

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	CHRISTINA RAINVILLE, ESQ.	
4	On behalf of the Petitioner	3
5	LEONDRA R. KRUGER, ESQ.	
6	On behalf of the United States, as amicus	
7	curiae, supporting the Petitioner	19
8	WILLIAM A. NELSON, ESQ.	
9	On behalf of the Respondent	29
10	REBUTTAL ARGUMENT OF	
11	CHRISTINA RAINVILLE, ESQ.	
12	On behalf of the Petitioner	51
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:16 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear

4 argument next in Case 08-88, Vermont v. Brillon.

5 Ms. Rainville.

6 ORAL ARGUMENT OF CHRISTINA RAINVILLE

7 ON BEHALF OF THE PETITIONER

8 MS. RAINVILLE: Mr. Chief Justice, and may

9 it please the Court:

10 There are many reasons to reverse the
11 Vermont Supreme Court in this case. I am going to begin
12 by addressing four reasons as a matter of law that do
13 not require the Court to -- to review the record. The
14 first is, even if we assume that the public defender is
15 an assigned counsel -- and for the purposes of argument,
16 I am just going to use the term "public defender." If
17 we assume that public defenders do little or nothing in
18 a case, one cannot have a rule that that time is
19 chargeable under the speedy trial right to the State
20 because to do so creates chaos of constitutional
21 proportions in the criminal justice system.

22 JUSTICE SOUTER: May I ask you a question
23 that goes at least to one possible application of -- of
24 your argument? Your argument for the State, the
25 position that you just took, would -- would apply to the

1 period of time, as I understand it, in which the
2 individual named, the defender named Sleigh, had been
3 appointed to -- to represent the defendant.

4 And as I understand it, when this case was
5 argued in the Supreme Court of Vermont, the State
6 conceded that, in fact, some prejudice should be
7 attributed and it should be held against the State that
8 Sleigh in effect did nothing. They said, well, don't
9 hold it against us quite as much as you might, but, in
10 any case, that can be held against us.

11 Here you don't take that position, and I --
12 I don't know whether it's open to you -- it seems to me
13 that it's not open to you -- to take a different
14 position with respect to Sleigh here than the Attorney
15 General of Vermont did when it was before the Supreme
16 Court of Vermont. And I -- I have to assume that you
17 just see it differently from the way the Attorney
18 General did. But would -- would you comment on -- on
19 the position that the State took and tell me why you can
20 take a different position here?

21 MS. RAINVILLE: Yes. Yes, Your Honor. The
22 State did take the position that the eight-month period,
23 which included the four months where Attorney Sleigh was
24 involved, was a neutral factor. And under the dicta in
25 Barker, that would allow the Court to apply it against

1 the State, although not to weigh it heavily as a -- as a
2 neutral factor.

3 JUSTICE SOUTER: Yes.

4 MS. RAINVILLE: That was dicta in Barker,
5 but controlling to the Vermont Supreme Court. Before
6 this Court, however, on these facts --

7 JUSTICE SOUTER: But it was conceded, wasn't
8 it, in the -- in the Vermont Supreme Court?

9 MS. RAINVILLE: It was conceded that it was
10 a neutral time period.

11 JUSTICE SOUTER: Yes.

12 MS. RAINVILLE: And -- and --

13 JUSTICE SOUTER: Well, then, why isn't that
14 concession binding here?

15 MS. RAINVILLE: I think it -- it may be
16 binding if the Court determines it's binding. But I
17 don't think it should be binding because this Court is
18 considering policy that's going to affect all States and
19 all courts. And the issue that was raised by the
20 National Governors Association, for example, as to
21 whether public defenders can be State actors -- and the
22 law is clear that they cannot -- that's an important
23 issue.

24 JUSTICE SOUTER: Well, it is, but that is
25 not an issue that is necessarily implied by the -- by

1 the concession that the Attorney General made in the
2 Vermont Supreme Court.

3 MS. RAINVILLE: Yes. Yes, but also if you
4 look at the record, the three years of delay, the time
5 period involving Mr. Sleigh is approximately four
6 months. If you take all four months where he was
7 appointed by the docket or two months if you take the
8 time where he thought and understood that he was on the
9 case, and in light of the three-year delay, that amount
10 of time is really inconsequential.

11 CHIEF JUSTICE ROBERTS: It may have been a
12 good concession below. I mean, it would -- as I
13 understand it, the problem arose because of change in
14 the contract, right?

15 MS. RAINVILLE: That's correct.

16 CHIEF JUSTICE ROBERTS: I mean, that may
17 well have been attributable to the State.

18 MS. RAINVILLE: It -- it may well have been
19 attributable to the defender general. And that's one of
20 the problems in this case is that we don't have a record
21 of why different attorneys -- Attorney No. 4, Donaldson,
22 and Attorney No. 5, Sleigh, were never asked what they
23 did or --

24 CHIEF JUSTICE ROBERTS: I suppose you are
25 willing to concede that there are situations where the

1 delay would be attributable to the State because of
2 systemic problems?

3 MS. RAINVILLE: Yes.

4 CHIEF JUSTICE ROBERTS: The State has so
5 many cases, and it's only willing to hire one lawyer.
6 That lawyer can't possibly handle all the cases.

7 MS. RAINVILLE: Absolutely. But that's not
8 the case here. That might be the situation if, for
9 example, the defender general said to every defendant:
10 If you want a trial with a lawyer, you have to wait a
11 year. That's not what happened here.

12 What happened here is the defender general
13 was incredibly diligent. He appointed new counsel five
14 times the same day. The day of the arraignment Mr.
15 Ammons was appointed. The day Mr. Ammons withdrew,
16 replacement counsel, Mr. Harnett, was appointed. The
17 day Mr. Harnett withdrew, replacement counsel was
18 appointed. The day Mr. Donaldson withdrew, the docket
19 shows that Sleigh was appointed. Five times the same
20 day the defender general appointed counsel.

21 The sixth time, given that we are in
22 Vermont, a very small State with few lawyers, he had
23 difficulty finding a sixth lawyer. But the defender
24 general took extraordinary measures and went to the
25 Vermont Legislature and obtained funding, and the

1 legislature came up to the plate very quickly, in a
2 matter of weeks.

3 The last withdrawal of Lawyer No. 5 happens
4 on April 10th. It's June 20th that there is the letter
5 in the appendix from the defender general saying that
6 the legislature has approved new funding. It's -- it's
7 literally a matter of weeks before the legislature comes
8 to the plate and provides additional funding.

9 So to the extent that -- that that is State
10 action, the defender general has been incredibly
11 expeditious, incredibly diligent, and went to the
12 extraordinary length of getting additional funding for
13 the sixth lawyer. We -- we would concede --

14 JUSTICE SCALIA: I guess when -- when the
15 last two lawyers withdrew because their contracts had
16 expired, I suppose the court could have refused to
17 permit them to withdraw, couldn't it?

18 MS. RAINVILLE: It could have.

19 JUSTICE SCALIA: Couldn't it say you -- you
20 have an ethical duty; having undertaken representation,
21 and it being very difficult to get anybody else, you --
22 you stay in the case?

23 MS. RAINVILLE: The -- the court could have,
24 and certainly --

25 JUSTICE SCALIA: Does it make it not the

1 State's court -- not the State's fault no matter what?
2 Is -- is the court's misfeasance the State's
3 misfeasance? Do you attribute that to the State?

4 MS. RAINVILLE: The court's misfeasance
5 would -- would certainly be attributable to the State,
6 but we would argue that it would be a neutral factor.
7 But here, Your Honor, Brillon would -- in terms of the
8 fourth lawyer, Mr. Donaldson, he sought to have him
9 fired. And, in fact, it was his letter to the court and
10 then a subsequent motion to the court to have that
11 lawyer dismissed. And in that colloquy when the -- when
12 the -- the trial judge asked Brillon, do you want to
13 have -- do you still want to have him fired despite all
14 this delay and everything, and Brillon says yes, clearly
15 the court with regard to Donaldson could have said to
16 Donaldson, you stay on this case and get this case to
17 trial. But Brillon waived that. Brillon said that he
18 wanted a new lawyer.

19 With regard to Sleigh --

20 JUSTICE BREYER: -- with that particular
21 period. The trouble that I have with that particular
22 period is August 1, 2003, to June 14, 2004, isn't that
23 right? That is Donaldson -- or that's Moore?

24 MS. RAINVILLE: That's Moore.

25 JUSTICE BREYER: All right. Donaldson was

1 the first one?

2 MS. RAINVILLE: Donaldson was actually
3 Lawyer No. 4.

4 JUSTICE BREYER: Go ahead.

5 (Laughter.)

6 JUSTICE SOUTER: Before you start, let me
7 just make a comment and a -- and a question based on it.
8 The comment is I -- I'm willing to accept a lot of what
9 you say here, there is plenty of blame to go around.
10 But you accept, as I understand it, the proposition that
11 the State has simply got an affirmative duty to make
12 some kind of effective trial and representation
13 arrangement. It -- it -- it has that duty through
14 providing the public defender, it has that duty simply
15 through providing a court that will keep things moving,
16 and I think that's common ground.

17 If that, as it seems to be, is common
18 ground, then do we have anything before us in this case,
19 except sort of going through the list of counsel, the
20 list of reasons, the list of delays and reviewing the
21 Vermont Supreme Court on, in effect, the details that it
22 assumed in applying the rule? In other words, it seems
23 to me that there isn't an issue of principle dividing
24 the parties here, it's a series of issues of details.
25 Is that an unfair way to look at the case as we've got

1 it?

2 MS. RAINVILLE: You can certainly look at it
3 in terms of details, and I think that the Vermont
4 Supreme Court's findings are unsupported by the record.
5 But as a matter of law, you have delays by State actors,
6 and even if you take the two or the four months for
7 Sleigh aside, the rest of the delay, three years of
8 delay minus -- there's four months, of course, which he
9 had no counsel -- but three years minus that time, is
10 all caused by non-State actors.

11 JUSTICE SOUTER: Yeah, but if you take
12 Sleigh, Donaldson, and the period in which there was
13 no -- I guess, following Sleigh, in which there was no
14 counsel appointed at all, you're already up to just
15 about a year. And a year is -- is enough to trigger
16 Neil v. Biggers. And so, it seems to me that what --
17 what the fight, what the serious fight is about is,
18 well, within the further total of two-year period, who
19 is to blame for this, who was to blame to that, and
20 I'm -- I'm not sure that it's of any value to just go
21 through and second-guess the Supreme Court of Vermont on
22 those details, because you've got enough in Neil v.
23 Biggers before you even get to those details.

24 MS. RAINVILLE: Well, also in terms of just
25 based on Brillon's admission, there's enough for this

1 Court to decide the case. He admits that he fired three
2 different lawyers.

3 JUSTICE SOUTER: Right.

4 JUSTICE ALITO: Isn't there -- isn't there
5 that very important principle involved here that doesn't
6 simply involve calculating particular periods of delay?
7 When you have a defendant who starts out by firing a
8 lawyer and engineering the withdrawal of another lawyer
9 by threatening a lawyer, is it appropriate then to go
10 through all of the subsequent periods and attribute the
11 delay to the defendant or to the prosecution or as a
12 neutral factor as if those, the initial events, hadn't
13 occurred?

14 We don't know how quickly this case would
15 have gone to trial if the first lawyer hadn't been fired
16 or if the third lawyer, I guess it was, had not been
17 threatened and forced to withdraw.

18 MS. RAINVILLE: I believe you're absolutely
19 right, Justice Alito. In this case his conduct was so
20 unconscionable in threatening both his lawyer, and the
21 facts there --

22 JUSTICE STEVENS: I really wanted to ask you
23 pretty much exactly the same question. If we assume
24 exactly the terrible way he fired the first two -- the
25 first lawyer certainly, maybe the second, would it be

1 true that no matter how long the delay occurred after
2 that, he could never get Sixth Amendment relief?

3 MS. RAINVILLE: I would -- I wouldn't go
4 that far, Justice Stevens.

5 JUSTICE STEVENS: Why not?

6 MS. RAINVILLE: Because what if the State
7 kept him for ten years without a trial? I don't think
8 that would ever happen. Certainly on these facts
9 there's no basis, given his conduct, to balance anything
10 in his favor. Vermont's --

11 JUSTICE BREYER: Well, there -- as I
12 understand it, that that first year the Vermont Supreme
13 Court agrees with you.

