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Interview with Howell Heflin, Chief Justice, Alabama Supreme Court,  
July 9, 1974, conducted by Jack Bass and Walter de Vries, transcribed  
by Linda Killen.

Jack Bass: Was that your first state wide political race when you  
ran for chief justice?

Howell Heflin: Yes.

J.B.: Had you held any other political office before that?

Heflin: No.

J.B.: What prompted you to run?

Heflin: Ha. Well, I don't know. I suppose it was many factors.  
I'd been president of the Alabama state bar, 1965-66, and had started  
what I thought was a reform movement of courts and of the bar association  
. . . the bar profession in Alabama to some degree. And some things had  
carried on. I was interested in the courts. In modernization of the  
courts. Judicial reform for part of it. Then I suppose I'd reached a  
stage in my life where change was desirable. Or maybe I was a little  
tired of what I was doing. Many factors. It could have been an

thing. Basically I think it was an opportunity to see some  
of my ideas that I had advocated on judicial reform and had been advocat-  
ing for a number of years. . . . An opportunity to try to do something  
about it. Also, I was being urged by most of the lawyers of the state to  
run. I ran against the former governor Patterson. He had announced. I  
had encouraged several other people myself to run. One member of the  
court at the time, the senior associate justice. He wouldn't run. And I

reckon I got talked into it by several people plus the fact that I think it gave me an opportunity to do some things that I'd been thinking about a long time plus the fact that it had a little spice and zest to life as it was going after 23 years of practicing law. It wasn't as intriguing and as interesting as it had been up until that time.

J.B.: And you've accomplished a number of those reforms you set out to accomplish.

Heflin: We feel like we got. . . . I've been in office about three and a half years and we. . . . We 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. We've got a complete new judicial article. That went through in January of '73. Before that we had had some legislative matters that. . . . We had a pretty good legislative package. We created the department of court management. Got two bills that gave the court rule making power for rules of civil procedure and for appellate rules. And pursuant to it the court adopted the federal rules of civil procedure with some modification. And we're in the process of adopting the appellate rules now. We started an effort to get the appellate courts current and they are now all current. We cleared the docket of the supreme court 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. We did away with the j.p.s and the constitutional election in January of '72, which was the people ratifying the legislative authorization to have a constitutional amendment. It was in the '71 legislature. And we created at that time a judicial commission. The Alabama Constitutional Commission which had been created

in '69 had been meeting. So they finished their work product in about April or May of '73. We urged the passage of the judicial article and they felt that that was perhaps the first step in their desire for constitutional reform and they supported it. And the judges and the lawyers and the citizens group and other people supported it and we got through the new judicial article. Which the Constitutional Commission had drafted over about a two or three year period. As well they had drafted other. . . a complete new constitution for Alabama. That was the only segment of it that has passed so far. So we've things moving. There are other details but that's the major .

J.B.: What's the status of the rest of that constitutional reform effort?

Heflin: Well, there is still. . . . The legislature continued it. It gave it an appropriation for two years. I had a phone call today. By the way, they want you to meet with them in August, get your ideas on how they could move in the other areas. They really just decided. . . they put it out. There was a lot of opposition on various vested interests that some elements, as there was in the judicial article. But they concentrated on the judicial article and that passed. Now the rest of it, they are in the process of trying to rev it up and get it going again. The commission continues. That's about the status of where it is right now. I suppose some of them making speeches about it but it's really. . . . There hasn't really much been done since the December 18, '73 election when the judicial article was passed.

Walter de Vries: How is it going to change the judicial politics of the state?

Heflin: Well, it doesn't change the politics because you, in effect,

still have an elected system. There was introduced. . . . The Constitutional Commission recommended that there be an appointed system similar to the Missouri plan for the appointed system for the selection of judges. Not their retention. They did not advocate the Missouri plan retention program. But the legislature indicated that they did not want that changed. They had had for a number of years in Jefferson county which is where Birmingham is, the largest city of the state. . . they had had a nominating commission where a commission composed of five people select three people and the governor must appoint one of the three. That was what the constitutional commission advocated. The legislature changed it. Then in the last days, when the judicial article. . . . They amended on the floor of the house and put 15 counties in the position that they can do it by local legislation. Prior to that time it had to be done by a constitutional amendment. I think it really was a unique situation. I think what they were trying to do is they thought that they were making the judicial article unconstitutional. There are some decisions of this court that say that if you put certain counties, and name them specifically or exclude them or have them treated differently, then that is, in effect, local legislation, should have been [amortized/advertised] according to the constitutional requirements for local legislation. But they failed to realize you don't make the constitution unconstitutional. So as a result it would mean that those counties could go into a judicial selection process by legislation, local legislation, instead of the old route that they had to go prior to that time, which was of constitutional amendment change.

J.B.: Basically the 15 largest counties?

