24 74:7 87:24</p> <p>totally ^[2] 68:22 72:8</p> <p>traditional ^[3] 25:8 84:13,</p>	<p>14</p> <p>transcript ^[2] 70:23,25</p> <p>translate ^[1] 20:18</p> <p>trash ^[1] 9:25</p> <p>treat ^[1] 97:12</p> <p>treatises ^[1] 10:20</p> <p>treatment ^[1] 30:12</p> <p>trial ^[37] 5:12 7:5 11:23,24 12:24,24,25 13:15 14:10,11,11 15:21 18:16 19:21 26:15 42:25 46:2 48:21 50:14 57:2,2 60:24 61:11,20 63:9,10 64:21 66:13,17,17 67:2 73:25 78:24 81:19 82:10 85:8 98:3</p> <p>trials ^[1] 43:4</p> <p>tried ^[2] 13:20 91:5</p> <p>trier ^[3] 10:15 14:23 79:21</p> <p>tries ^[1] 61:16</p> <p>true ^[14] 10:24 15:11 43:1,3 55:6 70:1 79:15,19 86:16 88:4 91:3 99:8 100:9 101:20</p> <p>truth ^[48] 5:24 6:7 10:16 11:9 12:3 13:8,23 14:7,13,25 15:2,4,5,6,12 28:10 31:7 36:11 38:1 39:5,8 41:23 47:18 48:6 50:11 55:9 56:18 57:20,25 60:3,4,10 62:20 63:11 66:25 67:18 73:15,19 74:23 75:2,6 79:23 80:25 81:6 85:1,4 101:7,18</p> <p>try ^[2] 38:24 85:6</p> <p>trying ^[7] 10:2 54:9 56:1 92:24 94:5,7,9</p> <p>turns ^[1] 94:15</p> <p>two ^[9] 6:20 27:17 32:11 36:6 41:3 49:10 51:2 71:17 75:11</p> <p>two-edged ^[1] 8:9</p> <p>type ^[4] 8:4 76:15,18 96:11</p> <p>types ^[1] 23:6</p> <p>typewriting ^[1] 24:9</p> <p>typewritten ^[2] 7:9 98:14</p> <p>typically ^[1] 54:18</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately ^[4] 89:3,25 92:1 95:15</p> <p>umbrella ^[1] 21:12</p> <p>unclear ^[1] 64:19</p> <p>unconventional ^[1] 73:22</p> <p>under ^[33] 5:23 10:3 16:3,6 18:1 21:17 22:16,16 23:24 26:10,17 27:11 28:9 29:18 35:11,13 42:4 48:3,4 50:3 52:6,11 69:9 78:4 87:3 89:4,12,16 91:11,12 92:15,16 97:24</p> <p>underlying ^[10] 5:22 6:8 10:21 13:7,22 15:9 63:5 71:19 74:22 95:21</p> <p>underscores ^[2] 31:7 101:</p>	<p>5</p> <p>understand ^[22] 5:7 6:3,24 9:23 12:10,11 13:16 14:9 22:20 27:24 36:20 38:20 39:16 42:24 44:25 73:18 74:24 84:6,11 86:23 92:24 94:9</p> <p>understanding ^[3] 40:22 47:14 50:22</p> <p>understood ^[12] 6:5 11:3,14 35:1,5 40:6 42:12 52:21 68:24 69:3 87:25 90:17</p> <p>unique ^[2] 62:6 73:24</p> <p>UNITED ^[13] 1:1,15 2:5 3:7 5:17 29:25 32:2 86:24 87:4,24 93:15,22 100:2</p> <p>unless ^[3] 67:25 79:13 90:18</p> <p>unlikely ^[3] 51:6 68:1,6</p> <p>unpublished ^[1] 67:20</p> <p>unquestionably ^[1] 75:2</p> <p>unrealistic ^[2] 6:2,2</p> <p>unusual ^[1] 86:11</p> <p>up ^[23] 8:10 16:9 17:12 23:9 26:6 32:13 36:1 37:3 39:14 40:10 43:12 46:6 49:11 57:3 67:9 71:12 77:2 84:16,21 85:18 88:3 96:2 98:19</p> <p>urge ^[2] 45:4 97:25</p> <p>urging ^[1] 45:6</p> <p>usable ^[2] 62:2 