No. 08-88

IN THE

Supreme Court of the United States

STATE OF VERMONT,
Petitioner,
v.
MICHAEL BRILLON,
Respondent.

On Writ of Certiorari to the Vermont Supreme Court

BRIEF OF *AMICI CURIAE* VERMONT NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE *et. al.*, IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES Page

BOOKS & REPORTS

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTEREST OF AMICI [1]

The Vermont Network Against Domestic and Sexual Violence and the other Amici listed in the Appendix are non-profit organizations devoted to remedying domestic and sexual violence through legal, legislative, and policy initiatives, as well as organizations providing shelter, advocacy, and legal counseling services to survivors of domestic and sexual violence. Amici are particularly concerned that if permitted to stand, the Vermont Supreme Court decision will frustrate the ability to prosecute domestic and sexual violence cases, subject victims and their children to increased coercive abuse, compromise public safety, and ultimately undermine the integrity of the criminal justice system.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici draw to the Court's attention the impact that its ruling will have on victims of domestic and sexual violence.[2] Estimates of the number of American women

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[1] Pursuant to S. Ct. R. 37.3(a) and 37.6, the undersigned represents that (1) all parties consented to the filing of this brief, (2) no counsel for any party authored this brief in whole or part, and (3) no person or entity other than the above-named *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief.

[2] Amici define domestic and sexual violence as the physical, sexual, psychological and/or emotional abuse and coercive control of a victim by her intimate partner, with the goal of asserting and maintaining power and control over the victim. *See, e.g.*, Evan Stark, *Coercive Control: How Men Entrap Women In Personal Life* 5 (2007); Nichole Miras Mordini, Note, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 Drake L. Rev. 295, 300 (2004). Although such violence does occur in same-sex relationships and can be committed by women, the vast majority

assaulted and/or raped each year by an intimate partner range from 1.5 million to 4 million.[3] An increasing number of domestic and sexual violence cases are prosecuted as the criminal justice system continues to make progress in addressing them as serious crimes. The Vermont Supreme Court ruling undermines this progress by giving incentive to defendants and their counsel to strategically delay proceedings with the hope that the victim will decide not to proceed, or that the case will be dismissed for lack of a speedy trial. It further encourages defendants to continue their abusive behaviors towards victims by manipulating the court system.

As this Court set forth in *Barker v. Wingo*, the right to a speedy trial must be evaluated in light of public concerns as well as the constitutional rights of criminal defendants. *Barker v. Wingo*, 409 U.S. 514 (1972). "[T]here is a societal interest in providing a speedy trial which exists separate from, and at times

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of domestic violence victims are women and their attackers are men. *See, e.g.*, Callie Marie Rennison, Bureau of Justice Statistics, U.S. Dep't of Justice, *Crime Data Brief: Intimate Partner Violence, 1993-2001* 1 (2003) (reporting that women are 85% of victims). Therefore, Amici use gender-specific terminology to reflect the vast majority of these cases.

[3] *See* Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice & Ctrs. for Disease Control & Prevention, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* iv (2000); *see also* American Psychological Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence in the Family* 10 (1996). At least half of all women murdered in the United States are killed by an intimate partner. Violence Pol'y Center, *When Men Murder Women: An Analysis of 2003 Homicide Data* 3 (2005) (92% of female victims murdered by someone they knew; 62% killed by husbands or intimate partners).

in opposition to, the interests of the accused." *Id at* 519. Because it is often in the interest of criminal defendants and their counsel to delay trial, this Court has unequivocally held that courts must evaluate a defendant's speedy trial claim with particular attention to the context of the case. "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." *Id*. at 522 (citing *Beavers v. Haubert*, 198 U.S. 77, 87 (1905)).

The Vermont Supreme Court committed two fatal errors in *State v. Brillon*, 2008 VT 35, ¶ 2, 955 A.2d 1108. First, it, failed to account for the particular facts of the case as required by *Barker*. The factual record, which the court never examined in detail, contains overwhelming evidence that the delays during the first two years defendant was in custody were the result of defendant's own manipulation of the criminal justice system, including his desire to further "trash the victim." (J.A. 77). He fired three of his six attorneys, in part because they did not engage in arguably unethical discovery that would have dissuaded the victim from proceeding. (J.A. 67, 69, 72). Brillon even threatened the life of one of his attorneys, turning his abusive behavior on the court itself. (J.A. 69). But for the defendant's own delays, the case could have been tried within six months of his arrest.[4] At no time did the prosecution request a

[4] Brillon was arrested on July 27, 2001, following an alleged assault on Michelle Tatro. (J.A. 66). The original date for a jury draw was in February 2002. (J.A. 67). At that time, Brillon's attorney, Richard Ammons, requested a continuance until April 2002. (J.A. 164). The court refused to grant the continuance, and Brillon immediately fired Ammons. (J.A. 187). Ammons was

continuance, nor was there any evidence in the record that the delays were a result of an under-resourced public defender system.[5] The only way for courts to distinguish between delays caused by failure of the state-operated public defender system to provide effective counsel in a timely manner and delays caused by the defense is to undertake a detailed factual examination as required by *Barker*. The Vermont Supreme Court relied almost entirely on conjecture, not facts, when accounting for the reasons for delay.

Furthermore, the Vermont Supreme Court failed to account for public concerns. In domestic and sexual violence cases, there is a particularly high risk that defendants will manipulate the court system and attempt to further control and harass victims. Michael Brillon is a habitual domestic offender with fourteen prior convictions, including a felony sexual assault of a minor. *Brillon*, 2008 VT 35, ¶ 74 (Burgess, J., dissenting). Unfortunately, Brillon's behavior is all too typical of domestic and sexual offenders. The kinds of delays and abusive behavior he exhibited can significantly impact a victim's life physically, emotionally, and financially. Such delays also make it less likely a victim will decide to proceed with a criminal case. If this ruling is allowed to stand, defendants and their counsel will have increased

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later given permission to withdraw. (J.A. 202). But for Brillon's actions, this case would have been tried in February 2002.

[5] In a subsequent news report following the *Brillon* decision, the Vermont Defender General Matthew Valerio stated that "the problems that delayed the case were unique to the Brillon situation and not systemic." Louis Porter & Patrick McArdle, *High Court to Revisit Brillon Decision*, Rutland Herald, Oct. 2, 2008 at B5.

incentive to use delay tactics with the hope that either the case will be dismissed because the victim no longer wishes to participate or that the case will be dismissed for lack of a speedy trial. This will likely result in fewer domestic and sexual violence cases being prosecuted and will compromise the public safety by releasing dangerous defendants like Brillon back into society.

Ultimately, what is at stake in this decision is the integrity of the criminal justice system itself. The Court must demand that both the prosecution and the defense litigate cases in a manner that upholds that integrity, and must refuse to give incentive or reward behaviors that undermine it. This Court has held that it is improper for the prosecution intentionally to delay "to gain some tactical advantage over [defendants] or to harass them." *United States v. Marion*, 404 U.S. 307, 325 (1971). *See Pollard v. United States*, 352 U.S. 354, 361 (1957). This Court has also held that "while defendants have no duty to assist the State in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system." *Davis v. Washington*, 547 U.S. 813, 833 (2006) (emphasis in original). Thus, it is also improper for the defendant or his counsel to intentionally delay a case to gain some tactical advantage over the prosecution or to harass victims. When the defense acts improperly, resulting delays should never serve as the factual predicate for a speedy trial claim.