Heflin: No, just a conglomeration of people. Jefferson county. First



thing the amendment was to keep Jefferson county just like it was. That was done. And then at the same time wanted to follow the Jefferson county approach and they had a constitutional amendment at the same time.

Unidentified: That was the last night of the session

J.B.: Judges will still be elected in Alabama?

Heflin: Yeah. There'd be no change there. The governor was afraid, opposed any change of that. He was opposed--at least his lieutenants were opposed to a change in the method of selecting judges. Anyway, it was amended out. We didn't. . . . We realized that the constitutional commission proposal wouldn't go with . This was a compromise. To go back . . . just to maintain the status quo of the election of judges and the selection process and the appointive process. It ends up being better than the status quo, but it was not intentionally done. It just happened that way.

W.D.V.: This is the only major piece of legislative reform in either one of the three branches of government in Alabama. Is that right?

Heflin: It's probably the only one that's happened since 1901.

W.D.V.: Right. Why is that? There's been no executive reorganization. The only legislative reorganization came about because of court orders on reapportioning. How were you able to get this thing through?

Heflin: Well, we worked on it. Had a lot of support. Of course the constitutional commission had worked on it. We had a citizens group. We had the support of the bar association and we had the support of all sorts of. . . . Mike worked on it like everything. We had parent-teachers PTA organizations fighting for it. League of Women Voters. In the campaign what did we have, about 30 sponsoring organizations that supported it in

constitutional amendment election.

Unidentified: It was probably the first time in the history of the state that you ever had League of Women Voters and [labor?] on the same issue with Farm Bureau and major black leaders. Everybody, all the groups worked for it.

Heflin: Had labor and chamber of commerce both endorse it. We had still a lot of opposition from people. . . lay judges, probate judges, just a variety of groups that opposed it. One former governor campaigned heavily on it and lawyers and judges. He didn't really understand it I don't think. Jim Folsome. I think if he'd been able to understand it. . . he's had some pretty progressive ideas in the past. I don't know, it was just a whole lot of effort. We spent a lot of time on it.

J.B.: When you ran for chief justice, was the campaign different for that office from what it would be for another office?

Heflin: Well, yes and no. You've got the problem of trying to run from it from an ethical viewpoint. And you've got the problem of financial contributions. To run a campaign you've got to look at it from. . . it's in the same sense of a political campaign. You've got to have the mass media and advertising. And you've got to go around, see the people and everything else. But you have the problem of what do you do? [Are you at a stage?] where you come into office in effect indebted to your supporters. And this is the thing, from a judicial position, that ought to be avoided to every degree. It ought not to be present. My campaign. . . the idea that they worked out in the beginning is that there would be a group that would raise money and I would not know how much money was raised or who the contributors were. This was the idea. . . shield me. . . this was lawyers from throughout the state. . . would shield me from being able

to know who made contributions and prevent me from feeling I had any sub-conscious obligation to support people. Well, that's good in theory. Lawyers would send me checks. Hell, I'd know who sent it and that sort of thing. And then, of course, in my home area where I ran, citizens and other people raised money. Just a friendly or local pride in a native son running, that sort of thing. The end result was is this, that I ended up knowing about half of the people that made contributions to my campaign and about half of them that did not. Under that situation. . . really, when it got down to it, I ended up with about 90% of the lawyers supporting me in the race. So it may well. . . . I have not had any qualms about deciding cases against people who supported me. I may have the idea well I don't know, this fellow who's on the other side, he may have made a much larger contribution than the other. But I tried to come in and divorce completely the idea of who supported me or who didn't. Money-wise, I think it's in a, such a state of confusion that I would not know who did or did not. In my own judgment, I would know about 50%. You do know--and this is an evil of the elected system--you do know the man that [phones?] you, that worked, that did the leg work, that campaigned for you in this county and that county, and that sort of thing. So I think ours may have been a little unique in that method. I don't know of any other place--now you just ended up in New York for the position of the chief judge of the New York court of appeals, which is the equivalent of the supreme court of New York, a campaign where unofficial reports say that each candidate in that race, his supporters spent over one million dollars. Well, that's not healthy for a judicial system. I was down in New Orleans right after an election. I went down and made a speech to a meeting of all the judges. They elect their members of the supreme court by districts. And they had the two being elected from the New Orleans districts. And I

understood there that those candidates, that their supporters must have spent \$200,000 in behalf of each of the candidates. There was one candidate, fellow who was elected, named [Calligarro?] who was the former law partner of mayor Landry, Boone Landry, the mayor of New Orleans. He was running against a fellow named Leon Sarpy who was largely a bar association and more of a large firm candidate. And at the same time they had Garrison running against a fellow named [Marks?]. I don't think in that race as much money on each side was spent, but probably was a substantial amount in that Marcus-Garrison race. Garrison was defeated. But I mean it points out the evils of the elective system. Of course there are evils of the appointed system and I'm not getting off into a debate between that, but you're asking me about judicial politics. And your question was to me about my election. But it creeps in. I mean in all candor you can't say that it doesn't. But you try to divorce it as you can and as far as I know I don't think I've made any vote or any decision that was based on any political situation that I know of. I mean I've tried to be honest in my voting and not to let who were my supporters and who were opposing me enter into it. Consciously I have. You never know subconsciously whether things enter into your mind or not. I mean you put it away, try to divorce it, but it's an ill of the system.

