

Declaration of Dr. J. Wayne Flynt

I, J. Wayne Flynt, declare under penalty of perjury, pursuant to 28 U.S.C. 1746, as follows:

1. I am responding to arguments by the defendants' brief supporting summary judgment. In that brief, one of the defense attorneys alleged that the plaintiffs' historian consultants had interviewed no legislators that served in the legislature during the post-1970 years when Alabama's current use and lid bills, with their classification systems of property taxation, were enacted. Nor, he stated, did they cite any newspaper articles or editorials indicating the racial intent of the 1972, 1978, or 1982 legislative acts. "There is not even a shred of evidence that the Alabama legislature was aware that any of the post-1970 laws might have a discriminating effect on African-Americans." (pp. 11, 400. I am afraid this is a classic example of a syllogism gone wrong. The defense's major premise seems to be that the only historical evidence that matters happens within months of an historical decision, and in order for it to matter, it must be found in discussions or newspapers. The defense's minor premise is that their historical consultant found no specific references to race in the 1971-72, 1978, 1982 debates over the lid bill, classification system, or current use legislation. Conclusion: therefore "there is not even a shred of evidence that the Alabama legislature was aware that any of the post-1970 laws might have a discriminating effect on African-Americans." Both the major and minor premises of a syllogism must be true for the conclusion to follow logically. The defense argument stems from a deeply flawed major premise that no historian I know accepts.

Furthermore, the defense contended that "prior to their testimony in Knight or this case, none of the historians had written that any of the post-1970 laws either had a racially discriminatory impact or were enacted with racially discriminatory intent." (p.58).

The accuracy of these contentions depends entirely upon one's conception of the nature of historical research and analysis. In fact, the historian consultant for the defense (Jonathan Bass) made it clear throughout his deposition that he paid no attention to historical context but devoted his entire research to precisely what the defense attorneys asked him to research: interview legislators who were present during the 1972, 1978, and 1982 debates; read newspaper articles and editorials regarding those same debates. He specifically noted that his report did not address the question of whether there was any relationship between race and school segregation, that he did not research events prior to 1970 ("My report does not specifically address what went on in Alabama prior to the Lid Bill amendment in 1971"). (p. 75 of Bass deposition). It is as if historical causality has a statute of limitations. Because he found no specific references to race in contemporary newspapers or in the testimony and interviews of legislators, he concluded race was not an issue in these tax provisions. These are issues Bass did not address: the historical connection of race, tax policy, and legislative enactment; the power exercised by influential Black Belt white political leaders; the role of the Farm Bureau in crafting tax legislation; the role race played in the careers of many Farm Bureau leaders; the growing threat of Federal court decisions to their hegemony over the Black Belt during the 1950s

and 1960s; the increasing threat of enfranchised and politically powerful African Americans after the 1965 Voting Rights Act; and especially their aspirations to increase property taxes to fund historically inadequate public schools. This lack of attention to context was particularly striking in both the depositions of Professors Bass and Stewart.

For instance, Prof. Bass was not familiar with property tax assessments during the 1950s and 1960s. Nor did he recognize *REYNOLDS V. SIMS* (Supreme Court ruling which forced Alabama to reapportion its legislature, something the legislature under the control of Black Belt whites had refused to do for more than half a century despite the fact that it was required by the 1901 Constitution). Nor did he recognize *GOMILLION V. LIGHTFOOT* regarding racial gerrymandering to eliminate black voters in the city of Tuskegee. In fact, he could not list Black Belt counties when asked to do so nor was he familiar with Farm Bureau (later Alabama Farmers Federation) policy on politics, taxes, or race. Nor had he read Dr. Malcolm McMillan's classic and, to the degree such a term is applicable to any historical subject, definitive work on Alabama constitutional development. Nor did he study the 1970 gubernatorial election for references to race, the immediate political event preceding introduction of the first lid bill in 1971.

It is within this context that I seriously dispute the defense's major premise that the only evidentiary issue in the case is the specific reference to race in the years 1971-1982, when increasing numbers of blacks were voting and a growing number of blacks were elected to the legislature.

Historical causation is never quite so simple as asking persons why they act in a certain way. Nor is it easily determined by reading contemporary newspapers. Were it that simple, there would be no need for historians at all. Journalists with tape recorders could interview people or even read their own newspapers in order to tell us all we need to know about causality. What separates such activity from history is analysis of context and meaning. Of the thousands of examples that I could cite, several will suffice. During the run up to the American Revolution, there was much talk of taxation without representation as a justification for revolution. However, most historians paint a more complex origin to the American revolution that was virtually never mentioned by patriots or in contemporary broadsides or newspapers. As English colonists encountered the American frontier, they began to think in new ways separated by thousands of miles from the "Mother Country." The presence of hostile natives on their boundaries necessitated taxes for raising forces or stationing British troops and mercenaries between their settlements and the mountains. Because English citizens resented paying taxes to defend colonists an ocean away, the Crown tried to transfer costs of defending the colonies to the colonists who were being defended. To the colonial cry that they were being taxed by people they did not elect (a frontier notion of democracy), the Crown noted that MPs did not represent specific constituencies but all citizens. The colonial experience of 150 years of separation from England was thus, historians have concluded, a more powerful force in independence than the tea tax, though obsessively mentioned at the time, cited constantly by patriots, and now part of American mythology. Historians do more than merely listen to what people say and read what they write; they also analyze context for meaning beyond these particular sources.

A reverse example would be the 1860 secession crisis. Although a few southern “fire eaters” mentioned the perpetuation of slavery as a primary reason to reject Lincoln’s election in 1860, most were not nearly so plain spoken. They cited the tyranny of northern politicians, the meddling of abolitionists, the primacy of States Rights, the clash between industrial and agricultural economic interests, and notably, the growing decadence of urban, industrial America, and the general threat of urban/industrial values to agrarian America. They even cite the wickedness of northern evangelical preachers who mobilized the spirit of the Bible against slavery when, southerners contended, the literal words of the Bible acknowledged the existence of slavery. All but one major denomination, in fact, split over this issue. So powerful is this narrative in the memory of white southerners that even today great numbers of them insist that the Civil War (though they deny even that name, preferring one more consonant with the rhetoric of 1860-61, The War Between the States) had nothing to do with slavery and was entirely a struggle between state and local authority and centralized governmental tyranny. Yet I know of no historian writing today and well respected within the historical profession who denies that the central issue in the American Civil War was slavery (its preservation or abolition; its status in the territories; its atrocities toward African Americans).

When the U. S. government relocated Japanese away from the Pacific Coast during W.W. II, there was no mention in government documents or in public media about race as a source for relocation policy. Yet it is curious to historians that in the absence of any concrete evidence of disloyalty, Japanese-Americans were relocated, while German-Americans living in the Mid West were not. Historians have concluded, though with virtually no oral or written evidence, that race played a major if not dominant role in the relocation.

To say that race may only be considered a factor in the 1972, 1978, and 1982 tax debates if one hears it in interviews or reads it in the papers is essentially ahistoric. For the first time in 1971, two blacks sat in the legislature. White opinions were changing as well. As the defenses’ depositions make clear, legislators such as senator and later lieutenant governor George McMillan commuted to the legislature with a black friend. House member Ben Erdrich not only received significant black support but had black legislative friends. So did Senator Ted Little. Had overt racial motives been expressed by Black Belt and Farm Bureau leaders, would that have solidified support for the bills among such legislators or made it less likely they would have voted for them? If the goal was passage of bills protecting the interest of white property owners and shifting the burden of taxation to African Americans through sales taxes, then the last place I would expect to find such rhetoric is in the volatile racial world of the 1970s. Coming as it did in the context of the Voting Rights Act of 1965, a massive registration campaign of African American voters in the mid to late 1960s, court-ordered reapportionment of the legislature, the Black Belt’s loss of its tradition majority control of the legislature, judicially ordered tax reassessment of property values, and other forms of judicial activism on matters of race, I would NOT expect as an historian to find overt references to race during these debates which might have fueled legal challenges to the legislation. I would expect to find a strong contextual argument for race and rapidly declining overt

racial references as more and more blacks registered to vote. In fact, that is precisely the pattern of Governor George Wallace, whose own racial rhetoric could hardly be more incendiary in 1962-1971, but became increasingly covert after 1970. He switched from some of the most repulsive references in the 1960s to an entire litany of code words and phrases by the early 1970s. As for legislators who participated in these debates, when asked if they heard specifically racial rationalizations of the various tax proposals proposed by the Farm Bureau and other agricultural commodity groups, they could honestly say they did not. But the larger question is the racial motivation of those who advanced the legislation and the many whites who feared that higher taxes for them translated into more money “wasted” on the education of African American children. Especially is this so in an environment completely dominated by white reaction to the integration of public schools (which had only become widespread in the late 1960s), court-ordered busing to eliminate the vestiges of segregation, and massive white reaction in the form of the private school movement (which left many public schools all black or nearly so, and private schools all white). Why should white tax payers pay higher property taxes to educate black children when their own offspring had left public schools for private ones seemed to be the question on the minds of many white voters.

