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# respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

## Is Saying You're Sorry for Lynching Enough?

by Cheryl Baisden

**When it comes to murder in America, it's usually up to the state to prosecute the alleged killers. And in most cases, said Nicholas Harbist, a New Jersey criminal attorney, the system works properly as long as there is enough evidence for a conviction. But historically, lynching, where a group of people take the law in their own hands and kill someone, has been the exception.**

Between the years 1882 and 1968, there were 4,742 reported cases of lynching — most involving black victims. Lynchings were reported in all but four states during this time, according to a resolution passed by the U.S. Senate on June 13, 2005, which apologizes for not enacting anti-lynching legislation. The resolution also notes that in 99 percent of lynching cases the perpetrators went unpunished. According to the Tuskegee Institute, Mississippi had more lynchings than any other state, with 581 reported lynching incidents.

### History of lynching

"Historically speaking, lynchings were rarely prosecuted because they were generally local crimes, and during that time and in those places there was a lack of desire to take action against the perpetrators," Harbist explained. "The suspects were usually politically connected; the victims were usually

not. And the community, unfortunately, saw these lynchings as just an act against a young black man, which, to them, didn't really matter. It was really a matter of racially motivated violence that was accepted by those communities."

Usually the act of white men, lynchings during the period between the elimination of slavery and the passage of the federal Civil Rights Act of 1964 were common. *>continued on page 2*

## Getting a Racism-Free Trial

by Phyllis Raybin Emert

**The U.S. Supreme Court recently overturned the murder convictions of two black men after finding that racism was the cause for removing prospective black jury members at each man's trial.**

Thomas Miller-EI of Texas was convicted of murder in 1986 and sentenced to death by a jury with only one black member. Jay Johnson of California was convicted of second-degree murder in 1998 by an all-white jury. As a result of the Court's rulings, both Miller-EI and Johnson will receive new trials.

### Thomas Joe Miller-EI

In the course of a 1985 robbery, Thomas Miller-EI, an African-American, allegedly shot and killed one hotel employee and severely injured another. There were 108 people in the jury pool for Miller-EI's trial, of which 20 were African-American. Of those 20 prospective African-American jurors, nine were removed for cause or by agreement (for example, if they knew the victim or the defendant) and 10 were eliminated through the use of **peremptory challenges** by the prosecution.

Essentially, a peremptory challenge is used to remove a potential juror from a jury without having to give a reason. *>continued on page 4*

# Respect

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## Is Saying You're Sorry for Lynching Enough? *continued from page 1*

Rights Act of 1964 were often designed to punish black men for behaviors the white community felt were inappropriate. In general, the perpetrators had the support, either publicly or privately, of the dominant white community, which protected them from prosecution. Often members of the Ku Klux Klan, some lynch mobs were to include the community's political leaders and members of the police force.

Lynchings were particularly violent and often took place publicly. For example, in 1916, Anthony Crawford, who owned a 427-acre cotton farm in South Carolina and started a school for black children and a union for black farmers, was arrested when he disagreed with a white farmer over the purchase price for his cotton. Several hundred local residents, including government officials, responded to the incident by dragging him through the streets, hanging him from a tree and riddling his body with approximately 200 bullets. No one was ever charged in the murder.

In another case, a black Georgia farmer was arrested in 1946 for arguing with a white farmer. After his bail was posted by a member of the Ku Klux Klan, he was driving home with his wife and another couple when they were ambushed by at least 20 heavily armed men. Both couples were lined up and shot more than 60 times. No one was ever charged in those killings either, although at least 50 suspects were identified.

### Senate atones

Although to date a specific anti-lynching law has never been enacted into federal law, it is important to note that lynching is murder, which is against the law. While such a law may not be needed in these modern times, it was needed in the first half of the 20th century to protect the African-American population. With the passing of Resolution 39, the Senate took a step toward addressing the nation's long-ignored history of lynching. The move was prompted by publication of the book *Without Sanctuary*:

*Lynching Photography in America*, and lobbying by a group called the Committee for a Formal Apology, which also called for an apology for slavery.

Lynching was an American form of terrorism, according to Senator Mary Landrieu (D-La.), who co-sponsored the Senate resolution along with Senator George Allen (R-Va.). Now, as the nation fights the war against international terrorism, is a good time to apologize for the past and "remind ourselves that terrorism existed in the United States in different ways," she said.

