

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 C TO
PLANTIFFS' SUBMISSION OF EXPERT REPORTS**

Expert report of Dr. J. Wayne Flynt

Report of Wayne Flynt, expert witness

I.

Of my 11 published books, 6 deal with Alabama, along with dozens of published articles. These deal with race, religion, politics, the economy, business, Montgomery, poverty, education, culture, the 1901 Constitution, among other topics. The most relevant ones for this case are: Mine, Mill and Microchip; Poor But Proud; Alabama: The History of a Deep South State (co-author); Alabama in the Twentieth Century; and the essay "A Tragic Century: The Aftermath of the 1901 Constitution." in Bailey Thomson's edited work, A Century of Controversy.

II.

I have worked as a consultant to help resolve the Lee vs. Macon case during the past 4 years but did not testify in the case as an expert witness. I have also worked to help resolve the Hall-Moffett case, though I did not appear as a witness.

III.

I am paid \$125 per hour for my work. So far this is approximately \$2000.

IV.

A statement of all opinions that I will express and the reasons for them:

During the antebellum period in Alabama, relatively few blacks could read or write, there were no African-American schools, and no blacks could vote. Taxes were levied mainly on wealth (land, slaves, objects of high value such as clocks and gold watches, etc.) and were both low and relatively equitable. Those who owned most wealth paid most taxes. No statewide public school system existed until 1854, and even then it was poorly funded from a variety of sources (gambling, charitable gifts, raffles, etc.).

All this ended in 1865 with the defeat of the Confederacy. A combination of African-Americans, Scalawags, Carpetbaggers, and Unionist whites gave Republicans political control of the state. In the 1868 Constitution, they increased taxes significantly in order to fund education both for whites and newly emancipated blacks. Additional taxes also funded internal improvements and other services. With slavery ended and little conspicuous wealth to tax, taxes fell more heavily on all land owners, including a few blacks who had managed to acquire land. The connection of taxes to public services (especially education) was obvious. Two overwhelming realities of Reconstruction were: many more schools were built where many more children were educated; and much higher taxes were levied to accomplish the improvements in schools. County taxes in Montgomery Co. quadrupled, in Madison County went from \$13,300 in 1859 to \$65,400 in 1869. In 1870 the State tax was nearly three times as large as in 1860 and the county tax had increased four times. The town tax was approximately 35 times as heavy as in 1860. The average yearly cost of State and local government in the fiscal year 1866-67 totaled \$676,500 and \$413,800 of that amount went to schools. Yet in 1870 the superintendent of public instruction reported that the state's 1,355 white and 490 black schools enrolled 229,000 whites and 158,000 blacks.

So-called Conservative-Democratic “redemption” of the state from Republican rule in 1874, resulting from widespread Democratic violence, intimidation, and voter fraud, led to a constitutional convention in 1875. Fearful of disfranchising black voters lest Congress or the military intervene, Democrats did limit the capacity to tax property by establishing maximum property tax rates both statewide and in counties. The cause and effect relationship of this attempt to limit taxation seems historically obvious. Given the increased taxation between 1865 and 1874, most of it for education and much of that spent on black education, limiting taxes on the mass of white property owners fitted the so-called Redeemer and Bourbon Democrats philosophy perfectly. That much of the money went for black education added racial urgency to the economy measures. This fear was strongest in the Black Belt but shared by white property owners statewide. During the constitutional convention, there was a sharp exchange over funding for education. Republicans warned that the tax provisions of the proposed 1875 Constitution would significantly reduce tax money available for education compared to the 1868 Constitution. Democrats brushed aside such objections, arguing that economies such as abolishing the State Board of Education as well as county and state superintendents of education would result in more money for actual classroom instruction and teachers. The 6 Republican delegates voted against the provisions, which passed easily. The 1875 Constitution thus placed a cap on property taxes by state, county and city, decentralized the system, and ensured its chronic underfunding. Bondholders and debt commissioners, representing the interests of wealthier whites, wanted economy in government in order to give highest priority to paying off bondholders. In fact the report of the committee on finance and taxation recommended economy in every branch of government and ended its report with an historic blueprint for the future economy of the state: “We believe, with these economical views fully carried out, and the contemplated compromise consummated, with this rate of taxation fixed at three-fourths of one per centum as a maximum, that our State will once more gain her deserved prosperity; that capital, seeing that our debt is reduced and our taxing power limited, will seek investment in our cheap lands, and population, always following capital, will fill up our waste places: that our property will enhance in value and a rapid reduction of the rate of taxation may be had, with yet sufficient revenue to meet an economical administration and pay interest on the public debt.” Paying the debt was paramount. Next came draconian reductions in services. That permitted reduced taxes. Low taxation, cheap land, low-skill, tractable labor, natural resources would attract northern and European capital. That would make Alabama a prosperous, profitable state. That became the template of political and economic development until the late 20th century when what labor knows became more important than what labor costs, and Alabama’s business and corporate leaders began to agitate for education and tax reform in order to reverse the wretched education system that denied them an adequate labor pool. As Malcolm McMillan brilliantly concluded about the finance and taxation part of the 1875 Constitution: “State finances, responsibility for the state debt, limitation of taxation, repudiation of the railroad bonds, retrenchment and economy in government, and salaries of state officials were the important issues in the debate on the taxation article.”

