

Kogan served on the Florida Supreme Court from 1987 to 1998 and has had a distinguished career as a prosecutor, criminal defense lawyer, and appellate litigator. Prior to serving on the Supreme Court, He served as Chief Prosecutor of the Capital Crimes Division of the Miami Dade State's Attorney Office as well as the Administrative Judge of the Criminal Division in Florida's Eleventh Judicial Circuit. He also has served the Florida Bar in Ethics and Disciplinary matters, and has taught Trial Advocacy both at the Florida State College of Law and to prosecutors and public defenders around the country. He has extensive experience in both criminal defense and legal ethics and has published articles on the failures of the criminal justice system. During his career he has had personal involvement in approximately 1200 capital cases.

- Honorable Rudolph J. Gerber, a member of the Arizona Bar for 37 years, has served as a prosecutor, Arizona trial court judge, and on its Court of Appeals for 13 years. Now a professor at Arizona State University, Professor Gerber drafted Arizona's death penalty law. He is the recent author of *The Top Ten Death Penalty Myths: The Politics of Crime Control*, R. Gerber & J. Johnson (Praeger: 2007) and has consulted with the Department of Justice concerning potential improvements to the capital punishment system.

- Charles Ogletree is the Jesse Climenko Professor of Law at Harvard Law School and the Executive Director of the Charles Hamilton Houston Institute for Race and Justice. Professor Ogletree has argued cases before the United States Supreme Court, the Circuit Courts of Appeal, and various state courts on capital punishment, indigent defense, and criminal defense counsel performance standards. Professor Ogletree is the author of numerous publications on criminal justice, indigent defense, and capital punishment, including “*Beyond Justifications: Seeking Motivations to Sustain Public Defenders,*” 106 *Harvard Law Review* 1239 (1993); and *From Lynch Mobs to the Killing State: Race and the Death Penalty in America*, C. Ogletree & A. Sarat, eds. (NYU Press: 2006). In addition to his extensive academic contributions in these subject areas, Professor Ogletree has served on national bodies, including the American Bar Association, the NACDL and the American Association of Law Schools regarding the performance standards for criminal defense counsel.
- Eric M. Freedman is the Maurice A. Dean Distinguished Professor of Constitutional Law at Hofstra Law School. Professor Freedman was the Reporter for the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Capital Cases. He is also the author of *Habeas Corpus: Rethinking the Great Writ of Liberty*

(NYU Press: 2002). Professor Freedman has a longstanding commitment to the rights of capital defendants, including adequacy of capital defense counsel. He is also a nationally-recognized expert on the writ of habeas corpus.

- Elizabeth A. Semel is a Clinical Professor at the University of California, Berkeley School of Law, and Director of the Berkeley Law Death Penalty Clinic. Between 1997 and 2001, Professor Semel served as the Director of the American Bar Association's Death Penalty Representation Project in Washington, D.C., assuming that position after the defunding of the Resource Centers and the enactment of AEDPA. One of her primary responsibilities was to place post-conviction capital defendants around the country with pro bono counsel, particularly in the southern states, such as Georgia. Professor Semel has written numerous articles and authored numerous Supreme Court Amicus briefs on criminal justice and the death penalty, with a particular focus upon racial discrimination in capital cases.
- Steve Sadow is an attorney practicing in Atlanta, Georgia with over thirty years experience in criminal defense and constitutional law, including extensive experience in the Eleventh Circuit and the Georgia Supreme Court. Mr. Sadow has been active in numerous Georgia and national bar association activities designed to ensure that the criminal justice system

provides indigent defendants with fair and dignified representation under law.

- George H. Kendall is Senior Counsel with Holland & Knight and a Member of the Georgia Bar. Mr. Kendall has served as counsel in capital cases in Georgia and throughout the country since 1980. Mr. Kendall's career includes service as Staff Attorney to the ACLU Eleventh Circuit Capital Litigation Project in Atlanta, Georgia from 1983 to 1988, and as Counsel to the NAACP Legal Defense Fund from 1988 to 2003. During the mid to late 1990's, Mr. Kendall was lead counsel in several Georgia capital post-conviction cases, and has extensive familiarity with the effects of the Georgia Resource Center's financial crisis and the passage of AEDPA.

Amici request leave to submit a brief, which is submitted simultaneously with this motion, to address important historical circumstances pertinent to the issues before the Court, and in particular, the 1995 defunding of the Federal Resource Centers and the 1996 passage of AEDPA, and how the convergence of those events had a particularly catastrophic impact on Mr. Troy Davis' state habeas corpus proceedings. Several of the *Amici* have had immediate experience with the effect of the defunding of the Georgia Resource Center, and all of the *Amici* have a strong background and interest in the administration of criminal justice, including in capital cases.

CONCLUSION

For the reasons set forth above, *Amici* Hon. Gerald Kogan, Hon. Rudolph Gerber, Professor Charles Ogletree, Professor Eric Freedman, Professor Elizabeth Semel, and Attorneys Steve Sadow and George Kendall request that the Court grant this motion for leave and accept the accompanying *amicus curiae* brief for filing.

The Petitioner has consented to the filing of this brief, and the Respondent has declined to consent.

Dated: November 15, 2008

Respectfully submitted,

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

IN RE: TROY ANTHONY DAVIS,)
Petitioner)
)
)
)
)

Case No. 08-16009-P

CERTIFICATE OF INTERESTED PERSONS

Counsel hereby certifies that the following have an interest in the outcome of this case:

1. Spencer Lawton, Jr., District Attorney, Trial
2. David T. Lock, District Attorney, Trial
3. Robert E. Barker, Trial Counsel for Mr. Davis
4. Robert Falligant, Trial Counsel for Mr. Davis
5. Nancy A. Askew, Trial Counsel for Mr. Davis
6. Hon. James W. Head, Trial Judge
7. Troy Anthony Davis, Petitioner
8. Thomas H. Dunn, Director, Georgia Resource Center
9. Jason Ewart, Habeas Counsel for Mr. Davis
10. Danielle Garten, Habeas Counsel for Mr. Davis
11. Philip Horton, Habeas Counsel for Mr. Davis
12. Susan V. Boleyn, Counsel for Respondent
13. Mark MacPhail, Deceased

14. Kathleen A. Behan, *Amicus Curiae* Counsel (and former counsel for Mr. Davis).
15. Arnold & Porter LLP, Habeas Counsel for Mr. Davis
16. Mary Elizabeth Wells, Former Counsel for Mr. Davis
17. Hon. Gerald Kogan, *Amici*
18. Hon. Rudolph Gerber, *Amici*
19. Professor Charles Ogletree, *Amici*
20. Professor Eric Freedman, *Amici*
21. Professor Elizabeth Semel, *Amici*
22. Steve Sadow, *Amici*
23. George Kendall, *Amici*

Kathleen A. Behan, Esq.
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

This is to certify that I have this day caused a true and correct copy of the foregoing MOTION OF AMICI FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF OF PETITIONER TROY ANTHONY DAVIS to be served via Federal Express upon the following:

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November 15, 2008