Therefore, Amici respectfully request that the Court vacate the decision, or in the alternative, remand with clear instructions that the court should undertake a more thorough examination of the reasons for the delays, the context of the case, and the interests

of public justice as required by *Barker*. The Court should further clarify that delays caused by the defendant and/or his counsel cannot serve as the factual predicate for a speedy trial claim unless those delays had nothing to do with the defendant's own conduct and were instead the result of the inability or unwillingness of the state public defender system to provide adequate counsel in a timely manner. Finally, Amici urge the Court to alert the trial and appellate courts to the particular risks of defense delay tactics in domestic and sexual violence cases and the consequences of those delays on victims, the public, and the criminal justice system.

ARGUMENT

I. DOMESTIC AND SEXUAL VIOLENCE OFFENDERS AND THEIR COUNSEL COMMONLY ENGAGE IN DELAY TACTICS TO DISCOURAGE VICTIMS FROM PARTICIPATING AND TO MANIPULATE THE CRIMINAL JUSTICE SYSTEM TO THEIR STRATEGIC ADVANTAGE.

This Court has recognized that domestic and sexual offenders often use both physical and psychological coercion to discourage their victims from seeking outside assistance. For example, in *Giles v. California*, this Court recognized that "[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions." *Giles v. California*, 128 S. Ct. 2678, 2692 (2008). Furthermore, in *Davis* this Court held that domestic violence cases are "notoriously susceptible to intimidation or

coercion of the victim to ensure that she does not testify at trial." *Davis*, 547 U.S. at 833.

Such coercion and intimidation does not end upon arrest. Empirical research and experience show that many domestic and sexual offenders continue to engage in behavior intended to dissuade victims from participating in criminal proceedings as well as manipulate the legal system to gain strategic advantage. Such behavior further harms victims and their children and decreases the likelihood that victims will participate with the state in holding their abusers accountable. When defendants manipulate the court system to coerce and control their victims, the court system not only becomes complicit in the defendant's abuse, but also becomes the target of the defendant's abusive behavior.

Although the criminal justice system focuses primarily on the physical harms caused by offenders, research and experience show that offenders use a host of tactics to exert coercion and control over victims beyond physical and sexual violence.[6] Most victims are subjected to an ongoing strategy of intimidation and control intended to deny them of their autonomy and liberty.[7] Researchers, legal scholars,

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[6] *See* Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 93 (1991) ("[B]attering is power and control marked by violence and coercion."); Deborah Turkheimer, *Recognizing and Remedying the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. Crim. L. & Criminology 959, 964–65 (2004); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1204–06 (1993); Karla Fischer, Neil Vidmar & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2126–29 (1993).

[7] *See generally* Stark, *supra* note 2.

advocates, and the federal government have all come to understand that domestic and sexual abusers disempower and control their victims by engaging in a range of behaviors including: emotional abuse, economic control, psychological intimidation, social isolation, and threats to and about the children or other family members.[8] For these offenders, maintaining control over every aspect of the victim's life is their primary motivation.

The ability to control one's targeted victim is frustrated by state intervention. Indeed, state interven-

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[8] *See* Turkheimer, *supra* note 6, at 964–65; Dutton, *supra* note 6, at 1204–06; Fischer *et al*., *supra* note 6, at 2126–29 (describing batterer and victim as "the Ruler and the Ruled"); Robert Geffner, Peter G. Jaffe & Marlies Sudermann, *Children Exposed to Domestic Violence: Current Issues in Research, Intervention, Prevention, and Policy Development* 330 (2000) ("The working definition of domestic violence used in this article is the deliberate use of threats, violence, and other types of abuse in intimate teen or adult relationships in order to exert power and control over the victim."); Jalna Hanmer & Catherine Itzin, *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice: a Reader* 314 (2000) ("Controlling behavior was conceptualized as a continuum which ranged from physical violence and intimidation to overt psychological and economic abuse to more subtle forms of psychological control . . ."); Evan Stark, *Mandatory Arrest of Batterers*, *in Do Arrests and Restraining Orders Work?* 115, 121 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) ("In trying to conceptualize battering, we need to picture ongoing forms of control that are at once both personal and social."); National Institute of Justice, *Do Batterer Intervention Programs Work? Two Studies* 2 (2003), *available at* http://www.ncjrs.gov/pdffiles1/nij/200331.pdf ("[A] power and control wheel illustrates tactics abusers use to control their partners."); Peter G. Jaffe, Nancy K. D. Lemon & Samantha E. Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability* 39 (2003) ("At the core of domestic violence is the abuse of power and control.").

tion can be among the most dangerous situations for victims, who become at increased risk for retaliatory abuse. At least 30% of domestic offenders assault their victims while awaiting trial on a prior violent incident.[9] Thus, many offenders do everything they can to avoid accountability for their illegal behavior, including keeping their victims from accessing outside help.[10]

In addition to retaliatory violence, domestic and sexual violence offenders often use the legal system to retaliate against their victims.[11] Once a defendant

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[9] Andrew King-Ries, *Forfeiture by Wrongdoing: A Panacea for Victimless Domestic Violence Prosecutions*, 39 Creighton L. Rev. 441, 443 n.14 (2006) (citing Randal Fritzler & Leonore Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, 37 Ct. Rev. 28, 28–33 (2000)).

[10] *See* James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* 74–85 (1999) (detailing tactics used to keep victims from turning to outside help and tactics used to retaliate against victims for doing so); Tom Lininger, *Prosecuting Batterers After Crawford,* 91 Va. L. R. 747, 768–69 (2005) (citing a study that found that half of all victims suffered threats of retaliation for seeking outside assistance).

[11] *See* Roberta Valente, *Screening Guidelines*, *in The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook* 51, 54 (Margaret B. Drew et al. eds., 2d ed. 2004) ("Many batterers use the legal system to punish their partners for taking steps to free themselves from domestic violence."); Susan L. Keilitz et al., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers* 3 (1997) ("An abuser also may engage in delay tactics or file motions to increase costs, wear down his partner's resolve to leave the relationship, and remain in a position of power over her."); Joan Zorza, *Batterer Manipulation and Retaliation in the Courts: A Largely Unrecognized Phenomenon Sometimes Encouraged by Court Practices*, 3 Domestic Violence Rep. 67, 68–75 (1998) (detailing tactics domestic abusers use in manipulating the court system); Leigh Goodmark, *Law is the Answer? Do We*

is facing criminal charges, he is even more likely to use these tactics to control the victim and dissuade her from continuing to participate in court proceedings.[12] This is particularly true if, as in Brillon's case, he is in state custody pending trial. Then, the only means by which to exert coercion and control over one's victim is to use psychological tactics, including trial manipulation. Such tactics satisfy the defendant's need to continue to dominate the victim's life and to avoid accountability.

