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Clement Clay Torbert and Alabama Law Reform Alabama Legal Issues Series

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CLEMENT CLAY TORBERT AND ALABAMA LAW REFORM

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During the 1970s, Chief Justice Howell Heflin and State Senator Clement Clay Torbert led a movement to reform Alabama's law and courts. Beginning in the mid-1960s, Heflin mobilized statewide support for reform of an antiquated legal system.[1] Alabamians passed a constitutional amendment transforming the old system in 1973.[2] Inside the legislature, Torbert organized passage of the enabling laws bringing into operation the new legal order. Heflin left the Alabama Supreme Court in 1977.[3] In 1976, Torbert was elected Chief Justice; during his twelve-year tenure, the state's legal system ranked among the nation's best.[4]

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1. JOHN HAYMAN & CLARA RUTH HAYMAN, A JUDGE IN THE SENATE: HOWELL HEFLIN'S CAREER OF POLITICS AND PRINCIPLE 155 (2001).

2. *Id.* at 184.

3. *Id.* at 198.

4. Thomas Hargrove, *Alabama Courts Now Rank Among Best in Nation*, BIRMINGHAM POST-HERALD, Nov. 24, 1978 (on file with author); *Chief Justice Torbert Tells Legislature Alabama Courts Making Marked Progress*, METHODIST CHRISTIAN ADVOC., July 17, 1979 (on file with author) ("Torbert said that the state can be proud that its court system has been ranked as one of the best in the nation during the past year by two separate and independent surveys."); Stan Bailey, *Supreme Court Justices Make System Work Well*, BIRMINGHAM NEWS, May 4, 1980, at 26A (on file with author) ("[T]he court has kept its dockets current since 1973. Alabama's is perhaps the only court in the United

Other works have examined Heflin's central place in the reform movement.[5] This Article focuses on Torbert's less studied role within the Alabama legislature and his implementation of centralized court administration. The Alabama legal profession as a whole, Heflin said, achieved law reform.[6] While Heflin's reform campaigns clearly appealed to wide ranging interests throughout the state, he particularly targeted Alabama lawyers who had graduated from law school after World War II. Like Heflin himself, Torbert was representative of these postwar law school graduates, a group that constituted the largest proportion of lawyers in the state.

Focusing on Torbert's central role reveals how important Alabama lawyers and judges were to attaining law reform. The identification of Torbert as representative of the Alabama legal profession, in turn, addresses the puzzling contradiction between Alabama's impressive law reform triumphs versus the state's tragically conflicted postwar struggle over more equal racial justice. The same legal profession, long identified with recalcitrant defiance of federally enforced civil rights by the late 1960s, supported the law reforms Heflin advocated and Torbert promoted within the state legislature. The first Part considers Torbert's early career as a lawyer and legislator encountering the contradictions in the old system from 1954 to 1965; the second Part examines how these experiences influenced reform legislation supporting Heflin's initiatives during the late 1960s. The third Part examines interconnections between Heflin's and Torbert's reform leadership during the 1970s, culminating in the legislation implementing the constitution's judicial article. The fourth Part considers Chief Justice Torbert's role as a judicial administrator. The Conclusion suggests the legacy of the Alabama legal profession's commitment to law reform for the state and nation.

I. INDIRECT ENCOUNTERS WITH LAW REFORM ISSUES, 1954–1965

Torbert's early law practice reflected the status quo. By the time he graduated from the University of Alabama School of Law in 1954, the legislature had for decades *permitted* the state supreme court to administer and make rules for the judicial system. Nevertheless, the supreme court generally deferred such matters to the legislature.[7] The Alabama legislature

States with that record."); G. ALAN TARR & MARY CORNELIA ALDIS PORTER, STATE SUPREME COURTS IN STATE AND NATION 69–123 (1988).

5. *See* HAYMAN & HAYMAN, *supra* note 1; TARR & PORTER, *supra* note 4, at 69–123; Tony A. Freyer & Paul M. Pruitt, Jr., *Reaction and Reform: Transforming the Judiciary Under Alabama's Constitution, 1901-1975*, 53 ALA. L. REV. 77, 106–32 (2001).

6. *See* HAYMAN & HAYMAN, *supra* note 1, at 107, 110; Freyer & Pruitt, *supra* note 5, at 113–14.

7. Howell T. Heflin, *Rule Making Power*, 34 ALA. LAW. 263, 263 (1973).

had rule-making and administrative power over the courts; yet, the legislature had employed its power chiefly to benefit numerous local interests across the state's sixty-seven counties and the larger cities of Montgomery, Mobile, and Birmingham.[8] As a result, by the 1950s, the state's judicial system embraced numerous ad hoc courts, registers in chancery, and non-law as well as legally trained judges; lawyers and judges also used old common law pleadings and other practices that inhibited reaching the merits of a case.[9] From revered and masterful teachers such as law school Dean Leigh Harrison, Torbert—like generations of successful Alabama legal practitioners—expertly learned to apply the old system in the service of clients.[10] Moreover, shortly after returning home to begin practicing law in Opelika, Alabama, the city commission appointed Torbert to serve in the part-time position of city judge.[11] Torbert thus was immersed in the old order.

Torbert's early law practice in Opelika coincided with propitious developments involving law and court reform. The year after Torbert's law school graduation, the legislature funded a Commission for Judicial Reform charged with addressing problems associated with the old system.[12] For eighteen months, the commission, which included what Heflin later described as "progressive-minded lawyers and judges," examined reform issues and solutions. [13] The identification with "progressives" paralleled the use of the term applied to Governor Jim Folsom's gubernatorial terms, 1947–1951 and 1955–1959.[14] Indeed, as early as 1951 a special joint house–senate committee began working with the Alabama State Bar to pursue law and court reform.[15] A decade earlier (1942), Alabama Bar

8. Interview with Boots Gale, S'holder, Maynard Cooper & Gale PC, in Birmingham, Ala., at 2 (July 6, 2010) (transcript on file with author); Interview with Mike House, former chief of staff for Senator Heflin, in Tuscaloosa, Ala., at 9–10 (Aug. 30, 2010) (transcript on file with author); Freyer & Pruitt, *supra* note 5, at 95–100.

9. Freyer & Pruitt, *supra* note 5, at 95–100; *see also* Interview with Judge Joseph Colquitt, Jere L. Beasley Professor of Law, Univ. of Ala. Sch. of Law, in Tuscaloosa, Ala., at 8–9 (June 18, 2010) (transcript on file with author).

10. For press and legislative references to Torbert's years in law practice in Opelika, see notes 11, 29, and 30, which show correspondence with Dean Harrison's tenure at the University of Alabama School of Law, 1950–1966; Robert H. McKenzie, *Farrah's Future: The First One Hundred Years of the University of Alabama Law School, 1872-1972*, 25 ALA. L. REV. 121, 149 (1972).

11. Dick Parker, *Wheels of Justice Also Turn on Weekends*, DOTHAN EAGLE, Jan. 3, 1982 (on file with author).

12. Alice Merchant, *The Historical Background of the Procedural Reform Movement in Alabama*, 9 ALA. L. REV. 284, 293–94 (1957).

13. Heflin, *supra* note 7, at 264.

14. *See* NEAL R. PEIRCE, THE DEEP SOUTH STATES OF AMERICA: PEOPLE, POLITICS, AND POWER IN THE SEVEN DEEP SOUTH STATES 31, 247–49 (1974); Carl Grafton & Ann Permaloff, *James E. Folsom, 1947-1951, 1955-1959*, *in* ALABAMA GOVERNORS: A POLITICAL HISTORY OF THE STATE 197 (Samuel Webb & Margaret E. Armbrester eds., 2001).

15. Merchant, *supra* note 12, at 293.

Association President Jacob A. Walker had proposed basing reform of Alabama's civil procedure on the 1938 Federal Rules of Civil Procedure.[16] By 1957, about twenty other states had already adopted such an approach.[17] Coincidental with these "progressive" developments, however, the Montgomery Bus Boycott of 1955–1956, led by Martin Luther King, Jr., had coalesced white Alabamians' resistance to federal defense of racial justice.[18] Might opposition extend to matters as prosaic as the Federal Rules of Civil Procedure?

During 1957–1958, Torbert resigned as city judge, won election to the lower house of the legislature, and formed a law partnership with State Senator Yetta Samford.[19] As Torbert began his own legislative campaign and gained insight into the senate from Samford, the legislature began considering the proposals from the Commission for Judicial Reform. In 1957, the *Alabama Law Review* published articles praising the commission's work (that the legislature had funded).[20] Federal judge and former Yale Law School Dean Charles E. Clark exclaimed that the reform proposal's "passage will put Alabama in the forefront of procedural progress in this country."[21] The commission's consultant, University of Texas Law School professor Charles Alan Wright said, the

> rules, as a system, are the best of any jurisdiction in the world. Their adoption in Alabama will not only make justice . . . better, swifter, and less expensive, but . . . henceforth forward-looking jurisdictions everywhere will turn to the Alabama Rules of Civil Procedure as the model to be copied.[22]

In 1957, a large majority in the lower house passed the commission's recommendations targeting deficiencies in the state's procedure and process, adapting many of the Federal Rules.[23]

Torbert's 1958 election to the legislature coincided with the demise of the commission's proposals. The overwhelming support the commission's work received in the house did not persist in the senate. Two senators from

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16. *Id.* at 290.

17. Charles Alan Wright, *Modern Pleading and the Alabama Rules*, 9 ALA. L. REV. 179, 179 (1957).

18. *See* PEIRCE, *supra* note 14, at 235–40.

