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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ALABAMA  
3 SOUTHERN DIVISION  
4

5 JOHN F. KNIGHT, JR. And ALEASE  
6 S. SIMS, et al., individually and  
7 On behalf of others similarly  
8 Situated,  
9 Plaintiffs and Plaintiffs-Intervenors,

CIVIL ACTION NO:  
CV-83-M-1676-S

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10

11 UNITED STATES OF AMERICA,

11

12 Plaintiff-Intervenor,

12

13 Vs.

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15 THE STATE OF ALABAMA, et al.,

15

16 DEPOSITION OF DR. J. MILLS THORNTON, III

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17 The Deposition of DR. J. MILLS THORNTON,  
18 III was taken before Kimberly B. Garrett,  
19 CSR, RPR, on Saturday, April 24, 2004, at  
20 710 Title Building, 300 21st Street North,  
21 Birmingham, Alabama, commencing at 10:12  
22 a.m., pursuant to the stipulations set forth  
23 herein:

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1 A P P E A R A N C E S

2

3 APPEARING FOR THE PLAINTIFFS,  
4 JOHN F. KNIGHT, Jr., and  
5 ALEASE S. SIMS:

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6 LAW OFFICE OF JAMES U. BLACKSHER  
7 BY: Mr. James U. Blacksher  
8 300 21st Street North, Suite 710  
9 Birmingham, Alabama 35203

6

7

8

9 LAW OFFICE OF DEMETRIUS NEWTON  
10 BY: Mr. Demetrius Newton  
11 Post Office Box 2525  
12 Birmingham, Alabama 35202

9

10

11

12 LAW OFFICE OF SUSAN J. WATTERSON  
13 BY: Ms. Susan J. Watterson  
14 2610 19th Street South  
15 Birmingham, Alabama 35209

12

13

14

15

16 APPEARING FOR THE DEFENDANTS,  
17 THE STATE OF ALABAMA:

16

18 ADAMS AND REESE/LANGE SIMPSON  
19 BY: Mr. John B. Tally, Jr.  
20 Mr. Henry J. Walker, Jr.  
21 2100 3rd Avenue North, Suite 1100  
22 Birmingham, Alabama 35203

17

18

19

20

21 OFFICE OF THE ATTORNEY GENERAL  
22 BY: Mr. Jack Park, Jr.  
23 Assistant Attorney General  
24 11 South Union Street, Room 303  
25 Montgomery, Alabama 36130

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A P P E A R A N C E S  
(Continued)

APPEARING FOR ASU:

DERFNER, ALTMAN & WILBORN, LLC  
BY: Mr. Armand Derfner  
40 Calhoun Street, Suite 410  
Charleston, S.C. 29402

APPEARING FOR THE DEFENDANTS,  
SBE and POSTSECONDARY CHANCELLOR:

FOSHEE & GEORGE, LLC  
BY: Mr. Jeffery A. Foshee  
900 South Perry Street, Suite B  
Montgomery, Alabama 36104

Also Present: Mr. Robert S. Norrell  
Mr. McKibben

Reported By:  
Kimberly B. Garrett,  
Certified Shorthand Reporter  
Registered Professional Reporter

I N D E X

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S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and  
between the parties through their  
respective counsel, that the deposition of  
DR. J. MILLS THORNTON, III, be taken before  
KIMBERLY B. GARRETT, Certified Shorthand  
Reporter, and Notary Public, State of  
Alabama at Large, at 710 Title Building,  
300 21st Street North, Birmingham, Alabama  
on Saturday, April 24, 2004.

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IT IS FURTHER STIPULATED AND AGREED that the signature to and the reading of the deposition by the witness is waived, the deposition to have the same force and effect as if full compliance had been with all laws and rules of Court relating to the taking of depositions.

IT IS FURTHER STIPULATED AND AGREED that is shall not be necessary for any objections to be made by counsel to any

questions, except as to the form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of the trial, or at the time said deposition is offered in evidence, or prior thereto.

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IT IS FURTHER STIPULATED AND AGREED that notice of filing of the deposition by the Commissioner is waived.

\* \* \* \* \*

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1 DR. J. MILLS THORNTON, III  
2 after having been first duly sworn under  
3 oath, was examined and testified as follows:

4 COURT REPORTER: Would you  
5 like the usual stipulations?

6 MR. BLACKSHER: Yes, with  
7 the exception that again, this is  
8 a trial deposition. So the  
9 provisions of Rule, what did I  
10 say, 32(d), apply when special  
11 forces...

12 EXAMINATION BY MR. BLACKSHER:

13 Q. Let's begin with your name and  
14 address please, Dr. Thornton.

15 A. My name is J. Mills Thornton, III.  
16 And my address is 804 Berkshire Road, Ann  
17 Arbor, Michigan 48104.

18 (Whereupon, Plaintiff's Exhibit  
19 Number 47 was marked for identification.)

20 Q. Is the document that I've marked  
21 as Exhibit 47 an updated copy of your CV?

22 A. Yes, it is.

23 Q. Are you the same Dr. Mills

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1 Thornton who testified in this action,  
2 Knight versus Alabama, in 1990?

3 A. Yes.

4 Q. And you were on the stand for most  
5 of three days, as I recall; is that correct?

6 A. Yes, that's right.

7 Q. And what, in broad terms, was the  
8 focus of your narrative testimony at that

9 time?

10 A. Well, the issue of -- it turned on  
11 remnants or vestiges of racial discrimination  
12 that remained in the higher education system  
13 of Alabama. And so I testified about the  
14 creation of the black colleges and the  
15 creation of the white colleges and the -- and  
16 the history of their governments and the  
17 evolution of higher education policy in  
18 Alabama.

19 Q. And the record, of course, will  
20 show that Judge Murphy cited your testimony  
21 numerous times in his 1991 opinion.

22 Some of your testimony that was  
23 relied on, Judge Murphy referred in some parts

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1 to the funding of public education; isn't that  
2 correct?

3 A. Yes, that's right. I testified  
4 more broadly about the general history of  
5 Alabama and the changing political  
6 relationships and power relationships in the  
7 state and control of the legislature and quite  
8 generally about the background, political  
9 background, that shaped the context in which  
10 higher education policy was created.

11 Q. You are aware, are you not, that  
12 your deposition is being taken today in  
13 connection with a motion for additional relief  
14 that the Plaintiffs have filed challenging  
15 Alabama's property tax system?

16 A. Yes.

17 Q. And have I asked you in previous  
18 months, perhaps even years, to review some of  
19 the historical research and briefs that I have  
20 prepared?

21 A. Yes. I have seen your submission  
22 to the Court in this case, your petition to  
23 the Court.

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1 Q. And you have, you did suggest some  
2 changes to earlier drafts that I made; is that  
3 correct?

4 A. Yes, that is correct.

5 Q. Dr. Thornton, it's our intention  
6 to use this occasion to get you to talk in  
7 more or less the chronological order about the  
8 property tax system and its relationship to  
9 funding higher education in Alabama's history.  
10 The Court is going to have a trial on this, on  
11 the Plaintiffs' motion, May 4th and 5th in  
12 Rome, Georgia, and we have limited time in  
13 which to present witnesses, which is one of  
14 the reasons why I have asked that -- to take  
15 your testimony by deposition. But I want to  
16 urge you to help us in whatever way that you  
17 think is useful in understanding the full  
18 context of this narrative.

19 I won't ask you any further  
20 questions about your CV because the Court has  
21 already been introduced to you and is aware of  
22 your qualifications. So I would like to just  
23 proceed more or less to some questions and

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1 answers about the history of the property tax  
2 system and its relationship to funding  
3 education.

4 Let me begin with this question.  
5 Well, as a predicate to the question, your

6 dissertation book, "Politics and Power in a  
7 Slave Society," was about Antebellum Alabama;  
8 is that correct?

9 A. Yes, that's correct.

10 Q. Would you tell us, please, in  
11 whatever general or specific way you choose,  
12 about the sources of tax revenue for public  
13 education in Antebellum Alabama?

14 A. Well, in Antebellum Alabama the  
15 tax structure -- the largest source of tax  
16 revenue was the tax on slaves. The tax on  
17 slaves in the early part of the antebellum  
18 period, before 1847, was a flat head tax.  
19 Then in 1847, for reasons that I'll talk about  
20 in just two seconds, it was changed so that it  
21 remained a head tax but was apportioned by the  
22 age of the slaves so that the smallest tax  
23 would be on the very young and the very

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1 elderly, and the highest tax would be on young  
2 adults. In other words, it made a sort of a  
3 bell curve.

4 The occasion of that change was  
5 that in 1847 the state also moved to ad  
6 valorem taxation of land. Land was the second  
7 largest source of state revenue. But land  
8 taxes were held to very low levels. And the  
9 reason that they were -- that the state was  
10 able to hold them to such low levels was that  
11 it was receiving such substantial revenue from  
12 the slave tax.

13 Initially --

14 Q. Could I just interrupt with a  
15 question?

16 A. Yes.

17 Q. Was the ad valorem tax and the  
18 slave tax used to fund both state government  
19 and the local government or just state  
20 government?

21 A. The ad valorem tax was used by a  
22 county -- was used by county governments as  
23 well as by its state's government. The county

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1 government was limited to the collection of a  
2 percentage of the state tax. For most of the  
3 antebellum period it was one half of the state  
4 tax.

5 The slave tax was a source of  
6 state revenue but not a source of county  
7 revenue, so that the land tax was the  
8 principal source of county revenue.

9 Q. I'm sorry. To get you back on  
10 track --

11 A. Yeah.

12 Q. -- because you were talking about  
13 how the ad valorem tax came in in 1847 and how  
14 that produced a corresponding change on the  
15 head tax on slaves.

16 A. Before 1847, land was valued by  
17 what was called the classification method.  
18 Land was divided into four classifications by  
19 the quality of the land. That is to say, the  
20 relative fertility or relative agricultural  
21 productivity of land. And then the statute  
22 attributed to all land within each of the four  
23 categories a price per acres. And then the

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1 tax was figured as a percentage of the revenue  
2 that would thus be created. So that the

3 number of acres you had times the  
4 statutorily-mandated value for the category  
5 your land was in, times the percentage that  
6 the revenue act required at that time, the  
7 millage rate that it required, produced the  
8 amount of tax that you -- that you receive --  
9 that you paid.

10 Q. That was governed by state  
11 statute?

12 A. That was governed by state  
13 statute, yes, that is correct.

14 Then that created a -- well, let  
15 me pause and finish the rest of the antebellum  
16 tax structure and then I'll return to the  
17 historical development of it before the Civil  
18 War.

19 So the other major sources of  
20 revenue were luxury taxes and taxes on  
21 capital. Luxury taxes were specific levies  
22 on property that was regarded as something  
23 that -- as property that a well-to-do citizen

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1 would be likely to own but a poor citizen  
2 would almost never own, such things as  
3 carriages or racehorses or gold and silver  
4 plate or furniture worth more than \$500 in  
5 value, other things of that kind. I would  
6 call all of those, in general, luxury taxes.

7 And then there were taxes on  
8 capital, so that there were specific levies on  
9 money lent at interest. There were levies on  
10 the capital stock of banks and the capital  
11 stock of insurance companies and things of  
12 that character. There were also some more  
13 minor sources of revenue. There was what was,  
14 in effect, a sales tax though it was  
15 understood to be a tax of a percentage of  
16 gross sales by merchants.

17 But overwhelmingly, the principal  
18 sources of revenue were the slave tax, of  
19 which produced -- in the late 1840's would  
20 have produced about half of the total revenue,  
21 and the land tax, which would have produced  
22 possibly another third of the revenue.

23 The general thrust of this entire

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1 structure was to tax planters and wealthy  
2 Alabamians more heavily and to exempt, so far  
3 as possible, poorer Alabamians, particularly  
4 small farmers in the hill counties and in the  
5 Wiregrass, from taxation.

6 In general, that's an index to  
7 relative power within the legislature. Under  
8 the Constitution of 1819, the basis of  
9 apportionment in the legislature was the white  
10 population. And the result of that was that  
11 the counties with the largest white  
12 population, which were the hill counties and  
13 the Wiregrass counties, had the bulk of the  
14 representation in the state legislature, both  
15 the senate and the house. Both houses had the  
16 same basis of apportionment.

17 The plantation counties, the Black  
18 Belt counties, and to a lesser extent the  
19 Tennessee Valley counties, had less  
20 representation than their total population  
21 would have warranted because of a very  
22 substantial percentage of their population in  
23 the case of Black Belt, easily the majority

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1 and in many cases as much as 80 percent of  
2 their population was made up of slaves.

3 Q. What about in the white counties  
4 or the Wiregrass?

5 A. In the white counties and  
6 Wiregrass --

7 Q. Similar to the hill counties, I  
8 should say?

9 A. Yeah. In the hill counties and in  
10 the Wiregrass, similarly, slaves were not  
11 counted but they were so many fewer slaves and  
12 so many more white people, that the result was  
13 that using a basis of apportionment like this  
14 meant that -- that nonplantation counties,  
15 counties that were not primarily involved in  
16 plantation. Market-oriented agriculture were  
17 the counties that were most heavily  
18 represented in the legislature.

19 In party terms, those were also  
20 the counties that were most heavily  
21 Democratic. And the plantation counties, the  
22 majority slave counties, were the counties  
23 that were most heavily Whigs. But the Whigs

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1 are the other major political party in the  
2 antebellum period up until the middle 1850's.

3 And the result of this structure  
4 of power in the legislature was that the  
5 Jacksonian Democrats, who controlled the state  
6 legislature and who represented the counties  
7 that were majority white, constructed a tax  
8 structure which protected their constituents  
9 who were -- who were nonslave holding or very  
10 small slave holding small farmers from the  
11 bulk of taxation and shifted the bulk of  
12 taxation onto the wealthiest citizens, the  
13 planters and large slave holders, who bore  
14 overwhelmingly the majority of the tax burden.

15 I should say that not only is that  
16 true in positive terms, in terms of what was  
17 taxed in the way that I talked about a second  
18 ago, but it also is true in negative terms.  
19 There were specific exemptions for property  
20 that was -- that was most closely associated  
21 with poorer citizens, so that there was an  
22 exemption, for instance, for livestock up to  
23 about 100 head because that was a principal

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1 source of the wealth of nonslave holding  
2 farmers. There was an exemption of taxes on  
3 farm implements and on horses and mules used  
4 in farming and things of that character.

5 And so in terms both of what was  
6 not taxed and of what was taxed, the tax  
7 structure represented the power of the small  
8 farmer constituency to effect its will.

9 Now, this was a tax structure with  
10 which planters were quite discontented. They  
11 felt that they bore the burden of taxation and  
12 they felt that they bore it unfairly. And  
13 what they -- what their solution was, was what  
14 was called the ad valorem system, or the ad  
15 valorem general property tax.

16 And the idea of the ad valorem  
17 general property tax was to tax all property  
18 in proportion to its value at -- to take all  
19 property of all character, to assess it at its  
20 actual market value, and then to impose a

21 percentage, or a millage, tax on the value  
22 that was derived for every citizen instead of  
23 having specific levies, such as the luxury

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1 taxes, that singled out property that was  
2 owned by the wealthy and specific exemptions  
3 that singled out property that was owned by  
4 the poor. That was a major source of  
5 political conflict in Alabama in the -- for  
6 much of the antebellum period.  
7 Eventually, in 1847, the  
8 legislature reached a sort of compromised  
9 position in which they adopted an ad valorem  
10 system for land, eliminating the  
11 classification system, but kept all of the  
12 specific levies and kept the slave tax. It  
13 was at that point that the slave tax, however,  
14 was refined to make this discrimination as to  
15 the age of the slaves. So the moving away  
16 from a flat head tax in slaves and  
17 distributing it among slaves was a part of the  
18 same process as moving to an ad valorem system  
19 for the taxing of land.

20 And the result of that reform is  
21 in the very late antebellum period, in the  
22 period after about 1855, in the final five  
23 years of the antebellum period, the land tax

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1 actually passed the slave tax as the principal  
2 source of revenue. And in each -- both the  
3 slave tax and the land tax by that time are  
4 bearing about a third of the total revenue.

5 This is a substantially increased  
6 revenue and the movement to the ad valorem  
7 system because it increased total revenue,  
8 also facilitated the movement toward the  
9 creation of the public school system.

10 Q. All right. Before the 1854 public  
11 school system statewide act --

12 A. Right.

13 Q. -- what part of this tax structure  
14 or revenue source structure you have been  
15 describing went to public schools and who  
16 controlled it, at what level was the control?

17 A. Well, the system that I have been  
18 describing, essentially none of it went to the  
19 public schools. The public schools were  
20 funded by the income of the 16th sections.

21 When Alabama was surveyed prior to  
22 the sale of the public land surveyed by the  
23 federal government, prior to the sale of that

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1 public land, it was divided by -- into  
2 townships, by township and range lines. Each  
3 of those is divided into sections. And the  
4 sixteenth section in each of these townships  
5 -- in each of these square townships, the  
6 sixteenth section was reserved by statute, by  
7 the federal statute, for the support of a  
8 public school for that section.

9 This was by no means unique to  
10 Alabama. In fact, it was the system that was  
11 used in all of the new states, in all of the  
12 non-Atlantic Seaboard states, the non -- the  
13 states created other than the original 13  
14 states.

15 Q. How would they get school revenues  
16 out of the 16th sections?

17 A. The 16th sections were then -- it

18 was either one of two ways. The 16th sections  
19 would be rented, leased, and then the lease  
20 income went to the trustees of the -- of the  
21 township, the township school trustees, who  
22 used that to pay a teacher to run a school for  
23 that township. Or alternatively, the 16th

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1 sections would be sold, the proceeds of the  
2 sale could be invested in bonds and the -- and  
3 the interest income could then be used to pay  
4 the salary of the teacher.

5 But of course there was a  
6 necessary inequity in this, which was true in  
7 every state, which was, that where the 16th  
8 section ended up was a matter of chance, so  
9 that -- the 16th section for a particular  
10 township could be very fertile land and could  
11 be leased at a very high lease value, and then  
12 there would be a very large income for that,  
13 for the school for that township. But that  
14 16th section could be rocky soil that nobody  
15 would particularly want to lease or, even  
16 worse, it could have been swamp land or --

17 Q. And we are talking about almost an  
18 entirely agricultural economy?

19 A. That's right.

20 So the movement towards the Public  
21 Schools Act of 1854 that you mentioned just a  
22 second ago, was a movement towards attempting  
23 to consolidate all of the 16th Section Funds

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1 in Alabama into a statewide fund, to have all  
2 of the income from all of the 16th sections of  
3 all of the townships flow into a state public  
4 schools fund and then to apportion the income  
5 from the fund according to the number of  
6 children to be schooled in each -- in each  
7 township to eliminate the accidental  
8 inequities that came from the entirely  
9 locally-based previous form of funding.

10 (Whereupon, a discussion was held  
11 off the record.)

12 Q. The previous 1854 revenues from  
13 the 16th section lands, were they controlled  
14 locally or at the state level?

15 A. Yes, they are controlled locally.

16 Each township elected a board of township  
17 school trustees, and the elected township  
18 school trustees were responsible for hiring  
19 and firing the teacher for the school.  
20 Ordinarily, I should have said, the township  
21 school had only a single teacher who taught  
22 all children of all ages for -- who lived  
23 within that township. And the township school

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1 trustees hired and fired this person, man, it  
2 was always a man, and set all other  
3 educational policies.

4 Then separately, there was an  
5 appointed township board of school  
6 commissioners, who were appointed by the  
7 county commission, and their job was entirely  
8 financial. That is, they administered the  
9 16th section, got the income, and then handed  
10 it over to the elected trustees who disbursed  
11 it in the operation of the schools.

12 So there was one -- there were two  
13 separate bodies, one an appointed body and one  
14 an elected body. And the appointed body was

15 appointed by the county commission, and the  
16 county commission, the -- if you want to know  
17 this, the county commission in all Alabama  
18 counties consisted of five people, four of  
19 whom were elected by the voters, and the fifth  
20 was the official who today is called the  
21 probate judge. At that time he was called  
22 judge of the county court. And he was elected  
23 by the -- by joint session of the members of

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1 the legislature. So one of the five was  
2 elected by the legislature and the other four  
3 were elected by the voters.

4 Q. And before 1854, how wide-spread  
5 were the township schools, were they all over  
6 the state?

7 A. No. Because of the situation that  
8 I said, in a given township, the 16th section  
9 might not generate sufficient income to  
10 maintain a school. And if it did not, then it  
11 was impossible to maintain a school. So there  
12 was considerable variety in the availability  
13 of public education. And in the more fertile  
14 counties, such as the Black Belt county, it  
15 was much more likely that you were going to be  
16 able to maintain a school. And besides that,  
17 since the Black Belt counties were also Whig  
18 counties and the Whigs were very interested in  
19 public education, it was much more likely that  
20 they would take action to maintain, to create  
21 and maintain, a public school; whereas, in the  
22 hill counties and the Wiregrass, it was much  
23 more likely that there would be insufficient

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1 funds to maintain a school and generally,  
2 ideologically, the Jacksonians were less --  
3 were less committed to the idea of public  
4 education and were less aggressive about  
5 creating the schools.

6 Now, the situation --

7 Q. Want to talk about 1854 now?

8 A. Yes. That was exactly where I was  
9 going.

10 The situation then is that in the  
11 Black Belt they pretty much already have  
12 schools, and in the hill counties, the push  
13 for schools is not strong. The increasing  
14 urbanization of Alabama and the rise of  
15 younger, more progressive, business-oriented  
16 leaders, leads to an effort in the 1850's to  
17 consolidate the 16th sections and to create  
18 a -- and to create public schools everywhere.

19 Now, there are actually social  
20 divisions as to whose for this and who is not.  
21 The general thrust of those people who are for  
22 consolidation of the 16th sections tends to be  
23 elitists. They tend to believe that -- that

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1 the aggressively agrarian and  
2 anti-developmental policies that the  
3 government of Alabama has traditionally  
4 pursued under Jacksonian leadership opposition  
5 to aid to the building of railroads,  
6 opposition to -- or insouciance about public  
7 education, things like that, proceeded from an  
8 ill-educated white electorate, and if the  
9 electorate could be better educated, that  
10 these people would then begin voting for more  
11 progressive policies.

12 So that's a major source of the --  
13 of the sort of urban progressive desire to  
14 create a public school system.

15 On the other hand, even though the  
16 Whigish Black Belt was generally enthusiastic  
17 about education in the abstract, the  
18 consolidation of the 16th Section Funds meant  
19 that they would be the principal contributors  
20 to the consolidated 16th Section Fund because  
21 their 16th sections were the ones that were  
22 producing the most income, and in effect, this  
23 would be geographically redistributed --

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1 redistributive. That is, a lot of the Black  
2 Belt revenue would then begin flowing into the  
3 hill counties and into the Wiregrass where the  
4 16th section income had been -- had been  
5 small. So that's the nature of the fight.