Widening white poverty, the spread of farm tenancy, declining cotton prices, the rise of the labor movement, the national depression of 1893-97, and other factors, plunged the

state into political chaos during the 1890s. A coalition of laborers, small land-owning farmers pressed toward tenancy, and African-Americans living outside the Black Belt where their votes were less vulnerable to fraud, organized as the Jeffersonian Democrats or Populist Party and threatened Democratic hegemony. But for planter intimidation of black voters, especially in the Black Belt, most historians believe Ruben Kolb, the Jeffersonian Democratic candidate for governor, would have been elected both in 1894 and 1896.

So egregious, open, and pervasive had Democratic corruption become by 1900, that editors, many politicians, ministers, and others pushed for some legal resolution of disfranchisement in order to replace intimidation, violence, and corruption. This was the primary motivation for the 1901 Constitutional Convention.

The Convention was in no way representative of the state's population or even of its voting population, which included more than 100,000 eligible black voters. All 155 delegates were white males, nearly all were Democrats, more than a hundred were lawyers and bankers, and a fourth were Confederate veterans.

Although the primary issue of the delegates was disfranchisement of blacks and poor whites, they acted also to protect low property taxes enacted in 1875. They lowered the maximum statewide mileage rate from 7.5 to 6.5, plus an additional mill that could be levied by counties in a referendum (now shorn of black voters by the Constitution's suffrage restrictions). Delegates earmarked a certain percentage of property taxes for education, believing it would be spent largely on white schools and would attract the ratification votes of hill country white voters who might otherwise oppose ratification because of its threat to their voting.

Many blacks and working-class white voters understood the intent of the 1901 Constitution full-well, and they opposed ratification. Booker T. Washington privately mobilized black voters to oppose ratification as well. Some black leaders urged blacks not to vote at all so their votes could not be corruptly counted in favor of ratification.

Contemporary white Alabama newspapers overwhelmingly favored ratification, as did white Conservative-Democratic Party leaders. Their appeals were overtly racist, urging white supremacy and racial solidarity as the way to eliminate the need for vote-stealing. They predicted that blacks would not vote because of apathy. On November 5, 1901, the Montgomery Advertiser editorialized that "All white people who have studied it and who are not carried away by prejudice, will vote for it." On November 7, 1901, the same paper wrote that "Few Negroes care one way or the other and will not even vote on ratification. They have concluded that the ballot has been of no great advantage to them. They are resolved to allow whites to settle issues among themselves." The Birmingham Age-Herald suggested that the best way to end political corruption was to ratify the new constitution. The Age-Herald on Nov. 5, 1901 editorialized: "Vote then for a white supremacy that does not involve dishonest elections. Vote for the new Constitution." On Nov. 6 the same paper wrote that white supremacy was essential to all other reforms: "What is most wanted for the general good is assured white supremacy." The Choctaw

Advocate in southwestern Alabama editorialized on Nov. 6: "This is the time when all white men should stand together. The new Constitution was made by white men, for white men." On Nov. 3, 1901, the Mobile Daily Register stated that one good reason to ratify the new constitution was that it would disenfranchise Black voters. It noted that in Montgomery, only 168 Negroes in the County (living outside the city limits) would own enough property to vote under terms of the new Constitution, which required 40 acres or \$300 in personal property. There would be even fewer black voters who would qualify in other counties. The Democrats Ratification Campaign Committee formed to lead the ratification effort during the Fall of 1901 promised: "There will be no personalities indulged in and our slogan will be 'white supremacy'! Honest elections! And the New Constitution! One and inseparable." The committee added that "Advocates of ratification asked approval of the new Constitution because of additional support of education, a reduced constitutional tax limit, the provision of a popular vote on bond issues and the election of solicitors, restrictions on local and private legislation, quadrennial sessions of the Legislature, and easier amending process, and the abolition of unnecessary elections and useless Courts."