19. Interview with Clement Clay Torbert, Jr., former chief justice of the Supreme Court of Ala., in Opelika, Ala., at 27 (March 10, 2010) (transcript on file with author).

20. *See* Charles E. Clark, *Alabama's Procedural Reform and the National Movement*, 9 ALA. L. REV. 167 (1957); Wright, *supra* note 17, at 180; Thomas E. Skinner, *Pre-Trial and Discovery Under the Alabama Rules of Civil Procedure*, 9 ALA. L. REV. 202 (1957); Edward D. Morgan, *The Spirit of the New Rules*, 9 ALA. L. REV. 236 (1957); Merchant, *supra* note 12.

21. Clark, *supra* note 20, at 167.

22. Wright, *supra* note 17, at 201.

23. Heflin, *supra* note 7, at 264.

the Black Belt filibustered and otherwise resisted the proposed reform legislation until it died in late 1957.[24] These few opponents condemned the use of the Federal Rules as subversive of states' rights, claiming that somehow it would aide NAACP lawyers in future race cases.[25] In 1956, the U.S. Supreme Court had upheld the lower federal court decision Judge Frank Johnson wrote defending the rights of Martin Luther King and his followers in the Montgomery Bus Boycott.[26] The 1957 filibuster against Alabama adopting the Federal Rules of Civil Procedure in order to reform state law appealed to Alabamians' emotions, even though of course the NAACP pursued its litigation in federal not state court.[27] Accordingly, in the summer of 1958, Birmingham lawyer Henry Upson Sims questioned in the *Alabama Lawyer* what the effect might be "*if* the report is adopted as presented by the Judicial Reform Commission of the 1957 legislature, recommending the adoption of new rules of civil procedure, and substantially abolishing all [old common law] causes of action."[28]

The Law Reform Commission's reforms were dead at the point Torbert entered the Alabama lower house, where he served from 1959 to 1962. He also continued to practice law in Opelika with Yetta Samford. Just thirty years old in 1959, Torbert was an effective legislator; he was selected as the house's "Outstanding Freshman."[29] Torbert applied his considerable skills on finance and tax matters, including county commissioner expenses, spending for public schools—particularly increased teacher salaries paid for by higher automobile license plate fees—and an appropriation to fund toxicology facilities at Auburn University, the growing university town which was about thirty miles from Opelika, the Lee County seat.[30] By 1961, Torbert and Samford were legal counsel for the Housing Authority that received funding from the Opelika City Commission.[31] The city commissioners also provided appropriations for the local court system,

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24. Freyer & Pruitt, *supra* note 5, at 98 & n.152.

25. *Id.* at 98 & n.155; TONY FREYER AND TIMOTHY DIXON, DEMOCRACY AND JUDICIAL INDEPENDENCE: A HISTORY OF THE FEDERAL COURTS OF ALABAMA, 1820-1994, at 181, 184–85, 233–34 (1995); Telephone Interview with Oakley W. Melton, former clerk, Ala. House of Representatives (July 1, 2010); Telephone Interview with Honorable Champ Lyons, Jr., former Justice of the Supreme Court of Ala. (June 30, 2010); Thomas E. Skinner, *Stagnation or Modernization: Alabama's Procedural Crisis*, 32 ALA. LAW. 128, 132–33 (1971).

26. Gayle v. Browder, 142 F. Supp. 707 (M.D.. Ala. 1956), *aff'd*, 352 U.S. 903 (1956).

27. *See id.*

28. Henry Upson Sims, *A Suggested Way to Provide the Background of Substantive Law for the New Forms of Alabama Pleadings*, 19 ALA. LAW. 323, 323 (1958) (emphasis added).

29. *Honor for Rep. Torbert*, OPELIKA DAILY NEWS, Nov. 14, 1959 (on file with author).

30. *See* Bob Ingram, *Rep. Torbert Offers New Property Bill*, June 17, 1959 (on file with author); *Mileage Expense Hike For Officials Asked* (on file with author); Bob Ingram, *Favorable Reports Given 8 Bills By House Group* (on file with author); *3 Bills Would Up Take On Sales, Vehicle Tags*, July 8, 1959, (on file with author).

especially the circuit court in which the Samford and Torbert firm argued many cases employing the old common law pleading. Although court and law reform disappeared in the legislature, Torbert's law practice kept him engaged with what had been its central targets—multiple local courts and common law pleading.

As a young lawyer establishing himself from 1954 to 1965, Torbert had episodic reminders of law reform issues. During his final year in law school, Torbert had been a member of *Alabama Law Review* responsible for Volume 6, in which appeared Dean Harrison's article, *Reform of Alabama Pleading*.[32] A survey of reform issues, Harrison's article affirmed that the Federal Rules of Civil Procedure were unsuited to Alabama. "My personal inclination is to take a conservative approach to the reform of pleading, for I am skeptical of the new [Federal Rules] philosophy of notice pleading,"[33] Harrison concluded. "Although it seems clear to me that changes in our procedure are necessary, I think that the reforms which are needed can be achieved without sacrificing the basic values of our system."[34] This remained Harrison's position as a member of the 1955–1957 law reform commission; it was the view expressed by the Alabama State Bar committees and reported in the volumes of the *Alabama Lawyer* in the mid-1960s.[35] As a city judge and practitioner before the Lee County Circuit Court, Torbert undoubtedly noticed the continuing influence of Dean Harrison's conservative position towards law reform, especially as it was repeated in committee reports at the annual meetings of the Alabama State Bar.

Torbert indirectly encountered the racial issues that had defeated reform. By injecting attenuated racial and federal images into the 1957 senate vote on law and court reform, its opponents had aroused white Alabamians' entrenched resistance to the federal judiciary and the Supreme Court's defense of equal justice. Similarly, legislative malapportionment involved racial struggle in Alabama's Black Belt, so named for its rich, dark soil. Indeed, a major civil rights confrontation pitting federal courts against white authorities arose over racially malapportioned Tuskegee in Macon County, a Black Belt county not far from Opelika.[36] Racial injustice, however, was not involved in legislative malapportionment

32. M. Leigh Harrison, *Reform of Alabama Pleading*, 6 ALA. L. REV. 28 (1953).

33. *Id.* at 35.

34. *Id.*

35. For the State Bar Committees' application of Dean Harrison's incremental approach to reform, which ignored the 1957 Reform proposals and the Federal Rules, *see Report of Committee on Jurisprudence and Law Reform for 1958–59*, 21 ALA. LAW. 11 (1960); J. Ed Thornton, *Report of Committee on Jurisprudence and Law Reform, 1960-61*, 23 ALA. LAW. 47 (1962); J. Edward Thornton, *Sections for the Alabama Bar Association*, 24 ALA. LAW. 335 (1963).

36. *See* Gomillion v. Lightfoot, 364 U.S. 339 (1960).

outside the Black Belt in Lee County's Opelika and Auburn. These two smaller cities had proportionally more representation than much larger population centers such as Birmingham.[37] In 1962, Alabama federal District Judge Frank Johnson ordered the state's legislative reapportionment.[38] As a result of Johnson's decision, Opelika and Auburn no longer each had one representative; a special election was necessary to decide upon a *single* house member for *both* communities.[39] Representing Opelika, Torbert lost the election to the man who had previously represented only Auburn.[40]

Torbert also avoided potential racial antagonism concerning local African-Americans' access to courts. The Black Belt opposition to law reform in 1957 had conjured images of state courts applying indigenous common law pleading in race cases to defeat NAACP Legal Defense Fund lawyers. Admittedly, Martin Luther King, Jr. and fellow African-Americans had long experience with racial discrimination in Southern state courts. African-Americans sought refuge in federal courts because a few judges, such as Frank Johnson, readily asserted federal (constitutional) supremacy over state law and courts.[41] In Opelika, however, the Samford and Torbert firm encountered a local case that confounded the public image that Alabama courts and law inevitably discriminated on the basis of race. Up to the mid-1960s Opelika's City Commission and the Housing Authority pursued an urban renewal plan that local whites and African-Americans endorsed.[42] In part, the plan targeted decayed, substandard homes—nearly all of which had no indoor plumbing—located along

37. Sims v. Frink, 208 F. Supp. 431, 440 (M.D. Ala. 1962) (per curiam) (noting that a citizen's vote "in the 6 smallest senatorial districts would be worth fifteen or more times that of a citizen in the [Birmingham] senatorial district."), *aff'd sub nom.* Reynolds v. Sims, 377 U.S. 533 (1964). Overall, 27.6% of the state's voters controlled the Alabama Senate. Following the principles laid down in *Baker*, the court decided against the state authorities, justifying its intervention in the political process by emphasizing that the "duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long-continued default and total inability of the Legislature to reapportion itself." *Frink*, 208 F. Supp. at 441. Moreover, if the Court's "moderate steps . . . . should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the . . . citizens . . . from further denial of the equal protection of the laws." *Id.* at 442. The Warren Court upheld the "reappointment revolution" in *Reynolds*, 377 U.S. 533. *See also General Population Characteristics: Alabama, in* 1960 CENSUS OF POPULATION–ADVANCE REPORTS 5–6 (1961), *available at* http://www2.census.gov/prod2/decennial/documents/15611114.pdf (showing the 1960 Birmingham urbanized area population of 521,330 versus the Opelika census population of 15,678).

38. FRANK M. JOHNSON, DEFENDING CONSTITUTIONAL RIGHTS 104, 149 (Tony A. Freyer ed., 2001).

39. *See Legislature Post At Stake Tuesday*, LEE COUNTY BULL. (Auburn, Ala.), Aug. 23, 1962, at 1 (on file with author).