6 There is some desire in the hill  
7 counties to get the money from the Black Belt,  
8 but generally only among those hill county  
9 residents who care a lot about establishing  
10 public schools. There are a lot of hill  
11 county residents who don't care a lot about  
12 establishing public schools. And then within  
13 the Black Belt there are those who don't want  
14 to give up their local substantial revenue  
15 from the 16th sections. And then there are  
16 more elitists and, particularly, more  
17 town-dwelling residents who think that the  
18 ultimate welfare of the state depends on the  
19 education of the substantially illiterate  
20 white population in the hills and in the  
21 Wiregrass.

22 And this --

23 Q. And to be clear, because there are

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1 already findings about this, of course. We  
2 are not talking about educating blacks.

3 A. Oh, of course not. This is -- I  
4 mean, the overwhelming black population was  
5 slaves, but even those who were free blacks,  
6 who are chiefly in the Mobile area and the  
7 counties in the southwest immediately around  
8 Mobile, Washington, and Clark, that's where  
9 most of the -- most of the free blacks live,  
10 even they -- you are not talking about schools  
11 for them because after -- after 1833, it's  
12 illegal to teach any black person, free or  
13 slave, to read and write.

14 Q. Okay. Before the Civil War how  
15 was higher education, public higher education,  
16 funded?

17 A. At the same time, when Alabama  
18 came into the Union, at the same time that the  
19 federal government had reserved the 16th  
20 sections for the support of primary education,  
21 it had also granted to the state a large land  
22 grant of public lands which were either to be  
23 leased or sold to create a state university,

0031

1 and these are called the university lands.  
2 And these lands were sold off and their -- and  
3 the funds were invested in the Bank of  
4 Alabama, which is a state-controlled,  
5 state-owned banking institution.

6 The bank was then going to fail in  
7 the panic of 1837. The actual funds were  
8 going to be lost and -- in the failure of the

9 bank. And then the state government was going  
10 to take the balance that had been in the  
11 university lands fund, which is about  
12 \$300,000, and to make it a permanent  
13 obligation of the state and then to pay  
14 interest on it, and the interest payments on  
15 this, on this amount, which is the amount that  
16 had been on deposit for the university lands  
17 in the Bank of Alabama at the time of its  
18 failure, that amount, which is a perpetual  
19 obligation on the state, and is to this day,  
20 was paid over to operate the University of  
21 Alabama, and it produces an income of about  
22 \$36,000 a year. And that's the -- and that's  
23 the income of the state, of the state

0032

1 university.

2 Q. I'm going to have to take a break.

3 A. All right.

4 (Whereupon, a break was taken.)

5 Q. (BY MR. BLACKSHER) Dr. Thornton,  
6 can I ask you to describe how the matter  
7 you've been discussing changed after the Civil  
8 War?

9 A. Well, they don't change  
10 effectively until the Radical Republican  
11 Constitution of 1867, '68. There are two  
12 intervening state constitutions, the Secession  
13 Constitution of 1861 and the Presidential  
14 Reconstruction Constitution of 1865. Both of  
15 those continued to limit the electorate to  
16 adult white males and continued to use only  
17 the white population as the basis for  
18 apportionment in the two houses of the  
19 legislature. And the structure of the public  
20 school administration and funding did not  
21 change.

22 But with military --

23 Q. They are minimalist provisions in

0033

1 the 1819 and 1861 and 1865 Constitutions  
2 regarding education?

3 A. That's right. The 18 -- all three  
4 constitutions merely quoted from the Northwest  
5 Ordinance provision that says that schools and  
6 the means of learning shall forever be  
7 encouraged. But within that, the legislature  
8 has the plenary authority to determine how it  
9 will go about encouraging education.

10 And so there had been these two  
11 acts. There is the Common Schools Act of  
12 1821, which established this local, entirely  
13 locally-based administration that I described  
14 earlier, and then there is the Public Schools  
15 Act of 1854 which consolidated all of the 16th  
16 Section Funds and began distributing aid from  
17 the state level from the consolidated 16th  
18 Section Fund. And that produced an annual  
19 income for the public schools of about  
20 \$250,000 a year which is then split up among  
21 all of the townships to fund the school in  
22 each township.

23 Q. But the point is, isn't it true

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1 that none of the first three Alabama  
2 constitutions in any way restricted the  
3 legislature's ability to decide how to set up  
4 and fund public schools or higher education  
5 either one?

6 A. That's correct. That's absolutely  
7 correct. The legislature can do what it wants  
8 in the area of public schools.

9 But now, that's all going to  
10 change with the -- with the so-called Radical  
11 Republican Constitution, the constitution that  
12 was drafted at the end of 1867 under the terms  
13 of the military reconstruction.

14 Q. And ratified in 1868?

15 A. And ratified just after the turn  
16 of the year in 1868. But sometimes it's  
17 called the Constitution of 1867, sometimes  
18 it's called the Constitution of 1868.

19 And that new state constitution  
20 established a highly centralized public school  
21 system. It created a state board of education  
22 which was elected with one member from each  
23 congressional district plus an elected state

0035

1 superintendent of education who presided, and  
2 it gave it legislative authority. It passed  
3 -- it passed acts to regulate the entire  
4 structure of education.

5 The acts, in effect, were  
6 statutes. That is to say, they were  
7 submitted -- once adopted by the board of  
8 education, they were submitted to the Governor  
9 for his signature. If the Governor vetoed the  
10 act, then they could be re-passed over his  
11 veto by a vote of two-thirds of the board of  
12 education. But the board of education, in  
13 effect, is acting as a sort of separate  
14 legislature whose authority is confined to  
15 educational -- educational matters. And the  
16 only role that the state legislature has in  
17 this is that by affirmative statute it can  
18 overrule a statute of the board of education,  
19 but otherwise, the statutes of the board of  
20 education are -- have the force of binding  
21 law.

22 And the -- and the state board of  
23 education also supervised the University of

0036

1 Alabama. So the entire educational system  
2 from -- from first grade all the way up  
3 through the university was under this single  
4 centralized state control body.

5 Q. What funding provisions were in  
6 the 1867 Constitution for public schools?

7 A. Yes. The 1867 Constitution  
8 required the legislature to appropriate at  
9 least 20 percent of the total revenues it  
10 received in every year to the public schools.  
11 It could, of course, appropriate more than a  
12 fifth of the total revenues but it had to  
13 appropriate at least one fifth of the total  
14 revenues it received to the public schools.

15 Q. To be administered by the state  
16 board?

17 A. And this was administered by the  
18 state board and was divided among the counties  
19 in proportion to the number of school-age  
20 children. Now, this, of course, now we are  
21 actually talking about total number of  
22 school-age children because slavery has been  
23 abolished and it is now the function of the

0037

1 state to maintain schools for both races.

2 The State Board of Education in

3 one of its first acts after it's elected, at  
4 one of its first meetings, provided for  
5 separate schools between the white and black  
6 children. So the schools were racially  
7 segregated from the first time they -- there  
8 were any schools for blacks. But the  
9 percentage that each of the white and the  
10 black schools got was a proportion of the  
11 number of -- was proportioned to the number of  
12 students so that there was -- there could be  
13 no financial discrimination as to the funding  
14 of the black schools and the white schools.

15 Q. But if the Constitution of 1867  
16 required a fifth, at least a fifth --

17 A. Yes.

18 Q. -- of state revenues to go to  
19 public education, where did those revenues  
20 come from after the Civil War?

21 A. Well, they -- the 1867  
22 Constitution, there is -- there continues to  
23 be what had been the Public School Fund from

0038

1 the Public Schools Act of 1854, so there are  
2 the former 16th Section Funds. And then some  
3 other sources of revenue escheats to the state  
4 from -- from intestate, persons who die  
5 intestate, and things like that.

6 But then the 1867 Constitution  
7 also added a millage rate, which was -- which  
8 was dedicated to the schools.

9 And then in addition to that, the  
10 1867 Constitution had a permissive permit --  
11 provision which allowed the legislature to  
12 authorize each school district to impose a  
13 poll tax and of -- of one dollar a person.  
14 Now, this is not necessary, it's just that the  
15 legislature can do this. And that would --  
16 that would create some local support for the  
17 schools because that poll tax revenue in  
18 each -- in each district in each township  
19 would go directly to the township school.  
20 And the poll tax that was collected from  
21 whites would go to the white school and the  
22 poll tax that was collected from blacks would  
23 go to the black schools. That was the way it

0039

1 was set up.

2 Q. That wasn't --

3 A. But aside from that, aside from  
4 that very limited local support, the entire  
5 funding of the enterprise comes from the state  
6 level, and even that local support is merely a  
7 permissive provision. The constitution simply  
8 authorized the legislature to grant this power  
9 to the school district if it chose to do so.

10 But other than that, the total  
11 school revenue is now -- was now under the  
12 terms of the 1867 Constitution centered in the  
13 state treasury and administered, passed out  
14 among the counties from the state level and --

15 Q. Including the 16th Section Funds?

16 A. This includes the 16th Section  
17 Funds. And the administration is similarly  
18 centralized; that is, the county  
19 superintendents of education are appointed by  
20 the state superintendent of education, so  
21 that -- so that the entire structure of the  
22 administration of the public school system  
23 flowed down from the -- from Montgomery, from

0040

1 the state capitol.

2 Q. What was the effect to ordinary  
3 taxpayers of the need for revenues after the  
4 Civil War?

5 A. Well, moving back to my earlier  
6 description of the antebellum tax structure,  
7 as I have said, revenue from property taxes  
8 had been held to very low levels because the  
9 state was receiving so much revenue from the  
10 tax on slaves. But obviously now slavery has  
11 been abolished and, therefore, with it,  
12 revenue from the slave tax. And the  
13 Constitution of 1867 required the assessment  
14 of all property on a uniform basis. And the  
15 result is that the state, under the  
16 Constitution of 1867, moved to the ad valorem  
17 general property tax.

18 And this meant not merely that  
19 land, which since 1847 had always -- was now  
20 being assessed on an ad valorem basis, it  
21 meant that all property of every description  
22 was now supposed to be reported by the  
23 taxpayer and a value created on that basis.

0041

1 And the millage rate was now going to be  
2 applied to that -- to that property.

3 So, that is to say, it would  
4 include the total merchandise of a store, it  
5 would include all stocks and bonds, it would  
6 include every kind of personal property, all  
7 carriages, all livestock, barns, implements,  
8 farming implements, every conceivable kind of  
9 property, in other words. The property holder  
10 was supposed to appear before the tax assessor  
11 every year and give in under oath the total  
12 amount of everything he owned at its market  
13 value, and then the millage rate would be  
14 applied to that, to that total amount for  
15 each.

16 Q. A voluntarily assessment?

17 A. It's a voluntary assessment except  
18 that the tax assessor, his job is to form  
19 these assessments, and so he, in theory, can  
20 reject this assessment program and -- that the  
21 taxpayer hands in and tells him he is  
22 underassessing it.

23 Now, actually under the

0042

1 Constitution of 1867, because the tax  
2 assessors are radical Republican officials and  
3 they have no particular interest in  
4 protecting well-to-do white property holders,  
5 virtually none of whom were Republicans, there  
6 is -- there was quite an aggressive effort to  
7 make sure that these -- that these values were  
8 accurate. And so there is a very substantial  
9 revenue that flows from the ad valorem general  
10 property tax. And the result is that the  
11 schools are receiving very large revenues.

12 So before the Civil War, as I  
13 said, the schools were receiving about  
14 \$250,000 a year. Now they begin receiving 400  
15 to \$500,000 a year.

16 Q. Did the University of Alabama get  
17 in on this?

18 A. The University of Alabama did not  
19 get in on this. The University of Alabama  
20 continues to receive its \$36,000 a year. But

21 the University of Alabama at this time is very  
22 small. Its total enrollment is between 100  
23 and 200 students.

0043

1 Also at this time, what is to  
2 become Auburn University was established. It  
3 similarly received a land grant, a separate  
4 land grant, under what is called The Moral  
5 Act.

6 Q. That's 1871

7 A. Yes, 1871. This is during this  
8 period. And that land grant also produced an  
9 income of about a little more than \$25,000 a  
10 year, and that was the -- and that was the  
11 income for what we now call Auburn University.  
12 At that time it was called the Agriculture and  
13 Mechanical College.

14 And --

15 Q. But large --

16 A. It similarly only had an  
17 enrollment of about 150 to 200 students. So  
18 these are very small colleges.

19 Q. Let me digress from the story  
20 about the revenue just for a minute --

21 A. Yes.

22 Q. -- to put in context higher  
23 education.

0044

1 A. Yes.

2 Q. The public schools, University of  
3 Alabama, alone until the 1862 Moral Act --

4 A. Yes.

5 Q. -- school is designated as Auburn  
6 in 1872, I believe it was?

7 A. Right. Yes.

8 Q. All right. There were other  
9 colleges of a private sort in Alabama prior to  
10 that?

11 A. Yes, that's right.

12 Q. Can you give us some idea about  
13 the relative size and scope of the private  
14 versus public higher education in Alabama at  
15 that time?

16 A. Well, various religious  
17 denominations had established colleges and --  
18 and as I said, both the University of Alabama  
19 and the Agriculture and Mechanical College of  
20 Alabama are very small schools, and they're no  
21 larger than the religious colleges. So within  
22 the state, I actually don't know the  
23 percentage, but a minority of students who

0045

1 were attending college would have been  
2 attending public college, within the state.  
3 Obviously that wouldn't include students from  
4 Alabama who went to out-of-state colleges.

5 Q. Okay. And wealthy Alabamians  
6 or --

7 A. Yes.

8 Q. And I use wealthy advisedly --

9 A. Yes.

10 Q. -- and broadly.

11 A. Uh-huh (in the affirmative).

12 Q. Would likely send -- if they send  
13 their children to college, where would they  
14 go, for the most part?

15 A. Well, there was very considerable  
16 doubt during the Reconstruction period about  
17 the quality of the education that was provided

18 at either of the state university or the  
19 Agriculture and Mechanical College. It's  
20 later in the antebellum -- I mean, in the  
21 Postbellum period, not until the 1880's and  
22 '90's that the -- that two public universities  
23 are really restored to solid -- restored in

0046

1 the case of University of Alabama, established  
2 in the case of Auburn, on a solid basis. So  
3 very few parents would have trusted their  
4 children to these colleges and they're much  
5 more likely to go to private colleges than  
6 they are to public colleges.

7 Q. And I guess -- let me just ask a  
8 leading question. Because we look at the past  
9 through modern eyes, contemporary eyes, in the  
10 days after the Civil War that we are talking  
11 about, there weren't that many people who were  
12 going to college or even completing what we  
13 would call high schools these day; isn't that  
14 true?

15 A. Well, there is no high school. I  
16 mean, there are no high schools that -- the  
17 high schools have not yet been established.  
18 There are, in addition to the University of  
19 Alabama and Auburn, there is one other public  
20 university that was established during the  
21 Reconstruction period and that is what is  
22 today called the University of North Alabama.  
23 At that time it was called the Florence State

0047

1 Normal College. And then after jumping ahead,  
2 after the redemption, after -- after the end  
3 of radical Reconstruction, additional normal  
4 colleges are going to be established.

5 Q. Which normal colleges teach  
6 teachers?

7 A. Teach teachers. These are  
8 intended to train teachers for -- for going  
9 into the public schools.

10 Then there are two black colleges.  
11 There is the future Alabama State University  
12 and the future Alabama A & M. Alabama State  
13 University --

14 Q. Let me just stop you. There were  
15 extensive findings about that in the Judge  
16 Murphy's 1991 opinion?

17 A. Fine.

18 Q. I want to move back, to interrupt  
19 you if I may --

20 A. Yes.

21 Q. -- and move back to the revenue  
22 issues that we were discussing.

23 A. Yeah.

0048

1 Q. I take it from what you are saying  
2 that the increased revenues, you said perhaps  
3 a half a million dollars --

4 A. Yes.

5 Q. -- going to public schools.

6 A. Right.

7 Q. That was all going to --

8 A. Primary education.

9 Q. -- primary education. I was going  
10 to say elementary and secondary but it's  
11 really primary, is that what you would call  
12 it --

13 A. Yes.

14 Q. -- education system?

15 A. That's correct.  
16 Q. And it was, I believe you  
17 testified, it's under -- in radical  
18 Reconstruction it's centrally organized and  
19 the administered by the state at the state  
20 level?  
21 A. Right.  
22 Q. With local communities, counties,  
23 and municipalities being able to enact a  
0049 property tax, or -- I'm sorry -- a poll tax?  
1 A. No. The poll tax was something  
2 that proceeded from the school district, the  
3 township.  
4 Q. The township. Okay.  
5 A. Yeah.  
6 Q. And that's another thing that we  
7 need to keep in mind, is that -- that local  
8 schools weren't organized exactly the way they  
9 are today either.  
10 A. Correct.  
11 Q. Okay. And they were centered  
12 around, school districts usually centered  
13 around townships?  
14 A. That's right. And then if you  
15 want to move on to the changes that came from  
16 the 1875 Constitution, that's going to become  
17 even more apparent.  
18 Q. Before we do that --  
19 A. All right.  
20 Q. -- I want to make sure I -- all  
21 right. Let me ask a question that leads us  
22 to the 1875 Redeemer Constitution.  
23  
0050 A. All right.  
1 Q. What were the -- there were a lot  
2 of charges of abuse and mismanagement  
3 associated with radical government, including  
4 the administration of the school system; is  
5 that correct?  
6 A. Yes, that is correct.  
7 Q. To what extent did those charges  
8 of abuse have a racial component?  
9 A. Almost entirely. There was --  
10 there was an enormous Democratic and white  
11 hostility to the education of blacks, much --  
12 a substantial portion of the leadership of the  
13 Republican party, particularly the  
14 carpetbaggers, were people who had -- who were  
15 associated with the effort to educate the  
16 Freedmen.  
17 A number of these people had come  
18 to the South precisely to build up the public  
19 schools -- the public schools for blacks which  
20 had been established by the Freedmen's Bureau,  
21 and were generally called Freedmen schools,  
22 then there were northern missionary  
23  
0051 denominations, the American Missionary  
1 Association, which sent people to the South to  
2 attempt to educate the Freedmen.  
3 There was deep white hostility to  
4 the -- to these schools because they attempted  
5 to educate blacks in terms of academic  
6 subjects. And the general white and  
7 Democratic position, subsequently, also to be  
8 taken up among -- among some black leaders  
9 such as Booker T. Washington was, that the  
10 only kind of education that was suitable for  
11

12 blacks was vocational and specifically  
13 oriented towards training blacks to be  
14 effective workers, whether in a mechanical or  
15 in an agriculture setting.

16 That enthusiasm for agriculture  
17 and mechanical education, I should say,  
18 spreads beyond the racial component. There is  
19 a -- there is during this period a  
20 considerable interest in agriculture and  
21 mechanical training for whites, and that's how  
22 -- that's what Auburn was intended to --

23 Q. And that's what the Moral --

0052

1 A. The Moral Act was intended to  
2 create colleges of that kind. But that's --  
3 but that's of course after whites had already  
4 had a more academic training in reading,  
5 writing, and arithmetic, and had gone on to  
6 college. But there was a general feeling  
7 among whites that blacks should, from the  
8 beginning, only receive vocational sorts of --  
9 sorts of training.

10 And so the academic nature of  
11 the -- of the schools that were established  
12 for the Freedmen led to considerable  
13 Democratic hostility to them, to the notion  
14 that this was wasted money and that they were  
15 being taxed at very high levels and -- and to  
16 no good purpose, or as they would actually  
17 have said, simply to align the pockets of  
18 white carpetbaggers and radical officials who  
19 were on the public -- who were sopping at the  
20 public trough, who were being paid out of this  
21 large state fund to run useless schools for  
22 the Freedmen.

23 Q. All right. And I think one of the

0053

1 things we passed over without sufficient  
2 comment was the extent to which small farmers  
3 experienced a much heavier tax burden after  
4 the Civil War?

5 A. Yes, that is correct. I had  
6 started on that and then I got sidetracked.  
7 I'm sorry.

8 Obviously, once the slave tax was  
9 abolished and you move to the general property  
10 tax, that meant that small farmers who before  
11 the Civil War had largely been exempted from  
12 taxation except for the poll tax, now all of a  
13 sudden found themselves having to bear a very  
14 substantial tax burden. And this was  
15 something brand-new to them.

16 Now, wealthier whites are bearing  
17 an even larger tax burden. But in terms of  
18 their disposable income in a year, it would  
19 be -- it would be much less than it would be  
20 for a small farmer who is struggling on the  
21 edges of the cash economy and for whom paying  
22 the poll tax plus the new property tax is a  
23 very substantial burden. And so --

0054

1 Q. The poll tax, by the way, was not  
2 a disqualifying requirement for voting; would  
3 that be clear?

4 A. That's a term that is -- that's  
5 very often misunderstood. The term "poll"  
6 there and the term "polls" as in voting, both  
7 have to do with the actual literal meaning,  
8 poll, which is a head. And so the poll tax

9 simply means a tax per head or a tax per  
10 capita.

11 Q. Not when it's collected at the  
12 voting booth?

13 A. After the -- after 1901, the  
14 payment of the poll tax is going to become a  
15 prerequisite to being able to vote, but before  
16 1901 that was not true. There had always been  
17 a poll tax but it was -- it was a tax.

18 Q. And who collected that tax?

19 A. The county tax collector.

20 Q. Your friend and neighbor, the  
21 county tax collector?

22 A. Well, so the result of this new  
23 tax structure was to move tax incidence in the

0055

1 social scale downwards toward poorer white  
2 citizens.

3 Q. You have written before, haven't  
4 you, that there is irony in the fact that the  
5 slave tax was a progressive tax?

6 A. That's right. The slave tax  
7 creates a very progressive tax structure  
8 whereas emancipation creates a tax structure  
9 which is -- which is much lower in the social  
10 scale in terms of its -- it's regressive in  
11 terms of its incidence.

12 Most of the Freedmen, because they  
13 own virtually no property, are exempted from  
14 taxation except for the poll tax. So it  
15 doesn't extend to them but -- but in terms of  
16 white small farmers, it means that for the  
17 very first time they're paying a very  
18 substantial part of their cash income to the  
19 tax collector. And that had never happened in  
20 the antebellum period because of all the  
21 exemptions and because of the very low nature  
22 of the land tax.

23 And the result of that is, of

0056

1 course, to create among these poor whites a  
2 motive for the cooperation with wealthier  
3 whites in a sort of all white alliance of the  
4 Democratic party which brings whites together  
5 along the color line, which -- which draws the  
6 line between Republicans, who are essentially  
7 blacks, and their very few white allies,  
8 carpetbaggers and scalawags, and -- on the one  
9 hand, and on the other hand, a Democratic  
10 party which united together all white people  
11 essentially on -- on the grounds of -- of  
12 reducing taxes for all white people and  
13 establishing white supremacy.

14 Q. To relate this theme, taxation  
15 theme, back to power relationships --

16 A. Yes.

17 Q. Well, the apportionment in the  
18 1867 Constitution was by what?

19 A. Apportionment in the 1867  
20 Constitution is by total population. It's the  
21 first time in Alabama's history that the  
22 legislature was apportioned according to total  
23 population. Initially, that meant that the

0057

1 Black Belt, for the very first time, gained a  
2 very large representation in the legislature  
3 because its total population including black  
4 people was very substantial indeed.