2. It is within this historical context that Prof. Bass claims that “the most prevalent conflict in more recent Alabama history (after 1970) has been the clash between rural and urban political forces in the state.” I find that conclusion not only amazing but one not supported by the historical evidence nor any other major Alabama historian. In fact, the major change since 1970 has been the covert use of surrogate issues such as education, tax, and constitutional reform as substitutes for the overt racism of earlier years. When Alabamians were asked to strip racist language out of the 1901 Constitution, Alabama Christian Coalition, the Alabama Farmers Federation, and Judge Roy Moore led the successful forces opposing the amendment, arguing that one provision that would be thereby stripped from the constitution was a segregation-era amendment that denied the responsibility of the state to educate every child. Eliminating this segregationist amendment, they assured citizens, would open the way to litigation requiring higher property taxes to fund equitable and adequate education for all children. When debate raged about constitutional reform, opponents claimed it was a ploy to raise property taxes. Curiously, the funding trail for all these campaigns tracked back to ALFA, the old Farm Bureau Federation, and its allies in the legislature.

In the 1990 gubernatorial election, the most compelling advertisement for the winning candidate showed film of his opponent (Paul Hubbert) entering a car with the black associate director of the Alabama Education Association. In 2001 the Delta Sigma Phi fraternity at Auburn University staged a Halloween party at which a male student dressed in a KKK robe and hood had his photograph made standing next to a coed dressed as a Playboy bunny and holding a noose around the neck of a fraternity brother in black face. When the photo was widely distributed on the internet, fraternity members insisted the incident had nothing to do with race. As I pointed out in a chapter on race in my book, *ALABAMA IN THE TWENTIETH CENTURY* (p. 364), many of their parents, protesting university disciplinary action, insisted that the university was engaging in political correctness, overacting to good natured fraternity fun, and denying students First

Amendment rights of free speech. In the 2008 presidential election, Republican presidential candidate John McCain increased his majority over that obtained by President George W. Bush by more than 10% in 223 counties. All but one of the 223 were in the Appalachian, Ozark, southern Louisiana, and west Florida panhandle areas. In Alabama, McCain especially increased the Republican margin in the white north Alabama hill counties. Some pundits insisted that this resulted from Obama's liberalism in a very conservative state. However, historians pointed out that John Kerry ran on a platform as liberal as Obama's, that Alabama Republicans considered McCain too liberal compared to Bush, whom they supported overwhelmingly in 2000 and 2004 Republican presidential primaries, while they voted in the 2008 presidential primary overwhelmingly for Mike Huckabee, who trounced McCain. That left the increased Republican majority over Obama to be explained mainly by the state's continuing racial divisions. Indeed, only slightly more than 10% of Alabama's white voters cast ballots for Obama (only 7% of white males), the smallest margin in the South. That race was by the 1970s a more covert than overt issue among most whites is certainly true. As I wrote in an entire chapter devoted to race (ALABAMA IN THE TWENTIETH CENTURY, p. 359), "hardly an election cycle passed without some candidate playing the race card. George Wallace reached the pinnacle of racist demagoguery in his runoff campaign against Albert Brewer in 1970. No one matched him, though many tried." A 1995 Mobile Register-University of South Alabama poll found that 56% of white Alabamians favored ending affirmative action. And suits charging racial discrimination in the Department of Transportation continued into the 21st century. In Randolph County, the school superintendent canceled the 1994 high school prom because interracial couples planned to attend. Even though the state made painfully slow progress on racial issues, as I pointed out in dozens of lectures to my Alabama history courses and in hundreds of public speeches in Alabama, everything, even religious practice and educational policy, tracked back to the central issue of race. That rural-urban divisions had replaced racial ones as predominant after 1970 is supported by neither political patterns nor historical analysis.

3. It is only within the defense's narrow context of specific words from interviews and newspapers between 1971 and 1982 that no racial pattern emerges about tax and constitutional policy. Within the pre-1970 historical context, I have made a different argument long and often. As early as Spring, 1992 in an article entitled "Taxes, Taxes, Taxes," published in ALABAMA HERITAGE magazine (co-authored by Keith Ward), I wrote (p. 11): "The Reconstruction era . . . posed new problems for Alabama's fiscal policy and generated new political conflicts. The recently installed Republican government, though by no means dominated by African-Americans, was nonetheless responsive to their needs for education and public health. . . . at the same time that the primary source of antebellum revenue-taxes on slaves-disappeared, the Republican dominated government needed to rapidly increase state expenditures. The result was a much heavier tax levy on small farmers." Taxes more than tripled during the ensuing decade. The typical value per acre on a 160 acre farm declined by one-third between 1860 and 1870, but the tax on that same farm increased two-and-a-half times.

I described the effect of tax policy during Reconstruction to explain the background of the 1874 gubernatorial election, the “Redemption” of whites from Reconstruction, the imposition of the “Bourbon Regime,” and the 1875 Constitution: “For the most part, these new taxes paid for additional public services for emancipated slaves, which the black population both needed and desired. Because blacks paid few taxes they were largely unaffected by the tax increases. White voters, on the other hand, believed that whites received few benefits from the new public services. And because they paid much higher taxes, they bitterly resented both the tax increases and the new government which imposed them.” “Indeed , Republican tax policy between 1867 and 1874 may have done as much or more to create a century of Democratic control of Alabama politics as racism. Terrified by the prospect of a neo-Reconstruction government, framers of the new ‘Redeemer’ Democratic Constitution of 1875 placed limits on the state’s taxing power and indebtedness” (p. 11). As taxes declined, so did expenditures for health and education. Democratic legislators transformed the state’s penal system from a financial liability into an asset by way of the convict lease system. Though far less than 90% of the state’s criminals were black, 9 of 10 convicts who served in the convict lease system were African-Americans. And by the late teens and early 1920s, the state derived some 20% of its total revenue from convicts. Because the convicts were mainly black, they were little noticed by most whites, and brutality toward them drove the death rate up into the mid teens, higher than in any other southern states. “The 1901 Constitution . . . did little to rectify the situation. Along with disenfranchising blacks, the new constitution addressed tax policy and education, but when that document emerged from the constitutional convention, its tax provisions were essentially the same as in the 1875 Constitution.” “Limitations of ad valorem taxes imposed by the convention’s Black Belt - industrialist majority forced the state to rely on license and privilege taxes, which had become a hopeless ‘conglomeration.’” (p. 12).