40. *See id.*

41. JOHNSON, *supra* note 38, at 26–46, 56–82, 90–118.

42. Harold Monroe Smith, Urban Renewal in Opelika, Alabama: A Case Study 38-57 (1967) (unpublished M.A. thesis, University of Alabama) (on file with the University of Alabama Library System).

Lockhart Street, an African-American neighborhood surrounded by newer, more prosperous white-owned houses and businesses.[43]

A court case involving the Lockhart Street neighborhood favored an African-American woman as property owner.[44] Opelika Housing Authority officials—one of whom was also a leader in the African-American civic organization advocating the interests of neighborhood residents—minimized use of condemnation proceedings.[45] Within a total of sixty-two pieces of Lockhart Street real estate, the owners of forty-six negotiated a settlement with the Housing Authority.[46] Some 47% of the residents accepted relocation in new public housing, while others awaited return to the newly built houses on Lockhart Street.[47] Among the other sixteen pieces of real estate, some were settled after more money was paid; settlement of several others was delayed because minors held the property titles.[48] An unnamed African-American woman refused to sell the remaining pieces of real estate.[49] When the Housing Authority initiated condemnation proceedings against the woman, she filed a demurrer claiming the process discriminated against her for reason of race. The probate judge awarded an additional $4,200 to the price established through condemnation proceedings.[50] The woman then sued in the local circuit court; the all-white "jury awarded her an additional $24,000 for nine pieces of property."[51]

Samford and Torbert was the law firm representing the Housing Authority during the Lockhart Street proceedings.[52] The firm was thus directly involved in litigating a racial discrimination claim by an African-American woman, the outcome of which went against the grain of the racial conflicts and tragedies unfolding in the Black Belt through the mid-1960s. Indeed, the Lockhart Street case coincided with the Selma voting rights struggle (famously associated with Martin Luther King, Jr.'s leadership); it followed years of racially charged confrontations in nearby Macon County. Torbert undoubtedly recognized the low-key results achieved in the Opelika Circuit Court versus the tense outcomes of analogous cases tried in the Black Belt or, for that matter, in urban centers such as Birmingham. In addition, as a participant in the state bar annual

43. *Id.* at 38–40.

44. *Id.* at 56.

45. *See id.* at 49 n.11, 55.

46. *Id.* at 55 ("Of the sixty-two pieces of property in the Lockhart area, by July of 1965, all but sixteen were purchased by negotiating a settlement between the owners and the Housing Authority.").

47. *Id.* at 47.

48. *Id.* at 55.

49. *Id.* at 55–56.

50. *Id.* at 56

51. *Id.*

52. *Id.* at 45.

meetings and a reader of the *Alabama Lawyer,* Torbert could not miss that long-established lawyers linked states' rights' defiance of federal authority to preservation of Alabama's old courts and common law pleading—the system that had prevailed over reform in 1957. Even so, after his 1966 election to the state senate, Torbert became a senate leader in Howell Heflin's campaign to reverse the 1957 defeat by separating reform issues from racial struggle.

II. HEFLIN AND TORBERT REVIVE LAW AND COURT REFORM IN ALABAMA, 1965–1970

As incoming 1965 Alabama State Bar President, Heflin began a law reform campaign that by 1967 resulted in Torbert proposing reform legislation.[53] Heflin's initiatives benefited from short-term political developments and from certain fundamental changes occurring within the Alabama market for legal services during the 1960s. The key political change was that George Wallace's influence depended upon the health of his wife Lurleen. She had been elected governor in 1966 only to pass away from cancer within two years.[54] Succeeding her in office was Lieutenant Governor Albert Brewer, whom the press characterized as a "progressive."[55] Through the late-1960s Wallace's state political involvement was further distracted by his increasing focus upon national political goals. Meanwhile, Senator Torbert, whom the media also described as a "progressive,"[56] actively pursued Brewer's ambitious legislative program, which included law and court reform.[57] In addition, from the mid-1960s on, Heflin's law reform campaign especially appealed to increasing numbers of younger lawyers, like Torbert and Heflin himself, practicing in growing urban areas outside the Black Belt, such as Decatur, Florence, and Opelika.[58] Thus, while Wallace's racially conflicted political

53. *See* HAYMAN & HAYMAN, *supra* note 1, at 140–44, 156.

54. PEIRCE, *supra* note 14, at 253.

55. *See* HAYMAN & HAYMAN, *supra* note 1, at 149.

56. *Brewer Names Progressives Torbert, Snell Legislature Floor Leaders*, BIRMINGHAM NEWS, Dec. 20, 1968 (on file with author).

57. *See* HAYMAN & HAYMAN, *supra* note 1, at 149–51, 157–58; *infra* notes 94–98.

58. *See* interview with Gale, *supra* note 8, at 2 ("I met Judge Heflin when I was a senior at the Law School in '69. He was the president of the law school foundation, and he took a great interest in the Alabama Law School. He was one of the founders of the foundation. He would come down and meet with students, and I met him, and then the next year when I graduated, I was practicing here, is when he ran for the Supreme Court, and I got involved in his campaign. Most of the young lawyers did, and so at that point, he was talking about reform issues. Now, they were probably not as concrete in example at the time, but I remember him saying that one of the big issues was the multiplicity of different courts we had in different counties, and they were all sort of—you found them without any uniformity, and uniformity was one of the things he was really stressing, so that a lawyer in Alabama could go to County X or County Y, and he would find the same system: a District Judge with limited jurisdiction, a Circuit Judge with certain jurisdiction, and no Justices of the Peace. That was one of the

influence seemed to have abated, law reform appeared in a more "progressive" light.

Heflin's "progressive" reform campaign targeted Alabama's changing market for legal services suggested by Torbert's law practice in Opelika, the seat of Lee County. The state's overall population increased 6.7% between 1950 and 1960 (from 3,061,743 to 3,266,740).[59] Within the state, however, the growth was quite uneven, as indicated by Tuskegee and Macon County in the Black Belt versus Opelika and Lee County generally outside it (in the region known as the Wiregrass). Thus, from 1950 to 1960, the census designated Tuskegee as a "rural place" with a population 2,500 or less, [60] while Macon County's population as a whole declined 12.6%.[61] Over the same decade, however, Lee County's overall population rose 10.4%,[62] whereas Opelika, designated as an "urban place," *increased* in population by 27.5%.[63] Similarly, the state's three major "urbanized areas" of Birmingham, Mobile, and Montgomery increased in population, respectively, by 17.1%, 46.6%, and 30.5%.[64]

In addition, University of Alabama Law School Professor John C. Payne in 1966 published statistical findings showing that among the state's practicing lawyers "47% are located in our three largest cities, 29% in cities from 20,000–99,999 and 24% in the small cities [such as Opelika] and [little] towns [like Tuskegee]."[65] Payne also correlated the size of the communities in which Alabama lawyers with twenty years of experience or less practiced law. These lawyers—who included Heflin and Torbert—belonged to a younger generation who had attended law school after World War II. By 1960, in urban cities of 300,000 or more, as well as in the medium-sized cities of 100,000 to 200,000, these younger lawyers comprised just 51% of the total proportion practicing law; similarly, in the little towns of 5,000 or less, the same group comprised 50%.[66] In growing smaller cities such as Opelika—which in 1960 had a 15,678 population—the proportion of younger lawyers was as much as 63%.[67] These figures suggested several points concerning law reform. Since the mid-1950s,

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major issues then. A lot of justices of the peace were paid a percentage of what they collected in fines.").

59. *See General Population Characteristics: Alabama*, *supra* note 37, at 4.

60. *See id.* at 6 (excluding Tuskegee from list of urban places in Alabama); *id.* at 1 (classifying populations with 2,500 or more as urban and all others as rural).

61. *Id.* at 7.

62. *Id.*

63. *Id.* at 6.

64. *Id.* at 5.

65. John C. Payne, *A Statistical Analysis of the Alabama Bar*, 27 ALA. LAW. 32, 43 (1966); *see also General Population Characteristics: Alabama*, *supra* note 37, at 5–7.

66. Payne, *supra* note 65, at 43.

67. *Id.* at 34; *General Population Characteristics: Alabama*, *supra* note 37, at 6.

reformers emphasized the inefficiency of the old pleading system, as well as the needless complexity of multiple overlapping courts. Although in the old system lawyers with twenty years or less experience competed effectively with senior counterparts, the time and cost inefficiencies undoubtedly troubled younger lawyers like Heflin. According to Payne's data, these lawyers constituted bare proportional majorities in the three largest urban centers and larger proportions in the growing medium-to-smaller cities such as Opelika.

Thus, in 1953 Alabama Law School Dean Harrison had suggested that most Alabama lawyers conceded that the old system's worst abuses required correction.[68] Even so, by 1965, state bar president Heflin—as well as other younger lawyers such as Torbert—could appreciate the need to sharply separate law and court reform from any perceived connection with the images of racial conflict and federal intervention that had defeated the 1957 reform proposals. Up to the mid-1960s, senior lawyers repeatedly affirmed in the *Alabama Lawyer* that the old order defended Alabama's racial segregation from the U.S. Supreme Court and NAACP lawyers. In 1964, a prominent senior Alabama lawyer disclaimed against "a Socialistically oriented Supreme Court . . . propelling this country into Socialism irrespective of its wishes."[69] The following year, another senior lawyer explicitly linked Alabama's ethics rules governing lawyer–client privileges to the types of Southern states' rules that were being deployed against U.S. Supreme Court decisions upholding NAACP lawyers' right to practice.[70] This author nonetheless confirmed a Columbia law professor's view that "at least . . . since 1954" the *Alabama Lawyer* had expressed "racist ideology" and "chauvinist tones" targeting a "gallery of foreign devils" which taken together "looks like the work of lawyers in a closed society."[71]

Heflin mobilized the broadest possible support for law reform. He promoted a survey collecting statistical data profiling the "Economics of Law Practice" under the leadership of T. Julian Skinner, Jr. of Birmingham.[72] Thomas E. Skinner had been a leading proponent of the 1957 reforms;[73] his example thus strengthened Heflin's conviction that a

68. *See* Harrison, *supra* note 32, at 29.