J.B.: Among the people who urged you to run, was Patterson's record on segregation as governor an issue?

Heflin: It was with some. I ended up with support from all groups. I would think that a sizeable group who were anti-Patterson from racial matters urged me to run. At the same time I had extremely conservative vote. I ended up in Mobile, which is unusual, with almost every element and segment of society and economic life supporting me. And Mobile is largely, they say, is largely a ticket area. So I ended up with rabid

segregationists and I ended up with the black vote. So . . . occasionally. . . it wasn't a race in which that was primarily an issue. But I'd say it was a significant issue among those that were opposed to Patterson's segregation record. And a great number of those asked me to run. For example Bob Vance, who is chairman of the Democratic executive committee. I reckon. . . . Well, he was also vitally interested in judicial reform. But he urged me a great deal to run and talked to me a number of times about it. On the other hand a great number of conservative type people were. . . . Patterson also had this. I'm not saying it's true, but there was in the minds of a number of people that he had had some corruption in his administration. Things about paint striping and some other matters and liquor agents that conservative people. . . . In the Laurleen Wallace race, when she ran, Patterson ran for governor. He had defeated Wallace and then under Alabama's law had to stay out four years. Then he ran again and he was in the race where Laurleen was. That issue of paint striping, liquor agents, some allegedly corruption was an issue or issues in that race with him.

J.B.: I'm not familiar with the term paint striping. I may be just naive. [Laughter.]

Heflin: Well, during his administration all the highways ended up with white stripes on the outer edges as well as white stripes dividing the two lanes. Now it is probably commonly done throughout all highways. But the issue was that this was being done by certain contractors as political pay-offs. And paint striping was an issue in his. . . at that time highway maintenance and that sort of thing. They actually even tried the assistant director of the highway department during his administration on bribery or kick back charges. He was found not guilty but it was after he went out of office. This usually. . . you know, some administrations,

they go out of office and there are indictments that follow sometimes. There was in this one. So that was a . . . that largely worked out. Paint striping means.

J.B.: Is the politics of race gone in Alabama?

Heflin: I don't think so. I think it's still in many of the people's minds and their thoughts in their selection. I don't think it's gone. I think it's still an issue with a lot of people.

J.B.: Can a segregationist candidate, excluding George Wallace. . . anyone other than George Wallace who this time did not run as a segregationist candidate. But can a segregationist candidate still get elected in Alabama in a state wide race?

W.D.V.: Running on it as an open issue?

Heflin: As an open issue I doubt it. That again. . . .

J.B.: Open issue. It's a code word you're talking about.

W.D.V.: Right, using code words, not. . . .

Heflin: Yeah. . . . The issue would be. . . they could

but the catch would be in a similar situation where. . . the run-off between Brewer and Wallace. <sup>Where there</sup> whether you would use those code words, bloc vote. And in a close race, where there was somebody in a run-off. . . the pattern of using it was that you would wait until the run-off. The man that got the black vote. Then they would take the boxes where there are primarily and predominantly black and they would pass the word, openly or quietly, he voted this in the Smithfield box in Birmingham. What is it, they've got some [fire?] station here in Montgomery that is predominantly a black vote. The local elections still. If that box here in Montgomery goes predominantly for a person and there's a run-off, they will usually by word of mouth pass it. And it has some effect, too.

We'd say that if you had a governor's race or if you had had it in this last race, say the lieutenant governor's race in Alabama. If you had that I'm not sure. . . I would not have put it past some that they would have run.

I don't know. Maybe it's past and maybe it's not.

J.B.: George Wallace ran in 1970 and in the run-off made a big issue of the bloc vote and the dangers of that ~~for~~ Alabama and so forth, in which race was a very open issue, particularly in that run off.

Heflin: What year?

J.B.: '70.

Heflin: [That was the Brewer race.]

J.B.: And then in '74 he didn't really have strong opposition but he campaigned on being governor of all the people. And we're writing a book on southern politics over the last 25 year period during which George Wallace has been a very central figure. And we're really trying to get some insight and understanding. Has he changed or has he not changed?