In the chapter, “Politics, Alabama Style,” in *ALABAMA IN THE TWENTIETH CENTURY* (2004), I expanded on the same racial/tax/constitutional context: “No discussion of Alabama’s traditional political culture strays far from race. From the time freedmen received the vote in the late 1860s, race played a pivotal role in state politics. First mobilized by the Republican Party, African Americans favored more state services funded by higher taxes. Because most were poor and few owned property, they benefited from such Reconstruction policies without having to pay the costs. And their party took on a clear political agenda: higher taxes and more state services The Democratic Party positioned itself in opposition to Republicanism: lower taxes and reduced expenditures for state services such as education and prisons, cessation of government subsidies for industry; white supremacy, racial segregation; traditional values and opposition to social experimentation. Conservative elites might not be able to convince working-class whites that they shared the same class interests. But they could set themselves up as champions of white supremacy and extol the virtues of racial solidarity. In time, the ideological positions of the two parties would reverse. And so would loyalties of their racial constituencies. What would not change is the racial identity of most whites with one party and most blacks with another.” (pp. 32-33). Speaking of the last half of the 20th century, I wrote: “What made the failure of legislative leadership more damning was the vacuum it created for demagoguery. Without meaningful

oversight from an elected supreme court that often cowered before the glare of angry voters and confirmed their prejudice, the imperial legislature was more interested in posturing than posterity. Whereas American politics has been characterized by governance from the center, in Alabama candidates who were right of center usually won. Politics moved toward the margins, with muted but thoughtful candidates easily dismissed amid voter preference for the rhetoric of simplification, racial solidarity, or resistance to outsider interference.”(p. 36). Describing the politics of the early 20th century, I wrote: “One central issue was not even a bone of contention between” progressive Democrats and Bourbon Democrats. “Except for African American reformers, neither camp proposed reform for blacks. These decades in fact were arguably the worst in the 20th century to be black and live in Alabama. Denied the ballot by the new constitution, they were also denied equitable and adequate education.”(p. 51). I detail in three chapters on the 1901 Constitution, politics, and the economy, that issues of constitution writing, race, low taxes, and low expenditures for social services were all of a piece, and in fact I separated these chapters from the ones that came after them by a separate section entitled “Alabama’s Political Economy,” which dealt with the legacy of racism, the 1901 Constitution, tax issues, chronic underfunding of state services, especially for blacks, and how all of these were related to each other. On page 57 I specifically referred to the “united patrician, business-oriented, conservative, Big Mule, Bourbon coalition” which was armed with “the 1901 constitution, traditionalism, racism, and contempt for the white masses. The legacy of these mutual animosities would divide Alabama for the rest of the 20th century and would provide citizens a political history at variance at least by degree from that of any other southern state.” (p. 57). I cannot imagine how I could have been more direct in my analysis, and that sentence is as much applicable to the 1972, 1978, and 1982 tax amendments as to the writing of the 1901 Constitution itself.

Though it is true that I also discussed rural-urban conflict in the late 20th century (pp. 86-87), as does Bass, it is important to note that I did so in a long section of my chapter on politics under the subheading, “The Politics of Race, 1958-2000” (p. 76). It was also within that subheading that I discussed John Dorrill, Jr., and his central role as a lobbyist for the most significant of the planter oriented, agricultural lobbies, the Alabama Farm Bureau (later renamed the Alabama Farmers’ Federation or ALFA), p 82. Within that section also, I discussed Baker v. Carr, Reynolds v. Sims, Bolden v. Mobile and other rulings that threatened planter hegemony in Alabama politics and especially Black Belt white legislators who dominated the legislature (p. 87). This section of my book also contains a section on the racism of Gov. George C. Wallace (pp. 88-89), the role of Wallace’s 1972 presidential campaign which centered not on the overt racial rhetoric of his 1964 and 1968 presidential races but on a more covert and nuanced opposition to “forced busing” (pp. 99, 104-105 emphasize the importance of race in Alabama politics in the late 20th century).

In this same section, “The Politics of Race, 1958-2000”, I write that “Race increasingly defined all political discourse, reducing both class and section to secondary importance...The new racial politics had put two of Alabama’s most venerable political traditions—friends-and-neighbors voting and courthouse gangs—on life support.” (p. 77). “The planter-Big Mule alliance that has dominated Alabama politics for half a

century initially gained strength from racial polarization. But later it came unglued due to the civil rights movement, Voting Rights Act, urban-rural clashes, the metropolitization of Alabama . . . clashes over demands for infrastructures, and a slow but steady modernization that accompanied Sunbelt growth. The Black Belt wing of the old Bourbon regime was fighting for its life by the 1960s and virtually gone by century's end. Between 1940 and 1960 alone, the region lost more than 4 percent of its population, while Jefferson, Mobile, and Etowah Counties grew by nearly 50 percent. Within these counties, some Big Mules reluctantly conceded the obvious: rapid economic growth was incompatible with low property taxes, poor schools, wretched social services, a poorly trained labor force, racial polarization, and widespread poverty." (p.78). This is the context in which Black Belt whites and their Farm Bureau allies mobilized in a desperate attempt to protect their property from the inroads of African-American majorities in many Black Belt counties.

As for the Farm Bureau (ALFA) role in this battle, I write on p. 79: "By 2001 . . . ALFA remained a huge player within Alabama's secret government (lobbyists) even as the number of farmers fell both in the legislature and general population. . . . Farmers represented less than 2 percent of the population. But thanks mainly to 'voluntary' fees added on to ALFA insurance policies and seldom explained to customers, ALFA ranked in the top four PACS with more than \$2 million to dole out during an election cycle). Its influence was decisive in passing current-use tax legislation as well as blocking tax, education, and constitutional reform." On p. 84, I elaborate: "Taxes remained a central public policy issue of the state, and conservative coalition that had put the 1901 constitution in place rallied repeatedly to defend their handiwork." On p. 85, I note that the poor, who were disproportionately black (rates of poverty in Alabama vary from about 10% for whites to 33% for blacks) were the victims of this tax policy: "Meanwhile crises growing from the state's regressive and inadequate tax system steadily worsened. Court orders against the state for inadequate or inequitable funding of public schools, mental health facilities, prisons, foster children, and other basic services earned the state increasingly negative national and international attention. In 1996 Citizens for Tax Justice listed Alabama as one of the 'Terrible 10' states for excessive taxation of poor and middle-class citizens."

Governor George Wallace, from Barbour County in the Black Belt, which furnished more governors than any other county, introduced an unparalleled racism to Alabama politics during the 1960s, culminating in the 1970 Democratic primary, before drifting toward a more covert racism in the 1970s as growing numbers of African-Americans registered to vote. On p. 99, I write: "All these changes (two-party politics, black registration to vote) could have shifted Alabama toward a new kind of politics, as similar changes did in other southern states. Instead Wallacism froze political change in an arctic blast of racism. In Alabama, everything hinged on Wallace and whether one opposed or supported him."

In summary of politics between 1958 and 2000, I wrote (p. 104): "As the century ended certain patterns appeared clear. Racial and ideological polarization remained a primary political reality, not in the old-time sense of Wallace's racial rhetoric about segregation,

busing, and civil rights, but in new code words and attitudes about racial profiling, affirmative action, social welfare, and tax reform.”

In short, for the defense to claim that as an historian I did not address previous to this case the interlocking issues of race, politics, Black Belt whites, the Farm Bureau, and tax policy is untrue.

In this same book, my chapter on education related race to public school funding. On p. 223, I describe conditions which resulted from the tax system installed by the 1901 Constitution and administered by state and county officials. “Lowndes County (in the Black Belt) in 1914 contained only four white illiterates, a rate of 1 percent, the state’s lowest. But that same county in 1930 spent on average less than \$5 to educate a black child compared to \$96 for a white youth. Chambers County in 1901 paid white teachers a monthly average of \$35, black teachers only \$21. During the 1905-6 school year, the white school term increased to 146 days; black schools averaged just 90 days. Chambers County white teachers that year averaged \$46 a month; black teachers \$24. In 1911 98 white students attended the county high school; there was no high school for blacks. Average annual teachers’ salaries in 1911 varied from \$428 for white males to \$407 for white females to \$157 for black males and \$90 for black females. The value of equipment in the county’s white schools in 1913-14 stood at \$2,500 compared to \$500 for black schools.” On p. 225, I add: “The state simply ignored late 19th-century Supreme Court decisions that required that racially separate schools must be equal. In 1924 blacks comprised 40 percent of state population, but Alabama spent less than \$1.5 million on Negro children compared to \$13 million for whites.” “Teacher salaries statewide in 1919-20 revealed the same multiple discrepancies as in Chambers County: rural white males averaged \$630 a year; rural white females, \$430. White urban males averaged \$1,481; women, \$762. Black urban male teachers averaged \$206; women, \$167. Urban black males averaged \$635; women, \$407.” On p. 227, I summarized that “African American schools remained inadequate throughout the 20th century.”