69. James A. Simpson, *What I Expect from Judges*, 25 ALA. LAW. 363, 365 (1964).

70. J. Edward Thornton, *Must There Be Another Organization for the Members of the Legal Profession?*, 26 ALA. LAW. 405 (1965).

71. Marvin E. Frankel, *The Alabama Lawyer, 1954–1964 Has the Official Organ Atrophied?* 64 COLUM. L. REV. 1243, 1256 (1964).

72. *Report Of Committee On Economics Of Law Practice*, 26 ALA. LAW. 384 (1965).

73. Thomas E. Skinner, *Stagnation or Modernization: Alabama's Procedural Crisis*, 32 ALA. LAW. 128, 129 (1970) ("Mr. Skinner was chairman of the Alabama Commission for Judicial Reform, 1955–57."); *see* Thomas E. Skinner, *Alabama's Approach to a Modern System of Pleading and*

reform strategy relying solely upon the legislature was prone to defeat. On the other hand, Heflin doubtlessly accepted Professor Payne's statistical profile of the market for legal services throughout the state's various large or medium-to-smaller urban centers and little towns.[74] Payne's data showed Heflin that post-World War II law school graduates, such as Torbert, comprised the largest proportion of practicing lawyers throughout the state.[75] Potentially these lawyers could be receptive to objective criteria and move beyond contentious images identified with racial conflict and federal intervention. At the same time, Heflin undoubtedly knew that even influential, pro-segregationist lawyers had expressly advocated achieving incremental reform by allocating rule-making authority to the Chief Justice of the Alabama Supreme Court.[76] Although the long-time chief justice (J. Ed Livingston) had long defied the U.S. Supreme Court, Heflin could hope that the 1970 judicial elections would weaken the pro-segregationists' grip on the state's highest court.

From 1965 to 1970, Heflin's strategy coalesced around proposals popularized in a statewide judicial conference, which drew Torbert into the reform campaign. As one historian has shown, during the years prior to Heflin becoming its president, the State Bar wrestled with controversies concerning so-called "quickie divorces" and rising numbers of ethics violations resulting in lawyers being disbarred.[77] Most directly, these abuses agitated and exposed the wider problems and inefficiencies rooted in the enduring autonomy the legislature had granted the diverse local courts, as well as the courts' and bar's facility to manipulate the old legal rules. As national businesses increasingly located within the state's growing large, medium, and small urban centers, the state's market for legal services fostered renewed demand for reform that Heflin promoted as state bar president and in the judicial conference during 1965–1966.[78] Following Mrs. Wallace's untimely passing, Governor Brewer advocated such reforms from 1968 to 1971;[79] Torbert and others, in turn, sponsored legislation supporting the same program.[80] Even so, following his 1966

Practice, 20 F.R.D. 119 (1957); Thomas E. Skinner, *Pre-Trial and Discovery Under the Alabama Rules of Civil Procedure*, 9 ALA. L. REV. 202 (1957).

74. Payne, *supra* note 65.

75. *Id.* at 34.

76. *See* Freyer & Pruitt, *supra* note 5, at 116.

77. *Id.* at 94.

78. *Id.* at 118–19 ("Unquestionably, the economic nationalization Alabama was undergoing facilitated a new market for legal services that encouraged growing numbers of the state's lawyers and judges to favor change.").

79. HAYMAN & HAYMAN, *supra* note 1, at 157–58.

80. *Id.* at 156 ("'Bo' Torbert, later to be chief justice, was in the state senate then and was supportive, as was Lieutenant Governor Albert Brewer. They introduced a package of bills that had the endorsement of the Citizens' Conference and the state bar association.").

election to the senate, Torbert sponsored various judicial measures for Lee County that enabled him to aid Heflin's reform campaign.[81]

As he had done in the house, Torbert established his leadership in the senate. In the special and regular sessions of 1967, Torbert's six committee appointments included judiciary and finance-taxation.[82] Coincidentally, these committees were involved in law and court reforms Heflin and others proposed in the statewide judicial conference.[83] Most conspicuously, the conference proposals advocated replacing the old, multiple local courts with a modernized judicial system.[84] Such fundamental restructuring exacerbated the issue as to whether counties and the state should fund the courts together or lodge funding solely in the latter. In addition, court restructuring raised issues of how to bring judges into Alabama's public employee retirement system. Under the old court system, retired judges became eligible for ad hoc supernumerary appointments, which depended on uncertain availability throughout the state.[85] Including judges within the state retirement system eliminated the uncertainty but posed questions of cost. Funding matters also arose because the state would take over construction of courthouses, as well as salaries and retirement of clerk and clerical personnel.[86] In addition, the judicial conference proposed a new system of judicial administration under the chief justice.[87]

During the 1967 special and regular legislative sessions, Torbert's senate committee work involved court reform issues. Most significantly he co-sponsored a proposal to amend the state's constitution in order to establish "a judicial department of the State of Alabama."[88] Torbert also sponsored a bill "[t]o provide for and regulate an additional expense allowance for the circuit judges of the Fifth Judicial Circuit payable out of the state treasury."[89] He sponsored another proposal to fund "expense allowances" for circuit judges "of all judicial circuits in [the] State

81. S. 17, 1967 Leg., Reg. Sess., 1967 Ala. Acts 7 (proposing funding to build new judiciary building); S. 40, 1967 Leg., Reg. Sess., 1967 Ala. Acts 12 (proposing to fix the compensation of the clerk of the court of appeals and provide appropriations); S. 41, 1967 Leg., Reg. Sess., 1967 Ala. Acts 12 (proposing to make appropriations for the expenses of the Court of Appeals); S. 573, 1967 Leg., Reg. Sess., 1967 Ala. Acts 909 (proposing the provision of expenses for judges and the deputy district attorney for the court of common pleas allowances and would provide changes for the juvenile divisions of said court).

82. *See Representatives from Lee Draw Key Assignments* (on file with author); *Our Busy Senator*, June 1, 1967 (on file with author).

83. Howell T. Heflin, *Scope and Function of New Committees*, 26 ALA. LAW. 359 (1965).

84. *See* Freyer & Pruitt, *supra* note 5, at 107.

85. HAYMAN & HAYMAN, *supra* note 1, at 161, 170.

86. *Id.* at 175.

87. Freyer & Pruitt, *supra* note 5, at 118–24. *See also* HAYMAN & HAYMAN, *supra* note 1, at 155–58, 162–67, 172–78.

88. S. 394, 1967 Leg., Reg. Sess., 1967 Ala. Acts 392.

89. S. 45, 1967 Leg., Extraordinary Sess., 1967 Ala. Acts 34.

composed of five (5) counties, with not less than three (3) circuit judges."[90] He proposed other legislation appropriating funds for the court of appeals and that court's clerk, as well as such funds for other courts and the deputy district attorney for the court of common pleas.[91] He also sought funding for a new Lee County court house.[92] At the same time, he proposed higher state taxes on cigarettes, funding that, in part, *could* support the judicial expenditures.[93] In principle, Torbert's efforts to restructure the state's antiquated court system—including those benefiting his senate district—were consistent with proposals emerging from the judicial conference.

Once Brewer became governor in May 1968, Torbert's influence increased as the administration's senate floor leader. In its opening session, Brewer commended the senate for "convening in a constructive spirit—not to tear down but to build up—not to argue negatively, but to act positively—not to look for problems but to find solutions."[94] Torbert led in Brewer's ambitious legislative agenda, which included "[c]onstitutional revision" pertaining to the judicial article.[95] Torbert thus sponsored or co-sponsored bills that addressed court reform, such as one "relating to supernumerary justices of the supreme court so as to provide further conditions for mandatory and elective status and to prescribe the duties, powers and salaries of such justices."[96] A similar bill sought to amend "an act providing for appointment and designation of supernumerary circuit judges."[97] Both bills anticipated creation of a modernized judicial system. Another bill Torbert sponsored would create an indigent defense fund for indigent defendants in the Fifth Judicial Circuit,[98] which was consistent with U.S. Supreme Court and Alabama federal court decisions.[99] In addition, Torbert supported Brewer's more moderate stance towards racial

90. S. 282, 1967 Leg., Reg. Sess., 1967 Ala. Acts 193.

91. S. 40, 1967 Leg., Reg. Sess., 1967 Ala. Acts 12; S. 573, 1967 Leg., Reg. Sess., 1967 Ala. Acts 909.

92. S. 17, 1967 Leg., Reg. Sess., 1967 Ala. Acts 7; S. 33, 1967 Leg., Reg. Sess., 1967 Ala. Acts 33.

93. S. 415, 1967 Leg., Reg. Sess., 1967 Ala. Acts 414.

94. Albert P. Brewer, Governor, Ala., Message to Members of the Legislature of the State of Alabama (May 6, 1969), *reprinted in* 1969 Ala. Acts 4.

95. Albert P. Brewer, Governor, Ala., Message to Members of the Legislature of the State of Alabama (May 20, 1969), *reprinted in* 1969 Ala. Acts 45.