14 MS. RAINVILLE: That's right.

15 JUSTICE BREYER: They said, we're not
16 counting any of that against you.

17 Now we go into the second year, and the
18 second year had to do with Mr. Donaldson, a lot of it.
19 And it turns out that Mr. Donaldson actually had left
20 the office within a few days of his having been
21 appointed to do this and then he never did anything. So
22 the Supreme Court of Vermont says, as far as Mr.
23 Donaldson is concerned, we do hold that against the
24 State for the reason that it is the equivalent of not
25 giving him anybody. The guy they gave him wasn't even a

1 public defender, he never did a thing. All right.

2 Now we go to the third group. The third
3 group, the State agreed they should be charged. That's
4 Mr. Sleigh. The third one they agreed with it. They
5 said lightly, but they agreed with it.

6 And as to the final group, Mrs. Moore, well,
7 it looks like from the record as if the reason that was
8 held against the State had nothing to do with her
9 performance. It had to do with the fact that the State
10 didn't give certain records to her, which everybody
11 would agree, if it's true, should be chargeable to the
12 prosecution, which is the State.

13 So we have four periods. In one of them you
14 won; in the second one he had no lawyer at all,
15 according to the court; in the third one you agree it
16 should be chargeable to you; and in the fourth one it
17 has to do possibly with prosecution errors, not defense
18 errors.

19 Now, what are we supposed to decide? Are we
20 supposed to decide whether my statement is, in fact, a
21 correct statement? If so, why isn't it? I guess we
22 have to read the record. But what else is there to
23 decide?

24 MS. RAINVILLE: I think you can decide it
25 without reviewing the record, based on the fact that you

1 have a defendant who fired his first lawyer six months
2 into the case, one day before trial.

3 JUSTICE BREYER: And you won that.

4 MS. RAINVILLE: And then filed -- fired a
5 second lawyer when the lawyer initially argued and said,
6 no, no, it's not true, I've been working; he then
7 threatened to kill the lawyer. Then he at that time was
8 told: If you want a new lawyer, there's going to be
9 inevitable delays. He said: That's okay, I still want
10 to fire this lawyer. Then he went on and fired yet
11 another lawyer.

12 CHIEF JUSTICE ROBERTS: I suppose -- I'm not
13 sure that we necessarily want to get into the particular
14 details of a very complicated record, but there are
15 several points in the Vermont Supreme Court opinion
16 where it says that the failure of assigned lawyers to do
17 anything to move the case forward is attributable to the
18 State. And I thought the fundamental principle we were
19 debating is whether or not assigned lawyers who fail to
20 move a case forward, whether that is attributable to the
21 defendant or whether it is attributable to the State
22 because they happen to work for the State.

23 And I would assume one way to dispose of the
24 case would be to decide that general question and send
25 it back for the Vermont Supreme Court with that guidance

1 that they were wrong, as a general matter, to assign
2 delay caused by the counsel to the State, to sort
3 through the record themselves.

4 MS. RAINVILLE: And I think that's a very
5 important point, Mr. Chief Justice.

6 JUSTICE BREYER: Is that point in the case?
7 Where -- where is that in this case? I don't know who
8 -- I didn't see anywhere where the Vermont Supreme Court
9 said anything, said that, except in the instance where
10 you agreed with them.

11 Where is it in their -- where is it -- who
12 are they are referring to when they said that? Is that
13 Donaldson? Because I thought the claim with Donaldson
14 was it -- it was not his attribution, nothing he did was
15 attributed. Rather, it was the State's failure to
16 appoint anyone, because to appoint Donaldson was to
17 appoint no one since he had left the office and since he
18 did nothing.

19 Now, is that what we're supposed to decide:
20 When a State appoints a person who has already left the
21 office and does nothing, under those circumstances is it
22 correct to attribute to the State their failure to
23 appoint anybody?

24 MS. RAINVILLE: Well, first let me address
25 this point of two lawyers who did little or nothing. In

1 Strickland v. Washington, this Court said how extremely
2 important it is when determining ineffective assistance
3 to have a strong presumption that counsel's conduct
4 falls within the wide range of reasonable professional
5 assistance, and that there should be a hearing to ask
6 counsel what they did.

7 Here the Vermont Supreme Court makes this
8 ruling without anyone at any point ever asking Mr.
9 Donaldson or Mr. Sleigh what they did.

10 JUSTICE GINSBURG: Ms. Rainville, underneath
11 or between the lines there seems to be great discontent
12 on the part of the Vermont Supreme Court with the way
13 the public defender system is operating. And if we hold
14 for you as a matter of the federal speedy trial right,
15 the Vermont Supreme Court could go back and decide just
16 the same thing under the Vermont Constitution, couldn't
17 it?

18 MS. RAINVILLE: It could except for that we
19 believe that this decision creates an unconstitutional
20 situation in creating two different classes of
21 defendant, indigent and non-indigent, in their speedy
22 trial rights, such that henceforth the prosecution and
23 the courts must treat every indigent defendant
24 differently merely because they're indigent when they
25 ask for a continuance or when they ask for change of

1 counsel. We have to oppose those. So that we make the
2 unpleasant choice of the constitutional due process
3 violation, that we would rather push a defendant who's
4 indigent to trial before his counsel's ready, because
5 the constitutional violation there is only one of due
6 process and he'll get a new trial, versus agreeing to
7 allow their counsel to have time to prepare, in which
8 case we risk a speedy trial violation, where he will be
9 able to walk free despite his guilt.

10 JUSTICE SCALIA: Ms. Rainville, you -- you
11 began your presentation with a statement that gave me so
12 much hope. You said you were going to give us three
13 reasons why we wouldn't have to get into the hairy facts
14 of the case and could decide it on -- on issues of law.
15 Okay? You only mentioned the first. What are the other
16 two?

17 MS. RAINVILLE: The second is --

18 JUSTICE SCALIA: Remind us of the first.

19 MS. RAINVILLE: The first is that this
20 creates an unconstitutional situation where there are
21 two classes of defendants treated differently by the
22 State and by the courts.

23 The second is that the delays in this case
24 were caused by non-State actors and as a matter of law
25 under Polk County cannot be a constitutional violation.

1 JUSTICE SCALIA: Well, that sort of gets us
2 into the facts at some point. I mean, that does get us
3 into the facts.

4 What's the third?

5 MS. RAINVILLE: The third is that, based on
6 his concessions, his admissions in the brief, he's
7 waived it; and that's under Barker v. Wingo where the
8 Court talks about standard waiver doctrine applies in
9 speedy trial.

10 And the fourth is that under the balancing
11 test based solely on his admissions, his conduct ought
12 to weigh like a ton of bricks against whatever happened
13 with the State.

14 and I'll reserve the rest of my time if I
15 might for rebuttal.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 We'll hear from Ms. Kruger first.

18 MR. NELSON: Oh, excuse me.

19 CHIEF JUSTICE ROBERTS: Ms. Kruger.

20 ORAL ARGUMENT OF LEONDRA R. KRUGER

21 ON BEHALF OF THE UNITED STATES,

22 AS AMICUS CURIAE,

23 SUPPORTING THE PETITIONER

24 MS. KRUGER: Mr. Chief Justice, and may it
25 please the Court:

1 If you look on pages 27 through 28 of the
2 Vermont Supreme Court's opinion, it is clear that the
3 Vermont Supreme Court decided this case on the basis of
4 a single principle that it applied to the entirety of
5 the final two years of the pretrial delay in this case,
6 and that is, as the Chief Justice has noted, that the
7 failure of defendant's series of assigned counsel to
8 move his case to trial should be attributable to the
9 State.

10 As the question comes before the Court
11 today, I think the primary point of dispute is whether
12 there should be an exception to the general rule that a
13 defendant is responsible for his own lawyer's delays in
14 situations in which the lawyer purportedly does little
15 or nothing to move the case to trial; and for four
16 reasons we think that the Court should decline to create
17 a kind of attorney inaction exception to the general
18 rule.

19 First of all, we think that such a rule
20 would be inconsistent with the role of a lawyer in an
21 adversarial system and would undermine a lawyer's
22 authority to make day-to-day decisions about the
23 scheduling of pretrial proceedings.

24 Second, we think that such a rule would be
25 enormously difficult for courts to administer in

1 practice, because attorney inaction is generally
2 difficult to discern in the midst of pretrial
3 proceedings and the risk of error would be to deprive
4 the defendant of the time that his lawyer may genuinely
5 need in order to prepare an effective defense.

6 The third reason is that it would create
7 opportunities for gamesmanship; it would create
8 incentives for defendants to use the services of their
9 lawyer so long as it suits them, but then to complain
10 later that the lawyer was inactive and therefore they
11 should not be held responsible for the lawyer's delay.
12 And as to the lawyers themselves, it would create an
13 incentive to unreasonably delay, with the comfort of
14 knowing that the worst that would happen is the best
15 possible outcome for their client, which is the
16 dismissal of charges with prejudice.

17 And finally, we think that such a rule would
18 create an unjustifiable distinction between the
19 treatments of appointed counsel and retained counsel in
20 our system.

21 JUSTICE SOUTER: With respect to that last
22 point, let me ask you this question. Let's assume we --
23 we have paid counsel in a criminal case and, as a result
24 of -- of delays by the prosecution, but primarily as a
25 result of requests for continuance after continuance

1 after continuance, the -- the case is not tried; it's a
2 simple case and it's not tried for three years.

3 Is -- is it open to a reviewing court on
4 constitutional grounds to say that the State has got an
5 affirmative obligation, a non-delegable obligation, to
6 bring cases to trial in a reasonable time? And whether
7 the reason for the failure in this three-year case is
8 because counsel just kept trying to -- to shove it off,
9 or the courts were not diligent in scheduling it for
10 trial, at some point that non-delegable obligation has
11 been violated. Is -- is that a -- a possible
12 constitutionally based position?

13 MS. KRUGER: I think that Barker makes clear
14 that defendants can waive their right to a speedy trial
15 and that indeed defendants will often desire to put off
16 trial as long as possible. I think that in giving
17 proper consideration to the Barker Court's explanation
18 of the nature and purposes of the right, and in
19 particular focusing on the fact that the only possible
20 remedy for the speedy trial violation is a remedy that
21 uniquely advantages defendants and poses substantial
22 burdens on society, we think ultimately a defendant
23 can't escape responsibility for continuances that he has
24 requested through or without the assistance of counsel,
25 simply by blaming the prosecution for failing to object

1 or by blaming the courts for failing to go along.

2 JUSTICE SOUTER: Well, what if the -- what
3 if we change the facts slightly. What if the defendant
4 himself never says anything on the record? The only
5 thing we've got on the record are repeated requests by
6 paid counsel for continuances, and then after three
7 years the defendant fires paid counsel and says: I've
8 been sitting in jail for three years awaiting trial, and
9 I shouldn't have to wait that long. The State has
10 failed in its non-delegable duty. Would your answer
11 still be the same?

12 MS. KRUGER: It would still be the same. We
13 think that fundamentally the principal safeguard against
14 that kind of unreasonable attorney-caused delay is the
15 attorney's ethical obligation, which creates a duty in
16 the attorney to represent his clients with reasonable
17 diligence and promptness. We think that a rule that
18 would require --

19 JUSTICE SOUTER: Lots -- lots of very
20 effective criminal trial lawyers believe that the first
21 tactic is delay, delay, delay, delay, delay.

22 MS. KRUGER: And I think it's precisely for
23 that reason, because a delay may ultimately be in the
24 client's interest, that this Court should decline to
25 fashion a rule that makes the exercise of the remedy,

1 which is again an extreme remedy that advantages the
2 defendant alone, exercisable at the option solely of the
3 defendant.

4 We think for that reason the defendant
5 necessarily has to be responsible for any delays that
6 are caused either by him or by the person who is
7 appointed to represent him. Again, the ethical duty of
8 the lawyer is to zealously advocate on behalf of the
9 defendant's interests, and if the defendant desires to
10 go to trial as quickly as possible, it's still the
11 lawyer's duty under the ethical rules to try to
12 accommodate that request, while at the same time doing
13 everything he can to prepare an effective defense.

14 JUSTICE STEVENS: Let me ask you this
15 question about your reliance on pages 27 and 28. If you
16 describe it as delays by the lawyers themselves, I
17 understand your comment as being right on the nose. But
18 I understood part of that to be talking about the
19 situation in which the defender general's office has not
20 performed its duty with sufficient promptness.

