IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 13-0584

STATE OF MONTANA,

Plaintiff and Appellant,

v.

STACEY DEAN RAMBOLD,

Defendant and Appellee.

On Appeal from the Montana Thirteenth Judicial District Court
Yellowstone County – Case No. DC 08-628
The Honorable G. Todd Baugh

AMICI CURIAE BRIEF OF LEGAL VOICE, LEGAL MOMENTUM, MONTANA NOW, PENNSYLVANIA NOW, WOMEN'S LAW PROJECT, AND SEXUAL VIOLENCE LAW CENTER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitutional Provisions

Other Authorities

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This Court and the Montana Legislature have set a high standard for protecting the rights of Montanans, particularly children. The District Court's imposition of a sentence that blatantly disregarded Montana law and relied on rape myths raises serious questions about whether justice was served in this case. Judicial reliance on rape myths destroys confidence in the integrity of the judicial system. By addressing the sentencing error, this Court can ensure that a perpetrator is held accountable for his criminal sexual assault of a child incapable of consent. At the same time, this Court can help restore the integrity of Montana's judicial system by holding that reliance on rape myths is an improper basis for sentencing decisions.

Legal Voice, Legal Momentum, Montana NOW, Pennsylvania NOW, Inc., the Women's Law Project, and the Sexual Violence Law Center (collectively "*Amici*") work to advance the legal, social, and economic rights of women. Statements of interest for each organization are set forth in the Appendix. *Amici* file this brief in support of the State of Montana's position. *Amici* respectfully urge the Court to find that the District Court disregarded Montana law as to age of consent and improperly relied on rape myths in sentencing Defendant/Appellee Rambold, creating, as a result, an appearance of prejudice and bias that requires

this Court to use its supervisory authority to remand and reassign this case to a new district judge for resentencing consistent with established Montana law.

II. RELEVANT FACTS

On October 31, 2008, Stacey Dean Rambold, a 49-year-old teacher, was charged with three counts of sexual intercourse, without consent, with C.M., a 14-year-old student. (D.C. Doc. 52 at 1.) Rambold had engaged in numerous grooming activities, such as sharing inappropriate private information about his personal life, driving C.M. home from school, taking C.M. to his home, and rewarding her with inflated grades. (D.C. Doc. 1 at 2-3, 5.)

A jury trial was initially scheduled within months of Rambold's arrest. (D.C. Doc. 8.) Trial was then delayed three times, all in response to Rambold's requests. (D.C. Docs. 17, 19, 21, 23, 26.) Ultimately, after 15 months of painful anticipation, the young victim bowed to the emotional burden of the pending prosecution and committed suicide. (D.C. Doc. 52 at 1; D.C. Doc. 62 at 4.)

On July 16, 2010, the State and Rambold entered into a deferred prosecution agreement in which Rambold admitted to one count of sexual intercourse without consent. (D.C. Doc. 35 at 2.) Under that agreement, the State gave Rambold the opportunity to avoid more serious consequences by completing a sex-offender treatment program. (*Id.*) The agreement specified that if Rambold failed to satisfactorily complete the conditions of deferment, he waived his right to the

victim's trial testimony and agreed that his admission to Count II would be admissible. (*Id.* at 12, 15.) Even given the opportunity and incentive of the deferred prosecution agreement, Rambold failed to comply with the terms.

In November 2012, the State was notified of Rambold's dismissal from the sex-offender treatment program. (D.C. Doc. 40.) The grounds for his dismissal included missed sessions, unsupervised contact with minors, and undisclosed sexual relations with an adult female. (D.C. Doc. 62 at 11-12.) The State then moved to revoke the deferred prosecution agreement, and Rambold faced trial on the original charges. (D.C. Doc. 41.) Plea negotiations ensued, and on April 15, 2013, Rambold pled guilty to one count of sexual intercourse without consent, with the understanding that the State would be recommending a 20-year sentence with 10 years suspended. (D.C. Doc. 47 at 3, 4.)