72:21</p> <p>useful ^[1] 63:12</p> <p>uses ^[1] 72:18</p> <p>using ^[2] 28:20 72:15</p> <p>utterly ^[1] 86:9</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid ^[2] 84:16 88:5</p> <p>value ^[2] 62:22,25</p> <p>vast ^[1] 23:5</p> <p>velocity ^[1] 74:11</p> <p>veracity ^[1] 96:5</p> <p>verbatim ^[2] 5:3 35:4</p> <p>versus ^[6] 4:5 40:17 49:1 53:13 72:6 94:13</p> <p>victim ^[3] 74:18,20 75:24</p> <p>view ^[12] 24:23 55:3,8 69:4,12 87:4 88:21 89:2,4,10 92:16 93:22</p> <p>violated ^[1] 6:16</p> <p>violation ^[9] 11:21 13:21 16:12 18:2,5 61:3 64:15 90:14 101:1</p> <p>vouches ^[1] 54:24</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wanted ^[6] 22:2 35:9 40:6 42:9 46:25 49:11</p> <p>wants ^[2] 20:14 44:2</p> <p>Washington ^[2] 1:10 2:5</p> <p>wax ^[1] 86:6</p> <p>way ^[24] 9:25 23:12 29:3 38:23 45:5,7 54:16 55:2,5 56:</p>	<p>19,19 57:22 58:15,19 62:4 75:6 76:5,7 77:6 79:4 81:13 91:6 92:18 93:24</p> <p>ways ^[11] 22:12 23:9 41:3 61:14 62:4 77:25 78:3,16,24 88:13 93:25</p> <p>weapon ^[10] 73:22 74:2,4,5,8,19,25 76:8,15 77:7</p> <p>Wednesday ^[1] 1:11</p> <p>weight ^[2] 50:20 62:18</p> <p>welcome ^[2] 6:17 62:16</p> <p>whatever ^[2] 8:7 24:17</p> <p>Whereupon ^[1] 102:1</p> <p>whether ^[25] 13:19 21:10 28:5,9 29:2 36:24,25 37:6 40:4 48:16,25 49:8 50:13 51:21 53:7 63:2 68:15,23 75:23 77:8 79:20,25 88:17 89:18 93:10</p> <p>White ^[2] 22:15,21</p> <p>who's ^[2] 31:17 75:17</p> <p>whole ^[1] 85:13</p> <p>will ^[3] 13:7,20 21:4</p> <p>Williams ^[12] 6:1,21 22:21 25:1,1 49:1 65:24 69:10 81:8 91:5 98:24 100:4</p> <p>win ^[3] 11:6 23:25 92:16</p> <p>window ^[1] 18:14</p> <p>winds ^[1] 57:3</p> <p>within ^[1] 21:11</p> <p>without ^[13] 5:23 16:10 18:3,5 31:9 33:2 58:11 62:8 67:20 70:4 77:22 90:15 94:23</p> <p>witness ^[12] 4:15 6:11 9:13 55:15,16 70:3 79:5 92:25 95:12 99:13,16,19</p> <p>witnesses ^[10] 33:4 43:11 44:12 45:1,25 46:6 86:4,5,6,7</p> <p>wonder ^[1] 5:16</p> <p>wondering ^[1] 19:15</p> <p>word ^[3] 44:13 70:24 73:9</p> <p>words ^[5] 8:8 61:24 72:14,16,18</p> <p>work ^[3] 53:21,22 65:15</p> <p>workable ^[1] 62:8</p> <p>worked ^[2] 75:1 77:6</p> <p>works ^[5] 74:6 76:2,4,6 77:4</p> <p>world ^[1] 94:12</p> <p>worries ^[1] 77:1</p> <p>worse ^[1] 46:1</p> <p>worth ^[2] 78:15 79:2</p> <p>worthless ^[1] 79:13</p> <p>wound ^[1] 74:18</p> <p>write ^[1] 28:22</p> <p>written ^[4] 16:5 51:10 98:11,12</p> <p>wrote ^[1] 93:8</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>X-ray ^[1] 47:25</p>	<p>Y</p> <hr/> <p>years ^[1] 13:1</p>
---	---	--	--	---