

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

INDIA LYNCH, by her parent, SHAWN KING **
LYNCH, et al., individually and on behalf of *
others similarly situated, *

Plaintiffs, *

v. *

Civil Action No.
CV-08-S-0450-NE

THE STATE OF ALABAMA; BOB RILEY, in his *
official capacity as Governor of Alabama; and *
TIM RUSSELL, in his official capacity as *
Commissioner of Revenue, *

Defendants. *

**EXHIBIT A TO
PLANTIFFS' SUBMISSION OF EXPERT REPORTS**

Expert report of Dr. Robert J. Norrell

Report of Robert J. Norrell, historian

1. I am a professor of history and the Bernadotte Schmitt Chair of Excellence at the University of Tennessee. I am a specialist in American history, with a special focus on Alabama history. I earned my Ph.D. in American history from the University of Virginia in 1983. To date, I have published ten books, twenty peer-reviewed history articles, twenty encyclopedia history entries, sixteen booklets and research reports on American history, and several dozen book reviews. Since 1980 I have given approximately one historical paper per year at meetings of the Southern Historical Association, the Organization of American Historians, or at various conferences at the universities of Newcastle, Cambridge, Florida, and Virginia. My book *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* won the Robert F. Kennedy Book Prize in 1986. I have written three Alabama history textbooks that have been used in Alabama public schools. I have also published a monograph on the history of higher education in Alabama, an edited autobiography of an Alabama industrialist, and an edited work of essays on higher education desegregation in Alabama. I continue to do research in American history, primarily on the subject of race relations. *The House I Live In: Race in the American Century*, an overview of a century of race relations in the United States, was published by Oxford University Press in 2005. *Up from History: The Life of Booker T. Washington* appeared in January 2009 from Harvard University Press.

Since 1979 I have been a professional historian, teaching, doing research, and writing on various topics of American history at four different institutions—Birmingham-Southern College, the University of Cambridge, the University of Alabama, and the University of Tennessee. I belong to the Southern Historical Association and various other professional organizations over the years. I have taught courses on U.S. history, history of the American South, Alabama history, American race relations, African-American history, and world history. My complete CV is attached.

2. I have been accepted as an historian expert witness by federal courts in Alabama and Georgia, and state courts in Alabama, Tennessee, and Louisiana. I have been recognized as an expert witness in cases regarding the history of voting rights, school desegregation, employment discrimination, economic discrimination, and the awareness of health risks associated with smoking. In the past four years I have been deposed in three cases: *Moore v. Liberty National Insurance* in Jefferson County, Alabama, circuit court; *Martin v. Philip Morris et al*, in Escambia County, Florida, circuit court; and *LeRoy Williams v. Brown and Williamson Tobacco Company et al.* in St. Louis County, Missouri, circuit court.

3. I am to be paid \$225 per hour for my work. So far this is approximately \$12,000 for this case.

4. My opinions in this case are summarized in the numbered paragraphs below. They encompass my overarching opinions based on my research. They do not, however, represent every opinion I have but rather they constitute my summary ones. My research in this case is ongoing, and my opinions may be revised as the result of further study.

5. I testified earlier on the history of taxation issues in Alabama in *Knight v. Alabama*. I read Judge Murphy's findings of fact regarding the history of property tax restrictions in the Alabama constitution, and in my opinion those findings are correct.

6. Since Alabama's beginnings as a state, there has been a close association of taxation with the presence of African Americans. Originally slaves, blacks were the main source of state revenue, with a head tax on each slave according to age. At the same time blacks in antebellum Alabama received no benefit from state revenue.

7. Starting in 1832, state law made it illegal for blacks to be educated, and therefore being African American and getting educated were mutually exclusive realities until 1865.

8. Tax support for public education in antebellum Alabama was weak, with lowest support for it coming from the Black Belt region of the state where most wealthy whites educated their children privately. What support that did exist for public education in Alabama was lost with the failure of the State Bank of Alabama in the 1840s.

9. Tax on land in Alabama was secondary as a funding source for the state in the antebellum period, with especially strong opposition to land tax coming from whites with modest landownership. Legislative power in antebellum Alabama was based solely on white population, which made northern Alabama and the Wiregrass section of southeastern Alabama relatively more powerful on tax policy than the Black Belt, where the large majority of the population was black.

10. White hostility to black education soared in the post-Civil War years in Alabama. The initiative for black education came from black Alabamians, with assistance from northern philanthropic groups. Virtually no native white Alabamians supported black education. New black schools became, with the Union League political meetings, the main object of white terrorism in the years between 1865 and 1875. Many black schools were burned, and many teachers threatened and terrorized and a few were killed.

