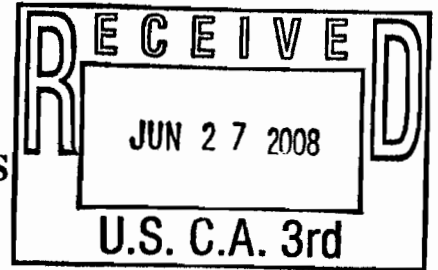


UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



MUMIA ABU-JAMAL,

No. 02-9001

Appellee and Cross-Appellant,

**E-Transmission
Signature to follow**

v.

MARTIN HORN, et al.,

No. 01-9014

Appellant and Cross-Appellee.

DEATH PENALTY CASE

**MOTION TO FILE THE ACCOMPANYING
BRIEF OF *AMICUS CURIAE*
THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
IN SUPPORT OF APPELLEE/CROSS-APPELLANT'S PETITION FOR
PANEL REHEARING AND SUGGESTION FOR REHEARING *EN BANC***

The NAACP Legal Defense & Education Fund, Inc., through undersigned counsel, respectfully Moves to File the accompanying *Amicus Curiae* brief, and in support of this Motion submits the following:

1. *Amicus Curiae* is The NAACP Legal Defense & Educational Fund, Inc.
2. The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit corporation formed to assist African Americans in securing their rights by the prosecution of lawsuits. LDF has a long-standing concern with the influence of racial discrimination on the criminal justice system in general, and on jury selection in particular. We therefore represented the defendants in, *inter alia*, *Swain v. Alabama*,

380 U.S. 202 (1965), *Alexander v. Louisiana*, 405 U.S. 625 (1972) and *Ham v. South Carolina*, 409 U.S. 524 (1973); pioneered the affirmative use of civil actions to end jury discrimination, *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320 (1970), *Turner v. Fouche*, 396 U.S. 346 (1970); and appeared as *amicus curiae* in *Miller-El v. Dretke*, 125 S. Ct. 2317 (2005), *Johnson v. California*, 545 U.S. 162 (2005), *Miller-El v. Cockrell*, 537 U.S. 322 (2003), *Batson v. Kentucky*, 476 U.S. 79 (1986), *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991), and *Georgia v. McCollum*, 505 U.S. 42 (1992).

3. In addition to our jury discrimination work in the United States Supreme Court, LDF was counsel of record in *Wilson v. Beard*, 426 F.3d 653 (3d Cir. 2005). Additionally, LDF submitted an *amicus* brief and presented oral argument in the Panel litigation in the instant matter.

4. Given its expertise, LDF believes its perspective would be helpful to this Court in resolving the issues presented in this case.

5. Undersigned counsel has contacted counsel for the parties in this case, Robert Bryan (Appellee's counsel) and Hugh Burns (Appellants' counsel), to obtain their positions with respect to this motion. Mr. Bryan has informed undersigned counsel that he does not oppose this motion. Mr. Burns has informed undersigned counsel that Appellant takes no position with regard to this motion.

WHEREFORE, counsel requests, on behalf of The NAACP Legal Defense & Educational Fund, Inc., that this Court permit it to file the accompanying *Amicus Curiae* brief.

Respectfully submitted,

JOHN PAYTON
Director-Counsel and President
/s/ Christina A. Swarns
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Dated: June 27, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above motion on the following persons by U.S. Mail, First Class:

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Dated: June 27, 2008