The resolution apologizes to the victims and their descendants for failing to enact anti-lynching legislation in the past, even though more than 200 bills were introduced in Washington, D.C., between 1882 and 1968. The resolution also notes that between 1890 and 1952, seven presidents petitioned the U.S. Congress to end lynching.

While the House passed strong anti-lynching legislation three times in the first half of the 20th century, the Senate repeatedly refused to approve the bills. By failing to pass federal legislation against lynching, the Senate allowed state and local governments to continue their unwritten policy of not prosecuting perpetrators.

### Prosecuting lynchers

Over the years, on rare occasions, the federal government stepped in to prosecute lynchers for violating the Civil Rights Act, but they still faced a local jury, which rarely convicted them. And convictions that were won resulted in minor penalties for the perpetrators, compared to what a state murder conviction would have brought. For example, Florida policeman Tom Crews received a \$1,000 fine



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and a year in prison in 1946 when he was found guilty of civil rights violations in the lynching of a black farmhand. If he had been tried for murder and found guilty, the penalty would have been life in prison. Anti-lynching legislation would have, in theory, required that states follow through in prosecuting murder suspects.

In a *Washington Post* column, Laura Wexler, author of *Fire in a Canebrake: The Last Mass Lynching in America*, wrote,

“The fact is, even if the Senate had passed one of the 200 anti-lynching bills proposed... lynchers still would have gone unpunished, and lynchings still would have continued to occur due to the attitude of the communities.”

The Senate’s failure to enact anti-lynching legislation was due to the fact that lawmakers were “trapped by the savage history and legacy of slavery and segregation that for two centuries

systematically devalued black lives,” wrote social and political analyst Earl Ofari Hutchinson for the *Pacific News Service* the day after the resolution passed.

“Throughout the slave and segregation eras, black inferiority was enshrined in law, custom and practice. The negative racial typecasting of blacks was an intimate part of the political and cultural ethic that tainted law and public policy in America well into the 20th century.” >continued on page 8

## Tulsa Race Riot of 1921 Remains Unsettled

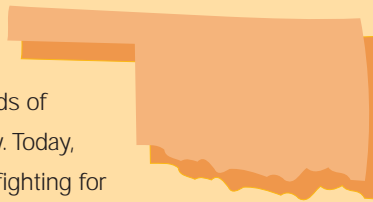
It’s been 84 years since violence erupted in Tulsa, Oklahoma, but the race riot, which claimed the lives of as many as 300 people and left thousands of residents homeless, is still the center of controversy. Today, more than 100 survivors and their descendants are fighting for **reparations** for the property and lives that were lost in the 1921 riot that destroyed Greenwood, an affluent black neighborhood and business district on the outskirts of Tulsa.

The conflict began on May 31, 1921, after Tulsa police arrested 19-year-old Dick Rowland, a black shoe-shiner, for allegedly assaulting a 17-year-old white female elevator operator. Although the charges against Rowland were later dropped, rumors spread through the white community that he had actually raped the young woman. In no time an angry mob with thoughts of lynching had gathered around the jail, along with a crowd of black residents determined to protect him. When gunshots rang out in the crowd, Tulsa police deputized and armed hundreds of white men, who, along with the mob, headed into Greenwood, shooting black residents and setting fire to their businesses and homes.

“I was looking at them throwing bombs, shooting people, burning houses,” Genevieve Jackson, who was five at the time of the riot, told *People* magazine in 2003. “People were crawling on the ground like dogs, trying to save their lives. I watched them carrying off truckloads of bodies.”

When the Oklahoma National Guard arrived to restore order, they disarmed and arrested thousands of Greenwood residents, leaving the neighborhood unprotected. The next day, a total of 1,256 homes and nearly every other structure — including Greenwood’s schools, churches and hospital — lay in ruins.

Although Greenwood residents were blamed for the violence for decades, in 1997, the Oklahoma Legislature established the Tulsa



Race Riot Commission to study the uprising. According to the report, there was “strong evidence that some local municipal and county officials failed to take actions to calm or contain the situation once violence erupted and, in some cases, became participants in the subsequent violence which took place on May 31 and June 1, 1921, and even deputized and armed many whites who were part of the mob that killed, looted, and burned down the Greenwood area.”