Chapter 7 in the same book dealt with race during the 20th century. In regard to the Bourbon regime that ended Reconstruction and installed the 1875 Constitution, I wrote on p. 318: “Whites had restored their power by a combination of political chicanery, economic intimidation, and physical violence. These same instruments would serve them well in the quarter century that followed. They allowed black voters to continue on the rolls but in many places manipulated the votes on behalf of white planter interests, especially in the Black Belt.” “Fathers of the 1901 constitution offered their work as a ‘reform’ because they proposed to do with legislation what politicians and white terrorists had done with corruption and violence.” And on p. 319, I added: “Jim Crow’s world might be less violent than what preceded it, but it was no more just or humane. The 1901 constitution not only stripped the ballots from black men but also prohibited interracial marriages and required separate schools for blacks and whites. Local custom as well as ordinances insisted that mental institutions, TB sanatoriums, prisons, reform schools, public transportation, and hospitals also be racially segregated.” Regarding politics, I wrote on p. 359: “But hardly an election cycle passed without some candidate playing the race card. George Wallace reached the pinnacle of racist demagoguery in his runoff

campaign against Albert Brewer in 1970. No one matched him, though many tried.” Although more subtle and covert racism prevailed after 1971, I detail the continuing presence of racism after 1970: Republican state senator Charles Davidson who ran a campaign extolling the Confederate flag and arguing that the Bible endorsed slavery; Governor Jim Folsom, Jr., who removed the Confederate flag from the capitol dome, which factored into his defeat for governor in 1994; in 1995, a Hueytown city councilman assured city residents that though he had nothing against blacks personally, they “messed up everything they tried to manage.” Not until 2003 did the state Department of Transportation settle an 18 year-old-suit by blacks for racial discrimination in the department which cost the state \$62 million dollars. In 1994, the white superintendent of Randolph County schools canceled the school prom because some interracial couples planned to attend. He also called a student from a racially mixed family a “mistake.” During the years also blacks sued the state university system for maintaining racial inequity in higher education. (pp. 359-363). This evidence hardly supports the claim of the defense’s historian consultant that race ceased to be the central issue in Alabama history after 1970 and was replaced by rural-urban conflict.

3. In Professor Stewart’s deposition (10/12/09) he argued that although education funding fell after enactment of the 1875 Constitution, the cause could have been hard economic times, not the constitution. However, the so-called Panic of 1873, which precipitated the depression, began two years before the enactment of the constitution and presumably would have already set funding on a downward path if the constitution played no role. Stewart also denied that whites feared black political power, a stunning argument which runs counter to the work of all recent historians of Reconstruction and Redemption in Alabama. He also denied that the millage rate limitations in the 1875 Constitution had a racial origin or that whites feared Reconstruction tax increases on property. He found no specific references to such fears as a source for the property tax limitations of the 1875 Constitution. Furthermore, he argues that Dr. Malcolm McMillan, author of the definitive book on Alabama constitutions, said that “the reasons for the 1875 Constitutional convention were unrelated to race. . . .” Although Stewart admitted that the 1901 Constitution was driven by white supremacist concerns and desire to preserve white control, the suffrage provisions solved that problem, so he believed there was no need for racists to limit property taxes for racial reasons.

Unfortunately, Stewart did not read the historical sources he cites very carefully. Speaking of the 1875 Constitution, McMillan attributes Bourbon Democratic victory in 1874 to northern Alabama “white counties.” He cites the Mobile Register as pleading: “We, of South Alabama, only ask . . . (North Alabama’s) full vote at the polls on behalf of our common principles and our south Alabama safety.” He cites the Montgomery Advertiser (the chief journalistic spokesman for Black Belt whites): “South Alabama raises her manacled hands in mute appeal to the mountain counties. . . . Is there a white man in north Alabama so lost in all his finer feelings of human nature as to slight her appeals?” Democrats, McMillan writes, “drew the ‘color line’ and made white supremacy the MAIN ISSUE.” (my emphasis). The Mobile Register added: “The present

constitution (1868) was framed by the enemies of the white people of Alabama in the year 1867, and put upon our people not only without their consent, but against their earnest protest. In fact it was the work of interested carpetbaggers and scalawags, supported by such enlightened statesmen of the colored people.” Commenting on the vote in favor of a constitutional convention, McMillan quotes the Mobile Register again, arguing that the issue was not a party issue between Democrats and Republicans, but an issue of the “color line”, which should rally “whites to overthrow the Negro, Carpetbag, Scalawag Constitution of 1868.” (p. 177).

Democrats favored the convention, editorialized the Mobile Register, because current apportionment “gives a large minority of Negroes an equal voice in the state government with a large majority of whites.” “This outrage will remain unless the people change the constitution.” Nor was this strategy lost on Republicans. The Republican Alabama State Journal editorialized that the “old secession leaders are now scheming to get full and complete control of the State government. . . and entrench themselves in power,” and deprive Negroes of “every vestige of political existence.” (p.185). The paper warned that “the poor whites of this commonwealth will lose their free schools, if that constitutional convention ever meets. We warn the people of the poor white counties that all the school fund they will ever afterwards receive will be their sixteenth section fund, which amounts to but a few dollars. And we finally warn the poor white people of Alabama that if this convention ever assembles, a property and educational qualification will be required of voters. In the effort to keep down the Negroes, these old secession leaders will sacrifice every poor white man in the state.” (p. 186). Democrats left no doubt about the racial animus of the campaign, calling Republicans “Jacobins and niggers.”

The regional nature of the convention is striking to McMillan, who notes that the call for the convention passed 68,000 to 60,000. In the Black Belt, where the majority of voters in most counties were African American, and in 5 other counties, the vote opposed calling a constitutional convention. But the white mountain counties provided critical majorities in favor.

Although the subsequent constitutional convention feared Federal intervention and refused to disfranchise blacks, the delegates (80 Democrats, 12 Republicans, and 7 independents) did limit property taxes to 7 and ½ mills after what McMillan calls an “exceedingly bitter” debate. He also notes that the Committee on Education abolished the state Board of Education and required racially segregated schools. He also notes that revenues for schools were much less than provided by the 1868 constitution (p. 206). McMillan concluded that “A conservative agrarian-minded policy” based on distrust of Republicans “dominated the work of the convention” and led to retrenchment in government and “partial abandonment of the public school system....”

During the battle over ratification of the new constitution, McMillan quotes much specifically racist rhetoric in favor of ratification. The Montgomery Advertiser editorialized: “Who made the present (1868) constitution? Corn field Negroes, corrupt Carpetbaggers and United States soldiers. Vote for the new one, made by your own

representatives.” Democrats, McMillan notes, appealed for “white supremacy,” warning that a defeat would return the “Jacobin Republicans” to power. p. 211. He quotes the Republican Alabama State Journal: “When our friend the Advertiser becomes alarmed like its other Bourbon contemporaries, it puts up the howl of nigger! nigger! nigger!” Under the new government, the paper believed, the poor would grow poorer, the rich would grow richer. The main Republican argument against ratification, McMillan concluded, was the Democratic attempt to destroy public schools. (p. 213). The 1875 Constitution was ratified by a vote of 85,700 to 29,200, with only 4 Black Belt counties opposed. McMillan noted that Black Belt white Democrats subsequently manipulated “the Negro vote in order to ‘outvote’ the white counties...” They used ballot box stuffing in the Black Belt to assure white supremacy. (p. 218). Whites used “force, intimidation, and violence to control black votes.” (p. 218).