96. S. 60, 1969 Leg., Reg. Sess., 1969 Ala. Acts 15.

97. S. 320, 1969 Leg., Reg. Sess., 1969 Ala. Acts 110.

98. S. 65, 1969 Leg., Reg. Sess., 1969 Ala. Acts 15.

99. Gideon v. Wainwright, 372 U.S. 335 (1963); Washington v. Holman, 245 F. Supp. 116 (M.D. Ala. 1965), *modified*, 364 F.2d 618 (5th Cir. 1966).

issues, such as were involved in the first election of blacks to local offices since Reconstruction—as mandated by federal courts.[100]

In 1970, Brewer's constructive record won him first place among the voters over Wallace and others in a close Democratic Party primary election.[101] Stung by defeat, Wallace resorted to blatant racist demagoguery to beat Brewer in the runoff primary.[102] Wallace, however, did not involve law and court reform in the pronounced racial tendentiousness. Indeed, in 1970, Heflin won election as chief justice of the Alabama Supreme Court espousing law and court reform[103]—essentially the same program he had advocated since 1965, and one that Torbert had underpinned with legislative initiatives since 1969. Thus, racial conflict and federal defiance agitated state politics in 1970 at least as much has it had when court and law reform was defeated in 1957. Yet, during the intervening years, Heflin succeeded in divesting reform from its racial and federal implications. Torbert and his senate colleagues did the same, drafting legislation that paved the way for a constitutional amendment that would modernize Alabama's court and legal system.[104] Torbert left the senate in 1970;[105] at that point, Chief Justice Heflin began a new phase of law and court reform promoting the constitutional amendment to change the judicial article.[106] In 1974, Torbert returned to the senate to lead implementation of the new system.[107]

III. INSTITUTING LAW AND COURT REFORM, 1970–1976

The reform legislation Torbert earlier had sponsored entered a new phase under Chief Justice Heflin. Following an agreement to accept an outcome involving the reapportionment of his senate district, Torbert did not run for re-election in 1970.[108] Returning to law practice in Opelika, he

100. Interview with Gale, *supra* note 8, at 6–8; Interview with House, *supra* note 8, at 14-15. *See, e.g.*, S. 1, 1970 Leg., Extraordinary Sess., 1970 Ala. Acts 8 (Torbert co-sponsored a bill to "prevent discrimination on account of race, color, creed or national origin in connection with the education of the children of the State of Alabama."); S. 1058, 1975 Leg., Reg. Sess., 1975 Ala. Acts 1313 (Torbert co-sponsored a bill to allow the governor to increase the reward to $10,000 for information leading to an arrest in cases "involving the murder, attempted murder, assassination or attempted assassination of any member of the judiciary, state or other public official, or of any law enforcement officer . . . .").

101. PEIRCE, *supra* note 14, at 255.

102. *Id.*

103. *See* HAYMAN & HAYMAN, *supra* note 1, at 159–62; Freyer & Pruitt, *supra* note 5, at 115–16.

104. *See* S. 394, 1967 Leg., Reg. Sess., 1967 Ala. Acts 392.

105. Don F. Wasson, *Turner to Leave Senate; Torbert Quits State Race*, MONTGOMERY ADVERTISER, Feb. 6, 1970 (on file with author).

106. Freyer & Pruitt, *supra* note 5, at 119–22

107. *Torbert, Little, Higginbotham Win*, OPELIKA-AUBURN NEWS, May 8, 1974, at A1 (on file with author).

108. Wasson, *supra* note 105.

supported Heflin's subsequent mobilization of statewide support for the constitutional amendment instituting a new judicial article.[109] Torbert undoubtedly was gratified when the legislation he had initiated mandating the judicial article passed on the last day of legislative session in 1973.[110] Somewhat reluctantly, Governor Wallace (who had encouraged his legislative allies to oppose reform by way of amendments and procedural roadblocks) signed the legislation into law.[111] With the laws in place, Heflin as chief justice led a new campaign informing Alabama's legal profession and the general public alike about the need to enact (through statewide vote) Constitutional Amendment 328; in a vote taken in December 1973, the new judicial article was ratified, winning 62% of the popular vote.[112] Heflin's successful reform movement contrasted markedly with national publicity identifying federal judge Frank Johnson as Alabama's "real governor."[113] Wallace's and other state officials' defiance resulted in the federal court overseeing public schools, prisons, law enforcement, and mental institutions. By 1976, the contradiction between Alabama's defiant images and meritorious law and court reforms highlighted Heflin and Torbert's triumphs.

In a July 1974 Southern Oral History interview, Heflin described the enacted reforms at the point Torbert returned to the senate. Regarding the Amendment passed in February 1973, he said, "[W]e have a new judicial article. I reckon for Alabama it's the first constitutional revision of a major segment of the state constitution since 1901."[114] Alluding to legislation initiated by Torbert over the late 1960s, Heflin praised "a pretty good legislative package" enacted during the intervening years, including a department of court management and rule-making power for the state supreme court.[115] Potential adoption of the Federal Rules, of course, had

109. *See Bo Torbert To Seek Chief Justice Office*, OPELIKA-AUBURN NEWS, Feb. 25, 1976, at A1 (on file with author); *Strong Leadership for Alabama's Judicial System*, THE HUNTSVILLE NEWS, April 5, 1976 (on file with author); *For Torbert, Beatty*, GRAPHIC, (on file with author); *Torbert for Chief Justice*, THE BIRMINGHAM NEWS, April 25, 1976 (on file with author).

111. Freyer & Pruitt, *supra* note 5, at 123–25, 130; See *infra* notes 109–10. For an account of the types of opposition mounted by Wallace's legislative supporters, see HAYMAN & HAYMAN, *supra* note 1, at 180 ("Opponents put up fifteen amendments, and nine were adopted. . . . The Senate then had to approve the amendments the House passed. On the final House vote, the article was approved 77-22. Then it had to be signed by the speaker of the house and the lieutenant governor before midnight. It was somewhere in the neighborhood of ten o'clock [PM] by the time they finally adopted it, and we were running against time.").

112. Freyer & Pruitt, *supra* note 5, at 122–25.

113. Steven Brill, *The Real Governor of Alabama*, NEW YORK MAGAZINE, April 26, 1976, at 37; Steven Brill, *Federal Judge Frank M. Johnson, Interpreter on the Front Line*, TIME, May 12, 1968, at 72.

114. Interview by Jack Bass and Walter Devries with Howell Heflin, Chief Justice, Ala. Supreme Court, at 2 (July 9, 1974), *available at* http://docsouth.unc.edu/sohp/A-0010/A-0010.html.

115. *Id.*

formerly engendered the successful opposition among senior, pro-segregationist Alabama lawyers during 1957–1958.[116] Under Heflin, however, the modified Federal Rules were adopted because even those older opposition lawyers had come to support the grant of rule-making authority to the chief justice.[117] Heflin's 1970 election to that office thus enabled him to enact the Federal Rules, whereas during 1957–1958 they were defeated because reformers had relied upon the legislature where a filibuster prevailed. Heflin's interview specified other reforms. "And we're in the process of adopting the appellate [court] rules now," he remarked in July 1974.[118] Concerning the time costs resulting from the docket backlogs that plagued old local multiple courts, he added:

> We started an effort to get the appellate courts current and they are now all current. We cleared the docket of the Supreme Court . . . [by the] new term year in October of '72. And all of the appellate courts were cleared when we entered a new term court in '73. The Alabama Court of Criminal Appeals and Alabama Court of Civil Appeals.[119]

A fundamental blow against the legally untrained, localized "cash register" justice system was ending the constitutionally authorized justice of the peace. Heflin observed, "We [also won] the constitutional election in January of '72," ratifying Amendment 323, which abolished that office.[120] "And," said Heflin, "we created at that time a judicial commission[,]"[121] which provided Alabama courts and judges up-to-date information that kept the state courts' operation consistent with the most advanced nationwide methods. The state-funded constitutional commission that

116. *See Honor for Rep. Torbert, supra* note 29.

117. *See supra* notes 20, 25, 32–35, 58 (tracing fate of 1957 reforms and Alabama lawyers' response); Skinner, *supra* note 73, at 132–33 ("These rules represented an adaptation of the Alabama practice to the Federal Rules of Civil Procedure. The Bill embodying the proposed Alabama Rules of Civil Procedure passed the House by a substantial majority, and the majority of the Senate were committed to its passage, but their efforts were aborted by the filibustering tactics of two Senators. The cause of justice smouldered under the ashes of its defeat from 1957 to July, 1970, when it erupted at the annual meeting of the State Bar Association. A resolution was unanimously adopted recommending to the Legislature 'That legislation be passed to the end that the rule making power for the Rules of procedure in Alabama Courts be invested in the Supreme Court of Alabama.'") (quoting *Board of Commissioners Meeting*, 31 ALA. LAW. 456, 457 (1970)). Since the vote in July 1970 was unanimous, including senior and younger lawyers, compared to the more divided bar during the 1957 filibuster, a reasonable inference is that senior lawyers gradually changed to support change.

118. Interview with Heflin, *supra* note 114, at 2.

119. *Id.*

120. *Id*; ALA. CONST. amend. 323.