While the report recommended that *reparations* be made to survivors and descendants of the riot, the Oklahoma Legislature failed to approve a *reparations* plan, so in 2003 survivors filed a lawsuit against the state and the city of Tulsa. By May 2005, courts all the way up to the U.S. Supreme Court had rejected the lawsuit on the grounds that the two-year **statute of limitations** under Oklahoma law had expired.

Attorneys for the victims claimed that the statute of limitations should have begun when the commission report was released, since the real facts surrounding the riot were not made public until that time. The government argued that the clock started running when the riot ended.

With nowhere left to turn in the judicial system, Tulsa riot victims are pinning their hopes on lawmakers, hoping to convince Congress to take steps to compensate them for their losses.

“It’s really about justice,” Charles Ogletree Jr., an attorney representing the riot victims, stated in an address given to Stanford University students in February 2005. “It’s really about correcting the past. And it’s really about trying to make sure as we move ahead as a nation that we really are one people, not many.” ■

— Cheryl Baisden

## Getting a Racism-Free Trial *continued from page 1*

A certain number of peremptory challenges are given to the defense and the prosecution in a criminal trial, though the number varies from state to state.

Only one African-American served on Miller-El's jury. During the trial, his lawyers objected to the make-up of the jury on the grounds of racial bias, but the court denied the request for a new jury. Miller-El was ultimately convicted and sentenced to death.

Another issue that came out when the Court heard oral arguments in the appeals case was the practice of jury shuffling. Jury shuffling, which is allowed by both the defense and prosecution under Texas law, occurs when the cards with the names of prospective jurors are reshuffled so that the order in which they are seated and questioned is rearranged. Those who are seated in the front are questioned first. Those who are seated in the back may never be questioned and are dismissed if a jury is selected before their turn comes up. In Miller-El's case, the prosecution called for a jury shuffle on three occasions when several African-Americans were seated in the front.

Evidence was also presented to the U.S. Supreme Court that Dallas County had a policy of excluding African-Americans from juries since the 1950s. A 1963 notice distributed to prosecutors stated, "Do not take Jews, Negroes, Dagoes, Mexicans, or a member of any minority race on a jury no matter how rich or how well-educated." A 1968 manual distributed to prosecutors outlined the reasons for excluding minority jurors. This manual remained in circulation into the 1970s and was available to one of the prosecutors in Miller-El's 1986 trial.

In view of the evidence, the U.S. Supreme Court held that race was a factor in determining jury selection in Miller-El's case. U.S. Supreme Court Justice David Souter stated, "when this evidence on the issues raised is viewed cumulatively, its direction is too powerful to conclude anything but discrimination."

### Jay Shawn Johnson

African-American Jay Shawn Johnson was tried for assaulting and murdering his girlfriend's 19-month-old child. Defense counsel objected to peremptory challenges by the prosecution to remove the remaining three black

prospective jurors during the jury selection process. Although Johnson claimed the death was accidental, the all-white jury convicted Johnson of second degree murder and assault.

The trial judge did not ask the prosecution to explain the peremptory challenges. Instead, the judge denied the defendant's objection, declaring that state law required a "strong likelihood" of bias and though it was "very close," the defendant "failed to establish a *prima facie* case" of purposeful discrimination. *Prima facie* refers to something that appears to be true "on the face of it" or at first glance. In other words, if a *prima facie* case can be proven, the burden would be on the prosecution to disprove a claim of discrimination with concrete evidence.

The case made its way to the U.S. Supreme Court and, in an 8-1 decision the Court held that the inference of discrimination was sufficient to establish a *prima facie* case. Justice John Paul Stevens, writing the majority opinion, noted that the trial judge failed to question the prosecution about the peremptory challenges, a practice that was established in the landmark case of *Batson v. Kentucky*.

### *Batson v. Kentucky*

The 1986 case of *Batson v. Kentucky* shifted the responsibility of proving racial bias from the defendant to the state. In this case, a prosecutor used peremptory challenges to remove all four black people from the jury pool, resulting in an all-white jury. Despite protests by defense counsel, the court never asked the prosecutor to explain his actions. The defendant, *Batson*, who is African-American, was convicted of second-degree burglary and receipt of stolen goods. The conviction was upheld upon appeal to the Kentucky Supreme Court.

