

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 10
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Declaration of Dr. Jeff Frederick

Declaration of Jeff Frederick, Ph.D.

I Jeff Frederick, declare under penalty of perjury, pursuant to 28 U.S.C. 1746 as follows:

I am a forty-six year old white male living in Lumberton, North Carolina. I am an American citizen and employed as an Associate Professor of History at the University of North Carolina at Pembroke. I have worked at the university since August, 2003, have been promoted from Assistant Professor to Associate Professor, and have earned tenure. I was graduated from Auburn University in May, 2003 with a PH.D. in American History. My research and writing is in Southern History, and I consider myself to be an expert in post-World War II southern politics in society. In the course of my work as an historian I have published books, articles, essays of various lengths, book reviews, presented and commented on work at various conferences and public events, reviewed book and article manuscripts for journals and publishers, taught classes, advised students, served in various capacities across the university, and directed graduate student writing. My own work has been favorably reviewed within the academic community of southern history scholars.

The defendant's motion for summary judgement is based on an intentionally narrow reading of history, a willful neglect of the prevailing and historical culture of race in Alabama during the 1960's and 1970's, and methodological conclusions that reduce historical inquiry into an elementary search for specific phrases. Given that the historical content of the era is the legal standard, these omissions by the defendants are noteworthy.

Part of the defense motion is based on a belief that because the plaintiff's historical experts had not previously published explicitly on the issue of racial discrimination in Alabama's property tax system, that their reports on this case somehow shows "that there was no

discriminatory intent.” In fact, the nexus of this case, the historical uses of racial discrimination by Alabama’s governmental elites have been chronicled in great detail by each of the plaintiff’s experts in print, at conferences, in public lectures, and in the academy. The political culture of Alabama is integral to understanding the context of time and place and space, beliefs about school integration and segregation, attitudes about public and private schools, values related to busing and additional revenue streams allocated toward integrated public schools, and the property taxes which were to be a major source of those school funds. Much like a physician requires a thorough patient history in order to accurately diagnose the etiology of a patient’s presenting problem, historians assess the sweep of contextual factors that situate specific actions into a broader and fuller narrative. And on this matter of the social and political context of the era, the plaintiff’s experts have been prolific.¹

Historians function on a slightly different time frame than other scholars within the public square. As a rule, trained historical scholars work slowly, often painstakingly, identifying potential sources, evaluating context and the flow of events prior to and after an individual historical event or epoch. As a result, while journalists, commentators, and a wide array of other public intellectuals are quick to offer opinions, historians often take years if not decades to construct a proper contextual analysis before tackling a given topic. This is why, in addition to the discovery of additional sources, active scholars continue to develop new interpretations and evidence related to Ancient History, the Medieval period, and even early American history. It is therefore, no great surprise that some elements of Alabama’s past, including it’s property tax

¹“Defendants Brief in Support of their motion for Summary Judgement,” *India Lynch v The State of Alabama*, March 1, 2010, p. 58.

system, have yet to be fully tackled in exhausting detail. George Wallace was the single most noteworthy Alabama politician of the twentieth century and the first major scholarly biography of his effect on the State of Alabama as chief executive was not published until 2007.

Among the most troubling assertions in the defendant's motion, is the idea that "the issue relating to legislative intent is not whether the racial turmoil Alabama experienced in the 1950's and 1960's – be it from voting enfranchisement and school desegregation or from redistricting– influenced thought or action in Alabama generally or the Legislature specifically." In essence, the defense motion states that since no legislator admitted to nefarious racial intent, racial discrimination did not exist. This is little more logical than a hunter who travels to the woods and states that deer do not exist in Alabama because he did not see one that day. In fact, a thorough hunter would check for rubs and scrapes, scat, bedding areas, tracks, and other contextual factors that explain the presence of deer in the woods, even if the bucks, does, and fawns could not be observed on a given day.

This fascination by the defendants with finding direct statements of racial intent by Alabama legislators seems to be drawn in part from the report and deposition of Dr. S. Jonathan Bass. Dr. Bass reaches the conclusion that there is no evidence to support the "assertion that race was a motivating factor behind the property tax measures of 1971, 1978, or 1982." Dr. Bass is unequivocal in his report about this conclusion, even as he admits in his deposition that race was a previous motivator of actions taken by Alabama Governor George Wallace. Several identifiable errors in methodology and conclusion exist in Dr. Bass's work and are also to be found in the Motion for Summary Judgement.²

²Report of Dr. S. Jonathan Bass, p. 22.