21 And would you not agree if there were a
22 period, say, of seven or eight months in which they just
23 didn't get around to appointing a lawyer, that that
24 should be charged against the State?

25 MS. KRUGER: We would agree, Justice

1 Stevens. In this case there were a period of a total of
2 about six months during which the Respondent was not
3 represented at all, and we think in view of the State's
4 ultimate responsibility for providing counsel to
5 indigent defendants, when the State doesn't comply in a
6 timely fashion with that duty, that delay is properly
7 attributable to the State.

8 Although in this case, because the delay was
9 not the product of a deliberate effort to hamper the
10 defense, we think that that period should weigh only
11 lightly against the State; and ultimately, given the
12 other factors at issue in this case, the absence of any
13 actual trial prejudice in particular, we think that
14 ultimately those six months are insufficient to
15 establish a speedy trial violation.

16 JUSTICE STEVENS: Isn't the prejudice factor
17 pretty much established as long as the guy has to stay
18 in jail during this entire period?

19 MS. KRUGER: I think that that's certainly
20 one form of prejudice, but in the Barker balancing -- in
21 Barker itself, for example, the defendant was
22 incarcerated for ten months during the pretrial
23 proceedings, and the Court nevertheless found that there
24 was no speedy trial violation. We think a similar
25 principle applies in this case. Although incarceration

1 is obviously prejudicial to defendants, in this case
2 there was no prejudice above and beyond that. The
3 Vermont Supreme Court was clear in finding the absence
4 of --

5 JUSTICE GINSBURG: Did he get to offset it
6 against the time for the pretrial incarceration?

7 MS. KRUGER: I am not aware that he did, but
8 this Court made clear in Strunk that getting credit for
9 time served is not an appropriate remedy for a speedy
10 trial violation, that the only possible remedy is again
11 what the Vermont Supreme Court did, erroneously in our
12 view, which is to dismiss the charges without
13 possibility of reindictment.

14 JUSTICE SCALIA: What would you think of a
15 rule that said where most of the delay is attributable
16 to the defendant, he doesn't -- he doesn't walk? That
17 seems like a reasonable rule. Whatever the delay is, if
18 most of it is attributable to the defendant himself, it
19 is -- it is not a basis for dismissing the indictment?

20 MS. KRUGER: We think that a defendant -- we
21 think that that rule would make a great deal of sense.
22 When a defendant --

23 JUSTICE SCALIA: That would make it easy to
24 decide this case because the -- the supreme court's
25 opinion acknowledges that most of the -- most of the

1 delay was caused by the defendant.

2 MS. KRUGER: Well, the Vermont Supreme Court
3 thought that some of the delay was caused by the
4 defendant and didn't charge most of that period to the
5 State to support its finding of the speedy trial
6 violation.

7 JUSTICE STEVENS: Would you really get by
8 that rule if there were, say, four years of delay and
9 two years and one month was attributable to the
10 defendant and two years to the State?

11 MS. KRUGER: We would think that a court
12 evaluating a speedy trial claim in that case would
13 properly exclude any period that was attributable to the
14 defendant and focus specifically on that period that was
15 attributable to the State in determining whether or not
16 the right was violated.

17 CHIEF JUSTICE ROBERTS: Counsel, I'm sure
18 you have gone through the record and, agreeing with
19 Justice Stevens that the periods where there wasn't a
20 contract, the State couldn't provide somebody, do count
21 against the State, but disagreeing with the Vermont
22 Supreme Court that when an assigned counsel fails to
23 move the case forward that is attributable to the State
24 and not the defendant, what's the difference in time?

25 MS. KRUGER: The difference in time is -- I

1 think that the -- as the case comes to the court, the
2 final 11 months of the pretrial delay is not seriously
3 in dispute. I think that Respondent has raised a number
4 of arguments about concurrent causes of delay unrelated
5 to the performance of his counsel. I think that those
6 arguments are not properly before the Court because they
7 fall well outside the scope of the question as to which
8 this Court granted review and because they were neither
9 pressed nor passed on below.

10 I think that leaves the middle 14 months of
11 the pretrial delay. And I think, given the Vermont
12 concession, the Vermont Supreme Court focus naturally
13 rests on the 5.5-month period during which Paul
14 Donaldson represented Respondent. And we think, with
15 respect --

16 CHIEF JUSTICE ROBERTS: Yes?

17 MS. KRUGER: We think with respect to that
18 period, we think that there is no basis for shifting the
19 responsibility for that delay that Paul Donaldson sought
20 before going to trial from defendant to the State
21 because, as Justice Scalia has rightly pointed out, any
22 contract expiration didn't in and of itself end the
23 attorney-client relationship, and Paul Donaldson
24 remained the agent and advocate of his client during
25 that period.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.
2 Mr. Nelson.

3 ORAL ARGUMENT OF WILLIAM A. NELSON

4 ON BEHALF OF the RESPONDENT

5 MR. NELSON: Mr. Chief Justice, and may it
6 please the Court:

7 I apologize for jumping the gun.

8 CHIEF JUSTICE ROBERTS: Sorry to delay you.

9 JUSTICE SCALIA: But it's not going to get
10 you off.

11 (Laughter.)

12 MR. NELSON: I would like to respond to --
13 to Vermont's argument about there being no detailed
14 record about why these attorneys left when they left.
15 And I -- I think if they're right, then that augurs a
16 remand, that suggests a remand. But the reason there
17 was no record of those departures is because the courts
18 who presided over those departures never requested an
19 explanation.

20 With Paul Donaldson, the matter was a
21 foregone conclusion. He had no contract. He was going
22 into another line of work. So be it, he's out of there.
23 No questioning concerning Mr. Brillon's complaints about
24 his inaction, his failure to investigate, and so forth;
25 nothing about are you ready to go to trial, what have

1 you done, what have you accomplished, what are you
2 passing on, if anything, to the next lawyer in line,
3 none of that.

4 And with Sleigh, the judicial disinterest,
5 if that's what it was, the judicial silence is even more
6 resounding. Sleigh did not request permission to
7 withdraw. He put the court on notice that he was
8 withdrawing, and this came out of the blue. I don't
9 think there was any heads-up for the court that this was
10 going to happen, although Sleigh had expressed some
11 serious reluctance to take the case and hadn't done
12 anything. He didn't -- he had a filing deadline of
13 April 11th, and he was supposed to file motions on that
14 date, and instead of filing motions he filed this notice
15 of withdrawal with no response from the court.

16 CHIEF JUSTICE ROBERTS: What is the -- what
17 is the distinction in your theory of the case between
18 delay and failure -- failure to move a case -- what did
19 -- what did the Vermont case say: Failure to do
20 anything to move the case forward?

21 When do we know that that's attributable to
22 the defendant, and when is it attributable to the State?

23 MR. NELSON: I think it -- I think it
24 depends on the facts, and I think in each of the -- in
25 the case of each of these two attorneys, the facts are

1 different. With Donaldson, I think the State's
2 responsibility -- the State's involvement in a
3 do-nothing attorney, an attorney who was really a
4 nominal attorney, started from the beginning. It
5 started from the appointment of -- of counsel who had
6 been on contract with the State to perform defense
7 services and was appointed.

8 CHIEF JUSTICE ROBERTS: Of course, if the
9 lawyer is a do-nothing lawyer, then I suppose there's an
10 ineffective-assistance claim?

11 MR. NELSON: Well, it might mature into an
12 ineffective-assistance claim, but there couldn't be an
13 ineffective assistance claim on the record here because,
14 well, ineffective assistance is -- is something that
15 occurs at a trial. And it can't be --

16 JUSTICE GINSBURG: It's an anomaly, though,
17 isn't it, that easily might have matured into
18 ineffective assistance? It wasn't yet, but if Attorneys
19 4 and 5, Donaldson and Sleigh -- if the case were for
20 ineffective assistance of counsel, then the defendant
21 would get a new trial, but here the result is he walks.

22 MR. NELSON: That's -- that's a consequence
23 of the speedy-trial clause in Barker and Strunk. A
24 speedy-trial violation happens, by definition, before
25 trial. Ineffective assistance happens, by definition

1 and by this Court's decisions, at trial and can't be
2 determined until after trial. Unless there is -- is a
3 speedy trial right and unless it's going to be enforced,
4 this is the consequence. And that's --

5 CHIEF JUSTICE ROBERTS: In the abstract, you
6 have a lawyer who is a public defender or hired as a
7 public defender, and he keeps asking for continuances --
8 continuance, continuance. How do we tell that that's
9 the State's problem as opposed to what the defendant is
10 doing through his lawyer?

11 MR. NELSON: I think at first you would have
12 to assume that the continuances were sought in good
13 faith and -- and for purposes of defense preparation.
14 If the defendant had demanded a speedy trial, as this
15 defendant had an early date, I think the court, looking
16 at -- at a continuance motion, would have to look at it
17 in that light.

18 JUSTICE ALITO: Well, what is the trial
19 judge supposed to do? The defense attorney keeps asking
20 for continuances for purposes of investigation. I need
21 more time to investigate. If -- and -- and -- can the
22 court say: You need to tell me exactly what you are
23 doing?

24 MR. NELSON: I think, Justice Alito, that a
25 court -- when a defendant has demanded a speedy trial,

1 that a court does have some obligation to -- to
2 supervise, to monitor, to -- and -- and it happens all
3 the time in criminal courts. What have you done? Have
4 you seen your client? What -- how much time do you need
5 for these motions? When are you going to be ready for
6 trial? That happens all the time.

7 And as the -- as time goes by, as the months
8 pass and -- and become years, I think a court's granting
9 of continuances has to be more grudging. The courts are
10 under a duty because they have a duty to assure the
11 speedy-trial right. Because they are the -- they are
12 the primary actors in that, the court has a duty to be
13 --

14 JUSTICE ALITO: Aren't you giving the
15 attorney a very perverse incentive there? I mean the
16 delay may help the ultimate outcome of the case, and if
17 the -- if the defense attorney can engineer enough
18 delay, he or she may also produce a speedy-trial
19 violation.

20 MR. NELSON: Well, I -- yes, of course,
21 that's a -- that's a problem, and it's a problem that
22 was recognized by Barker, and -- and it's a problem that
23 -- that courts are well equipped to handle. They --
24 courts are able to and commonly do. In fact, it's their
25 pretrial business -- main pretrial business to -- to set

1 that line to make sure lawyers adhere to them and make
2 sure that the case goes to trial. They -- courts are
3 well equipped to deal with that.

4 But I -- I would like to point out that your
5 hypothetical is not this case. That we are not dealing
6 here with delays that were caused by continuance
7 motions. In fact, if you look closely at the record,
8 trial dates were not pushed back by continuance motions
9 in this case. Trial dates were pushed back by attorney
10 inaction and withdrawals.

11 JUSTICE ALITO: And by your client firing
12 the first attorney, correct?

13 MR. NELSON: My client -- that's correct.
14 My client fired -- fired the first attorney, which --
15 which the State says was the bad act. But look at the
16 record of that firing. It wasn't really a firing, of
17 course. He had no right to fire assigned counsel. But
18 he had just heard his lawyer telling the judge, I'm
19 handling 150 odd cases, I cannot be ready for trial,
20 give me more time. I -- I -- I could be ready maybe in
21 March or April, but I can't be ready now. And that was
22 like three or four days before trial.

23 And I would submit that any client, hearing
24 his lawyer making those representations to a judge,
25 would have been very upset and would, in fact, have

1 wanted another lawyer.

2 JUSTICE GINSBURG: But knowing that the new
3 lawyer would have to start from scratch, from the
4 beginning, so it was going to take more time. If he got
5 a new lawyer, it was going to take more time than if he
6 stayed with the lawyer who was already acquainted with
7 the case but just needed a few more weeks.

8 MR. NELSON: Well, yes, but the lawyer who
9 had been appointed wasn't going to get those few more
10 weeks, and as Mr. Brillon said to the court, I would
11 rather do it right the first time. Being charged with a
12 life imprisonment offense, one can hardly blame him.
13 Yes, he had to make a tradeoff, but he had to do it
14 because his lawyer was not ready.

15 Now, we argued in the Vermont Supreme Court
16 that that time could not --

17 JUSTICE SCALIA: Excuse me, is that the
18 proper remedy? I mean, it seems to me he should appeal
19 to the judge and say, look, this lawyer -- is -- is that
20 the way you solve the problem of -- of an attorney who
21 is not ready, like fire him so you can get another
22 attorney? That seems to me very strange.

