

## Reigniting Reform

There are many facets of life that are necessary for advancement and progress, the most important one being change. Without it life would become stagnant and progress would be nothing but a fleeting idea. However, it cannot take place without the will or the means of others. It requires more than one person with an idea or a vision; it requires faith and action from those who believe it to be essential and ultimately beneficial to the greater good. Change comes in many forms and on many levels, reformation being one of them. For some reformation implies political transformation, often one of the hardest forms of change to achieve because it requires the persuasion of a great majority. History has proven that change poses itself as a threat to the traditions and mores of Southern culture, specifically to Alabama's culture. The Reconstruction era following the South's defeat in the Civil War remains the greatest example of change gone awry to Alabamians and Southerners alike, a bad taste yet to be remedied in the sweet South.

It is no wonder then that those with the power to prevent any kind of reformation in Alabama did so in such a way that would prove to be more than a formidable challenge to future reformers. These powerful and influential Bourbon Democrats of Alabama sought to maintain their stronghold through the 1901 constitution and ensured amendment to the document would have to go through as many hoops and hurdles as possible before it could be passed. Many attempts for reformation were made by very prominent figures in Alabama history including Governor Edward O'Neal, who in 1915 proposed a new constitution, Governor Thomas Kilby, who plead for a commission to study the constitution in 1923, or Governor Jim Folsom, who pursued "vigorous efforts" to call a constitutional convention during his term starting in 1947.

All of these concerted efforts came to a screeching halt in the state legislature.<sup>1</sup> It was not until 1973 that the state witnessed sweeping changes to the constitution, and it all began with the will of one man and his ability to connect and lead the people of Alabama towards the future. The Judicial Article of 1973, headed by former Chief Justice Howell Heflin, brought about comprehensive changes to the legal system of Alabama along with Article VI of the 1901 Constitution, and in order to understand how he mobilized the electorate to achieve such groundbreaking legislation, it is important to understand the opposition he faced in doing so, but also the man himself.

The Alabama Constitution of 1901 was a document with complete intent of disfranchising poor whites and blacks of the state population. The state's main political force was the Democratic Party, comprised primarily of wealthy landowners from the Black Belt and wealthy businessmen from Birmingham, Huntsville, and even the Mobile area. These two groups were determined to restrict and restrain any threat posed to their party and their power, namely the Populist Party who threatened to destroy everything they had worked hard to establish. The Populist Party was comprised of "sharecroppers, tenant farmers, and farm laborers," whose physical labor in fields and plantations helped sustain the wealth of many Democrats. Democrats maintained power through limiting the political rights of their opponents and in creating the 1901 constitution they sought to make such limitations permanent.<sup>2</sup> The

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<sup>1</sup> Robert Martin Schaefer, "A Taste of Reform: The Judicial Article." In *A Century of Controversy*, edited by Bailey Thomson, 50-53. Tuscaloosa, AL: The University of Alabama Press, 2002.

<sup>2</sup> Samuel L. Webb, "The Populist Revolt in Alabama: Prelude to Disfranchisement." In *A Century of Controversy*, edited by Bailey Thomson, 1-16. Tuscaloosa, AL: The University of Alabama Press, 2002.

political tension between Democrats and Populists came to a boiling point when the ulterior motives of the Democrats became public. Democrats considered any kind of challenge to their party as “disloyal” and defiant towards the white race.<sup>3</sup> With help from Alabama’s Black Belt, the Bourbon Democrats were able to advance forward to construct a constitution that would seal the dismal fate of African Americans and leave the economically poor sharecroppers, tenant farmers, and farm laborers of the Populist Party out of the electorate for decades to follow.

Through the fraudulent elections of 1901, the Democrats were able to gain a majority vote in favor of a constitutional convention that would generate a document disfranchising its own citizens for over a century. In addition to disfranchisement, the delegation also made it a goal to restrict spending and collecting of taxes indicating that anything that fell under the financial umbrella of the state was to be under the charge of the state legislature to avoid any kind of debt that could incur. According to the *Montgomery Advertiser*, the biggest priority of the delegation was to “fix things, so the Republicans could do little harm if they should return to power.” In limiting taxation, the conservatives of this delegation believed “they cured many of the evils of the carpetbag regime” during the Reconstruction era.<sup>4</sup>

For decades following the passage of the 1901 constitution, amending the constitution was the only method feasible in bringing change to the state constitution, but even that method proved difficult to achieve because every amendment entailed a majority vote in the legislature followed by a state-wide vote, both requirements difficult to attain without great influence and careful planning. However, one man rose to the occasion to overcome these obstacles in lieu of

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<sup>3</sup> *Ibid*, 6.