Heflin: Let me give you something of my own ideas now. I don't know whether you agree with me or not. [Trans. note: there is someone else in the room during this interview and the 'you' in this sentence could well be directed toward that person.] The black vote up until this election. . . ~~has been~~ fairly well a bloc vote. Behaved. . . they would stick together. Usually coming together from their various organizations over the state to a state meeting and then passing the word ~~to~~ black votes. Hasn't always been fully organized. This time, my observation is, that in local counties the local politicians--the white politicians--he had realized that in his local election that he must in effect get black votes. A black vote that votes ten or fifteen per cent in/any election in many counties. Probate judges, sheriffs, these



other things. This is a sizable vote and can mean the difference. So as a result there has been a lot of work done by white politicians with local black politicians. And they have developed, in each county in the state, a lot of cooperation, harmony between some black politicians and white politicians. And as a result, I think this has somewhat weakened a state bloc vote of votes. I think in the lieutenant governor's race I think Beasley ended up getting most of the black vote in the run-off. But it wasn't obtained through a state going down . I think what happened was his supporters in a local county basis were very friendly with black local counties and made themselves that feedback from county to state somewhat resulted in his getting that. Now would you think that's somewhat of a fairly good analogy in that?

Unidentified: Again, it just depends on the nature of the figures in the race.

Heflin: Now that wouldn't necessarily be true in the larger metropolitan areas. That would be true excluding say four or five of the larger counties. The rest of the state I think that influences now felt.

Unidentified: Depends on, you know, the issue. solid bloc of black votes, especially in Jefferson county.

Heflin: Well, they felt it would bring about a better quality of justice. We. . . . One of the major things in the judicial article was that every judge would have to be a lawyer. I think they felt that their constitutional rights would be protected better by legally trained judges than it would by a lot of lay judges. That's part of it. I think that feeling was. . . they felt that. [I've gotten off the track.] You asked me about. . . what was your question you asked me about 25 years?

J.B.: We were asking. . . is George Wallace, in the last four years, either as a result of his accident or as a result of the fact that blacks



now vote in significant numbers, is this changing image that he's projecting reflect any change in the man himself?

Heflin: Well. . . I don't know. I don't have enough. . . . I've known George a long time but I've never really been around him a great deal. So I mean it would be a personal evaluation of that. Openly, he seems to . . . talking to. . . there's a dialogue going on between that didn't exist formerly which is evidence of a change on his attitude. To what degree. . . . I don't know. I don't really think I'm sufficiently conversant with or have observed him other than just as a newspaper or media approach to tell you that. I couldn't answer it on personal observation. I've seen him here and been on various sundry things with him, but I don't see him enough and I've had no real discussion with him about politics. So I don't think I can really answer that.

J.B.: One person expressed the view that the effect of. . . one effect of George Wallace's political tenure I suppose has been that it's had the effect of freezing political development in Alabama.

Heflin: Of freezing political development? I don't understand exactly your terminology.

W.D.V.: That he's been the predominant force in the Democratic party so long that there's been very little opportunity for other leaders, new leaders, younger people and so on to develop in the party. Development has been kind of arrested. Things really haven't changed that much in the state because of his dominance over the party and government.

Heflin: His office as state governor?

W.D.V.: And the Democratic party.

Heflin: Well, of course, the party. . . depends on what. . . machinery. The executive committee, he's not been in control there. I suppose you all

are familiar with this recent thing on that.

W.D.V.: Right.

Heflin: In the last several years. .

W.D.V.:                    talking more about the executive branch  
and the legislature.

Heflin: The. . . we'll say lieutenants that have strictly followed Wallace that if something were to happen to him and you were to. . . say something were to happen to him . . . towards the end of this next term and well, he can't run again. Who would be the Wallace people to run for office? Have they been developed? It would be difficult to start naming them. You've got. . . . Well, again, I'm not sure this wasn't true in the Long administration in Louisiana. It ended up there that the family name carried forward, which could happen in Alabama.

J.B.: Except in Louisiana during the Long regime you had much more of a. . . people either ran as Long or anti-Long candidates. And that's not true in Alabama, is it? I mean, you don't run for office here. . . . Or do you? I really asking it as a question. Do candidates in Alabama run as a Wallace candidate or as an anti-Wallace candidate?

Heflin: Well. . . there been some. There were some in the legislature this last time. Some on the Democratic executive committee. Or you've ended up in a run-off in the lieutenant governor's race, both claiming. . . no question of their allegiance to Wallace. You couldn't say it as much as maybe it was in the Louisiana situation with Long. There has not been that.

J.B.: He hasn't attempted--

Heflin: There has been a lot of [coat-tail] sharing. Don't you think the [a series of names] race, while age was a part of it, it was still somewhat of a coat-tail that Melba Till Allen got elected on. That

race would probably be about the only one this last time that would have some indication of coat-tail riding. I assume that in some places legislative races were determined on that. Not on wide spread.

W.D.V.: That means that if he left the scene, he wouldn't still have a Wallace faction and anti-Wallace faction like you do in Louisiana, or like you did in Louisiana.