Instead, at the sentencing hearing on August 26, 2013, the District Court (Honorable G. Todd Baugh) sentenced Rambold to 15 years, with all incarceration suspended except for 31 days, with credit for one day served. (D.C. Doc. 62 at 47.) In reaching this decision, the District Court stated that C.M. was a "troubled youth, but a youth that was probably as much in control of the situation as was the Defendant, one that was seemingly, though troubled, older than her chronological age." (D.C. Doc. 62 at 45, 46-47.) In later speaking with the press, Judge Baugh noted that "[i]t was horrible enough as it is just given her age, but it wasn't this

forcible beat-up rape." Matt Pearce, *Hundreds Rally Against Montana Judge in Rape-Suicide Case,* L.A. Times, Aug. 29, 2013, *available at* http://articles.latimes.com/2013/aug/29/nation/la-na-nn-montana-rally-20130829.

Judge Baugh's statements were criticized on local, state, national, and international stages.[1] In response, Judge Baugh issued an apology.[2] In doing so, he acknowledged that his statements were "demeaning of all women" and

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[1] *See, e.g.,* Greg Tuttle, *Baugh addresses media at unusual hearing in Rambold rape case*, billingsgazette.com, Sept. 6, 2013, *available at* http://billingsgazette.com/news/local/crime-and-courts/baugh-addresses-media-at-unusual-hearing-in-rambold-rape-case/article_719fe5f8-78da-5878-bc89-148dcf0cf42a.html (reporting national outrage); John Grant, *Rally set today in Butte to protest judge's light rape sentence*, The Montana Standard, Aug. 30, 2013, *available at* http://mtstandard.com/news/local/rally-set-today-in-butte-to-protest-judge-s-light/article_4858dc7c-111f-11e3-b0c5-001a4bcf887a.html (quoting Butte commissioner Bill Anderson: "He isn't a local judge, but this reflects badly on all of us in Montana."); Max Ehrenfreund, *Montana judge to reconsider 30-day sentence for Stacey Rambold, who admitted rape*, www.washingtonpost.com, Sept. 4, 2013, *available at* http://www.washingtonpost.com/national/montana-judge-to-reconsider-30-day-sentence-for-stacey-rambold-who-admitted-rape/2013/09/04/9d85d200-1583-11e3-a2ec-b47e45e6f8ef_story.html (noting that the Editorial Board joined with others in calling for Judge Baugh's resignation); *Montana judge's remarks about raped teen prompt outrage,* BBC News, Aug. 29, 2013, *available at* http://www.bbc.co.uk/news/world-us-canada-23882735; Laura Zuckerman, *Hundreds rally to protest Montana judge over 31-day rape sentence*, reuters.com, Aug. 29, 2013, *available at* http://www.reuters.com/article/2013/08/29/us-usa-montana-rape-idUSBRE97S1AP20130829.

[2] Hon. G. Todd Baugh, Letter to the Editor, The Billings Gazette, Aug. 28, 2013, *available at* http://billingsgazette.com/news/local/letter-of-apology-from-judge-g-todd-baugh/pdf_5bb2c5d5-90d8-556a-a2e4-5e2174d23eab.html.

"irrelevant to the sentencing."[3] Under mounting criticism, the District Court attempted to schedule a resentencing, conceding that the imposed sentence was likely illegal because it did not comply with mandatory minimum sentencing requirements. (D.C. Doc. 56 at 1.) This Court canceled the District Court's order because the District Court lacked authority to revise a sentence that had already been issued. (D.C. Doc. 65 at 2.)

III. ARGUMENT

A. Montanans Have Consistently Protected Child Victims of Sexual Assault.

Montana has consistently acted to protect the state's children from the physical, emotional, and psychological harm that can result from sexual contact between minors and adults. It did so by clearly and unambiguously codifying an age of consent that protects children who are incapable of consenting to sexual conduct. Specifically, as it relates to this case, Montana law establishes that individuals under the age of 16 are legally incapable of consenting to sexual activity with individuals significantly older than themselves. In fact, as early as 1954, the Montana Supreme Court confirmed that under Montana law:

> [T]he consent of the female, the lack of knowledge of her age, or even her misrepresentation as to her age, and the lack of chastity of the female, and even the fact that she was at the time an inmate of a house of prostitution, are all immaterial matters; ***a conviction depends solely upon proof of intercourse and nonage*** . . . .

[3] *Id.*

State v. Reid, 127 Mont. 552, 562, 267 P.2d 986 (1954) (emphasis added; internal quotation marks and citation omitted).

