

# URGENT ACTION

**EXECUTION SET, MENTAL DISABILITY AND RACE ISSUES**  
**Andre Cole, a 53-year-old African American man, is scheduled to be executed in Missouri on 14 April. He was sentenced to death in 2001 by an all-white jury. His lawyers say that his mental health has steadily and seriously deteriorated over recent years.**

Anthony Curtis was stabbed to death on 21 August 1998 at the home of **Andre Cole's** former wife (they had divorced in 1995). She was also stabbed in the confrontation, but survived. At Andre Cole's trial in 2001, the jury sentenced him to death for the murder of Anthony Curtis and to three life terms for assault.

The St Louis County jury consisted of 12 white people after the prosecutor dismissed three African Americans from the jury pool. Challenged to give a "race neutral" explanation for his summary dismissal of one of the three, the prosecutor said it was because the individual was divorced and, as such, would be sympathetic to the defendant. The prosecution theory was that there had been a "great deal of animosity" between Andre Cole and his wife, but it did not even question the would-be juror about the circumstances of his own divorce. The man concerned has since said that he had been divorced for 10 years by the time of the trial, and that his divorce involved no animosity. In addition, the prosecution did not dismiss a divorced white man who was paying child support at the time of the trial. Yet the prosecution's central theory was that the murder had occurred after Andre Cole broke into his former wife's home in anger about his child support situation. A black woman selected as an alternate juror (in case of a juror having to withdraw) later described in a sworn statement how the 12 white jurors made racist comments about Andre Cole in her presence, comments she described as "blatant in terms of racial bias".

According to Andre Cole's lawyers, in recent years he has reported having auditory hallucinations, specifically hearing voices through the prison intercom system, the telephone, and his television set. A psychiatrist has opined that Andre Cole has "prominent symptoms of psychosis" and suffers from "gross delusions" which prevent his rational understanding of the reason for and reality of his punishment.

Anthony Curtis's mother opposes the execution, as does Andre Cole's ex-wife, who says that the execution would be "devastating" to her and their children. One of their sons has said: "although I am still angry about the attack against my mom, and am struggling to forgive my father, I do not want to see my father executed. If my father is executed, it will be devastating to my mother, my auntie, my uncle, my brother and to the rest of my dad's family".

**Please write immediately in English or your own language:**

- Calling for Andre Cole's execution to be stopped and his death sentence commuted;
- Expressing concern that Andre Cole was tried by an all-white jury after the prosecutor removed the remaining three black prospective jurors, and at other evidence of racial bias in St Louis County capital cases;
- Noting evidence that Andre Cole's mental disability prevents his rational understanding of his punishment;
- Explaining that you are not seeking to downplay the seriousness of the crime or its consequences.

**PLEASE SEND APPEALS BEFORE 14 APRIL 2015 TO:**

Office of Governor Jay Nixon

P.O. Box 720, Jefferson City, MO 65102, USA

Fax: +1 573 751 1495

Email: via website <http://governor.mo.gov/contact/>

**Salutation: Dear Governor**

**And copies to** diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



# URGENT ACTION

## EXECUTION SET, MENTAL DISABILITY AND RACE ISSUES

### ADDITIONAL INFORMATION

In 2013 President Barack Obama acknowledged the “history of racial disparities in the application of our criminal laws”, including on the death penalty, and US Attorney General Eric Holder pointed to the need to “confront the reality” that “people of colour often face harsher punishments than their peers.” On 29 August 2014, the UN Committee on the Elimination of Racial Discrimination again called on the US authorities to “take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system” and called for a moratorium on executions with a view to abolition. Study after study has shown that race plays a part in who is sentenced to death. In 2012, the American Bar Association issued its findings on Missouri, noting research indicating that racial factors influence prosecutorial and juror decision-making in capital cases in the state.

In 2008, Professor David Sloss at the St Louis University School of Law found that prosecutors in St Louis County in Missouri pursued the death penalty in more than seven per cent of intentional homicide cases, a rate more than 14 times higher than their counterparts in Jackson County (Kansas City), for example. Eleven of the 33 men currently on Missouri’s death row were sent there from St Louis County. Seven of the 11, including Andre Cole, are African American. Less than a quarter of the St Louis population is black, but comprise nearly two thirds of the current inmates on death row convicted in that jurisdiction. Andre Cole’s clemency lawyers have pointed out to Governor Jay Nixon that this is greater than the racial disparities found by the US Department of Justice in its recent investigation into the Ferguson Police Department in Missouri, in which it identified a pattern or practice of racial bias. Ferguson is in St Louis County.

Under the 1986 US Supreme Court decision *Batson v Kentucky*, prospective jurors can only be removed for “race neutral” reasons. If the defence makes a *prima facie* case of discrimination by the prosecution, the burden shifts to the state to provide race neutral explanations. The *Batson* ruling did not end discriminatory tactics by prosecutors during jury selection, as one of the Justices predicted at the time. The latter Justice said in another opinion in 1989 that “*Batson*’s greatest flaw is its implicit assumption that courts are capable of detecting race-based challenges to Afro-American jurors... This flaw has rendered *Batson* ineffective against all but the most obvious examples of racial prejudice”.

Troubling jury selection tactics have occurred in St Louis County cases other than Andre Cole’s, over a prolonged period. For example, the death sentence passed by an all-white jury in 1992 on Herbert Smulls, a black man, was carried out in 2014. The prosecutor had dismissed the only remaining black prospective juror on the grounds that she worked as a mail sorter and that such workers were “very disgruntled, unhappy people” who occupy “the bottom of the employment ladder”. Marcellus Williams, another black defendant, was tried in 2001 by a jury consisting of 11 white jurors and one African American, after the prosecutor dismissed six of the seven African Americans from the jury pool. Kimber Edwards, also black, was sentenced to death by an all-white jury in 2002 after the prosecutor removed all three black prospective jurors. During oral arguments in another case in 2007, the Missouri Supreme Court pointed to the “fairly repetitive problem” of all-white juries occurring at a rate that was “not mathematically possible” given the “substantial African American population” in the county’s population.

There have been 1,404 executions in the USA since judicial killing resumed there in 1977. Missouri accounts for 82 of these executions. There have been 10 executions so far in the USA this year, two in Missouri. Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Andre Cole

Gender m/f: m

UA: 79/15 Index: AMR 51/1400/2015 Issue Date: 8 April 2015