The complete record in this case indicates that the defendant engaged in precisely the kind of coercive manipulation so common among domestic and sexual offenders. The facts serve as an illustration of the kind of tactics defendants and sometimes their counsel undertake. Petitioner's brief sets forth the facts in detail and thus Amici will highlight those which demonstrate the broader pattern of coercive manipulation evident throughout the criminal justice system in domestic and sexual violence cases.

There is ample evidence in the record that Brillon intentionally engaged in delay tactics calculated to manipulate the court system and to discourage the

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Know for Sure? Questioning the Efficacy of Legal Interventions for Battered Women, 23 St. Louis U. Pub. L. Rev. 7, 32–35 (2004) (describing how abusers manipulate the court system to revictimize); Lundy Bancroft, *Why Does He do That? Inside the Minds of Angry and Controlling Men* 291–314 (2002) (detailing how abusers manipulate the court system).

[12] Goodmark, *supra* note 11, at 33–34 (describing how batterers file repeated motions to harass or take revenge on victims and noting that "batterers use the legal system to abuse their victims when they can no longer reach them by other means"); Stark, *supra* note 2, at 56–57 (describing how legal interventions lead abusers to supplant physical violence with other forms of coercive control).

participation of his victim Michelle Tatro. He fired three of his six attorneys, each time claiming that they were inadequately representing him. However, a closer examination of the record reveals that he likely fired them because they refused to engage in arguably unethical behavior designed to "trash" the victim and dissuade her from proceeding with the case. (J.A. 217–18). Brillon tried to fire his first attorney, Richard Ammons, just four days before trial. (J.A. 68). The trial court then allowed Ammons to withdraw after he cited "irreconcilable differences in preferred approach between Mr. Brillon and counsel as to trial strategy, as well as other legitimate legal decisions." (J.A. 104). Ammons also was concerned "whether it would be ethically appropriate" for him to continue representation. (J.A. 170). Although the trial court made some inquiry into the reasons for Ammons's request to withdraw, it did not go into sufficient detail with Ammons over these differences in "trial strategy." However, the court did acknowledge that it could not require Ammons to violate his "ethical obligations." (J.A. 198–99).

Brillon's third lawyer, Gerard Altieri, was far more forthcoming with the court as to the reasons why Brillon attempted to fire him. Altieri shared with the court that Brillon wanted "for me to somehow bring in a lot of people . . . I don't want to use the words trash, but impeach Mrs. Tatro. I'm not sure that stuff is admissible." (J.A. 217). Altieri continued, "[a]nd you have seen me try complex cases before and I'm willing to work with the man, but I cannot do a lot of things he wants me to do, and I am not the first attorney he's fired." (J.A. 218). Altieri further stated that "if Mr. Brillion wants me to go on a fishing expedition and haul in people and relatives just to trash his wife, I don't think a judge is going to allow

me to do that. At least not in front of the cases I've tried downstairs. And if it's not relevant, I think it could hurt the case potentially in front of a jury." (J.A. 218). When Altieri agreed to stay on the case, Brillon threatened his life. Altieri informed the court that Brillon said, "If it takes me 20 years, to get even with you, I'll get you." (J.A. 224). After advising Brillon that his right to counsel did not include the right to manage every aspect of the strategy of the case, the court allowed Altieri to withdraw. (J.A. 228).

Subsequently, Brillon fired his fourth attorney, Paul Donaldson, just before yet another scheduled trial. (J.A. 237–38). Brillon again filed a *pro se* motion with the court seeking Donaldson's dismissal for lack of adequate representation. (J.A. 115–16). The court allowed Donaldson to withdraw without making any inquiry as to whether, in fact, his representation had been inadequate. (J.A. 240).

Brillon's actions towards his attorneys suggest that the delays were calcuated to game the system and discourage Tatro's participation. Indeed, in Brillon's motion to dismiss for lack of a speedy trial, he claimed prosecutorial misconduct related to newly discovered evidence that the victim did not want to press charges against him. (App. to Pet. Cert 68). Brillon faced an almost certain conviction unless Tatro decided not to proceed with the case. Brillon's behavior suggests that he hoped to wear down Tatro's resolve by insisting his attorneys engage in unethical discovery. When Brillon's counsel refused to do so, he fired them.

Furthermore, there is evidence in the record to suggest that at least two of Brillon's attorneys requested delays to gain a strategic advantage on be-

half of their client. Ammons, the first attorney, requested that the initial trial judge, Karen R. Carroll, recuse herself because she was familiar with Brillon from a family law matter. (J.A. 66–67). When she denied the request, Ammons sought a continuance until Judge Carroll had rotated out of the county. (J.A.174). Given that all depositions were taken, including two from the victim, there seemed to be no reason for the requested continuance but to have a more favorable judge. In addition, Ammons also requested a continuance to engage in discovery concerning Tatro's alleged use of prescription medication. (J.A. 167–68). It appeared that Ammons was on a "fishing expedition" to dig up any evidence he could to embarrass and harass Tatro. (J.A. 178). The court denied the request, suggesting that the defense had ample time to do discovery and that this evidence was likely not exculpatory for the defendant. (J.A. 186–87).

Donaldson, the fourth attorney, also asked for additional time at a status conference, prior to yet another scheduled trial, to depose last-minute witnesses who would attack the victim's character. *Brillon*, 2008 VT 35, ¶ 25. Arguably, this was the same discovery that Altieri refused to undertake. The trial court noted that these were peripheral character witnesses. *Id.* Again, this request was likely intended to harass the victim and discourage her participation. The court requested the list of these witnesses, but Brillon fired Donaldson, who was allowed to withdraw from the case before providing the court with the requested names. *Id.*

Defense attorneys certainly have a duty to engage in zealous representation of their clients. But it is important to highlight that this was a simple assault

case. Defense counsel took twelve depositions, including two from Tatro. (J.A. 167–68). At the actual trial, the defense called no witnesses. There was no reason for the requested delay or any reason for the additional discovery after February 2002, but to postpone the case with the hope that the victim would no longer proceed. While defense counsel certainly can request such delays, if granted, these delays should never serve as a factual predicate for a speedy trial claim. Otherwise, there is every incentive for counsel to engage in needless discovery and continuances.

II. DELAYS BY DEFENDANTS AND THEIR COUNSEL ADVERSELY IMPACT VICTIMS AND UNDERMINE THE ABILITY OF THE CRIMINAL JUSTICE SYSTEM TO EFFECTIVELY PROSECUTE DOMESTIC AND SEXUAL VIOLENCE CASES.