Montana's current sexual assault laws have existed, without substantial revision, for over 20 years. Since at least 1991, the Montana Legislature has progressively *increased* the minimum and maximum sentences for sexual assault crimes, and related fines. Where certain aggravating factors occur, such as the extreme youth of the victim or the occurrence of multiple perpetrators, increased penalties are imposed. *See, e.g.,* Mont. Code Ann. § 45-5-503(3)(c)(i) (repeat offender's crime may be punishable by death); *id.* § 45-5-503(4)(a)(i) (where victim is 12 or younger and offender is 18 or older, punishment includes 100 years' imprisonment, the first 25 years of which may not be suspended or deferred). At no point in the past several decades has the State of Montana sought to decrease penalties for adults who have sex with children.

A court has no authority to impute consent and override the statutory declaration that age is per se determinative of the crime and the penalty. Therefore, a court may not override the letter of the law, as the District Court did in this case, through application of biases and myths that blame the victim. The District Court's perception of the victim's maturity and character are irrelevant.

B. Rape Myths Are a Form of Gender Bias That Destroy the Integrity of the Judicial Process and Contravene Montana Law.

Rape myths are forms of gender bias that have no place in a justice system that strives to provide an impartial forum for all participants. Indeed, "[w]hen people perceive gender bias in a legal system, whether they suffer from it or not, they lose respect for that system, as well as for the law." Hon. Sandra Day O'Connor, *The Quality of Justice*, 67 S. Cal. L. Rev. 759, 760 (1994). Relevant here, rape myths have no place in Montana's jurisprudence, both because they have been discredited by social science and because they have been rejected by the Montana Legislature. To this end, this Court has previously acknowledged the harm of gender bias, finding that "[i]t is bad enough when attorneys inject gender bias and sexual stereotyping into legal proceedings; it is unacceptable when the court wholly or partially premises its decision on such erroneous preconceptions." *In re Marriage of Davies*, 266 Mont. 466, 481, 880 P.2d 1368 (1994).

Rape myths are "attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women." Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 Psychol. of Women Q. 133, 134 (1994). Many of these myths blame the victim, trivialize the seriousness of sexual assault, or excuse the assailant's behavior. *See, e.g.,* Martha R. Burt, *Rape Myths and Acquaintance Rape,* in *Acquaintance Rape: The Hidden Crime* 27 (2001). They are tied to biased

stereotypes about women and the notions of how they should behave before, during, and after rape. *See, e.g.,* Kristine M. Chapleau et al., *How Ambivalent Sexism Toward Women and Men Supports Rape Myth Acceptance*, 57 Sex Roles 131-36 (2007). These sexist beliefs perpetuate inequality between the sexes, thwart legislative intent to protect vulnerable members of society, and undermine public trust and confidence in the courts.

1. Blaming the Victim.

Focusing on the actions of the victim is a hallmark of early common-law rape jurisprudence. Victim-blaming is such a prevalent phenomenon, both consciously and unconsciously, that the justice system must make deliberate efforts to avoid it (*e.g.*, by barring evidence of a victim's previous sexual behavior through rape shield laws). Historically, rape laws were based on the false belief that rape is rare and women are likely to lie about it. *See, e.g.*, 3A John H. Wigmore, *Evidence* § 924a, at 737 (Chadbourn rev. ed. 1970) (recommending mandatory psychiatric evaluation for all rape complainants to assess whether the victim "suffers from some mental or moral delusion or tendency . . . causing distortion of the imagination in sex cases"). Unfortunately, suggesting that the victim is to blame for being raped remains a persistent myth, at times adopted by the judiciary. *See Catchpole v. Brannon,* 42 Cal. Rptr. 2d 440 (Cal. Ct. App. 1995) (trial judge faulted victim for not resisting attacker and suggested victim sought

and welcomed attacker's attention; ruling reversed and case reassigned to new judge on remand due to judicial bias).