11. Only with the dominant authority of the national government under congressional Reconstruction in 1867 and 1868 did Alabama whites capitulate to allowing blacks to become partial beneficiaries of state revenue. The main way that blacks benefitted during the Reconstruction period between 1868 and 1874 was through the creation of segregated but equally funded schools. A State Board of Education was created, blacks were elected to positions on the board, and generally racially egalitarian policies were pursued for the six years of Republican control.

12. The granting of citizenship rights to African Americans in 1868 resulted in a large expansion of the power of the Black Belt counties in state politics. Black Republicans were typically elected to fill many county and state legislative offices during the late 1860s and 1870s. Blacks were elected county commissioners, judges, tax assessors, and state legislators.

13. Alabama's Reconstruction government levied much higher taxes on land than had existed during the antebellum years, and much of this new revenue supported a much expanded system of public schools. Republican tax assessors carried out a fair assessment of Black Belt property, which yielded some of the funding for the new school system.

14. White landowners responded with great hostility to the Republicans' increase in property tax, therefore undermining some of the potential for white support for the Republican Party.

15. When white “Redeemer” Democrats wrested control of the state government with violence and vote fraud in 1874, they convened a constitutional convention in 1875 and wrote a new “Redeemer” constitution. Whites from the Black Belt, concerned that a black majority might regain political power and raise taxes, placed in the constitution millage caps for both state and local property taxes. This constitution abolished the State Board of Education, which had been the administrative and legislative authority for implementing education for African Americans in the state. The limits on property taxes on Alabama were created in 1875 with a racial intent, to deny black children full and equal opportunities for education.

16. The 1875 constitution created mechanisms to undermine local taxing and governing authority, including means to remove authority from local officeholders and place that power with a statewide authority like the governor. This change was designed by whites to address the situation when blacks were elected to local office. The 1875 constitution thus set the policy of vesting taxation power at the state level and removing it from local control to prevent majority-black counties from raising taxes on whites. This was applied especially in the Black Belt, where property assessments had risen dramatically during Reconstruction and where opposition to public education was strongest in the state.

17. The Redeemer constitution so lowered the tax support for state and local government that one of the major sources for state and local revenue in the late nineteenth century was the convict lease system, which sent a nearly all-black body of prisoners to work on railroads, coal mines, and plantations. Thus, as under the slave system, unfree black labor was a main basis of revenue for the state of Alabama and county governments.

18. At the same time, the Redeemer government moved to insure that blacks received as little benefit as possible from state and local revenue. The now-dominant Conservative Democratic element, based heavily in the newly powerful Black Belt, was unrelenting in their opposition to black education. After 1875, property assessments and collections were in the hands of local whites who practiced a haphazard under-assessment and under-collection of property taxes, especially in the Black Belt. It was well understood among whites that the collection of property taxes in the heavily-black areas went to the benefit of black children.

19. Opposition to black education increased among whites during the economic depression of the 1890s, a time when some urban counties wanted to improve their schools for white children. Still governed by the Reconstruction mandate for equally funded and segregated schools, whites began to agitate for the separation of school revenues by race. A constitutional amendment to separate the school funds by race of taxpayer passed the state legislature in 1893 but failed to get enough votes in the ratification election to make it law.

20. But the ability to discriminate by race in the funding of schools had already been facilitated by the 1891 Apportionment Act, which gave local school officials the authority to spend state funds as they deemed fit. This resulted in a drastic inequality between expenditures on black and white schools, with expenditures for white teachers in one Black Belt county actually 28 times greater per child than for black teachers.

21. The Apportionment Act meant that in the Black Belt, white officials could generously fund schools for white children by taking blacks’ fair share of the school funds. Therefore, Black Belt

whites enjoyed relatively good schools under the existing arrangement, and they could fight any effort to raise property taxes without their own children suffering.

22. In 1901 a state constitutional convention was convened for the express purpose of disfranchising blacks. By prior agreement, the convention was prevented from altering the 1875 Constitution's limits on property taxation, and therefore the limits set in 1875 controlled, though the limits on property taxation instituted in the 1901 constitution were even lower. Thus the tradition of state-level control over local taxing authority, initially imposed in the 1875 constitution, was continued in the 1901 constitution.

23. The caps on millage placed in the 1901 constitution are directly traceable to the 1875 constitution and had the same racially discriminatory purpose that the ones in the 1875 constitution contained. Indeed, the 1901 convention had agreed *a priori* to caps on taxation in order to continue the 1875 agreement on limiting the property taxes that benefited black children.

