

**IN THE SUPREME COURT OF TENNESSEE
WESTERN DIVISION
AT JACKSON**

SEDLEY ALLEY,)	
)	
Petitioner-Appellant)	No. _____
)	From the Court of Criminal Appeals
v.)	at Jackson
)	No. W2006-001179-CCA-R3-PD
STATE OF TENNESSEE)	
)	
Respondent-Appellee)	

**MOTION FOR LEAVE TO FILE BRIEF OF PROPOSED AMICI CURIAE,
JEANETTE POPP, KAREN POMER, JENNIFER THOMPSON-CANNINO
IN SUPPORT OF SEDLEY ALLEY'S APPLICATION FOR PERMISSION TO APPEAL
URGING REVERSAL OF THE COURT OF CRIMINAL APPEAL'S DECISION**

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In accordance with Tennessee Rule of Appellate Procedure Rule 31, undersigned counsel and amicae respectfully requests permission for leave to file a Brief of an Amicus Curiae in Support of Sedley Alley's Application for Permission To Appeal.

The Amicae are rape victims, family members of rape and murder victims, and/or experienced advocates for victims' rights. They are not family members of the victim in this case, and do not express any view regarding the correctness of the conviction of Petitioner-Appellant Sedley Alley. Instead, the Amicae come before the Court for the sole purpose of offering their unique perspective on the value and wisdom of allowing DNA testing to occur in cases such as Petitioner-Appellant's. For them, when guilt is at issue in a case, finality and closure are elusive concepts. The power of DNA is that it can provide scientific evidence of the "truth" in a case, the truth that provides the finality and closure that victims and families of victims need. Given that, the Amicae urge the Court to allow the DNA testing to go forward in this case. Whether Sedley Alley is innocent as he contends or guilty as the State asserts, DNA testing should be allowed in the interests of truth and finality.

Based on their own personal experiences, the Amicae have come to understand the capacity of DNA testing to resolve disputed issues of fact crucial to the determination of actual guilt or innocence of an accused. Indeed, in each of their cases, DNA was the only tool that identified the actual perpetrator. For one amicus-victim, Ms. Karen Pomer, DNA was able to identify her kidnapper-rapist where she could not. For the other two amicae-victims, Ms. Jennifer Thompson-Cannino and Ms. Jeanette Popp, DNA both exonerated innocent people who had been wrongfully convicted of the underlying crimes and led to the apprehension of the real

perpetrators. Although DNA evidence is not available in most criminal cases, where it is available, the Amicae fervently believe that it should be tested. Unlike many other types of evidence, DNA is capable of getting to the heart of the matter—i.e., who the perpetrator is—or at least confirming or disproving the validity of the evidentiary case against an accused.

The Amicae are not insensitive to the concerns voiced by others, including the need for finality in convictions, the threat of seemingly endless appeals, and the creation of undue administrative burdens. Yet they believe that those concerns are clearly outweighed by the States’—and the victims’ and the family members of victims’—countervailing interests in producing correct results, in identifying and punishing only the guilty, in exonerating and freeing the innocent, and locating and prosecuting the real perpetrators of crimes.

Not testing available DNA also leaves open the real possibility that the actual perpetrators of the crimes remain at large. In many cases, this has led to the creation of new victims—not only the innocent, imprisoned person, who is often the overlooked victim, but also among the public at large, when the perpetrators are free to commit more crimes. Rapists rape more women. Murderers take more lives.


The Amicae also question the adherence to “finality” for finality’s sake. They argue that when the validity of a conviction is drawn into question or when a conviction can be confirmed through available DNA testing but the State refuses to allow it, then for them, there is no “finality” and there is no “closure.” They want the State to allow the testing so that, if the DNA confirms the conviction, they can rest with true finality and closure—to a scientific certainty.

The Amicae therefore urge courts interpreting and applying statutes permitting post-conviction DNA testing, such as Tenn. Code. Ann. §§ 40-30-304 & 305, the statutory provisions

in this case, to construe and apply the statutes in accordance with the express statutory language and in furtherance of the core value of the criminal justice system—and the interest of the victims’ and victims’ families: identifying and punishing the guilty party. Neither the States nor the victims and their families have a legitimate interest in prosecuting, convicting, imprisoning, and, most egregiously, executing an innocent person. DNA testing can prevent that from occurring—and, with the aid of a databank in appropriate cases, can even identify and locate the real perpetrators.

Along with the State, victims of crime have perhaps the greatest interest in seeing that the States identify, prosecute, and convict the actual perpetrators in the crimes against them. Yet none of them wants to be involved in a case—as some of the Amicae here were—in which the wrong person is incarcerated for the crime. The anguish of the crime is compounded by that tragedy, and, in cases involving the death penalty, as in this case, that anguish would be unbearable. The Amicae therefore write to share their perspective—a perspective that is not in the parties’ briefs and, indeed, one that is seldom told. The Amicae submit that sharing it here will assist the Court in reaching a correct judgment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

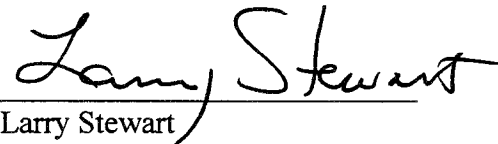
I hereby certify that a true and exact copy of this Motion has been served upon the following:

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on this 26th day of June, 2006.


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DESIGNATION OF ATTORNEY OF RECORD
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The *amici curiae* identified above designate the following attorney of record:

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Mr. Stewart prefers that he be notified of orders or opinions of the Court by e-mail.