The Alabama State Journal in March 1876 wrote: “When the Bourbons assert that they refuse to tax the white property owners for the education of the Negroes, they only exhibit the malice in their hearts against a race which toiled and struggled for them in the days of slavery.” (p.206, footnote 117). In 1875-76, the paper noted, Democrats abolished offices held by African Americans in the Black Belt.

McMillan concludes his discussion thusly on p. 362: “The presence of the Negro in large numbers has been the most important factor in the constitutional history of the state. No major constitutional issue has faced the state since 1819 that has not been decided largely in light of the presence of the Negro. Scarcely less important has been the concentration of this large Negro population in the rich agricultural area of South-central Alabama with very few negroes in the hills of North Alabama.”

This extended passage hardly supports Stewart’s contention that Dr. McMillan believed that the “reasons for the 1875 Constitutional Convention were unrelated to race. . . .”

Forest economist Warren Flick, in a report for the Alabama Forestry Association on March 8, 1982 entitled “Forestry and the Property Tax in Alabama”, favored current use limits on property taxes to protect landed interests. However, in his discussion of the 1875 and 1901 constitutions, he noted that they limited taxes because of rapid Reconstruction- era increases. He then writes: “When those constitutional provisions are applied in a state where rural interests are politically powerful, and where the state’s wealth base has been relatively low, the results could only be low property taxes. Other circumstances contributed too. Racial tensions—the desire of white dominated political establishments to avoid providing public services for blacks—have been present. . . . In a sense, then, property tax levels are a manifestation of public will, at least that public whose interests have been influential in Alabama for over 100 years.” (report located in Record Group – Alabama Farmers Federation, RG # 543, Auburn University Archives).

Flick’s reference to racial tensions as a source of tax and constitutional policy parallels both McMillan’s and that of Horace Mann Bond. In his seminal book, **NEGRO EDUCATION IN ALABAMA**, historian Bond applies these arguments about race, tax policy, and constitutional change even more precisely to black education. He begins with

a simple premise: “With dual systems of schools in theory deriving support from the same sources, the development of Negro schools is obviously dependent upon the demands which the system for white children makes upon public support; and the mere physical existence of Negro children is vital to the financing of schools for white children.” (p. 135).

His chapter discusses the manner in which economic and social forces, working through political action, affected the educational demands of white children as competitors of blacks for public educational funds. “The election of 1874,” he writes, “had been won on the issue of the fear of ‘Negro domination.’” Unified white voters across sections supported the convention. The 1875 Constitution “severely restricted the amount of money available for the schools.” (p. 135). But white enrollment between 1874 and 1888 increased from 91,200 to 159,700 while black enrollment increased from 54,600 to 99,000. The State badly needed additional revenue. The head of the Peabody Fund advised a local tax for schools, but the constitutional limitation on property taxes prevented such action. The only option available was to take money away from black schools in order to use it for white schools. “The history of the movement to make the State reach this commitment to inequality in school expenditures covers a long period and deserves extended attention as the vital decision for the future support of Negro public schools,” Bond writes. (p.136). “As the Black Belt politically dominated the white counties through the control of the Negro vote, the Black Belt also stood in the way of local taxation for the schools.” (p. 138). “While Negro voters after 1875 were firmly controlled by Democratic politicians in the Black Belt, they remained an important political force in the State for some years.” (p. 138).

By the 1880s and early 1890s a full scale political revolution was forming in Alabama know as Populism (in Alabama, the antecedents of this biracial revolt were found in many sources: the National Grange, the Farmers’ Alliance, the Knights of Labor, and the United Mine Workers, among others) which appealed to both blacks and whites. One issue which Horace Mann Bond emphasizes in the run up to Populism is the inadequacy of public schools. The 1888-89 legislature debated increases in school appropriations. The Montgomery Advertiser, traditional voice of Black Belt white conservatives, mentioned arguments against such an increase: “Here in the Black Belt, where the country white people pay the taxes and the negroes go to school, there is considerable sentiment to the effect that taxation for public schools is a burden to the white people, not a benefit.” (p. 152). The Selma Times and Mail on July 15, 1888, objected to the poll tax because “white people pay the tax and the Negroes go to school.” In the House debate on December 3, 1888, concerning a \$55,000 increase for schools, Mr. McLeod of Clarke County moved the total be nearly doubled, to which Mr. Paine of Macon County responded that Black Belt people were paying for the education of 3 Negro children for every one white child, which was unfair. (p. 153).

Bond’s description of the 1901 Constitution, like Malcolm McMillan’s, attributes the primary thrust of the effort to race. Describing the decades from 1890 to 1910 as “The Vale of Tears” for southern Negroes, he quotes J. Thomas Heflin, a delegate to the convention, as opposing a stenographic record of the proceedings because: “There will be . . . when the battle comes between the Anglo-Saxon and the African, things said here

that we do not want to go before the Court of the United States. . . . We will say things down here in our Southern way, and in the great old commonwealth of Alabama, that we do not want read and criticized day after day.” Unfortunately for the defense in this case, Heflin’s opinion was not heeded, and the racist origins of the 1901 Constitution are available for all to read. A Populist delegate from DeKalb County proposed that the first article of the new constitution should read: “That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights.” He was shouted down by other delegates. (p. 171). In fact, pages 171-177 in Bond’s book chronicle the racism of various delegates to the 1901 Constitutional convention and the centrality of race to their decisions.

Chapter 13 of Bond’s book deals specifically with the 1901 Constitution, taxation, and education. Strong debate broke out over the segregation of school taxes. In districts where Negroes were disfranchised, how could they vote for a local school tax? Mr. Ashcraft responded: “If there are any districts that do not contain negroes who can vote they will have to wait until they could vote,” “until they can educate men who can vote.” (p. 188). Tom Heflin responded by saying: “The convention should think of the men who fought for the Stars and Bars, and who fell in the defense of the old flag, and the Convention should think of their sons. ‘I ask if it is right to tax them to educate the Negroes of Alabama?’” The proposal to segregate taxes by race was essentially a Black Belt vs. white county debate. (p. 191). Although delegates decided against allocating only taxes paid by blacks to black schools, the debate displayed the racial issues central to all conversations during the 1901 proceedings.

In his summary of the effect of tax policy in the 1901 Constitution on Black education, Bond writes: “The suffrage provisions . . . were of vital importance to the education of Negroes because they focused attention on the necessity of educating white children, and made the expenditure of school funds even more a matter of competition between the two separate systems.” “From 1901, with Negroes thoroughly disfranchised, all emphasis was laid on the education of ‘white’ children in the State. Official Reports specified this interest; so far as educational campaigns were concerned, Negro children did not exist in the State.” (p. 192).

“Two other factors affecting all education in the State, and so that of Negro children, were the provisions regarding local taxation and regarding limitations upon the tax-levying powers of the General Assembly.” (pp. 192-193).

Bond cites the Education Commission of 1919 on the effect of racially driven tax limitations: “It can be stated with substantial accuracy that there was no provision for local taxation for educational purposes in the State of Alabama from 1875 until 1901. . . . In so far as education is concerned, therefore, the Constitution of 1875 marks a change from a Constitution providing as liberal a method of support for schools as existed in any State of the Union to a Constitution with the most illiberal and inadequate method of support to be found in any state.” (quoted on p. 193). The Brookings Institution called the limiting tax provisions of the 1901 Constitution one which resulted in a “warped and distorted” revenue system: “The policy of limiting taxation in Alabama has proved ‘defective, detrimental, and unsound.’” Bond then concludes: “In the financing of the

general school system this 'obsolete' taxing machinery continued to emphasize property values. As a result, expenditures for Negro children were directly connected with direct land taxes; and any expansion of facilities for Negro children had to meet the full brunt of the old opposition of the 'taxpayers' versus the 'non-taxpayers' and "left the Negro population totally at the tender mercies of the white population where almost every conceivable grant of privilege or citizenship was concerned." (p. 193). "After 1901, the development of Negro schools was even more than ever at the mercy of stark social and economic influences, divorced of any ameliorating effect which the exercises of the franchise may have introduced in the past. For many reasons, therefore, the Constitutional Convention of 1901 is the definite climax of the problem of educating Negroes in the State at public expense." (p. 194).