Many of the same papers commented after the 102,000 to 82,000 victory for ratification on November 11, 1901, that blacks had voted heavily against ratification across the state, a vote that was decisive in the defeat of the Constitution in Mobile County, Opelika, and elsewhere. In fact, outside 12 Black Belt counties, the ratification vote failed by a vote of 76,000 to 72,000. However, in those 12 counties, all with a preponderance of black voters, the vote was 36,000 to 5,000. In Lowndes County, which contained 5,600 black voters and 1,000 white voters, 5,326 votes were cast for ratification, 338 against. Assuming that every white voter voted and voted for ratification, that would require that more than 4,300 blacks voted for denying themselves the right to vote, and that in a state where blacks outside the Black Belt overwhelmingly rejected ratification. All 12 counties conveniently submitted their results late after determination of how large the majority needed to be to carry ratification.

Newspapers that had predicted few Negroes would vote in the ratification election wrote in post-election editorials that there had been a massive and in many counties a decisive black turnout. The Montgomery Advertiser which had predicted indifferent black voters who would stay home, reported a large black turnout virtually unanimous against ratification. The Mobile Daily Register reported on Nov. 23, that in Opelika, only 85 of 912 anti-ratification votes had been cast by whites. Mobile County narrowly voted against ratification, the paper wrote, because of the heavy black vote against it and the light white vote in favor. The Negro vote statewide had been much heavier than predicted, and "the Negroes voted solidly against." (Nov. 12).

This made the decisive vote in 12 Black Belt counties particularly suspicious. As Malcolm McMillan wrote in *Constitutional Development in Alabama*, "Although one cannot prove that the large Negro vote in the black counties in favor of the Constitution was fictitious, a study of the election returns, contemporary sources, and Black Belt voting practices has convinced the author that in some counties almost every eligible Negro was 'voted' although thousands never appeared at the polls. In other cases the

Negro appeared at the polls and either voluntarily or involuntarily voted away an interest so fundamental to him as the franchise. Figures prove that the Constitution was adopted by the majorities of the black counties, whether the vote was fictitious or real.”

As a consequence of the referendum, Black Belt planters spent little on black schools, perpetuating generations of blacks who would grow up in illiteracy and poverty. Bill Stewart in Bailey Thomson’s book, *A Century of Controversy*, wrote: “Under the terms of the new Constitution, power over taxes and bond issues for educational and economic development was transferred virtually to all whites, with the issues of equality and adequacy for black education to be decided by a white supremacy majority with resulting injustice to blacks.” (p. 50).

The regime of plantation, large land-owning whites and Birmingham-area Big Mule industrialists formed a powerful political alliance to keep taxes low, perpetuate a “favorable business climate” (anti-union and low taxes), control sources of labor, and build a low wage, low skill industrial state. Commitment to a low-wage, low-skill labor force that could be politically controlled meant that public expenditures for education was a low priority. Public policy for the next century proved the point. The percent of total state revenue expended on public schools actually declined from 38% to 30% between 1913 and 1921, though local funding increased during the same years. However, as the results in counties such as Lowndes and Chambers makes clear, local funds seldom helped black schools. Historian A.B. Moore, himself a descendent of Black Belt politicians and defender of black inferiority and the 1901 Constitution’s suffrage restrictions for reducing corruption, nonetheless summed up the ancient regime’s strategy perceptively: “Political issues have been affairs between the progressive and conservative elements of the Democracy.... Again and again these factions have drawn their lances over such public questions as taxes, education, prohibition, methods of nominating officers, woman suffrage....The Black Belt and the business sections have been the stronghold of conservatism. It is commonly said that the disfranchisement of the Negroes under the constitution of 1901 deprived the Black Belt section of its political power....But the conservative influence of the Black Belt has gone out into other sections of the State, and the counties of this belt are represented in the legislature out of all proportion to their white population. In the industrial section a powerful group of business men has arisen, and these men, true to the instincts of their class elsewhere, are as a rule conservative. They have formed with Black Belt leaders the most powerful political coalition in the State. This coalition, with the exception of a few administrations, has generally exercised a controlling influence over the affairs of the State.” (p. 650-651). Several years after Moore wrote these lines in 1934, Gov. Bibb Graves would give the coalition a name: “planters and big mules.” What they had in common was a 50 year old common interest in cheap, tractable, controlled labor, low taxes, low-wage, low-skill manufacturing, and cheap farm labor.