In addition to acting as a deterrent to victims reporting sexual crimes, focusing on the victim's actions has been discredited by social science as a viable way to determine credibility. Sexual assault victims often suffer a variety of physical, psychological, and emotional symptoms immediately and in the long term. Patricia L. Fanflik, *Victim Responses to Sexual Assault: Counterintuitive or Simply Adaptive*, Am. Prosecutors Res. Inst., Nat'l Dist. Att'ys Ass'n 5 (2007). These symptoms may include fear, anxiety, anger, self-blame, dissociation, guilt, loss of trust, flashbacks, PTSD, depression, phobias, panic disorder, and obsessive compulsive disorder. Shirley Kohsin Wang et al., *Research Summary: Rape: How Women, the Community and the Health Sector Respond* 2 (2007). In any case, a victim's response to sexual assault should not dictate the judgment of the court. Indeed, the fact that a victim may not act the way a judge thinks a rape victim should act does not make the perpetrator any less of a criminal, and it should not be the basis for any determination of credibility or culpability.

2. The Myth of the Nonviolent Rapist and Implied Consent.

There is also a lingering myth that a rape must involve physical violence in addition to the nonconsensual sexual act itself in order to be either a "real rape" or harmful. Not only has this been shown to be false in the vast majority of cases, it

ignores the fact that rape, in and of itself, is an act of violence that often causes psychological damage that is longer lasting than a bruise or broken bone. *See, e.g.*, Lynn Hecht Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, 20 Fordham Urb. L.J. 439 (1992).

A national study found that an acquaintance of the victim committed almost 80% of rapes, 70% of victims reported no physical injuries, and only 4% had serious physical injuries. Nat'l Victim Center & Crime Victims Res. & Treatment Ctr., Med. Univ. of S.C., *Rape in America* 5 (1992) ("Rape in America"). Another study showed that only about half of all victims of rape even attempt to physically resist their attackers, often due to other factors such as fear, intoxication, etc. Bonnie S. Fisher et al., *The Sexual Victimization of College Women* 19-21 (2000). This overwhelming lack of additional physical violence in conjunction with the act of rape does not lead to a conclusion that these rape victims are not victims of violence or that they do not suffer serious injuries as a result. Indeed, in one major national study, 31% of victims developed Rape-Related Post Traumatic Stress Syndrome, 30% experienced major depression, 33% considered suicide, and 13% actually attempted suicide. Rape in America at 8.

3. The Lolita Effect and Power Dynamics.

Another rape myth that unfortunately exists is the "Lolita Effect," which involves simultaneously imposing social pressure for girls to behave in a hyper-

sexualized manner and then blaming and shaming those girls for their sexuality. *See* M. Gigi Durham, *The Lolita Effect: The Media Sexualization of Young Girls and What We Can Do About It* (2008). Indeed, there is a persistent "Lolita" myth stemming from a bias against girls who are viewed as predatory due to their prior sexual experience or sexualized appearance, immortalized by Vladimir Nabokov's tale of Humbert Humbert's sexually abusive "relationship" with his stepdaughter, Lolita. The myth is but a fiction.

Power disparity, such as that between a teacher and student, makes the child vulnerable to sexual coercion and makes the child's seemingly voluntary sexual activity truly nonconsensual. *See* Jacqueline E. Darroch et al., *Age Differences Between Sexual Partners in the United States,* 31 Fam. Plan. Persp. 160, 163 (1999). This power disparity becomes even greater in an adolescent who suffers from the common childhood affliction of low self-esteem. *See* Lewis Bossing, *Now Sixteen Could Get You Life: Statutory Rape, Meaningful Consent, and the Implications for Federal Sentence Enhancement*, 73 N.Y.U. L. Rev. 1205, 1239 (1998). Indeed, such early and coerced sexual interaction is associated with an increased tendency to, among other things, suicidality. Barbara Vanoss Marin et al., *Older Boyfriends and Girlfriends Increase Risk of Sexual Initiation in Young Adolescents*, 27 J. of Adolescent Health 409, 411 (2000).

C. The District Court's Erroneous Reliance on Rape Myths Poses a Threat to Sexual Assault Survivors' Confidence in the Judicial System.

The District Court erroneously relied on rape myths in three principal respects in determining Rambold's sentence and, as a result, imposed an illegal sentence on Rambold:

First, the District Court judge erred by considering the absence of violence as some form of implied consent, in sentencing. Specifically, the District Court's statement that Rambold's crime was not a "forcible, beat-up rape" trivializes Rambold's actions and distracts from the fact that Rambold was a 49-year-old teacher in a position of power who took advantage of, and sexually assaulted, a child who was incapable of consent as a matter of law, and unable to defend herself psychologically or physically.