It should be noted that Dr. Bass steadfastly notes in his deposition that his scope and purpose as a defense expert was tied specifically to identifying whether race was a motivation in the ad valorem legislation. “I was given a very specific question,” he notes, and his focus seems to be more on the legislature than any other stakeholder in the process.. This overly narrow focus precludes any substantive analysis of the contextual factors related to Alabama history, Governor George Wallace, the motivations and preferences of the electorate, the interest groups involved in the matter, and the tortured reality of racial politics in Alabama history. History is constructed on an intellectual architecture of interconnected beliefs, actions, and experiences. An overly narrow approach which neglects to assess a wide range of historical contexts and influences and instead seeks only to answer a question by looking for overt, racist, communication is a simplistic methodology. “I was certainly looking for,” Bass explains of his research into this issues, “ you know, a direct communication that would show that this bill was– that the sponsors of this bill were motivated by race.”³

This insistence on finding only direct communication as evidence is not consistent with methodologies found elsewhere in Dr. Bass’s work. In his July 1992 *Alabama Review* article, “Bishop C. C. J. Carpenter: From Segregation to Integration,” Dr. Bass explores a world where southerners operated in ways other than direct and explicit communication. “The Episcopal church had never been segregated officially,” Dr. Bass writes. “No spaces were marked ‘colored’ or ‘white only’ at official diocesan meetings; however, in the reality of the South blacks and whites were segregated.” Segregation, operating on direct and indirect levels, made folks “prejudiced without knowing we were prejudiced,” Bass quotes Episcopal youth worker Peggy

³Bass, Report, 47, 110.

Rupp.⁴ It seems as if Dr. Bass believes that meaning and action could be communicated without direct communication. Folks could understand de facto, the meaning of race and segregation without expressed direct words or de jure mandates. One could harbor specific beliefs and take clear actions, without offering an accompanying declaration of motive. Yet despite this argument in his earlier work, Dr. Bass suggests in his deposition that he was only looking for direct, worded evidence of racial animus in the property tax legislation debates. When questioned about whether the evidence he was searching for to develop his conclusion on the matter, Dr. Bass seemed unequivocal: “. . . what else would I be looking at, you know, as a historian, if I’m not dealing with words.”⁵

In fact, Alabamians frequently relied on custom, inference, and assumption when communicating with one another. The Wallace household, for example, often functioned on these indirect communication techniques and not direct statements. The Wallace family was left to decipher code words and body language when assessing whether George Wallace intended to run for office again, be it the governor’s office or the presidency. He never directly told them he was running for office, but by custom, inference, and assumption they knew that he would. Direct evidence is not always available, nor it is necessarily the custom of political leaders to speak and write in such a clear and unequivocal manner, certainly when such a declaration could be illegal. An exhaustive look at the Administrative Files of Governor George C. Wallace in the Alabama Department of Archives and History reveals that Wallace rarely left a direct paper trail of his

⁴S. Jonathan Bass, “Bishop C. C. J. Carpenter: From Segregation to Integration,” *Alabama Review*, July 1992, 184-215.

⁵Deposition of S. Jonathan Bass, *Lynch v. State of Alabama*, 162-163.

intentions and motivations. It was simply not his custom to be direct as it relates to his own motivations.⁶

It is also true that direct communication is still not always clear communication. The central figure of Dr. Bass's article, Bishop Carpenter, was described as a moderate segregationist. "He passively accepted integration," Dr. Bass writes, "as earlier he had passively accepted segregation. . . Contemporaries used contradictory phrases such as 'benevolent dictator,' 'a gradualist,' and a 'moderate segregationist,' to describe Bishop Carpenter." Despite Carpenter's sentiment toward gradual change and maintaining segregation as long as possible in a peaceful manner, Dr. Bass documents that some critics thought that the Bishop was far too soft on integration while others thought him too defiant in favor of segregation. Perceptions about the Bishop were stronger evidences of his motivation for some than were his actual words. Direct communication, even in Dr. Bass's own work, is not always a reliable exemplar of individual motivation.⁷

The inability of Dr. Bass to link prevailing political issues into the wider indirect landscape of the ad valorem tax debate is also troubling. Interest groups, including the bill's primary backer— The Alabama Farm Bureau— had been dominant in the Alabama Legislature for decades. And groups like the Farm Bureau were more than simply economic organizations intent on keeping certain tax rates low for their members. These groups and in particular their leaders like Walter Givhan, had burnished credentials as white supremacists and advocates for

⁶Jeff Frederick, Stand up for Alabama: Governor George Wallace, Tuscaloosa: The University of Alabama Press, 2007, 183-185.