Tatro did proceed with the case and a jury found Brillon guilty. *Brillon*, 2008 VT 35, ¶ 30. He was sentenced to twelve to twenty years based on his status as a habitual domestic violence offender. *Id.* However, many victims do not proceed with criminal prosecution. The kinds of delays and tactics Brillon and other offenders engage in can significantly impact a victim's life physically, emotionally, and financially. Criminal defendants and their counsel are well aware that if a victim decides not to participate in a criminal proceeding, then the most likely result is dismissal.[13] Proactive and aggressive

[13] Cheryl Hanna, *No Right to Choose: Mandated Participation in Domestic Violence Prosecutions*, 109 Harv. L. Rev. 1849, 1892–93 (1996) (describing the ways in which defense attorneys encourage victims not to participate in criminal proceedings).

prosecution of domestic and sexual violence has become the norm, strongly encouraged by federal and state governments.[14] If defendants and their counsel can use the kinds of delay tactics Brillon engaged in to serve as a factual predicate for speedy trial claims, then the progress that has been made in this area will be frustrated. Most cases like Brillon's will not make it to trial because victims will decide that it is no longer in their best interests to proceed. This loss of faith in the judicial system compromises the rights of victims and fails to adequately protect the public from domestic and sexual violence offenders.

Delayed trials impact victims in a multitude of ways. Most significant is the risk of retaliatory violence. Abusive trial tactics, especially those sanctioned by the court, demonstrate to the victim that the abuser will be able to perpetuate abuse against her and potentially escalate his violent acts if he is

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[14] *See* Jeffrey Fagan, National Institute of Justice, *The Criminalization of Domestic Violence: Promises and Limits* 1 (1996), *available at* http://www.ncjrs.gov/pdffiles/crimdom.pdf ("During the past 30 years, the criminalization of domestic violence has developed along three . . . tracks: criminal punishment and deterrence of batterers, batterer treatment, and restraining orders designed to protect victims through the threat of civil or criminal legal sanctions."); *see generally* Emily Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 Wisc. L. Rev. 1657 (2004) (describing the shift towards aggressive prosecution); Press Release, Dep't of Justice Violence Against Women Office, Justice Department Funds Community Initiatives to Treat Domestic Violence as a Crime (Sept. 15, 1998), *available at* http://www.ojp.usdojgov/press releases/1998/VAW98204.htm; International Association of Chiefs of Police, *Model Policy: Domestic Violence* (2006), http://www.the iacp.org/documents/pdfs/RCD/IACPDomesticViolencePolicy.pdf (urging equal treatment of domestic assaults and calling for non-arrest decisions to be justified).

released from prison. Because victims of domestic and sexual violence remain very much at risk after separation or reporting of their abuse, and because the legal system has often failed to protect them, many victims are ambivalent or fearful about prosecution. It is estimated that such victims recant or decide not to cooperate with the prosecution approximately 80-90% of the time.[15] A study in New York City found that 80-90% of victims decide not to cooperate in domestic violence cases.[16] In the 1980s and 1990s, as many as 60-80% of domestic violence cases were abandoned for this reason.[17] In Brooklyn and Milwaukee, the most common reason for dismissal of domestic violence prosecutions was a victim's decision not to appear in court or to testify against the defendant.[18]

Research has shown that delays in trial discourage victims from participating in the prosecution of their abusers. For example, a study of specialized domestic violence courts in Milwaukee, Wisconsin found that if cases were efficiently processed, then conviction rates

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[15] Tom Lininger, *supra* note 10, at 768; Douglas E. Beloof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims' Out of Court Statements as Substantive Evidence*, 11 Colum. J. Gender & L. 1, 3–4 (2002).

[16] Richard R. Peterson, *Combating Domestic Violence in New York City: A Study of DV Cases in the Criminal Courts*, *CJA Final Report* 9–10 (2003), http://www.nycja.org/research/reports/ressum43.pdf.

[17] Lininger, *supra* note 10, at 771 n.121.

[18] *Id.* at 769 (finding that in Milwaukee in 2005, 96% of dismissals occurred because victims did not appear in court for trial).

increased.[19] Milwaukee officials found that reducing the time it took for a case to go to trial resulted in fewer defendants threatening or harming victims.[20] Research has also found that specialized courts that understand the context of domestic violence are less likely to allow defendants to manipulate the system and thus more likely to hold abusers accountable for their behaviors.[21] Victims are more likely to decide that it is to their benefit to go forward with a case when there are fewer opportunities for abusers to prolong the judicial process.

Victims also experience continued psychological abuse when cases are continually delayed and can be re-traumatized when the legal system appears indifferent or hostile. "The common denominator of psychological trauma is a feeling of 'intense fear, helplessness, loss of control, and threat of annihilation.'"[22] Deliberate delay tactics continue coercive control over victims.[23] Victims remain in fear pending disposition of a case and can be overwhelmed by mental and emotional distress. They can also experience heightened fear and anxiety if they see that no one, not even judges, can stop the abuse. A victim continues to be abused by manipulative delay tactics,

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[19] Robert C. Davis et al., *Prosecuting Domestic Violence Cases with Reluctant Victims: Assessing Two Novel Approaches in Milwaukee, Executive Summary* 1 (1997).

[20] *Id.* at 7.

[21] Sack, *supra* note 14, at 1730–31 (finding that coordinated community responses to domestic violence, which include specialized courts and judicial training, decrease delays as well as batterer manipulation of the legal system).

[22] Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* 33 (1992).

[23] Peter G. Jaffe et al., *supra* note 8, at 32.

even if she no longer is hit, battered, or raped by the defendant.

Continued abuse through trial tactics is of particular concern when victims are subjected to needless and irrelevant discovery of the type Brillon encouraged his attorneys to undertake. As noted above, Ammons requested a continuance to engage in discovery concerning Tatro's alleged use of prescription medication. (J.A. 167–68). The court did not see how evidence that she took medication would be helpful to Brillon given that there were photographs of Tatro's injuries and evidence that she was in pain as a result of the assault. (J.A. 185–86). The trial court properly exercised its discretion by refusing to grant a continuance for irrelevant discovery. However, unless a trial court engages in a factual inquiry as to the reasons behind the requested continuance, it may be inclined to grant such requests. In doing so, a victim can become disinclined to seek medical treatment, including mental health services, for fear that her entire life will be subjected to scrutiny and ridicule. Criminal defendants certainly have a right to vigorously defend themselves. However, continuances and delays requested by the defense in the course of vigorous representation should not then serve as the basis for a speedy trial claim.

Delay tactics can also result in enormous economic hardships for a victim who must repeatedly return to court, thereby requiring her to miss employment and incur additional costs for repeated, drawn-out litigation. Criminal trial delays have a disproportionate impact on poor women, compounding their harms.

> Cooperation with prosecution often requires women to take time off from work, to acquire transportation and childcare, or to make other

> sometimes costly and difficult arrangements. Thus, women who have family or friends who will watch the children, help them with chores, or provide transportation or emergency loans, are more likely to cooperate with prosecution than women who do not have access to these informal sources of tangible support.[24]

Poverty and lack of material resources are disincentives to participate in the criminal process. Delays caused by the defendant exacerbate those barriers. "Economic abuse often plays an integral role in a batterer's coercive control tactics. Dire economic straits, in turn, increase a woman's vulnerability to future violence."[25]

Delay tactics also significantly impact the victim's ability to parent her children. This is true especially when children have witnessed violence against their mothers, as was the case here.[26] In the *Brillon* case,

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[24] Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review* 408 (2001).

