

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

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

Plaintiffs, *

v. *

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

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

Defendants. *

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

Expert report of Dr. Jeff Frederick

Report of Jeff Frederick, Ph.D.
Lynch v Alabama case

The purpose of this report is to comply with Rule 26 (a) (2) (B) pursuant to expert witnesses and the testimony they intend to provide. I, Jeff Frederick, am an Assistant Professor of History at the University of North Carolina at Pembroke. I earned a doctorate in history at Auburn University and was graduated in 2003. My major fields of study were southern history and modern American history. At Auburn, I studied under the direction of Dr. Wayne Flynt and consider myself a scholar in the field of southern history. I graduated with a 4.0 grade point average in all graduate work and my dissertation, "Command and Control: Governor George Wallace of Alabama, 1963-1972" was expanded and published by the University of Alabama Press as *Stand Up for Alabama: Governor George Wallace* in 2007. I have published articles, essays, and book chapters on Wallace, the Talladega Speedway, Antebellum politics, interest groups in Alabama, and southern governors in the civil rights era. A copy of my cv is attached for a fuller listing of publications and professional activities.

I have not appeared as a witness either at trial or deposition in the last four years.

I am to be paid \$200 per hour for work related to the issues of this case, including research, study, and testimony.

My work on the gubernatorial career of George Wallace and his administrations is based on a multitude of sources including administration records, correspondence, and manuscript collections at the Alabama Department of Archives and History, collections of relevant materials at the University of Alabama and Auburn University, newspaper and magazine accounts, artifacts, oral history, and related secondary works by scholars, authors, and historical actors. The research translated into a substantial dissertation (626 pages) as well as a lengthy book. (489

pages) The focus of my work, as opposed to other biographies of the Alabama governor which focused more narrowly on his presidential campaigns and national political role, was his impact on the state as governor. I believe it is fair to note that the book has been favorably reviewed by other scholars on behalf of relevant historical journals. It should also be noted that many of the reviews have cited the exhaustive research conducted on state records that formed the intellectual core upon which historical interpretations have been made.

As a result of this research and related study, I believe George Wallace, for the majority of his elected terms, governed this state based on a political desire to constantly campaign, an intuitive and tested belief that white Alabamians were motivated by a belief in white supremacy and an antipathy for the federal government, and a general disregard for public policy and the daily affairs of governance. In many discernable ways, Alabama became virtually frozen in time, making little substantive progress as compared to both peer states and national averages in most meaningful categories related to government activities. Alabama failed to achieve significant progress against regional and national averages in categories of income, education, prisons, and mental health. It is also true that Alabama, during the near quarter-century of Wallaceism, developed a reputation for segregation and racial inspired violence unmatched by every other state in the Union with the possible exception of Mississippi. The combined political culture created through the 1901 Constitution and hardened by the Wallace era, left Alabama with a political culture that has become nearly impossible to change.

Critical to Wallace's immersion into full-blown racial politics was his 1958 defeat at the hands of John Patterson. Wallace underestimated the white supremacy sentiments in the state and vowed, infamously, never to be trumped by a political opponent on the issue again. It was after

this 1958 defeat that Wallace offered the infamous comment that he would never be "out-Niggered." again. Note that Wallace ran as a segregationist in 1958, but as a comparative moderate vowing to use delaying tactics or legal challenges. By 1962, his rhetoric and verbal imagery had changed to unmatched defiance and pledges to stand in the schoolhouse door. His key opponent in 1962, Ryan DeGraffenreid, ran as more of a moderate segregationist and lost, as Wallace had done in 1958.

Many white Alabamians viewed Wallace as a defender of their traditions, including white supremacy, and supported him electorally or programmatically in demonstrable ways. It is virtually impossible to distinguish Wallace's perception in local, state, regional, and national politics from his image as a virulent segregationist and critic of the federal government. He won his first gubernatorial term in the 1962 campaign by pledging to uphold segregation and soon became a national figure for his stand in the schoolhouse door, opposition to civil rights activities in Birmingham, Selma, and elsewhere, and vocal castigation of the Civil Rights Act of 1964. Wallace earned substantial electoral support from Black Belt counties where, because of various disfranchisement mechanisms inherent in the 1901 Alabama Constitution, whites cast nearly all the votes. The election of his first wife, Lurleen Wallace, in 1966 can be traced in large part to her vow to continue the same policies as her husband. Implicit in this campaign idea is the suggestion of continuing to work against federal and local attempts at equal rights for blacks. In 1968, Wallace ran for president as the candidate of the American Independent party, winning five states, all of which feature a tortured racial past.