5 Now, initially, that was a

6 Republican representation. But after  
7 redemption --

8 Q. Simply because of the large number  
9 of blacks?

10 A. Yeah, because of the large number  
11 of blacks who voted Republican. But after  
12 redemption, with extra legal means of  
13 controlling or eliminating the black vote in  
14 the Black Belt, that meant that the Black Belt  
15 under the Constitution of 1875 was going to  
16 retain its new very large presence in the  
17 state's legislature, but those representatives  
18 were going, effectively, to be elected by the  
19 very small percentage of the population in the  
20 Black Belt who were white.

21 Q. Right.

22 A. And --

23 Q. And blacks became in control. But

0058

1 we are jumping ahead a little bit here.

2 A. All right. I'm sorry.

3 Q. That's all right.

4 But the 1875 Constitution --

5 A. Yes.

6 Q. -- this dissatisfaction and the  
7 extra taxations on poor farmers, on smaller  
8 farmers, that united them around a Democratic  
9 party, this all played a role in the way the  
10 1875 Constitution was put together; is that  
11 correct?

12 A. Yes. The 1875 Redemption  
13 Constitution was a constitution that was  
14 intended to consolidate the white supremacist  
15 domination of the Democratic party that had  
16 been gained the year before in the so-called  
17 Redemption Election of 1874 when the  
18 Republican -- the Republican governor, David  
19 P. Lewis, was -- incumbent Governor David P.  
20 Lewis was defeated by the Democratic candidate  
21 and new Governor George S. Houston. From then  
22 on, from 1874 up until the election of Guy  
23 Hunt, no Republican was to be elected to any

0059

1 statewide office.

2 The next year, after the election  
3 of George S. Houston in 1874, the next year,  
4 in 1875, the new state constitutional  
5 convention was called and a new constitution  
6 was written intended to consolidate this  
7 Democratic victory and to place the new white  
8 alliance in firm and irrevocable control of  
9 the state government.

10 Q. Before they -- the state  
11 constitution had the centralized public school  
12 system you had described, did it begin to fail  
13 financially or --

14 A. Yes. After the panic of 1873,  
15 even though the Constitution of 1867 required  
16 the legislature to appropriate 20 percent of  
17 the total tax revenue to the schools, the  
18 legislature simply had not done so. And the  
19 reason was that after the panic of -- the  
20 legislature -- I should have said during  
21 Reconstruction -- in the interest of funding  
22 the building of railroads, had endorsed the  
23 corporate bonds of a large number of railroads

0060

1 who were building tracks in the state. That  
2 is, they had agreed if the railroad defaulted

3 on the payment of the corporate bonds out of  
4 their corporate revenues, that the state would  
5 guarantee the payment.

6 And that -- and that allowed the  
7 bonds to be sold for a lower interest rate  
8 because the bond holders then had the  
9 guarantee of the state backing it up as a  
10 fall-back position. And in return for that,  
11 the state received a first mortgage on the  
12 track of the -- the property of the railroad.

13 And then after the panic of 1873,  
14 quite a number of these railroads did default  
15 and the state was placed very suddenly in the  
16 position of having to make good on its payment  
17 on interest on some of these bonds. In fact,  
18 that had actually happened before the -- the  
19 case of the Alabama and Chattanooga that  
20 happened as early as 1870. After the panic  
21 1873, it happens on a much broader scale.

22 And the result of that is this  
23 new, very large demands on the state treasury

0061

1 and so the appropriation for the school system  
2 was not made by the legislature and the  
3 funding system began very rapidly to  
4 deteriorate during the Lewis Administration,  
5 which is from 1872 to 1874. He was governor  
6 for two years, from 1872 to 1874, and the  
7 panic happened right in the middle of his  
8 administration.

9 Q. All right. So what were the  
10 changes in the taxation system that were  
11 brought by the 1875 Redeemer Constitution?

12 A. The Redeemer Constitution replaced  
13 the guarantee of the expenditure of 20 percent  
14 of the total revenues in every year going to  
15 the public school instead -- instead to a flat  
16 guarantee of at least \$100,000 a year to the  
17 public schools.

18 And then it could be more than the  
19 \$100,000, of course, but the Constitution  
20 requires that they spend at least \$100,000,  
21 though that was a substantial reduction from  
22 what they had been spending.

23  
0062

Then it also guaranteed the

1 antebellum Public School Fund, the 16th  
2 section revenues to the public schools. But  
3 it changed the government's system of the  
4 public school radically. The board of  
5 education was abolished, the --

6 Q. State Board of Education?

7 A. The State Board of Education was  
8 abolished. Well, and there are no county  
9 boards of education either. And the  
10 governments of the public schools essentially  
11 returned to the antebellum system of township  
12 boards, of school trustees who were elected  
13 for a four-year term at the township level.

14 And the -- and then there is a  
15 millage tax which is handed over to the -- to  
16 the county superintendent of education who  
17 apportions this county fund among the  
18 townships within his -- within his county.  
19 And then those funds are administered directly  
20 by the various elected townships boards of  
21 trustees.

22 The county superintendent was  
23 appointed by the -- continued to be appointed

0063

1 by the state superintendent. The state  
2 superintendent was an elected position. It  
3 was elected by the voters of state. But there  
4 is no state board of education.

5 And --

6 Q. What about the property tax?

7 A. And the property tax, it continues  
8 in theory to be a general -- ad valorem  
9 general property tax. But here's the big  
10 change. Now the tax assessor is an elected  
11 county official and is a Democrat. And he --  
12 his -- unlike the Republican tax assessors  
13 from the Reconstruction period who had an  
14 interest -- who had no particular interest in  
15 protecting white property holders and had an  
16 interest in getting as much as possible from  
17 the property tax for the public schools, now  
18 the interest of the tax assessor is very much  
19 to protect the property holders. The result  
20 is an immediate fall in the amount of --

21 Q. Assessed rate?

22 A. Assessed value in every -- in  
23 every county, but most particularly in the

0064

1 Black Belt counties. In fact, the fall in  
2 assessed value in the hill counties and the  
3 Wiregrass is distinctly less than the fall in  
4 the Black Belt assessed value. And that's  
5 because in the Black Belt the -- the  
6 electorate to whom the tax assessor would have  
7 to respond is now essentially entirely a white  
8 and property holding electorate because the  
9 mass of the electorate is black, whereas, in  
10 the hill counties the -- there is -- there are  
11 more cross currents on the elected tax  
12 assessor.

13 There is a mass of poorer property  
14 holders and -- who have an interest in having  
15 wealthier property holders within their  
16 counties more vigorously assessed. But in  
17 general, everywhere in the state assessments  
18 fall. In fact, they fall by about half.

19 Q. What about millage rates?

20 A. The millage rates, if I'm not --  
21 if I'm not mistaken --

22 Q. I mean, in the 1875 Constitution.

23 A. Yes. If I'm not mistaken, I

0065

1 believe that it's three mills in the 1875  
2 Constitution is the maximum tax rate that --  
3 no. No. I am wrong about that. No. The  
4 Constitution -- the 1875 Constitution  
5 established a maximum tax rate of seven and a  
6 half mills which was the same rate that --  
7 that had been assessed under the 1867  
8 Constitution.

9 Q. But the 1867 Constitution didn't  
10 specify a millage level.

11 A. No, it did not.

12 Q. Or cap it?

13 A. No, it did not cap it. But this  
14 was the same rate that had --

15 Q. That had been legislatively  
16 established?

17 A. That had been legislatively  
18 established. It was carried forward and  
19 written into the Constitution as the maximum  
20 that the legislature could ever impose.

21 Q. And what about on county millages?  
22 A. And then counties, counties -- you  
23 know, this is sort of going out of my mind.

0066

1 But there is a county millage rate --

2 Q. There is a county millage cap in  
3 the Constitution?

4 A. There is a county millage cap in  
5 the Constitution.

6 Q. You just don't remember the  
7 amount?

8 A. I don't remember the exact amount.  
9 I could easily look it up but it's just not  
10 popping into my mind right offhand. But there  
11 are millage caps. I think the county millage  
12 cap is three mills but I'm not positive.

13 At any rate, at any rate, the  
14 seven and a half mill cap is a cap. The  
15 legislature can reduce it below that level.  
16 And as time goes on, the legislature does  
17 reduce it below that level and eventually it  
18 gets down in the early 1890's to four mills.  
19 But it can't go above seven and a half mills.

20 Q. Now, why are the millage caps put  
21 in the Constitution itself for the first time  
22 in 1875?

23 A. Well, the new power of the whites  
0067

1 in the Black Belt introduces -- it introduces  
2 the racial fears of white land holders in a  
3 very powerful way into the political culture  
4 of the state because the Black Belt is now,  
5 for the first time, very heavily represented,  
6 for the first time since -- because of  
7 emancipation, is very heavily represented in  
8 the legislature and now because -- of because  
9 of redemption, that representation of the  
10 Black Belt is essentially in white hands.

11 But during Reconstruction, the  
12 experience of those whites had been a county  
13 government which was controlled by blacks and  
14 their Republican allies and which had very  
15 heavily taxed them, and taxed them for  
16 purposes that they largely regarded as  
17 illegitimate, such as the education of the  
18 Freedmen.

19 Now that they had power back into  
20 their own hands, they were intent on -- on  
21 controlling that, or using that new control to  
22 protect themselves from the possibility that  
23 the black majority in their counties would  
0068

1 ever again be able to use that political power  
2 to -- to tax them in a way that would force  
3 them as the property holders to cough up the  
4 funds, of which would be used to the benefit  
5 of the majority of the people in the Black  
6 Belt who were black and essentially  
7 nonproperty holding.

8 And so the dual outcome of the  
9 fact that the tax was a property tax and that  
10 in the Black Belt the overwhelming majority of  
11 the population was nonproperty holding, meant  
12 that that portion of the population in the  
13 Black Belt which was property holding, which  
14 is to say the white population, was fearful of  
15 the -- of the -- of its experience with the --  
16 with that period during which the nonproperty  
17 holding majority in the Black Belt had been

18 able to use its electoral power to tax them  
19 disproportionately. And so they wanted to  
20 write into the Constitution permanent  
21 protections.

22 Now, actually there was a strong  
23 desire in the Constitutional Convention of

0069

1 1875 to write lower -- a lower cap than seven  
2 and a half. Governor Houston persuaded them  
3 not to do that because of the necessity to  
4 fund these -- the what is called the adjusted  
5 state debt, which is a debt that is derived  
6 from these railroad bonds that I talked about  
7 just a minute ago, plus other bonds.

8 Q. Are we still paying off those  
9 railroad bonds?

10 A. Eventually -- well, the railroad  
11 bonds actually were going to be refunded  
12 again -- refunding of the refunding of bonds,  
13 but eventually we do get out from under it.  
14 But so the result of the -- the result of  
15 the --

16 Q. Lower assessment?

17 A. Of the -- yeah. Well, the result  
18 of all of that was a lower -- was de facto  
19 lower assessments, particularly in the Black  
20 Belt, and constant pressure on the part of --  
21 of whites in the Black Belt to reduce the  
22 state millage rates, which meant the most  
23 rigid economy in the state government and --

0070

1 and constant attention to the -- to the  
2 possibility whenever there was -- whenever  
3 there was sufficient revenue to reducing the  
4 millage rate.

5 Over time, the -- this pressure  
6 led to a movement away from the ad valorem  
7 tax, even under the Redeemer Constitution, as  
8 the only source of revenue as it had been  
9 under the radical Constitution. They are  
10 looking for other sources of revenue which can  
11 fund the state government so that they can  
12 reduce the millage rate which, as I said,  
13 eventually they are able to do.

14 Q. Can I ask --

15 A. Just to finish very quickly, the  
16 two -- the two other sources to which they  
17 turn are franchise taxes and the convict lease  
18 system. And revenue from the convict lease  
19 system eventually reaches more than \$100,000 a  
20 year. And the revenue from the convict lease  
21 system plus the franchise taxes which are  
22 imposed on railroads, corporations, and  
23 insurance companies, things like that, then

0071

1 allow the reduction of a millage rate.

2 I'm sorry. I just wanted to  
3 finish that.

4 Q. Seven point five mills, that's  
5 mills that the legislature -- that the radical  
6 Reconstruction legislature had gotten millage  
7 rate up to and which was capped by the 1875  
8 Constitution, that 7.5 mills was higher than  
9 what even the big landowner had been used to  
10 before the Civil War, isn't it?

11 A. Oh, much, much higher. The  
12 percentage rate before the -- before the Civil  
13 War would have been in the neighborhood of two  
14 mills.

15 Q. Okay.  
16 (Whereupon, a break was taken.)  
17 Q. (BY MR. BLACKSHER) Dr. Thornton,  
18 after the changes that you described brought  
19 by the 1875 Constitution, what impact did that  
20 have on absolute levels of funding that went  
21 to public education?

22 A. The absolute levels declined very  
23 substantially because the amount -- the  
0072 1 assessed value of property had declined so  
2 substantially. The -- I don't know if you  
3 want me to press on, but the next major change  
4 in the funding system is going to be what is  
5 called the Apportionment Act of 1891.

6 Q. Before you get to that, no, I  
7 don't want you to get quite to 1891 yet.

8 A. Okay.  
9 Q. Well, there were some millage  
10 reductions that the legislature accomplished  
11 between 1875 and 1891?

12 A. Yes. I mentioned that because of  
13 the increasing revenues from the franchise  
14 taxes and from the convict lease system they  
15 were then able to reduce the millage rate.  
16 And eventually, by the early 1890's they got  
17 it down to four mills, but then with the panic  
18 of 1893, they actually had to re-increase it  
19 back up to seven and a half again because of  
20 declining state revenues after the panic of  
21 1897.

22 Q. Okay. I think we stipulated  
23 somewhere or are about to exactly what those  
0073 1 changes were.

2 To go back to the franchise tax,  
3 you said that was basically a tax on  
4 corporations and railroads?

5 A. Yes. It's a -- the one thing  
6 that -- that farmer constituents, whether  
7 wealthy planters or poorer white farmers,  
8 could agree on, was that -- was that more  
9 industrial and urban sources of revenue ought  
10 to be made to bear a greater share of the --  
11 of the revenue.

12 The railroads, in theory, were  
13 supposed to be taxed on the -- by the ad  
14 valorem general property tax in exactly the  
15 same way as every other person. And in  
16 theory, every railroad was supposed to appear  
17 before the tax assessor in each county through  
18 which it ran, and declare the market value of  
19 its property in that county and then be taxed  
20 accordingly. That was a -- that was a very  
21 easy tax to evade. The state actually tried  
22 to do something about it by creating a state  
23 board consisting of the governor, the state

0074 1 auditors, and the state treasurer to assess  
2 the property of the railroad. And they did  
3 succeed in raising it to some degree.

4 But they themselves consciously  
5 allowed the underassessment of the railroad  
6 property simply because they thought it would  
7 just be so unfair to assess the railroads at  
8 actual market value when nobody else in the  
9 state had his or her property assessed at any  
10 place near actual market value. So they  
11 consciously underassessed the railroads.

12                   And then a way to deal with that  
13 then, that whole situation then, was, in  
14 addition to this property tax, to impose  
15 franchise taxes. Because the franchise taxes  
16 couldn't be evaded. You know whether a  
17 business has paid its franchise. It's a  
18 flat-rate tax imposed and you know whether  
19 it's paid it or not.

20                   Q. All right. But the evasion of  
21 assessment, of fair market value assessments,  
22 that -- you were talking about how the  
23 Democrats took over assessing property after

0075  
1                   1875. But the sort of crazy quilt and  
2 arbitrary assessment of property is a pattern  
3 in Alabama history that goes at least all the  
4 way up to the Lid Bills in the 1970's, doesn't  
5 it?

6                   A. Yes, that's correct.  
7                   I can tell you about that in the  
8 future. You probably don't want me to talk  
9 about it right now.

10                  Q. You are right.

11                  A. All right. But it is absolutely  
12 true, that over time there is a -- there are  
13 patterns of the state government trying to --  
14 to edge the assessment back towards parity  
15 from county to county and among various  
16 property classifications and then it falls  
17 back again. And the reason that it never  
18 is -- is very effective is that it relies at  
19 the local level on elected officials, and  
20 those elected officials have to respond to  
21 their constituents.

22                  And there are differential rates  
23 constantly between sections of the state

0076  
1                   because -- because there are differential  
2 power relationships in the Black Belt from  
3 those in the majority white counties.

4                   Q. And just to bring it into context,  
5 1875 is the time when basically Birmingham and  
6 the steel industry and the big industries in  
7 the Jones Valley come into being, isn't it?

8                   A. Yes, that's right. Birmingham had  
9 never existed until -- until about 1870. It  
10 comes into existence when two railroads cross  
11 at that point and it grows up around the  
12 crossing of the two railroads. It initially,  
13 in the 18 -- in the late 1870's and 1880's  
14 grew up around the cast iron industry. And  
15 then at the end of the 19th Century and  
16 beginning of 20th Century, yeah, it moves from  
17 cast iron to steel.

18                  Q. But just -- we always talk about  
19 Bourbon aristocrats and big mules and this  
20 that and the other phrases which some of us  
21 don't even like to use, but the urban  
22 industrialists really don't come onto the  
23 scene, I guess is what I'm trying to ask,

0077  
1                   until this period of around 1875?

2                   A. That's correct.

3                   Q. The convict lease system, is that  
4 a tax on blacks?

5                   A. Yes. Virtually the entire convict  
6 population of the state is black. The  
7 convicts who are leased are almost all black,  
8 more than 90 percent black. The growth of

9 Birmingham is a part of the -- is in part  
10 facilitated by the leasing of the convicts.  
11 The principal lessor of the convicts is a  
12 thing called the Pratt Mines, which is a  
13 division of Sloss Sheffield or the Sloss  
14 Furnaces, and these convicts are used in iron  
15 ore mining and coal mining and other jobs that  
16 are related to the emerging iron industry.  
17 And the state is paid a lease fee for them and  
18 that becomes then a source of revenue for the  
19 state.

20 Q. There is a big exhibit over here  
21 in the Birmingham Civil Rights Institute about  
22 the convict lease system, describes the  
23 conditions and so forth. Okay.

0078

1 A. Uh-huh (in the affirmative).

2 Q. I'm just trying to put it in the  
3 context of time here.

4 MR. DERFNER: Pratt is the  
5 lessee, not the lessor.

6 A. Oh. I'm sorry. Okay.

7 Q. Now, between 1875 and 1891 is when  
8 we get to the --

9 A. The Apportionment Act.

10 Q. -- Apportionment Act, but between  
11 1875 and 1891, tell us a little something  
12 about the schooling of whites and blacks,  
13 particularly in the Black Belt.

14 A. Well, the funds are relatively  
15 fairly-distributed between the black and the  
16 white schools in proportion to the number of  
17 black and white students. But the township  
18 trustees are white and are hostile to the  
19 education of blacks in the Black Belt. And  
20 consequently, there is much less pressure to  
21 maintain a black school. It's up to the  
22 elected township trustees to hire this teacher  
23 for the black schools. They can hire it --

0079

1 hire a person, they can neglect to hire a  
2 person, they can not keep the school in  
3 repair, or repair it. All of these are  
4 decisions that are made at the local level by  
5 these elected trustees.

6 Now, these elected trustees in the  
7 Black Belt counties are all whites and are --  
8 and are responsive to the attitudes of white  
9 and Democrats, who are a very small portion of  
10 the population in each of these townships.  
11 And there is no effective way for the majority  
12 of the residence of a township who are black  
13 to bring any effective political pressure on  
14 the trustees, and consequently the black  
15 schools are neglected. But it's not because  
16 of the unavailability of funds.

17 Now, that's going to change the --

18 Q. Because the funds are diverted to  
19 white schools?

20 A. Well, no. It's -- no, because  
21 then at this period before the Apportionment  
22 Act of 1871, the funds are not being diverted  
23 to white schools. That's the reason the

0080

1 apportionment Act of 1891 is so important.

2 So it's --

3 Q. That's what I didn't understand.

4 A. All right. Then let me explain  
5 it.

6                   The Apportionment Act of 1891 gave  
7 to --

8           Q.    I mean, let me tell you why I  
9 didn't understand it.  If the white trustees  
10 controlled the schools, why didn't they just  
11 give all the money to the white schooling and  
12 very little to the blacks?

13           A.    Because that was not what the law  
14 was.  The law was that it was to -- that in  
15 each -- in each township the funds were to be  
16 apportioned in proportion to the number of  
17 schools -- of students of each race in that  
18 school.

19                   The township trustees might not  
20 spend the funds but they couldn't divert it to  
21 the white schools.  After the Apportionment  
22 Act of 1891, that changed.  Now, the trustees  
23 under the Apportionment Act for the first time

0081

1 can take the funds that were destined for the  
2 black schools and spend them on the white  
3 schools.  And immediately, in all counties  
4 they start doing that.  But of course in the  
5 majority Black Belt townships, this is -- this  
6 has an enormous and devastating effect on  
7 black education.

8           Q.    Well, let me just ask.  There were  
9 findings again by Judge Murphy in his 1991  
10 opinion about the 1891 --

11           A.    Apportionment --

12           Q.    -- Apportionment Act --

13           A.    Yeah.

14           Q.    -- and also about the diversion of  
15 school monies after the 1901 Constitution and  
16 so forth.

17                   But I want to ask you to focus on  
18 the effects, if any, that the 1891  
19 Apportionment Act had on the taxation system,  
20 the property tax system.  Did it have any  
21 appreciable effect?

22           A.    Yes.  Well, once the ad valorem  
23 funds that were going to the county -- to the

0082

1 township level in the Black Belt could be  
2 diverted to the white schools, the result was,  
3 since the white population was -- and  
4 therefore the white number of children in each  
5 township was so small, that those schools  
6 became very well-funded.  And so there would  
7 then have been virtually no pressure from  
8 whites living in the Black Belt to increase  
9 funding for the public schools at large in the  
10 state because their schools in the -- their  
11 white schools in the Black Belt are now  
12 getting all the money they need because the  
13 money is coming to them in terms of -- in  
14 terms of the total population, both white and  
15 black, but effectively it's being spent almost  
16 all on the white students.

17                   And that's a very small  
18 percentage, a fifth, a sixth, to even an  
19 eighth of the population in some of these  
20 counties.

21           Q.    And we are talking about the Black  
22 Belt counties now having more power in the  
23 state legislature?

0083

1           A.    They have more power in the state  
2 legislature and therefore greater power to

3 block acts that might increase funding for the  
4 public schools.

5 Q. And this would become a source of  
6 regional division as well?

7 A. It becomes -- absolutely. Because  
8 in the majority white counties in the hills  
9 and in the Wiregrass, the schools are  
10 inadequately funded. But the Black Belt  
11 representatives in the legislature don't see  
12 that. And of course over time, with  
13 adequately funded schools in the Black Belt  
14 and inadequately school funds in the hills and  
15 in the Wiregrass, the social divisions  
16 necessarily over the life of a generation, the  
17 social divisions between the sections of the  
18 state, grow greater so that the percentage of  
19 whites who are illiterate in the Black Belt  
20 would become much less than the percentage --  
21 already was less, but that would perpetuate  
22 itself.

