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The Honorable Harry Reid  
Majority Leader, United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader, United States Senate  
361-A Russell Senate Office Building  
Washington, DC 20510

Dear Senators Reid and McConnell:

I write on behalf of the New York City Bar Association, an independent non-governmental organization of more than 24,000 members, to express concern over the Senate's recent vote in opposition to the confirmation of Mr. Debo Adegbile to head the Civil Rights Division of the Department of Justice. The Senate's rejection of Mr. Adegbile's nomination principally on the ground that he represented a death-row inmate is contrary to the fundamental American principle of access to justice and sends a chilling message to the legal profession. It is urgent that the Senate revisit this issue and reconsider Mr. Adegbile's nomination.

Mr. Adegbile's nomination was evidently not opposed by on the ground that he lacked the requisite background and qualifications for the position, but apparently because Mr. Adegbile was involved with Mr. Mumia Abu-Jamal's appeal of his 1982 death sentence, including filing three briefs. Two of the briefs were filed in the U.S. Supreme Court and the U.S. Court of Appeals for the Third Circuit on behalf of the NAACP Legal Defense and Educational Fund as *amici*, and one was filed in the U.S. Supreme Court as counsel for Mr. Abu-Jamal. The briefs raised arguments under the U.S. Constitution and focused on the prosecutor's exclusion of minorities from the jury and the trial judge's instructions to the jury during Mr. Abu-Jamal's trial. Several senators who voted against Mr. Adegbile's nomination explained that they were doing so because Mr. Adegbile had worked on Mr. Abu-Jamal's case.

The Senate's actions with respect to Mr. Adegbile's nomination are inconsistent with the fundamental tenet of the American system of justice that legal representation is guaranteed to everyone who faces a loss of liberty, even those who are unpopular. This view has its roots in President John Adams's representation of British soldiers accused of carrying out the Boston Massacre in 1770. He wrote in his diary that his representation of the soldiers was "one of the most

gallant, generous, . . . and disinterested actions of my whole life, and one of the best pieces of service I ever rendered my country.”<sup>1</sup>

President Adams’s representation of the unpopular is cited as an example of the expectation that the legal profession and the public have of lawyers—to step up and defend even the most despised in our society. Lawyers in modern times have carried out this historic tradition. Chief Justice John Roberts, for instance, represented John Errol Ferguson who was recently executed by the State of Florida for murdering eight people, and former judge and U.S. Solicitor General Kenneth Starr represented Robin Lovitt and Michael Morales who had been sentenced to death by juries in Virginia and California, respectively.

Many law students and members of the bar look up to the work of lawyers on behalf of death-row inmates as upholding the finest tradition of our profession, and law schools and bar associations throughout the country highlight it in an effort to recruit lawyers to represent death-row inmates on a *pro bono* basis. The need for *pro bono* counsel for death-row inmates is especially acute because many prisoners lack effective counsel during trial and post-conviction proceedings.<sup>2</sup> Due in part to efforts by *pro bono* counsel, over a hundred death-row inmates have been exonerated over the years for crimes that they never committed.

The Senate’s vote on Mr. Adegbile’s nomination will deter lawyers from representing death-row inmates and other unpopular clients. The vote also undermines the efforts of law schools and bar associations who have encouraged *pro bono* work in an effort to fill the needs left by governmental budget cuts.

We urge the Senate to reconsider Mr. Adegbile’s nomination on the basis of his qualifications; the Senate should not be sending the message that a lawyer who may at some point want to serve in a public office should refuse to represent a client, no matter how meritorious the case, if that client is unpopular.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Carey R. Dunne", with a horizontal line extending from the end of the signature.

Carey R. Dunne

cc: Hon. Patrick J. Leahy, Chairman, Senate Judiciary Committee  
Hon. Chuck Grassley, Ranking Member, Senate Judiciary Committee  
Hon. Charles E. Schumer  
Hon. Kirsten E. Gillibrand

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<sup>1</sup> David McCullough, *John Adams* 68 (2001).

<sup>2</sup> See American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* 928-30 (Rev. Ed. Feb. 2003).