24. The 1901 Constitution solidified the white-supremacist *de jure* system in Alabama government. All means proposed for disfranchising blacks were put in the new constitution. Of the 180,000 black voters on the rolls before 1901, only 3,000 remained afterward.

25. The disfranchisement of blacks in 1901 was understood by white Alabamians as a permanent disbarment of blacks from the state's democratic processes. By so intending, and by so largely succeeding far into the twentieth century, white voters ensured that the state's interests were virtually the total domain of whites for more than two generations. For whites over the course of the next 70 years at least, the idea of blacks influencing the outcome of state policy was deemed unthinkable or revolutionary.

26. An effort to separate the school funds by race was forcefully advanced by many delegates in the convention, a reflection of strengthening white opposition to any and all black education. Black leaders understood the disfranchising effort as a *fait accompli* even before the convention, but the separation of the school funds was feared as the next devastating assault on black interests. Black Belt forces defeated the separation, albeit narrowly, because local school boards in the Black Belt were effectively robbing state funds, with the authority from the 1891 Apportionment Act, from the black children to educate the whites generously.

27. The 1901 constitution was not a "living document" in the sense that its enforcement allowed Alabama's public policies to adapt to changes in circumstances. The requirement that the legislature be reapportioned decennially was simply ignored, thus making the 1901 apportionment of state power in the legislature a permanent fixture, in defiance of large changes in population by region in the state. This froze the arrangement of power in the moment of 1901 and was not addressed in actuality until the 1970s. Also effectively frozen were attitudes about public policies about black education and black political rights. In essence, 1901 realities dictated 1970s public policies.

28. Another official defiance of state law was the widespread failure to assess property at the 60% ratio dictated in a 1911 state statute. Hostility to equal tax enforcement paralleled the continuing hostility to black education and the resulting beggaring of black education in the state. In fact, the malapportionment of funds between black and white schools increased after

1901, which meant that white schools advanced even further, including the building of state-funded white high schools in every county. The state provided little funding for black high schools, which, when they were built, emerged in most counties mainly with philanthropic support.

29. In Alabama after 1875, therefore, the customs of white supremacy—which denied blacks any rights or privileges, including access to education—overrode state law and the state constitution when statutes and constitutional provisions somehow redounded to the benefit of blacks, including the opportunity to get an education. The state’s written law was a dead letter when its enforcement would have helped blacks, while at the same time it was a main instrument for enforcing racially discriminatory laws in voting, public accommodations, and housing.

30. With segregation firmly entrenched and school funds distributed in a highly discriminatory manner against blacks, the state added new sales and income taxes in the 1930s which rescued the white public schools from penury in the midst of the Great Depression. The new funding for schools went disproportionately for the benefit of white students. Property assessments remained unequally assessed and thus education funding from property taxes was abysmally low.

31. Starting in 1938, decisions of the United States Supreme Court began to threaten the state of Alabama’s discriminatory treatment of African Americans. Beginning with *Gaines v. Canada* in 1938, 305 U.S. 337 (1938), and *Alston v. Norfolk* in 1940, 112 F.2d 992 (4th Cir. 1940), cert. denied 311 U.S. 693 (1940), the court began to enforce equal treatment, including spending, in black education. Whites in Alabama recognized that federal courts could enforce the Fourteenth Amendment to undermine their customary domination of blacks, as well as the discrimination entrenched in statutory segregation laws and the 1901 Constitution.

32. At the same time, the 1940s, blacks in the state began to challenge teacher-salary discrimination in the courts. These cases served further to warn whites in Alabama that the discriminatory public funding of black education, entrenched since 1891, was in jeopardy.

33. Beginning in the mid-1930s, African Americans in most Alabama cities organized challenges to disfranchisement, which accelerated during World War II. Black plaintiffs entered lawsuits against several county boards of registrars. The Supreme Court’s decision in *Smith v. Allwright*, 321 U.S. 649 (1944), outlawed the white primary. In response to rising black political participation, white voters in 1946 supported a constitutional amendment, the Boswell Amendment, to strengthen disfranchising mechanisms. The Boswell Amendment was declared unconstitutional, *Davis v. Schnell*, 81 F. Supp. 872, 881 (SD Ala. 1949), and white Alabamians’ fears rose in the 1940s and 1950s that blacks would regain the political rights taken away in the 1901 constitution.

34. White political activists like state senator Sam Engelhardt openly declared in the 1950s that the danger of the blacks’ regaining the right to vote lay in the prospect of electing black tax assessors who would raise the property taxes of white landowners.