<sup>4</sup> *Montgomery Advertiser*, July 7th, September 4, 1901.

a waning judicial system in the late 1960s. Howell Heflin set forth to restructure the entire judicial system through one detailed and carefully devised article that would not only improve the inadequacies of the system, but also convince legislators of its value.

Heflin first took note of the shortcomings in the system which had been instated after the passage of the 1901 Constitution when the system was “ranked at the bottom by national observers” in 1970.<sup>5</sup> Much of its ineffectiveness stemmed from the legislature governing the rules of judicial procedure rather than the court system. The Constitution of 1901 instituted circuit level courts, but the remainder of the system was left up to the discretion of the legislature. This resulted in “eighty-five limited jurisdiction trial courts, apart from municipal and probate courts, under twenty-three different names, each with varying jurisdiction and procedure,” according to the Judicial Conference of Alabama in 1973.<sup>6</sup> With each court establishing its own set of rules, even practicing lawyers in the state were confused as to what procedure to follow. In 1966 Heflin constructed the Citizens’ Conference to examine the court system and present reports based on their findings.<sup>7</sup> During the conference they discussed methods in selecting judges and also ways of eliminating politics from the court room in order to preserve justice. Their recommendations attracted the necessary attention from lawyers and politicians alike towards a need for judicial reform.

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<sup>5</sup> John Hayman and Clara Ruth Hayman, *A Judge in the Senate: Howell Heflin’s Career of Politics and Principle*. (Montgomery: NewSouth Books), 152.

<sup>6</sup> Chief Justice Howell T. Heflin, “The Judicial Article Implementation Act,” in the *Alabama Law Review*, 28 (Spring 1977): 215.

<sup>7</sup> Hayman, *Loc. Cit.* p. 155.

Howell Heflin's decision to run for Chief Justice of the Alabama State Supreme Court in 1970 following the legislative dismissal of the Citizens' Conference reports provided him and his supporters the leverage necessary to pursue reform. During the campaign period, *The Huntsville Times* endorsed Heflin as "a man of intelligence and integrity. Steeped in the best traditions of the legal profession, he also is a creative, innovative practitioner of the law . . . with a wide repute as a brilliant attorney."<sup>8</sup> Upon appointment, Heflin began work on reformation of the court system starting with the Supreme Court itself, and working his way down the court hierarchy. His determination and ingenuity, personality traits he developed as a young boy, directed him through a challenging political system and propelled his call for reform all the way into the constitution.

Howell Heflin was born on June 19, 1921 to a very prominent family in Alabama during the twentieth century.<sup>9</sup> Heflin grew up in a household filled with care and love, dictated by the Methodism of the time. In an interview, Heflin discussed the significant impact growing up a preacher's son had on his life. Because his father was a reverend, the family spent vacation time at church camps using the time for prayer and reflection instead of sight-seeing and leisure. A strong sense of morality and ethics was imparted upon Howell at a young age through his father's vocation and strong sense of religion. He recalled having family prayer before breakfast, and at night right before bed, all of these things he continued to do in his adult life. His strong religious background which emphasized the "ideals of honesty, morality, and the

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<sup>8</sup> *The Huntsville Times*, April 2011, May 1970.

<sup>9</sup> Hayman, *Loc. Cit.* p. 24.

Protestant work ethic” built a foundation of character in Heflin that grew and matured with time, an asset that would prove handy in his professional career as a judge and politician.<sup>10</sup>

Howell Heflin became interested in politics at the age of ten when he attended a political rally in Cordele, Georgia for a Senate race between Richard Russell and Congressman Charlie Crisp.<sup>11</sup> This was a significant event in his life because it was the first political event he attended on his own, but also because it sparked his interest in public speaking, a skill he would perfect as his education progressed and use to his full potential in acquiring the necessary support for judicial legislation. Although Heflin lived comfortably, this did not mean he was a stranger to hard, physical labor. During the Great Depression Heflin took on various jobs, one of them during the summertime with Claude King and Son at their general store, where he worked from “6 in the morning until 7 at night, and on Saturdays it was all day long from 6am to midnight,” earning a dollar a day.<sup>12</sup> Growing up during the Great Depression introduced Heflin to the perspective of the government’s responsibility to address social needs, a mindset that would help mold his resolve in pursuing judicial reform.