When it heard the case, the U.S. Supreme Court held that a defendant may establish a *prima facie* case of racial bias by relying only on the facts of his case. No longer would the defendant have to establish a pattern of discrimination. Furthermore, the burden shifted to the prosecutor to come up with a neutral explanation for his peremptory challenges.

In *Batson*, the Court established a three-step process in assessing a claim of racial bias in jury selection. First, the defendant must demonstrate a *prima facie* case of purposeful discrimination by showing certain racial groups were excluded from the jury. Second, the prosecution must explain why jurors were challenged. A denial of racial bias, or saying, for example, that a black juror may be partial to a black defendant is not enough of an explanation. The prosecutor must give a non-racial explanation related to the case, for example, if a juror's job would create a bias toward the defendant. Finally, the trial judge must determine whether or not there is purposeful racial bias.

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# Closing the Book on Mississippi's Murders

by Cheryl Baisden

**It only took a few hours to plan and carry out the murder of three civil rights workers in Mississippi in 1964, but it took more than 40 years to convict someone of the crime. On June 21, 2005, exactly 41 years to the day after James Chaney, Andrew Goodman and Michael Schwerner were beaten and shot to death in Philadelphia, Mississippi, part-time preacher and former Ku Klux Klansman Edgar Ray Killen was found guilty of manslaughter in connection with the murders.**

Prosecutors argued that while Killen, who is now 80 years old, was not at the scene of the murders, he was the one who planned the attack and selected the spot where the bodies were buried. His attorneys claimed that he was not involved in the incident, which focused international attention on the civil rights movement in the South and was the basis for the 1988 movie *Mississippi Burning*.

On June 21, 1964, Mississippi-born Chaney, 21, who was black, and Goodman, 20, and Schwerner, 24, both white and from New York, were charged with speeding and held in the Philadelphia jail for three hours. The men had been out inspecting the scene of a black church that had been torched by the Klan a week earlier. While they sat in jail an angry mob of Klansmen gathered. When the three were released, the mob was waiting for them on an isolated country road. Their bodies were found 44 days later by the FBI, since state officials had refused to investigate the incident as a murder.

State murder charges were never filed in the case, but a total of 18 alleged Klan members, including Killen, were charged with conspiracy in connection with the murders in a federal case in 1967, three years after the crime was committed. Eight of the defendants were found guilty, although none served more than six years in jail. In Killen's case, an all-white jury became **deadlocked** and a mistrial was declared. *The Clarion-Ledger* of Mississippi interviewed several jurors from Killen's 1967 trial for a series of articles in 2000. One juror recalled that the jury ended up *deadlocked* because of one holdout juror who could not bring herself to convict a preacher.

## Seeking justice

The recent decision to pursue state murder charges followed the formation of a multi-racial coalition to plan events surrounding the 40th anniversary of the murders. That group decided the best memorial to the three victims would be to demand justice.

"There was this secret in the community that nobody talked about. But something happened, and everybody finally

talked about it," Susan Glisson, director of the William Winter Institute for Racial Reconciliation at the University of Mississippi, and one of the founders of the coalition, told *USA Today*. The grand jury heard evidence against the eight surviving original defendants in January, but only indicted Killen, who admitted he was a member of the Klan at the time but pled not guilty to the charges.

During the six-day trial, the prosecution based much of its case on testimony obtained during the 1967 conspiracy case, and informed the jury that if they believed Killen organized the attack but were not totally convinced he actually wanted the three men killed, they could find him guilty of the lesser charge of manslaughter. That's exactly what the jury did.

"I heard a number of very emotional statements from some of the white jurors," Warren Paprocki, a white juror, told *The New York Times*. "They had tears in their eyes, saying that if they could just have better evidence in the case that they would have convicted him of murder in a minute. Our consensus was the state did not produce a strong enough case."

Killen was sentenced to 60 years in prison — 20 years for each killing. At his sentencing, the judge in the case said, "each life has value." However, the same judge released Killen on \$600,000 bail pending his appeal. Killen had served less than two months of his sentence when he was released. With his poor health it was likely that he would die a free man, a fact that had many up in arms.