35. The 1954 *Brown* decision was the culmination of US Supreme Court decisions since 1938 pointing to an end to federal acceptance of “separate but equal.” White Alabamians received their clearest indication that discrimination in education would not continue to be tolerated by the

US government. In general, white Alabamians did not believe that Alabama schools could or would be racially integrated. They resisted all efforts at school desegregation until 1963, when token desegregation began to take place in a few schools under federal court orders.

36. In the aftermath of *Brown*, white Alabamians began to contrive means to prevent racial integration in public schools. Various state statutes were designed to give white officials the authority to keep schools segregated. More and more in the 1950s, white Alabamians discussed the creation of private segregated schools to prevent racial integration, a reflection of the determination of whites that their children should not and would not go to school with blacks.

37. White reaction against *Brown* made it difficult to get increases in tax support for education in Alabama, including that for white students. Despite widespread awareness of the inequities in property tax assessment, no equalization effort succeeded.

38. The federal-court-ordered desegregation of Alabama's public schools that began in 1963 accelerated the movement to private schools among white Alabamians. Governor John Patterson had supported the effort, but his successor Governor George Wallace made promotion of private, segregation academies a central focus of his political action. He openly solicited support among state employees for the state's first segregation academy, Macon Academy in Tuskegee.

39. Governor Wallace publicly demonized federal judges like Frank M. Johnson, who was one of the three judges who made the statewide school desegregation order in *Lee v. Macon*. He connected Judge Johnson to the US Supreme Court that had ruled in *Brown* and to other courts that had enforced equal protection against disfranchisement and segregation in public accommodations in Alabama. The verbal assault on federal judges became a coded message for defense of white supremacy.

40. In 1964 the US Supreme Court ruled in *Reynolds v. Sims* that the malapportioned Alabama legislature violated the one-man, one-vote principle inherent in the US Constitution, a decision meaning that the Black Belt's domination of the state legislature would end, because since its last apportionment in 1901, the state's population had shifted heavily northward and into cities.

41. This structural realignment of electoral power in the state potentially undermined the Black Belt's anti-property tax policies, because urban interests in the state openly advocated both the equalization of assessments and a raise in tax rates. The promise of a real legislative reapportionment after the 1970 census meant a big expansion of power for urban, suburban, and black interests in the state and a drastic diminution of Black Belt power.

42. The passage of the 1965 Voting Rights Act removed the disfranchising mechanisms used since 1901 to keep most blacks from voting. Hundreds of thousands of black voters registered in the late 1960s. Blacks began to get elected to local offices in Black Belt counties.

43. A series of federal court decisions and administrative orders between 1965 and 1969 undermined the "freedom of choice" school desegregation policies that had allowed the tokenism in school desegregation of the mid-1960s. Stronger mandates for real school integration appeared finally to signal the end of segregated public schools. Those decisions prompted Governor Lurleen Wallace in 1967 to call for massive resistance to school desegregation orders in the state.

She and her husband accelerated the demonization of federal judges. Her successor, Albert Brewer, also condemned federal judges for forcing school desegregation.

44. When challenging Albert Brewer for governor in 1970, George Wallace condemned Brewer as a pawn of the “black bloc” in Alabama, which in collaboration with federal judges, were undermining Alabama’s “way of life,” another coded message to signal to whites his defense of segregation. Wallace won the election and was thus in office in 1971 when the *Weissinger* case ordered a statewide equalization of property assessments.

45. A series of federal court decisions, culminating in *Swann v. Charlotte-Mecklinburg* and *Davis v. Board of School Commissioners of Mobile County* in the spring of 1971, precipitated many busing orders for desegregation in the South, including Alabama’s biggest cities. The opposition to Judge Sam Pointer’s orders in Jefferson County was vitriolic in August and September of 1971. More and more private schools sprang up in Alabama in 1969-1971 as whites increasingly abandoned the public schools.

46. In this context, George Wallace called the legislature into session to ask for a constitutional amendment to set statewide property tax assessments at a low level and thus end the threat of much higher assessments that existed in the *Weissinger* order. Long the voice of anti-black and Black-Belt white interests, Wallace insisted that there was no need for any higher property taxes in Alabama. It was well understood among white Alabamians in 1971 that an increase in property taxes would go to fund public education that many of them no longer supported.

47. Wallace said at the opening of the December 1971 special session that the property tax issue “was brought upon you by the federal courts.” Urban interests, in favor of a higher assessment ratio, responded angrily by saying that was not true, because this coded message obviously appealed to an anti-black rights sentiment that would doom the hope for a stronger state property tax basis.