Educational inequities were both regional and racial. In 1918, 7 of 10 rural teachers held the two lowest certification credentials; only 3 in 10 urban teachers did so. In 1927 Alabama ranked 45th of 48 states in literacy. Many working class and poor white farmers so little value in education. But it was in the Black Belt that the most egregious

discrepancies in funding black and white schools occurred, because there whites showed great interest in education of their own children and virtually none for the education of black children.

In Jan. 1930 66 of Alabama's 67 counties had levied a 3 mill school tax to upgrade education. The exception was the Black Belt's Lowndes County which had refused to vote the new tax, perhaps because it already spent heavily for its white children by underfunding black schools. Superintendent of Education Spright Dowell deplored Alabama's low ranking in funding public education. More than 500 white schools and a similar number of black schools had been unable to open during 1919 because no teacher was available. The average salary in white rural schools was \$470 a year for males, \$312 for females. In urban white schools it was \$1345 for males, \$698 for females. For Negro schools the average for males was \$178, for females, \$180. Black urban males teachers averaged \$602, females \$386. Only one small elementary school had been erected in Montgomery between 1904 and 1920. Sidney Lanier High School had a capacity of 700 and an enrollment of 1.012. Montgomery could not build more schools because it was in debt \$500,000 and needed new sewers, a jail, and a waterworks.

Similar discrimination appeared in the 1922 Alabama Department of Education annual report. White students attended school for an average 103 days a year, black students, 81 days.

The 1929 annual report reported that only 59% of the state's teachers possessed standard credentials. White rural elementary teachers earned an average of \$84.70 a month, their urban counterparts \$124.38. City salaries for elementary teachers were about 46% higher than rural. Whereas 28% of city elementary teachers had completed 4 years or more of college, only 7% of rural elementary teachers had done so.

Individual counties varied widely in expenditures and results. Lowndes County in 1914 contained only 4 white illiterates, a rate of half a percent, the state's lowest. But that same county in 1930 spent on average less than \$5 to educate a black child compared to \$96 to educate a white child. Chambers County in 1901 paid white teachers a monthly average of \$35, black teachers only \$21. During the 1905-06 school year, the white school term increased to 146 days. black schools averaged just 90 days. Chambers County white teachers that year averaged \$46 a month: black teachers, \$24. In 1911, 98 white students attended the county high school; there was no high school for blacks. Average annual teachers' salaries in 1911 varied from \$428 for white males to \$407 for white females, to \$157 for black males and \$90 for black females. The value of equipment in the county's white schools in 1913-14 amounted to \$2,500 compared to \$500 for black schools.

As decades passed, and especially after the Lid Bill and Current Use tax amendments passed during the 1970s, the state increasingly relied on state funding, and local sources declined as a percentage of total educational revenue to the point where Alabama trailed all states in local funding. Illiteracy and high school dropout rates ranked near the top of the 50 states. In 1990, Alabama ranked 10th highest in high school dropouts. In 1996

34% of adult Alabamians (930,000) did not possess a high school diploma; 456,000 were functionally illiterate. Local control of the property assessment process allowed Black Belt whites in particular to maintain artificially low property assessments from Redemption in 1874 to the 1970s. When the *Weissinger v. Boswell* decision forced the state to equalize assessment in all counties, Black Belt whites became even more concerned because the Voting Rights Act of August 1965 and court-ordered legislative reapportionment signaled the imminent demise of their ability to control the local tax assessor? The 1971 and 1978 Lid Bill amendments for the first time embedded low property assessments in the Constitution, which is now virtually immunize farm and timber land from higher millage rates.