Heflin graduated from high school in 1938, and attended Birmingham-Southern College, a prestigious school sponsored by the General Conference of the Methodist Episcopal Church in Alabama. According to former Lieutenant Governor Bill Baxley, when Heflin enrolled at the university it was considered the top academic institution in Alabama.<sup>13</sup> Heflin’s early childhood interest in politics led him to run as a senator for the Student Government Association for

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<sup>10</sup> Hayman, *Loc. Cit.* p. 33

<sup>11</sup> Hayman, *Loc. Cit.* p. 42.

<sup>12</sup> Hayman, *Loc. Cit.* p. 51.

<sup>13</sup> Former Lieutenant Governor Bill Baxley, personal interview, April 2011.

multiple years, an experience that would prepare him for what his future held.<sup>14</sup> He honed his public speaking skills through college by participating on the debate team and competing on a national level. Heflin believed his time spent at Birmingham-Southern was the most influential and pivotal point in his life, “The interplay between student and faculty was challenging, and it helped to formulate ideas and philosophical beliefs that stayed with me . . . I became much more progressive in my thinking, race-wise and problems-wise, through my experience at Southern.”<sup>15</sup> After his enlistment with the Marines during World War II, Heflin returned to Alabama to finally pursue his law degree. Thanks to the G.I. Bill his dream became an affordable reality and he was able to obtain his L.L.D degree in March 1948.<sup>16</sup> Heflin recalls his experience at The University of Alabama School of Law as diverse with “a wide variety of professors (who) provided a great atmosphere for returning veterans, most of whom were serious minded.”<sup>17</sup> During his time in law school, Heflin was also hired to teach two political science courses, mainly because of a shortage of staff, but also because his experience in the war afforded him the necessary maturity. This teaching experience coupled with his time in the service and in law school helped mold Heflin’s perspective, his political stance, and his political motivation. After graduating law school, Howell actively pursued the idea of where to build a law practice, always keeping politics on the “backburner” of his mind.

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<sup>14</sup> Hayman, *Loc. Cit.* p. 61.

<sup>15</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman, recorded in *A Judge in the Senate: Howell Heflin’s Career of Politics and Principle.*

<sup>16</sup> Hayman, *Loc. Cit.* p. 92.

<sup>17</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman recorded in *A Judge in the Senate: Howell Heflin’s Career of Politics and Principle..*

By the fall of 1948, Howell set up his practice in Tuscumbia, Alabama, where there were fourteen practicing lawyers in the county. In order to build up his clientele he approached his old hometown of Leighton, Alabama, just ten minutes down the road from Tuscumbia. His hometown welcomed him back and immediately sought after him for legal advice and support. The people of Leighton were thrilled with his accomplishments and even more so about his return to the town to provide his skill and talent for his neighbors. Steadily, Heflin began to build his reputation as a trial lawyer through his fine maneuvering in criminal cases, and his success with the jury in those cases. After just a few years of “settling down” in Tuscumbia, Heflin had created an ideal life, the kind of life he could and would use as political leverage in the years to come. He continued to build his reputation as an exceptional trial lawyer and litigator, and his practice was flourishing. In addition to his successful professional life, he had an attractive wife, a solid church life, and became very involved with community affairs. His network of influential ties was steadily growing, paving the way for his future political goals.