Decades ago, the Montana Legislature removed the requirement of force or violence from the definition of the crime of sexual assault, which focuses on the fact that the act of sexual contact without consent is itself an assault, whether or not it includes violence. Although the Montana criminal code provides increased penalties for sexual assaults that involve bodily injury, the crime of sexual assault itself does not require any evidence of violence in addition to the sexual contact itself. Even if the victim were old enough to legally consent, the provisions generally applicable to sexual crimes state that "[r]esistance by the victim is not required to show lack of consent." Mont. Code Ann. § 45-5-511(5). In addition,

the definition of "bodily injury" includes "mental illness or mental impairment," evidencing that the Montana Legislature recognizes that not all injury resulting from sexual assault is physical or visually evident. Mont. Code Ann. § 45-2-101(5). In sum, the absence of violence is not a proper consideration in sentencing, and its consideration here undermines the Montana Legislature's reforms.

Second, the District Court judge erred by considering the victim's actions as somehow inconsistent with his view of how a 14-year-old should behave, or inconsistent with her legal status as a 14-year-old minor who lacks the capacity to consent. Specifically, in stating that the victim was "seemingly though troubled, older than her chronological age," the District Court judge implied that the statutory age of consent does not apply to every 14-year-old. Even as the District Court judge acknowledged that the victim was likely more vulnerable even than others her own age, as evidenced by her suicide before trial, the judge also implied that she had some form of control over the relationship and therefore deserved a portion of the blame.

Third, the District Court judge erred by not recognizing that in addition to the victim's incapacity to consent, a significant power disparity existed between the perpetrator and the victim. Specifically, the District Court judge stated that the victim was "as much in control of the situation" as Rambold. That is simply not

the case. Rambold was the victim's teacher, and almost 35 years her senior. According to the testimony of other students and teachers at the school, Rambold was a teacher who gave the victim grades that she did not earn, got her excused from work and discipline from other teachers, and gave her gifts and special privileges. Rambold cultivated the relationship with the victim and controlled their interactions.

This young girl, whom even the District Court judge described as "troubled," experienced such psychological and emotional damage that she ultimately took her own life before the case even came to trial. For the District Court judge to state overtly that the victim was as much in control of the situation as Rambold is insupportable as a matter of fact and law, given the victim's age and her particular vulnerability.

Children and adolescents are vulnerable to coercion and social pressure by adults and figures of power. While children are able to process and handle many parts of their lives when in controlled situations, those same children, and even teenagers, have not fully developed the emotional and psychological maturity to handle the highly stressful, emotional, and coercive situation of having an adult make sexual advances. *See, e.g.*, Marin, *supra*, at 411; Jennifer Ann Drobac, *Developing Capacity: Adolescent "Consent" at Work, at Law, and in the Sciences of the Mind*, 10 U.C. Davis J. Juv. L. & Pol'y 1 (2006). This is precisely the reason

that the Montana Legislature established a strict age of consent. The District Court contravened that legislative intent by stating that a 14-year-old victim had as much control over the situation as a teacher 35 years her senior.

In sum, not only did the District Court judge's erroneous reliance on rape myths lead to an illegal sentence, but the District Court judge's public statements result in a chilling effect on other victims of sexual assault. If sexual assault victims are unable to trust and rely on the justice system to properly weigh the relevant factors in addressing sexual assaults, victims will lose confidence in the integrity of the judicial process.

D. On Remand, the Supreme Court Should Use Its Supervisory Control to Reassign the Case to a New Judge.

This Court should exercise its supervisory authority to remand and reassign this case to a new District Court judge for purposes of Rambold's resentencing. Judge Baugh's actions have not only caused Montana citizens (as well as others) to question whether prejudice or bias affected the outcome in this case, they have also caused many to question the fairness of our justice system. Given these perceptions and beliefs, reassignment upon remand is the only possible action to remedy this result.