23 Q. How does the growing urbanization  
0084 of Jefferson County play into that regional  
1 funding?

2 A. The corporations in Jefferson  
3 County on which the prosperity of Jefferson  
4 County depended were themselves very  
5 interested in keeping tax rates as low as  
6 possible because the paying of taxes is a cost  
7 of doing business for them. And  
8 representatives who were loyal to the  
9 corporate part of the power structure in  
10 Jefferson County would -- frequently allied  
11 themselves with the planters in the Black Belt  
12 in opposition to increased funding for public  
13 schools.

14 I should say about Jefferson  
15 County, though, that there is also an urban  
16 progressive element within Jefferson County  
17 that is interested in increased public funding  
18 for schools. So even at this period there  
19 are -- there is a division within Birmingham  
20 and Jefferson County as a whole, and after  
21 1901 that's going to play itself out with  
22 amendments to the State Constitution of 1901

0085 that are going to give Jefferson County  
1 special taxing authority that increases its  
2 taxes for public schools much more than most  
3 counties in the state.

4 Q. Now, during the latter half of --  
5 well, the latter quarter of the 19th  
6 Century --

7 A. Uh-huh (in the affirmative).

8 Q. -- we started -- we had the  
9 University of Alabama and Auburn. You have  
10 already talked about Florence State. We got  
11 some more normal schools, didn't we?

12 A. Yes. Got white normal schools and  
13 one additional black normal school. The  
14 additional black normal school, in addition to  
15 Alabama State and Alabama A & M, was Tuskegee  
16 Institute. And the additional white normal  
17 schools are Jacksonville State, Livingston  
18 State, and Troy State.

19 Q. Right. And their funding is  
20 coming primarily -- is still coming from the  
21 original township appropriations and, I think,  
22 the finding from the -- Judge Murphy's '91  
23

0086

1 opinion was general education board and  
2 others?

3 A. Yes. There is some support from  
4 source -- for both black and white normal  
5 schools from sources outside the state who are  
6 interested in training teachers.

7 Q. I only want to make a passing  
8 reference to that because both you and Dr.  
9 Anderson testified at great lengths about  
10 those sources of funding and there were  
11 findings made about them. Trying to put this  
12 into -- trying to keep the big picture of  
13 what's going on in terms of revenues and  
14 appropriations for both K-12 and higher ed. as  
15 we go -- approach the 1901 Constitution.

16 (Whereupon, a discussion was held  
17 off the record.)

18 Q. (BY MR. BLACKSHER) All right. I  
19 need to ask you about local taxes for schools  
20 during the period 1875 to 1901. There was a  
21 cap in the 1875 Constitution. You mentioned  
22 that you couldn't remember how much the cap  
23 was on local property taxes?

0087

1 A. Yes.

2 Q. Did blacks in the -- blacks were  
3 still enfranchised during this period; is that  
4 correct?

5 A. Blacks are legally enfranchised.  
6 The extent to which they can vote as a  
7 practical matter varies from county to county.  
8 In the Black Belt there is very little  
9 capacity for blacks as a practical matter to  
10 vote. Where blacks are a small percentage of  
11 the population, they -- there may be greater  
12 freedom. So the -- there is no uniform  
13 statement that can be made about the hill  
14 counties and the Wiregrass as to the -- as to  
15 the capacity of blacks to vote freely. But in  
16 the Black Belt, the black vote is essentially  
17 completely controlled by whites.

18 As a practical matter, the  
19 Democratic party is able to control the  
20 electorate because the Democratic party  
21 controls who the sheriff is. And the sheriff  
22 appoints the -- the sheriff and the probate  
23 judge create the poll officials. And the poll

0088

1 officials can use any number of extra legal  
2 devices for controlling the black electorate  
3 all the way from simply not holding a poll in  
4 a majority black neighborhood, or a majority  
5 black beat, as it's called, which means a  
6 precinct, or to intimidation of a voter before  
7 he arrives at the poll, to fraud, a ballot box  
8 stuffing, or something of that character, and  
9 everything in between.

10 And so --

11 Q. But before you go too much  
12 further, again, that's a topic that was  
13 touched upon in the earlier testimony and  
14 findings, and I don't want to get too deep  
15 into it. What I want to get at now is, in  
16 this condition the black electorate -- to what  
17 extent did the black electorate have the  
18 opportunity to try to increase funding through  
19 taxation for public schools?

20 A. Well, in the Black Belts section

21 of the state, the opportunity was nil. I  
22 mean, there is no effective political voice  
23 for blacks in the Black Belt. In other areas

0089

1 of the state, there were occasionally  
2 officials for whom the minority black  
3 electorate might have played some roll when  
4 there was a division among the white  
5 population in getting them into office. And  
6 then that particular official might pay  
7 somewhat greater attention to -- to blacks.  
8 But that's -- you are talking at that point  
9 about a minority of the black population  
10 because most of the black population lived in  
11 the Black Belt.

12 Q. Did the pattern of abolishing  
13 elected county commissions altogether in the  
14 Black Belt have any relationship to taxation?

15 A. Yes. Well, it has a direct  
16 relationship to -- to black -- to the  
17 potential for black control. Immediately  
18 after redemption, the Republicans continued to  
19 be able to rely on the black vote, and since  
20 the black vote is a majority, the Black Belt  
21 counties, even after redemption, even after --  
22 immediately after the 1875 Constitution,  
23 remained in Republican hands. Indeed those

0090

1 counties in the 1875 Constitutional Convention  
2 were represented by Republicans and even four  
3 of the delegates are black and they represent  
4 black counties.

5 And so the only way now for the  
6 redeemers to control those counties is to  
7 eliminate the electoral feature of county  
8 government altogether or to engage in the most  
9 aggressive intimidation of black voters, and  
10 they do both.

11 So there are in Montgomery County  
12 and Dallas County and Wilcox County the  
13 elected county commission is simply abolished  
14 and replaced with what's called a board of  
15 revenue, which is appointed by the Governor.

16 In other Black Belt counties the  
17 elective feature is retained but intimidation  
18 is used to control those elections. So that  
19 effectively by, say, 1878, the county  
20 governments in all of the Black Belt counties  
21 are now in white and Democratic hands, and  
22 remain so.

23 Q. But actually my question was, what

0091

1 was the relationship between the suppression  
2 of black electoral influence at the local  
3 level and taxation?

4 A. Yeah. I'm sorry. You did ask  
5 that.

6 Well, of course, in the first  
7 place, the township school trustees are  
8 elected officials. They are elected for  
9 four-year terms and so -- and so this same  
10 process of control of the black electorate is  
11 necessary to -- for the Democrats and -- the  
12 white Democrats to control the choice of the  
13 township school trustees. And then more  
14 generally, the white control of the Black Belt  
15 counties has the effect that I talked about a  
16 little bit ago. It means that the -- that  
17 there is a difference in the power

18 relationships in the Black Belt from the --  
19 from the relationship -- the relationships in  
20 the hill counties and the Wiregrass.

21 And eventually, after the  
22 Apportionment Act of 1891, it means that it's  
23 possible for those township trustees to divert

0092

1 tax revenue that is apportioned to them on the  
2 basis of the black population to the white  
3 schools.

4 Q. Let me ask about the home rule.  
5 To what extent in this last quarter of the  
6 century, of the 19th Century, was home rule an  
7 issue that was affected by the issues of race  
8 and taxation and representation in the  
9 legislature?

10 A. Well, the white control of the  
11 state government is -- is an important  
12 fall-back position for guaranteeing the  
13 maintenance of white supremacy in majority  
14 black counties. And so it's important not to  
15 have too much power in the hands of the  
16 counties, or to make sure that the power that  
17 is -- that is at the local level is in safe,  
18 that is, Democratic and white hands.

19 Q. And there is a reasonable  
20 component to this because of the white  
21 counties and the black counties?

22 A. Yes. That's exactly right. The  
23 fear of black control is obviously infinitely

0093

1 greater in counties that have a black  
2 population in the majority.

3 Q. Can I ask you about the  
4 constitutional amendment that was sponsored by  
5 Oscar Hundley in 1892-93 session to levy a 2.5  
6 mills tax for local school districts. Do you  
7 know -- can you tell us anything about that?

8 A. Senator Hundley was the state  
9 senator from Huntsville, from Madison County,  
10 and he -- and he sponsored a proposed  
11 constitutional amendment which would have  
12 increased the possibility of local taxation in  
13 support of public schools, something that was  
14 greatly desired in the many majority white  
15 counties but was unnecessary in the Black Belt  
16 counties because they were already getting  
17 their -- getting adequate funding for the  
18 white schools.

19 Q. I don't think of Madison as being  
20 a majority white county somehow. Maybe it  
21 was.

22 A. Yeah, it was. Yeah, it was a  
23 majority white county. It's a Tennessee

0094

1 Valley county. That's what you mean. It had  
2 a bigger percentage of blacks than would have  
3 been true below it in the hill counties, but  
4 it is a majority white county.

5 But nevertheless --

6 Q. What happened to Hundley's  
7 amendment?

8 A. What happened to his amendment  
9 was, in general only one amendment actually  
10 got added to the 1875 Constitution in the  
11 entire -- in the entire period between 1875  
12 and 1901 when the constitution was -- it was  
13 in effect. There was only one amendment.  
14 And the reason was -- and that amendment

15 actually speaks to something I said before.  
16 It was an amendment that gave Jefferson County  
17 increased authority to tax for public schools.  
18 And that was a Jefferson County specific  
19 amendment. And the reason was that  
20 Constitution of 1875 had very tough mandatory  
21 provisions. It required a two-thirds vote in  
22 each house of the legislature and then in the  
23 referendum it required that a majority of the

0095

1 whole number of people voting in the election  
2 vote for the amendment.

3 So it was possible, in fact very  
4 likely for the amendment to get a majority of  
5 the people voting for it and still to fail  
6 because it was necessary that the -- that the  
7 highest vote total, let us say, the vote total  
8 for the -- in the gubernatorial election, you  
9 would add together all of the votes that went  
10 to the any of the gubernatorial candidates.  
11 You would determine that the -- the number of  
12 people who had voted overall in that election,  
13 the highest number, and then it would be  
14 necessary that the amendment have received a  
15 majority of that whole number, which, in terms  
16 of the number of people who had voted on the  
17 amendment, might mean that it would have to  
18 have received a two-thirds or maybe even a  
19 three-fourths majority.

20 Q. So the amendment had to be voted  
21 for by a majority of those who allegedly voted  
22 for governor?

23 A. Correct. That's exactly right.

0096

1 Q. And in the Hundley amendment case?

2 A. In the Hundley amendment case, it  
3 got a clear majority but it did not get a  
4 majority of the whole number of people who  
5 voted in the 1894 election. And the reason  
6 for that is, you -- as you imply with your --  
7 with your phrase, allegedly is that the 1894  
8 gubernatorial election is one of the Populist  
9 elections, and in order to ensure that the  
10 Populist candidate, Reuben Kolb was defeated  
11 by the regular Democratic candidate, William  
12 C. Oates.

13 In the Black Belt very large  
14 numbers of black voters were voted by white  
15 Democratic officials. These were fictional  
16 gubernatorial votes but it meant that it  
17 appeared that many, many more people had voted  
18 in the gubernatorial election than cast  
19 ballots on the constitutional amendment  
20 question.

21 MR. BLACKSHER: Why don't  
22 we pause here since some food has  
23 arrived.

0097

1 (Whereupon, a lunch break was taken.)

2 Q. (BY MR. BLACKSHER) All right.  
3 1901 Constitution. Malcolm McMillan's  
4 "Constitutional History" is sort of the  
5 bellwether authority for the 1901  
6 Constitution; is that correct?

7 A. Yes.

8 Q. And do you agree with Professor  
9 McMillan's argument or opinion that this  
10 franchisement of blacks was the cardinal  
11 reason for the adoption of the 1901

12 Constitution?

13 A. Yes, I agree completely.

14 Q. Well, and just generally about  
15 McMillan's book, since it was published in the  
16 1950's, right?

17 A. Yes.

18 Q. Has it stood the test of time?

19 A. In my opinion, wonderfully. I  
20 think it's a really splendid book.

21 Q. What about the -- what I would  
22 like you to talk about, Dr. Thornton, is some  
23 of the other competing agendas that Alabamians

0098

1 wanted to accomplish with the 1901  
2 Constitution that got submerged by the  
3 disfranchisement, and specifically I'm  
4 thinking about educational reform.

5 A. Well, it is true that in the  
6 lead-up to the 1901 Constitutional Convention,  
7 there are varieties of groups in the state  
8 who, for various reasons, are dissatisfied  
9 with the 1875 Constitutional Convention. And  
10 one of those groups is advocates of public  
11 school reform and the improvement of the  
12 public schools, who are dissatisfied with the  
13 millage rates limits in the 1875 Constitution  
14 because -- and flowing from the defeat of the  
15 Hundley amendment about which you just asked  
16 me a second ago, it appears to them that under  
17 the limitations of the 1875 Constitution both  
18 the millage rate provisions and the difficulty  
19 of amending the Constitution, that it really  
20 is going to be impossible to, at least for the  
21 foreseeable future, to get increased funding  
22 for the schools. So they do hope that holding  
23 a new constitutional convention will be a

0099

1 shortcut to eliminating those constitutional  
2 limitations on taxation.

3 And so in calling the convention,  
4 the disfranchisers who are the -- who are  
5 the -- form the main thrust of the summoning  
6 of the convention, receive some support in the  
7 -- in the election for calling the convention  
8 from sort of urban, progressive-type voters  
9 who are leaders who hope that this may lead to  
10 a more liberal and less restrictive tax, an  
11 education article, or articles, for the  
12 constitution. Now, in the end, of course,  
13 they are going to be defeated on the floor of  
14 the convention, but that is one of the  
15 elements that was -- that was involved.

16 At a different kind of level,  
17 education, however, plays a role in the  
18 motives of the disfranchisers themselves, and  
19 that's because a principle idea behind  
20 disfranchisement -- if I can just begin that  
21 sentence again.

22 I have already said that -- that  
23 as a practical matter, the black vote was

0100

1 already controlled in the Black Belt. The  
2 white political forces, political leaders, in  
3 the Black Belt effectively controlled the  
4 black vote and used it as they -- as they  
5 wished.

6 Q. To their advantage, I thought you  
7 said.

8 A. And much to their advantage. And

9 indeed it is the principal source of the  
10 ability of the white conservative leadership  
11 of the regular Democratic party to defeat the  
12 Populist candidacy of Reuben F. Kolb, both in  
13 1892 and in 1894. And so in that sense, there  
14 would be no need for disfranchisement. But  
15 there was a need, in their eyes, for  
16 disfranchisement, and the reason was that the  
17 control and manipulation of the black vote was  
18 hard work. It was something that they had to  
19 devote themselves to actively at every  
20 election, and it was something about which  
21 they were subject to second-guessing. And  
22 particularly was that so in congressional  
23 district elections where -- and where it was

0101

1 possible to contest the election before the  
2 U.S. House of Representatives.

3 And there, particularly if the  
4 Republicans had a majority in the U.S. House  
5 of Representatives and therefore controlled  
6 the committee that looked into the contest, it  
7 was possible to get very searching inquiries  
8 into the -- into the conduct of local  
9 elections and in a -- not a small number of  
10 cases, the regular Democratic nominee found  
11 himself deprived of the ostensible victory and  
12 the seat given to the person who had run  
13 against him.

14 So -- and then there was the more  
15 general fear of something like the so-called  
16 Lodge Election Bill, which was a bill that had  
17 been sponsored by Senator Henry Cabot Lodge of  
18 Massachusetts, that would have -- that would  
19 have used the enforcement powers of the  
20 federal government under the 15th Amendment to  
21 reverse or control the manipulation of the  
22 black vote.

23 And so for all of those reasons,

0102

1 there appeared to be -- for the white  
2 leadership and in the Black Belt, even though  
3 they were firmly taking control immediately,  
4 as a practical matter it appeared to them that  
5 as a long-term matter their rule was shaky and  
6 was subject to -- subject to being reversed.  
7 And if it ever were reversed, they could find  
8 themselves back exactly in the situation that  
9 they had -- that they had escaped from in 1874  
10 where the black-controlled county government  
11 and a black-controlled assessment in tax  
12 collection mechanism and find themselves being  
13 taxed to the benefit of the property list  
14 black majority.

15 So that was, for them, a principal  
16 consideration. It meant by depriving  
17 themselves of the black vote they would --  
18 because they would now be left with an  
19 entirely white or essentially entirely white  
20 electorate that meant that they would no  
21 longer have to engage in the manipulation,  
22 fraud, or intimidation by which they  
23 controlled the black vote because only whites

0103

1 now would be able to legally to vote. And  
2 therefore, the decisions in the election of  
3 township school commissioners or, after the  
4 1901 Constitutional Convention, the county  
5 board of education, and county commission and

6 other local officials would be a decision that  
7 would be made exclusively and legally by white  
8 people.

9 Now --

10 Q. Well, how did the Black Belt  
11 politicians intend to protect themselves  
12 against the growing power that  
13 disfranchisement was given to the white  
14 counties and the white counties were the ones  
15 who wanted to reform education and increase  
16 their taxes?

17 A. Well, yeah. We have -- yes.  
18 That's a good question. That's exactly what I  
19 was about to say.

20 In a sense this is a concession on  
21 the part of the Black Belt Democratic leaders  
22 because their control of the Democratic party  
23 in statewide elections had turned on the fact

0104

1 that they could deliver these fictional black  
2 votes for their preferred candidates, and they  
3 are about to give that up.

4 Now, so this is a compromise on  
5 their part. Now, what they are going to  
6 get -- what they are going to retain is an  
7 apportionment of both houses of the state  
8 legislature on the basis of total population.  
9 So now, though the electorate will be very  
10 small and essentially exclusively white in the  
11 Black Belt counties, their representation in  
12 the legislature will be on the basis of total  
13 population and therefore they will have, in  
14 terms of the number of registered voters, they  
15 will have a grossly disproportionate voice in  
16 the legislature and they will have complete  
17 control over the identity of those  
18 legislators.

19 But what they are giving up is the  
20 capacity to control statewide elections. And  
21 so that sort of -- the deal that in effect  
22 they are offering to the white counties,  
23 whether hill counties or Wiregrass, is in the

0105

1 future you will be able to control statewide  
2 elections for governor and other statewide  
3 offices, secretary of the state, state  
4 auditor, state treasurer, Attorney General,  
5 but you will have to accept that -- so that  
6 the executive branch of government will now  
7 fall into the hands of the white counties.  
8 But you will have to accept that in the  
9 legislative branch of government we are going  
10 to have disproportionate -- we are going to  
11 have disproportionate power. And because of  
12 our power within the legislature, at least  
13 we'll be able to block legislation that will  
14 be inimical to our interest.

15 And it was that quid pro quo which  
16 was at the heart of the 1901 Constitution. In  
17 fact, that's what the 1901 Constitution is  
18 effectively about.

19 Q. As Vann Woodward said.

20 Professor McMillan writes about a  
21 pre-convention agreement that was made within  
22 the Democratic party about taxation. What was  
23 that?

0106

1 A. I don't actually recall that --  
2 that --

3 Q. He writes that the condition for  
4 obtaining disfranchisement of blacks was a  
5 pre-convention agreement to establish  
6 constitutional protections against increased  
7 taxation of white corporate landowners.

8 A. Well, certainly at the convention,  
9 I'm not actually prepared to testify about  
10 this pre-convention thing because I don't  
11 really know about it, but I know what happened  
12 at convention. What happened at the  
13 convention is that the committee on taxation  
14 that produced the tax article of that  
15 convention was essentially controlled by urban  
16 industrial forces, particularly lawyers for  
17 railroads and the steel companies, and Black  
18 Belt planters and -- and political leaders  
19 from the Black Belt. And that they -- they  
20 produced a tax article which did not at all  
21 fulfill the hopes of those progressive school  
22 reformers of which I spoke earlier.

23 So it -- the tax article does not  
0107 effectively liberalize the tax structure for  
1 schools.

2  
3 The one thing that it did do, and  
4 this actually didn't come from the tax  
5 committee but came from the education  
6 committee, was that it did authorize an  
7 additional one mill for schools to be levied  
8 at the county level on a -- the county's own  
9 option if the county -- if three-fifths of the  
10 voters of the county voted to assess  
11 themselves with this special tax. And that --  
12 the main reason that -- that the leadership of  
13 the committee -- of the convention was willing  
14 to agree to that, was disfranchisement.

15 That is to say, in the Black Belt  
16 that meant that this one mill was now going to  
17 be levied -- was going to be levied only if  
18 the white people in the county, who were the  
19 property holders, effectively agreed to levy  
20 it on themselves. But it was not a tax that  
21 could be -- that could be hoisted on them by  
22 the votes of blacks and other nonproperty  
23 holders.

0108  
1 Q. Now, isn't it true that by the  
2 same time that they authorized counties to  
3 levy up to one mill for school purposes, they  
4 took away one mill from the seven and a half?

5 A. Yes. They reduced it to six and a  
6 half.

7 Q. Reduced the cap on the state levy  
8 to six and a half?

9 A. Correct.

10 Q. So it still came --

11 A. To seven and half.

12 Q. -- to seven and a half that way.  
13 Okay.

14 A. That's right. But this one mill  
15 was -- had to go to the schools, whereas, the  
16 other seven and a half mill cap, only three  
17 mills of that had to go to schools under the  
18 preceding ...

19 Q. The 1901 Constitution has a cap  
20 on, as you said, six and a half mills on the  
21 state --

22 A. Yes.

23 Q. -- levy of property taxes.

0109

1 Doesn't it also have caps on county and  
2 municipal levies?

3 A. Yes, that's right.

4 Q. Are they substantially the same as  
5 the ones, the caps that were in the 1875  
6 Constitution?

7 A. Yes.

8 Q. And why is that?

9 A. Well, the -- as I said, there had  
10 been some hope on the part of some people who  
11 had -- who had pressed for the calling of the  
12 convention that this would be a more  
13 liberalized tax article, but the fact is that  
14 the people who control the convention were --  
15 were not interested in liberalizing the tax  
16 article. And it was, as I said, it was  
17 essentially an alliance between industrial  
18 forces and Black Belt planter forces, both of  
19 whom had strong interest in minimizing taxes  
20 because -- on property, because their property  
21 was very large. That involved accepting  
22 minimal governmental activity, but on the  
23 other hand, that was -- minimal governmental

0110

1 activity was something that quite generally  
2 they favored.

3 Q. Were the white county residents  
4 strongly desirous of increasing funding for  
5 public schools at the time of the 1901  
6 Constitutional Convention?