Unidentified:

Heflin: That remains to be seen. It could develop. You'd get that develop because of a moral situation. The voter allegiance to the Long name. Whether that would develop, if it happened in Alabama, would really remain to be seen.

J.B.: But it's also an issue oriented faction.

Heflin: Well. . . I'd have to go back. . . I haven't read much Louisiana politics in a long time. But I don't know. I don't know whether there's much issue over anything or not. There was some populism. Earl and the Senator. The Senator, of course, came along as a. . . largely namesake. He can't say that he represents a populist viewpoint.

oil interest and things of this sort. Russell.  
But it's largely. . . . I think Russell's success has been his name. Smart enough to take advantage of it.

J.B.: Did you get any surprises when you campaigned? I mean in terms of perception of Alabama voters and what they wanted and what was on their minds.

Heflin: [Mine was/wasn't an issue race.]

J.B.: No, but you had to talk to a lot of voters and get out and campaign.

W.D.V.: Were they different than you thought they were going to be?

Heflin: Oh, not much. They're basically pretty conservative in their

approaches. I think they are prone to want to have progress to take place. We probably pushed them on our judicial article and judicial reform, but so far we haven't had a reaction against it. But it's been. . . they've gone a pretty good ways in supporting things like this whereas in the past they have not supported many constitutional amendments.

W.D.V.: You think there's been a basic change in the voter then in the last ten or twenty years?

Heflin: I would think that the base. . . . Of course there's no doubt that the voter is better educated than he was twenty years ago or twenty-five years ago and he's coming along. What you run now. . . your percentage of people graduated from high school and go to college now. . . wasn't it 35-40 percent as opposed to 15-20 twenty-five, thirty years ago? A lot more blacks now in college and schools. I mean, they're better educated. And I think as a result times are changing and they are asking more questions. They are more intelligent in their voting than they used to be. Course I suppose they were then, but I wouldn't. . . . I would compare the basis. You can't say that education hasn't changed things. And the other factors of media, television. You got all of these media matters. Nobody really knows what's the effect of television. But television. . . they're on the scenes of what's happening and being there. What's happening in Washington, what's happening in the Supreme Court. They have to be more intelligent than they. . . . And I think as a result they are more knowledgeable about their vote than what they used to be. Last thirty years, or forty years, just changed life completely. Scientifically. You've had more advances than all the rest of the history of the world put together. And it's bound to get into the political processes to some degree.

W.D.V.:

Wallace has been around or in

office or his wife has or somebody since 1962. When a politician is around

that long, generally his popularity goes down. His is higher now than ever before. What's the reason for that?

Heflin: Well, you had a series of events. There's no doubt that his unfortunate shooting has given him a great deal of sympathy. And with this in mind. . . I mean, the question is if he hadn't been shot what would be the situation at this time? If he hadn't been an invalid? I don't know. It's speculation. But it might have been entirely different. That factor alone is a significant factor. He has really had no issue. He had the busing issue which was a popular issue. Maybe some people say the issue of tax reform. But I don't think the average Alabamian associates tax reform with George Wallace. I mean I think this is something he's gained nationally . But it has to be that right now his great degree of popularity is his injury, his fighting spirit to overcome it. He had this. . . personal things that have gone on all his life. His wife dying of cancer was a significant factor. I don't think you can. . . . And the long period that she had that she lived with it. That's a factor. I think he's got a fighting spirit that the average voter likes. But he's had a series of personal things that have happened to him that some way or another get out to the voter and the voter sympathizes with him. Or at least maybe the voter feels a part of it, the empathy of whatever it might be.

W.D.V.: So you're saying he has a personal kind of attraction?

Heflin: Well, I wouldn't say it altogether, but I would say that you can't divorce those factors from him. He's had. . . . Right now

been an election I don't know what the outcome would be. But there's been speculation. But if he had not been . . . if he had not been an invalid, if he had not displayed the fighting spirit in effect to overcome

it, the spirit to. . . . I think the average people feels that he exercises, works hard. The parallels of Franklin D. Roosevelt's rise to fame following his polio. Those are all factors that you just can't divorce and say that they haven't had no input. If you try to divorce that and then put in the balance of the scales the other factors . . . altogether the fighting spirit, maybe the changed attitude on racial matters if that be true.

J.B.: I want to ask you a political question. It goes back to '64. Because we've heard some divergent opinions on this. When Goldwater swept the state, how big a factor, in your opinion, was the fact that he voted against the civil rights act that year?

Heflin: Goldwater? Oh, I think it was a sizable factor. I think that had a sizable influence on Alabama voters at that time. You know, you go back in your history. . . . Didn't Wallace withdraw? Was he running at that time and then he withdrew?

J.B.: Withdrew after Goldwater got the nomination.