As the skill of the labor force became increasingly important and low wage jobs were exported abroad, this deficiency crippled the state and especially its poor white and black population.

In 1901, before macadamized roads, public health programs, a state prison system, or extensive education programs, and with a Constitution that banned state expenditures for internal improvements, little tax money was required. In 1920, property taxes funded 63% of all state expenditures. By 1940, property taxes funded only 40%. By 1973, the figure had dropped to only 3.5%, and by 1992, to only 2%. State funds to make up the difference came from corporate and personal income taxes and increasingly after the 1930s, from regressive sales taxes. Thus the cost of operating state government had been transformed from antebellum taxes levied mainly upon the wealthiest Alabamians to modern taxes levied most heavily against the poorest citizens. And, of course, whereas only 10.5% of Alabama whites live below the poverty level (342,388), 31.3% of blacks are poor (371,975). And among black children in the Black Belt, figures are above 50% in many counties. In Perry County, 98% of the all-black public school population are eligible for free and reduced meals.

Historians have concluded that the 1901 Constitution brilliantly achieved its purposes, disfranchising virtually all black voters, many poor whites, and protecting property from all but minimal taxation. And even after Federal court decisions striking down disfranchisement, the other pillar of planter rule—low property taxes embedded in the Constitution—remained in effect. The systematic underfunding of schools, especially in the Black Belt and in rural areas of Alabama, is the result, meaning that areas of high wealth with strong support of public education obtain a level of education quite impossible for most of the state's children. For more than a century dating back to 1875, the desire of powerful and affluent white interests desired to reduce government spending, especially on black education, cut the cost of government by reducing services, find alternative ways of funding necessary government expenditures (i.e. the convict lease system to replace the cost of state prisons), and keep labor uneducated as a hedge against blacks leaving for better jobs elsewhere or gaining leverage that might force higher wages for those who remained in Alabama. Race was an ever-present shadow hovering over every discussion of millage caps, Lid Bills, Current Use laws, tax reform and education reform debates for more than a century. I believe that the testimony of Professors J. Mills Thornton and Robert J. Norrell upon which the court relied in the case

of Knight v. Alabama, 458 F.Supp.2d 1273 (N.D. Ala. 2004) concerning the enactment of the property tax millage caps and Lid Bill amendments to the Alabama Constitution are accurate reflections of the facts and the historical interpretation of those facts. There is a direct line of continuity between the property tax provisions of the 1875 Constitution, the 1901 Constitution, and the amendments up to 1978. As Thornton argued at 175-81, "The fact is, that this is a set of assumptions and a set of institutional relationships and a set of social relationship that . . . is created by historical events, that is historically created and . . . interrelated so that the events feed onto each other and makes a single understandable whole." The historical fears of white property owners, particularly those residing in the Black Belt, that black majorities in their counties would eventually become fully enfranchised and raise their property taxes was a pervasive fear and motivated the property tax provisions in the 1901 Constitution and the amendments to it in 1971 and 1978.

I base this narrative on the overwhelming consensus of books, monographs, theses, and dissertation about Alabama, as well as my own sampling of primary documents. Works by Jeff Norrell (Reaping the Whirlwind), Mills Thornton(Politics and Power in a Slave Society; Dividing Lines); Malcolm McMillan (Constitutional Development in Alabama); Harvey Jackson (Inside Alabama); Bertis English ("Civil Wars and Civil Beings: Violence, Religion, Race, Politics, Education, Culture, and Agrarianism in Perry County, Alabama, 1860-1875", unpublished Ph.D. dissertation, Auburn University, 2006); Robert Sherer, Jr. Black Education in Alabama, 1865-1901); William W. Rogers, David Ward, et al., Alabama: The History of a Deep South State); Horace Mann Bond (Negro Education in Alabama); Anne Permaloff and Carl Grafton (Political Power in Alabama); Bailey Thomson, editor (A Century of Controversies); Edith Miriam Ziegler ("The Shaping of Alabama's Educational System: Localism, Community, and Domain as Persistent Influences on the Development of Alabama's Public Schools, 1865-1915", Ph.D. thesis, University of New England, 2008); A.B. Moore, History of Alabama, support all of parts of this narrative. I also worked extensively in State Department of Education Annual Reports and in state newspapers deposited in the State Archives.



Wayne Flynt
April 15, 2009