Heflin’s judicial career reached a high point when he was elected as President of the Alabama State Bar Association. In order to become president, Howell had to be elected in as vice president, who essentially was president-elect, and the following year he would be allowed to transition in to the role.<sup>18</sup> Heflin received a great deal of encouragement from family, friends, and colleagues, and these were the very people who organized his campaign and helped him win the office. During his tenure, there was a growing concern among lawyers over the conditions of the judicial system in Alabama. Many felt that the “popularity or unpopularity of a national

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<sup>18</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman recorded in *A Judge in the Senate: Howell Heflin’s Career of Politics and Principle..*

political party should not be the controlling factor in the election of the justices of the Supreme Court of a state. There was a great feeling among the lawyers that the legal profession ought to go through a cleansing process and straighten up and also should try to move forward with judicial reform.”<sup>19</sup> What really brought attention to the discrepancies in the court system was the scandal over “quickie divorces” that had been occurring for years. According to Alabama law, anyone could “submit themselves to the jurisdiction of the court,” meaning citizens from other states could come in and get divorced faster than in courts of their home state where typically the grounds for divorce was limited to abandonment or adultery.<sup>20</sup> The state legislature who had control over the judicial system refused to address the situation because many of them were either involved themselves or profiting from the scheme. Heflin along with the State Bar viewed these practices as unethical and proposed something be done to discontinue such practices. As a group they began to challenge lawyers involved with the “quickie divorces” with ethic cases, which resulted in suspension from the practice of law for two years and quickly dissolved the scandal.<sup>21</sup>

In order to address the other discrepancies in the system, Heflin appointed committees to address specific issues like bar discipline, congestion, judicial salaries, legal internships, rules of civil procedure, and the revision of the Canons of Ethics.<sup>22</sup> One of the biggest decisions made by the state bar was to have a Citizens’ Conference on the judicial and legal systems of the state, which became the focal point of the constitutional reforms yet to come. The conference had

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<sup>19</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman, recorded in *A Judge in the Senate: Howell Heflin’s Career of Politics and Principle*.

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

about 100 participants and its recommendations would later be adopted in the Judicial Article. At the end of Heflin's term as president, the Alabama Bar Association was awarded the prestigious, and coveted Award of Progress from the American Bar Association for having "the most progressive state bar organization in the nation."<sup>23</sup> Another significant result of Heflin's role as president was the establishment of the Alabama Constitutional Commission by the state legislature at the insistence of then Governor Albert Brewer (Alabama Law Review, pg 107).<sup>24</sup> The work of this commission would later be crucial to Heflin's Chief Justiceship.

By 1970, the need for judicial reform was at an all-time high throughout the state of Alabama. During this time period, the Alabama Supreme Court was becoming notorious for dismissing a number of appeals based on minor infractions such as incorrectly numbered transcript pages or margins that were not of the correct width leaving many feeling helpless.<sup>25</sup> The Justice of the Peace system had become a travesty to the state as well because many of the courts were rackets. "Justices would be in trailers, and the highway patrol or the sheriff's people would be out on the highways. They would stop somebody, take them to a moveable trailer housing the JP, and collect the fees and fine right there and maybe split the take among themselves. There was no regulation . . . Their decisions faced no review, and they were subject to no audit."<sup>26</sup> In addition to the lack of ethical behavior, there were also severe delays in the

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<sup>23</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman recorded in *A Judge in the Senate: Howell Heflin's Career of Politics and Principle*.

<sup>24</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 107.

<sup>25</sup> John Hayman and Clara Ruth Hayman, *A Judge in the Senate: Howell Heflin's Career of Politics and Principle*. (Montgomery: NewSouth Books), 153.

<sup>26</sup> *Ibid*.

dockets. At the trial level, there were many instances in which four or five years would pass from the date a case was filed to the date of the actual trial, and overall the entire system was behind in caseloads. Many attempts were made to change the efficiency and effectiveness of the system, but often times these attempts were shut down by the status quo of Alabama politics. The lack of political clout to make a compelling case for reform to the legislature became a clear issue, right around the time of the 1970 election when Howell Heflin was urged by many to run for Alabama Supreme Court Chief Justice.<sup>27</sup>

During the election of 1970, Howell Heflin's sole opponent for Chief Justice was former Alabama Governor John Patterson. According to Thomas Carruthers, an old friend of Heflin's and currently a distinguished partner at Bradley Arant, L.L.P., Heflin was the popular choice for Chief Justice. Carruthers admitted that most lawyers of the bar did not want Patterson to win and felt that judicial reform was a necessary future endeavor.<sup>28</sup> When Carruthers was approached by Douglas Arant, who served as chairman for the First Citizens' Conference, about supporting Heflin for Chief Justice to combat Patterson's campaign, Carruthers agreed and together they assembled support among fellow lawyers of the Alabama Bar. During his term as governor, John Patterson had gained a reputation for resisting federal authority with his unyielding stand on segregation and was considered a favorite by voters. While Heflin was well-acquainted among those in the law community, he remained relatively unknown to voters of

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<sup>27</sup> Nazary, Jeri. "Majority of the Court." Alabama Alumni Magazine. Vol. 74, No.5. August-September 22, 1974.