"He [Killen] may not be capable of enacting revenge, but he has stature within a certain community. And they are capable of enacting revenge," the publisher of the *Neshoba Democrat* wrote in an editorial. "It's difficult to bring closure on the reign of terror with him out of prison. It's difficult, because that fear is still there with him out."

On September 9, 2005, a Mississippi judge ordered Killen back to prison, declaring that he deceived the court about his poor health. Killen had used a wheelchair and oxygen tank throughout his trial, claimed that he could not walk and complained about the lack of medical care he received while in jail. Several sheriff's deputies, however, saw Killen walking and pumping his gas at a local gas station, which was enough to revoke his bail.



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Justice Lewis Powell, who delivered the opinion of the Court in *Batson* stated, "By requiring trial courts to be sensitive to the racially discriminatory use of peremptory challenges, our decision enforces the mandate of equal protection and furthers the ends of justice." Over the years, the U.S. Supreme Court has expanded the scope of *Batson* to include gender and national origin or ethnicity as well as racial bias.

### The 14th Amendment

Even before *Batson*, the U.S. Supreme Court laid the foundation for eliminating racial bias in jury selection 125 years ago with the 1880 case of *Strauder v. West Virginia*. In that case, the Court held that excluding blacks from a jury violated the equal protection clause of the 14th Amendment. The Court stated that this Amendment was specifically, "designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment, whenever it should be denied by the states."

An all-white jury convicted Taylor Strauder, an African-American, of murdering his wife. In West Virginia, only white men were allowed to serve on a jury. Strauder's appeals to remove the case from the state courts and be tried before a federal court were denied.

The U.S. Supreme Court **reversed** the Supreme

Court of West Virginia and moved the case to a federal court where the defendant had the rights and protections of the 14th Amendment. The Court claimed such racial bias was unconstitutional, discriminated against the defendant, as well as the excluded jurors, and weakened the justice system in general.

The opinion, written by U.S. Supreme Court Justice William Strong, carefully noted, however, that the defendant had no "right" to a jury composed of members of his own race. Instead, there is a 14th Amendment guarantee that the state will not exclude members of a defendant's race from the jury pool.

### Questioning peremptory challenges

Despite the Supreme Court ruling in *Strauder*, the problem of racial bias has persisted in the United States. Today, discrimination is not as obvious as it once was. While minorities are no longer excluded from juries, the use of peremptory challenges can still be racially based since no reason need be given to remove a prospective juror.

For more than 200 years, peremptory challenges have been a part of the U.S. jury system. Many consider the peremptory challenge an essential part of the American criminal justice process designed to guarantee fairness and impartiality.

During oral arguments before the U.S. Supreme Court, California's Deputy Attorney General said, "We should not adopt the divisive assumption that everything turns on race. The state has an interest in maintaining peremptory challenges."

But Justice Breyer pointed out that, "the whole point of *Batson* is to explain a suspicious situation."

In a concurring opinion in *Batson v. Kentucky*, Justice

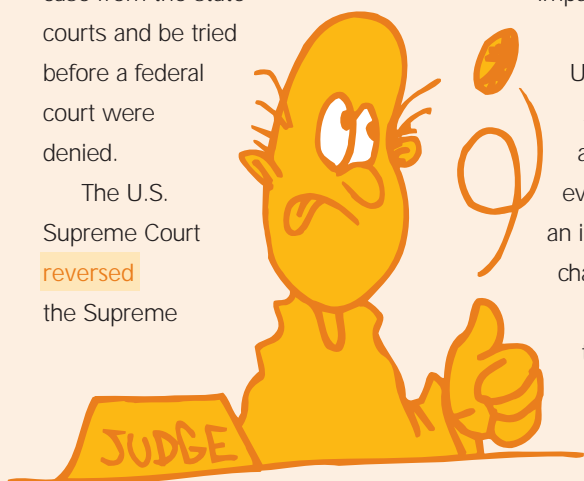
Thurgood Marshall, the first African-American to be appointed to the U.S. Supreme Court, wanted to eliminate peremptory challenges entirely, believing they allowed for the potential of racial bias in all jury selections. There is, however, some disagreement on the Court regarding peremptory challenges. The late Chief Justice William Rehnquist dissented on the *Batson* ruling as well as with the Court's current ruling, saying "*Batson* set a very low standard for questioning prosecutors. Why should it be watered down more?"