48. It was understood in 1971 that the pending reapportionment of the state legislature would reduce drastically the power of the Black Belt and increase the presence of blacks in the legislature. In 1971 there were only two black representatives, but by 1975, after court-ordered reapportionment in 1972, there would be 15 African Americans in the legislature.

49. Thus in 1971-72, when today’s controlling constitutional property tax limits were put in place, a convergence of influences came together to make a final and lasting implementation of the state’s longstanding opposition to tax property for the benefit of black education. The busing orders and the resulting explosion of private schools meant the final abandonment of public education for many whites. The re-enfranchisement of black voters and the impending legislative reapportionment meant that a state-level limit on property taxes needed to be imposed quickly. George Wallace’s demonization of federal judges—perfected in campaigns in 1962, 1964, 1966, 1968, and 1970—had laid the predicate for opposition to court-ordered property-tax equalization.

50. This perfect storm of the federal court orders and laws—re voter registration, redistricting, taxes, and school desegregation—took place in the context of the state’s uninterrupted hostility to black education and its almost century-old association of black schools with property taxes. These anti-black attitudes were old but they still prevailed in 1971-72, both in law and in custom

in the state of Alabama. George Wallace exploited this perfect storm of federal court intervention to command support for new property-tax limits.

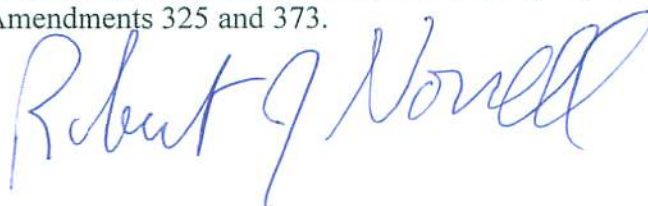
51. The 1978 current-use provision was a tweaking of the limits imposed in 1972. The circumstances that dictated policy in 1971-72 still held in 1978, as political observers noted at the time, especially the high levels of white opposition to public education. In campaigning for the current-use amendment in 1978, Governor Wallace fell back on his traditional appeal to the demonization of the federal judges who had ordered the property tax reform.

52. In summary, the 1971 Amendment 325, which established the first classification system for property taxes in Alabama history, and the 1978 Amendment 373, which modified the assessment ratios and added a current use provision for farm and timber land, were the products of a series of contemporaneous events that brought to an end the ability of Black Belt whites to control the Legislature and to block increases in local property taxes. These events were the rise of black political power resulting from the passage of the 1965 Voting Rights Act, the re-enfranchisement of blacks, and corresponding litigation challenging racially discriminatory election structures; school desegregation, which undermined support for public schools; court challenges to the widespread under-assessment of property for tax purposes, culminating in the 1971 federal court decree in *Weissinger v. Boswell*, which required uniform property assessments statewide; corresponding pushes by the Farm Bureau and forestry interests to obtain additional constitutional protection from legislative or local tax initiatives; and legislative reapportionment resulting in an increase in the number of black legislators, which created a corresponding growing concern on the part of white property owners about their property taxes being raised.

53. Further in summary, there was a strong historical continuity between the property tax provisions of the 1875 Constitution, the 1901 Constitution, and amendments 325 and 378. State policies about property taxes were formulated in the context of the racially charged circumstances of Reconstruction and the immediate post-Reconstruction years. Property tax policies were created to maintain the lowest possible taxation because property taxation was associated with funding for education for black children. The historical fears of white property owners, particularly those in the Black Belt, that black majorities in their counties would eventually become fully enfranchised and raise their property taxes motivated the property tax provisions in the 1901 Constitution and the amendments to it in 1971 and 1978. The limits were the result of white supremacist intent in 1875, which was strongly reinforced in 1901, and were essentially unbroken as main public policy commitments of the state through the 1970s. All tax policy imposed in the 20th century was effectively made to conform with the commitments of taxation capped by constitutional mandate, reinforced by limits on local control and local authority to tax. That was the result of fears, especially among Black Belt counties, that in the future some re-enfranchised black electorate would raise property taxes.

54. Finally, since the 1901 constitution, when the vast majority of black voters were taken out of the polity in Alabama, the policies of minimal property taxes, white-supremacist control of local government, and minimal support for black education in Alabama have gone uninterrupted. Even after the civil rights movement had succeeded in 1964 and 1965, the anti-black, anti-property tax interests in the state were able to reinforce the historic commitment to minimal property taxation and minimal support for education with Amendments 325 and 373.

Robert J. Norrell April 30, 2009



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