[25] Barbara J. Hart & Erika A. Sussman, *Civil Tort Suits and Economic Justice for Battered Women*, 4(3) Victim Advocate: J. of the Nat'l Crime Victim Bar Ass'n 3, 6 (Spring 2004); *see also* Erika A. Sussman, *Using the Civil Protection Order as a Tool for Economic Justice*, *in* The Advocate's Quarterly: Newsletter of the Center for Survivor Agency and Justice 3(1) (2006).

[26] Peter G. Jaffe, Linda L. Baker & Alison J. Cunningham, *Protecting Children from Domestic Violence: Strategies for Community Intervention* 193 (2004) ("Roughly one-third of the states have opted to increase the penalty usually given for domestic violence if it occurs where a child hears, sees, or is aware of it, rather than create a separate crime."); *see In re Marriage of Stewart*, 137 P.3d 25, 28 (Wash. Ct. App. 2006) (finding evidence of imminent psychological harm and domestic violence where children witnessed father's domestic assault on their mother and feared continued assault).

the domestic assault that initiated the whole proceeding took place in front of Tatro's daughter. Tatro had her daughter in the car as she tried to get away from Brillon. In her attempt to leave, Brillon struck Tatro in the face. The police arrived thereafter. *Brillon*, 2008 VT 35, ¶ 8. Tatro's daughter was subjected to her mother's assault and the arrival of the police. A child's sense of security is intertwined with the parent's safety. Any child would be terrified by witnessing her mother's assault and the arrival of the police. This victimization is compounded when the case remains in limbo. The longer the trial process is drawn out, the more anxiety arises in the victim. This can subsequently affect the child. Thus, a victim often will decide to give up on the criminal process if long delays are adversely impacting her and her children. Courts need to exercise enhanced judicial oversight, especially when children are involved.[27] Delays and trial manipulation by offenders heighten the concern that children will be adversely impacted.

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[27] David A. Ford et al., *Controlling Violence Against Women: A Research Perspective on the 1994 VAWA's Criminal Justice Impacts* 47 (2002), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/197137.pdf (the National Institute of Justice "calls for enhanced judicial oversight with extensive graduated sanctions for domestic violence offenders and with comprehensive services for victims in order to increase both defendant and system accountability, to lower recidivism, and to insure victim safety").

III. THE VERMONT SUPREME COURT DECISION ENCOURAGES STRATEGIC DELAYS AND MANIPULATIVE BEHAVIOR BY DEFENDANTS AND THEIR COUNSEL AND WILL COMPROMISE THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM.

The Court should be particularly concerned with the abusive and controlling behavior Brillon exhibited towards his attorneys, the public defender system, and the court. Indeed, the only person who seemed to be in control of the court proceedings during the first two years was Brillon himself. Domestic and sexual violence offenders operate with the goal of controlling and manipulating those around them.[28] In most circumstances, intimate partners become the target of these coercive, domineering, power-seeking techniques. Yet, those who are abusive in their personal lives often become abusive in other contexts. They seek to gain control in situations where they themselves are otherwise powerless.[29] Like Brillon, abusers may continually file motions and seek continuances, and most offensively, fire or threaten their court-appointed counsel.

The behaviors Brillon displayed are not surprising when considered in the context of someone who abuses an intimate partner. Not only did Brillon engage in abusive tactics in the case involving Tatro, but he also engaged in such tactics in other cases.

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[28] Karla Fischer *et al*., *supra* note 6, at 2120.

[29] Andrew King-Ries, *supra* note 9, at 460; Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 Geo. Wash. L. Rev. 552, 568–70 (2007); Susan L. Keilitz et al., *supra* note 11, at 3.

Brillon, 2008 VT 35, ¶ 58. His actions are analogous to the controlling and manipulative behavior he likely exhibited towards Tatro. Amici see evidence of domestic and sexual violence offenders' overwhelming need for control throughout the criminal justice system.

Attorneys representing abusers can also be the target of abuse from their clients. The American Bar Association Commission on Domestic Violence recommends that attorneys representing domestic abusers "heavily document" the file and engage in safety planning because the batterer may later become unhappy with the representation and take action against them.[30] Brillon's threats toward Altieri demonstrate the kinds of dangers such offenders often pose to their court-appointed counsel. While the trial court might have no choice but to allow attorneys physically threatened by their clients to withdraw, no offender should be rewarded for such behavior by allowing it to serve as the factual predicate of a speedy trial claim.

The Vermont Supreme Court ruling places public defenders at even greater risk of unwarranted manipulation by clients, including false claims of inadequate assistance of counsel. If the ruling is allowed to stand, defendants will know that firing one's attorney and thus delaying trial could eventually result in dismissal. Defendants could become increasingly difficult and uncooperative with their counsel. This makes it harder for public defenders to provide ade-

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[30] Lisa Angel & Lee Rosen, *Zealous and Ethical Representation of Batterers*, *in The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook* 83, 85 (Margaret B. Drew et al. eds., 2d ed. 2004).

quate representation and could further burden an already over-burdened public defender system. Indeed, were it not for Brillon's manipulative behaviors, the Vermont Defender General would not have had to provide six attorneys to represent him. This resulted in a tremendous expenditure of unnecessary time and resources.

The Defender General did have difficulty replacing Brillon's counsel after he fired Altieri and Donaldson. But this challenge was a direct result of Brillon's own actions. If the public defender system has difficulty finding replacement counsel due to the defendant, then those delays should not serve as the factual predicate of a speedy trial claim. Otherwise, abusive and controlling defendants like Brillon could fire as many lawyers as it takes to exhaust the system. When the public defender system can no longer keep up with the defendant's demands, the defendant's case could be dismissed. This consequence is completely antithetical to the effective administration of justice and places both the public defender system and the public's safety at risk.

The Vermont Supreme Court decision will also burden the court system, which will be no doubt inundated with requests from defendants to fire their counsel. Just following the *Brillon* decision in Vermont, two high profile murder defendants, both domestic and sexual offenders, sought to fire their court-appointed attorneys. While the motives behind the requests were unclear, observers suggested that these requests were prompted by the *Brillon* decision.[31] Word can travel quickly in jail that firing one's

[31] Adam Silverman, *Suspects Ask to Fire Attorneys*, Burlington Free Press, April 3, 2008 at 1A; Vermont Public Radio, *Lawyer for Suspect in Murder of Va. Woman Wants off Case*,

attorney might get one's case dismissed. Unless the Court provides guidance to the lower courts that such behavior cannot serve as the factual predicate for a speedy trial claim, defendants will have additional incentive to engage in behaviors that will burden the public defender and criminal justice system.

Scholars and advocates have continued to call for the judicial system to recognize and address those behaviors by domestic and sexual offenders that undermine the integrity of the court system.[32] By allowing Brillon to continually request delays and fire, as well as threaten, his attorneys, the court itself became complicit in his further abuse of Tatro. The court became a vehicle by which Brillon could gain access to and control of Tatro. In that process, the court also became the target of Brillon's manipulations. Abusive trial tactics, especially those sanctioned by the court, demonstrate to the victim and the community that the abuser can continue his abuse and could potentially escalate his violent acts upon release. If the public sees that the criminal justice system cannot adequately control such defendants and protect victims, faith in the system itself to protect the public from domestic and sexual violence offenders is shattered.