No single incident better illustrates Bond's conclusion that the 1901 tax provisions connected expenditures for Negro children to direct land taxes ("taxpayers" vs. "non-taxpayers") than an incident in Birmingham in 1923. As recorded in the May 13, 1923, issue of the Birmingham News, the Knights of the Ku Klux Klan complained that money from a \$200,000 bond issue was to be used to build a Negro high school. The Klan demanded that white children be taken care of first: "Therefore, be it resolved, that it is the sense of this organization that white children be adequately housed and cared for and double sessions and poor housing be at least partially relieved and discontinued before any further money is spent in the construction of negro schools, and we respectfully suggest to the City Board of Education that the people of Birmingham cannot be expected to support future bond issues for school purposes if the money is to be expended for negro high schools before adequate provision has been made for white children."

When Howell Raines, Birmingham native and reporter for the New York Times, called me in 1990 about post-Wallace era politics in Alabama, we talked at length about tax policy and the 1901 Constitution. His conclusion reflected that conversation: The 1901 Constitution "was written to deprive blacks of the vote and, by mandating equal tax rates for all individuals and corporations, to assure that wealthy farmers and industrialists could not be taxed for programs to help blacks. The idea was, as the saying goes, 'to keep the niggers down.' But as Flynt, who teaches history at Auburn, documented, the result was to keep everybody down." Then Raines quotes the Republican State Chair in 1962, John Grenier, the man widely regarded as giving birth to the modern GOP in the state and the key adviser to the first Alabama Republican governor since Reconstruction, Guy Hunt: "The problem with the property tax, of course, like everything, goes back to race in Alabama. I think probably whites feel like they own the property, and the property tax goes up, and the proceeds will go to blacks." Raines concluded his essay: "This is the 1990 version of the oldest theme in Alabama politics: the corporations and the plantation owners appeal for the votes of working-class whites by convincing them that blacks hunger for their jobs and a disproportionate share of government benefits." (New York Times Magazine, June 3, 1990).

By concentrating exclusively on the years from 1972 to 1982, the defense experts missed altogether this historic context to the events they researched. By the 1960s, an entire series of Federal Court rulings and events in Alabama threatened the historic hegemony

that Black Belt whites had exercised since 1874 and which I have just described. They were besieged at every point: by the declining population of the Black Belt; by threats to reapportion the legislature; by massive registration of black voters; by the election of blacks to both local and legislative posts; by the potential for local black office holders and majority black voters to increase property taxes on mostly white landowners in order to increase appropriations for schools and other social services. As a consequence of such threats, they mobilized politically in the most important agricultural commodity groups that they controlled (Farm Bureau, Cattlemen's Association, Forestry Association) to pass a lid bill, classification system, and current use standard for property taxes through the legislature.

5. A brief chronology of the threats to their hegemony just prior to the decisive votes in 1972, 1978, and 1982 will illustrate my point.

Reynolds V. Sims (1964): the Court ruled that the malapportioned Alabama legislature violated the one-man, one-vote standard of the Baker V. Carr ruling. This ruling threatened conservative, white, Black Belt control of the legislature which had been sustained for two-thirds of a century in violation of the state's constitution, which required reapportionment every 10 years based on census data.

Passage of the Voting Rights Act, 1965: this act precipitated a rapid increase in Black voter registration from about 20% to more than 50% of eligible black voters by 1970. Many Black Belt counties by 1970 contained a majority of black voters for the first time since disfranchisement in 1901. And the worst nightmare of Black Belt white segregationists was realized in 1970 when those majorities elected two blacks to the House of Representatives. As Governor Albert Brewer explained in his 2009 deposition for the defense, Black Belt legislators despaired of the changes integration would make in their counties. They feared that all local office holders and schools would soon be black. They also had opposed taxes for public schools even before 1954 and favored sales taxes which would be the only taxes many blacks would pay. These counties also spent most of their education tax revenue on white schools even though the majority school population was black. Brewer also noted that Black Belt senators opposed a minimum local property tax for education. John J. Synon, publisher of the Camden Progressive Era in Wilcox County wrote an editorial in 1970 entitled "On Helping Private Schools." He claimed that Alabama was third in the "quantity of recently opened private schools," and held up as a model the six opened by the Jackson, Mississippi, Citizens' Councils. Synon's friends in Jackson boasted that within two years Jackson's public schools would be all black because of the tide of white exodus into private academies.

In May 1969, the Fifth U. S. Circuit Court struck down Louisiana's "Freedom-of-Choice" method of desegregation schools. During the 1970 session of the Alabama legislature, legislators passed a private school grant-in-aid which paid tuition for white children unwilling to attend integrated schools.

The Weissinger decision in 1971: this act required uniform assessment of property. The 1901 Constitution had required that property be assessed at 100% of fair market value. But amendments sponsored by various agricultural commodity groups through the years

had reduced the real rate to 17% by 1967. That led a Mobile County official, Martha Hornbeak, to sue the state. U. S. Federal Judge Frank M. Johnson declared Alabama's property tax system inequitable and ordered reappraisal. Consequently, agricultural groups frantically rushed to create a modified system. In 1967, the Farm Bureau backed bill 502 which set a maximum property tax rate at 30% of real value. This effort resulted in 1971 in the introduction at the Farm Bureau's initiative of the classification system. It classified property for purposes of taxation according to three categories: utilities, general property, and agricultural/residential. This, of course, is the immediate background for the 1972 "lid bill" and subsequent classification and "current use" legislation.

5. Given this context, virtually no one disputes that the primary support for the 1972, 1978, and 1982 laws came from the Farm Bureau (later ALFA), the Cattlemen's Association, and the Forestry Association. That is largely due to the heavy public fingerprint on the bills, especially by the Farm Bureau working in tandem with the other groups.

The Montgomery Advertiser on July 16, 1972 editorialized: the "forest products and corporate farm interests so intent on passing the lid bill have been riding too long on a property tax discount ticket at the poorer Alabamian's expense." The Birmingham News, December 2, 1971 noted that "The powerful Alabama Farm Bureau lobby suffered its first setback Wednesday when the House Ways and Means Committee by a narrow 8-7 margin" authorized a committee to establish the meaning of the Court's recent ruling taxing property at "fair market value." The same newspaper on December 6, 1971 editorialized: "For the sake of the majority of Alabama's ad valorem property tax payers we hope the Senate is not eager to have the Alabama Farm Bureau's classified tax reform bill railroaded through that chamber as it was through the House last week. The Farm Bureau measure decorated with Gov. Wallace's blessing slid out of the House Ways and Means Committee with the slippery speed of a T-Model going down a red clay hill in the rain. The Farm Bureau's version of a classified property tax system is an attempt to keep the large-scale farm interest off the fair share tax hook, a privilege it has enjoyed for many years." The same paper opined on December 10, 1971 that Gov. Wallace "was calling signals" in the special session that had just passed the classification system. On August 1, 1978, the Birmingham News editorialized that Wallace had warned a minority who were blocking the Farm Bureau plan to limit property taxes: "You are getting one more chance. You'd better not fail this time or a lot of you will have political funerals to attend on Sept. 6. And I can't go to all of them." On December 15, 1972, the Alabama School Journal wrote that the lid bill was introduced and pushed by the Alabama Farm Bureau, the Cattlemen's Association, and "other farm related groups." In his deposition for the defense, Governor Albert Brewer confirmed that opposition to increasing property taxes represented by the lid and current use bills was centered in the Farm Bureau and timber interests. Senator John Teague of Childersburg told the upper chamber during the 1978 lid bill debate that "the bill was drafted by the Farm Bureau for their purposes. . . ." (Alabama School Journal, March 24, 1978).

So, the authorship of this series of laws is quite clearly established in contemporary sources.

4. Curiously, the defense has not examined the background of the Alabama Farm Bureau, its leaders, their racial views, or their racial involvements in the run up to the 1972 lid bill. These racial involvements may explain why the defense is so eager to confine their narrative to post 1970 comments, newspapers, and events.