Heflin: He withdrew after he got the nomination. And who was running against Goldwater? Lyndon Johnson. Yeah. That was the race. . . push the button, the man pushes the button and atomic bombs go off. Vietnam and all. *[And of course]* Johnson got a lot of mileage nationally out of. . . that Goldwater's liable to do something erratic and put us all into a nuclear war. I don't know. It's hard for me now to all of a sudden think back ten years ago and give you that answer. But at the time I felt like that his withdrawal, Wallace's withdrawal, and Goldwater's position on civil rights at that time was a sizable factor in Goldwater's sweep of certain southern states. Mostly in the real deep South. Of course Goldwater also is a hard-nosed military man which may have been popular at that time. Basically the South is very patriotic. They like strong military,

strong defense. Of course that's hard to divorce. . . separate your mind as you view Goldwater today and then how he was in '64. But I'd think about it a long time.

W.D.V.: As long as you're thinking ten years ago, could you have foreseen the accommodation between whites and blacks, the races, that occurred between '64 to '74? Change in race relations?

Heflin: I think you would--

[End of side of tape.]

--in '64 really nothing much had been done. Great number of Selma march. When was the school house door stand?

J.B.: '63.

Heflin: '63. Things were changing nationally. Of course some people say that those instances helped bring about the legislation. But I would think that really. . . . My own idea as I look back on it, I'm surprised that it moved as slowly as it did. If I look forward from '74 to '84, I would anticipate that by '84 that with kids solving their own problems in schools. . . that in ten years you ought to have. . . the matter of race ought to be pretty well gone behind people. And there'll be other issues that crop up. Really, in looking forward that ten year span, I really, I think basically, the deliberate speed of the '54 Brown decision for 20 years was pretty deliberate. You would have expected it to move a little faster. When it came operative. Because everybody immediately looked upon it as being a period of. . . . I would not have thought that the Warren court or even the people like in Mississippi or Tom Brady who called you know and made his famous, what is it, Black Friday speech against the '54 decision. And all of those thought something was going to immediately happen. It took. . . . Maybe by doing it in the slowness that it moved,

kept down much more violence than you might have had otherwise. But looking from '64 to '74 and saying that if I could go back and record my thoughts then as to what the future would be, I really thought things would have occurred far faster.

J.B.: You got into politics fairly late in your career and successfully. And you've accomplished a number of the changes and reforms in state government--in the judicial branch of state government--that you were out to. Do you foresee any possibility that being the son of a U.S. Senator that you might like to move into another branch of government?

Heflin: I am not a son. Tom Heflin was my uncle.

J.B.: Uncle. Excuse me. Nephew.

Heflin: You know, this is a funny thing. People always say you're going to do this, you're going to run for this office [if] you run for that office. If you say you are, then you're immediately put into a position where. . . . I elected the judiciary. . . could be [wrong?]. You're not running for something from the judiciary. And if you say that you're not, nobody believes you. But my own idea is that I have no intention of doing anything. I can tell you that. You can believe what ever you want to. And that sort of thing. But damned if you do and damned if you don't. I mean you say that you're not going to run and nobody believes you. And if you said you did that would be the biggest mistake in the world. But I really, basically, I don't have any plans to run for anything else.

J.B.: Are those the kind of decisions you find are dictated as much by events as anything else?

Heflin: Well, I just really don't have any ideas. I think really



there's a lot to be done and probably. . . . The position, the court. . . . We got a new court coming on. It's an intriguing, challenging situation. I think state court systems in the next ten to fifteen years will change drastically. You got all sorts of intriguing challenges in all various aspects there. Movement . State judiciaries. You have more of an independent judiciary. All sorts of state problems that you are confronted with. It's an interesting, challenging thing. So. . . . But in all candor if I tell you that I'm not or if I tell you that I am or one way or the other, it's just a situation. It could be that events could change. But I don't have any plans. If I say that I'm interested in running for something then there are immediately a bunch of knives that get sharpened for you. I don't want the judiciary program harmed by people that a way and I don't really. . . . Frankly, the court's the only one that I know that can veto the governor without having anybody to override its vetoes. So we've got an interesting. . . . That's just an illustration where courts do stand. And I think there's a lot of development going on in the jurisprudence. In all throughout the entire country there's a new, young element coming in. State courts have gone through a period where they exercised judicial restraint to every degree. They wouldn't do anything. They say it's a legislative problem; let legislature make its change. Now you can see it beginning where if it's a matter that was made by judge made law why can't you change judge made law? You do exercise restraint as to legislative matters, but so much of the law is common law, is judge made. And for years judges said if you're going to change it do it through the legislature. Now you got a movement says well, all right, we can change it ourselves. If it's judge made, why not if it needs to be changes, change it yourself?

J.B.: You do see then a trend toward a more activist state court system?

Heflin: I do.