Deprivation of the right to a speedy trial does not necessarily harm the defendant, but often works in the defendant's favor. *Barker*, 407 U.S. at 521. That

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VPR News, April 25, 2008, https://www.vpr.net/news_detail/80277/.

[32] *See* Sacks, *supra* note 14, at 1693 ("There is no doubt that the justice system urgently needs to develop a more sophisticated method both of identifying and addressing this manipulation when it exists.").

advantage is particularly salient in cases involving domestic and sexual violence. If the Vermont Supreme Court ruling is upheld, a defendant and his counsel will have every incentive to delay trials as much as possible, with the calculated hope that cases will be dismissed either because the victim decides not to participate or because the case did not proceed to trial in a timely manner. Consequently, a defendant has nothing to lose by attempting delays. If the court denies the speedy trial claim, he has still manipulated the system and possibly procured the absence of witnesses or important evidence. More importantly, he has succeeded in punishing the victim for participating in the proceedings and has discouraged future victims from seeking outside help.

This Court has steadfastly maintained that it will not tolerate actions by the defense to "game" the criminal justice system. In *Davis*, a case similar in its concern for domestic and sexual violence victims, this Court held that "while defendants have no duty to assist the State in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system." *Davis*, 547 U.S. at 833 (emphasis in original). Furthermore, in *Morris v. Slappy*, 461 U.S. 1 (1983), a rape case in which the defendant claimed a violation of his Sixth Amendment right to counsel when his first attorney fell ill and was replaced by a second attorney, this Court held:

> [I]n the administration of criminal justice, courts may not ignore the concerns of victims. Apart from all other factors, such a course would hardly encourage victims to report violations to the proper authorities; this is especially so when the crime is one calling for public testimony about a

> humiliating and degrading experience such as was involved here.

Id. at 15. This Court further emphatically stated: "A criminal trial is not a 'game.'" *Id.* In order to protect victims and support them in moving forward with a case, the Court's instructions must be clear that this sort of gaming should not be tolerated and will not result in dismissal for lack of a speedy trial.

In *Barker*, this Court clearly stated that interests of public justice must be taken into account when evaluating a speedy trial assertion. *Barker*, 407 U.S. at 519. "Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). Strategic delays, particularly when they involve the continual replacement of counsel, prevent trials from moving forward and consume the public's time and resources. Most profoundly, they undermine the public trust and confidence in the criminal justice system's ability to hold accountable those who engage in criminal wrongdoing.

IV. WHEN CONSIDERING SPEEDY TRIAL CLAIMS, COURTS MUST MAKE SPECIFIC FACTUAL FINDINGS TO DETERMINE WHETHER THE DELAYS WERE CAUSED BY THE DEFENDANT AND HIS COUNSEL OR BY THE INABILITY OR UNWILLINGNESS OF THE STATE TO PROVIDE ADEQUATE COUNSEL.

Amici agree that continuances and delays caused solely by an indigent defendant's public defender can rise to a speedy trial violation if attributable to the

inability or unwillingness of the state public defender system to appoint adequate counsel in a timely manner. Victims of domestic and sexual assault often find themselves as defendants in the criminal justice system. Indeed, 57% of female prisoners in state prisons and 40% of female prisoners in federal prisons reported that they had been physically or sexually abused before serving their sentence.[33] Thus, it is always in the best interests of victims, whether they are defendants or witnesses in a criminal case, to have adequate counsel appointed in a timely manner as required by *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). A defendant's right to assistance of counsel and right to a speedy trial are inevitably intertwined. Both are constitutional rights under the Sixth Amendment of the United States Constitution and both must be respected by the Court. Therefore, it is within a trial court's discretion

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[33] *See* National Commission on Correctional Health Care Board of Directors, *Position Statement: Women's Health Care in Correctional Settings* (1994), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html (guiding correctional administrators in the management of women's health, including effects of sexual and physical abuse of women prisoners); Lawrence A. Greenfield & Tracy L. Snell, Bureau of Justice Statistics, *Women Offenders* 1 (1999), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/wo.pdf ("Nearly six in ten women in State prisons had experienced physical or sexual abuse . . . ."); Caroline Wolf Harlow, Bureau of Justice Statistics, *Prior Abuse Reported by Inmates and Probationers* 1 (1999), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/parip.pdf (reporting physical and sexual abuse of inmates prior to admission); Tracy L. Snell & Danielle C. Morton, Bureau of Justice Statistics, *Women in Prison: Survey of State Prison Inmates* 1991 6 (1994), *available at* http://www.ojp.usdoj.gov/bjs/abstract/wopris.htm ("An estimated 50% of women in prison who reported abuse said they had experienced abuse at the hands of an intimate . . . .").

to find that a defendant's right to a speedy trial has been violated by delays caused solely by the state public defender system.

The Court, however, must provide guidance to the lower courts as to how to evaluate the specific facts and contexts of cases where delays are caused solely by the defendant and/or his counsel. The right to a speedy trial was not intended to "provide defendants with tactics for ensnaring the courts into situations where charges will have to be dismissed on technicalities." *United States v. Banks*, 27 Fed. App'x 354, 358 (6th Cir. 2001) (quoting *United States v. Cianciola*, 920 F.2d 1295, 1298–1300 (6th Cir. 1990)). When a defendant necessitates repeated continuances and waives his right to a speedy trial, as did the defendant in *Brillon*, such actions may be considered "sandbagging" and the court may find that there has been no speedy trial right violation. *Banks*, 27 Fed. App'x at 358.

Thus, while Amici agree that the state has a duty to provide criminal defendants with adequate counsel and a functioning, well-funded public defender system, we cannot agree that "tak[ing] the extraordinary step of vacating the convictions and dismissing the charges against the defendant" was the appropriate remedy in this case. *Brillon*, 2008 VT 35, ¶ 1. Ultimately, it is clear that neither the majority nor the dissent knew whether the delays in Brillon's case were attributable to his own "'monkey-wrenching' 'maneuvers'" or to a "breakdown in the public defender system." *Id.* ¶¶ 2–4. In fact, the majority readily admits that "[b]ecause of the limited record" in this case it could not be sure that Brillon's case was not an "aberration," rather than a "growing crisis" in the defender general services in the state.

Id. ¶ 3. Yet, the actual record is extensive and clearly demonstrates numerous instances of intentional delays by Brillon and his counsel, and no evidence that any delays in the first two years were a result of an under-resourced public defender system. Particularly noteworthy is that after the decision, the Vermont Defender General stated that the problems that delayed the case were unique to the *Brillon* situation and not systemic.[34] Because the Vermont Supreme Court ignored critical facts about the behavior of the defendant and his counsel, it over-stepped its authority by engaging in determinations about the functioning of the public defender system best left for the legislature.

Amici agree with the dissent that to allocate, on the meager record before the court, certain portions of the delay to the state and the defendant respectively constitutes unwarranted "appellate fact-finding." *Id.* ¶ 57. Under such circumstances, the proper remedy is to either vacate the decision or to remand the case to the trial court, as the dissent urges, so that the court can make factual findings on the cause for the delays. Releasing the defendant fails to give trial courts the necessary guidance on how to deal with defendants like Brillon in future criminal proceedings.