121. Interview with Heflin, *supra* note 114, at 2.

drafted the judicial article, however, had no further success revising the 1901 constitution as a whole.[122]

Since most of the initial reform measures Torbert sponsored were enacted the year after he departed the legislature, it was Heflin who addressed Wallace's involvement. Wallace's failure to denounce law reform issues in his racially charged campaign against Brewer left the field clear for Heflin's successful promotion of those issues in his bid to win election as chief justice. Indeed, Heflin told the 1974 interviewers that while race was no longer "an open issue," it was "still in many of the people's minds and their thoughts . . . . I don't think it's gone. I think it's still an issue with a lot of people."[123] Nevertheless, concerning his victory on the platform of court reform, Heflin said, "Mine wasn't an issue race."[124] He meant that, compared to 1957, court reform no longer possessed a racial stigma that politicians such as Wallace could profitably exploit. Wallace undoubtedly was attentive to the law reform issues. Indeed, he signed the legislative package into law, but he stipulated his main condition for doing so was that Amendment 328 would preserve popular election of Alabama's judges.[125] Torbert's original proposal to amend the constitution did not alter the existing system of judicial election.[126] The constitutional commission was inclined to disagree, but Wallace insisted upon preserving that element of the old system.

In the 1974, interview Heflin suggested why race had ceased to entrap law and court reform in Alabama. He noted that federal Judge Frank Johnson's decisions enforcing the Civil Rights Act of 1964 and the Voting Rights Act of 1965 had enfranchised African-American voters throughout the state.[127] Typically, in the smaller but growing cities from Opelika to Huntsville, the enfranchisement had occurred without the violence that had plagued the state's largest cities and the Black Belt. As Heflin's Chief of Staff W. Michael House later noted, federally enforced voting rights almost ensured African-Americans' election to local offices (such as the county commissions) and the legislature for the first time since Reconstruction.[128] These local African-American officials' employed their influence to end the traditional abuse local circuit courts and probate judges had directed against blacks. Thus, the positive treatment of the Opelika African-American woman as property owner in the 1965 Lockhart Street land case was prophetic of the more equal justice African-Americans could win in

122. *Id.* at 3–4.
123. *Id.* at 10.
124. *Id.* at 15.
125. Freyer & Pruitt, *supra* note 5, at 131.
126. S. 394, 1967 Reg. Sess., 1967 Ala. Acts 392.
127. Interview with Heflin, *supra* note 114, at 25.
128. Interview with House *supra* note 8, at 14–15.

local courts. Accordingly, by the 1970s, House observed that African-American leaders worked with Heflin and Torbert to extend that same local justice through law and court reform.[129]

By the time of Torbert's 1974 senate election, a statewide organization already existed promoting law and court reform.[130] Indeed, Torbert had been involved with the state bar in mobilizing established lawyers across Alabama in support of replacing the multiple local courts and common law pleading with the centralized system under the chief justice and the Administrative Office of Courts.[131] Recent law school graduates belonging to the junior bar, such as Michael House and Fournier "Boots" Gale, contributed their growing numbers and energy.[132] Following Chief Justice Heflin's usage of the term, both senior and junior bar members described their reform efforts as "progressive," suggesting a middle way between the defiant conservatism identified with Wallace and the liberalism that white Alabamians had during recent decades consistently rejected.[133] Also, most circuit judges not only supported the reform movement, which brought with it their inclusion in the state retirement system, but younger circuit judges such as Joseph Colquitt participated in a speaker's bureau which presented the reforms to business and civic groups. Colquitt later recalled being impressed that these groups' members were not only keenly interested but also deeply informed as a result of the public organization Heflin had evolved since the 1966 judicial conference.[134]

In the end, Torbert emerged as the legislative leader best equipped to implement the cumulative phase of reform.[135] Since 1971, Wallace had signed law reform legislation, including constitutional provisions requiring implementation of the new judicial article. He had also, as noted above, quietly given the go-ahead to opponents employing procedural maneuvers and technical amendments seeking to cripple or reverse each reform.[136] In order to overcome such resistance peacefully, the Heflin forces turned to Senator Torbert. They did so because, as chief legislative liaison Mike House later said, the Opelika senator was an experienced and persuasive legislator, a lawyer capable of navigating complex documents, and personally well liked. During years in the legislature, Torbert had earned the personal trust of fellow members, particularly in sponsoring reform

129. *Id.*

130. *See* Freyer & Pruitt, *supra* note 5, at 119–132.

131. HAYMAN & HAYMAN, *supra* note 1, at 180.

132. Interview with Gale, *supra* note 8, at 2–6.

133. Interview with House, *supra* note 8, at 3, 17–18, 20 (note House's use of the term "pragmatic progressive" and Tony Freyer's use of the expression "a middle way").

134. Interview with Colquitt, *supra* note 9, at 2.

135. Interview with House, *supra* note 8, at 5, 7; HAYMAN & HAYMAN, *supra* note 1, at 180, 188, 189.

136. *See* HAYMAN & HAYMAN, *supra* note 1, at 181.

bills during the late 1960s. Moreover, Torbert and Yetta Samford's Opelika law practice represented or was peripherally concerned with "progressive" groups, such as African-Americans, parent teacher organizations, business and civic groups, labor unions, farm organizations, and civic or professional women's organizations. Torbert's senate leadership embraced these same "progressive" groups' support for implementing law and court reform.[137]

Heflin described implementation as providing the basic resources for the reforms mandated by the judicial article.[138] During 1975 in particular, the legislature reviewed, amended, and voted on implementation legislation that enacted all the extensive proposals which were enacted from 1971 to 1973.[139] The opposition still maneuvered to derail the process, but Heflin and his allies had already assembled their grassroots lobbying coalition, an alliance that swept the opposition before it.[140]

Amidst such technicalities, Torbert skillfully maneuvered. During the first five months of 1975, in addition to regular session, there were four special sessions.[141] Torbert repeatedly gained cosponsors for bills implementing the mandates of the constitution's judicial article.[142] A new criminal code, for example, was of special concern to African-Americans, who since the nineteenth century identified the old code with arbitrariness, discrimination, and tragedy. Emblematic of Torbert's effective leadership, among his cosponsors for the criminal code was U. W. Clemon, the first African-American elected to the state senate since Reconstruction.[143] These allies knew that the new criminal code would fundamentally undercut the local autonomy Alabama judges had possessed under the 1901 constitution. In return for weakened autonomy, Torbert and his colleagues provided incentives establishing statewide uniformity. These new regulations

137. *Id.* at 155–56. See *supra* Part I for Torbert and Samford's experience of issues of importance to African-Americans. See Keith B. Norman, *Executive Director's Report: Models of Professionalism*, 69 ALA. LAW. 167, 168 (2008) for Torbert and Samford as exemplars of professionalism. See Opelika Royal Crown Bottling Co. v. Goldberg, 299 F.2d 37 (1962) for Samford and Torbert's involvement in a complex minimum wage case.

138. *See infra* notes 144, 147–48 and accompanying text.

139. *See also* S.J. Res. 124, 1976 Leg., Reg. Sess., 1976 Ala. Acts 1002; S. 406, 1976 Leg., Reg. Sess., 1976 Ala. Acts 186; S. 47, 1976 Leg., Reg. Sess., 1976 Ala. Acts 26; S. 18, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28; S. 17, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28; S. 15, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28; S. 95, 1975 Leg., 3d Extraordinary Sess., 1975 Ala. Acts 73; S. 13, 1975 Leg., 2d Extraordinary Sess., 1975 Ala. Acts 12; S. 16, 1975 Leg., 1st Extraordinary Sess., 1975 Ala. Acts 38–44.

140. HAYMAN & HAYMAN, *supra* note 1, at 177–78, 188, and 189 (describing the 1974 creation of an advisory committee on the judicial article, the Citizens' Conferences convened by Heflin as early as 1973, and the support given by labor, the Farm Bureau, the PTA, and the Jaycees).

141. *See, e.g.*, 1975 Leg., 4th Extraordinary Sess.

142. *See, e.g.*, S. 690, 1975 Leg., Reg. Sess., 1975 Ala. Acts 389; S. 699, 1975 Leg., Reg. Sess., 1975 Ala. Acts 393.

143. S. 690, 1975 Leg., Reg. Sess., 1975 Ala. Acts 389.

(especially those that brought judges within the state retirement system) epitomized inducements promoting change.[144] During the early 1970s, there were eighty-seven circuit judges spread over thirty-seven circuits.[145] In addition, there were fourteen supernumerary circuit judges. Despite resistance, many circuit judges favored the new system.[146]

During the 1975 and 1976 sessions, the senate continued debating the many amendments proposed in order to implement the judicial article. As Heflin noted above, the procedures governing passage of each amendment opened the entire implementation process to resistance and possible defeat from the covert opposition identified with Wallace supporters.[147] Even so, in a special 1975 session, Torbert alone sponsored a proposal that would fund an independent committee for the purpose of revising Alabama's whole law code and include the significant revisions of the Criminal Code.[148] Torbert built support for this important project as he cosponsored specific law and court reform provisions that applied within his own and colleagues' counties.[149] The process continued into the regular 1976 session.[150] Finally, the amendment process concentrated around the debates over enacting a new Code of Alabama; with its passage in the regular 1976 session, the judicial article's implementation seemed complete.[151] Funding issues, however, remained for a later day. Meanwhile, Torbert won election

144. S. 1164, 1975 Leg., Reg. Sess., 1975 Ala. Acts 1704; S. 15, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28.

145. BUREAU OF PUB. ADMIN., UNIV. OF ALA., ALABAMA GOVERNMENT MANUAL 349–50 (Coleman B. Ransone, Jr. ed., 1977).

146. Interview with Colquitt, *supra* note 9, at 2–3 ("And, there were citizens groups around the state pushing for court reform. It was the topic of the day. At the time, I was 30 years old, so, I was one of the young judges in the state. Most judges were much older than I was. My undergraduate degree was in commerce, so I had taken courses in management, production and subjects like that. Thus, I looked at the courts a mite differently than maybe some of my colleagues. I was not the only one in the state that looked at the courts—to some extent at least—like a business. We had a certain product, mainly justice—timely justice—to provide, and we had a system that really did not offer that. Most cases were quite old; things moved slowly. So, there were new judges around the state . . . who were young judges, and they were very interested in moving the system forward. Chief Justice Heflin had enlisted some of those people, probably before he had got around to me.").