23 MR. NELSON: Counsel. Counsel moved for --
24 moved for a continuance on February 22nd.

25 JUSTICE SCALIA: Right.

1 MR. NELSON: And --

2 JUSTICE SCALIA: And from what you told me
3 it should have been given, right?

4 MR. NELSON: Pardon me?

5 JUSTICE SCALIA: From what you tell me, it
6 should have been given if indeed he was unable to
7 prepare adequately for the trial?

8 MR. NELSON: I believe so. The judge took a
9 different view. It was fully argued. The judge was the
10 only one who had -- the judge was the decider on that
11 one, and she said no. You don't get it.

12 JUSTICE GINSBURG: Well, wasn't there a
13 concern about this defendant trying avoid a particular
14 judge? That's why he wanted the continuance?

15 MR. NELSON: The -- the State made that
16 allegation, and it made that claim here. No court has
17 found it. The Vermont Supreme Court found the opposite.
18 The Vermont Supreme Court held that Brillon fired or
19 asked for the dismissal of his first lawyer because he
20 was not prepared to go to trial, which seems like an
21 ample, sufficient and supported reason for the action he
22 took. That explains the case.

23 JUSTICE GINSBURG: Not only did the Vermont
24 Supreme Court make that finding, it does not hear the
25 witnesses, it -- it has a record before it. I can

1 understand if you're talking about a finding made by the
2 court of first instance, but the Vermont Supreme Court
3 is reviewing a record, it's not making findings.

4 MR. NELSON: That's -- that's true, Justice
5 Ginsburg. The trial court, however, also didn't make
6 that finding, although it was asked to. And, in fact, I
7 think any such finding would be entirely speculative.

8 It would require the court, the fact finder,
9 to interpolate various happenings that are not of
10 record, and that we say never happened. It would
11 require us to assume that Brillon told Ammons, I want
12 you to move for a continuance on whatever grounds you
13 can think of, but the real reason is to get rid of the
14 judge. And that Ammons would do that for his client,
15 and, you know, for the ostensible reason that he
16 presented to the court, namely, he was overloaded and
17 not prepared to go to trial, his secret reason was to
18 get rid of the judge. And I think the record doesn't
19 warrant that kind of inference, especially since it's
20 been presented to and not accepted by the State courts.

21 CHIEF JUSTICE ROBERTS: This is not an
22 unusual reason for criminal defense lawyers in the
23 private sector to ask for a continuance. It's quite
24 common for the lawyers to go before the judge and say,
25 look, I've got this other case going to trial next week,

1 I've got this and this, can I get more time, and judges
2 give them the first two but not the third. And why in a
3 case simply where you're dealing with a public defender
4 do you presume the opposite and blame the State for
5 what's a quite common practice in the private part?

6 MR. NELSON: Mr. Chief Justice, I -- I'm
7 only saying that this -- on this record, the conclusion
8 that that was what was happening, which would be
9 significant if the court were then to say, and
10 therefore, it was done by the defendant who wanted delay
11 despite what he said, and therefore, this is time
12 considered waived under Barker. There is no basis for
13 that finding.

14 CHIEF JUSTICE ROBERTS: My point is, I
15 guess, how do we tell? I mean, if this is normal -- I
16 think it is normal, I think it's quite unusual for a
17 defense lawyer to be prepared to go to trial the first
18 time the trial date is set. If it is normal, how do we
19 tell?

20 MR. NELSON: Well, actually, this wasn't the
21 first -- the first request for a continuance, Chief.
22 Ammons had moved for a continuance before, and it had
23 been denied.

24 CHIEF JUSTICE ROBERTS: Yeah, but -- again,
25 I assume that's -- there are probably cases in the

1 private bar where that's true as well.

2 MR. NELSON: How does one know? I think
3 one -- I think what makes a major difference here is
4 that Brillon had demanded a speedy trial. He had done
5 so long before Ammons' motion for a continuance. He had
6 done -- he did so almost every chance he got at almost
7 every court hearing.

8 You could, and I think the State does,
9 assume that this was all tomfoolery and an attempt to
10 manipulate the court, but there is nothing in the record
11 to suggest that. That was the debate between the
12 majority and the dissent at the State court. The
13 majority won. As in Doggett, the -- the State is now
14 coming back and trying to refight here an essentially
15 factual issue which it lost in -- in the courts below.

16 JUSTICE BREYER: What about Donaldson and
17 Moore, those two periods? Those two periods, the
18 Donaldson period and the Moore period, seem, as far as I
19 can tell, which isn't that far, they seem to be periods
20 when the State -- when the court below was saying that
21 all that happened here was that the lawyers who were
22 appointed, did a very bad job.

23 You can't say they weren't appointed. It
24 isn't that he didn't have counsel. He had counsel, and
25 they just didn't do very much.

1 Now, why should that be accounted against
2 the stayer? Is Moore special? Was there really a
3 problem of prosecutorial behavior? Is Donaldson the
4 same as Sleigh? I don't know.

5 MR. NELSON: Let me start --

6 JUSTICE BREYER: Is Donaldson a case where
7 they -- is equivalent to having no lawyer? I don't know
8 how to deal with it.

9 MR. NELSON: Let me start with Donaldson,
10 and I think in answer to your question, I don't think
11 Donaldson is substantially different from Sleigh. I
12 won't go over the circumstances of Donaldson's
13 appointment, but once he was appointed, he began
14 conversations with the defender general about getting
15 off the case. And I think the sense -- and -- and a
16 significant fact about those conversations is that the
17 defender general told Donaldson he was going to be
18 replaced.

19 We don't know exactly when that happened,
20 but he told him he was going to be replaced with someone
21 who was more competent, more qualified to deal with a
22 life imprisonment case. So this is not information
23 which will light a fire under a lawyer to prepare a
24 case, that he knows he's not going to try.

25 Donaldson then asks for time. It's the only

1 request he ever made of the court. The court gave him
2 time and set filing deadlines, and he missed them.
3 Missing those deadlines should have been a red flag to
4 the court in a case that was already over a year old.
5 The court let those deadlines pass without a word.

6 The court also said, we're going to try this
7 case in October. Get ready for trial in October.
8 Everything should be filed by September 23rd. And for a
9 reason, which the record has no explanation for, the
10 October trial never happened. Donaldson was still on
11 the case, his name was still on the case, and the
12 October trial date passed without a murmur. It was not
13 until late November that Donaldson came to the court and
14 explained the situation.

15 Now the court -- I think the defender
16 general failed in his responsibility with regard to
17 Donaldson. That's State involvement. The court failed
18 in not noticing the -- the missed deadlines and in
19 allowing the trial date to pass without a trial; and I
20 think the Court also failed in its duty in allowing
21 Donaldson off the case, which rendered any catch-up time
22 that he had to do pointless, without any inquiry at all.
23 The court, it's clear from the record, deferred entirely
24 to the defender general, and so I think the Vermont
25 court on that record thought that there was enough State

1 involvement here to charge -- to find the State
2 responsible and to weigh some of that responsibility
3 against the State. The court --

4 CHIEF JUSTICE ROBERTS: What does your --
5 your argument do to the fundamental and I think quite
6 vital principle in Polk County that public defenders
7 work for their clients; they don't work for the State?

8 MR. NELSON: It does nothing to Polk County,
9 and we acknowledge that -- that Paul Donaldson's
10 inaction by itself, if it had nothing to do with the
11 State, if the State did not involve itself or condone --
12 if the State had no responsibility with regard to that
13 time, the State would have no responsibility under
14 Barker. That's perfectly clear, and I don't think the
15 Vermont Supreme Court's opinion, fairly read, fairly
16 read says anything other than that. The Vermont --

17 CHIEF JUSTICE ROBERTS: Well, I guess fairly
18 read, it does say the failure of several assigned
19 counsel to do anything to move the case forward is
20 attributable to the State, because they didn't do
21 anything, I guess is the touchstone.

22 MR. NELSON: Well, I think I have two
23 responses to that. One is that in the context of the
24 rest of the opinion, what the court was talking about
25 was a breakdown of the system, and the focus was on two

1 actors, both State actors, the assigning agency, the
2 defender general, and the court and I don't think
3 there's any dispute that both of those are indeed State
4 actions, and that delays which can be traced to them,
5 which they have a hand in, can be weighed against panned
6 the State under Barker.

7 JUSTICE SCALIA: But it doesn't say that; it
8 really does say most of the delay was caused by the
9 inability or unwillingness of assigned counsel, not of
10 the -- of the institution that appoints them,
11 unwillingness or inability of assigned counsel to move
12 the case forward. That looks to me like --

13 MR. NELSON: I think -- elsewhere in the
14 opinion, Justice Scalia, I think the court is clear that
15 -- that they were faulting the defender general, and to
16 a lesser extent the court. I think we are putting more
17 stress on the court's nonfeasance than the Vermont
18 Supreme Court did, but in fact, the time adds up to the
19 same. The time, we're talking 14 months from
20 Donaldson's assignment until Moore's assignment in
21 August.

22 CHIEF JUSTICE ROBERTS: Do you agree -- just
23 following up --

24 MR. NELSON: Okay.

25 CHIEF JUSTICE ROBERTS: I'm sorry. Just

1 following up on your latest answer, do you agree that it
2 has to be a systemic problem? I mean, you gave us that
3 -- the situation where the lawyer says I've got 150
4 cases, I need a -- need a continuance.

5 What if there's none of that? They've got,
6 you know, 500 public defenders, and the -- but the guy
7 still delays. He's responsible for not doing anything
8 to move the case forward.

9 MR. NELSON: Well --

10 CHIEF JUSTICE ROBERTS: Is it still
11 attributable to the State?

12 MR. NELSON: I don't think -- I don't think
13 the result depends on there being a systemic problem. I
14 think in this case there was a systemic problem, and the
15 Court knows about that from the findings of the indigent
16 defense task force, which --

17 JUSTICE KENNEDY: But the Chief Justice's
18 question, I'm interested in it as well, are there
19 instances in which a State-appointed counsel can delay
20 and have that not attributed to the State? Is it always
21 attributed to the State --

22 MR. NELSON: No.

23 JUSTICE KENNEDY: Just because he's State --

24 MR. NELSON: Absolutely there can be
25 situations like that, where there is no --

1 JUSTICE KENNEDY: There is a delay, but it's
2 not attributable to the State.

3 MR. NELSON: It's not attributable to the
4 State, it's attributable to counsel. And just the same
5 as -- just the same as for private counsel. We're not
6 proposing a two-tiered system there. We're --

7 CHIEF JUSTICE ROBERTS: Well, when is that?
8 The -- you have the same situation, the defense counsel
9 appointed by the State does nothing to move the case
10 forward, that's as I understand it the Vermont Supreme
11 Court touchstone. When is that attributable to the
12 State and when is it not?

13 MR. NELSON: It would not be attributable to
14 the State if the assigning agency was -- had no fault,
15 had no supervising duty that it failed to perform, that
16 the lawyer was essentially on his own or her own; and it
17 would also assume, I think, if the delay went on long
18 enough, that there was no fault in the court in failing
19 to --

20 CHIEF JUSTICE ROBERTS: Well, I --

21 MR. NELSON: -- to notice that nothing was
22 happening.

23 CHIEF JUSTICE ROBERTS: It does sound to me,
24 then, that you're saying there has to be some systemic
25 problem, that the rule that I understand the Vermont

1 Supreme Court to have adopted, that when assigned
2 counsel does nothing to move the case forward, that
3 that's attributable to the State, you would disagree
4 with? You would say no, there has to be a systemic
5 problem, not the -- not just the individual lawyer, but
6 they're not assigning enough defenders, they're not
7 supervising them, whatever.

8 MR. NELSON: Maybe I'm not using the word
9 systemic in the same sense you are. All I would say is
10 say is it doesn't have to happen to a lot of people, it
11 could happen to just one person, but it would only
12 happen to that one person if a public, State agency was
13 responsible for the delay.

14 JUSTICE ALITO: What if you have a situation
15 in which the -- an attorney is appointed, the defendant
16 threatens that attorney, the attorney withdraws. A
17 second attorney is appointed, the client threatens that
18 attorney, the attorney withdraws, and then thereafter a
19 new attorney is pointed, and there is great delay.
20 Maybe more -- two or three attorneys are appointed.
21 There's great delay. Is -- does the -- does the chain
22 of events that started all this get taken into account
23 or do you just start counting the time from the
24 appointment of the last attorney who wasn't threatened?

