

April 25, 2014

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: The Recent Debate and Vote on the Confirmation of Debo Adebile for Assistant Attorney General for the Civil Rights Division, Department of Justice

Dear Senators Leahy and Grassley:

We the undersigned law professors write in our individual capacities to express our deep concern about the discourse surrounding the Senate vote on the confirmation of Debo Adebile as Assistant Attorney General for Civil Rights. While we do not take a position on this or any other nominee, we are deeply concerned that the vote and the rationale publicly articulated by a majority of Senators rejecting Mr. Adebile sends a message that goes to several core values of the legal profession. These include the right to counsel, the importance of *pro bono* representation, and the importance of ensuring that constitutional protections are afforded to every criminal defendant regardless of the crimes for which they are accused.

As law teachers we are particularly concerned about the disquieting message conveyed to law students and graduates entering the profession who may fear that their engagement with *pro bono* representation of unpopular clients may imperil their future eligibility for federal government service. Those who rejected Mr. Adebile, while acknowledging his stellar and unquestioned qualifications for the position, repeatedly invoked the fact that Mr. Adebile provided legal representation to an inmate on death row – Mumia Abu Jamal – while Mr. Adebile was a lawyer with the NAACP Legal Defense Fund (“LDF”).

We believe that the criticism of Mr. Adebile, based on his representation of a death row inmate, is unjust and inconsistent with the fundamental tenets of our profession. The Sixth Amendment to the United States Constitution guarantees the assistance of counsel to persons charged with crimes, and all accused defendants are entitled to zealous representation by competent counsel.

The highest calling of any lawyer is to ensure that the Constitution is applied fairly and in accordance with the decisions of the U.S. Supreme Court to every defendant. Thus it is worth noting that Mr. Adebile’s and LDF’s representation of Mr. Abu Jamal successfully vindicated a constitutional infirmity in the instructions given to the jury that

sentenced Mr. Abu Jamal to death. LDF's position was upheld twice by a federal court of appeals.

The debate surrounding Mr. Adegbile's confirmation also threatens to undermine the widely-recognized importance of lawyers providing *pro bono* representation to meet unmet legal needs. Providing representation to defendants on death row is among the most challenging, resource-intensive and critically important *pro bono* counsel a lawyer can provide. Lawyers engaged in this work should be commended rather than denounced for their hard-work and commitment to ensuring that the protections of the Constitution are extended even to those accused of heinous crimes. In fact, according to Standard 4-1.2 of the American Bar Association Standards for the Defense Function "Since the death penalty differs from other criminal penalties in its finality, defense counsel in a capital case should respond to this difference by making extraordinary efforts on behalf of the accused."

The message we extend to our students about the importance of *pro bono* representation is reinforced by the rules of professional conduct in each state, nearly all of which strongly encourage *pro bono*. Recently, New York even instituted a requirement that law graduates demonstrate proof of *pro bono* service for admission to the bar. The presence of a robust *pro bono* practice is also a significant factor considered by many of our students in evaluating which law firms may provide the best work environment upon graduation.

Finally, as every lawyer knows – including the 57 in the U.S. Senate – we are not our clients. The constitutional right to effective assistance of counsel would be turned on its head if the contrary view were advanced. Indeed, had past candidates for public office been held to the Senate's unjust standard, our nation would have been deprived of the likes of President John Adams (who defended British soldiers charged with killing Americans in the Boston Massacre), Justice Thurgood Marshall (who defended countless black men on death row in the Jim Crow South), and Chief Justice John Roberts (who represented convicted serial killer John Errol Ferguson).

Simply put, the rule of law cannot succeed if attorneys are judged guilty by association with their clients. In rejecting a qualified nominee for public service based on conduct which reflects the best of our profession, the Senate has done a grave disservice to the legal profession and those who seek to enter it.

It is our sincere hope that the United States Senate will evaluate future lawyer nominees based on their integrity, experience, professionalism and leadership, and not on the popularity of the clients they represent. To do otherwise, strikes at the core values of the profession which we prepare our students to lead.

(Institutional affiliations are provided solely for identification purposes and should not be interpreted as communicating institutional endorsement.)

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341. Nancy Gertner, Professor of Law, Harvard Law School
342. Llewellyn Gibbons, Professor of Law, University of Toledo
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559. Hope Lewis, Professor of Law, Northeastern University School of Law
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567. Lance Long, Professor of Legal Skills, Stetson University College of Law
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