J.B.: Nationally?

Heflin: Nationally. In every state. It's beginning to crop up.

J.B.: Is this sort of an after effect of the Warren court?

Heflin: It's a pendulum. I think as basically the state court systems reacted against Warren court. . . . I came on this court. . . . I mean I came up as a lawyer trying to find out what the law was. You followed decisions of the Supreme Court. I came into a conference here and the first " any damn way we can get around the Supreme Court on this decision let's do it. I ain't following the Supreme Court of the United States on anything." That type of attitude. Now it's changing. You're getting a younger group that's coming in. And I think it's part of the pendulum. It was a reaction against the Warren court. And this is true in Montana, true in Kansas, true in Michigan and New Jersey and all state. But now, I think, that group is going and you're getting a younger--maybe younger is in the fifties--coming on with an idea that their obligations and responsibilities that they owe to the state and owe to the people and they ought to endeavor to try to do something about it. I've been here three and a half years, but in January, with the new court coming in, there will only have been two people who have been here longer. In other words there will be six members of the court which will--five members of the court which will have been added since I've come on. And I think in another five or six years this will take place in the other states.

J.B.: I recall reading in a biography of Warren that he said he viewed the Supreme Court of the United States as being more of a court of justice

than a court of law. Is this philosophy permeating down to . . . coming into the state court system?

Heflin: Not as much so, of course, as the Warren did. It's moving but I think some of it, to some moderate degree, is coming down. You've got such things as . . . we'll say in consumer fields. this issue has been in state courts. Largely you have the old common law concepts of jurisprudence. You follow the various things. And I think more people are more people minded, that people have more rights, injured people have more rights than the concepts of what you .[?] I can tell already the trend in this court to effect. . . . Well, they're more human rights versus property rights. I think the human rights philosophy is creeping in in moderate degrees now in state courts where it was a firm, hardfast feeling before that we protect property rights over human rights. I think now there is a feeling that human rights should be looked upon more so than property rights.

J.B.: Do you perceive. . . . You know, when you go to judicial conferences and so forth, do you perceive any difference in attitudes among state judges from the South as opposed to those from the non-South on these issues?

Heflin: I think it's more largely new people coming in. The older judges from the South possess the same judicial restraint-states rights approach. . . . The one in Kansas that had that approach, the older one, and Oregon, Washington, Indiana. . . . I'd say the most conservative chief justice on states rights and federal and state relationships today is the chief justice in Indiana. More so than the old chief justice Bobbitt or Suzy Sharp or Joe Mulston in South Carolina--who have been there for years--and that type of people. I think they are the same all over.

I think the change is taking place all over regardless whether it be South,

North, East or West.

W.D.V.: Do you detect any regional differences between southern court systems and court systems outside the South?

Heflin: Well, basically there have been in the racial matters. I think there's more. . . well, the older groups. . . . I think as the younger group comes along that that is lesser.

W.D.V.: Any other differences?

Heflin: Well, in the other state systems, you find pretty well the same stereotypes that you find in the South. You find in other places. . . perhaps may be the South maybe is a little more. . . . But there are a lot of. . . . I look around in Georgia, look around in Florida, Kentucky, Tennessee, and I see opinions coming out that are not really different from what's coming out of Oregon, coming out of New Jersey, coming out of Maine, coming out of Colorado. I think the philosophy is not altogether uniform, but there's a striking uniformity between them.

J.B.: Have you read Neil Pierce's book, The Deep South States?

Heflin: No.

J.B.: You should read it because he has some nice things to say about you [laughter] and the court reform. That's one of the sources we found.

Heflin: What's the name of it I've got to write it down. [Laughter.]

[Interruption.]

--than any one person in Alabama and probably as much as any. . . . He sat on a few 5th circuit courts, but I'd certainly think that his decisions and his decisions--not just Frank Johnson, but I'd say federal judges.

There are other judges that have held likewise. They didn't get the publi-

city that Johnson did. But several judges like Lynn in Birmingham,

who's pretty conservative but still follows the United States Supreme Court. You've got a class of federal judges that have never been written about. But they were not the flashy. . . and that sort of thing. But they moved to follow the Supreme Court and gave adherence to it in a unspectacular way, but they added stability to it. You got people like Frank Johnson. . . I mean like Lynn in Birmingham and Hobert Greens in Birmingham and Dan Thomas who was in Mobile. They were not spectacular with it, but they saw that the United State Supreme Court's decisions were carried out. They followed it. And at the same time they were able to keep the lawyers convinced that they were not revolutionaries but that they were doing what they thought they had to do and what was right. That element in the South has never been written about. But the conservative federal judge who followed the Supreme Court and gave stability to it really. . . . If you get down to it, nobody knows. . . and this is something. . . but the influence of Seibert Lynn had--he was a federal judge in Birmingham on the school house door. I don't know. All mine's hearsay. But the word out in a few circles was that he let George Wallace know that if he did certain things that if he held him in contempt that his contempt procedure was going to be rough. That sort of thing I've heard. Now I don't know. . . that's all hearsay. I don't know whether it's true. But there was a lot of conversation about that at certain times.

