

EXTRA 59/01

Death penalty / Legal concern

31 August 2001

USA (North Carolina) Robert Bacon, black, aged 41

Robert Bacon is scheduled to be executed in North Carolina on 21 September 2001. He was sentenced to death for the 1987 murder of Glennie Clark.

Glennie Clark, white, was the estranged husband of Bonnie Clark, also white. She left him after he became alcoholic and physically abusive towards her and their two children. However, he continued to harass her. She began a relationship with Robert Bacon, and, on her repeated suggestion, they agreed to kill Glennie Clark. On the first attempt to carry out the plan, Bacon refused at the last minute. The next night, they drove to Glennie Clark's house. Clark reacted angrily when he saw the couple together and a heated discussion ensued about the relationship. At some point, Glennie Clark called Bacon a "nigger", and Bacon stabbed him.

The sole aggravating factor in the murder making it punishable by the death penalty was that it was committed for pecuniary gain; Bonnie Clark stood to receive \$130,000 in life insurance. She was convicted of first-degree murder and sentenced to life imprisonment.

Robert Bacon was sentenced to death by an all-white jury in 1987. In 1990, the state Supreme Court overturned the sentence. At a 1991 resentencing, Bacon was again condemned by an all-white jury, in a county whose population was about 20 per cent African American. Before Bacon's 1987 trial, his lawyer had unsuccessfully sought to prohibit the state from dismissing African Americans from the jury, citing the prosecutor's "pattern of discrimination" in capital jury selections.

Bacon's appeal lawyer interviewed jurors from the 1991 sentencing and an alternate juror from 1987. In an affidavit, she stated that two of the 1991 jurors said that during their deliberations, reference was made to Bacon's race and his involvement in an interracial relationship. The alternate juror recalled jurors making racial "jokes" during the 1987 trial.

In May 2001, one of the jurors from the 1991 resentencing came forward to sign an affidavit supporting clemency. She recalls that "some jurors felt that it was wrong for a black man to date a white woman. Jurors also felt that black people commit more crime and that it is typical of blacks to be involved in crime... some jurors were adamant in their feeling that Bacon was a black man and "he deserved what he got".

The 1991 jury found in mitigation that Bacon had acted under the domination of Bonnie Clark, had no history of violent behaviour and was unlikely to commit another violent crime, that he was remorseful, and that his co-defendant was serving a life sentence. They still voted for death. The juror's affidavit quoted above recalls that during deliberations, the jury was initially 10-2 for death. The two who favoured a life sentence switched their votes to death after the majority "complained that this should be an easy decision and that we were taking too long. The other jurors emphasized that Bacon had received the death penalty the first time, a fact we knew because Bacon's attorney had told it to us in closing argument" (if a prosecutor had done the same thing, North Carolina case law suggests that it would have led to a new sentencing).

In 1998, a federal district judge ruled that Robert Bacon should receive a new sentencing hearing because his lawyer had failed to present important mitigating evidence. This was that Bacon had an alcoholic father who engaged in numerous adulterous affairs. From when he was very young, Bacon's mother sought his advice and assistance on this adultery, including having the boy eavesdrop on his father's phone calls. He also witnessed various incidents in which his father physically abused his mother.

The Fourth Circuit Court reinstated the death sentence, saying that this evidence would not have altered the outcome. One of the three judges dissented, saying that the evidence "would support the proposition that Bacon's family history uniquely mirrors the circumstances surrounding the crime for which Bacon now faces the death penalty; in both instances (in his family and in his relationship with Clark), a woman was apparently subjected to abuse by her husband; Bacon served as confidant to the woman, and Bacon was manipulated to take steps he otherwise would not have taken". Two state Supreme Court judges have also dissented in the case, saying that in comparison with other cases and Bonnie Clark's life sentence, Bacon's death sentence was disproportionate.

This case was first issued as UA 97/01 (AMR 51/056/2001, 12 April). Robert Bacon was 12 hours from execution in May when the North Carolina Supreme Court issued a stay so that it could consider the claim that Governor Easley could not act as an impartial arbiter of clemency petitions, given his previous roles as state Attorney General and a local District Attorney. On 2 August, the Court rejected the claim. Two men have been executed since then, two of 19 prisoners put to death in North Carolina and 731 executed nationally since the USA resumed judicial killing in 1977.

Bacon's lawyers have filed a petition with the Inter-American Commission on Human Rights, which has scheduled a hearing on the case for 28 September, and called for the execution to be stayed. The USA, continuing to take a position that undermines the international community's efforts to protect fundamental human rights, has replied that it views the IACHR's call for a stay as a non-binding recommendation.

RECOMMENDED ACTION: Please send faxes/express/airmail letters, in your own words, in English or your own language:

- explaining that you do not condone the manner of Glennie Clark's death and expressing sympathy for his relatives;
- expressing deep concern at the allegations of racial discrimination that have marked this case;
- noting that two state Supreme Court judges have stated that Bacon's death sentence is disproportionate when compared to others and his co-defendant's sentence, and that two federal judges have ruled that evidence of Bacon's background not heard by the jury should require a new sentencing hearing;
- pointing out that the power of executive clemency exists to compensate for the rigidity of the courts, to remedy unfairness and error;
- noting that the Inter-American Commission on Human Rights has called for a stay of execution in order that it can consider Bacon's petition;
- calling on the governor to commute Robert Bacon's death sentence in the name of fairness and the reputation of his state and country.

APPEALS TO:

Governor Michael F. Easley

Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301, USA
Fax: + 1 919 715 3175 or + 1 919 733 2120
Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

You may also write, in not more than 250 words) to "Letters to the Editor":

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