During the first administration of George Wallace and the tenure of Lurleen Wallace, a time where Alabama earned a reputation for massive resistance to integration and defiance of

federal court and legislative action, no substantive attempts to improve the education of ordinary Alabamians was made. The Wallace administrations supported multiple schemes to evade or avoid integration, sought no new revenue streams for K-12 education, created a junior college system which largely rewarded regions of the state that supported him electorally, and made no effort to reform Alabama's regressive tax code. The Wallace administrations supported the concept of allocating state funds to private (segregated) schools, though court orders prevented those laws from taking effect. The administration also supported numerous so-called "Nigger Resolutions" passed by its floor leaders in the legislature. These non-binding resolutions blamed the conflict of the era on civil rights protestors, not segregationists and white supremacists. The governor spoke frequently to Citizen's Council groups, organizations which made resistance to integration their principle mission.

In 1970, Wallace defeated Albert Brewer in a close election which featured both overt and covert racist appeals. Brewer had become governor with the untimely passing of Lurleen Wallace. Wallace and his campaign staff trumpeted a belief that Brewer was receiving the "bloc vote," a reference to black voters. The campaign implored white Alabamians not to allow the bloc vote to determine the election. The campaign also circulated numerous handbills and flyers which forecast rampant inter-racial sexual alliances and other racist beliefs should Wallace not be voted into office. Much had changed regarding the issue of race, but in Alabama, the campaign of 1970 indicated that racial issues were still alive and well. Wallace did nothing without charting the political winds and those winds continued to be based on race. As long as white Alabamians were driven by issues of race, Wallace was going to exploit that for his own benefit.

Wallace also made innumerable campaign promises in 1970 to defeat Brewer, including

separate vows to not to raise taxes of any kind, and a pledge not to allow any taxes to be raised without a vote by the people on the matter. Once returned to office, Wallace faced a different legislature, no longer impressed by his somewhat reduced popularity and including a larger urban presence than in his previous terms. Wallace continued to be perceived as a governor that was sympathetic to the interests of white supremacists through his calls to reimplement “freedom of choice” plans which would allow whites to choose non-integrated schools in favor of desegregated ones, his support of Act 1418 (1971) law which would allow parents to keep students out of integrated schools if the time, distance, or safety factors of attending those schools was considered severe, and his frequent pronouncements against busing to achieve racial balance.

Over the course of the time, many white students in Alabama had left the public schools and enrolled in private, segregated academies. Wallace’s attempts at funding these schools through state coffers had failed, but his support for them had not waned. Faced with the reality of court-ordered integration and the possibility of busing, many wealthy white Alabamians as well as supporters of George Wallace across the economic spectrum, found public schools to be anathema. Many Alabamians did not want to continue to pay the same amount in taxes to support public schools and were adamantly against any increased taxation to fund them more sufficiently. While the Alabama education budget had increased in recent years and teachers were receiving more compensation, this was a result of small increases in existing revenue streams, not the product of new Wallace administration policies. Only Albert Brewer had advocated and enacted new revenue streams for education. And even he had not mounted a determined attempt to increase or address ad valorem taxation. As a result, Alabama continued to lag far behind peer

states and national averages in nearly every statistical index used to evaluate education. And of all the schools in the state, those in predominately black areas fared the worst due to insufficient and outdated facilities, high teacher-to-student ratios, and other preventable problems. Education metrics revealed that Alabama had a large number of high school dropouts, was woefully behind national averages in education funding, and featured a student population that lagged behind regional and national averages in academic achievement. The funding from official state coffers was adequate, but local school district revenues-- the ones dictated by property taxes-- were exceedingly low. It should be noted that this low local revenue for schools can be demonstrated by the fact that a larger percentage of total school funds in Alabama came from federal funds than most any other state. For the last half-century, Alabama has consistently had the lowest or among the lowest property taxes in America. During this same period, Alabama has had the lowest or among the lowest performing schools. And black Alabamians, particularly those in rural counties, have consistently suffered from the fewest educational resources and have performed consistently behind national averages for academic performance.

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

1972 and 1974 and 1976. It is not an accident that white Alabama fought for low property taxes.

The Alabama Education Association, recently integrated through a merger with the black Alabama State Teachers Association, favored new revenue streams for additional support for schools. The most immediate mechanism for adding revenue for local school districts was to increase or adjust property appraisals, rates, and assessments. The Wallace administration's attempts to redirect funds from the Special Education Trust Fund and teacher retirement plans emboldened the AEA and made it a stronger interest group.

The state faced a mandate to reform property tax issues directed by the courts. The Wallace administration backed a plan supported by the Farm Bureau, to classify property by usage and put a cap or "lid" on the maximum amount of increase allowed. Alabamians associated higher property taxes with revenue that would be directed toward schools, schools that were now integrated and might include busing. With reapportionment and redistricting orders looming, Black Belt legislators wished to cement low property taxes so that potentially new groups of future legislators, black or urban, would not have the power to increase them. The Black Belt areas featured majority black populations, and the old guard segregationist class did not want the possibility of local referendums allowing black governments to increase taxes of white property owners for the purpose of improving integrated schools. Wallace supported the Classification plan in concert with his plan to not support higher taxes, but also because many white Alabamians, his core constituency, would not support increased rates for integrated schools. Many urban area legislators, particularly in Jefferson County, were in frequent conflict with the governor whose policies tended to favor rural counties which had been dominated for decades by segregationists. More specifically, Wallace supported the Classification plan by appearing on