7 A. I don't know that you can make  
8 that generalization that flatly. But there  
9 certainly -- certainly those people in Alabama  
10 who were interested in strengthening the  
11 public schools were much more likely to be in  
12 the majority white counties, in the hill  
13 counties and the Wiregrass because, as I said,  
14 the public schools for whites in the Black  
15 Belt were already adequately funded because of  
16 the diversion of funds into the white schools  
17 which were serving just a small percentage of  
18 the population in the Black Belt; whereas, the  
19 underfunded schools were universally in the  
20 hill counties and the Wiregrass.

21 So where you find enthusiasm for  
22 increased funding of public schools, are in  
23 rapidly-growing urban areas like Jefferson

0111

1 County where there is some enthusiasm for it  
2 and in small farmer white counties where there  
3 is some enthusiasm for it.

4 On the other hand, there are  
5 people, regardless of -- regardless of how  
6 poorly-funded their schools are, who are not  
7 particularly interested in education. So I  
8 don't want to be quite as aggressive in my  
9 statement about the extent of the enthusiasm  
10 there as your question implied.

11 Q. Did the conservatives, the Black  
12 Belt members of the convention, the urban  
13 industrialists, you said -- did they  
14 essentially control the convention?

15 A. Yes.

16 Q. Did the conservatives make  
17 arguments to the representatives of the white  
18 counties that education reform and tax reform  
19 would enable it, would undermine the objective  
20 of preserving white supremacy and

21 disfranchising blacks?

22 A. Well, there are arguments of that  
23 kind made, but there is a wide variety of

0112

1 opinions about the -- the interaction of  
2 education and race. There are delegates who  
3 believe that blacks should receive essentially  
4 only vocational education. And there, on the  
5 other hand, are delegates who believe that  
6 over a long period of time through the  
7 educational mechanism, it might be possible to  
8 improve the status of blacks.

9 There is nobody at the convention  
10 who is not a white supremacist, but there are  
11 varieties of opinions about what white  
12 supremacist -- whether white supremacy is an  
13 immediate necessity or whether white supremacy  
14 will always exist because of inherent  
15 differences between the races. And everything  
16 in between. That's a whole spectrum of  
17 opinions.

18 I doubt, however, that there was  
19 anyone in the white counties who needed to be  
20 convinced, at least of the immediate  
21 necessity, of white supremacy. There is  
22 nobody at the convention who's not a white  
23 supremacist.

0113

1 And I might just say that right  
2 about this same time, the Democratic party is  
3 going to adopt as its state motto, the state  
4 motto "White Supremacy For The Right," and it  
5 is going to have that motto at the top of its  
6 Democratic party primary ballot upon the  
7 adoption of the direct primary in 1902 all the  
8 way up to beyond the Voting Rights Act of  
9 1965. Every ballot has emblazoned across the  
10 top of it, "White Supremacy For The Right,"  
11 and you can't walk into the polling booth and  
12 vote in a Democratic primary without seeing  
13 that motto at the top of the ballot.

14 (Whereupon, a discussion was held  
15 off the record.)

16 Q. (BY MR. BLACKSHER) In the  
17 ratification of the Constitution, how did the  
18 white counties go?

19 A. Time of the ratification of the  
20 Constitution Alabama had -- had 66 counties.  
21 If you take out the 12 Black Belt counties,  
22 the Constitution lost. That is to say, if  
23 you total the vote in the remaining -- in the

0114

1 remaining 54 counties, the Constitution would  
2 have been defeated. The Constitution carried  
3 because of the vote in the 12 Black Belt  
4 counties. And in the 12 Black Belt counties,  
5 it carried by a margin of seven to one.

6 So it is clear -- and those -- and  
7 there again, this is the very last of the  
8 votes in which the white Democratic leadership  
9 in the Black Belt is going to be able to use  
10 the black votes. So this is the very last  
11 example of a quarter century of essentially  
12 fictitious black votes from the Black Belt  
13 carrying a statewide -- a statewide election.

14 But in effect, therefore, it will  
15 be fair to say that the white population of  
16 the state rejected the 1901 Constitution, and  
17 that the 1901 Constitution became law because

18 of the votes of the black population of this  
19 state though -- though those folks were  
20 essentially fictitious.

21 Q. With respect to the one mill  
22 school tax that counties were authorized to  
23 levy in the 1901 Constitution --

0115

1 A. Yes.

2 Q. -- that was taken out of the 7.5  
3 state levy, as it were, it provided that the  
4 voters of the counties, as you said, is it  
5 three-fifths?

6 A. Yes.

7 Q. Had to approve it. Was this the  
8 first time in Alabama's constitutional history  
9 that a voter referendum requirement was  
10 entrenched in the Constitution?

11 A. On taxes, yes.

12 Q. Okay. And your explanation for  
13 that was that it would empower the black  
14 counties to ensure that the -- that black  
15 majorities couldn't vote it in?

16 A. My explanation for that is that  
17 now having gotten disfranchisement, the  
18 conservative white leadership in the Black  
19 Belt was willing to allow some additional  
20 local funding for public schools because the  
21 assurance would be that it would be white  
22 people, and therefore the property holders who  
23 would be taxed, who would be giving this

0116

1 consent. So in effect, the willingness to  
2 allow this additional local contribution to  
3 the public school, the quid pro quo for that  
4 was disfranchisement.

5 Q. How did the -- I was asking my  
6 constitutional expert here about the  
7 provisions of Section 5 of the 14th Amendment  
8 that would reduce a state's apportionment in  
9 the U.S. Congress if they had disfranchised a  
10 portion of the population. Why weren't the  
11 1901 convention members concerned about that?

12 A. Well, of course they were  
13 concerned about it in the abstract. That  
14 depended on their ability in the Congress to  
15 prevent any such enforcement of the reduction  
16 of their representation that the 14th  
17 Amendment authorized. They were, however, by  
18 this time very strong within the Democratic  
19 party, the Congress has -- had by this time  
20 adopted the seniority system. It was possible  
21 for long-serving Southern representatives and  
22 senators, through seniority, to build up very  
23 substantial power within the Congress, and

0117

1 they had to depend on the hope that they would  
2 be able to block that, at least the use of the  
3 14th Amendment provision. But the 14th  
4 Amendment provision remained in the  
5 Constitution, was in the Constitution, is in  
6 the Constitution, and there was never a time  
7 when they -- when they weren't faced with that  
8 threat in the abstract. Just as a practical  
9 matter, they were always able to block it  
10 within the Congress.

11 Q. But at that time, the turn of the  
12 20th Century, white supremacy was at its apex  
13 nationally, wasn't it?

14 A. That's absolutely right. The

15 disfranchisement of blacks in the South in the  
16 decade essentially from 1895 to 1905, at  
17 various times and various states beginning  
18 with Mississippi in 1890, South Carolina in  
19 1895, Louisiana in 1898, and culmin -- and  
20 Alabama and Virginia in 1901, culminating in  
21 Georgia in 1905, is coincident with the  
22 adoption of literacy tests and other  
23 disfranchising provisions in the number of

0118

1 Northern constitutions. New York, for  
2 instance, in 1895, I believe, adopted a  
3 literacy test. The Northern disfranchising  
4 provisions are generally directed at eastern  
5 and European southern -- eastern and southern  
6 European immigrants who are pouring into the  
7 northern states.

8 But disfranchisement is  
9 widespread. Fear of immigrants by the 1920's,  
10 of course, that's going to be shut off with  
11 the Immigration Restriction Act. So there's  
12 a -- this is a period of very considerable,  
13 both nativist and white supremacist attitude.  
14 Some of these white supremacist attitudes were  
15 exacerbated by the outcome of the Spanish  
16 American War and the new necessity to rule the  
17 Philipines and to rule Puerto Rico and racial  
18 prejudices that grow out of the Colonial  
19 experience in the Philipines and Puerto Rico.

20 So, absolutely, this is a period  
21 when white supremacy is quite broadly-shared  
22 as an attitude beyond the South.

23 The big difference is that -- is

0119

1 that in the South there are so many more black  
2 people. Most of the black population of  
3 America is concentrated in the South and  
4 continues to be really all the way up to World  
5 War II.

6 Q. Dr. Thornton, in your opinion are  
7 the public school funding provisions in the  
8 1901 Constitution directly traceable to  
9 similar provisions in the 1875 Constitution?

10 A. Yes.

11 Q. And in your opinion, are there  
12 racially discriminatory motives behind those  
13 provisions?

14 A. Certainly there are motives behind  
15 those provisions that have to do with the --  
16 with the structure of power within the society  
17 and the desire to maintain -- maintain a  
18 social structure and social relations, an  
19 essential component of which is white  
20 supremacy.

21 Q. Is it fair to say that in the 1901  
22 Constitution that -- that whites in Alabama  
23 gave up some prospects of progress in their

0120

1 own communities with respect to education  
2 because of the disfranchisement theme which  
3 was driving the 1901 Constitution?

4 A. Those whites who accept the 1901  
5 Constitution. But as I said, to some degree  
6 the 1901 Constitution is hoisted on some  
7 whites, particularly whites in the hill  
8 counties and the Wiregrass who might otherwise  
9 desired a more progressive constitution and a  
10 more active state government. But certainly  
11 those whites who support the 1901

12 Constitution, though I take them to be a  
13 majority of -- I mean a minority of all  
14 whites, but those whites who do support the  
15 1901 Constitution are effectively willing to  
16 make the sacrifice, as you say.

17 Q. In fact, didn't the conservatives,  
18 or many conservatives in the 1901 Constitution  
19 intend that the disfranchising provisions that  
20 they put in, which we haven't talked about,  
21 again, as we did 12 years ago, 14 years ago,  
22 that the conservatives intended that it work  
23 to the disadvantage of some whites as well as

0121  
1 disfranchising blacks?

2 A. Yes, that's correct.

3 Now, there I can say something  
4 about a Democratic party pledge that had been  
5 made before the convention. The Democratic  
6 party, before the convention, had pledged  
7 itself that no white person would be  
8 disfranchised, that no white man would be  
9 disfranchised. Now, the fact is, that the  
10 Constitution proceeded to disfranchise a  
11 substantial number of whites. But in order to  
12 accomplish that and yet to claim that they had  
13 lived up to their -- up to their pledge, they  
14 adopted two different disfranchising plans, a  
15 so-called temporary plan which ran up to  
16 January 1st, 1903, and then the permanent  
17 plan.

18 The permanent plan, once it went  
19 into full effect on January 1st, 1903, would  
20 have the effect of disfranchising some whites  
21 as well as blacks, and particularly so because  
22 of the linking of the poll tax to an ability  
23 to vote. Because poorer whites would find it

0122  
1 difficult, even though they could register,  
2 they would find it difficult to maintain the  
3 payment of their poll tax, and particularly  
4 because of its accumulative feature. If they  
5 fell behind they had to pay all the back poll  
6 taxes that they owed.

7 The numbers are essentially -- the  
8 new disfranchising provisions reduced the  
9 black electorate from about 185,000 to about  
10 3,000. And it reduced the white electorate  
11 from about 240,000 to about 200,000. So there  
12 is some impact on whites but obviously nothing  
13 like the impact that it has on blacks, which  
14 is much greater.

15 (Whereupon, a discussion was held  
16 off the record.)

17 Q. (BY MR. BLACKSHER) Okay. One of  
18 the facts that we couldn't agree on in our  
19 request for admissions, was Professor  
20 McMillan's assertion that -- I believe you  
21 testified to this earlier, that the margin of  
22 victory for ratification of the 1901  
23 Constitution was brought about because blacks

0123  
1 in the Black Belt got voted for their own  
2 disfranchisement. Do you agree or disagree  
3 with that?

4 A. I agree with that.

5 Q. Let me read you another direct  
6 quote from Professor McMillan to ask you if  
7 you agree with it or not.

8 A. All right.

9 Q. And this is near his conclusion.  
10 Quote, the presence of African-Americans in  
11 large numbers has been the most important  
12 factor in the constitutional history of the  
13 state. No major constitutional issue has  
14 faced the state since 1819 that has not been  
15 decided largely in the light of the presence  
16 of African-American citizens of Alabama, close  
17 quote.

18 A. Yes, I do agree with that.

19 Q. After disfranchisement of  
20 African-Americans produced by the 1901  
21 Constitution, were whites more willing to  
22 support public education?

23 A. Yes. After 1901, with the  
0124 adoption of the 1901 Constitution, and then  
1 the next year, in 1902, with the adoption of  
2 the direct primary for the Democratic party,  
3 for choosing the nominees of the Democratic  
4 party, the -- I said that the -- in effect,  
5 the deal that was being offered is that -- is  
6 that the executive branch of the government  
7 was now being turned over to the control of  
8 the white electorate in the hill counties and  
9 the Wiregrass. And a result of that is that  
10 in the period between the adoption of the  
11 Constitution of 1901 and -- and the -- into  
12 the -- and World War I and indeed into the end  
13 of the early 1920's, this is the period during  
14 which the progressive movement has its  
15 greatest impact on Alabama politics. And at  
16 least three progressives are going to be  
17 elected as governor. Braxton B. Comer and  
18 Emmett O'Neal and Thomas E. Kilby, all are  
19 progressives. And they -- one of their causes  
20 is the improvement of the white public  
21 schools.  
22

23 Q. You said Kilby?

0125 1 A. I did.

2 Q. Okay.

3 A. That's right. Kilby is from  
4 Anniston, Comer is from over in Birmingham,  
5 and Emmett O'Neal is from the Tennessee  
6 Valley.

7 MR. DERFNER: Florence, I  
8 think.

9 MR. BLACKSHER: Off the  
10 record.

11 (Whereupon, a discussion was held  
12 off the record.)

13 A. So the improvement of the public  
14 schools, particularly white public schools, is  
15 a -- was a major thrust of the progressive  
16 movement in the 19 -- in the period between  
17 1901 and World War I and immediately  
18 thereafter.

19 And essentially, there are three  
20 major efforts along this line. One was the  
21 establishment of the state board of  
22 equalization and empowering it to order county  
23 boards of equalization to increase their total

0126 1 property tax assessment. If the state board  
2 equalization regarded the county equalization  
3 total -- I mean, the county total assessments  
4 as unreasonably below what it thought they --  
5 what it would, as a practical, common-sense

6 matter would indicate the county total  
7 property ought to have been were, they could  
8 simply order the state -- the county board of  
9 equalization to increase all property  
10 qualifications by a percentage to bring them  
11 up to a higher level and thus to equalize  
12 assessments from county to county. That's the  
13 function of the state board of equalization as  
14 opposed to a county board of equalization  
15 which is concerned about a specific tracts of  
16 property owned by specific people.

17 And that, they hoped, was going to  
18 increase or to remedy the notorious  
19 underassessment of property in the state. And  
20 it has some positive effect, but not at all  
21 what they had hoped. And so because it was  
22 not being as effective, in 1911 they passed --  
23 they passed a bill, an act, the legislature

0127

1 passed an act, lowering the percentage of a  
2 fair market value that the property had to be  
3 assessed at from the full fair market value,  
4 which was assumed in the Constitution of 1901,  
5 to 60 percent of a full market value.

6 And the idea behind that was,  
7 well, property was so grossly underestimated  
8 all around the state, that they just never get  
9 them up to 100 percent, but maybe they  
10 could -- that they could -- if they said you  
11 only have to go up to 60 percent, maybe the  
12 assessment officials would agree to increase  
13 it to that point.

14 But that also --

15 Q. I've always had a question about  
16 that 1911 statute and the 1935 statute as  
17 written.

18 A. Uh-huh (in the affirmative).

19 Q. It was essentially -- how was  
20 it -- was it ever challenged under the State  
21 Constitution? How was it squared with the  
22 State Constitution?

23 A. Yes, it was indeed challenged

0128

1 under the State Constitution, and the State  
2 Supreme Court held it constitutional. The  
3 opinion is by Justice Somerville, and he  
4 writes in it, I have never heard of any -- of  
5 any people groaning under the yoke of  
6 undertaxation. So he says, he said, there is  
7 no -- whereas, the legislature cannot -- there  
8 are limits on increasing taxation, there is  
9 nothing in the Constitution that would  
10 prohibit the legislature from decreasing  
11 taxation.

12 Q. Well, the 1901 Constitution  
13 provides that all property will be taxed at  
14 the same rate?

15 A. That's correct. And this  
16 continues that it's 60 percent but it still is  
17 at the same rate.

18 Q. Does the Constitution of 1901 say  
19 anything about -- about what base the rate  
20 will be applied to? In other words, does it  
21 say reasonable fair market value like the  
22 statute does?

23 A. Oh. The Constitution. The

0129

1 Constitution didn't say anything about that  
2 one way or another. The statute does say --

3 does specify.

4 Q. So the legislature has the power  
5 to define what the base will be, that is, what  
6 is fair and reasonable market value. And  
7 that's what they did in 1911 by saying it  
8 would be 60 percent of what is actually fair  
9 market value?

10 A. Uh-huh (in the affirmative).

11 Q. And that's what Justice Somerville  
12 said was okay, huh?

13 A. Yes. The name of the case doesn't  
14 pop right into my mind but I can easily find  
15 it out for you and tell you.

16 Q. I didn't mean to digress on  
17 that --

18 A. Because I was about to say, the  
19 third one of these efforts that the  
20 progressives tried, the state board of  
21 education -- the state board of equalization  
22 had not worked so well. The 60 percent  
23 effort had not worked so well. In 1915, this

0130 1 is on in the Emmett O'Neal Administration --

2 Q. Had not worked to increase  
3 revenues?

4 A. Yes. Had not worked to the extent  
5 that the advocates of pro-school reform had  
6 hoped it would to increase the total ad  
7 valorem valuations and thus total ad valorem  
8 receipts.

9 And so in 1915 the legislature  
10 proposed an amendment to the Constitution  
11 which authorized an additional local one mill  
12 tax, this is Third Amendment.

13 Q. Amendment Three?

14 A. Amendment Three. And reduced the  
15 necessity in the local referendum fund to be  
16 accepted from three-fifths of those voting  
17 simply to a majority of those voting, which  
18 made it easier to get the local -- the  
19 additional local one mill?

20 Q. This was still the local option?

21 A. This is a local option but a more  
22 effective local option.

23 A number of counties then did

0131 1 adopt the additional one mill. Not as many as  
2 the educational reformers had hoped. In the  
3 Kilby Administration, right after World War I,  
4 the Kilby Administration proposed -- proposed  
5 supplementing the school funds back by a  
6 wholly new tax, which was a state income tax.

7 Q. Well, before we get to that, if I  
8 may --

9 A. Okay.

10 Q. -- just stop you before we get  
11 into the income tax. And we are still talking  
12 about the attempts to raise property taxes  
13 during the progressive period.

14 Have you read Vern Sisq's articles  
15 about the difficulties of even enforcing an  
16 Amendment Three and other options for raising  
17 school taxes in the Black Belt counties?

18 A. I have but I can confess that it  
19 was many years ago.

20 Q. Okay. All right. Well, then I  
21 won't grill you about that.

22 A. Oh. Good.

23 Q. Well, let me just read you one

0132

1 quotation --

2 A. Yes.

3 Q. -- from his article that I cited  
4 in the brief that I filed, over a year ago  
5 now.

6 He says: "Thus with some  
7 reluctance did the Alabama Black Belt share in  
8 the educational awakening of the state."

9 Now educational awakening is a  
10 term that means what? That applies to what?

11 A. Well, it applies to these -- these  
12 progressive advocates of improving the public  
13 schools, about which I was talking before. If  
14 I can just clarify that, the -- I really  
15 already explained what was going on there.  
16 The big -- the big factor in the Black Belt  
17 is -- is this Apportionment Act of 1891, which  
18 means that the white schools in the Black Belt  
19 are already adequately funded and therefore  
20 this progressive effort to increase,  
21 statewide, the funding of the public schools,  
22 really is irrelevant to the situation of the  
23 white schools in the Black Belt which are

0133

1 already far and away the best-funded public  
2 schools in the state. Because, virtually,  
3 their total appropriation is being funneled  
4 into the white schools. The percentage on  
5 that, when we have figures for it in 1908, the  
6 percentage is that only about 12 percent of  
7 the -- of the -- of the school funds are going  
8 to the black schools and the remaining 88  
9 percent of the school funds are going to the  
10 white schools.

11 Q. And the 1809 Apportionment Act was  
12 endorsed by the 1901 Constitution, isn't it?

13 A. That's correct.

14 Q. Well, to continue with this quote  
15 from Sisq, he says: "The reluctance was  
16 caused --" the reluctance to participate in  
17 the great awakening -- "was caused, not by any  
18 lack of appreciation for the value of public  
19 school education, but by the constant guarding  
20 of the principle that the white people  
21 considered paramount, white supremacy. This  
22 principle, important throughout the state and  
23 South was adhered to with constant persistence

0134

1 in the Black Belt where African-Americans  
2 greatly outnumbered the white people. The  
3 Black Belt white citizens viewed school  
4 legislation in the light of their white  
5 supremacy belief, and accordingly accepted the  
6 law, if no conflict existed, or if there were  
7 a conflict, he made efforts to change the law.  
8 Failing that, he simply neglected to enforce  
9 the law."

10 And I guess my question, there is  
11 a lot to ask if you agree to there, is Sisq's  
12 assertion that white supremacy was a paramount  
13 concern in these Black Belt counties?

14 A. I do believe that's so, yes.

15 Q. Dr. Thornton, now tell us about  
16 the changes in Alabama's --

17 (Whereupon, a cell phone rings.)

18 MR. BLACKSHER: Is that me?

19 Is it okay, Jeff?

20 MR. FOSHEE: Yeah. Keep

21 on.

22 Q. The changes in Alabama's tax  
23 structure that occurred in the 1920's and

0135  
1 30's, please.

2 A. Well, I mentioned just a minute  
3 ago that the Kilby Administration recommended  
4 and the legislature passed an income tax  
5 statute. And the proceeds of the income --

6 Q. And that would have been what  
7 year?

8 A. This would have been, gosh, I'm  
9 not absolutely certain, but I think 1921,  
10 something roughly right about that.

11 And this was to provide, of  
12 course, an additional source of funding in  
13 addition to the ad valorem property taxes to  
14 supplement appropriations for the schools  
15 because they had not been very effective in  
16 getting increased property tax revenue for the  
17 schools in the earlier reforms.

18 What happened to the new income  
19 taxes that the State Supreme Court declared  
20 that the legislature did not have the  
21 constitutional authority under the 1901  
22 Constitution to enact an income tax. It had  
23 never been empowered to do that. And so that

0136  
1 voided the act.

2 And so then there are no further  
3 efforts along that line until the Great  
4 Depression came.

5 Now, with the coming of the Great  
6 Depression, of course nationwide and in  
7 Alabama, there is a financial crisis of the  
8 first magnitude. And in fact in Alabama the  
9 state had to cease paying salaries to its --  
10 to its employees. It even amended the  
11 Constitution to suspend salaries for the  
12 period up to 1935. And it paid the employees  
13 with what was called state script, which was  
14 essentially a promissory note promising to  
15 reimburse the employee when it had the money  
16 to reimburse him. And this meant all state  
17 employees, so it meant all public school  
18 teachers, it meant all game wardens, it meant  
19 all prison guards, the whole spectrum of the  
20 employees of the state. It meant the  
21 Governor.