⁷Bass, "C.C. J. Carpenter: From Segregation to Integration," p. 214.

segregation. Interest groups with as much clout as the Farm Bureau had social and cultural reputations as well as economic ones. The Citizen's Council claimed it was an organization dedicated to defending state's rights, but no historian would argue that it did not also claim a social reputation as a defender of white supremacy, a concept imbued with political, economic, and cultural overtones. Furthermore, the Citizen's Councils and the Farm Bureau shared many of the same rank and file members of rural, white Alabamians raised to believe in the superiority of whites and cherishing the separation of the races as the only way to construct a society. Dr. Bass admitted in his deposition that he had undertaken no research which could assess the attitudes and beliefs of the Alabama Farm Bureau on social issues such as segregation. Nor did Dr. Bass explore the relationship between the Alabama Farm Bureau and Governor Wallace—prominently aligned with the Farm Bureau politically and as a television spokesman of sorts.⁸

In fact, the Farm Bureau had been in virtual lock-step with Governor Wallace since he first ascended to the office in January, 1963. Wallace corresponded frequently with Farm Bureau executives, spoke regularly at their meetings, and represented their interests in his legislative priorities. Wallace appeared in Farm Bureau advertisements so frequently that one Alabama youth upon seeing the governor squealed, "Mommy, Mommy it's the Farm Bureau man." Jefferson County lawmaker Tom Gloor understood the close connection between the governor and the Farm Bureau when it came to property tax issues: "We have seen the governor and the lieutenant governor appear repeatedly on paid television commercials to huskster the classification bill like a cake of soap."⁹

⁸Bass, Deposition, 157-158.

⁹Frederick, Stand Up for Alabama, 294.

Every time Governor Wallace spoke, whether on behalf of the Farm Bureau, the Citizen's Council, or some other entity, he carried with him the reputation of being the the most infamous segregationist in the South. Wallace 's use of race knew no bounds. He championed segregation, fought against the Civil Rights Act of 1964, castigated federal court judges for decisions, blasted the United States Congress, heavily criticized Presidents Kennedy, Johnson, and Nixon for failures to allow the white South to govern itself, blamed African-American protestors and demonstrators for the tumult of the times and not segregationists, and used Klan contacts within the state to engage in partisan campaigning. Wallace used hateful pejoratives in private conversation but later developed a set of coded communication phrases for blacks by the early 1970's when those insulting terms of the past became increasingly taboo in public communication. In fact, political candidates, office holders, and operatives have increasingly used coded communication since the 1970's to provide specific meanings in a world where direct communication has become unsavory. And beyond simple communication tendencies, the Wallace administration routinely crafted state policy based on racial considerations. The State Sovereignty Commission, Alabama State Troopers, and violent segregationists developed infamous and notorious reputations during the administration of George Wallace. Should one conclude that the State Sovereignty Commission did not engage in racially motivated behavior because they did not champion white supremacy in the letterhead of their official office stationary? Evidence of motive and intent can be found in action and is rarely offered in direct communication. Dr. Bass, despite Wallace's incessant use of race as a standard operating procedure, offers only that "at some stage in his career he was very adept at using race as a

political issue.”¹⁰

It is virtually impossible to distinguish Wallace’s perception in local, state, regional, and national politics from his image as a virulent segregationist and critic of the federal government. He won his first gubernatorial term in the 1962 campaign by pledging to uphold segregation and soon became a national figure for his stand in the schoolhouse door, opposition to civil rights activities in Birmingham, Selma, and elsewhere, and vocal castigation of the Civil Rights Act of 1964. Wallace earned substantial electoral support from Black Belt counties where, because of various disfranchisement mechanisms inherent in the 1901 Alabama Constitution, whites cast nearly all the votes. The election of his first wife, Lurleen Wallace, in 1966 can be traced in large part to her vow to continue the same policies as her husband. Implicit in this campaign idea is the suggestion of continuing to work against federal and local attempts at equal rights for blacks. The administration also supported numerous so-called “Nigger Resolutions” passed by its floor leaders in the legislature. These non-binding resolutions blamed the conflict of the era on civil rights protestors, not segregationists and white supremacists. The governor spoke frequently to Citizen’s Council groups, organizations which made resistance to integration their mission. In 1968, Wallace ran for president as the candidate of the American Independent party, winning five states, all of which feature a tortured racial past.

