

# How will the upper court react? What will the people do in reaction to Judge Yohn's denial of the *Amicus* briefs?

## DEFINITION OF LEGAL TERMS

### **Amicus Curiae,**

### **Amici, Amicus, and Briefs**

In Latin, "amicus" means friend and "curiae" means court, "amici" means friends. "Brief" means a legal statement prepared by a lawyer arguing a case in court. Black's Legal Dictionary defines *amicus curiae*: "A person with a strong interest in or views on the subject matter of an action may petition the court for permission to file a brief ostensibly on behalf of a party, but actually to suggest a rationale consistent with its own views. Such *amicus curiae* briefs are commonly filed in appeals concerning matters of broad public interest; e.g. civil rights cases".

### **Discretion**

According to Webster's Dictionary, discretion means: "the quality of being discreet, being careful about what one does and says."

Black's Law Dictionary defines the word discretion as it is used in a legal context: Judicial and legal discretion: "These terms are applied to the discretionary action of a judge or court and mean discretion bounded by rules and principles of law, and not arbitrary and capricious, or unrestrained. It is not the indulgence of a judicial whim, but the exercise of judicial judgment, based on facts and guided by law, or in the equitable decision of what is just and proper under the circumstances. It is a legal discretion to be exercised in discerning the course prescribed by law and is not to give effect to the will of the judge, but of the law. The exercise of discretion where there are two alternative provisions of law applicable, under either of which court could proceed. A liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of the law."

### **Abuse of Discretion**

Black's Law Dictionary also defines abuse of discretion: "A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law."

In a decision without basis in court precedent, Judge William H. Yohn denied all four *Amicus* (see "*amicus*" at left) briefs filed in support of Mumia. These legal briefs supplement, in detail, legal issues crucial to Mumia's pending petition for *Writ of Habeas Corpus* and go right to heart of why Mumia should be released or at the very least, granted a new trial. The facts addressed, and the law applied illuminate those found in the *Petition for Writ of Habeas Corpus*. The *amici* who have submitted briefs in the case of Mumia Abu-Jamal serve in the classical role of *amici* supplementing the *Petition of Habeas Corpus* by highlighting specific constitutional violations and applying law which demonstrates, from a perspective unique in these proceedings, that the structural defects in the trial mandate a vacating of the death sentence, a reversal of Petitioner's conviction, and his immediate release.

**The denial of the *amici* leave to file their briefs, was an abuse of discretion by Judge Yohn.** The cases Judge Yohn cited himself are devoid of support for his decision. Judges usually cite (*identify as legal precedent or discuss*) cases in which other judges have come to similar conclusions on a similar set of facts and support the position a judge is taking. When a judge is making a decision that is a severe departure from legal precedent, it may be "difficult" for a judge to find cases that *actually* support his position, and this may indicate of abuse of discretion.

**What is abuse of discretion?** (*read "discretion" and "abuse of discretion" at left*) Many try to obscure the simplicity of discretion in the legal realm to make it seem like the person has more power according to the law than he/she really does. Legal precedents establish criteria within which the court can exercise its discretion. On the subject of granting leave to file *amicus* briefs the criteria are well settled law. A judge can abuse the use of discretion by failing to follow well-settled principles and precedents.

**The excuse that the Judge offers for his denial of the *amicus* briefs, is that they are unhelpful.** Not because he has found them without merit. Judge Yohn states: "*I do not question the professional skill possessed by counsel for all amici groups. Nothing in this*

*memorandum or the attached order is intended to reflect on the merits of the proposed amici filings or of petitioner's underlying claims.*"

**When Judge Yohn openly refused to examine the briefs on their merits, he broke with court precedent.** It is a court's duty to examine each *amicus* brief on its merits (*advances the understanding of the issues before the court or adds something to the case*). It is an abuse of discretion to refuse to evaluate the briefs on their merits. The court's duty to do so is dictated by **clear legal precedent**. Each of the cases that Judge Yohn cited explain this precedent, yet he does not adhere to it. The Judge did not make a claim of lack of merit in the case of the *amici* who probe the very heart of Mumia's case.

**Judge Yohn cites cases that do not support his claim on the issue of denial based on adequate representation.** The Judge says, "*First, I find that additional filings by amici in this matter are not necessary because the petitioner is adequately represented.*" The Judge cites two United States District Court of the Eastern District of Pennsylvania cases for the foregoing proposition, *Sciotto* and *Goldberg*. Both cases cite *Liberty Lincoln Mercury*. **But the *Liberty Lincoln Mercury* case doesn't say that *amicus* briefs were not necessary because a petitioner is adequately represented.** If this were a rule and was applied, *amici* would become the self-appointed paramedics of the legal profession, being granted leave to file only where the court determined that counsel was ineffective. This would be a most unfortunate reflection on the profession in general and the existing counsel in particular. Both parties to the controversy would inevitably be hostile to the "*amici*." All this hostility would negate any possible advantage to the court and cast a pall rather than a light on proceedings of significant public interest.

The *Liberty Lincoln Mercury* court actually states, "*When a court determines the parties are adequately represented and participation of a potential amicus curiae is unnecessary because it will not further aid in the consideration of the relevant issue leave to appear has been denied.*" (*Emphasis added*) Contrary to Judge Yohn's

stated Opinion, it is clear, that the *Liberty Lincoln Mercury* court's decision is not dependent on a finding of inadequate representation, but rather the determining factor in its denial of the *amici* is that the *amici* did "...not further aid in the consideration of a relevant issue."