22 And that and other difficulties  
23 with funding, but particularly the

0137  
1 difficulties with funding of the schools,  
2 finally pushed the state government, now  
3 headed by Governor B. M. Miller, to consider  
4 the possibility of amending the Constitution  
5 to authorize an income tax. As I said, the  
6 State Supreme Court had ruled that the  
7 statutory income tax was a violation of the  
8 Constitution, so now they have turned to the  
9 idea of amending the constitution to authorize  
10 it.

11 They had, initially, at beginning  
12 of the Miller Administration, the state had  
13 let a contract to the Brookings Institution in  
14 Washington, D.C. to study the -- to study the  
15 structure of taxes in the state and to  
16 recommend a general reform. And the Brookings  
17 Institution study had recommended that the

18 state abandon the property tax and move  
19 towards funding the state with -- with a state  
20 income tax.

21 And so that was the form of the  
22 amendment that was offered to the voters and  
23 ratified by the voters in the Summer of 1933,

0138

1 now really at the very bottom of the Great  
2 Depression. And the amendment provided that  
3 initially the proceeds of this income tax were  
4 to be used to fund what was called the  
5 floating debt of the state, which was this  
6 script that had been issued to pay employees,  
7 these promissory notes, and that once that was  
8 paid off, as the revenue built up from the new  
9 state income tax, that that would be used  
10 to -- to reduce the ad valorem property tax so  
11 that eventually there would be no property tax  
12 left and the income tax would have replaced  
13 the property tax and the state would then be  
14 out of the property tax business.

15 Q. What about local governments?

16 A. All right. Now, this says nothing  
17 about local governments and the possibility of  
18 using property taxes to fund local government.  
19 This is merely about the state ad valorem tax.  
20 And the income tax was going to replace it.  
21 That was a sort of a long-term process. But  
22 this process was written into the -- was  
23 written into the constitutional amendment.

0139

1 At the same time, offered by the  
2 legislature at the same moment and as a pair  
3 with the income tax amendment and ratified by  
4 the voters on the same day at the same  
5 election, was -- was another amendment which  
6 provided for what was called the  
7 self-balancing budget, which is what we today  
8 call today proration. It wrote into the  
9 Constitution that whenever revenue sources  
10 fell below what was appropriated, then all  
11 appropriations would be a percentage of the  
12 total pop -- appropriations would be figured  
13 out and that each appropriation would be  
14 reduced pro rata to what the revenue was. And  
15 the result of that would be that the state  
16 could never again go into debt and would never  
17 again be faced with the financial crisis, the  
18 floating debt and the financial crisis that it  
19 was faced with in 1933.

20 And so those two outcomes, the  
21 replacement of the -- well, essentially a quid  
22 pro quo, they were -- the replacement of the  
23 property tax with the income tax, and -- and

0140

1 proration of the budget whenever there was a  
2 budgetary shortfall in the future so that  
3 there could never again be a state debt.

4 And those two amendments went into  
5 the Constitution together.

6 Then -- you want me to say what's  
7 going to happen to the income tax or should  
8 I --

9 Q. In 1947?

10 A. 1947, yeah.

11 Q. Before we get to that, let's talk  
12 about the creation of the education trust  
13 fund.

14 A. All right. Well, then --

15 Q. That would be the Graves  
16 administration --

17 A. Correct.

18 The next administration, Bibb  
19 Graves was elected to his second term to  
20 succeed B. M. Miller in 1934. And in 1935 in  
21 the first session of the legislature in the  
22 Graves Administration, now the income tax has  
23 been enacted but the revenues from the income

0141  
1 tax in this initial period were going into  
2 retiring the floating debt, so the schools are  
3 still, are still not getting any additional  
4 flow of revenue. They're still getting only  
5 the ad valorem taxes that they earlier had  
6 been getting. And so -- and those now much  
7 diminished, of course, because a lot of people  
8 weren't able to pay them and were simply  
9 giving up their property for nonpayment of  
10 taxes.

11 And so -- and so to deal with  
12 that, the Graves Administration proposed the  
13 adoption of the first state sales tax. Now, I  
14 had said that there was something like a sales  
15 tax back in the antebellum period but this is  
16 the first time that a formal sales tax,  
17 statewide sales tax, was enacted throughout  
18 the state. So the sales tax -- the income tax  
19 comes in 1933, the sales tax comes in 1935.  
20 And the sales tax then was channeled into what  
21 was called the Minimum Program Fund. The  
22 Minimum Program Fund was intended to establish  
23 in every school what was to be a -- the

0142  
1 minimum program that the -- that every school  
2 was going to maintain. That is to say, in a  
3 given school district you could have a program  
4 above that if you had the funding for it or  
5 you could have a program that would improve on  
6 that, but every school would at least meet  
7 this minimum program. And that -- and that  
8 was to be funded in every school by  
9 apportioning among the schools this new  
10 revenue source from the new state sales tax.

11 And that was funneled into the  
12 Minimum Program Fund?

13 Q. Now, this is a statutory, not a  
14 constitutional change?

15 A. Correct. This is all done -- both  
16 sales tax and the Minimum Program Fund are  
17 established by statute.

18 And earlier I should have said,  
19 and did not say, but earlier I should have  
20 said, in the first Graves Administration, this  
21 is the second Graves Administration, in the  
22 first Graves Administration in 1927, the  
23 school fund had been taken out of the general

0143  
1 fund and had been segregated, pledged, into a  
2 separate thing, separate fund, which is called  
3 the Special Education Trust Fund.

4 And so together, the two Graves  
5 programs, the establishment of the Special  
6 Education Trust Fund in the first Graves  
7 Administration in 1927 and the establishment  
8 of Minimum Program Fund in the second Graves  
9 Administration in 1935, together both of those  
10 represented substantial advances in the  
11 funding of the public schools in the state.

12 Q. When did the state universities,  
13 higher education institutions, I should say,  
14 whether they were universities or normal  
15 schools, begin getting state appropriations?

16 A. Oh, well, they had at various  
17 times gotten state appropriations, originally  
18 for special buildings, to build a new building  
19 or something like that. So all through  
20 Alabama history they had been getting special  
21 appropriations.

22 Q. But that would have been line  
23 items of sorts?

0144

1 A. Correct.

2 Q. Was there -- would there -- I  
3 mean, would there ever --

4 A. I don't know when it became just  
5 the ordinary presumption that that was going  
6 to be included in the budget, but not until  
7 the 20th Century, at any rate.

8 Q. What we now call the O & M  
9 Funding?

10 MR. BLACKSHER: Is that  
11 right, Armand?

12 MR. DERFNER: Uh-huh (in  
13 the affirmative).

14 Q. That comes every year for  
15 operating funds, operation and maintenance  
16 funds for -- you are not sure when that --

17 A. I'm not, no.

18 Q. Okay. 1947.

19 A. Well, as the 1930's moved along,  
20 and there is a -- and then during World War  
21 II, there is, of course, a return of  
22 prosperity, particularly after America enters  
23 the second world war. And -- and the

0145

1 floating debt has now been paid off. During  
2 the Sparks Administration, which is during  
3 World War II, Governor Sparks -- the  
4 legislature had authorized and Governor Sparks  
5 had appointed a thing which was called the  
6 Education Study Commission.

7 And the Education Study  
8 Commission, which was headed by a man named  
9 Hubert Searcy, who was president of Huntington  
10 College in Montgomery, filed in 1945 a  
11 full-scale report on the status of Alabama  
12 public education as it stood at the end of  
13 World War II in 1944 and 1945. And a part of  
14 that was a recommendation that there was an  
15 urgent necessity to improve public school  
16 teachers' salary.

17 Then in 1946 James Folsom was  
18 elected governor and he took office in January  
19 of 1947. And at the 1947 session of the  
20 legislature, with the support of the Folsom  
21 Administration and against the background of  
22 the recommendations of this Sparks Education  
23 Study Commission of 1945, the legislature in

0146

1 1947 agreed to submit to the voters a new  
2 constitutional amendment, which authorized the  
3 diversion of the income tax proceeds which had  
4 been pledged under the 1933 amendment to the  
5 reduction of the ad valorem property taxes,  
6 the diversion of those proceeds into the  
7 Special Education Trust Fund with a pledge  
8 that they would be used to increase public

9 school teachers' salaries. And so that was  
10 the outcome of -- the outcome of the income  
11 tax --

12 Q. Amendment 61 is the 1947 income  
13 tax amendment?

14 A. Correct. And that is the  
15 amendment under which the state today -- the  
16 state income tax today functions.

17 Q. Now, is there any linkage -- we  
18 have alleged there is a linkage between the  
19 Amendment 61 income tax provision that -- that  
20 dedicated or essentially earmarked income tax  
21 for teacher salaries. With the passage of  
22 Amendment 55 in the year before 1946, known as  
23 Boswell Amendment, which was dealing with --

0147 well, briefly what was the Boswell?

1 A. Well, the Boswell Amendment was  
2 the -- the disfranchising provision of the  
3 1901 Constitution, as time had passed, had  
4 become less and less effective in excluding  
5 blacks from the electorate.

6 Under the original 1901 provisions  
7 any person could register who could read and  
8 write the English language or, alternatively,  
9 who had a very small amount of property. I  
10 believe it was \$500. And by -- by 1945, a  
11 substantial number of blacks were literate,  
12 and because of inflation, the \$500 value was a  
13 value that was relatively easily satisfied.

14 And it appeared therefore -- oh.  
15 And then in addition to that, in 1944 the  
16 supreme court, in a case of Smith versus  
17 Allright, had ruled unconstitutional the  
18 Alabama -- I mean all southern states, but --  
19 that happened to be about Texas -- but for  
20 Alabama it meant that the rule of the Alabama  
21 Democratic party that limited participation in  
22 its direct primary to white people was  
23

0148 unconstitutional.

1 So that meant both that it was now  
2 easier for blacks to register to vote under  
3 the 1901 Constitution and that they were going  
4 to have to be permitted to vote in the  
5 Democratic primary, which was at this time the  
6 only election that effectively really mattered  
7 except in certain circumstances in Alabama.

8 And so the Boswell Amendment  
9 attempted to deal with that by writing a new  
10 standard for registration, which was that --  
11 that the registrant had to, or the applicant  
12 had to satisfy the board of registrars that  
13 not only could you read but could also  
14 understand any section of the Constitution of  
15 the United States that was presented to him by  
16 the board.

17 That amendment was voided by a  
18 decision of a federal court in Mobile in a  
19 case called Davis versus Schnell.

20 Q. 1949?

21 A. In 1949. Because it was ruled to  
22 have had racially-discriminatory motives.  
23

0149 But then in 1951, the  
1 Constitution, a new amendment to the  
2 Constitution was -- was adopted and it was --  
3 though it was not the same amendment, it had  
4 similar -- similar implications, called the  
5

6 Bonner Amendment, and it required -- it  
7 required the State Supreme Court to create a  
8 voter qualification test which was to be  
9 administered by the boards of registrars. And  
10 that's the amendment that's going to remain in  
11 effect all the way up to the Voting Rights Act  
12 of 1965.

13 Q. At the end of World War II and all  
14 these changes, not this Smith v. Allright, but  
15 the changes that World War II brought and the  
16 returning GI's and all of that, what  
17 connection was there between the impending  
18 re-enfranchisement of African-Americans who  
19 had been disfranchised by the 1901  
20 Constitution on the property tax situation?

21 A. Well, in the Black Belt of course,  
22 the pending -- I mean, if it were to happen  
23 that blacks in the Black Belt were able to be

0150

1 re-infranchised and were able to begin to  
2 participate also in the Democratic party's  
3 direct primary elections, that pretended the  
4 end of the system which had been at the core  
5 of the agreement of the Black Belt white  
6 Democratic leadership that had led to the 1901  
7 Constitution in the first place. Because it  
8 meant now that they would have given up  
9 control -- they would have -- they would  
10 effectively have given up the capacity to  
11 control their own counties. And if blacks  
12 became an effective part of the electorate  
13 again, then -- then that meant the capacity of  
14 blacks in the black -- the majority black  
15 counties to control county government and to  
16 control taxing and to tax well-to-do white  
17 land owners and property holders to the  
18 benefit of black schools.

19 And so there were a variety of  
20 responses in the Black Belt to that prospect.  
21 The county in which it was most pressing was  
22 Macon, and the reason for that was that that  
23 was the county that contained the Tuskegee

0151

1 Institute and also the black Veterans  
2 Administration Hospital at Tuskegee, and  
3 therefore, it was a county that contained a  
4 very large number of very well-educated black  
5 residents and it was a county that was  
6 overwhelmingly black, that had relatively few  
7 white people.

8 And black registration was  
9 mounting there very rapidly all through the  
10 late 1940's and early 1950's. And the  
11 legislature responded with specific  
12 legislation directed at Tuskegee and Macon  
13 County, altering the city boundaries of  
14 Tuskegee to exclude most of the black  
15 population and amending the Constitution to  
16 authorize the legislature by statute to  
17 abolish Macon County and to split it up among  
18 the surrounding counties.

19 And both of those are responses  
20 directed specifically at the one county  
21 where -- where the increasing black  
22 registration is most likely to happen soonest.  
23 But that same fear more generally was true

0152

1 throughout the Black Belt and there was a  
2 widespread fear among Black Belt legislators

3 that they would -- that they would lose their  
4 power.

5 In addition to that, during the  
6 Folsom Administration --

7 Q. The first one?

8 A. The first Folsom Administration  
9 beginning in 1947, there was a strong effort  
10 on the part of Folsom and his allies in the  
11 legislature to attempt to reapportion the  
12 legislature. And reapportionment meant the  
13 loss of the power within the legislature which  
14 had been at the core of a deal at the 1901  
15 Constitution.

16 In the meantime, I should have  
17 said but didn't, the legislature never had  
18 been reapportioned, even though the  
19 Constitution required it -- the state  
20 Constitution required its reapportionment  
21 after every decennial federal census. The  
22 legislature had simply ignored that.

23 Q. To jump ahead to the State versus

0153  
1 Carr and Reynolds versus Sims, it was no  
2 accident that it hadn't been reapportioned.  
3 That was part of a deal in 1901?

4 A. That is correct. In addition to  
5 pressure from the Folsom Administration at  
6 this time for the legislature itself to do the  
7 reapportioning by statute, this is also the  
8 period of the initial federal court suits to  
9 attempt to -- to --

10 Q. Not in Alabama?

11 A. Yes.

12 Q. In Alabama?

13 A. Yes, sir. There was such a case.  
14 The judge who presided was Hobart Grooms.  
15 The -- a case arose in Anniston. He threw it  
16 out. He ruled that it was a political  
17 question. But it is right at this time that  
18 you -- that we first begin to have federal  
19 court action to attempt to force  
20 reapportionment of the legislature.

21 Q. Was Colegrove versus --

22 MR. DERFNER: It was  
23 Illinois.

0154  
1 MR. BLACKSHER: I know it  
2 was in Illinois but it was 1946,  
3 right?

4 MR. DERFNER: 1946.

5 Q. 1946. That was the supreme court  
6 case involving Illinois' congressional  
7 redistricting in which Justice Frankfurter  
8 coined the phrase "Political Thicket"?

9 A. And relying on -- and Judge Grooms  
10 relied on the holding in Colegrove versus  
11 Green to throw out this case, which I -- I  
12 can't immediately think of the --

13 Q. It involved Anniston?

14 A. Yes, sir. I can get the --

15 (Whereupon, a discussion was held  
16 off the record.)

17 A. I can get you the citation for it,  
18 but nevertheless, anyway there was a -- the  
19 case failed but the supreme court in  
20 Colegrove versus Green, there was no majority  
21 in Colegrove versus Green. The Court was  
22 fractured in Colegrove. And even though the  
23 federal district court had dismissed the

0155

1 Alabama case on the strength of Colegrove,  
2 there was considerable fear that that might  
3 not be the ultimate outcome of such  
4 challenges.

5 So there is fear of  
6 reapportionment action through the federal  
7 courts, and then there is fear of the fact  
8 that the Folsom Administration itself was  
9 pushing hard to get the legislature  
10 reapportioned by statute, which of course the  
11 legislature could have done regardless of any  
12 court action if it had had the votes to do it.  
13 And in all of that, emphasized the need for  
14 the Black Belt representatives to maintain  
15 their control because the way they blocked the  
16 Folsom administration's ability to get the  
17 reapportionment bill through the legislature  
18 was by filibustering in the senate and by  
19 their -- and because of their disproportionate  
20 size of their representation in both houses,  
21 but particularly in the upper house where they  
22 could filibuster. They were able to prevent  
23 that from happening. I mean, they -- there

0156

1 is -- that's not in --

2 Q. Let me --

3 A. Well, that's all I -- I just --  
4 all I was going to say was, they did actually  
5 get a constitutional amendment on the ballot  
6 which is called the "67 Senator Amendment,"  
7 which would have reapportioned the house on  
8 the basis of population and then given every  
9 senator one -- every county one senator, but  
10 that was defeated by the voters.

11 But at any rate, there was a great  
12 deal of interest during this period in the  
13 reapportionment of the legislature was the  
14 real point of this. And all of that posed  
15 a -- posed a threat to the -- to the sort of  
16 what was in effect, the foundational deal that  
17 underlay the 1901 Constitution.

18 Q. Well, to redirect the discussion  
19 to Folsom's 1947 Income Tax Amendment, 61 --

20 A. Yes.

21 Q. -- would it have been reasonable  
22 in the environment you've described for Folsom  
23 to have proposed increasing local property

0157

1 taxes in order to fund the teacher salaries  
2 that were so desperately needed after World  
3 War II?

4 A. No. I mean, here's the -- the  
5 answer to that of course is that the -- is  
6 that the income tax was producing --

7 Q. A surplus?

8 A. A surplus. The floating debt had  
9 been paid off, the money in effect was there,  
10 and the people were paying this income tax and  
11 diverting it to the payment of the teachers'  
12 salaries was a reasonable way of dealing with  
13 the -- dealing with the problem. But -- but  
14 it did involve giving up what had been written  
15 into the 1933 amendment, which was that this  
16 funding would be used to reduce the state ad  
17 valorem tax.

18 Q. But it's true, isn't it,  
19 Dr. Thornton that throughout the United States  
20 it's the rule rather than the exception that a

21 large part of the K-12 public school system is  
22 funded by local property taxes?

23 A. Yes. Yes, that's right. But as  
0158

1 I said, the problem with using local property  
2 taxes in a legislature which is dominated by  
3 Black Belt -- by disproportionate  
4 representation of the Black Belt counties in  
5 an environment in which the Black Belt  
6 legislators fear that -- that the time is  
7 going to come in the foresee -- in the not too  
8 distant future when they are going to have  
9 black governments in their counties that will  
10 tax them, that that means that they will find  
11 themselves -- their property will be subject  
12 to -- if the levy is at the local level their  
13 property will be subject to the vote of a  
14 black majority.

15 So those Black Belt legislators  
16 would simply not permit such -- such a funding  
17 scheme to go through the legislature; whereas,  
18 a funding scheme at the state level, which  
19 was -- which was gathering revenue from all  
20 over the state and which was sort of generally  
21 redistributed, did not pose the challenge to  
22 their being placed -- their own property being  
23 placed directly under the control of black

0159  
1 majorities which they so distrusted and which  
2 were themselves holders of relatively little  
3 property.

4 So as a practical matter, the  
5 Folsom Administration could get through a  
6 malapportioned legislature with  
7 disproportionate Black Belt power. The Folsom  
8 Administration and subsequent administrations,  
9 the Persons Administration and the Patterson  
10 Administration, could get through such a  
11 malapportioned legislature increases of  
12 funding for the public schools at the state  
13 level when Black Belt legislators would have  
14 fought to the death against placing that  
15 funding at the local level.

16 MR. BLACKSHER: Let's take  
17 a break.

18 (Whereupon, a break was taken.)

19 Q. (BY MR. BLACKSHER) Dr. Thornton,  
20 I want to, I think, go next to the  
21 constitutional amendment that -- wait a  
22 minute. The constitutional amendment that  
23 was proposed in 1955 which would have allowed

0160  
1 an addition of another 5.5 mills to the  
2 allowable seven mills for school purposes when  
3 local citizens wanted to vote for it.

4 Now, are you at all familiar with  
5 that constitutional amendment? '55 would have  
6 been the second Folsom Administration, right?

7 A. Yes, it would. I'm not directly  
8 familiar with that particular amendment  
9 though. Throughout this period, because they  
10 are increasing pressures for increased public  
11 schooling, there are both general statewide  
12 efforts to increase public schooling,  
13 increasing the sales tax and efforts to amend  
14 the Constitution. There was an unsuccessful  
15 amendment to increase the income tax for --  
16 and dedicate that for schools. That was  
17 defeated. And there were proposed amendments,

18 and then in addition -- and much more likely  
19 to be successful, there was a whole slough of  
20 constitutional amendments permitting  
21 particular counties and particular cities to  
22 levy additional taxes, both -- generally ad  
23 valorem property taxes increasing millage.

0161

1 And generally where the amendments provide  
2 that the tax will become effective only if the  
3 voters in the county or the municipality  
4 approve it, those amendments are quite likely  
5 to be added to the Constitution.

6 As I think you know, we end up  
7 with literally hundreds of amendments to the  
8 Constitution. A great many of these apply  
9 only to a particular county -- probably most,  
10 in fact, of these amendments apply only to a  
11 particular county or a particular  
12 municipality.

13 Here in Jefferson County this is  
14 one of the places that had -- that had the  
15 strongest effort for these local amendments.  
16 And Jefferson County as a whole and then some  
17 of the particular school system areas of  
18 Jefferson County, all gain additional local  
19 authority to tax, so that at the end of this  
20 process, the City of Mountain Brook has the  
21 highest taxing authority of any jurisdiction  
22 in the entire state.

23 Q. And this is through the process of

0162

1 constitutional amendment, isn't it?

2 A. Through the process of  
3 constitutional amendment, correct.

4 Q. That affect only a particular  
5 jurisdiction, local jurisdiction?

6 A. That is correct.

7 Q. What effect -- I mean, let's bring  
8 into the picture now Brown versus The Board,  
9 1954. What effect does the federally-enforced  
10 school desegregation have on the support for  
11 public education and financing public  
12 education in Alabama?

13 A. Well, the real answer to that  
14 is -- depends on how the individual citizens,  
15 how likely the individual citizens thought it  
16 was that the schools of Alabama would ever  
17 actually be integrated. It's hard for us  
18 today to realize it, but a great many white  
19 Alabamians really did not think that racial  
20 integration would ever come to Alabama. And  
21 if they are -- if the individual voter is --

22 Q. You mean even after Brown? Brown  
23 won.

0163

1 A. Long after Brown. For many years  
2 after Brown. The feeling was quite  
3 widespread in the South that there simply was  
4 going to be no way that the federal government  
5 would ever have the power to bring integration  
6 to the state. There was no sense of -- that  
7 integration was impending or even very likely.  
8 And if you are quite confident that that's  
9 true, then you can continue to be an advocate  
10 of increased funding for the schools and the  
11 confidence that these schools will be -- will  
12 continue segregated.