1. The Court Has Supervisory Authority to Remand and Reassign to a New Judge.

While remand to a new judge is not the ordinary remedy employed when error is found in a District Court proceeding, it has been deemed appropriate in "unusual circumstances" such as those presented here. *Coleman v. Risley*, 203 Mont. 237, 249, 663 P.2d 1154 (1983) (citing *United States v. Arnett*, 628 F.2d 1162, 1165 (9th Cir. 1979)). The *Coleman* court adopted three factors for determining whether reassignment is appropriate:

> (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Id.

Subsequently, the Montana Legislature amended Montana Code Annotated Section 3-1-804(12), "substitution of district judges," to include the provision that "in criminal cases, there is no right of substitution when the cause is remanded for resentencing." This Court concluded that the plain meaning of the statute precluded substitution of a District Court judge when a cause of action is remanded for resentencing. *State v. Wilson*, 250 Mont. 241, 247, 818 P.2d 1199 (1991) (rejecting defendant's argument that Court should order reassignment or allow substitution based on errors in lower court proceeding). When this Court next

reviewed remand for resentencing in a criminal action, it did not constrain its analysis to Section 3-1-804. *State v. Smith*, 261 Mont. 419, 445-46, 863 P.2d 1000 (1993) (ordering remand and reassignment for resentencing in capital case based on *Coleman* factors alone). The apparent conflict between *Wilson* and *Smith* was recognized in 2003. *State v. Mason*, 2003 MT 371, ¶¶ 38-39, 319 Mont. 117, 82 P.3d 903 (2003) (overruled on other grounds) (concluding that under either standard defendant was not entitled to reassignment on remand).

Amici urge the Court to recognize that, as applied here, *Wilson* and *Smith* do not necessarily conflict. Section 3-1-804(1) grants each adverse party in any action the right to one substitution of a District Court judge. Section 3-1-804(12) proscribes this entitlement in criminal cases upon remand for resentencing. But the statute does not limit the ability of this Court, in its broad authority, to *order* remand and reassignment. Mont. Const. art. VII, § 2; *see also Smith v. Mahoney*, No. CV 86-198-M-CCL, 2007 WL 869624, at *8 (D. Mont. Mar. 20, 2007) (holding that remand to a new judge does not violate Montana Code Annotated Section 3-1-804(1)(g), which precludes "substitutions by the parties *as of right*" (emphasis in original)). *Amici* thus urge application of the *Coleman* factors to support remand and reassignment of this case.

2. Application of the *Coleman* Factors Provides for Remand and Reassignment.

The circumstances in this case satisfy the *Coleman* factors. First, in sentencing Rambold, the District Court judge stated that C.M. was a "troubled youth, but a youth that was probably as much in control of the situation as was the Defendant, one that was seemingly, though troubled, older than her chronological age." (D.C. Doc. 62 at 45, 46–47.) Then, in a statement to *The Los Angeles Times*, Judge Baugh further explained that "[o]bviously, a 14-year-old can't consent. I think that people have in mind that this was some violent, forcible, horrible rape. It was horrible enough as it is just given her age, but it wasn't this forcible beat-up rape." Pearce, *supra*.

These statements indicate that the District Court judge apparently has a personal view of the definition of rape that is in conflict with Montana law and the intent of the Legislature in enacting the applicable statutory scheme governing sexual assault. Given the District Court's public expression from the bench of his personal opinion regarding the facts of this case, it will likely be difficult for the District Court judge to put aside his biased perception of rape and the victim on remand.

Second, local and national media coverage of Rambold's sentencing and the District Court judge's statements makes it impossible for the appearance of justice to remain were the Court to remand without reassignment. *See, e.g., Washington v.*

Mont. Mining Props., Inc., 243 Mont. 509, 516, 795 P.2d 460 (1990). In *Washington*, the defendant moved to disqualify the judge because the plaintiff's counsel employed the judge's son as an intern. *Id.* at 512-13. While the motion was pending, the judge was seen at a football game having a brief conversation with plaintiff's counsel. *Id.* A reporter witnessed the exchange and published an article regarding the case and the disqualification proceeding. *Id.* at 514. The disqualification motion was denied, but this Court ultimately determined that use of its supervisory control was appropriate to reassign the case on remand because, as combined, the circumstances "snowballed" into an appearance of impropriety that needlessly undermined public faith in the administration of justice. *Id.* at 516. Of particular importance to the Court was the newspaper article, which made public the District Court judge's conduct such that public trust in the judge being free from impropriety became "a virtual impossibility." *Id.*

Amici have identified articles at the state, national, and international level concerning this case, many of which indicate a lack of confidence in Montana courts. It is the mandate of this Court to protect the integrity of the judiciary as a whole. When Rambold was sentenced to less than the mandatory minimum based on outdated and illegal standards of proof for sexual assault, that integrity was threatened. There is simply no reasonable way for the District Court judge to walk back his statements so that the appearance of justice is preserved.

