

January 16, 2014

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

**RE: Nomination of Debo Adegbile
Assistant Attorney General of the
Civil Rights Division**

Dear Senators Leahy and Grassley,

We are members of the Supreme Court bar of varying political philosophies and longstanding advocates for the protection of constitutional rights. In this capacity, we write to address an argument raised by friends in the law enforcement community that a lawyer's representation of an unpopular client – in this case, a convicted killer of a police officer who was facing the death penalty – disqualifies him from serving as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

Specifically, we understand that opposition to Mr. Adegbile's nomination has been expressed because of his leadership position at the NAACP Legal Defense Fund (LDF) at the time LDF contended that Mumia Abu-Jamal's constitutional rights had been violated during his capital trial. LDF's advocacy in Mr. Abu-Jamal's case centered around two settled fundamental principles: 1) that, particularly when someone is facing the harshest punishment in our society – a death sentence – that person's trial must be free from racial bias or discrimination; and 2) when considering the ultimate punishment of death, each juror must be allowed to consider, individually, whether or not he or she can find reasons to spare a defendant's life. The federal courts reviewing Mr. Abu-Jamal's case ruled, repeatedly and unanimously, that he was entitled to a new death sentencing hearing free of constitutional error. Because the prosecutors – heeding the request of Officer Daniel Faulkner's widow – declined to seek a new death sentence, Mr. Abu-Jamal was resentenced to life without possibility of parole.

Our system works best when both the prosecution and defense are represented by highly competent legal representation. It is well-established that even the most unpopular defendant requires such representation, particularly when he or she is facing capital punishment. Before Chief Justice Roberts was appointed to the United States Court of Appeals for the District of Columbia, he aided lawyers at his firm in their representation of Florida condemned inmate John Ferguson. Ferguson, with two co-defendants, had been convicted of killing eight persons in 1978. During his 2005 confirmation hearing for Chief Justice, he explained that while lawyers need not take on cases or clients they believe morally questionable, “lawyers don't stand in the shoes of their clients and [] good lawyers can give advice and argue any side of a case.”

Answering the call for competent legal representation, numerous highly regarded attorneys have provided their services to condemned prisoners in recent time, and it has never been thought that such representation is disqualifying of appointment to high government position. For example, Gregory Garre, the former Solicitor General, represented Cory Maples, an indigent condemned Alabama inmate who had been convicted of two counts of capital murder. Maples’ former counsel had failed to appeal his case on a timely basis, and he faced execution with no further review. But for Garre’s successful advocacy before the Supreme Court, Maples would have been executed. *See Maples v. Thomas*, 565 U.S. ____ (2012). Similarly Miguel Estrada, a partner at Gibson Dunn, represented Virginia condemned prisoner Thomas Strickler. A federal district court judge had struck down Strickler’s sentence due to the prosecution’s suppression of impeachment material concerning a key prosecution witness. The Supreme Court affirmed the court of appeals’ reinstatement of the death penalty. *See Strickler v. Greene*, 527 U.S. 263 (1999). While in private practice, former Solicitor General Seth Waxman and current SG Donald Verrilli provided pro bono representation to indigent condemned prisoners. Among other cases, Waxman twice successfully argued the case of Texas inmate Thomas Miller-El that led to Miller-El being awarded a new trial because of racial discrimination during jury selection. *See Miller-El v. Cockrell*, 537 U.S. 322 (2003) and *Miller-El v. Dretke*, 545 U.S. 231 (2005). And General Verrilli successfully represented Maryland condemned inmate Kevin Wiggins, winning a new sentencing hearing because the jury did not learn of important mitigating evidence. *See Wiggins v. Smith*, 539 U.S. 510 (2003). In each of these instances, these attorneys devoted hundreds of hours, on a pro bono basis, to ensure that important legal issues were ably advocated and fully understood by the courts.

Few voices would assert any of these talented and dedicated advocates should be turned away from federal appointment solely because they chose – in the best

tradition of the legal profession – to provide their services to an indigent citizen in cases where the stakes could not have been higher.

Thus, LDF's advocacy on behalf of Mr. Abu-Jamal does not disqualify Mr. Adegbile from leading the Civil Rights Division. To conclude otherwise would send the wrong message to any lawyer who is affiliated, or might be asked to become involved, with a difficult, unpopular case for the purpose of enforcing and preserving important constitutional principles.

In our view, Mr. Adegbile represents the best of our profession. He is a lawyer of the highest quality and integrity. He has worked tirelessly to preserve the principle of equal rights for all. His nomination should not be jettisoned simply because the legal organization he headed represented an unpopular client.

Respectfully yours,

/s/ George H. Kendall

George H. Kendall
Squire Sanders LLP
30 Rockefeller Plaza
New York, NY 10112

/s/ Paul M. Smith

Paul M. Smith
Jenner & Block
1099 New York Avenue, NW
Washington, DC 20001

/s/ David W. DeBruin

David W. DeBruin
Jenner & Block
1099 New York Avenue, NW
Washington, DC 20001

/s/ William F. Sheehan

William F. Sheehan
Goodwin Procter LLP
901 New York Avenue, NW
Washington, DC 20001

/s/ Lisa S. Blatt

Lisa S. Blatt
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004

/s/ Jeffrey T. Green

Jeffrey T. Green
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

/s/ Andrew H. Schapiro

Andrew H. Schapiro
Quinn Emanuel
500 West Madison St., Suite 2450
Chicago, IL 60661

/s/ Jeffrey L. Fisher

Jeffrey L. Fisher
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305

/s/ Peter J. Neufeld

Peter J. Neufeld
Innocence Project
40 Worth St., Suite 701
New York, NY 10013

/s/ Stephen B. Bright

Stephen B. Bright
Southern Center for Human Rights
83 Poplar St. NW
Atlanta, GA 30303