The only way for a court to decipher if the reasons for the delays are attributable to the state public defender system as opposed to the defendant and his counsel is to engage in specific fact finding based on the entire record. *Barker* requires such an examination precisely because of the complex nature of the right itself. *Barker*, 407 U.S. at 522. It is critically

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[34] Porter, *supra* note 5, at B5.

important for courts to undertake a specific factual inquiry in order to preserve the constitutional right to a speedy trial, while at the same time ensuring that defendants are not manipulating the court and harassing victims.

The facts from *Brillon* highlight precisely why a detailed factual inquiry is necessary at every stage at which a defendant or his counsel request a continuance or instigates some other delay. Brillon claimed three of his attorneys were inadequate, and he was ultimately successful in having each of them removed, significantly delaying his trial. (J.A. 68–69, 72). While Brillon never formally raised an ineffective assistance of counsel claim, the Vermont Supreme Court seemed to allude to the notion that Brillon's counsel had been ineffective, thus justifying dismissal of his case. "A defendant cannot be forced to choose between his right to a speedy trial and his right to effective assistance of counsel." *Brillon*, 2008 VT 35, ¶ 38. If the state public defender system had appointed Brillon incompetent counsel, the result of which was a delayed trial, then certainly his right to a speedy trial was implicated. However, neither the trial court nor the Vermont Supreme Court undertook an ineffective assistance of counsel analysis guided by *Strickland v. Washington*, 466 U.S. 688 (1984). Nor is there any evidence in the record to suggest that Brillon's lawyers failed to provide adequate representation as required by the Sixth Amendment and *Gideon*. *See also United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006) (the defendant's right to counsel of choice is limited by the trial court's authority to establish criteria that balances the right to counsel against the judiciary's interest in fairness).

The Vermont Supreme Court never undertook the required fact finding, and thus it could not determine whether the state violated the defendant's Sixth Amendment right, or whether the defendant forfeited any such right based on his own manipulative behavior. The only way to preserve both a defendant's constitutional rights and the fair and effective administration of justice is for judges to follow the dictates of *Barker* and examine the facts and the context before them. When courts fail to follow these dictates, the results can be disastrous, particularly given that the remedy to a speedy trial violation is dismissal.

CONCLUSION

For the foregoing reasons, and in the interest of ensuring the safety and security of victims of domestic and sexual violence, the rights of criminal defendants, the public safety, and the integrity of the criminal justice system, Amici respectfully request that the Court vacate the decision, or in the alternative, remand with clear instructions that the court should undertake a more thorough examination of the reasons for the delays, the context of the case, and the interest of public justice as required by *Barker*. The Court should further clarify that delays caused by the defendant and/or his counsel cannot serve as the factual predicate for a speedy trial claim unless those delays had nothing to do with the defendant's own conduct and were instead the result of the inability or unwillingness of the state public defender system to provide adequate counsel in a timely manner. Finally, Amici urge the Court to alert the trial and appellate courts to the particular risks of defense delay tactics in domestic and sexual violence cases

and the consequences of those delays on victims, the public, and the criminal justice system.

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APPENDIX

The Alaska Network on Domestic Violence and Sexual Assault is the statewide non-profit coalition of twenty-one domestic-violence and sexual-assault programs from Barrow to Unalaska to Ketchikan. Our agency's mission is to work to end domestic violence and sexual assault across the state. To this end, we provide training and technical assistance as well as leadership in the development of public policy and systemic responses to reduce and eliminate violence.

Our Legal Advocacy Project ("LAP") was started in 1996 to help victims of domestic violence and sexual assaults meaningfully access the civil and criminal justice systems. The LAP works closely with the legal advocates at each of our member programs to provide services to victims. We provide training and technical assistance to these legal advocates, in addition to providing direct representation to clients through staff attorneys and our Pro Bono Program. Since the LAP's inception, we have, either directly or indirectly, helped thousands of victims of domestic violence and sexual assault to go through civil and criminal legal proceedings.

The Battered Women's Justice Project promotes systemic change within community organizations and governmental agencies engaged in the civil and criminal justice response to domestic violence in order to hold these institutions accountable for the goals of safety and security for battered women and their children.

The California Partnership to end Domestic Violence ("CPEDV") acts as a leader and catalyst for innovative, long-range plans to end domestic violence in California. CPEDV is a statewide, membership-based coalition of 195 domestic-violence service pro-

viders and other supporters, who offer a united voice on legislation and budgetary initiatives affecting victims of domestic violence and their children at the local, state, and national level. Over the course of our 25-year history, we have worked with lawmakers and our allied partners to enact over 100 statutes on these issues and have worked on amicus briefs impacting victims of domestic and sexual violence and stalking.

The Center for Survivor Agency and Justice ("CSAJ") is dedicated to enhancing advocacy for survivors of oppression-based, intimate-partner violence. We strive to meet this goal by cultivating a community of attorneys and advocates who are skilled in survivor-centered advocacy and capable of meeting the entire spectrum of civil legal assistance needs of survivors.

Since the year 2000, CSAJ has served as a technical assistance provider for the network of over 200 LAV grantees across the nation. CSAJ staff and expert consultants work closely with attorneys and advocates to provide legal and advocacy problem-solving assistance tailored to address individual cases as well as more broadly defined systemic advocacy needs. The Center for Survivor Agency and Justice staff, consultants, and national partners collaborate with attorneys and advocates to facilitate critical thinking, networking, strategic advocacy, and innovative practices.

The Domestic Violence Legal Empowerment and Appeals Project ("DV LEAP") believes that real and lasting change in legal and social responses to domestic violence requires great patience and persistence. DV LEAP provides victims with the continued support needed - often for years - to take a case through the appellate process, in order to advance

justice and achieve both system and perpetrator accountability. More specifically, DV LEAP does the following: empowers victims and their advocates by providing expert representation for appeals in collaboration with our pro-bono partners; educates and supports its pro-bono counsel through in-depth consultation, mentoring, and access to domestic-violence experts and resources; furthers community education and awareness by training lawyers, judges and others on cutting-edge issues crucial to effective advocacy; speaks for the national and local domestic-violence communities in significant cases through its "friend of the court" briefs; organizes and spearheads the domestic-violence community's advocacy in Supreme Court domestic-violence cases; supports law reform and policy initiatives in D.C. and nationally to further the rights of victims of domestic violence; and provides consultation and mentoring to lawyers and litigants in domestic-violence cases around the country. By focusing on the more powerful level of our justice system, appellate courts, DV LEAP seeks to hold trial courts to the promise of fairness embodied in the law, and to create long-term and more fundamental change in the legal system.

The Hawaii State Coalition Against Domestic Violence ("HSCADV") is a private, not-for-profit statewide coalition of domestic-violence programs. Our mission is to ensure the safety and protection of women in intimate relationships by coordinating domestic-violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii. The purpose of the Coalition is to coordinate efforts to end family violence in Hawaii. The HSCADV provides education and training on family violence to service providers, collects resource materials and serves as a clearing-

house, provides technical assistance on family violence matters, and provides facilitation when requested by member agencies.

