



Carl Staples stands front and center of the Louisiana Supreme Court with Friends of the Court on May 9, 2011. Friends wear buttons that state: "Subject to Removal for Cause," referring to the fact that Staples was rejected for jury service because he objected to the Confederate flag that flies in front of the Caddo Parish Courthouse. Photo by Sophie Cull

## A Curious Case of Racial Amnesia

Dr. Alex Mikulich, Research Fellow

*"Is it a prerequisite for jury service that you do not object to the Confederate flag flying outside the courthouse?"<sup>1</sup>*

This is a real and legal question 150 years after the Civil War.

The Louisiana Supreme Court and the Caddo Parish District Attorney seemed to assume that objection to the symbol of slavery constitutes bias on behalf of a potential juror, in the hearing of a death-penalty appeal on May 9, 2011.

As I observed the Supreme Court proceeding, this assumption of the Louisiana Supreme Court justices and of the Caddo Parish district attorney struck me with a sense of the fear that African Americans must have felt during Jim Crow. Yet this is 2011.

The questions of the Supreme Court justices called to my mind Ralph Ellison's insight that "Americans are notoriously selective in the exercise of historical memory," and that this selectivity demonstrates "some self-deceptive magic ... for in spite of what is left out of our recorded history, our unwritten history looms as its obscure alter ego, and although repressed from our general knowledge of ourselves, it is always active in the shaping of events."<sup>2</sup>

Since the Supreme Court nearly declared the death penalty unconstitutional in *Furman v. Georgia* (1972), juries in Caddo Parish have voted to impose the death penalty on 16 men and one woman. Thirteen of these cases involved black defendants, and research demonstrates that the combination of a black defendant and a white victim exponentially increases the likelihood of aggressive prosecution.

The legacy of official racial discrimination is alive and well in the last capital of the Confederacy, Caddo Parish (Shreveport) Louisiana, where the Confederate flag still flies at the courthouse.<sup>3</sup>

The monument that stands at the Caddo Courthouse was erected in 1906. The monument includes Clio, the muse of history, pointing to an inscription "Lest We Forget." The busts of Confederate leaders Stonewall Jackson, P.G.T. Beauregard, Henry Watkins Allen, and Robert E. Lee adorn the corners of the monument. "To the Just Cause, 1861-1865" is on the rear of the monument.

No flag flew on the monument in 1906, as lynching enforced minority white rule. The Caddo Parish government did not decide to fly the "blood-stained banner" of the Confederacy until October 17, 1951. The "blood-stained banner" of the Confederacy includes a red stripe running down the edge, symbolizing Confederates' willingness to die for their cause.

Carl Staples was summoned to jury duty on May 14, 2009, in the capital case of Felton Dejuan Dorsey, an African American accused of killing a white firefighter in the majority white area of Caddo Parish. Staples called the Clerk of Court to state his objection to serve as a juror under the Confederate flag. The clerk responded that a warrant would be put out for his arrest if he did not show up for jury duty. Upon individual examination for jury duty, he stated:

The flag is a symbol of one of the most heinous crimes ever committed to another member of the human race ... and then again you overlook this great injustice by continuing to fly this flag which ... puts salt in the wounds of people of color. I don't buy it.<sup>4</sup>

The prosecutor promptly moved the court to strike Staples, arguing that he could not be fair. The judge granted the motion. The prosecutor proceeded to strike five out of the remaining seven qualified black prospective jurors. The defense objected to the strikes as racially discriminatory and in violation of the Supreme Court's *Batson v. Kentucky* decision. The judge rejected the challenge and Felton Dejuan Dorsey was convicted and sentenced to death by a jury of eleven whites and one black.

Another troubling assumption of the Supreme Court justices and the Caddo district attorney, revealed during the May 9 hearing, is that since only one African American objected to the flag, it must be OK for all African Americans. In other words, nearly 50 years after the achievement of Civil Rights, the onus remains on African Americans to protest and achieve racial justice.

In his oral argument before the Supreme Court, Caddo Parish District Attorney Brady O'Callaghan called the flag challenge "an insult to the intelligence of Caddo Parish jurors because it suggests that they are so frail and easily swayed by the influence of random stimuli." In fact, O'Callaghan's assertion that the Confederate flag is "random stimuli" defies the reason why white Caddo Parish leaders raised the "Blood Stained" banner of the Confederacy in 1951 as an act of white resistance to African American rights.

Social psychological studies find that the Confederate flag "primes" the expression of negative attitudes toward African Americans. Racial priming operates by increasing cognitive and emotional accessibility of culturally associated biases in the subconscious mind.

—Continued on back cover

## A Curious Case of Racial Amnesia

Continued from page 7

Dr. Alex Mikulich, Research Fellow



Caddo Parish Courthouse

Multiple studies have demonstrated how whites associate blackness with guilt, criminality, and dangerousness.<sup>5</sup>

Once implicit bias is activated cognitively—it affects how people remember and process information. Implicit racial bias necessarily inhibits the ability of whites to perceive a black defendant as an individual.

By activating implicit bias, the Confederate flag “encourages the jury to see the defendant in group terms and to attribute to him characteristics associated with the group. This cognitive process alone denies the defendant the opportunity for meaningful individual consideration to which he is entitled under the

Eighth Amendment.”<sup>6</sup> In the case of Felton Dorsey, the jurors serving that trial passed the Confederate flag at least 12 and possibly two or three dozen times.

Even more problematic is that these subconscious preconceptions about guilt and aggression of the accused cannot be consciously set aside. As the Dalai Lama explains, the social conditioning that gives rise to racial bias can only be undone by “actively disputing

the distorted ideas and false beliefs, [and] presenting a case for revising these beliefs, by pointing out where there are false premises upon which they base their beliefs, false projections, and so on. It is a matter of discovering the reality.”<sup>7</sup> When will white Louisianans discover and confront our reality?

### ENDNOTES

- 1 Rachel Maddow asked this question on her MSNBC program on May 9, 2011 online at <http://www.msnbc.msn.com/id/26315908/>
- 2 Ralph Ellison, *Going to the Territory* (Random House, 1986), p. 124. Originally from Ellison’s speech at Brown University in 1979.
- 3 Cecelia Trenticosta and William Claude Collins, “Death and Dixie: How the Courthouse Confederate Flag Influences Capital Cases in Louisiana,” accessed online at online February 17, 2011 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1734397#%23](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1734397#%23)
- 4 *Ibid.*, “Death and Dixie.”
- 5 See Justin D. Levinson, “Race, Death, and the Complicitous Mind,” *DePaul Law Review* 599 (2008-2009): 599-644.
- 6 *Ibid.*, “Death and Dixie.”
- 7 Howard Cutler and Dalai Lama, *The Art of Happiness in a Troubled World* (Harmony Books, 2009), p. 69.