Judge Yohn cites *Waste Management v. Pennsylvania* on the specific issue of whether *amicus* briefs are timely. Would anyone guess after reading his Opinion that the *Waste Management* court welcomed the *amici*, the Environmental Protection Agency (EPA), and ignored the fact that the *amici* submitted their brief 2 1/2 years after the case started? The *Waste Management* court explained, "...that the concept of *amicus curiae* is flexible and that, as long as the *amicus* does not intrude on the rights of the parties, it can have a range of roles; from a passive one of providing information to a more active participatory one."

**Judge Yohn cites no support for his claim that issues can be rejected irrespective of their merits because of the burden of their procedural complexity. The Judge doesn't cite a single case to support such a thing. He doesn't and he can't.**

Judge Yohn is a U.S. District Court Judge. In U.S. District Courts the Federal Rules of Civil Procedure apply. There is **no rule** in the Federal Rules of Civil Procedure about *amici*, so naturally none of the six U.S. District Court cases that are cited by Judge Yohn consider the amount of pages there is in a *amicus* brief or the date an *amicus* brief was submitted, as being controlled by a rule. The U.S. District court cases don't mention any rule because *there is none*. **The court, therefore, relies on legal precedent.** The fact that there is an Appellate Rule for Appeals Court which limits pages and the time allowed for submitting briefs, **has no place** in the considerations of a U.S. District Court.

All of these facts make it particularly stunning that a U.S. District Judge, would choose to state in his conclusion, as Judge Yohn did: "Finally under the relevant appellate rule each brief would be excessive in length

and untimely, **therefore the petitions of amici will be denied as unnecessary and unhelpful.**" (*Emphasis added*) Appellate Rules are exclusively for Appeals Courts and the Appellate rules state, specifically, that they can only be applied in Appeals Courts. Presumably, if the U.S. Supreme Court wanted to make a rule limiting *amici* in U.S. District Courts, it would certainly do so because the U.S. Supreme Court makes changes in the rules all of the time.

**Additionally, Judge Yohn says that he is denying all the *amicus* briefs because he is fearful that, because of the worldwide interest, he will be buried under an avalanche of *amici* if he opens the door.**

Friends of Mumia Abu-Jamal would be justified, frankly, to be alerted by Judge Yohn's attempt to rationalize his "slam shut the courtroom door policy" by feigning the need for self-protection against "world wide interest in this case." A more temperate, reasoned approach in furtherance of the appearance of justice might be expected since the Judge admits that he is cognizant of the fact that the world is watching. It is important to understand that there is a contradiction inherent to Judge Yohn's determination that he is going to deny the *amicus* briefs, specifically, because there is world-wide interest. The Judge's statement is extraordinary in light of the fact that it is almost exclusively in cases of significant public interest that *amici* ask and are granted leave to file *amicus* briefs. (*Please refer to the definition of "amicus curiae" on the other side.*) The extent of the public's interest is actually one of the determining factors the courts regularly use in their consideration of whether *amici* would be beneficial.

**None of the cases that the Judge uses in his attempt to support his decision are about a person in prison. The Judge cites cases about money, cars, turtles, trusts, and liability. Should it matter? Is there any question in anybody's mind that Judge Yohn should not be able to deny the paltry courtesy of evaluating briefs that raise and resolve critical issues in a case of life and of death?**

The Fifth Circuit Court of Appeals took a rather different view on the issue of an *amicus*

brief when it had before it the case of *Stephens v. Zant* 631 F. 2d 397, 406-407 (5th Cir. 1980). (No capital case was even mentioned by Judge Yohn. *Stephens v. Zant* is only mentioned here for purposes of comparison)

The Fifth Circuit Court of Appeals looked to the merits of the issues in *Stephens v. Zant*, and when it reversed and remanded (*sent it back to the district court*), it ordered the District Court to take appropriate action on three issues which were being raised by *amici* for the very first time in a brief filed in the Court of Appeals. The court expressed concern that the issues "may be related to the murder conviction." *As the issues were being raised for the first time on appeal* from the District Court it was inevitable that the three issues involved would raise questions of complex procedural issues on remand, but that did not deter the *Stephens* court from ordering the District Court to consider the issues raised by the *amici*.

(Coincidentally, the NAACP Legal Defense and Educational Fund is the *amici* in the brief in the *Stephens* case and is also one of the *amici* denied by Judge Yohn in Mumia's case.) For the Fifth Circuit Court of Appeal in the case of *Stephens v. Zant*, it was the donut, not the hole. **Justice, not convenience.**

Further, Judge Yohn in the last words of his Opinion claims an "absence of prejudice resulting from a denial of permission for *amici* to file a memorandum of law." He claims that it is in the Petitioner's interest to deny the briefs. While undoubtedly the Petitioner would not be ungrateful for any solicitude on the part of the court, its concern in this instance that "delay occasioned by substantial additional filings will work to the detriment of the petitioner..." is without foundation, as it would have been in *Stephens v. Zant*, also a capital case. Faced with death, delay is rarely a primary source of disturbance to the petitioner.

**Did Judge Yohn exercise his discretion or abuse it when he denied the *amicus* briefs? This is the critical question. The answer has many and serious ramifications for us all and for Mumia's situation in particular.**

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**For information contact Pam Africa,  
International Concerned Family & Friends of Mumia Abu-Jamal**

tel: 215/476-8812; fax: 215/476-7551; PO Box 19709, Phila., PA 19143; icffmaj@aol.com; www.mumia.org