In his concurring opinion in *Miller-El v. Dretke*, Justice Breyer called for a reconsideration of the peremptory challenge system. Breyer noted that England, which also has had a long history of peremptory challenges, eliminated them and "continues to administer fair trials based on random jury selection." Furthermore, Breyer declared that an impartial jury is guaranteed in the Sixth Amendment of the U.S. Constitution, but the use of the peremptory challenge is not.

### NJ considering reduction of peremptory challenges

Currently, the New Jersey court system allows six peremptory challenges per side in a civil case. In criminal cases the number of challenges varies. In serious criminal cases, for example a murder trial, the defense is allowed 20 peremptory challenges and the prosecution is allowed 12. In less serious criminal matters, both the defense and the prosecution each receive 10 peremptory challenges.

In 2004, the New Jersey Supreme Court appointed a committee to examine the jury selection process in the state. Among other things, the Special Committee on Peremptory Challenges and Jury **Voir Dire** was asked to evaluate the



number of peremptory challenges allowed in civil and criminal trials. Among its recommendations, the committee proposed reducing the peremptory challenges in civil trials to four per side. For criminal trials with one defendant, the committee recommended eight peremptory challenges for the defense and six for the prosecution. For trials with multiple defendants, the committee suggested that each defendant receive four challenges and the prosecution receive three peremptory challenges for each defendant.

In addition, the committee also recommended expanding the pretrial *voir dire* conference to include the submission of written questions for jurors and for the trial judge to rule on those questions. *Voir dire* literally means "to speak the truth." It also refers to the jury selection process where attorneys and the court are able to question potential jurors. It is during this process that peremptory challenges are used.

The New Jersey Supreme Court is expected to consider the committee's recommendations sometime after November 1, 2005. ■

## Closing the Book On Mississippi

*continued from page 5*

"Without the testimony of the defendant's poor physical condition," the court's written order stated, "the court finds that the defendant has failed to show by clear and convincing evidence that he is not a danger to the community."

Susan Glisson told *The New York Times*, "It's interesting that 41 years ago the police department was involved in a conspiracy to murder these three young men. The fact that members of that same police department are now involved in putting Mr. Killen back in jail is indicative of how far this community has come." ■

## Bring a Little Drama to Your Class to Promote Tolerance and Drug Awareness

Teachers looking for an innovative way to promote tolerance might consider having the George Street Playhouse's Touring Theatre perform one of its tolerance-based or drug awareness stage productions at their school.

The plays address such timely issues as school violence, tolerance, prejudice, drug abuse and peer pressure. All the performances are followed by a discussion with the audience facilitated by the actors. In addition, every student receives a student guide or "playbill," which mirrors the traditional theatrical playbill, preserving the theater experience for students. Printing of the "playbills" is sponsored by the New Jersey State Bar Foundation.

### The Play's the Thing

The plays are as diverse as their subject matter and cater to different age groups. A description of each play follows.

**New Kid** (grades 1-6) is the story of an immigrant family from a fictitious place called "Homeland." When the family arrives in America, they discover a new culture and unexpected prejudice against "Homelanders." The Homelanders speak English while the Americans speak gibberish, demonstrating the complexities of cross-cultural communication and the implications of prejudice. Through comedy, this play addresses the themes of racism, prejudice, peer pressure, and conveys the need for tolerance.

**Peacemaker** (grades K-4) is the story of the Blue People and the Red People who have lived on either side of a "Wall" for many years. Interaction between the people is forbidden, and both communities live in fear, suspicion and mistrust. When Simp, a Red person, sees a Blue person for the first time, the automatic response is panic; once the pair interact, however, they learn they have a lot to offer one another, and an unexpected friendship begins. A parable of our diverse society, the play promotes the themes of tolerance and acceptance and advocates an end to prejudice on the basis of appearance and origin.

**In Between** (grades 6-9) explores issues of self-esteem, social pressure and the correlation between peer disrespect and school violence. The story focuses on a new student, Cue, who finds herself choosing between friendships with the popular Tad and the forgotten Barrett. The play examines the fragile identities and fickle emotions that make decision-making difficult for young people. The use of popular music and youthful dialogue holds the students' attention, allowing the idea that they have options and the courage needed to effect change in their own lives to be absorbed.