In 1970, when the first two African Americans were elected to the legislature, Walter Givhan won a 9th term over a black candidate of the National Democratic Party of Alabama. Givhan operated a large plantation near Safford in western Dallas County, employing many black sharecroppers. He represented a three county Black Belt district that included Dallas, Perry, and Bibb. Born in Perry County, Givhan became president of the Dallas County chapter of the Farm Bureau in 1942 and according to historian Mills Thornton, “was the legislature’s principal spokesman for large planting interests. . . .” In 1947, he addressed the Alabama Farm Bureau, telling them that liberal Governor James E. Folsom’s ideals were communistic and posed a threat to white supremacy. In 1957-58, he was chairman of the Dallas County White Citizens’ Council and was state chairman of the Association of White Citizens’ Councils from 1958 to 1962. According to Thornton, Senator Givhan “ranted that the goal of the NAACP ‘is to open the bedroom doors of our white women to Negro men.’” “This is a white man’s country,” he continued, and “It always has been and always will be.” (quoted in Mills Thornton, *Dividing Lines*, p. 401). Continuing, he warned that “we are going to have to face (integration) and meet it in our fashion, or expect ultimate doom of our civilization.” The Civil Rights bill of 1964, he warned, “threatens to make all our freedoms null and void and to destroy our present American way of life. It is designed to destroy the America that we love so well.” (p. 402). Central to the strategy of the White Citizen’s Council was its desire to crush white dissent, Thornton explains. (p. 402). Speaking in Selma, Givhan credited the withdrawal of Federal troops from Little Rock to the efforts of the Citizens’ Councils: “We will always be on top, and eventually we are going to win a complete victory in our fight to preserve our sacred way of life.” Governor Patterson explained the winning strategy: whites controlled the South’s money and could afford to close public facilities and establish private ones in their place. (p. 404). Under Givhan’s leadership, the Dallas County Citizens’ Council became the state’s largest, helped formed councils in adjacent counties, and at the February 1961 Citizens’ Councils’ national convention in New Orleans was selected as the top individual council in the United States. Givhan also argued that white supremacists could prevail over hostile courts or laws because whites constituted juries and could thus defeat the courts simply by refusing to convict defendants who resisted integration. (p. 405). On October 1962, Selma’s white supremacists mobilized against the admission of James Meredith to the University of Mississippi. The executive committee of the Dallas County Republican Party wired Mississippi Governor Ross Barnett that the issue at Ole Miss involved “can we preserve constitutional self-government in America or must we yield to totalitarianism, with supreme authority vested in the president and his appointed officials?” Senator Givhan, Dallas County White Citizens’ chairman Earl Goodwin, and others, flew to Oxford, Mississippi, in a private plane as an advance party to determine if a large delegation of Dallas White Citizens’ Council members should caravan to Oxford to help repel this

Federal tyranny. They were appalled when they arrived at the airport to observe that nearly half the troops there were black. Givhan wired Alabama's senators and congressmen, "You cannot conceive of the tragedy which has befallen your native land. Please come immediately to Oxford and see for yourself the gravity of the threat which our democratic form of government now faces." He traced the racial troubles to the South's failure to unite behind a bloc of unpledged presidential electors during the 1960 presidential election. (pp. 412-413). During the 1965 voter registration movement in Selma, Givhan participated with other segregationist leaders in rejecting any compromise with black petitioners. (p. 453). Governor George C. Wallace appointed Givhan to the State Sovereignty Commission, whose task it was to document Communist ties and sexual orgies of Civil Rights demonstrators in Alabama. (Jeff Frederick, *Stand Up for Alabama*, pp. 123-124). On August 13, 1971, during the debate over the lid bill and Wallace's anti-busing bill in the legislature, Givhan wrote Governor Wallace, thanking the governor for his anti-busing legislation: "I want to take this opportunity to thank you for the stand you took yesterday on the busing situation. . . . This move was one of the most important things to preserve Anglo-Saxon race and to keep the schools segregated." (quoted on p. 277 of Frederick, *Stand Up for Alabama*). Givhan personally implemented Gov. Patterson's strategy of abandoning integrated institutions for private ones, raising money, much of it reportedly from outside Alabama, to support segregationist Morgan Academy in Dallas County. (CD 6, track 1), Accession 1980, Box 15, ALFA Papers, Auburn University Archives. I transcribed part of this tape on December 15, 2009.) Senator Givhan sponsored a bill for farm tax exemptions in August, 1970, the same session of the state senate that passed a private school grant-in-aid bill which would pay tuition of white children unwilling to attend integrated schools. Givhan voted with the 22-9 majority for the white tuition bill. (*Montgomery Advertiser*, August 7, 1970). On July 18, 1975, Givhan wrote J. D. Hays, then president of the Alabama Farm Bureau, that he was appalled at the growing influence of the Alabama Education Association (AEA) which fought both the lid and current use bills. Beginning in 1970, the Alabama Education Association (white) and the Alabama State Teachers Association (black) met together. However, between Governor James Folsom's speech to the ASTA and Governor Brewer's speech to the same organization, governors spoke at the annual AEA meeting but not to the ASTA. After the merger of the two organizations, with Paul Hubbert (white) as director, and Joe Reed (black) as assistant director, segregationists increasingly attacked public schools, AEA, Hubbert, and Reed. In his 1975 letter to Hays, Givhan deplored a bill just passed by the legislature that allowed teachers to deduct AEA dues from their salaries, calling it "the beginning of unionizing all the teachers in Alabama." "Unless this trend slows down and money continues to get shorter, they may be able to have enough power in the future to remove our (tax) exemptions." (Walter C. Givhan to J. D. Hays, July 18, 1975, in J. D. Hays Papers, Auburn University Archives. I read this letter while conducting research at Auburn University on December 15, 2009).

This biographical background is pivotal because Sen. Givhan chaired the Senate Finance and Taxation Committee and handled the Farm Bureau tax limitation legislation in the senate. And as former legislator Joe Fine explained in his deposition for the defense, Black Belt legislators had major power in the house and senate. He especially named

Roland Cooper of Wilcox County and Sen. Givhan, both Farm Bureau activists, as influential.

Givhan was not the only Black Belt planter with significant influence and close association with the Farm Bureau. Farm Bureau officials also relied heavily on Representative Joe McCorquodale of Clarke County, who served as Speaker of the House of Representatives during the 1978 lid bill and 1982 current use debates. McCorquodale owned real estate and agricultural lands valued at more than a million dollars, and earned more than \$10,000 from the sale of timber during 1981 alone, according to the April 29, 1982 Birmingham News.

Rick Manley of Demopolis (Marengo County in the Black Belt) was another key Farm Bureau leader pushing property tax limitations. He sponsored the 1977-78 lid bill in the House and introduced the current use bill in the 1981 legislature. In fact, Farm Bureau lobbyist John Dorrill wrote Joe McCorquodale on May 13, 1981 that without him and Rick Manley, “the land owners would have never been able to enjoy the benefits of classification, the lid bill, and now current use.” (John Dorrill to Joe McCorquodale, May 13, 1981, in Current Use Correspondence, Record Group 543, Accession No. 04-013, Box 22, File 22-2, Farm Bureau Papers, Auburn University Archives). Dorrill kept a list of other key Black Belt allies in the 1981 current use battle who served as local presidents of local Farm Bureau chapters: they included among others R. Nolan Williams of Newton, William D. Edwards, representing Lowndes, Dallas, and Wilcox counties, and J. E. “Jimmy” Warren representing Monroe and other counties. (found in “Current Use bill in House in 1980: H. B. 763, Farm Bureau Papers, Auburn University).

