

URGENT ACTION

LEGAL REPRESENTATION IN SPOTLIGHT AS EXECUTION SET
Ledell Lee, aged 51, is due to be executed in Arkansas on 20 April for a murder committed in 1993. There have been serious concerns about his legal representation.

On 9 February 1993, 26-year-old Debra Reese was found dead in her home in Jacksonville, Arkansas. She had been beaten to death. **Ledell Lee**, aged 27, was charged with her murder. His first trial ended in a hung jury in 1994. At a new trial in October 1995, he was convicted and sentenced to death. Three 100 dollar bills were missing from the victim's wallet; the state's theory was that the crime was for financial gain.

After he was charged with the murder, Ledell Lee became a suspect in another murder and three rapes. He was assigned the same two lawyers for all the cases. The judge overseeing the rape cases removed the lawyers from those cases on the basis of a conflict of interest between counsel and defendant. The lawyers asked to be removed from the murder cases, citing an intolerable conflict and a breakdown in communication with their client. The prosecution agreed that "Ledell Lee cannot now obtain a fair trial in the two capital cases" unless the lawyers were relieved. The judge overseeing the Reese murder trial denied the motion. The Arkansas Supreme Court upheld this, over the dissent of two Justices who expressed "dismay" at the decision which they said was "a very grave mistake" and would be "harmful to the confidence of attorneys in our system of jurisprudence in this state".

After the trial, Ledell Lee was appointed a lawyer for his state appeal. He filed a petition claiming inadequacy of the defence lawyers' representation at trial. It was denied. The case moved to the federal courts where in 2003, a judge found that the transcript of the state post-conviction hearing indicated that Ledell Lee's lawyer had been "impaired to the point of unavailability" during the hearing. He ordered that the case be returned to the trial court. The state appealed, but in 2006, the Arkansas Supreme Court remanded the case for a new hearing on the grounds that the lawyer had been drunk during the original proceedings. It held that, contrary to what the state argued, "counsel who is impaired by alcohol abuse cannot be said to be qualified counsel". Among other things, the lawyer had repeatedly been unable to understand questions from the judge, had not been familiar with his own witnesses, forgot basic rules of procedure, failed to tell witnesses to attend, and "rambl[ed] incoherently, repeatedly interjecting 'blah, blah, blah' into his statements". With Ledell Lee represented by newly appointed counsel, another post-conviction hearing was held in August 2007. The lawyers had organized an expert mitigation investigation to pursue the claim that the trial representation was deficient, but presented none of the evidence at the hearing. The judge denied the petition in November 2007. The appeal to the Arkansas Supreme Court was then delayed by five months because his lawyers twice filed briefs that did not conform to the court's rules. The Court referred the lawyers to the Committee on Professional Conduct for possible disciplinary action. The Court then upheld the death sentence in May 2009. In 2016, one of Ledell Lee's two appeal lawyers was taken off the case because he was suffering from bipolar disorder. Another was appointed in August 2016. Ledell Lee is due to be executed on 20 April 2017, one of eight men scheduled for execution in Arkansas between 17 and 27 April.

Please write immediately in English or your own language:

- Calling for clemency for Ledell Lee and for his death sentence to be commuted;
- Expressing concern at the serious issues relating to legal representation provided to Ledell Lee;
- Explaining that you are not seeking to condone violent crime or to downplay its consequences.

PLEASE SEND APPEALS BEFORE 20 APRIL 2017 TO:

The Honorable Asa Hutchinson, Governor of the State of Arkansas
 State Capitol, Suite 250, 500 Woodlane St, Little Rock, AR 72201, USA
 Fax: +1 501 682 3597

Email: <http://governor.arkansas.gov/contact-info/> (use US detail)

Salutation: Dear Governor

Also send 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.

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ADDITIONAL INFORMATION

Before Ledell Lee's trial, his lawyer had moved to prohibit the use of voter registration records as the means by which to choose the pool from which his jury would be selected, arguing that it led to the systematic under representation of African Americans (this was a black defendant/white victim case). The motion was denied. Of the 85 people then summoned to jury service, only 10 were black, that is, 11%, compared to the over 25% in the county's population. It is unclear from the record what the racial mix of the jury eventually selected was, but the jury appears to have been chosen from the first 75 called, of whom only one was black. This issue has been raised and rejected on appeal, as has been the claim that the application of the death penalty is influenced by race. Study after study has found that race, particularly race of murder victim, has an impact on who receives the death penalty. In June 2015 US Supreme Court Justice Stephen Breyer pointed out that multiple studies have concluded that "individuals accused of murdering white victims, as opposed to black or other minority victims, are more likely to receive the death penalty." In the USA, blacks and whites are the victims of murder in approximately equal numbers (meaning that black people, who make up only about 13% of the population, are disproportionately the victims of murder). In the country as a whole, 78% of executions since 1977 were of people convicted of crimes involving white victims. In Arkansas the figure is 89%.

Justice Breyer also pointed out that half a century of research shows that the process of qualifying jurors for capital cases in the USA ("death qualification") "skews juries toward guilt and death". If prosecutors resort to questionable tactics in presenting aggravating evidence or defence lawyers inadequately investigate mitigation, the problem is exacerbated. After he was charged with the murder of Debra Reese, Ledell Lee became a suspect in several other crimes in the Jacksonville area, including the 1989 murder of another woman (the prosecution was dropped in 1997 after he was sentenced to death in the Reese case), and three rapes of women in 1990, 1991 and 1992. At the capital sentencing, the state argued that Ledell Lee had committed the rapes, and presented the three women in question as witnesses. He had been convicted in the 1990 case about a month before the murder trial, but in the other two cases had not yet been tried. Having presented this highly aggravating evidence, including in the two unadjudicated cases, the prosecutor described Ledell Lee in her closing argument as "a hunter" whose "prey were the people of Jacksonville from 1990 to 1993. And the people of Jacksonville didn't even know they were being hunted". After the defence asked the jury: "Who are we then to say that we are going to kill Ledell Lee", the prosecutor responded: "Ladies and gentlemen, I will tell you who we are. We are the hunted". On appeal, a state judge found that the prosecutor's argument was "objectionable", and the state Supreme Court ruled it both "objectionable" and "improper", but upheld the death sentence.

The prosecution also presented the victim's sister who testified about the impact of her murder on their parents, and that she and her sister had each been trying to get pregnant at the time of her murder. The sister was pregnant by the time of the trial, and told the jury that she would name the girl after her dead sister. She also told the jury of her traumatic experience of having to go to a shop and select a wig for her sister's corpse. In 2001, a judge on the Arkansas Supreme Court expressed concern about this "victim impact" evidence. He noted that "When the jury is requested to impose the death penalty in a capital case, its sole task during the penalty phase is to evaluate the evidence of aggravating and mitigating circumstances... Nothing more, and nothing less, may figure into the equation..." He expressed "serious doubts whether the victim-impact evidence presented to the jury was relevant to any of the aggravating and mitigating circumstances raised by the parties".

There have been six executions in the USA this year, bringing the total to 1,448 since judicial killing resumed in the USA in 1977 under new capital statutes approved by the US Supreme Court in 1976. The last execution in Arkansas – its 27th since 1977 – was carried out in 2005. Amnesty International opposes the death penalty in all countries and all cases, unconditionally.

Name: Ledell Lee
Gender m/f: m

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