Third, reassignment for resentencing would not cause waste or duplication out of proportion to the gain in preserving the appearance of fairness because Rambold entered a guilty plea. This case does not present the situation where the record is so extensive that reassignment would force a new District Court judge to wade through mounds of testimony and evidence. *See, e.g., Coleman*, 203 Mont. at 250. Here, a new District Court judge should be able to review the parties' briefing and court record without unreasonable waste or duplication. Moreover, because of the very bright spotlight on this case, any waste or duplication in review and determination by a new District Court judge would still pale in comparison to the gain in the appearance of fairness.

Indeed, this case presents precisely the type of unusual circumstances where use of the Supreme Court's extraordinary supervisory power to remand and reassign to a different judge is appropriate. Here, a child of just 14 years of age, who was preyed on by a man 35 years her senior, was first blamed for her own abuse and then discredited by the District Court judge expressing the view that her sexual assault did not rise to the gravity of harm that justifies even the minimum of legislative protection for victims of similar abuse. The public response to Rambold's sentencing was swift and definitive. Therefore, this Court has both the authority and precedent to remand and reassign resentencing in a criminal case to a different District Court judge. *Amici* urge the Court to use that authority here

because no other remedy exists to correct the grave injustice of this sentence, both as a matter of law in sentencing, and as a matter of public trust in the judicial process.

IV. CONCLUSION

Amici respectfully urge the Court to exercise its broad supervisory powers to remand and reassign this matter to a new District Court judge for the purpose of conducting a resentencing that comports with established Montana law, including Montana's long-established practice of ignoring rape myths and protecting Montana's children.

Respectfully submitted this 12th day of December, 2013.

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APPENDIX

Legal Voice is an organization dedicated to upholding women's legal rights to equality, safety, self-determination, and bodily autonomy. Formerly known as the Northwest Women's Law Center, Legal Voice is a regional, nonprofit public interest organization that works to advance the legal rights of all women and girls in the Northwest through litigation, legislation, education, and the provision of legal information and referral services. Since its founding in 1978, Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country.

In Montana, Legal Voice (then the Northwest Women's Law Center) served as co-counsel in *Gryczan v. State of Montana*, and has appeared before this Court as *amicus*, most recently in *State of Montana v. Donaldson, Snetsinger v. Montana University System*, *Stoneman v. Drollinger*, and *Baxter v. State of Montana*.

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women, www.legalmomentum.org. Founded in 1970 as NOW Legal Defense and Education Fund, Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. Legal Momentum has long engaged in efforts to eliminate gender-motivated violence, including sexual assault, and has a longstanding commitment to addressing inequality and gender bias in state and federal judicial systems. Legal Momentum was instrumental in drafting and

passing the Violence Against Women Act in 1994 and its subsequent reauthorizations in 2000, 2005, and 2013. The organization has served as counsel and joined *amicus curiae* in numerous cases to support the rights of victims of sexual assault and other forms of gender-motivated violence.

Legal Momentum's award-winning National Judicial Education Program ("NJEP"), founded in 1980, was the catalyst for the nationwide formation of state Supreme Court task forces on gender bias in the courts, including the Montana Supreme Court Gender Fairness Task Force, which reported in 2000. NJEP has a particular focus on cases involving sexual assault and has developed several judicial education curricula, DVDs, and publications on all aspects of this issue. NJEP's resources, such as its model curriculum and DVD, *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault,* and its publication, *Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case,* are in use throughout the country and may be accessed at www.njep.org. NJEP's Director has written frequently on sexual violence, including: Lynn Hecht Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, 20 Fordham Urban L.J. 439 (1992).