J.B.: How about Judge <sup>Rives</sup> ~~Reeves~~? What has his role been?

Heflin: Well, <sup>Rives</sup> ~~Reeves~~ has been. . . he's looked upon as being a little more liberal than this conservative group. Now Walter is another federal judge that you'd have to put in the conservative, Alabama judges. And you've had them also in Georgia and you've had them in other

places. You'll say Clem, Clement Hainsworth in South Carolina. He's been a . . . he's gone through this sort of thing. But they were able to follow the Supreme Court and they kept up with the things that were happening. But they were able, at the same time, still to keep the confidence of the people. It's a mixture that's unusual, but it's had a sizable influence.

W.D.V.: It's also a completely different role for judges than ever before, right?

Heflin: Yeah. Well, Frank Johnson. . . Frank was the headliner. Frank had. . . . I'm not being critical of him, but he had the headline cases and he was looked upon and cursed and his family. . . . He's had to have marshalls and guards guard him, as I understand it, when George Wallace was shot. Immediately following it, US marshalls circled his home because nobody knew what might happen. There was a lot of reaction against him and I wouldn't doubt that he probably has had many close calls. But on the other hand, there is another group that didn't get the headlines but had all these cases and handled them in such a way that the leadership of the South maintained respect for them. And they went with them. They felt that they had to do it and there was no real deep animosity. Lynn retired after 25 years--well, on his 25th year before he retired--the lawyers in Birmingham and all of north Alabama, they gathered and honored him. He was, in effect, a revered federal judge today. I mean, he's retired. He's a senior judge. <sup>Rives</sup>~~Reeves~~ had a little more. . . . He was not looked upon in the same category by the people as [Bewen?] and as Grooms and as Lynn were.

W.D.V.: Some make the argument that the major social change in the South in the last 100 years came about because of the federal judiciary in the last 20 years. If that's the case, then that's an entirely new

role.

Heflin: Well, the Warren court's new role.

W.D.V.: You're saying that that's happening in the state court systems. . . .

Heflin: No, I'm not saying to that degree. I say I foresee a modified. And it ain't. . . it's an elected system and it's not going to be . But I foresee in the future a role of the state judiciaries by which they will occupy a, more of a potent factor on philosophy than it has in the past. I don't think you're going. . . . Any elected system, they aren't going to get out of. . . they aren't going to move too fast and that sort of thing. But they're going to still. . . I foresee, with young judges coming in. . . and the fact that other things. . . . the pendulum has swung so against the federal court. Now, as somebody pointed out the other day, if you were to go back and say what would you repeal? Now that things have occurred, what would you repeal that the United States Supreme Court decisions made during the Warren things? And you stop and think. I don't agree with their search and seizures. I don't agree with a lot of things that they've done. But at the same time, their basic, fundamental rights, such as the fact that every indigent defendant ought to have a lawyer. I mean it's become now commonplace. The average lawyer and the average person would not like to see a system where you went back and did not see that a poor man was not adequately represented in court. They go back to the Miranda warning. That was revolutionary. Well, now you feel like that everytime the policeman arrests somebody and says "Now you're under arrest. You've got certain rights. You can remain silent." This is just common place in the English system and has been for years. I don't think many people would want to change



and say that a person does not have the right to be informed that he can remain silent and that he has certain individual rights that would protect him. So there are a lot of changes that have occurred that now that they've occurred, while they were cursed and people said that they were revolutionary, you wouldn't want to go back and say I'll repeal those things. And I think that type of feeling is that those things are good for the people. There are things--search and seizure--where I think justice has got to be reached. I think somebody has written a book recently in California that there is no such thing as perfect justice. And the idea of reversing every case because of every technicality has got to go. And you've got to look at the overall situation of. . . . If there was an error was it an error that substantially effected his constitutional rights or his rights? And if the error is some minor error the case ought not to be reversed.

W.D.V.: It will also make it difficult for state legislature to ignore reapportionment sections of their constitutions. Is that right?

Heflin: Oh, well, yeah.

W.D.V.: That's a major change.

Heflin: Major change. One man one vote. I don't know whether today it's being accepted. There was a lot of feeling that that was wrong and the greatest thing in the world. I have reservations at times. If I had to go back and look at it again my thoughts on it today may be different from what the thoughts were at that time. So as you go along, I think there is a role in state judiciary that's going to be different from what it has been in the past. It's going to be a stable approach rather than doing anything revolutionary or that sort. But still at the same time, I think the people will benefit and it's an opportunity for service.

[End of interview.]