<sup>28</sup> Thomas Carruthers (Bradley Arant, L.L.M.), personal interview, April 2011.

Alabama. Heflin recognized his need for recognition statewide, and he was more acutely aware of Patterson's political machine from his days as governor.

In contrast to Patterson's reputation in the political sphere, Heflin made a great effort to leave racial issues out of his campaign even though George Wallace's machine who supported Patterson attempted to introduce the matter into the election.<sup>29</sup> According to Carruthers, Heflin knew better than to take a public stance on civil rights because either side he took would produce public backlash, but it was known among those close to him that Heflin abhorred Wallace and his segregationist tendencies.<sup>30</sup> During the campaign efforts, it was also evident that the black electorate had grown significantly since 1965. By 1970 anyone running knew they needed to win the black vote, but many were afraid to be identified with it.<sup>31</sup> Heflin's reputation had been more positive than Patterson's among black communities and political groups, and groups such as the Alabama Democratic Conference were glad to support him almost as a pay back to the insensitive attitude Patterson held towards blacks during his tenure as Attorney General and Governor.<sup>32</sup> Heflin's refusal to conform to political custom allowed him to employ a new strategy to win over the electorate by appealing directly to his voters regardless of the Party's traditional legal establishment.<sup>33</sup>

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<sup>29</sup> John Hayman and Clara Ruth Hayman, *A Judge in the Senate: Howell Heflin's Career of Politics and Principle*. (Montgomery: NewSouth Books), 159.

<sup>30</sup> Thomas Carruthers (Bradley Arrant, L.L.M.), personal interview, April 2011.

<sup>31</sup> Former Lieutenant Governor Bill Baxley, personal interview, April 2011.

<sup>32</sup> Reed, Joe. Chairman of the Alabama Democratic Conference. Statement recorded November 12, 1996.).

<sup>33</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 116.

During the election, many of the local newspapers printed articles in Heflin's favor, portraying him in a positive light with such depictions as a "man of intelligence and integrity. Steeped in the best traditions of the legal profession, he also is a creative, innovative practitioner of the law . . . with a wide repute as a brilliant attorney," as *The Huntsville Times* framed him. Heflin won the Democratic primary in a two to one margin and his victory suggested that support for the "old order" had eroded.<sup>34</sup> As soon as Heflin took the oath of office, he immediately went to work in reforming the system and within a year the first bills made their way to the legislature. Heflin was able to get the Alabama Supreme Court "authority to establish its own rules pertaining to appeals and practice in the state appellate courts, and the Supreme Court was given exclusive power to promulgate rules of procedure, practice, and pleading for trial courts."<sup>35</sup> The passage of this legislation was significant because it meant the legislature could no longer filibuster to kill rule reform and bolstered the authority of the Chief Justice Offices.<sup>36</sup> According to Bill Baxley, there were also bills to create a continuing judicial training and education, a Department of Court Management, and a permanent commission to study the courts.<sup>37</sup>

This first round of legislation was significant because since the enactment of the 1901 Constitution, the centralization of judicial power in the legislature weakened the judiciary's independence and the accountability inherent in a system of checks and balances. In addition, the legislature failed to safeguard the system from local control. The new legislation would

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<sup>34</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 117.

<sup>35</sup> Howell Heflin. "Foreward: The Dawning of a New Era." *Cumberland-Samford Law Review* (1972): 2.

<sup>36</sup> Freyer and Pruitt, *Loc. Cit.* 120.