Montana NOW is a Montana-based statewide, grassroots, nonprofit volunteer organization with over 800 contributing and dues-paying members, and

is the state-level chapter of the National Organization for Women. NOW members are women and men, young and old, all colors, classes, and backgrounds, working together to bring about equal rights for all women. Montana NOW has a long history of working for civil rights for women and other minority groups. Over the years, Montana NOW has worked closely with other organizations to educate the public on key issues affecting women and their families. Among the many issues critical to women's and children's lives, Montana NOW has been a strong advocate for the enforcement and improvement of laws in Montana covering sexual assault, domestic violence, education, and child abuse. Montana NOW has worked in coalition with other organizations in the state on these various issues and others that impact our citizens.

Pennsylvania NOW, Inc. ("Pennsylvania NOW") is a Pennsylvania-based statewide, grassroots, nonprofit volunteer organization with over 13,000 contributors and dues-paying members; it is the state-level chapter of the National Organization for Women (http://panow.org). NOW members are women and men, young and old, all colors, classes, and backgrounds, working together to bring about equal rights for all women. Pennsylvania NOW has a long history of working for civil rights for women and other minority groups. Over the years, Pennsylvania NOW has worked closely with other organizations to educate the public on key issues affecting women and their families. Among the many issues

critical to women's and children's lives, Pennsylvania NOW has been a strong advocate for the enforcement and improvement of laws and policies in Pennsylvania covering sexual assault, domestic violence, education, and child abuse. This advocacy has included several decades of work calling for zero tolerance for all forms of violence against women and children at Penn State University, including the case of child sexual assault and conviction of former PSU football coach Gerald "Jerry" Sandusky and the alleged cover-up of these assaults by the administrators at the University. Pennsylvania NOW has also provided *amicus* briefs in several sexual assault cases, including *Commonwealth v. Fischer* in 1999, *Schieber v. City of Philadelphia* in 2001, and *Reedy v. Evanson* in 2009.

Montana NOW and Pennsylvania NOW previously filed a joint complaint related to this case with the Montana Judicial Standards Commission on September 23, 2013.

The Women's Law Project ("WLP") is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. The core values of the WLP are a belief in the right of all women to bodily integrity and personal autonomy; dedication to listening to women and being guided by their experiences; and commitment to fairness, equality, and justice. WLP is committed to ending violence against women and

children and to safeguarding the legal rights of women and children who experience sexual abuse. To this end, the WLP engages in high-impact litigation, advocacy, and education. WLP provides counseling to victims of violence through its telephone counseling service. We also engage in public policy advocacy work to improve law enforcement and judicial response to rape, including collaborating with the Philadelphia Police Department to improve its response to sexual assault, spearheading the expansion of the FBI's definition of rape for law enforcement data reporting, and testifying before a U.S. Senate subcommittee on the subject of the failure of law enforcement to report and investigate rape cases. WLP has also prepared *amicus* briefs in state and federal criminal and civil challenges to law enforcement and judicial response to sexual assault, including *Commonwealth v. Fischer* (1999), *Schieber v. City of Philadelphia* (2001), *Reedy v. Evanson* (2009), and *Commonwealth v. Claybrook* (2012).

The Sexual Violence Law Center ("SVLC") is a nonprofit organization based in Seattle, Washington that works to create a world without sexual violence. The mission of SVLC is to help sexual assault survivors rebuild their lives by protecting their privacy, safety, and civil rights through legal advocacy and education. SVLC provides services to the community including holistic legal representation, consulting, referrals, legal clinics, and other support for survivors, as well as training advocates, attorneys, university employees, law enforcement,

and judges. Through SVLC's Sexual Assault Legal Services & Assistance program, SVLC has provided direct legal representation or consultations to hundreds of survivors of sexual assault in King County, Washington, and has assisted hundreds of other survivors across the state through legal clinics, publications, and a legal information and referral hotline. SVLC is committed to ensuring that all victims of sexual violence have access to justice and are treated fairly and respectfully within the legal system.

CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing *Amici Curiae* Brief by sending via overnight delivery, addressed to the following:

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DATED this 12th day of December, 2013.

Vanessa S. Power

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(a) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points and is double-spaced, except for footnotes and for quoted and indented material; the word count calculated by Microsoft Word for Windows is 4,799 words, excluding the cover page, tables of contents and authorities, certificate of service, Appendix, and this certificate of compliance.

Dated this 12th day of December, 2013.

Vanessa S. Power