

UA 97/01

Death pen**USA (North Carolina) Robert Bacon, black, aged 40**

Robert Bacon, black, is scheduled to be executed in North Carolina on 18 May 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. Bonnie Clark and Robert Bacon began a relationship. On her repeated suggestion, they agreed to kill Glennie Clark. On the first attempt to carry out the plan, Bacon refused. 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 to death.

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 upheld the conviction but overturned the death sentence.

At a 1991 resentencing hearing, Bacon was again sentenced to death by an all-white jury. The combined total of jurors in the jury pools for Bacon's trial and resentencing was 90. Five (5.6 per cent) were black, in a county whose population was about 20 per cent African American.

Before Bacon's 1987 trial, his lawyer unsuccessfully sought to prohibit the state from dismissing African Americans from the jury, citing the prosecutor's "pattern of discrimination" in capital jury selections. Of the four black jurors in Bacon's 1987 jury pool, two were dismissed by the judge because they were not qualified to serve. The other two were dismissed by the prosecutor.

There were two people in the 1991 jury pool who were not white, one Hispanic and one African American. Both were dismissed by the same prosecutor.

The last three African Americans executed in North Carolina were sentenced to death by juries made up of a combined total of 34 whites and two blacks.

When Robert Bacon's case is included, the figures show five juries comprising 58 whites and two blacks.

Bacon's lawyer interviewed jurors from the 1991 sentencing and an alternate juror from the 1987 trial. In an affidavit, he said that two of the 1991 jurors told him that during their deliberations, reference had been made to Bacon's race and his involvement in an interracial relationship. The alternate juror recalled jurors making racial "jokes" during the course of the 1987 trial. No evidentiary hearing into these allegations was held.

At the 1991 resentencing, a psychiatrist testified that Bacon "had a history...of becoming involved with people that were in need of assistance" and "tried to help rescue Ms Clark from her reported abuse by her husband".

Bacon was, for example, aware of numerous incidents between the Clarks "including a time when [Glennie] smashed her head against a cabinet and held a knife to her throat". The jurors found in mitigation that Bacon had acted under the domination of Bonnie Clark, had no significant criminal record, 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.

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. As a teenager Robert Bacon showed signs of severe stress, including bedwetting.

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 new 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: "In short, Bonnie Clark and defendant committed the same crime. Although defendant dealt the fatal blows, Clark was the instigator, planner and motivator who was actually present during and actively participated in the murder... When such inconsistent, inherently self-contradictory results lead to the sentence of life imprisonment in one case and the sentence of death in another, it is this Court's duty on proportionality review to remedy the result...".

BACKGROUND INFORMATION

The history of the death penalty in the USA is one of racist use, and to this day race continues to play a role in who is sentenced to death. Studies have consistently shown that those who kill whites are more likely to receive a death sentence. Studies indicate that this likelihood rises when the defendant is black. Twenty three prisoners have been executed in the USA this year, bringing to 706 the total number of executions since 1977. In more than 80 per cent of cases, the crimes involved white victims.

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;
- noting that the power of executive clemency exists to compensate for the rigidity of the courts;
- calling on the governor to commute Robert Bacon's death sentence;
- urging the Governor to support a moratorium on executions in his state.

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 brief letters of concern (not more than 250 words) to:
- Letters to the Editor, *Raleigh News and Observer*, PO Box 191, Raleigh, NC 27602, USA. **Fax: + 1 919-829-4872. E-mail: forum@nando.com**
- Letters to the Editor, *Charlotte Observer*, PO Box 20848, Charlotte, NC 28230, USA. **Fax: + 1 704 377 6214. E-mail: opinion@charlotteobserver.com**

PLEASE SEND APPEALS IMMEDIATELY.