<sup>37</sup> Former Lieutenant Governor Bill Baxley, personal interview, April 2011.

allow the court to regain autonomy at the top in the Supreme Court and in turn establish centralization of power within the system again down to the grass roots level.<sup>38</sup> In regard to the work accomplished by the court by this time, Heflin stated, “Perhaps the most important change which has taken place in the past two years is the atmosphere of cooperation on the part of judges, lawyers, legislators, and citizens throughout the state to improve the operation of our courts system so that cases may be speedily and justly decided.”<sup>39</sup>

Heflin knew that what had been accomplished in the first two years of his tenure was simply the groundwork for the greater transformation of the system. The greatest task yet remained: rewriting Article VI of the 1901 Constitution. This was no easy feat for many reasons, but mainly because politicians of the time had an exceptional sway over the people of Alabama, convincing them that any change made to the 1901 Constitution was a challenge to what had sufficed so long for the people. The Alabama Constitutional Commission recommended that instead of trying to take on the entire document, it was better and more practical to focus on improving Article VI. Practical in the sense that the greatest concern of the court was establishing change to the judicial system, and in trying to reform the entire document, they left more room for the legislature to deny the most desired and necessary outcome at the time.

The proposal for a new article by the Citizen’s Conference, established by Heflin in 1966 to study Alabama’s courts, posed the following criteria: 1.) A uniform statewide system of

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<sup>38</sup> *Ibid.*

<sup>39</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman recorded in, A Judge in the Senate: .

limited jurisdiction trial courts. 2.) Abolition of the office of the justice of peace. 3.) An independent judicial commission for discipline and removal of judges. 4.) Creation of the Administrative Office of Courts. 5.) Merit selection of judges.<sup>40</sup> The proposal for a uniform system emerged as a result of the chaos and disorderly conduct concerning the scandal of “quickie divorces,” as aforementioned. The next biggest scandal fell in the offices of the Justice of Peace, an office the Commission felt needed to be eliminated. Many were appointed by mayors for “political or nepotistic reasons.”<sup>41</sup> As discussed before, the Justice of the Peace offices were a mockery to the idea of legal services and studies because they did everything and anything but uphold the law.

The legal system also failed to provide an effective way to impeach judges who acted impulsively without any forethought, and a two-tier system was devised to address this deficiency. It created a Judicial Inquiry Commission that would allow citizens to “formally lodge complaints about judges or justices.”<sup>42</sup> If probable cause was found for grounds of impeachment, the complaint would be forwarded the Court of the Judiciary, where a final decision would be made regarding the need for disciplinary action. The creation of the Administrative Courts would allow the chief justice to regulate “financial functions, court workloads, juror selection procedures, and various other administrative matters,” which would

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<sup>40</sup> Robert Martin Schaefer, “A Taste of Reform: The Judicial Article.” In *A Century of Controversy*, edited by Bailey Thomson, 141-151. Tuscaloosa, AL: The University of Alabama Press, 2002.

<sup>41</sup> Robert Martin Schaefer, “A Taste of Reform: The Judicial Article.” In *A Century of Controversy*, edited by Bailey Thomson, 141-151. Tuscaloosa, AL: The University of Alabama Press, 2002.

<sup>42</sup> *Ibid.*

eliminate the severe backlog of cases that was currently plaguing the system.<sup>43</sup> And the final change was the merit selection of judges, a hotly contested issue. Under the merit system, a judicial nominating commission comprised of representatives on behalf of the governor, the chief justice, state bar members, and lay citizens would be formed to recommend qualified judges review the credentials of qualified lawyers.<sup>44</sup> All of these criteria together formed after great deliberation and planning by the Citizen's Conference, in hopes that it would seriously be considered to address the deficiencies of Article VI in the 1901 Constitution.

Opposition to the article began developing in 1973 mostly because Alabama citizens were not accustomed to change, and naturally opposed anything that challenged what was comfortable and familiar. According to Tar and Porter's comments in the *State Supreme Courts in State and Nation*, there was a general resentment in Alabama toward the federal government and an impression formulated that the article would "federalize" the state courts.<sup>45</sup> One group that posed as a key challenge to the article was the League of Municipalities, who was largely concerned with the funds cities received from court costs and fees and they found additional grounds for rejecting the article because they believed the article would be a great cost to the state. In reality however, a national consultant calculated that the actual cost would only account

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<sup>43</sup> James D. Thomas and William H. Stewart, *Alabama Government and Politics* (Lincoln: University of Nebraska Press, 1988), 113.

<sup>44</sup> Robert Martin Schaefer, "A Taste of Reform: The Judicial Article." In *A Century of Controversy*, edited by Bailey Thomson, 141-151. Tuscaloosa, AL: The University of Alabama Press, 2002.