25 MR. NELSON: I think you can't ignore what

1 happened before, but you can -- but -- but if what
2 you're saying or suggesting is that earlier bad actions
3 result in a forfeiture of speedy trial rights, I would
4 disagree. The way you -- the way it matters is that by
5 firing, threatening, unjustifiably getting rid of a --
6 of a lawyer, you require the next lawyer to spend some
7 time getting up to speed on the case. And that time --

8 JUSTICE ALITO: What if a small -- I don't
9 know how many lawyers are available for appointment in
10 Bennington. What if it's a small jurisdiction where
11 there aren't that many who are available to be
12 appointed? And so you fire the public defender, you
13 threaten the first appointed counsel, and pretty soon
14 you don't have very many left, or the ones that you have
15 left are busy with other cases and delay results.

16 MR. NELSON: But that's not the case here,
17 and I think my answer to your question is that what
18 makes this a State response -- failure of responsibility
19 is that the State had the ability to do something about
20 it. If the State's hands are tied, if they run out of
21 legal talent, if there's no other way to get counsel on
22 the case than by a broken-down contract system, which
23 was not the case --

24 JUSTICE GINSBURG: What about the point that
25 Ms. Rainville made? And she talked about this balancing

1 that comes out of Barker, and she said you have to weigh
2 against the defendant very heavily, the episodes with
3 lawyer number one and number three, because that was
4 really bad stuff. The State is perhaps responsible for
5 some of the other delays, but she called those "neutral"
6 in the weighing process. Don't those two episodes,
7 counsel number one was fired, counsel number three, who
8 says his life was threatened by the defendant, don't
9 those have to count very heavily against the defendant?

10 MR. NELSON: Justice Ginsburg, I don't think
11 that Barker works that way. I think what Barker says is
12 that time which is attributable to the defendant gets
13 subtracted from the total delay; that that's not
14 considered. That the rest of the time is a period which
15 the State has to account for; and there are -- there
16 will be segments of that time, segments of that delay
17 which are nobody's fault, and those delays would in fact
18 be truly neutral in the sense of they would have no
19 weight against the State; and there are others that
20 would count more or less heavily against the State.

21 So I think the effect of what went on with
22 Jerry Altieri, which I think was not much more than two
23 months of the total time that he was on board, I think
24 the effect of that is to subtract that period, and then
25 any catch-up period that his firing or his dismissal

1 required, subtract that period as well from the total,
2 and weigh the rest more or less heavily or perhaps not
3 at all against the State.

4 JUSTICE GINSBURG: Well, the rest, I
5 couldn't find in his final counsel's representation -- I
6 didn't see anything in her representation that would
7 suggest any lack of diligence on her part or any reason
8 to count that in the speedy trial calculus. That runs
9 from August 2003 to June 2004.

10 MR. NELSON: To June 2004. That's correct.
11 I -- I think that the opinion is not clear as to how
12 much responsibility the Vermont court attributed to the
13 State for that period. Vermont says they charged every
14 second of the -- of that time to the State, and it's
15 quite clear from the opinion that they didn't. They
16 said that most of the remaining two years, as of
17 Donaldson's appointment in June of '02, was attributable
18 to the State. It's not clear how much of that time or
19 if they actually counted it. I think that any precise
20 calculation of that time period is impossible.

21 We argue, and the record supports, that much
22 of that time had to do with Ms. Moore getting files
23 together, not only from predecessor counsel but from the
24 State, and that the State delayed for many months in
25 providing an updated witness list with current

1 addresses. She needed that to interview the witnesses.
2 The case was old, and she needed the State's help there,
3 with other discovery material which the record shows --
4 it's not in the joint appendix, but it is in the printed
5 case, which was essentially Vermont Supreme Court's
6 equivalent of an appendix. These materials were at
7 issue for Moore. She needed them. The prosecutor was
8 dilatory in providing them. And I think that that's a
9 kind of vanilla reason to attribute some of that time to
10 the State.

11 JUSTICE STEVENS: Mr. Nelson --

12 MR. NELSON: The court was also --

13 JUSTICE STEVENS: -- what is your judgment
14 on how much time all together was attributable to the
15 State?

16 MR. NELSON: I think 14 -- I think the
17 Vermont court was clear about the 14 months from
18 Donaldson through Moore, including the six months of no
19 counsel. It adds up to 14 months. And then the rest of
20 the time I don't think you can put a number on.

21 Maybe it's not time that we're trying to add
22 up, but responsibility. And what the -- what the State
23 court was saying was when a case is as old as this one
24 was when Moore took it over, the court should be very
25 vigilant and grudging in its grants of continuances, and

1 the case could have been tried sooner than in eight
2 months.

3 CHIEF JUSTICE ROBERTS: So your 14 months,
4 just so I understand, that includes the August 2003
5 through June 2004, when Moore was representing him?

6 MR. NELSON: No. The 14 months goes from
7 Donaldson on June 11th, 2002, through Moore's
8 appointment in August 2003.

9 Thank you, Your Honor.

10 CHIEF JUSTICE ROBERTS: Thank you, Mr.
11 Nelson.

12 Ms. Rainville, you have a minute remaining.

13 REBUTTAL ARGUMENT OF CHRISTINA RAINVILLE

14 ON BEHALF OF THE PETITIONER

15 MS. RAINVILLE: Very quickly then, Justice
16 Ginsburg, the answer to your question, he did receive
17 credit for his time served.

18 The important distinction that the questions
19 raised show, what's so fundamentally wrong about this
20 case, is the distinction between Strickland. There you
21 ask the lawyers what they did. They're given deference.
22 They're given the right to defend themselves. And if
23 you prove that it would have had an effect on the
24 outcome of the case, the defendant gets a new trial.
25 Here the lawyers are never asked, no presumption is

1 given, and the defendant is allowed to walk free for the
2 rest of his life. It's fundamentally wrong.

3 Letting a defendant walk free from a crime
4 is an extraordinary remedy that should only be given in
5 an extraordinary case, and that case is not this one.

6 Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 The case is submitted.

9 (Whereupon, at 12:17 p.m., the case in the
10 above-entitled matter was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A	19:11	anybody 8:21	51:13	35:22 46:15,16
ability 47:19	admits 12:1	13:25 16:23	arguments 28:4	46:16,17,18,18
able 18:9 33:24	adopted 46:1	apologize 29:7	28:6	46:19,24
above-entitled	advantages	appeal 35:18	arose 6:13	attorneys 6:21
1:11 52:10	22:21 24:1	APPEARAN...	arraignment	29:14 30:25
absence 25:12	adversarial	1:14	7:14	31:18 46:20
26:3	20:21	appendix 8:5	arrangement	attorney's 23:15
absolutely 7:7	advocate 24:8	50:4,6	10:13	attorney-caused
12:18 44:24	28:24	application 3:23	aside 11:7	23:14
abstract 32:5	affect 5:18	applied 20:4	asked 6:22 9:12	attorney-client
accept 10:8,10	affirmative	applies 19:8	36:19 37:6	28:23
accepted 37:20	10:11 22:5	25:25	51:25	attributable
accommodate	agency 43:1	apply 3:25 4:25	asking 17:8 32:7	6:17,19 7:1 9:5
24:12	45:14 46:12	applying 10:22	32:19	15:17,20,21
accomplished	agent 28:24	appoint 16:16	asks 40:25	20:8 25:7
30:1	agree 14:11,15	16:16,17,23	assign 16:1	26:15,18 27:9
account 46:22	24:21,25 43:22	appointed 4:3	assigned 3:15	27:13,15,23
48:15	44:1	6:7 7:13,15,16	15:16,19 20:7	30:21,22 42:20
accounted 40:1	agreed 14:3,4,5	7:18,19,20	27:22 34:17	44:11 45:2,3,4
acknowledge	16:10	11:14 13:21	42:18 43:9,11	45:11,13 46:3
42:9	agreeing 18:6	21:19 24:7	46:1	48:12 49:17
acknowledges	27:18	31:7 35:9	assigning 43:1	50:14
26:25	agrees 13:13	39:22,23 40:13	45:14 46:6	attribute 9:3
acquainted 35:6	ahead 10:4	45:9 46:15,17	assignment	12:10 16:22
act 34:15	Alito 12:4,19	46:20 47:12,13	43:20,20	50:9
action 8:10	32:18,24 33:14	appointing	assistance 17:2	attributed 4:7
36:21	34:11 46:14	24:23	17:5 22:24	16:15 44:20,21
actions 43:4	47:8	appointment	31:13,14,18,20	49:12
47:2	allegation 36:16	31:5 40:13	31:25	attribution
actors 5:21 11:5	allow 4:25 18:7	46:24 47:9	Assistant 1:18	16:14
11:10 18:24	allowed 52:1	49:17 51:8	Association 5:20	augurs 29:15
33:12 43:1,1	allowing 41:19	appoints 16:20	assume 3:14,17	August 9:22
actual 25:13	41:20	43:10	4:16 12:23	43:21 49:9
add 50:21	Altieri 48:22	appropriate	15:23 21:22	51:4,8
additional 8:8	Amendment	12:9 26:9	32:12 37:11	authority 20:22
8:12	13:2	approved 8:6	38:25 39:9	available 47:9
address 16:24	amicus 1:20 2:6	approximately	45:17	47:11
addresses 50:1	19:22	6:5	assumed 10:22	avoid 36:13
addressing 3:12	Ammons 7:15	April 8:4 30:13	assure 33:10	awaiting 23:8
adds 43:18	7:15 37:11,14	34:21	attempt 39:9	aware 26:7
50:19	38:22 39:5	argue 9:6 49:21	attorney 1:16	a.m 1:13 3:2
adequately 36:7	amount 6:9	argued 4:5 15:5	4:14,17,23 6:1	
adhere 34:1	ample 36:21	35:15 36:9	6:21,22 20:17	B
administer	anomaly 31:16	argument 1:12	21:1 23:16	back 15:25
20:25	answer 23:10	2:2,10 3:4,6,15	31:3,3,4 32:19	17:15 34:8,9
admission 11:25	40:10 44:1	3:24,24 19:20	33:15,17 34:9	39:14
admissions 19:6	47:17 51:16	29:3,13 42:5	34:12,14 35:20	bad 34:15 39:22

47:2 48:4 balance 13:9 balancing 19:10 25:20 47:25 bar 39:1 Barker 4:25 5:4 19:7 22:13,17 25:20,21 31:23 33:22 38:12 42:14 43:6 48:1,11,11 based 10:7 11:25 14:25 19:5,11 22:12 basis 13:9 20:3 26:19 28:18 38:12 began 18:11 40:13 beginning 31:4 35:4 behalf 1:16,20 1:22 2:4,6,9,12 3:7 19:21 24:8 29:4 51:14 behavior 40:3 believe 12:18 17:19 23:20 36:8 Bennington 1:16 47:10 best 21:14 beyond 26:2 Biggers 11:16 11:23 binding 5:14,16 5:16,17 blame 10:9 11:19,19 35:12 38:4 blaming 22:25 23:1 blue 30:8 board 48:23 breakdown 42:25 BREYER 9:20	9:25 10:4 13:11,15 15:3 16:6 39:16 40:6 bricks 19:12 brief 19:6 Brillon 1:6 3:4 9:7,12,14,17 9:17 35:10 36:18 37:11 39:4 Brillon's 11:25 29:23 bring 22:6 broken-down 47:22 burdens 22:22 business 33:25 33:25 busy 47:15 <hr/> C C 2:1 3:1 calculating 12:6 calculation 49:20 calculus 49:8 called 48:5 case 3:4,11,18 4:4,10 6:9,20 7:8 8:22 9:16 9:16 10:18,25 12:1,14,19 15:2,17,20,24 16:6,7 18:8,14 18:23 20:3,5,8 20:15 21:23 22:1,2,7 25:1,8 25:12,25 26:1 26:24 27:12,23 28:1 30:11,17 30:18,19,20,25 31:19 33:16 34:2,5,9 35:7 36:22 37:25 38:3 40:6,15 40:22,24 41:4	41:7,11,11,21 42:19 43:12 44:8,14 45:9 46:2 47:7,16 47:22,23 50:2 50:5,23 51:1 51:20,24 52:5 52:5,8,9 cases 7:5,6 22:6 34:19 38:25 44:4 47:15 catch-up 41:21 48:25 caused 11:10 16:2 18:24 24:6 27:1,3 34:6 43:8 causes 28:4 certain 14:10 certainly 8:24 9:5 11:2 12:25 13:8 25:19 chain 46:21 chance 39:6 change 6:13 17:25 23:3 chaos 3:20 charge 27:4 42:1 chargeable 3:19 14:11,16 charged 14:3 24:24 35:11 49:13 charges 21:16 26:12 Chief 1:15 3:3,8 6:11,16,24 7:4 15:12 16:5 19:16,19,24 20:6 27:17 28:16 29:1,5,8 30:16 31:8 32:5 37:21 38:6,14,21,24 42:4,17 43:22 43:25 44:10,17 45:7,20,23	51:3,10 52:7 choice 18:2 CHRISTINA 1:15 2:3,11 3:6 51:13 circumstances 16:21 40:12 claim 16:13 27:12 31:10,12 31:13 36:16 classes 17:20 18:21 clause 31:23 clear 5:22 20:2 22:13 26:3,8 41:23 42:14 43:14 49:11,15 49:18 50:17 clearly 9:14 client 21:15 28:24 33:4 34:11,13,14,23 37:14 46:17 clients 23:16 42:7 client's 23:24 closely 34:7 colloquy 9:11 comes 8:7 20:10 28:1 48:1 comfort 21:13 coming 39:14 comment 4:18 10:7,8 24:17 common 10:16 10:17 37:24 38:5 commonly 33:24 competent 40:21 complain 21:9 complaints 29:23 complicated 15:14 comply 25:5	concede 6:25 8:13 conceded 4:6 5:7,9 concern 36:13 concerned 13:23 concerning 29:23 concession 5:14 6:1,12 28:12 concessions 19:6 conclusion 29:21 38:7 concurrent 28:4 condone 42:11 conduct 12:19 13:9 17:3 19:11 consequence 31:22 32:4 consideration 22:17 considered 38:12 48:14 considering 5:18 Constitution 17:16 constitutional 3:20 18:2,5,25 22:4 constitutionally 22:12 context 42:23 continuance 17:25 21:25,25 22:1 32:8,8,16 34:6,8 35:24 36:14 37:12,23 38:21,22 39:5 44:4 continuances 22:23 23:6 32:7,12,20 33:9 50:25 contract 6:14 27:20 28:22
--	--	--	--	--