147. *See* HAYMAN & HAYMAN, *supra* note 1, at 180.

148. S. 106, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 76.

149. *See* S. 15, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28 ("To provide for supplementing the salaries or compensation paid to retired or supernumerary Circuit Judges in the 37th Judicial Circuit."); S. 17, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28 (proposing to "empower recorders courts" to suspend sentences or grant probation in the largest cities in counties with populations from 60,000 to 65,000); S. 18, 1975 Leg., 4th Extraordinary Sess., 1975 Ala. Acts 28 (proposing to allow the 37th circuit to hold court anywhere within the county).

150. S. 47, 1976 Leg., Reg. Sess., 1976 Ala. Acts 26 (stating amendment purpose "[t]o provide an entirely new criminal code for the State of Alabama"); S. 406, 1976 Leg., Reg. Sess., 1976 Ala. Acts 186 (proposing the raising of the salary of the deputy district attorney for the 26th judicial circuit); S.J. Res. 124, 1976 Leg., Reg. Sess., 1976 Ala. Acts 1002.

151. Amendment to S.J. Res. 124, 1976 Leg., Reg. Sess., 1976 Ala. Acts 1012.

to succeed Heflin.[152] On the last night of the legislature's 1976 regular session, a resolution passed commending Torbert's leadership prior to his becoming chief justice of the Alabama Supreme Court.[153]

Michael House later evaluated Heflin's and Torbert's respective roles in implementation of law reform. Heflin himself said that Torbert "hasn't been given the credit due him for his role in getting the amendment and the implementation legislation passed and then following up as chief justice."[154] Regarding the whole process, House elaborated: "It was the combination of Heflin and Bo Torbert which pulled it off, and it worked extremely well. We're fortunate in Alabama we had that combination. Heflin's a bulldog."[155] His causes triumphed, but his skillfully directed tenaciousness also "caused some resentment, which would have carried over year after year. That's why Bo was so important. He could go to the legislative leadership and say, 'Gentlemen, look, I didn't pass the Judicial Article. Howell Heflin did that. My job is to implement it.' It worked beautifully."[156] The emphasis upon the two men's respective political and personal skills assumed without saying that they effectively mobilized self-described "progressive" groups, including lawyers and judges, civic and business interests, and African-Americans; they also reflected postwar Alabama's fundamental generational and urban shifts. Torbert, however, again tested these elements once he became chief justice.

IV. CHIEF JUSTICE TORBERT AND THE POLITICS OF JUDICIAL ADMINISTRATION

Fair or not, Torbert earned a reputation as an almost-ran. Earlier, he had publicly wavered on whether he would run for high offices, and by 1976, the recurrent would-he-or-won't-he yielded a handy nickname: "I was called the plaid senator from Lee," he recalled.[157] He was a respected and effective legislator, but when it came to higher office, he was seen to have a problem with cold feet. "Bo had been accused in the past of being slow to make up his mind and was sort of always going to be a candidate," Boots Gale observed, "but would get close to the altar and back off."[158] This underscores the significance of his 1976 campaign for chief justice.

152. *'Bo' Torbert Takes Judge's Office*, COLUMBUS ENQUIRER (Columbus, Ga.), Jan. 18, 1977, at B4 (on file with author).

153. S. Res. 152, 1976 Leg., Reg. Sess., 1976 Ala. Acts 1596.

154. HAYMAN & HAYMAN, *supra* note 1, at 191–92.

155. *Id.* at 192

156. *Id.*

157. *Mr. Chief Justice Torbert*, ALA. MAG., Sept. 1979 (on file with author in Brown Scrapbook 1, leaf 118).

158. Interview with Gale, *supra* note 8, at 5.

There was very little to think about; the decision was automatic. Upon learning of Chief Justice Howell Heflin's decision to not seek another term (from Heflin himself), Torbert immediately launched a campaign of his own. As Boots Gale remembered it: "Bo literally got in his car and went to Montgomery and fought the fight. It was like: 'I am not going to hesitate because there were a lot of people being talked about.' And, I think he felt: 'If I get down there first I will run off some of my friends who might want this job.'"[159]

The 1976 campaign was a model of collegiality and decorum, both because of the mores of the time and the fact that Torbert and his Democratic primary and general election opponents deliberately kept it that way. "[I]t was kind of a nice, gentlemanly sort of race," as Torbert has described it.[160] His Democratic opponent was State Representative Douglas Johnstone, a labor-identified candidate and a young one as well. "Dougger was my age" (in his thirties), according to Gale, and was supported by a new coalition group in Alabama politics: "teachers, labor, and trial lawyers and, in part, a minority of African-Americans."[161] Though Torbert's role in judicial reform certainly suggested that he was forward thinking, Johnstone was cast as the progressive candidate in the race.[162] However, though coalitions of the type that supported Johnstone became, in time, a potent force in state politics, in 1976, the progressives had not quite mastered their craft. As Gale put it, "I am not sure that they knew exactly what they were putting together at the time . . . ."[163] Still, though they didn't have a lot of money to spend, they did have organization. Gale noted: "[T]hey got stuff out for him. They had a network we didn't have. We had lawyers, basically, and some of Bo's friends, but no real good network."[164] The campaign was vigorous but never personal, and Torbert and Johnstone maintained a warm and productive relationship subsequently. "We never fell out with one another in that race," Torbert recalled, and when Johnstone sought a judgeship in Mobile, he had the Chief Justice's endorsement.[165]

This was not entirely a story of Johnstone's or Torbert's temperament and personal style. It also has much to do with timing and good fortune. Unlike Heflin, a dynamic figure who, as chief justice, clashed (albeit quietly) with Wallace, Torbert posed no threat to the ruling machine in Alabama politics. Heflin was a rising star in Alabama politics and both the

159. *Id.*
160. Interview with Torbert, *supra* note 19, at 5.
161. Interview with Gale, *supra* note 8, at 7.
162. *Id.* at 7–8.
163. *Id.* at 7.
164. *Id.*
165. Interview with Torbert, *supra* note 19, at 6.

governorship and a U.S. Senate seat were plausibly within his grasp. Wallace sought reelection in 1974 and would seek the U.S. presidency for the fourth time in 1976.[166] Of more immediate concern, however, was Wallace's widely presumed interest in a U.S. Senate race in 1978.[167] Heflin was known to have higher office in mind when he stood aside in 1976, and it was likely that he and Wallace would do battle in 1978. Indeed, it was widely thought that Heflin could best Wallace in a primary campaign![168] Torbert's personal style was low key, careful, and inclusive; there was little chance that he would stumble upon the tripwires surrounding the Wallace campaign. Indeed, it was exceedingly unlikely that the Torbert campaign would be dragged into the mire that attended any and all challenges to the Wallace machine. None of this happened, and Torbert enjoyed the luxury of making a campaign based upon germane issues and substantive policy matters.

Torbert was able to wage an issue based campaign because his candidacy threatened no other established powers within the state. Likewise, he would also enjoy what might look like the additional luxury of presiding over a finished judiciary because even though Torbert was responsible for drafting the enabling legislation, Heflin had been the public face of judicial reform. Any blame or lingering resentments did not attach to Torbert. However, it would fall upon Torbert to actually get the newly reformed judiciary going. "He, I would have to say, he came into office at a time when we had to finish the job," former Circuit Judge Joseph Colquitt noted, " and the job was a big one. There was the transition, funding, and responsibility, and accountability throughout the system [to be addressed]. All of these types of loose threads were there, and Torbert inherited the role of tying those threads."[169]

Torbert would have been entirely justified to believe that this tenure as chief justice would be smooth. The reforms that he had implemented into state law were in place, streamlining Alabama's judicial processes. Where there were 10,000 separate forms being used pre-reform, there were only 300 afterward; court services were no longer fragmented; judging had been professionalized; a clearly structured court system had been created; the chief justice was empowered to assign (or reassign) circuit judges as needed; the state courts' backlog had been eliminated.[170] There had also been implemented a new system for funding courts, which turned on court-generated revenue, namely fines and fees. During the campaign for the

166. *See* HAYMAN & HAYMAN, *supra* note 1, at 191.
167. *See id.* at 203.
168. *See id.* at 203–08.
169. Interview with Colquitt, *supra* note 9, at 14.
170. Hargrove, *supra* note 4.

judicial article, Heflin had relied on estimates prepared by "national consultants" who "knew something about the costs of other judicial systems" and predicted what a unified system in Alabama would cost.[171] They had projected, Torbert recalled, that the new, unified system would be essentially "self-supporting."[172] But the predictions were wildly wrong, and money problems would bring the judiciary to its knees early in Torbert's tenure, dispelling any notions that the new system would operate flawlessly.