<sup>45</sup> Alan G. Tarr, and Mary Cornelia Aldis Porter. *State Supreme Courts in State and Nation* (New Haven: Yale University Press, 1988).

for one percent of the entire budget of the state.<sup>46</sup> Supporters of George Wallace also posed a significant threat as well because Heflin was certain that Wallace was doing everything he could to undermine the effort partly because Heflin had never supported him and partly because he viewed Heflin as a challenge to his own political ambitions. Wallace's political machine had been working behind the scenes to encourage representatives in the House to vote the bill down because Wallace wanted to preserve the power structure in Montgomery. The Citizens' Conference combated Wallace's political machine by making a number of phone calls to legislators during the final session of the House encouraging them to vote in favor of the bill, knowing that the Wallace's group did not want to make its efforts against the proposal public knowledge.

According to *The Birmingham News* there was a great deal of opposition from non-lawyers who held judicial or "quasi-judicial" positions. The initial group of opposition was comprised of farmers, timber owners, and some business interests as well as Justice of the Peace appointees whose positions would be eliminated upon passage of the Article. *The Birmingham News* writers continued by paraphrasing one of the provisions of the article which stated that in four years following its passage, the article would eliminate any judge who had not passed the bar exam and legally could not practice law in the state.<sup>47</sup> There was much dissent from the Alabama League of Municipalities in response to this provision, but the Legislature was able to maneuver in a few compromises in favor of municipal courts. Municipal courts retained the right to withdraw from the district court jurisdiction at any time and for small municipalities with

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<sup>46</sup> Former Alabama Chief Justice Howell Heflin, interview with John Hayman recorded in, *A Judge in the Senate: Howell Heflin's Career of Politics and Principle*.

<sup>47</sup> *The Birmingham News*, April 1, December 16, 1973.

no resident lawyer, an attorney from another municipality could serve as a city judge.<sup>48</sup> *The Birmingham News* reported more organized opposition from Probate Judge Sammie Daniels of Marengo County. Judge Daniels argued that the amendment would “unnecessarily require city court judges to be lawyers, and that it would put too much power in the hands of the state Supreme Court.” Daniels continued by saying “it was ridiculous to allow non-lawyers in the Legislature to write laws if no one but an attorney could handle traffic cases.”<sup>49</sup> The newspaper also found that these views were shared by Former Governor James E. Folsom who described the measure as a “lawyer-judge” amendment that would make Alabama a “jail gate for us non-lawyers.”<sup>50</sup>

While gaining support to combat the vocal opposition seemed difficult, Heflin made it a reality. His campaign to win approval targeted two specific groups. The first and most important group for legislative adoption was the legal professionals, judges, and lawyers across the state. Many from this group were already mobilized in support of the article because of the support needed to carry out prior legislation granting the state Supreme Court more power. However, regardless of legislative approval, the article still had to be voted upon by the entire citizenry of Alabama. Thomas Carruthers recalled that this was one of the greatest feats Heflin faced in getting the article passed, but Heflin took on the task by carrying out an active speaking campaign along with several other members of the state’s Bench and Bar.<sup>51</sup> Not only did this plan of action allow for a greater number of voters to be reached, it also played on one of

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<sup>48</sup> *Ibid.*

<sup>49</sup> *The Birmingham News*, April 2011, December 18, 1973.

<sup>50</sup> *Ibid.*

<sup>51</sup> Thomas Carruthers (Bradley Arrant, L.L.M.), personal interview, April 2011.

Heflin's greatest strengths, his oratory skills. These speeches were tailored towards legal professionals and lay alike, and through the state's Education Television System he was able to air the speeches.<sup>52</sup> The most visible effort in reaching the citizens was the call for a Second Citizen's Conference on Alabama State Courts which included prominent citizens from every city and town.<sup>53</sup> Those invited were highly influential in their respective communities and key to gaining support in those areas. The conference became the "vehicle through which wide-based support for the judicial article among the citizenry was gained."<sup>54</sup>

Over 200 citizens from all over the state met in Birmingham at the Thomas Jefferson Hotel in April 1973, an event which received media coverage across the state. Thomas Carruthers recalled, "Almost all of the media in the state in full support of the article," and the Associated Press even nationally reported the success of the conference.<sup>55</sup> The conference devised a plan to bring the final decision on the Judicial Article to the people, not to the legislature. They wanted to request the legislature to grant a statewide vote to allow every Alabama citizen the opportunity to indicate their stand on reform because it was considered the most democratic approach and because any opposition from the legislature would be viewed as a way of suppressing the voice of the people. When it came time for the legislature to make a decision on allowing the people of Alabama to vote, deliberation went on until the very last day

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<sup>52</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 124.