29:21 31:6 47:22 contracts 8:15 controlling 5:5 conversations 40:14,16 correct 6:15 14:21 16:22 34:12,13 49:10 counsel 3:15 7:13,16,17,20 10:19 11:9,14 16:2 17:6 18:1 18:7 19:16 20:7 21:19,19 21:23 22:8,24 23:6,7 25:4 27:17,22 28:5 29:1 31:5,20 34:17 35:23,23 39:24,24 42:19 43:9,11 44:19 45:4,5,8 46:2 47:13,21 48:7 48:7 49:23 50:19 52:7 counsel's 17:3 18:4 49:5 count 27:20 48:9 48:20 49:8 counted 49:19 counting 13:16 46:23 County 18:25 42:6,8 course 11:8 31:8 33:20 34:17 court 1:1,12 3:9 3:11,13 4:5,16 4:25 5:5,6,8,16 5:17 6:2 8:16 8:23 9:1,9,10 9:15 10:15,21 11:21 12:1 13:13,22 14:15 15:15,25 16:8 17:1,7,12,15	19:8,25 20:3 20:10,16 22:3 23:24 25:23 26:3,8,11 27:2 27:11,22 28:1 28:6,8,12 29:6 30:7,9,15 32:15,22,25 33:1,12 35:10 35:15 36:16,17 36:18,24 37:2 37:2,5,8,16 38:9 39:7,10 39:12,20 41:1 41:1,4,5,6,13 41:15,17,20,23 41:25 42:3,24 43:2,14,16,18 44:15 45:11,18 46:1 49:12 50:12,17,23,24 courts 5:19 17:23 18:22 20:25 22:9 23:1 29:17 33:3,9,23,24 34:2 37:20 39:15 court's 9:2,4 11:4 20:2 22:17 26:24 32:1 33:8 42:15 43:17 50:5 create 20:16 21:6,7,12,18 creates 3:20 17:19 18:20 23:15 creating 17:20 credit 26:8 51:17 crime 52:3 criminal 3:21 21:23 23:20 33:3 37:22 curiae 1:21 2:7	19:22 current 49:25 <hr/> D <hr/> D 3:1 date 30:14 32:15 38:18 41:12,19 dates 34:8,9 day 7:14,14,15 7:17,18,20 15:2 days 13:20 34:22 day-to-day 20:22 deadline 30:12 deadlines 41:2,3 41:5,18 deal 26:21 34:3 40:8,21 dealing 34:5 38:3 debate 39:11 debating 15:19 decide 12:1 14:19,20,23,24 15:24 16:19 17:15 18:14 26:24 decided 20:3 decider 36:10 decision 17:19 decisions 20:22 32:1 decline 20:16 23:24 defend 51:22 defendant 4:3 7:9 12:7,11 15:1,21 17:21 17:23 18:3 20:13 21:4 22:22 23:3,7 24:2,3,4,9 25:21 26:16,18 26:20,22 27:1 27:4,10,14,24	28:20 30:22 31:20 32:9,14 32:15,25 36:13 38:10 46:15 48:2,8,9,12 51:24 52:1,3 defendants 18:21 21:8 22:14,15,21 25:5 26:1 defendant's 20:7 24:9 defender 3:14 3:16 4:2 6:19 7:9,12,20,23 8:5,10 10:14 14:1 17:13 24:19 32:6,7 38:3 40:14,17 41:15,24 43:2 43:15 47:12 defenders 3:17 5:21 42:6 44:6 46:6 defense 14:17 21:5 24:13 25:10 31:6 32:13,19 33:17 37:22 38:17 44:16 45:8 deference 51:21 deferred 41:23 definition 31:24 31:25 delay 6:4,9 7:1 9:14 11:7,8 12:6,11 13:1 16:2 20:5 21:11,13 23:14 23:21,21,21,21 23:21,23 25:6 25:8 26:15,17 27:1,3,8 28:2,4 28:11,19 29:8 30:18 33:16,18 38:10 43:8 44:19 45:1,17	46:13,19,21 47:15 48:13,16 delayed 49:24 delays 10:20 11:5 15:9 18:23 20:13 21:24 24:5,16 34:6 43:4 44:7 48:5,17 deliberate 25:9 demand 32:14,25 39:4 denied 38:23 Department 1:19 departures 29:17,18 depends 30:24 44:13 deprive 21:3 Deputy 1:15 describe 24:16 desire 22:15 desires 24:9 despite 9:13 18:9 38:11 detailed 29:13 details 10:21,24 11:3,22,23 15:14 determined 32:2 determines 5:16 determining 17:2 27:15 dicta 4:24 5:4 difference 27:24 27:25 39:3 different 4:13 4:20 6:21 12:2 17:20 31:1 36:9 40:11 differently 4:17 17:24 18:21 difficult 8:21 20:25 21:2 difficulty 7:23 dilatory 50:8
--	--	--	--	--

diligence 23:17 49:7	do-nothing 31:3 31:9	escape 22:23	33:24 34:7,25	28:2 49:5
diligent 7:13 8:11 22:9	due 18:2,5	especially 37:19	37:6,8 40:16	finally 21:17
disagree 46:3 47:4	duty 8:20 10:11 10:13,14 23:10	ESQ 1:15,18,22 2:3,5,8,11	43:18 48:17	find 42:1 49:5
disagreeing 27:21	23:15 24:7,11	essentially 39:14 45:16 50:5	factor 4:24 5:2 9:6 12:12	finder 37:8
discern 21:2	24:20 25:6	establish 25:15	25:16	finding 7:23 26:3 27:5
discontent 17:11	33:10,10,12	established 25:17	factors 25:12	36:24 37:1,6,7
discovery 50:3	41:20 45:15	ethical 8:20 23:15 24:7,11	facts 5:6 12:21 13:8 18:13	38:13
disinterest 30:4	D.C 1:8,20	evaluating 27:12	19:2,3 23:3	findings 11:4 37:3 44:15
dismiss 26:12	E	events 12:12 46:22	30:24,25	fire 15:10 34:17 35:21 40:23
dismissal 21:16 36:19 48:25	E 2:1 3:1,1	everybody 14:10	factual 39:15	47:12
dismissed 9:11	earlier 47:2	exactly 12:23,24 32:22 40:19	fail 15:19	fired 9:9,13 12:1 12:15,24 15:1
dismissing 26:19	early 32:15	example 5:20 7:9 25:21	failed 23:10 41:16,17,20	15:4,10 34:14
dispose 15:23	easily 31:17	exception 20:12 20:17	45:15	34:14 36:18 48:7
dispute 20:11 28:3 43:3	easy 26:23	exclude 27:13	failing 22:25 23:1 45:18	fires 23:7
dissent 39:12	effect 4:8 10:21 48:21,24 51:23	excuse 19:18 35:17	fails 27:22	firing 12:7 34:11 34:16,16 47:5
distinction 21:18 30:17	effective 10:12 21:5 23:20	exercisable 24:2	failure 15:16 16:15,22 20:7	48:25
51:18,20	24:13	exercise 23:25	22:7 29:24	first 3:14 10:1 12:15,24,25
dividing 10:23	effort 25:9	expedition 8:11	30:18,18,19	13:12 15:1
docket 6:7 7:18	eight 24:22 51:1	expiration 28:22	42:18 47:18	16:24 18:15,18
doctrine 19:8	eight-month 4:22	expired 8:16	fairly 42:15,15 42:17	18:19 19:17
Doggett 39:13	either 24:6	explained 41:14	faith 32:13	20:19 23:20
doing 24:12 32:10,23 44:7	enforced 32:3	explains 36:22	fall 28:7	32:11 34:12,14
Donaldson 6:21 7:18 9:8,15,16	engineer 33:17	explanation 22:17 29:19	falls 17:4	35:11 36:19
9:23,25 10:2	engineering 12:8	41:9	far 13:4,22 39:18,19	37:2 38:2,17
11:12 13:18,19	enormously 20:25	expressed 30:10	fashion 23:25 25:6	38:21,21 47:13
13:23 16:13,13	entire 25:18	extent 8:9 43:16	fault 9:1 45:14 45:18 48:17	five 7:13,19
16:16 17:9	entirely 37:7 41:23	extraordinary 7:24 8:12 52:4	faulting 43:15	flag 41:3
28:14,19,23	entirety 20:4	52:5	favor 13:10	focus 27:14 28:12 42:25
29:20 31:1,19	episodes 48:2,6	extreme 24:1	February 35:24	focusing 22:19
39:16,18 40:3	equipped 33:23 34:3	extremely 17:1	federal 17:14	following 11:13 43:23 44:1
40:6,9,11,17	equivalent 13:24 40:7		fight 11:17,17	force 44:16
40:25 41:10,13	50:6		file 30:13	forced 12:17
41:17,21 50:18	erroneously 26:11		filed 15:4 30:14 41:8	foregone 29:21
51:7	error 21:3		files 49:22	forfeiture 47:3
Donaldson's 40:12 42:9	errors 14:17,18	F	filing 30:12,14 41:2	form 25:20
43:20 49:17		fact 4:6 9:9 14:9 14:20,25 22:19	final 14:6 20:5	forth 29:24
				forward 15:17 15:20 27:23