During the years that the legislature passed the lid and current use bills, the president of the Alabama Farm Bureau was James Deford Hays of Huntsville. Hays came from a large plantation family in Haysland, south of Huntsville, was a founding director of Compass Bank, and long time president of the Alabama Farm Bureau Federation. His extensive papers located at Auburn University reflect the racial ethos of the Black Belt more than the progressive racial ideas of Huntsville in the 1960s and 1970s. On May 5, 1975, Hayes wrote U. S. Senator James Allen that Alabama was one of only 5 states still under Federal jurisdiction of the 1965 Civil Rights Act. He called such restriction “by the Federal Government and the U. S. Attorney General” . . .”discriminatory and without justification.” (J.D. Hays to Senator James Allen, May 5, 1975, J. D. Hays Papers, Auburn University Archives). Hays introduced Governor George C. Wallace in October, 1963, when Wallace spoke to the annual Alabama Farm Bureau state convention. He began with a story about the president: “Down here in Alabama, you are not as big a man as you are in Massachusetts.” He had invited segregationist Mississippi U. S. Senator James Eastland, but when the senator cancelled, he asked Wallace to fill in. Wallace began, “I wish we had more Senators like Sen. Eastland, and the country would be a lot better off than it is.” (loud applause from Farm Bureau members). He claimed that football teams could not play games in the city of Philadelphia because of violent racial incidents. The governor then attacked Attorney General “Bobby Kennedy.” He thanked Farm Bureau Federation for its support of his administration, launched an attack on the Birmingham News and other media, then criticized “outside agitators.” He proposed cracking down

on aid-to-families with dependent children and welfare cheats, to another roar of applause. When he joked about Yale University turning down an invitation for him to speak there, he predicted that the people of Connecticut supported him (loud applause). “I am going to speak up there because I am standing up for Alabama” (loud applause). He attacked the use of military bases by the government to bring about social reform, called the Public Accommodations bill unenforceable except in a police state, warning that the Justice Department would tell hotels who could sleep in rooms, hair dressers whose hair they could work on. Next would come land reform for racial compensation, which would amount to confiscation of land. The Federal government wanted to destroy the free enterprise and capitalist system as well as the nation’s liberty and freedom. He claimed that 16 Communists had met in Birmingham churches to foment racial conflict . (CD 2, Track 2, Accession 1980, Box 15, copies of tapes from Farm Bureau Papers, Auburn University Archives, Auburn University). His pledge “to send those Kennedys back to Massachusetts” drew the largest cheers. The Federal government, Wallace told Bureau members, cultivated “left-wingers and bloc voters” and was too busy trying to control state voting registrars to weed out Communists. He concluded, “We are living in sad times” and urged his listeners to support private schools in Tuskegee and Birmingham. He closed by telling them, “I am proud that the Alabama Farm Bureau Federation stands up for freedom... and honors me tonight. . . .” (CD 3, Track 1, Accession 1980, Box 15, copies of tapes from Farm Bureau Papers, Auburn University).

In 1970, Wallace was invited to speak to the Farm Bureau convention just after he defeated Albert Brewer in the gubernatorial race. He urged the Farm Bureau to organize the state politically as thoroughly as possible. He promised to oppose any new taxes except by a vote of the people. He promised to speak out on all national issues and condemned news media for misrepresenting Alabamians as racists. He told members that he spoke for Alabamians across the nation and intended to continue to do so. He drew loudest applause when telling them, “You represent the majority of people in this country.” He claimed to have forced President Nixon to support neighborhood schools, oppose busing, and had forced winning congressmen from both parties in 1970 to endorse his position on schools and taxes: “We will continue to stand up for Alabama , and the Farm Bureau of Alabama has stood up for those principles of the majority of Americans.” After one of Wallace’s speeches, John Dorrill, Jr., who became legislative lobbyist for the Farm Bureau in 1961 and assistant to the president (and in 1978 Executive Director), closed the evening with an enthusiastic endorsement of Governor Wallace: “Now anything else we could say tonight would be an anticlimax,” and promised to do everything the Farm Bureau could to help the governor. (CD 5, Track 2, Accession 1980, Box 15, copies of tapes from Farm Bureau Papers, Auburn University).

Lieutenant Governor Jere Beasley, like Wallace a native of Barbour County in the Black Belt, spoke to the 1971 50th anniversary convention of Alabama Farm Bureau. He told members that the most important issue was the property tax limitation in the special session. He predicted the bill would pass due to the hard work of Senator Givhan, who Beasley had chosen to handle the bill in the senate. (CD 3, Track 2, Accession 1980, Box 15, copies of tapes from Farm Bureau Papers, Auburn University. I listened to all these CDs on December 15, 2009).

Historian Harvey Jackson in his book, *Inside Alabama*, notes the rapid decline from 200,000 farms in 1950 to less than 50,000 by the 1980s. He notes that as farm population declined, the average size of farms dramatically increased, turning family farms into agribusiness. Then he summarizes the transition: “Reacting to this trend, and benefiting from it, the old farm bureau transformed itself into the Alabama Farmers Federation (ALFA), shifted its focus to selling insurance, and became a household name in the state. But ALFA executives still were Bourbons at heart, so with the money they made they hired lobbyists, and with the help of the Alabama Forestry Commission, they did what their Bourbon ancestors had done—kept property taxes low and social services starved.” (p. 277).

In a sense Jackson’s conclusion expresses the nearly perfect symmetry of the nexus of taxes, race, constitutional change, and politics between 1865 and 2000. Reconstruction-era empowerment of blacks resulted in a tripling of property taxes between 1865 and 1875. The violent reaction of large white property owners, especially in the Black Belt, where black voting majorities taxed their property in order to fund schools for all, led directly to the narrow Bourbon victory in the 1874 gubernatorial election and the 1875 Constitution which, for the first time, set caps on property taxes. The biracial Populist uprising of the 1890s again threatened Bourbon hegemony and race relations, resulting in the 1901 Constitution which maintained 1875 limitations on property taxes within the context of a thoroughly racist document. The Bourbon faction within the state Democratic Party fiercely fought reform elements to protect low property taxes and switch any additional revenue proposals to sales taxes or other revenue measures. After 1954, they lived in terror of enfranchised black majorities in Black Belt counties which might gain political control and increase property taxes in order to fund social services, particularly schools, as had happened in the same counties between 1865 and 1875. Federally imposed reapportionment of the legislature during the 1960s, successful suits to force uniform assessment and collection of property taxes during the same decade, added additional danger to the Voting Rights Act. So did election of the first two blacks to the legislature in 1970. All these threats, coming within a decade of each other, created tremendous urgency to limit taxes on property controlled by wealthy whites before insidious courts or politically empowered blacks could raise them in order to provide critical improvements in public education, which whites were rapidly abandoning for private schools. Alabama Farm Bureau’s long association with the racial views of Bourbon land owners in the Black Belt, and their immense political power in the legislature which they realized would soon be diminished, led to the lid and current use bills. Realizing that the racial landscape was rapidly changing by the 1970s, they, like their idol George Wallace, switched from the overt racist rhetoric of the 1960s to the covert racist policies of the 1970s and 1980s. As Joe Fine noted in his deposition for the defense, Wallace by the 1970s “had code words that he used. He was a master of touching the nerves...” Question: “Words like federal judges and federal courts and interventions?” Fine’s answer: “Well, he did all that. But in 1970, when they ran, it was a little more pointed than that. Don’t turn it over to them, don’t let them take it away

from us. . . .” When asked if school integration was a significant issue in the 1970s, Fine responded “yes,” that Alabama’s population was racially polarized, using terms such as “block vote” as code words. The lid and current use bills may not have involved use of the word “race,” which would probably have made passage of the bills more difficult and court action to declare them unconstitutional more likely. Yet, the preceding one hundred year context and especially the preceding 10 years provides convincing evidence to most Alabama historians. Resistance to the threat of black political empowerment and Federal court intrusion, channeled through the most logical political vehicle for such resistance, the Alabama Farm Bureau Federation (which was the logical successor to the Bourbon Black Belt political regime that had ruled Alabama since 1874), basically continued the racial agenda of inequity and inequality that had plagued Alabama since Reconstruction.

Wayne Flynt, March 18, 2010.

Handwritten signature of Wayne J. Flynt in blue ink.Handwritten date March 18, 2010 in blue ink.