<sup>53</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 124.

<sup>54</sup> John Hayman and Clara Ruth Hayman, *A Judge in the Senate: Howell Heflin's Career of Politics and Principle*. (Montgomery: NewSouth Books), 177.

<sup>55</sup> Thomas Carruthers (Bradley Arrant, L.L.M.), personal interview, April 2011.

of the regular session in 1973 when it was decided that on December 18, 1973, Alabama's citizens would vote in a special election to approve or reject amendment 328.<sup>56</sup>

The reform campaign, very similar to Heflin's campaign for Chief Justice, immediately went into action. A speech initiative organized by supporters of the cause presented over one hundred talks at civic clubs around the state. Heflin himself delivered "more than fifty speeches, including television appearances; on one occasion he spoke before one hundred of Alabama's journalists at a 'Media Seminar on Alabama Courts.'"<sup>57</sup> The *Montgomery Advertiser* dubbed the whole effort, "the most significant amendment to face the voters since the 1901 constitution was adopted."<sup>58</sup> Thanks to the grand and sweeping effort of Heflin along with legal organizations, and the media of Alabama, Amendment 328 passed with the support of 62% of Alabama's voters.<sup>59</sup>

Passage of the amendment entailed further work in specifying and ensuring proper enactment of the intended changes. A commission was put together comprised of "prominent citizens from all parts of the state to generate an Implementation Act that would spell out all of the details of the newly-voted Amendment. All aspects of the state and local judicial systems (were) represented: judges, clerks, registers, district attorneys, lawyers, and members of the

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<sup>56</sup> Don F. Wasson, "Vote Culminates Heflin Effort, Judicial Article: It's Goals," *Montgomery Advertiser*, December 9, 1973.

<sup>57</sup> Freyer, Tony A., and Paul M. Pruitt, Jr. "Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975." *Alabama Law Review* 53, no. 1 (2001-2002): 125.

<sup>58</sup> Don F. Wasson, "Vote Culminates Heflin Effort, Judicial Article: It's Goals," *Montgomery Advertiser*, December 9, 1973.

<sup>59</sup> Chief Justice Howell Heflin. "The Judicial Article Implementation Act," *Alabama Law Review* (Spring 1977): 216.

legislature and local governments.”<sup>60</sup> This group of intellectual individuals met consistently for a year to consider and deliberate every detail of the Implementation Act to ensure no loophole was created, and eliminate any grounds for debate. One of the most important and essential changes under the article was the creation of the district court structure.<sup>61</sup> The district court would replace the eighty-five intermediate trial courts of varying jurisdiction, a trademark of the previous system. Its jurisdiction ranged from felony prosecutions to appellate jurisdiction over all civil, criminal, and juvenile cases. The other significant result of the Implementation Act was the four year transition and removal of judges who were no longer qualified to serve on the bench because the Alabama Bar did not recognize them as practicing lawyers in the state.

The ultimate success of Howell Heflin’s initiative and the gumption of his fellow lawyers is immeasurable, but its effects are certainly evident in the judicial system to this day. Howell Heflin’s reputation as a well-respected, honest, and hard-working individual preceded him and was witnessed by all through his uninhibited effort to overcome the stronghold of the status quo in Montgomery and do what was best for the citizens of Alabama. However, his success in reforming the constitution has been unmatched thus far, and the constitution of Alabama still remains in a dire state. This unrivaled effort by Heflin suggests that his strong leadership, will, foresight, and apparent good intent were what mobilized an entire state towards progress, towards the future. More importantly, his efforts pushed the people of Alabama a little further past their impeding fear of change to what is comfortable and what is familiar. It his example of

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<sup>60</sup> State of Alabama. *Report of the Advisory Commission on Judicial Article Implementation*. (Montgomery, AL: 1974).

<sup>61</sup> *Ibid.*

governance and resilience that today's generation must look to for hope and fortitude that change is possible.

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