30:20 42:19 43:12 44:8 45:10 46:2 found 25:23 36:17,17 four 3:12 4:23 6:5,6 11:6,8 14:13 20:15 27:8 34:22 fourth 9:8 14:16 19:10 free 18:9 52:1,3 fully 36:9 fundamental 15:18 42:5 fundamentally 23:13 51:19 52:2 funding 7:25 8:6 8:8,12 further 11:18	given 7:21 13:9 25:11 28:11 36:3,6 51:21 51:22 52:1,4 giving 13:25 22:16 33:14 go 10:4,9 11:20 12:9 13:3,17 14:2 17:15 23:1 24:10 29:25 36:20 37:17,24 38:17 40:12 goes 3:23 33:7 34:2 51:6 going 3:11,16 5:18 10:19 15:8 18:12 28:20 29:9,21 30:10 32:3 33:5 35:4,5,9 37:25 40:17,20 40:24 41:6 good 6:12 32:12 Governors 5:20 granted 28:8 granting 33:8 grants 50:25 great 17:11 26:21 46:19,21 ground 10:16,18 grounds 22:4 37:12 group 14:2,3,6 grudging 33:9 50:25 guess 8:14 11:13 12:16 14:21 38:15 42:17,21 guidance 15:25 guilt 18:9 gun 29:7 guy 13:25 25:17 44:6	hamper 25:9 hand 43:5 handle 7:6 33:23 handling 34:19 hands 47:20 happen 13:8 15:22 21:14 30:10 46:10,11 46:12 happened 7:11 7:12 19:12 37:10 39:21 40:19 41:10 47:1 happening 38:8 45:22 happenings 37:9 happens 8:3 31:24,25 33:2 33:6 Harnett 7:16,17 heads-up 30:9 hear 3:3 19:17 36:24 heard 34:18 hearing 17:5 34:23 39:7 heavily 5:1 48:2 48:9,20 49:2 held 4:7,10 14:8 21:11 36:18 help 33:16 50:2 henceforth 17:22 he'll 18:6 hire 7:5 hired 32:6 hold 4:9 13:23 17:13 Honor 4:21 9:7 51:9 hope 18:12 hypothetical 34:5	implied 5:25 important 5:22 12:5 16:5 17:2 51:18 impossible 49:20 imprisonment 35:12 40:22 inability 43:9,11 inaction 20:17 21:1 29:24 34:10 42:10 inactive 21:10 incarcerated 25:22 incarceration 25:25 26:6 incentive 21:13 33:15 incentives 21:8 included 4:23 includes 51:4 including 50:18 inconsequential 6:10 inconsistent 20:20 incredibly 7:13 8:10,11 indictment 26:19 indigent 17:21 17:23,24 18:4 25:5 44:15 individual 4:2 46:5 ineffective 17:2 31:13,14,18,20 31:25 ineffective-ass... 31:10,12 inevitable 15:9 inference 37:19 information 40:22 initial 12:12 initially 15:5	inquiry 41:22 instance 16:9 37:2 instances 44:19 institution 43:10 insufficient 25:14 interest 23:24 interested 44:18 interests 24:9 interpolate 37:9 interview 50:1 investigate 29:24 32:21 investigation 32:20 involve 12:6 42:11 involved 4:24 12:5 involvement 31:2 41:17 42:1 involving 6:5 issue 5:19,23,25 10:23 25:12 39:15 50:7 issues 10:24 18:14
<hr/> G <hr/> G 3:1 gamesmanship 21:7 general 1:19 4:15,18 6:1,19 7:9,12,20,24 8:5,10 15:24 16:1 20:12,17 40:14,17 41:16 41:24 43:2,15 generally 21:1 general's 24:19 genuinely 21:4 getting 8:12 26:8 40:14 47:5,7 49:22 Ginsburg 17:10 26:5 31:16 35:2 36:12,23 37:5 47:24 48:10 49:4 51:16 give 14:10 18:12 34:20 38:2	<hr/> H <hr/> hairy 18:13	<hr/> I <hr/> ignore 46:25	<hr/> J <hr/> jail 23:8 25:18 January 1:9 Jerry 48:22 job 39:22 joint 50:4 judge 9:12 32:19 34:18,24 35:19 36:8,9,10,14 37:14,18,24 judges 38:1 judgment 50:13 judicial 30:4,5 jumping 29:7 June 8:4 9:22 49:9,10,17 51:5,7	

jurisdiction 47:10	37:19 50:9	37:22,24 39:21	M	49:24 50:17,18
justice 1:19 3:3	know 4:12 12:14	47:9 51:21,25	main 33:25	50:19 51:2,3,6
3:8,21,22 5:3,7	16:7 30:21	lawyer's 20:13	major 39:3	Moore 9:23,24
5:11,13,24	37:15 39:2	20:21 21:11	majority 39:12	14:6 39:17,18
6:11,16,24 7:4	40:4,7,19 44:6	24:11	39:13	40:2 49:22
8:14,19,25	47:9	leaves 28:10	making 34:24	50:7,18,24
9:20,25 10:4,6	knowing 21:14	left 13:19 16:17	37:3	51:5
11:11 12:3,4	35:2	16:20 29:14,14	manipulate	Moore's 43:20
12:19,22 13:4	knows 40:24	47:14,15	39:10	51:7
13:5,11,15	44:15	legal 47:21	March 34:21	motion 9:10
15:3,12 16:5,6	Kruger 1:18 2:5	legislature 7:25	material 50:3	32:16 39:5
17:10 18:10,18	19:17,19,20,24	8:1,6,7	materials 50:6	motions 30:13
19:1,16,19,24	22:13 23:12,22	length 8:12	matter 1:11 3:12	30:14 33:5
20:6 21:21	24:25 25:19	LEONDRA	8:2,7 9:1 11:5	34:7,8
23:2,19 24:14	26:7,20 27:2	1:18 2:5 19:20	13:1 16:1	move 15:17,20
24:25 25:16	27:11,25 28:17	lesser 43:16	17:14 18:24	20:8,15 27:23
26:5,14,23	L	letter 8:4 9:9	29:20 52:10	30:18,20 37:12
27:7,17,19	lack 49:7	Letting 52:3	matters 47:4	42:19 43:11
28:16,21 29:1	late 41:13	Let's 21:22	mature 31:11	44:8 45:9 46:2
29:5,8,9 30:16	latest 44:1	life 35:12 40:22	matured 31:17	moved 35:23,24
31:8,16 32:5	Laughter 10:5	48:8 52:2	mean 6:12,16	38:22
32:18,24 33:14	29:11	light 6:9 32:17	19:2 33:15	moving 10:15
34:11 35:2,17	law 3:12 5:22	40:23	35:18 38:15	murmur 41:12
35:25 36:2,5	11:5 18:14,24	lightly 14:5	44:2	N
36:12,23 37:4	lawyer 7:5,6,10	25:11	measures 7:24	N 2:1,1 3:1
37:21 38:6,14	7:23 8:3,13 9:8	line 29:22 30:2	mentioned	name 41:11
38:24 39:16	9:11,18 10:3	34:1	18:15	named 4:2,2
40:6 42:4,17	12:8,8,9,15,16	lines 17:11	merely 17:24	National 5:20
43:7,14,22,25	12:20,25 14:14	list 10:19,20,20	MICHAEL 1:6	naturally 28:12
44:10,17,23	15:1,5,5,7,8,10	49:25	middle 28:10	nature 22:18
45:1,7,20,23	15:11 20:14,20	literally 8:7	Middlebury	necessarily 5:25
46:14 47:8,24	21:4,9,10 24:8	little 3:17 16:25	1:22	15:13 24:5
48:10 49:4	24:23 30:2	20:14	midst 21:2	need 21:5 32:20
50:11,13 51:3	31:9,9 32:6,10	long 13:1 21:9	minus 11:8,9	32:22 33:4
51:10,15 52:7	34:18,24 35:1	22:16 23:9	minute 51:12	44:4,4
Justice's 44:17	35:3,5,6,8,14	25:17 39:5	misfeasance 9:2	needed 35:7
K	35:19 36:19	45:17	9:3,4	50:1,2,7
keep 10:15	38:17 40:7,23	look 6:4 10:25	missed 41:2,18	Neil 11:16,22
keeps 32:7,19	44:3 45:16	11:2 20:1	Missing 41:3	neither 28:8
KENNEDY	46:5 47:6,6	32:16 34:7,15	monitor 33:2	Nelson 1:22 2:8
44:17,23 45:1	48:3	35:19 37:25	month 27:9	19:18 29:2,3,5
kept 13:7 22:8	lawyers 7:22	looking 32:15	months 4:23 6:6	29:12 30:23
kill 15:7	8:15 12:2	looks 14:7 43:12	6:6,7 11:6,8	31:11,22 32:11
kind 10:12	15:16,19 16:25	lost 39:15	15:1 24:22	32:24 33:20
20:17 23:14	21:12 23:20	lot 10:8 13:18	25:2,14,22	34:13 35:8,23
	24:16 34:1	46:10	28:2,10 33:7	36:1,4,8,15
		lots 23:19,19	43:19 48:23	

37:4 38:6,20 39:2 40:5,9 42:8,22 43:13 43:24 44:9,12 44:22,24 45:3 45:13,21 46:8 46:25 47:16 48:10 49:10 50:11,12,16 51:6,11 neutral 4:24 5:2 5:10 9:6 12:12 48:5,18 never 6:22 13:2 13:21 14:1 23:4 29:18 37:10 41:10 51:25 nevertheless 25:23 new 7:13 8:6 9:18 15:8 18:6 31:21 35:2,5 46:19 51:24 nobody's 48:17 nominal 31:4 nonfeasance 43:17 non-delegable 22:5,10 23:10 non-indigent 17:21 non-State 11:10 18:24 normal 38:15,16 38:18 nose 24:17 noted 20:6 notice 30:7,14 45:21 noticing 41:18 November 41:13 number 28:3 48:3,3,7,7 50:20	O O 2:1 3:1 object 22:25 obligation 22:5 22:5,10 23:15 33:1 obtained 7:25 obviously 26:1 occurred 12:13 13:1 occurs 31:15 October 41:7,7 41:10,12 odd 34:19 offense 35:12 office 13:20 16:17,21 24:19 offset 26:5 Oh 19:18 okay 15:9 18:15 43:24 old 41:4 50:2,23 once 40:13 ones 47:14 open 4:12,13 22:3 operating 17:13 opinion 15:15 20:2 26:25 42:15,24 43:14 49:11,15 opportunities 21:7 oppose 18:1 opposed 32:9 opposite 36:17 38:4 option 24:2 oral 1:11 2:2 3:6 19:20 29:3 order 21:5 ostensible 37:15 ought 19:11 outcome 21:15 33:16 51:24 outside 28:7 overloaded	37:16 P P 3:1 PAGE 2:2 pages 20:1 24:15 paid 21:23 23:6 23:7 panned 43:5 Pardon 36:4 part 17:12 24:18 38:5 49:7 particular 9:20 9:21 12:6 15:13 22:19 25:13 36:13 parties 10:24 pass 33:8 41:5 41:19 passed 28:9 41:12 passing 30:2 Paul 28:13,19 28:23 29:20 42:9 people 46:10 perfectly 42:14 perform 31:6 45:15 performance 14:9 28:5 performed 24:20 period 4:1,22 5:10 6:5 9:21 9:22 11:12,18 24:22 25:1,10 25:18 27:4,13 27:14 28:13,18 28:25 39:18,18 48:14,24,25 49:1,13,20 periods 12:6,10 14:13 27:19 39:17,17,19 permission 30:6 permit 8:17	person 16:20 24:6 46:11,12 perverse 33:15 Petitioner 1:4 1:17,21 2:4,7 2:12 3:7 19:23 51:14 plate 8:1,8 please 3:9 19:25 29:6 plenty 10:9 point 16:5,6,25 17:8 19:2 20:11 21:22 22:10 34:4 38:14 47:24 pointed 28:21 46:19 pointless 41:22 points 15:15 policy 5:18 Polk 18:25 42:6 42:8 poses 22:21 position 3:25 4:11,14,19,20 4:22 22:12 possibility 26:13 possible 3:23 21:15 22:11,16 22:19 24:10 26:10 possibly 7:6 14:17 practice 21:1 38:5 precise 49:19 precisely 23:22 predecessor 49:23 prejudice 4:6 21:16 25:13,16 25:20 26:2 prejudicial 26:1 preparation 32:13 prepare 18:7	21:5 24:13 36:7 40:23 prepared 36:20 37:17 38:17 presentation 18:11 presented 37:16 37:20 presided 29:18 pressed 28:9 presume 38:4 presumption 17:3 51:25 pretrial 20:5,23 21:2 25:22 26:6 28:2,11 33:25,25 pretty 12:23 25:17 47:13 primarily 21:24 primary 20:11 33:12 principal 23:13 principle 10:23 12:5 15:18 20:4 25:25 42:6 printed 50:4 private 37:23 38:5 39:1 45:5 probably 38:25 problem 6:13 32:9 33:21,21 33:22 35:20 40:3 44:2,13 44:14 45:25 46:5 problems 6:20 7:2 proceedings 20:23 21:3 25:23 process 18:2,6 48:6 produce 33:18 product 25:9 professional
---	--	---	---	---