Farm Bureau sponsored advertisements. The administration also backed the idea of having local counties assess property value. The overwhelmingly majority of these county officials were white and some even had no formal training as assessors. During the debate on the classification plan, Wallace's 1418 anti-busing law was overturned by Federal Judge Sam Pointer. Wallace derided both the judge and his ruling in public and in correspondence. The administration-led rural bloc in the legislature rejected compromises and the classification bill was eventually gavelled through by Lt. Governor Jere Beasley, another supporter of the legislation. The new law required the assessment of residential, farm, and forest property at 15%; commercial and industrial property at 25%, and utility property at 30%. Wallace was an outspoken critic of utilities during this term, but continued to gain support from agricultural interest groups who allied themselves with their constituents who owned large tracts of property in Black Belt areas. State voters ratified the changes as a constitutional amendment.

Subsequent court decisions forced Alabama to address the property tax issue again. By early 1972, Wallace was campaigning feverishly for the Democratic Party nomination. In the course of this campaign, Wallace was shot, resulting in permanent paralysis. This effectively ended his 1972 presidential aspirations but created an outpouring of sympathy from within the state. Wallace easily won re-election in 1974, facing little credible opposition. Wallace did not even have to campaign extensively, such was the feeling of empathy in Alabama for him. Wallace had always been reluctant to engage in policy matters, preferring the allure and adulation of campaigns. His physical condition deteriorated and caused him to miss even more state governing board meetings of various agencies than in previous terms. Up until the end of this term, the state legislature did not agree to any permanent property tax changes, a reflection of

Wallace's diminishing power as governor and the growing presence of black voters, candidates, and office-holders, as well as comparatively progressive legislators from urban districts. These legislative dynamics had weakened the power of the traditional rural bloc, though Wallace still identified with their interests.

Wallace campaigned for the Democratic nomination again in 1976, losing badly. Wallace lost in many southern primaries that he had previously won easily. Peer states across the South had moved away from traditionalist governors and embraced more progressive leadership that backed a deeper commitment to better schools even if they were integrated schools. One of these "New South" governors, Jimmy Carter, defeated Wallace, although the Alabama governor did narrowly win his home state primary. Wallace considered a campaign for the United States Senate, but ultimately declined to run for fear of defeat and the reality that the special privileges enjoyed by a governor were rarely apparent for senators without seniority.

Before leaving office for what he thought was his last time, Wallace supported a property tax lid bill that was passed and was ratified by voters as an amendment to the constitution. The timing of the law's passage was noteworthy. Although Wallace had distanced himself from the divisive rhetoric of his early years in power, he continued to receive letters of support from Alabamians who viewed the days of segregation as preferable to the world of the mid-to-late 1970's. Wallace claimed his views of the 1960's were not forged by racist ideals, but rather were the product of his belief in state's rights—the concept that the federal government should have no power to compel states to change their ways. This contention by the governor is not supported by the evidence of his own actions or words. A special session was called in August, 1978, approximately one month before the state primary election, to address a number of issues

including property taxes.

During the special session, Wallace threatened the legislators about to run for re-election in the primary if they did not pass his property tax plan. He pledged to work against their re-elections if the bill was defeated or if it was not passed by the end of the special session, a true deadline given the necessity of it appearing on the November ballot in constitutional amendment form. Wallace was not as popular or powerful as he had been in the past, but he still had the ability to rally his traditional voting bloc with direct appeals. The Wallace plan lowered the assessments on residential, farm, and timber property from 15% to 10%. The assessments on commercial property was lowered from 25% to 20%. The bill also capped the amount of property taxes payable on residential, timber, and farm property. Timber and agricultural property was also to be assessed according to "current use" instead of "market value." This allowed large property owners to keep their taxes as low as possible, particularly for those who owned timber and farm property in areas where their property taxes would fund racially integrated majority black schools. Issues of race were present and important in the passage of the 1978 bill, though they were comparatively less overt than in 1971 or anytime during the earlier Wallace administrations. The 1978 legislation is a continuation and clarification of Alabama's historical actions of racial discrimination on property taxes as it relates to education. It is a reflection of a twentieth century political culture that was forged on white supremacy and hardened by the actions of George Wallace, a governor whose administrations and actions are synonymous with racial discrimination.

Beginning with the 1901 Constitution and continuing through the Wallace era, Alabama created a political culture based around white supremacy and maintaining power in the hands of a

privileged class of rural and industrial elites. Governor Wallace did little to change this culture, and in fact made it stronger by his words and actions, including support for a property tax system which disproportionately effected the ability of black Alabamians to gain the type of education necessary to lift themselves out of poverty.

A handwritten signature in black ink, appearing to read 'Jeff Frederick', with a horizontal line underneath.

Jeff Frederick, Ph.D