13 If, on the other hand, you believe  
14 that there is some real likelihood that

15 schools will be integrated, then you would  
16 have very much more substantial doubts because  
17 all political leaders at this period said, and  
18 some actually believed, that the outcome of  
19 the integration of the schools would be the  
20 abolition of the schools. Certainly Governor  
21 John Patterson was, not merely in rhetoric but  
22 actually in his heart, to the closing -- to  
23 the abolition of the public school system of

0164

1 the state if integration came to the state, or  
2 particular school districts, if there were  
3 no -- if there was no likelihood that it was  
4 going to become statewide, he was prepared to  
5 close them in particular districts and leave  
6 them open elsewhere.

7 And Governor Wallace, I think  
8 actually welcomed the thought of general  
9 conversion to a system of -- a system of  
10 private segregated academies if there  
11 continued to be some form of public funding  
12 that did not go to the school, but instead  
13 went to the parents in the form of tuition  
14 grants or scholarships, which would then --  
15 which the parents could then use to send their  
16 child to the segregated private academy.

17 Q. With an early voucher system?

18 A. Yes.

19 Q. What I want to do now is to ask  
20 you about the attempts to -- well, the events  
21 surrounding property tax policy in Alabama,  
22 say, from Brown in the first -- second Folsom  
23 Administration up through 1978, which was when

0165

1 the second final Lid Bill Amendment passed.

2 Can I ask you first if you can  
3 talk about the challenges that were brought in  
4 state court to the crazy quilt assessment  
5 system by the power company and other  
6 corporate interests?

7 A. Yes. In general terms, the --  
8 particularly the public utilities, the  
9 railroads and the public utilities, were --  
10 but particularly the public utilities, were  
11 being assessed because their assessment  
12 happened at the state level from the revenue  
13 commissioner. They were being assessed at a  
14 level which, though the law required it of  
15 everyone, nobody else was being assessed at  
16 that level.

17 Q. Well, in the one in force in  
18 the -- at least until 1969 was the 60 percent  
19 assessment ratio?

20 A. Correct.

21 Q. That I guess was -- the last time  
22 it was amended was 1935?

23 A. Correct. That's right.

0166

1 And eventually there are court  
2 challenges that proceed from the public  
3 utilities. I can't carry you in detail  
4 through the -- through all of the cases, but  
5 it does eventuate in a three-judge federal  
6 court order that all property be reassessed  
7 and a legislative response. And part of that  
8 response you can see actually in the law since  
9 it was the public utilities that had brought  
10 on this situation, the public utilities get  
11 singled out and made into a separate, a

12 separate class of property just for themselves  
13 where they get a special tax rate just for  
14 themselves, which is a sort of a punitive  
15 response to the fact that they had brought  
16 these suits and they had -- and they had  
17 plunged the state into this situation.

18 Q. The three-judge federal court you  
19 are talking about is the 1971 three-judge  
20 court in Weisinger versus Boswell?

21 A. Correct.

22 Q. All right. And the lawsuits in  
23 state court that the power company and others

0167

1 were bringing, go all the way back to the  
2 '50's, don't they?

3 A. Yes. And they do eventuate in a  
4 State Supreme Court ruling on the basis of the  
5 state constitutional requirement that all  
6 property be assessed uniformly throughout the  
7 state, that's right. That holds the -- that  
8 these assessments are unfair.

9 Q. Isn't it true that throughout the  
10 late '50's and all through the '60's it was  
11 the whole notion of bringing some rationality  
12 and reform to the property tax system was very  
13 much in the air, and at least in the  
14 background, on the legislative agenda because  
15 of these power company lawsuits and other  
16 things of that sort, and the development of  
17 equal protection law in the federal courts?

18 A. Yes, that is true.

19 Q. And so were there not  
20 pro-education forces, Albert Brewer types, for  
21 example, who in the 1960's were hoping to use  
22 reform of the property tax system to increase  
23 revenues for public schools?

0168

1 A. Yes. That's correct. They --  
2 the Alabama Education Association, the AEA,  
3 was a principal of force in the -- in pushing  
4 legislature in that direction. And another  
5 element in this was, for reasons that I talked  
6 about just before the last break, increasingly  
7 after World War II, the funding of the schools  
8 had become very much a state-centered  
9 enterprise and whereas other states got a lot  
10 more of their -- of the support of the schools  
11 from the local level, the -- Alabama did not.  
12 And Alabama's tax effort at the state level,  
13 judged against other states at the state  
14 level, was very good. Alabama ranked very  
15 high in terms of its effort to fund education  
16 simply considered as a state phenomenon.

17 What dragged the total support  
18 down was that Alabama had vastly less support  
19 from local government and at the school  
20 district level. And so the result of that,  
21 since you have mentioned the Brewer  
22 Administration, the result was -- the  
23 principal thrust of the reform legislation

0169

1 that passed the legislature during the Brewer  
2 Administration was to attempt to force, to  
3 compel, increase support at the local level.

4 Q. Well, actually, the best Brewer  
5 could do, wasn't it, was to encourage them and  
6 provide incentive?

7 A. It provided very strong incentive,  
8 that is, they began forfeiting state funds.

9 So that was -- that was the point of it.

10 Q. But the problem, in addition to  
11 whatever caps the State Constitution put on  
12 local property taxes, as I understand it, the  
13 problem that the power company and others were  
14 complaining about was that nobody at the local  
15 level was following the law with respect to  
16 fair market value, 60 percent or otherwise?

17 A. The highest assessment level in  
18 the state was 30 percent. And that was in  
19 Jefferson County. Everything else was -- was  
20 below 30 percent. And it was -- and in some  
21 counties vastly, grossly below 30 percent.

22 (Whereupon, a discussion was held  
23 off the record.)

0170

1 Q. (BY MR. BLACKSHER) All right.  
2 Can you tell us anything about the ways  
3 that the anti-property-tax forces, the Black  
4 Belt counties, industrial interests, whatever,  
5 can you tell us anything about their agenda or  
6 their strategies for opposing property tax  
7 reform during this period?

8 A. Well, the principal -- as time  
9 goes on, the principal opposition to property  
10 tax reform comes to be centered in the Alabama  
11 Farm Bureau. And the Alabama Farm Bureau  
12 developed a proposal for -- for classification  
13 of property. And this is the plan that  
14 eventually is going to be -- or versions of it  
15 are going to be seen in the 1972 and 1978  
16 amendments to the Constitution.

17 Q. 1971, I think it is.

18 A. 1971 and 1978 amendments to the  
19 Constitution. And the principal concern of  
20 the Alabama Farm Bureau was the taxation of  
21 agricultural property and, particularly,  
22 agricultural property in the Black Belt and  
23 large, very large agricultural property

0171

1 holdings.

2 Similar concern was also -- timber  
3 interests had very similar concerns. And the  
4 timber industry and the Farm Bureau were very  
5 interested in -- in attempting to eliminate  
6 from the Constitution the uniform -- the  
7 requirement of uniform assessment of all  
8 property across all classes that was written  
9 into the Constitution, because they did fear  
10 that the day was going to come when they were  
11 going to be -- there was going to be  
12 compulsion to carry those provisions of the  
13 Constitution into effect just as at this same  
14 time they were developing pressure to carry  
15 into effect the provisions of the Constitution  
16 as to -- relative to legislative  
17 reapportionment, which is also being ordered  
18 in excessive -- in increasingly rigorous steps  
19 during this period until eventually you get to  
20 the full-scale single-member reapportionment  
21 that is the outcome of that series of  
22 calculations.

23 Q. In Reynolds versus Sims, the

0172

1 Supreme Court decision is 1964.

2 A. Well, yes. But then --

3 Q. And then 1971 you get a little bit  
4 of change, and by the mid-1970's you have got  
5 single-member districts?

6 A. Correct.

7 Q. Mr. Park and I have been down  
8 these roads before and have written about it.  
9 By 19 -- by the end of the 1970's, you have  
10 got at least a handful of blacks in both  
11 houses of the legislature?

12 A. That's right. So that the outcome  
13 of this process of fuller and fuller genuine  
14 reapportionment is climaxing right about the  
15 same time as the 1978 second property tax  
16 bill. And the two are -- two concerns are  
17 proceeding along -- along the same -- are  
18 proceeding in lock step with each other.

19 Q. And we should give at least an eye  
20 to the 1965 Voting Rights Act which greatly  
21 accelerated the number of blacks who actually  
22 got on the rolls?

23 A. Absolutely.

0173

1 Q. All right. So what I want to ask  
2 is, is there continuity between these events  
3 in the 1960's and 1970's surrounding property  
4 tax revision, if you will, and the themes that  
5 you have been discussing with respect to the  
6 concerns of white property owners that led to  
7 the 1901 Constitution, the 1875 Constitution,  
8 and so on?

9 A. Yes. Yes. To my mind this is all  
10 a sort of continuing story. That it's a --  
11 it's all of a piece. It is about the gradual  
12 creation of a political culture, of a set of  
13 institutions, and a set of institutional  
14 assumptions, of a way of thinking about  
15 politics, and a way of thinking about power  
16 and social relationships which becomes  
17 ingrained in people and they take it -- they  
18 take it to be second nature. And eventually  
19 they even assume it to have -- to be natural,  
20 to have been always that way.

21 In fact, of course, it's  
22 historically created. It's created by  
23 history. But any one person is only going to

0174

1 live 70 or 80 years. And as a conscious  
2 observer, probably only 50 or 60 years. And  
3 so you come in on this process as just a  
4 little slice of it. And it's very easy to  
5 think of this as something that is natural and  
6 inevitable if you have grown up in the midst  
7 of it and -- and don't assess it -- assess it  
8 very critically.

9 But the fact is, that this is a  
10 set of assumptions and a set of institutional  
11 relationships and a set of social  
12 relationships that is -- that is created by  
13 historical events, that is historically  
14 created and -- and interrelated so that the  
15 events feed onto each other and it makes a  
16 single understandable whole.

17 Q. I wanted to ask you to read, on  
18 that point, the last page -- not the last page  
19 but it's the second to last -- no. The third  
20 to last paragraph, in your tone --

21 A. Uh-huh (in the affirmative).

22 Q. -- "The Dividing Lines," which was  
23 published in 2002 -- 2002 by the University of

0175

1 Alabama Press, and ask you just to begin  
2 reading at the bottom of page 581. I have

3 highlighted that paragraph.

4 A. All right.

5 Q. And read it slowly, please, so the  
6 court reporter can get it.

7 A. All right. "Southerners of  
8 goodwill have persisted in the illusion that  
9 racial animus is a remnant of the era of white  
10 supremacy that will slowly give way to harmony  
11 if the various sources of tension can be  
12 removed. It is certainly correct, of course,  
13 that the elimination of social factors that  
14 have exacerbated racial antagonism may allow  
15 the expression of racial rivalries without  
16 quite so hard an edge as that to which we are  
17 accustomed. But at the local level, as we  
18 have seen, the civil rights movements  
19 represented, in very great measure, efforts to  
20 compel the redistribution of power,  
21 particularly political power, within the  
22 community. Because expressions of power are  
23 protean, and both the persons who hold power

0176  
1 and the situations that emphasize it will  
2 necessarily change over time, this endeavor  
3 must essentially be perpetual, even though its  
4 salience may wax and wane. More than that,  
5 however, this illusion reckons without the  
6 fact that historic conflicts within a  
7 community may be one of its most fundamental  
8 constitutive elements, a part of the structure  
9 of reality for its members, and therefore  
10 something which the very authenticity of the  
11 community itself would inhibit their  
12 transcending. Certainly that is true of  
13 Southern communities; racial conflict has been  
14 so much a focal point of their existence that  
15 to eradicate it would be in a sense to deprive  
16 the communities' residents of their unity with  
17 their past. Such an outcome is no more to be  
18 imagined than we could imagine a  
19 self-conscious people without a history. We  
20 can demand that the contest be fought out  
21 openly and fairly; we can oppose the  
22 maintenance or adoption of practices that  
23 deliver victory artificially to one of the

0177  
1 various contending parties; but the life of  
2 such conflicts must be coextensive with that  
3 of the community that defines them and that  
4 concomitantly in so large a part obtains its  
5 meaning from them. Visions of communal  
6 harmony thus in fact defy the substance of the  
7 communities they celebrate, for actual  
8 communities must be built upon the aspirations  
9 and passions of human beings."

10 Q. Now, and -- thank you. Those  
11 conclusions you arrived at at the end of this  
12 book were really directed primarily at the  
13 disciples of Martin Luther King, Jr., the --  
14 who espoused a beloved community and the end  
15 of racial strife and the disappointments that  
16 they experienced after King's death to the  
17 present, that it really didn't come about, and  
18 also the expectations of progressive Alabama  
19 and other Southern -- well, this is about  
20 Alabama. This would have been Southern  
21 business progressives.

22 And let me get in a word for my  
23 partner John Falkenberry's father, Roswell

0178

1 Falkenberry, who you mention in the Selma  
2 section here, who hoped that economic  
3 considerations would dissolve some of these  
4 old rivalries. And that's what you are  
5 addressing, those expectations are what you  
6 are addressing with this conclusion; is that  
7 correct?

8 A. That is correct, though it is no  
9 less true that it addresses the dream of  
10 anyone who -- who envisions a color-blind  
11 society.

12 Q. All right.

13 A. Because the answer to that is that  
14 our history, that however noble that  
15 aspiration may be, our history in fact happens  
16 amidst -- amidst a set of assumptions that  
17 makes our awareness of race inevitable and  
18 indeed crucial.

19 Q. Okay. Now I would like you to  
20 relate those broad opinions about the role of  
21 race and racial rivalry to the testimony you  
22 have just given about events, generally  
23 including regarding the property tax system up

0179

1 through 1978. Do these conclusions apply to  
2 those circumstances as well?

3 A. Yes. Certainly. In fact, that  
4 was exactly what I was actually trying to say,  
5 is that -- is that almost -- is that every --  
6 all of our -- all of the parts of our lives  
7 are interrelated, and that nothing we here in  
8 Alabama can ever do is -- can be divorced from  
9 our lived experience of race because --  
10 because we live it. And so things that --  
11 that you might talk about as having been -- as  
12 having motive X or motive Y or motive Z, in  
13 terms of the lived experience of every human  
14 being, X, Y, and Z are all interrelated as  
15 motives. And because we are aware of race,  
16 we act in the midst of that awareness whatever  
17 we do.

18 Q. The historical fear that you have  
19 described of white property owners, especially  
20 those in the Black Belt that are fully  
21 political empowered, black voters would raise  
22 their property taxes as being behind the  
23 creation of the property tax provisions in the

0180

1 1901 Constitution?

2 A. Yes.

3 Q. Is it your judgment that those  
4 same concerns still operate in the 1960's and  
5 1970's?

6 A. Yes.

7 Q. Now I need to ask you, I'm about  
8 to wind up, but I need to ask you to clarify  
9 something --

10 A. Yes.

11 Q. -- about -- you said about the  
12 1901 Constitution.

13 When we were talking about how the  
14 margin of victory for ratification of the 1901  
15 Constitution was provided by blacks being  
16 voted in the Black Belt, as Professor McMillan  
17 has longed established.

18 A. Yes.

19 Q. Does that mean that if whites  
20 alone -- that the whites who voted against

21 ratification were voting against white  
22 supremacy?

23 A. No. No.

0181

1 Q. Why would they be voting against  
2 the 1901 Constitution?

3 A. Well, as I said, there are --  
4 there is a whole spectrum of white supremacist  
5 attitudes. And I said or meant to say, there  
6 was no one at the -- who was a delegate to the  
7 Constitutional Convention of 1901 who was not  
8 a white supremacist. And more generally,  
9 there were very few whites in Alabama who were  
10 not white supremacists. There were some  
11 but -- but a handful.

12 But a generalized support for  
13 white supremacy does not dictate a particular  
14 set of institutional outcomes. There can be  
15 varieties of expressions of white supremacy.  
16 And so in terms of the Constitution of 1901,  
17 that embodied a structure of power  
18 relationships and a -- in a particular  
19 structure of the relationship of the executive  
20 and legislative branches of the state  
21 government and particular provisions, we've  
22 talked about the tax and educational  
23 provisions. There are others. There are

0182

1 lengthy provisions in the 1901 Constitution  
2 related to what kind of local legislation is  
3 acceptable. There are a lot -- there is a  
4 municipal -- municipalities section of the  
5 Constitution, et cetera, et cetera.

6 All of that produces a particular  
7 structure of power in the government. And  
8 that particular structure of power reflected  
9 the aspirations of one group of white  
10 supremacists, particularly planters in the  
11 Black Belt working in cooperation with -- with  
12 corporate interests from -- from particularly  
13 the Birmingham area. And --

14 Q. Could one of those factors have  
15 been a concern on the part of some whites,  
16 that they too were going to be disfranchised?

17 A. Oh, well, now, you would most --  
18 if you were -- if you were a poor white living  
19 in the hill counties, and you were aware of  
20 the nature of the -- and the implications of  
21 the permanent plan of disfranchisement and had  
22 not been taken in by the temporary plan, which  
23 was going to expire at the end of 1902, then

0183

1 you might very well think, and in fact with  
2 very good reason think, that you were likely  
3 to be disfranchised, and that your own vote  
4 would be taken away from you. And you might  
5 very well have opposed the Constitution of  
6 1901, whatever your -- the extent of your  
7 white supremacist views.

8 Q. Well, the -- McMillan quotes  
9 Republican newspapers who were opposing  
10 ratification of the 1875 Constitution by  
11 saying that those old supremacists in the name  
12 of disfranchising blacks, are going to take  
13 away all your school funds, or words to those  
14 effects; isn't that correct?

15 A. Yes.

16 Q. And was it also the case -- of  
17 course, the 1875 Constitution and the -- the

18 redemption theme, restoration of white rule  
19 still carried the day easily in 1875. What I  
20 want to ask is, if the cardinal purpose of the  
21 1901 Constitution, 1901 Constitution, was  
22 disfranchisement, did it also trump, in the  
23 final analysis, all the other agendas, if you

0184

1 will, that people brought to that  
2 constitutional convention?

3 A. Well, trump may be an awfully  
4 strong word. It reaches out and incorporates  
5 them and uses them. In some cases,  
6 particularly in the case of progressive  
7 advocates of public school reform, they lose  
8 at the convention. In other cases, other  
9 interests may get particular provisions of the  
10 Constitution that they had wanted, but the --  
11 but what made the Constitution work, its  
12 fundamental underlying motive, is the creation  
13 of the particular structure of power and the  
14 particular relationships among the sections of  
15 the state that I tried to describe.

16 So that's the thrust of the  
17 constitutional arrangement created in 1901.  
18 And in that sense, of course, it's  
19 sufficiently powerful that it carries forward  
20 even into an age in which some of its most  
21 fundamental institutions, such as the  
22 structure of legislative apportionment and the  
23 disfranchisement, themselves begin to go away

0185

1 because once it's created, a political culture  
2 once it's created a set of assumptions and a  
3 set of -- a set of beliefs that seem natural  
4 and inevitable, then it's very difficult for  
5 people to break out of them.

6 So that was what I was trying to  
7 say.

8 Q. All right. The role of race, the  
9 white supremacy of black disfranchisement, the  
10 protection -- shielding of white property from  
11 taxation by black majorities in the counties  
12 or at the state level, either one, they are  
13 not the only factors at work in any of these  
14 situations?

15 A. No.

16 Q. These are complex, as you say,  
17 power structures?

18 A. Yes.

19 Q. Circumstances, institutions. But  
20 what I do understand you to be saying, you  
21 correct me if I'm wrong, is that there really  
22 isn't a circumstance of any significance that  
23 we discussed where race wasn't a powerful

0186

1 factor in what was going on?

2 A. Yes, that is what I would say.

3 MR. BLACKSHER: Okay. We  
4 would like to take a break.

5 (Whereupon, a break was taken.)

6 EXAMINATION BY MR. TALLY:

7 Q. Dr. Thornton, I want to ask you a  
8 few questions to try to clarify in my own mind  
9 some of the things you said. And it's not my  
10 purpose to disagree with anything you said but  
11 just to try to fill in some things where I'm  
12 not clear. And as you -- toward the end of  
13 your earlier testimony you were saying, this  
14 is not a quote, that, you know, all the parts

15 of our lives are interrelated and there is  
16 nothing we do in Alabama that can be divorced  
17 from race, and you recall that?

18 A. Yes, sir.

19 Q. Somewhere I think I've read a  
20 similar comment about the history of the  
21 United States, saying that, you know, if  
22 you've watched the distinguishing feature of  
23 the whole history of the United States from

0187

1 start to finish, that the race issue has been  
2 part of it and that is distinguishing feature  
3 of the United States. Do you agree with that?

4 A. Well, I'm a little reluctant to  
5 talk about distinguishing features of the  
6 history of the United States because of the  
7 extent of the diversity of the historical  
8 experience in the various sections of America,  
9 but certainly I do believe that -- that the  
10 presence of race and racial animosity and the  
11 effort to create racial community is -- is one  
12 of the themes of American history. It's  
13 certainly one of the things that Americans  
14 have had to deal with since earliest times,  
15 yes.

16 Q. You mentioned that all the members  
17 of the Constitutional Convention of 1901 were  
18 white supremacists. Could the same be said  
19 of the delegates to the Philadelphia  
20 Convention of 1787?

21 A. The delegates of the Convention of  
22 1787 had a variety of racial views, but it is  
23 also true that there was a sort of ground of

0188

1 being that they would have assumed, which  
2 would have led them to believe in the cultural  
3 preeminence of western European civilization  
4 over other civilizations around the globe, and  
5 to take pride in the achievements of -- of the  
6 United States as it created the world's only  
7 republic. And that there was an element of  
8 racial pride in that, I think is a correct  
9 statement, yes.

10 Q. Would it also be a correct  
11 statement that over history, history teaches  
12 that people's attitudes do change?

13 A. Yes, it is a correct statement to  
14 say that people's attitudes are constantly  
15 evolving. But it is equally correct to say  
16 that they revolve -- is that they evolve  
17 against a ground of being and a ground of  
18 assumption so that evolution is the right  
19 word. That is to say, there is no such thing  
20 as the capacity of any person to break sharply  
21 from his -- from his background and his  
22 training. There is only -- there is only  
23 evolution through time incorporating all of

0189

1 the experiences that go to make up any person  
2 and that go to make up the larger culture in  
3 which his personhood is imbedded.

4 Q. And so there is a sense in which  
5 everything that exists today is traceable to  
6 what came before, correct?

7 A. Certainly. I mean, that is --

8 Q. Every single thing, correct?

9 A. All -- yes. Our world is  
10 determined by our history.

11 Q. All right. Would it be correct

12 that history teaches that for many thousands  
13 of years land owners have tended to oppose  
14 taxes on their property?