17:4 promptness 23:17 24:20 proper 22:17 35:18 properly 25:6 27:13 28:6 proportions 3:21 proposing 45:6 proposition 10:10 prosecution 12:11 14:12,17 17:22 21:24 22:25 prosecutor 50:7 prosecutorial 40:3 prove 51:23 provide 27:20 provides 8:8 providing 10:14 10:15 25:4 49:25 50:8 public 3:14,16 3:17 5:21 10:14 14:1 17:13 32:6,7 38:3 42:6 44:6 46:12 47:12 purportedly 20:14 purposes 3:15 22:18 32:13,20 push 18:3 pushed 34:8,9 put 22:15 30:7 50:20 putting 43:16 p.m 52:9	21:22 24:15 28:7 40:10 44:18 47:17 51:16 questioning 29:23 questions 51:18 quickly 8:1 12:14 24:10 51:15 quite 4:9 37:23 38:5,16 42:5 49:15	23:23 24:4 29:16 36:21 37:13,15,17,22 41:9 49:7 50:9 reasonable 17:4 22:6 23:16 26:17 reasons 3:10,12 10:20 18:13 20:16 rebuttal 2:10 19:15 51:13 receive 51:16 recognized 33:22 record 3:13 6:4 6:20 11:4 14:7 14:22,25 15:14 16:3 23:4,5 27:18 29:14,17 31:13 34:7,16 36:25 37:3,10 37:18 38:7 39:10 41:9,23 41:25 49:21 50:3 records 14:10 red 41:3 referring 16:12 refight 39:14 refused 8:16 regard 9:15,19 41:16 42:12 reindictment 26:13 relationship 28:23 reliance 24:15 relief 13:2 reluctance 30:11 remained 28:24 remaining 49:16 51:12 remand 29:16 29:16 remedy 22:20	22:20 23:25 24:1 26:9,10 35:18 52:4 Remind 18:18 rendered 41:21 repeated 23:5 replaced 40:18 40:20 replacement 7:16,17 represent 4:3 23:16 24:7 representation 8:20 10:12 49:5,6 representations 34:24 represented 25:3 28:14 representing 51:5 request 24:12 30:6 38:21 41:1 requested 22:24 29:18 requests 21:25 23:5 require 3:13 23:18 37:8,11 47:6 required 49:1 reserve 19:14 resounding 30:6 respect 4:14 21:21 28:15,17 respond 29:12 Respondent 1:23 2:9 25:2 28:3,14 29:4 response 30:15 47:18 responses 42:23 responsibility 22:23 25:4 28:19 31:2 41:16 42:2,12	42:13 47:18 49:12 50:22 responsible 20:13 21:11 24:5 42:2 44:7 46:13 48:4 rest 11:7 19:14 42:24 48:14 49:2,4 50:19 52:2 rests 28:13 result 21:23,25 31:21 44:13 47:3 results 47:15 retained 21:19 reverse 3:10 review 3:13 28:8 reviewing 10:20 14:25 22:3 37:3 rid 37:13,18 47:5 right 3:19 6:14 9:23,25 12:3 12:19 13:14 14:1 17:14 22:14,18 24:17 27:16 29:15 32:3 33:11 34:17 35:11,25 36:3 51:22 rightly 28:21 rights 17:22 47:3 risk 18:8 21:3 ROBERTS 3:3 6:11,16,24 7:4 15:12 19:16,19 27:17 28:16 29:1,8 30:16 31:8 32:5 37:21 38:14,24 42:4,17 43:22 43:25 44:10 45:7,20,23 51:3,10 52:7
Q	R			
qualified 40:21 question 3:22 10:7 12:23 15:24 20:10	R 1:18 2:5 3:1 19:20 Rainville 1:15 2:3,11 3:5,6,8 4:21 5:4,9,12 5:15 6:3,15,18 7:3,7 8:18,23 9:4,24 10:2 11:2,24 12:18 13:3,6,14 14:24 15:4 16:4,24 17:10 17:18 18:10,17 18:19 19:5 47:25 51:12,13 51:15 raised 5:19 28:3 51:19 range 17:4 read 14:22 42:15,16,18 ready 18:4 29:25 33:5 34:19,20,21 35:14,21 41:7 real 37:13 really 6:10 12:22 27:7 31:3 34:16 40:2 43:8 48:4 reason 13:24 14:7 21:6 22:7			

rule 3:18 10:22 20:12,18,19,24 21:17 23:17,25 26:15,17,21 27:8 45:25	40:15 46:9 48:18 September 41:8 series 10:24 20:7 serious 11:17 30:11 seriously 28:2 served 26:9 51:17 services 21:8 31:7 set 33:25 38:18 41:2 seven 24:22 shifting 28:18 shove 22:8 show 51:19 shows 7:19 50:3 significant 38:9 40:16 silence 30:5 similar 25:24 simple 22:2 simply 10:11,14 12:6 22:25 38:3 single 20:4 sitting 23:8 situation 7:8 17:20 18:20 24:19 41:14 44:3 45:8 46:14 situations 6:25 20:14 44:25 six 15:1 25:2,14 50:18 sixth 7:21,23 8:13 13:2 Sleigh 4:2,8,14 4:23 6:5,22 7:19 9:19 11:7 11:12,13 14:4 17:9 30:4,6,10 31:19 40:4,11 slightly 23:3 small 7:22 47:8	47:10 society 22:22 solely 19:11 24:2 Solicitor 1:18 solve 35:20 somebody 27:20 soon 47:13 sooner 51:1 sorry 29:8 43:25 sort 10:19 16:2 19:1 sought 9:8 28:19 32:12 sound 45:23 SOUTER 3:22 5:3,7,11,13,24 10:6 11:11 12:3 21:21 23:2,19 special 40:2 specifically 27:14 speculative 37:7 speed 47:7 speedy 3:19 17:14,21 18:8 19:9 22:14,20 25:15,24 26:9 27:5,12 32:3 32:14,25 39:4 47:3 49:8 speedy-trial 31:23,24 33:11 33:18 spend 47:6 standard 19:8 start 10:6 35:3 40:5,9 46:23 started 31:4,5 46:22 starts 12:7 State 3:19,24 4:5,7,19,22 5:1 5:21 6:17 7:1,4 7:22 8:9 9:3,5 10:11 11:5 13:6,24 14:3,8	14:9,12 15:18 15:21,22 16:2 16:20,22 18:22 19:13 20:9 22:4 23:9 24:24 25:5,7 25:11 27:5,10 27:15,20,21,23 28:20 30:22 31:6 34:15 36:15 37:20 38:4 39:8,12 39:13,20 41:17 41:25 42:1,3,7 42:11,11,12,13 42:20 43:1,3,6 44:11,20,21,23 45:2,4,9,12,14 46:3,12 47:18 47:19 48:4,15 48:19,20 49:3 49:13,14,18,24 49:24 50:10,15 50:22 statement 14:20 14:21 18:11 States 1:1,12,20 2:6 5:18 19:21 State's 1:15 9:1 9:1,2 16:15 25:3 31:1,2 32:9 47:20 50:2 State-appointed 44:19 stay 8:22 9:16 25:17 stayed 35:6 stayer 40:2 Stevens 12:22 13:4,5 24:14 25:1,16 27:7 27:19 50:11,13 strange 35:22 stress 43:17 Strickland 17:1 51:20	strong 17:3 Strunk 26:8 31:23 stuff 48:4 submit 34:23 submitted 52:8 52:10 subsequent 9:10 12:10 substantial 22:21 substantially 40:11 subtract 48:24 49:1 subtracted 48:13 sufficient 24:20 36:21 suggest 39:11 49:7 suggesting 47:2 suggests 29:16 suits 21:9 supervise 33:2 supervising 45:15 46:7 support 27:5 supported 36:21 supporting 1:21 2:7 19:23 supports 49:21 suppose 6:24 8:16 15:12 31:9 supposed 14:19 14:20 16:19 30:13 32:19 supreme 1:1,12 3:11 4:5,15 5:5 5:8 6:2 10:21 11:4,21 13:12 13:22 15:15,25 16:8 17:7,12 17:15 20:2,3 26:3,11,24 27:2,22 28:12
---	---	---	--	--

35:15 36:17,18 36:24 37:2 42:15 43:18 45:10 46:1 50:5 sure 11:20 15:13 27:17 34:1,2 system 3:21 17:13 20:21 21:20 42:25 45:6 47:22 systemic 7:2 44:2,13,14 45:24 46:4,9	think 5:15,17 10:16 11:3 13:7 14:24 16:4 20:11,16 20:19,24 21:17 22:13,16,22 23:13,17,22 24:4 25:3,10 25:13,19,24 26:14,20,21 27:11 28:1,3,5 28:10,11,14,17 28:18 29:15 30:9,23,23,24 31:1 32:11,15 32:24 33:8 37:7,13,18 38:16,16 39:2 39:3,8 40:10 40:10,15 41:15 41:20,24 42:5 42:14,22 43:2 43:13,14,16 44:12,12,14 45:17 46:25 47:17 48:10,11 48:21,22,23 49:11,19 50:8 50:16,16,20 third 12:16 14:2 14:2,4,15 19:4 19:5 21:6 38:2 thought 6:8 15:18 16:13 27:3 41:25 threaten 47:13 threatened 12:17 15:7 46:24 48:8 threatening 12:9,20 47:5 threatens 46:16 46:17 three 6:4 11:7,9 12:1 18:12 22:2 23:6,8 34:22 46:20	48:3,7 three-year 6:9 22:7 tied 47:20 time 3:18 4:1 5:10 6:4,8,10 7:21 11:9 15:7 18:7 19:14 21:4 22:6 24:12 26:6,9 27:24,25 32:21 33:3,4,6,7 34:20 35:4,5 35:11,16 38:1 38:11,18 40:25 41:2,21 42:13 43:18,19 46:23 47:7,7 48:12 48:14,16,23 49:14,18,20,22 50:9,14,20,21 51:17 timely 25:6 times 7:14,19 today 20:11 told 15:8 36:2 37:11 40:17,20 tomfoolery 39:9 ton 19:12 total 11:18 25:1 48:13,23 49:1 touchstone 42:21 45:11 traced 43:4 tradeoff 35:13 treat 17:23 treated 18:21 treatments 21:19 trial 3:19 7:10 9:12,17 10:12 12:15 13:7 15:2 17:14,22 18:4,6,8 19:9 20:8,15 22:6 22:10,14,16,20 23:8,20 24:10	25:13,15,24 26:10 27:5,12 28:20 29:25 31:15,21,25 32:1,2,3,14,18 32:25 33:6 34:2,8,9,19,22 36:7,20 37:5 37:17,25 38:17 38:18 39:4 41:7,10,12,19 41:19 47:3 49:8 51:24 tried 22:1,2 51:1 trigger 11:15 trouble 9:21 true 13:1 14:11 15:6 37:4 39:1 truly 48:18 try 24:11 40:24 41:6 trying 22:8 36:13 39:14 50:21 Tuesday 1:9 turns 13:19 two 6:7 8:15 11:6 12:24 16:25 17:20 18:16,21 20:5 27:9,10 30:25 38:2 39:17,17 42:22,25 46:20 48:6,22 49:16 two-tiered 45:6 two-year 11:18	undermine 20:21 underneath 17:10 understand 4:1 4:4 6:13 10:10 13:12 24:17 37:1 45:10,25 51:4 understood 6:8 24:18 undertaken 8:20 unfair 10:25 uniquely 22:21 United 1:1,12,20 2:6 19:21 unjustifiable 21:18 unjustifiably 47:5 unpleasant 18:2 unreasonable 23:14 unreasonably 21:13 unrelated 28:4 unsupported 11:4 unusual 37:22 38:16 unwillingness 43:9,11 updated 49:25 upset 34:25 use 3:16 21:8
T			U	V
T 2:1,1 tactic 23:21 take 4:11,13,20 4:22 6:6,7 11:6 11:11 30:11 35:4,5 taken 46:22 talent 47:21 talked 47:25 talking 24:18 37:1 42:24 43:19 talks 19:8 task 44:16 tell 4:19 32:8,22 36:5 38:15,19 39:19 telling 34:18 ten 13:7 25:22 term 3:16 terms 9:7 11:3 11:24 terrible 12:24 test 19:11 Thank 19:16 29:1 51:9,10 52:6,7 theory 30:17 thing 14:1 17:16 23:5 things 10:15			ultimate 25:4 33:16 ultimately 22:22 23:23 25:11,14 unable 36:6 unconscionable 12:20 unconstitutio... 17:19 18:20	v 1:5 3:4 11:16 11:22 17:1 19:7 value 11:20 vanilla 50:9 various 37:9 Vermont 1:3 3:4 3:11 4:5,15,16 5:5,8 6:2 7:22