The first two years of the new judicial system were extraordinarily rocky from a financial standpoint. The situation grew so dire that Torbert was left to threaten (privately) a suspension of trials. He said, "Within three to six months after the new system [was implemented], I became Chief Justice, the system was broke, and we needed funds."[173] He discussed the possible suspension with confidante and early supporter Boots Gale, who warned him strongly against it. "I remember Bo calling me saying it looks like we are going to have to suspend jury trials. And I said, 'You cannot do that.' My just first reaction was: 'What do you mean? Suspend jury trials. You cannot.'"[174] In the event, Torbert drew upon his considerable powers of persuasion in private meetings with Governor Wallace. Wallace teased Torbert with pointed jabs at his close friend Howell Heflin, but Wallace had nothing to gain by letting the state courts go bankrupt during the final years of his gubernatorial administration.[175] That would not have helped his senatorial campaign and so the two men reached an agreement whereby Wallace made funds available to cover the shortfall; "so we avoided a real showdown, although it was about to reach the point of closing the courts."[176]

The judicial article required that the courts spend no more than the revenue they generated. This created shortfalls in the first two years of administration of the new system and led critics to attack the system as costly to administer. However, by 1979, Torbert was reporting two million in savings from the new system.[177] When the system recovered, Torbert acknowledged funding increases from the legislature. He also attributed the courts' financial improvement to computerization; this allowed for coordination of spending and caseloads with an eye to disposing of matters

171. HAYMAN & HAYMAN, *supra* note 1, at 176.

172. Interview with Torbert, *supra* note 19, at 7.

173. *Id.*

174. Interview with Gale, *supra* note 8, at 11; *see also* Hargrove, *supra* note 4 (discussing the financial crisis); Kendal Weaver, *Funding Crunch Aided Torbert*, MOBILE PRESS REGISTER, Sept. 9, 1979, at 8A (on file with author).

175. Interview with Torbert, *supra* note 19, at 7–8.

176. *Id.* at 8.

177. *Court System Financially Sound*, OPELIKA-AUBURN NEWS, Sept. 9, 1979, at A3 (on file with author).

more quickly. Even though the caseload increased 7% from 1978 to 1979, the number of cases disposed increased 17% during the same period.[178] From 1979 to 1980, the court budget increased only 6%. This was during a period of drastically increased caseloads and inflation rates of 13%.[179] Torbert said of the court's efficiency: "This is possible because the management capabilities we now utilize allow us to be more accountable in monitoring and spending public funds."[180]

In short, the system recovered and worked. After the implementation of the judicial article, the *Opelika-Auburn News* reported in 1980 that, in spite of caseload increases of 15% or more a year, the court kept its dockets current since 1973. Alabama is perhaps the only court in the United States with that record.[181] On September 20, 1980, the Alabama Supreme Court ended the fiscal year with only one death penalty case held over. It was the eighth year in a row that the system had been up to date. An ABA list ranked Alabama eighth amongst states in adopting judicial reforms suggested by the ABA in 1974 as possible changes to improve state court systems.[182] The implementation of the judicial article addressed many of these changes. Also, the Alabama court system ranked as one of the best court systems in the nation by "two separate and independent surveys" conducted by the National Center for State Courts and the Law Enforcement Assistance Administration.[183]

V. CONCLUSION: LOOKING BACKWARD, LOOKING FORWARD.

"Progressivism" is a term that can be defined in several ways—and certainly Torbert and his allies were widely labeled, even self-labeled, as progressives—but it generally refers to an enthusiastic use of government to solve problems.[184] Progressivism is often associated with types of reformism that are informed by social science concepts.[185] In traditional American historiography, the differing programs and proposals of such early twentieth-century leaders as Theodore Roosevelt and Woodrow

178. *Id.*

179. *Chief Justice Torbert Tells Legislature Alabama Courts Making Marked Progress*, *supra* note 4.

180. *Id.*

181. *Id.*

182. Hargrove, *supra* note 4.

183. *Chief Justice Torbert Tells Legislature Alabama Courts Making Marked Progress*, *supra* note 4.

184. *See, e.g.*, *supra* notes 55–56, 133, 137.

185. For a useful, if hostile, discussion of the diversities of Progressivism, see WILL MORRISEY, THE DILEMMA OF PROGRESSIVISM: HOW ROOSEVELT, TAFT, AND WILSON RESHAPED THE AMERICAN REGIME OF SELF-GOVERNMENT (2009).

Wilson—both progressives—have been viewed in a positive light.[186] The same period in Alabama, however, saw the ratification of the 1901 constitution. This was a document touted by a coalition of Democrats as a form of racial deliverance, a document that would ensure "white supremacy" by disfranchising African-American citizens. As such, it was a perversion of the progressive approach to reform, for it used government to benefit certain specific racial, political, and economic groups[187] and, above all, to ensure the supremacy of the Democratic Party as then constituted.[188] This structure of power and privilege was maintained through the years by means of race-based demagoguery until race baiting was a "normal" component of politics—indeed, it was an almost surefire winner—and the state political scene was dominated by a succession of more or less transient coalitions.[189]

Of all the shifting factions of Alabama politics, George C. Wallace was master of the most formidable and long-lived.[190] But, thanks to the circumstances outlined above, Wallace was not able to unleash the demons of white racism[191] on either the court reform movement or its leaders Heflin and Torbert. Their movement did not suffer the fate of the 1957 attempt to adopt the Federal Rules of Civil Procedure. Instead, with the adoption of the judicial article, the mid-twentieth-century Alabama legal progressives secured a triumph of which past (and future) reformers could only dream: the replacement of a major component of the 1901 constitution. They had surely achieved a "middle way" marked neither by Wallace's intransigence nor by the sweeping liberalism that Alabama voters were likely to reject. Their victory was due in part to their possession of a commanding leader, Howell Heflin, who combined strategic vision with organizational skills,

186. *See, e.g.*, GEORGE E. MOWRY, THE ERA OF THEODORE ROOSEVELT AND THE BIRTH OF MODERN AMERICA, 1900–1912 (Henry Steele Commager & Richard B. Morris eds., 1958); ARTHUR S. LINK, WOODROW WILSON AND THE PROGRESSIVE ERA, 1910–1917 (Henry Steele Commager & Richard B. Morris eds., 1954).

187. WAYNE FLYNT, ALABAMA IN THE TWENTIETH CENTURY 3–28 (2004).

188. WILLIAM WARREN ROGERS ET AL., ALABAMA: THE HISTORY OF A DEEP SOUTH STATE 355–75 (1994).

189. *See* FLYNT, *supra* note 187, at 3–106. For a classic account, see V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 35–57 (University of Tennessee Press, 1984) (1949) (observing the importance of race at 42–46 and the transience of coalitions at 46–52). For an approving view of racial politics, see Ulrich B. Phillips, *The Central Theme of Southern History*, 34 AM. HIST. REV. 30 (1928), *reprinted in* ULRICH BONNELL PHILLIPS, THE SLAVE ECONOMY OF THE OLD SOUTH: SELECTED ESSAYS IN ECONOMIC AND SOCIAL HISTORY 273 (Eugene D. Genovese ed., 1968).

190. FLYNT, *supra* note 187, at 88–100; *see generally* DAN T. CARTER, THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS (1995).

191. Many works detail Wallace's role as fomenter, facilitator, and beneficiary of white racism. For some insightful glimpses, see MARSHALL FRADY, WALLACE 133, 140–70 (Random House 1996) (1968) and J. MILLS THORNTON III, DIVIDING LINES: MUNICIPAL POLITICS AND THE STRUGGLE FOR CIVIL RIGHTS IN MONTGOMERY, BIRMINGHAM, AND SELMA 338–44 (2002).

personal charisma and sense of iron discipline; thus, Heflin served, in Michael House's words, as "a battering ram" imbued with a sense of purpose.[192] Appropriately, the vision he shared with his allies was both modern and lawyerly. In fact, it embodied an approach to reform that found distinguished adherents. This was a vision of justice based on common law values of due process, fundamental fairness, and equal rights. These are concepts associated with the Bill of Rights, the Civil War amendments, and the U.S. Constitution generally—concepts that we associate with Hugo Black's Supreme Court years and with the middle district decisions of Judge Frank M. Johnson.[193]

To insure the success of legal reform, another kind of leadership was also vitally important. This variety involved close knowledge of legislative details and a genuine knack for bringing people together. In the aftermath of the constitutional celebrations, reformers had to fight countless small battles against Wallace's men in the state house and senate. They were led by Senator "Bo" Torbert, a man of expertise and good will, whose maneuvers protected Heflin's conceptual reforms from devils that might have lurked in the details.[194] As chief justice, Torbert employed the same personal skills in coaxing financial assistance from Wallace himself; though even with that accomplished, he couldn't rest on his laurels. To make the new regime work properly, Torbert also had to engage the full support of circuit judges—a process that in some cases would mean considerable changes in the lives of powerful men. Not surprisingly, Torbert elected to approach the judges face to face, in the relaxed atmosphere of personal (and institutional) give and take. It would be a challenge to lobby the judges while learning the ropes of judicial leadership and opinion writing. But Torbert, in a long career of practicing law and working with lawyers, had shown that he was tolerably familiar with Alabama's legal briar patch.

192. Interview with House, *supra* note 8, at 8.

193. For biographical information on Justice Black and Judge Johnson, respectively, see ROGER K. NEWMAN, HUGO BLACK: A BIOGRAPHY (1994) and JOHNSON, *supra* note 38. For the early history of this brand of Alabama legal reformism, see PAUL M. PRUITT, JR., TAMING ALABAMA: LAWYERS AND REFORMERS, 1804–1929 74–111 (2010).

194. Torbert's tactics also echoed earlier events in state legislative history. Nearly a century before Torbert fought for the Heflin reforms, Miss Julia Tutwiler had lobbied the legislature on behalf of better conditions for prisoners. For the sake of her cause, she made individual appeals, drew upon personal connections and shared experiences, and suggested ways around parliamentary roadblocks. Her application of deep knowledge of the subject at hand and of the men and institutions in question was a precursor of the Torbert style. *See* PRUITT, *supra* note 193, at 32–45.