15 A. Well, if tended is the operative  
16 word, I mean, in different kinds of situations  
17 a given individual, no matter how well-to-do  
18 he may be, may favor increased taxes because  
19 of the goals that are -- that are involved in  
20 that, and certainly that's true in a -- I  
21 mean -- well, for instance, let me take that  
22 out of the abstract and put it in the  
23 concrete.

0190

1 I've talked some about industrial  
2 leaders in Birmingham having been allied  
3 because of their self-interest with the Black  
4 Belt planters in seeking lack of governmental  
5 activity and lower taxes. And yet in  
6 Birmingham, there are quite a number of  
7 prominent, very progressive industrial  
8 leaders, and I mentioned Braxton B. Comer, the  
9 progressive governor, and then in the next  
10 generation, his son, Donald Comer, is  
11 equally -- is equally so, very much a leader  
12 of the forces in the state that seek to --  
13 that seek to improve education and lift the  
14 state out of illiteracy and what they take to  
15 be cultural backwardness, despite the fact  
16 that that might lead to higher taxes for them.

17 So, the given individual is not  
18 simply a function of his economic interest,  
19 but yet it is true that economic interest  
20 can -- I mean, can and do serve as a  
21 motivation for people, just as other kinds of  
22 things can too. I mean, religion could,  
23 or -- or cultural aspirations could. People

0191

1 are not simply reflexes of their economic  
2 interest.

3 Q. I'm sorry if you understood the  
4 question to mean that every property owner  
5 opposes taxes on their property. That's not  
6 what I was suggesting at all. What I was  
7 suggesting is whether you cannot think of many  
8 examples in history from ancient Greece until  
9 today in which it is known that people who  
10 owned property were not in favor of having  
11 their property taxes increased?

12 A. Yes, sir. And I meant to say that  
13 as long as you -- as long as the operative  
14 word in your question was tending, then I --

15 Q. Right. Right. I understand.

16 A. -- was prepared to agree with  
17 that.

18 Q. People tend to favor their own  
19 economic self-interests, that's true, isn't  
20 it?

21 A. Yes, sir, with the caveat that I  
22 said, that I mean, people -- people's  
23 religious interests or people's cultural

0192

1 attitude, or people's educational background  
2 also shape who they are. I'm not a believer  
3 in the notion that people are reflexes of  
4 their economic interests, but I absolutely do  
5 accept that, among the powerful forces that  
6 shape people's attitudes, are economic forces.

7 Q. And we talked today, or you talked  
8 today about some other interests that people

9 have. We talked about the hill counties  
10 versus the Black Belt at one point in history,  
11 correct?

12 A. Yes, sir.

13 Q. We talked about blacks and whites  
14 and their different interests. We talked  
15 about the big city industrialists and the  
16 Black Belt versus everyone else in the state,  
17 correct?

18 A. Yes. Correct.

19 Q. And we talked at one time, we  
20 talked about education, the difference between  
21 the urban view of the need for education  
22 versus the rural view, correct?

23 A. Yes, sir.

0193

1 Q. And all of these are different  
2 interests that, except in the one example I  
3 gave of blacks and whites, don't have anything  
4 necessarily to do with race, correct?

5 A. No. That's not correct. Now I  
6 think we've reached a parting of the ways. I  
7 absolutely accept that all of those -- that  
8 all of those interests that you -- I mean, all  
9 of those divisions that you talked about --

10 Q. Right. Right.

11 A. -- are real divisions and have a  
12 life of their own. But, really, exactly what  
13 I wanted to say was that those -- that those  
14 divisions and racial divisions are -- are  
15 inextricably linked with each other, and that  
16 that rural versus urban has a racial component  
17 to it. This is in Alabama now. I mean, rural  
18 versus urban. If we were talking about  
19 Montana might be different, but in Alabama --

20 Q. Or we might say Sweden?

21 A. Or Sweden, yes, sir. Exactly.  
22 But, in Alabama, because we live in a world in  
23 which -- in which race is -- is a constitutive

0194

1 element of our history, the result is that  
2 when you talk about rural versus urban, even  
3 when you talk about something more  
4 philosophical, such as governmental activity  
5 versus belief in a more restrained or inactive  
6 government, when you talk about religious and  
7 moral considerations, and et cetera. All of  
8 those various divisions that you went through,  
9 every single time race is involved with them  
10 just as race is modified by them.

11 I mean, I don't want to say that  
12 race causes those other things. I want to say  
13 that -- that all of -- that race is modified  
14 by those considerations and those  
15 considerations are modified by race.

16 Q. Well, let's take another example.

17 Suppose in the last few years  
18 there are counties in Alabama that have  
19 majority black populations.

20 A. Yes.

21 Q. And that proposals have been made  
22 to raise property taxes in those counties, and  
23 they have been defeated. Is that decision

0195

1 somehow related to race?

2 A. It can be. I mean, it can be.  
3 It depends on the particular county and a  
4 study of the -- a study of the election. I  
5 don't know the facts and so we are just

6 talking about --

7 Q. Yeah.

8 A. -- in the abstract. But I can  
9 imagine situations in which, despite the  
10 existence of a black majority, the nature of  
11 the structure of life in that community  
12 creates -- creates relationships of dependence  
13 between a black tenants and white property  
14 owners or black employees and white employers.  
15 And just as in a given factory setting,  
16 workers may or may not vote to unionize. So  
17 there can be internal forces in the life of a  
18 community that can create outcomes of the kind  
19 you described.

20 And, in fact, I take that to be  
21 really what I wanted to get across, that folks  
22 are not a direct reflex or obvious reflection  
23 of any one motive but their lives are complex

0196  
1 and that they are -- and that they respond to  
2 all of the various interactive components of  
3 their background.

4 Q. I think I'm about to follow you.  
5 And I want to see if you will give me this.  
6 That in many cases in the history of Alabama,  
7 opposition to increases in property taxes has  
8 come from many motivations, not just race?

9 A. I agree that --

10 Q. I think -- I didn't mean to  
11 interrupt you. Go ahead.

12 A. Yes, sir, I do agree that race is  
13 not -- race is just -- just as I would say  
14 that race is never absent, so I would say that  
15 race is not always the dispositive element.

16 Q. I'm getting there slowly. You  
17 have to understand I went to the public  
18 schools in Alabama.

19 A. Well, I went to the public schools  
20 in Alabama too.

21 Q. Until when?

22 A. Through the ninth grade.

23 Q. All right. See if you will agree

0197  
1 with this. That it would be an  
2 oversimplification to say that in Alabama  
3 opposition to property taxes is the product of  
4 racism?

5 A. I would agree that opposition  
6 to -- it would be wrong to say that it was the  
7 product of racism. I would want to say,  
8 though, that that race was -- that race was a  
9 profoundly central element in the creation of  
10 the political power relationships that  
11 produced those outcomes -- those tax outcomes  
12 just as it produces -- and those educational  
13 outcomes, just as it produces other factors.  
14 But I don't take those two statements to be at  
15 war with each other.

16 Q. Is it true that if you look back  
17 in the history of Alabama and the South, that  
18 people in the South have not placed as much  
19 value on education as in other parts of the  
20 country?

21 A. No. I don't believe that's true.

22 Q. Was it ever true at any time in  
23 the history of Alabama or other Southern

0198  
1 states?

2 A. No. I believe that there are, of

3 course, people in Alabama, individuals in  
4 Alabama, who do not particularly value either  
5 education in the abstract or education for a  
6 particular group, such as black people. But I  
7 don't -- I don't accept that that -- I mean,  
8 or there's a different way of saying that.

9 I think exactly the same thing  
10 could have been said about Massachusetts or  
11 Indiana or Wisconsin. This is to say, that at  
12 all times people whose attitude -- peoples'  
13 attitudes toward education represent a  
14 spectrum from people who value it highly to  
15 people for whom it is less crucial.

16 Q. I think I made a note that, or I  
17 have a note, that one reviewer of "Politics  
18 and Power" stated that you dealt less with  
19 white racism as a factor of succession than  
20 you did with white reaction to economic  
21 development of the 1850's.

22 And I'm thinking of Edwin Miles'  
23 review in Alabama Review in 1990. Do you

0199 1 agree with his assessment?

2 A. Yes. Can I -- would you like to  
3 hear more?

4 Q. You can say anything you want to.  
5 I'm not trying to stop you.

6 A. Well, it is the argument of this  
7 "Politics and Power" book that the rapid  
8 socioeconomic changes in the dozen years  
9 between the end of the Mexican War and the  
10 Civil War, produced a sort of what I, in the  
11 book call, sort of cultural vertigo in which  
12 the rapidity of the change opened the  
13 political culture to manipulation by political  
14 extremists. So the goal of the book is to try  
15 to explain why nonslave-holding poor white  
16 farmers were so -- were so enthusiastic about  
17 the -- about prospect of succession.

18 And the -- and the conclusion of  
19 the book emphasizes the changes in their  
20 world. But that isn't -- I mean, I certainly  
21 would not deny that Alabamians -- as I said,  
22 Alabamians' world view was not suffused with  
23 and shaped by racial attitudes. It's merely

0200 1 that I'm attempting to understand a particular  
2 political outcome, which is succession.

3 Q. You are familiar with the work of  
4 W. J. Cash, who was not a historian but has  
5 written about the South, correct?

6 A. Yes, sir. I'm not much of a fan  
7 of his work, I will tell you.

8 Q. Well, I'm going to throw it out at  
9 you and this is your chance to tear him apart.  
10 I'm going to throw a statement or two at you  
11 and see what your reaction is.

12 How about his contention that the  
13 South was, quote, a world in which horses,  
14 dogs, guns, not books and ideas and art, were  
15 the normal and absorbing interests?

16 A. I think that's false and  
17 insulting, is what I believe. And more --  
18 more generally, I believe that the quality of  
19 the intellectual life of the Antebellum South  
20 has been grossly underestimated by hostile  
21 Northern critics, and that -- and that in fact  
22 there is a great deal of valuable and subtle  
23 thought that the life of the mind is real in

0201

1 the Antebellum South.

2 My friend Michael O'Brien has just  
3 within the last two weeks published a  
4 wonderful two-volume work surveying the  
5 intellectual life of the Antebellum South and  
6 I think demonstrates its -- demonstrates its  
7 power and complexity.

8 Q. And I believe George Wallace, for  
9 one, used to speak about the fact that he  
10 considered that people in the South were just  
11 as intelligent and refined, et cetera, as  
12 other parts of the country, correct?

13 A. He did. A good point, I may say.

14 Q. I think one of your books here,  
15 the "Region, Race, and Reconstruction" has an  
16 article that you wrote, and I think it says,  
17 among other things, I'm quoting you this:  
18 "Racism cannot serve, however, as an  
19 all-purpose explanation for small farmers'  
20 electoral behavior." You mean and are  
21 opposing reconstruction, correct?

22 A. Yes. Correct. I did say that. I  
23 do believe that.

0202

1 Q. And as you pointed out earlier,  
2 there was a time before the Civil War, or  
3 after the Civil War when small farmers who  
4 were not accustomed to paying taxes suddenly  
5 were hit with what they considered to be high  
6 property taxes, correct?

7 A. Yes.

8 Q. And that they therefore opposed  
9 those taxes?

10 A. Yes. Let me --

11 Q. Go ahead.

12 A. Let me say, yes, is the answer to  
13 that question. And I have repeated that, of  
14 course, in my testimony earlier today. And I  
15 believe that that's very important. But it's  
16 also important to understand that that leads  
17 them into an essentially racial all white  
18 political alliance.

19 Now, I'm trying to say that in  
20 that case there is a real example of the  
21 varieties of motives interacting to produce --  
22 to produce an outcome with a clear racial  
23 implication, that is, here are -- here's a

0203

1 group of people whose -- whose experience has  
2 to do with their own newly-devalued economic  
3 independence. And so they end up accepting a  
4 political outcome which draws the color line,  
5 and which separates a Democratic party which  
6 is all white from a Republican party which is,  
7 other than a handful of carpetbaggers and  
8 scalawags, is all black. And so that's a --  
9 that's a racial outcome, but the -- but the  
10 motives are complicated and human.

11 Q. And indeed you pointed out that a  
12 lot of these small farmers who were paying  
13 more taxes, were generally receiving no more,  
14 as far as they could tell, and perhaps less --

15 A. Less.

16 Q. -- than they were getting from the  
17 government?

18 A. In Alabama, less. In some states,  
19 it's no more. But here in Alabama it was  
20 downright -- it was flatly less. That is to

21 say that that's because the expenditures  
22 before the Civil War per citizen simply goes  
23 to the white population, whereas, the

0204

1 expenditures after the Civil War per citizen  
2 now have to go to a population that is doubled  
3 because of the freeing of the slaves.

4 So -- so if you take the total  
5 amount of expenditures and divide them by the  
6 number of citizens, since the number of  
7 citizens doubles after the Civil War, then the  
8 expenditure per capita actually turns out to  
9 be less, even though the gross amount of  
10 expenditures increases.

11 Q. I believe you say in the same work  
12 that an essential concern for the work of  
13 Professor Woodward, you mean C. Van Woodward,  
14 correct?

15 A. Yes.

16 Q. And he was one of your teachers,  
17 was he not?

18 A. He was. This book from which you  
19 are quoting was festschrift, a collection of  
20 essays by his former students celebrating his  
21 career at the time of his retirement. And  
22 this was published the year he retired as a  
23 teacher at Yale.

0205

1 Q. You say that an essential concern  
2 of Professor Woodward has been his effort to  
3 demonstrate that lower middle and lower class  
4 whites have often been willing to rise above  
5 their racial attitudes when presented, as in  
6 Populism, with a political or economic  
7 movement that offered real hope of  
8 ameliorating their hard lot, correct?

9 A. Yes. Yes, that's right. And  
10 that's a, of course, a principal thrust of  
11 Populism as a movement, is attempting to unite  
12 people across race lines, essentially along  
13 class lines.

14 Q. And you continue to say: "The  
15 Populist experience seems to me to indicate  
16 that small farmers might even have tolerated  
17 on practical political grounds the passage of  
18 state and federal civil rights acts if the  
19 Republican party had otherwise been vigorously  
20 espousing policies that promised small farmers  
21 important benefits."

22 A. Yes. I believe that. I believe  
23 that this was a sort of -- that failure of the

0206

1 Republicans in the South had much to do with  
2 their misunderstanding of the South.

3 Q. How about Edward L. Ayers' "The  
4 Promise of the New South: Life After  
5 Reconstruction," are you familiar with that  
6 work?

7 A. Yes, sir, I am.

8 Q. Ayers says that "the delegates to  
9 the 1901 Constitutional Convention from the  
10 hill district voted as they had back in the  
11 days of the early alliance for the cheapest  
12 government they could get, and found that  
13 Black Belt counties did the same."

14 Do you agree with that statement?

15 A. I think that's over simplifying.

16 I think that the event, the constitutional  
17 convention -- I mean, this is a very long

18 article with lots of different issues that  
19 were being presented to the delegates, and  
20 sometimes there is cooperation across  
21 sectional division and sometimes it's very  
22 stark sectional division. In general I agree  
23 that the Constitution of 1901 reflects an

0207

1 interest in limited government. I do  
2 absolutely think that.

3 MR. TALLY: Give me one  
4 second. I may be about to quit.

5 Q. Well, going back to the  
6 Constitution of 1901, in the quote I just read  
7 to you he talks about the delegates from the  
8 hill districts versus the Black Belt, and  
9 certainly those were two factions that had  
10 their own agenda when the convention met,  
11 correct?

12 A. Yes.

13 Q. And then you had the education  
14 forces were another faction, correct?

15 A. Yes.

16 Q. And to write the Constitution of  
17 1901, it sounds like, from your -- from what I  
18 heard you say earlier today, there were  
19 certain compromises that had to be made?

20 A. Yes.

21 Q. And were made?

22 A. Yes. Though I would want to say  
23 that there was more a winning side and a

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1 losing side. That is to say, I do believe  
2 that the alliance of Black Belt planters and  
3 industrialists won more than it lost in the  
4 making of the Constitution of 1901. But  
5 the -- but I believe also that the structure  
6 of power that emerged from the Constitution of  
7 1901 represented a sort of historic compromise  
8 on the part of Black Belt planters in, as I  
9 said, effectively conceding control of the  
10 executive branch of government to the white  
11 majority counties in return for control  
12 through disfranchisement, absolute control of  
13 their own counties, and then disproportionate  
14 power within the legislature.

15 Q. And typically that's the way the  
16 legislative process works, isn't it?

17 A. You mean, tension between the  
18 legislators and the executive branch?

19 Q. That compromises have to be made,  
20 and to get what one side wants, sometimes they  
21 have to give something up.

22 A. Well, this is a compromise  
23 about -- I mean, this is a -- not that kind of

0209

1 compromise, to my mind. This is a -- this is  
2 a sort of historic compromise. This is a  
3 compromise about the structure of racial power  
4 and the structure of -- and the structure of  
5 class power in the state that's going to  
6 determine -- that's going to determine its  
7 future for a century to come.

8 Q. Let me rephrase that because I  
9 think I got it headed somewhere I didn't  
10 intend for it to head.

11 I was just asking you whether the  
12 legislative process typically consists --

13 A. Many compromises.

14 Q. -- in compromise so that --

15 A. Yes.  
16 Q. -- a faction, to get what it  
17 wants, has to give something up. And this is  
18 typically the way it works; would you agree  
19 with that?  
20 A. Yes, sir. I would.  
21 MR. TALLY: I don't have  
22 anything else.  
23

0210

1 EXAMINATION BY MR. BLACKSHER:  
2 Q. John Tally was asking you about  
3 your essay in the festschrift draft, "Region,  
4 Race, and Reconstruction." Your essay is  
5 entitled, "Fiscal Policy and the Failure of  
6 Radical Reconstruction in the Lower South."  
7 A. Yes.  
8 Q. And he asked you about the  
9 economic motives of poor farmers before and  
10 after the Civil War and your judgment about  
11 the failure of the Republican party to speak  
12 to the interests of -- addressing interests of  
13 small farmers.  
14 That concern that that -- that  
15 interest as you expressed in the -- in your  
16 essay was that small farmers felt it was  
17 unfair that they were going to have to pay  
18 more taxes and yet receive less in educational  
19 returns because they were going to also have  
20 to pay for the education of blacks who were  
21 not going to be paying many property taxes?  
22 A. Yes, that's exactly right. That's  
23 the -- the failure of interest there turns

0211

1 fundamentally on the freeing of the slaves.  
2 Yes.  
3 Q. And when I asked you, is it fair  
4 to summarize your testimony that the argument  
5 that it would be unfair for small white  
6 farmers or property owners to have to pay for  
7 the education of blacks who did not pay  
8 commensurate shares of the property tax, was  
9 an argument that was used successfully by  
10 powerful property interests in the state to  
11 imbed the property tax provisions in the 1875  
12 and 1901 Constitutions?  
13 A. Yes.  
14 Q. And for that matter, the  
15 amendments to the 1901 Constitution, called  
16 the Lid Bills, in 1971 and 1978 during the  
17 period of school desegregation?  
18 A. Yes. Of course time has passed at  
19 that point and all of the sort of intervening  
20 developments that I testified about earlier  
21 are necessary to -- necessary to that  
22 evolution. But the -- but in general, it's  
23 certainly true that -- that the structures of

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1 power that were initiated in the Constitution  
2 of 1901 have -- continue to have inescapable  
3 consequences on to the -- into the 20th  
4 Century.  
5 MR. BLACKSHER: That's it.  
6 MR. TALLY: I have a copy  
7 of that article that I want to  
8 make an exhibit to the deposition.  
9 I prefer the unvarnished version  
10 of the article.  
11 (Whereupon, Defendant's Exhibit

12 Number 004-006 was marked for  
13 identification.)  
14 MR. TALLY: Anything else,  
15 Henry?

16 EXAMINATION BY MR. WALKER:

17 Q. Can I ask you something?

18 A. Sure.

19 Q. In Antebellum Alabama, small  
20 farmers were very much opposed to any property  
21 tax, right?

22 A. Well, no, I don't think that's  
23 right. I think that in Antebellum Alabama

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1 farmers were interested in having rich folks,  
2 particularly planters, bear the brunt of  
3 taxes. They didn't at all mind having  
4 property taxes because the -- assuming they  
5 were going to have all the exemptions that  
6 they had, because the planters were bearing  
7 most of the property tax, all of the slave  
8 tax, and all of the luxury tax, and -- and the  
9 well-to-do, including planters, were bearing  
10 all the taxes on capital. So -- so for them  
11 they were largely exempted from taxes.

12 But that isn't to say that they  
13 were against all property taxes. As long as  
14 those taxes were being born by wealthy  
15 planters, they were all for them.

16 Q. They were opposed to any increase  
17 or any substantial increase on their own  
18 property for the tax. I mean, they actually  
19 agreed with Governor Fitzpatrick that taxation  
20 is oppression; is that correct?

21 A. Yes, that is right. That's a  
22 standard doctrine of Jacksonianism, and these  
23 people are generally Jacksonians.

0214

1 Q. In the Postbellum period, the  
2 attitude about not wanting to increase  
3 property taxes was really a continuation of  
4 the antebellum attitude, was it not?

5 A. Yes, it is. I mean, that is to  
6 say, Jacksonian ideology carries forward in  
7 terms of its social thrust all the way into  
8 Populism, so in terms of the actual policy  
9 outcomes, there are remarkable differences.  
10 That is to say, the Jacksonians favor a  
11 wholly-specie currency and want to eliminate  
12 bank notes. The Populist favor radically  
13 expanded currency and favor free silver and  
14 green backs. One is a deflationary, the other  
15 is an inflationary policy. It would sound  
16 like they don't have anything in common, but  
17 what they have in common is -- is a set of  
18 social attitudes and those social attitudes  
19 that connect them have to do with -- since  
20 that -- that the money power and the wealthy  
21 planters are oppressing them and depriving  
22 them of their autonomy and ability to dictate  
23 their -- the shape of their own lives.

0215

1 Q. So the Postbellum attitude that  
2 caused the white farmer to oppose  
3 Reconstruction, i.e., increased property  
4 taxes, that's an idea, that's an ideologists  
5 way of thinking that comes from the antebellum  
6 period before the slaves are freed, right?

7 A. It is.

8 MR. WALKER: Thanks.

9 (Whereupon, the preceding  
10 Deposition was concluded at 4:36 p.m.)  
11  
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1 REPORTER'S CERTIFICATE  
2

3 STATE OF ALABAMA )  
4 JEFFERSON COUNTY )  
5

6 I hereby certify that the above  
7 and foregoing deposition was taken down by  
8 me in stenotype, and the questions and  
9 answers thereto were transcribed by means of  
10 computer-aided transcription, and that the  
11 foregoing represents a true and correct  
12 transcript of the testimony given by said  
13 witness upon said hearing, to the best of my  
14 ability and understanding.

15 I further certify that I am  
16 neither of counsel, nor of kin to the  
17 parties to the action, nor am I in anywise  
18 interested in the result of said cause.  
19  
20

21 \_\_\_\_\_  
22 Kimberly B. Garrett, CSR., RPR  
23

24 My Commission expires:  
25 March 16, 2008