**Wasted** (Grades 6-8) A cautionary tale of a young woman who looks back at her wasted life, her wasted relationships, and her wasted state of being, due to drugs. Through flashbacks--., we follow ambitious, smart, young Ashley as she enters into a devastating relationship with drugs and with Ty, the boy who introduces her to them.

For a brochure and/or booking information call the George Street Playhouse at 732-846-2895 ext. 115. George Street is currently accepting bookings for the 2005-2006 school year.

Is Saying You're Sorry for Lynching Enough? *continued from page 3*

Passage of Resolution 39 marks the first time members of Congress — who have apologized to Japanese-Americans for imprisoning them in camps during World War II, to Native Americans for taking their land and to Hawaiians for the overthrow of their kingdom — have apologized to African-Americans for any reason, according to Senators Landrieu and Allen.

The resolution “expresses the deepest sympathies and most solemn regrets of the Senate to the descendants of victims of lynching, the ancestors of whom were deprived of life, human dignity, and the constitutional protections accorded all citizens of the United States.”

**Not everyone gets on board**

Critics say the government should do more than offer apologies; it should provide financial compensation to victims' families as well. Some also believe that the way in which Resolution 39 was passed, and the fact that some Senate members did not sign on as co-sponsors, indicates that the racism that allowed lynching to go unpunished is still alive and well in some parts of America. The two-page resolution was adopted after regular hours, by voice vote, meaning that unless someone specifically spoke against the measure it would be approved unanimously. Because it did not require an actual vote, critics say it allowed senators whose **constituencies** might have been unhappy if they had supported the resolution to avoid taking a stand either way.

At the time of the voice vote, a total of 15 senators, all Republicans, had failed to sign on as sponsors of the resolution. Five senators signed on after the vote, leaving 10 senators from the states of Tennessee, Utah, Mississippi, Texas, Wyoming, New Hampshire, and Alabama, who declined to be part of the voice vote and did not sign on as co-sponsors of the resolution.

“America is home of the brave, but I'm afraid there may be a few cowards,” Janet Cohen, a member of the Committee for a Formal Apology and a descendant of a Kentucky lynching victim, told

ABC News in June. “They're hiding out, and it's reminiscent of a pattern of hiding out under a hood, in the night, riding past, scaring people.”

Senator Thad Cochran (R-Miss), who did not sign on as a co-sponsor, said his decision had nothing to do with racial concerns.

“I'm not in the business of apologizing for what someone else did or didn't do,” he told a *Washington Post* columnist after the resolution was approved. “I deplore and regret that lynching occurred and that those committing them weren't punished, but I'm not culpable.”

The newspaper columnist later pointed out that Cochran did co-sponsor bills apologizing for the government's treatment of Native Americans and Japanese-Americans.

**Righting wrongs**

Regardless of the motives behind some lawmakers' actions, efforts are now underway to attempt to resolve some longstanding lynching cases, such as the 1964 killings in Mississippi (see related story on page 5) and the 1955 murder of 14-year-old Emmett Till, which *Respect* reported on in its spring 2005 issue.

It is possible that finally bringing those responsible for lynchings to trial, with juries committed to hearing the cases without prejudice, will help heal the nation's racial wounds.

As for the Senate's resolution, “just as no one can ask forgiveness for a sin he or she did not commit, the Senate cannot apologize for the real crime of lynching: the countless burnings, beheadings, mutilations, assassinations and hangings that occurred on American soil,” Wexler wrote in her *Washington Post* column. “And it cannot apologize for the failure of countless juries to convict those who committed such hideous acts... The Senate, a bit player in the tragedy, has offered its apology. But instead of providing comfort, it has pointed to the gaping hole that exists, and will always exist, where the other apologies — the ones from citizens — should have been.” ■

**constituency** — voters or residents in an electoral district. **deadlocked** — when a jury is unable to agree on a verdict.

**peremptory challenge** — the right to challenge and remove a prospective juror without giving a reason. **prima facie** — presumed to be a fact unless disproved with evidence to the contrary. **reparations** — financial compensation. **reverse** — to void or change a decision by a lower court. **statute of limitations** — a maximum time period during which certain legal actions can be brought.

**voir dire** — preliminary examination of potential jurors by the court and attorneys.