In fact, Wallace’s use of race was so pervasive that virtually all Alabamians and probably most Americans knew that the governor advocated maintaining segregation long after his communication became more coded and less direct. Most Alabamians would have also been aware that Wallace was a vocal supporter of private segregated schools in areas where public

¹⁰Bass, Deposition, 112.

schools had faced court-ordered desegregation. Over the course of his career as governor, Wallace received innumerable letters of support from Alabamians who believed that Wallace was their champion for maintaining segregation, white supremacy, and space and place restrictions for blacks. The missives offer strong evidence that Alabamians expected Wallace to be an advocate for whites in all elements of state policy. "Stand up for Alabama," the governor's famous campaign phrase, was in many ways a coded communication vowing that the governor would always support the interests, traditions, and heritage of white Alabamians.

A particularly important time when Wallace was adept at using the race issue was during the 1970 gubernatorial campaign. Dr. Bass concludes that Wallace was primarily motivated to support the 1972 and 1978 property tax bills because of his "no new taxes" pledge. In fact, Wallace did make this promise and he made it during his hotly contested 1970 campaign against Albert Brewer. But that promise—made in conjunction with a panoply of others—proved insufficient to give Wallace enough traction to win. A thorough analysis of tracking polls indicates that it was only with Wallace's repeated use of race that he was able to overcome Brewer's lead. Wallace used both overt but increasingly covert and coded language to claim that Brewer was receiving electoral support from the "Black Bloc vote," a development which Wallace promised would lead to militant black rule for the next half century. Race, not an appeal to keep taxes low, had been the critical development to earning Wallace the governor's office when the property tax issues were considered in the 1971 legislative sessions. The 1970 race was quite arguably the nastiest, most divisive, most racially sensitized campaign in Alabama gubernatorial history. Would not those white supporters who put Wallace back in office have

expected the governor to act in their interests? ¹¹

Wallace continued to be perceived as a governor that was sympathetic to the interests of white supremacists through his calls to reimplement "freedom of choice" plans which would allow whites to choose non-integrated schools in favor of desegregated ones, his support of Act 1418 (1971) law which would allow parents to keep students out of integrated schools if the time, distance, or safety factors of attending those schools was considered severe, and his frequent pronouncements against busing to achieve racial balance.

In his report, Dr. Bass suggests that Wallace no longer played the race card because his battle against the utility companies had become a suitable surrogate. This is in many ways a misreading of my work. Wallace took on the utilities because it reinforced his popularity with voters at a time when his power with the legislature was waning. The urban portion of the legislature, because of some voting realignments and redistricting, had become more powerful than in past years. This is accurately noted in Dr. Bass's report. But it is a misread to suggest that Wallace abandoned the race issue, his core constituents who continued to be obsessed about it and finance his political campaigns, or his own personal sentiments on the matter in favor of the battle against utilities. It should be noted that his utility battles began at a time when his major complaint on the hustings continued to be busing.

Going further, Dr. Bass did not examine any material related to attitudes in Alabama about public education, a major recipient of property tax funds. Dr. Bass made no analysis on Governor Albert Brewer's education package, passed prior to the 1970 campaign. Many whites continued to support the idea of segregated schools, state money for private segregated

¹¹Frederick, Stand Up for Alabama, p. 251-259.

academics, freedom-of-choice plans to give families the option of keeping their white children out of schools that had a majority of black students, and even teacher-choice options designed to keep white students from studying under the direction of black teachers. Dr. Bass did not study attitudes of Alabamians toward forced busing to achieve racial balance. All of these indicators would have suggested that Alabamians were increasingly disgusted with public education, an institution that had been collectively funded in a miserly way as a matter of course anyway, a reality not reflected in the defendant's Motion for Summary Judgement. Dr. Bass noted during his deposition that he did not consider the reluctance of Alabama voters to support education during the completion of his report: This is problematic given the elevated nature of the rhetoric of the period and the reluctance of many whites to view integrated public education as worthy of existing funds, let alone enhanced revenue funds drawn from property taxes. White Alabamians had knowledge of property taxes and their relationship to public schools, and strong attitudes about racial integration or busing to achieve racial balance in schools. They expected their governor to protect those interests, a large reason why they elected Wallace over Albert Brewer in 1970.¹²