The Illinois Coalition Against Domestic Violence ("ICADV") is a non-profit organization incorporated in the State of Illinois in 1978. Through the 53-member full service domestic-violence agencies, ICADV is dedicated to the elimination of violence against women and their children through the following vision: to promote the eradication of domestic violence across the state of Illinois; to ensure the safety of survivors, their access to services, and their freedom of choice; to hold abusers accountable for the violence they perpetrate; and to encourage the development of victim-sensitive laws, policies and procedures across all systems that impact survivors of domestic violence.

ICADV has a long history of working to promote a strong criminal justice response to domestic violence, including holding perpetrators accountable for their illegal behavior through mandatory jail time, fines, and enhanced charges for subsequent domestic violence. ICADV was instrumental to passage of the model Illinois Domestic Violence Act of 1986 legislation and worked for enactment and implementation of the Violence Against Women Acts of 1994, 2000, and 2005.

The Iowa Coalition Against Domestic Violence ("ICADV") is a non-profit organization, incorporated in the state of Iowa in 1985. ICADV provides educational and technical assistance to the domestic-violence programs across Iowa, and also acts on a statewide and national level to promote public policy and legislative issues on behalf of battered women and their children. ICADV's purpose is to eliminate personal and institutional violence against women

through support to programs providing safety and services to battered women and their children. ICADV recognizes that unequal power contributes to violence against women. Therefore, ICADV advocates social change, legal and judicial reform, and the end to all oppression.

The Kansas Coalition Against Sexual and Domestic Violence ("KCSDV") is a non-profit organization incorporated in Kansas since 1988 with several member programs. KCSDV seeks to protect the interests and missions of these member programs and the women who are battered or formerly battered as well as sexual assault survivors. KCSDV has extensive expertise on the physical, sexual, emotional and economic dangers women and their families face on a daily basis. KCSDV and its member programs work closely with courts, legislators, law-enforcement agencies, prosecutors, and the media across the state to provide a more effective and safer network to protect victims of sexual and domestic violence.

The Kentucky Domestic Violence Association ("KDVA") is a not-for-profit organization founded in 1981 and incorporated in the State of Kentucky. It is dedicated to advocating for safety and justice for battered women and their children, and provides comprehensive services to families through fifteen shelter programs located across the state. KDVA serves as the state domestic-violence coalition and provides training, technical assistance, and support for a wide variety of victim service providers across the state as well as shelter program staff. KDVA also works with state legislators to draft and enact strong laws, which will provide needed safety for victims to enable them to leave abusive situations. KDVA is active in promoting both effective civil protective order legislation and criminal statutes, which will hold abusers accountable for their criminal acts.

The National Network to End Domestic Violence ("NNEDV") is a non-profit membership organization devoted to remedying domestic violence through legal, legislative, and policy initiatives. The members of NNEDV are the state coalitions against domestic violence, who represent their states' local organizations that provide shelter, advocacy, and legal and counseling services to survivors of domestic violence. The member organizations of NNEDV collectively represent thousands of organizations that have hundreds of years of experience working with survivors of domestic violence, including undertaking extensive efforts to improve the justice system's response to victims of domestic violence.

The New Jersey Coalition for Battered Women ("NJCBW") is a statewide coalition of domestic-violence service programs and concerned individuals whose purpose and mission is to end violence in the lives of women. Incorporated in 1979, NJCBW is a private, non-profit corporation whose members include 28 domestic-violence programs in the State of New Jersey. NJCBW advocates for battered women with state-level governmental and private agencies, the state legislature, judiciary, and governor to support legislation and policies that will increase the safety and options of victims of domestic violence. It also provides information, resources, technical assistance, and training to domestic-violence programs, the public and those agencies, organizations and individuals involved with New Jersey's response to domestic violence.

The New York State Coalition Against Domestic Violence ("Coalition") is a not-for-profit membership organization whose mission is to eradicate domestic violence and to ensure the provision of effective and appropriate services to victims of domestic violence through community outreach, educa-

tion, training, technical assistance, and policy development. The Coalition's principles and practices prioritize the safety and concerns of women who are abused, provide support and encouragement for the participation of women who are abused in the struggle to eradicate personal and institutional violence against them, and provide for a non-competitive atmosphere that fosters open communication, respect, and cooperation among advocates and women who are abused. Since its inception in 1978 in Woodstock NY, the Coalition has been a driving force in the development of hundreds of programs throughout New York State that provide services for women who are abused and their children. As the only statewide domestic violence coalition in New York, members include all residential and non-residential programs in the state that are licensed by the NYS Office for Children and Family Services (OCFS) as well as a host of other programs in NYS that serve women who are abused and concerned individuals who share the Coalition's goal of ending domestic violence.

The South Carolina Coalition Against Domestic Violence and Sexual Assault ("SCCADVASA") is a statewide membership organization representing the 23 member programs across the state serving victims of domestic and sexual violence. Founded in 1981, SCCADVASA is involved in public policy, training and public-awareness efforts throughout South Carolina to prevent and eradicate domestic violence and sexual assault.

The Vermont Network Against Domestic and Sexual Violence was founded in 1988 as a statewide coalition of domestic- and sexual-violence programs with a state office in Montpelier. The 16 Member Programs are located around the state and provide direct services and advocacy for and on behalf of victims and survivors of domestic- and sexual-

violence in their communities. All adhere to basic standards of service as a prerequisite to their membership in the Network, and out of a deep, shared commitment to victims and survivors.

The Victim Rights Law Center ("VRLC") is the first law center in the nation dedicated solely to serving the legal needs of sexual assault and rape victims. The VRLC provides free legal services in matters involving physical safety, housing, employment, immigration, privacy, financial compensation, and victim rights in the criminal justice system

The Virginia Poverty Law Center ("VPLC") is a not-for-profit organization concentrating in the areas of law that affect low-income families. Established in 1978 to advocate on behalf of low-income Virginians on poverty issues of statewide importance, VPLC is the only state-wide organization providing training to local legal aid program staff, private bar attorneys, and low-income clients, relating exclusively to the legal rights of Virginia's poor.

The Domestic Violence Project addresses the legal needs of victims of domestic or intimate-partner violence through training and technical assistance to legal aid and private attorneys, advocates and other service providers, legislative advocacy, and direct legal representation in limited situations

The Virginia Sexual and Domestic Violence Action Alliance ("Alliance") is a diverse group of individuals and organizations that believe ALL people have the right to a life free of violence. We recognize that sexual and domestic violence are linked to other forms of oppression, which disproportionately affect women, children and other marginalized people, harming individuals, families and societies as a whole. We will use our diverse and collective voices to create a Virginia free from sexual and domestic vio-

lence and to inspire others to join and support values of equality, respect, and shared power.

The Alliance works to end domestic and sexual violence in Virginia through accreditation of local sexual-and domestic-violence agencies, prevention initiatives, public-awareness campaigns, public policy efforts, outreach to underserved populations, training, resource development, and education.