Whenever race could be used to benefit Wallace politically he was more than ready to use it. He relished the responses he received from crowds when he let loose with material that can easily be characterized as racist. The integrated schools and busing issues were directly tied to both race and property taxes. Alabamians wanted lower property taxes in large part because of the issues of school desegregation. Because racism was good for Wallace politically, he exploited it whenever possible including on the property tax issue. Wallace was a strong supporter of this

¹²Bass, Deposition, 72.

property tax legislation because it was so closely connected to issues of race, and race was still dear to the heart of voters and campaign contributors. And he would need both voters and contributors in 1972 and 1974 and 1976. It is not an accident that white Alabama fought for low property taxes.

Dr. Bass does not examine the potential of black voters and office-holders to influence property assessments in his report. The Voting Rights Act of 1965 had incorporated a steady stream of black voters onto the rolls of eligible voters. With each passing election cycle, blacks became an increasingly formidable political force primarily in counties where they had historically been both a majority of the population but, because of disfranchisement, a minority of the registered voters. The largest landowners in these counties were white and they had traditionally maintained a county political presence sympathetic to keeping their property taxes as low as possible. With the gradual ascension of blacks into elected positions of prominence, white landowners— many of whom were either members of or intellectual compatriots of the Farm Bureau — faced the real threat of substantially increased property assessment being made on their holdings. Dr. Bass's report fails to take into account this contextual issue as well as the fact that the increased assessments might offer tangible assistance to public schools peopled overwhelmingly by black students.

It is extremely difficult to evaluate any potential act of public policy without contemplating the effect it would have on constituents. Politicians routinely calculate the potential reactions and perceptions of both interest groups and supporters as they evaluate policy options. Based on his report and deposition, Dr. Bass believes this to be true. He avers that Governor Wallace supported the property tax reform plans in 1972 and 1978 because his

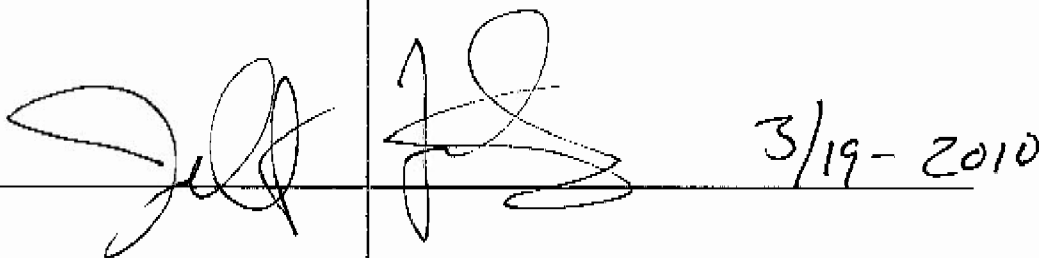
supporters expected that he would not raise taxes in any form. Dr. Bass simply chooses not to apply the same logic to the expectations of Wallace's Alabama constituents about race and integrated schools. This appears to be an inconsistency in logic.

The Motion for Summary Judgement also avers that the popular vote for Amendments 325 and 373 indicates that "there was no discriminatory intent." In fact, the vote proves no such thing. The defendants based their analysis of the vote on racial demographics of Alabama counties and aggregate voting returns. They offer no exit polling to determine racial preferences, and no metrics suggesting voter turnout percentages by race or even class within those individual counties that were majority-black based on the 1970 census. Given Alabama's history of low voter turnout and voter fraud, it is not clear based on the available sources that any racially specific conclusions can be drawn from those votes.¹³

The Motion for Summary Judgement asks the court to rule that there is no genuine issue of fact at stake in this case. The motion fails to take into account any number of demonstrable elements of racial animus that motivated the Wallace administration and their key legislative and interest group allies to take action.

¹³Motion for Summary Judgement, p. 54.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature and date are written across a horizontal line. The signature is written in cursive and appears to be 'Jeff Frederick'. To the right of the signature, the date '3/19-2010' is written in a similar cursive style.

Jeff Frederick

Date